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India

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This article surveys significant legal developments in India during 2017.**

I. Goods and Services Tax: A Game-Changer For The Indian Economy

India launched its Goods and Services Tax ("GST") regime; perhaps the most significant tax reform in the country since independence, effective July 1, 2017.[1] In contrast to the complex, multi-layered, indirect tax system it replaced, GST is expected to create a comprehensive method of taxation that is simple and uniform.

GST has sparked debate and prognostication from experts, quickly becoming a key term in India's trade and commerce lexicon. The tax structure that the country previously imposed featured a multiplicity of taxes, tax rates, tax periods, threshold limits, and a vast set of endlessly diverse and exponentially multiplying provisions. The much-awaited GST is seen as a major step towards easing tax compliance for businesses in India.

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The idea of introducing GST in India was first mooted in 2006.[2] The objective was to create market efficiency through the creation of a single national market, reducing the effect of cascading taxes without breaking the chain of input credit available.[3] This objective required eliminating the piecemeal application of a large number of central and state tax laws. Since then, the concept of an Indian GST has undergone numerous changes and overcome immense hurdles, including the need to amend several provisions of the Constitution of India. With the persistence and dedication of the government of India, GST has been successfully implemented, reconciling differences between States and transcending political boundaries to create a "one nation, one tax" structure.[4]

It is expected that GST will be a game-changer for the Indian economy, acting as a catalyst for growth and employment generation in the years to come. GST's elimination of differential tax treatment for goods and services has already resulted in greater certainty and ended the multitude of tax disputes that have long plagued Indian businesses. GST is also expected to substantially widen the tax base[5], bringing a substantial portion of the unorganized sector into the fold of the formal economy and helping the Indian government reduce unaccounted income. A larger tax base is helping the government lower the tax burden on essential commodities, giving significant respite to citizens.[6]

The new regime takes the form of "Dual GST," comprising a "Central GST" as well as "State GST."[7] These taxes are levied simultaneously and are administered by the Central and State governments, respectively.[8] Tax is levied only upon the value addition at each stage where goods are supplied or services rendered.[9] In the case of inter-state transactions (including imports), "Integrated GST" operates, and a structured system that has been

2. Central Goods and Services Tax Act, No. 12, Act of Parliament, 2017 (India).

3. *See generally* P. Chidambaram, Minister of Finance, Budget 2006–07 (Feb. 28, 2006) (idea of a unified goods and services tax first proposed in the Union Budget 2006–07.

4. *See id.*

5. *See* Shireesh Sahai, *Top 5 Challenges Faced by Tax & Accounting Professionals Due to GST*, THE ECONOMIC TIMES (July 4, 2017, 11:39 AM), http://economictimes.indiatimes.com/small-biz/policy-trends/top-5-challenges-faced-by-tax-accounting-professionals-due-to-gst/articleshow/59436292.cms.

6. PTI, *GST to help lower overall tax burden over time: Patel*, THE HINDU (June 22, 2017), http://www.thehindu.com/business/Economy/gst-to-help-lower-overall-tax-burden-over-time-patel/article19127104.ece.

7. *See id.*

8. *See, e.g.*, Central Goods and Services Tax Act, *supra* note 1; *see also* Integrated Goods and Services Tax Act, No. 13, Act of Parliament, 2017 (India); Union Territory Goods and Services Tax Act, No. 14, Act of Parliament, 2017 (India); Goods and Services "Compensation to States" Act, No. 15, Act of Parliament, 2017 (India) (Additionally, each state has passed its own act governing State GST).

9. *Rakesh Nangia & Rajat Mohan, India: GST Impact And The States*, MONDAQ (Oct. 10, 2016), http://www.mondaq.com/india/x/533716 sales™axes+VAT+GST/GST+Impact+And+The+States.

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integrated into the GST framework through an IT network matches transactions and applies credits, automatically providing tax set-offs.[10]

While the GST is expected to have positive long-term consequences, the transition to the new regime has not been easy. Introductory issues have arisen on several fronts. These include, *inter alia*, technical issues with the GST Network, problems stemming from the lack of awareness among businesses on GST compliance, constitutional challenges to various GST provisions, and uncertainty stemming from constant amendments to tax rates.[11] The government of India and the State governments are closely monitoring these challenges and taking swift remedial actions to ensure that GST is implemented with minimal business disruptions.

The early days of GST in India have been a roller coaster ride, but the country has implemented a significant tax reform that should help businesses operating in India for generations to come. With strong resolve and commitment from the government to smooth out the initial problems, implementation should only get better. The next 100 days lead up to Budget 2018, which provides an opportunity to resolve a number of concerns.[12]

II. Key Developments in Indian Arbitration Law

The [Indian] Arbitration and Conciliation Act 1996 (the Act) was substantially amended in 2015, and case law interpreting old and new provisions of the Act dominated the 2017 arbitration landscape.[13] A few significant developments are summarized in this update.

In *Chittaranjan Maity v. Union of India (UOI)*,[14] the Indian Supreme Court held that the High Court was not justified in considering the arbitrability of a dispute for the first time when the issue had not been raised in preceding forums. Additionally, the Court ruled that contract provisions barring payment of interest would trump the Act and prevent a party from earning interest on an award.[15]

In another case that addressed arbitrator conflict of interest issues, the Supreme Court held that appointing an employee of a party as an arbitrator would not render the appointment invalid where there was "no justifiable apprehension" that the employee could not be independent and impartial.[16] Further, where a party failed to comply with the procedure for challenging

10. *See id.*

11. *See* Integrated Goods and Services Tax Act, No. 13.

12. *See* Shireesh, *supra* note 4.

13. *Key Highlights from Budget 2018: Bold on vision, short on outlays and focused on polls*, ECONOMIC TIMES, https://economictimes.indiatimes.com/news/economy/policy/key-highlights-from-budget-2018-ease-of-living-is-new-catch-phrase/articleshow/62735935.cms (last visited Apr. 13, 2018).

14. Law Commission of India, Report No. 246: Amendments to the Arbitration and Conciliation Act 1996, Aug. 2014.

15. *Chittaranjan Maity v. Union of India*, (2017) 1 SCC 10 (India).

16. *Id.* at 13.

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the arbitrator and participated in the arbitration, the High Court erred in exercising jurisdiction over the dispute.[17]

Another 2017 case examined the impact of the arbitration seat and governing law on the jurisdiction of Indian courts to hear disputes.[18] In this case, the Supreme Court held that where parties have not expressly chosen the law governing the contract or arbitration agreement, the law of the country where the arbitration is held has primacy.[19] Thus, where parties agreed to arbitration before the ICC, the arbitration was held in London applying English law, and the award was made there, a Section 34 petition was not maintainable before a court in India.[20]

In *Srei Infrastructure Finance Limited v. Tuff Drilling Private Limited*,[21] the Supreme Court held that even after an Arbitral Tribunal passed an order terminating the arbitration, it did not become "functus officio." Pursuant to Section 25 of the Act, if sufficient cause was shown, the Tribunal had jurisdiction to re-open the arbitration and to accept a delayed statement of claim.[22]

In *Duro Felguera S.A. v. Gangavaram Port Limited*,[23] the Supreme Court held that a composite reference to arbitration of six interrelated agreements required six separate Arbitral Tribunals—four domestic arbitrations between the Indian entities and two international arbitrations involving the Spanish entity—although the arbitrators could be the same.

Finally, a notable 2017 High Court decision held that when an arbitrator merely gives a legal opinion to a party in an unrelated matter, it would not amount to that arbitrator being an "advisor" or "regularly advising" the party pursuant to category Nos. 1 or 8 of the Seventh Schedule of the Act.[24]

III. Privacy: A Fundamental Right In India*

On August 24, 2017, India's Supreme Court declared that privacy is a fundamental right under the Constitution.[25]

The decision resolved a controversy as to whether privacy is a fundamental right or merely a statutory and common law right.[26] Certain Supreme Court decisions treated privacy as an element of fundamental

17. *Aravali Power Company Pvt. Ltd. v. Era Infra Engineering Ltd.*, (2017) 1 SCC 16 (India).
18. *Id.* at 10–11.
19. *See IMAX Corporation v. E-City Entertainment (I) Pvt. Ltd.*, (2017) 1 SCC 2 (India).
20. *Id.* at 6.
21. *Id.* at 4.
22. *Srei Infrastructure Finance Ltd. v. Tuff Drilling Private Ltd.*, (2017) 1 SCC 4 (India).
23. *Id.* at 8.
24. *Duro Felguera S.A. v. Gangavaram Port Ltd.*, (2017) 1 SCC 29–30 (India).
25. *H.R.D. Corp. (Marcus Oil & Chemical Division) v. Gail (India) Ltd., (2017) 1 SCC 29 (India).*

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rights, particularly the right to personal liberty and life, and to freedom.[27] At the same time, decades-old decisions of two, larger benches had denied privacy the status of a fundamental right.[28]

The controversy came to a head in 2012. Puttaswamy, a retired appellate judge, moved the Supreme Court against Aadhaar, the world's largest initiative for issuing unique IDs to individuals.[29] Since 2009, the federal government had allocated about $750 million to Aadhaar and collected biometric and demographic information of hundreds of millions of individuals solely on the basis of an executive order.[30] In 2012 it earmarked another $350 million, even after a Parliamentary committee rejected a bill that would have provided legislative underpinnings.[31] Puttaswamy argued that requiring people to part with biometric information was an invasion of the fundamental right of privacy.[32]

A nine-judge Constitutional bench examined the question.[33] The Court's *per curium* decision rejected the government's contention that privacy was an elitist construct, secondary to the goal of targeted delivery of welfare benefits.[34] It noted, "[t]he theory that civil and political rights are subservient to socio-economic rights has been urged in the past and. . . categorically rejected. . . by this Court."[35] "Every individual in society irrespective of social class or economic status is entitled to the intimacy and autonomy" and dignity.[36] Privacy, it noted, was an element of freedom, and development consisted of "expansion of people's freedom."[37]

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27. *Puttaswamy v. Union of India ("Puttaswamy")*, (2017) 1 SCC 43 (India).

28. *Id.* at 178–179; *see also* Telegraphs Act, Section 5, Act of Parliament, 1885 (India); Indian Post Office Act, Section 26, Act of Parliament, 1898 (India); Right to Information Act, Section 8(1)(j), Act of Parliament, 2005 (India).

29. *See Gobind v. State of Madhya Pradesh*, (1975) 2 SCC 148 (India); *Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632 (India); *People's Union of Civil Liberties v. Union of India*, (1997) 1 SCC 301 (India).

30. *See M.P. Sharma v. Satish Chandra*, (1954) 1 SCR 1077 (India); *see also Kharak Singh v. State of U.P.*, (1962) 1 SCR 332 (India).

31. *See* Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, Gazette of India, pt. II sec. 1 (Mar. 26, 2016) (Hindi for foundation, is the federal government's campaign to issue each resident a unique, 12-digit, biometrically verifiable ID to help it and state governments more efficiently provide targeted welfare benefits).

32. *See id.*; *See also Government of India Planning Commission*, UIDAI Notification No. A-3011/02/2009 (Jan. 28, 2009), *available at* https://uidai.gov.in/images/notification_28_jan_2009.pdf.

33. *See, e.g.*, *Unique Identification Authority of* India, (Feb. 28, 2018), https://uidai.gov.in/about-uidai/about-uidai/financials.html; *see also* Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, No. 18, Act of Parliament, 2016 (India), *available at* https://uidai.gov.in/images/targeted_delivery_of_financial_and_other_subsidies_benefits_and_services_13072016.pdf.

34. *See generally*, *Puttaswamy v. Union of India ("Puttaswamy")*, (2017) 1 SCC 43 (India) (Puttaswamy also argued that by acting without legislative mandate and in apparent contempt of Parliament, the executive had exceeded its competence. The issue of executive's competence has yet to be deliberated by the Court).

35. *See id.*

36. *Id.*

37. *Id.* at para. 97.

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It also rejected the argument that because privacy is a common law and statutory right, it need not be read as a constitutional right. The Court noted that a statutory right, unlike a fundamental right, could be modified, curtailed, or annulled by a simple enactment, and it was declaring privacy a fundamental right "precisely to provide it a sense of immunity from popular opinion."[38]

Henceforth, all laws and executive actions implicating privacy must meet the heightened standards of judicial review applicable to infringements of fundamental rights, and shall be open to challenge by direct motions to the state High Courts and the Supreme Court. The decision will likely compel the government to promptly bring in a data protection regime and will affect the outcome of pending cases.

IV. Peer-to-Peer Lending (P2P) and Regulatory Developments in India - An Outline

Indian regulators, including the Reserve Bank of India (RBI), Insurance Regulatory and Development Authority of India (IRDAI), and the Securities and Exchange Board of India (SEBI), are endeavoring to reduce regulatory uncertainty in the field of Financial Technology (FinTech). Developments in the context of Peer-to-Peer Lending (P2P) is a critical part of the FinTech industry that falls within the purview of the RBI.

A. Status Summary until 2017

The RBI issued its Consultation Paper on P2P[39] in 2016. In it, the RBI set forth the need for regulatory oversight and announced that P2P lending platforms would be treated as Non-Banking Financial Companies (NBFCs). A detailed framework for implementation was created by October 2017. In November 2017 an evolved version of that framework was released that addressed outsourced P2P activity under the new regulations.[40]

B. Making and Reading of Framework 2017

1. *Inception*

In early October 2017, RBI issued the NBFC – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017 (Directions)[41] for the registration and operation of all NBFC-P2Ps, to be effective immediately.

38. *Id.* at para. 157.

39. *Id.* at para. 156. (Reviewing economics literature, the Court observed, for instance, that countries with more freedom have had historically fewer incidents of famine).

40. Id. at para. 143.

41. *See Consultation Paper on Peer to Peer Lending*, RBI, *available at* https://rbidocs.rbi.org.in/rdocs/Content/PDFs/CPERR280420162D5F13C3A2204F4FB6A2BEA7363D0031.PDF.

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2. *Revision*

The comprehensive Directions, *inter alia*, provided definitions, eligibility criteria, registration requirements, operations guidelines, prudential norms, accountability measures, data protection mandates and interpretation cues. A second iteration a month later provided mandates for outsourced P2P activity.[42]

3. *Interpretation*

The Directions are to be read and interpreted according to the provided definitions and per the Companies Act, 2013 (considered annexed)[43] along with other applicable guidelines on incidental aspects such as information technology, outsourcing, and credit cards.[44] When further clarification is required, the RBI has the discretion to make the final determination.[45]

C. Basic Provisions of the Directions, 2017

1. *Broad Mandates*

It is mandated that only non-banking companies, and only those incorporated in India, may conduct P2P business, excluding all other non-banking entities; that registration is required to both commence and carry on such business; and that every NBFC-P2P, whether existing or prospective, must conform to the Directions, employ strong data protection paraphernalia and practices, and process and store data solely within India.[46]

2. *Capabilities Required*

Each NBFC-P2P must have sufficient technological, entrepreneurial, and managerial resources; adequate capital structure; fit and proper promoters and directors; a robust character that is not prejudicial to the public interest; a secured Information Technology system; and a viable business plan.[47]

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42. *See Directions on Managing Risks and Code of Conduct in Outsourcing of Financial Services by NBFCs* RBI Notification No. 2017-18/87 (09/11/2017), *available at* https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11160&Mode=0.

43. *See Master Directions Non-Banking Financial Company: Peer to Peer Lending Platform* RBI Notification No. 2017-18/57 (04/10/2017), *available at* https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11137&Mode=0 (last updated on Nov. 9, 2017).

44. *See Climate change: India begins work on meeting its obligations under the Paris Agreement*, The Scroll (July 13, 2017), https://scroll.in/article/843416/climate-change-india-begins-work-on-meeting-its-obligations-under-the-paris-agreement.

45. *See id.* at 23.

46. *See generally Master Direction: Information Technology Framework for the NBFC Sector*, RBI Notification No. 2016-17/53 (08/06/2017), *available at* https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MD53E0706201769D6B56245D7457395560CFE72517E0C.PDF; *See also Credit Card Operations of banks*, RBI Circular No. 2005-06/211 (21/11/2005), *available at* https://rbidocs.rbi.org.in/rdocs/notification/PDFs/67415.PDF.

47. *Id.*

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3. *Threshold Mentioned*

Each NBFC-P2P must possess a Net Owned Fund of not less than rupees twenty million or such higher amount as the RBI may specify.[48]

4. *Timelines Stipulated*

Already-existing NBFCs are mandated to register within three months from the issuance of the Directions.[49] For prospective NBFCs, full functionality, documentation and compliance must be achieved within twelve months once the entity's in-principle approval is granted.[50]

5. *Relaxation Given*

NBFCs that are already carrying P2P business can continue to operate while their registration application is perused.[51]

6. *Sanctions Postulated*

Certificates of registration may be cancelled for non-conformity, deviation, and even diluted eligibility.[52]

Each NBFC-P2P shall act, *inter alia*, only as an intermediary providing an online marketplace or platform to the participants; shall not be involved in raising deposits; and shall not cross-sell except for loan-specific insurance products.[53]

D. Upcoming Possibilities

The FinTech ecosystem is highly dynamic, the Directions are untested and have already been expanded in the outsourcing context, and crucial terms like "peer" are not defined. The framework can be expected to evolve further.

The Directions provide for data protection mandates, yet the data protection and consumer protection laws in India are expected to be revised in the near future. The Directions may be amended to comply with those revisions.

Since the RBI itself is the designated authority to make a binding decision whenever there is doubt as to interpretation, outside regulatory oversight may be demanded in the future.

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48. *Master Directions Non-Banking Financial Company: Peer to Peer Lending Platform*, *supra* note 41, at 2.
49. *Id.* at 2–3.
50. *Id.*
51. *Id.* at 3.
52. *Id.*
53. *Id.*

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V. Paradise Papers: Another Insight Into The World Of Tax Havens

On November 5, 2017, two days before the government of India observed "Anti-Black Money Day" to mark the first anniversary of demonetization, the largest ever leak of financial data, dubbed the "Paradise Papers," appeared.[54] The documents originate from the law firm Appleby and business registries in nineteen tax jurisdictions that are referred to as "tax paradises."[55] Records were obtained by the German newspaper Süddeutsche Zeitung and shared with the International Consortium of Investigative Journalists (ICIJ).[56]

Nearly seven million records from Appleby, a noted multi-jurisdictional law firm, and its affiliates were made public.[57] These documents from 1950 to 2016 included emails, billion-dollar loan agreements, and bank statements. They involved at least 25,000 entities connected to people in 180 countries.[58]

A. Tax Havens - Promise of Secrecy

Tax havens attract their global clientele not only with little or no tax, but also secrecy and the ability to escape national laws and regulations.[59] Tax havens are masters of opacity, with strict laws in place that forbid any form of disclosure or investigation.[60]

B. How the Paradise Papers are Different from Past Leaks

Like the three major global financial leaks in the past, the Paradise Papers reveal the tracks of veiled offshore financial activities. Unlike the previous leaks, the latest revelations are less about individual players and more about mega-corporations taking advantage of and, in many cases, misusing offshore jurisdictions.[61]

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54. *Master Directions Non-Banking Financial Company: Peer to Peer Lending Platform*, *supra* note 41, at 2.

55. *Id.* at 4.

56. *See Offshore Trove Exposes Trump-Russia Links And Piggy Banks Of The Wealthiest 1 Percent*, ICIJ Investigations (Nov. 5, 2017), https://www.icij.org/investigations/paradise-papers/paradise-papers-exposes-donald-trump-russia-links-and-piggy-banks-of-the-wealthiest-1-percent/.

57. *Id.*

58. *See id.*

59. *Id.*

60. *Id.*

61. *Offshore Trove Exposes Trump-Russia Links And Piggy Banks Of The Wealthiest 1 Percent*, ICIJ Investigations (Nov. 5, 2017), https://www.icij.org/investigations/paradise-papers/paradise-papers-exposes-donald-trump-russia-links-and-piggy-banks-of-the-wealthiest-1-percent/.

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C. Offshore Footprints of India's Major Players

India was figured prominently in the exposed papers.[62] The papers reveal offshore footprints of some of India's major corporate players as well as a few high net worth individuals.[63] Appleby itself red-flagged round-tripping on occasion by questioning if offshore funds meant for investing in India were sourced from India.[64] In some instances, assets of Indian companies were used to guarantee loans raised by offshore companies without disclosure to Indian regulators.[65] In other instances, ownership of offshore companies was changed to actually change the ownership of shares held by them in Indian companies without paying taxes in India.[66]

Among the 180 countries represented in the data, India ranks nineteenth in terms of the number of names.

D. Tax Avoidance – A Global Issue

Recently, global corporations such as Google, Amazon, and Starbucks have faced strong regulatory intervention for allegedly manipulating legal loopholes to evade taxes.[67] Former U.S. President Barack Obama called for international tax reform to curb the "huge problem" of global tax avoidance and to make sure "everyone pays their fair share."[68] Similarly, India's Finance Minister has on several occasions cited the need for fair tax administration and an expansion of the tax base.

E. India's Progress So Far

Action against black money is an ongoing process that includes policy-level initiatives, effective enforcement action, robust legislative and administrative frameworks, and more. Recent major steps include the creation of the Special Investigation Team on Black Money; enactment of the Black Money Act; creation of the Multi-Agency Group comprising officers of the Central Board of Direct Taxes and the Reserve Bank of India to investigate the Panama financial leaks of May 2016; proactive engagement with foreign governments to facilitate and enhance the exchange of information; re-negotiation of the existing tax treaty to introduce an article

62. *Id.*

63. *See id.*

64. *See Why Paradise Papers Matter: They Lift the Veil for Regulators to Peek In*, The Indian Express (Nov. 6, 2017), http://indianexpress.com/article/explained/paradise-papers-explaind-indian-in-the-list-black-money-4924083/.

65. *Id.*

66. *Id.*

67. *Id.*

68. Id.

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on the exchange and execution of new tax treaties; and enactment of the Benami Transactions (Prohibition) Amendment Act, 2016.[69]

The Paradise Papers, like similar earlier leaks, give ordinary people a glimpse into the parallel world constructed by the wealthy and powerful. Yet these exposures continue a narrative that cloaks the nature and scope of what is really happening. Though the Indian government has taken a strict stance in its fight against tax evaders, these papers should act as a wake-up call to deal with industrial-scale tax dodging. Stronger regulation of intermediaries is needed, including penalties for those proven to be complicit in tax evasion, aggressive tax avoidance, or money laundering.

VI. Immigration Trends In India

With tremendous growth in the economy and positive developments in society, India has become an attractive destination for foreign workers and multi-national corporations. These immigration trends have necessitated the establishment of systems that effectively manage the flow of Indian immigration with the use of technology.

Indian Missions such as the Indian embassies and consulates in the United Kingdom and South Africa have biometric enrollment facilities and have made basic enrollment, consisting of fingerprints and facial image scans, mandatory when visa applications are submitted.[70] Other Missions are expected to eventually follow suit.

The Intern Visa was introduced in March 2017 for foreign nationals who desire to pursue an internship with a company, Non-Governmental Organization (NGO), or an educational institution in India for a period of one year or the duration of the internship, whichever is less, and will be granted only pursuant to the completion of graduation or post-graduation.[71] Thus, this visa is not granted for mid-career or intra-company internships.

With the intention to promote ease in travel to foreign film makers and production houses to India, the government recently introduced the "Film Visa" category, which is granted for a maximum period of one year with

69. *See, e.g.*, *MPs attack Amazon, Google and Starbucks over tax avoidance*, THE GUARDIAN (Dec. 3, 2012), https://www.theguardian.com/business/2012/dec/03/amazon-google-starbucks-tax-avoidance.

70. *See* Neate, Rupert & Smith, David, *Obama Calls for International Tax Reform Amid Panama Papers Revelations*, THE GUARDIAN (Apr. 5, 2016), https://www.theguardian.com/news/2016/apr/05/justice-department-panama-papers-mossack-fonseca-us-investigation.

71. *See Measures taken by Government to Control and Curb Parallel Economy and Unaccounted Transactions*, BUSINESS STANDARD, http://www.business-standard.com/article/news-cm/measures-taken-by-government-to-control-and-curb-parallel-economy-and-unaccounted-transactions-117122000928_1.html (last updated Dec. 20, 2017).

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multiple entries.[72] This visa enables foreign nationals to shoot films, TV shows, commercials, and the like in India.[73]

India also provides Medical Visas to foreign nationals who seek medical treatment in hospitals and other medical institutions in India.[74] Requests for Medical Visas for urgent medical cases are expeditiously processed, with visas in some cases issued the same day. As of May 2017, Pakistani citizens are required to obtain a letter from the Advisor to the Pakistani Prime Minister on Foreign Affairs to obtain a Medical Visa.[75] The Indian government has not imposed any restrictions on Medical Visas for nationals from other countries.

India has also introduced Electronic Visas (e-Visas) for foreign nationals who wish to visit India for a short duration for purposes such as recreation, sightseeing, casual visits to friends or family, short duration medical treatment, casual business visits, or to attend a short-term yoga program.[76] E-Visas are provided under one of the following three categories: e-Tourist Visa, e-Business Visa, and e-Medical Visa.[77] The government has extended the availability of the e-Visa category to citizens of 161 countries for entry through twenty-four airports and three ports, subject to additions.[78] Recently, the application window for e-Visas increased from thirty days to 120 days and the duration of stay on the e-Visa increased from thirty days to sixty days, with double entry available on e-Tourist and e-Business Visas, and triple entry available on the e-Medical Visa.[79]

The Indian government has been taking affirmative steps to harmonize its policies and practices with global standards. The government has been employing new technology to track the enforcement of its regulations. The introduction of varied categories of visas is expected to substantially increase the arrival of foreigners to India, which would lead to a consequential boost in the tourism, medical and business sectors, and would contribute to the growth of the Indian economy.

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72. *See Biometrics*, VFS GLOBAL, http://www.vfsglobal.com/india/southafrica/biometrics.html (last accessed Mar. 27, 2018); *see also General Visa Information*, HIGH COMMISSION OF INDIA, https://www.hcilondon.in/pages.php?id=8221 (last updated Dec. 6, 2017).

73. *See Intern Visa: How to Apply*, COX & KINGS GLOBAL SERVICES, *available at* http://mha1.nic.in/pdfs/InternVisaDetails_20042017.pdf (last accessed Mar. 28, 2018); *see also* https://www.in.ckgs.us/visa/intern-visa (last visited Mar. 28, 2018).

74. Shooting of Feature Films, Reality TV Shows, Commercial TV Serials, by Foreign Film Makers in India, *available at* http://mib.gov.in/sites/default/files/Film_In_India_-_Step-by-Step_Guide.pdf (last visited Mar. 28, 2018).

75. *Id.*

76. *See Medical Visa*, COX & KINGS GLOBAL SERVICES, *available at* https://www.in.ckgs.us/howtoapply/medicalvisa.pdf (last accessed Mar. 28, 2018).

77. *See Medical Visa/Medical Attendant Visa*, HIGH COMMISSION OF INDIA, https://www.india.org.pk/pages.php?id=127 (last updated Nov. 30, 2017).

78. *See* Ministry of Home Affairs, Government of India, *e-Visa*, https://indianvisaonline.gov.in/evisa/tvoa.html (last accessed Mar. 18, 2018).

79. *Id.*

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VII. Climate Change and Energy Update

India reiterated its support for the Paris Agreement in spite of U.S. withdrawal. In a joint conference with German Chancellor Angela Merkel in May 2017, Prime Minister Modi said that it would be a "crime" to spoil the environment for future generations.[80] Building on this sentiment, in 2017 India made advances in the clean energy and climate field that will help place it on a low carbon trajectory.[81]

A. INTERNATIONAL

To help meet its commitments under the Paris Agreement, India is developing a climate blueprint and has instituted an implementation committee and six thematic sub-committees that involve key ministries and departments.[82] India has also commissioned three think tanks, The Energy Research Institute, the Observer Research Foundation, and the Center for Study of Science, Technology and Policy, to develop long-term low carbon growth trajectories for India.[83] Their studies are expected to project economic growth and concomitant greenhouse gas emissions for the period 2030–2045.[84]

1. *India-Africa Partnership within the International Solar Alliance*

In May 2017, Power Minister Piyush Goyal launched the India-Africa partnership in the International Solar Alliance (ISA), an alliance announced at the Paris Climate Meeting in 2015.[85] The partnership (within ISA) aims to share best practices, research and development, and cutting-edge technologies in renewable energy with African countries.[86] The Indian government has allocated $2 billion for solar projects in Africa out of India's

80. *Id.*

81. *See* Ministry of Home Affairs, Government of India, *Press Release* (Mar. 31, 2017), http://pib.nic.in/newsite/PrintRelease.aspx?relid=160350.

82. *See Modi in Germany: Spoiling Environment for Posterity is Crime*, LIVE MINT (May 30, 2017), http://www.livemint.com/Politics/g20NTZUkySGOWPuVWUiMiL/Modi-in-Germany-Spoiling-environment-for-posterity-is-crime.html; *see generally As U.S. Backs Away from Climate pledges, India and China Step Up*, THE WASHINGTON POST (June 1, 2017), https://www.washingtonpost.com/world/asia_pacific/as-us-backs-away-from-climate-pledges-india-and-china-step-up/2017/06/01/59ccb494-16e4-4d47-a881-c5bd0922c3db_story.html?utm_term=.3e2c1e40f406.

83. *As U.S. Backs Away from Climate pledges, India and China Step Up*, *supra* note 80.

84. *See India Working on Blueprint to Implement Climate Change Norms*, THE HINDU, http://www.thehindu.com/sci-tech/energy-and-environment/india-working-on-blueprint-to-implement-climate-change-norms/article19594034.ece (last updated Aug. 31, 2017).

85. *See Climate change: India begins work on meeting its obligations under the Paris Agreement*, THE SCROLL (July 13, 2017), https://scroll.in/article/843416/climate-change-india-begins-work-on-meeting-its-obligations-under-the-paris-agreement.

86. *Id.*

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$10 billion concessional line of credit (LOC) for Africa.[87] This LOC will be extended only to those African countries that have ratified the ISA's Framework Agreement.[88]

B. DOMESTIC

1. *National Missions*

In May 2017, India announced the launch of a National Mission on advanced ultra-supercritical technologies for cleaner coal utilization and a National Mission on methanol and di-methyl ether.[89] National Missions were first announced as part of India's National Action Plan on Climate Change[90], which consists of multi-pronged, long-term, and integrated strategies for achieving the key goals of the Plan. After establishing the first eight National Missions, the Indian government has announced several additional Missions to implement its energy and climate policies. The National Mission on advanced ultra-supercritical technologies for cleaner coal utilization will have a total cost of $238 million.[91]

2. *National Energy Policy*

India released its draft National Energy Policy (NEP) in June 2017.[92] The NEP is an omnibus policy, building on the Integrated Energy Policy of 2006 and helping achieve the goal of energy security through coordination between several different Ministries that govern energy issues.[93] It has four key objectives: Access at Affordable prices, Improved Security and Independence, Greater Sustainability, and Economic Growth.[94] The draft Policy lays out two scenarios up to 2040, a business-as-usual scenario and an "ambitious" scenario.[95] It states that 100 percent rural electrification by 2022 is the main plank of the overall energy strategy and enumerates the role for distributed renewables as it moves towards this goal by 2022.[96] Other highlights of the policy are the establishment of an Energy Access

87. *See India & Africa Partnership in International Solar Alliance Launched by Mr Piyush Goyal*, CONFEDERATION OF INDIAN INDUSTRY (May 24, 2017), http://www.cii.in/PressreleasesDetail.aspx?enc=5TVjvkdyP3WVaOWSkqX2gZ/5QJgZIKEXfjEpYt0nuxo=.

88. *Id.*

89. *Id.*

90. *Id.*

91. Government of India, Prime Minister's Council on Climate Change, National Action Plan on Climate Change (2008) *available at* http://www.moef.nic.in/sites/default/files/ Pg01-52_2.pdf, accessed on Jan. 19, 2017.

92. *See* Ministry of Science & Technology, Government of India, *Press Release* (June 8, 2017), http://pib.nic.in/newsite/PrintRelease.aspx?relid=165512.

93. *Id.*

94. *See Draft National Energy Policy* (2017), NITI AAYOG, *available at* http://niti.gov.in/writereaddata/files/new_initiatives/NEP-ID_27.06.2017.pdf (last updated June 27, 2017).

95. *Id.*

96. *Id.* at 4.

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Fund, focus on the access to clean cooking, and the use of micro-grids in remote areas and as a backup solution where the grid is present.[97]

3. *Energy Conservation Building Code 2017*

Launched in March, the Energy Conservation Building Code 2017[98] (ECBC) was developed by the Ministry of Power and Bureau of Energy Efficiency (BEE) and is currently in the "voluntary phase of implementation." To be ECBC-compliant, buildings will need to demonstrate minimum energy savings of 25 percent.[99] The code aims to optimize energy savings with the comfort levels for occupants, and prefers life-cycle cost effectiveness to achieve energy neutrality in commercial buildings.[100]

4. *Pradhan Mantri Sahaj Bijli Har Ghar Yojana–"Saubhagya"*

Launched by Prime Minister Modi, Saubhagya aims to achieve universal household electrification by last mile connectivity and electricity connections to all remaining non-electrified households "in rural as well as urban areas" of the country.[101] The States and Union Territories are required to meet the goal of household electrification by December 2018.[102]

5. *Electric Vehicles*

India is developing a road map that will ensure that only electric vehicles are sold and produced in the country by 2030.[103]

VIII. World Court Grants India's Petition For Stay Of Execution

On May 18, 2017, the International Court of Justice (ICJ) granted India's request to stay temporarily Pakistan's execution of Kulbhushan Sudhir Jadhav.[104] The provisional order is part of a larger complaint in which India alleges that Jadhav, an Indian national and former Indian naval officer, was

97. *Id.* at 11.
98. *Id.* at 17.
99. *See Draft National Energy Policy* (2017), NITI Aayog, *available at* http://niti.gov.in/writereaddata/files/new_initiatives/NEP-ID_27.06.2017.pdf (last updated June 27, 2017).
100. Ministry of Power, Government of India, *Annual Report 2016–17*, *available at* https://beeindia.gov.in/sites/default/files/BEE_Annual%20Report_2016-17____.pdf.
101. *See* Ministry of Power, Government of India, *Press Release* (June 19, 2017), *available at* http://pib.nic.in/PressReleseDetail.aspx?PRID=1493249.
102. *Id.*
103. Ministry of Power, Government of India, *Press Release* (Sept. 25, 2017), http://pib.nic.in/newsite/PrintRelease.aspx?relid=171101.
104. *Id.*

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denied consular access as afforded him under the Vienna Convention on Consular Relations (VCCR).[105]

Under debated circumstances, Jadhav was detained, prosecuted, and convicted of "espionage, sabotage and terrorism" by a Pakistan Court Martial.[106] Jadhav's mother exhausted appellate routes available under the Pakistan Army Act of 1952, rendering the decision final.[107] India's counsel asserts that Jadhav's mother acted without proper resources, both in being denied access to records of the proceedings against Jadhav and in *de facto* denial of local legal assistance. India alleges that the Lahore Bar Association resolved to cancel membership of any lawyer found assisting Jadhav's appeal.[108]

The Jadhav Case is only the second contentious matter India has initiated before the World Court. The first came in 1971, when India sought to clarify whether an international aviation council was competent to hear a Pakistani complaint against India.[109] The ICJ found the council competent.[110] India has greater experience on defense, asserting that the ICJ lacks jurisdiction to hear a complaint against India. India contended lack of jurisdiction in 1955, facing action from Portugal (unsuccessful); in 1973, facing action from Pakistan (successful); and in 2016, facing action from the Marshall Islands (successful).[111] Much ink has already been spilt on whether the ICJ will find that it has jurisdiction to rule on the merits of this case.

India and Pakistan submitted memorials (briefs) on the merits in September and December 2017, respectively.[112] In January 2018 the ICJ permitted a reply from India and a rejoinder from Pakistan, due in April and July 2018, respectively. The allowance for additional filings came on India's protest that Pakistan's brief exceeded the scope of reasonably expected arguments.[113]

Per ICJ procedure, the filings will not be released until the Court issues its ruling on the merits. Oral argument will likely follow sometime in late

105. Ministry of Power, Government of India, *Press Release* (Mar. 27, 2017), http://pib.nic.in/newsite/PrintRelease.aspx?relid=159961.

106. Jadhav Case (India v. Pak.), Order on Provisional Measures, 2017 I.C.J. 168 (May 18), *available at* http://www.icj-cij.org/files/case-related/168/168-20170518-ORD-01-00-EN.pdf.

107. *Id.*

108. *Id.* at 5.

109. *See id.* (citing declaration of Judge Bhandari), *available at* http://www.icj-cij.org/files/case-related/168/168-20170518-ORD-01-02-EN.pdf.

110. *Id.* at 3.

111. *See* Katherine Davis, *Hurting More than Helping: How the Marshall Islands' Seeming Bravery Against Major Powers Only Stands to Maim the Legitimacy of the World Court*, 25 MINN. J. INT'L L. 79, 117–18 (2016).

112. *Id.* at 118.

113. *Id.* at 117 (citing Branson MacChesney, *Judicial Decisions: Case Concerning Right of Passage Over Indian Territory (Port. v. India)*, 52 AM. J. INT'L L. 320, 327 (1958) (The court found jurisdiction, but ultimately found for India on the merits); *See also id.* at 118, (citing Aerial Incident Judgment, 10 Aug. 1999 (Pak. v. India), Judgment, Jurisdiction (June 21, 2000) para. 56.

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2018. As the legal community waits to watch the case unfold, implications are myriad. If Pakistan can establish that Jadhav was a spy, do consular rights still arise from the VCCR? Does India's Commonwealth Reservation to compulsory ICJ jurisdiction curtail efforts here against a fellow former commonwealth state; or does India's specific submission to the VCCR Optional Protocol for ICJ jurisdiction trump any reservation to general jurisdiction?[114] If Pakistan loses on the merits, will it consider withdrawing from the VCCR Optional Protocol as the United States did when the ICJ questioned U.S. adherence to the VCCR in *Avena*?[115] Time will tell.

114. *See India v. Pak.*, Order (June 13, 2017), *available at* http://www.icj-cij.org/files/case-related/168/168-20170613-ORD-01-00-EN.pdf.
115. *See India v. Pak.*, Order (January 17, 2018), *available at* http://www.icj-cij.org/files/case-related/168/168-20180117-ORD-01-00-EN.pdf.

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