

## What did apple say to the skeleton key, outlook, 21 march 2016

“Public Interest Over Privacy”

Apple’s legal tussle with the FBI has opened a Pandora’s box. Should privacy be protected to the extent that it overrides needs of law enforcement? Should cooperation be extended by technology companies to law enforcement agencies in cybercrime or terrorist attack cases? Should law and public safety or national security be compromised in the name of protecting individual privacy? Should commercial considerations and security concerns surpass law enforcement needs or effective dispensation of justice?

Unless technology firms cooperate with law enforcement agencies and investigative bodies, effective investigation of such crime cases will not be possible. Law, in that case, will remain merely a paper tiger. Electronic evidence is by far the most important evidence in many offline/cybercrime cases; and it is crucial in tracing criminals misusing technology to commit illegal acts that aim to harm a nation.

Considering India is yet to sign a cybercrime convention, efficient cooperation from technology companies whose servers are based abroad is indispensable for enforcement of laws. Such cooperation is expected from all technology companies, including Google, Facebook, WhatsApp and others, whose high-security encryption services may be misused. A similar debate arose in India regarding Blackberry, where law enforcement agencies required the messaging service to disclose certain data and monitor communications or shut down its services. However, fishing expeditions are strongly declined and only in case of reasonable suspicion and prima facie evidence can law agencies request for such data.

“Unless technology companies cooperate with law enforcement agencies, effective investigation of national security cases will not be possible. Law, in that case, will merely remain a paper tiger.”  
Karnika Seth, cyberlaw expert, advisor to govt agencies [karnika\\_seth\\_thumb](#)

In India, the right to privacy is protected by Article 21 of the Constitution. However, this right is not absolute, but remains “subject to procedure established by law”. Section 69 of the Information Technology Act, 2000, empowers the government to issue directions for interception or decryption of any information through any computer resource. However, this power is to be exercised only when it is satisfied that it is necessary in the interests of sovereignty or integrity of India, the defence of India, friendly relations with foreign states, maintenance of public order, and so on.

Section 69(3) puts an obligation on a subscriber or intermediary or any person in charge of the computer resource to extend all facilities and technical assistance to provide access or secure access to the computer resource. By virtue of Section 69(4), the intermediary, or subscriber, or a person who fails to assist the investigation agency, is punishable with imprisonment for a term that may extend to seven years and shall also be liable to pay a fine. Section 69B empowers the central government to monitor and collect traffic data or information through any computer resource for cybersecurity and puts similar obligation on

intermediary to cooperate, failing which punishment for a period up to three years is prescribed. Similarly, there's Rule 3 (7) of the IT (Intermediaries Guidelines) Rules, 2011, that mandates an intermediary to provide all assistance to government agencies in such matters.

Clearly, if this Apple versus FBI battle were to be fought in India, the law of the land would prevail. A person's privacy is certainly not greater than protecting the interests of one's nation or the public interest. Technology companies argue that developing such software for decryption of passcodes will lead to weakening of their security, but surely they cannot blindfold themselves and allow terrorists to misuse its security features too! We did not give up inventing smartphones for fear of its misuse by some. In the same vein, we cannot give up inventing decryption software to protect law of the land, its nation and its people!

Karnika Seth

<http://www.outlookindia.com/magazine/story/what-did-the-apple-say-to-the-skeleton-key/296823>