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# Green Arbitration: Restructuring Arbitration Proceedings to Reduce Carbon Footprint

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## ABSTRACT

*Green arbitration is a concept introduced by Lucy Greenwood in 2019, which aims at reducing the carbon footprint caused by international arbitration. A medium-sized international arbitration requires almost 20,000 trees to be planted to offset its carbon footprint emissions. Arbitration has proved to be one step ahead when compared to litigation. However, this comes with a huge price. The Campaign for Greener Arbitration aims at inspiring and encouraging fellow arbitrators to conduct arbitration with a minimum carbon footprint. The Green Protocol, or the Green Pledge, accommodates nine simple but significant changes that can be adopted by arbitrators and other stakeholders. The COVID-19 pandemic has accelerated the trend towards virtual hearings and online proceedings. Through this paper, the author attempts to exhibit the impact of arbitration on the environment. The author endeavours to discuss an unexplored pitfall of arbitration and the importance of recognising the same in India. The paper cites various suggestions and guidelines mentioned in the Green Protocol. The author also gives different insights on how India can deal with arbitration in an environment-friendly manner. Towards the end of the paper, the author suggests practical changes that arbitrators can do to attain carbon neutrality.*

**Keywords:** *Green Arbitration, Green Pledge, Flygskam.*

## I. INTRODUCTION

Green arbitration was introduced in 2019 by Lucy Greenwood, an international arbitrator, who wanted to reduce the environmental impact and carbon footprint that resulted from arbitration. Carbon footprint is a term used to denote the presence of carbon dioxide and other toxic gases in the atmosphere. The Campaign for Greener Arbitration was a concept inspired by a study that revealed that medium-sized international arbitration required almost 20,000 trees to be planted to offset its carbon footprint emissions.<sup>2</sup> One such proceeding, when looked at in isolation, requires efforts of this level to equate the carbon emissions. Imagine the alarming rate of carbon footprint resulted by all the arbitrations taken cumulatively. Initially, the campaign

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<sup>1</sup> Author is a Lawyer in India.

<sup>2</sup> CAMPAIGN FOR GREENER ARBITRATION, <https://www.greenerarbitrations.com/impact> (last visited Jan. 13, 2022).

started off as Green Pledge and accommodates nine simple but significant changes. Joining the campaign is free and requires lawyers or arbitrators pledging to all nine guidelines for present as well as future arbitrations.<sup>3</sup>

Green Pledge won the “Best Development Award” at the Global Arbitration Awards (GAR) 2020. Most recently, on July 1<sup>st</sup>, 2021, Freshfields Bruckhaus Deringer, one of the oldest international law firms and one of the first to sign the Green Pledge, won an award for “Sustainable Behaviour” at the GAR Awards 2021. The campaign started with an arbitrator’s zeal to draw the attention of the international arbitration community towards the serious carbon footprint they had been causing all along. Lucy Greenwood has not only been successful in achieving what she desired but has also expanded her campaign to include more stakeholders within the green arbitration community.

Green arbitration is an avant-garde concept in India. Our legal industry, like every other country, contributes significantly to the environment’s carbon footprint. A massive portion of these carbon emissions is caused by arbitration proceedings. However, to offset these emissions, little to no progress has been made by our arbitrators. Lawyers and arbitrators litigate/settle environment-related disputes, emphasising saving Mother Earth. However, a question becomes pertinent: how many of them honestly preserve our environment and get the ball rolling? This paper aims to bring out the alarming rate of carbon footprint in the arbitration industry and the need to adopt the Green Protocol to reduce it. The paper also discusses methods by which arbitrators can contribute to attaining carbon neutrality. Arbitration in India is a booming industry. Adopting the concept of green arbitration from the very beginning will turn out to be a huge advantage for India.

## II. IMPACT OF ARBITRATION PROCEEDINGS ON ENVIRONMENT

As mentioned earlier, a single mid-sized international arbitration emits around 418,531 kg CO<sub>2</sub>e<sup>4</sup> which requires the equivalent of 20,000 trees to be planted. The study conducted before the birth of the Green Pledge Campaign relied upon numerous underlying assumptions that helped them arrive at this figure. Factors such as air travel, printing huge documents, energy consumption and wastage, hotel stays, etc. contribute to the carbon footprint. Herbert Smith Freehills, a London-based international arbitration team, conducted research and analysed the

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<sup>3</sup> GREENWOOD ARBITRATION, <https://www.greenwoodarbitration.com/greenpledge> (last visited Jan. 13, 2022).

<sup>4</sup> Mohit Mahla and Kabir A.N. Duggal, *When the Answer is Becoming the Question: Impact of Arbitrations on the Environment*, KLUWER ARBITRATION BLOG (Nov. 29, 2020) <http://arbitrationblog.kluwerarbitration.com/2020/11/29/when-the-answer-is-becoming-the-question-impact-of-arbitrations-on-the-environment/>.

carbon footprint of one party's counsel in a London-based medium-sized arbitration. They concluded that 57% of the carbon emitting source was energy consumption by counsels/arbitrators, 41% on flight travel, and 2% on the use of materials. Materials included paper printing and USB drives.<sup>5</sup>

#### **(A) Carbon Footprint Caused By Flights:**

A great deal of carbon footprint is caused by aeroplane travel, business class travel in particular. The Green Pledge team estimated that around 93% of the carbon emissions were caused by flight travel.<sup>6</sup> To put things in perspective, one flight from the west to the east coast of the USA (approximately 4507 km, which is almost equal to twice the distance between Ahmadabad and Thiruvananthapuram) produces 1 metric tonne of carbon dioxide. An average international arbitrator, therefore, produces up to 5 metric tonnes of carbon dioxide per year.<sup>7</sup> As per the International Civil Aviation Organization (ICAO), a United Nations Specialized Agency's carbon footprint calculations, a flight from Cochin to Delhi emits 170.1 kg carbon dioxide per head.<sup>8</sup> All these studies converge on the point that flight travels are extremely harmful to the environment. However, despite the carbon footprint, flying is an honour to some people. Lucy Greenwood introduced *Flygskam*, which means "shame of flying," to discourage people from flying.

#### **(B) Carbon Footprint Caused By Papers:**

The carbon footprint caused by paper consumption is on par with flight travel in arbitration. This is because its production requires not only trees but also water and fossil fuels. Paper production involves an extensive amount of energy consumption, adding up the costs of logging, transportation, and conversion of wood pulp to paper product. Every stage of arbitration requires printing of hard copy bundles. The study conducted before the Green Pledge revealed that eliminating paper usage and switching to electronic mode in every arbitration would save around 2 million trees.<sup>9</sup> The steering committee arrived at this estimate by including

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<sup>5</sup> Herbert Smith Freehills, *Inside Arbitration: Towards greener arbitrations Achieving greater environmental sustainability in the way we conduct arbitrations: An update* (Feb. 25, 2021) <https://www.herbertsmithfreehills.com/latest-thinking/inside-arbitration-towards-greener-arbitrations-achieving-greater-environmental-0>.

<sup>6</sup> CAMPAIGN FOR GREENER ARBITRATION, <https://www.greenerarbitrations.com/news/international-arbitrations-are-not-green> (last visited Jan. 13, 2022).

<sup>7</sup> CAMPAIGN FOR GREENER ARBITRATION, <https://www.greenerarbitrations.com/news/we-have-flight-pride-when-we-should-have-flight-shame> (last visited Jan. 13, 2022).

<sup>8</sup> ICAO CARBON EMISSIONS CALCULATOR, <https://www.icao.int/environmental-protection/Carbonoffset/Pages/default.aspx> (last visited Jan. 15, 2022).

<sup>9</sup> CAMPAIGN FOR GREENER ARBITRATION, <https://www.greenerarbitrations.com/news/international-arbitrations-are-not-green> (last visited Jan. 15, 2022).

papers submitted to the tribunals alone, discarding any other internal printing or drafts.<sup>10</sup> Paper usage is not only limited to printing documents but also includes couriers, forms, and disposable coffee cups. The Green Pledge team concluded that simply moving from single use coffee cups to reusable cups in every arbitration could save around 328,000 trees over one year.<sup>11</sup>

### III. THE FRAMEWORK FOR GREEN PROTOCOL

The protocol essentially focuses on three aspects: adopting green energy; reducing flight travel; and reducing paper and other forms of waste. The first step requires a stakeholder to choose an appropriate protocol. The Framework for Green Protocol lays down six sets of protocols that can be adopted either individually or in combination as deemed necessary. Every set of protocol has nine guidelines each, albeit most of them are interchangeable. Additionally, the framework also contains “Model Procedural Order” which covers nine practical changes that can be adopted to make a difference in carbon footprint emissions.

- Green Protocol for Arbitration Proceedings

Tribunals/Parties may adopt this Protocol undertaking to follow all or part of the sustainability measures. The stakeholders should confer to adopt them for the entire duration of the proceedings as applicable.

- Green Protocol for Law Firms Working in Arbitration

Legal advisors committed to reducing carbon footprint can implement the guidelines set up in this Protocol. The legal advisors may also appoint “Green Ambassadors” to help develop policies within their firm and to promote best activities based on the guiding principles contained in this Protocol. Sustainability measures would be more efficient only if implemented on a firm-wide basis rather than on a departmental or office basis.

- Green Protocol for Arbitrators

This protocol extends to arbitrators who endeavour to take all the possible and practical steps to reduce carbon emissions through their arbitration practices.

- Green Protocol for Arbitration Conferences

This protocol is for organisers of arbitration conferences. The organisers should be mindful to reduce environmental impact while preparing for the events. Conducting such events via virtual

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<sup>10</sup> Lucy Greenwood and Kabir A.N. Duggal, *The Green Pledge: No Talk, More, Action*, KLUWER ARBITRATION BLOG (Mar. 20, 2020) <http://arbitrationblog.kluwerarbitration.com/2020/03/20/the-green-pledge-no-talk-more-action/>.

<sup>11</sup> CAMPAIGN FOR GREENER ARBITRATION, <https://www.greenerarbitrations.com/news/blog-post-two-pj249> (last visited Jan. 15, 2022).

mode should be preferred over in-person conferences.

- Green Protocol for Arbitral Hearing Venues

For daily operating proceedings, the facilitators should adhere to the guidelines in this protocol for the duration of a particular matter.

- Green Protocol for Arbitral Institutions

This protocol is similar to the protocol for law firms working in arbitration. In this protocol too, the arbitration institutions may appoint “Green Ambassadors” to suggest policies for the institutions based on the guidelines in the protocol.

#### IV. GREENER ARBITRATIONS

Extrapolating the given information, it can be inferred that there are three obstacles that block our way towards environmentally friendly arbitrations: flight travel, paper wastage and energy consumption. Switching to greener arbitrations is not an option anymore. The time is ripe for arbitrators and lawyers to adopt certain sustainability measures from the Green Protocol. In general, the following measures can be taken by them to reduce carbon emissions:

##### (A) Get Acclimatised To Remote Interactions

With the COVID-19 pandemic revolutionising every aspect of our lives, the legal industry is no exception. It has given us the opportunity to take stock of what works and what does not, in terms of virtual hearings and e-proceedings. However, the need for online hearings was identified years ago in the case of *M/S Meters and Instruments v. Kanchan Mehta*<sup>12</sup>, wherein the Supreme Court held that technology should be used for cases that can be concluded online without the physical presence of the parties. They were of the view that it helps courts to go paperless and reduce unnecessary overcrowding. In 2020, various international arbitral bodies proposed new rules in response to the pandemic, facilitating video conferencing for arbitration proceedings.

The International Chamber of Commerce (ICC) Rules 2021, amended Article 26<sup>13</sup>, which authorises the arbitral tribunal to decide upon the modus operandi of arbitration proceedings. On considering the relevant facts and circumstances of the case, the tribunal can decide whether the hearing should be held in the physical presence of the parties or by video conferencing, telephonic mode, or any other suitable means of communication. Article 14 of the London

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<sup>12</sup> 2018(1) SCC 560.

<sup>13</sup> INTERNATIONAL CHAMBER OF COMMERCE, <https://iccwbo.org/content/uploads/sites/3/2020/12/icc-2021-2017-arbitration-rules-compared-version.pdf> (last visited Jan. 16, 2022).

Chamber of International Arbitration (LCIA) Rules, 2020, empowers the arbitral tribunal to hold video conferences or telephonic proceedings as deemed fit.<sup>14</sup> Also, Articles 16 and 19 say that in-person hearings are not compulsory for arbitration proceedings. The Indian Council of Arbitration (ICA) too released a similar notice during COVID-19 outbreak mandating the use of technology and video conferencing to conduct arbitration proceedings.<sup>15</sup> However, the move was only temporary as the parties were directed to send hard copies of documents after the lockdown period.

Remote hearings are effective, efficient, and environment friendly. Of course, this comes with an inevitable complexity: time zone difference between the countries. However, the model procedural order in the framework for the green campaign suggests a practicable solution to this problem. There are two options available with the parties to conduct virtual hearings; they can either opt for shorter hearing days or longer hearing days. In case the tribunals or parties are situated in different time zones, shorter days should be considered and scheduled for the parties in accordance with their preferred timings. The time of such hearing shall be ideally mid-way between parties with the time zone difference.<sup>16</sup> For example, Party A is situated in Chicago, United States of America, and Party B is in Kolkata, India. The time difference between both countries is approximately 12 hours. In such a case, the time of hearings should be of that country that lies mid-way between both these places, say, London, United Kingdom. This way, parties at both places would have a fair and manageable 5-6 hour time difference.

### **(B) Print Less, Save Paper**

Article 4 of the London Chamber of International Arbitration (LCIA) Rules, 2020, has mandated electronic communications to submit arbitration requests instead of written communication.<sup>17</sup> Article 3 of the International Chamber of Commerce (ICC) Rules, 2021 leaves it upon the parties to decide their preferred mode of transferring files, either via emails, couriers, or posts. Furthermore, Article 4 does not require the parties to submit hard copies of the documents. Additionally, ICC has made electronic filing for ADR requests mandatory.<sup>18</sup> Since 2019, the Arbitration Institute of Stockholm Chamber of Commerce has been using the

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<sup>14</sup> LONDON CHAMBER OF INTERNATIONAL ARBITRATION, [https://www.lcia.org/Dispute\\_Resolution\\_Services/lcia-arbitration-rules-2020.aspx#Article%2014](https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx#Article%2014) (last visited Jan. 16, 2022).

<sup>15</sup> INDIAN COUNCIL OF ARBITRATION <https://www.icaindia.co.in/Notice-for-ICA.pdf> (last visited Jan. 16, 2022).

<sup>16</sup> *Model Procedural Order*, FRAMEWORK FOR ADOPTION OF THE GREEN PROTOCOLS, <https://drive.google.com/file/d/1OAOt6gF19j34uNjkCyfEaOUFwEmeNLLS/view> (last visited Jan. 17, 2022).

<sup>17</sup> LONDON CHAMBER OF INTERNATIONAL ARBITRATION, [https://www.lcia.org/Dispute\\_Resolution\\_Services/lcia-arbitration-rules-2020.aspx#Article%204](https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx#Article%204) (last visited Jan. 17, 2022).

<sup>18</sup> INTERNATIONAL CHAMBER OF COMMERCE, *Urgent COVID-19 message to DRS community* (Mar. 17, 2020), <https://iccwbo.org/media-wall/news-speeches/covid-19-urgent-communication-to-drs-users-arbitrators-and-other-neutrals/>.

SCC Platform and the Ad Hoc Platform.<sup>19</sup> These are digital platforms used for secure communication and file sharing between the parties and the tribunal. The International Centre for Settlement of Investment Disputes (ICSID) has also made electronic filings its default procedure.<sup>20</sup>

The Model Procedural Order encourages parties and tribunals to conduct proceedings through electronic platforms or case management systems. Any transfer of files should be done via electronic media, and printing of papers must be avoided wherever possible. All the correspondence between the parties and tribunals must be made electronically unless otherwise provided by the institutions. The parties should refrain from sending hard copies via courier or air freight unless necessary. All the written submissions, memorials, statements, exhibits, etc. should be filed electronically in e-bundle format via email or any other secure link. In case the tribunal requests parties to submit printed documents, the parties should submit only short extracts of the contents of the documents. This is applicable when the document exceeds 100 pages. The short extracts must briefly explain the relevant parts of the entire document.

Where the use of paper is necessary, the order provides some useful alternatives to reduce paper consumption: use A5-sized, greyscale, double-sided, and narrowed margins, use eco- friendly toner/ink, use recycled chlorine-free or tree-free papers, and use environment friendly printers such as LED UV printing. Furthermore, one of the best advices the order puts forth is to dispose paper in an environment friendly way, which includes composting or recycling, instead of burning. Maintaining electronic case files instead of hard copies, installing multipurpose machines for printing, copying, scanning, faxing, and considering the possibility of e-mailing wherever possible are some other ways that can drastically reduce paper consumption and its carbon footprint.

### **(C) Adopt Flyskam Arbitration Badge and Fly Less**

As mentioned earlier, avoiding flight travel can create a significant change in the environment because a major portion of carbon footprint is caused by aeroplane travel. Examining the various rules and orders of the arbitral bodies, none of them mandates in-person hearings or proceedings. A right to physical hearing does not exist in international arbitration. In 2020, the ICCA (International Council for Commercial Arbitration) conducted and analysed a research project covering 78 countries under New York Convention jurisdiction, including India. None

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<sup>19</sup> STOCKHOLM CHAMBER OF COMMERCE, <https://sccinstitute.com/case-management/> (last visited Jan. 17, 2022).

<sup>20</sup> International Centre for Settlement of Investment Disputes, *ICSID Makes Electronic Filing its Default Procedure* (Mar. 13, 2020) <https://icsid.worldbank.org/news-and-events/news-releases/icsid-makes-electronic-filing-its-default-procedure>.



of the countries mandate in-person hearings. Therefore, neither the parties nor the arbitrators are bound to travel miles to attend physical arbitration proceedings. This, along with the rules that do not constrain parties/arbitrators to attend in-person proceedings could be adopted to bolster Green Arbitration.

The parties and counsels should minimise travelling whenever possible. Where travelling is an absolute necessity, they are advised to use eco-friendly travel options. For example, business class flights are usually twice or thrice as energy-intensive as economy class, depending on the size and area of the seats. The Model Procedural Order favours remote hearings, wherein all the hearings shall be conducted via telephonic or video conferencing unless impractical or the Tribunal refuses to do so. The parties and witnesses should meet only remotely and not in person. Whenever in-person meetings are necessary, the number of participants must be kept to a minimum.

#### **(D) Green Energy**

The breath-taking levels of carbon footprint emissions from arbitral proceedings show the need for relentless vigilance to adopt various renewable energy sources. Switching to sustainable green energy is another way to minimise carbon emissions by law firms. The framework for green arbitration suggests a few alternatives through which arbitrators/law firms can go green. Selecting an appropriate protocol either individually or in combination is the first step. The stakeholders, once committed to the protocol should take sustainability measures wherever applicable, i.e., before, during, or after arbitration proceedings. The parties should reuse, repurpose, recycle, and reduce their consumption wherever practical.

Some other suggestions mentioned in the framework are: use of LED lights or natural light wherever possible, install timed lighting systems in the office, use of eco-friendly air conditioning/heating/cleaning systems, use water saving facilities, avoid single use cups/bottles, install separate waste-bins for recyclable/organic/non-recyclable wastes, keep plants to increase oxygen, etc. Additionally, the parties and tribunals should try to offset carbon footprint through schemes that have been accredited to meet the highest standards implementing sustainability measures, for example, the Gold Standard or Verified Carbon Standard.

### **V. WHAT HAS INDIA DONE SO FAR?**

The case of *Subhash Kumar v. State of Bihar*<sup>21</sup> is one of the first constitutional interpretations by the Apex Court for the protection of a safe environment for life. The Court ruled that water

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<sup>21</sup> 1991 AIR 420, 1991 SCR (1) 5.

and air are an inalienable part of life under Article 21 of the Constitution. In the *Vellore Citizens Welfare Forum v. Union Of India & Ors.*<sup>22</sup>, the Supreme Court stated that sustainable development is a viable idea for eradicating poverty and improving the standard of human life. The Supreme Court ruled in *Charan Lal Sahu Etc. Etc v. Union of India and Ors.*<sup>23</sup> that Article 21 of the Constitution guarantees the right to life, which includes the right to a wholesome environment. To support this argument, the Court cited Articles 48A and 51A (g) of the Constitution and said that environmental pollution would be a violation of Article 21. Protection of the environment is within the meaning of fundamental rights and the duty to protect extends to every citizen of our country, including arbitrators and lawyers.

Judges have laid down excellent observations and principles in Indian Environmental Jurisprudence. However, it is quite the irony that Indian judiciary dumps heaps of paper every year. For instance, over 60,000 cases are presented in the Supreme Court with about 100 sheets of paper per file. Documents are required to be filed in specific formats such as 14-size fonts, double spaced, 3-inch margins, and one sided printing. As staggering as it may sound, this causes an estimate wastage of around 11 billion sheets of paper and 109 billion litres of water a year.<sup>24</sup> Considering the immense paper wastage, our judiciary fortunately took steps in the right direction to save trees and other resources. In 2020, the Supreme Court of India released a circular to bring uniformity in filing legal documents.<sup>25</sup> The circular mandated the use of white A4 sized sheets instead of legal sized papers, to be printed on both sides with a font size of 14 and 1.5 line spacing. It also directed communications to be done via emails followed by an SMS. In addition to this, various High Courts have also been playing their parts to reduce carbon footprint. The Calcutta High Court banned single-use plastics on its premises.<sup>26</sup> The Punjab and Haryana High Court introduced the “go green drive” to eliminate the use of papers, manual statements, or registers.

Coming to part of virtual hearings, the Supreme Court for the first time went paperless amidst COVID-19 lockdown by using laptops to refer cases.<sup>27</sup> The National Judicial Data Grid (NJDG) is a Case Information Software developed to automate the Court Registry and is used for judicial

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<sup>22</sup> 1996 5 SCR 241.

<sup>23</sup> 1990 AIR 1480, 1989 SCR Supl. (2) 597.

<sup>24</sup> Ishadrita Lahiri, *Indian Courts Use a Lot of Paper. 11 Billion a Year to be Precise*, THE QUINT (31. Oct, 2019, 12:04 PM) <https://www.thequint.com/news/india/indian-judiciary-uses-eleven-billion-papers-in-a-year-a-million-tress-and-hundred-and-nine-billion-litres-of-water#read-more#read-more>.

<sup>25</sup> Supreme Court of India, (Mar. 5, 2020) [https://main.sci.gov.in/pdf/Circular\\_filing.pdf](https://main.sci.gov.in/pdf/Circular_filing.pdf).

<sup>26</sup> The Leaflet, *Calcutta High Court bans single-use plastic on its premises*, (Sep. 27, 2019) <https://www.theleaflet.in/calcutta-high-court-bans-single-use-plastic-on-its-premises/>.

<sup>27</sup> A Vaidyanathan, *In A First, Supreme Court Goes Paperless As Judges Use Laptops*, NDTV (Jun. 1, 2020, 9:49 PM) <https://www.ndtv.com/india-news/coronavirus-in-a-first-supreme-court-goes-paperless-as-judges-use-laptops-2238988>.

data transmission. 12 Virtual Courts were set up, which so far have tried 86 lakh traffic offence cases and collected over Rs.175.35 crore online fine. Delhi High Court set up 34 Digital Courts to deal with cheque bounce cases within the Negotiable Instruments Act.<sup>28</sup> The Supreme Court strictly directed all the High Courts to make e-filing of petitions mandatory from January 1, 2022, after which no physical filing should be done.<sup>29</sup> Jupitice, India's first digital Court was launched in May 2021 to solve disputes of civil/commercial nature using ADR and ODR.<sup>30</sup> Taking into account the importance of Online Dispute Resolution, the NITI Aayog launched a handbook that could become a watershed document on ODR.<sup>31</sup>

We locked the doors but left the window open; only a part of the problem has been solved. Our judiciary has positively taken some steps to preserve and conserve our environment. Whether those steps will actually help us attain carbon neutrality or not is a question yet to be answered. As yet, however, not a single person has taken the initiative to drag our arbitration community's attention towards the carbon footprint caused by arbitral proceedings. In India, it is difficult to find data on carbon emissions by arbitral proceedings because no such studies have been conducted yet. This is undoubtedly why we need to recognise the concept of green arbitration in India. Therefore, it is imperative to move forward with the assumption that a medium-sized international arbitration in India generates a similar carbon footprint as mentioned earlier. At present, arbitration is at a developing stage in India. People have slowly started to shift from traditional litigation methods to arbitration. Therefore, implementing sustainability measures while at this initial stage will give India a competitive advantage over other countries.

Indian law firms and arbitrators are way behind when compared to international efforts to reduce carbon footprint. However, some of the bigger law firms seem to be applying their minds on this issue. Khaitan & Co installed solar panels in its Kolkata office, generating up to 13 kW of power to cover its electricity use. Recently, Shardul Amarchand Mangaldas pledged to attain carbon neutrality by introducing an environment sustainability initiative. The plan includes rain water harvesting, putting more indoor plants, gifting potted plants instead of bouquets to members of the firm on special occasions, using recycled and eco-friendly papers, using aerator-

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<sup>28</sup> Ministry of Law and Justice, GOVERNMENT OF INDIA <https://doj.gov.in/nationalmissions/ecourts-achievements> (last visited Jan. 18, 2022).

<sup>29</sup> FE Online, *Supreme Court asks HCs to make e-filing of cases mandatory in certain types of cases from Jan 1*, FINANCIAL EXPRESS (Oct. 17, 2021 12:49 PM) <https://www.financialexpress.com/india-news/supreme-court-asks-hcs-to-make-e-filing-of-cases-mandatory-in-certain-types-of-cases-from-jan-1/2350995/>.

<sup>30</sup> Live Law New Network, *India's first digital court Jupitice, launches MSME digital court*, LIVE LAW (Oct. 18, 2021, 11:43 AM) <https://www.livelaw.in/law-firms/deals/digital-court-jupitice-msme-digital-court-slough-pr-183844>.

<sup>31</sup> Live Mint, *NITI Aayog to launch Online Dispute Resolution handbook today*, (Apr. 10, 2021, 07:18 AM) <https://www.livemint.com/news/india/niti-aayog-to-launch-online-dispute-resolution-handbook-today-11618018650958.html>.

fitted taps, which reduces water consumption by 20%, etc.<sup>32</sup>

## VI. WHAT LIES AHEAD OF INDIA?

A problem well-defined is a problem half-solved. It is vital to define the problem first. As mentioned earlier, India lacks proper surveys or studies to measure the carbon footprint caused by the arbitration sector. Without recognising the problem, there can be no solution. The author therefore believes the need to identify the problem as the *first* step. The *second* step involves adopting suitable sustainability measures and the *third* step involves implementing them. Any issue can be solved amicably with some give and take. Lawyers and arbitrators must do more than just draft, interpret, and litigate environment laws. However, this does not come free. Installation of eco-friendly machines and other sustainability measures as mentioned in the Framework for Green Protocol requires a huge amount of initial capex (Capital Expenditure). Nonetheless, in the case of *Rural Litigation and Entitlement Kendra, Dehradun v. State of UP*<sup>33</sup>, the Supreme Court of India held that protecting and safeguarding people's rights to live in a healthy environment must be achieved even if it has some economic cost. Therefore, despite the initial costs of installation being high, it is crucial to adopt eco-friendly options as a safeguard to protect our environment.

Furthermore, India can model the already existing Green Litigation/Arbitration initiatives in other countries like the Legal Sustainability Alliance (LSA) in the United Kingdom. Once an LSA member, one can access the carbon calculator which is a free tool provided by the LSA team. This tool enables its members to keep track of their carbon emissions on a monthly, quarterly, or yearly basis.<sup>34</sup> They believe that measuring carbon footprint is the first step towards reducing it. The author also stresses upon the same principle to be applied in India too. We should measure carbon footprint caused by arbitration in order to reduce it. The silver-lining of COVID-19 is that people realised that not everything has to be done in the conventional way to attain efficient results. The pandemic taught us that legal proceedings can be conducted without face-to-face meetings or huge paper bundles.

## VII. CONCLUSION

For starters, India requires zealous arbitrators who can raise the need and importance of green

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<sup>32</sup> Legally India, *Desi lawyers warm to climate change fight: Shardul Amarchand, NUJS roll out starter green deals, KCo Cal does solar* (Sep. 27, 2019 03:51 PM) <https://www.legallyindia.com/lawfirms/desi-lawyers-warm-to-climate-change-fight-shardul-amarchand-nujs-roll-out-first-starter-green-deals-kco-cal-does-solar-20190927-10874>.

<sup>33</sup> 1985 AIR 652, 1985 SCR (3) 169.

<sup>34</sup> LEGAL SUSTAINABILITY ALLIANCE, <https://legalsustainabilityalliance.com/carbon-calculator/> (last visited Jan. 18, 2022).

arbitration. With arbitration comes the huge costs of carbon footprint. However, the results of Lucy Greenwood's initiative show that it is possible to conduct arbitration effectively and efficiently without any carbon emitting activities. The Framework for Green Protocol frequently uses phrases like "wherever possible," "wherever applicable," "wherever practical," etc. This indicates that there is no straight-jacket formula that can be followed for one to preserve the environment. The Protocol can only act as a driving force or a wake-up call for arbitrators to pursue their careers without harming the environment. The adoption and implementation of sustainability measures laid down in the Protocol are entirely optional and should be done at the stakeholders' will. This means that, even if one does not follow the guidelines, there would be no consequence or punishment except for the carbon footprint caused. There is no dearth of ideas to attain carbon neutrality but their implementation remains at stake. Following the protocol's eco-friendly measures could be a prolonged and tedious process. We are awfully habituated to conventional methods such as printed documents and in-person meetings. It was only after the outbreak of COVID-19 that we moved to alternate methods such as video conferencing or telephonic meetings. Therefore, we might have to step out of our comfort-zone a bit, but we can rest assured that the results will be drastic.

There is a very famous quote that says, "Shoot for the moon. Even if you miss, you will land among the stars." Bhutan is the only carbon negative country in the world. This means that it absorbs more carbon dioxide than it produces. We might not be able to be like them, but if we aim for carbon negativity, we might as well achieve carbon neutrality. This paper has attempted to bring out the importance of introducing green arbitration in India. The paper discusses the impact of arbitration proceedings and the possibly practical solutions to reduce it. The paper has attempted to encourage people to contemplate the possibility of environment friendly arbitration proceedings.

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