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Unplanned Urbanisation and the Right to a Healthy Environment: Rethinking Environmental Governance in Himachal Pradesh

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Abstract

Himachal Pradesh presents an unusually demanding setting for environmental governance because urban growth takes place on steep, geologically fragile and disaster-prone terrain while being driven by tourism, transport infrastructure, housing demand and expanding commercial activity. The resulting legal problem is not simply whether individual projects comply with environmental statutes, but whether the cumulative pattern of urbanisation is compatible with the constitutional obligation to secure a healthy environment. This article examines the relationship between unplanned urbanisation and the right to a healthy environment in Himachal Pradesh, with particular attention to Shimla and the wider Himalayan urban context. It argues that Indian environmental law has already developed the constitutional and doctrinal foundations necessary for an integrated model of ecological urban governance, but those foundations remain institutionally fragmented. Town planning, municipal regulation, environmental clearance, forest protection, disaster management, waste regulation and climate adaptation are commonly administered through separate legal channels even though they operate on the same ecological system. The article analyses Article 21, Articles 47, 48A and 51A(g), the Environment (Protection) Act 1986, the Himachal Pradesh Town and Country Planning Act 1977, municipal legislation, the Environmental Impact Assessment framework and the jurisprudence of the Supreme Court and National Green Tribunal. It particularly examines the Supreme Court's decisions in State of Himachal Pradesh v Yogendera Mohan Sengupta (2024) and M/s Pristine Hotels and Resorts Pvt Ltd v State of Himachal Pradesh (2025), alongside the continuing judicial scrutiny of Himachal's ecological condition. The article proposes a framework of ecological urban governance based on carrying capacity, risk-sensitive zoning, cumulative impact assessment, climate-resilient planning, transparent environmental data, meaningful public participation and enforceable development controls. It concludes that the right to a healthy environment should operate not merely as a remedial right after pollution or disaster occurs, but as a substantive planning principle governing where, how and at what intensity urban development may lawfully occur in a fragile Himalayan state.

Keywords: Himachal Pradesh; Urbanisation; Right to Healthy Environment; Environmental Governance; Town And Country Planning; Carrying Capacity

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1. Introduction

Urbanisation is often treated as an indicator of economic progress. In mountainous regions, however, the legal and ecological consequences of urban expansion are fundamentally different from those in plains. A city built on relatively stable terrain can often respond to population growth by extending its horizontal footprint, strengthening infrastructure or increasing density within a comparatively predictable physical environment. A Himalayan settlement cannot assume the same flexibility. Slope stability, drainage, seismic vulnerability, forest cover, water availability, road geometry, landslide susceptibility and waste-disposal capacity impose physical limits on development. When those limits are disregarded, urbanisation ceases to be merely a question of land use and becomes an issue of public health, safety, environmental justice and constitutional governance.

Himachal Pradesh illustrates this problem with particular force. Shimla, the State's principal urban centre and an important tourism destination, has experienced prolonged pressure from population growth, floating tourist populations, construction, traffic and infrastructure demands. The Development Plan for the Shimla Planning Area itself records that, over several decades, the city and its surrounding areas expanded rapidly and, in significant respects, in an unregulated and unplanned manner (Town and Country Planning Department, Himachal Pradesh 2022). Earlier proceedings before the National Green Tribunal similarly placed before the adjudicatory record questions concerning carrying capacity, water supply, traffic, solid waste, sewage, forest loss, slope instability and construction pressure in Shimla (Yogendra Mohan Sengupta v Union of India 2017).

The contemporary legal significance of this problem has increased. The Supreme Court in State of Himachal Pradesh v Yogendera Mohan Sengupta (2024) declined to invalidate the State's Development Plan as a whole and recognised the statutory role of the State in town and country planning. At the same time, the Court expressly observed that development must be accompanied by environmental and ecological safeguards and left open challenges to particular provisions that may be detrimental to the environment (State of Himachal Pradesh v Yogendera Mohan Sengupta 2024). The decision therefore should not be read as a judicial endorsement of unrestricted urban growth. Rather, it establishes a more precise constitutional question: whether development planning, once exercised through statutory authority, must itself remain responsive to environmental limits and constitutional environmental duties.

That question became still more prominent in 2025. In M/s Pristine Hotels and Resorts Pvt Ltd v State of Himachal Pradesh (2025), the Supreme Court, while dismissing the challenge to a notification concerning a green area, expressed serious concern about the ecological condition of Himachal Pradesh and directed that broader environmental issues be examined through a public-interest proceeding. The Court identified unscientific construction, infrastructure expansion, deforestation, tourism pressure, waste-management difficulties and other forms of development pressure as matters requiring serious governmental attention (M/s Pristine Hotels and Resorts Pvt Ltd v State of Himachal Pradesh 2025). The resulting suo motu proceedings, In Re: Issues Relating to Ecology and Environmental Conditions Prevailing in the State of Himachal Pradesh, demonstrate that ecological governance in the State has moved beyond isolated disputes concerning particular projects.

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Against this background, this article advances a central proposition: the right to a healthy environment should be understood as a planning right as well as a remedial right. Article 21 jurisprudence has already recognised environmental quality as an aspect of the right to life. Yet if environmental protection becomes legally relevant only after pollution, landslide, flooding, water scarcity or ecological degradation has occurred, the legal system remains reactive. In a fragile mountain environment, effective environmental governance requires anticipatory regulation. Planning authorities must therefore incorporate ecological carrying capacity, hazard exposure, cumulative impacts and essential infrastructure thresholds into development decisions before permissions are granted.

The argument is not that all urban development in Himachal Pradesh should be prohibited. Such an approach would be inconsistent with the State's legitimate responsibilities concerning housing, livelihoods, connectivity, public services and economic development. The constitutional task is instead to reconcile development with ecological limits. Sustainable development, the precautionary principle and inter-generational equity already supply the doctrinal vocabulary for this reconciliation (Vellore Citizens Welfare Forum v Union of India 1996). The challenge is institutional: these principles must be translated into planning standards capable of influencing ordinary decisions concerning zoning, building permissions, road construction, tourism infrastructure, waste systems and urban expansion.

The article proceeds in six stages. First, it examines the relationship between urbanisation and Himalayan ecological vulnerability. Secondly, it considers the constitutional emergence of the right to a healthy environment. Thirdly, it analyses the statutory architecture governing urban and environmental decision-making in Himachal Pradesh. Fourthly, it evaluates the lessons of the Shimla litigation and recent Supreme Court interventions. Fifthly, it identifies the principal deficiencies in the existing governance model. Finally, it proposes an integrated framework for ecological urban governance centred on carrying capacity, risk-sensitive planning, cumulative assessment, public participation, accountability and judicially reviewable environmental standards.

2. Urbanisation in a Fragile Himalayan Environment

2.1 The ecological specificity of mountain urbanisation

Urbanisation in Himachal Pradesh cannot be evaluated solely through conventional indicators such as population density, floor area, road length or economic output. Mountain urban systems operate within a constrained ecological geography. The available buildable land is limited; slopes can become unstable when natural drainage is interrupted or terrain is excessively cut; roads require substantial engineering intervention; water must often be brought across difficult terrain; and waste cannot easily be transported or disposed of without significant environmental and financial costs. A planning model that treats land as an infinitely substitutable commodity is therefore poorly suited to Himalayan conditions.

The concept of carrying capacity is particularly relevant. In environmental law, carrying capacity refers broadly to the ability of an ecological or physical system to support a population and

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its activities without losing the capacity to maintain essential functions. In an urban context, it has at least two dimensions. Supportive capacity concerns whether the territory can supply water, energy, mobility, housing, public services and other necessities. Assimilative capacity concerns whether the environment can absorb wastewater, solid waste, air emissions and other pressures without unacceptable degradation. In a Himalayan city, a third dimension is indispensable: hazard capacity, meaning the extent to which development can safely coexist with landslide, earthquake, flood, cloudburst and slope-instability risks.

The significance of this approach was already visible in the Shimla proceedings before the National Green Tribunal. The record considered population growth, construction activity, vehicular pressure, solid waste, sewage, forests, water supply and the vulnerability of slopes and buildings. The Tribunal's expert material described carrying capacity not as an abstract environmental ideal but as a practical limit connected to transportation, water, waste, forests and disaster risk (Yogendra Mohan Sengupta v Union of India 2017). This is important because it transforms the legal question from whether a particular building is technically permissible into whether the aggregate burden imposed by development is compatible with the physical system in which the building is located.

2.2 Unplanned urbanisation as a compound environmental risk

The phrase 'unplanned urbanisation' should not be understood to mean simply construction without a master plan. A development may be formally sanctioned and still produce cumulative ecological risks if individual permissions are assessed without reference to aggregate effects. A sequence of legally approved hotels, roads, parking structures, residential buildings and commercial establishments may collectively exceed the water, waste, traffic or slope capacity of a locality. Environmental governance therefore faces a scale problem: project-level legality does not necessarily establish landscape-level sustainability.

The problem is intensified by the temporal mismatch between planning and ecological change. A development plan may remain in force for many years while population, tourism, climate conditions, transportation patterns and construction technology change. The Shimla Development Plan 2041 was itself prepared against the historical background of an Interim Development Plan dating from 1979 and a prolonged period during which the earlier plan continued with amendments (Town and Country Planning Department, Himachal Pradesh 2022). Such institutional inertia can create a gap between the legal map and the ecological reality.

Tourism adds another layer. Tourist populations are temporary but can create intense seasonal pressure on roads, water, waste systems and accommodation. The environmental load of a town cannot therefore be calculated exclusively from its resident population. Planning must account for floating populations and peak-season conditions. This is especially relevant to Shimla, Manali, Dharamshala and other tourism-dependent settlements. A road, hotel or sewage facility designed for average demand may become inadequate during peak periods, creating environmental consequences that are predictable rather than unforeseeable.

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2.3 Climate change and the changing risk baseline

Climate change further weakens the assumption that historical patterns provide a reliable basis for future planning. The Supreme Court in M.K. Ranjitsinh v Union of India (2024) recognised a constitutional right to be free from the adverse effects of climate change, grounding the protection in Articles 14 and 21. The judgment is significant for urban environmental governance because climate impacts are not confined to abstract global processes; they affect the safety and quality of life of communities through heat, water insecurity, extreme rainfall and other hazards (M.K. Ranjitsinh v Union of India 2024).

For Himachal Pradesh, climate-sensitive planning must therefore become part of ordinary urban governance. Hazard maps, drainage assessments, slope stability, water availability and emergency access should not be treated as specialist information consulted only after a disaster. They should influence zoning and development permissions from the beginning. A constitutional right to a healthy environment that ignores foreseeable climate and disaster risks would be incomplete in a Himalayan state.

3. Constitutional Foundations of the Right to a Healthy Environment

3.1 Article 21 and environmental quality

Indian constitutional environmental law developed through an expansive interpretation of Article 21. In Subhash Kumar v State of Bihar (1991), the Supreme Court held that the right to life includes the right to enjoy pollution-free water and air. The decision converted environmental quality from an administrative concern into a constitutional interest enforceable through fundamental-rights jurisdiction. The principle was subsequently developed through a long line of cases concerning sanitation, forests, industrial pollution, urban land and ecological degradation (Subhash Kumar v State of Bihar 1991).

The municipal dimension of this constitutional approach is particularly relevant. In Municipal Council, Ratlam v Vardhichand (1980), the Supreme Court rejected the idea that municipal authorities could avoid statutory duties concerning public sanitation by pleading financial constraints. The judgment demonstrated that public authorities responsible for urban governance may be compelled to perform obligations necessary to protect public health and community welfare (Municipal Council, Ratlam v Vardhichand 1980). In Virender Gaur v State of Haryana (1995), the Court connected a hygienic environment and an atmosphere conducive to human existence with the right to life and emphasised the State's obligation to maintain ecological balance (Virender Gaur v State of Haryana 1995).

These decisions matter for Himachal Pradesh because urban environmental governance involves precisely the kinds of public functions that constitutional environmental jurisprudence has long treated as legally significant: sanitation, water, public health, land-use control, open spaces, waste management, ecological balance and protection against environmental hazards. The constitutional question is therefore not whether the State may regulate urbanisation. It is whether

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the State can lawfully exercise its planning powers without giving adequate consideration to the environmental conditions necessary for life and health.

3.2 Articles 47, 48A and 51A(g)

The constitutional framework extends beyond Article 21. Article 47 directs the State to improve public health; Article 48A requires the State to protect and improve the environment and safeguard forests and wildlife; and Article 51A(g) places a corresponding fundamental duty upon citizens. Although Directive Principles and fundamental duties do not operate in precisely the same manner as fundamental rights, the Supreme Court has repeatedly used them to interpret the content of environmental obligations. In Vellore Citizens Welfare Forum v Union of India (1996), the Court integrated Articles 21, 47, 48A and 51A(g) with sustainable-development principles and held that the precautionary and polluter-pays principles form part of Indian environmental law.

The constitutional architecture therefore supports an integrated reading of health, environment and planning. A town planning authority does not become environmentally neutral merely because its statutory mandate is expressed in terms of land use and construction. If planning decisions affect air, water, forests, public health, disaster exposure or ecological resilience, constitutional environmental duties necessarily inform the exercise of planning discretion.

3.3 From environmental protection to environmental rights

The contemporary jurisprudence goes beyond the simple proposition that pollution violates Article 21. The right to a healthy environment increasingly encompasses the conditions necessary for dignified and secure human life. In M.K. Ranjitsinh (2024), the Supreme Court expressly connected constitutional rights with freedom from the adverse effects of climate change. This development has important implications for urban governance: environmental rights must be considered before a harmful urban form becomes entrenched.

The practical consequence is a shift from remediation to prevention. If a city has already exceeded its water or waste capacity, if slopes have already been destabilised, or if open spaces have already been built over, a judicial order after the fact may be incapable of restoring the original ecological condition. Environmental constitutionalism must therefore influence the administrative stage at which land is zoned, a development plan is prepared, or a construction permission is considered. In this sense, the right to a healthy environment should be understood as a right to environmentally rational public decision-making as well as a right to relief against environmental harm.

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4. Statutory Architecture of Urban and Environmental Governance in Himachal Pradesh

4.1 The Himachal Pradesh Town and Country Planning Act, 1977

The Himachal Pradesh Town and Country Planning Act, 1977 is central to the legal regulation of urban development. The Act establishes a statutory framework for planning areas, development plans, land-use regulation and development permissions. The State's online building-permission guidance confirms that development activity within planning, special or deemed planning areas requires prior permission from the competent authority (Town and Country Planning Department, Himachal Pradesh 2026). The Act is therefore not merely a technical planning statute; it is a principal mechanism through which the State determines the spatial distribution and intensity of urban development.

The Supreme Court's 2024 decision in State of Himachal Pradesh v Yogendera Mohan Sengupta is important because it reaffirmed the statutory character of the planning process. The Court held that the State could proceed with the Development Plan published in June 2023 after considering objections and environmental and ecological material. At the same time, the Court made clear that it had not examined the plan in minute detail and that citizens could challenge individual provisions that were detrimental to the environment or ecology (State of Himachal Pradesh v Yogendera Mohan Sengupta 2024). This preserves a crucial distinction between deference to a planning authority's statutory competence and immunity from environmental review.

The Act itself also demonstrates why environmental protection cannot be treated as external to planning. Section 18 requires development plans to address matters including traffic circulation, flood control, protection against landslides, prevention of air and water pollution, disposal of garbage and general environmental control. The statutory planning framework therefore already contains the legal vocabulary needed for ecological planning. The principal difficulty lies in translating these broad requirements into measurable standards and ensuring that they meaningfully constrain development decisions.

4.2 Municipal law and urban environmental functions

Municipal governance forms the second major layer. The Himachal Pradesh Municipal Act, 1994 assigns municipal institutions functions relating to urban planning, regulation of land use and building construction, water supply, public health, sanitation, solid waste management, fire services, urban forestry and protection of the environment (Himachal Pradesh Municipal Act 1994). These functions correspond closely to the environmental determinants of urban health.

The fragmentation of responsibilities, however, creates a governance risk. Town planning authorities regulate land use; municipal bodies provide services; pollution-control authorities regulate emissions and effluents; forest authorities administer forest-related restrictions; disaster-management institutions address hazards; and environmental authorities administer

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environmental clearances. A project may therefore pass through several administrative systems without any single institution being legally required to calculate its complete cumulative ecological burden. The existence of multiple laws is not necessarily a weakness, but the absence of institutional integration can produce regulatory gaps.

4.3 Environment (Protection) Act and Environmental Impact Assessment

The Environment (Protection) Act, 1986 provides the central statutory framework for environmental protection, while the Environmental Impact Assessment Notification 2006 creates a prior appraisal mechanism for specified categories of projects. EIA is especially relevant where urban development involves projects or expansions falling within the notification's schedules. Its significance extends beyond the final decision on whether a project may proceed. Screening, scoping, appraisal and public consultation are intended to ensure that environmental consequences are considered before the activity is undertaken.

In Hanuman Laxman Aroskar v Union of India (2019), the Supreme Court described environmental decision-making as an exercise requiring legality, rationality and consideration of relevant environmental information, and developed the idea of an environmental rule of law. In Alembic Pharmaceuticals Ltd v Rohit Prajapati (2020), the Court rejected the routine use of ex post facto environmental clearance and emphasised the preventive purpose of prior environmental assessment. These cases support a broader principle relevant to urbanisation: environmental governance must operate prospectively, not merely regularise development after ecological costs have already been incurred.

Nevertheless, EIA is not a complete answer to unplanned urbanisation. Many forms of ordinary urban construction may fall outside project-level EIA requirements, even though their cumulative impact can be substantial. A city can experience severe pressure through numerous individually modest projects. This exposes a structural gap between project-based environmental regulation and area-based ecological planning. For Himalayan urban settlements, development plans and local planning permissions must therefore carry a greater share of environmental responsibility.

4.4 Waste, water, air and public-health regulation

Urban environmental quality also depends on the effective implementation of sector-specific rules. The Solid Waste Management Rules 2016 require local authorities and other responsible actors to establish systems for collection, segregation, processing and disposal. Air and water pollution are regulated through the Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. These regimes become particularly challenging in mountain towns because collection routes, treatment facilities and disposal sites are geographically constrained.

The legal significance of these systems is that development permission should not be divorced from service capacity. Approving substantial additional accommodation in a locality without adequate wastewater treatment or solid-waste infrastructure may create a foreseeable

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public-health burden. Planning law should therefore require a demonstrated relationship between permitted development intensity and the infrastructure capacity necessary to support it. This is a practical expression of the constitutional right to a healthy environment.

5. The Shimla Litigation and the Judicialisation of Urban Environmental Governance

5.1 The NGT's carrying-capacity approach

The litigation concerning Shimla provides one of the clearest Indian examples of judicial engagement with ecological carrying capacity in urban planning. In Yogendra Mohan Sengupta v Union of India (2017), the National Green Tribunal considered extensive material concerning the city's environmental condition. The proceedings addressed construction, traffic, water supply, sewage, solid waste, forest loss and disaster vulnerability. The expert material placed before the Tribunal treated Shimla as an urban system whose carrying capacity had been substantially exceeded and emphasised the need for decongestion and restrictions on further development in environmentally sensitive areas.

The importance of the NGT proceedings lies not simply in the specific restrictions imposed at the time, many of which were subsequently litigated. More fundamentally, the proceedings established that environmental governance of a city can require consideration of cumulative pressures. The environment of a mountain city is not adequately protected by regulating pollution from individual factories. The built environment itself can alter drainage, slope stability, water demand, forest cover and transport emissions. Consequently, urban form becomes an environmental-law issue.

5.2 The Supreme Court's 2024 decision: development within law

The Supreme Court's 2024 judgment in State of Himachal Pradesh v Yogendera Mohan Sengupta recalibrated the relationship between judicial environmental intervention and legislative planning authority. The Court set aside the NGT orders that had substantially constrained the Development Plan and permitted the State to implement the plan published on 20 June 2023. It emphasised that the State had prepared the plan through the statutory process, considered expert reports and received objections and suggestions. The Court also stated that the plan could not be stalled in its entirety merely because particular provisions might be controversial (State of Himachal Pradesh v Yogendera Mohan Sengupta 2024).

This decision should not be characterised as a victory for development over environment. Its more enduring contribution is institutional. Environmental protection must operate through legally authorised planning structures, while statutory planning decisions remain open to environmental challenge where particular provisions violate constitutional or statutory obligations. The Court's approach therefore favours legality, institutional competence and targeted review rather than blanket judicial administration of urban planning.

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The judgment also demonstrates why the right to a healthy environment should be operationalised within the planning process itself. If environmental safeguards are embedded in development plans, courts need not choose between two extremes: allowing unrestricted development or imposing broad judicial prohibitions. A well-designed statutory plan can identify green areas, hazard zones, density limits, infrastructure thresholds and environmental controls in advance. Judicial review can then focus on whether those standards were lawfully formulated and applied.

5.3 The 2025 Supreme Court intervention and continuing ecological concern

The Supreme Court's 2025 decision in M/s Pristine Hotels and Resorts Pvt Ltd v State of Himachal Pradesh demonstrates that the environmental question in Himachal Pradesh remains unresolved. The case concerned a challenge to restrictions associated with a green area, but the Court went beyond the narrow dispute and expressed serious concern about the State's ecological condition. It referred to the pressures associated with infrastructure development, construction, tourism, deforestation and waste management and directed that broader ecological issues be considered through a public-interest proceeding (M/s Pristine Hotels and Resorts Pvt Ltd v State of Himachal Pradesh 2025).

The significance of this development is especially strong for the present argument. The Court's intervention confirms that environmental governance cannot be reduced to whether one notification or one construction permission is valid. The ecological condition of Himachal Pradesh is the product of interacting decisions across sectors. The subsequent proceedings in In Re: Issues Relating to Ecology and Environmental Conditions Prevailing in the State of Himachal Pradesh have required the State to provide information concerning zoning, forests, climate change, roads, hydropower, mining, tourism and construction, thereby illustrating the inherently cross-sectoral nature of the problem (Supreme Court of India 2025).

The later referral of ecological questions concerning Himachal Pradesh, including issues relating to the Shimla Planning Area and notified green belts, to the Centrally Empowered Committee further demonstrates that the judicial process is moving towards evidence-based institutional examination rather than isolated project adjudication (Supreme Court of India 2026). This development reinforces the article's central claim that environmental governance requires systematic data, expert assessment and continuous monitoring rather than one-time approval.

6. Why the Existing Governance Model Remains Inadequate

6.1 Fragmented decision-making

The first structural weakness is fragmentation. Town planning, environmental clearance, municipal services, forests, tourism, roads and disaster management are governed by different statutes and institutions. Fragmentation is not inherently unlawful, but it becomes problematic where no mechanism requires the responsible authorities to consider the combined effects of their decisions. A planning authority may examine floor-area ratio; a road authority may examine engineering

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feasibility; a tourism authority may examine accommodation demand; and an environmental authority may examine a particular project. The ecological system, however, experiences all these interventions simultaneously.

An integrated environmental governance model should therefore require cross-departmental assessment for development in ecologically sensitive urban areas. The question should not merely be whether a proposed use is permitted by a zoning map. It should also be whether the locality retains sufficient water, drainage, waste, traffic, open-space and hazard capacity after the proposed development is added to existing and reasonably foreseeable development.

6.2 Project-level assessment versus cumulative impact

The second weakness is the predominance of project-level thinking. EIA can be powerful where it applies, but the cumulative environmental impact of urbanisation cannot be captured by examining each building or project in isolation. The environmental consequences of ten hotels may not be ten separate environmental questions. They may collectively change groundwater demand, traffic, sewage generation, solid waste and slope pressure. Similarly, a road widening project can interact with building construction, drainage modification and slope cutting.

The precautionary principle requires public authorities to anticipate environmental degradation rather than wait for conclusive evidence of damage. Vellore Citizens Welfare Forum (1996) placed the burden of precaution at the stage of environmental decision-making. For Himachal Pradesh, that principle supports cumulative assessment at the planning-area level, particularly where scientific evidence identifies a high-risk ecological setting.

6.3 Weak integration of disaster risk

The third weakness is the separation of environmental and disaster governance. Landslides, flash floods and slope failures are often discussed as disasters after they occur, while the planning decisions that increase exposure to those hazards are treated as separate regulatory questions. This is analytically inadequate. If a planning decision allows construction on a highly unstable slope, obstructs natural drainage or materially increases the consequences of a foreseeable hazard, the decision itself has an environmental and public-safety dimension.

Risk-sensitive planning should therefore integrate geological, hydrological and climate information into zoning. Development intensity should be lower in high-risk areas; drainage corridors should be protected; natural slopes should be preserved where engineering intervention would create disproportionate risk; and essential infrastructure should have redundancy and emergency-access requirements. These are not merely engineering preferences. They are measures necessary to protect life and environmental quality.

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6.4 Weak transparency and environmental data

Effective public participation requires access to current and comprehensible information. Yet urban environmental decision-making frequently relies on fragmented datasets maintained by different departments. A citizen may know that a locality experiences water shortages or landslides but have no consolidated public dataset showing projected population, approved construction, water capacity, sewage capacity, waste generation and hazard exposure.

The solution is an open environmental-planning information system for major planning areas. Such a system should map land use, building permissions, green areas, forests, water sources, drainage lines, landslide susceptibility, seismic risk, waste facilities, sewage infrastructure, traffic capacity and climate-risk indicators. Data should be updated periodically and linked to development permissions. Transparency would not merely improve accountability; it would improve the quality of administrative decisions.

6.5 Participation as a continuing process

The Town and Country Planning framework provides opportunities for objections and suggestions when development plans are prepared. That is important, but public participation should not end when the plan is notified. Urban environmental conditions evolve continuously. Residents should have meaningful opportunities to challenge violations, obtain information about development permissions, and participate in periodic reviews of ecological indicators.

Participation is also essential for environmental justice. The costs and benefits of urbanisation are not distributed equally. Tourism and construction may generate employment and revenue, while residents may experience congestion, water scarcity, noise, waste and increased land prices. Local communities may also bear the consequences of ecological degradation while receiving comparatively limited benefits from development. A rights-based planning model must therefore consider distributional impacts rather than treating aggregate economic growth as sufficient justification.

7. Reframing the Right to a Healthy Environment as a Planning Principle

7.1 From reactive remedies to preventive governance

The most important conceptual reform is to treat environmental rights as ex ante planning constraints. Traditional environmental litigation often begins after a violation: pollution has occurred, a forest has been cleared, construction has begun or a project has been approved without adequate assessment. Preventive governance changes the legal question. Before approving development, the authority must ask whether the proposed activity is consistent with ecological and infrastructural limits.

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This approach follows directly from precautionary environmental jurisprudence. In Vellore Citizens Welfare Forum (1996), the Supreme Court stated that environmental measures must anticipate and prevent causes of degradation. In Hanuman Laxman Aroskar (2019), the Court emphasised the environmental rule of law and the importance of reasoned environmental decision-making. In Alembic Pharmaceuticals (2020), it rejected the notion that prior environmental safeguards could simply be replaced by retrospective regularisation. Together, these authorities support an administrative culture in which environmental considerations are integrated before irreversible choices are made.

7.2 Carrying capacity as a legally relevant standard

Carrying capacity should be transformed from an advisory concept into a legally relevant planning standard. This does not require one rigid numerical ceiling for every Himalayan settlement. Carrying capacity is context-specific and must reflect water availability, terrain, waste systems, road capacity, ecological sensitivity, population, tourist influx and hazard exposure. The appropriate legal requirement is therefore procedural and substantive: authorities must identify relevant capacity indicators, obtain reliable data, disclose the methodology and demonstrate that proposed development remains within defensible limits.

A statutory planning rule could require each major planning area to maintain an Ecological and Urban Capacity Statement. The statement would identify, at minimum, (a) water-supply capacity; (b) wastewater-treatment capacity; (c) solid-waste processing capacity; (d) traffic and emergency-access capacity; (e) slope and geological risk; (f) green/open-space requirements; (g) climate-risk indicators; and (h) projected resident and floating populations. Development intensity could then be linked to these indicators.

7.3 Risk-sensitive zoning

Zoning in mountain regions should move beyond conventional residential, commercial and institutional categories. It should incorporate ecological and hazard layers. Areas could be classified, for example, into development-permissible zones, controlled-development zones, ecological protection zones and high-risk no-build zones. Such categories would not eliminate development but would make the intensity and form of development responsive to physical conditions.

The legal advantage of risk-sensitive zoning is predictability. Instead of relying on ad hoc refusals after applications are filed, the State would publish the ecological reasons for restrictions in advance. Developers and residents would know the constraints, while authorities would have a defensible basis for enforcement. This also reduces the risk of arbitrary decision-making and strengthens the rule of law.

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7.4 Cumulative impact assessment for urban planning

A planning-area cumulative impact assessment should be mandatory for major revisions of development plans and for identified high-pressure urban clusters. It should examine not only environmental pollution but also the interaction among construction, roads, tourism, water, forests, waste and disaster risk. The assessment should include alternatives, including the option of limiting growth or directing development towards lower-risk areas.

This approach is compatible with the precautionary principle because it recognises that uncertainty about cumulative impacts is not necessarily a reason to permit unrestricted development. Where evidence indicates a serious risk of irreversible ecological harm, planning authorities should adopt conservative development assumptions until adequate evidence establishes that additional growth can be accommodated.

8. A Proposed Model of Ecological Urban Governance for Himachal Pradesh

8.1 The Ecological Urban Governance Framework

This article proposes an Ecological Urban Governance Framework (EUGF) for Himachal Pradesh. The framework would operate through six mutually reinforcing elements: ecological baseline assessment; risk-sensitive zoning; capacity-linked development permissions; cumulative-impact review; continuous environmental monitoring; and enforceable accountability. The objective is not to create another parallel regulatory institution but to integrate environmental information into the planning system that already authorises urban development.

First, every major planning area should establish a periodically updated ecological baseline. Secondly, planning maps should incorporate hazard and ecological layers. Thirdly, development permissions should be linked to demonstrated infrastructure and ecological capacity. Fourthly, projects with significant cumulative implications should undergo area-level review even where individual projects do not independently trigger central EIA requirements. Fifthly, environmental indicators should be monitored after development approvals rather than only before them. Sixthly, violations should attract effective sanctions, restoration obligations and, where appropriate, personal accountability for responsible officials or developers.

8.2 Capacity-linked building permissions

Building permissions should incorporate a 'capacity certificate' for designated high-pressure areas. The certificate would confirm that the proposed development can be supported by existing or committed infrastructure and does not exceed identified environmental thresholds. For hotels and tourism accommodation, the calculation should include peak-season occupancy rather than only average annual demand. For large residential developments, projected population should be assessed against water, sewage, waste and emergency-access capacity.

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Such a mechanism would give practical meaning to the constitutional right to a healthy environment. It would also reduce the possibility that a development becomes lawful on paper while imposing foreseeable costs on surrounding residents and public infrastructure. The system could be digital and publicly accessible, allowing citizens to understand the environmental basis for approvals.

8.3 Green and open areas as constitutional infrastructure

Green areas, forests, drainage corridors and open spaces should not be viewed merely as aesthetic amenities. They provide ecological and public-health functions, including water infiltration, slope protection, heat regulation, recreation and biodiversity support. The jurisprudence concerning protected open spaces demonstrates that planning reservations can have legal significance beyond private land-use expectations (Virender Gaur v State of Haryana 1995).

Accordingly, the conversion of designated green or open areas should be subject to a heightened legal test. The authority should demonstrate a compelling public need, consider alternatives, assess cumulative ecological consequences and provide restoration or compensatory measures where lawful. In ecologically fragile areas, the default should favour retention rather than conversion.

8.4 Tourism management and floating population

Tourism policy should be integrated with environmental carrying capacity. Local authorities should calculate seasonal accommodation capacity, waste generation, water demand and transport pressure. Where capacity is exceeded, regulatory responses could include temporary limits on new accommodation approvals, incentives for off-season tourism, decentralisation of tourist flows and investment in local waste and water systems.

This approach is preferable to treating tourism as either inherently beneficial or inherently harmful. Tourism is economically significant for Himachal Pradesh, but economic value cannot be assessed independently of ecological costs. The Supreme Court's 2025 intervention illustrates the need to ensure that revenue generation does not become the overriding criterion in ecologically sensitive areas (M/s Pristine Hotels and Resorts Pvt Ltd v State of Himachal Pradesh 2025).

8.5 Climate-resilient urban infrastructure

Urban infrastructure must be designed for changing climate and hazard conditions. Drainage systems should account for extreme rainfall rather than historical averages alone. Roads should include slope-stabilisation and drainage measures appropriate to local geology. Critical hospitals, water systems, electricity infrastructure and emergency routes should be mapped for redundancy and accessibility during disasters. Building controls should reflect seismic and slope conditions rather than relying exclusively on generic construction norms.

The constitutional recognition of protection against adverse climate effects in M.K. Ranjitsinh (2024) strengthens the legal basis for such anticipatory planning. Climate resilience is not

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merely a policy preference; where scientific evidence establishes foreseeable threats to life and health, it becomes relevant to the State's Article 21 obligations.

8.6 Institutional coordination and accountability

The State should establish a formal coordination mechanism for ecologically sensitive urban planning involving town planning, municipal bodies, the pollution control board, forest authorities, disaster-management authorities, water agencies and relevant scientific institutions. The mechanism should not replace statutory powers. Its purpose should be to ensure that each authority has access to the same environmental baseline and that major planning decisions are informed by cross-sectoral evidence.

Accountability should operate at three levels. At the planning level, development plans should contain measurable environmental objectives. At the permission level, individual approvals should record the relevant environmental and capacity findings. At the monitoring level, authorities should publish compliance information and take corrective action where thresholds are exceeded. This creates a traceable chain between statutory power and environmental outcome.

9. Judicial Review, Institutional Deference and the Rule of Law

A stronger environmental planning model must also respect the constitutional allocation of institutional functions. The 2024 Supreme Court decision in State of Himachal Pradesh v Yogendera Mohan Sengupta cautions against converting environmental adjudication into direct administration of town planning. Courts and tribunals should therefore be careful not to substitute their own planning preferences for those of legally competent authorities. But institutional deference cannot mean judicial abdication where statutory environmental duties, constitutional rights or mandatory procedures are violated.

The appropriate model is structured judicial review. Courts should ask whether the authority identified the relevant environmental risks, used reliable information, considered cumulative effects, provided reasons, followed statutory procedures, considered less harmful alternatives and acted consistently with constitutional environmental principles. Where the decision is unsupported by evidence or ignores mandatory ecological considerations, judicial intervention is justified. Where the authority has made a rational planning choice within its lawful discretion, courts should ordinarily respect that institutional judgment.

This approach is consistent with environmental rule of law. In Hanuman Laxman Aroskar (2019), the Supreme Court emphasised the importance of transparency, reasoned decision-making and compliance with environmental law. For Himachal Pradesh, these principles are particularly important because the ecological consequences of a planning decision may be difficult to reverse. The stronger the possibility of irreversible harm, the greater the need for transparent and evidence-based administrative reasoning.

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10. Environmental Justice and the Distribution of Urbanisation Costs

The debate over urbanisation in Himachal Pradesh should not be reduced to environment versus development. The more appropriate question is who receives the benefits of development and who bears its costs. Tourism infrastructure may generate employment, tax revenue and business opportunities, but local residents may bear congestion, water scarcity, waste, noise and increased exposure to hazards. Similarly, infrastructure projects may improve regional connectivity while imposing concentrated ecological costs on particular communities.

A rights-based environmental governance model must therefore incorporate distributional considerations. Article 21 protects individual life and dignity, while Article 14 requires non-arbitrary public decision-making. The State should be able to demonstrate why a particular development intensity is justified and how its environmental costs will be managed. Communities that experience concentrated ecological burdens should have meaningful participation in planning and access to effective remedies.

Environmental justice also has an inter-generational dimension. Mountain ecosystems provide water, forests, biodiversity, tourism resources and climate-regulation functions that extend beyond the present generation. The principle of inter-generational equity, recognised within sustainable-development jurisprudence, requires the present generation to avoid exhausting ecological options for those who will inhabit the State in the future (Vellore Citizens Welfare Forum v Union of India 1996). In a state where development is physically constrained by geography, this principle has immediate practical relevance.

11. Recommendations

The analysis supports the following legal and institutional reforms for Himachal Pradesh:

1. Make ecological carrying capacity a mandatory component of every major development plan and plan revision, with publicly disclosed methodology and periodic reassessment.
2. Introduce risk-sensitive zoning that integrates landslide susceptibility, seismic risk, flood and drainage corridors, forest cover, water availability and climate projections with conventional land-use categories.
3. Require cumulative environmental assessment for high-pressure planning areas, even where individual buildings or projects do not independently trigger central-level EIA requirements.
4. Link development permissions to infrastructure capacity, including water supply, wastewater treatment, solid-waste processing, road access and emergency response.
5. Treat peak tourist and floating populations as part of environmental-capacity calculations in major tourism centres.
6. Establish a publicly accessible geospatial environmental-planning portal containing development permissions, green areas, hazard maps, ecological indicators and infrastructure-capacity data, subject to legitimate privacy and security restrictions.

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7. Strengthen protection of notified green areas and ecological corridors by requiring a heightened public-interest justification for changes in land-use status.
8. Require climate-risk and disaster-risk assessments to form part of urban planning and major infrastructure decisions in designated Himalayan planning areas.
9. Create formal inter-departmental review mechanisms so that town planning, municipal, forest, pollution-control, water, tourism and disaster authorities work from a common ecological baseline.
10. Require reasoned environmental findings in significant planning and development decisions, making clear how the authority considered the precautionary principle, sustainable development and cumulative impacts.
11. Strengthen post-approval monitoring so that permissions can be reviewed where environmental thresholds are exceeded or material assumptions prove incorrect.
12. Ensure meaningful public participation not only at the plan-preparation stage but also through periodic review, disclosure of environmental data and accessible complaint and enforcement mechanisms.
13. Apply the polluter-pays and restoration principles where unlawful or environmentally damaging development causes ecological harm, with restoration costs directed towards the affected ecological system.
14. Develop specialised training for planning and municipal officials in mountain ecology, environmental law, climate adaptation and disaster-risk reduction.
15. Use judicial review primarily to enforce legality, environmental duties, procedural fairness and evidentiary rationality, while preserving the statutory role of planning authorities in making technical and policy choices.

12. Conclusion

Unplanned urbanisation in Himachal Pradesh is not merely a town-planning problem. It is a constitutional environmental problem because the quality, location and intensity of development directly affect the conditions under which people live. In a fragile Himalayan environment, the consequences of weak planning are cumulative: forests may be fragmented, slopes destabilised, drainage altered, water systems strained, waste-management capacity exceeded and communities exposed to greater disaster risk. These effects can converge to undermine the right to life and the right to a healthy environment.

Indian law already contains much of the normative foundation required to address this challenge. Article 21 protects environmental conditions necessary for life; Articles 47 and 48A reinforce public-health and environmental obligations; Article 51A(g) recognises a civic environmental duty; the Environment (Protection) Act and EIA framework provide preventive regulatory mechanisms; and the Himachal Pradesh Town and Country Planning Act expressly incorporates environmental control, flood and landslide protection, pollution prevention and waste disposal into development planning. Judicial decisions have added the precautionary principle, sustainable development, polluter pays, environmental rule of law and, more recently, protection against the adverse effects of climate change.

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The difficulty is therefore not the absence of environmental law but its institutional fragmentation and insufficient integration into everyday urban decision-making. The Shimla litigation demonstrates both the possibilities and limits of judicial intervention. The Supreme Court's 2024 judgment properly recognised the State's statutory authority to plan, while preserving the possibility of environmental challenges to particular provisions. The Court's 2025 intervention, followed by continuing public-interest proceedings, confirms that ecological degradation in Himachal Pradesh cannot be treated as a series of isolated planning disputes. It is a systemic governance issue.

The appropriate response is neither an absolute freeze on development nor a presumption that economic growth must prevail. It is ecological urban governance: a model in which development is planned within scientifically identified environmental and infrastructural limits. Carrying capacity should become legally relevant; zoning should incorporate hazard and ecological information; cumulative impacts should be assessed; infrastructure capacity should condition development intensity; environmental data should be transparent; communities should participate continuously; and post-approval monitoring should ensure that permissions remain consistent with environmental realities.

Most importantly, the right to a healthy environment should operate before harm occurs. The constitutional value of Article 21 would be substantially weakened if it provided an effective remedy only after a mountain has been cut, a drainage system blocked, a water source depleted or a building destroyed by a foreseeable hazard. A genuinely preventive conception of the right requires the State to organise development in a manner that preserves the ecological conditions necessary for present and future life.

Himachal Pradesh therefore presents an important opportunity for Indian environmental law. Its geographical fragility makes visible a principle that is increasingly relevant across India: urban planning is environmental governance. Once that proposition is accepted, the legal objective changes from permitting as much development as a plan can accommodate to determining what form and intensity of development the ecosystem can safely sustain. That is the more defensible constitutional balance between development, public welfare and ecological protection.

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