

# Evolving Paradigm of Right to Development in International Human Rights Law and Its Transformation into the National Legal System: Challenges and Responses in Pakistan

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**Abstract**—No state can be progressive and prosperous in which a large number of people is deprived of their basic economic rights and freedoms. In the contemporary world of globalization, the right to development has gained a momentum force in the domain of International Development Law (IDL) and has integrated into the National Legal System (NLS) of the major developed states. The international experts on human rights argued that the right to development (RTD) is called a third-generation human right which tends to enhance the welfare and prosperity of individuals, and thus, it is a right to a process whose outcomes are human rights despite the controversy on the implications of RTD. In the Pakistan legal system, the RTD has not been expressly stated in the constitution of the Islamic Republic of Pakistan, 1973. However, there are some implied constitutional provisions which reflect the concept of RTD. The jurisprudence on RTD is still an evolving paradigm in the contextual perspective of Pakistan, and the superior court of diverse jurisdiction acts as a catalyst regarding the protection and enforcement of RTD in the interest of the public at large. However, the case law explores the positive inclination of the courts in Pakistan on RTD be incorporated as an express provision in the chapters of fundamental rights; in this scenario, the high court's of Pakistan under Article 199 and the supreme court of Pakistan under Article 184(3) have exercised jurisdiction on the enforcement of RTD. This paper inter-alia examines the national dimensions of RTD from the standpoint of state practice in Pakistan and it analyzes the experience of judiciary in the protection and enforcement of RTD. Moreover, the paper highlights the social and cultural challenges to Pakistan in the implementation of RTD and possible solution to improve the conditions of human rights in Pakistan. This paper will also highlight the steps taken by Pakistan regarding the awareness, incorporation, and propagation of RTD at the national level.

**Keywords**—Globalization, Pakistan, RTD, third-generation right.

## I. INTRODUCTION

RIGHT to development (RTD) has a unique place among the other human rights. It is not a sole right but a set of rights that spans over a wide class of economic, political, social and cultural rights, including both individual and collective rights of people [1]. In international law, it is now a settled principle among all the contracting states that human rights are the integral part of the NLS of each state because “human rights are indivisible, interdependent, interrelated and of equal significance for human existence and dignity” at the

national and global level. Therefore, states and international institutions are responsible for the violations and enforcement of human rights. The convergence and concept of “human rights and human development” emerged during the 20<sup>th</sup> century. At the conceptual level it may be established that development and human rights are virtually the same theme and imperatively unimpeachable. Therefore, the idea and recognition about “human rights” without development of the human being is just theory and not in practice in a globalized world. The United Nations Development Program (UNDP) explains the concept of human development as being about creating an environment wherein people can improve their living standards, develop their full potential and lead productive lives; according to their interests and needs [1]. This paper explores the interrelation between human development and “human rights”. In this perspective, various approaches have been adopted in order to establish relationship between “human rights” and human development. These approaches are an “holistic approach, the human rights based approach, the social justice approach, the capabilities approach, the RTD approach the responsibilities approach and the human rights education”. This paper concludes with a set of challenges for the recognition and enforcement of RTD in the globalized world and with special reference to Pakistan which is of special relevance to human rights. Therefore, the RTD is a debatable issue and still remains a test case, despite the 30 years existence of the “United Nations Declaration on the Right to Development (UNDRTD)” still no unanimous consensus has been reached between the North and South on the realization of the “RTD”. The eminent expert on RTD has explored that:

“...We consider the scope for revitalizing the RTD through existing provisions of international law, rather than by creating additional normative frameworks... We pursue the question of how existing provisions of the international law could be mobilized more explicitly for the sake of revitalizing the RTD and more in particular for its actual realization in the future. Three concrete means of implementation provide, at least, for the positive change, international cooperation for development, accountability and monitoring mechanism and regional and inter-regional instruments and procedures [2]”. There is an emergent need to change the set-mind of the states and need to create a harmonized

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mechanism between the developed and developing countries on the recognition and enforcement of RTD. On the concept of RTD it was observed that "it is the right of individuals, groups and peoples to participate in contributing to and enjoyment of continuous economic, social, cultural and political development, in which all human rights and fundamental freedoms could be fully realized. It includes the right to effective participation in all aspects of development and at all stages of the decision-making process, the right to equal opportunity and access to resources, the right to fair distribution of the benefits of development, the right to respect for civil, political, economic, social and cultural rights and the right to an international environment in which all these rights could be fully realized. The human being is a central subject, rather than a mere object of the RTD".

## II. LITERATURE REVIEW

In Article 22 of the "African Charter on Human and Peoples Rights", the RTD was first distinguished as complete individual and collective right. The year of its origin was 1981. This article states that: "All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind." The "RTD" was therefore declared by the UN in the "Declaration on the Right to Development," it was approved by the UNGA resolution 41/128. RTD is a collective right of people as compared to an individual's right, and was approved by a convention in 1993. RTD is now built-in in the directions of numerous United Nation's associations and organizations. The preamble of the RTD declaration provides "development is a complete economic, social, cultural and political process, which aims at the constant improvement of the welfare of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom". The origin of RTD can also be derived from the UDHR, UN Charter's provisions and also from important covenants of Human Rights. UDHR, 1948 consists of numerous essentials that developed as fundamental principles for the global understanding of community about the RTD. It gives significance to the rise of societal prosperity and to improve the living standards of human life. It also includes the individual's right towards society and analyzes the global framework in which the civil liberties and rights are enumerated in international human rights treaties. Another resolution passed by the UNGA stated that "a balanced and integrated economic and social development would contribute towards the promotion and maintenance of peace and security, social progress and better standards of living, and the observance and respect for human rights and fundamental freedoms." An international conference on human rights was organized by Iran, in which this right was accepted in these words: "that the enjoyment of economic and social rights is inherently linked with any meaningful and profound interconnection between the realization of human rights and

economic development". It is acknowledged "the communal responsibility of the global community to guarantee the achievement of the least standard of living necessary for the satisfaction of human rights and obligatory liberties for all persons throughout the world." Moreover, in 1969 another "Declaration on Social Progress and Development" stated its recognition of this cogent right in these words: "social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with human dignity and in compliance with human rights and fundamental freedoms". The UNCHR also decided to pay more attention to acknowledgement of "RTD"; therefore, in this connection, the reflection of the RTD can be seen in the "United Nations Declaration on the Right to Development" and "Charter of Economic Rights and Duties of States (CERDS)". In addition to above references, other important declarations were also acknowledged i.e., the democratic respect for "human rights and liberties" of individuals at the social and international level. The convention on RTD is a soft law. The soft law refers to those international documents which have no binding effect on nations. Therefore, it is said that the RTD will not be operative until and unless the declaration is shifted into the hard law alike other human rights instruments such as International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESR) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) etc., which are binding in nature and are accountable for the recognition and enforcement of "human rights". In the case of non compliance of these human rights, countries have to face blaming and shaming. The definition and content of RTD are still in controversy. Therefore, there is a dire need to build a consensus on the definition and the contents of RTD among the international community, otherwise, its transformation into NLS will remain a debate. In this connection, the "African Charter on Human and Peoples' Rights" (also known as the Banjul Charter) may be considered for future strategy, wherein Article 22, RTD has been incorporated and the regional court has been constituted for the enforcement of the human right.

## III. THE RELEVANCE OF HUMAN RIGHTS VIS-À-VIS HUMAN DEVELOPMENT

The RTD is an inalienable human right and is the most important right as compared to other "human rights". Political, social, cultural and economic factors are strongly connected to human rights, and ultimately, all of these aspects lead towards human development. However, there is a need to attain the attention of international institutions upon these aspects. For the recognition of RTD, different approaches have been adopted which reflect the various dimensions of RTD and their relevance with other human rights such as health, education, social justice etc.

### A. The Holistic Approach

This approach examines the human rights framework as whole system and does not emphasize on its individual

components. Human rights function in a systematic way because the rights of humans are so interconnected that progress on some rights is difficult without progress in the system as a whole. Therefore, the holistic approach does not favor the categorization of human rights. In this way, there are various instruments which support the holistic approach. UDHR Article 28 stipulates that every human being has a RTD, liberty and life at the social and international level. Article 6, paragraph 2 of the Declaration on the Right to Development (1986) emphasizes this approach as "All human rights and fundamental freedoms are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights". The Vienna Declaration and program Action (June 1993) in paragraph 5 states that "All human rights are universal, indivisible and interdependent and interrelated" [1]. Therefore, it is the core responsibility of the states to enforce the political, economic, social and cultural rights.

#### *B. The Human Rights-Based Approach*

This approach primarily focused on the relationship of human development with "human rights". The eminent scholar Julia Hausermann expressed her views on this approach in these words: "Puts people first and promotes human centered development, recognizes the inherent dignity of every human being without distinction, recognizes and promote equality between women and men, promote equal opportunity and choices for all, promotes national and international system based on economic equity, equity in the public resources and social justice and promotes mutual respect between people". Therefore, this approach elucidates that processes and policies of development should be prepared in accordance with international human rights policies. One of the major elements of the development process is "public participation"; this concept is gaining momentum nowadays in leaps and bounds. Therefore, the individual's "participation" is a central theme in the realization of RTD and it seems to be incorporated into national development strategies. It is pertinent to mention here that, the international instruments such as ICCPR and ICESCR emphasized the role of "participation" in the development of RTD. The special rapporteur on human rights Manoucher Ganji [3] observed that:

"The basic principle governing the question of human rights in development should be the participation of the people in deciding their own style of individual and corporate life in general and in particular their participation in decision making in connection with development programmes, in the implementation of these programmes and in the benefits derived from them" [4].

For the recognition of the RTD, it is quite imperative that the consensus based and result oriented efforts should be initiated at all levels, because the idea of "participation" is of greater importance in the context of human rights law. Therefore, in this context, the requirement for "participation" is also a consistent theme in international instruments,

resolutions, declarations and planes of actions [5]. In a nutshell, this approach has a close nexus with the empowerment of vulnerable groups, participation of individuals in decision making, non discrimination and accountability, inter-alia, transparency in the context of good governance.

#### *C. The Capabilities Approach*

The Capabilities Approach introduced by Amartya Sen relates to health, and deals with enhanced choices such as capabilities. The concept also explains poverty as being contrary to capabilities and highlights its three basic ingredients being premature morality, undernourishment and illiteracy. This approach leads to a person's choice to adhere any sort of life style, functioning and operation.

#### *D. The RTD Approach*

The RTD approach considers development as an independent and self-determined right. The recognition and enforcement of RTD was primarily introduced by consensus resolution of the UN General Assembly (GA) (1996-1997). The new international economic order (NIEO) has in respect of this right acknowledged the duties of the state to realize RTD based on different concepts like sovereign equality, mutual-interest and co-operation. The promulgation of right of development was mistakenly assumed to be the victory of poorer nations; however, RTD has always been used for the betterment of these nations particularly the developing ones and precisely includes all rights available to a human being for his growth and development.

#### *E. The Social Justice Approach*

The Social Justice approach emphasizes on eliminating social inequalities and enforcing social justice in society. It mainly focuses on important features of human development by recognizing the UDHR which affirmed that every citizen has a right to "a social and international order in which the rights and freedoms set-forth in this Declaration can be fully realized". The relationship between human rights and social justice is an acceptable core criterion of fundamental justice in a society.

#### *F. The Responsibilities Approach*

International economic law explores that states have the right and duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of society on the basis of their qualification and capacity. Therefore, the responsibility approach imposes obligations on states with respect to the recognition and enforcement of RTD in a holistic manner. In this context, Immanuel Kant, an eminent scholar, suggests that while considering human rights, it is not necessary to negate any perfect or imperfect obligation. But Amritya Sen, on the other hand, considered that without perfect obligation, human rights would be of no avail. This argument however has been endorsed by many international human documents i.e. article 2 of the ICESCR. The International Human Rights Convention has categorized the obligations of rights into two parts. The first is the perfect obligation which is enforced through the

courts and the second is an imperfect obligation that is based on general commitments to carry out definite polices and to attain certain results. In the social contractarian theory of human rights, one is obliged to contribute to society so that his rights may be protected. The third type of right is subject to limitations placed by international human rights instruments. According to this, human rights should not violate the laws of the state. Article 29(2) of the Universal Declaration, which states that: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society." The ICCPR has provided some restrictions on six human rights such as movement, religion, public trials, opinion, assembly and association. Thus, there should be some legitimate limitations on human rights so that there should be no political manipulation in the name of human rights.

#### *G. The Human Rights Education Approach*

The goal of the Human Rights Education approach (ERE) is to ensure quality education to everyone that respects and promotes his right to dignity and optimum development [22]. The eminent scholar Clarence Dias argued about this approach and elucidated five key factors by which HRE participates to human development, which are: (i) "by helping monitor development activities", (ii) "by mobilizing support for victims' struggles for rehabilitation, redress, and justice", (iii) "by promoting understanding of the rationale for development", (iv) "by securing more effective participation in the development process", and (v) "by securing accountability for those responsible for misuse of public resources". HRE stresses on non-formal human rights education as a development methodologies and the preferred role of educators as facilitators. The human rights facilitators who continually strive to make learners aware of their rights and, in particular, their right to claim them. This can be achieved using participatory methods to create a basis for experience and learning. The HRE approach ranges from small group community task forces to the formation of human rights communities. The idea of human rights communities promoted by way of People's Decade for Human Rights Education (PDHRE) is based on the idea that individuals of a society deserve protection and enforcement of RTD in all disciplines of life.

#### IV. STRUCTURAL AND CONCEPTUAL CHALLENGES IN THE IMPLEMENTATION OF RTD:

There are number of structural and conceptual challenges in the methods of enforcement of RTD. One of the major challenges results from the lack of policy coherence on the part of states, and there is an emergent need to make the RTD an essential part of the Human rights law as fundamental right in the constitutional law of a state. It is worthwhile to note that there should be a comprehensive mechanism in the legal framework at the regional and international levels for the

enforcement of RTD. States remain divided on its transformation from the international system to domestic legal system. In the contemporary world of globalization, the reflection of RTD can be traced only in international conventions and there is still controversy and debate on enforcement of this right, and this picture reflects the parochial attitude of the states, which seems that they believe only in 'law in books and not in action'. In this regard, domestic policies of a state must accommodate human rights to eliminate social injustice at the national and international levels. Every state is facing the practical challenges for the realization of RTD. The primary challenges to realize RTD are (i) politicization: states are still divided in interpreting this right that whether it should be part of state obligations or the responsibility of international community, and there is a difference of opinions among states regarding its criteria and indicators for measuring progress towards implementing RTD, (ii) lack of engagement: there is a lack of engagement on the part of United Nations agencies and civil society in the promotion of RTD. (iii) Adverse global trends: there are several challenges in the realization of this right include corruption, the energy and climate crises, economic and financial crises etc. [21]. In order to implement RTD, the African Charter of Human and Peoples' Rights may be adopted as a model law wherein a comprehensive mechanism is provided to monitor this right in the contracting states and they are held accountable before the African Commission on Human and Peoples' Rights. In the reported case titled as *The Centre for Minority Rights Development (Kenya) and Minority Rights Group International vs. Kenya* [6]. In May 2009, the African Commission on Human and Peoples' Rights observed that the Government of Kenya guilty of violating the rights of the Endorois, an indigenous community, including their RTD, by evicting them from their lands to make way for a wildlife reserve. In another case, Sudan was held responsible on account of the violation of RTD with respect to attacks and forced displacement of the Darfurian people [7]. Another challenge is the resistance to address core international economic and trade issues. In this perspective, the World Trade Organization (WTO), IMF, World Bank, ACP, MERCOSUR, are relevant to the implementation of RTD. These financial organizations are not primarily focusing on RTD; their core purpose is to promote trade and investment that leads towards economic growth. However, human rights generally and RTD specifically require a different logic, and sometimes this growth may cause an adverse effect on the rights of some people and generate inequality and discrimination. Therefore, there is an emergent need to reconcile human rights with trade and international financial institutions in order to implement or promote the RTD. The above argued challenges may be referred as structural challenges, which reflect the future of RTD, however, the conceptual challenges depends upon the mindset of the policy makers. They argued that RTD, as provided in the declaration, is a vague term and its practical application is a very complicated phenomenon. The eminent scholar Peter Uvin expressed his critical views on the conceptual foundation of

RTD in these words:

"The Declaration on the Right to Development was, from its inception onward, politically very weak. It was politically engineered as bad law: vague, internally contradictory, duplicative of other already clearly codified rights and devoid of identifiable parties bearing clear obligations... it was so watered down that it became meaningless" and "has been devoid of any real impact" [8].

In the global scenario, there is still controversy regarding the exact definition and contents of RTD. Hence, in its present status, it seems difficult to transform this right into the constitutional domain and to make it a part of a NLS. Moreover, there is still no concrete methodology and criteria to enforce this right among the states.

#### V. THE REFLECTION OF RTD IN INTERNATIONAL ECONOMIC LAW (IECL)

The pre-world war period was an era of colonialism and imperialism. The most important aim of imperialism and colonialism was economic gain [9]. Therefore, in that period, the European Nations initiated trade measures for the sake of strategic raw materials like oil and markets in the developing world for the consumption of their finished products.

Consequently, prior to WW-II, the world was governed by colonial powers. At the end of WW-I, the League of Nations came into existence and introduced various policies in order to regulate world trade. However, no member of the league was prepared to stake its own national interests for the sake of the greater international interest; therefore, they violated the league covenant for the sake of their own national interests.

Developed nations were interested in the promotion of international trade. Therefore, the establishment of the League of Nations at the end of WW-I, included a number of financial and economic committees in the economic sphere consisting of experts from various countries. These committees introduced concrete reforms in the domain of international trade. However, no member country was ready to stake its own national interests for the sake of greater international interest. Some member countries violated the rules of League of Nations for the sake of their own narrow national interests, and started unfair trade practices. Hence, the League of Nations became weak and failed to overcome the economic challenges, which were aroused as consequences of World War I. Consequently, there was a worsening economic disorder and economic inequality between developed and developing nations. In that scenario, developing states felt that do not get a fair deal from the existing international economic order and demanded fair and even preferential treatment in the field of trade, investment, technology, finance and money, and participation in international decision making. In response to these demands, the UN General Assembly in 1974, in its special session, approved a declaration on the creation of the New International Economic Order (NIEO), which was based on sovereign equality, inter-dependence, common interest, equality and cooperation among all states irrespective of their economic and social system, In order to make it possible to

eliminate the widening gap between developed and developing countries and to ensure steadily accelerating economic and social development in peace and justice for present and future generations [9]. Subsequently, in 1974 , the United Nations General Assembly approved the "Charter of Economic Rights and Duties of States" for the economic growth and development of developing countries and for the wider prosperity of the people, inter-alia "The encouragement of co-operation, on the basis of mutual advantage and equitable benefits for all peace-loving States which are willing to carry out the provisions of the present Charter, in the economic, trade, scientific and technical fields, regardless of political, economic or social systems" [10]. In 1986, the Declaration on RTD was introduced at the UN platform, which provided that "the right to development is the inalienable right of every human being without any discrimination". In this declaration, the concept of development was incorporated with these words that:

"Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom" [23].

In 1995, the World Trade Organization (WTO) was established. The fundamental agenda of this organization is the economic prosperity and development of states and their individuals. In this organization, special and differential treatment (S&DT) provisions were incorporated for the economic development of developing and least developed countries for their economic growth, participation and development in international trade. The preamble of this organization reflects that "economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development" [11]. It is worthwhile to note that the Brettonwood institutions IMF and World Bank group envisage the provisions with respect to the economic development of states and individuals. The central theme of the IMF is "working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world" [12]. Whereas, the World Bank group "promotes long-term economic development and poverty reduction by providing technical and financial support to help countries reform certain sectors or implement specific projects—such as building schools and health centers, providing water and electricity, fighting disease, and protecting the environment" [13].

## VI. CONSTITUTIONAL ANALYSIS AND IMPLICATIONS OF RTD IN PAKISTAN

While Pakistan has no express provision in its Constitution on the RTD, the Chapter of fundamental rights is an operative part of the Constitution which is enforced by the superior Courts of Pakistan under Article 184 and Article 199. From an examination of the case law, it may be argued that the courts in Pakistan are proactive in the enforcement of rights. Case law analysis and the express provisions Article 4, Article 9, Article 18 and Article 25 of the Constitution of Pakistan, 1973, reflect that Pakistan has accepted the reality of the RTD. It is pertinent to mention that the Pakistan National Human Development Report highlights that the country has taken serious measures to improve the “living standards” of its people and their education by incorporating the provisions in their national policy and action plans. However, the pace of change is slow because Pakistan has spent \$126 billion US in last 17 years on account of the war against terrorism. Moreover, due to emergence of this struggle, “Pakistan could not collect \$3459.67 million tax due to terrorism in last two years, in addition, \$383.93 million has been spent on infrastructure and \$129.89 million paid to aggrieved families of terrorism in the above mentioned period” [24]. Therefore, in view of these facts, Pakistan has had to face the financial constraints and did not improve the areas of human development on account of the diversion of funds to fight the war against terrorism and for the rehabilitation of internally displaced people (IDPs). However, the present government is trying its best to revamp the economy and formulate new education, economic, investment and trade policies. It is also pertinent to mention here that the present government has decided to revisit the country’s anti-money laundering and corruption laws in order to improve the governance structure for the betterment of the socio-economic development of the people of Pakistan. Fig. 1 shows the financial losses to Pakistan as the result of terrorism.



Fig. 1 Financial losses beard by Pakistan on account of terrorism

Pakistan is a democratic country with a strong constitutional mechanism for the enforcement of the fundamental rights of citizens. Pakistan has played a critical role in the implementation of RTD in all proceedings of the GA, and has contended that RTD be accepted as a human right. In the 1996 session of the Human Rights Commission (OHRC), Pakistan demanded a special rapporteur on RTD with a vision to re-examine the policies of states, and proposed the mechanism in

which RTD could be promoted collectively. In 2003, Pakistan organized a regional workshop to create awareness and an action plan for the promotion of human rights in the Asia Pacific region, and it was agreed among all member states that “all human rights including RTD are indivisible, interdependent and interrelated” [25]. The literature review explores that Pakistan has actively participated at the national and regional levels to create awareness on RTD and proposed possible solutions to promote the RTD. The South Asian Association for Regional Cooperation (SAARC) is a regional intergovernmental organization and geopolitical union of nations in South Asia, and its social Charter supports RTD [14]; yet, no practical initiatives have been initiated on the part of member states. However, they have agreed on the rights-based approach in the performance of good governance. In 2016, the eminent Rapporteur from Pakistan submitted a comprehensive report on RTD, which contained the criterion for its enforcement. Most of its key characteristics are in accordance with fundamental rights, objective resolution and principles of policy. In this contextual perspective, “Article 9 of Constitution of Pakistan, 1973 provides that no person shall be deprived of life or liberty save in accordance with law” [26]. The Supreme Court of Pakistan elaborated the word ‘life’ at length and included in its definition the ‘RTD’ in a number of cases for instance, in the case of *“Shehla Zia vs. WAPDA”* [15]. In this case, the Supreme Court held that “The word life in the Constitution has not been used in a limited sense. A wide meaning should be given to enable a man not only to sustain life but to enjoy it. [...] The constitution guarantees dignity of man [article 14] and also the right to life under Article 9 and if both are read together, [the question] will arise whether a person can be said to have [the] dignity of man if his right to life is below bare necessity [i.e. without] proper food, clothing, shelter, health care, education, green atmosphere and unpolluted environment” [15]. In the recent case of *Maulana Aman Ullah Haqani vs. Government of Pakistan* [16], the Supreme Court held that “right to life includes a clean and healthy environment and the right to human dignity, equality, social, economic and political justice”. Article 11 of the Constitution of Pakistan, 1973, provides that “slavery in Pakistan is non-existent and that no law shall permit or facilitate its introduction in the country in any form. It also prohibits forced labor in all forms and traffic in human beings”. In 2006, in human rights case number 5091, the Supreme Court of Pakistan declared the detention of brick kiln workers illegal and ordered for their release. This attitude of the Court reflects the positive recognition of RTD. Article 17 of Constitution relates to the freedom of association and participation and guarantees the “right to form association and unions subject to reasonable restrictions imposed by law in the public interest”. In the case of *Muhammad Nawaz Sharif vs. President of Pakistan* [17], the Supreme Court observed that “freedom of association not only includes the right to form an association but also includes the right to participate in elections”. Article 18 of the Constitution relates to the freedom of economic activities. It provides that every person is free to make a choice of his own employment or to take up

any trade or business. "Subject to the conditions, qualifications and limitations as may be prescribed by law". Article 25 of the Constitution relates to the equality of citizens. It provides that "All citizens are equal before law and are entitled to equal protection of the law. There shall be no discrimination on the basis of sex" This article also provides special protection of women and children for their socio-economic development. In the case of *Al-Jehad Trust* [18], it was held by the Court that the fundamental rights of the people of the northern areas of Pakistan must be protected. In another case, *Mohammad Shafique Ur Rehman vs. Federation of Pakistan* [19], the Court directed the concerned authority to gather the data of persons with disabilities and transgender, and to categorize transgender in a special column of census form in the upcoming population census.

Article 37 of the Constitution relates to the "promotion of social justice and eradication of social evils". This article provides that protection of social justice, eradication of social evils in accordance with the tenets of Islam is the foremost duty of the state. In the case of *Nasreen vs. Fayyaz Khan* [20], the Supreme Court of Pakistan directed the government that urgent measures should be initiated for the elimination of poverty and development of illiterate persons according to the teachings of Islam. Article 38 of the Constitution relates to the promotion of the socio-economic well-being of the people. It provides that the state is bound to provide social justice, education, health, shelter and food. Moreover, efforts shall be made to raise the living standards of people and ensure the equitable balance between the employers and employees for their mutual economic development.

Article 184(3) of the Constitution provides that in the case where a question of public importance with special reference to the enforcement of fundamental rights arises, the Supreme Court of Pakistan (SC) interferes in the form of suo moto action. In human rights case No. 4668 of 2006, the Supreme Court held that the establishment of a restaurant in any park is contrary to Article 18 of the constitution. Moreover, Article 199(i)(c) of the Constitution of Islamic Republic of Pakistan, 1973 relates to the jurisdiction of each High Court of a province for the enforcement of fundamental rights. Each High Court may exercise this power when no adequate and alternative remedy is available to an aggrieved party. In the case of *Mian Shabir Asmail vs. Chief Minister of Punjab*, the Court allowed the representation in the legal process of poor and disadvantaged citizens. In another case, that of *Muhammad Sher vs. Abdul Karim*, it was held that "Article 199 empowered the High Court to act in aid of law to protect the rights of citizens within the framework of the Constitution". In the *Orange Line Metro Train Case*, the Supreme Court reversed the decision of the High Court and allowed this transport plan, keeping in view the greater interests of the community for socio-economic development.

#### A. Pakistan's Human Development Index value

The Human Development Index (HDI) is a summary measure for examining the long-term progress in three basic dimensions of human development, which are: a) a long and

healthy life, b) access to education, and c) standard of living. The UNDP 2018 statistical update on human development shows that the HDI value of Pakistan for 2017 is 0.562. This shows the trends of progress in the human development index of Pakistan in a comparison to previous regimes. The following dashboard analyzes the key indicators in life expectancy, schooling and GNI, which reflects this progress. However, it is worth to mention that this progress is lower in comparison to other countries in South Asia.

TABLE I  
PAKISTAN'S HUMAN DEVELOPMENT INDICATORS [28]

	Life expectancy at birth	Expected Years of Schooling	Mean years of Schooling	GNI per Capita (2011 PPP\$)	HDI Value
1990	60.1	4.6	2.3	3.195	0.404
1995	61.4	5.0	2.8	3.387	0.428
2000	62.7	5.4	3.3	3.451	0.450
2005	63.8	6.5	4.5	4.101	0.500
2010	65.1	7.5	4.7	4.447	0.526
2015	66.3	8.2	5.1	4.978	0.551
2016	66.5	8.6	5.2	5.155	0.560
2017	66.6	8.6	5.2	5.311	0.562

#### VII. THE FUTURE OF RTD

The literature review explores that at the United Nations forum, several working groups were established to create the awareness and enforcement of RTD among the international community. Different working groups and independent experts and a proactive task force were established to determine the criteria and methodology on the basis of three components of RTD, "comprehensive human centered development", "enabling environment" and "social justice". In the proceedings of the various working groups and task force, it was argued that RTD should be included in the national policies and development plans of every state for the betterment of the poor and other vulnerable disadvantaged groups in society. Furthermore, the United Nations General Assembly initiated other steps in the form of research projects in order to identify the exact definition and contents of RTD. In the continuation of these initiatives, the Office of the United Nations High Commissioner for Human Rights (OHCHR) published a remarkable document on the analysis of RTD. In this connection, the former High Commissioner on human right expressed her views on this document as:

"Since the adoption of that landmark document, a debate has been raging in the halls of the United Nations and beyond. On one side, proponents of the right to development assert its relevance (or even primacy) and, on the other, sceptics (and rejectionists) relegate this right to secondary importance, or even deny its very existence. Unfortunately, while generating plenty of academic interest and stimulating political theatre, that debate has done little to free the right to development from the conceptual mud and political quicksand in which it has been mired all these years" [27].

In 2016, a Pakistani Rapporteur submitted a report, in which it suggested four measures for the enforcement of RTD.

Firstly, there is a need for state cooperation. Secondly, there is a need for strong political will for the implementation of RTD at global level. Thirdly, at the national level a comprehensive and inclusive approach is required, and fourthly, concrete measures should be initiated for the betterment of human life.

### VIII. CONCLUSION AND WAY-FORWARD

To round off the brief discussion, it may be observed that the United Nations Declaration on the RTD is a soft law and that most states have a positive attitude regarding the recognition and enforcement of this right. However, there is a need for political will and consensus among the states to resolve the controversy on the definition and contents of RTD. Moreover, it has been observed that RTD is not in the main stream of the policies and actions of international organizations on human rights. RTD is still a controversial right among the states regarding its definition and contents. Hence, a lack of consensus in the international community is a potential barrier regarding the enforcement of this right at the international and national levels. Moreover, no state has accepted this right in express form in their NLS, with the exception of the African Charter of Peoples' and Human Rights. However, the United Nations and its associated bodies have acknowledged RTD and argued that it has great potential and is an accepted norm for sustainable development. In the case of Pakistan, RTD is not directly provided in the country's Constitution; however, there are certain Constitutional provisions which reflect RTD that courts in the country use to interpret this right. The courts of Pakistan have interpreted RTD on a case-by-case basis in the form of Public Interest Litigation (PIL). Pakistan has participated in all the proceedings of the UN and supported the UN resolutions on RTD, and highlighted the importance of the international dimension of RTD. Overall, Pakistan has shown keen interest in "human development" like other countries; however, the level of progress is not satisfactory at this time. More significantly, Pakistan is falling behind its neighbors and comparable countries in South Asia, as a result of the \$126 billion US spent in last 17 years in the country's war against terrorism and the rehabilitation of IDPs.

To improve human rights conditions in the globalized world, the following recommendations are put forward:

- a. There should be a comprehensive consensus over the definition and content of RTD among the international community.
- b. The "African Charter of Human and Peoples' Rights" may be adopted as a model law in agreed countries for a specific period of time as an ad-hoc arrangement.
- c. RTD must be placed in the mainstream of international institutions and organizations.
- d. There is a dire need to shift the paradigm of soft law to hard law.
- e. Special legislation should be made in every NLS to recognize and enforce this right.
- f. There is an emergent demand that research activity must be conducted in order to examine the gross-root level challenges in the enforcement of RTD on a country-to-

country basis

- g. RTD awareness programs and seminars must be organized at the regional and international level.

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