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The Digital Ghost in the Legal Machine: Reconciling Post-Mortem Privacy with Succession Law in India

Abhijit Singh
B.B.A. LL.B. (HONS) at National Forensic Sciences University, Delhi Campus
Contact at: abhijitsingh1505@gmail.com

ABSTRACT

The surge of the digital economy is creating a complicated field of wealth, the "Digital Estate," which has engendered a conflict between the traditional approach to devolution of property under the Indian Succession Act, 1925, and information-based privacy approaches under the DPDP Act, 2023. This report finds that a "Consent Gap" occurs in the DPDP Act, with the "Right to Nominate" creating a posthumous privacy guardian. Still, the statute systematically omits to provide an asset heir to inherit monetized, intangible digital assets. The study examines the deficiency in the existing system for digital inheritance, as it depends solely on contractual Terms of Service (ToS) following the WazirX cyber-attack and the conflicting laws in the past regarding post-mortem privacy in India. The report presents a comprehensive "Unified Digital Succession Framework" (UDSF) based on the comparative models of other countries, such as the US RUFADAA and Germany's universal succession. The bill aims to introduce a 'Digital Executor' concept which would mandate the legal recognition of a 'Digital Executor', a tiered access concept, differentiating the economic from highly personal data, and the punishment of unauthorized post-mortem access. In conclusion, the balancing of the right to privacy and the proprietary rights of legal heirs is a pressing constitutional challenge.

KEYWORDS

Digital Estate, Post-Mortem Privacy, Digital Succession, Consent Gap, Digital Executor, DPDP Act, Unified Digital Succession Framework (UDSF)

1. Introduction: The Inevitability Of The Digital Afterlife

The biological parameters of the human experience are no longer exclusively physical; human existence has definitively transitioned into a highly quantifiable digital data phenomenon.[1] Modern individuals seamlessly entrust their memories, financial wealth, professional identities, and intimate communications to decentralized blockchain networks and centralized cloud computing infrastructure.[2] This continuous generation of data ensures that the universally shared phenomenon of death now carries profoundly complex digital and informational implications.[3] This reality is not confined to the urban technological elite; it has been fundamentally democratized by rapid internet penetration across virtually all socioeconomic demographics in the global south. Citizens utilizing Unified Payments Interface (UPI) handles, maintaining monetized social media profiles, utilizing cloud storage architectures, and holding virtual digital assets (VDAs) are now active stakeholders in a massive, fundamentally unregulated digital estate.[4]

While the past decade has witnessed the aggressive construction of robust digital public infrastructure and sophisticated commercial platforms for the living, the legal architecture governing the digital footprint of the deceased remains dangerously underdeveloped and critically ignored.[5] The Indian legal system, deeply rooted in colonial-era jurisprudence and mid-twentieth-century property concepts, is fundamentally anchored to the devolution of corporeal and tangible assets, such as land, physical currency, jewelry, physical securities, and material manuscripts.[6] Consequently, when biological life ceases, a digital construct—often conceptualized as a "Digital Ghost"—remains suspended in the cloud, frequently outliving its physical counterpart and existing in a state of indefinite legal purgatory.

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[1] *Post-Mortem Privacy and Informational Self-Determination*, ResearchGate (last visited Apr. 13, 2026), https://www.researchgate.net/publication/315920837_Post-mortem_privacy_and_informational_self-determination.
[2] *Digital Estate Inheritance Law: The Need of the Hour to Balance the Rights of Posthumous Privacy and Legal Heirs*, NLIU L. Rev. Blog (last visited Apr. 13, 2026), https://nliulawreview.nliu.ac.in/blog/digital-estate-inheritance-law-a-need-of-the-hour-to-balance-the-rights-of-posthumous-privacy-and-legal-heirs/.
[3] *Legal Challenges of Digital Afterlife Services in India*, Jus Corpus (last visited Apr. 13, 2026), https://www.juscorpus.com/legal-challenges-of-digital-afterlife-services-in-india/.
[4] *The Digital Afterlife: Post-Mortem Privacy and Proprietary Rights in the Information Age*, SCC Online Blog (last visited Apr. 13, 2026), https://www.scconline.com/blog/post/2026/02/27/digital-afterlife-post-mortem-privacy-succession-india/.
[5] *Digital Assets and Death: A Legal Vacuum in Indian Succession Law?*, TaxTMI (last visited Apr. 13, 2026), https://www.taxtmi.com/article/detailed?id=14823.
[6] *The Digital Afterlife: Post-Mortem Privacy and Proprietary Rights in the Information Age*, SCC Online Blog, *(supra note 4)*.

The severe urgency of this jurisprudential void was brutally highlighted by the July 2024 cyber-attack on the Indian cryptocurrency exchange WazirX, which resulted in the theft of approximately $230 million in digital assets and triggered a cascading crisis regarding digital asset ownership, fiduciary duty, and post-mortem asset recovery.[7] In the chaotic aftermath of such systemic breaches, or even in routine cases of intestate succession, the families of deceased users are routinely locked out of their rightful inheritances.[8] Legal heirs are frequently rendered "data orphans," technically disenfranchised by a formidable combination of strict platform privacy algorithms, impenetrable cryptographic encryption, and unilateral Terms of Service (ToS) agreements rigorously enforced by multinational technology conglomerates.[9]

This report conducts a rigorous, multi-disciplinary examination of the tension between post-mortem privacy rights and traditional succession law in India. It evaluates the philosophical underpinnings of informational self-determination, deeply analyzes the limitations of the current statutory regime—specifically the Indian Succession Act, 1925, the Information Technology Act, 2000, and the DPDP Act, 2023—and critically reviews recent judicial interventions classifying digital assets as tangible property capable of being held in trust. By synthesizing global best practices and cross-border regulatory responses, the analysis formulates a cohesive, actionable framework to bridge the chasm between preserving digital dignity and ensuring the equitable, legally sound transmission of digital wealth.

2. The Philosophical and Jurisprudential Foundations of Post-Mortem Privacy

To adequately address the legal mechanics of digital inheritance, it is first necessary to establish the theoretical parameters of the "Digital Estate" and interrogate the foundational concept of post-mortem privacy. The legal friction currently observed in courts worldwide stems from a fundamental philosophical disagreement regarding the nature of data and the rights of the dead.

Legal philosophers, technologists, and ethicists, such as Luciano Floridi, have increasingly argued that human beings operating within the twenty-first century are essentially "informational bodies"—complex constructs of data and metadata that accurately map personal

[7] *2024 WazirX Hack*, Wikipedia (last visited Apr. 13, 2026), https://en.wikipedia.org/wiki/2024_WazirX_hack.
[8] *Avoiding Probate for Digital Assets and Cryptocurrency*, JGCG (last visited Apr. 13, 2026), https://jgcg.com/avoiding-probate-for-digital-assets-and-cryptocurrency/.
[9] *Legal Challenges in Accessing Digital Assets After Death*, Temmerman, Cilley, Kohlmann & Norcia, LLP (last visited Apr. 13, 2026), https://www.tcklawfirm.com/blog/2024/06/legal-challenges-in-accessing-digital-assets-after-death/.

preferences, movements, physiological health, and intimate communications.[10] Because the assumption that a person ceases to exist entirely upon biological death no longer holds in a hyper-networked society, scholars advancing the theory of Information Ethics advocate that the deceased possess a *prima facie* moral right to privacy, particularly concerning highly sensitive health data and personal communications.[11] The concept of post-mortem privacy revolves around the intrinsic right of an individual to preserve their reputation, dignity, and informational self-determination even after the cessation of biological functions.[12]

However, classical legal doctrine strongly dictates that privacy is a deeply personal right that extinguishes simultaneously with physical death, encapsulated by the common law maxim *actio personalis moritur cum persona* (a personal right of action dies with the person).[13] Legal scholars Anita L. Allen and Jennifer E. Rothman observe that this "no-privacy-rights-for-the-dead" doctrine has been repeated in jurisprudence for over a century, relying on a "jurisprudence of exclusion" which routinely withholds rights from entities that lack the traits deemed essential for rights ascription, namely consciousness and agency.[14]

Despite this historical doctrine, the reality of modern data processing requires a radical reevaluation of how legal systems handle digital remnants. Legal theorists point out that the most compelling justifications for extending post-mortem privacy protections are not rooted in the non-existent ongoing interests of the dead themselves, but rather in the highly tangible interests of the living and of society at large.[15] These interests can be bifurcated into two primary categories. The first involves the "future-decedents," which refers to living individuals who fundamentally alter their present behavior, communications, and digital interactions based on their expectations of how their data will be treated and exposed after their death.[16] If individuals believe their private communications will be immediately exposed to heirs or monetized by corporations upon death, their present autonomy and freedom of expression are severely chilled. The second category involves the "relational-living," referring to surviving

[10] *Post-Mortem Privacy and Informational Self-Determination*, ResearchGate, *(supra note 1)*.
[11] Anita L. Allen & Jennifer E. Rothman, *Postmortem Privacy*, 123 Mich. L. Rev. (last visited Apr. 13, 2026), https://repository.law.umich.edu/mlr/vol123/iss2/4/.
[12] *Post-Mortem Privacy and Informational Self-Determination*, ResearchGate, *(supra note 1)*.
[13] Anita L. Allen & Jennifer E. Rothman, *Postmortem Privacy*, 123 Mich. L. Rev., *(supra note 10)*.
[14] *Ibid*
[15] *Ibid*
[16] *Ibid*

family members and loved ones whose own privacy, emotional well-being, and social standing are intrinsically and inextricably tied to the deceased's data.[17]

Furthermore, current legal paradigms that focus predominantly on the commercial value of a persona after death—such as post-mortem publicity rights for celebrities—are fundamentally skewed.[18] This narrow focus incentivizes unrelated corporate entities to exploit and profit from the digital remnants of the dead without meaningfully protecting the informational privacy of ordinary citizens.[19] Therefore, post-mortem privacy must be democratized and bounded; it should not grant perpetual control, which would hinder historical research and free expression, but rather employ "durational pragmatism" to balance the dignity of the deceased with the practical necessity of estate administration.[20]

3. The Indian Constitutional Paradigm and the Right to Privacy

In India, any analysis of informational rights and data protection must necessarily begin with the constitutional bedrock established by the Supreme Court. The foundation of modern privacy law in the Indian Republic is the monumental nine-judge bench decision in *Justice K.S. Puttaswamy (Retd.) & Ors. v. Union of India & Ors.* (2017).[21]

The Supreme Court unanimously overruled earlier restrictive precedents, such as *M.P. Sharma* and *Kharak Singh*, definitively holding that the right to privacy is a constitutionally protected fundamental right.[22] The Court established that privacy is an intrinsic, inseparable part of the right to life and personal liberty guaranteed under Article 21 of the Constitution, as well as being incidental to the various freedoms guaranteed across Part III.[23]

The *Puttaswamy* judgment extensively elaborated on the doctrinal foundation of privacy, emphasizing that fundamental rights emanate from basic notions of liberty and dignity.[24]

[17] *Ibid*
[18] *Postmortem Privacy*, Mich. L. Rev., https://michiganlawreview.org/journal/postmortem-privacy/.
[19] *Postmortem Privacy*, Mich. L. Rev., *(supra note 17)*.
[20] *A Proposed Framework for Privacy Rights After Death*, Jotwell (last visited Apr. 13, 2026), https://trustest.jotwell.com/a-proposed-framework-for-privacy-rights-after-death/.
[21] *Puttaswamy v. Union of India (I)*, Glob. Freedom of Expression (last visited Apr. 13, 2026), https://globalfreedomofexpression.columbia.edu/cases/puttaswamy-v-india/.
[22] *Puttaswamy v. Union of India*, Wikipedia (last visited Apr. 13, 2026), https://en.wikipedia.org/wiki/Puttaswamy_v._Union_of_India.
[23] *Judgment of the Court in Plain English (I)*, SC Observer (last visited Apr. 13, 2026), https://www.scobserver.in/reports/k-s-puttaswamy-right-to-privacy-judgment-of-the-court-in-plain-english-i/.
[24] *Judgment of the Court in Plain English (I)*, SC Observer, *(supra note 22)*.

Justice D.Y. Chandrachud noted that the Constitution must dynamically evolve to meet the technological challenges of the future, recognizing that in an age where information technology governs virtually every aspect of human existence, the Courts must impart profound meaning to the concept of individual liberty.[25] This includes protecting citizens against an overarching presence of State and non-State entities that seek to regulate aspects of social existence through unregulated surveillance and data aggregation.[26] Furthermore, Justice S.A. Bobde articulated that privacy entails a "negative autonomy"—the right to be let alone, to seclude oneself from intrusions, and to actively choose not to do a specific act.[27]

Justice S.K. Kaul specifically addressed the protection of informational privacy, stating that the law must provide for rigorous data protection while balancing national security exceptions through a strict test of proportionality.[28]

Jurisprudential Pillar	Constitutional Interpretation in Puttaswamy (2017)	Implications for Digital Data
Informational Privacy	Recognized as a core facet of Article 21 (Right to Life and Liberty).	Grants individuals the right to control the dissemination and processing of their personal data.
Negative Autonomy	The fundamental right to be let alone and to seclude oneself from unwarranted intrusions.	Provides the theoretical basis for encrypted communications and anonymous digital participation.
Horizontal Application	Protection extends against both State actors and non-State commercial entities.	Subjects multinational technology platforms and Data Fiduciaries to constitutional privacy standards.
Proportionality Test	State interference requires legality, a legitimate goal, and proportionate means.	Ensures that data collection is not arbitrary and is strictly tied to necessary administrative or security functions.

However, despite its sweeping and revolutionary scope, the *Puttaswamy* judgment predominantly addressed the privacy rights of the living, leaving the temporal boundaries of

25 *Judgment of the Court in Plain English (I)*, SC Observer, *(supra note 22).*
26 *Ibid*
27 *Ibid*
28 *Puttaswamy v. Union of India (I)*, Glob. Freedom of Expression, *(supra note 20).*

these rights largely undefined.[29] While the judgment elevated informational privacy to the level of a basic human right, it did not explicitly address whether this right survives the biological death of the data principal.[30] Crucially, Justice Abhay Manohar Sapre, in his concurring notes, stated that privacy is "born with human beings and extinguishes with human beings," heavily implying an adherence to the traditional common law view that post-mortem privacy rights are legally untenable.[31] This specific constitutional ambiguity left a profound vacuum regarding the treatment of the digital footprint post-mortem, setting the stage for highly contentious legal conflicts between grieving families seeking access to data and platforms invoking privacy as an impenetrable shield against disclosure.

3.1 Judicial Pronouncements on Post-Mortem Rights in India

In the distinct absence of clear statutory guidelines regarding the digital afterlife and post-mortem data management, Indian high courts have been routinely forced to adjudicate complex civil disputes involving post-mortem privacy, defamation, and personality rights. A critical analysis of recent Indian jurisprudence reveals a highly consistent, albeit rigid, adherence to the traditional common law doctrine that personal rights unconditionally extinguish upon death.

3.2 The Extinguishment Doctrine: Ruba Ahmed and Krishna Kishore Singh

The Delhi High Court addressed the inheritability of the right to privacy directly in the highly publicized case of *Ruba Ahmed & Ors v. Hansal Mehta & Ors* (2022).[32] The plaintiffs, who were the mothers of victims killed in a 2016 terrorist attack in Bangladesh, sought an ad-interim injunction to restrain the release of a cinematographic film based on the attack.[33] The plaintiffs vehemently argued that the film would portray their deceased daughters inaccurately, thereby inflicting severe emotional trauma on the families and infringing upon the fundamental right to privacy of the deceased victims under Article 21.[34]

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[29] *Posthumous Privacy Under the DPDP Act, 2023: Nomination vs Inheritance*, IR Global (last visited Apr. 13, 2026), https://irglobal.com/article/posthumous-privacy-under-the-dpdp-act-2023-nomination-vs-inheritance/.
[30] *Posthumous Privacy Under the DPDP Act, 2023: Nomination vs Inheritance*, IR Global, *(supra note 28).*
[31] *Ibid*
[32] *'Right to Privacy' is Essentially a Right in Persona and Not Inheritable: Delhi High Court Allows Release of Film Faraaz*, The Law Advice (last visited Apr. 13, 2026), https://www.thelawadvice.com/news/right-to-privacy-is-essentially-is-a-right-in-persona-and-not-inheritable-delhi-high-court-allows-release-of-film-faraaz%C2%A0.
[33] *Ruba Ahmed v. Hansal Mehta: Defamation Case Analysis*, Scribd (last visited Apr. 13, 2026), https://www.scribd.com/document/640644909/Triya-Ghosh-Case-Commentary.
[34] *'Right to Privacy' is Essentially a Right in Persona and Not Inheritable: Delhi High Court Allows Release of Film Faraaz*, The Law Advice, *(supra note 31).*

The Delhi High Court categorically dismissed the plea for an injunction, ruling decisively on the temporal limits of fundamental rights.[35] The Court explicitly held that the right to privacy is essentially a right *in personam* and, therefore, is not an inheritable right that can be exercised by the mothers or legal heirs of the deceased persons.[36] The Court noted that a cause of action regarding privacy or defamation cannot outlive the person it concerns, and the defamation of a deceased person does not give rise to a civil or common law right of action in favor of surviving relatives who have not been personally defamed.[37]

This strict interpretation was further solidified and expanded in the case of *Krishna Kishore Singh v. Sarla A Saraogi & Ors* (2021), a complex commercial suit involving the deceased Bollywood actor Sushant Singh Rajput.[38] Following the actor's untimely death, his father attempted to legally restrain filmmakers from utilizing his son's name, likeness, caricature, and lifestyle in cinematic projects, asserting violations of post-mortem privacy, publicity, and personality rights.[39] The plaintiff argued that as the sole surviving legal heir, he was entitled to control the deceased's personality rights and protect the commercial brand value of the celebrity from unauthorized exploitation.[40]

The Delhi High Court, however, maintained its strict doctrinal stance. The Court held that the rights to privacy, publicity, and personality are not heritable assets; rather, they are deeply personal rights that cease to exist instantaneously upon the actor's death.[41] Consequently, the plaintiff, despite his status as the primary legal heir under succession law, did not possess enforceable rights to control the deceased's persona posthumously or prevent the dissemination of information derived from publicly available sources.[42]

3.3 The Paradox of Platform Policies and Judicial Silence

These judicial precedents collectively establish an unequivocal principle under Indian common law: privacy rights, personality rights, and the right to control personal information are not

[35] *Ibid 34*
[36] *Ibid 34*
[37] *Ibid 34*
[38] Krishna Kishore Singh v. Sarla A. Saraogi, Indian Kanoon (June 25, 2021), https://indiankanoon.org/doc/157514547/.
[39] *Krishna Kishore Singh v. Sarla A. Saraogi*, Glob. Freedom of Expression (last visited Apr. 13, 2026), https://globalfreedomofexpression.columbia.edu/cases/krishna-kishore-singh-v-sarla-a-saraogi/.
[40] *Krishna Kishore Singh v. Sarla A. Saraogi*, IPRMENTLAW (June 10, 2021), https://iprmentlaw.com/wp-content/uploads/2021/06/Krishna-Kishore-vs-Sarogi-SSR-case.pdf.
[41] *Krishna Kishore Singh v. Sarla A. Saraogi*, Glob. Freedom of Expression, *(supra note 38).*
[42] *Ibid 41*

inheritable assets that pass to legal heirs upon death.[43] However, this legal reality creates a severe and paralyzing paradox in the context of digital succession and the administration of digital estates.

If privacy rights definitively extinguish upon death as ruled by the Delhi High Court, multinational technology platforms and Data Fiduciaries theoretically possess no valid legal basis under Indian law to invoke "user privacy" as a justification for denying verified legal heirs access to a deceased person's digital accounts.[44] Yet, operating in a globalized digital environment, these platforms routinely rely on foreign statutes, such as the U.S. Stored Communications Act, or their own proprietary, non-negotiable Terms of Service (ToS) agreements to systematically refuse access.[45]

For example, platforms like Facebook (Meta) and Google offer proprietary solutions, such as "memorializing" an account or designating an "Inactive Account Manager".[46] When an account is transitioned into a memorialized state by the platform—often triggered by a third-party report of death—the platform unilaterally locks out the legal heirs, preventing them from accessing private data, financial records, or communications, even if the heirs possess the correct login credentials and probate documents.[47] The persistent silence of the higher Indian judiciary regarding the enforceability of these platform ToS against domestic succession laws leaves executors and heirs entirely without a viable judicial remedy, effectively allowing private corporate contracts drafted in Silicon Valley to supersede sovereign domestic succession laws.[48]

3.4 The Legislative Void: Conflict Between Succession Law and Digital Realities

The severe friction between the practical necessity of accessing digital assets and the corporate enforcement of data protection is exacerbated by a deeply fragmented and technologically obsolete legislative landscape in India. The traditional property framework is wholly

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[43] *Ibid41*
[44] *The Digital Afterlife: Post-Mortem Privacy and Proprietary Rights in the Information Age*, SCC Online Blog., *(supra note 4)*.
[45] *Digital Assets and Death: A Legal Vacuum in Indian Succession Law?*, TaxTMI *(supra note 5)*.
[46] *Legal Challenges of Digital Afterlife Services in India*, Jus Corpus *(supra note 3.)*
[47] *Ibid*
[48] *The Digital Afterlife: Post-Mortem Privacy and Proprietary Rights in the Information Age*, SCC Online Blog. *(supra note 4)*.

incompatible with the realities of intangible, encrypted data, while modern privacy laws inadvertently create insurmountable roadblocks to legitimate inheritance.

4. The Inadequacies of the Indian Succession Act, 1925

The Indian Succession Act, 1925 (ISA) is the primary central legislation governing testamentary (with a Will) and intestate (without a Will) succession procedures in India, laying down the rules for the transfer of property, the appointment of executors, and the issuance of succession certificates.[49] Section 5 of the ISA broadly regulates the succession to a deceased person's "movable property," and while Indian courts have generally adopted an expansive, dynamic understanding of what constitutes property, the Act contains no explicit provisions, definitions, or mechanisms for the handling of digital assets, cryptocurrencies, non-fungible tokens (NFTs), or online accounts.[50]

The procedural mechanisms mandated by the ISA present nearly insurmountable administrative hurdles for digital succession. Sections 212 and 213 of the Act traditionally require the obtaining of a grant of probate or letters of administration from a competent court to formally establish an individual's right as an executor or legatee.[51] Furthermore, Section 370 prohibits the grant of succession certificates for any debt or security to which a right must be proved by letters of administration.[52]

Applying these physical-world, paper-heavy procedural requirements to the fluid digital realm is highly problematic. Executors face immense uncertainty regarding whether digital holdings are legally transferable.[53] Even when armed with a court-issued probate order, executors are routinely thwarted by massive technological barriers, including multi-factor authentication (2FA) protocols, complex cryptographic encryption, and platform ToS that strictly prohibit the sharing of passwords or automated access.[54] An Indian executor is thus left with a frustrating paradox: possessing a legally valid probate order from an Indian court that is practically

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[49] *What Is the Indian Succession Act 1925 Law in India?*, WillJini (last visited Apr. 13, 2026), https://www.willjini.com/blog/what-is-the-indian-succession-act-1925.

[50] *The Digital Afterlife: Post-Mortem Privacy and Proprietary Rights in the Information Age*, SCC Online Blog. *(supra note 4)*.

[51] *Removal of the Mandatory Probate Requirement Under the Indian Succession Act*, Trilegal (last visited Apr. 13, 2026), https://trilegal.com/knowledge_repository/trilegal-update-removal-of-the-mandatory-probate-requirement-under-the-indian-succession-act/.

[52] *Removal of the Mandatory Probate Requirement Under the Indian Succession Act*, Trilegal *(supra note 50)*.

[53] *Digital Assets and Death: A Legal Vacuum in Indian Succession Law?*, TaxTMI *(supra note 5)*.

[54] *Ibid*

unenforceable against a digital platform governed by foreign jurisdictions and complex encryption algorithms.[55]

4.1 The Exclusion of Electronic Wills under the IT Act, 2000

The logical solution for individuals wishing to organize their digital estate would be the creation of a "Digital Will." However, this avenue is explicitly blocked by the Information Technology (IT) Act, 2000. While the IT Act provides legal recognition for electronic records and digital signatures, forming the basis for electronic contracts and e-governance in India, Section 1(4) of the Act contains a critical exclusion.[56]

Section 1(4) explicitly states that nothing in the IT Act shall apply to documents or transactions specified in the First Schedule, which notably includes "any will as defined in clause (h) of section 2 of the Indian Succession Act, 1925".[57] This statutory exclusion renders purely digital, cryptographic, or video-recorded wills legally invalid in India.[58] Consequently, the law forces individuals to rely on physical, paper-based documents requiring wet signatures and physical witnesses to govern highly complex, fluid, and encrypted digital wealth, creating a massive disconnect between the nature of the asset and the instrument used to bequeath it.[59]

5. The Digital Personal Data Protection (DPDP) Act, 2023 and the "Consent Gap"

The enactment of the Digital Personal Data Protection (DPDP) Act, 2023, represented a watershed moment for informational privacy in India, finally operationalizing the constitutional principles laid down in the *Puttaswamy* judgment.[60] Recognizing the absolute necessity of managing personal data post-mortem, the legislature introduced a novel and revolutionary provision: the "Right to Nominate" under Section 14 of the Act.[61]

Section 14, read in conjunction with Rule 13 of the subsequently notified DPDP Rules, 2025, allows a "Data Principal" (the individual to whom the data relates) to formally nominate another individual to exercise their statutory rights under the Act in the event of their death or

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[55] *Ibid*
[56] *Digital Wills: Legal or Illegal*, iPleaders (last visited Apr. 13, 2026), https://blog.ipleaders.in/digital-wills-legal-illegal/.
[57] *Digital Wills: Legal or Illegal*, iPleaders, *(supra note 55).*
[58] *Ibid*
[59] *Ibid*
[60] Digital Nominee VS. Legal Heir: Who Owns Your Data After Death?, LiveLaw (last visited Apr. 13, 2026), https://www.livelaw.in/articles/digital-nominee-legal-heir-dpdp-act-521855.
[61] Digital Nominee VS. Legal Heir: Who Owns Your Data After Death?, LiveLaw, *(supra note 59).*

physical/mental incapacity.[62] Rule 13 establishes the procedural mechanics for this nomination, mandating that "Data Fiduciaries" (the entities determining the purpose and means of data processing) provide clear, user-friendly, and accessible mechanisms for users to designate this nominee within their platforms.[63] This creates a statutory pathway for a digital nominee to ensure that a person's digital identity and private data do not fall into a legal vacuum, granting the nominee the right to access, correct, or definitively erase the data.[64]

5.1 The YouTuber's Dilemma and the Conflict of Rights: While revolutionary from a data privacy perspective, Section 14 creates a profound and dangerous jurisprudential dilemma that can be termed the "Consent Gap." The DPDP Act treats the designated nominee purely as a "Privacy Guardian" responsible for managing personal data and preserving the digital dignity of the deceased.[65] The nominee is statutorily empowered to enforce data erasure or retrieval, but they do *not* inherit any proprietary rights over the financial value generated by that data or the underlying digital asset.[66] The law treats the nominee merely as a "key-holder," while the legal heir retains the right to the actual financial value.[67]

This sharp statutory distinction between data privacy and asset ownership leads to complex inheritance deadlocks, best illustrated by the "YouTuber's Dilemma." Consider a scenario where a deceased content creator, tech influencer, or digital entrepreneur leaves behind a highly monetized online channel or a digital storefront generating significant monthly revenue.

5.2 The Heir's Proprietary Position: The legal heirs, designated under the Indian Succession Act, 1925, legitimately claim the ongoing revenue stream and the account itself as a proprietary debt owed to the estate, legally analogous to continuing royalties from a published book.

5.3 The Nominee's Privacy Position: The DPDP nominee, who may be a completely different individual from the legal heir (e.g., a trusted friend rather than a family member), possesses the statutory right to access or delete the account to protect the deceased's privacy and communications.[68]

5.4 The Platform's Contractual Position: The Data Fiduciary, citing its non-transferable

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[62] *"Right to Nominate" Under India's DPDPA - Navigating the Digital Afterlife*, DPDPA (last visited Apr. 13, 2026), https://www.dpdpa.com/blogs/righttonominatedpdpadigitalafterlife.html.
[63] *Your Complete Guide to Digital Personal Data Protection Rules, 2025*, SCC Online (last visited Apr. 13, 2026), https://www.scconline.com/blog/post/2025/11/14/meity-notified-digital-personal-data-protection-rules-2025/.
[64] *Posthumous Privacy Under the DPDP Act, 2023: Nomination vs Inheritance*, IR Global, *(supra note 28).*
[65] *Posthumous Privacy Under the DPDP Act, 2023: Nomination vs Inheritance*, IR Global, *(supra note 28).*
[66] Digital Nominee VS. Legal Heir: Who Owns Your Data After Death?, LiveLaw, *(supra note 59).*
[67] *Ibid*
[68] *Posthumous Privacy Under the DPDP Act, 2023: Nomination vs Inheritance*, IR Global, *(supra note 28).*

Terms of Service and its compliance obligations under the DPDP Act, restricts all access to the legal heirs and relies solely on the instructions of the designated DPDP nominee.[69]

If the nominee exercises their statutory right to erasure under Rule 13 of the DPDP Rules to protect the deceased's privacy, they inherently and permanently destroy the financial asset and revenue stream that legally belongs to the heirs. The current 2025 Rules completely lack a "Conflict Resolution" clause to protect nominees who fulfill the deceased's privacy wishes from being sued by legal heirs for the destruction or misappropriation of property.[70] Consequently, the DPDP Act effectively secures the digital ghost but leaves the economic digital estate in a state of perilous ambiguity, exacerbating inheritance disputes rather than resolving them.[71]

5.5 The Proprietary Recognition of Digital Assets: The WazirX Catalyst

The theoretical debates surrounding digital succession, property rights, and platform liability were thrust into urgent, high-stakes practical reality following the catastrophic July 18, 2024, cyber-attack on WazirX (operated by Zanmai Labs).[72] The attack, attributed by global analysis to the North Korea-associated Lazarus Group, targeted a Mult signature wallet managed under a third-party custody arrangement with Liminal Custody, resulting in the theft of approximately $230 million in digital assets.[73]

The platform's subsequent actions—suspending trading, freezing assets, and attempting to impose a controversial scheme to socialize the massive losses across all users, regardless of whether their specific tokens were stolen—triggered an unprecedented wave of litigation.[74] This litigation fundamentally altered the judicial classification of digital wealth in India, providing the missing link required for digital succession.

5.6 Classifying Cryptocurrency as Trust Property

The ensuing legal battles culminated in two landmark, paradigm-shifting High Court judgments in late 2025: *Rhutikumari v. Zanmai Labs Pvt. Ltd.* (Madras High Court) and *Zanmai*

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[69] Digital Nominee VS. Legal Heir: Who Owns Your Data After Death?, LiveLaw, *(supra note 59).*
[70] Ibid
[71] *Ibid*
[72] *2024 WazirX Hack*, Wikipedia, *(supra note 7).*
[73] *Ibid*
[74] Rhutikumari v. Zanmai Labs Pvt. Ltd., Indian Kanoon (Aug. 1, 2023), https://indiankanoon.org/doc/34487423/.

Labs Pvt. Ltd. v. Bitcipher Labs LLP (Bombay High Court).[75] These rulings decisively moved Indian jurisprudence forward by classifying cryptocurrencies and virtual digital assets not merely as unregulated data packets or speculative algorithms, but as actionable, legally recognizable property.

In *Rhutikumari v. Zanmai Labs*, the Madras High Court examined the core issue of whether an individual applicant's crypto holdings could be treated separately as her exclusive "property," or if they could be aggregated by the exchange for loss-sharing.[76] The Court unequivocally held that cryptocurrency constitutes "property" under Indian law.[77] Relying heavily on the expansive statutory definition of Virtual Digital Assets (VDAs) introduced under Section 2(47A) of the Income Tax Act, 1961—which defines VDAs as any information, code, or token generated through cryptographic means providing a digital representation of value—the Court determined that crypto tokens are intangible proprietary rights.[78] The Court noted that tokens, though technically "only a series of 1s and 0s," possess the defining characteristics of property: they are identifiable, definable, capable of being transferred, and subject to exclusive control.[79]

Crucially, the Madras High Court fully endorsed the earlier logic of the Bombay High Court in the related *Bitcipher Labs* case, ruling that cryptocurrency exchanges do not hold absolute ownership of user assets; rather, they act as custodians and owe a strict *fiduciary duty* to their users.[80] Justice Venkatesh emphatically declared: "Cryptocurrency is a property. It is not a tangible property nor is it a currency. However, it is a property… which is capable of being held in trust".[81]

Judicial Finding in WazirX Litigation (2025)	**Impact on Digital Asset Jurisprudence**

[75] *Cryptocurrency as Property: Madras High Court's Ruling and the Indian Regulatory Framework*, IndiaCorpLaw (last visited Apr. 13, 2026), https://indiacorplaw.in/2026/01/10/cryptocurrency-as-property-madras-high-courts-ruling-and-the-indian-regulatory-framework/.
[76] *Cryptocurrency as Property and Trust*, Vidhi Ctr. for Legal Pol'y (last visited Apr. 13, 2026), https://vidhilegalpolicy.in/blog/cryptocurrency-as-property-and-trust/.
[77] *Cryptocurrency as Property and Trust*, Vidhi Ctr. for Legal Pol'y, *(supra note 75).*
[78] *Taxation of Virtual Digital Assets (VDA) in India - Complete Guide*, Treelife (last visited Apr. 13, 2026), https://treelife.in/taxation/taxation-of-virtual-digital-assets/.
[79] *Cryptocurrency as Property and Trust*, Vidhi Ctr. for Legal Pol'y, *(supra note 75).*
[80] *Cryptocurrency as Property: Did the Madras High Court Overstep or Fill a Necessary Void*, CasCargNul, *(supra note 74).*
[81] Rhutikumari v. Zanmai Labs Pvt. Ltd., Indian, *(supra note 73).*

Recognition as "Property"	Elevates crypto from unregulated data to a protected asset class, aligning with international standards (UK Jurisdiction Taskforce, New Zealand).
Establishment of Fiduciary Duty	Exchanges are classified as trustees, not absolute owners. They must maintain clear records and cannot arbitrarily socialize losses.
Insolvency Remoteness	User assets held in trust are protected from the exchange's own liquidation/insolvency proceedings under the Insolvency & Bankruptcy Code, 2016.
Rejection of Platform Immunity	Courts rejected defenses based on foreign jurisdiction clauses and third-party custody infrastructure, asserting jurisdiction over assets held by Indian users.

5.7 Implications for Digital Succession

The judicial classification of digital assets as property held in trust carries profound, systemic implications for succession law and estate planning.[82] By establishing a formal fiduciary relationship rather than a mere contractual licensing arrangement, the courts effectively determined that technology platforms cannot arbitrarily extinguish user rights upon death via standard-form Terms of Service (ToS).[83] The beneficial ownership of the asset firmly rests with the user and, subsequently, passes to their legal estate.[84] Upon the verified death of the user, the exchange is now legally obligated as a trustee to transfer the assets to the legitimate legal heirs, permanently stripping away the defense of "platform privacy" that previously blocked inheritance.[85]

Despite this monumental judicial intervention, the current process relies heavily on initiating costly arbitration or seeking court-ordered interim injunctions.[86] The rulings highlight the desperate and urgent need for a comprehensive legislative framework that statutorily

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82 *Cryptocurrency as Property: Did the Madras High Court Overstep or Fill a Necessary Void*, CasCargNul, *(supra note 74)*.
83 *Ibid*
84 *Ibid*
85 *Ibid*
86 *India's Crypto Crossroads: Madras High Court Declares Cryptocurrency as Property*, Chambers (last visited Apr. 13, 2026), https://chambers.com/articles/indias-crypto-crossroads-madras-high-court-declares-cryptocurrency-as-property.

recognizes digital property, defines uniform custody standards, and establishes seamless mechanisms for estate administrators to claim these assets without protracted litigation.[87]

6. Global Comparative Jurisprudence in Digital Succession

To resolve the domestic deadlock between succession and privacy, Indian policymakers must evaluate how advanced global jurisdictions have reconciled post-mortem data protection with property rights. An in-depth analysis of the European and American regulatory models reveals two distinct, highly effective approaches to digital inheritance that provide a blueprint for Indian reform.

6.1 The German Approach: Universal Succession and Digital Analogies

The European Union's General Data Protection Regulation (GDPR), which serves as a global benchmark for privacy, explicitly states in Recital 27 that it does not apply to the personal data of deceased persons, leaving it entirely to individual member states to regulate post-mortem data.[88] Within the EU, Germany has provided the most definitive and philosophically rigorous legal resolution regarding the inheritance of digital accounts.

In a landmark, fiercely debated 2018 ruling (BGH III ZR 183/17), the German Federal Court of Justice (Bundesgerichtshof or BGH) examined a tragic case where the parents of a deceased 15-year-old girl sought access to her Facebook account to search her private messages to determine if she had committed suicide by jumping in front of a train.[89] Facebook vehemently refused access, citing the post-mortem privacy of the deceased, the fundamental telecommunications secrecy of the third parties she had messaged, and their rigid corporate policy of permanently "memorializing" accounts upon notification of death.[90]

The German Supreme Court ruled unequivocally against the technology giant, establishing several foundational principles for digital inheritance:

6.2 Universal Succession: The Court determined that the user contract between the deceased and the social media platform is a legal asset of both monetary and deeply personal

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[87] *India's Crypto Crossroads: Madras High Court Declares Cryptocurrency as Property*, Chambers, *(supra note 85)*.
[88] *Digital Assets and Death: A Legal Vacuum in Indian Succession Law?*, TaxTMI *(supra note 5)*.
[89] *Germany: Federal Court of Justice Rules Digital Social Media Accounts Inheritable*, Libr. of Cong. (last visited Apr. 13, 2026), https://www.loc.gov/item/global-legal-monitor/2018-09-07/germany-federal-court-of-justice-rules-digital-social-media-accounts-inheritable/.
[90] *Parents v. Facebook Ireland Ltd.*, Glob. Freedom of Expression (last visited Apr. 13, 2026), https://globalfreedomofexpression.columbia.edu/cases/parents-v-facebook-ireland-ltd/.

value. Under § 1922 of the German Civil Code (BGB), this contract does not terminate upon death; rather, it passes by way of universal succession directly to the legal heirs.[91]

6.3 Analogy to Analog Diaries: The Court structurally and dogmatically equated a digital social media account to an analog, physical diary or a box of physical letters. Just as physical letters pass to heirs under property law regardless of the sensitive, intimate information contained within, so do digital accounts and private messages.[92]

6.4 GDPR Compliance: Addressing the privacy concerns, the Court held that providing heirs with access to the account does not violate the GDPR. The Court applied Article 6(1)(b) and (f) of the GDPR, ruling that processing the data is legally necessary for the performance of the inherited contract and for the legitimate interests pursued by the heirs (in this case, investigating the circumstances of death and defending against damages).[93]

6.5 Read-Only Access Doctrine: To balance the property rights of the heirs with the ongoing privacy rights of third parties who communicated with the deceased, a subsequent 2020 clarification by the BGH (III ZB 30/20) stipulated a vital caveat. While Facebook must grant the heirs full "read" access to the original account interface (rejecting Facebook's attempt to provide a mere USB drive of data), the heirs are strictly prohibited from "actively using" the account to generate new communications or impersonate the deceased.[94]

6.6 The American Approach: Statutory Fiduciary Access (RUFADAA): In stark contrast to Germany's reliance on broad civil code interpretations and judicial analogies to physical diaries, the United States developed a highly specific, granular statutory framework: the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA).[95] Drafted by the Uniform Law Commission and adopted by the vast majority of U.S. jurisdictions, RUFADAA legally authorizes a decedent's personal representative, trustee, or designated agent to access and manage digital assets, deliberately overriding restrictive platform ToS and superseding

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[91] *Germany: Federal Court of Justice Rules Digital Social Media Accounts Inheritable*, Libr. of Cong., *(supra note 87)*.
[92] *Is There (Digital) Life After Death?*, HIIG (last visited Apr. 13, 2026), https://www.hiig.de/en/is-there-digital-life-after-death/.
[93] *Germany: Federal Court of Justice Rules Digital Social Media Accounts Inheritable*, Libr. of Cong., *(supra note 87)*.
[94] *German Federal Court of Justice: Facebook Must Grant Heirs Full Access to a Deceased Person's Account*, Ihde & Partner Rechtsanwälte (last visited Apr. 13, 2026), https://ihde.de/en/german-federal-court-of-justice-facebook-must-grant-heirs-full-access-to-a-deceased-persons-account-update-2020/.
[95] *Protecting Digital Fortunes – Planning for a Digital Asset Legacy*, Thomson Reuters (last visited Apr. 13, 2026), https://tax.thomsonreuters.com/news/protecting-digital-fortunes-planning-for-a-digital-asset-legacy/.

federal anti-hacking statutes like the Computer Fraud and Abuse Act.[96]

RUFADAA masterfully resolves the inherent tension between user privacy expectations and fiduciary administrative duty by establishing a strict, statutorily binding hierarchy of user intent, commonly referred to as the "Tiered Directives" [97]

6.7 Online Tool Directives: Instructions provided explicitly by the user via a platform's proprietary online tool (e.g., Google's Inactive Account Manager or Apple's Legacy Contact) take absolute, overriding precedence over all other records, including traditional wills.[98]

6.8 Will or Trust Directives: In the absence of an online tool directive, specific instructions left in a legally valid Will, Trust, Power of Attorney, or other traditional estate document strictly govern the extent of the fiduciary's access.[99]

6.9 Terms of Service (ToS): Only if the user provided absolutely no explicit directives via an online tool or estate document do the platform's default Terms of Service dictate access.[100]

Crucially, under the RUFADAA framework, fiduciaries do not inherently gain property ownership rights over the data; rather, they gain the legally protected administrative authority required to access, manage, catalogue, or distribute the digital assets in accordance with the user's overall estate plan.[101] This uniform framework forcefully compels technology custodians to communicate directly with fiduciaries and provide transparent access, effectively ending the unilateral lockdown of digital estates.[102]

7. Proposing a Unified Digital Succession Framework (UDSF) for India

The analysis dictates that India's reliance on fractured jurisprudence, outdated succession statutes, and uncoordinated privacy regulations is unsustainable. To reconcile the post-mortem privacy mandates of the DPDP Act with the economic rights of legal heirs under the ISA, Parliament must enact a Unified Digital Succession Framework (UDSF). This framework must synthesize the technological pragmatism of the American RUFADAA model with the proprietary trust doctrines established in the *Rhutikumari* judgment.

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[96] *Digital Assets After Death: RUFADAA and Its Implications*, Robins Kaplan (last visited Apr. 13, 2026), https://www.robinskaplan.com/assets/htmldocuments/uploads/pdfs/03cb7e3c686f4e6086bd90598083747a__digital-assets-after-death-rufadaa-and-its-implications.pdf.
[97] *Protecting Digital Fortunes – Planning for a Digital Asset Legacy*, Thomson Reuters, *(supra note 93).*
[98] *Ibid*
[99] *Ibid 97*
[100] *Ibid 97*
[101] *Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)*, Westlaw (last visited Apr. 13, 2026), https://content.next.westlaw.com/Glossary/PracticalLaw/I225912a0cdcc11efae8ce3fe797c80f5.
[102] *Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)*, Westlaw, *(supra note 99).*

7.1 Statutory Recognition of the "Digital Executor"

The cornerstone of the UDSF must be the statutory amendment of both the Indian Succession Act, 1925, and the Information Technology Act, 2000, to recognize the legal role of a "Digital Executor." Currently, Indian law fails to distinguish between the administration of physical chattels and encrypted digital estates.[103]

A statutorily recognized Digital Executor would be authorized to manage a "Digital Asset Will"—a concept which must be legalized by removing the exclusion under Section 1(4) of the IT Act, allowing wills to be executed and verified digitally.[104]

The Digital Executor would possess a statutory "restricted access key," empowering them to bypass multi-factor authentication and platform ToS strictly for administrative estate purposes.[105] Their mandate would involve identifying digital assets (VDAs, UPI wallets, demat accounts, cloud storage), retrieving financial records for tax assessment, and securely segregating monetized data from non-financial communications.[106] This creates a vital legal bridge, ensuring that the fiduciary duty recognized by the Bombay and Madras High Courts can be practically executed without exposing the estate administrator to criminal liability under cyber laws.[107]

7.2 Implementation of a Tiered Access Taxonomy

To resolve the "Consent Gap" between the DPDP privacy nominee and the legal heir, the UDSF must adopt a statutory taxonomy based on a Tiered Access Model, recognizing that digital assets possess varying ratios of economic value to personal privacy.

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[103] *Digital Executor in India: Secure Your Assets*, R Assocs. (last visited Apr. 13, 2026), https://www.rassociates.in/digital-executor-in-india-secure-your-assets/.
[104] *Digital Wills: Legal or Illegal*, iPleaders, *(supra note 55)*.
[105] Digital Executor in India: Secure Your Assets, R Assocs, (supra note 101).
[106] *Ibid*
[107] *Ibid*

Classification	Asset Types	Proposed Legal Treatment under UDSF
Tier 1: Absolute Transferability (Economic Assets)	Virtual Digital Assets (Crypto, NFTs), Domain portfolios, Monetized ad-revenue channels, UPI Wallets.	Recognized as trust property (per *Rhutikumari*). Treated identically to bank accounts. Fiduciary access is absolute; platform ToS restricting transfer are void *ab initio*.
Tier 2: Conditional Access (Social & Sentimental Assets)	Social media profiles, digital photo albums, personal blogs.	Governed by the DPDP Act's "Right to Nominate." Following the German BGH model, the executor/heir is granted read-only access for memorialization, strictly avoiding active continuation of the persona.
Tier 3: Absolute Privacy (Intimate Communications)	End-to-end encrypted messaging (WhatsApp), search histories, unshared cloud documents.	Defaults to absolute erasure upon death to respect Post-Mortem Privacy (PMP). Access granted *only* if the deceased explicitly activated a prior "Privacy Preference Toggle."

7.3 Conflict Resolution and Criminalizing Digital Grave Robbing

The UDSF must explicitly resolve the deadlock that occurs when the DPDP Nominee and the ISA Legal Heir are different individuals. The framework must stipulate that the proprietary rights of the legal estate concerning Tier 1 economic assets supersede the privacy rights of the nominee. A DPDP nominee cannot mandate the erasure of an account holding VDAs or generating revenue, as this constitutes the destruction of inherited property.[108]

Furthermore, as digital wealth becomes a primary mode of inheritance, the risk of posthumous asset stripping rises. The UDSF requires a penal amendment—potentially introduced as Section 66G of the Information Technology Act—to criminalize the act of "Digital Grave Robbing." This provision would target unauthorized access, password sharing, or illicit asset transfers from a deceased person's digital devices or hardware wallets by estranged relatives, malicious actors, or unauthorized fiduciaries before the grant of probate.[109]

[108] Digital Nominee VS. Legal Heir: Who Owns Your Data After Death?, LiveLaw, *(supra note 59)*.
[109] *Legal Challenges in Accessing Digital Assets After Death*, Temmerman, Cilley, Kohlmann & Norcia, LLP, *(supra note 9)*.

8. Conclusion

The evolution of the "Digital Ghost" from an abstract concept into a tangible repository of financial value and personal data necessitates a reimagining of Indian civil and property law.[110] The current jurisprudential and statutory landscape in India is characterized by an asymmetry: while new privacy laws under the DPDP Act protect the data of the living and establish mechanisms for post-mortem digital dignity, the archaic, paper-based frameworks of the Indian Succession Act remain oblivious to the reality of the digital estate.[111]

The vulnerabilities exposed by the WazirX cyber-attack and the judicial recognition of cryptocurrencies as trust property by the Madras and Bombay High Courts demonstrate that digital assets can no longer be exclusively governed by the Terms of Service imposed by technology platforms.[112] While the Indian higher judiciary has utilized established trust doctrines to secure digital wealth, judicial intervention via ad hoc interim injunctions is an inadequate substitute for statutory reform.[113]

To resolve the dichotomy of "Privacy versus Property," India must move beyond the passive taxation of virtual digital assets and proactively enact the Unified Digital Succession Framework. By legally recognizing the administrative role of a licensed Digital Executor, validating the use of electronic and cryptographic wills, and implementing a Tiered Access Model that calibrates the economic rights of heirs against the post-mortem privacy interests of the deceased, the legal system can restore certainty to digital inheritance.[114] Ultimately, preserving an individual's digital dignity and informational autonomy is a moral imperative aligned with the constitutional right to life; however, it must be balanced with legislative mechanics to ensure that an individual's digital legacy is accorded identical protection and transmissibility as their physical wealth.[115]

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[110] *The Digital Afterlife: Post-Mortem Privacy and Proprietary Rights in the Information Age*, SCC Online Blog, *(supra note 4)*.
[111] *The Digital Afterlife: Post-Mortem Privacy and Proprietary Rights in the Information Age*, SCC Online Blog, *(supra note 4)*.
[112] *Digital Assets and Death: A Legal Vacuum in Indian Succession Law?*, TaxTMI *(supra note 5)*.
[113] *India's Crypto Crossroads: Madras High Court Declares Cryptocurrency as Property*, Chambers, *(supra note 85)*.
[114] *Digital Executor in India: Secure Your Assets*, R Assocs, *(supra note 101)*.
[115] *Judgment of the Court in Plain English (I)*, SC Observer, *(supra note 22)*.