Why in News

India voted in favour of a cybercrime resolution led by Russia in a committee of the United Nations General Assembly. The resolution seeks to set up new cyber norms considered as counter alternative to the US backed Budapest Accord.

A final General Assembly vote to adopt the resolution will be held in December, 2019.

Budapest Convention

- The Council of Europe’s (CoE) Cybercrime Convention is also known as the Budapest Convention. It was open for signature in 2001 and came into force in 2004.
- The convention is the sole legally binding international multilateral treaty on cybercrime. It coordinates cybercrime investigations between nation-states and criminalizes certain cybercrime conduct.
- It serves as a guideline for any country developing comprehensive national legislation against Cybercrime and as a framework for international cooperation between state parties to this treaty.
  
  The Budapest Convention is supplemented by a Protocol on Xenophobia and Racism committed through computer systems.
- **Significance:** Almost all stakeholders agree that the current form of cross-border data sharing for law enforcement through the Mutual Legal Assistance Treaty (MLAT) is insufficient for the digital age. However, there is an ongoing debate whether to revamp MLAT or form an entirely new system for cybercrimes in the form of this Convention.
- This Convention has eagerly called for Indian participation since its formation in 2001, but India has decided not to be a party to it.

Russia-led Resolution
The Russian proposal entitled “Countering the use of information and communications technologies for criminal purposes” was recently put forth in the United Nations General Assembly (UNGA). This recent UN proposal follows previous Russian initiatives, including the “Draft United Nations Convention on Cooperation in Combating Cybercrime” in 2017 to develop a UN convention on cybercrime.

The Russian proposal calls for creation of a committee that will convene in August 2020 in New York in order to establish a new treaty through which nation-states can coordinate and share data to prevent cybercrime.

- This draft Convention goes far beyond what the Budapest Convention allows for regarding cross-border access to data, including limiting the ability of a signatory to refuse to provide access to requested data.
- This is the reason why several human rights groups criticize the UN proposal as a way to extend a Chinese and Russian form of internet governance, or the so-called “closed Internet” or “state-controlled internet.”

If this resolution will be passed by the UNGA, it will become the second international convention on cybercrime.

Russia and China question the Budapest Convention on the grounds of national sovereignty issues, thereby proposing their own treaty at the UN.

India’s Stand

- India maintained its status as a non-member of the Europe-led Budapest Convention. Although, India voted in favour of a Russian-led UN resolution to set up a separate convention.
- According to the Intelligence Bureau (IB), data sharing with foreign law enforcement agencies infringes on national sovereignty of India.
- India has also previously argued that it will not sign onto the Budapest treaty since it was drafted without its participation.

Data Laws in India
Data protection laws in India are currently facing many problems and resentments due to the absence of a proper legislative framework. The legal framework includes:

- **Information Technology Act, 2000**: IT Act contains provisions (For example, mentioned in section 43A, 72A) regarding cyber and IT-related laws in India.
  - **Section 43A**: Compensation for failure to protect data.
  - **Section 72A**: Any disclosure of information, knowingly and intentionally, without the consent of the person concerned has been made punishable with imprisonment for a term extending to three years.

- However, these provisions neither protect any breach of information on the one hand nor enforce a right-based framework on privacy.
  - Supreme Court in *Justice K. S. Puttaswamy (Retd.) Vs Union of India* (2017) unanimously held that citizens have a constitutionally protected fundamental right to privacy that forms an intrinsic part of life and liberty under Article 21.

- Therefore, in order to establish a strong data protection regime, the government has proposed the **Draft Personal Data Protection Bill, 2018** (based on the recommendation of Justice BN Srikrishna Committee).

**Source: IE**