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Who Speaks When the Data Principal Cannot? The Right to Nominate under Section 14 of the DPDP Act, 2023 and Its Collision with Indian Capacity Law

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ABSTRACT :

Section 14 of the Digital Personal Data Protection Act, 2023 lets a Data Principal nominate another person to exercise her statutory rights if she dies or becomes “incapacitated.” It is one of the shortest provisions in the Act and, so far, one of the least examined. This paper argues that its brevity conceals a structural problem. The Act defines incapacity as “unsoundness of mind or infirmity of body” but says nothing about who decides that the condition has arisen, and Rule 14(4) of the 2025 Rules then makes the nomination subject to the Data Fiduciary’s own terms of service. Indian law already contains at least three older routes by which one person may speak for another (the nominated representative under the Mental Healthcare Act, 2017, limited guardianship under the Rights of Persons with Disabilities Act, 2016, and succession to a deceased person’s estate), and none was drafted with the DPDP nominee in mind. Drawing on the scholarship on post-mortem privacy and on the American fiduciary-access statute, together with the French and Italian data protection codes, the paper proposes a four-part reconciliation test covering trigger verification, source of authority, scope, and revocability. It applies that test to a mental-health-app hypothetical and closes with targeted amendments to Rule 14 and a model nomination clause for fiduciaries.

Keywords: *Data Protection, Right to Nominate, Section 14 DPDP Act, Post-Mortem Privacy, Mental Healthcare Act, Legal Capacity, Digital Succession.*

Introduction

Almost everything written about the Digital Personal Data Protection Act, 2023 (DPDP Act) concerns consent, cross-border transfers, or the wide exemptions the Act gives the State. Section 14 gets a sentence, sometimes two. It is easy to see why. The provision is short: a Data Principal may nominate “any other individual” who will, “in the event of death or incapacity,” exercise her rights under the Act, and incapacity means inability to exercise those rights “due to unsoundness of mind or infirmity of body.”¹ Rule 14(4) of the DPDP Rules, 2025 adds that the nomination is made “in accordance with the terms of service of the Data Fiduciary and such law as may be applicable.”² Both provisions are due to take effect in mid-May 2027, eighteen months after the Rules were published.³

The difficulty is not conceptual. The idea of letting someone act for you when you cannot is old and familiar. The difficulty is practical, and it surfaces at the moment of use. Picture a settings page where a user types in a relative’s name. Years later that relative writes to the company to say the user has died, or has fallen seriously ill, and asks for her records to be handed over or wiped. Somebody at the company has to decide whether to believe him. The Act gives that somebody no test for belief, no standard of proof, and no instruction for the case where a second person turns up with a competing claim. That last possibility is the centre of this paper. India already has several statutory routes by which one person may lawfully speak for another: the nominated representative under the Mental Healthcare Act, 2017, limited guardianship under the Rights of Persons with Disabilities Act, 2016, and, after death, succession to the estate. Each was built with its own safeguards and its own idea of who counts. The DPDP nominee arrives alongside them with no rule on rank, and it is the only one of the four that a private company, rather than a court, a Board or a registry, will be asked to put into operation.

A word on terms. “Nominee” here means a person named under s 14 of the DPDP Act, “principal” means the Data Principal who named her, and “rival representative” means anyone holding authority over the principal under some other statute. The paper deals with both limbs of s 14 but spends longer on incapacity. Death has at least attracted some commentary. Incapacity, for reasons set out in Section II, has attracted almost none.

Section II reviews the literature. Section III sets out the statutory position and identifies three gaps in it: the trigger, the rival claimant, and the scope of what a nominee may do. Section IV looks at how other systems have handled posthumous and substitute control over data, giving most attention to the American fiduciary-access statute. Section V proposes a four-part test and runs it through a hypothetical. Section VI turns to amendments to Rule 14 and to fiduciary practice, and Section VII concludes.

¹ Digital Personal Data Protection Act 2023, s 14(1)–(2).

² Digital Personal Data Protection Rules 2025 (GSR 846(E), 13 November 2025), r 14(4).

³ DPDP Rules 2025 (n 2), r 1, under which rr 3, 5 to 16, 22 and 23 take effect eighteen months after publication. Secondary sources give the date variously as 12, 13 or 14 May 2027; nothing in this paper turns on the day.

Literature Review

Writing on s 14 is thin, and most of it sits outside the academic journals. The commentary I was able to locate comes largely from law-firm publications. Some of it welcomes the provision as India's first statutory step towards post-mortem privacy.⁴ Some treats it as a modest beginning that falls short of a real digital succession scheme, and uses the label "data ghosting" for what is left unregulated.⁵ A third strand asks the sharper question of whether a s 14 nominee can override the heirs who take under succession law, and answers, sensibly, that the nominee controls privacy-related rights while the law of succession continues to govern proprietary interests.⁶ This is useful work and Section III relies on it. But all three pieces are written from the death end of the provision. None of them, so far as I could find, examines the incapacity limb, the definition in s 14(2), or the deference to terms of service in Rule 14(4).

The literature on incapacity lives somewhere else entirely. Indian writing on the Mental Healthcare Act and the Rights of Persons with Disabilities Act is mostly occupied with how legal capacity is to be reconciled with guardianship. The tension is familiar: s 13 of the RPwD Act recognises that persons with disabilities enjoy legal capacity on an equal basis with others, yet s 14 provides for limited guardianship, and commentators disagree about how faithfully the Act carries over Article 12 of the UN Convention on the Rights of Persons with Disabilities.⁷ That debate has never been about data. The DPDP Act, for its part, brings in its own definition of incapacity without referring to any of it.

Comparative scholarship has been far more productive on the death side. Edwards and Harbinja argued that the privacy interests of the deceased deserve protection and that the common assumption that privacy dies with the person is poorly justified.⁸ Harbinja's later work looks at how technology, in the form of platform-built tools for naming a legacy contact, has in practice run ahead of legislation.⁹ Mazzone's study of how Facebook handled the accounts of deceased users showed early on how a company's terms of service can come to work as de facto succession law.¹⁰ That last observation matters here, because Rule 14(4) hands the same function back to the platforms by design.

What none of this literature does is ask the question the present paper takes up. When a statute lets a principal name a substitute for both death and incapacity, and other statutes already supply substitutes of their own, whose claim prevails, who decides that the trigger has been met, and how far may the substitute go?

Section 14, Rule 14(4) and Three Silences

Three features of the text deserve attention before the gaps. First, the nominee is "any other individual." The section imposes no requirement of kinship, residence or adulthood, and Rule 14(4) allows the principal to nominate "one or more" individuals, though it is silent on what happens when several nominees disagree. Second, what the nominee exercises is "the rights of the Data Principal." The Act's chapter on rights covers access to information, correction and erasure, and grievance redressal.¹¹ The right to withdraw consent, however, sits in s 6(4), outside that chapter, and s 14 does not say whether the nominee may use it or may give fresh consent.¹² A nominee who can erase data but cannot stop processing would be an odd creature, and one who can do both has far more power than the word "nominee" suggests. Third, the two triggers are of different kinds. Death is an event and can be documented. Incapacity, as defined, is a condition, and it can be partial, temporary and contested.

Section 14(2) defines incapacity but supplies no way of finding it. The Act does not say who must certify it, on what material, or whether the fiduciary may act on the nominee's word. Rule 14(4) fills the vacuum by pointing to the fiduciary's terms of service, so that in practice a private company will set the standard of proof for deciding that a person can no longer manage her own affairs. Compare how Indian capacity law approaches the same question. The Mental Healthcare Act defines capacity functionally, by reference to the person's ability to understand relevant information, appreciate its consequences and communicate a decision.¹³ Whatever one thinks of the details, that is a standard a clinician, and not a customer-support desk, is expected to apply. The DPDP phrase "infirmity of body" also stretches a long way. A person recovering from surgery may be unable to use her phone for a few weeks, and the text does not clearly say she is not "incapacitated."

The Mental Healthcare Act lets an adult appoint a nominated representative, and an advance directive may be the vehicle for doing so; revoking or amending a directive requires the same procedure as making one.¹⁴ Where a minor is concerned the legal guardian is the representative unless the Board orders otherwise.¹⁵ The RPwD Act separately provides for limited guardianship, defined as joint decision-making that is limited to a period and to specific decisions and operates in accordance with the will of the person with disability, and it deems every guardian appointed under earlier law to be a limited

⁴ King Stubb & Kasiva, 'Data Principal's Right to Nominate under the DPDP Act, 2023: Succession of Rights after Death or Incapacity' <<https://ksandk.com/data-protection-and-data-privacy/right-to-nominate-under-dpdp-act-privacy-after-death/>> accessed 6 October 2026.

⁵ 'The Law of the Dead: Post-Mortem Privacy and Data Ghosting' (Primelegal, 26 September 2026) <<https://blog.primelegal.in/?p=60899>> accessed 6 October 2026.

⁶ King Stubb & Kasiva, 'Digital Succession in India: Balancing Privacy and Property' <<https://ksandk.com/data-protection-and-data-privacy/digital-succession-in-india/>> accessed 6 October 2026.

⁷ Rights of Persons with Disabilities Act 2016, ss 13–14; see Centre for Law and Policy Research, 'Legal Capacity of People with Disabilities: A Way Forward' <<https://clpr.org.in/blog/legal-capacity-of-people-with-disabilities-a-way-forward/>> accessed 6 October 2026; Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, art 12.

⁸ Lilian Edwards and Edina Harbinja, 'Protecting Post-Mortem Privacy: Reconsidering the Privacy Interests of the Deceased in a Digital World' (2013) 32 Cardozo Arts & Entertainment Law Journal 83.

⁹ Edina Harbinja, 'Post-Mortem Privacy 2.0: Theory, Law, and Technology' (2017) 31 International Review of Law, Computers & Technology 26.

¹⁰ Jason Mazzone, 'Facebook's Afterlife' (2012) 90 North Carolina Law Review 1643.

¹¹ DPDP Act (n 1) ss 11–13.

¹² *ibid* s 6(4).

¹³ Mental Healthcare Act 2017, s 4(1).

¹⁴ *ibid* ss 5, 8 and 14.

¹⁵ *ibid* s 15.

guardian.¹⁶ It also entitles a person with disability to alter or dismantle a support arrangement, and forbids a supporter from exercising undue influence or disregarding the person's "autonomy, dignity and privacy."¹⁷ That last phrase is worth pausing over: privacy already features in the duties of the support-giver under disability law.

The DPDP Act itself recognises one of these routes. Its definition of Data Principal extends, for a child, to the parents or lawful guardian and, for a person with a disability, to her lawful guardian acting on her behalf.¹⁸ The statute therefore carries two substitute decision-makers in the same breath, the lawful guardian in s 2(j) and the nominee in s 14, and never says what happens if they disagree. After death the claimants multiply again, with legal heirs taking under the Indian Succession Act, 1925 or the personal law that applies to them.

Commentary has already noted that a nominee should be read as exercising privacy-related rights without displacing the law of succession over proprietary interests.¹⁹ I agree with that as a starting point, but the line is harder to hold than it sounds. An erasure request is a privacy right. It is also, if the account holds family photographs, an unpublished manuscript or years of correspondence with a business partner, the destruction of things the heirs may well have wanted. An access request, conversely, is a transparency right, yet if the account holds a dead person's therapy notes or an incapacitated person's private messages, it is also a disclosure of intimate material to whoever the principal happened to choose in a more trusting year. Nothing in s 14 distinguishes between a nominee meant to close an account and one meant to read someone's diary.

No court has yet had to say anything about this. The constitutional materials are nonetheless suggestive. *Puttaswamy* placed informational privacy within Article 21 but concerned the living.²⁰ The Supreme Court has held, in a case about the handling of a dead body, that dignity and fair treatment do not end at death.²¹ And in *Common Cause* the Court accepted that an individual's advance directive on treatment at the end of life is an exercise of the autonomy and dignity that Article 21 protects, to be honoured even when the individual can no longer speak.²² The nearest authority for the principle this paper defends, that a person's own earlier and deliberate choice about who is to speak for her should carry real weight once she cannot, is therefore *Common Cause* and not any decision on data protection.

Posthumous and Substitute Control: Other Models

The GDPR does not apply to the personal data of deceased persons and leaves the matter to Member States.²³ The results diverge. France allows individuals to leave directives, general or specific, about what is to happen to their data after death, including who is to carry them out.²⁴ Italy permits the rights to be exercised by a person with an interest of his own, a person acting to protect the deceased as agent, or a person with family reasons deserving protection, while allowing the deceased in some circumstances to forbid this by an express written declaration.²⁵ Both approaches are centred on death, and both put the principal's own recorded instruction at the top.

The closest functional comparator is American. The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), promulgated by the Uniform Law Commission in 2015 and since adopted by a large majority of States, covers personal representatives of estates but also conservators and agents acting under a power of attorney, so it speaks to incapacity as well as death.²⁶ Its distinctive feature is a three-step hierarchy. Directions given through an online tool provided by the custodian prevail over contrary provisions in the user's will or other instrument; failing that, the will or other instrument governs; and only if the user has done neither do the provider's terms of service apply.²⁷ Disclosure of the content of communications additionally depends on the user's consent.

Two lessons follow. The first concerns ordering. Under Rule 14(4) the terms of service come first, while RUFADAA puts them last, behind the user's own tool and her estate documents. Indian policy has in effect inverted the American ranking, and the inversion is hard to defend. Terms of service are drafted by one party for its convenience and accepted by the other, usually unread, so they tell us very little about what the principal actually wanted. The second lesson concerns coverage. Of the models surveyed, only the American one reaches incapacity during life, and it does so by relying on instruments, such as a court order or a power of attorney, that exist independently of the platform. A trigger that depends on documents outside the fiduciary's own judgment is what the DPDP framework currently lacks.

A Four-Part Reconciliation Test and a Hypothetical

A court will not reach these questions soon, because s 14 is not yet in force and the first disputes will go, if anywhere, to the Data Protection Board.²⁸ What fiduciaries and the Board need in the meantime is a way of reasoning about competing claims. This section proposes four questions, to be asked in order, and then applies them.

- i. **Trigger Verification.** Has the death or incapacity been established by something outside the nominee's own assertion, and is the evidence proportionate to what is being asked? For death, a certificate under the Registration of Births and Deaths Act, 1969 will ordinarily do. For incapacity, the fiduciary should look for a clinician's assessment, a guardianship order, or confirmation of an appointment under the Mental

¹⁶ Rights of Persons with Disabilities Act 2016 (n 7) s 14(1)–(2).

¹⁷ *ibid* s 13(4)–(5).

¹⁸ DPDP Act (n 1) s 2(j).

¹⁹ King Stubb & Kasiva, 'Digital Succession in India' (n 6).

²⁰ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

²¹ *Pt Parmanand Katara v Union of India* (1995) 3 SCC 248.

²² *Common Cause v Union of India* (2018) 5 SCC 1.

²³ Regulation (EU) 2016/679 (General Data Protection Regulation), recital 27.

²⁴ Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, art 85.

²⁵ Decreto legislativo 30 giugno 2003 n 196 (Codice in materia di protezione dei dati personali), art 2-terdecies.

²⁶ Revised Uniform Fiduciary Access to Digital Assets Act (Uniform Law Commission 2015).

²⁷ *ibid* s 4.

²⁸ DPDP Act (n 1) ss 18 and 27.

Healthcare Act or the RPwD Act. A hospital admission is not incapacity. The more irreversible the act sought, such as erasure, the firmer the evidence should be.

- ii. **Source of Authority and Rank.** Does anyone else hold authority over this principal under a statute, and if so, which instrument is earlier, more formal and more specific? The working rule proposed here is that a formal statutory appointment outranks a nomination collected through a platform interface within the domain of that appointment, and that the DPDP nominee fills the gap where nothing else exists. The reason is the one *Common Cause* supplies: a considered, formally made choice deserves more weight than a click. The Mental Healthcare Act points the same way, since revoking a directive demands the same formality as making it.²⁹
- iii. **Scope.** What exactly does the nominee ask to do? Privacy rights may be exercised; proprietary interests are left to succession law. Access to the content of private communications and to health records should require the principal's express authorisation. Erasure should respect any retention duty the fiduciary owes under law.³⁰
- iv. **Revocability and the Principal's Residual Voice.** Is the principal's own will still discernible, and can what the nominee does be undone or paused if she recovers? Disability law already treats support as something the person may alter or dismantle and requires supporters to respect her autonomy. A nominee's authority on the incapacity limb should therefore lapse automatically on recovery, and the principal should be told afterwards what was done in her name.

Consider a hypothetical. CalmPath is a Bengaluru mental-health app that stores chat transcripts with counsellors and daily mood journals. Anaya, a user, used its "trusted contact" setting to name her brother Rohan as her nominee. Some months earlier, outside the app, she had made a written advance directive under the Mental Healthcare Act, certified by her psychiatrist, which named her friend Meera as nominated representative and recorded that her family were not to be given details of her treatment. Anaya is later admitted to hospital during an acute episode. Rohan writes to CalmPath enclosing a hospital letter confirming the admission, says she is "incapacitated," and asks for copies of all her records and then for the account to be erased. Meera writes separately to object. CalmPath's terms of service say a nominee may exercise any right on "reasonable proof" of incapacity.

On the first question, Rohan has shown an admission, not a finding. The letter says nothing about Anaya's ability to understand and decide, so the trigger is not met. Even if it were, the second question points to Meera: her appointment arises under a statute, was certified by a clinician, and predates the app nomination, and a tap on a settings page does not meet the formality that revoking the directive would need. On scope, the material is mental-health data of the most sensitive kind, and Anaya's own directive speaks against disclosure to family. Erasure would be irreversible and could destroy records relevant to her continuing care. On the fourth question, the real chance that she recovers within days or weeks is exactly why nothing irreversible should happen now. CalmPath should decline both requests, preserve the data, tell Rohan what evidence would change the answer, and give Meera, if she asks, a route to establish her standing. On these facts the nominee's claim fails all four questions.

A plain case shows the test is not built only to refuse. A user dies; her mother, the sole nominee, produces a death certificate and asks the fiduciary to close the account and delete her daughter's photographs. There is no directive, no rival and no visible estate dispute. Each question is answered in the mother's favour, and the test should not stand in her way.

Two objections are foreseeable. The first is that the test turns every fiduciary into a small court. It does so only slightly: the fiduciary is asked to look at documents, not to adjudicate capacity, and the test supplies a safe default of refusing, preserving and pointing to the proper forum when the documents are missing or in conflict. The terms-of-service model, by contrast, makes the fiduciary the judge by default. The second objection is cultural. Families in India commonly decide for one another, and a test that seems to distrust the family cuts against practice. But nothing here stops a principal from nominating family, and in most cases a family will satisfy the test without difficulty. The test is aimed at the case where the principal chose differently and the family arrives regardless.

Regulatory Recommendations

Judicial guidance will arrive late and piecemeal. The more effective levers are the Rules, which the Central Government may amend under its rule-making power,³¹ and the nomination mechanisms that fiduciaries must build before May 2027. Five steps are proposed.

Amend Rule 14(4). The unqualified deference to terms of service should go. In its place the Rule should require that the fiduciary offer a nomination mechanism recording the date, the nominee's identity and the scope chosen; set minimum evidence of the trigger (a death certificate for death, and for incapacity a certificate from a registered medical practitioner, a guardianship order, or confirmation of an appointment under the relevant statute); and provide that a nomination yields, within its own domain, to an earlier formal appointment under a statute.

Settle the consent question. The amendment should state whether a nominee may withdraw consent under s 6(4) and whether she may give fresh consent. The reasoned answer is that she may withdraw but not give new consent for new purposes. Withdrawal stops processing and leaves options open; fresh consent widens processing of a person who cannot oversee it.

Set default limits on scope. Unless the principal expressly authorises it, a nominee should not obtain the content of private communications or health records. Irreversible erasure should require the stronger evidence described in Section V, and the fiduciary should keep whatever the law requires it to keep.

Adopt a model nomination form. Fiduciaries need not wait for the Rules to change. A form that lets the principal choose which rights the nominee may use, exclude categories of data, name an alternate and acknowledge the effect of earlier statutory appointments would resolve most of the problems above at the point of nomination, which is the cheapest moment to resolve them. A suitable clause might read:

I nominate [name] to exercise the following rights on my behalf if I die or become incapacitated: [access / correction / erasure / grievance redressal]. This nomination does not extend to [the content of my messages / my health records] unless I tick here. It

²⁹ Mental Healthcare Act 2017 (n 13) s 8(2).

³⁰ DPDP Act (n 1) s 8(7).

³¹ DPDP Act (n 1) s 40.

does not displace any appointment I have made, or any guardian appointed for me, under a law in force, and it ends automatically if I regain capacity.

Coordinate across ministries. The Ministry of Electronics and Information Technology, the Ministry of Health and Family Welfare and the Department of Empowerment of Persons with Disabilities should issue a joint advisory making clear how data requests are to be handled where a nominated representative or guardian already exists. Without it, the same family will receive different answers from the same company depending on which statute the customer-support team happens to know.

Conclusion

Section 14 is easy to admire and hard to apply. The idea that a person should be able to decide in advance who will speak for her is sound, and it has a respectable constitutional pedigree. But the provision names the nominee and then stops. It does not say how the trigger is established, how the nominee ranks against representatives appointed under other statutes, or how far the nominee may go. Rule 14(4) resolves these questions by deferring to the one party with the strongest commercial interest in an easy answer.

The four-part test proposed here (trigger verification, source of authority, scope, and revocability) is meant to give fiduciaries and the Data Protection Board a disciplined way to reason about those questions before litigation does it for them. Its recommendations are modest. They ask for evidence from outside the nominee's own assertion, respect for earlier formal choices by the principal, sensible limits on what may be read or destroyed, and recognition that incapacity may pass.

The paper has limits. Section 14 is not yet in force, so there is no fiduciary practice to observe and no Board decision to analyse. The foreign law is described from secondary materials and the statutes themselves, and should be checked against current text before anyone relies on the comparison. The practitioner commentary cited is, by nature, not peer-reviewed. The analysis also confines itself to adult principals and leaves aside the position of children, whose data is governed by a separate regime, and the State exemptions in the Act.

A last question will come soon enough. Once services can build conversational replicas from a person's messages, the nominee will be asked not only to close or read an account but to authorise a digital version of the dead to go on speaking. The principal's own choice, made earlier and in writing, is the best answer available. The law should be ready to honour it.