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Public Interest Litigation: A Catalyst for Realizing the Right to Development in Pakistan

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Abstract

Public Interest Litigation (PIL) is a legal tool that allows individuals and organizations to seek legal remedies in court on behalf of the public interest and societal well-being, rather than just for personal grievances. PIL can be a powerful instrument for the realization of the right to development, which is a complex and multifaceted human right aimed at ensuring that all individuals and communities can participate in, contribute to, and benefit from the development process. The right to development encompasses various economic, social, cultural, and political dimensions, and it goes beyond mere economic growth to address issues such as poverty reduction, equality, sustainable development, and the participation of marginalized groups. This study explores the evolution of PIL in Pakistan's legal landscape, tracing its historical context and key milestones. By examining pivotal cases that have shaped PIL's impact on development, the paper elucidates how PIL has been instrumental in addressing issues such as socio-economic disparities, environmental degradation, and access to essential services.

Keywords: PIL, Right to Development, Judicial Activism, Suo-Moto, Human Rights

Rationale of Public Interest Litigation

It has been observed that PIL has acted as an instrumental force for the realization of RTD in world modern legal systems. In globalized world PIL has emerged as one of the most promising concepts and key element of the process of participate justice in Pakistan International Judicial Conference. (2013). Therefore, PIL comprises of the intention of providing legal aid in order to extend social welfare and justice to the marginalized and vulnerable groups. In practice, it varies from that of the legal proceedings being carried traditionally, because it is non-adversarial in nature. However, PIL is invoked before the Court of competent jurisdiction to spread and enforce justice for the public at large rather than struggling to provide justice to one person only. Therefore, the infringement of the rights of the public masses who are not rich enough or educated about their rights but are suffering because their grievances go unnoticed due to their inferior status in society are served justice through public interest litigation. According to the Black's law Dictionary the definition of public interest litigation is that it is a legal action which is initiated in a court of law the purpose of which is the enforcement of the public interest in general where the public or community has some monetary interests through which legal liabilities or rights are influenced. The eminent jurists argued that, PIL provides the forum for all those citizens who do not have access to justice for the enactment of their rights otherwise, such as right to health, education, food, and employment and

allied matters. Asghar, (2011). In a land-mark case (Muhammad Bin Ismail v. Tan Sri Haji Othman Saat, (1982), Honorable justice of Malaysia observed as under:

“in case if there is any contravention of law or any unconstitutional activity is carried by any public authority, then it is permissible for any citizen to file the case in the court, even if he has no direct grievance, and the courts therefore are to provide the remedy in the concerned matter as per its discretion.”

It is a fascinating exercise for the Court to deal with PIL because it is an evolving paradigm. So, it is an innovative mechanism and judicial action for the purpose of supremacy of justice and makes possible the revelation of the basic rights of marginalized and vulnerable groups of the society. Moreover, PIL is an influential instrument in the hands of individuals and social action groups, who are fighting against the exploitation, injustice and to safeguard the interests of vulnerable groups. So in the light of these arguments, it may be recognized that PIL is the most efficient tool when it comes in the ambit of Constitutional domain for enforcing and promoting rule of law to the ordinary individuals in society *M.C Mehta Vs. Union Of India (1987)* .It is pertinent to mention here that, implementation of such rights will need a provision for its enforcement, as earlier argued that, the Constitution of 1973 of Pakistan has no direct provision which relevant to right to development and its enforcement, however, there are certain provisions in the Constitution which reflect the idea of right to development. In practice, however, the Courts of Pakistan have shown liberal approach while interpreting the constitutional provisions, imparted to right to development. The case law analysis reveals that the Superior Courts of Pakistan and India has relied upon the PIL in the realization of RTD. It has been observed that the public interest litigation aims at promoting and enforcing rule of law to the marginalized and ignored segments of the community; its ultimate aim is to ensure better judicial protection of human rights.

Emergence of PIL

Public Interest Litigation in the recent years has increased not only in Pakistan; rather, it can be seen all around the world, because, as the community fails to seek remedy from the other relief providing bodies, so the constitution comes as a guardian of the fundamental rights. The phenomenon of the public interest litigation has emerged as a new judicial system which aims to reduce amongst the social and economic welfare along with the enforcement of law. Historical origins of public interest litigation can be traced from USA during the 1960's where the movement for the public interest to secure the rights of the poor and ignored segment of society, for the promotion and safety of life, health, ecosystem, education, poverty alleviation, and racial discrimination Ray, A. (2003), which are an integral part of right to development. However, in India it emerged in the early 1980's and in Pakistan in the late 1980's. However, the political and Constitutional history of Pakistan does not reflect a pleasant scenario on account of internal and external conspiracies. Due to political instability and Constitutional dilemmas, the rights protected by the constitution remained suspended as the country was going through constitutional crises. Moreover, the powers of the superior judiciary were curtailed, during the proclamations of emergency, regarding the implementation of the fundamental rights. However, after the constitution was revived, the Superior Courts invoked the PIL as a best tool in order to safeguard the fundamental rights of the marginalized sectors, in health, education, food, employment, poverty alleviation and allied matters Newberg, P. R. (1995). It is pertinent to mention here that, the judicial trends in the mid-1980s reflect the idea of judicial activism in Pakistan for the actualization of right to development, and the superior Courts of Pakistan observed that, rule of law, social justice and good governance all go hand in hand, so judicial activism through PIL is an instrumental force to uphold social justice and RTD Haleem, M. (1986). However, the movement for the public interest litigation kept going during the 1990s and in the recent times, specifically after 2013, it has gained momentum, the Supreme Court

adopted the view that the *Suo motu* jurisdiction assumed by it is a pillar of effective promotion of justice The News International (2006). Hence, the Superior Courts of Pakistan has been playing an effective role in the contemporary regime of governance to uphold the justice and social welfare. No doubt, the apex court of Pakistan has articulated the notion of PIL to re-establish its institutional sanctity, and to safeguard the rights of people. In the continuity of this argument, it is important to mention here that, the Apex Court carried out two major changes in the traditional litigation mechanism. Firstly, it has given leniency with various provisions of procedure in order to make easier and inexpensive way to justice, and established a 'Human Rights Cell' in 2013, in order to promote less costly and speedy justice to people in issues regarding the violation of the fundamental rights including issues of health, education and food etc. The Cell is working under the supervision of Honorable CJP, with a mandate to resolve disputes relevant to human rights. Second, it interpreted the Fundamental Rights, especially, the right to life in a wider sense, and enunciated that right to health, education, food, security, housing, environment, employment, and livelihood, are all under the domain of right to life.

Nature and Scope of PIL

PIL is of inquisitorial nature rather than having adversarial nature. It has been observed in Liaquat National Hospital Association (2002), case that the public interest litigation is not designed to settle for the rights of the individual persons rather it aims at the provision of justice for the public at large, especially the protection of the fundamental rights which are provided in the constitution. This revolves around the redressal of the grievances of those poor and needy people who are either not educated about their rights or cannot afford the expenses of the litigation. The philosophy behind the PIL is to make sure that the rights of the ignored and unnoticed segments of society through public functionaries and make them accountable for the non-compliance of their administrative obligations. Therefore, the PIL envisages with a theme to promote socio-economic justice, and rule of law. In an Indian judgment titled as Union of India Case People's Union of Democratic Rights (1983), it was held by the Supreme Court that the state is bound by the constitution to keep a check whether the fundamental rights are being enforced or violated especially the fundamental rights of the people belonging to the weaker class, which cannot afford a legal contest with its strong opponent which is infringing his rights. In *S.P. Gupta (1982) case*, it was held that if there be any public injury in a result of any act or omission by the state or a public official which is acting opposed to the constitution or any other law. Therefore, any person being affected from such an act can file a suit against it for the redressal of it. The strategy or object of public interest litigation is that the poor segments of society can access to justice as well Bihar Legal Support Society (1986). It is adopted to advance public interest and avoid public mischief Chaitanya Kumar (1986).

It is an established principle of law that in a conventional litigation, only persons whose fundamental rights have been violated would be proper plaintiffs. However, the SC has chosen to ignore such traditional notions of 'standings' in cases that are brought to Court in Social or in the interest of public. It is contended that or as a matter of practice, the case law reveal that the superior Courts have allowed any person, even a person not directly suffering harm, to sue in the public interest, so long as the suit is brought in good faith. The named plaintiff is merely representing the interest of the public or of some third parties which are not in the capacity to knock the door of the court of law. However, the Courts have laid down certain rules to determine locus-standi in PIL. In *Rauf Ahmad Ghauri (1998) Case*, The Court observed that (a) any public-spirited person/organization, motivated by interest of public at large, can come to Court in order to claim access to due procedure of law as provided by the Article 199 of the Constitution of Pakistan. This is known as public interest litigation, (b) with the growth of activities of State, this approach was adopted as instrument of social engineering for purpose of coming to help disadvantaged and destitute class. The procedural rules were even relaxed, and telegrams sent by the aggrieved person

were treated as petitions, (c) this rule is, however, subject to well-known limitations that the petitioners must appear in the court with clean hands rather than being malicious and in the aid of public at large and not in the furtherance of litigations. Add to it, the Courts, while deciding such petitions, should remain within frontiers of their jurisdiction and should not probe into the matters that are specifically kept for the executive domain. In *Mian Shabir Asmail (2017)* Court explained the scope and nature of PIL; the Court held that it is an endeavor to afford legal representation to the marginalized and vulnerable groups. It was further held that PIL is an effective tool in the hands of public action groups for fighting against the exploitation and injustice.

An analysis of PIL Case Law

The limitations and weaknesses of PIL as a judicial mechanism notwithstanding, the contribution of PIL in promoting social justice and the right to development, PIL has offered an alternative model of justice that is inexpensive and expeditious. It is a fact that, PIL has efficiently sped up the process of social transformation and the enforcement of the social and economic rights. The RTD is used in legal systems of both, India and Pakistan, through case law, which interpreted as a process of Juridification. The Juridification is established through judges who have revealed a better inclination to raise the RTD in their legal argumentation to solve judicial disputes. Courts unequivocally sustain the existence of RTD as a part of the constitutional fundamental right to life under article 9 Wolf, (2016). The realization of RTD reflects a legal guard for the rights of weaker sectors such as, rights for the women, education related rights, health matters, food and in allied areas. The case law analysis reflects contribution of superior Courts in India and Pakistan, in the enforcement of RTD through the instrumental force of PIL.

In **INDIA**, the Courts examined the issue of '*right to food*' as applicable to specific politically and socially marginalized groups- Child bonded laborers, the children of prostitutes, and the incarcerated. It has held that various levels of the Indian government have a duty to provide these groups with adequate access to food. However, the apex court of law has had occasion to comment on the right to food in general. In a recent ongoing PIL case the Supreme Court, in series of interim orders, has made a strong statement in favor of the right to food for everyone throughout the country. In case of *G.K Moopanar (1990)*, Madras High Court held that the access to food is a right which is safeguarded by the supreme law of the land. In *Bandhua Mukti (1997)* Case, Supreme Court of India addressed certain marginalized children's access to food, observed that underage bonded carpet makers from U.P were not being given the meaningful right to life, leisure, food...', the Court ordered that the central government has to provide healthy food to the children which should be a part and parcel in the strategy of eradicating child labor. In *Gaurav Jain (1997)* case, it was emphasized by the Apex Court it is in the obligations of the Central Government as provided in the Article 8 of the Declaration on the RTD, to make sure that there must be equal opportunity for the access to food. The Court held that the State should remove children older than six years from the red-light areas to institutions where they would, among other things, be fed. In *PUCL(2001)* case the Supreme Court raised concerns on the matter of growing number of deaths caused by the deprivation of food despite of the fact that there were huge food reserves of government. The Court highlighted that there must be a long-term strategy for the solution of providing people with means of employment, and underscored the importance of providing food to the senior citizens, physically disable, homeless people, starvation-endangered, women going through pregnancy or lactation and homeless children. Moreover, the states are ordered by the court to implement food-for-work programs in all scarcity areas.

It is important to mention here that, after the 93rd Constitutional Amendment in 2001, **Education** has gained the status of Fundamental Right in India. Earlier, education was included in the Constitution principles of policy directive for the state, with the Art. 45 stipulating that it is on the State to make sure that free and compulsory education would be made accessible for all children

under the age of fourteen in a span of ten years. However, the Supreme Court held in various cases that education is a right that could be claimed. After the earlier mentioned amendment, comes the constitutional surety about the free and compulsory education. As 21-A has been added, making it mandatory for the state to provide education free and compulsorily to the children whose lies between six and fourteen years, Article 45 has been substituted with the duty of the state that it should ensure the early childcare including the education of the children below six. In this connection, Indian Apex Court, in *Bandhua Mukti*(1997) case founded that states have an obligation to make Article 45 rights as priority for poor children and children from social minority groups such as the Dalits and Scheduled Tribes. The Court Ordered the UP and other State governments to promptly formulate policies for providing educational access to underage bonded carpet makers and other juvenile laborers. In *Gaurave jain* (1997) case the Supreme Court denied the application by prostitutes' children that would have caused States and Union territories to establish separate educational institutions for them, reasoned that, segregating such children in schools and hostels separate from other children would work against their integration into mainstream society. The Court held that, these children should instead be assigned to institutions where they could mingle with others and become a portion of the society. In another landmark case of *M.C Mehta* (1990), the Apex Court founded that Tamil Nadu could satisfy its Article 45 obligations to children employed in matchbox factories by establishing a welfare fund into which the children's employer and the Tamil Nadu government would contribute matching funds to be used to provide child laborers with general and job oriented education during non-working hours. In *Jagdish Negi* (1997) case, the Supreme Court considered that if UP had violated Article 15(4) by annually reviewing whether certain groups of persons still constituted 'regressive and ignored areas entitled' to 27 % of the admissions slots in medical colleges under the Reservation Act. The Court Stated that, 'Backwardness cannot continue indefinitely', found that UP was entitled to annually ascertain whether groups claiming to be disadvantaged were still worthy of preferential treatment. In *Maharashtra* (1995) case, the apex Court ordered the Maharashtra government to provide funding for legal colleges commensurate with that provided to other non-governmental professional schools.

'*Health*' has been mentioned in numerous documents relevant to human rights as: 'a thorough matter of physiological and psychological sufficiency rather than simply the absence of any disease'. The Apex Court of India has elaborated the Art.21 of the Constitution and expanded the scope of word 'health'. Further Article 39 (e) of the Constitution directs the states that states are under obligation to protect the health of both men and women workers at working places. As is clear from the cases cited earlier, the second phase of PIL was unique in that the judiciary expansively elaborated the word 'life' to contain many of the socio-economic rights mentioned in the Directive Principles. Thus, the word 'life' also includes the right to better health facilities, quality food and basic education facilities. In this perspective, the Supreme Court of India in *Bandhua Mukti* (1997) case found that underage bonded carpet makers in UP were being deprived of their meaningful life under Art.21 of the Constitution of India, which contains rights to health-generating food, shelter and medical aid. The Court ordered the State governments to provide child laborers with nutritious food and health check-ups as part of a program designed to progressively eliminate child labor. In *Municipal Coucil, Ratlam* (1980) case, the Supreme Court ordered the Municipal Council to construct public washrooms and drains, under take mosquito control, and fill in cesspools. In landmark case of *Dr Ashok* (1986), the Apex Court elaborated the Art.21 of the Constitution and noted that health is the cornerstone of human existence and human wellbeing in the state; therefore it is the duty of the government to take necessary measures in order to provide better health facilities to its citizens. In *M.C Mehta* (1986) Case, the Supreme Court held that the State has the authority to delegate its powers to any other authority for delivery of better health facilities. In *Consumer Education* (1995) case the SC gave a strikingly expansive view of States and even private employers duties to provide health benefits for workers. The Court held that employers are constitutionally obliged to provide workers with access to medical facilities, both during and after active employment, as well as to prevent workplace pollution, protect the environment and preserve unpolluted water for workers to drink. The Court also found employers duty bound to maintain employee's health record. In *Gaurave Jain* (1997) case the SC

directed the concerned authorities to take the custody of the children from the streets and place them in institutions where they would receive health care, participate in health camps.

In *Constitutional petition (2013)*, the Indian Supreme Court held that the government must endeavor to attain proper health care standards. In case of *Mansukhbahi (2018)*, the SC held that, ‘corruption’ is a matter of public importance; Corruption is the hateful exhibition, which is intimidating the decency and morality people. A recent land-mark judgment on PIL in India is case of ‘*Centre for PIL(2020)*’, wherein, a case was filed for the welfare of public at large and the discretionary power of the central government was challenged, on account of being arbitrary discretion in allotment of retail outlets of petroleum during COVID-19, and the Court provided some guidelines, which shall be followed by the government for the allotment of retail outlets.

In Case of Pakistan: Few decades ago, the Courts of Pakistan were very rigorously followed the principle of ‘locus standi’ in cases of public importance, and also abstained themselves from taking suo motu actions in such matters Tariq Transport company, (1958). Nevertheless, the practice of the Courts was gradually rehabilitated and the Courts started to adopt a lenient view about the requirement of “locus-standi” and also initiated to take actions on its own in public welfare matters. As it can be seen in the landmark case of MS Bhutto, the honorable Apex Court had relaxed the rule of locus standi and other stringent requirements which were considered as hurdle for any person from public to reach the court for enforcement of fundamental rights for public welfare Benazir Bhutto (1988). The court established that examining the cases of public interest litigation the court would be having progressive and liberal approach. In a recent case law, it is demonstrated that it could be any member of the public which initiate any claim for seeking redressal of any public injury caused by the violation of the constitution or any other law Watan Party, (2006). In a landmark case of chest foundation (1997), the honorable court held that, it is necessary to forbid the media from publishing the advertisement of cigarettes, because cigarettes are harmful to life. This decision was proved to be a milestone for the wide interpretation of word ‘life’. The Court had given the liberal interpretation to world life by including the clean environment and health into the domain of life, which was not mentioned expressively in the Constitution as part of life. In case of Muhammad Ahmad Pansota (2019), Honorable Court has protected the ‘right to food’ which comprehends the ‘life’, Court held that wasting food violates the “right to food” and it is the duty of the government to take result-oriented measures for the protection of this right. In Asghar Laghari (2015) case, a PIL was filed by a farmer and Honorable Court held that “environmental problem” is an emerging challenge of present time and has led to intense changes in our globe’s environment structure. For Pakistan, these deviations have mostly resulted in floods and droughts, which negatively impact the water, food, health and education facilities of the vulnerable and weak groups of the society”. In another PIL case of Qazi Ali Athar, (2008), on health segment, the Honorable Supreme Court observed that “hospitals waste is not being disposed of according to the settled standards and requirements. The court declare this as an infringement and hazardous to health and clean environment and Court order the government to constitute a committee for safe and environmentally friendly disposal of waste. In a Constitutional petition, (2012), SC held that, after delegation of the matter of education to the Provinces, it is the constitutional obligation of the provinces to promote and protect the right to education of the children. In Marvi Memon,(2011) case, SC ensured the enforcement of basic human rights guaranteed by the Constitution for the interest of public at large, during the unprecedented flood devastation in the country. In PIL landmark case of Wattan Party, (2011), the honorable court observed and directed that, P.M as well as the C.Ms are duty bound to obey the Constitution and provide security and safety to the citizens. In a human right Case (2011), Supreme Court held that law administering agencies shall make exertions to provide safeguards to the fundamental rights of aggrieved persons. In another suo-moto case (2011), SC held that the State is duty bound to take serous initiatives for the protection of lives of fishermen, who were under serious threat because of contaminated water.

This paper has expounded that; judiciary can act as an instrumental force for the protection, promotion and enforcement of the RTD. In other words, public interest litigation jurisprudence aims

at the creation of the scope of realization of the RTD. However, with the excessive repetition of the public interest litigation in the recent years has further enhanced its scope in the matters of public importance. Therefore, public interest litigation carries the tendency to leave a mark on the legislative matters to strengthen the RTD in the constitutional domain. The momentum of PIL, however, has helped the country to work parallel to the recommendations provided by the RTD at country level. However, there is a minute reference to the international provisions for human rights as well as UNDRTD amongst the case laws of India and Pakistan. This attitude shows that there is somewhat ignorance about RTD among the judicial and legal professionals, and there is a dire need to formulate such policies at the municipal level, that inculcate the enforcement of RTD in modern set-up. It is also pertinent to mention here that, awareness programs regarding UNDRTD can enhance the capacity building and understanding of the petitioners or other PIL campaigners to invoke the jurisdiction of Courts. It is a fact that PIL is an effective and supportive instrument for expeditious and inexpensive justice. However, it has some inherent problems. It is argued that there is a possibility of abuse of PIL for the private interests of the litigants. On account of this reason, the Courts, however, have always taken into consideration the intention of the petitioner, and discouraged such petitions which are based on vexatious, frivolous and concocted facts. It is further argued that lack of implementation of the Court decision is another impediment of PIL; however, on account of international commitments, slight improvement in health, education, food etc. has been witnessed. In this connection Pakistan has taken legislative and administrative measures. For instance, in the year of 2019, there was a reasonable progression by Pakistan to eradicate the harsh child labor. The Punjab Domestic workers Act of 2029 adopted by Punjab prohibited the work of children in domestic service capacity that belongs to the age below 15. Similarly, the Employment of Children Act was passed by the National Assembly of Pakistan for Islamabad. In furtherance of which, a board was established named as Child Protection Advisory Board. Also the special funds were allocated by Khyber Pakhtunkhwa and Baluchistan provincial labor department's. In food sector, Article 38 of Constitution of Pakistan, 1973 provides directive principles for the assurance of adequate food facility. In compliance of Article 38, and the international obligations of ICESCR, the Punjab Government has enacted and enforced the Punjab Food Authority Act, 2011 in the province. Likewise in education sector, in the regime of present government, ministry of federal education has launched New Education Policy framework, 2018, which has four major concerns i.e (i) improvement of standard of education, (ii) enhancement of enrolment of school children, (iii) establishment of uniform education system, and (iv) imparting skills development to youth, moreover, on the directions of PM of Pakistan the Ministry of Education and Professional Training is working on Pakistan National Education Policy (2021). Pakistan has also taken serious measures in health sector, such as, establishment of DRAP authority, under Drug Regulatory Authority of Pakistan Act, 2012, in order to provide operative implementation of the Drugs Act of 1976, also to make coordination between the trade and commerce between the provinces. Moreover, among the other things, 'financial constraints and resources' is a pivotal barrier to the implementation of PIL, because the Constitutions of India and Pakistan provide that the implementation of those regulations which are dependent upon the availability of resources.

It is worthwhile to note that, the Courts have the power to take the matters of public interest litigation which are concerned with the fundamental rights only, *inter-alia*, sometimes, the protection of one fundamental right through public interest litigation can also violate certain other rights, for instance, if an industry is causing damage to clean environment through pollution, the Court order for its closure without any doubt seeks to guard the right to a clean environment; however, at the same time the order of closure is violating the right of earning livelihood of several workers of industry MC Mehta, (1996). This situation is in contradiction of the RTD matter as it requires the guard of one right which shall not infringe any other right. Furthermore, lack of awareness about PIL is also an obstacle which slows down the pace of PIL campaign. However, there are some positive factors, which are performing their part in the growth of PIL and realization of the RTD, such as, progressive legislation, active role of NGO,s *Suo-moto* actions and wisdom of the Courts.

Conclusion

Public Interest Litigation (PIL) has undeniably emerged as a powerful catalyst for advancing the right to development in Pakistan. Through its ability to bring marginalized voices to the forefront and hold authorities accountable, PIL has facilitated significant strides towards socio-economic justice, environmental protection, and equitable access to essential services. The analysis of key case laws and legislative measures demonstrates the transformative potential of PIL. Moreover, legislative developments have provided a structured framework to streamline PIL procedures and enhance its efficacy. However, PIL's journey in Pakistan has not been devoid of challenges. Critics argue that excessive judicial intervention might infringe upon the separation of powers, potentially undermining the democratic process. It is essential to strike a balance between judicial activism and respecting the prerogatives of the executive and legislative branches. Moreover, issues of access to justice, resource constraints, and the potential for abuse of the PIL mechanism must be vigilantly addressed. Nonetheless, the overarching impact of PIL cannot be overlooked. It has enabled the courts to play a pivotal role in fostering positive change, especially for marginalized and disadvantaged communities. By consistently championing causes related to environmental protection, healthcare, education, and human rights, PIL has emerged as a force for good, ensuring that development is not merely economic, but also encompasses the holistic well-being of citizens.

In essence, Public Interest Litigation has demonstrated its capacity to be a catalyst for realizing the right to development in Pakistan. As the nation strives to overcome socio-economic disparities, protect its environment, and uplift its citizenry, PIL stands as a beacon of hope, reminding us that the pursuit of development must be both collective and conscientious.

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