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International cyber security law developments in 2015

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Pavan Duggal in Cyber Laws in Today's Times | India | ET



The year 2015 saw the strengthening of cyber security thought process by nations. Nations very quickly realized in 2015 that there were no international treaties, arrangements which would prevent breaches of cyber security. The absence of any international binding treaty on cyber security, coupled with the lessons that nations of the world learnt from the Snowden revelations, prompted the nations into taking action. Different nations started doing various permutations and combinations of policy measures, all aimed at protecting and preserving the cyber security of their computer systems and networks.

In 2015, almost every fortnight, there were some major incidents of cyber security breach being reported. Consequently, the year 2015 was also the year when cyber security law jurisprudence began to emerge and became increasingly important.

In this regard, the year 2015 saw two broad trends emerging vis-à-vis national governments. In the first trend, we saw national governments trying to come up with their own national legislations to deal with various aspects pertaining to protection and preservation of cyber security. Different countries quickly went into action and came up with their respective national legislative approaches on the subject. The year 2015 was historic when we saw China building a new way for the world.

China came up with a national law on national security. However, the way and the manner in which the said law was drafted, was extremely wide and comprehensive to include all aspects pertaining to cyber security. When China legislated on making cyber security as an integral component of national security, it actually sent a message and a signal to all other nations that this should be the more preferred national legislative approach, given the lack of international arrangements on cyber security.

There are other nations like Germany, who decided in 2015 to target cyber security by focusing on low hanging fruits. The German approach instead focused on protection and preservation of critical information infrastructure. The German law on cyber security aimed at elaborating the various obligations, duties, rights of various stakeholders, dealing, handling or processing information on critical information infrastructure. We also saw other nations coming up with other national approaches on cyber security. Increasingly, 2015 saw the beginning of a trend with the nations to start looking in the direction of mandating the reporting of cyber security breaches. One of the biggest problems in recent times is that the legal entities do not report cyber security breaches with the result that non-reporting of cyber security breaches tends to not give a correct picture of the actual ground realities in terms of cyber security breaches.

The second major approach that countries across the world started adopting was that in the absence of international arrangements and agreements on cyber security, there was nothing stopping countries from entering into bilateral arrangements for the purposes of protection and preservation of cyber security. Consequently, the year 2015 saw dramatic and important bilateral arrangements entered into between important countries. China and Russia led the way earlier the year by coming up with an agreement that none of them will hack into each other's computer systems and websites or networks.

The most significant bilateral agreement pertaining to cyber security related to the agreement between the United States of America and China. In this historic mother agreement, both the countries agreed that they will not assist any actions or activities that are aimed at targeting the computer systems and networks of the respective other country. It also came up with a mechanism for close cooperation and sharing of information between two nations in respect of cyber security breaches and further sought to put an institutionalized mechanism concerning the same. Of particular relevance was also the fact that information of national interest or national security information was deliberately kept outside the ambit of the said international cooperation agreement.

We also saw other countries like India, UK and others entering into bilateral arrangements. There were bilateral agreements

between India-UK, India-Malaysia, UK-China and many more. The purpose of these bilateral arrangements was that in the absence of international sharing of information pertaining to breaches of cyber security, bilateral arrangements should be a step forward.

No doubt, the said bilateral arrangements are indeed a great step in the right direction. However, there are intrinsic and inherent deficiencies of bilateral arrangements in as much as in a majority of the said bilateral arrangements, national interest information or national security information is being kept out of the ambit and scope of cooperation amongst countries. Further, it needs to be intrinsically understood that cyber security is a global phenomenon and a global challenge and hence, the said global challenge cannot be met by national or bilateral approaches, but by international unified approaches and perspectives.

The year 2015 was also significant because it saw the International Conference on Cyberlaw, Cybercrime & Cybersecurity taking place on 19th November, 2015 at New Delhi. The Conference deliberations in the context of emerging cyber security breaches pushed the further development of cyber security law jurisprudence. One of the key outcomes was the recommendation that the conference will need to work and contribute towards evolving cyber security law jurisprudence by coming up with common nominators and principles which are accepted by nations concerning protection and preservation of cyber security. The International Commission on Cyber Security Law is seeking to address the issue on how the legal frameworks on cyber security law can be evolved.

The year 2015 will always be remembered as the historic year, which woke up the entire world to the significance of cyber security and to the importance of huge volumes of losses caused by cyber security breaches. The year 2015 has only further reiterated the thinking that stakeholders in the digital and mobile ecosystems, at an international level, have to quickly come up with effective and efficient mechanisms, technical, regulatory, legal, policy or otherwise, to deal with the emerging challenges of cyber security.

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