



## **Regulating the Digital Afterlife: A Critical Analysis of Digital Remains, Post-Mortem Privacy and Commercial Exploitation under Indian Law**

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### **ABSTRACT:**

The increasing use of digital technology has created a digital existence that may continue even after a person's death. Social media accounts, emails, photographs, videos, cloud storage, cryptocurrency, voice recordings and other digital materials may remain accessible after death, raising questions regarding their legal status, inheritance, privacy and control. The development of Artificial Intelligence has further complicated these issues by making it possible to recreate the image, voice and likeness of deceased persons through AI-generated content, deepfakes, voice cloning and digital avatars.

This research critically examines whether the existing Indian legal framework adequately regulates digital remains while protecting post-mortem privacy and preventing the unauthorised commercial exploitation of deceased persons' digital identities. The study adopts a doctrinal research methodology to analyse relevant constitutional provisions, statutes and judicial decisions and uses a comparative approach to examine selected jurisdictions, including the United States, California, Germany, the European Union and the United Kingdom.

The study finds that Indian law provides protection through different legal mechanisms relating to privacy, data protection, succession, intellectual property, personality rights and commercial exploitation. However, these protections remain fragmented and do not provide a comprehensive framework specifically governing the digital afterlife. While Section 14 of the Digital Personal Data Protection Act, 2023 provides a mechanism for nomination in relation to certain rights after death, it does not comprehensively address digital inheritance, post-mortem privacy or commercial exploitation of a deceased person's digital identity. The study further finds that the legal position regarding post-mortem personality and publicity rights remains uncertain.

The research concludes that the existing Indian framework is inadequate to address the overlapping interests of property, privacy, succession, personality and commercial exploitation in the digital afterlife and highlights the need for a more comprehensive legal framework in India.

**Keywords:** Digital Afterlife, Digital Remains, Post-Mortem Privacy, Personality Rights, Digital Inheritance, Artificial Intelligence, Digital Identity, Commercial Exploitation.

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## CHAPTER 1

### INTRODUCTION

#### 1.1 Background of the Study

“Death was once considered the final chapter of human existence, but the digital age has rewritten that narrative.”<sup>4</sup>

A person's life does not end with the death of their body. Because people use digital technologies throughout their lives, they leave behind images, videos, social media accounts, emails, messages, audio recordings, digital property, and many other personal records. Such information can survive the death of its creator and continue to exist, at times acquiring economic or personal worth. The rise of artificial intelligence has added a further dimension to this scenario, as AI can now recreate the image, voice, and likeness of a deceased person through various digital means.

This phenomenon of continued digital existence beyond death is known as the digital afterlife, and the digital information, assets, records, and identity material that a deceased person leaves behind are known as digital remains. Digital remains differ from traditional property in that they may hold not only economic value but other forms of value as well, including emotional, personal, privacy, and identity value. For instance, a photograph of a deceased individual may be copyrighted material, may contain personal details, may form part of that individual's legacy, and may also serve as an expression of their identity.

The matter is further complicated by the fact that questions relating to the right of inheritance and the rights to privacy and personality become intertwined. While succession law provides the means by which property interests pass on after death, it does not automatically address who is entitled to control personal photographs, private communications, social media accounts, or other digital information relating to a person's identity. Likewise, while privacy law protects personal information, it does not fully resolve who may access and control a deceased person's digital information.

Different dimensions of this issue have been addressed through separate laws in India. The Information Technology Act, 2000<sup>5</sup> recognises the validity of electronic records and addresses several issues relating to information technology, yet it contains no legal mechanism specifically addressing the inheritance of digital remains. The Digital Personal Data Protection Act, 2023 addresses the issue in part through Section 14,<sup>6</sup> which allows a Data Principal to nominate someone to exercise their rights upon death or incapacitation. Even so, the Act does not provide a complete framework addressing the ownership, inheritance, control, or commercial exploitation of digital remains.

The issue of post-mortem privacy raises a further legal problem. The right to privacy and dignity is generally understood to be contained in Article 21 of the Constitution.<sup>7</sup> The Supreme Court held

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<sup>4</sup>Brown, D. (2021, February 4). AI chat bots can bring you back from the dead, sort of. The Washington Post. <https://www.washingtonpost.com/technology/2021/02/04/chat-bots-reincarnation-dead/>

<sup>5</sup>Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

<sup>6</sup>Digital Personal Data Protection Act, 2023, § 14, No. 22, Acts of Parliament, 2023 (India).

<sup>7</sup>Constitution of India, art. 21 (1950) (India).



the right to privacy to be a fundamental right in *Justice K.S. Puttaswamy (Retd.) v. Union of India*,<sup>8</sup> and informational privacy was recognised as one of its integral components. However, the Court did not decide whether the constitutional right to privacy survives an individual's death. Indian courts have also recognised the dignity of the dead as significant, but this does not, by itself, establish a right to post-mortem digital privacy.

Another significant matter concerns the personality and publicity rights of the deceased. Indian courts have recognised personality rights through a series of judicial pronouncements, particularly in cases concerning the unauthorised use of a person's name, portrait, voice, and likeness for commercial gain. Several cases have established this protection, including *D.M. Entertainment Pvt. Ltd. v. Baby Gift House*,<sup>9</sup> *Amitabh Bachchan v. Rajat Nagi*,<sup>10</sup> and *Anil Kapoor v. Simply Life India*.<sup>11</sup> In *Anil Kapoor v. Simply Life India*, the Delhi High Court also considered the misappropriation of personality rights through AI-generated content.

A central question nonetheless remains open after a person's death: whether personality and publicity rights survive, and if so, whether they may be claimed by the deceased's heirs. The case of *Krishna Kishore Singh v. Sarla A. Saraogi*<sup>12</sup> is particularly significant in this regard, as it concerned the personality, privacy, and publicity rights of Sushant Singh Rajput, a deceased actor, illustrating how these questions play out differently for the deceased than for the living.

The issue becomes still more pressing with the use of artificial intelligence. AI can use existing photographs, audio, or video clips, and other data to generate a new representation of a deceased person, whether a synthetic voice, an AI-generated image or video, a digital avatar, or another form of digital reanimation. The question here extends beyond the copyright status of the underlying photograph or recording to whether the identity, voice, image, or likeness of the deceased may lawfully be used for commercial purposes.

Several legal provisions exist under Indian law that bear on these circumstances. Copyright law may offer protection for photographs, films, and recordings; trademark law and the doctrine of passing off may afford some protection against certain forms of commercial misrepresentation; and the Consumer Protection Act, 2019 may apply where AI-driven commercial representation involves misleading advertisements or trade practices. Nevertheless, these statutes regulate different rights, and none offers comprehensive governance of the posthumous commercial use of a person's digital identity.

The difficulty, therefore, is not that Indian law is silent on these aspects but that the relevant law is fragmented. The digital remains of a deceased individual may raise questions of property, privacy, succession, personality, and commerce simultaneously, yet each is governed under a separate legal domain. This fragmentation is what gives rise to the central problem addressed in this study: who has the right to access, control, and exploit the various aspects of a person's digital remains.

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<sup>8</sup>[Justice K.S. Puttaswamy \(Retd.\) v. Union of India, \(2017\) 10 SCC 1 \(India\).](#)

<sup>9</sup>[D.M. Entertainment Pvt. Ltd. v. Baby Gift House & Ors., 2010 SCC OnLine Del 4790 \(India\).](#)

<sup>10</sup>[Amitabh Bachchan v. Rajat Negi & Ors., CS \(COMM\) 819/2022 \(Delhi High Court, November 25, 2022\).](#)

<sup>11</sup>[Anil Kapoor v. Simply Life India & Ors., CS\(COMM\) 652/2023 \(Delhi High Court, May 20, 2024\).](#)

<sup>12</sup>[Krishna Kishore Singh v. Sarla A. Saraogi & Ors., 2021 SCC OnLine Bom 1141 \(Bombay High Court, July 22, 2021\).](#)



## 1.2 Statement of the Problem

With the advent of digital technology, a person's digital existence can now persist even after their physical existence has ended. However, the current Indian legal system lacks a well-developed body of law governing the digital afterlife.

The first problem relates to the legal nature of a person's digital remains. Digital remains may take many forms, including property-related digital assets, personal data, communications, photographs, videos, social media accounts, audio recordings, and other identifying material. Different forms of digital remains carry different legal qualities, making it difficult to determine whether they should be classified as property, personal data, personality rights, or some combination of these.

The second issue concerns posthumous privacy. While privacy is a fundamental right, the extent to which it applies after death remains unclear. This gives rise to unresolved questions regarding the privacy of a deceased individual's personal data, messages, photographs, and other digital information.

The third issue concerns the use of a deceased person's personality for commercial gain. Indian courts have recognised the personality and publicity rights of living persons, but no statute provides a general post-mortem personality or publicity right. Certain statutes relating to copyright, trademarks, passing off, consumer protection, and data protection may offer partial protection, but none addresses the issue comprehensively.

This question becomes more complex still in light of technologies such as deepfakes, voice cloning, avatars, and digital resurrection. The prospect of reviving a person's identity after death raises new questions of consent, control, property, and commercial use that current Indian legislation is not equipped to regulate.

The problem, then, is not merely the absence of specific legal provisions but the absence of a comprehensive legal approach capable of addressing these questions together.

## Literature Review

### 1. Introduction: The Rise of the Digital Afterlife

“With 535 million WhatsApp, 515 million Instagram, 500 million YouTube, 405 million Facebook, 250 million Snapchat, 120 million LinkedIn and 30 million X users, social media and digital footprints, are now an integral part of life.”<sup>13</sup> After the expansion of digital life this much it completely changed the way we look at the privacy, personal identity of a person and the property or assets they hold digitally. With the increase of social media platforms, cloud storage, developing and ownership of artificial intelligence systems and other ways of earning through digital means, these have a lot of digital footprints of a person even after their death these digital remains still exist online this is often called digital afterlife. Till date India is not having a comprehensive legal framework to govern the afterlife of a person, their digital remains, ownership of their assets, misuse of their identity and commercial exploitation of such person's likeness, these issues are covered under multiple legal domains, including privacy law, data protection, intellectual property

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<sup>13</sup>[The Hindu. \(2026, August 3\). Why end-of-life care should include digital assets management.](#)



and succession law which are scattered and includes a lot of loopholes in its implementation specially for deceased person.

An article mentions that earlier, death used to be a biological event, a social ritual and a legal transition. Today, it is also a digital event. The digital data generated during a person's life does not disappear when the heart stops. It remains locked, scattered and unmanaged. A digital legacy is more than passwords: it is a record of a life lived in networked form. It includes photographs, voice notes, creative work uploaded over years, financial assets and much more that may continue to speak after the person is gone. Our digital identities today form a major component of who we are. We are remembered through our posts, recordings, online interactions and messages.<sup>14</sup>

9.75 million deaths occurring every year and there is continuing storage of information even after the death and in India people do not have end of life care plan and no care is given to management of digital assets which includes social media, email accounts, cloud photographs, messaging histories, cryptocurrency wallets, monetized channels, online subscriptions and gaming identities. This explicitly mentions that in India there is a lack of afterlife management and even people are also not aware of such assets. Existing approaches that treat digital remains primarily as a form of property do not fully address the nature of digital remains because not all digital remains have only an economic or proprietary character. A deceased person's photographs, emails, social media accounts, voice recordings and other digital content may have both economic and personal value. While a property-based approach may provide a basis for inheritance or control over economically valuable digital assets, it does not necessarily determine whether the deceased person's privacy, personality or identity interests can also be inherited or exercised by the heirs. Therefore, treating digital remains only as property fails to address situations where the same digital material carries both proprietary and personal interests.

## **2. Post-Mortem Privacy: Does Privacy Survive Death?**

There is also a debate on whether privacy ends with death or whether some form of post-mortem privacy continues to exist. Majorly judges relies on the common law maxim *ACTIO PERSONALIS MORITUR CUM PERSONA* which basically means a personal action dies with the person.<sup>15</sup> Realists argue that the landmark *K.S. Puttaswamy* judgement<sup>16</sup> established privacy as an un-detachable part of personal liberty under article 21 but that liberty needs the personal to be alive to enjoy that privacy therefore the right of deceased personnel naturally ends when they die. On the other hand, scholars supporting post-mortem privacy argue that privacy is closely linked with dignity and therefore may not simply end with the death of a person. In *Parmanand Katara v. Union of India*, court held that the right to dignity extends even to the treatment of dead body.<sup>17</sup> So how can the privacy of the very same person just vanish after his life; it should be protected and preserved from any misuse. As digital things have become an extension of ourselves, it should be treated as any financial asset because it is linked to both economic property and human autonomy.<sup>18</sup>

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<sup>14</sup>[The Hindu. \(2026, August 3\). Why end-of-life care should include digital assets management.](#)

<sup>15</sup>*Actio personalis moritur cum persona.* (n.d.). ICLR.

<sup>16</sup>*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (Supreme Court of India).

<sup>17</sup>*Pt. Parmanand Katara v. Union of India*, AIR 1989 SC 2039 (Supreme Court of India).

<sup>18</sup>*Chaturvedi, S. (2026, February 27). The digital afterlife: Post-mortem privacy and proprietary rights in the information age.* SCC Online Blog.



This restrictive approach can be seen in the Madras high court decision, in the case of Deepa Jayakumar v. A.L. Vijay where the Court held that the right to privacy and reputation extinguishes after death and legal heirs can not inherit rights which basically ends up the digital remains of those people will be available and accessible for commercial use as well if they do not have right to privacy and reputation afterlife whereas Authors like Ohman & Floridi notes that treating digital remains as pure commercial data violates human dignity.<sup>19</sup>

The privacy-based approach also presents limitations when considered independently. The protection of personal data and privacy may restrict access to or use of information, but it does not by itself determine who should control the digital asset after death or whether the heirs can commercially exploit it. This creates a conflict between the interest in protecting the privacy of the deceased and the interest of heirs in accessing or managing the deceased person's digital estate. The problem becomes more complicated where digital remains contain information relating not only to the deceased but also to living third parties. Thus, a privacy-based approach alone cannot provide a complete solution to questions of inheritance, control and commercial use.

### **3. Gaps in Indian Legislation: The IT Act, DPDP Act, consumer protection act and personality rights.**

“Death was once considered the final chapter of human existence, but the digital age has rewritten that narrative. Today, our online identities continue to speak through photographs, videos, messages, and artificial intelligence long after our physical presence has disappeared, compelling the law to confront the reality that digital existence often outlives biological life.”<sup>20</sup>

This study suggest that law should have some provisions which confront this issue, whereas when we talk about the Information Technology Act, 2000 provides legal recognition and regulation of electronic records and addresses various aspects of information technology, including electronic transactions, cyber offences and intermediary liability. However, it does not contain specific provisions governing the succession or inheritance of a deceased person's digital accounts or digital remains, nor does it establish a dedicated framework for digital wills, digital executors, or post-mortem control of digital data.<sup>21</sup> The absence of specific provisions in the IT Act concerning digital succession does not, by itself, mean that digital data is legally incapable of inheritance. Rather, it indicates that the IT Act does not provide the statutory mechanism for determining succession to digital accounts or digital remains. This leaves technology platforms and their standard-form contracts (Terms of Service) with significant control over what happens to a person's data after death. The IT Act states that data must be protected, but it cannot be inherited. It neither recognises digital wills and executors nor provides a framework for digital succession or posthumous data rights.<sup>22</sup>

The Digital Personal Data Protection Act, 2023, however, introduces a relevant mechanism through Section 14, which provides the right to nominate. Under Section 14(1), a Data Principal may nominate another individual who, in the event of the Data Principal's death or incapacity, may exercise the rights of the Data Principal in accordance with the Act and the rules made thereunder.

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<sup>19</sup>Floridi, L., & Öhman, C. (2018, April 20). Digital remains should be treated like physical ones. Oxford Internet Institute. <https://www.oii.ox.ac.uk/digital-remains-should-be-treated-like-physical-ones/>

<sup>20</sup>Brown, D. (2021, February 4). AI chat bots can bring you back from the dead, sort of. The Washington Post.

<sup>21</sup>Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

<sup>22</sup>Shaw, N. (2025, June 26). Posthumous rights in India: Legal recognition of digital legacy and online assets.



This provision is significant for the digital afterlife because it provides a statutory mechanism for the exercise of certain data-related rights after death. However, Section 14 does not create a comprehensive regime governing ownership, inheritance, commercial exploitation, or personality rights over all forms of digital remains. Thus, while the DPDP Act addresses one aspect of post-mortem digital data management, it does not resolve the broader legal question of who controls the deceased person's digital identity and whether that identity may be commercially exploited.

The issue becomes more complex where a deceased person's digital identity is used for commercial purposes, particularly through artificial intelligence. The Consumer Protection Act, 2019 provides a regulatory framework concerning consumer interests and misleading advertisements, including powers of the Central Consumer Protection Authority in relation to false or misleading advertisements under Section 21, and penalties for false or misleading advertisements under Section 89. However, these provisions are primarily concerned with protecting consumers from misleading commercial practices and cannot, by themselves, be treated as a comprehensive legal framework protecting the personality or post-mortem identity of a deceased person.

The digital afterlife industry with advanced technology and AI use dead's voice and lifetime earned personality end up resulting in making deepfakes and other systems this results in commercial exploitation of human dignity of death and therefore the post mortem privacy is very important to save human dignity of person afterlife.<sup>23</sup> The distinction is particularly important in cases involving AI-generated likenesses, voice cloning, deepfakes or other forms of digital recreation. In *Anil Kapoor v. Simply Life India*, the Delhi High Court considered unauthorised uses of the plaintiff's name, image, likeness and voice, including AI-generated images and videos, and granted protection against commercial misuse of his persona. The Court specifically recognised that unauthorised commercial use of a person's name, voice, image and likeness could infringe personality and privacy interests and restrained the defendants from using technological tools including artificial intelligence, machine learning, deepfakes and face morphing for such purposes. The decision demonstrates the ability of existing personality-rights jurisprudence to respond to AI-enabled commercial exploitation during the person's lifetime. However, it does not establish a general post-mortem personality right. This distinction is central to the present research because the commercial exploitation of a deceased person's digitally recreated identity raises the additional question of whether the protection available to a living individual continues after death.

#### **4. The Gandhinagar iCloud Case: A Judicial Turning Point**

In 2026 year, Gujarat high court recognizes through the case of *Smt. Sadhna Shaishav Shah & Anr*, I cloud data as inheritable property directs daughter recover dead father's locked iPhone contents, A Civil Court in Gandhinagar has held that "digital data" of a deceased party stored on Apple's 'iCloud account' constitutes a valuable digital asset forming part of the deceased's estate,<sup>24</sup> which would fall under administration under the Indian Succession Act 1925,<sup>25</sup> this was discussed in the case of *Smt. Sadhna Shaishav Shah & Anr*.<sup>26</sup> This case was a turning point to recognize data as inheritable but in practicality this shows a gap in legal framework that just how to recover data

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<sup>23</sup> [Azhary, T. \(2026, June 1\). The dead have no data: Posthumous digital dignity and the silence of Indian law.](#)

<sup>24</sup> [Prasad, M. \(2026, May 19\). Gujarat court recognises iCloud data as inheritable property, directs Apple to help daughter recover dead father's locked iPhone contents.](#)

<sup>25</sup> [Indian Succession Act, 1925, No. 39, Acts of Parliament, 1925 \(India\).](#)

<sup>26</sup> [Smt. Sadhna Shaishav Shah & Anr. v. Nil, Civil Miscellaneous Application No. 17/2026 \(3rd Addl. Senior Civil Judge, Gandhinagar, decided May 5, 2026\).](#)



of a dead father which has information, memories which are emotional bond for daughter and the deceased's wife had to come to court to seek if they can inherit that and it took a long year after the death of the holder and judiciary is burden with cases which needs caution and reasoning based on their specific facts.

The case also raises an important question regarding the relationship between privacy and succession law. Court ruled that an individual's right to privacy is very personal as according to article 21<sup>27</sup> but this right does not survive death so that the legal heirs can easily take up the digital assets and estate as according to the succession law but it overrides the personal intent of deceased person as according to Under section 14 of DPDP act 2023 which basically allow data principal to nominate another person who may exercise data rights in event of one's death and he/ she can request access, correction or reassurance of personal data after death.<sup>28</sup> So here the question arises whether succession law will prevail over the personal intent under section 14 of DPDP act and in which situation what if person dies intestate therefore raises an unresolved question as to whether succession rights should prevail over the deceased person's expressed intention under Section 14 of the DPDP Act, 2023 or in situation like intestate what will happen. These kind of question end up burdening the judiciary itself. Hence this case is a turning point which will lead to the discussion and understanding the need for separate legal framework which cover such issues.

## 5. Comparative International Approaches

When we talk about international approaches and how they are dealing with these issue, in the United States the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA).<sup>29</sup> It permits fiduciaries to administer certain digital assets while providing greater protection to the contents of electronic communications. This distinction is significant for India because a digital estate may contain both economically valuable assets, such as cryptocurrency and monetised accounts, and highly personal material, such as private messages and photographs. RUFADAA therefore demonstrates the importance of categorising digital remains rather than treating all digital content as inheritable property.

Germany also uses an important succession-based approach. In Bundesgerichtshof (Federal Court of Justice), III ZR 183/17 (2018), the Court held that a deceased person's Facebook contractual relationship passed to the heirs under German succession law.<sup>30</sup> The decision demonstrates that digital accounts can be incorporated into the estate through existing succession principles. This approach is particularly relevant to India following the 2026 Gandhinagar decision recognizing a deceased person's iCloud data as part of the estate. However, Germany also illustrates the need to distinguish inheritance of an account from unrestricted access to all personal communications contained within it.

The European Union follows a different approach. Recital 27 of the General Data Protection Regulation (GDPR) excludes the personal data of deceased persons from the Regulation and leaves

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<sup>27</sup>[Constitution of India, art. 21.](#)

<sup>28</sup>[Digital Personal Data Protection Act, 2023, § 14 \(India\).](#)

<sup>29</sup>[Uniform Law Commission. \(2015\). Revised Uniform Fiduciary Access to Digital Assets Act.   
https://www.uniformlaws.org/acts/catalog/current/](#)

<sup>30</sup>[Bundesgerichtshof \[Federal Court of Justice\], III ZR 183/17 \(July 12, 2018\).   
https://juris.bundesgerichtshof.de/cgi-bin/bgh\\_notp/document.py?Art=en&Datum=2018-7-12&Gericht=bgh&anz=20&pos=5](#)



Member States to determine their own rules.<sup>31</sup> This contrasts with India's constitutional privacy framework, where Justice K.S. Puttaswamy (Retd.) v. Union of India recognised privacy as a fundamental right under Article 21, while Indian jurisprudence has generally treated privacy as a personal right. The European approach nevertheless demonstrates that protection of deceased persons may be addressed through mechanisms other than general data-protection legislation, including succession, confidentiality and personality rights.

California provides a particularly relevant model for commercial exploitation of deceased identity. California Civil Code § 3344.1 recognises post-mortem rights concerning the commercial use of a deceased person's name, voice, photograph and likeness. Its relevance has increased with artificial intelligence and digital replicas capable of recreating a deceased person's voice or appearance.<sup>32</sup> Compared with this statutory protection, Indian law lacks a comprehensive post-mortem personality-right regime, leaving protection against commercial exploitation dependent upon fragmented doctrines such as privacy, passing off, copyright and personality-related principles.<sup>33</sup>

The United Kingdom provides a further perspective through its developing recognition of digital assets as property. The Law Commission's work on digital assets and the subsequent Property (Digital Assets etc) Act 2025 demonstrate the increasing willingness of legal systems to recognise certain digital assets as proprietary interests.<sup>34</sup> This is relevant to India because digital estates may contain economically valuable assets that require treatment under succession and property law rather than solely under data-protection principles. These approaches collectively suggest that effective digital-afterlife regulation requires separate consideration of digital property, private communications, post-mortem privacy and personality rights. For India, the comparison highlights a significant legislative gap. Existing Indian law addresses these issues through separate areas of constitutional law, succession, data protection and intellectual property, while recent judicial developments have begun recognising digital assets within the estate. However, there remains no comprehensive framework determining who may access, inherit, preserve or commercially exploit a deceased person's digital remains. The comparative experience therefore supports the need to examine whether India should develop an integrated framework that balances the interests of heirs and digital platforms with the deceased person's autonomy, dignity and privacy, while providing specific protection against unauthorised commercial and AI-based exploitation of deceased identity.<sup>35</sup>

## 6. Research Gap and Conclusion

A lot of existing literature and studies have discussed different aspects of the digital afterlife, such as what digital remains are, how digital assets can be managed after the death of a person, questions

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<sup>31</sup>European Parliament & Council of the European Union. (2016). Regulation (EU) 2016/679 (General Data Protection Regulation), Recital 27. <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

<sup>32</sup>Cal. Civ. Code § 3344.1.

<sup>33</sup>Chaturvedi, S. (2026, February 27). The digital afterlife: Post-mortem privacy and proprietary rights in the information age. SCC Online Blog. <https://www.scconline.com/blog/post/2026/02/27/digital-afterlife-postmortem-privacy-succession-India/>

<sup>34</sup>Law Commission. (2023). Digital assets. <https://lawcom.gov.uk/project/digital-assets/>; Property (Digital Assets etc) Act 2025, c. 29 (UK). <https://www.legislation.gov.uk/ukpga/2025/29/enacted>

<sup>35</sup>Harbinja, E. (2017). Digital inheritance in the United Kingdom. *Journal of European Consumer and Market Law*, 6(6), 253–256; Uniform Law Commission. (2015). Revised Uniform Fiduciary Access to Digital Assets Act.



relating to post-mortem privacy, digital inheritance, personality rights, and the commercial exploitation of a person's identity. However, these issues are mostly discussed separately. There is a gap in critically analysing the Indian legal framework as a whole and examining how these different areas are connected with each other. There is also a need to examine whether the existing Indian legal framework provides sufficient protection to the privacy and digital identity of a deceased person, how their digital remains can be accessed or inherited, and whether the existing laws are sufficient to prevent the unauthorised commercial exploitation of their identity, especially with the development of artificial intelligence, digitally recreated likenesses, voice cloning, and digital resurrection.

The existing literature also shows that digital remains can involve different legal interests, such as property, privacy, personality, succession, and commercial interests. However, there is still uncertainty about how these interests should be dealt with together under Indian law. The absence of a comprehensive legal framework raises questions regarding who can access, inherit, manage, preserve, or commercially use the digital remains of a deceased person, and whether the existing constitutional, statutory, and judicial framework is sufficient to provide protection in such situations. Therefore, a comparative study of other jurisdictions is also important to understand how different legal systems deal with digital remains, post-mortem privacy, and posthumous personality or publicity rights, and whether any of these approaches can be useful for developing a suitable legal framework in India.

The study therefore examines the existing Indian legal framework relating to digital remains, post-mortem privacy, personality and publicity rights, succession, and commercial exploitation, and identifies the gaps and limitations in the existing framework. The study also uses a comparative approach to examine selected foreign jurisdictions and their legal approaches towards digital remains, post-mortem privacy, personality rights, and commercial exploitation. This comparison will help in identifying principles and approaches that may be relevant to the Indian context and in assessing whether there is a need for a more comprehensive legal framework governing the digital afterlife in India.

## **7. Objectives of the Study**

The study aims:

1. To examine the concept and legal status of digital remains and analyse their treatment under the existing Indian legal framework.
2. To examine the scope of post-mortem privacy and the extent of legal protection available to the digital identity of deceased persons under Indian law.
3. To analyse the applicability of personality and publicity rights to the commercial exploitation of deceased persons' digital identities, particularly in the context of emerging AI technologies.
4. To identify the gaps and limitations in the existing Indian legal framework governing digital remains, post-mortem privacy and commercial exploitation.
5. To comparatively examine the legal approaches adopted by selected foreign jurisdictions and identify principles that may be relevant to the Indian context.



6. To assess whether a comprehensive legal framework is required in India for regulating digital remains and protecting the post-mortem privacy and digital identity of deceased persons.

### **Research Methodology**

Doctrinal and comparative research methodologies have been adopted for the present study. These methods were selected because the research questions identified in the preceding literature review—namely, whether a comprehensive legal framework governing the digital afterlife is necessary in India, how other jurisdictions address digital remains, post-mortem privacy, and the commercial exploitation of deceased identity, and what principles from those jurisdictions may be adapted for India—are primarily legal-doctrinal in nature and require assessment against a comparative international backdrop. The study accordingly proceeds in two stages: a doctrinal analysis of the existing Indian legal position is undertaken first to identify gaps and inconsistencies, followed by a comparative analysis of foreign jurisdictions to identify principles and models that may inform reform in India.

The doctrinal research methodology has been adopted because it focuses on law as it is written and interpreted—in statutes, case law, constitutional provisions, and legal principles. It examines the “law in books” and is well suited to purely legal questions, enabling critical analysis of case law without requiring fieldwork. The comparative research methodology, in turn, is useful for the comparative study of different jurisdictions, allowing an assessment of how their principles and approaches may be adapted to the Indian context.

#### **1. Sources used in research**

This study relies on an analysis of primary and secondary sources.

Primary sources include statutory provisions such as the Constitution of India, the DPDP Act 2023, the IT Act 2000, the Indian Succession Act 1925, the Copyright Act 1957, the Trademark Act 1999, and the Indian Contract Act 1872, along with judicial decisions of the Supreme Court of India and relevant High Courts concerning privacy, dignity, digital data, succession, personality rights, publicity rights and commercial exploitation. For the comparative analysis, primary sources include relevant foreign legislation, judicial decisions and regulatory instruments, including the U.S. state right-of-publicity statutes, the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), relevant German legislation and judicial decisions, the General Data Protection Regulation (GDPR), relevant European Union legislation, and UK legislation and judicial decisions.

Secondary sources are used primarily to support the interpretation and critical analysis of the primary legal materials. These include peer-reviewed academic journal articles, books, legal commentaries, Law Commission reports, government publications, and reports of recognised international organisations and institutions dealing with digital remains, post-mortem privacy, personality rights, digital inheritance, artificial intelligence and the digital afterlife. Secondary literature is used to identify existing scholarly debates, develop the analytical framework, and support the identification of gaps in the existing Indian legal framework. Blogs and general informational websites are not relied upon as primary legal authority and, where referred to, are used only for contextual or illustrative purposes.



The comparative jurisdictions examined—namely the United States (including California), Germany, the European Union, and the United Kingdom—were selected because each represents a distinct regulatory model for digital remains: a fiduciary-access model under RUFADAA, a succession-based model in Germany, a data-protection model that defers to Member States under the GDPR, a post-mortem personality-rights model under California Civil Code § 3344.1, and an emerging property-based model under UK legislation. Judicial decisions relied upon, including the Puttaswamy, Parmanand Katara, Deepa Jayakumar, Gandhinagar iCloud, and German Federal Court of Justice decisions, were selected on the basis of their landmark or precedent-setting status and their direct relevance to digital remains, post-mortem privacy, or personality rights.

## **2. Analytical framework**

The study revolves around the regulation of the digital afterlife. It examines the legal status and classification of digital remains, the scope of post-mortem privacy, and the application of publicity rights after death, before analysing the commercial exploitation of a deceased person's likeness and digitally recreated identity, particularly through AI. These aspects are used to identify gaps and inconsistencies in the existing Indian legal framework. A comparative method is also used to analyse the legal mechanisms, models, and laws of foreign jurisdictions, along with relevant case law, in order to assess alternative approaches to digital remains, post-mortem privacy, personality rights, AI, and the commercial exploitation of the deceased, and to identify principles that may be relevant for India.

## **3. Ethical Considerations**

As the study adopts a doctrinal and comparative legal research methodology and does not involve human participants, interviews, surveys, or the collection of personal data, conventional ethical considerations relating to participant consent and confidentiality are not applicable. However, the research adheres to the principles of academic integrity through accurate attribution, proper citation of primary and secondary legal sources, faithful representation of judicial decisions and scholarly arguments, and avoidance of plagiarism or misrepresentation of legal authorities.

Particular care is taken to distinguish established legal principles from scholarly interpretations and the researcher's own analysis.

## **4. Limitations of the Study**

The study is subject to certain limitations arising from the evolving nature of the subject. Indian jurisprudence specifically addressing digital remains and post-mortem digital identity is presently limited, and India does not have a dedicated statutory framework comprehensively governing the digital afterlife. Further, the rapid development of artificial intelligence and technologies such as deep fakes, voice cloning, and digital resurrection may result in legal issues evolving faster than legislative and judicial responses. The legal status and extent of post-mortem personality and publicity rights also remain unsettled in several respects. Additionally, the comparative analysis is subject to differences in the constitutional, statutory, and judicial frameworks of the jurisdictions examined, which may limit the direct applicability of foreign legal approaches to the Indian context.

### **1.3 Research Gap**



Existing literature on the digital afterlife has examined various related topics, including the nature and management of digital legacy, digital inheritance, post-mortem privacy, personality rights, and the commercial use of a deceased individual's digital identity. However, these topics have generally been explored separately. There remains a need for an integrative analysis of the current Indian legal regime that examines whether these elements are interrelated and whether the law adequately addresses the legal implications arising from the digital identity of the deceased.

The available literature shows that digital remains may implicate several conflicting legal interests, including property, privacy, personality, succession, and commercial interests, yet there is ambiguity as to how the Indian legal framework should address these interests together. The same piece of digital content may simultaneously raise questions of inheritance, privacy, personality, or commercial interest. The emergence of AI compounds this complexity, as existing digital content can be used to generate new representations of a deceased person's personality.

This study accordingly examines whether the existing Indian legal framework is adequate to manage these overlapping interests or whether a broader legal framework is required. A comparison with selected foreign jurisdictions is undertaken to determine how other legal systems address digital remains, post-mortem privacy, and personality or publicity rights, and whether any of these approaches may be relevant to the Indian context.

#### **1.4 Research Question**

Accordingly, the present study seeks to answer the following main research question:

“Whether the existing Indian legal framework adequately regulates digital remains while protecting post-mortem privacy and preventing the unauthorised commercial exploitation of deceased persons' digital identities?”

#### **1.5 Hypothesis**

The study proceeds on the following hypothesis:

“The existing Indian legal framework is inadequate to effectively regulate digital remains, protect post-mortem privacy, and prevent the unauthorised commercial exploitation of deceased persons' digital identities, thereby necessitating a comprehensive legal framework governing the digital afterlife.”

This hypothesis is examined through the doctrinal and comparative methodology set out in the Research Methodology section.

#### **1.6 Scheme of Chapters**

The research is organised into seven chapters, each addressing a distinct aspect of the research question.

##### **Chapter 1 – Introduction**

This chapter provides the background to the research and explains why the continued existence of digital information after a person's death raises new legal issues. It sets out the research problem, research gap, research question, and hypothesis.

##### **Chapter 2 – Understanding Digital Afterlife**



This chapter answers the question: what are digital remains and their status under Indian law? It examines the definition and nature of digital remains, illustrated through examples such as social media accounts, cloud storage, emails, cryptocurrencies, photographs, voice recordings, AI datasets, and digital avatars, and explores whether any legal framework in India currently governs them.

### **Chapter 3 – Post-Mortem Privacy and Personality Rights**

This chapter addresses the question: what protection does Indian law provide for the privacy, dignity, and personality of an individual after death? It traces the evolution of the right to privacy under Article 21, post-mortem dignity, informational privacy, and related case law, and examines whether personality and publicity rights subsist after death.

### **Chapter 4 – Commercial Exploitation of Digital Remains**

This chapter addresses the question: to what extent does existing Indian law prevent the commercial exploitation of a deceased individual's digital identity through AI? It examines the commercial value of digital identity and technologies such as deepfakes, voice cloning, AI avatars, and digital resurrection, and analyses the limitations of personality rights, passing off, copyright, trademark, and consumer protection law in addressing such exploitation.

### **Chapter 5 – Comparative Legal Analysis of Other Jurisdictions**

This chapter addresses the question: how have other jurisdictions approached digital remains, post-mortem privacy, and posthumous personality or publicity rights, and what may India learn from their approaches? It undertakes a comparative analysis of the United States, California, Germany, the European Union, and the United Kingdom.

### **Chapter 6 – Evaluation**

This chapter answers the key evaluative question: is the present Indian legal framework satisfactory in light of the challenges posed by the digital afterlife, privacy, succession, personality rights, and AI identity? It consolidates the findings of the preceding chapters, identifies inconsistencies and gaps in Indian law, compares them with the approaches discussed in Chapter 5, and assesses whether the hypothesis holds true.

### **Chapter 7 – Conclusion and Suggestions**

This chapter presents the concluding answer to the research question based on the findings of the study. It assesses whether the current Indian legal structure is sufficient and, on the basis of the gaps identified, offers recommendations concerning digital remains, post-mortem privacy, personality rights, digital executors, and the commercial use of AI-generated identity.

## **CHAPTER 2**

### **UNDERSTANDING THE DIGITAL AFTERLIFE**

#### **2.1 Meaning of Digital Remains**



The rapidly evolving digital technology has changed people's daily lives. The digital technologies and platforms including social media, emails, cloud storage, online banking, digital wallets, online businesses and virtual identity cards have become integral to contemporary life. Digital assets are these electronic items of value that can be owned, transferred, or monetized. Digital identity however, is not only a collection of digital assets but also an extension of personality and reputation. It may include usernames, email addresses, professional profiles, biometric data, identity cards and licenses. Digital remains may be understood as the digital traces, assets, records and identity related materials left behind by a person after death. As most users do not manage posthumous aspects of their online activity, the problem of digital remains intensifies.<sup>36</sup> The arrangements, instructions, and values that a person leaves for the management of their digital presence after death forms the digital legacy. It may be created through a testamentary instrument, a nomination under section 14 of the DPDP Act,<sup>37</sup> contracts or wills. A key legal question that arises is whether digital remains can be seen as property.

## 2.2 Types of Digital Remains

Social media accounts are the most visible form of digital remains. Mostly, these accounts are governed by the platform's terms of service. For instance, under Meta, legacy contacts can manage certain profile elements and download a data archive if they were granted permission in the account settings. Authorized representatives can request additional account information or content in rare cases, but this requires providing proof of authorisation and a court order. Login information is not provided to anyone to protect the privacy of the account holder.<sup>38</sup> However, for Instagram and Threads, the policy is to remove the profile of a deceased person to protect their privacy. Thus, the legal policy of the platforms decides the fate of digital remains. Access to the cloud account, however, may remain restricted by encryption, password protection, contractual terms and the privacy interests of other people whose data is stored alongside the deceased's data.

Emails are comparatively complex since they are relational rather than personal data. After death, a request for access to the deceased's inbox may expose the communications, personal data and confidential information of living third parties thus violating Article 21 of Indian Constitution.<sup>39</sup> Cryptocurrency and other assets constitute the economic form of digital remains. They can be transferred easily through succession if the deceased had legally recognised interest. If not, then based on the facts of the case, the court may allow the same.<sup>40</sup>

Digital avatars represent a person in a virtual world, online game or metaverse environment. Whether they are inheritable depends upon the platform's contract, the nature of the virtual asset and the law. At present, there are no particular laws or statutes for this category in India which creates yet another gap.

## 2.3 Can Digital Remains be seen as property?

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<sup>36</sup>Morse T, Birnhack MD. Digital remains: the users' perspectives. In: Savin-Baden M, Mason-Robbie V, eds. *Digital Afterlife: Death Matters in a Digital Age*. Routledge; 2020:107-126.

<sup>37</sup>Digital Personal Data Protection Act, 2023, § 14.

<sup>38</sup>Meta. Legacy contact. Facebook Help Center.

<sup>39</sup>Constitution of India, art. 21.

<sup>40</sup>Khanna S. Cryptocurrency is property capable of being held in trust: HC. Times of India. October 27, 2025. Accessed August 10, 2026.



Indian Courts, in several case laws treat digital remains as property, but it does not justifies treating all digital remains as property. On 5th May, 2026, the Hon'ble court Gandhinagar, Gujrat granted Letters of Administration over a deceased man's iPhone and iCloud account to his daughter<sup>41</sup> under the Indian Succession Act, 1925<sup>42</sup> petition. The court ruled that the deceased's digital data constitutes inheritable property under Indian Law.<sup>43</sup> But does treating private data of a person as property not a violation of their privacy? Is privacy only limited to a living person?

Actio Personalis Moritur Cum Persona (A Personal Right of Action Dies with the Person).<sup>44</sup> The Delhi High Court in Ruba Ahmed Vs. Hansal Mehta (2021)<sup>45</sup> and Krishna Kishore Singh Vs. Sarla A. Saraogi (2021)<sup>46</sup> similarly held that the right to privacy does not subsist after death and is not inheritable by legal heirs. The Madras High Court has recognized cryptocurrency as a property capable of being held in trust. It demonstrates that the intangible nature of a digital asset does not prevents it from having proprietary status.<sup>47</sup> This supports that the digital remains can attract succession rights when they have identifiable value, ownership and control. But the issue that remains is whether personal data that does not hold financial value like cryptocurrency can have proprietary status.

According to Birnhack and Morse, digital remains are categorised as: Intangible items, Information concerning property, Intellectual property and Personal data. Their analysis on whether digital remains be considered as property concludes that the property framework is capable of covering the first three categories, but not personal data.<sup>48</sup> The same categorisation of digital remains in Indian laws remain unclear.

It has been constantly held that the right of privacy of a person extinguishes after death, however this does not necessarily apply that all the digital remains be capable of succession. The absence of clear statutory framework governing the ownership, rights, control and succession of such digital remains creates a significant legal gap between post-mortem privacy and digital inheritance. The lack of distinction of what is considered as property needs to be clearer.

## 2.4 Why digital remains require legal protection?

Digital remains combine property, privacy, identity and memory of a person in a way that the traditional law does not yet recognize completely. The legal value of digital remains began with the IT Act, 2000.<sup>49</sup> Yet the recognition of an electronic record is not the same as recognition of a

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<sup>41</sup> [Sadhna Shaishav Shah & Anr. v. Nil, CMA No. 17/2026 \(3d Additional Senior Civil Judge, Gandhinagar, Gujarat, May 5, 2026\).](#)

<sup>42</sup> [Indian Succession Act, 1925, § 212.](#)

<sup>43</sup> [Garg, M. \(2026, June 17\). The dead do not log out: Juridical recognition of digital estates in India. LiveLaw.](#)

<sup>44</sup> [Garg, M. \(2026, June 17\). The dead do not log out: Juridical recognition of digital estates in India. LiveLaw.](#)

<sup>45</sup> [Ruba Ahmed & Ors. v. Hansal Mehta & Ors., CS \(OS\) 498/2021, 2022:DHC:4263 \(Delhi High Court, October 14, 2022\).](#)

<sup>46</sup> [Krishna Kishore Singh v. Sarla A. Saraogi & Ors., 2021 SCC OnLine Del 3818 \(Delhi High Court, June 10, 2021\).](#)

<sup>47</sup> [Khanna S. Cryptocurrency is property capable of being held in trust: HC. Times of India. October 27, 2025. Accessed August 10, 2026.](#)

<sup>48</sup> [Birnhack M, Morse T. Digital remains: property or privacy? International Journal of Law and Information Technology. 2022;30\(3\):280-301. doi:10.1093/ijlit/eaac019.](#)

<sup>49</sup> [Information Technology Act, 2000, No. 21 of 2000 \(India\).](#)



deceased person's right of control, privacy or inheritance. Sec. 14 of the DPDP Act, 2023 permits a person to nominate another individual to exercise statutory rights after death or incapacity.<sup>50</sup> Nevertheless, the Act does not comprehensively regulate post-mortem privacy, the transmission of digital accounts, the rights of legal heirs, or the obligations of foreign platforms. The Indian Succession Act, 1925 governs succession to property, but it does not classify digital remains.<sup>51</sup> Apart from legal value, digital remains carry economic, cultural, emotional and identity value which definitely requires protection.

## 2.5 Conclusion

The Indian law does not presently provide statutory regulations for digital remains. While several components of the digital sphere are recognized, the law does not treat them as a unified legal category capable of automatic succession, administration, deletion or memorialisation. The NLIU Law Review observes that India has no specific statute governing digital-estate planning, protection, access, and that the existing information-technology, data-protection and succession statutes do not provide an integrated framework for digital estate inheritance.<sup>52</sup> The present legal situation is thus one of partial recognition without any comprehensive classification. The law currently does not examine digital remains by integrating post-mortem privacy, commercial exploitation and personality rights within a unified regulatory framework. Until such legislation is enacted, the management of digital remains will continue to depend on the deceased person's will, nomination, platform's terms of service, and court orders.

## CHAPTER 3

### POST-MORTEM PRIVACY AND PERSONALITY RIGHTS

#### 3.1 Introduction

The death of an individual raises an important legal question: whether a person's rights relating to privacy, dignity, reputation, and identity continue after death. This issue has become increasingly significant because of social media, digital archives, artificial intelligence, deepfakes, and the commercial exploitation of a person's name, photograph, voice, or likeness. Unlike some jurisdictions that have introduced specific rules concerning post-mortem personality rights, Indian law does not presently contain a comprehensive legislation specifically governing post-mortem privacy and personality rights. As a result, protection is derived from a combination of constitutional principles, intellectual property law, common-law remedies, and judicial decisions.<sup>53</sup>

#### 3.2 Constitutional Foundation of the Right to Privacy

The constitutional foundation of privacy in India is primarily found in Article 21 of the Constitution, which guarantees the right to life and personal liberty. The Supreme Court gave

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<sup>50</sup>[Digital Personal Data Protection Act, 2023, No. 22 of 2023, § 14 \(India\).](#)

<sup>51</sup>[Indian Succession Act, 1925, No. 39 of 1925.](#)

<sup>52</sup>[Varsha KVS. Digital estate inheritance law: the need of the hour to balance the rights of posthumous privacy and legal heirs. January 27, 2025. Chapter:3](#)

<sup>53</sup>[Deepa Jayakumar v. A.L. Vijay, 2021 SCC On-Line Mad 2642 \(India\).](#)



privacy constitutional recognition in *Justice K.S. Puttaswamy (Retd.) v. Union of India*.<sup>54</sup> The Court held that privacy is an intrinsic part of life and personal liberty and is closely connected with human dignity. Privacy encompasses several interests, including personal autonomy, bodily integrity, family life, personal choices, and informational privacy.

The Puttaswamy judgment represented a significant development in Indian constitutional law because it moved beyond the earlier understanding that privacy was merely a collection of statutory protections. The Court recognised privacy as a fundamental right protected by the Constitution. However, the judgment also indicates that the right is inherently connected with the individual who possesses it. This becomes particularly relevant when considering whether such a personal right can continue after the individual's death.

### 3.3 Survival of the Right to Privacy After Death

The question of whether privacy survives death remains legally complex. The right to privacy is generally regarded as a personal right because it protects the autonomy, dignity, and choices of a particular individual. Consequently, it cannot ordinarily be transferred or inherited in the same manner as property.

In *Krishna Kishore Singh v. Sarla A. Saraogi*,<sup>55</sup> the Delhi High Court considered the issue in the context of the late actor Sushant Singh Rajput. His father sought protection against the use of his son's name, image, and personality in films and other works. The Court examined the relationship between privacy, publicity, and personality rights and observed that the right to privacy is personal to an individual and does not survive death. Therefore, the legal heirs cannot simply inherit the deceased person's constitutional right to privacy.

This distinction is important. A surviving family member may have their own independent privacy or reputational interests, but this does not necessarily mean that they inherit the deceased person's personal right to privacy. Thus, Indian law presently treats the constitutional right to privacy as one that generally ends with the death of the person to whom it belongs.

### 3.4 Post-Mortem Dignity and Reputation

Although the constitutional right to privacy may not survive death, the dignity and reputation associated with a deceased person can still raise legal concerns. The manner in which the body, memory, image, or personal information of a deceased person is treated may affect the dignity of the deceased and the emotional and reputational interests of surviving family members. Indian courts have therefore sometimes considered claims relating to deceased persons through the rights and interests of their relatives rather than by treating the deceased's privacy as an inheritable fundamental right. This distinction prevents the complete absence of legal protection while recognising that constitutional privacy is fundamentally personal.

The issue becomes particularly complicated where information concerning a deceased person is published, fictionalised, or commercially exploited.<sup>56</sup> Courts must then balance the interests of the

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<sup>54</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

<sup>55</sup> *Krishna Kishore Singh v. Sarla A. Saraogi*, 2021:DHC:1870, CS (COMM) 187/2021 (Del. H.C. June 10, 2021).

<sup>56</sup> *Deepa Jayakumar v. A.L. Vijay*, 2021 SCC On-Line Mad 2642 (India).



family against freedom of speech and expression, artistic freedom, journalism, and the public's right to information.

### 3.5 Personality Rights and Publicity Rights

Personality rights refer broadly to the rights associated with the identity and distinctive attributes of an individual.<sup>57</sup> They may include a person's name, image, voice, signature, likeness, appearance, and other characteristics through which the person is identified. Publicity rights, on the other hand, are generally concerned with the commercial exploitation of those attributes.<sup>58</sup> Personality rights are particularly important for celebrities because their identity can possess considerable commercial value. Advertisements, films, merchandise, endorsements, social media content, and artificial intelligence-generated material may all make commercial use of a person's identity.

Indian law does not presently recognise personality rights through one comprehensive statute. Instead,<sup>59</sup> different legal mechanisms may provide protection depending upon the circumstances. Copyright law, trademark law, passing-off principles, and other common-law remedies may sometimes be used to prevent unauthorised commercial exploitation.

### 3.6 Do Personality and Publicity Rights Survive Death?

The question of whether personality and publicity rights survive death is different from the question of whether privacy survives death. Privacy is primarily personal and connected with individual autonomy, whereas publicity rights can have an economic or commercial character. In *Krishna Kishore Singh*,<sup>60</sup> the Delhi High Court considered whether the commercial aspects of a celebrity's personality could continue after death. The Court recognised the distinction between personal rights and commercial interests but did not establish a general rule that all personality or publicity rights automatically survive death.

This creates an important area of uncertainty in Indian law. If a celebrity's name, photograph, voice, or likeness has significant commercial value during their lifetime, it is possible that some related economic interests may form part of the person's estate. However, whether such rights can automatically be inherited by legal representatives depends upon the nature of the particular right and the legal basis of the claim.

### 3.7 Rights of Legal Heirs

Legal heirs may have certain rights concerning the estate of a deceased person, but they do not necessarily inherit every personal right enjoyed by the deceased. This distinction is especially important in cases involving privacy and personality.

In *Deepa Jayakumar v. A.L. Vijay*, the Madras High Court considered issues concerning the privacy and personality rights of the late Tamil Nadu Chief Minister J. Jayalalithaa. The Court considered the argument that personal rights such as privacy and reputation could be inherited by

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<sup>57</sup>[D.M. Entertainment Pvt. Ltd. v. Baby Gift House](#), 2010 SCC OnLine Del 4793 (India).

<sup>58</sup>[ICC Development \(International\) Ltd. v. Arvee Enterprises](#), 2003 (26) PTC 245 (Del) (India).

<sup>59</sup>[Titan Industries Ltd. v. Ramkumar Jewellers](#), 2012 SCC On-Line Del 2382 (India).

<sup>60</sup>[Krishna Kishore Singh v. Sarla A. Saraogi](#), 2021:DHC:1870, CS (COMM) 187/2021 (Del. H.C. June 10, 2021).



legal heirs and adopted the view that purely personal rights do not ordinarily survive the death of the individual.

Therefore, legal heirs cannot automatically claim ownership over every aspect of a deceased person's personality. Nevertheless, where an economic or proprietary interest has been created during the individual's lifetime, the position may be different. The estate may continue to possess certain transferable rights, depending on the applicable law.

### **3.8 Protection Under Intellectual Property and Trademark Law**

In the absence of a dedicated personality-rights statute, Indian intellectual property laws may provide limited protection against unauthorised use of a deceased person's identity.

Section 14 of the Trade Marks Act, 1999<sup>61</sup> provides protection in circumstances where a trademark application falsely suggests a connection with a living person or a person who has died within twenty years before the application. Consent may be required from the relevant person or, where applicable, the legal representative.

Copyright law may also become relevant where photographs, films, recordings, writings, or other creative works are involved. Similarly, the law of passing off may provide a remedy where unauthorised use of a person's identity creates a false impression of endorsement, association, or commercial connection.

These provisions, however, do not amount to a complete post-mortem personality-rights regime. They protect particular interests through specific legal doctrines rather than creating a single general right over a deceased person's identity.

### **3.9 Judicial Approach to Post-Mortem Rights**

Indian courts have gradually developed principles concerning post-mortem privacy and personality rights through individual disputes.

In *Makkal Tholai Thodarpu Kuzhumam Ltd. v. V. Muthulakshmi*,<sup>62</sup> the Madras High Court considered issues relating to the portrayal and publication of material concerning Veerappan. The case demonstrated the difficulty of distinguishing between the rights and interests of a deceased person and the independent interests of surviving family members.

Similarly, *Deepa Jayakumar v. A.L. Vijay* dealt with the portrayal of Jayalalithaa and the claims raised by persons connected with her. The decision contributed to the developing judicial understanding that personal rights such as privacy cannot simply be inherited after death.

The decision in *Krishna Kishore Singh v. Sarla A. Saraogi* is particularly relevant because it directly considered the post-mortem use of a celebrity's personality. Taken together, these cases show that Indian courts have generally distinguished between personal privacy rights, which are closely tied to the individual, and commercial or proprietary interests that may have a degree of continuity.

### **3.10 Post-Mortem Privacy in the Digital Age**

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<sup>61</sup>Trade Marks Act, 1999, No. 47 of 1999, § 14 (India).

<sup>62</sup>*Makkal Tholai Thodarpu Kuzhumam Ltd. v. V. Muthulakshmi*, (2007) 6 Mad LJ 1152 (India).



The development of digital technology has made post-mortem privacy substantially more complicated. A person's digital footprint may continue for decades after death through social media profiles, photographs, videos, emails, cloud storage, online publications, and other digital records.

Artificial intelligence has introduced another dimension to the problem. Modern technology can reproduce a deceased person's face, voice, mannerisms, or writing style with increasing accuracy. Deepfakes and AI-generated content can therefore create material that appears to show a deceased person saying or doing something that never occurred.

Indian law does not yet provide a comprehensive legal framework specifically addressing the post-mortem use of digital identities. Existing laws may provide remedies in particular situations, but they do not establish a clear and uniform system governing consent, ownership, duration of protection, or the rights of heirs over a deceased person's digital personality.

### 3.11 Existing Legal Gaps in India

The absence of comprehensive legislation creates several uncertainties. First, there is no single statute clearly defining post-mortem personality rights. Second, the duration of protection for a deceased person's commercial identity remains uncertain. Third, it is unclear to what extent legal heirs can control the commercial use of the deceased person's name, image, voice, or likeness.

The problem is even more significant in the context of artificial intelligence. A deceased person's identity may potentially be reproduced without physical access to any original material. Existing intellectual property and privacy laws may not always provide an adequate remedy against such technological exploitation.

There is therefore a need to distinguish between legitimate artistic, journalistic, historical, and educational uses and exploitative or misleading commercial uses of a deceased person's identity.<sup>63</sup>

### 3.12 Need for Legislative Reform

India would benefit from a clearer statutory framework dealing with post-mortem personality and publicity rights. Such legislation could define the nature of the rights, identify who may exercise them after death, establish an appropriate duration of protection, and provide remedies against unauthorised commercial exploitation.<sup>64</sup>

Any proposed legislation should also protect freedom of speech and expression under Article 19(1)(a).<sup>65</sup> Not every reference to a deceased person should require the permission of their heirs. Historical works, biographies, journalism, criticism, academic research, and artistic expression should receive appropriate protection.

A balanced framework should therefore distinguish between legitimate public-interest expression and unauthorised commercial exploitation. It should also address modern forms of digital reproduction, including AI-generated images, voice cloning, virtual avatars, and deepfakes.

### 3.13 Conclusion

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<sup>63</sup>D.M. Entertainment Pvt. Ltd. v. Baby Gift House, 2010 SCC OnLine Del 4793 (India).

<sup>64</sup>Krishna Kishore Singh v. Sarla A. Saraogi, 2021:DHC:1870, CS (COMM) 187/2021 (Del. H.C. June 10, 2021).

<sup>65</sup>Constitution of India, art. 19(1)(a).



Indian law currently provides fragmented protection for the privacy, dignity, identity, and commercial interests associated with deceased persons. The constitutional right to privacy recognised in *Puttaswamy* is fundamentally personal and generally does not survive the death of the individual. At the same time, certain commercial interests connected with a person's name, image, voice, or likeness may receive protection through intellectual property law, trademark law, passing-off principles, or other legal remedies.

The growing use of artificial intelligence and digital technologies makes this issue increasingly urgent. A deceased person's digital identity can now remain accessible and reproducible long after death. The absence of a dedicated statutory framework leaves significant uncertainty for families, estates, creators, technology companies, and courts. Legislative reform should therefore seek to protect legitimate commercial and dignitary interests while maintaining freedom of expression and public access to historical and artistic works.

## CHAPTER 4

### COMMERCIAL EXPLOITATION OF DIGITAL REMAINS

#### 4.1 Introduction and the Commercial Value of Digital Identity

A person's name, face, voice, signature, and mannerisms have, over the last three decades, come to function as economic assets in their own right, independent of any product they may be attached to. Indian courts recognised this proposition well before the emergence of artificial intelligence: in *Titan Industries Ltd. v. Ramkumar Jewellers*,<sup>66</sup> the Delhi High Court held that a celebrity couple's endorsement of a jewellery brand generated protectable commercial goodwill that could not be appropriated by a rival without consent. The same logic underlies the more recent decision in *Digital Collectibles Pte Ltd. v. Galactus Funware Technology Pvt. Ltd.*,<sup>67</sup> where the court accepted that a cricketer's name, photograph, and statistics could carry independent commercial value once packaged as a Non-Fungible Token (NFT), even though the underlying persona itself was never “owned” in a conventional property sense.

Death does not extinguish this economic value; if anything, digitisation has made it easier to monetise. A deceased person's photographs, voice recordings, film performances, and social media presence continue to exist as reusable digital assets long after biological death, and platforms, advertisers, and AI developers now have both the technical means and the commercial incentive to repurpose them. The central difficulty explored in this chapter is that Indian law has built a reasonably coherent (though uncodified) body of protection for the commercial identity of living persons, but has not extended that protection in any comprehensive way to the digital identity of the dead; that is precisely the gap that the commercial exploitation of digital remains now occupies.

#### 4.2 Artificial Intelligence and Digital Resurrection

“Digital resurrection” refers to the use of artificial intelligence and allied technologies to recreate the face, voice, or behavioural patterns of a deceased person for renewed public presentation. Commentators generally identify four overlapping techniques: AI avatars, computer-generated,

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<sup>66</sup>*Titan Industries Ltd. v. Ramkumar Jewellers*, CS(OS) No. 2662/2011 (Delhi HC 2012).

<sup>67</sup>*Digital Collectibles Pte Ltd. & Ors. v. Galactus Funware Technology Pvt. Ltd. & Anr.*, CS(COMM) 108/2023 (Delhi HC, order dated 26 April 2023).



animated representations trained on a person's photographs and videos, capable of being posed or animated in new contexts; voice cloning, synthetic audio generated from a limited sample of a person's recorded speech, capable of producing entirely new sentences in that person's voice; deepfakes, machine-learning models that superimpose a person's likeness onto new or altered video content; and holograms, three-dimensional projections used to stage a "live" appearance of a deceased individual, most famously the 2012 Coachella performance built around the late rapper Tupac Shakur.

India has not been insulated from this trend. AI-generated recreations of veteran playback singer Kishore Kumar, and the broader use of voice-cloning technology in disputes involving singers such as Arijit Singh and Asha Bhosle, indicate that digital resurrection is no longer speculative but an active commercial practice within the Indian entertainment industry.<sup>68</sup> Internationally, so-called "grief-tech" or "digital afterlife" companies have gone further still, offering AI chatbots trained on a deceased person's messages, emails, and voice notes so that relatives may continue to "interact" with them, a use case that technology companies have already sought to patent.<sup>69</sup> Because none of this activity is presently tied to a specific, codified legal test in India, it proceeds largely in a regulatory vacuum: the only checks available are the general-purpose doctrines discussed in Section 4.5, most of which were built for the protection of the living.

#### 4.3 Commercial Uses of Deceased Persons' Digital Identity

**Advertisements.** The posthumous use of a well-known person's image or AI-cloned voice in an advertisement risks misleading consumers into believing the deceased (or their estate) endorsed a product, a concern that would ordinarily be actionable in a living-persona case as false endorsement or passing off, but which finds no equivalent settled remedy once the person concerned has died.

**Films, biopics, and dramatised content.** Cinematic and web-series recreations of a deceased individual's life sit at the border of commercial exploitation and free expression. In *Krishna Kishore Singh v. Sarla A. Saraogi*,<sup>70</sup> the father of the late actor Sushant Singh Rajput sought to restrain a film loosely based on his son's life; the Delhi High Court declined interim relief, reasoning that the personality or publicity right the actor held, to the extent it existed at all, was derived from his constitutional right to privacy, and that a privacy-derived right could not survive his death or be asserted by his legal heirs. As Section 4.5(a) below discusses in more detail, this is a narrower holding than it is often taken to be: the Court was rejecting one specific doctrinal route to posthumous protection, not ruling on every possible route by which a deceased person's identity might be protected. A comparable approach, on comparable reasoning, was taken by the Madras High Court in *Deepa Jayakumar v. A.L. Vijay*,<sup>71</sup> concerning a web series on the life of a former

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<sup>68</sup>Jus Corpus, "Digital Resurrection: Legal Issues Around Recreating Dead Celebrities Using AI" (2026); IJLLR, "Digital Resurrection and Posthumous Personality Rights in the AI Era" (2026).

<sup>69</sup>Andrade, C. et al., "No Peace After Death? The Impact of AI-Driven Memorial Chatbots on Privacy and Data Protection," Information, MDPI (2025).

<sup>70</sup>*Krishna Kishore Singh v. Sarla A. Saraogi & Ors.*, CS(COMM) 187/2021 (Delhi HC, order dated 10 June 2021).

<sup>71</sup>*Deepa Jayakumar v. A.L. Vijay & Ors.*, 2021 SCC OnLine Mad 2318 (Madras HC).



Chief Minister, and has more recently been echoed in litigation over the film *Haq* before the Madhya Pradesh High Court.<sup>72</sup>

NFTs and digital collectibles. *Digital Collectibles Pte Ltd. v. Galactus Funware Technology Pvt. Ltd.*<sup>73</sup> is presently the clearest Indian judicial engagement with the commodification of persona through blockchain-based tokens. Although the case concerned living cricketers, the court's reasoning, that an NFT's commercial value derives substantially from its association with a real person's identity, applies with equal, if not greater, force to a hypothetical "memorial" NFT collection built around a deceased celebrity, an area Indian law has not yet addressed at all.

AI training data. Generative AI models require training data, and a deceased person's photographs, interviews, and recorded performances are obvious candidates. This raises a layered ownership problem: copyright in a photograph or sound recording usually vests in the photographer, videographer, or producer rather than in the person depicted, meaning that even the deceased's own family may have no copyright-based standing to object to the underlying training use, while separately having no clear right to object to the resulting output on personality-rights grounds because such rights are not judicially recognised as surviving death.

#### 4.4 Ethical Issues Underlying Commercial Exploitation

Consent. Existing Indian law has no settled mechanism by which a person can, during their lifetime, authorise or prohibit the future commercial use of their digital likeness after death, comparable to a testamentary direction over tangible property. Anil Kapoor's public remarks following his own (living-persona) injunction,<sup>74</sup> that he wished his family to be able to "protect [his personality] and gain from it" after he was no longer alive, illustrate the gap between what public figures increasingly want and what Indian law currently permits them to arrange.

Family and heirs' interests. It is invariably family members, a parent, spouse, or child, who approach courts to restrain misuse of a deceased relative's identity, as seen in the *Krishna Kishore Singh* litigation.<sup>75</sup> Yet Indian courts have been reluctant to treat this as a property interest capable of standing in its own right, applying instead the common-law maxim *actio personalis moritur cum persona* (a personal right of action dies with the person), most clearly articulated in the 2007 Madras High Court decision in *Makkal Tholai Thodarpu Kuzhumam Ltd. v. V. Muthulakshmi*.<sup>76</sup>

Public interest, history, and freedom of expression. Article 19(1)(a) of the Constitution<sup>77</sup> operates as a persistent counterweight. In *Digital Collectibles*,<sup>78</sup> the Delhi High Court expressly held that the right of publicity is not absolute and must yield to free speech where no false endorsement is

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<sup>72</sup>Litigation concerning the film *Haq* (Madhya Pradesh HC, 2026); see Mondaq, "Posthumous Publicity Rights: The *Haq* Decision and Beyond" (2026).

<sup>73</sup>*Digital Collectibles Pte Ltd. & Ors. v. Galactus Funware Technology Pvt. Ltd. & Anr.*, CS(COMM) 108/2023 (Delhi HC, order dated 26 April 2023); see also Mondaq, "Commercial Free Speech – No Longer a 'Fantasy': *Digital Collectibles v. Galactus Funware*" (2023).

<sup>74</sup>*Anil Kapoor v. Simply Life India & Ors.*, CS(COMM) 652/2023 (Delhi HC, order dated 20 September 2023); Naik Naik & Co., "Delhi HC's Protection to Anil Kapoor: A Landmark Order on Personality Rights" (2023).

<sup>75</sup>*Krishna Kishore Singh v. Sarla A. Saraogi & Ors.*, CS(COMM) 187/2021 (Delhi HC, order dated 10 June 2021).

<sup>76</sup>*The Managing Director, Makkal Tholai Thodarpu Kuzhumam Ltd. v. Mrs. V. Muthulakshmi* (Madras HC, 2007).

<sup>77</sup>Constitution of India, art. 19(1)(a).

<sup>78</sup>*Digital Collectibles Pte Ltd. & Ors. v. Galactus Funware Technology Pvt. Ltd. & Anr.*, CS(COMM) 108/2023 (Delhi HC, order dated 26 April 2023).



implied, a balancing exercise that Indian courts have replicated in refusing to restrain biographical films and docudramas about deceased public figures.

#### 4.5 Adequacy of Existing Indian Laws

The doctrines available under Indian law are examined below in a deliberate sequence: first the personality and publicity rights that offer the strongest protection to the living, then copyright, then trademark law and passing off, then consumer protection law, then defamation and reputation, and finally the AI- and deepfake-specific gaps that cut across all of the preceding doctrines.

##### (a) Personality and publicity rights

India has no standalone personality-rights statute. The doctrine has instead been built by the Delhi High Court through a line of injunctions protecting living celebrities: *Anil Kapoor v. Simply Life India & Ors.*<sup>79</sup> (protecting Anil Kapoor's name, voice, and likeness against AI-generated deepfakes, GIFs, and unauthorised merchandise), *Amitabh Bachchan v. Rajat Nagi & Ors.*,<sup>80</sup> and *D.M. Entertainment Pvt. Ltd. v. Baby Gift House & Ors.*<sup>81</sup> (restraining unauthorised merchandise built around singer Daler Mehndi's persona). All of these decisions trace their constitutional root to the right to privacy recognised in *Justice K.S. Puttaswamy v. Union of India*.<sup>82</sup> Because that right is personal to a living individual, the same courts have, in *Krishna Kishore Singh*<sup>83</sup> and *Deepa Jayakumar*,<sup>84</sup> declined to extend it posthumously.

It is also important not to read *Krishna Kishore Singh*<sup>85</sup> more broadly than its reasoning supports. The Delhi High Court declined interim relief on the specific ground that a personality or publicity right derived from privacy does not survive the person in whom the underlying privacy interest vested. The Court did not decide, and expressly left open for trial, the distinct question of whether a deceased person's persona could be protected as commercially valuable property independent of privacy, a route closer to passing off, unjust enrichment, or a *sui generis* publicity right than to privacy as such. Nor did the case involve, or foreclose, a claim grounded in copyright's moral rights (which protect a specific authored work against distortion, not a person's identity generally), in trademark passing-off (which protects against misleading commercial association), or in a possible future post-mortem publicity statute of the kind several comparative jurisdictions already have. *Krishna Kishore Singh* therefore establishes only that one particular route to posthumous protection, privacy-derived publicity rights, is currently closed under Indian law. It does not establish, and should not be cited as establishing, that Indian law rejects all forms of posthumous protection for a deceased person's identity; the other routes examined in the subsections below remain, at least in principle, open.<sup>86</sup>

##### (b) Copyright Act, 1957

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<sup>79</sup> *Anil Kapoor v. Simply Life India & Ors.*, CS(COMM) 652/2023 (Delhi HC, order dated 20 September 2023).

<sup>80</sup> *Amitabh Bachchan v. Rajat Nagi & Ors.*, CS(COMM) 819/2022 (Delhi HC, 2022).

<sup>81</sup> *D.M. Entertainment Pvt. Ltd. v. Baby Gift House & Ors.*, 2010 SCC OnLine Del 4790.

<sup>82</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

<sup>83</sup> *Krishna Kishore Singh v. Sarla A. Saraogi & Ors.*, CS(COMM) 187/2021 (Delhi HC, order dated 10 June 2021).

<sup>84</sup> *Deepa Jayakumar v. A.L. Vijay & Ors.*, 2021 SCC OnLine Mad 2318 (Madras HC).

<sup>85</sup> *Krishna Kishore Singh v. Sarla A. Saraogi & Ors.*, CS(COMM) 187/2021 (Delhi HC, order dated 10 June 2021); Foxmandal, "Sushant Singh Rajput's Publicity Rights: Delving into the Order's Reasoning" (2023).

<sup>86</sup> SpicyIP, "Rest in IP: Posthumous Personality Rights in the Age of Deepfakes" (2026).



Two distinct protections exist. First, economic copyright in a photograph, film, or sound recording ordinarily vests in the photographer or producer, not the person depicted, so a deceased individual's estate frequently has no copyright claim over the very images or recordings used to train an AI model or construct a deepfake.<sup>87</sup> Second, Section 57<sup>88</sup> grants authors non-waivable moral rights of paternity and integrity; following the 2012 amendment, these rights are perpetual and may be exercised by legal representatives after the author's death. However, Section 57 protects a specific authored work against distortion; it does not create a freestanding right against the creation of new AI-generated content depicting a person's likeness or voice where no pre-existing authored work is being distorted. Performers' rights under Sections 38, 38A, and 38B<sup>89</sup> extend limited, related protection to recorded performances, which is relevant to voice-cloning disputes but again attaches to a specific performance rather than to the person's identity as such.

### **(c) Trade Marks Act, 1999, and passing off**

Passing off remains available to restrain unauthorised commercial exploitation of a recognisable persona used as a source identifier, as in *D.M. Entertainment*.<sup>90</sup> More significantly, Section 14 of the Trade Marks Act, 1999<sup>91</sup> is the only Indian statutory provision that expressly contemplates a deceased person's identity: it bars registration of a mark falsely suggesting a connection with a living person, or with a person who died within twenty years before the date of application, unless the Registrar is satisfied that the consent of that person, or their legal representative, has been obtained. This is a real, if narrow, acknowledgment of a post-mortem interest, but it is confined to trademark registration, lasts only twenty years, and does nothing to address unregistered commercial use such as AI-generated endorsements, deepfake videos, or NFT collectibles.

### **(d) Consumer Protection Act, 2019**

A posthumous AI-generated endorsement that misleads consumers could, in principle, be challenged as an unfair trade practice or false representation.<sup>92</sup> This remedy, however, is reactive, requires an aggrieved consumer or the Central Consumer Protection Authority to act, and was not designed to vindicate the dignitary or economic interest of the deceased or their family as such.

### **(e) Digital Personal Data Protection Act, 2023**

The Act's consent-and-erasure architecture is built around a living "Data Principal" and, subject to limited nominee provisions, does not generally extend to a deceased person's personal data,<sup>93</sup> leaving the data actually used to train resurrection models or deepfakes largely outside its protective scope.

### **(f) Defamation and reputation**

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<sup>87</sup> Copyright Act, 1957, No. 14 of 1957 (India).

<sup>88</sup> Copyright Act, 1957, s. 57, as amended by the Copyright (Amendment) Act, 2012.

<sup>89</sup> Copyright Act, 1957, ss. 38, 38A, 38B.

<sup>90</sup> *D.M. Entertainment Pvt. Ltd. v. Baby Gift House & Ors.*, 2010 SCC OnLine Del 4790.

<sup>91</sup> Trade Marks Act, 1999, s. 14.

<sup>92</sup> Consumer Protection Act, 2019, No. 35 of 2019 (India).

<sup>93</sup> Digital Personal Data Protection Act, 2023, No. 22 of 2023, s. 14 (India).



Indian defamation law, both the civil tort and the criminal offence now codified in the Bharatiya Nyaya Sanhita, 2023,<sup>94</sup> offers a further, indirect route that existing commentary on this topic tends to overlook. A sufficiently damaging AI-generated depiction of a deceased person could, in principle, found a defamation claim brought by surviving family, either on the footing that it defames a class of persons connected to the deceased or that it damages the family's own reputation by association. This route has real limits: it protects reputation rather than identity or commercial value as such, it requires proof of harm to a living claimant's own standing rather than to the deceased's, and it provides no remedy at all where the AI-generated content is flattering, respectful, or simply commercially exploitative without being defamatory, which describes most digital-resurrection use cases, including grief-tech chatbots and memorial AI avatars. Defamation law is consequently a narrow supplement to, not a substitute for, the personality-rights, copyright and trademark routes discussed above.

#### **(g) AI and deepfake-specific concerns**

None of the doctrines examined above was designed with AI-driven digital resurrection in mind, and considered together they leave gaps that are specific to the technology rather than incidental to it. No route requires consent, from either the deceased or their estate, before a person's photographs, voice, or written communications are used to train a generative model. No route addresses an AI avatar or synthetic voice that recreates a person's likeness in an entirely new context, since copyright's moral rights require distortion of an existing work and trademark law requires a false commercial association, neither of which an AI avatar necessarily involves. The closest India has come is the 2026 amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021,<sup>95</sup> which defines "synthetically generated information" and imposes labelling and takedown duties on intermediaries, but this is a content-moderation regime addressed to platforms, not a personality or estate-rights regime addressed to the interests of the deceased or their family; it says nothing about consent, ownership, or compensation. No route is available proactively: every doctrine discussed in this section depends on a living party discovering the misuse and approaching a court after the fact, by which point the synthetic content may already have been widely circulated.

#### **4.6 Legal Gaps**

Read together, the provisions examined above reveal a structural gap rather than a series of isolated omissions: no statute defines or recognises a general post-mortem personality or publicity right, and the only statutory acknowledgment (Trade Marks Act, 1999, s. 14<sup>96</sup>) is narrow, time-bound to twenty years, and limited to registration disputes. Indian courts have repeatedly and explicitly declined to treat publicity or personality rights as inheritable, applying the *actio personalis* doctrine,<sup>97</sup> so the strong injunctive protection built for living celebrities in cases like *Anil Kapoor*<sup>98</sup> does not transfer to their estates after death. There is no statutory consent mechanism enabling a

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<sup>94</sup>Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023 (India).

<sup>95</sup>Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2026, notified 10 February 2026, in force 20 February 2026; see Mondaq, "IT Rules 2026 Deepfake Regulation: Three-hour Takedowns and AI Labelling Obligations" (2026).

<sup>96</sup>Trade Marks Act, 1999, s. 14.

<sup>97</sup>*The Managing Director, Makkal Tholai Thodarpuzhukuzhumam Ltd. v. Mrs. V. Muthulakshmi* (Madras HC, 2007).

<sup>98</sup>*Anil Kapoor v. Simply Life India & Ors.*, CS(COMM) 652/2023 (Delhi HC, order dated 20 September 2023).



person to authorise, restrict, or prohibit the future commercial or AI-driven use of their likeness after death, and no recognised “digital executor” role akin to those proposed in comparative literature.<sup>99</sup> Copyright’s moral-rights protection under Section 57<sup>100</sup> is confined to distortion of a specific authored work and does not reach the creation of wholly new AI-generated content, the dominant mode of digital resurrection. Ownership of AI-generated outputs, training data drawn from a deceased person’s digital footprint, and NFTs built around a deceased persona remains legally unsettled, leaving it unclear who, if anyone, has standing to object. Enforcement is reactive and fragmented across trademark, copyright, consumer-protection, and (occasionally) tort law, rather than governed by any coherent, purpose-built regime.

## CHAPTER 6

### CRITICAL ANALYSIS OF INDIAN LAW

#### 6.1 Introduction

This chapter draws together the findings of Chapters 2 to 5 and tests them against a single question: is the existing Indian legal framework adequate to regulate digital remains, protect post-mortem privacy, and prevent the unauthorised commercial exploitation of a deceased person’s digital identity? The analysis proceeds issue by issue — digital remains, post-mortem privacy, and commercial exploitation — before consolidating the findings into a set of institutional gaps and their real-world consequences.

#### 6.2 Digital Remains: Defined and Regulated, or Not?

Finding: No. Digital remains are not defined, classified, or regulated as a distinct legal category anywhere in Indian law.

None of the four sources of law identified in Chapter 2 — the Constitution, the Digital Personal Data Protection Act, 2023 (“DPDP Act”), the Information Technology Act, 2000 (“IT Act”), and the Indian Succession Act, 1925<sup>101</sup> — contains the term “digital remains”, “digital legacy”, or an equivalent concept. The DPDP Act comes closest: it treats a person as a “Data Principal” only while that person is capable of exercising rights over her own data, and its accompanying Digital Personal Data Protection Rules, 2025 require data fiduciaries to allow a nominee, appointed under the Act’s nomination provision (commonly identified as Section 14), to act on behalf of an incapacitated or deceased Data Principal.<sup>102</sup> This is a narrow and procedural mechanism: it lets a nominee exercise the deceased’s existing statutory rights (such as seeking erasure or correction of data held by a fiduciary) for a limited, transitional purpose. It does not define digital remains as an object of law, does not vest ownership or a property interest in the remains, and does not create a general right for heirs to access, control, or manage a deceased person’s digital footprint.

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<sup>99</sup>Cyril Amarchand Mangaldas (Private Client blog), “‘Until Death Do Us Part’: Can a Celebrity’s Publicity Rights Be Inherited?” (2021).

<sup>100</sup>Copyright Act, 1957, s. 57, as amended by the Copyright (Amendment) Act, 2012.

<sup>101</sup>Indian Succession Act 1925, esp pts II-VII on testamentary and intestate succession, which are drafted exclusively around tangible and financial property and make no reference to data, accounts, or digital assets.

<sup>102</sup>Digital Personal Data Protection Act 2023, s 14 (right to nominate); Digital Personal Data Protection Rules 2025. See Lexology, ‘India’s Digital Personal Data Protection Act 2023 Brought Into Force’ (2025).



The Indian Succession Act, 1925, drafted for tangible and financial property, has no vocabulary for cloud storage, social media accounts, cryptocurrency wallets, or AI training datasets built from a person's data. Consequently, whether such assets pass to legal heirs at all — and if so, on what terms — is answered today only by the private terms of service of platforms such as Google (Inactive Account Manager) or Meta (Legacy Contact), which are contractual, revocable at the platform's discretion, and enforceable, if at all, only against the platform and not *erga omnes*. This stands in visible contrast to the position surveyed in Chapter 5: several American states have enacted the Revised Uniform Fiduciary Access to Digital Assets Act<sup>103</sup> (RUFADAA), which for the first time gives an executor or trustee a statutory — not merely contractual — basis to access and manage a decedent's digital assets, subject to the decedent's own instructions and to reasonable limits set by the custodian. India has no equivalent statute. On the specific question of whether digital remains are defined or effectively regulated, the answer under Indian law is no, and the absence is close to total rather than partial.

### 6.3 Post-Mortem Privacy: Protected, or Not?

Finding: Only weakly, and inconsistently. Privacy and dignity are constitutionally protected during life, but Indian courts have been reluctant to extend an enforceable privacy right beyond death.

Chapter 3 traced the constitutional foundation of privacy to Article 21 and its recognition as a fundamental right in Justice K.S. Puttaswamy v. Union of India (2017).<sup>104</sup> The difficulty is that Indian courts have repeatedly applied the common-law maxim *actio personalis moritur cum persona* — a personal right of action dies with the person — to hold that the right to privacy, being intensely personal, does not survive the person in whom it vested.<sup>105</sup> The Madras High Court's decision in *Makkal Tholai Thodarpuzh Kuzhumam Ltd. v. V. Muthulakshmi* (2007)<sup>106</sup> took this position, and it was reaffirmed by the Madras High Court in *Deepa Jayakumar v. A.L. Vijay* (2020),<sup>107</sup> where the niece of the former Tamil Nadu Chief Minister J. Jayalalithaa was unable to restrain a film and web series based on her aunt's life on privacy grounds, the Court holding that her legal heirs could not inherit a right that had extinguished with the deceased.

The Delhi High Court's judgment in *Krishna Kishore Singh v. Sarla A. Saraogi & Ors.* (2021),<sup>108</sup> arising from the father of the late actor Sushant Singh Rajput seeking to restrain films and series about his son, is the most direct judicial engagement with the question. Relying on Puttaswamy, the Court reasoned that if the right to privacy extinguishes with the individual, any publicity right derived from that privacy interest must extinguish with it as well; at the same time, the Court left open, for trial, the separate question of whether a deceased person's *persona* could survive as commercially exploitable property independent of privacy.<sup>109</sup> What emerges is a doctrinal position that is coherent in logic but thin in protection: Indian courts have consistently declined to recognise a free-standing post-mortem privacy right, and dignity-based protection for the dead exists, if at

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<sup>103</sup> Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) 2015, adopted in some form by a majority of US states. See Financial Planning Association, 'Estate Planning for Digital Assets' (2018).

<sup>104</sup> Justice K.S. Puttaswamy (Retd.) v Union of India, (2017) 10 SCC 1.

<sup>105</sup> Anand and Anand, 'Life and Death Matter: The Protection of Well-Known Personal Names in India' (2026).

<sup>106</sup> *Makkal Tholai Thodarpuzh Kuzhumam Ltd v V Muthulakshmi*, Madras High Court (2007).

<sup>107</sup> *Deepa Jayakumar v AL Vijay*, 2020 SCC OnLine Mad 26887.

<sup>108</sup> *Krishna Kishore Singh v Sarla A Saraogi & Ors*, 2021 SCC OnLine Del 3457.

<sup>109</sup> Lawschool Policy Review, 'The SSR Case: A Missed Call on Posthumous Personality Rights?' (2021).



all, only indirectly — through defamation of a class to which the deceased's family belongs, through obscenity or decency provisions of the Bharatiya Nyaya Sanhita, 2023, or through equitable orders restraining particularly egregious misuse, rather than through any statute or precedent that squarely protects the deceased as such.

This is a materially weaker position than several of the comparators examined in Chapter 5. The German Federal Constitutional Court held, in the *Mephisto* case (1971), that the constitutional duty to protect human dignity under Article 1(1) of the Basic Law does not end at death,<sup>110</sup> and the Federal Court of Justice (BGH) applied that principle in the *Marlene Dietrich* case (1999) to recognise that the commercial elements of a deceased person's personality right pass to her heirs.<sup>111</sup> Even the GDPR, which formally excludes the data of deceased persons from its scope under Recital 27,<sup>112</sup> expressly permits member states to legislate additional protection, and states such as Italy and, to a degree, France and Germany have done so.<sup>113</sup> India has taken neither the German nor the flexible-EU-member-state route: post-mortem privacy in India is, in substance, unprotected.

#### 6.4 Commercial Exploitation: Prevented, or Not?

Finding: Only incidentally, and only where a living successor is prepared to litigate. No dedicated cause of action for unauthorised commercial use of a deceased person's digital identity exists.

Chapter 4 showed that living celebrities in India enjoy meaningful, if judge-made, protection against unauthorised commercial use of their name, image, voice, and likeness, through the tort of passing off, the personality/publicity right recognised in cases such as *ICC Development (International) Ltd. v. Arvee Enterprises* (2003),<sup>114</sup> *Shivaji Rao Gaikwad v. Varsha Productions* (2015),<sup>115</sup> *Titan Industries Ltd. v. Ramkumar Jewellers* (2012),<sup>116</sup> and, more recently, injunctions obtained by figures including Amitabh Bachchan, Anil Kapoor, and Arijit Singh restraining AI-generated impersonations, deepfakes, and unauthorised merchandising.<sup>117</sup> The doctrinal foundation of these rights, however, is the living person's autonomy and privacy interest in her own persona. Because Krishna Kishore Singh and the earlier authorities tie publicity rights to privacy, and privacy is treated as extinguishing at death, the same courts that protect a living celebrity's commercial persona have been unwilling to extend an equivalent right to a deceased one. The result is an asymmetry: the day before death, a celebrity's likeness is fully protected against commercial misuse; the day after, protection becomes uncertain and litigation-dependent, resting on whichever ancillary cause of action — trademark infringement if the name is registered, copyright if a specific work is reproduced, or a narrowly pleaded passing-off claim — happens to fit the facts.

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<sup>110</sup> *Mephisto*, BVerfGE 30, 173 (Federal Constitutional Court, 24 February 1971).

<sup>111</sup> *Marlene Dietrich case*, BGH I ZR 49/97 (1 December 1999).

<sup>112</sup> General Data Protection Regulation (EU) 2016/679, recital 27.

<sup>113</sup> See *SA Editions Plon v Mitterand*, Court of Cassation (France).

<sup>114</sup> *ICC Development (International) Ltd v Arvee Enterprises*, 2003 SCC OnLine Del 91.

<sup>115</sup> *Shivaji Rao Gaikwad v Varsha Productions*, 2015 SCC OnLine Mad 158.

<sup>116</sup> *Titan Industries Ltd v M/s Ramkumar Jewellers*, 2012 SCC OnLine Del 2382.

<sup>117</sup> KSANDK, 'Personality Rights in India: Life, Legacy, and the Law' (2025).



Artificial intelligence has sharpened this gap considerably. Chapter 4 catalogued the commercial uses to which a deceased person's digital identity can now be put: AI-generated avatars, voice cloning, deepfake video, and “digital resurrection” for advertising, film, gaming, and virtual-influencer purposes. The Central Government's most direct legislative response — the 2026 amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which defines “synthetically generated information”, mandates continuous, clearly visible labelling of AI-generated content, and imposes short takedown timelines on intermediaries,<sup>118</sup> is a genuine advance, and the first Indian legislative definition of synthetic media. Yet it is a content-moderation and platform-due-diligence regime addressed to intermediaries, not a personality or estate-rights regime addressed to the interests of the deceased or their families. It says nothing about consent, ownership, or compensation, and nothing distinguishes a deepfake of a living public figure from a deepfake, or an AI “resurrection”, of someone who has died.<sup>119</sup> On the specific research question, therefore, existing Indian law offers only incidental and inconsistent protection against commercial exploitation of a deceased person's digital identity.

### 6.5 Institutional Gaps

Considered together, the analysis in Sections 6.2 to 6.4 resolves into five connected institutional gaps that recur across every area examined in this dissertation.

7. No definition: “Digital remains” has no statutory meaning, so courts and platforms have no shared vocabulary with which to allocate rights over it.
8. No ownership rules: it is unsettled whether a deceased person's digital assets are property capable of devolving under the law of succession, contractual entitlements governed solely by a platform's terms of service, or something falling into neither category.
9. No digital executor: unlike the fiduciary-access model adopted in a majority of U.S. states, India has no statutory mechanism equivalent to a digital executor with a recognised legal right to access, manage, or wind up a deceased person's digital accounts.
10. No consent mechanism: there is no statutory requirement that a person's advance consent, or an estate's consent after death, be obtained before her likeness, voice, or data are used to train an AI model or generate synthetic content.
11. No AI-specific regulation of digital identity: the 2026 IT Rules amendment regulates synthetic content as a category of information for intermediary due-diligence purposes; it does not regulate the use of a specific deceased person's identity as a distinct legal wrong.

Read together, these are not five isolated omissions but a single structural gap: Indian law treats death as the point at which a person's legal personality, and with it her enforceable interest in her own data and image, simply ends, leaving whatever remains behind to be governed by private contract and litigation-by-analogy rather than by a coherent public-law framework designed for the purpose.

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<sup>118</sup> [Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Amendment Rules 2026](#); see Mondaq, 'IT Rules 2026 Deepfake Regulation' (2026).

<sup>119</sup> [Compare the Bombay High Court's order condemning and directing urgent removal of an AI-generated deepfake video of actor Akshay Kumar, reported in Deccan Herald.](#)



## 6.6 Consequences of the Gaps

The absence of a coherent framework is not merely an academic deficiency; it produces identifiable, and increasingly common, real-world harms.

12. Identity misuse: without a statutory right vested in an estate or a digital executor, third parties can operate, impersonate, or repurpose a deceased person's accounts and data with little legal risk beyond a platform's own, discretionary, terms-of-service enforcement.
13. Deepfakes and AI resurrection: incidents such as the Bombay High Court's intervention to order the removal of an AI-generated deepfake video of a living actor<sup>120</sup> illustrate how quickly synthetic media can spread before any legal remedy is available; the risk is materially higher for deceased persons, who cannot personally object, correct the record, or instruct counsel, and whose families must first establish that they have standing to do so at all.
14. Unauthorised advertisements and commercial use: because post-mortem publicity rights remain judicially unsettled after Krishna Kishore Singh, advertisers, filmmakers, and AI-avatar developers face genuine uncertainty, and families face an uphill evidentiary and doctrinal battle, in respect of any commercial use of a deceased person's persona that is not already covered by copyright or a registered trademark.
15. Platform uncertainty: in the absence of statutory guidance, platforms set their own, inconsistent policies on account memorialisation, data retention, and disclosure to next of kin, leaving the practical fate of a person's digital remains to differ from one service provider to another rather than following a single rule of law.

## 6.7 Synthesis and Conclusion

This chapter therefore concludes, and answers the dissertation's central research question, in the following terms: the existing Indian legal framework is inadequate to regulate digital remains, protect post-mortem privacy, and prevent the unauthorised commercial exploitation of a deceased person's digital identity. The gaps identified in Section 6.5 are structural rather than incidental, and the consequences catalogued in Section 6.6 are already visible rather than speculative. This finding directly supports the hypothesis with which this dissertation began, and it is on this basis that Chapter 7 sets out the dissertation's conclusion and its recommendations for legal reform.

# CHAPTER 7

## CONCLUSION AND RECOMMENDATIONS

### 7.1 Conclusion

On the totality of this evidence, the hypothesis is supported. India needs a legal framework that governs the digital afterlife of a person: one that defines digital remains, clarifies who may deal with them and on what terms, sets out the extent to which privacy and dignity interests survive death, and regulates the use of a deceased person's digital identity for commercial and AI-driven

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<sup>120</sup>[Deccan Herald, 'Focus on Curbing Misuse of Artificial Intelligence as MeitY Mandates Labelling of AI Generated Content'.](#)



purposes. The recommendations that follow are offered as the building blocks of such a framework, informed by the comparative models examined in Chapter 5 but adapted to the structure of existing Indian law identified in Chapters 2 to 4.

## **7.2 Recommendations**

### **7.2.1 Define digital remains in legislation**

Parliament should insert a statutory definition of “digital remains” — covering, at minimum, social media accounts, cloud-stored data, email, digital financial assets, AI datasets derived from a person, and stored voice, image, and video recordings — either as an amendment to the DPDP Act, 2023 or as a stand-alone Digital Assets and Digital Remains Act. A shared definition is the precondition for every other reform proposed below, since courts, platforms, and families currently have no common vocabulary with which to allocate rights over these assets.

### **7.2.2 Recognise a limited post-mortem privacy right**

Rather than reopening the broad question of whether privacy as such survives death, Parliament should legislate a narrower, time-bound right restraining the publication or exploitation of a deceased person's private data or communications where this would cause serious distress to surviving close family or would be inconsistent with the deceased's known wishes, for a defined period after death (for example, ten years, broadly mirroring the durational choices found in comparative personality-rights regimes).<sup>121</sup> This targeted approach avoids resurrecting a personal right of action that Indian courts have consistently held cannot survive the person, while still addressing the concrete harms identified in Chapter 6.

### **7.2.3 Establish a statutory post-mortem personality and publicity right**

The dissertation recommends a dedicated, time-limited statutory right vesting in a deceased person's estate or nominated heirs, entitling them to control and to seek compensation for the commercial use of the deceased's name, voice, image, and likeness, including AI-generated recreations. This would resolve the uncertainty left open, but not decided, in Krishna Kishore Singh,<sup>122</sup> and would bring India into closer alignment with the German and select U.S. state approaches examined in Chapter 5, without requiring Indian courts to first re-characterise publicity rights as independent of privacy.

### **7.2.4 Introduce a Digital Executor system**

Drawing on the RUFADAA model,<sup>123</sup> Indian succession law should be amended, or a dedicated statute enacted, to allow a person to nominate a digital executor — either the same individual as their executor under a will or a separate nominee — with a statutory right to access, manage, memorialise, or close digital accounts and assets after death, subject to the deceased's own instructions and to reasonable safeguards for the privacy of third parties who communicated with

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<sup>121</sup> Compare, e.g., the ten-year period referenced in respect of the protection of commercial interests under German law in the Marlene Dietrich case, BGH I ZR 49/97 (1999), and the durational variation across US states discussed in Mondaq, 'The Living Dead: Looking at Posthumous Celebrity Rights Across Jurisdictions' (2024).

<sup>122</sup> Krishna Kishore Singh v Sarla A Saraogi & Ors, 2021 SCC OnLine Del 3457.

<sup>123</sup> Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) 2015. See Trust & Will, 'What is RUFADAA - Everything You Need to Know'; Nolo, 'The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)'.



the deceased. This should be designed to interlock with, rather than duplicate, the nomination mechanism already found in the DPDP Act, 2023, extending its logic from data-protection rights specifically to digital assets generally.

### **7.2.5 Require lifetime or estate consent for AI-driven commercial use**

Any commercial use of a deceased person's likeness, voice, or data to train or operate an AI system — including “digital resurrection”, AI avatars, and voice cloning — should require documented consent given by the person during her lifetime or, failing that, consent from her estate or nominated heirs. This recommendation should be read together with the 2026 amendment to the IT Rules:<sup>124</sup> the labelling and traceability obligations already imposed on intermediaries for synthetically generated information provide a ready-made technical and enforcement infrastructure onto which a consent requirement specific to deceased persons could be attached, rather than requiring an entirely new regulatory architecture.

### **7.2.6 Clarify platform obligations**

Significant social media intermediaries and other digital-service providers should be placed under a statutory obligation to publish a clear, accessible policy on account memorialisation, data retention, and disclosure to a nominee or digital executor, and to comply with disclosure requests made under the statutory Digital Executor mechanism recommended above. This converts what is presently a matter of unilateral, revocable platform policy (such as Google's Inactive Account Manager or Meta's Legacy Contact) into an enforceable minimum standard, addressing the platform uncertainty identified as a consequence of the current gaps in Chapter 6.

### **7.2.7 Balance privacy with freedom of expression, research, and historical documentation**

Any framework adopted must expressly preserve the ability to report on, critically discuss, document, and create works about deceased persons, particularly public figures, historical subjects, and matters of legitimate public interest. The recommendations above should therefore include statutory exceptions for journalism, biography, historical and academic research, satire, and commentary, modelled on the balancing exercise Indian courts have already performed in cases such as Krishna Kishore Singh and Deepa Jayakumar, so that protection for the deceased and their families does not become a tool for suppressing legitimate public discourse.

## **7.3 Scope for Future Research**

This dissertation has concentrated on the adequacy of existing Indian law and on the architecture of the reforms required. Two questions fall outside its scope and merit dedicated future study: first, the valuation and taxation treatment of digital assets forming part of a deceased person's estate; and second, the cross-border enforcement difficulties that will arise where a deceased Indian citizen's digital remains are held on servers, or by platforms, located outside India's jurisdiction. Both questions become more pressing as the recommendations in Section 7.2 move from proposal to implementation.

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<sup>124</sup> [Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Amendment Rules 2026.](#)