

Call for Papers: The Philosophy and Law of Information Regulation in India

Editors: Sudhir Krishnaswamy^[1], Divij Joshi^[2], Kruthika R^[3]

India is immersed in several simultaneous battles over the regulation and control of information. While the COVID-19 pandemic has ignited concerns over state mandated information gathering of the health and personal information of residents, the expanded use of the Aadhaar biometric identity system threatens to make it an essential cipher for every interaction between the state and society. At the same time, the earlier momentum towards building strong legislative mandates to disclose public information to promote government accountability and enhance service delivery appears to have stalled. Further, the legislative efforts to regulate both public and private use of personal and non-personal information proceeds at a glacial pace.

While these developments occur in different containers and niches of the legal ecosystem, they are grounded in one common conceptual, philosophical and legal puzzle: how should we regulate the access to, and the use of, information by public and private actors? This question becomes all the more salient with the surge in new forms of information collection and processing at speed and scale made possible by big data collection and algorithmic decision-making technologies.

In India, the collection, disclosure and analysis of information has historically been the subject of diverse and disparate forms of legal regulation and governance. The regulation and governance of information has been particularly germane to questions around the accountability of democratic institutions (for example, laws on the disclosure of government documents like the Right to Information Act); the distribution and allocation of ownership rights in information (as in intellectual property law and associated fields like database protection); and individual privacy concerns (as in the proposed data protection law in India).

Legal systems now have to contend with new challenges in information governance that merge these normative and legal frameworks of information regulation. The growth of powerful and pervasive new technologies that create, aggregate and analyse different forms of information - often referred to as 'artificial intelligence' or 'big data' technologies - apply logics of algorithmic or 'data-driven' decision making to aid or displace human judgement by private and public actors alike, in areas ranging from criminal justice to employment. The automated analysis of information poses distinct concerns for systems of procedural and substantive justice, and public accountability, built on the premise of human subjects exercising rational and express agency. While there are some examples of new protections against automated decision-making, such as in Europe's General Data Protection Regulation, these new developments call for new foundational analysis.

Each of these realms of theory and action in information governance embodies distinct values and addresses specific concerns, which may intersect, overlap, diverge or sometimes conflict. While courts and legislatures in India have addressed these issues as and when they arise, the broader questions have received scant systematic analysis. Each sphere of legal or regulatory authority has considered discrete aspects or applications of information, for example, the relationship between public records information and democratic participation; or data protection and individual privacy.

Several questions need to be addressed to reconstruct the landscape of information regulation and governance in India. Is a unifying framework for the law and governance of information possible, or even a useful analytical frame? What are the values and considerations which have historically driven the regulation of information, and how can they inform a theory of information governance? How should legal and regulatory approaches be grounded in the political economy of information technologies? How does our early empirical experiences with specific technologies square with our normative assumptions about the relationship between information, technology and regulation?

There is important scholarship that reflects on these questions, though not always grounded in the legal academy. In the field of Science & Technology Studies, Sheila Jasanoff's work explores how law and legal institutions construct, propagate and influence the development of science and technology, and offers a compelling intellectual framework for these enquiries. In the field Information Sciences, Helen Nissenbaum's work on the 'contextual integrity' of information flows has been instrumental in broadening and anchoring new regulatory debates around the appropriate forms of privacy and information security.

Legal scholarship has also engaged with these questions. Lawrence Lessig's influential early work explores how software acts as a prominent mode of regulation in digital environments: captured evocatively through the phrase "code as law." Julie Cohen's work explores how networked 'legal-institutional' actors, like standard setting institutions, are emergent non-state actors who decisively shape the legal rules for information and communication technologies. Yochai Benkler's work explores the political economy of information regulation, and particularly how information and communication networks shape the forms and behaviours of markets and their constituents.

Contending with questions of emerging technologies and information regulation, Mireille Hildebrandt cautions us that 'smart' information technologies are displacing foundational norms in western legal systems, like the rule of law and due process. Lina Khan and Tim Wu have explored how transformations in the legal institutions of market regulation like anti-trust law are linked to the development of a particular form of the information economy. Pamela Samuelson, among others, has questioned the relevance of older intellectual property law approaches to contemporary debates in information regulation. Paul Schwartz and Danielle Keats Citron have argued for importing due process into the domain of automated decision making technologies. This body of work argues that information regulation goes to the very heart of constitutional and legal systems, and must be engaged with at this level.

Much of this academic engagement with the law and philosophy of information regulation, has, however, remained limited to the specific legal and historical contexts of the USA or Europe. In India, while courts and legislatures, as well as legal academia and civil society, have engaged with these questions and generated empirical insight into these questions, there is a need to construct a rigorous theoretical foundation for questions of information regulation in India. Exploring these questions within the distinct historical and political context of information regulation in India, as well as from the analytical frameworks of the Indian constitutional and legal system, can not only add a critical dimension to this scholarship but also provide a theoretical basis for informing ongoing (and future) debates around information regulation in India.

‘*The Philosophy and Law of Information Regulation in India*’ project is an effort to collate multi-disciplinary scholarship on the subject of the law and philosophy of information regulation, with a specific focus on India. We recognise that such an effort cannot be bound by legal scholarship alone, and must encompass and contend with the normative assumptions of various approaches towards information technologies. We invite multi-disciplinary submissions from fields of law, history of science, science and technology studies, informatics and information sciences, political and economic philosophy, design studies, and other related fields to reflect on the relationship between law, technology and information, with specific reference to the institutions of public law in India. Submissions taking a comparative approach between jurisdictions addressing similar concerns are particularly appreciated.

We are accepting submissions of articles between 5,000-10,000 words, which may be empirical case studies relating to information regulation in India, or normative and theoretical analyses of the subject. All submissions will be editor-reviewed. Some suggested thematic areas include:

1. The history of information regulation in India
2. Privacy, data protection, and algorithmic governance
3. Due process in algorithmic systems
4. The political economy of information regulation
5. Discrimination law, equality and algorithmic fairness
6. Disinformation, misinformation and new media technologies
7. Information and electoral democracy
8. Competition law, information and markets
9. Smart cities, urban governance and automated decision making
10. Biometric technologies and embodied information
11. The Indian judiciary’s engagement with information governance
12. Identity, identification and citizenship
13. International law, trade and geopolitics of information governance

Procedure for Submission:

Please email your original and previously unpublished paper abstracts to [divij\[joshi\[at\]clpr.org.in](mailto:divij[joshi[at]clpr.org.in) by **10 September, 2020**, with the subject line ‘Proposal Submission | The Philosophy and Law of Information Regulation in India’.

Abstracts should be **no more than 1,500 words**, and attached in a separate document in a doc/docx format.

Each proposal must contain:

1. Author’s name(s) and institutional affiliation(s).
2. Introduction to the topic.
3. Thesis statement(s) and/or research question(s).
4. Research methodology.

Accepted proposals will be required to produce a *5,000 to 10,000* words article within the project’s timeline. The articles will be workshopped at a virtual symposium held in December 2020. A selected group of discussants will be invited to write short response pieces to the accepted papers.

The final edited articles will be published as an open-access monograph.

Important Dates:

1. September 10 – Submission of proposals [1500 words]
2. September 17 – Acceptance of proposals by the editors
3. November 15 – The first draft of the submissions to be sent to editors [5,000 to 10,000 words]
4. December 15 – Accepted and edited submissions will be presented at a workshop to be held virtually, in December 2020
5. March 1 – Publication of the monograph

Contact:

Please reach out to Divij Joshi (divij[dot]joshi[at]clpr.org.in) if you would like to discuss potential topics or any for any other clarifications.

Disclaimer: This project is supported by a [Facebook Ethics in AI Research Award](#). Editorial responsibilities and discretion remain solely with the editors.

^[1] Prof. Dr. Sudhir Krishnaswamy is the Principal Investigator of ‘The Philosophy and Law of Information Regulation in India’ Project. He is the co-founder of the Centre for Law and Policy Research and the Vice-Chancellor of National Law School of India University, Bangalore.

^[2] Divij Joshi is the Co-Investigator of the Project. He is an alumnus of the National Law School of India University, Bangalore and is currently a Mozilla Tech Policy Fellow.

^[3] Kruthika R is the Coordinator of the Project. She graduated from School of Law Christ University and is a Research Associate at the Centre for Law and Policy Research.