

DATA LEGACY: A STUDY ON THE NEED FOR DIGITAL INHERITANCE LAWS IN INDIA

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Abstract:

With the rise of the digital era and growing digital dependency the nature of property in itself has transformed with the emergence of a new kind of property, i.e., digital assets. These digital assets form a part of an individual's estate often holding monetary and sentiment significance. Despite the growing significance in digital assets, there are no laws or regulations to ensure a smooth inheritance of the same after the death of an individual. The existing succession laws and cyber laws do not lay down any rules for digital inheritance. This paper explores the concept of digital inheritance, evaluates the challenges is digital inheritance and regulating it. It discusses the current legal standpoint of different countries on digital inheritance; assesses the current legal vacuum in India regarding digital succession, and provides proactive recommendations for codifying inheritance of digital assets.

Key words: Digital inheritance, Digital estate, Digital assets, Service providers, Privacy

Introduction:

In today's digital age, technology has become an important part of our daily lives. People have started using mobiles and internet to communicate, work, shop, store information, and manage their finances. This has resulted in every individual knowingly or unknowingly building a digital life consisting of content and data stored online or on devices. The digital life is left behind when a person passes away creating a digital legacy which gives rise to the concept of digital inheritance.¹ Digital inheritance refers to the process succession of digital estate of a deceased person by the legal heirs or beneficiaries chosen by the deceased. Just like physical property such as land, jewellery, or money is inherited, digital inheritance involves dealing with a person's digital belongings which may include assets such as email accounts, social media profiles, photos and videos stored in cloud services, blogs, websites, e-books, online shopping

accounts, crypto currency wallets, and much more.²

Digital inheritance is turning into a significant legal problem as more and more day to day life activities are digitalized and moved online. In the past, when someone died, their family members could go through their belongings, letters, diaries, photo albums, and bank accounts. But the same is not always possible in the digital space, where such access to digital belongings is not always easy. Many service providers and platforms do not allow third parties to access a deceased person's digital contents owing to privacy policies and user agreements.³ Furthermore, in some cases, the families of the deceased may not even be aware or informed of the full extent of the digital assets left behind.

To address these issues, legal experts and policymakers have started discussing how to operate the existing laws or lay out new laws to regulate digital inheritance. A few countries

have already begun to take steps for the same. For example, in the United States, some states have passed laws laying out condition for allowing access to a deceased person's digital assets. These laws aim to balance the right to privacy of the deceased and the succession rights of the heirs. However, India is yet to take any specific steps regarding digital inheritance. Due to the lack of clear law, family member of are often denied access or face impediments in gaining the access to the digital estate.

Understanding digital assets:

Digital assets are any items of value or significance that exist in digital form. They can be broadly categorized into monetary (e.g., cryptocurrency wallets, Paytm or Google Pay balances, online investment accounts) and non-monetary (e.g., personal photos, emails, blogs, digital journals, playlists). These assets may reside on personal devices, cloud storage services, or third-party platforms, and can either hold economic value or possess deep emotional and cultural significance.⁴

The scope of digital assets continues to expand rapidly with technological advancements. In today's world, a person's digital presence can include everything from NFTs and gaming profiles to e-commerce accounts and digital intellectual property. While some of these assets can be monetized or legally transferred, others are governed by terms of service agreements that often prohibit sharing or transferring login credentials. Moreover, many digital platforms operate across jurisdictions, further complicating access and succession.

Digital assets are not only valuable in terms of content but also as a part of a person's identity. For example, an active social media account may serve as a modern-day photo album, a blog as a personal diary, or a YouTube channel as a creative legacy.⁵ Hence, managing these assets after death involves more than just economic valuation—it also raises questions about memory, legacy, and emotional closure for surviving family members.

Emotional and social perspective of digital legacy:

Beyond the legal and technical complexities, digital inheritance has profound emotional and societal implications. Digital content often holds sentimental value—photos, messages, voice notes, and videos can serve as cherished memories for loved ones.⁶ In some cases, families seek access to these materials for comfort, remembrance, or to continue managing the deceased's digital presence. This aspect of inheritance reflects the human need to preserve relationships, identities, and histories in the digital realm.⁷

Moreover, the idea of a "digital afterlife" is emerging, where social media accounts are memorialized or managed by designated contacts.⁸ Platforms like Facebook allow for legacy contacts, while Google offers an Inactive Account Manager, enabling users to pre-plan the fate of their digital data. These developments show that digital inheritance is not just a legal or financial issue but also a deeply personal one, requiring thoughtful planning, emotional sensitivity, and cultural understanding. In a society increasingly shaped by digital interaction, how we remember and honor the digital legacies of our loved ones may redefine traditions of mourning, remembrance, and legacy-building.

Research questions:

- How does Indian law currently deal with digital inheritance?
- What are the legal and ethical challenges in inheriting digital assets?
- What regulatory frameworks can be proposed?

Legal framework in India:

The Indian legislation has not framed any specific legislation regarding inheritance of digital assets and estates. The succession laws such as Indian Succession Act, 1925 primarily deal with distribution of physical assets and tangible properties. Though it does not

specifically mention anything about digital assets, such assets may be included to be part of the general estate of the estate, which may ultimately differs case to case basis, leaving no proper legal framework.

Furthermore, the cyber laws such as Information Technology Act, 2000 and Digital Personal Data Protection Act are limited to dealing with data privacy, data protection, digital authenticity and cyber crimes leaving no provisions pertaining to inheritance of digital assets. The only existing legal practicality is the contractual obligations arising out of Terms of Service agreements of Service providers and media platforms, by which an individual could pass on his digital asset pertaining to that particular platform. These agreements are enforceable under the Indian Contract Act, 1872.

Therefore, the digital estate may be dealt with in three ways in India. Firstly, the concerned individual may prepare a digital estate plan or will, pertaining to all or any of his digital assets and the same may be executed/ enforced as per law. Secondly, in case of absence of such digital estate plan, the Terms of Service agreements of separate platforms shall govern the handling of the deceased's digital assets. Many platforms such as Google and Facebook provide an option to nominate a legacy contact, to whom the concerned account will pass on upon the death of the user. Thirdly, in cases where there is no estate plan, no terms provided by the platform or the user has not left any information regarding legacy contacts, the service providers lock the deceased user's account and the legal heir would not have an option to inherit the digital asset.⁹ Therefore, it is crystal clear that digital inheritance is significantly underdeveloped concept in India. Despite the rapid increase in digitalization and technological advancements, there is currently not even a minimum legal framework to address the inheritance, transfer, management and access of digital estate after an individual's death.

Role of service providers:

Service providers such as social media platforms, cloud storage companies, email providers, and cryptocurrency exchanges play a crucial role in storing and managing a person's digital assets and estate. These service providers act as custodians of a vast array of digital assets including data, intellectual property, communications, and financial information. They have a significant and complex role in digital inheritance. A major aspect of this role is in regard to Terms of Service (ToS) agreements, which are the agreements that the users accept upon entering or using the particular service platform.¹⁰ Some service providers have introduced legacy management terms which provide an option to the user to name a person to whom the account passes to upon their death. For instance, Google's provides "Inactive Account Manager" which allows users to specify who should gain access to their account in case of prolonged inactivity or death. Similarly, Facebook allows users to name a "legacy contact" to manage their account after death. Apple, through its "Digital Legacy" feature, allows users to assign trusted individuals who can access data stored in iCloud after death. However, if the user fails to give the required information, these service providers usually lock the account, making it no available to anyone including the users' legal heirs.⁹ The issue of unawareness is a significant barrier in implementation of digital inheritance.

Service providers are, on the other hand, should also uphold the data protection and data privacy laws. These laws often impose restrictions in adverse to the disclosure of personal data, further complicating the process of posthumous data access. Providers may deny access to heirs citing legal obligations to protect user confidentiality, particularly in the absence of explicit consent from the deceased. Thus, even when family members or legal representatives present proof of death, service providers may be reluctant, or legally unable to comply with access requests. Furthermore,

the lack of uniform digital legacy policies adopted by various service providers is a major challenge, which often leads to confusion for both users and heirs, in the absence of standardized international protocols, service providers operate under diverse and often conflicting legal jurisdictions.

Challenges in digital inheritance:

Regulatory Gaps: There are no explicit laws in India addressing digital inheritance. Traditional inheritance laws like the Indian Succession Act, 1925, do not adequately cover the digital assets. The cyber laws also lack provisions related to succession or inheritance of digital properties. This regulatory gap leads to ambiguity over rights of the heirs in digital assets and the legal procedures to be followed to gain access to or control digital assets. Without clear statutory provisions, courts may struggle to provide consistent rulings, and heirs are often left at the mercy of service providers' policies and vague contract terms.

Privacy issues: Digital assets can contain highly sensitive and personal information of the user. Right to privacy is recognized as a fundamental right in India and the same is upheld strictly by courts which impose restrictions in sharing and accessing personal data of the deceased. Service providers too have established privacy policy and may tend to prioritize protecting the deceased user's privacy over granting access to heirs unless and otherwise the explicit consent for the same has been given by the deceased.

Fragmentation of Digital Assets: 'Digital assets' is an umbrella term that includes assets in different forms such as social media accounts, blog pages, cryptocurrencies, etc., that are scattered across multiple platforms and formats. Each platform has different policies, access protocols, and security measures. The lack of a unified system complicates the identification, retrieval, and management of these assets.

Service Providers' Policies and Their Limitations: Most digital service providers include terms in their Terms of Service (ToS) that restrict account access by third parties. These policies often deny heirs any right to manage or inherit digital content. While platforms have introduced legacy options or dormant account managers, these are not widely used or standardized.

Jurisdictional and Cross-Border Legal Challenges: Digital platforms often operate in multiple jurisdictions with diverse laws governing data, privacy, and inheritance. When providers are outside India, Indian heirs face legal obstacles, including the need to comply with foreign legal processes or obtain international court orders. This raises complex questions about which country's laws apply, especially when the user, provider, and heirs are in different countries.

Lack of User Awareness and Estate Planning: A major impediment is the lack of awareness about digital inheritance among the general public. Most users do not maintain records of their digital accounts, passwords, or the nature of digital assets they own. They also tend to not prepare any digital estate planning or wills. Without clear instructions from the deceased, heirs may struggle to locate or access digital property, resulting in potential loss of valuable or sentimental data.

Technical and Security Barriers: Even if legal access is granted, technical barriers can prevent heirs from retrieving digital assets. These include: two-factor authentication, biometric locks, encryption and private keys for crypto currencies, accounts being deleted or deactivated due to inactivity. Digital asset recovery often requires cooperation from service providers, which is seldom done by such providers.

Valuation Difficulties: Assigning monetary value to digital assets is challenging. Many digital assets, like social media profiles, digital photos, or virtual goods in games, have intangible or sentimental value that cannot be easily quantified for inheritance or taxation purposes.

Cryptocurrencies and NFTs, however, represent tangible financial assets that must be correctly valued and transferred, adding layers of complexity to estate valuation.

International approaches:

Most of the nations do not properly regulate digital inheritance.⁹ The United States is the only country to pass a specific enactment for this purpose. The Uniform Fiduciary Access to Digital Assets Act was enacted in the year of 2014 (UFADAA). It was subjected to severe criticism for granting broad powers to the fiduciaries to control the data of the deceased in detriment to the privacy and data protection rights of the deceased.¹¹ Therefore, The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) was passed in 2015. The RUFADAA balances privacy and balance. The Act provides for the user to use online tools to direct the custodian to disclose or not disclose the whole or part of his digital assets or to allow or prohibit access to digital assets through will, trust, power of attorney or other record. The Act also distinguishes between entire accounts and data such as messages and emails within those accounts, laying down rules for both.

In the European Union, the GDPR does not explicitly regulate digital inheritance, but it places strong emphasis on data privacy, data access and data rights, which covers the aspect of restriction of post-mortem data access. Countries like France and Germany have given court rulings recognizing and allowing wills explicitly stating inheritance of digital assets. Other developed countries such as Canada, and Australia have directly included digital estate inheritance in their succession laws. U.K, however, does not have any dedicated legislation addressing digital inheritance.

Recommendations:

Enact Specific Legislation on Digital Inheritance:

India currently lacks a comprehensive law on digital inheritance and the existing succession laws clearly do not cover all most aspects of digital assets. Introducing a separate Digital

Inheritance and Legacy Act that defines what is digital assets and explains its scope, specifies the rights and responsibilities of the deceased and heirs and provides rules for service providers is essential to effectively preserve and safeguard digital assets.

Extend succession laws to digital estate planning:

- A minimal step to regulate digital inheritance would be to extend the scope of existing succession laws to include digital assets. Recognizing digital assets in par with the physical assets by amending the succession laws can safeguard the digital legacy of the rightful heirs. For example, recognizing and executing wills that allocate digital assets specify data and estates that are not to be inherited can facilitate effective posthumous handling of digital belongings.

Harmonize digital inheritance and privacy laws:

It is pertinent to note that while allowing digital inheritance, there must also be given due consideration to the privacy of deceased. Clear provisions regarding data fiduciary responsibilities post-mortem, which data can be accessed or erased and allowing users to explicitly state which data can be inherited and which are to be deleted or lock up must be laid down. It ensures that the privacy and data protection laws are also upheld.

Uniform rules for Online Service Providers

The digital assets of an individual are spread across different service provider, each having different legacy policies and some of them even having no such policies. These inconsistencies can potentially confuse both the users and the heirs resulting in conflicting legal claims and disputes. Therefore, a uniform set of rules and policies laid out to be upheld by the service providers in forming their legacy policies can minimize these hurdles and ensure a smooth digital inheritance.

Awareness of Digital Estate Planning

Most Indians have no idea about digital estate planning and die intestate. Therefore, it is recommended that the Government may take measure to create awareness regarding the same through mass media. The public must be aware of the significance of storage, management, protection, and access to their digital assets and estates after their death.

Conclusion:

As India becomes increasingly digitized, not only the way we live and interact has changed but also the legacies and estates we leave behind. From financial holdings like cryptocurrency and bank accounts to digital data holding sentimental value such as photos, emails, and social media content, digital assets now constitute an integral part of an individual's estate. Therefore, digital inheritance, which was once a vague concept, has now emerged to be an important succession aspect that intersects legal, technical, ethical and social factors.

The existing laws such as Indian Succession Act, 1925 and the Information Technology Act, 2000 do not explicitly address digital inheritance. Furthermore, the Digital Personal Data Protection Act, 2023, emphasizes on the data privacy of the user but is undeveloped as to the rules to be followed upon the death of the user as. In the absence of specific laws, the families of the deceased user often face sever struggles to gain access to the digital assets of the deceased which could be of sentimental value. The service providers also do not follow uniform legacy policies with some of them not even having option of legacy contacts, which further complicates the inheritance process. This lack of legal clarity is compounded by the individuals' inaction to leave behind a secure digital estate plan. Most individuals do not consider nominating heirs to their digital assets or leaving a will for the same, adding to complexities in accessing digital assets upon their death.

In conclusion, this research strongly the supports the enactment of a new specific digital inheritance in India that defines and

categorizes digital assets and dives into details regarding the circumstances and procedures to gaining access to and distributing the digital estate of a deceased; and provides clear guideline to be observed by service providers and online platforms. Global practices, especially the United States' Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) can be of help in enacting a balanced legal framework. The promotion of awareness among the public and encouraging digital estate planning could also facilitate a smooth transition of digital assets.

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