

**Host**

Hi Pranjal, thank you for joining us on Mrigashira. The new IT rules have received some praise and much criticism and their impact will start to become clearer as they are implemented. People have even argued that the government does not have the right to change the laws. Facebook, WhatsApp, Twitter, are challenging the new privacy policy. Let me begin by asking you should these private companies be allowed to question the rules of operations laid down?

**Pranjal Sharma**

Hi Charu, thank you for inviting me for this discussion. Let's, let me answer that very briefly. Yes, every company in a free open democratic society, every organization entity and individual has right to question the government about any law and policy that is being done or implemented in an open manner.

**Host**

Fair enough. But what are they? There have in different discussions that sometimes they call themselves a media company, sometimes it's a technology company? So just to put things in perspective, I just thought it will be good to understand where would you put these global giants.

**Pranjal Sharma**

Let's talk about the rules and regulations which concern technology companies. There are two sets of regulations which concern us. Actually, if you look at it, there is a three-way relationship between companies, civil societies, or the consumers and the government, right. So, whether it's a tech company or any other company, it's a government and there are the consumers, as well as the users, depending on the situation. Now, in this contract between these three stakeholders of our society, you need to have a rules framework on how to ensure that things work in a way that everybody benefits. And it is not to the detriment of any other of any of the parties involved. So, with that background, I think it's important that in the new era of this information revolution, or the era of the fourth industrial revolution, where technology and such linkages play such a critical role in our lives, we need to reorganize, renew and rethink the laws and the rules that govern our relationship with them earlier. If you remember, when Google came up, it was the underdog, it was taking on the Microsoft's of the world. And we all supported it. But now Google is the Microsoft of the world and it is basically deciding everything for everybody from e commerce and the app ecosystem, to what kinds of content is promoted or established. And this is the same thing which applies to other companies, which are part of the big five or six as you may include them from Twitter to Facebook, which now actually own several other services. And you know, the size allows them to buy more companies and startups as they happen.

So, WhatsApp, Instagram are very important examples of how Facebook has expanded its empire. Twitter is a standalone in many ways. But still, it has from being a global square of conversations, it has now turned into something which a lot of people have concerns about.

**Host**-right, right no absolutely

**Pranjal Sharma**

About the, so about the rules what we are in the middle of right now, not just in India, but globally and across different regulatory regimes is rethought about what kind of rules should be imposed on consumers on technology companies, and, you know, the, curbs for the government as well. So, this is where we are right now.

## Host

Right. So, on one hand, our constitution talks about freedom of speech. On the other hand, the government is asking for traceability and transparency, is that justified?

## Pranjal Sharma

Let's step back a little bit, traceability is a very important question. But let's first look at the relationship between tech companies and users. All of us have agreed to the terms and conditions of the technology service providers and devices and apps that we use. That's right Charu, right. How many of us are able to understand that, which is sometimes you know, 500 words, sometimes 2000 words? Are we really clear about what those rules mean for us as a user? Fundamentally, it's a one-sided bag either we use it or we exit, there is no question and there is no opportunity for us to negotiate that set of conditions that we take when we're downloading an app, whether we working on an Android product or an Apple product, whether it's Google, Facebook, Twitter, WhatsApp, if WhatsApp decides these are the rules, you have to accept it, there is no accountability, you cannot question as a user, all of us can question every other product and service that we, consume from other companies. If you're consuming a food product, if you're consuming any other, if you're buying an automobile, you have those companies have an accountability.

Today these tech giants do not have national accountability, they have grown to a level where their user's community is bigger than any other country in the world. So therefore, they have said that we will set the rules and governments and nations and people and users have to follow it. Now many countries which are small, do not have the power, have not been able to question them. But the European Commission has put very strict rules. The United States Congress and Senate is questioning them itself. So, I think India has every right as a sovereign country, to reorient its laws to ensure and define what is freedom of expression. What are the privacy rules that should govern the relationship between tech companies, users and the government?

So, there is no doubt in my mind that private global entities which are opaque and non-transparent, cannot set the rules for individuals. If we again look at how, in a democratic country freedom of speech is enshrined in our Constitution, we have a right to living the way we want to live and expressing our views. However, those have been established through a system and an ecosystem of checks and balances between state governments, we have political leaders, we have ruling party, we have opposition parties, we have state level institutions, we have the judiciary, we have a non-government organization. So, if somebody tries to curb our freedom of expression, so many different bodies can come and counter it. In the case of private companies, if they set the rules, they do not want any national law to be controlling them, at the fundamental level that is what is creating the current friction between the Government of India or the or our country and these tech giants.

## Host

I think you made a very valid point and in a very, very simplistic way, I think this is the only place where consumers do not have any scope for negotiation. If you look at insurance as well, there, you do not read the fine print and that's why probably there's so much because of information asymmetry, people do not subscribe to insurance, here just because everybody is using these platforms, and you want to be on these platforms, you're not even thinking and just going ahead with it, I feel that maybe these rules should have been in place much earlier, we've kind of woken up a little late. Coming to the point about seeking information from platforms like WhatsApp, which are end to end encrypted. Does that go against individual liberty because you know, they have been or, I would say right to privacy above national interests. It's becoming a debate where people some

people say that, you know, our privacy is far more important because the end-to-end encrypted platforms. But on the other hand, especially when it comes to combating child abuse, spread of fake news, curbing violence, are we somewhere compromising on national interest, so end to end encryption should not be cast in stone and there should be you know, ways to go around it.

### **Pranjal Sharma**

Let's look at the fact that freedom of expression and privacy needs a balance as well. You cannot have absolute sense of privacy in an open democratic society. absolute freedom of expression is also not allowed. You cannot stand inside, on your own rooftop, and you know, scream and abuse at your neighbor, that is not freedom of expression. Freedom of expression means that you have to respect your neighborhood, you have to respect other citizens in the society. And the very fact that you have to respect fellow citizens means that there are certain limits and curbs on you. That's point one, second point is, what is the cost of absolute privacy? I'm not saying we should not have privacy. But the question is, what type of privacy? Are we willing to forego our sense of security, for in favor of absolute privacy? I think that's a dialogue that society should have. A society has to take a call at decision and choose what it accepts as privacy and what it does not accept, and when is it willing to offer and give up its privacy. India has had a strong legacy of looking at these issues from the time that telecommunications entered India, to the time of the launch of the mobile services, to now in the times of internet communication. The fact is that the government and the country has had rules on things like for example, tapping of phones, right, there is a process where a certain authorized officer has to prove that there is a need for him or her to tap the phone of a person for the larger social interest. Those are often endorsed by the judiciary either before or later. Now, that creates a system where somebody cannot arbitrarily tap your phone or get information. However, let me give you another example and this is an example which will help me argue for what we are talking about in terms of traceability. When mobile phones began, you remember, anybody could buy a SIM card, and anybody could get a connection, right?

**Host-**Yeah.

### **Pranjal Sharma**

And they were certainly, so until then, if you remember when we all had landlines, they used to be a directory, and that directory had everybody's name, address and phone number, right? Remember, if you asked for the same for in the in the era of mobile phones, people will say it's invasion of privacy, that how can my mobile number be made public and the whole concept of spam mails and spam messaging, etc. has ensured that we don't allow our personal, mobile communication details to be made public. But there was an era before the internet and mobiles when we had actually allowed the government or any service provider to make our details absolutely public. And there was no question and there was no worry about it. But that's, that is what it is.

When the telecom revolution with mobiles began, the government started saying, well, for the sake of security, we'd like to know who this person is because if you're not making the public information public through a directory, then how do I know who's using what number? What if somebody is using a mobile number to call and abuse somebody else? We have caller ID you know which the number is, but we don't know who the owner and operator of that number is. So, through a process of consultation, the government said everybody needs to submit their identities before getting a telecom subscription for a mobile service. Do you know what happened at that time? All the mobile companies protested. They said, no, how can we do it? There are so many poor people in the world, 1.2 billion people if they get where will they get the identity from and it's going to be a problem.

Let's not do it, but the government persisted and trust me, all of us will agree although those who are listening and the rest of the society we will agree, it has made our life better. Hundreds and 1000s of crimes have been solved. And if nothing else, we know that if somebody bothers us, we can question them and it may not be a perfect system, people still try to find loopholes, etc. But at least there is a system which we can enforce and ensure.

Now, when you have a messaging system like WhatsApp, where there is absolute anonymity, where you cannot find out who's sending, of course between two people, you know, who's sending a message, but if two people are discussing something, which is not good for the society, how do you find out who created it and who started it? You've seen several campaigns and rapidity of the movement of information through such messaging systems which nobody can control.

Now, we as citizens who have voted a certain government to power demand from the government that the government which has the authority to do something about it, curb the spread of false information. I'm not even getting into criminal information. I'm not even getting into information which can incite the society. I'm just talking about misleading information. All that the government is saying today is two things. One, let us know who created it. Okay, sure, maybe you were misled, and you forwarded it without knowing it, we will give you the benefit of doubt. But we'd like to know who created it because the person who created it probably knows that he or she have created something, which is misleading. And I think the government has a right to question that. The second thing that the government is saying is, you should appoint officers for grievance redressal. People who can who are employees of the company, and who can engage with the civil society with the consumers and with the government. Remember the triangle, I talk to you about the relationship between technology companies, government, as well as consumer bodies, you know, some of these companies like WhatsApp and others, and Twitter, as of, as we speak, still were struggling to appoint the kind of officers who were employees of the company to be responsible for some of these issues. So, they might be a fake case against any of these companies, or they could be a genuine case, but either way, the company should have a mechanism to be able to deal with that.

Now, these companies are saying that well, no, we are we are not accountable. We cannot agree with these rules. We don't want to invest in an office in the country. We don't want to spend such activities. Why should we be accountable to laws, which we think are not correct? I don't think the companies have the right to decide that I think the civil society and the government has the right to decide that. Remember that even while they're not accepting the government of India's rules, they have the freedom and they've used the freedom to challenge it in the judiciary, in an open society and an open democracy, they can do it, do you think they could do it in a country like China? No, they're not even allowed in China. China has created a firewall where all the companies based out of America or Europe, which are social media giants or technology giants, do not have access, let alone a voice in the government system. So, I would tend to argue and a lot of people would argue that they are misusing the open systems of India to push through rules which are useful for them, but not for the other two stakeholders, and are hell bent on using their influence and undermining the system, which will ensure that the relationship between technology companies, consumers and government is at an equal level?

#### **Host**

No, I think point well-made and change is always resisted. And we've seen that and it's just hindsight side we are able to understand and like the example you gave on the SIM cards is a proof in itself. Just one last question I'm going to ask you is internationally we have bodies like the Internet Watch Foundation funded by the global tech industry, they verify content, they kind of, they create, the

analysts are creating unique digital fingerprints of each photograph and video which they see online, and they flag whatever they feel is abusive material. So not sure if anything like this is here. And much needed I would say and you know, I think we even have much ground to cover with regards to cybersecurity. So, when India is merely making amendments in IT Laws enough.

### **Pranjal Sharma**

So that's right. Charu, I think we need bodies which can speak for the consumer and the civil society. Unfortunately, what has happened that many of the non-government organizations that we see speaking for the civil society are actually funded by the large companies. A lot of that funding is opaque through more than arm's length distance. So, in the end, you will see that they tend to represent consumers, but they're actually representing the tech companies. And they always push that point of view in the garb of consumer interest. And if you remember the whole debate about net neutrality, where the companies like Facebook were trying to create a gated community where they would decide what is the internet was thwarted. And there was it was a big battle in the public discourse and a legal battle as well. I think we need such bodies. The question is how it can be created. We need people who are completely agnostic of such influences to come together and create it. I'm not aware of too many there may be some, but perhaps they do not have the kind of influence or the profile.

But I am sure that with time we will get it. You know, what gives me strength is the fact that if you look at the food industry and it's a similar parallel comparison, the laws about what is good to eat, what calories are good, whether too much sugar is good or bad and whether a food item should be allowed to be sold in the open market was not decided by the food companies, it is decided by the food regulators of every country. The society and the government come together to say that we think these are the rules about what is good food what is bad food, give the right information and let the consumer decide in, which is exactly what we need as far as the technology companies are concerned as well that the government should set the rules, inform people that this is what is happening, this is what is good, and therefore, ensure that technology companies are not the ones setting the rules for the other two stakeholders, which is a society and the government.