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## Nothing Goes with the Soul, who will inherit our E-Wallets, Crypto, WhatsApp accounts, & Digital Assets? A Grey Area in Indian Jurisprudence

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*In this fast-paced 21<sup>st</sup> century, the rapid expansion of the digital ecosystem has fundamentally altered the nature of wealth, identity and ownership, but the laws often move slowly, and the non liquet in Virtual Digital Asset management is a big example. As the saying goes “मृतस्य धनं जीवितानां कल्याणाय भवेत्” (The wealth of the dead should serve the well-being of the living.), but the legal framework at present does not impart justice to this. This article examines the emerging legal vacuum surrounding the succession and ownership of VDAs (Virtual Digital Assets) built through years of hard work, which slowly lose their value after death. The present taxation regime imposes heavy taxes on the income made through VDAs but remains silent when it comes to regulations. This article argues for a unified statutory mechanism incorporating features like the digital wills, nominee recognition and appointment of digital executors. India is growing exponentially in terms of digital presence, and if it gets the legislative support required, it can achieve the unachievable. It concludes that regulating digital assets is no longer an option but essential to uphold property rights in the digital age.*

**Keywords:** virtual digital assets, cryptocurrency, graphic content, digital rupee (₹), social media assets

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## INTRODUCTION

Suppose one day a renowned Instagrammer, a YouTuber, or a public influencer dies, leaving behind dependents with no source of income. Then what about the digital money or digital assets that a person accumulated over the years? Will it devolve upon the heirs just like material succession? In today's world, we are more alive online rather than offline, thus ending up making money, assets, and memories in digital form. This furthers the need for its regulation, but who knew that our loved ones would not have access once the accumulator becomes deceased? According to Statista, the number of users in India's digital assets market is expected to reach 107.30 million users by 2025 (*Impacts of Inflation on Financial Markets, August 2023*). India's digital asset market has been experiencing exponential growth, fuelled by the increased adoption of cryptocurrencies and blockchain technology. This furthers the need for its regulation.<sup>1</sup>

So, today we are facing a legal crisis because we have no legal statute to manage ownership of any asset earned digitally nor we have any mechanism to enforce any interest thereupon in case the operator bans its users from using or if the platform simply closes, this is happening because when we buy anything online using real money it does not make us the real owners, our status is of mere user and the platform owner or the big companies remain the owners.

Do we really need a mechanism to exit from this situation of *non liquet*? If your answer is doubtful, then you must read this article.

## WHAT DO WE MEAN BY 'DIGITAL ASSETS'?

In simple words, Digital Assets mean anything that is purchased and then stored digitally, having some value and giving certain rights to the purchaser. In Indian legislative context The Income Tax Act, 1961 defines Digital Assets in section 2(47A) as - 'any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account

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<sup>1</sup> Miklós Péter et al., 'The Impacts of Inflation on Financial Markets' (*Statista*, August 2023)  
<<https://www.statista.com/site/insights-compass-inflation-overview>> accessed 15 March 2026

including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically...<sup>2</sup> further the Finance Act, 2022 added the term 'Virtual to Digital Assets'.<sup>3</sup>

Till date, there is no comprehensive and categorically mentioned definition of Digital Assets in any statute, but the Hon'ble Supreme Court has stated, 'any attempt to define what a virtual currency is, it appears, should follow the Vedic analysis of negation, namely '*neti, neti*'. The concept of *Neti Neti* is an expression of something inexpressible...<sup>4</sup> therefore, the court suggests that instead of defining what it is, we must focus on what it is not.

**We can bifurcate Digital Assets based on their utility in the following categories:**

**Graphics and Media Content:** Photos, videos, audio files, documents, designs, logos, social media posts, etc.

**Crypto Assets:** Crypto-currency, non-fungible tokens, etc.

**Entertainment Subscriptions:** Amazon Prime, Netflix, e-books, etc.

**Creative Assets:** YouTube content, Instagram uploads, blogs, various social media accounts, etc.

The difference between real assets and digital assets is that the former gives the owner exclusive rights over others, whereas this is not the case with the latter because of the lack of legislation. Digital assets lack the features of ownership, transferability, disposition, and inheritance.

A huge population of India spends lakhs every year in purchasing digital assets using real money, yet they do not become the real owners, and we still do not have any legislation to support it. Traditional property laws focussed on material property only and ignorant of the fact that India is moving at a fast pace in this era of technology and with this growth comes the need for protection of rights because only having the right but not having mechanism to enforce it is not a good example of doctrine of *ubi jus ibi remedium* the legislature is still caught in ancient web of Land and gold as human's saviour whereas this digital asset owns the

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<sup>2</sup> The Income Tax Act 1961, s 2(47A)

<sup>3</sup> The Finance Act 2022, s 2(47 A)

<sup>4</sup> *Internet and Mobile Association Bank of India v Reserve Bank of India* AIR 2021 SC 2720

future therefore this legal vacuum needs a quick fix. Although the apex court expands the horizon by stating 'the term 'property' is of wide amplitude and includes every possible interest which a person can acquire, hold and enjoy.'<sup>5</sup>

## WHAT IS THE CURRENT LEGAL SCENARIO?

The present is in deficit in terms of Digital Asset Management, and there is a need to come up with the legislation so as to compete with the global pace.

**The following are the key areas that need deliberate action because they lack a mechanism to enforce Digital Assets:**

- Succession laws talk about the inheritance of property, but as they were made in the pre-Internet era, they do not deal with modern issues.
- The Digital Personal Data Protection Act 2023 deals with digital data but does not cover the inheritability of digital data.
- Tax Laws are recognising 'virtual digital asset' for computing taxes, but do not clarify succession-related rules.
- The Information Technology Act 2000 regulates data protection, but does not clarify digital property ownership.

**At the same time, there are a few instances that illustrate the likelihood of further growth in this field:**

**Introduction of Digital rupee e₹:** Usage of e₹ is currently being pilot tested in the form of some studies in the country. Digital Rupee or e₹ is India's Central Bank Digital Currency (CBDC). It is the digital form of India's physical currency, the Rupee (₹). e₹ is issued by the Reserve Bank of India (RBI) in digital form and e₹ is at par with the physical currency, offering features similar to physical cash like convenience of use, guarantee of RBI, finality of settlement, etc. e₹ is stored in the user's digital wallet and can be used to receive/send money, and/or make payment for transactions, just like any physical ₹ note.<sup>6</sup>

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<sup>5</sup> Lucknow Nagar Nigam & Ors v Kohli Brothers Colour Lab Pvt Ltd & Ors 2024 INSC 135

<sup>6</sup> Reserve Bank of India, Digital Rupee (e₹) - FAQs (2025)

**Introduction of 30% tax on VDAs:** There has been a phenomenal increase in transactions in virtual digital assets. The magnitude and frequency of these transactions have made it imperative to provide for a specific tax regime.<sup>7</sup> But the government has only taxed income emerging from these transactions and has not done anything to make it legal or to regulate it. Thus, because of this ambiguity regarding regulation, succession and legality of VDAs, the rights of heirs fall at the mercy of platform policy makers and the whims of big companies; a unified mechanism to deal with such issues will do away with this predicament.

## **REAL ISSUES ENCOUNTERED BY THE FAMILIES**

**Here are some legal and emotional drainage faced scenarios:**

**Loss of Memory:** Family photographs and videos shot during the lifetime of the deceased hold great sentimental value for the family, but due to privacy concerns, these are not available to kin.

**Digital Goods:** The e-books, subscriptions, and app licenses are not inheritable, unlike the actual bookshelf.

**Monetised Social Accounts:** It might continue to generate revenue, yet that money cannot be used by the grieving members.

**Crypto Balance:** For enforcing liquidation, the members have to undergo a cumbersome process, thus restricting the fulfilment of immediate requirements.

Thus, we are moving in the right direction, but we have miles to go

## **THE FOLLOWING STATUTORY STEPS CAN TAKE US CLOSER TO THE MILESTONE**

It is high time that the legislature, either by way of amendment or enactment, introduces a uniform digital asset code to clarify and protect citizens from this plight of ambiguity. Key features can include:

- **Application-based Features:** The big giants like Google, Apple, and Facebook have features like Inactive account manager, Digital legacy contact, and memorialization

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<sup>7</sup> Budget 2022-23, para-131

account, respectively, but these are soft laws of the company, which lack strict enforcement and are more voluntary in nature.

- Creation of dedicated special laws for the inheritance & succession of VDAs.
- A clear, simple, and unanimous definition and classification of digital assets given by the statutory body would enable the transferability and taxation of assets.
- Recognition of a nominee, like any other asset paper, the digital asset must allow the exclusive user right to appoint a nominee. This would reduce litigation and enable speedy transfer.
- Recognising a 'Digital Executor' like the U.S. Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), which allows a testator to appoint someone with legal authority to manage their affairs on their behalf.

#### **STEPS AT PERSONAL LEVEL**

- Just like 'property will', the user must appoint a testator and make a 'digital will', explicitly giving directions as to the devolution of his assets.
- The user must use the tools already provided by companies, as stated above.
- Keep a sealed digital information pack to store important information and passwords, and secure it with the beneficiary with instructions to access only upon death.

Thus, these steps, if timely made, can reduce the sufferings of the members and will help in reducing financial and time drainage caused by litigation.

#### **CONCLUSION: THIS DEMAND IS NOT A LUXURY, BUT RATHER A NECESSITY**

In conclusion, with the rapid expansion of digital assets from cryptocurrencies and online accounts to monetised content and virtual holdings, it becomes a natural phenomenon that we will continue to own more and more digital assets, and with this, the principle of *res nullius*, as it applies to the physical property, must also apply to digital property. This has created a significant grey area, particularly in matters of succession and inheritance, leaving families uncertain about accessing such assets after the death of the owner. The absence of a legislative framework is not only an economic loss but also undermines the very purpose of wealth accumulation for future generations. Therefore, there is an urgent need for a comprehensive manifest legal framework that recognises digital assets as inheritable

property, establishes a mechanism for transfers and balances privacy concerns. Until such measures are adopted, digital wealth earned through efforts and innovation will continue to exist in a legal vacuum,

Thus, India at this time of legal uncertainty has a great opportunity and potential to craft statutory provisions to balance the technological growth of individuals with societal needs. India, with its rapidly growing digital economy, is well-positioned to pioneer a progressive framework.