

# Sustainable Development and Statutory Plans – A Critical Appraisal of draft Development Plan of Shimla – 2041

Dr. Poonam Prakash,

Professor, Department of Physical Planning,  
School of Planning and Architecture, New Delhi

## Abstract

In 2017 National Green Tribunal (NGT) prohibited construction in the core area of Shimla on account of it being contrary to principles of sustainable development, precautionary principle and principle of public trust doctrine. Agreement on what constitutes sustainable development and its measurement continues to elude scholars. In practice, however, most of the countries have adopted some form of measurement of sustainability. India has made specific commitments and set certain targets to achieve Sustainable Development Goals (SDGs) as a signatory to Transformative Agenda for Sustainable Development by the year 2030 of the UN General Assembly. Within the larger national commitments, each state has also formulated state wise targets to meet the SDGs. Implementation of SDGs requires interconnected approach and coordinated intergovernmental efforts.

While there are various central and state government missions, programmes and schemes focussing on different aspects of SDGs, the statutory plans as an instrument of implementation of SDGs is relatively less discussed in the literature. Preparation of Integrated Development Plans as one of the targets in SDGs focusses on whether the availability of the plan. The quality of plan and its role towards meeting SDGs is much less discussed.

As is often said that devil lies in the details. It is in the preparation of statutory plans which allocates land to various uses and users that a balancing act between environment, equity and economic growth takes concrete shape. The recent court case in the Supreme Court over the boundaries of NGT Act 2010 and Himachal Pradesh Town and Country Planning Act determining extent and intensity of development in the ecologically and topographically challenging town of Shimla raises interesting questions about the way sustainable development is imagined and practiced. This paper through the critical appraisal of legal frameworks, institutional arrangements as well as NGT orders and draft development plan document for 2041 highlights the contradictions and inconsistencies in the planning processes and speculates on the forces shaping the planning processes and its implications on sustainable development.

Key Words : Sustainable Development, Development Plans, Shimla, Environment, Town Planning

## 1.0 Introduction

This paper is part of larger research work connecting public values, planning practice, sustainable development and hill planning. Shimla presents an interesting case for its complexity, ongoing plan making process, and the classic environment – development dilemma. This work be further substantiated by some in-depth interviews with decision-makers and professionals this paper presents a critical reading of the development plan documents and various court orders. Planning is a complex allocational exercise determining the use of land in different parts of the city. Thus, it is inherently political, complex and highly contested domain.

While there are various central and state government missions, programmes and schemes focussing on different aspects of SDGs, the statutory plans as an instrument of implementation of SDGs is relatively less discussed in the literature. Preparation of Integrated Development Plans as one of the targets in SDGs focusses on whether the availability of the plan. The quality of plan and its role towards meeting SDGs is much less discussed.

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## 2.0 Shimla – An overview

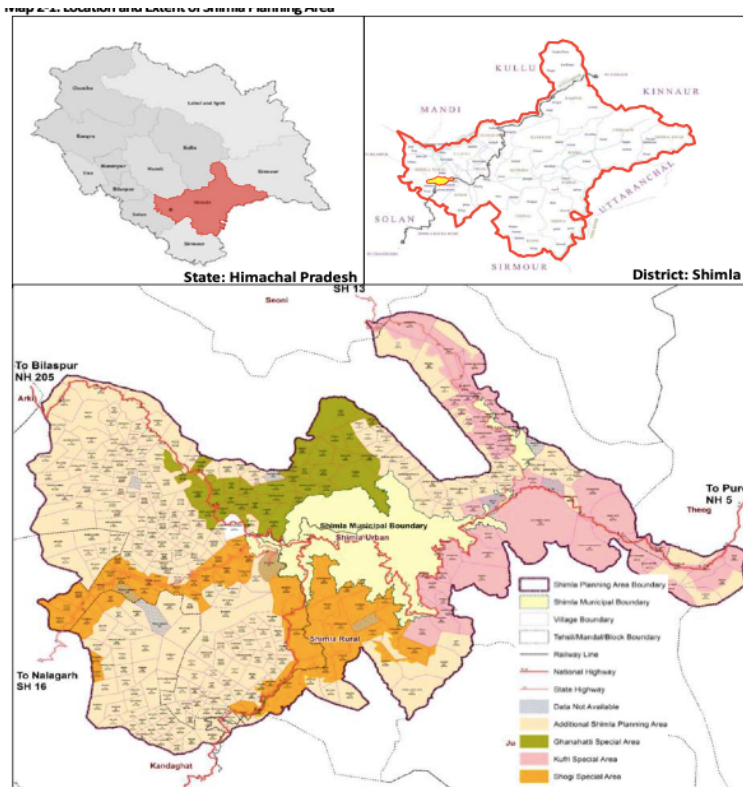
History of Shimla goes back to the period of Anglo-Gurkha war in the beginning of 19th century. In 1804 the Gurkhas, who had suffered a severe defeat at the hands of the Sikhs commenced to ravage the states and hills surrounding Shimla. Most of the chieftains of hill states sought British help to fight against Gurkhas. The war came to an end with the "Treaty of Sanjauli" (hp.nic). After the war most of the land was returned to chiefs but with some revisions where the Company retained land in strategic locations.

Shimla is said to derive its name from 'Shyamalaya' meaning blue house, said to be the name of house built of blue slate by a faqir on Jakhu. According to another version Shimla takes its name from 'Shamla' meaning a blue female another name for Goddess Kali. However, Shimla was apparently a small village till the Gurkha War. It was in 1819 A.D. when Lt. Ross set up first British residence of a wood cottage. His successor Lt. Charles Patt Kennedy' constructed the first pucca house in 1822 which was named as 'Kennedy House'.

The construction of Hindustan Tibet road in 1850-51 commencing from Kalka upto Shimla, a 560 feet long tunnel beyond Sanjauli and a rail line in 1903 between Kalka and Shimla were some of the impetus for the development of Shimla. With Shimla becoming the Summer Capital in 1864, many of the government offices were established and Shimla became an important administrative, military, leisure and health resort over time. In 1971 Himachal became a separate state with Shimla as its Capital and it has continued to grow as one of the attractive hill town for tourists.

It will be relevant to point out that Britishers enacted Forest Act to regulate the forest and it changed the relationship between forest and communities forever through the enactment of the Forest Act. Moreover, the literature also suggests how the idea of mountains had very different meaning for Britishers and the hill communities which considered mountains as sacred whereas for the Britishers it was a sensory experience. The different meaning of mountains for the rules at that time can also be said to have some influence in the way development was shaped in Shimla.

Figure 1. Shimla Planning Area



Source: Development Plan of Shimla 2041

Figure 1 shows the extent of Shimla Planning Area at the bottom. Shimla planning area is about 224 sq.km. within which Shimla municipal area in yellow colour is about 22 sq.km which is 10 percent of the planning area. which includes Indian Institute of Advanced Studies on the western side and little beyond chotta Shimla on the eastern side. The planning area also includes the special areas of Kufri and Shoghi as well as Shimla rural. beyond rest of the pink one is a cup free special area then we have shogi which is in orange and then the yellowish one is the shimla rural Shimla Municipal Area had a population of about 1.64 lakh as per 2011 census which is almost 70% of the total population of Shimla Planning Area of about 2.4 lakh.

### 3.0 Current Controversy

National Green tribunal have in different petitions over the years been giving various orders for improvement of infrastructure, forestations etc. It was however, on November 2017 where in a 165-page order, NGT passed a judgement in a petition which amongst many other directions :

- a) banned construction activity in core and green areas and restricted construction activity in rest of the area to only 2 floors and attic;
- b) created a parallel implementation mechanism;
- c) asked TCP to prepare a development plan taking into consideration NGT orders;
- d) created a parallel implementation mechanism.

The Judgement stated that current pattern of development was contrary to principle of sustainable development, precautionary principle and principle of public trust doctrine.

Shimla is divided in 3 areas; one is a core area which is mostly the municipal area, non-core area and seventeen pockets of green areas which are the protected greens. This order had far reaching implications on construction activity in Shimla. The order asked the town and country planning department to prepare a development plan within 6 months. In February 2022 the draft plan, prepared by a firm from Ahmedabad MaRS Consultants, was published for public objections and suggestions. In April the plan was challenged in NGT for being violative of NGT orders. In October 2022, the NGT stayed the plan which was then appealed in the Supreme Court. In May 2023, the Supreme Court ordered the Town and Country Planning Department to publish the plan after considering all objections and suggestions. On 19<sup>th</sup> June, the Council of Ministers approved the plan and it did not modify the draft plan and they said that we have considered all the objections suggestions. So, the currently we have the position of national green tribunal position which is under central act which considers the plan as a violation of a principle of sustainable development with a huge amount of unauthorised construction and forest cutting and as per the NGT the state had to follow NGT orders verbatim. On the other side the department of town and country planning which has prepared the draft development plan under a town and country planning act considers that the NGT does not have the jurisdiction to dictate the development plan and the plan has considered the NGT orders and have attempted to balance environment considerations and development imperatives. Currently the case is in the Supreme Court and the Court will be hearing the matter on 12<sup>th</sup> July 2023.

In this context, the question that this paper explores is “to what extent the statutory planning process is conducive to achieve sustainable development goals? Sustainable development has become a buzzword today. Every policy document is

filled with the term sustainable development, however, what does it look like when we operationalize it on the ground? There are various schemes promoting different aspects of sustainable development for example bio toilets, solar lights and many more. These are piecemeal schemes and in most cases are not part of legal frameworks but through financial incentives to the states promote “sustainable development”. The role of statutory planning process in promoting sustainable development is little less discussed in literature particularly in Indian context. This exploration is undertaken through study of four aspects. First one is to see whether the current legal framework in Shimla is adequate to provide the protection. Secondly, what kind of institutional capacities exist currently in Shimla for planning. To what extent we are able to adhere to the legal plan making process and then finally what does the content of plan balance these competing values of environment, equity and economic growth.

#### **4.0 Statutory Planning system in Shimla**

Himachal Pradesh has a Town and Country planning Act, 1977 under which plans are prepared usually for the next 20 years right usually it's a brand which is with the perspective of 20 years. Land is a state subject in India. State, therefore has jurisdiction on enactment of town planning laws. There are variations in the way planning system is organized in different parts of the country based on their historical context. For example, planning system of Mumbai is very different from planning system in Delhi. What is important to note however is that for the first time through the town planning laws, the modern state has a control over use of land and the extent of development. Prior to modern town planning, the city-wide control of use of land was nonexistent. Town planning laws in India were based UK town Planning Act and over a period have undergone changes. Himachal Town Planning Act was promulgated in 1977. The objects of the Act were to make provision for planning and development and use of land. It states:

- “An Act to make provision for planning and development and use of land;
- to make better provision for the preparation of development plans and sectoral plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective;
- to constitute the Town and Country and Development Authority for proper implementation of town and country development plan;

- to provide for the development and administration of special areas through the Special Area Development Authority 2[,]
- to make provision for the compulsory acquisition of land required for the purpose of the development plans ...”

As a planner our task is to prepare a plan that is politically acceptable and technically feasible and which provides economic opportunities, is equitable and sustainable. That is by any stretch of imagination is a complex task which gets undertaken in an uncertain and highly dynamic environment. One of the ways in which this complexity is managed is through a hierarchical system of planning. The town and Country Planning Act of Himachal Pradesh envisages a four-tier hierarchy from regional plan to Town development schemes as shown in the Figure 2. This hierarchical nature of planning decisions is important for sustainable development. For example at national and regional level our national and regional resources let's say rivers can be protected which can't happen at the city level. In case of Shimla we dont have any plan except an Interim Development Plan prepared in 1979 which has been modified many a times in the last forty three years. While this delay in undertaking major revisions of the plan in the last forty three years and not preparing a development plan is that there has been no statutory participation in planning nor in its modifications.

Fig. 2 Plan Hierarchy in the Act and their status

<b>Regional Plans</b>	• Not Prepared
<b>Development Plans</b>	• Only Interim Development Plan Prepared in 1979
<b>Sectoral Plan</b>	• Not prepared
<b>Town Development Schemes</b>	• No area declared under Town Development Scheme

#### 4.1. Statutory Planning and Environment Protection

Himachal Town and Country Planning Act has provisions for environment protection as we can see in Fig. 3. The Act provides preparation of land use maps and plans keeping in view natural hazard prone areas and other measures. The Act thus seems to have adequate provisions for environment protection, its practice however has been very limited.

### Fig. 3 Environment Protection Provisions in the Act

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**At Regional Level** prepare an existing land use map indicating the natural hazard proneness of the areas; and

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(iii) to prepare a regional plan keeping in view the regulation for land use zoning for natural hazard prone area.]

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Provisions for development of area including ; landscaping and the preservation of areas in their natural state; measures relating to the prevention of erosion, including rejuvenation of forest areas;

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**At City Level** Prepare an existing land use map indicating the natural hazard proneness of the area;

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(b) prepare an interim development plan keeping in view the regulation for land use zoning for natural hazard prone area;

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(c) prepare a development plan keeping in view the regulation for land use zoning for natural hazard prone area;]

## 4.2 Statutory Planning and Public Participation

Public participation has been important component in planning process. Effective public participation can ensure political acceptability of the plan which is predominantly a technical exercise. The Act provides for participation at the stage of preparation of existing land use as well as at the stage of draft plan. In practice, however, in case of Shimla this participation has not happened till recently when the draft development plan was published last year. The existing land use was prepared



in 1979 and then in 2007. Most of the modifications to the Interim development plan have been made without any statutory public participation. For the draft plan of 2041, about 97 objections were received. Wider participation of citizens require much more detailed planning, allocation of resources and system of consideration of objections and suggestions. Public participation is an important aspect of precautionary principle and its absence in the planning process can have serious implications for sustainable development

### **4.3 Institutional Capacities for Planning**

For any planning exercise certain minimum level of institutional capacities are needed. The issue of capacities for planning in terms of technical expertise has been raised in various national level reports. In Shimla for planning, we have a director of town planning who is a bureaucrat along with a district town planner and assistant planner. None of them have a degree in planning. Current development plan is prepared by private consultants from Ahmedabad. In terms of availability and competence of personnel for planning at present the institutional capacities to plan in Shimla are quite dismal.

## **5.0 Sustainable Development and Shimla Development Plan 2041**

### **5.1 Sustainable Development**

Most often quoted definition in planning disciplines about Sustainable Development is the one given by Brundtland commission where the term was first used in 1987. The Brundtland Report was intended to respond to the conflict between globalized economic growth and accelerating ecological degradation by redefining "economic development" in terms of "sustainable development". It is credited with crafting the most prevalent definition of sustainability:

"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

In 2015 the Sustainable Development Goals a collection of seventeen interlinked objectives were formulated by the United Nations General Assembly (UNGA) as part of the Post-2015 Development Agenda commonly known as Agenda 2030 to serve

as a "shared blueprint for peace and prosperity for people and the planet, now and into the future".

Sustainable development as a term has been critiqued as being an oxymoron as all development inherently threatens environment. Secondly it has been criticized by the Marxists who consider all capitalist processes as inherently unsustainable. This has been also critiqued for being an oxymoron as all development is inherently unsustainable. Further, the agreement on definition of the term also continues to elude scholar on two accounts. One is the relative importance of economic and environmental concerns. And second is on how to measure the environmental friendliness or sustainability of particular efforts such as technologies, practices of natural resource exploitation.

## 5.2 Sustainable Development in Court Orders

Without getting deeper into theoretical debates around value and measurement, a look at how courts have interpreted the term can take us a step closer to its operationalization on ground. Focusing on some selected court cases, one can see that there too the term remains fuzzy. In many court orders Sustainable development as a term has within it embedded the precautionary principle as well as principle of public trust doctrine. Given below are some statements from the court orders which give some indications of the meaning of the term.

In *Vellore Citizen Welfare Forum v. Union of India* [(1996) 5 SCC 647] and in *M.C. Mehta v. Union of India* [(2002) 4 SCC 356]

*"the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development"*

*"while the right to a clean environment is guaranteed as an intrinsic part of the fundamental right to life and personal liberty, the right to development can also be declared as a component of Article 21:"*

In *Indian Council for EnviroLegal Action v. Union of India*,

*"Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment"*

In *Essar Oil Ltd. v. Halar Utkarsh Samiti*, a two judge Bench noted that

*"while socioeconomic needs could be fulfilled through development, environmental concerns will always remain. However, these concerns should not be seen as a dead lock*

between development and the environment but **as an opportunity to harmonize both**, through the principle of sustainable development. "

In **Bengaluru Development Authority v. Sudhakar Hegde**, a two judge Bench observed that

"there was no winner in environmental litigation, since both development and protection of environment are necessary. The Court clarified that a framework created by environmental rule of law has to balance both these considerations by **creating transparent and accountable institutions, while allowing for participatory democracy.**" (emphasis mine)

"Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, **but ensuring that such failures do not take place.**"

**CWPIL NO 13/2021.** Kusum Bali vs State of HP and Others dated 13.01.2023

"This allows the principle of sustainable development to look beyond creating policy goals (which necessarily seek specific outcomes) towards **creating policy approaches (which rather seek to provide better frame works)**

From the above statements one can discern that in the process of balancing environment and development concerns some of the considerations are due Care and harmonisation, accountable and transparent Institutions, preventive action, outcome orientation to framework orientation – Interconnectedness and participatory nature of decisions. The concept though continues to elude us as the above stated considerations should be part of any good governance principles.

### 5.3 Planning Approach and Assumptions

Finally, a look at the plan document would provide an understanding of how the balancing between economy, equity and environment is achieved. I'm going to look at these 3 now through the SDG target for Himachal. According to the SDG targets, cities with more than 1,00,000 population must implement urban and regional development plans. If we start from the very common sense kind of questions then we need to be able to answer the following four questions: how much development do we want with our given resources ? where do we want this development ? what will be the extent of development and what will be the form of this development? Let's examine these through underlying assumptions for population, goals and

objectives and development scenarios as these underpin most of the sectoral proposals in the plan.

Fig. 4, 5 and 6 show the goals and objectives, population projections and development scenarios. A look at the goals and objectives will reveal that there is no state goal of environment protection. Except for one statement about protection of eco-sensitive areas, the environment as a larger goal in a hilly area like Shimla is glaringly missing. The goals and assumptions reflect whether we are underpinning Environment Protection as a predominant criteria.

Fig. 4 Goals and Objectives in the Plan

Table 3-1: Development Objectives

Goals	Objectives
<i>Living environment through proper planning and design</i>	<ul style="list-style-type: none"> <li>• Reduce Pressure on the Core City Area</li> <li>• The existing pattern of development of Shimla is insufficient to cater to the growing demand for residential, recreational, commercial and educational use for both residing and floating populations.</li> <li>• Effective Implementation of Building Bye Laws</li> <li>• Identification of newer areas for the future development</li> <li>• Roads &amp; Transportation- Strengthening the existing Road Network, Proposals of New Roads, Improvement in public Transportation system</li> </ul>
<i>Maintain its Character &amp; Image</i>	<ul style="list-style-type: none"> <li>• Development of more footpaths</li> <li>• Conservation of heritage buildings</li> <li>• Introduction of Urban Design Guidelines</li> <li>• Development of Pedestrian Public spaces</li> <li>• Development of more open spaces- parks &amp; Garden</li> </ul>
<i>Optimal Use of Resources</i>	<ul style="list-style-type: none"> <li>• Protection of eco – sensitive areas</li> <li>• Development of Shimla as – tourism network Centre</li> <li>• Encouragement to eco-tourism</li> <li>• Diversify the New economy</li> </ul>

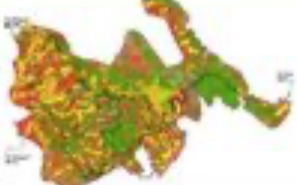

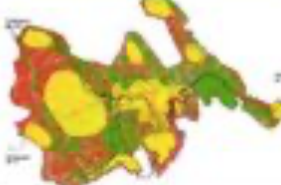
Population projections based on demographic models have many assumptions hidden under the figures finally presented. The plan provides some scenarios based on arithmetic, geometric and incremental growth scenarios and then selects an optimistic growth scenario of about 4.98 lakh population from the 2011 population of about 2.64 lakh. The plan provides no rationale for choosing an optimistic scenario for a city like Shimla which has already breached its carrying capacity in the Municipal Area. Assumptions behind population projections has implications for land requirements and is also a reflection on due care and harmonisation process talked about in the court orders.

Fig. 5. Population Projections

Population Projection – Residential Population

Projection Method	Existing Population	Projected Population		
	2011	2021*	2031*	2041*
<b>Arithmetic Method</b>				
Arithmetic Growth Scenario	2,41,429	2,77,439	3,13,449	3,49,459
Geometric Growth Scenario	2,41,429	2,81,478	3,21,526	3,61,575
Optimistic Growth Scenario	2,41,429	2,85,516	3,29,603	3,73,690
<b>Geometric Method</b>				
Arithmetic Growth Scenario	2,41,429	2,83,752	3,33,493	3,91,955
Geometric Growth Scenario	2,41,429	2,95,341	3,61,292	4,41,970
<b>Optimistic Growth Scenario</b>	2,41,429	<b>3,07,404</b>	<b>3,91,408</b>	<b>4,98,368</b>
<b>Increase Method</b>				
Arithmetic Increase Method	2,41,429	3,01,270	3,75,942	4,69,124
Geometric Increase Method	2,41,429	2,73,401	2,49,506	2,13,025
Average Increase (average of Arithmetic and Geometric)	2,41,429	2,90,314	3,46,673	4,12,306

Fig. 6. Development Scenarios

Scenario-1 Business as usual	Scenario-2 Development in Pockets	Scenario-3 Development of Counter Magnet/Satellites
		
<p>First concept will be to allow the growth as usual, by encouraging the growth more in the form of ribbon development along the major corridors.</p> <p>Along the major roads vacant developable land can be identified and can be demarcated for new development. Shimla shall have a ribbon development Pattern within and on the out skirts of the city area. However, the major challenge in this concept will be to provide all the basic infrastructure to these developments.</p>	<p>Second concept delves on identification of development pockets that are desirable &amp; suitable with the potential of scenic views, sunlight and accessibility. This model could have been suitable, if the additional population was around 30,000-40,000. However, it is not suitable for Shimla, where the population is likely to be double by 2041. Once these pockets of most desirable land will be developed, there will be spill over development in peri-urban areas in a haphazard manner. Also, providing basic infrastructure in these pockets, would be a challenge</p>	<p>The third scenario envisages development of Counter Magnet City to the existing city along with various developments. As in the previous concept it was observed that the development only along the road and various pockets will face a major challenge in providing basic infrastructure facilities to the increasing population. In order to provide basic infrastructure to these areas, development in Counter Magnet City can be introduced in phased manner. Also facade control regulations are to be introduced as per as the heritage value of the area.</p>

### ***Precautionary Principle and Planning Considerations***

Precautionary principles identify four aspects; protection in an environment of uncertainty burden of proof is on the person who wants to develop they should tell that it does not have environmental consequences, there should be range of alternatives from which one could make a choice and it should have a enough public deliberation and participation. A look at the development scenarios as shown in Figure 6 shows the perfunctory manner in which various options have been considered from environment perspective. The scenarios are covered in about half a page in the plan and provide no understanding of how these are better or worse from environment perspective.

### ***Public Trust Doctrine***

Public trust doctrine is an idea which states that state has an obligation to protect the environmental resources. Public trust doctrine enforces a legal right for the general public and a positive obligation for the state to perform its duty. Article 48A which made a way through Article 21 by including the right to clean environment under the

right to life. Article 51A(g) of the Constitution enjoins upon the Indian citizens a fundamental duty to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. And Article 39 [DPSP] which states proper distribution of the resources.

**In the CWPIL NO 13/2021** Kusum Bali vs State of HP and Others dated 13.01.2023 the court noted“

"In the facts and circumstances of the case, we find that there has been inaction and failure on the part of the State Government and its authorities, including the local authorities, to control the haphazard and indiscriminate development activities and in discharging their statutory duties under the Act, Rules, the Panchayati Raj Act and the Environment (Protection) Act, 1988 and the constitutional obligations under Article 48A of the Constitution of India. The State, as a trustee, is under a legal duty to protect the natural resources and the environment and prevent its degradation under the 'Public Trust Doctrine'. Moreover, there has been non-observance of principles of 'sustainable development' as well as 'pre cautionary principle" by the State which envisages that if there is risk of severe damage to humans and environment, absence of incontrovertible conclusive or definite scientific proof would not be a reason for inaction."

The NGT order of 2017 noted

"The Public Trust Doctrine is not adhered in Shimla as the basic infrastructure and the mandated norms for building construction have not been followed thereby making Shimla vulnerable to landslides and disasters. It was the duty of the public and the authorities for adherence to building bylaws and to follow the tenets "

## 6.0 Summing up

In conclusion, in answer to the question whether statutory planning process is conducive to achieve sustainable development one can say that the Act provides enough protections to achieve "sustainable development" however the institutional capacities and the adherence to law severely constrain this potential. Some of the larger concerns raised in terms of planning approach this paper points towards necessity of more interconnected approach rather than piecemeal approach. It indicates the need for more explicit acknowledgement of the competing values and how do we address these. The paper also demonstrates the limitation of techno-rational paradigm of planning as its 43 years and we haven't been able to

prepare a development plan. This brings to question the hopes that we had on survey analysis plan paradigm. In terms of sustainable development, it requires not an add on as a chapter on environment or a certain project. It requires a very different way of thinking it requires a different a shift in the way we look at development.

# Draft