THE RIGHT TO BE FORGOTTEN AFTER DEATH: RETHINKING DIGITAL PRIVACY, PERSONALITY RIGHTS, AND THE LEGAL PROTECTION OF DIGITAL LEGACIES IN INDIA

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ABSTRACT

Digital life does not necessarily end with physical death. Emails, photographs, social-media profiles, cloud files, online businesses and recordings may remain accessible long after their creator has died. Artificial intelligence has added a further concern: a person's voice, face or mannerisms may be recreated and used without their consent. This article examines whether Indian law adequately protects the digital identity and legacy of a deceased person. It analyses the constitutional right to privacy, the Digital Personal Data Protection Act, 2023, succession principles, intellectual-property law and judicial decisions on personality rights. The article argues that Indian law offers useful but fragmented protections and does not yet provide a complete, dedicated framework for post-mortem digital privacy and digital inheritance. It recommends a clear system for recording a person's wishes, appointing a digital executor, managing online accounts, protecting sensitive communications and preventing deceptive commercial use of a deceased person's identity, while preserving legitimate journalism, research, history and artistic expression.

Keywords: Personality Rights, Digital Inheritance, Digital Data, Data Protection, Artificial Intelligence.

INTRODUCTION

People now leave behind more than physical possessions. A person may leave years of emails, family photographs, private messages, social-media posts, online work, digital purchases and monetised accounts. These materials can be emotionally important, commercially valuable or

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deeply private. After death, family members may want to preserve memories, close accounts, recover important records or manage income-producing digital assets. At the same time, unrestricted access may expose confidential conversations or reveal information the deceased never intended to share.

The problem becomes more serious when another person uses a deceased individual's name, image or voice to mislead the public or earn money. AI-generated videos and voice clones can make it appear that the deceased has said or endorsed something they never said. A digital legacy therefore includes both assets worth preserving and personal information that may deserve protection or deletion.

The "right to be forgotten" is commonly understood as a right, in certain circumstances, to seek removal or restriction of personal information that is no longer necessary, relevant or lawfully available. However, applying that idea after death is difficult. Can a deceased person's wishes be enforced? Who should decide what happens to their accounts: family members, heirs, a nominee or the platform? Indian law does not answer all these questions through one comprehensive statute. This article examines the current legal position and suggests a balanced approach.

RESEARCH PROBLEM AND OBJECTIVES

The central problem is the absence of a clear, unified Indian framework dealing with the privacy, identity and digital property of a deceased person. Existing rules address different parts of the problem, but they do not always explain how those parts should work together.

The objectives of this article are:

- To explain the meaning of digital legacy and post-mortem privacy;
- To examine relevant constitutional principles, statutes and judicial decisions;
- To distinguish personal privacy from inheritable digital assets and commercial personality interests; and
- To recommend practical legal safeguards that respect the deceased person's wishes without unfairly restricting families, researchers, journalists or freedom of expression.

RESEARCH METHODOLOGY

This article follows a doctrinal and analytical method. It considers constitutional provisions, Indian legislation and reported judicial decisions, alongside selected comparative approaches to digital inheritance. It does not rely on interviews or original empirical data. The discussion distinguishes established legal principles from proposals for future reform.

UNDERSTANDING DIGITAL LEGACY AND THE RIGHT TO BE FORGOTTEN

A digital legacy is the collection of digital records, accounts, content and rights associated with a person that remain after death. It may include personal material, such as messages and photographs; economic assets, such as monetised channels or digital business records; and identity-related material, such as a person's name, image, voice or online reputation. These categories should not automatically be treated alike.

For example, a family may reasonably need a deceased person's tax records to administer an estate. That does not necessarily mean the family should be entitled to read every private message in the person's inbox. Similarly, a public figure's archived speeches may have historical value, but an AI-generated advertisement falsely suggesting that the person endorsed a product raises a different concern.

The right to be forgotten is not an unlimited power to erase history or remove any information that causes discomfort. In India, the idea has appeared in privacy litigation, but its scope remains context-dependent and must be balanced against freedom of speech, public interest, open justice and lawful record-keeping. After death, the issue is more complex because the deceased cannot personally apply for relief. Any framework must therefore distinguish between removing harmful or unnecessary personal data, preserving records of public importance and administering assets according to lawful authority.

LEGAL FRAMEWORK IN INDIA

Constitutional Privacy and Dignity: In Justice K.S. Puttaswamy (Retd.) v. Union of India, the Supreme Court recognised privacy as a fundamental right protected by the Constitution, particularly through Article 21 and the freedoms and liberties connected with personal autonomy. The judgment provides an important foundation for protecting informational privacy during life. However, it does not conclusively establish that a deceased person

continues to hold an independently enforceable fundamental right to privacy after death. A careful legal analysis should not assume that all constitutional rights automatically pass to heirs.

The dignity of the deceased, the privacy of surviving family members and the confidentiality of communications may nevertheless remain relevant. For instance, publishing a deceased person's private messages may also expose the personal information of living individuals who participated in those conversations. The legal interest is therefore not always limited to the deceased person alone.

Digital Personal Data Protection Act 2023: The Digital Personal Data Protection Act, 2023 (DPDP Act) establishes a statutory framework for the processing of digital personal data, subject to its provisions, scope and commencement. Section 14 provides for a Data Principal to nominate another individual to exercise rights in the event of death or incapacity. This is an important statutory recognition that a person should be able to plan for certain data-related decisions. However, nomination should not be confused with a complete law of succession. It does not, by itself, settle ownership of every digital asset, determine inheritance of licensed content or guarantee unrestricted access to all account contents.

The Act must be read with its applicable commencement notifications and rules. Its precise application to a particular dispute depends on the provisions in force, the nature of the data and the relevant circumstances. It is therefore safer to view the nomination mechanism as one part of the developing framework rather than as a complete answer to post-mortem privacy.

Succession, Contracts and Intellectual Property: Traditional succession law generally deals with property and interests that can legally devolve on heirs. Digital accounts complicate this approach because a user may own some content but only hold a limited licence to use a platform's service. A purchased digital book, a cloud account, a cryptocurrency holding and a monetised social-media page may all be governed by different legal and contractual rules.

Copyright law may protect original photographs, writing, music or other works, and certain rights may continue for legally specified periods after an author's death. But copyright in a work is not the same as ownership of every account in which it appears, nor does it automatically give heirs control over all personal data. Similarly, a platform's terms of service may prescribe procedures for memorialisation, account closure or access requests. Such terms

are relevant, but reliance on private platform policies alone can leave families facing inconsistent processes and uncertain outcomes.

JUDICIAL DECISIONS AND THEIR SIGNIFICANCE

Justice K.S. Puttaswamy (Retd.) v Union of India (2017): The Supreme Court's decision in Puttaswamy established privacy as a fundamental right and emphasised autonomy and control over personal information. Its significance for digital legacy is foundational: it explains why personal data cannot be treated as a matter of convenience for platforms or third parties. Nevertheless, the judgment should not be cited as directly deciding that privacy survives death in the same form.

K.S. Puttaswamy Principles and the Right to be Forgotten: In later privacy-related proceedings, Indian courts have considered requests to remove or restrict personal information from online access, including information connected with court records. These cases demonstrate that the right to be forgotten may require balancing individual privacy with open justice and the public's right to know. They do not create a universal right to erase lawful public records. Where the person concerned has died, the balance may also involve the interests of family members, historical accuracy and the integrity of judicial records.

ICC Development (International) Ltd. v Arvee Enterprises (2003): In this decision, the Delhi High Court discussed publicity rights and explained that the right of publicity is associated with an individual's own personality. The case is relevant to the protection of identity against unauthorised commercial exploitation. It does not, however, establish a comprehensive statutory right for heirs to control every posthumous use of a person's name or image.

Krishna Kishore Singh v. Sarla A. Saraogi (Delhi High Court, 2021): The litigation concerning the late actor Sushant Singh Rajput raised questions about whether personality and publicity rights can be enforced after death. The Delhi High Court declined to accept that the actor's personality rights automatically survived for his legal heirs in the manner claimed. The case highlights a key distinction: protecting a living person's autonomy and identity is not necessarily the same as recognising a transferable, inheritable commercial right after death. It also shows why legislative clarity is needed, particularly as AI can recreate the voices and likenesses of deceased persons.

Taken together, these decisions show that Indian law contains important principles on privacy and personality, but the precise legal protection available after death remains unsettled and fragmented.

CRITICAL ANALYSIS: WHERE THE LAW FALLS SHORT

The first difficulty is uncertainty over who has authority. A nominee may be authorised to exercise specified data-related rights, an heir may be entitled to inherit certain property, and a platform may control access under its contractual terms. These roles are not necessarily identical. Without a clear hierarchy, family members may face delays or conflicting decisions.

The second difficulty is the difference between access and ownership. Being a legal heir does not automatically mean that every private message should be disclosed. Conversely, a platform should not treat all digital material as permanently inaccessible if lawful access is necessary to administer an estate, preserve evidence or comply with a court order.

Third, the law must respond to AI-generated impersonation. An unauthorised synthetic voice or image can damage reputation, deceive consumers and exploit the emotional attachment of family members and fans. Existing remedies under intellectual-property, passing-off, privacy and information-technology principles may help in some cases, but their application depends on the facts and does not create a complete post-mortem digital personality code.

Finally, an overly broad right to erase information could threaten public history, journalism, scholarship, satire and artistic expression. The goal should not be to erase the past at the request of any relative. It should be to protect legitimate privacy interests while preventing deception, unlawful exploitation and avoidable exposure of sensitive information.

RECOMMENDATIONS AND SUGGESTIONS

India should consider a dedicated legal framework for digital estates and post-mortem digital identity. First, individuals should be able to prepare a simple digital legacy direction specifying which accounts should be closed, memorialised, preserved or transferred, and who should administer them. Platforms should provide a clear, accessible method for recording and updating these choices.

Second, the law should distinguish categories of digital material. Financial records and transferable economic assets may require access for estate administration, while intimate

communications and highly sensitive personal records should receive stronger safeguards. Access should be limited to what is necessary for a lawful purpose.

Third, a recognised digital executor could coordinate with platforms, heirs and relevant authorities. The executor's powers should be defined by the person's recorded wishes, applicable succession law and judicial oversight where disputes arise. A nominee under data-protection law should not automatically be treated as the owner of all digital property.

Fourth, platforms should adopt transparent procedures, reasonable response periods and review mechanisms for requests made after death. They should explain what evidence is required, what information can be disclosed and why a request has been refused.

Fifth, India should consider limited, time-bound protection against deceptive or unauthorised commercial exploitation of a deceased person's identity, especially AI-generated voice and likeness replicas. Such protection should include exceptions for news reporting, education, research, biography, historical preservation, criticism, satire and other legitimate expression. The law should focus on deception, commercial misuse and serious harm rather than giving heirs an unlimited veto over public discussion.

Finally, individuals should be encouraged to plan their digital legacy while alive by using platform legacy tools where available, maintaining a secure inventory of important accounts and communicating their wishes to a trusted person. This practical step cannot replace legislation, but it can reduce disputes.

CONCLUSION

Death should not mean that a person's digital life becomes an unregulated space. At the same time, a deceased person's online presence should not automatically become the unrestricted property of relatives or platforms. India's constitutional privacy jurisprudence, the DPDP Act, succession principles, intellectual-property law and judicial decisions offer parts of a solution, but they do not yet form a complete system for post-mortem digital privacy and digital inheritance.

A balanced framework should respect the wishes expressed by the individual during life, protect sensitive information, permit lawful administration of digital assets and prevent deceptive commercial exploitation of identity. It should also recognise that family interests,

public interest and freedom of expression may sometimes conflict. The right to be forgotten after death should therefore be understood not as an absolute right to erase history, but as a carefully limited legal safeguard within a broader system for responsible digital legacy management. Clear legislation and transparent platform procedures would help ensure that a person's digital remains are treated with dignity, fairness and legal certainty.

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