ARTICLE 51A(G) AND THE INTERNATIONAL COURT OF JUSTICE'S ADVISORY OPINION ON CLIMATE CHANGE: REIMAGINING ENVIRONMENTAL DUTIES BEYOND NATIONAL BORDERS

Ayushi Anil Malik, Gujarat National Law University, Gandhinagar

ABSTRACT

Climate change has made it progressively challenging to view environmental protection as a duty limited to national borders. Actions taken in one state can impact communities, ecosystems, and future generations far beyond its borders, rendering climate responsibility both transboundary and intergenerational. In India, Article 51A(g) embodies this duty by mandating that every citizen safeguard and enhance the natural environment. However, its non-justiciable nature has constrained its immediate legal implications. At the same time, the broader interpretation of Article 21 and the recognition of the need to protect against the detrimental effects of climate change as a constitutional issue suggest an increasing role for Indian constitutional law in addressing climate risks. This paper explores the evolving dynamics in light of the Advisory Opinion issued by the International Court on the Obligations of States in respect of Climate Change, announced on July 23, 2025. It evaluates how the Opinion's insights on State obligations concerning prevention, due diligence, and international collaboration can broaden the interpretation of Article 51A(g) and India's climate initiatives as a whole. Additionally, it addresses the consequences of these developments for India, especially the necessity to balance climate responsibilities with developmental goals and the principles of common but differentiated responsibilities and respective capabilities. The paper advocates for a more integrated relationship among India's constitutional values, its domestic climate framework, and international climate regulations, enabling Article 51A(g) to attain greater relevance today without being altered into a standalone principle.

INTRODUCTION

"Protecting nature is not merely our right, it is also our constitutional and moral responsibility."

Climate change has transformed environmental protection issues from domestic concerns into a global legal problem. Globalisation has increased the cross-border flow of resources, technology, and economic activities, while the environmental impacts of these processes increasingly transcend national borders. Global warming, severe weather events, rising sea levels, and loss of biodiversity are not just environmental concerns, but also impact human health and development.[1] Because climate change is a problem that crosses boundaries and affects future generations, it broadens the scope of accountability for environmental protection beyond geographical limits. This situation places a duty on both States and individuals to reflect on how their actions today influence communities, ecosystems, and future generations beyond their own territory.

In India, Article 51A(g), introduced through the Forty-Second Constitutional Amendment in 1976, imposes a *'fundamental duty'* upon every citizen *"to protect and improve the natural environment."* Although the duty is not independently enforceable, it fits within a broader constitutional framework when read alongside Article 21, which courts have interpreted to include the 'right to a clean and healthy environment', and Article 48A, which requires the state to protect and improve the environment. Furthermore, in *Vellore Citizens' Welfare Forum v. Union of India*,[2] the Supreme Court recognised principles such as *'sustainable development'* and the '*precautionary principle*' as an integral part of Indian environmental law. Meanwhile, in *M.K. Ranjitsinh v. Union of India*,[3] the Court more recently recognised a constitutional right to protection from the *'adverse effects of climate change'* under Articles 14[4] and 21. This framework is reinforced by legislation such as the Environment (Protection) Act, 1986, the National Green Tribunal Act, 2010, the National Action Plan on Climate Change, and the State Action Plans on Climate Change. The Ministry of Environment, Forest and Climate Change serves as the nodal ministry for climate change policy and coordination at the national level,[5]

[1] Ali Mehdi, *Climate Change and Biodiversity: India's Perspective and Legal Framework*, 52 J. INDIAN L. INST. 343, 343–45 (2010).
[2] *Vellore Citizens' Welfare Forum v. Union of India,* (1996) 5 SCC 647.
[3] *M.K. Ranjitsinh v. Union of India,* (2024) 19 SCC 139.
[4] INDIA CONST. art. 14.
[5] Akhilesh Yadav & Richa Choudhary, *The Legal Framework for Climate Change Mitigation in India: An Analytical Study*, 12 INT'L J. RECENT ADVANCES MULTIDISCIPLINARY RES. 11600, 11600–08 (2025).

while climate action also involves several sectoral ministries and institutions. However, climate governance remains distributed across different laws, policies and institutions, with no comprehensive climate statute. Furthermore, the non-justiciable nature of Article 51A(g) raises the question of how a Fundamental Duty might contribute to enforceable environmental protection when read in conjunction with Articles 21 and 48A. This raises a national legal issue regarding the interpretation, implementation, and accountability of existing constitutional and legal obligations to address climate change. The question is therefore not whether India recognizes environmental responsibility, but how that duty is perceived and translated into effective climate action.

India's climate obligations are influenced by the UNFCCC, the Kyoto Protocol, and the Paris Agreement, along with principles such as equity, Common but Differentiated Responsibilities and Respective Capabilities, the precautionary principle, and the prevention of transboundary environmental harm. The *'International Court of Justice's Advisory Opinion on States' Obligations Regarding Climate Change,'* issued on 23 July 2025,[6] highlights these issues by examining the responsibilities of States regarding climate change, including prevention, due diligence, and international collaboration. In India, the significance of these international commitments is reinforced by Article 51(c) and Article 253 of the Constitution. The Seventh Schedule does not expressly provide for climate change. However, Union List Entries 13 and 14, relating to participation in international bodies and the implementation of treaties, and Concurrent List Entry 20, relating to economic and social planning, are pertinent to India's constitutional framework for addressing climate-related issues. At the international level, this raises concerns about the scope of State obligations, the level of due diligence required, the implementation of climate commitments, and how international climate norms can inform domestic law.

Therefore, the ICJ Advisory Opinion provides a substantial basis for analysing India's current approach to climate responsibility from the perspective of emerging international climate law. While the Opinion does not immediately alter Indian domestic law, its formulation of States' duties under international law provides a helpful framework for analysing the effectiveness of existing legal and institutional frameworks. This study will examine the Indian constitutional, legal, and institutional frameworks, as well as the international climate law framework, in light

[6] International Court of Justice, *Obligations of States in Respect of Climate Change*, https://www.icj-cij.org/case/187 (last visited Aug. 22, 2026).

of the ICJ Advisory Opinion, with a focus on Article 51A(g) and its relevance to India's international climate commitments. It will look at the key issues of interpretation and implementation, specifically the relationship between Article 51A(g), enforceable environmental rights, state responsibilities, and international climate obligations. It will also identify the gaps between legal recognition and effective implementation and make suggestions for improving India's climate governance while balancing developmental requirements, justice, and the interests of both present and future generations.

INDIAN LEGAL FRAMEWORK ON ENVIRONMENTAL AND CLIMATE PROTECTION

Constitutional Framework

India's environmental protection framework has developed through constitutional provisions, judicial decisions, legislation, and policy measures. However, climate change is not governed by a single comprehensive statute. The constitutional framework therefore provides the primary basis for connecting environmental protection with climate responsibility.

The principles of *'justice'*, *'equality'*, and *'fraternity'* found in the *'Preamble'* are pertinent to climate governance. Fraternity represents the need for shared responsibility in tackling environmental issues that transcend national boundaries, justice supports climate justice and intergenerational fairness, and equality seeks equitable protection from climate-related harm.

Articles 21,[7] 48A,[8] and 51A(g)[9] serve as the primary constitutional framework for environmental protection in India. While Article 21 guarantees the right to life, the Forty-Second Amendment Act, 1976 enacted Article 48A, which directs the state to *"protect and improve the environment, forests, and wildlife of the country."* The Amendment also introduced Article 51A(g), which made it a fundamental duty of all citizens to *"protect and improve the natural environment, including forests, lakes, rivers, and wildlife, as well as to have compassion for living creatures."* Articles 38[10] and 47[11] strengthen this framework by emphasizing social welfare, a higher standard of living, and public health.

[7] INDIA CONST. art. 21.
[8] INDIA CONST. art. 48A.
[9] INDIA CONST. art. 51A, cl. (g).
[10] INDIA CONST. art. 38.
[11] INDIA CONST. art. 47.

Article 51A(g) is especially significant since it incorporates environmental protection into the scope of constitutional duties. However, because it is a Fundamental Duty, it is non-justiciable in nature. However, the Supreme Court interpreted Article 51A(g) alongside Articles 21 and 48A, allowing the Duty to strengthen enforceability. The courts have widened the scope of Article 21 to address environmental issues.[12] In *Rural Litigation & Entitlement Kendra v. State of Uttar Pradesh*,[13] ecologically destructive limestone mining was stopped and the Court recognized the importance of balancing environmental conservation and development. In *M.C. Mehta v. Union of India*,[14] which dealt with Ganga pollution caused by industrial effluents, the Court ordered the closure of polluting tanneries that had failed to establish treatment facilities. In *Subhash Kumar v. State of Bihar*,[15] the Court had recognised that the *'right to clean air and water'* are components of the right to life under Article 21. *Virender Gaur v. State of Haryana*[16] emphasized the necessity of a clean and sanitary environment for a life of human dignity.

The Court's approach then expanded beyond the recognition of environmental rights to include principles regulating environmental decision-making. In *Vellore Citizens' Welfare Forum v. Union of India*,[17] the Supreme Court recognized *"sustainable development", "precautionary principle"*, and the *"polluter pays principle"* as components of Indian environmental law.[18] In *M.C. Mehta v. Kamal Nath*,[19] the Court used the *"public trust doctrine",* acknowledging the State's obligation to conserve natural resources for the public. In *M.K. Ranjitsinh v. Union of India*,[20] the Supreme Court recognized a protection against the *"adverse effects of climate change"* under Articles 14 and 21. The Court also referred to Articles 48A and 51A(g), stating that, while not justiciable, these provisions underscore the constitutional importance of environmental preservation. The decision highlights how Article 51A(g), although not establishing a separate cause of action, might guide the interpretation of enforceable constitutional rights regarding climate change. It thereby integrates Article 51A(g) into the emerging constitutional notion of climate responsibility, rather than considering it as a stand-

[12] Vanishree R. & Mohd. Saleem*, Legal Obligations, Judicial Enforcement, and the Right to a Clean Environment: A Doctrinal Study of Municipal Solid Waste Management in Bengaluru*, 8 INDIAN J. L. & LEGAL RSCH. 3437, 3437 (2026).
[13] *Rural Litigation and Entitlement Kendra v. State of U.P.,* (1985) 2 SCC 431.
[14] *M.C. Mehta v. Union of India,* (1988) 1 SCC 471.
[15] *Subhash Kumar v. State of Bihar,* (1991) 1 SCC 598.
[16] *Virender Gaur v. State of Haryana,* (1995) 2 SCC 577.
[17] *Vellore Citizens' Welfare Forum v. Union of India,* (1996) 5 SCC 647.
[18] ALASTAIR RIEU-CLARKE, ANDREW ALLAN & SARAH HENDRY, ROUTLEDGE HANDBOOK OF WATER LAW AND POLICY (Routledge 2019).
[19] *M.C. Mehta v. Kamal Nath,* (1997) 1 SCC 388.
[20] *M.K. Ranjitsinh v. Union of India,* (2024) 19 SCC 139.

alone civic obligation. The pending case *Ridhima Pandey v. Union of India*[21] examines whether India's current environmental laws and climate policies are adequate to address climate change. The Supreme Court has also questioned the binding nature of India's climate obligations, the necessity to review existing environmental legislation for climate-centric mandates, and more cooperation among ministries. [22]

The Constitution further establishes a connection to international law. Article 51(c)[23] urges the State to *"foster respect for international law and treaty responsibilities",* whereas Article 253[24] authorizes Parliament to enact legislation *"to give effect to international agreements".* The Seventh Schedule lacks a specific entry on climate change. However, Union List Entries 13[25] and 14[26] address participation in international conferences as well as the implementation of treaties and agreements with foreign countries. Concurrent List Entry 20[27] is concerned with economic and social planning, whereas 17A[28] and 17B[29] are concerned with forests and the protection of wild animals and birds. Article 253 is thus particularly relevant in cases when Parliament wants to fulfill international climate obligations through legislation.

Therefore, India has a constitutional basis for protecting the environment and the climate, however, its provisions do not yet function as a fully integrated framework of climate responsibility. The primary problem is that Article 51A(g) does not independently impose an enforceable climate obligation and is still non-justiciable. Therefore, the solution should be to give it more constitutional significance by interpreting it in a way that is consistent with Articles 21 and 48A, thereby strengthening the State's obligation towards the environment and climate change. Articles 14, 51(c), and 253 can strengthen the framework by linking climate protection to equality, international obligations, and domestic implementation. Therefore, developing a constitutional interpretation in which Article 51A(g) significantly improves climate governance and reinforces enforceable rights and State obligations is an

[21] *Ridhima Pandey v. Union of India,* 2025 SCC OnLine SC 3115.
[22] Gunjan Soni & Jui Dharwadkar, *Is Ridhima Pandey v. Union of India Going to Change the Future of Climate Change Litigation in India? – An Assessment of the Indian Supreme Court's Recent Order*, WORLD'S YOUTH FOR CLIMATE JUSTICE (May 20, 2025), https://www.wy4cj.org/legal-blog/is-ridhima-pandey-v-union-of-india-going-to-change-the-future-of-climate-change-litigation-in-india-an-assessment-of-the-indian-supreme-courts-recent-order.
[23] INDIA CONST. art. 51, cl. (c).
[24] INDIA CONST. art. 253.
[25] INDIA CONST. sch. VII, list I, entry 13.
[26] INDIA CONST. sch. VII, list I, entry 14.
[27] INDIA CONST. sch. VII, list III, entry 20.
[28] INDIA CONST. sch. VII, list III, entry 17A.
[29] INDIA CONST. sch. VII, list III, entry 17B.

essential area for future work.

Legislative, Policy and Institutional Framework

The constitutional commitment to environmental preservation is complemented by a gradually evolving legal framework. The Water (Prevention and Control of Pollution) Act, 1974[30] and the Air (Prevention and Control of Pollution) Act, 1981[31] provided the primary legislative framework for regulating water and air pollution.[32] This framework was further supplemented by the Forest (Conservation) Act, 1980,[33] the Environment (Protection) Act, 1986, and the National Green Tribunal Act, 2010.

The Environment (Protection) Act, 1986 establishes a wide regulatory framework for protecting the environment. However, it is not intended as a climate governance framework and does not include extensive climate-specific targets or requirements. Sections 3,[34] 5,[35] and 6[36] allow the Central Government to preserve the environment, issue directives, and establish standards and safeguards. The National Green Tribunal Act, 2010 strengthened enforcement by creating a specialized forum for environmental issues. Sections 14[37] and 15[38] address substantial environmental issues and give relief, compensation, and restitution. Section 20[39] mandates the Tribunal to adopt sustainable development, the precautionary principle, and the polluter-pays principle.

India's climate response has evolved primarily through policy initiatives rather than specific legislation. The National Action Plan on Climate Change, 2008,[40] includes eight national missions focusing on solar energy, energy efficiency, sustainable habitat, water, forests, sustainable agriculture, and climate information. State Action Plans on Climate Change aim to transform these goals into state-level mitigation and adaptation actions, whereas India's

[30] The Water (Prevention and Control of Pollution) Act, No. 6 of 1974, INDIA CODE (1974).
[31] The Air (Prevention and Control of Pollution) Act, No. 14 of 1981, INDIA CODE (1981).
[32] ALAN P. DIDUCK, KIRIT PATEL & ARUNA KUMAR MALIK EDS., ADVANCING ENVIRONMENTAL JUSTICE FOR MARGINALIZED COMMUNITIES IN INDIA: PROGRESS, CHALLENGES AND OPPORTUNITIES (Routledge 2022).
[33] The Forest (Conservation) Act, No. 69 of 1980, INDIA CODE (1980).
[34] The Environment (Protection) Act, No. 29 of 1986, INDIA CODE (1986), § 3.
[35] The Environment (Protection) Act, No. 29 of 1986, INDIA CODE (1986), § 5.
[36] The Environment (Protection) Act, No. 29 of 1986, INDIA CODE (1986), § 6.
[37] The National Green Tribunal Act, No. 19 of 2010, INDIA CODE (2010), § 14.
[38] The National Green Tribunal Act, No. 19 of 2010, INDIA CODE (2010), § 15.
[39] The National Green Tribunal Act, No. 19 of 2010, INDIA CODE (2010), § 20.
[40] Harshal T. Pandve, *India's National Action Plan on Climate Change*, 13 INDIAN J. OCCUP. & ENV'T MED. 17, 17–19 (2009).

Nationally Determined Contributions serve as the basis for the country's commitments under the Paris Agreement. These guidelines do enable climate action but do not put in place a single regulatory framework containing enforceable climate targets and accountability systems. India's policy measures and legally binding obligations continue to fall behind, posing a significant challenge for climate governance.

Responsibility for executing these policies is split across many institutions. The *"Ministry of Environment, Forest and Climate Change"* is the primary ministry in control of environmental and climate policy, while the *"Ministry of External Affairs"* is responsible for India's international climate engagement. Other ministries, such as the Ministry of Power, Ministry of Coal, Ministry of Finance, Ministry of Agriculture and Farmers Welfare, and Ministry of Housing and Urban Affairs, are also important since climate action has an impact on energy, infrastructure, agriculture, finance, and urban development. Due to the participation of numerous ministries, inter-institutional coordination is an essential component of efficient climate implementation.

Thus, the legislative, policy, and institutional framework has a strong foundation, but it is fragmented and lacks clear climate-related obligations. Existing laws, including NAPCCs, SAPCCs, and NDCs, do not provide clear targets, accountability, or monitoring, and responsibilities are spread across multiple ministries. The solution is to create a clearer and more integrated framework through comprehensive climate legislation, climate due diligence and impact assessment, stronger state-level implementation, and improved institutional coordination. This would clarify climate responsibilities and enhance accountability and implementation.

INTERNATIONAL LEGAL FRAMEWORK ON CLIMATE CHANGE

The current legal regime regarding climate change has been developed through a combination of environmental principles, international agreements, and norms related to State responsibility. Together, they address the issues of mitigation, adaptation, financing, and cooperation, taking into account the different situations and capabilities of States.

The principle of no-harm is one of the foundational principles of international environmental law, established in the *Trail Smelter Arbitration*,[41] where Canada was found responsible for

[41] *Trail Smelter Arbitration* (U.S. v. Can.), 3 U.N. Rep. Int'l Arb. Awards 1911 (Arb. Trib. 1941).

transboundary pollution across the border caused by its nationals, which led to damage in the US environment. This principle was subsequently incorporated into Principle 21 of the Stockholm Declaration in 1972,[42] which has recognised States' responsibilities to guarantee that activities under their authority or in their jurisdiction do not cause environmental harm to other nations. Principle 12 acknowledged the necessity for financial and technical support to developing nations, considering their specific situations. The Rio Declaration of 1992[43] reiterated the no-harm principle outlined in Principle 2 and recognized Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) under Principle 7, along with the precautionary principle highlighted in Principle 15.

The United Nations Framework Convention on Climate Change[44] established in 1992, created the main treaty framework for tackling climate change. Article 2 aims to stabilize greenhouse gas levels to avoid harmful interference with the climate system. Article 3(1) mandates that climate protection should be grounded in equity and CBDR-RC, while Article 3(4) affirms that economic and social development and poverty reduction are top priorities for developing countries. Commitments regarding mitigation, adaptation, finance, technology transfer, and cooperation are outlined in Article 4.

The Kyoto Protocol, adopted in 1997,[45] introduced a more nuanced approach by mandating Annex I Parties to fulfill quantified targets for emission limitations and reductions under Article 3. The Paris Agreement,[46] established in 2015, created a more comprehensive framework that applies to all Parties. Article 2(1)(a) aims to maintain the *"rise in global average temperature to well below 2°C while striving to limit it to 1.5°C."* Article 2(2) upholds principles of equity and Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC), while Article 4(2) necessitates the submission of successive Nationally Determined Contributions, and Article 4(3) mandates that each subsequent contribution must demonstrate progress compared to the previous one. For India, these principles and obligations are of significance in order to balance climate justice with the development needs of the country. In

[42] U.N. Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, U.N. Doc. A/CONF.48/14/Rev.1 (June 16, 1972).
[43] U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Aug. 12, 1992).
[44] United Nations Framework Convention on Climate Change art. 3, May 9, 1992, 1771 U.N.T.S. 107.
[45] Kyoto Protocol to the United Nations Framework Convention on Climate Change art. 3, Dec. 11, 1997, 2303 U.N.T.S. 162.
[46] Kyoto Protocol to the United Nations Framework Convention on Climate Change art. 3, Dec. 11, 1997, 2303 U.N.T.S. 162.

addition, the Paris Agreement also recognises that climate action is not only about mitigation. Article 7 deals with adaptation, Article 8 deals with loss and damage, and Article 11 deals with capacity building. These are essential for developing countries, as they emphasize their need for support as well as adaptation. Furthermore, Articles 31 and 32 of the Vienna Convention on the Law of Treaties, 1969, [47] outline the fundamental rules for interpreting treaties. The Articles on Responsibility of States for Internationally Wrongful Acts, 2001, [48] formulated by the International Law Commission, lay down general principles regarding State responsibility and its consequences.

International law has likewise shaped environmental jurisprudence in India. In *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey*,[49] the Hon'ble Supreme Court recognised that international law can be applied in the country when it does not clash with domestic law. In *Vishaka v. State of Rajasthan*,[50] international conventions were used to fill a legislative void, provided they aligned with constitutional safeguards. In *Vellore Citizens' Welfare Forum v. Union of India*, the Court recognized *"sustainable development", "precautionary principle",* and the *"polluter pays principle"* as components of India's environmental law.

Despite the advancements in international climate law, there is still a significant gap between the recognition of climate responsibilities and their actual execution at the national level. The UNFCCC and the Paris Agreement outline various obligations, yet their success hinges on States converting these commitments into national actions. For India, this issue is particularly important since climate responsibilities are dispersed across various policies, laws, and institutions instead of being managed under a unified and comprehensive framework. Thus, the solution lies in enhancing the domestic execution of existing international commitments by establishing clearer legal obligations, ensuring effective monitoring, and increasing institutional accountability.

India can bridge this gap by implementing climate legislation that sets clear national goals, outlines institutional responsibilities, and includes provisions for monitoring, reporting, and periodic reassessment of climate commitments. Incorporating climate due diligence and climate impact assessment into current environmental regulations is essential, especially for

[47] Vienna Convention on the Law of Treaties arts. 31–32, May 23, 1969, 1155 U.N.T.S. 331.
[48] G.A. Res. 56/83, annex, Responsibility of States for Internationally Wrongful Acts, U.N. Doc. A/RES/56/83 (Dec. 12, 2001).
[49] *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey,* (1984) 2 SCC 534.
[50] *Vishaka v. State of Rajasthan,* (1997) 6 SCC 241.

projects that generate significant greenhouse gas emissions or pose climate-related risks. Greater legal authority should be granted to State Action Plans, integrating them with State and local development initiatives, while enhancing coordination among the MoEFCC, MEA, and relevant sectoral ministries. Domestic legislation and judicial interpretation can be further informed by international principles of prevention, due diligence, non-significant harm, equity, and CBDR RC. These actions would reinforce the connection between India's international obligations and their domestic execution while ensuring effective climate action.

ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE ON CLIMATE CHANGE

Legal Obligations and State Responsibility under the Advisory Opinion

On July 23, 2025, the International Court of Justice unanimously issued its Advisory Opinion on *"Obligations of States in Respect of Climate Change"* in response to a request made by the United Nations General Assembly through *Resolution 77/276*.[51] The Court was asked to clarify two issues: States' obligations to prevent anthropogenic greenhouse gas emissions from harming the climate system and other parts of the environment, and the legal consequences for States that significantly harm the climate system and environment through their actions or omissions.[52]

The Court clarified that climate treaties coexist with customary international law, human rights law, law of the sea,[53] rejecting the claim that the UNFCCC and Paris Agreement constitute a self-contained *lex specialis* system.[54] As a result, rather than relying solely on climate treaties, it viewed climate obligations as resulting from several different sources. One of the key findings was that States are obligated by customary international law to prevent significant environmental harm, including damage to the global climate. This duty has an *erga omnes* nature and is independent of treaty obligations, reflecting states' shared interest in safeguarding

[51] Jutta Brunnée, *The Advisory Opinion on Obligations of States in Respect of Climate Change: Harm Prevention under Customary International Law*, VÖLKERRECHTSBLOG (Aug. 6, 2025), https://voelkerrechtsblog.org/de/the-advisory-opinion-on-obligations-of-states-in-respect-of-climate-change/.
[52] Ben Chester Cheong, *The ICJ's 2025 Climate Change Advisory Opinion: Critical Implications for UK Environmental and Planning Law*, 12 J. PLAN. & ENV'T L. 1623, 1623–41 (2025).
[53] American Society of International Law, *U.N. General Assembly Adopts Resolution Welcoming ICJ Climate Change Advisory Opinion*, ASIL (July 29, 2025), [URL not provided].
[54] Maria Antonia Tigre, *Maxim Bönnemann & Antoine De Spiegeleir, The ICJ's Advisory Opinion on Climate Change: An Introduction*, VERFASSUNGSBLOG (July 24, 2025), https://verfassungsblog.de/the-icj-advisory-opinion-on-climate-change/.

the climate system.[55]

The Court adopted a strict due diligence standard because climate change poses an existential threat. Based on scientific and technical knowledge available, states must adopt necessary steps corresponding to the risk's seriousness and foreseeability.[56] This involves enacting and implementing standards and regulations, conducting risk and environmental assessments, and taking preventative steps even in cases where there exists some scientific uncertainty.[57] As per the CBDR-RC principle, the standard is not the same for every State, as several aspects are taken into account, such as national circumstances, level of development, historical contributions, and capabilities.[58] In addition, the Court emphasized that successive NDCs should demonstrate a progression and represent the States' highest ambition, of which the 1.5°C target temperature is an essential criterion to assess the State's efforts.[59]

The Court expanded these duties to include adaptation, cooperation, and regulation of private operations. States must implement appropriate adaptation measures and collaborate, particularly by providing support to states with greater vulnerability and fewer resources.[60] They must also regulate private actors whose actions contribute to climate change. Failing to exercise due diligence in managing such activities may result in State liability. In this regard, the Court recognized fossil-fuel production and consumption, exploration licenses, and subsidies as potentially relevant activities in cases where states fail to take the appropriate precautions.[61] Environmental impact assessments must also evaluate the potential climatic implications of large operations, such as downstream emissions from fossil-fuel projects.[62] The Court also recognized the connection between climate change and human rights, observing that

[55] Miles Jackson & Federica Paddeu, *Erga Omnes and Erga Omnes Partes Obligations in the International Court of Justice's Climate Change Advisory Opinion*, 2026 J. ENV'T L. eqag007 (2026).
[56] Steeve Guillod & Franz Xaver Perrez*, Due Diligence and Climate Change: Insights from the International Court of Justice's Advisory Opinion*, 35 RECIEL 311, 311–20 (2026).
[57] *Obligations of States in Respect of Climate Change*, Advisory Opinion, 2025 I.C.J, paras. 281–282, 293–298 (July 23).
[58] Dominic Coppens & Nicolas Lockhart, *Wayfinders for Climate Change Action: The ICJ, ITLOS, and IACtHR Advisory Opinions on Climate Change*, 72 NETH. INT'L L. REV. 301, 301–34 (2025).
[59] Didac Amat, *The Paris Agreement's Temperature Goal: An Obligation of Due Diligence to Protect the 1.5°C Threshold*, 39 LEIDEN J. INT'L L. 426, 426–49 (2026).
[60] Nathaniel Khng & Bryce Rudyk, *Advisory Opinion on Obligations of States in Respect of Climate Change (I.C.J.),* 65 INT'L LEGAL MATERIALS 789, 790 (2026).
[61] Umakanth Varottil*, ICJ's Advisory Opinion on Climate Change: Implications for Private Actors,* INDIACORPLAW (July 25, 2025), https://indiacorplaw.in/2025/07/25/icjs-advisory-opinion-on-climate-change-implications-for-private-actors/.
[62] Harro van Asselt & Tejas Rao, *Fossil Fuel Feuds and the ICJ Advisory Opinion on Climate Change*, 35 RECIEL 349, 349–65 (2026).

the protection of the environment is a prerequisite for the enjoyment of rights,[63] and that the effects of climate change, such as rising sea levels, desertification, and natural disasters, [64] can affect rights to life, health, livelihood, food, water, and housing.

In terms of State responsibility, the Court affirmed that the general principles of State accountability extend to violations related to climate change. The wrongful action is not necessarily the emissions themselves, but rather the failure to adhere to relevant preventive or regulatory obligations. A breach may lead to cessation, guarantees against future occurrences, and, if conditions are met, full compensation through restitution, compensation, or satisfaction.[65] However, establishing causation is difficult, because climate change is the consequence of the cumulative emissions of different States and actors. Therefore, the Court insisted on a *"direct and evident clear causal link"* between the wrongful act and the damage, leaving the assessment of attribution and responsibility to a case-by-case basis.

The Opinion, while not binding like a judgment, is an official statement from the International Court of Justice. It has the authority to shape States' practices, be used by domestic courts as a reference, influence various laws and legislation, and affect future litigation on climate change, thus possessing significant *"political pull."*[66] Consequently, the Opinion creates a new legal standard for climate obligations, integrating treaty obligations, customary international law, human rights, and State responsibility in determining the adequacy of States' climate efforts.

Impact of the Advisory Opinion on India

The Advisory Opinion has the potential to strengthen the legal foundation for India's evolving approach to climate-related law. Currently, India's climate governance is scattered across various environmental laws, policies, the National Action Plan on Climate Change, and individual state action plans, lacking a unified climate legislation. The Opinion offers Indian courts persuasive international references when interpreting current environmental and

[63] Dominic Coppens & Nicolas Lockhart, *Wayfinders for Climate Change Action: The ICJ, ITLOS, and IACtHR Advisory Opinions on Climate Change*, 72 NETH. INT'L L. REV. 301, 301–34 (2025).
[64] Ramesh Thakur, *Global Governance vs. Democratic Sovereignty*, DAILY TELEGRAPH N.Z. (Aug. 21, 2025), https://dailytelegraph.co.nz/opinion/global-governance-vs-democratic-sovereignty/.
[65] Yann Kerbrat & Sandrine Maljean-Dubois, *Opening the Doors: Legal Consequences of Breaching International Climate Obligations in the ICJ Advisory Opinion on Climate Change*, 35 RECIEL 340, 340–48 (2026).
[66] Soenke Kreft & Maren Solmecke, *Delivering Climate Justice? The ICJ Advisory Opinion and Its Significance for Climate Action*, UNITED NATIONS UNIVERSITY (July 28, 2025), https://unu.edu/ehs/commentary/delivering-climate-justice-icj-advisory-opinion-and-its-significance-climate-action.

constitutional laws. This is especially pertinent after the Supreme Court affirmed protection from the negative impacts of climate change under Articles 14 and 21.[67] The Opinion connecting environmental protection with human rights further strengthens this development, while Article 51A(g) articulates a constitutional duty towards environmental safeguarding without serving as a right that can be enforced independently. The Opinion may influence climate litigation in India to focus on the State's actions and inactions in relation to climate risk, rather than solely addressing climate damage through traditional environmental principles.

The Opinion is also relevant to India's developmental choices and energy transition. The Opinion does not impose a single standard that mandates developing nations to adopt the same transition strategies as developed countries. Its acknowledgment of historical contributions, capabilities, and varying levels of development within the CBDR-RC framework is particularly relevant for India, where affordable energy, infrastructure development, industrial growth, and poverty alleviation are key priorities.[68] India does not have to choose between economic development and climate action. However, the Opinion may make specific development decisions, particularly the continued growth or government support of fossil fuel-intensive businesses, more legally and environmentally contentious. Its focus on fossil fuel extraction, licensing, and subsidies emphasizes the impact of government decisions on future emissions.[69] This puts India's energy transformation under intense scrutiny. Furthermore, this transition should take into account energy security, economic prospects, and the communities that rely on coal and other carbon-intensive sectors. Adaptation is extremely important in India because climate change directly affects agriculture, water resources, health, infrastructure, and urbanization. Thus, India must sustain the developmental space required for poverty reduction and energy availability, while gradually transitioning away from carbon-intensive growth. Adequate climate funding, technological transfer, and international collaboration are thus required to guarantee that this transition does not disproportionately affect developing countries.

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[67] Gyanvi Khanna, *For First Time, Supreme Court Recognizes Right to Be Free from Adverse Effects of Climate Change*, LIVELAW (Apr. 8, 2024), https://www.livelaw.in/supreme-court/for-first-time-supreme-court-recognizes-right-to-be-free-from-adverse-effects-of-climate-change-254638.

[68] Paavni Gupta, *Decoding the World Court's Advisory Opinion on Climate Change and What It Means for Developing Countries Like India*, LAW & OTHER THINGS (Mar. 20, 2026), https://lawandotherthings.com/decoding-the-world-courts-advisory-opinion-on-climate-change-and-what-it-means-for-developing-countries-like-india-2/.

[69] Ashwathy Sunil, *Policy Ripple Effect: How the ICJ Advisory Opinion Could Shape India's Climate Governance*, WORLD'S YOUTH FOR CLIMATE JUSTICE (July 13, 2025), https://www.wy4cj.org/symposium/policy-ripple-effect-how-the-icj-advisory-opinion-could-shape-indias-climate-governance.

There is some ambiguity in the current legal framework about the definite extent of state obligations in combating climate change. A lack of clarity in responsibilities and standards can lead to uncertainty in environmental and climate governance and complicate accountability. Accountability, transparency, and consistency in climate decision-making can be strengthened by a clearer framework that outlines state obligations and conduct standards. The Advisory Opinion has the potential to help by providing more clarity on due diligence, scientific assessment, and environmental impact assessment, which can guide the consideration of climate risks in major infrastructure and energy decisions.

Despite not being legally binding, the Opinion's persuasive value can help Indian courts, regulators, and policymakers interpret current environmental and sectoral laws in a way that is sensitive to climate change. However, its implementation must continue to be in line with India's energy and developmental needs, including the need for affordable energy, infrastructure development, poverty alleviation, and the needs of communities that rely on carbon-intensive industries. Therefore, the goal should be higher climate accountability while maintaining flexibility in response to India's situation and CBDR RC.

SUGGESTIONS

Although India has a strong constitutional and legal foundation for protecting the environment and climate, the framework is still fragmented. The primary gap is the inconsistency between international obligations, domestic law, and constitutional requirements. Therefore, the recommendations seek to close this gap while respecting India's developmental requirements. The recommendations are as follows:

- **Enacting comprehensive climate legislation:** India should consider implementing comprehensive climate legislation under Article 253. Climate governance is now dispersed throughout the NDCs, the National Action Plan on Climate Change, state action plans, and different sectoral laws and regulations, resulting in a fragmented structure. The proposed legislation should establish national climate objectives, define institutional responsibilities, provide for monitoring and reporting, and create mechanisms for periodic review of India's climate commitments. It should provide a statutory framework for implementing the NDCs and connecting national objectives with State-level action, while retaining flexibility for India's developmental and energy requirements.

- **Integrating Climate Due Diligence into environmental regulation:** Climate due diligence should be included in India's current environmental regulatory framework. Major projects and activities that include considerable greenhouse gas emissions or climate-related risks should be mandated to identify and assess foreseeable climate impacts, as well as take preventative or mitigation actions as needed. Similarly, the Environmental Impact Assessment framework should take climate-related risks and consequences into account. This approach would shift climate governance toward prior assessment and prevention, rather than depending solely on action after environmental harm has occurred. It will also give a realistic way to incorporate the principles of prevention and due diligence into India's domestic regulatory framework.

- **Strengthening state and local climate governance:** National climate commitments cannot be properly executed without state and local action. State Action Plans on Climate Change should consequently be given more legal authority and connected to state budgets and development planning. Climate adaptation should also be included in local planning, especially in sectors such as water, agriculture, public health, and urban resilience. Greater engagement of Panchayats and Urban Local Bodies will help ensure that climate governance adapts to the realities in which climate effects occur. This would result in a more integrated multilevel system, linking national climate obligations to state and local implementation.

- **Strengthening institutional coordination:** Climate change has a wide-ranging impact on sectors such as energy, finance, agriculture, industry, transportation, and urban development. A fragmented institutional framework may hinder the implementation of climate measures. India should strengthen a coordinated framework to monitor climate commitments, coordinate across ministries, and assess their execution on a regular basis. A Climate Change Commission or specialized climate secretariat under MoEFCC, assisted by an increased coordinating role for NITI Aayog, could carry out these duties. Its primary function should be coordination, monitoring, and reporting. This will provide greater institutional responsibility and ensure that climate goals are integrated into overall development policies.

- **Giving greater constitutional significance to Article 51A(g):** Article 51A(g) 's non-justiciable character should not diminish its constitutional significance. At the same time,

it should not be interpreted as an independently enforceable responsibility against individual citizens. A more harmonious approach would be to interpret Article 51A(g) in accordance with Articles 21 and 48A. The Supreme Court has already acknowledged that, while not justiciable, Articles 48A and 51A(g) reinforce the constitutional notion of environmental protection and aid in the interpretation of Articles 14 and 21. Article 51A(g) can thus serve as a constitutional value that guides environmental and climate governance. This will give the Article modern significance while maintaining its constitutional status.

- **Strengthening climate remedies and public participation:** The National Green Tribunal Act, 2010 should expressly clarify the National Green Tribunal's jurisdiction over climate-related environmental disputes. This will provide clarity in disputes over climate consequences, environmental permits, and failures to conduct climate due diligence. People should be better equipped to have access to climate-related information and more opportunities to participate in key climate decisions. Such amendments would provide clearer remedies and more public accountability and implement Article 51A(g) of the common environmental obligation.

- **Using the Advisory Opinion in domestic interpretation:** Indian courts must consider the Advisory Opinion as a persuasive interpretive tool. It can contribute to the strengthening of existing constitutional and environmental norms. Indian jurisprudence in the past provided that international norms would be used to interpret domestic law when the domestic law was ambiguous, and the international norm did not conflict with the domestic law. This would be a bridge between the environmental jurisprudence of India and emerging international climate law.

- **Balancing climate responsibility with development:** The proposed reforms should take into account India's developmental aspirations and needs, including energy security, eradicating poverty, industrialization and infrastructure development. India must continue to focus on CBDR-RC and recognise the differences in capacities of the states and historical efforts. However, there should balance between these developments and duties towards climate so that the problem of climate change can be tackled properly.

Thus, these recommendations can contribute to the establishment of a cohesive framework for Indian climate governance, which will enhance climate accountability, without compromising India's development needs.

CONCLUSION

The study establishes that India has a substantial constitutional and international basis for addressing environmental and climate issues. Articles 21, 48A and 51A(g), supported by various judicial developments and India's international obligations regarding climate change, emphasize the increasing importance of environmental concerns as a legal obligation. However, climate change is a transboundary and intergenerational challenge, the causes and consequences of which are not confined within a single nation. It is essential to comprehend the importance of ecological responsibility not only as a national constitutional obligation but also as a part of a wider responsibility towards people and ecosystems beyond national borders.

The ICJ Advisory Opinion of 23 July 2025 is significant in this context as it provides greater clarity on the obligations of States in addressing climate change, particularly concerning prevention, due diligence and international cooperation. Although the Opinion does not directly alter Indian domestic law, it provides a persuasive international framework through which India's constitutional and legal commitments can be examined and strengthened. It also highlights the importance of interpreting India's domestic environmental framework in dialogue with its international climate obligations, particularly where international norms can complement and strengthen existing constitutional principles. It therefore provides an opportunity to reconsider the contemporary relevance of Article 51A(g) in addressing environmental harm whose effects extend beyond territorial borders and across generations.

The findings of this study provide a practical pathway for bridging the gap between constitutional recognition, international obligations and domestic implementation through stronger legislation, institutional coordination, accountability and public participation. Such measures must remain responsive to India's developmental priorities, energy requirements and principles of equity and CBDR-RC. Ultimately, the study seeks to demonstrate that environmental responsibility in an era of climate change cannot stop at national borders, it must evolve into a coherent framework capable of addressing transboundary harm and protecting the interests of both present and future generations.