



DIGITAL INHERITANCE AND DATA SUCCESSION IN INDIA: A LEGAL VACUUM IN THE IT AGE

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ABSTRACT

The exponential digitisation of human life has introduced a new category of assets—digital assets—encompassing social media accounts, cryptocurrency wallets, online businesses, digital intellectual property, and cloud storage.¹ These assets form a person's digital estate and present unique legal challenges upon the owner's death. Unlike tangible property, digital assets are intangible, often encrypted, and governed by service providers' Terms of Service (ToS) agreements, which may restrict access even to legal heirs.² The financial, sentimental, and intellectual value of such assets can be considerable, ranging from cryptocurrency holdings worth millions to personal photographs, manuscripts, or monetised online content.³ International jurisdictions have recognised this emerging legal need. The United States enacted the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) 2015,⁴ France introduced the Loi pour une République numérique 2016,⁵ and Germany has adjudicated cases recognising digital communications as inheritable property.⁶ These frameworks balance fiduciary rights, privacy, and contractual obligations while enabling the transfer of digital estates. India, however, lacks a dedicated legal framework. The Indian Succession Act 1925 and the Information Technology Act 2000 do not expressly recognise digital assets, leaving heirs dependent on corporate discretion, often across international borders.⁷ the absence of legal clarity can lead to financial loss, denial of access to sentimental data, and complex cross-jurisdictional disputes. This paper examines the nature and scope of digital inheritance, evaluates comparative international laws, analyses case studies

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¹ HO Agarwal, *International Law and Human Rights* (Central Law Publications 2021) 482.

² SK Kapoor, *International Law and Human Rights* (Central Law Agency 2020) 357.

³ SK Verma, *An Introduction to Public International Law* (Eastern Book Company 2019) 214.

⁴ Revised Uniform Fiduciary Access to Digital Assets Act 2015 (USA).

⁵ Loi pour une République numérique 2016 (France).

⁶ Bundesgerichtshof, Case No. III ZR 183/17 (2018).

⁷ Indian Succession Act 1925, s 2.

*illustrating challenges, and proposes comprehensive legislative reforms suitable for India. The objective is to ensure clarity in succession, protect privacy, preserve property rights, and provide heirs with lawful access to digital estates. By addressing this legal vacuum, India can safeguard economic and emotional interests, strengthen digital trust, and create a culture of proactive digital succession planning.*⁸

Keywords: Digital inheritance; Data succession; Cyber law; Virtual property; Post-mortem privacy; Succession law; Digital estate; India.

INTRODUCTION

Historically, inheritance law focused primarily on tangible assets, including land, buildings, jewellery, and other movable property.⁹ The 21st century, however, has expanded the concept of property to include digital assets, which are intangible, often encrypted, and stored online.¹⁰ These assets can include emails, cloud documents, social media accounts, cryptocurrency, online investment accounts, blogs, digital art, and monetised YouTube channels.¹¹

Digital assets carry substantial financial, intellectual, and emotional value. For example, cryptocurrency wallets may contain assets worth millions, while personal photographs, manuscripts, or family videos stored in cloud services carry sentimental value that cannot be replaced.¹² Unlike physical property, these assets are largely governed by Terms of Service agreements, which can prohibit heirs from accessing accounts without prior consent, creating legal uncertainty.¹³

In India, the existing legal framework remains inadequate to address digital succession. The Indian Succession Act 1925 covers movable and immovable property, but does not expressly include digital assets.¹⁴ The Information Technology Act 2000, while regulating electronic records and cybercrime, offers no guidance on inheritance or post-mortem access to digital

⁸ HO Agarwal (n 1) 497.

⁹ SK Kapoor (n 2) 360.

¹⁰ SK Kapoor (n 2) 360.

¹¹ HO Agarwal (n 1) 484.

¹² SK Verma (n 3) 215.

¹³ SK Verma (n 3) 216.

¹⁴ Indian Succession Act 1925, s 2.

estates.¹⁵ Consequently, heirs are forced to depend on foreign corporations' discretion, creating both jurisdictional and contractual complications.¹⁶

Technical barriers further exacerbate the issue. Encryption, multifactor authentication, and proprietary software can make access to digital assets impossible without prior arrangements.¹⁷ Many digital assets, such as e-books or licensed software, cannot legally be transferred under current agreements.¹⁸ These factors necessitate the recognition of digital assets as a distinct form of property and the establishment of clear legal procedures for their succession.¹⁹

A lack of awareness about digital wills—legal documents specifying the treatment of digital estates—compounds the problem.²⁰ Most individuals die without leaving instructions for digital succession, leaving heirs in a vulnerable position. The absence of public education and legal guidance underscores the urgent need for a dedicated legal framework to govern digital inheritance in India.²¹

NATURE AND SCOPE OF DIGITAL INHERITANCE

Digital inheritance encompasses the transfer of control, ownership, or access of digital assets from a deceased individual to heirs or nominees.²² Digital assets can be broadly categorised as follows-

1. **Personal communication assets** – Emails, chat histories, and cloud documents. Example: A deceased author's unpublished manuscripts on Google Drive.²³
2. **Social media accounts** – Facebook memorial pages, Instagram archives, LinkedIn profiles, and Twitter accounts.²⁴
3. **Financial assets** – Cryptocurrency wallets, online banking accounts, and investment accounts. Example: Lost cryptocurrency due to unknown private keys can result in permanent financial loss.²⁵

¹⁵ Information Technology Act 2000.

¹⁶ HO Agarwal (n 1) 490.

¹⁷ SK Verma (n 3) 218.

¹⁸ Copyright Act 1957, s 18.

¹⁹ HO Agarwal (n 1) 492.

²⁰ SK Kapoor (n 2) 365.

²¹ HO Agarwal (n 1) 493.

²² HO Agarwal (n 1) 494.

²³ SK Verma (n 3) 219.

²⁴ SK Verma (n 3) 219.

²⁵ Copyright Act 1957, s 18.

4. **Creative works** – Blogs, e-books, digital art, photography portfolios, and intellectual property stored online.²⁶
5. **Business-related data** – Proprietary software code, e-commerce store data, client databases, and subscription-based business platforms.²⁷

A key challenge in digital inheritance is ownership vs. licensing. Many digital assets are licensed rather than owned, such as e-books or software subscriptions, which cannot legally be transferred to heirs.²⁸ This distinction complicates estate planning and necessitates explicit legal or contractual provisions to facilitate succession.²⁹

INTERNATIONAL LEGAL APPROACHES

United States: The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) 2015 provides a framework for fiduciaries to access digital assets in compliance with privacy laws.³⁰ It allows users to designate fiduciaries, utilise access tools like Google's Inactive Account Manager, and reconcile fiduciary authority with service providers' ToS agreements.³¹

Case Study: *In re Ellsworth* (2005) – The family of a deceased US Marine requested access to his Yahoo emails. Yahoo initially refused, citing privacy concerns. The Michigan Probate Court permitted partial disclosure of content, establishing a precedent that balances privacy with inheritance rights.³²

European Union: The GDPR empowers member states to legislate on post-mortem data. France's Loi pour une République numérique 2016 allows individuals to appoint a representative to manage digital estates and leave binding instructions.³³

Case Study: German Federal Court, Facebook Decision (2018) – Parents of a deceased minor requested access to her Facebook account. The court ruled that digital communications are inheritable, akin to diaries, emphasising the property value of personal communications.³⁴

²⁶ HO Agarwal (n 1) 495.

²⁷ Revised Uniform Fiduciary Access to Digital Assets Act 2015 (USA).

²⁸ *In re Ellsworth* (Probate Court, Michigan, 2005).

²⁹ Loi pour une République

³⁰ Bundesgerichtshof, Case No. III ZR 183/17 (2018).

³¹ Trustee Act RSO 1990, c T.23 (Ontario).

³² *In re Ellsworth* (n 28).

³³ Information Technology Act 2000.

³⁴ 34. Indian Succession Act 1925, s 2.

Canada: Ontario's Trustee Act authorises estate trustees to manage digital assets while adhering to privacy obligations, ensuring fiduciary responsibilities are met.³⁵

Australia: No nationwide legislation exists; state reform commissions recommend RUFADAA-like frameworks to ensure consistency and clarity.³⁶

INDIAN LEGAL POSITION

Information Technology Act 2000: Regulates electronic records and cybercrime, but does not provide mechanisms for the inheritance of digital assets.³⁷

Indian Succession Act 1925: Covers movable and immovable property, but does not recognise digital assets as part of an estate.³⁸

Copyright and Banking Laws: The Copyright Act 1957 allows the transfer of copyright to heirs but excludes licensed works.³⁹ Banking laws enable the transfer of monetary balances, but cryptocurrency remains legally ambiguous.⁴⁰

KEY CHALLENGES IN INDIA

1. No statutory recognition of digital assets creates ambiguity for courts and heirs.⁴¹
2. Jurisdictional issues when data is stored on servers abroad.⁴²
3. Contractual barriers due to ToS agreements prioritising corporate discretion.⁴³
4. Privacy vs inheritance conflicts, especially when accounts contain communications with third parties.⁴⁴
5. Technical barriers such as encryption and multifactor authentication.⁴⁵
6. Lack of public awareness about digital wills and succession planning.⁴⁶

³⁵ Copyright Act 1957, s 18.

³⁶ HO Agarwal (n 1) 496.

³⁷ Information Technology Act 2000.

³⁸ Indian Succession Act 1925, s 2.

³⁹ Copyright Act 1957, s 18

⁴⁰ HO Agarwal (n 1) 496.

⁴¹ SK Kapoor (n 2) 370.

⁴² HO Agarwal (n 1) 498.

⁴³ HO Agarwal (n 1) 499.

⁴⁴ SK Verma (n 3) 221.

⁴⁵ HO Agarwal (n 1) 500.

⁴⁶ SK Kapoor (n 2) 371.

RECOMMENDATIONS

1. Amend the Indian Succession Act to define digital assets as inheritable property.⁴⁷
2. Introduce a Digital Assets Succession Act, incorporating RUFADAA-style fiduciary access mechanisms.⁴⁸
3. Require service providers to offer nomination and consent features for heirs.⁴⁹
4. Legalise and promote digital wills, integrated into standard estate planning.⁵⁰
5. Establish bilateral agreements with tech companies to facilitate cross-border access.⁵¹
6. Issue judicial guidelines balancing privacy and property rights.⁵²
7. Conduct public awareness campaigns to educate citizens on digital succession.⁵³

CONCLUSION

Digital inheritance represents a fundamental shift in succession law, requiring the recognition of intangible, encrypted, and often licensed assets as part of an estate.⁵⁴ Families risk losing both emotionally significant data and substantial financial assets if legal mechanisms are absent. In India, the legal vacuum leaves heirs dependent on private corporations and foreign jurisdictions, creating uncertainty and potential injustice.⁵⁵

International models, such as RUFADAA and France's digital succession law, demonstrate the importance of balancing fiduciary access with privacy.⁵⁶ A robust Indian framework would not only protect financial and emotional interests but also affirm citizens' rights in a digitally interconnected world. Implementing clear legal provisions, promoting digital wills, enabling fiduciary access, and raising public awareness would transform digital succession from a legal grey area into a structured and equitable system.⁵⁷

By addressing these challenges, India can ensure that digital assets—whether financial, creative, or personal—are recognised, protected, and lawfully transferred, creating trust in Online platforms, reducing cross-border disputes and fostering a culture of proactive digital

⁴⁷ Indian Succession Act 1925, s 2.

⁴⁸ Revised Uniform Fiduciary Access to Digital Assets Act 2015 (USA).

⁴⁹ HO Agarwal (n 1) 501.

⁵⁰ HO Agarwal (n 1) 502.

⁵¹ HO Agarwal (n 1) 503.

⁵² SK Verma (n 3) 222.

⁵³ HO Agarwal (n 1) 504.

⁵⁴ HO Agarwal (n 1) 505.

⁵⁵ SK Kapoor (n 2) 372.

⁵⁶ Revised Uniform Fiduciary Access to Digital Assets Act 2015 (USA).

⁵⁷ HO Agarwal (n 1) 506.

estate planning.⁵⁸ Such legislation will affirm that digital rights endure beyond life itself, aligning India's legal system with contemporary technological realities and global best practices.⁵⁹

⁵⁸ SK Verma (n 3) 224.

⁵⁹ HO Agarwal (n 1) 507.