

Greener Arbitration: Road towards Environmental Sustainability

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Abstract

Recently there has been concern raised on the ways through which the international arbitration community can make an initiative to improve environmental conditions. Since there has been environmental damage there is a necessity to make joint efforts by enhancing sustainable measures. Green protocols have been among those initiatives which have emphasized greener practices in this field. Post covid tenure requires cooperative behavior within the arbitration community to attain sustainable goals. By reducing carbon footprinting climatic issues would be addressed adequately.

This paper will reflect on the sustainable measures which can be taken into consideration for maintaining a healthy environment while performing their responsibilities by the arbitration community. By valuing the “green pledge” and “new normal” approach pollution quality can be lessened. With 2021’s green pledge, the author would demarcate the various ways through which there can be a reduction in carbon emissions. Although such practice requires governmental support in order to safeguard the arbitral process. These greener practices will be beneficial for attaining a sustainable future and reduction in ESG issues. With 2022’s Future of International Energy Arbitration report, focus will be made on understanding the necessity to maintain greener activities which would motivate everyone in this community to have a safer environment and healthy climate. It is estimated that there would be a surge in ESG issues there is a need to motivate the nations globally to follow the greener guidelines to achieve sustainability in the near future. With green infrastructure, waste management, and energy consumption the renovation projects would be successful in their goals. Low carbon and solar activity participation would result in a better future. By investing in sustainable products, online services, better wastewater treatment systems, and recycling practices there will be a healthy impact on the environment worldwide.

Keywords: Carbon, Green Arbitration, Net Zero, Sustainability, Online mode.

Introduction

Nations across the globe have been facing several challenges to tackle the environmental damage that has been caused due to human interference and climatic distress. To improve the present circumstances arbitration community has recently initiated to take steps to have proper implementation of the green protocols. In order to have control over the carbon footprinting impact the arbitration community has emphasized its community to indulge in activities which are greener practices. This community is aiming to encourage a focus on attaining sustainable goals. There is a need to highlight the activities which are beneficial for economic and social parameters which will be beneficial in promoting this practice. The international arbitration community has begun valuing greener procedures.¹ This would be beneficial in demarcating responsibilities among the members of this community to bring awareness about the “net zero” practice. There is a need to have a new regulatory framework to motivate them in these practices. As a part of environmental safety, effective

¹ Tariq Khan and Prakriti Patnaik, ‘Green Arbitration: The Uncharted Road towards Sustainable Arbitration’ (SCC Online Blog, 24 August 2022) <<https://www.sconline.com/blog/post/2022/08/24/green-arbitration-the-uncharted-road-towards-sustainable-arbitration/>> accessed 15 April 2023.

governance, and social awareness initiatives have been brought through the green protocols. Interestingly, the green pledge has made the arbitration community realize the significance of having a healthy environment. By controlling the stretch of environmental loss and engaging this community in making efforts to reduce the carbon footprinting would result in better results.²

In the absence of sustainable measures in arbitration community concern has been drawn to safeguard the earth from climatic changes. Recently under Indian paraments, the Apex Court has appreciated the usage of A4 size paper for filing the case procedure. The covid-19 pandemic's impact has made authorities realize the necessity to prevail guidelines to embrace natural habitats. There is an urgency to create awareness about carbon-neutral forms to lessen emissions. This community should reflect on "promoting" greener practices to achieve sustainability.³ The arbitrators and arbitral institutions are required to take proper caution when engaging themselves in these practices. The green protocols were launched on "earth day" in 2021. This campaign has involved practitioners, service providers, and institutions to focus on their performance to deliver eco-friendlier working practices.⁴ Its purpose is to campaign to promote awareness about the environmental impact of arbitrations and produce best practices that guides on the ways in which arbitration practitioners can act to minimize their carbon footprint.⁵ Also, many trees would need to be planted to "offset" the total carbon emissions resulting from the joint initiative of the arbitration community.⁶

Valuing the "Green" Pledge & Protocols

With an objective to have better participation in greener practices green protocols were brought to provide guidance for the effective implementation of green pledge. The working group has analyzed the functioning of the arbitration community. Their behavior was assessed and suggestions have been incorporated by adjusting their behavior to lessen carbon footprinting. Under these protocols aim is to enhance the greener practice in this community to have a better future.⁷ The green pledge act as a "guiding principle" that the arbitration practitioner is requested to obey voluntarily to reduce environmental loss.⁸ There should be a workplace that focuses on reducing energy consumption. The usage of technology should be in such a manner that it was environmentally friendlier. Paperless effort and utilizing email as a mode of communication would promote sustainability. Online mode has to be the ultimate way for conducting hearings. There is a need to make efforts to promote electronic submission of the documents. The suppliers and the service providers should engage themselves in indulging practices which can be beneficial in reducing carbon footprinting. The arbitration proceedings should be conducted virtually and investment should be made on greener infrastructure. By welcoming online procedure, the witness would be heard, and only on essential grounds the facility of traveling would be provided. This would be helpful in lessening the spread of carbon emissions.⁹

It would be interesting to see after a few years how much the nations have contributed keeping in mind this pledge. The fundamentals reflected through Steering Committee would be crucial to observe how the participatory nations are applying these green protocols in reality. Under these protocols, the focus is made on the manner an arbitral proceeding should be conducted. It shows that the parties and arbitrators are required to adopt sustainable measures for prevailing with the arbitral process.¹⁰

² *ibid.*

³ Khan (n 1).

⁴ 'Green Protocols'(Campaign for Greener Arbitrations) < <https://www.greenerarbitrations.com/green-protocols>> accessed 16 April 2023.

⁵ Burges Salmon, 'Green Arbitrations: Reducing the Environmental Impact of Arbitral Proceedings' (*Lexology*, 4 May 2021) <<https://www.lexology.com/library/detail.aspx?g=1dca3a47-324a-4686-8a57-eda3322f3439>> accessed 20 April 2023.

⁶ *ibid.*

⁷ n 4.

⁸ 'The Green Pledge'(Campaign for Greener Arbitrations) <<https://www.greenerarbitrations.com/sign-green-pledge>> accessed 20 April 2023.

⁹ *ibid.*

¹⁰ n 4.

The tribunals and parties should engage in electronic communication and should avoid sending hard copies comprising of applications, evidence, etc. With the availability of a virtual platform will be effective case management system. The third-party and institutions should follow these guidelines. The parties and tribunal should get the documents printed only at the necessary stage. By utilizing chemical-free toner, printer, and recyclable products the unnecessary expenditure would be reduced. The parties are suggested to maintain the quality of work to avoid repetition in maintaining records. The documents should be saved in pdf form to maintain the consistency and accessibility of the material.¹¹ These documents should be provided accessibility for smooth functioning and their submissions should be allowed. The consultation session and expert meetings should be conducted virtually unless necessary in-person. Remote access for procedural either substantive hearing by audio and video facility would make it process flexible. By limiting in-person presence unless necessary required the discussion should be done online mode. The expense-controlling approach and eco-friendly practices can be beneficial in making behavioral changes to support lessening carbon footprinting. Only with governmentally approved authentication, this functioning should exist.¹² For instance, the “model green procedural order” guides the tribunal in properly implementing greener practices. To minimize the loss the practitioners and their employees are suggested to follow sustainable measures while performing their duties at the workplace. The chambers, service providers, and firms are expected to maintain green standards to safeguard the environment.¹³ This reflects that arbitral proceedings and members of this community are requested to follow these protocols in an adequate manner. The legal advisors are suggested to use cleaner and renewable sources. With the usage of LED lights, natural light, maintaining greenery, sensory system, recycling facility, etc. should be applied uniformity. The building management should be obeying greener practices. Larger monitors, tablets, whiteboards, and smartphones should be provided to have an effective digital platform. Chlorine-free paper, digital marketing, digital funding, and recycled products should be practiced. With the single usage of item practice, there will be minimal impact. Sustainable catering services, organic meals, cycles, and rewards would be motivating the arbitration community to improve the condition.¹⁴

The arbitrators are suggestive to indulge in practical approaches which would be supportive in prevailing green arbitral proceedings. The arbitrator should use electronic tools, essential documentation for printing, recycling, sustainable hearing, minimal traveling, efficient lighting system should be installed.¹⁵ For conducting arbitral conferences, the authorities should take responsibility that the resources they will be used for these events are required to be environment friendly.¹⁶ The facilities, as well as centers for hearing, should be earth friendly. For instance, virtual meetings and paper straws should be used in everyday consumption. There can be electronic feedback to address the concerns of the virtual attendees. Virtual attendance should be encouraged and local residing facilities should be run on eco-friendly grounds. The venues should clear the sustainability certification.¹⁷ The hearing venues should follow sustainable measures.¹⁸ The arbitral institutions should maintain their respective progress report depicting the initiative which they have taken individually to lessen the carbon footprinting.¹⁹

¹¹ ‘Green Protocol for Arbitral Proceedings’ (*Campaign for Greener Arbitrations*) <<https://www.greenerarbitrations.com/green-protocols/arbitral-proceedings>> accessed 23 April 2023.

¹² *ibid.*

¹³ n 4.

¹⁴ ‘Green Protocol for Law Firms, Chambers and Legal Service Providers’ (*Campaign for Greener Arbitrations*) <<https://www.greenerarbitrations.com/green-protocols/law-firms-chambers-legal-service-providers>> accessed 25 April 2023.

¹⁵ ‘Green Protocol for Arbitrators’ (*Campaign for Greener Arbitrations*) <<https://www.greenerarbitrations.com/green-protocols/arbitrators>> accessed 25 April 2023.

¹⁶ n 4.

¹⁷ ‘Green Protocol for Arbitration Conferences’ (*Campaign for Greener Arbitrations*) <<https://www.greenerarbitrations.com/green-protocols/arbitration-conferences>> accessed 25 April 2023.

¹⁸ ‘Green Protocol for Arbitration Hearing Venues’ (*Campaign for Greener Arbitrations*) <<https://www.greenerarbitrations.com/green-protocols/arbitration-hearing-venues>> accessed 25 April 2023.

¹⁹ ‘Green Protocol for Arbitral Institutions’ (*Campaign for Greener Arbitrations*) <<https://www.greenerarbitrations.com/green-protocols/arbitration-institutions>> accessed 26 April 2023.

Way to Sustainability

By wakening through the observation made by Steering Committee there has been responsibility distribution on the ways through which the environmental conditions can be improved. A huge amount of carbon footprinting has been seen which has made the arbitration community aware of the severe consequences if changes are not brought in their working practice. Not only there is a requirement for tree plantation, less traveling, and biodegradable products the authorities require to create awareness about the green pledge. By engaging the users in greener practices, the circumstances can be improved.²⁰ By celebrating earth day and world environment day the arbitration community should make this process of awareness effective on a regular basis. By prevailing the guideline of “COP26” one would be able to achieve the goal of “net zero” globally.²¹ By working together in harmony, mutual goals can be successfully attained. There is a need to focus on assisting in finance and engaging jointly in activities that promote the protection of the community and natural resources would result in understanding the vital role played in restoring the ecosystem. With the support of green and resilience infrastructure, the issue of climate change can be handled appropriately.²² The arbitration community has been focused on promoting policies that could safeguard the earth. Still, there is the necessity to encourage better and more effective initiatives which could be beneficial in resolving climatic issues. There is a requirement to have more discussions in the near future to address the concerns confining to a safer ecosystem. Carbon footprinting reduction in the arbitration proceeding globally should be a regular practice in reality in order to improve the surroundings. For instance, IBA and ICC have been making efforts in tackling the challenges of maintaining a green ambiance. These authorities have reflected their commitment by highlighting the seriousness of these issues through their reports and surveys.²³

Learning through the “green campaign” there is a requirement to engage in greener activities where the arbitration community is required to maintain uniform standards in their daily working process. To reduce the rigorous impact this community should indulge in proper implementation of green protocols. These directives would be guided to this community to prevent climatic changes in the near future. By this there will be behavioral change and carbon emissions would be lower. The adoption of clean energy forms and limited usage of transportation can be beneficial in improving the atmosphere quality.²⁴

The “online mode” would make the arbitral process more approachable unless an in-person presence is required on urgent issues. There is a need to emphasize the active arbitration practice through a green lens. This would be gainful in safeguarding the green habitant. The covid-19 pandemic has shown the necessity of prevailing a healthy ecosystem which could be possible if society can jointly contribute to its protection.²⁵ There is a requirement to make practitioners engage in the no traveling norm unless it is required on essential issues to travel. The objective set behind this norm would be to lessen the traveling when it is not required and the process can be continued in virtual mode. Environment-friendly strategies should be obeyed and other modes of green transportation should be followed.²⁶ Hybrid and green transportation should be appreciated by arbitration practitioners while performing their professional obligations. The concern is in relation to the proper implementation of the green pledge and protocols by the arbitration community. There is a requirement to have

²⁰ Saudamini Amare, ‘The Switch to Sustainable and Greener Arbitration: How the “New Normal” Revolutionizes Procedural aspects in Arbitration’ (*IJPIEL*, 27 July 2021) <<https://ijpiel.com/index.php/2021/07/27/the-switch-to-sustainable-and-greener-arbitration-how-the-new-normal-revolutionizes-procedural-aspects-in-arbitration/>> accessed 26 April 2023.

²¹ ‘COP26 Goals’ (*UN Climate Change Conference UK 2021*) <<https://ukcop26.org/cop26-goals/>> accessed 27 April 2023.

²² *ibid.*

²³ Lucy Greenwood and Kabir A N Duggal, ‘The Green Pledge: No Talk, More Action’ (*Kluwer Arbitration Blog*, 20 March 2020) <<https://arbitrationblog.kluwerarbitration.com/2020/03/20/the-green-pledge-no-talk-more-action/>> accessed 27 April 2023.

²⁴ Lucy Greenwood and Leonor Diaz-Cordova, ‘Nudging Towards a Greener Future in Arbitration’ (*CIARB*, 29 November 2021) <<https://www.ciarb.org/resources/features/nudging-towards-a-greener-future-in-arbitration/>> accessed 28 April 2023.

²⁵ *n 24.*

²⁶ *ibid.*

voluntary participation by the stakeholders of this community in order to have better results which could be helpful for the fulfillment of future goals. Green sustainability can be attained when the community is working in harmony and prevailing international standards to avoid any unnecessary loss.²⁷ The online and hybrid modes should be implemented with greener infrastructural and advanced technical support to encourage this community to indulge in successful connectivity. The commercial relations will be maintained when the main highlight for everyone is “protecting and safeguarding” the earth as their common goal while delivering their responsibilities in their respective profession.

Future

The authorities should focus on maintaining digital records properly. This will be beneficial in improving the performance of the system. With the usage of transformative technology, the arbitral process can be approachable virtually. To have good commercial connectivity there should be a signing of eco-friendly practices. Online mode has been considered one of the ways through which lengthy proceedings can be avoided. Sixty-one percent agreed with this viewpoint.²⁸ Unfortunately, there is concern that there will be a surge in ESG matters so these environment-friendly efforts require proper assistance at present to avoid greater loss. Low-carbon projects should be provided with governmental and non-governmental support. To improve financial status and cross-border relations it is necessary that there should be utilization of greener and more sustainable measures.²⁹

Post covid tenure has made everyone realize the importance of “new normal” practice. The green pledge should be signed and implemented properly by the signatories in their respective areas. The green protocols’ success can be graded if they receive proper funding. By setting up awareness and environment-friendly campaigns the arbitral institutions can create awareness about its community about the necessity to have this sustainable measure. With well-equipped techniques and technology, the objective set behind this pledge would be able to be achieved in a few upcoming years. The arbitral institutions should be motivated and guided properly to implement these guidelines.

Recently the 2022’s FTI report has depicted that in the near future, ESG matters will be higher. The “go green” approach will be beneficial in maintaining sustainable economic growth in the future.³⁰ The authorities are required to get themselves trained before the situation gets worse. Sadly, there will surge in issues confined to the energy, natural, and construction sector. With eco-friendly practices, it is the responsibility of the arbitration community to prevail the greener practices. Although the arbitral tribunal requires to take further steps to implement sustainable measures properly. There is a need to tackle cyber security matters with care to safeguard the interest of those participating in the virtual process. Fifty-one percent have supported the usage of online mode for making legal submissions.³¹ For promoting confidentiality, the soft copies require stringent cybersecurity rules. To make cloud submission welcoming it is essential that the authorities should be facilitated with advanced technology and preventive measures by developing a digitally friendly atmosphere.

The concern arises that in the near future, there will be a surge in energy disputes and to lower dreadful climatic status implementation of “net zero” practice is required strictly to be maintained. The States should make the necessary initiative to achieve this goal. The arbitral community should focus on effective governance in order

²⁷ n 24.

²⁸ ‘2021 International Arbitration Survey: Adapting arbitration to a changing world’, <https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf> accessed 5 May 2023.

²⁹ *ibid.*

³⁰ ‘FTI Consulting Corporate Sustainability Report’ < <https://www.fticonsulting.com/-/media/files/us-files/insights/reports/2022/dec/corporate-sustainability-report-2021.pdf>> accessed 5 May 2023.

³¹ n 28.

to meet its goal. These environmental obligations can be achieved through an eco-friendly regulatory framework. There is a need to strengthen the practice of contract management.³²

Interestingly, eighty-one percent of the respondent in 2022's report depicts that virtual meetings and hearing are welcomed by the arbitration community. Also, sixty-nine percent supported the viewpoint of avoiding unnecessary traveling. Sixty-six percent have welcomed the usage of digital bundles at the hearing stage. To surge diversified participation, it is essential to encourage innovative techniques in the arbitral process. Due to green credentials, there can be minor changes in the pattern for deciding the provider for arbitral service. To maintain corporate priority these credentials can be supportive in providing a healthy ecosystem. Since climate change as well as the environment are important parameters in energy disputes it is required that for public interest the arbitral process should be based on greener policies.³³

Conclusion

With active green ambassadors, the objective set behind green protocols can be achieved. There is a need to have proper demarcation of cost which is to be spent on implementation of sustainable measures. The applicable laws should be formulated in such a way that it promotes greener practices. Climate change and environmental damage can be improved if the funding is properly allocated with the availability of greener technology. To attain sustainable goals the authorities should encourage the practice of confidentiality and cybersecurity. The arbitration users should follow these protocols adequately. Energy consumption and managing cases should be done in a greener way. Recycling, no plastic approach, and optimum utilization of natural resources would result in maintaining a healthy environment. Queen Mary's 2022 report has depicted that ESG matters are required to be handled with greater responsibility to safeguard the earth from any further loss.³⁴ This will guide the arbitration users in not disrespecting the guidelines and initiatives which will be brought by the authorities to have effective implementation of this pledge properly in the near future. The arbitration stakeholders with their determined efforts would be able to overcome the environmental concerns which would be beneficial for everyone in longer tenure.

³² 'Future of International Energy Arbitration Survey Report 2022' <<https://arbitration.qmul.ac.uk/media/arbitration/docs/Future-of-International-Energy-Arbitration-Survey-Report.pdf>> accessed 5 May 2023.

³³ *ibid.*

³⁴ *ibid.* n 32.