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Plural Legalities in the Shadow of the Himalayas: Re-evaluating Constitutional Federalism and Indigenous Customary Jurisprudence in Post-Transition Nepal

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Abstract

Nepal's 2015 Constitution restructured the state into federal, provincial, and local levels while affirming inclusion, cultural rights, and pluralism. Yet constitutional recognition does not automatically confer jurisdictional authority on Indigenous legal orders. This article examines the tension between Nepal's federal architecture and customary institutions, focusing on constitutional competence, dispute settlement, customary tenure, and Indigenous-rights standards. It develops "topographical jurisprudence" as an analytical framework for investigating how terrain, mobility, resource ecologies, and place-based relationships shape legal orders. The analysis finds that Nepal's constitutional design creates openings for local self-government but does not establish a system of co-equal Indigenous jurisdiction. Local judicial committees are statutory bodies and should not be conflated with customary institutions such as Tharu Badghar or Bhalmansa systems. The history of Kipat tenure shows that land governance cannot be reduced to a contrast between custom and state law: customary rights have changed through state-building, markets, and contested claims. The article argues for rights-based legal coordination combining consultation, protection of collective tenure, remedies, procedural safeguards, and internal accountability. Topography is treated not as a deterministic cause of autonomy, but as a condition through which jurisdiction is negotiated. The article contributes a framework for evaluating plural constitutionalism in Nepal and settings.

Keywords: constitutional federalism; legal pluralism; indigenous customary jurisprudence; topographical jurisprudence.

Introduction

Nepal's Constitution of 2015 represents a major institutional reconfiguration of a state whose modern political history has been marked by monarchy, centralisation, conflict, and contested demands for inclusion. The Constitution defines Nepal as an inclusive, democratic, federal republic and establishes three levels of government: federation, provinces, and local levels. Its language of pluralism, equality, cultural rights, and inclusive representation provides an important constitutional basis for reconsidering the relationship between state institutions and historically marginalised communities. Nevertheless, institutional decentralisation is not

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synonymous with the recognition of legal pluralism. A state may distribute administrative functions among several levels while retaining the power to determine which norms count as law, which institutions may adjudicate disputes, and which decisions are enforceable.

This distinction is central to the problem addressed in this article. Federalism distributes public authority territorially; legal pluralism concerns the coexistence and interaction of multiple normative orders, including state law and community-based systems of regulation. The two may reinforce one another, but they need not. A constitution can devolve powers to municipalities and provinces while continuing to treat indigenous jurisprudence as cultural practice rather than a source of legal authority. Conversely, customary institutions may remain socially authoritative even where their decisions lack formal recognition or are subject to state review. The relevant question is therefore not simply whether Nepal is federal, but how its federal arrangements shape the terms on which customary legal orders can operate, interact with state institutions, and secure remedies for their members.

The Constitution's recognition of diversity must be read alongside its allocation of legislative and executive competence. Article 56 establishes the three-tier structure, while Article 57 and Schedules 5–9 distribute powers among federal, provincial, and local institutions. Article 56(5) also permits the creation of special, protected, or autonomous regions by federal law for social, cultural, or economic purposes. These provisions offer a constitutional vocabulary for differentiated governance, but they do not by themselves establish a general jurisdictional settlement between state courts and indigenous institutions. The legal consequences of customary norms consequently depend on the interaction of constitutional rights, legislation, administrative practice, judicial interpretation, and the lived authority of community institutions (Constitution of Nepal, 2015; International Labour Organization [ILO], 1989). Recent analyses of local law-making and subnational governance show that formal devolution has not automatically resolved questions of capacity and intergovernmental authority (Dahal, 2024; Bhusal & Acharya, 2024; Acharya & Zafarullah, 2025). The constitutional history of federalisation also shows that the settlement emerged from contested choices about identity, territorial design, and constitutional change (Malagodi, 2018).

The analytical challenge is to avoid two opposite errors. The first is state legal centralism: the assumption that law is valid only when created or authorised by the state. The second is romantic pluralism: the assumption that customary institutions are inherently consensual, egalitarian, environmentally benign, or representative of every community member. Legal orders are socially embedded and internally contested. They can provide accessible, culturally intelligible dispute resolution while also reproducing hierarchies based on gender, age, caste, class, lineage, or status. A credible account of plural constitutionalism must therefore examine both the grounds of customary legitimacy and the conditions under which public law should recognise, review, or limit customary authority.

The term Adivasi Janajati is commonly used in Nepalese public discourse and policy to refer to Indigenous nationalities, although the identities, histories, and political claims encompassed by the term are diverse. Indigenous communities cannot be treated as a single legal

or cultural unit. Institutions, land relations, rituals, and dispute practices vary across regions and communities; even within one community, customary rules change over time and are interpreted differently by elders, women, younger members, elected representatives, and state officials. This diversity matters because legal recognition designed around a single model of "custom" may freeze a dynamic practice, privilege selected spokespersons, or exclude people whose claims do not fit official classifications.

International standards provide a useful benchmark. ILO Convention No. 169, ratified by Nepal in 2007, requires governments to respect the social, cultural, religious, and spiritual values and practices of the peoples concerned and to consider their customary institutions, subject to the Convention's safeguards. Articles 8 and 9 address the relationship between customary law, national law, and the justice system. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), although a declaration rather than a treaty, articulates standards concerning self-determination, institutions, culture, lands, resources, and juridical systems. Article 34 recognises Indigenous peoples' right to maintain and develop institutional structures and distinctive juridical customs in accordance with international human-rights standards; Articles 26 and 32 address lands, territories, resources, and consultation (ILO, 1989; United Nations General Assembly, 2007). These instruments do not mean that every customary decision must be immune from review. They instead demand a more careful relationship between collective autonomy, participation, and individual rights. Recent research on Indigenous human-rights conditions in Nepal continues to identify concerns involving land, participation, language, and exclusion, reinforcing the need to distinguish symbolic recognition from substantive protection (Chaney, 2025; Viaene, 2024).

In Nepal, this relationship is particularly important where customary institutions are associated with resource management and local dispute resolution. The Tharu Badghar or Bhalmansa institution, for example, has been described in research and justice-sector assessments as a community leadership and dispute-settlement mechanism in some Tharu communities. The names, selection procedures, responsibilities, and contemporary roles of such institutions vary by locality; they should not be represented as a uniform national tribunal. Their social authority may arise from mediation, collective labour, community coordination, and familiarity with local relationships rather than from formal jurisdiction granted by statute. Their continuing role raises a practical question: how should the state respond when people choose a customary forum, when a customary outcome is later contested, or when a dispute concerns rights that cannot legitimately be waived by community consensus?

A similar caution applies to Kipat. Historical scholarship documents Kipat as a form of communal or group-based tenure associated particularly with Limbu communities in eastern Nepal, with related and distinct customary land arrangements elsewhere. It is inaccurate to describe all Himalayan Indigenous communities as historically governed by one Kipat system. The transformation of Kipat illustrates the consequences of state territorialisation and the conversion of locally recognised claims into categories legible to formal land administration. It also shows why the relationship between land, identity, and jurisdiction cannot be understood

solely through individual property doctrine. A land dispute may concern not only title but also membership, inherited obligations, sacred relationships, collective use, and authority to make decisions about a territory (Forbes, 1999; Regmi, 1978).

The constitutional question is thus both institutional and substantive. Institutions require room to operate, but rights also require enforceable protections against arbitrary exclusion and dispossession. Formal recognition without adequate resources, accessible procedures, or respect for collective tenure may be largely symbolic. Yet unqualified recognition can enable local elites to claim authority without transparent accountability. The central challenge is to design coordination mechanisms that do not force customary institutions into a state-defined template while ensuring that affected individuals have access to fair processes and effective remedies.

Legal pluralism offers a framework for understanding why state law does not exhaust the normative orders that structure social life. Griffiths (1986) challenged state-centred conceptions of law by arguing that multiple normative orders may operate in a social field, while Merry (1988) mapped the development of legal pluralism as a major approach to the law–society relationship. Moore's (1973) concept of the semi-autonomous social field further directs attention to social settings capable of generating rules and inducing compliance while remaining connected to wider systems of power. These perspectives help explain how community norms can remain influential even when state institutions do not formally recognise them. Contemporary scholarship also cautions that formal incorporation can freeze dynamic customary practices or preserve state dominance under the language of recognition (Tamanaha, 2021; Manse, 2024; Utama, 2021).

Later scholarship has refined this framework. Tamanaha (2008) warns that defining every form of social normativity as law can make the concept too broad, while von Benda-Beckmann and von Benda-Beckmann (2009) show that legal pluralism must be analysed through its spatial dimensions and interactions. Swenson (2018) distinguishes different relationships between state and non-state justice, including combative, competitive, cooperative, and complementary arrangements. These approaches suggest that pluralism should not be treated as a single legal condition. The critical questions concern authority, recognition, jurisdiction, access, and the distribution of power between institutions.

For Nepal, a state-centred analysis risks equating legal validity with state enactment and thereby overlooking how people identify forums, mobilise norms, and pursue remedies in practice. But a purely sociological account also has limits. Social acceptance alone cannot determine whether a forum is fair, whether its jurisdiction is lawful, or whether its decisions violate constitutional rights. A socio-legal analysis must therefore examine both the social effectiveness of customary institutions and the formal rules that structure their interaction with public authorities. This is especially important in a constitutional democracy where equality, dignity, due process, and access to justice place limits on every institution exercising authority.

The term "hegemonic pluralism" is used here as a diagnostic proposition, not as a claim that all state recognition is necessarily oppressive. It describes a condition in which the state acknowledges diversity but retains decisive control over the terms of recognition, the boundaries of jurisdiction, and the enforceability of decisions. Such a structure can produce pluralism at the

level of cultural symbolism while preserving monism at the level of legal authority. The proposition must be assessed by tracing particular constitutional provisions, statutory competences, and institutional relationships rather than assumed from the existence of state law alone.

This article also draws on legal geography. Law is not simply applied in space; jurisdiction, property, mobility, borders, and access to institutions are shaped by spatial arrangements. Research in legal geography examines the ways legal orders interact within specific places and how place itself becomes part of legal meaning (Benda-Beckmann et al., 2009; Robinson & Graham, 2018). In mountainous regions, distance, transport, seasonal mobility, settlement patterns, resource access, and ecological dependence may affect the cost and practicality of formal justice. Yet geography does not mechanically determine legal behaviour. Roads, telecommunications, migration, tourism, state security, conservation policy, and market integration can alter the relationship between territory and authority. A defensible theory must therefore treat terrain as a condition mediated by institutions and political economy, not as a natural explanation for customary autonomy.

Existing scholarship provides substantial foundations for understanding Nepal's federal transition, Indigenous political mobilisation, customary tenure, and legal pluralism. However, these strands are often examined separately: constitutional federalism is analysed as an allocation of governmental power; customary institutions are described as local practices; and geography is treated as background context. The resulting analytical gap concerns the mechanisms through which constitutional jurisdiction, customary legitimacy, and material space interact. The article addresses that gap by bringing legal pluralism into conversation with legal geography and constitutional design.

The article asks three questions. First, to what extent does Nepal's constitutional and statutory framework provide space for the recognition of Indigenous customary institutions, and what limits arise from the allocation of public authority? Second, how do customary tenure and community dispute-resolution practices expose tensions between formal legal categories and place-based forms of belonging, resource use, and obligation? Third, how can a spatially attentive account of legal pluralism clarify the conditions under which constitutional recognition becomes meaningful, accountable, and compatible with fundamental rights?

The article makes a conceptual contribution through the framework of "topographical jurisprudence." The term is not presented as an established doctrine or as a replacement for legal pluralism and legal geography. Rather, it names an analytical approach that investigates how material terrain, ecological relations, mobility, and place-based memory shape the operation and legitimacy of competing legal orders. Its added value lies in asking how jurisdiction works in particular environments: which forums are practically accessible, which resource relations are rendered visible by formal law, and how spatially situated communities negotiate state institutions. The framework has three dimensions: material accessibility (the practical reach and cost of formal institutions); territorial normativity (the ways land, water, forests, routes, and

sacred places inform obligations); and jurisdictional translation (the processes through which customary claims are converted into statutory, administrative, or judicial categories).

This framework also has limits. Mountains do not inherently produce autonomy, and customary institutions are not necessarily more legitimate simply because they are locally embedded. State presence can be strong in remote areas, while urban communities may sustain powerful customary or religious orders. "Topographical" analysis is useful only when supported by evidence about actual institutions, resource relations, and spatial practices. It must also avoid treating Indigenous knowledge as static or using environmental claims to bypass questions of consent, distribution, and accountability.

The argument advanced is that Nepal's federal settlement creates opportunities for differentiated local governance but does not, by itself, guarantee jurisdictional pluralism for Indigenous peoples. A more substantive pluralism requires institutional coordination, recognition of collective interests, transparent limits on public power, and remedies that respect both community autonomy and individual rights. This is not a call for complete legal separation between state and customary systems. It is a proposal for negotiated, rights-compatible interaction in which recognition does not become assimilation and autonomy does not become immunity from accountability.

The article proceeds through doctrinal and socio-legal analysis of the Constitution, relevant legislation, international standards, and established scholarship. It then analyses three linked sites of tension: the constitutional distribution of authority; the translation of customary land and resource relations into state categories; and the position of customary dispute-resolution institutions alongside statutory local justice. The discussion concludes by specifying the contribution and limits of topographical jurisprudence and identifying practical principles for plural constitutionalism.

Method

This article uses a qualitative doctrinal and socio-legal research design. Its primary materials comprise the Constitution of Nepal (2015), relevant statutory provisions governing local government and land or forest administration, ILO Convention No. 169, and the United Nations Declaration on the Rights of Indigenous Peoples. Secondary materials include peer-reviewed scholarship and established research on legal pluralism, Indigenous politics, customary tenure, and legal geography. The analysis applies statutory interpretation to identify the distribution of authority and constitutional rights; conceptual analysis to distinguish federal decentralisation from legal pluralism; and contextual analysis to assess how legal rules interact with customary institutions and place-based resource relations.

The materials are read thematically across three domains: (1) constitutional allocation and local justice; (2) land, forests, and collective tenure; and (3) customary dispute resolution and rights safeguards. Comparative references are used analytically rather than to claim that Nepal replicates another jurisdiction. The article does not present new interview data. Although an earlier draft referred to 45 semi-structured interviews conducted between 2023 and 2025,

interview transcripts, recruitment records, ethics documentation, and an auditable coding procedure were not supplied for this revision. Those claims are therefore not treated as verified empirical findings. The conclusions are limited to what can be supported by the legal texts and cited scholarship. Before submission, the author should verify the current consolidated Nepali legal texts, the exact wording and applicability of statutory provisions, all bibliographic metadata, and any case law relied upon. This method is appropriate for a conceptual-doctrinal article but should not be described as a completed fieldwork study. The analysis is interpretive rather than statistical: it evaluates legal architecture and conceptual claims against the cited sources and identifies where further fieldwork would be needed to test propositions about institutional practice.

Federal structure and the difference between decentralisation and plural jurisdiction

The first finding is conceptual but legally consequential: the Constitution's three-tier structure distributes public authority without automatically recognising Indigenous customary systems as a separate, co-equal source of adjudicative jurisdiction. Article 56 establishes federal, provincial, and local levels; Article 57 and Schedules 5–9 allocate competences among them. Schedule 8 assigns local-level powers across matters such as local records, local development, basic services, and aspects of dispute resolution, while Article 217 establishes a judicial committee at the village or municipal level. These provisions are important openings for local justice, but the committee is a statutory public body. It is not interchangeable with a customary institution merely because both may resolve local disputes (Constitution of Nepal, 2015; Local Government Operation Act, 2017). Recent studies of Nepal's local law-making and provincial governments similarly identify gaps between constitutional allocation and the effective exercise of subnational authority (Dahal, 2024; Bhusal & Acharya, 2024; Bhul, 2025).

This distinction complicates the claim that federalism itself either recognises or suppresses customary law. Federalism can bring decision-making closer to residents, make public institutions more accessible, and create opportunities for local laws responsive to cultural and social circumstances. At the same time, public authority remains structured through constitutional competence, statutory procedure, and judicial review. Customary institutions may be consulted or may operate socially alongside local government, but their authority cannot be inferred from the existence of local self-government alone. The legal question is which powers have been assigned, to whom, under what conditions, and with what avenues of review.

The constitutional architecture therefore supports a more qualified diagnosis than a simple account of "federal supremacy." The Constitution does not establish an uncomplicated rule that all federal statutes automatically override every local decision in every field. Rather, the distribution of powers, constitutional supremacy, legislation governing each competence, and applicable judicial doctrines determine the validity of state and local action. A rigorous analysis should avoid describing all provincial powers as merely administrative or all customary decisions

as automatically void. Such generalisations overstate the legal position and obscure the different forms of interaction that may arise in practice.

Nevertheless, a structural asymmetry remains. State institutions define the official categories through which a dispute becomes legally actionable: jurisdiction, evidence, standing, remedies, and enforceability. Where a customary claim concerns collective membership, oral history, sacred use, or obligations to future generations, these categories may not map neatly onto state procedure. The difficulty is not necessarily that formal law always rejects customary claims; it is that customary claims often have to be translated into state-recognised forms before they can influence binding decisions. That translation can expand access to remedies, but it can also change the meaning of the claim.

The concept of hegemonic pluralism is useful here when used with precision. It describes a potential institutional pattern in which diversity is acknowledged while public institutions retain control over the legal conditions of recognition. It does not establish that every state intervention is hegemonic or that customary institutions should be exempt from law. Instead, it directs attention to the asymmetry between an institution whose decisions are enforceable through public power and an institution whose authority may depend primarily on social legitimacy.

Customary tenure, territorial belonging, and the legal translation of land

Land provides a second site where formal categories and customary jurisprudence may diverge. Land is not merely an economic asset in many Indigenous contexts. It can connect collective identity, ancestral presence, livelihood, ritual obligations, grazing, forests, water, and intergenerational responsibilities. Formal property systems, by contrast, commonly rely on registrable interests, defined boundaries, documentary title, and legally specified categories of ownership or use. These categories are not intrinsically illegitimate, but they may fail to capture the full social and normative dimensions of land relationships.

The history of Kipat is instructive. Forbes's (1999) study of disputes over Kipat lands in northeastern Nepal shows how contestation over tenure is also a contest over identity, place, political authority, and the relationship between local and national power. Kipat should not be described as a uniform system across all Indigenous groups or as a single legal institution that persists unchanged today. Historical arrangements varied, and their transformation occurred through broader processes of state formation and changes in land administration. The key analytical lesson is that formalisation does not merely record pre-existing rights; it can redistribute authority by determining which claims are visible, transferable, and enforceable. Contemporary analysis of Indigenous legal expertise and hydropower disputes in Nepal likewise demonstrates that land and resource controversies involve competing legal knowledge, sacred relationships, and state development priorities (Viaene, 2024).

When collective tenure is translated into individual title or a state-administered category, several questions arise. Who is recognised as a rights-holder: an individual, household, lineage, village, or Indigenous people? Which forms of evidence are accepted? How are seasonal use, shared access, sacred restrictions, and customary obligations represented? Who has authority to

consent to a project or negotiate compensation? If these questions are not addressed, formalisation may produce administrative certainty at the cost of substantive exclusion. The same risk arises when conservation, infrastructure, tourism, or resource extraction proceeds through licensing systems that treat a territory as a set of state-regulated assets rather than as a place governed through overlapping rights and responsibilities.

International Indigenous-rights standards are relevant to this problem. ILO Convention No. 169 addresses land and territorial rights, the relationship between peoples and their lands, and consultation concerning measures that may affect them. UNDRIP recognises Indigenous peoples' rights concerning lands, territories, and resources traditionally owned, occupied, or otherwise used, and calls for good-faith consultation through representative institutions in relation to projects affecting those interests (ILO, 1989, arts. 13–19; United Nations General Assembly, 2007, arts. 25–32). The exact domestic legal effect of these standards must be analysed in light of Nepalese law and applicable judicial interpretation; they should not be treated as automatically resolving every property dispute.

A topographical jurisprudence perspective adds three questions to the land analysis. First, what material practices make a place meaningful: seasonal movement, water access, forest use, pilgrimage, grazing, or shared cultivation? Second, how do these practices shape the community's own rules concerning access, obligation, and dispute settlement? Third, how does state law translate those practices into recognised legal interests? This approach does not assume that every local practice is sustainable or that every state intervention is harmful. It asks whether decisions account for the ecological and social relationships that the formal category may omit.

Customary dispute resolution and the problem of institutional equivalence

Customary dispute-resolution practices demonstrate that legal authority is often sustained outside formal courts. The Badghar or Bhalmansa system among some Tharu communities is one example identified in research on Nepal's justice landscape. Such institutions may support community coordination, mediate interpersonal disputes, organise collective work, and draw on local knowledge of relationships and obligations. Their role can be significant where formal proceedings are expensive, geographically distant, linguistically inaccessible, or experienced as procedurally alien. These characteristics help explain why customary forums may retain legitimacy even where their legal status is limited. Ethnographic work on the Tharu Badghar institution in Bansgadhi Municipality documents continuing interaction between customary institutions and elected local government, while also showing that this relationship is historically and locally specific (Dhakal, 2025).

However, customary institutions are diverse and should not be treated as a single tribunal system. Selection of leaders, participation, the scope of disputes, and the relationship with local government vary by locality. Nor should "near-total legitimacy" or claims that residents universally bypass statutory bodies be repeated without transparent empirical evidence. A justice-sector assessment can establish that mechanisms exist and are used; it cannot by itself prove their current prevalence in every community. This article therefore treats customary dispute resolution

as a documented institutional phenomenon, while avoiding claims about the frequency or uniformity of its use that require new field data.

The relationship between customary institutions and judicial committees can take several forms. They may compete for authority, cooperate through referrals, complement each other by handling different kinds of disputes, or operate with little formal interaction. Swenson's (2018) typology of combative, competitive, cooperative, and complementary relationships is useful because it avoids assuming that plural systems necessarily conflict. A customary forum might mediate a neighbourhood disagreement and then refer a legal question beyond its competence to a statutory institution. Conversely, a local committee might recognise a community-mediated settlement where lawful and appropriate. The quality of the relationship depends on clear boundaries and accessible pathways rather than on the formal declaration that pluralism exists.

The key issue is institutional equivalence. A customary forum should not automatically be treated as equivalent to a court simply because it resolves disputes. Courts and statutory committees have defined powers, procedural obligations, and public accountability structures. But neither should customary institutions be dismissed as legally irrelevant merely because they are not state courts. Their work may affect behaviour, restore relationships, distribute resources, and generate settlements that state institutions later encounter. A realistic account of justice therefore examines both legal validity and social effectiveness.

Human-rights safeguards are essential. Community consensus can conceal unequal bargaining power, particularly where a dispute involves domestic violence, inheritance, gender-based exclusion, caste hierarchy, or an individual challenging a powerful family or leader. A forum's cultural legitimacy cannot substitute for a person's right to safety, equality, impartial consideration, and access to an appropriate remedy. Equally, rights safeguards should not be designed in a way that assumes customary institutions are inherently abusive or that imposes procedural requirements so costly that they destroy accessible local resolution. The aim is to distinguish matters suitable for voluntary mediation from matters requiring formal adjudication and enforceable protection.

A defensible coordination model should incorporate five interrelated elements. First, clear jurisdictional boundaries are necessary to distinguish matters that may appropriately be addressed through customary mediation from those requiring formal adjudication by state institutions. Second, voluntary and informed participation must be ensured so that parties are not coerced into customary settlements and understand the implications of their decisions. Third, fundamental rights safeguards must protect individuals against discrimination, coercion, and violations of rights that cannot legitimately be waived through informal agreements. Fourth, referral mechanisms and access to legal assistance should enable customary institutions to refer cases beyond their competence to the appropriate public authorities. Fifth, accountability and review procedures must provide avenues for challenging customary outcomes where credible concerns arise regarding procedural unfairness, coercion, or discrimination. Together, these elements would support institutional cooperation without either subordinating customary institutions entirely to state authority or exempting them from fundamental rights standards.

Topographical jurisprudence: analytical value and limits

The proposed concept of topographical jurisprudence connects legal pluralism to the material and relational features of place. It begins from the proposition that jurisdiction is not experienced uniformly across territory. The practical reach of a court depends on roads, travel time, language, cost, seasonal conditions, and administrative presence. The authority of a customary institution may depend on shared resource use, kinship, collective labour, sacred geography, and a history of dispute settlement. These factors influence how people identify a forum, which evidence they can present, and whether a legal outcome can be implemented. Space is therefore not a passive container for legal rules; it participates in the conditions under which rules become meaningful and enforceable.

The first dimension is material accessibility. Formal justice may be constitutionally available but practically difficult to reach. The cost of travel, missed work, translation, documentation, and legal representation can affect whether a person pursues a claim. Mountainous terrain may intensify these costs, but it is not the only determinant. Institutional distribution, public transport, digital access, state capacity, and household resources also matter. The concept therefore directs empirical researchers to measure accessibility rather than infer it from a map or altitude alone.

The second dimension is territorial normativity. Land, forests, water, grazing areas, routes, and sacred places may be embedded in systems of obligation that cannot be adequately represented as isolated property interests. This does not mean that geography generates a single, timeless Indigenous worldview. Communities contain divergent interests, and place-based norms can change under migration, commercialisation, environmental pressures, and political mobilisation. The analytical task is to establish which territorial relationships matter in a specific dispute and how the relevant actors articulate them.

The third dimension is jurisdictional translation. Claims that originate in customary language may need to be translated into categories such as property, consultation, cultural rights, local competence, or administrative review before state institutions can act on them. Translation can create legal opportunities, but it can also narrow the claim. For example, a collective claim to maintain a relationship with a territory may be treated as a request for compensation to individual title-holders. A customary settlement may be treated as an informal agreement rather than as evidence of an institutional process. Topographical jurisprudence asks what is gained, lost, and redistributed through these translations.

The concept's theoretical contribution must be modest and testable. Legal geography already studies spatiality, law, jurisdiction, and the production of place; legal pluralism already recognises multiple normative orders and their interaction (Benda-Beckmann et al., 2009; Robinson & Graham, 2018). Topographical jurisprudence does not claim to discover that space matters. Its proposed contribution is to organise analysis around the relationship between material accessibility, territorial normativity, and jurisdictional translation in settings where ecological conditions and uneven state reach are salient. It is best understood as a middle-range analytical framework that generates research questions and comparative propositions rather than as a

universal theory of law. Recent work on jurisdiction and legal geography provides a strong contemporary foundation for analysing how space, authority, territory, and overlapping jurisdictions are mutually constituted (Lunstrum & Havice, 2025; Chiodelli, 2025; Marini, 2025).

Comparative implications and a model of plural constitutionalism

Nepal's experience can contribute to wider debates about constitutional pluralism, but comparison should be undertaken carefully. Bolivia's 2009 Constitution recognises a plurinational state and Indigenous campesino jurisdiction within a constitutional framework. Canada and Aotearoa New Zealand have distinct histories of treaty relationships, Indigenous legal orders, and state recognition. These arrangements differ in constitutional text, colonial history, land tenure, institutional design, and judicial doctrine. They cannot be ranked on a single scale from monism to pluralism, nor should Nepal be described as simply lacking "parity" without specifying the relevant legal standard.

The comparative value lies instead in identifying institutional choices. Some systems recognise Indigenous jurisdiction explicitly; others provide statutory space for customary processes, consultation, or community-based dispute resolution. Each approach raises questions about jurisdictional boundaries, conflicts of law, representation, remedies, and the protection of individual rights. Swenson's (2018) typology helps clarify that relationships can be competitive, cooperative, complementary, or combative. The appropriate arrangement may differ by subject matter: land and resource governance may require collective decision-making and consultation, while serious criminal matters require robust public-law safeguards and formal adjudication. Recent work on legal pluralism in the Global South further stresses that recognition can reproduce colonial hierarchies and empower local elites unless it is assessed through its actual institutional effects (Tamanaha, 2021; Manse, 2024; Malkani, 2025).

Nepal could pursue a model of plural constitutionalism based on coordinated rather than absolute jurisdictional autonomy. The first principle is recognition of customary institutions as real governance actors, not merely cultural symbols. This requires consultation in the design of local policies and, where appropriate, legal mechanisms for recording customary processes and settlements. The second is functional differentiation: the law should specify which matters may be mediated, which require statutory determination, and which cannot be settled through informal agreement. The third is reciprocal referral. State bodies should be able to refer suitable matters to trusted local processes, while customary institutions should have accessible routes to public remedies when a dispute exceeds their capacity or involves coercion.

The fourth principle is procedural fairness. Recognition should be conditioned on safeguards proportionate to the type of decision, including voluntary participation, impartiality, notice, opportunity to be heard, and protection against discrimination. These safeguards need not require every customary institution to replicate a formal courtroom. Instead, they should protect the essential interests of parties while respecting local forms of deliberation. The fifth principle is legal accessibility: rules about jurisdiction, recognition, appeal, and enforcement must be available in languages and formats that community members can understand.

The sixth principle is substantive recognition of collective tenure. Where land and resources are concerned, authorities should not assume that individual registration captures all relevant interests. Procedures should allow evidence of customary use and collective relationships, ensure meaningful consultation through legitimate representative institutions, and provide remedies where projects or administrative decisions interfere with protected interests. These processes should also guard against elite capture by ensuring that affected members can participate and contest decisions.

The seventh principle is institutional learning. Rather than codifying all customary norms in a single exhaustive code, Nepal could support locally designed protocols, periodic review, community documentation controlled by the relevant community, and evaluation of outcomes. Such an approach acknowledges that custom evolves.

Conclusion

This article has examined the relationship between Nepal's post-2015 constitutional federalism and Indigenous customary jurisprudence through doctrinal socio-legal analysis. It has argued that the distribution of authority among federal, provincial, and local governments creates opportunities for local governance but does not automatically establish co-equal customary jurisdiction. The constitutional recognition of diversity must therefore be distinguished from the legal authority, enforceability, and accountability of particular customary institutions.

The analysis of local justice demonstrates that statutory judicial committees and customary forums are institutionally distinct, even where their activities overlap. The discussion of Kipat and collective resource relations shows that land disputes concern not only formal title but also identity, place, historical use, and authority to define legitimate evidence. International standards, including ILO Convention No. 169 and UNDRIP, provide important benchmarks for participation, collective interests, and the maintenance of Indigenous institutions, while their domestic application must be assessed through Nepal's legal framework.

The article's conceptual contribution is "topographical jurisprudence," proposed as a middle-range framework linking material accessibility, territorial normativity, and jurisdictional translation. It does not replace legal pluralism or legal geography, nor does it claim that mountains automatically produce legal autonomy. Its value is to focus attention on how the material conditions of place affect access to justice, how territorial relationships inform customary obligations, and how those claims are translated when they encounter state institutions.

A more substantive plural constitutionalism in Nepal would require clear jurisdictional rules, reciprocal referral mechanisms, meaningful consultation, recognition of collective tenure, accessible remedies, and safeguards against coercion and discrimination. These arrangements should protect Indigenous self-government without romanticising custom or insulating local authority from accountability. Further empirical research should test the framework through transparent, ethically grounded comparison across communities and disputes. The overall task is

not to choose between state law and customary law in the abstract, but to construct fair and workable relationships between them.

Use of generative AI

Generative AI was used as a language and drafting aid during manuscript preparation. The author(s) remain responsible for the accuracy of the analysis, the integrity of the sources, and the final submitted text. This statement should be adjusted to reflect the journal's policy and the actual tools used.

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