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Escalating Artificial Intelligence in Invading the Post-Mortem Privacy Rights

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Preservation of private space is sacrosanct, and it even remains after death. There is an obligation upon everyone to respect the dead, and it follows a higher degree of moral ground as the deceased cannot defend themselves. The judiciary has played a vital role in bringing the concept of the rights of the dead into various facets, such as the right of the dead for decent cremation, preservation of human organs, no physical exploitation, and legal will. The era of technology has created a complete transition where dead people survive in the online medium. This reincarnation of the dead with artificial intelligence is creating a storm on various social media platforms, as the consent of the dead was not obtained. The data of the deceased is not protected by any laws, rules, or regulations. The digital afterlife appears in various avatars, such as those created by chatbots, smartbots, etc. This digital avatar acts as a means to talk to loved ones as it reawakens their image, voice, and physical appearance after death. Privacy and ethical implications are much questioned when it comes to victims of various crimes such as rape, murder, sexual assault, and other unnatural offenses. When the AI mechanism tries to tell the story of her or his death without proper consent or appropriate information, it questions the dignified life of a person after death. This paper surmises the need for strict rules and regulations about dead people revealing their stories of death. Autonomy, Privacy, and dignity should be considered while reincarnating the lives of people and making them tell their death stories. The researchers have pointed out certain recommendations and solutions for bringing light to the laws to be framed in this regard.

Keywords: *artificial, intelligence, privacy, consent, dead.*

INTRODUCTION

Loss is one of the most difficult experiences to go through in a person's life. In this tech-savvy age, people contact their loved ones through WhatsApp chats, Instagram reels, and Facebook images. The memories that they feature through these social media are generating happiness and comfort for thousands of minds, devoid of the reason that they are alive or dead. Confronting the memories of the dead, the digital remnants of a person, the life they had enjoyed, and the static profiles that are derived from these platforms made experts think about a world beyond the dead. People will be happy to see and look at the happy days of their deceased loved ones, not how they suffered before their death. The positive response given by the people to such a technology is bringing families together. Nowadays, social media platforms such as Facebook, using the technology of artificial intelligence, are creating avatars to bring back the dead, which is disturbing the lives of many. The dead person relives his death through an AI application and narrates the gory details of his death, the incident of the death, and the cause of the death. The stories narrated by the deceased victim are taken from their loved ones or the trial of the accused. It can be death by suicide, ill-treatment, assault, sex torture, being beaten to death, etc., and involves stories of the newborn to the old. These stories are narrated without the consent of the dead or their loved ones. The social media platform or its users take consent for granted and publish the gruesome stories of the dead without considering the rights and dignity of the person even after their death. The autonomy or privacy of the dead is compromised for the mere purpose of some views, likes, and shares.

Privacy rights cease with an individual's death, yet contemporary technology facilitates the resurrection of deceased superstars and regular individuals for new performances or voice recreations. This exploitation not only provides revenue but also evokes memories of cherished individuals. The realistic portrayal of the deceased in the form of stories that broadcast their lives illuminates the interests and ideals which is referred to as post-mortem rights. Discussions are being done on the provision of post-mortem rights for digital assets, although this should

also include the individual's life and related events. The living possess interests in the treatment of their future dead selves, referred to as the interests of 'future-decedents'. The living have interests stemming from the treatment of the dead to whom they are related. This is categorised as those of the 'relational-living,' including loved ones and relatives. Ultimately, society, comprised of living individuals, has a shared interest in honouring and respecting the deceased.

This article identifies the various rights of the dead person enshrined in the various Indian laws and how this right is reflected in the contemporary era. This article also delves into the need for better laws to restrict the people and social media platforms that narrate the terrific and unpleasant lives of the dead, thereby violating the privacy and confidentiality of the departed souls.

THEORETICAL FRAMEWORK ON THE LEGAL STATUS OF A DEAD PERSON

The word 'person' derives from the Latin word 'persona, which refers to a person's mask, this is where the English word "person" first appeared.¹ A person in law has been categorised as two, namely natural and legal. Natural persons are human beings; legal persons, on the other hand, may be called artificial persons. A dead person is defined as a person who is no longer alive or deceased.²

Death is a morally and ethically significant event, the dead can be harmed, benefited, or wronged, and whether the dead have rights, interests, or responsibilities is identified through different statutes. But death excludes a decedent from possessing some rights based on the principle of exclusion. This jurisprudential principle of exclusion identifies that human beings have rights, but for a set of reasons, some are denied the rights, such as corporations, plants, animals, etc. Possessing a right requires reason and the ability to exercise it freely; exercising a right entails the decision to assert, waive, or transfer it (if transferable). The deceased cannot possess rights in general, nor privacy rights specifically, if such possession necessitates the personal exercise of such rights. The deceased cannot possess privacy rights since such rights

¹ 'Person' (Merriam-Webster) <<https://www.merriam-webster.com/dictionary/person>> accessed 18 August 2024

² 'Deceased' (Merriam-Webster) <<https://www.merriam-webster.com/dictionary/deceased>> accessed 18 August 2024

need the continuous ability to see, feel, and be offended – fundamental justifications for the extension of privacy rights initially. Widely accepted interpretations of these philosophical concepts have supported the idea of denying privacy rights to the deceased.³ This jurisprudential concept of free will cannot be exercised by the dead, which was overlooked by the interest or well-being based on desires and preferences.

The interest theory incorporated the concept of 'nonwaivable rights' and rights for 'incompetents,' including fetuses, infants, and individuals in comas who may possess protectable interests in their well-being despite lacking the ability for free, rational decision-making.

The interest theory included respect for individual preferences and desires as elements of total objective well-being. Theory of interest 'exploits the compelling correlation between possessing rights and improved well-being. If the deceased possess cognisable and protectable interests, then the interest theory permits the attribution of legal rights, including privacy rights, to the deceased⁴.

Autonomy is another concept that is derived from both the will and interest theories, which will determine the moral, liberty, dignity, self-realisation, public interest, and social contract. The Kantian concept of personal autonomy can be developed from two important principles. "The first principle mandates that human beings act externally only to allow 'the freedom of the will of each to coexist together with the freedom of everyone by a universal law'. The second principle means that we are to 'act according to a maxim of *ends* which it can be a universal law for everyone to have', and these ends are our perfection and the happiness of others. Kant believes that acts to which someone has a right may be obtained by compulsion, whereas the adoption of ends and virtue must result from free choice.⁵" Even though a Kantian version of autonomy cannot be accepted due to the free will concept, which is not available per se in the

³ HLA Hart, 'Essays on Bentham: Studies in Jurisprudence and Political Theory' (1984) 97(4) Harvard Law Review <<https://www.jstor.org/stable/1341028?origin=crossref>> accessed 18 August 2024

⁴ Joseph Raz, 'The Morality of Freedom' (1987) 37(149) The Philosophical Quarterly <<https://academic.oup.com/pq/article-abstract/37/149/481/1592114?redirectedFrom=fulltext>> accessed 20 August 2024

⁵ Immanuel Kant, 'Conjectural beginning of human history' in Gunter Zoller and Robert B Loudon (eds), *Anthropology, History, and Education* (Cambridge University Press 2007)

case of a dead person. The theories on the property also refer to autonomy and free will, the jurist such as Hegel argues that property is an extension of personality rights⁶. Privacy and autonomy are considered to be attached, Ortiz defines “Privacy delineates 'the boundaries and bounds of individual liberty' and connects privacy with property. The property encompasses autonomy as control over objects and the physical realm, but privacy signifies control over oneself⁷”.

Dead will not get recognition as juristic persons, but according to Indian Law, they are protected and identified with certain rights. Even though the dead person fails to enjoy the rights or perform any duties, the law considers their wishes and desires. According to Salmond, a Legal philosopher, states that three things continue to pass even after the death of the person they are body, reputation, and property⁸.

A living being is curious about the care being given to his own body. The evolution of the concept of death has been different due to characteristic features such as attitudes toward death and dying, shaped by spiritual, intellectual, and logical beliefs and beginnings. The evolution caused by the divergent ideas in medicine and technology has given a different stand to the concept of death. Many Archaeological findings identified that even after death, some element of the person survives and believes in the afterlife. Ancient Hebrews, Egyptians, ancient Chinese, and Greeks believed that the preservation of the body is important for a happy afterlife. Asian religions believed in rituals for their reincarnation and purification of the soul. During the 14th and 16th centuries, people feared death subsequently, the medical profession gave a different view of the concept of death. Modern medicine tried to bring back the dead to life and brought the dying of a loved one. The individuals have subsequently identified the reality of death and restored the dignity of those who are dying⁹. The concept of testamentary freedom has provided

⁶ Gerog Hegel, *Hegel's Philosophy of Right* (Oxford University Press 1962)

⁷ D R Ortiz, 'Privacy, Autonomy, and Consent' (1989) 12 Harvard Journal of Law and Policy <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/hjlp12&div=18&id=&page=>> accessed 18 August 2024

⁸ A L G, 'Jurisprudence. Seventh edition. By SirJohn Salmond. London: Sweet & Maxwell, Lim. 1924. xviii. and 580 pp. (£1 net.)' (1924) 2(1) Cambridge Law Journal <<https://www.cambridge.org/core/journals/cambridge-law-journal/article/abs/jurisprudence-seventh-edition-by-sirjohn-salmond-london-sweet-maxwell-lim-1924-xviii-and-580-pp-1-net/09C3072EFD646A55E35CB299BE11759A>> accessed 20 August 2024

⁹ Elisabeth Kubler-Ross, *On Death and Dying* (Scribner 1969)

that wills are necessary for the peace of society and is the principle of freedom after death. The legal framework of every civilised society gives property owners the authority to dictate, by their final will, the distribution of their assets, either whole or partially, upon their death¹⁰. This freedom of testation brings personality rights for the will of the person after his death. The legal personality in cases of testamentary freedom extends to death.

There is no understanding of when a legal entity is established or when it ceases to exist. Physical death should not be seen as the conclusion of legal existence, primarily due to the presence of a legal will, which allows the deceased to dictate the distribution of their assets¹¹.

In this regard, India has been recognising the rights of death through its various statutes and legislative framework. The discussion provided below recognises the autonomy and personality rights of death from different perspectives.

A person wants a proper funeral and a respectable burial. All deceased people are guaranteed a respectable funeral under criminal law; therefore, disturbing a grave is a crime and it is an offence under Section 297 IPC. According to Indian Penal Code Section 297¹², it is against the law to treat dead bodies carelessly. If someone enters a location set aside for funeral rites or designated as a repository for the remains of the deceased with the intent or knowledge of injuring or insulting the religion of another person, treats a dead body with disregard, or disturbs those who have gathered to perform funeral rites for the deceased, they will be punished for a term of up to one year or a fine, or both. However, the law makes sure that the deceased man's body receives a respectable burial and a suitable cremation ceremony. But in recent trends, man creates a lawful trust in his will for the upkeep and repairs of the cemetery¹³. In *Ramji Singh and Mujib Bhai V State of UP*,¹⁴ the Allahabad court held that, in order to preserve the dignity of the deceased, post-mortem procedures should be avoided unless absolutely required. This is because Article 21 guarantees the right to treat a deceased person's body with

¹⁰ William Blackstone, *Commentaries on the Laws of England, Volume 1* (University of Chicago Press 1979)

¹¹ Arthur R Peacocke and Gillett Grant, 'Persons and personality: A contemporary enquiry' (Ian Ramsey Centre, Basil Blackwell 1987)

¹² Bharatiya Sakshya Adhiniyam 2023

¹³ Maxwell E Davison, 'Cemetery Trusts in Pennsylvania' (1956) 60(3) Dickinson Law Review
<<https://ideas.dickinsonlaw.psu.edu/dlra/vol60/iss3/7/>> accessed 20 August 2024

¹⁴ *Ramji Singh @ Mujeeb Bhai v State of UP and Ors* (2009) 5 ALJ 376

the same respect as they would have merited when they were still living. Even after death, everyone is concerned with preserving their reputation and dignity.

A Libel on a dead person is also actionable under the court of law¹⁵. The criminal code offers protection to a deceased person's reputation. For loss of reputation of deceased persons, a defamation lawsuit may be brought under section 499 IPC¹⁶. In the case of AIADMK, Madras V K.GovindanKutty,¹⁷ the court held that false accusation on a dead person also amounts to defamation and the deceased person's legal representatives can maintain an action against the defamation under sec 499 IPC. In *Sh. Raghu Nath Pandey and Anr v Sh Bobby Bedi and Ors*,¹⁸ No action for defamation can be taken in respect of a dead person since defamation is a personal wrong and the legal right does not survive and is not actionable after the death of the person in view of the principle laid down in the maxim 'actio personalist monitor cum persona'. But in this case, the court held that any false accusation amounts to defamation whether the concerned person is dead or alive. Thus, legal representatives can maintain action against people who raise defamation against a dead person. Even though there is no personal action, it can be brought against as the person does not survive after death.

Reputation of a dead person is protected by way of the person's will through various other means. Testaments of the deceased are respected and imposed by law, and dead person have the right to have their wills enforced. Even under the Indian Succession Act, it allows the fulfilment of the desires of a deceased person to regulate the actions of his successors. When a person dies intestate without any will to protect the deceased rights and the living person's rights, sections 8 to 13 of the Hindu Succession Act 1955 deal with general rules of succession. This shows that the rights and status of dead persons are protected under the law. So, a dead man is considered as legal person and their rights are protected under the law. S.Sethu Raja v The Chief Secretary¹⁹ in this case held that the right to human dignity is available even after death. According to Salmond, to protect the interest of a dead person, it is held that once a body

¹⁵ *Sh Raghu Nath Pandey and Anr v Sh Bobby Bedi and Ors* (2006) CS No 1212/2005

¹⁶ Bharatiya Nyaya Sanhita 2023, art 356

¹⁷ *K Govindan Kutty v AIADMK: T N Seshan* (1996) 2 ALD 139

¹⁸ *Sh Raghu Nath Pandey and Anr v Sh Bobby Bedi and Ors* (2006) CS No 1212/2005

¹⁹ *S Sethu Raja v The Chief Secretary* (2007) WP No 3888/2007

is buried on public property, it belongs to the law and is kept in their possession. These deceased remains are to be left alone and undisturbed. These dead bodies must be safeguarded by the court against any disruption or disinterment. The legislature and Judiciary have been at the forefront of protecting the dead persons against the offences committed to them.

Offences like Necrophilia are happening nowadays to dead persons. Necrophilia is an abnormal sexual attraction or temptation towards the dead. This kind of deviation or sexual attraction and sexual intercourse with the dead are considered an offence. Various nations such as New Zealand²⁰ and the United Kingdom²¹ have considered this as an offence and imprisonment is given for such activities. In India *Rangaraju @ Vajapeyi v State of Karnataka*,²² the court held that the law should be amended to include punishment for such 'carnal intercourse with corpses'.

Organ Transplantation is another grey area where the rights of dead persons are exploited and infringed. Organ transplantation has been increased after the death of a person and the legislature has emphasised that their bodily rights and reputation continue to pass even after death. In India, the Transplantation of Human Organs Act 1994 facilitates organ donation and transplantation. The Act recognised brain stem death as legal death and almost 8-9 organs can be donated. The donation of organs can take place only by the consent of the donor before his/her death and by the Authorization Committee as formulated by the Government. Even after death, consent of the legal representatives and Authorization Committee is required for further process of the Transplantation²³. Trafficking in human beings for the purpose of organ removal and human organ trade is universally condemned. The buying and selling of organs continue even after the death of a person when organ transplantation occurs. For donating the organs of the deceased, family consent is necessary, but sometimes, it is difficult to get consent from the deceased family because of religious and superstitious beliefs. So, illegal trafficking occurs largely because it is difficult to get consent from the deceased family members. Whether the person had given their consent or refused to donate their organs while they were still alive

²⁰ Crimes Act 1961

²¹ Sexual Offences Act 2003, s 70

²² *Rangaraju @ Vajapeyi v State of Karnataka* (2023) CrI AppI No 1610/2017

²³ Sunil Shroff, 'Legal and ethical aspects of organ donation and transplantation' (2009) 25(3) *Indian Journal of Urology* <<https://pubmed.ncbi.nlm.nih.gov/19881131/>> accessed 09 September 2024

must be ascertained. Making decisions for someone else can present ethical difficulties if their wishes are unclear.

Based on the analysis of the rights provided above, this Article gives an outline as to how the rights of a dead person can be protected in this technologically moving society. The use of Artificial Intelligence to bring back the dead and the ethical implications faced when they converse their tragic ends is bringing ethical considerations at various ends. The Article also surmises a few suggestions to safeguard the dignity and privacy of the dead person.

ROLE OF ARTIFICIAL INTELLIGENCE IN BRINGING BACK THE DEAD

The digital facsimile of the dead person or the loved ones is helping many minds to reboot the life grief of loved ones. The deepfake technology created by artificial intelligence is bringing back the voice, face, and image of the dead. The technology is called chatbots, dead bots, ChatGPT, and replica technology, which create convincing facsimiles of human and dead ones²⁴. The technology of preserving the memories of dead ones is bringing happiness to the minds of people. The basic human desire to be with their loved ones, not only for the present generation but also even for future generations, is a revolution in cyberspace. These chatbots help to converse with dead people by imitating their responses. This development will lead to virtualising relationships and muddling the limits between the physical and digital worlds. The growth in the field of artificial intelligence helped in creating a comfortable zone for thousands of people. The algorithms helped in simplifying the digital life and creating a life even after death.

This digital reincarnation and ethical implications connected to the creation of artificial immortality have raised the eyebrows of many as the dead narrate their stories. The dead bots raise several ethical issues, such as consent of the dead for the use of their data after the death, risk resulting from the usurpation of the person's identity, either living or dead, and psychological impact on the person who converses with the dead as said by William Gibson "As

²⁴ Tamara Kneese, 'Using Generative AI to Resurrect the Dead Will Create a Burden for the Living' (*WIRED*, 21 August 2023) <<https://www.wired.com/story/using-generative-ai-to-resurrect-the-dead-will-create-a-burden-for-the-living/>> accessed 09 September 2024

hallucination experienced by thousands of people” artificial intelligence and the use of algorithms are disturbing the minds by investing in the field of the afterlife. Death is not a domain; it will overrule the minds of people who are not able to differentiate real life and cyber life. These new Artificial Intelligence avatars, even though it is beneficial to the grieving process, affect the mental balance of the loved ones who hear their stories. Various studies have proved that proximity-seeking behaviours will create a mental blockage to people from creating meaningful relationships²⁵. When the dead speak about the terrific stories of how they are killed, it will disturb the minds of their loved ones. This increases the sense of criminal mentality among the people. Further, the humiliation that the dead are facing by narrating his/her own story is affecting the privacy of the family members, especially the personal information involved. Thus, it has become necessary that appropriate legal regulation is necessary for the betterment of society as well as the dead person.

DATA PRIVACY AND AUTONOMY OF THE DEAD

Data protection involves methods for ensuring data privacy, availability, and integrity, sometimes termed as data security. Any company that processes or stores sensitive data needs a data protection policy. A good approach can avoid data loss, theft, and corruption and reduce breach and disaster damage. Data privacy governs data collection and handling based on its sensitivity and importance. Personal health information (PHI) and individually identifiable information are normally protected. Financial, medical, social security, ID, name, birthdate, and contact information are included. There is no regulatory framework for people who handle the data of dead persons.

The protection of the personal data of the dead is an area to be identified by many countries and it remains unclear and uncertain as to its legal and regulatory perspective. The digital identity remains even long after the death of a person’s biological death. The growth of digital identities helped in developing the concept of ‘digital natives’ or ‘Netizens’ or ‘the citizens of the Internet’ who have digital assets and personal online data. The laws presently available for the right to

²⁵ Amber Louise Bryce, ‘The rise of ‘grief tech’: AI is being used to bring the people you love back from the dead’ *Euro News* (12 March 2023) <<https://www.euronews.com/next/2023/03/12/the-rise-of-grief-tech-ai-is-being-used-to-bring-the-people-you-love-back-from-the-dead>> accessed 20 August 2024

privacy and personal data protection are not adequate for a better framework in this regard. The Global Data Protection Law of the EU and the Digital Data Protection Law 2023 only protect the data of living people, there is nothing to give importance to post-mortem privacy. The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), developed by the Uniform Law Commission, provides fiduciaries with a legal necessity to manage the digital assets of the deceased or incapacitated people²⁶. Even though certain laws protect the interest of the dead, such as succession, burial, organ transplantation etc., many other legal rules suggest that the dead do not have privacy rights on their life and life-related events. As the slogan says, “The Dead have no rights and can suffer no wrongs²⁷”, or it can explain that no injury is caused to the deceased after death or no effect injury²⁸.

Data or information is one of the most important aspects involved in bringing loved ones back. Data commodification is what is faced in today’s scenario. The data controllers retain access to and process the data of the dead person. It contains personal and valuable information about the deceased. When the information or memories of the deceased person are gathered through family members, it will affect the personal data of the family members also. The reputation of other members of the family will be at stake. The chatbot, Deadbots, is used to recreate a person using text messages, audio, video, images, feelings, and habits of the dead person for bringing the interactive experience.

Chatbot means stimulating human conversation. Deadbot means the digital soul that can speak after death and chat with loved ones in other words, it is also known as a conversational robot mimicking dead people. Even though deadbolts give benefits to people, they have the potential to limit their user's emotional and psychological welfare since they may negatively affect the grieving process of users who have experienced a loss. The ethical consideration of deadbolts creates two things: firstly, there is little framework for the protection of the data of the deceased,

²⁶ ‘Fiduciary Access to Digital Assets Act, Revised’ (*Uniform Law Commission*)

<<https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=f7237fc4-74c2-4728-81c6-b39a91ecdf22&tab=librarydocuments>> accessed 20 August 2024

²⁷ Victoria Oloni CIPP/E CIPM, ‘LIFE AFTER DEATH: DATA PROTECTION RIGHTS OF DECEASED PERSONS’ (*LinkedIn*, 28 January 2020) <<https://www.linkedin.com/pulse/life-after-death-data-protection-rights-deceased-persons-oloni/>> accessed 19 September 2024

²⁸ *Ibid*

and secondly, it is based on the human dignity of the deceased. It is unethical to use people's data without their consent while they are alive why should it be ethical to do so after their death in the sense while developing a deadbot, it seems reasonable to request the consent of the one whose personality is mirrored. Deadbolts might be ethical in specific circumstances. The most important points are that an imitated person and the person creating and utilising it should have granted their agreement, along with the most thorough description of the system's scope, design, and planned usage. But deadbots created by people end up in violation of data protection laws and the privacy of the dead.

The trend of the dead person speaking about their death stories has started identifying the ethical implications from various perspectives. When the AI chatbot creators make the dead speak about their terrific and deadly stories of how they were murdered, raped, and assaulted in the digital platform, it affects the minds of thousands of persons. When the AI avatar of the dead narrates their stories, it is based on the factual events given by their family members or through the court trial proceedings. So, the clarity of the information is still a question to be raised. Are the stories narrated true and it is provided with the consent of the dead person? These questions cannot be answered in the affirmative unless the dead person itself justifies the same. Another issue that can be seen is whether consent is given as a 'Dying Declaration' or by the family members at the time of death of the person.

The major issue arises when the narration of the stories pinpoints the actual offender of the crime. The ethical implication is that the family members of the convict have to face the consequences when the dead person narrates the story about the heinous crime and spoils the family's reputation. The reputation of both the party is affected drastically if legal steps are not taken at this moment. Data about the deceased might often provide confidential details about the living. The living may potentially be adversely affected by further disclosures about departed relatives. The health and counselling records of the dead may include unverified accusations of violence and abuse attributed to a specific live individual. Such discoveries may inflict both reputational and emotional damage on the survivors. The restriction to intermediaries can be given to filter the posts of such AI-created avatars telling the terrific stories of their deaths. The main drawback that can be seen is that the Information Technology Act,

2000²⁹ or no other law was developed to put restrictions on such kind of content for the intermediary³⁰.

The US is planning to introduce the No Artificial Fake Replicas and Unauthorised Duplications Act of 2024 (NO AI FRAUD Act), which this legislation aims to protect the property rights related to an individual's image and voice, focusing on the unauthorised use of technology means referred to as "personalised cloning services." Nonetheless, these words are extensively defined. A "personalised cloning service" is described as an "algorithm, software, tool, or other technology, service, or device whose primary purpose is to generate one or more digital voice replicas or digital representations of specific, identified individuals." This notion may include the majority of consumer electronic gadgets, including smartphones and tablets. The definitions of "digital voice replica" and "digital depiction" are equally broad, including any resemblance or auditory replication of an individual. The No AI FRAUD Act surpasses the NO FAKES Act, which primarily sought to enhance accountability for the unauthorised digital replication of an individual's appearance, voice, and visual resemblance in audio-visual works or sound recordings. But there is no clear-cut mention of the creation done with the help of chatbots in recreating the stories of the dead person. The suggestions and recommendations will only serve as an eye-opener to the issues that arise in this context.

LEGAL AND CODED IMPLICATIONS

Various ways by which data privacy and confidentiality of the dead can be protected-

- Recognising the rights of dead persons with appropriate personality rights and autonomy in the digital platform.
- Contract law or consensual agreement of the party provides for the safety of data in whatever medium it is stored. If a person opens an account with the service provider, the terms of service should clearly mention that even after the death, the information will not be disclosed at any cost. The deceased's right to privacy with regard to their digital

²⁹ Information Technology Act 2000, s 79

³⁰ Natalie Banta, 'Death and Privacy in the Digital Age' (2016) 94(3) North Carolina Law Review
<<https://core.ac.uk/download/pdf/144553571.pdf>> accessed 18 August 2024

information, as outlined in these service agreements, is especially crucial. Thus, this will bring more safety to the information and data collected.

- The law at this point considers that death terminates the contract, but with regard to the digital data by death, the personal information should be deleted or anonymised.
- The law can be framed to provide inheritance rights to digital data. Personal data inheritance is being followed in the U.S. to protect corpses, journalistic information, and trade secrets. This will help in protecting certain data, which is necessary for the family's best interest³¹.
- Strict restrictions on the content creators using AI and the intermediaries on using the data of the dead and disturbing the minds of people. The law should be framed to protect the stakeholders who are directly and indirectly related to the death of the person.
- Digital Data Protection Act 2023 and Information Technology Act 2000 should be amended to include the impact of Artificial Intelligence on the right to privacy of people.
- The new US No AI FRAUD Act can even provide a better mechanism to restrict AI from misusing the rights of the dead person.

CONCLUSION

Courts and legislation have held and identified that privacy interests do not survive death. The information or data of the dead is considered as digital assets, which are stored and collected from third-party intermediaries. It is mandatory this information is protected by reconsidering the posthumous right to privacy and dignity. Legal privacy protections were born out of technological advancements, and as technology continues to advance, so too must privacy interests. This Article asserts a viable solution that can protect the data, privacy, reputation, and dignity of the dead through appropriate data protection laws. The right to be Forgotten is a regulatory protection and right to be protected and basic privacy rights. It is necessary to limit the extent to which AI can be regulated in recognising the rights of the dead and balancing the other established rights in the digital medium.

³¹ Nadezhda Purtova, 'The illusion of personal data as no one's property' (2015) 7(1) *Law, Innovation and Technology* <<https://www.tandfonline.com/doi/full/10.1080/17579961.2015.1052646>> accessed 20 September 2024