

Rethinking Corporate Social Responsibility in the Arena of Climate Change: A Study in Socio-Legal Aspect

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Abstract: Climate change is an environmental challenge confronting all countries across the globe in varying degrees of intensity. It, directly and indirectly, interferes with the enjoyment of all human beings including – the right to life, housing, water and sanitation, food, health, development, security of persons and an adequate standard of living. Industry and business play a crucial role with regard to climate change, accounting for approximately one-third of the world's energy consumption and 36 per cent of carbon dioxide emissions. Therefore, industry and the global business community have a responsibility to join national and international efforts to lower their greenhouse gas emissions. Across Asia, Europe, Africa, and North and South America, the adverse effects of climate change have manifested over the years as ozone layer depletion, continental global warming, a shower of acid rain, extended fires, melting ice, rise in sea level and other extreme events which call for urgent action at national and international levels.

A self-regulating approach that makes manufacturing organisations socially responsible and responsive to environmental issues in their operating countries can be pragmatic in climate-change mitigation, and strengthen existing governmental policies on climate change. A number of affirmative actions and recommendations has been formulated at national and international levels to regulate climate change including eco-vigilance, adoption of green, conservation of the flora and fauna, zero-tolerance of gas flaring, socially responsible investment, carbon emission reporting and disclosures and adoption of environment-friendly manufacturing techniques. Therefore, the present study not only focusses on the theoretical aspect but also on the socio-legal aspect filling the gap in both theory and practice related to the impact of Corporate Social Responsibility on society.

Keywords: Climate Change; China climate change partnership framework; Corporate social responsibility; Millennium development goals achievement fund; Millennium development goals; Socially responsible investment.

Introduction

“Climate change is the defining challenge of our age.”

*Ban Ki-Moon*¹

Climate change is perhaps the defining issue facing the global community today and if left unchecked, it has the potential to present humanity with disastrous

consequences in terms of negative social impacts, significant economic losses and severe global environmental degradation. Therefore, climate change is an environmental challenge confronting all countries across the globe in varying degrees of intensity. It, directly and indirectly, interferes with the enjoyment of all human beings including – the right to life, housing, water and sanitation, food, health, development, security of persons and an adequate standard of living. Industry and business play a crucial role with regard to climate change, accounting for approximately one-third of the world's energy consumption and 36 per cent of carbon

¹ Secretary-General of the United Nations General Assembly, 8th Secretary General, (from January 1, 2007 to December 31, 2016).

dioxide (CO₂) emissions. Therefore, industry and the global business community have a responsibility to join national and international efforts to lower their greenhouse gas (GHG) emissions. Much of the carbon dioxide (CO₂) emissions causing climate change come from business-driven economic activity. Developed countries with large industrial plants and manufacturing companies have experienced the threats of climate change. Unfortunately, it is the developing countries that are most vulnerable to climate change and associated environmental disasters as they cannot do much to alleviate these threats because of domestic challenges, bad governance, hunger, diseases and institutional corruption.

China has arguably always been one of the main focus countries when considering the role of developing countries in regard to climate change due to China's high energy demand and consumption, combined with the fact that most of its energy is derived from coal. Therefore, this consumption has resulted in China becoming the world's largest emitter of carbon dioxide although, in terms of per capita emissions China ranks ninety-fifth in the world.² Climate change and Corporate Social Responsibility are the products of the China Climate Change Partnership Framework (CCPF) programme that is being initiated under the Millennium Development Goals Achievement Fund (MDG-F), which was established in 2006 by the Government of Spain in order to accelerate progress on achieving the Millennium Development Goals (MFGs) worldwide.

The industry is one of the most important sectors to consider in respect of climate change mitigation as it is directly responsible for approximately one-third of global energy consumption and 36 per cent of global greenhouse gas emissions. In light of this fact, the Government of the People's Republic of China has released a number of laws, instructions and initiatives in order to address climate change through the promotion of increased industrial energy efficiency, cleaner energy production and utilisation. Over the past 20-30 years or so, growth in industrial energy demand has been in emerging economies and China alone accounts for about 80 percent of the growth in industrial energy usage in the last 25 years. Therefore, business and industry, in general, must properly be engaged, when necessary, to adopt new low-carbon technologies and production methods.

However, business activities can also contribute to innovation and solutions to avert, alleviate and adapt to climate change. Corporate Social Responsibility (CSR) can be an effective tool for alleviating climate-change. A self-regulating approach that makes manufacturing organisations socially responsible and responsive to environmental issues in their operating countries can be pragmatic in climate-change mitigation, and strengthen existing governmental policies on climate change. A number of affirmative actions and recommendations had been formulated at national and international levels to regulate climate change including eco-vigilance, adoption of green, conservation of the flora and fauna, zero-tolerance of gas flaring, Socially Responsible Investment (SRI), carbon emission reporting and disclosures and adoption of environment-friendly manufacturing techniques. Measures taken as a part of Corporate Social Responsibility (CSR) as a voluntary obligation for intensifying the social, economic and environmental wellness of society could actually reflect in CSR in its true spirit. Therefore, the present study focusses on Green Theory which can be a relevant perspective for embedding the climate change discourse in contemporary times. An attempt has been made to refocus CSR as a mitigation tool for climate change both at the national and international levels.

Human Rights and Protection of Environment in International Perspectives

Human rights are inherent in our nature and without which we cannot live as human beings. So, human rights may be regarded as those fundamental and natural rights which are *sine qua non* for a decent life as human beings and are possessed by every human being irrespective of his or her nationality, race, religion, sex, colour, simply and only because he or she is a human being. "Human rights" mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforced by Courts in India.³ The quest for rapid industrial development over the years, environmental quality has come to be subordinated to developmental goods. We are now leading towards irreversible environmental destruction, due to widespread land degradation, water pollution, and population explosion. Across Asia, Europe, Africa, and North and South America, the adverse effects of climate change have manifested over the years as ozone layer depletion,

² MDGIF (2011). *Guidelines on Climate Change and Corporate Social Responsibility*. United Nations Industrial Development Organization, Vienna, i-ix.

³ The Protection of Human Rights Act, 1993; Section 2(1)(d).

continental global warming, a shower of acid rain, extended fires, melting ice, rise in sea level and other extreme events which call for urgent action at national and international levels. The existing administrative and industrial framework is so feeble and ineffective that it cannot control the challenge of environmental protection, which threatens our very survival. There is a need to have a new environmental ethos to meet the challenge.

The protection and advancement of the environment and society have always been a focus of the work of the United Nations. Between the 1970s and 1980s, the right to development was introduced as one of the several rights belonging to a *third generation* of human rights. The *first generation* of human rights consisted of civil and political rights conceived as freedom from State abuse. The *second generation* of human rights consisted of economic, social and cultural rights and *third generation* of human rights consisted of **solidarity rights** belonging to peoples and covering global concerns like development, environment, humanitarian assistance, peace, communication and common heritage. In 1981, the concept of right to development was first given legal recognition under the African Charter on Human and People's Rights (Banjul)⁴ and was later incorporated into the United Nations Human Rights Framework through the adoption of the Declaration on the Right to Development⁵ in the year 1986. The 1993 Vienna Declaration and Programme of Action⁶, the 2000 Millennium Declaration⁷ and the 2001 Durban Declaration and Programme of Action⁸ reaffirmed right to development as a “universal and inalienable” human right. The Vienna Declaration, 1993 stated,

“The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental rights.”

⁴ ACHPR, adopted on June 27, 1981, OAU Doc. CAB/LLG/67/3 rec. 5, 21 I.L.M. 58 (1982), entered into force on October 21, 1986.

⁵ Adopted by General Assembly Resolution 41/128 on December 4, 1986.

⁶ Adopted by the World Conference on Human Rights in Vienna on June 25, 1993, endorsed by the General Assembly of the United Nations Resolution 48/121 on December 20, 1993.

⁷ General Assembly Resolution 55/2 on September 8, 2000.

⁸ Member States of the United Nations adopted the text at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held from August 31 to September 8, 2001 in Durban, South Africa.

Enduring a clean and pollution free environment is not an isolated problem of a particular country, it is a global issue. Therefore, all nations are equally concerned to protect the environment from being polluted and striving hard to achieve the objective.

Figure 1 shows how climate change can affect people by changing their exposure to health threats (moving top to bottom) and by influencing the environmental, institutional, social and behavioural factors that affect a person's or community's health (moving through the boxes on the sides).

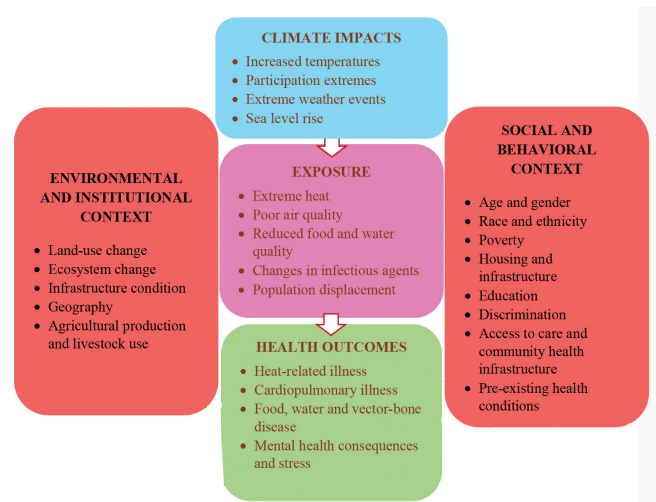


Figure 1: Climate change and health pathway.

Source: The U.S. Global Change Research Programme (USGCRP) Report (2016), *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment*, published in April, 2016.

‘Pollution’ means the release of substances and energy as waste products of human activities, which results in changes usually harmful, within the natural environment.⁹ Nature and its resources have adequate capacity to feed and bear the burden of the requirements of mankind. Once these resources are overburdened due to the undue pressure of human activities, it disturbs the equilibrium relationship between man and nature necessary for human existence. Consequently, it gives rise to problems like environmental pollution.¹⁰ Therefore, the crisis we are facing today due to pollution can be because, down the ages, human beings have been the major causes of polluting the environment, in one

⁹ *T. N. Godavaram Tirumalpal v. Union of India* (2002) 10 SCC 606.

¹⁰ N. S. Kamboj (1995). *Population Growth Prime Cause of Environmental Pollution and its Legal Control in India*. Indian Bar Review, Vol. XXII

way or the other. As aptly remarked by Martin Luther King Jr., “We have guided missiles and misguided men.”

The higher concentration of carbon dioxide (CO₂) in the atmosphere increases the Greenhouse Effect of the atmosphere and thus, increases the temperature of the earth's surface because carbon dioxide is more or less transparent to incoming short wave solar radiation and therefore, allows the solar radiation to pass through the atmosphere and reach the earth's surface, but stops the outgoing long wave terrestrial radiation from escaping to the space. If the concentration of atmospheric carbon dioxide goes on increasing, the oceans would be overburdened to absorb the additional carbon dioxide which would result in a gradual increase in oceanic acidity.¹¹ Carbon monoxide (CO) is the most important contributor to air pollutants. It causes respiratory problems and suffocation when inhaled by human beings. The major source of the production of carbon monoxide is the incomplete burning of fossils like coal, petroleum and wood charcoal. Automobiles using diesel and petroleum are the major sources of carbon monoxide. So, it is apparent that urban areas and industrial and business centres are the most significant contributors to carbon monoxide because they account for the largest number of automobiles and industries. After carbon monoxide, sulphur dioxide (SO₂) is the second most important contributor of air pollutants as it accounts for 29 per cent of the total weight of all air pollutants and when the concentration of sulphur increases in the atmosphere, it increases the acidity of water and lowers the pH¹² of water significantly. Thus, it becomes injurious to both plants and animals. The major man-made sources of sulphur dioxide are thermal power plants, crude oil refineries and automobiles which together account for five per cent of total SO₂ pollution from man organised sources.

Figure 2 shows worldwide emissions of carbon dioxide, methane, nitrous oxide and several fluorinated gases from 1990 to 2015. For consistency, emissions are expressed in million metric tons of carbon dioxide equivalents. These totals include emissions and sinks due to land-use change and forestry.

Therefore, a number of affirmative actions and recommendations has been formulated at national and

international levels to regulate climate change. Global concern for problems can be traced in the Seminar on Development and Environment in Switzerland convened in 1972 by the United Nations Organization on the Human Environment and Rio in 1992. The seminar concluded that environmental problems not only wrongly result from the development process itself but also because of the very lack of development, poor quality water, inadequate housing and sanitation, malnutrition disease and disaster.

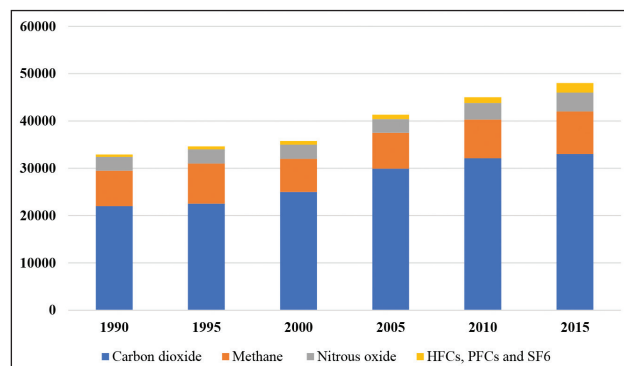


Figure 2: Global greenhouse gas emissions, 1990 – 2015.
Source: The U.S. Global Change Research Programme (USGCRP) Report (2016), *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment*, published in April, 2016.

The Stockholm Conference, 1972

The United Nations Conference on the Human Environment¹³ held in Stockholm from June 5 to June 16, 1972 may rigidly be reckoned as the first major attempt to solve the global problems of conservation and regulation of the human environment by international agreement on the universal level. It mobilised and concentrated the attention of international cooperation for environmental conservation. The main contribution of the Stockholm Conference of 1972 on the Human Environment comprises of:

- The Declaration on the Human Environment;
- The Action Plan for the Human Environment;
- The Resolution on Institutional Financial Arrangements;
- Resolution on Designation of a World Environment Day;
- Resolution on Nuclear Weapons Tests;
- Resolution on the covering of a Second Conference and

¹¹ Dr. I. A. Khan (2002). *Environmental Law*. Central Law Agency, 2nd ed., 7.

¹² pH stands for Potential of Hydrogen. It represents the ratio of Hydronium ions (H₃O) to Hydroxide ions (OH).

¹³ General Assembly Resolution No. 2398 (XXIII) and 2581 (XXIV) in 1968–1969.

- (g) Decision to refer to Government's recommendation for action at the national level.

Therefore, the protection and improvement of the human environment is a major issue that affects the well-being of people and economic development throughout the world. India was a signatory to the resolutions passed at this conference.

Earth Summit, 1992/ Rio Declaration

The Earth Summit or United Nations Conference on Environment and Development (UNCED) was held at Rio de Janeiro, the capital of Brazil from June 3 to June 14, 1992. It was the largest International Conference in the history of International Relations and International Law because it was attended by 178 Nations and more than 20,000 participants. The Earth Summit is the culmination of a series of United Nations Conferences beginning with the Stockholm Conference on Human Environment in 1972. Some of the main issues confronting the Earth Summit were financed¹⁴ technology transfer, institutional framework, *climate change*, forests, biological diversity and sustainable development. Rio Declaration contains 27 Principles concerning almost countries of the global community and enlisting general rights and obligations on environmental protection. *The United Nations Framework Convention on Climate Change (UNFCC)* establishes the common international objective of stabilizing atmospheric concentrations of Greenhouse Gas at a Level that will "prevent dangerous anthropogenic [human] interference with the climate system."

The Kyoto Protocol

Climate change is a global problem that requires a global response embracing the needs and interests of all countries. The United Nations Framework Convention on Climate Change (UNFCC) came into effect in 1994 and its Kyoto Protocol¹⁵ came into effect in 2005, sharing the objective of the Convention to stabilize atmospheric concentrations of greenhouse gases and enable such a goal response to climate change. The Protocol sets binding targets for developed countries, known as "Annex I Parties", to limit or reduce

greenhouse gas emissions. It has established innovative mechanisms to assist these Parties in meeting their emissions commitments.

Both the Convention and its Protocol created a framework for the implementation of an array of national climate policies and stimulated the creation of the carbon dioxide market and new institutional mechanisms that could provide the foundation for future mitigation efforts.

United Nations Global Compact

The International Community has been concerned with the growing gap in living standards between countries of the North and those of the South; widening overall disparities between rich and poor, rising unemployment as previously secure jobs are transferred overseas and the depletion of natural resources and environmental degradation. As a result, States have common goals for the implementation of International Labour Standards, the protection of other intrinsic human rights and "*sustainable development*". At the annual meeting of the Davos World Economic Forum in January 1999, the then United Nations Secretary-General Mr. Kofi Annan put forward the concept of a "*Global Compact*". The United Nations Global Compact officially launched at the headquarters of the United Nations in New York one year later. It is a voluntary corporate citizenship initiative with two complementary objectives –

- (a) To promote and develop the principles of the United Nations Global Compact so that they become essential elements of business strategy; and
- (b) To promote cooperation between the primary stakeholders, so that the cooperation is of a character that will support the objectives of the United Nations.

The United Nations Global Compact has been strengthened and expanded with the addition of the Caring for Climate initiative. Caring for Climate establishes a voluntary platform for Global Compact participants to cooperate and demonstrate leadership on the issue of climate change and a framework within which business leaders may promote practical solutions to assist in the formation of public policy. Businesses supporting the declaration are expected to set objectives and develop greenhouse gas reduction strategies, publicly sharing their progress through the publication of yearly evaluations.

¹⁴ Who will pay for the cleansing of the World?

¹⁵ The Kyoto Protocol was internationally endorsed in 1997 and came into force in February 2005, 90 days after Russia's ratification.

Protection of Environment in Constitutional Philosophy

The Constitution of India¹⁶ is amongst the few in the world that contains specific provisions on environmental protection. The Directive Principles of State Policy and the Fundamental Duties in Part IV and Part IVA explicitly enunciate the national commitment to protect and improve the environment. Environment protection and improvement were explicitly incorporated into the Constitution by the Constitution (Forty-Second Amendment) Act, 1976. The 42nd Amendment Act clearly spelled out in the amendment to the Preamble to the Constitution of India the concept of *socialism*. In the socialistic pattern of societies, the State pays more attention to social problems than to any individual problem and pollution is one of them. Article 47 provides for the improvement of public health as one of the primary duties of the State.

In pursuance of the United Nations Conference on Human Environment convened at Stockholm in 1972, the nations of the world decided to take appropriate steps to protect and improve the human environment. In view of this, the 42nd Amendment to the Constitution of India inserted Part IVA of the Constitution which enumerates certain Fundamental Duties under Article 51A (g) and also inserted Article 48A in Part IV of the Constitution of India. Article 48A states, “The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.” Article 51A (g) specifically deals with the fundamental duty with respect to the environment. It states, “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for a living creature.”

The Constitution (Forty-Second Amendment) Act of 1976 also made certain changes in the *Seventh Schedule* to the Constitution. Originally, the forest as a subject was included in List II, Entry 19. Since no uniform policy was being followed by the State with regard to the protection of forests, now, this subject has been transferred to List III and hence, now, the Parliament and State Legislature both may pass legislation.

¹⁶ Article 394 states that Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1950, which day is referred to in this Constitution as the commencement of this Constitution.

Corporate Social Responsibility as a Mitigation Tool for Climate Change

Corporate Social Responsibility (CSR) is a self-regulating business model that helps a company be socially accountable to itself, to its stakeholders and the public. By practicing Corporate Social Responsibility¹⁷, companies can be conscious of the kind of impact they are having on all aspects of society, including social, economic and environmental. As important as CSR is for the community, it is equally valuable for a company. CSR boosts morale and helps both employees and employers feel more connected with the world. So, it is a proactive policy initiated by the business itself in order to improve the adherence to and the promotion of ethical standards and global best practices within the global business community.

In India, the Ministry of Corporate Affairs notified Section 135 and Schedule VII of the Companies Act, 2013¹⁸ as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014¹⁹ with effect from April 1, 2014, under which every company, whether private or public, with a net worth of INR 500 crore or a turnover of INR 1,000 crore or net profit of INR 5 crore, needs to spend at least two per cent of its average net profit for the immediately preceding three financial years on CSR activities. Also, contribution to any political party is not considered to be a CSR activity.

Green Theory and Climate Change

Green Theory is a relevant perspective for embedding the climate change discourse in contemporary times. An attempt of rethinking Corporate Social Responsibility as a mitigating tool for climate change has led to the postulation of the green theory. It raises an alarm about the side effects of economic growth on climate change. Environmental degradation caused by human activity has a long and complex history. Until the period of European global expansion and the industrial revolution, environmental degradation generally remained uneven and relatively localised. So, environmental concerns have left their mark on most branches of the social sciences and humanities. However, it was not until the late 1980s that a distinctly ‘green’ social and political

¹⁷ Also called Corporate Citizenship.

¹⁸ Act 17 of 2013.

¹⁹ Published vide Notification No. G.S.R. 129(E), dated February 27, 2014.

theory emerged to give voice to the interrelated concerns of the new social movements that have shaped green policies. The term '*green*' is often used to refer simply to environmental concerns. The basic quest of green theory is to reduce ecological risks across the board and to prevent their unfair externalisation and displacement, through space and time, onto innocent third parties.

In pursuance of global green policy to control climate change, the seventh, eighth and ninth principles in the United Nations Global Compact need to be enforced. The *seventh principle* made it mandatory for all corporations across the globe to adopt a precautionary approach to environmental management; the *eighth principle* requires cooperation to promote greater environmental responsibility and the *ninth principle* expects corporations to deploy environment-friendly technologies in their operations. So, a green policy directed at climate change is a self-regulating action designed by political actors to mitigate the threat that climate change poses to the World.

Conclusion

Today enterprises are increasingly contributing to the progressive degradation of existing ecosystems by emitting huge amounts of hazardous pollutants and excessive use of available natural resources, causing a serious threat to our planet's biodiversity. Hence, there is a need to take varied measures to eradicate the degradation of the environment by human activity. Initiatives aimed at mere neutralisation of produce pollutants are no longer sufficient. It is necessary to search for solutions to reduce the environmental burden of business activity at all phases of the production process, from the designing stage and production planning to every stage of the manufacturing process.²⁰ Environmental law is an instrument to protect and improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. The foundation of the Indian Environmental Jurisprudence was incorporated into the Indian Constitution by the 42nd Amendment in 1976 along with the liberal interpretation of Article 21 of the Indian Constitution. This has generated a new Jurisprudence on environmental protection. The Supreme Court has played a pivotal role in preserving

the ecology and the environment. Various leading decisions laid down by the Apex Court in the field of Environmental Law that the right to a clean environment is an inbuilt part of Article 21 of the Constitution of India. However, the court fully realised that there can be no development without adverse effects on the environment and ecology. Therefore, a balance has to be struck and it must be remembered that public utility cannot be abandoned nor the environment can be allowed to be degraded and destroyed. Environmental pollution as a subject matter of legislation did not find its place in the Indian Law books until as late as 1974. Before 1974, the only legal support available to citizen against pollution of any nature was the Civil and Criminal Law, like the Indian Penal Code;²¹ the Code of Criminal Procedure, 1973²² and the law of tort. However, there was nothing in the nature of preventive and regulatory enactments. It was only in the year 1974 that the Water (Prevention and Control of Pollution) Act, 1974 was enacted. Then came the Air (Prevention and Control of Pollution) Act, 1981. Even these legislations were punitive in nature and not preventive. The Environment (Protection) Act of 1986 was the first comprehensive legislation with regard to environmental pollution. Therefore, it was widely acclaimed as the first legislation to tackle the problem of pollution.

It is clear that the world cannot continue to pursue a business-as-usual approach and nobody can solve the problem of climate change on their own. So, business, Government and philanthropy must collaborate within and among themselves to drive results quickly and at scale. Non-Governmental Organisations and State regulators should leverage corporate attitudes in order to improve uniformity and standardisation, which would be much easier to do than prescribing substantive norms for greenhouse gas reductions. Corporate Social Responsibility needs to be refocused as a tool for climate change mitigation through the adoption of green policies involving responsible production techniques and disclosure of carbon footprint. So, green theory can be a relevant perspective for mitigating climate change discourse in contemporary times. The mounting evidence for a coming era of climate unrest should be translated as soon as possible to concrete policy steps and pave a clear road map for humanity so that it can safeguard the planet for the future generation.

²⁰ Anna Zelazna, Matylda Bojar et. al. (2020). "Corporate Social Responsibility towards the Environment in Lubin Region, Poland: A Comparative Study of 2009 and 2019". *Sustainability*, 1.

²¹ Act 45 of 1860.

²² Act 2 of 1974.

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