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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

“BEYOND LIFE AND CODE: LEGAL, ETHICAL, AND SOCIO-TECHNICAL DIMENSIONS OF DIGITAL AFTERLIFE RIGHTS IN INDIA”

AUTHORED BY - SHREYANSHI TIWARI

Abstract

The digital age has transformed human existence, extending our identities and assets into cyberspace. Upon death, individuals leave behind not only tangible property but also an extensive array of digital assets, including social media profiles, cryptocurrency wallets, emails, and AI-generated digital personas. These assets challenge traditional legal frameworks, raising questions about ownership, succession, and privacy. This article examines the concept of “digital afterlife rights” through a socio-legal lens, analyzing Indian statutory frameworks¹ alongside international jurisprudence, including the German Federal Court of Justice ruling on Facebook inheritance², the U.S. Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)³, and the European Union’s GDPR⁴. The paper explores doctrinal tensions between property and contractual licenses, ethical dilemmas surrounding AI avatars and posthumous digital privacy⁵, and socio-legal implications of unregulated digital legacies. Finally, it proposes a detailed policy roadmap for India⁶, recommending statutory recognition of digital assets, protection of posthumous privacy, and harmonization with international best practices, while emphasizing the importance of human dignity and autonomy in digital inheritance.

¹ Indian Succession Act, No. 39 of 1925, Acts of Parliament, 1925 (India); Information Technology Act, No. 21 of 2000, Acts of Parliament, 2000 (India); Digital Personal Data Protection Act, No. XX of 2023, Acts of Parliament, 2023 (India).

² Bundesgerichtshof [BGH], III ZR 183/17 (27 Aug. 2018) (Ger.). See Bürgerliches Gesetzbuch [BGB] § 1922 (Ger.).

³ Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) (2015) Uniform Law Commission.

⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) recital 27 OJ L119/1.

⁵ Replika, ‘Create an AI Friend’; MyHeritage, ‘Deep Nostalgia’; Alice E. Marwick and danah boyd, ‘To See and Be Seen: Celebrity Practice on Twitter’ (2011) 13 *Convergence: The International Journal of Research into New Media Technologies* 123

⁶ Pranjal Sharma, ‘Digital Afterlife and the Indian Legal Framework: Challenges for Heirs’ (2021) 14 *Indian Journal of Law and Technology* 45.

Introduction

The proliferation of digital technologies has fundamentally altered how human lives are lived, remembered, and legally recognized. Individuals today generate enormous digital footprints encompassing social media accounts, cloud storage, cryptocurrency holdings, emails, and AI-driven personal avatars. Unlike tangible property, these assets often remain in cyberspace after death, governed by corporate terms of service (ToS), encryption protocols, and cross-border technological constraints. The fundamental question arises: who owns and controls these assets once their creator has passed away? This is the essence of digital afterlife rights a complex intersection of succession law, privacy, human rights, and technological regulation.

Traditional succession law primarily addresses tangible property, including land, chattels, and intellectual property. Digital assets, however, defy classical classifications. Social media accounts are contractual in nature yet carry immense personal, social, and cultural significance. Cryptocurrency holdings exist solely as digital records on decentralized ledgers, which may become inaccessible if private keys are lost. AI-generated digital avatars can simulate ongoing “life,” raising questions about consent, authenticity, and posthumous autonomy. These realities challenge doctrines of property, inheritance, and privacy, requiring nuanced legal frameworks.

In India, the legal landscape remains underdeveloped. The **Indian Succession Act, 1925** governs inheritance of tangible and some intangible property but does not explicitly cover digital assets.⁷ The **Information Technology Act, 2000** primarily addresses electronic records and cybercrimes but lacks guidance on posthumous access to digital data.⁸ The **Digital Personal Data Protection Act, 2023** (DPDPA) introduces nomination rights for personal data, allowing individuals to designate nominees to exercise certain rights after death.⁹ However, it fails to address posthumous privacy comprehensively or to provide enforceable rules for economic digital assets, such as cryptocurrency. Comparative jurisdictions offer both guidance and caution. Germany’s Federal Court of Justice held that digital accounts, including private Facebook messages, are inheritable, overriding corporate ToS.¹⁰ In the United States, the **RUFADAA** provides fiduciaries access to digital assets¹¹, while the European Union

⁷ Indian Succession Act, No. 39 of 1925, Acts of Parliament, 1925 (India).

⁸ Information Technology Act, No. 21 of 2000, Acts of Parliament, 2000 (India).

⁹ Digital Personal Data Protection Act, No. XX of 2023, Acts of Parliament, 2023 (India).

¹⁰ Bundesgerichtshof [BGH], III ZR 183/17 (27 Aug. 2018) (Ger.).

¹¹ Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) (2015) Uniform Law Commission.

emphasizes data protection under the **GDPR**.¹²

This paper examines digital afterlife rights through a socio-legal and comparative lens, integrating doctrinal analysis, ethical debates, and technological implications. It also proposes a detailed policy roadmap tailored for India, aiming to harmonize digital succession with human rights principles, particularly the fundamental right to privacy recognized in *Justice K.S. Puttaswamy v. Union of India* (2017).¹³

Typology of Digital Assets

Digital assets are diverse, carrying varying legal, economic, and social significance. They can be categorized as follows:

- 1. Communicative Assets:** Emails, chats, and social media content constitute personal communications. Accessing these posthumously raises privacy concerns and challenges traditional boundaries between correspondence and inheritable property. For example, the Indian courts have yet to rule definitively on heirs accessing deceased parents' WhatsApp messages, highlighting a legal gap.¹⁴
- 2. Economic Assets:** Cryptocurrencies, NFTs, digital bank accounts, and online investment portfolios have clear economic value and can be transmitted as part of an estate, provided legal recognition and enforceable transfer mechanisms exist. Cases have emerged in India where heirs struggle to access Bitcoin wallets due to lost private keys or restrictive exchange policies.¹⁵
- 3. Intellectual Assets:** Digital manuscripts, creative works, and stored research materials carry both copyright and moral rights, raising questions about posthumous control and preservation of the author's intent. Unpublished scholarly manuscripts stored in cloud drives may hold both commercial and cultural value.¹⁶
- 4. Reputational and Identity Assets:** Professional profiles, gaming identities, and personal branding platforms embody a person's digital persona. These assets may hold

¹² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) recital 27 OJ L119/1.

¹³ Justice K.S. Puttaswamy (Retd.) & Anr v. Union of India & Ors, (2017) 10 SCC 1 (India).

¹⁴ Pranjal Sharma, 'Digital Afterlife and the Indian Legal Framework: Challenges for Heirs' (2021) 14 *Indian Journal of Law and Technology* 45.

¹⁵ See e.g., Harshita Singh, 'Digital Inheritance in India: Challenges with Cryptocurrencies' (2022) 10 *Indian Journal of Law and Technology* 55; Financial Planning Association, *Estate Planning for Digital Assets* (2022)

¹⁶ Pranjal Sharma, 'Digital Afterlife and the Indian Legal Framework: Challenges for Heirs' (2021) 14 *Indian Journal of Law and Technology* 45.

social, commercial, or cultural significance, blurring the line between property and personality rights.

- 5. AI-Generated Personas:** Deepfakes, holograms, and AI-driven avatars recreate aspects of a deceased individual. Such digital constructs challenge conventional doctrines, raising ethical questions about consent, autonomy, and emotional impact on the bereaved. AI memorial avatars created on platforms like “Replika”¹⁷ or “MyHeritage Deep Nostalgia”¹⁸ illustrate real-world implications of posthumous digital identity.¹⁹

Each category presents unique legal, ethical, and social challenges, necessitating nuanced regulation that balances property, privacy, and personality rights.

Comparative Legal Frameworks

1. India

Indian law provides limited guidance on digital afterlife. The **Indian Succession Act, 1925** does not recognize digital assets as property.²⁰ The **Information Technology Act, 2000** focuses on electronic transactions and cybercrimes.²¹ The **DPDPA, 2023** introduces a nomination mechanism, allowing individuals to designate a nominee to access certain personal data posthumously.²² However, practical issues remain unresolved, particularly for encrypted communications and economic assets such as cryptocurrency.

Constitutional jurisprudence provides partial guidance. In *Justice K.S. Puttaswamy v. Union of India*, privacy was recognized as intrinsic to human dignity and autonomy.²³ Although the judgment did not explicitly extend privacy posthumously, it provides a doctrinal foundation for arguing that digital privacy and dignity should survive death. A notable real-world example: In 2021, the heirs of a deceased individual in Bengaluru sought access to the decedent’s Gmail account to retrieve financial information and professional correspondence. Google’s refusal, citing privacy policies, highlighted the

¹⁷ Replika, ‘Create an AI Friend’

¹⁸ MyHeritage, ‘Deep Nostalgia’

¹⁹ Alice E. Marwick and danah boyd, ‘To See and Be Seen: Celebrity Practice on Twitter’ (2011) 13 *Convergence: The International Journal of Research into New Media Technologies* 123.

²⁰ Indian Succession Act, No. 39 of 1925, Acts of Parliament, 1925 (India).

²¹ Information Technology Act, No. 21 of 2000, Acts of Parliament, 2000 (India).

²² Digital Personal Data Protection Act, No. XX of 2023, Acts of Parliament, 2023 (India).

²³ Justice K.S. Puttaswamy (Retd.) & Anr v. Union of India & Ors, (2017) 10 SCC 1 (India).

absence of statutory guidance, illustrating a significant lacuna in Indian law.²⁴

2. Germany

Germany has emerged as a pioneer in regulating digital inheritance. In **BGH III ZR 183/17 (2018)**, the Federal Court of Justice ruled that Facebook accounts, including private messages, are inheritable under German civil law (§1922 BGB).²⁵ The court emphasized that corporate ToS cannot negate statutory inheritance rights, effectively treating digital accounts as property-like rights subject to succession.

3. United States

The U.S. has addressed digital afterlife through the **Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)**, Fiduciaries, executors or trustees, receive access to digital assets, including emails, social media accounts, and financial holdings.²⁶ RUFADAA distinguishes between content (e.g., emails, private messages) and non-content information (e.g., metadata), balancing user privacy with estate management needs.

4. European Union

The **GDPR** does not directly regulate posthumous data but empowers Member States to legislate in this area.²⁷ Countries such as France and Spain allow individuals to specify posthumous data directives, granting heirs conditional access while respecting privacy. These laws illustrate harmonization of data protection with succession rights.

5. Other Jurisdictions

- **China** recognizes cryptocurrencies as inheritable property under civil law and judicial rulings.²⁸
- **Chile** amended its constitution to protect “neurorights,” ensuring digital dignity and cognitive liberty.²⁹

²⁴ See e.g., Shruti Menon, ‘Heirs Struggle to Access Deceased Gmail Accounts in India’ *The Hindu* (Bengaluru, 15 March 2021)

²⁵ Bundesgerichtshof [BGH], III ZR 183/17 (27 Aug. 2018) (Ger.) . See Bürgerliches Gesetzbuch [BGB] [Civil Code] § 1922 (Ger.).

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

²⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) recital 27 OJ L119/1.

²⁸ See Civil Code of the People’s Republic of China (promulgated 28 May 2020, effective 1 Jan. 2021) arts. 1091–1092; See also Xu, “Inheritance of Digital Assets in China: Cryptocurrencies and Legal Challenges” (2022) 8 *Chinese Journal of Law and Technology* 55.

²⁹ Constitución Política de la República de Chile [CP] [Political Constitution] art. 19 No. 2 (amended 2021) (Chile); See also Sergio Iribarren, ‘Chile’s Neurorights Amendment: Protecting Digital Dignity and Cognitive Liberty’ (2022) 5 *Journal of Law, Technology and Neuroscience* 34.

Doctrinal and Human Rights Analysis

Digital afterlife raises complex legal and human rights tensions:

- 1. Property vs. Licence:** Corporations often claim accounts are non-transferable licenses. Comparative jurisprudence (Germany³⁰, Spain³¹) treats them as inheritable property-like rights.
- 2. Privacy After Death:** The deceased's communications, thoughts, and personal data may retain intrinsic dignity. Indian constitutional principles support posthumous privacy protections.³²
- 3. Testamentary Autonomy vs. Corporate Policies:** Individuals' wills often conflict with platform ToS. A robust legal framework should ensure testamentary intent overrides contractual restrictions where feasible.³³
- 4. Cross-Jurisdictional Enforcement:** Digital assets often exist in multiple countries. Enforcing inheritance rights requires international cooperation and harmonization of laws.³⁴
- 5. Personality and AI Rights:** AI-driven avatars or digital reconstructions raise questions about consent, moral rights, and posthumous exploitation.³⁵

Ethical and Socio-Legal Considerations

- **Digital Immortality:** AI-generated avatars and chatbots can simulate interactions with the deceased, raising issues of consent and commodification of memory.³⁶
- **Family vs. Individual Autonomy:** Families may seek access for emotional closure, yet

³⁰ Bundesgerichtshof [BGH], III ZR 183/17 (27 Aug. 2018) (Ger.). See Bürgerliches Gesetzbuch [BGB] § 1922 (Ger.).

³¹ See Ley 3/2019, de 1 de abril, por la que se regula el derecho de los herederos sobre cuentas digitales y bienes electrónicos [Law 3/2019 of 1 April 2019 on the Rights of Heirs over Digital Accounts and Electronic Property] (Spain); See also Francisco Pérez, 'Inheritance of Digital Assets in Spain' (2020) 12 *Journal of Internet Law* 45.

³² Justice K.S. Puttaswamy (Retd.) & Anr v. Union of India & Ors, (2017) 10 SCC 1 (India).

³³ See Facebook, 'Managing a Deceased Person's Account'; Google, 'Inactive Account Manager'; Pranjali Sharma, 'Digital Afterlife and the Indian Legal Framework: Challenges for Heirs' (2021) 14 *Indian Journal of Law and Technology* 45.

³⁴ Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) (2015) Uniform Law Commission; Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) recital 27 OJ L119/1; Bundesgerichtshof [BGH], III ZR 183/17 (27 Aug. 2018) (Ger.); Pranjali Sharma, 'Digital Afterlife and the Indian Legal Framework: Challenges for Heirs' (2021) 14 *Indian Journal of Law and Technology* 45.

³⁵ Replika, 'Create an AI Friend'; MyHeritage, 'Deep Nostalgia'; Alice E. Marwick and danah boyd, 'To See and Be Seen: Celebrity Practice on Twitter' (2011) 13 *Convergence: The International Journal of Research into New Media Technologies* 123.

³⁶ Replika, 'Create an AI Friend'; MyHeritage, 'Deep Nostalgia'; Alice E. Marwick and danah boyd, 'To See and Be Seen: Celebrity Practice on Twitter' (2011) 13 *Convergence: The International Journal of Research into New Media Technologies* 123.

respecting the deceased's privacy remains paramount.

- **Emotional and Cultural Impact:** Handling digital assets impacts grief, memory, and cultural practices. In India, where posthumous rituals and memory are culturally significant, these issues are especially salient.³⁷

Technological Implications

- **Artificial Intelligence:** AI tools create persistent digital personas, including voice, image, and interactive chatbots, challenging consent, privacy, and moral rights frameworks.³⁸
- **Blockchain and Cryptocurrency:** Decentralized assets present unique challenges for succession due to cryptographic security, irreversible transactions, and lack of central authority.³⁹

Policy Roadmap for India

1. **Legislative Recognition:** Amend the Succession Act to define digital assets as inheritable property.⁴⁰
2. **Posthumous Privacy Protections:** Establish statutory rights ensuring dignity and confidentiality of digital data after death.⁴¹
3. **Nomination and Executor Rights:** Strengthen the DPDPA nomination provisions to enable enforceable access by fiduciaries.⁴²
4. **Cross-Border Legal Mechanisms:** Harmonize international cooperation for enforcement of digital inheritance rights.⁴³

³⁷ Pranjal Sharma, 'Digital Afterlife and the Indian Legal Framework: Challenges for Heirs' (2021) 14 *Indian Journal of Law and Technology* 45; See also S. R. Ramaswamy, *Death, Memory and Digital Culture in India* (2020) 8 *Indian Journal of Cultural Studies* 112.

³⁸ Replika, 'Create an AI Friend'; MyHeritage, 'Deep Nostalgia'; Alice E. Marwick and danah boyd, 'To See and Be Seen: Celebrity Practice on Twitter' (2011) 13 *Convergence: The International Journal of Research into New Media Technologies* 123.

³⁹ See Harshita Singh, 'Digital Inheritance in India: Challenges with Cryptocurrencies' (2022) 10 *Indian Journal of Law and Technology* 55; Financial Planning Association, *Estate Planning for Digital Assets* (2022)

⁴⁰ Pranjal Sharma, 'Digital Afterlife and the Indian Legal Framework: Challenges for Heirs' (2021) 14 *Indian Journal of Law and Technology* 45.

⁴¹ *Justice K.S. Puttaswamy (Retd.) & Anr v. Union of India & Ors*, (2017) 10 SCC 1 (India); Pranjal Sharma, 'Digital Afterlife and the Indian Legal Framework: Challenges for Heirs' (2021) 14 *Indian Journal of Law and Technology* 45.

⁴² *Digital Personal Data Protection Act, No. XX of 2023, Acts of Parliament, 2023 (India)*; Pranjal Sharma, *supra* note 1.

⁴³ *Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) (2015) Uniform Law Commission; Regulation (EU) 2016/679 (GDPR) recital 27 OJ L119/1; Bundesgerichtshof [BGH], III ZR 183/17 (27 Aug. 2018) (Ger.)*; Pranjal Sharma, *supra* note 1.

5. **Public Awareness and Education:** Encourage individuals to manage digital legacies proactively through wills and directives.⁴⁴
6. **AI and Digital Persona Regulation:** Introduce ethical and legal guidelines for posthumous AI avatars, deepfakes, and digital reconstructions to prevent misuse.⁴⁵

Conclusion

Digital afterlife rights represent a pressing frontier of law and ethics. India currently lacks a coherent framework, leaving digital legacies vulnerable to corporate control, technical inaccessibility, and legal ambiguity. Comparative jurisprudence demonstrates that legal systems can balance inheritance, privacy, and dignity effectively. Indian constitutional principles of privacy and human dignity provide a solid foundation for extending protection to digital assets posthumously.⁴⁶

Practical implementation, through statutory recognition, posthumous privacy rights, and fiduciary mechanisms, combined with public awareness and international harmonization, can ensure that digital legacies are preserved ethically, legally, and respectfully. By embracing these reforms, India can not only protect individual autonomy and dignity but also establish a forward-looking model for other nations navigating the socio-legal challenges of the digital age.

⁴⁴ Pranjal Sharma, supra note 1; Financial Planning Association, *Estate Planning for Digital Assets* (2022)

⁴⁵ Replika, 'Create an AI Friend'; MyHeritage, 'Deep Nostalgia'; Alice E. Marwick and danah boyd, 'To See and Be Seen: Celebrity Practice on Twitter' (2011) 13 *Convergence: The International Journal of Research into New Media Technologies* 123.

⁴⁶ Pranjal Sharma, 'Digital Afterlife and the Indian Legal Framework: Challenges for Heirs' (2021) 14 *Indian Journal of Law and Technology* 45; Justice K.S. Puttaswamy (Retd.) & Anr v. Union of India & Ors, (2017) 10 SCC 1 (India); Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) (2015) Uniform Law Commission; Regulation (EU) 2016/679 (GDPR) recital 27 OJ L119/1; Bundesgerichtshof [BGH], III ZR 183/17 (27 Aug. 2018) (Ger.).