
REVITALIZING INDIGENOUS JUSTICE: MEDIATION IN INDIA'S TRIBAL JUSTICE SYSTEM

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India is the land of millions of tribal populations. This tribal population resides in many states of India and lives with a non-tribal population. These tribal people have their justice delivery system, which loses charm due to the modern judicial system. Mediation has been part of the judicial system from time immemorial. Tribal communities were always well organized and have given very much importance to Justice. So, they have created their justice delivery system. In the past, the local community always worked on resolving their issues alone. This is when we have to look inside the box, not take the approach of finding something out of the box. Bringing these people into the mainstream deprives them of their indigenous rights. The tribal delivery system can naturally resolve issues with their intrinsic values attached to them. The tribal justice delivery system is cost-effective and result-oriented. THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996 also mentioned customary law in tribal areas' governance. The tribal justice system can be the best example of an inward approach to solving disputes. The Nagaland village and area council Act of 1979 also talks about the administration of Justice through the council. On March 10, 2016, the Standing Committee on Personnel, Public Grievances, Law, and Justice (Chairperson: Dr. E.M. Sudarsana Natchiappan) issued a report on the synergy between the tribal justice system and the regular justice system of the country. The tribal justice system has unwritten laws, which are easy to manipulate by council members.

This paper will examine the development of tribal delivery system in India and how it can be part of modern mediation methods.

Keywords : Indigenous, Justice, India, Tribal, Mediation, Law

INTRODUCTION:

When our Father of the Nation, Mahatma Gandhi, said, "Real India resides in villages," he wanted to convey that all the solutions also reside in these villages. He intended all villages to be self-sufficient in finding solutions to their problems. Tribal people carry the solution to most of their problems. They are less dependent on the outer world for their solutions. Tribal people are one of the significant organized groups living in India. The Scheduled Tribes, as defined under Article 342 of the Indian Constitution, are tribes or tribal communities, or parts of or groups within tribes and tribal communities, that the President has proclaimed by public notification. Tribal people are named aboriginals, Jan jatiya, Adivasis, and natives.

There are more than ten crores of the tribal population living in India, according to the population census of the year 2011. People of tribal origin mainly live in ten states of India and North-eastern states. Nearly 90% of the tribal people of the country live in the countryside. The Bhil tribe is the largest tribal party in India. The First Schedule to the Constitution (Scheduled Tribes) Order, 1950, lists 698 recognized tribes in India. Thirty-one tribes out of 698 recognized tribes in the country have a population of more than five lakh people. The tribal people live in two distinct geographical areas of India:

Central India and the North-Eastern Region. However, except for Assam, the North-eastern States have the greatest ratio of Scheduled Tribes population to the total population. In the North Eastern Region, 94.4 percent of the people of Scheduled Tribes are found in Mizoram, 86.5 percent in Nagaland, 86.1 percent in Meghalaya, 68.8 percent in Arunachal Pradesh, 35.1 percent in Manipur, 33.8 percent in Sikkim, 31.8 percent in Tripura, and 12.4 percent in Assam. The Indian constitution in Part X has provided some important provisions concerning Scheduled Tribal areas.

History of Mediation:

The original place of the evolution of Mediation is ancient Greece. At the time, Romans called mediators by different names like medium, Interlocutors, and conciliators. In India, the concept of Dharma is from time immemorial. One example is the KULA tribunal, which dealt with disputes between members of the family, society, tribes, castes, or races and was proposed and established by a brilliant scholar Yagnavalkya. Internal conflicts were handled by another tribunal, SHRENI, which comprises artisans who worked in the same

industry. Finally, PUGA was a similar group of dealers from several industries. With time, humans also found new ways of dispute resolution, and one of the methods was 'Panch.' The legal form of the old panch system is the modern Panchayati Raj System. The tribal mediation system is an example of community mediation.

The concept of Mediation was first legally recognized in the Indian Legal system in the Industrial dispute act of 1947 in Section 4 of this act where it is describing the role of the Conciliation officer.

In 1999, the parliament of India passed the CPC Amendment Act of 1999, which inserted Sec. 89 to the Code of Civil Procedure of 1908, authorizing cases pending in the courts to be referred to alternative disputes, including Mediation. The Amendment was passed on July 1, 2002. With globalization and the effect of the open economy, there was a need for a dispute settlement system that could resolve issues amicably. Mediation is one of the best ways to resolve issues amicably, in the Settlement through Mediation Report April 2021 to March 2022, 52968 cases were resolved through mediation.

Policies of State for the Tribal community justice system in India.

The special provisions for the Scheduled area are given in Schedules 5 & 6 of the Indian Constitution. Schedule 5 details the Tribal Advisory Council, and the Tribal Advisory will be established in the area where the Tribes reside. The Tribal advisory council consists of 20 members, of which three-fourths shall be representatives in Schedules tribes in the Legislative Assembly.

If the number of representatives is less in the legislative assembly, the remaining seat of the tribal advisory council can be filled by ordinary members of the tribes.

Schedule 6 of the Indian Constitution discussed the Tribal areas of Assam, Meghalaya, Tripura, and Mizoram. Scheduled 6 paragraph 2 discussed the constitution of District and Regional Councils. These district councils should have 34 members, of which the Governor of the said state nominates four, and the adult franchise should elect other remaining members. The members were nominated and elected and will hold the council's office for five years.

As per Paragraph 3 of Schedule 6, the district and regional councils have the power to make laws for this area. However, the powers are limited to some important topics related to the tribal areas. The powers to make laws included in the abovementioned article are the management of forests, property inheritance, marriage and divorce, and social customs.

Paragraph 5 of Schedule 6 confers power under the code of civil procedure (CPC), 1908, and the code of criminal procedure (CRPC), 1973, on regional and district councils and certain courts and offenses to particular trial suits and crimes.

Under section 14.1 of the Nagaland village and area council Act, 1979, the council can decide cases as per the customary laws and usages of the tribes. District councils can resolve the case of disputes between different villages.

According to Section 4(d) PESA, 1996, the Tribal people, through Gram Sabha, can preserve and protect their customary dispute settlement rules.

On March 10, 2016, the Rajya Sabha tabled its eightieth report on the country's synergy between tribal and conventional justice systems in both the Rajya Sabha and the Lok Sabha. According to this paper, the structure and method of the conventional court system and the tribal justice system are vastly different. The majority of tribal judicial system laws are unwritten and oral. It is impossible to make it uniform since there are so many tribes, and each tribe has its dispute resolution procedure.

The Non-State Justice system in South Asia

Many Non-state Justice Systems (NSJ) work in south Asian regions, especially Afghanistan, India, and Bangladesh. These systems develop before a uniform legal system to attract local people to resolve their issues. In recent decades, there has been a need to investigate the complementarity of state and non-state justice systems, particularly in South Asia, where non-state justice systems such as jirgas, shuras, shalish, panchayat, and others have become prominent modes of dispute settlement. The key findings of the NSJ report are as follows regarding the importance of the non-state justice system:

1. People in rural regions prefer NSJ systems because they are physically closer to them than formal justice systems. Furthermore, this method is intended to lower the cost of litigation for both formal

and informal channels. NSJ resolutions aid in the rapid resolution of cases and are viewed as trustworthy since they are grounded in the local environment. Because most NSJ systems are community-based, those involved would have a greater awareness of the situation, culture, and customs.

2. Hybrid systems that combine the best features of both systems have proven beneficial in resolving conflicts. Hybrid systems can be created by combining established justice delivery systems with NGOs. By merging customary and religious regulations, NSJs provide legitimacy. Hybrid systems can also emerge from government initiatives such as Sri Lanka's Mediation Boards.

Tribal Justice Systems in different Tribes in India

GOND

The Gond people, who live throughout large parts of central and eastern India, number more than 15 million. They have a unique legal system that predates colonialism woven into their complex social fabric of passed-down conventions and traditions. The purpose of this essay is to shed light on the fundamentals of the Gond judicial system, emphasising its applicability and intricacies in relation to India's larger legal system. The Gond tribe's spiritual values, respect for the natural world, and stress on communal peace are fundamental to the Gond judicial system. Its fundamental tenets include preservation of social balance, promotion of peace, and respect for customary law. These rules, which are frequently unwritten and include a broad spectrum of social and moral principles, are passed down orally down the generations and regulate land rights, marriage, inheritance, and conflicts between people. The Gond legal system uses a decentralised, community-based method of resolving conflicts. The "Panchayat" or "Gramme Sabha," or village councils, are essential in resolving disputes. These councils, which are made up of reputable elders and local authorities, use a variety of techniques to arrive at peaceful resolutions. Among these techniques are:

Conciliation is the process of assisting parties in conflict to communicate, comprehend one other's concerns, and come to a mutually beneficial resolution.

Oaths and Ordeals: Asking for divine assistance by making oaths to gods or going through symbolic trials to determine guilt or innocence.

Social Sanctions: Applying fines or other community-imposed punishments, including exclusion, to prevent future offences and uphold social order.

Mediation is frequently used in tribal communities to settle conflicts. The mediation procedure is typically overseen by elders or village leaders. The Gonds of central India are one example of this. In Gond society, disagreements are settled through the "jatra" method, in which a mediator is chosen by the village chief to hear both sides of the argument and then propose a solution that is agreeable to both.

For instance, 'Ghotul' is a method used to settle conflicts among the Gonds of central India. A traditional type of communication focused on song and storytelling is used in this process, with mediators using these techniques to assist parties in coming to an amicable agreement. The Gonds' use of storytelling and song is a crucial component of the mediation process because it demonstrates their commitment to sustaining cultural identity and strong community ties.

The "Khapri" process, which involves a mediator working with both men and women from the society to reach a solution that is agreeable to all sides, is the traditional method used by the Gond tribe of central India to settle conflicts.

A technique known as "Gramsabha" is traditionally used by the Gonds, a tribal group in central India, to settle conflicts. This process entails assembling community members to discuss and decide the problem. However, in recent years, the Gonds have also started to adopt contemporary techniques for resolving disputes, including the use of social media and cell phones to facilitate communication and find solutions.

There are issues with the Gond judicial system in the modern world. Tensions and disputes may arise as a result of the Gond communities' growing integration into the larger Indian legal system, the dissolution of customary authority systems, and the impact of outside factors. But the Gonds have shown to be quite adept at modifying their system to meet these obstacles. Keeping their own customs, they actively participate in the formal legal

system and request its assistance when needed. Furthermore, efforts are being made to record and formalise Gond customary laws so that they can be recognised and preserved within the legal system.

The Gond legal system provides insightful information about non-traditional dispute settlement methods. It has the ability to improve the Indian judicial system because of its emphasis on social harmony, restorative justice, and community involvement. Acknowledging the validity of customary rules and incorporating them into the official system can improve tribal populations' access to justice, encourage cultural sensitivity in the legal system, and support a more diverse and egalitarian society.

SANTHAL

On the other hand, conflicts are typically settled by a procedure called "Manjhi" among the Santhal tribe of eastern India. This procedure entails the parties meeting with a group of respected community members to discuss the matter and find a settlement. Disputes are typically resolved through a process called "Manjhi-Pargana," which involves the entire community in the mediation process. The mediation is typically informal and flexible, with the mediator or group of mediators adapting the process to suit the specific needs of the parties involved. The community's role in this process is to offer suggestions and comments to ensure that the solution is acceptable to all parties, while the mediator's function is to encourage conversation and assist parties in reaching a resolution.

Features of Santhal Mediation system:

Informal and easily accessible: There are no intricate legal formalities involved in this process, and it is easily accessible to all community members.

Community-driven: The Panchayat makes use of the group's knowledge and insight into the customs and traditions of the community.

Put reconciliation first: Rather than just blaming or punishing, the goal is to bring the community back to harmony.

Putting a focus on restorative justice: The goal of the mediation is to make amends for the wrongdoing and provide the injured party restitution or compensation.

Flexibility and adaptability: The procedure can be modified to meet the demands of the parties involved as well as the particulars of the dispute.

Problems and Restrictions in Santhal mediation system:

Gender prejudice: The possibility of gender bias within the Panchayat has been raised, particularly in situations concerning women.

Limited enforcement mechanisms: In complicated disputes, it may be challenging to implement mediation results due to the absence of official legal support.

Changing social context: Traditional mediation techniques may need to be modified in light of the Santhal community's shifting social and economic conditions.

KONDHS

Nestled in the lush hills of Odisha, India, is the Kondh tribe, a thriving group with a distinct judicial system and rich historical traditions. The core component of this method is mediation, a fundamental strategy used for generations to settle conflicts and preserve societal order.

Many indigenous tribes in India's varied tribal geography have managed to maintain their own traditional legal systems that are separate from the official legal system. One such example is the Kondh tribe, which has over 1.4 million members in Odisha. Niyam Raja, their traditional judicial system, functions inside the village context and prioritises community harmony and reconciliation above punitive measures. A key component of this system is mediation, which promotes cooperative solutions via discussion and agreement.

Contextualising Kondh Mediation in Culture:

Kondh culture is based on close ties to the community and reverence for elders, who are considered to be very wise and powerful. When disagreements do develop, they are seen as breaks in the group's web of ties rather than as personal disputes. As a result, mediation attempts to bring peace and balance back to the society instead than concentrating just on placing blame or exacting revenge on specific parties.

Kondh mediation follows a number of fundamental ideas:

Impartiality: Throughout the procedure, mediators, who are usually well-respected elders or community leaders known as Janis or Bethas, remain impartial.

Openness and Fairness: A fair and unbiased hearing is ensured by giving each party an equal chance to voice their opinions.

Confidentiality: In order to protect the parties' privacy and dignity, discussions held during mediation are handled in the strictest of confidences.

Emphasis on Reconciliation: Finding solutions that satisfy both sides is emphasised, encouraging forgiveness and the mending of relationships.

Community Involvement: Supporting and guaranteeing respect to customary standards, the larger community may take part in the mediation process.

The usefulness and applicability of Kondh mediation

Land disputes, marriage problems, and minor infractions are just a some of the intra-community conflicts that kondh mediation has shown to be extraordinarily effective in resolving. Its success is attributed to several factors:

Deeply ingrained Traditions: The Kondh culture is centred around the mediation technique, which encourages cooperation and mutual trust among community members.

Low Cost and Accessibility: Mediation is less scary for rural populations, easier to access, and more affordable than the official judicial system.

Emphasis on Social Harmony: Kondh values are in line with the emphasis on mending relationships and promoting communal well-being, which results in more long-lasting solutions.

Cultural Sensitivity: Janis and Bethas are very knowledgeable about Kondh customs and social mores, which enables them to resolve conflicts in a way that respects their cultural differences.

Notwithstanding its efficacy, Kondh mediation encounters various obstacles in the contemporary setting:

Gender Inequality: Gender equality must be promoted during the mediation process since traditional norms may disadvantage women in some disputes.

Integration with Formal Law: Kondh mediation procedures must be carefully considered and may even be legally recognised in order to successfully navigate the boundary between customary laws and mainstream legal systems.

Maintaining Traditions: Continual efforts are required to record and pass along Kondh customs to the next generation due to the fast-paced societal changes and outside influences.

GAROS:

The Garo tribe, who are native to Northeastern India's Meghalaya area, have a distinctive indigenous judicial system deeply entwined with their rich and colourful culture. Nokma, a customary law and mediation process that puts restorative justice, communal peace, and reconciliation ahead of punitive measures, is the foundation of this system.

Structure and role of Nokma

The 'Nokma' process, which comprises a council of elders who serve as mediators, is the customary method for resolving conflicts among the Garos of northeastern India. Instead, then punishing offenders during this procedure, the goal is to mend relationships amongst the people concerned. The council of elders collaborates with the parties to determine the damage that has been done and to create a strategy for fixing it.

The Nokma system is made up of a hierarchy of Nokmas at the village level who are supported by Nokma Gitting. Initially, disputes are taken before the village elder, known as the Nokma, who makes an effort to mediate and promote a peaceful conclusion. The dispute may be brought before higher-level Nokmas, leading to the Nokma Sangma (the council of elders), if a settlement is not achieved. Nokmas are selected from among the community's esteemed members, who are valued for their knowledge of Garo customs and traditions,

objectivity, and wisdom. They usually serve for life, accumulating respect and power via their expertise and skill in successfully resolving conflicts.

The Garo belief in Achikniba, a moral and ethical code that emphasises societal harmony and peaceful cooperation, is the source of Nokma. Oral history from the Garo people claims that Nokma originated centuries ago as a way for the society to resolve internal disputes without using force.

The system highlights ideas such as:

Restorative Justice: Nokma places more emphasis on making amends and mending the damage created by the conflict than it does on punishing the perpetrator.

society peace: Preserving social cohesiveness and making sure that there is peace in the society come before personal grievances.

Reconciliation: Nokma promotes forgiveness and the mending of relationships by encouraging reconciliation between the people involved.

Consensus-Based Decision Making: Discussions are facilitated and parties are led towards mutually acceptable solutions by Nokmas, who helps the parties arrive at decisions by consensus.

Strength and Limitation of Nokma

The emphasis that Nokma places on community-driven conflict resolution is one of its strongest points. Nokma maintains traditional values and promotes social cohesion by keeping disagreements inside the community. Because it is informal, it is affordable and accessible, especially for underprivileged groups who have little access to regular courts. But there are difficulties. Application discrepancies may result from a lack of standardised procedures and written documentation. Furthermore, problems with gender bias and power dynamics in the community may have an impact on the results.

Relevance in the Present and Prospects for the Future:

Nokma offers itself as a useful paradigm for alternative conflict resolution procedures in the modern setting. Its focus on community involvement and restorative justice is consistent with the growing awareness of the shortcomings of traditional judicial institutions in resolving social issues. Recognising Nokma's potential to support indigenous legal plurality and improve India's judicial system, efforts are being made to record it and incorporate it into the country's larger legal framework. However, while resolving its shortcomings, great thought needs to be paid to maintaining Nokma's intrinsic qualities.

BHILS

The Bhil tribe is spread out throughout several Indian states, mostly in Rajasthan, Gujarat, Madhya Pradesh, and Maharashtra. They have a long history of self-governance founded on customary rules and customs, as well as a distinctive cultural identity. The Bhil judicial system, also known as "Nyaya Panchayat" or "Gramme Panchayat," is a decentralised, community-driven approach to conflict resolution and runs concurrently with the state legal system. The fundamental component of this system is mediation, which promotes peaceful resolutions and preserves social norms.

Conflicts are settled among the Bhils of central India via a procedure known as "Chapai," which entails a number of rites and ceremonies intended to mend fences between parties. Instead of punishment, this technique emphasises healing and forgiveness.

Conflicts are settled among the Bhils of western India via a procedure known as "Panchayat," which emphasises the value of restorative justice concepts. The goal of this process is to mend the damage brought on by the conflict and mend the bonds between the parties. The mediator collaborates with the parties to create a plan for making amends, which can entail restitution in the form of money, community service, or other measures.

MIZOS

Other tribal communities have more formalised mediation procedures. For instance, the Tlawmngaihna system of traditional justice used by the Mizo tribe in northeast India features a council of village elders who serve as mediators. Conflicts are settled by a series of negotiations between the parties, with the mediators serving as a neutral third party and assisting in the discovery of a resolution that is acceptable to all parties.

The Mizo tribe of northeast India uses the "Tlawmngaihna" method to settle conflicts in a conventional manner. A mediator works with the parties involved in this process to find a solution that benefits everyone and fosters

societal harmony. The Mizo tribe has, however, also recently created a formal legal system that integrates traditional Mizo law with the existing legal system, such as the idea of "chhinna" or compensation.

The Mizo tribes of northeast India have altered conventional mediation procedures to permit participation of women and young people, who had traditionally been shut out of the process. As a result, the goals and needs of each community member are now more precisely reflected in the dispute resolution processes.

KHASI

Disputes are typically settled by the Khasi tribe in northeast India via a customary process called "Durbar Shnong," which entails a gathering of neighbours in a public place to discuss the problem and come up with a solution. Similar to the 'panchayat' system in other regions of India, but with a stronger focus on community involvement and group decision-making.

The 'Seng Khasi' institution, which is made up equally of men and women, is regularly used to adjudicate disputes among the Khasi tribe in northeast India. Women are treated equally to men's perspectives and play a vital role in mediation in the Seng Khasi culture.

The ancient approach for resolving disputes between the Khasi and Jaintia tribes of northeast India is known as the "Kohbar" procedure, which entails a mediator working with the parties concerned to find a resolution that promotes societal harmony and mends relationships. The parties are urged to apologise and make amends as part of this process to repair fences.

The "Khaplam" method is used by the Khasi tribes of northeast India to resolve disputes. This procedure involves a number of rites and ceremonies, all of which aim to mend the connections between the parties. Instead of punishing the offender, the objective of this process is to find a solution that repairs the harm caused by the disagreement and restores social harmony.

The Khasis frequently employ the 'Kur' method to settle disputes in north-eastern India. This procedure comprises a number of symbolic rituals intended to encourage rapprochement and create connections. One of the Kur process's key rituals is the community meal-sharing ceremony, which is meant to represent the participants' return to societal harmony.

KONYAK

The Konyak Naga tribes in northeast India have historically employed a method called "Amua" to resolve disputes. Every community member is invited to participate in a meeting that is held to address the issue, involving the whole community in the process. The mediator's role in this process is to promote dialogue and ensure that both parties' points of view are heard, and the community's role is to provide advice and criticism so that the parties can reach a mutually agreeable resolution.

CONCLUSION

In conclusion, restorative justice ideas, a focus on repairing harm and re-establishing connections, and a community-based approach are what distinguish mediation procedures in tribal cultures in India. These ancient mediation techniques offer a special and culturally sensitive method of conflict resolution that can aid in promoting social harmony and preserving strong community ties, despite some difficulties and restrictions.

The employment of symbolic rituals and rites as part of the mediation process in Indian tribal tribes is an intriguing component of those proceedings. These rituals, which are frequently rooted in long-standing cultural customs, are intended to aid the parties to a dispute in putting aside their differences and mend fences.

The inclusion of these symbolic rites and ceremonies in the mediation process shows a strong affinity for long-standing cultural customs and emphasises the value of preserving cultural heritage in conflict resolution. Tribal groups are able to foster social cohesiveness and retain solid community ties while also finding practical answers to the problems these communities face by incorporating these traditional practises into the mediation process.

The emphasis on consensus-based decision-making in tribal communities in India is another crucial feature of mediation methods. Instead of using formal legal systems or a majority vote, decisions in many indigenous societies are determined through a consensus-building process. This strategy is founded on the idea that decisions reached through consensus are more likely to be endorsed by the entire community, fostering stronger social cohesion and a sense of shared responsibility.

This consensus-based approach has consequences for mediation procedures since it calls for the mediator to work to promote candid dialogue and communication among the problem-solving parties. The goal is to find a solution that addresses the requirements and concerns of all parties and can be accepted by them. The mediator must have a high level of knowledge, delicacy, and cultural awareness since they must handle intricate interpersonal relationships and cultural norms while also maintaining the unique cultural history of these communities.

Indian tribal people are renowned for their use of restorative justice principles, community-based decision-making, traditional power structures, and symbolic rituals and rites, which distinguish their mediation practises from those of other countries. Tribal groups are able to foster social cohesiveness and retain solid community ties while also coming up with effective solutions to the problems these communities face by incorporating these antiquated practises into the mediation process. To successfully traverse complicated interpersonal interactions and cultural conventions while also protecting the special cultural legacy of these societies, the mediator must have a high level of competence, tact, and cultural awareness.

The dispute resolution mechanism of various tribal communities of India included here, show how successful indigenous mediation is in resolving conflicts within communities as well as disagreements over land and resource management. By drawing upon community-specific norms, elders' knowledge, and culturally appropriate rituals, these kinds of mediation prioritise social peace, restorative outcomes, and long-term sustainability over retributive punishment. Furthermore, indigenous mediation combats the disempowerment frequently seen within the official legal system by enabling local communities to settle their own conflicts and fostering a sense of agency and control over their legal procedures.

But it's important to acknowledge the difficulties. Potential inconsistencies with current laws and processes must be carefully considered before integrating indigenous mediation into the official judicial system. Furthermore, resolving issues of power disparities and gender inequality is crucial to guaranteeing fair access to justice among various tribal groups. Developing community capacity and providing formal legal actors with sensitivity training are essential elements in guaranteeing the ethical and successful use of indigenous mediation.

To sum up, restoring indigenous mediation involves more than simply bringing back historical customs; it also entails utilising customary justice's transformational power to solve current issues that India's tribal groups face. In order to achieve justice, reconciliation, and sustainable development within tribal communities, indigenous mediation can provide a culturally appropriate and successful strategy by identifying the innate strengths and modifying them to the changing legal environment. In order to restore peace and balance to tribal cultures, indigenous mediation must thrive in a supportive environment that is created by community leaders, legal experts, politicians, and development practitioners working together.

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