

State of Customary Governance System in Nepal: A Review

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Abstract

This article is based on the review of scholarly works on customary governance systems of Indigenous Peoples (IPs), prevalent in different communities, despite legal, political, and social adversaries, in Nepal and state imposed legal frameworks for "regulating" those self-governing traditions. Diverse online and physical sources were utilized to locate and acquire scholarly articles and the final set of literature pertinent to this review was determined using the PRISMA flow diagram. Legal instruments are selected purposively. The research questions addressed in this study are: What are the legal instruments that recognize IPs' customary governing systems in Nepal and to what degree those instruments ensures self-rule and autonomy? How self-rule and autonomy is exercised among IPs of Nepal? How customary governance systems interact with state governance systems? The core attributes of customary governance systems include collective leadership selection, participatory decision-making, and non-hierarchical power relations, unlike the state-embraced individualism, representative procedure, and hierarchy-based structure. After the promulgations of the 2015 federal Constitution, municipal governments, both rural and urban, started to acknowledge the customary system of governance of IPs enacting local legislations. Those state legislations, however, are driven by the assimilationist approach, tending to bring such systems under the jurisdiction and structure of the state rather than ensuring their autonomy and self-rule. Thus, IPs' demands and advocacy for legal recognition of customary governance system should be guided by the notion of de-Hinduization, de-Sanskritisation, de-Nepalization, and de-Brahminization to prevent NGO-ization and (political) Party-ization of their customary institutions and preservation of their distinct forms of self-rule.

Keywords: Indigenous Peoples, Customary Governance, Customary Law, Customary Institutions, Decolonization, Self-rule,

Introduction

Indigenous Peoples' aspirations for self-rule, autonomy, and self-determination to liberate themselves from oppression, suppression, marginalization, discrimination, assimilation, and exclusion imposed by colonialism, imperialism, conquest, and occupation is a global phenomenon. To meet this aspiration, it is essential to (re)establish their self-determined system of governance in their ancestral lands and territories to promote self-rule and uphold dignified lives in the territories of existing nation-states. For this, vibrant customary institutions with distinct judicial, political, and economic traditions are *the sine qua non*. Because contemporary state governance systems are unfavorable for them as they emphasize individualism, in contrast to the notion of collectivism embraced by IPs, and are inconsistent

to, sometimes contradictory to, IPs worldviews and cosmovision. The IPs governing system contributes instrumentally for regulating societal affairs based on their belief systems, functioning independently of the contemporary state apparatus. Such systems reflect their customary worldviews, morals, ethics, and legislation, as well as their concepts of authority (United Nations, 2018). United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and International Labor organizations (ILO) Convention No. 169 are the vital international human rights instruments for recognizing Indigenous laws and their system of governance at global levels.

In Asia, where more than 2,000 IPs communities resides (Amnesty International, n.d.; UNPFII, 2014), accounting 70% of the total IPs populations, the level of recognition of customary laws by states are differs: some constitutions recognize, where others do not (Roy, 2005). South and East Asia have the highest level of constitutional acknowledgment of customary law, where out of 22 constitutions 15 of them have pertinent provisions (Cuskelly, 2011). However, the vast majority acknowledge a general right to culture and only a few are on institutional structures and land tenure (ibid), such as Bangladesh has adopted some considerable laws to advance the conditions of tribal communities, whereas India has introduced a comprehensive legal and policy framework targeting scheduled tribes (Errico, 2017). In Indonesia and Malaysia, national human rights commissioners and courts have commenced to take a positive role in recognizing and defending IPs' rights (ibid). Similarly, special protections for the residents of Sabah and Sarawak are included in the Federal Constitution of Malaysia, including recognition of customary law (United Nations, 2018).

Nepal is an ethnically, religiously, and linguistically rich country with 142 castes/ethnicities, 124 mother-tongue-speaking communities, and ten religious groups (National Statistics Office, 2021) within its territory of 147,181 square kilometer. However, customary laws and institutions are not acknowledged by the state legislation, i.e. the Constitution. Still, customary forms of self-governance systems are prevalent among different groups with effective presence in administering social, political, and economic affairs within their respective communities and jurisdiction of ancestral lands and territories. Despite lack of *de-jure* recognition of national legislations, *de facto* recognition of Indigenous systems of governance are in place for long time in the community levels. Since the promulgation of the 2015 Constitution that introduce the federal state structure in Nepal, the local governments began to recognize customary governance system in some parts of the country, for instance the *Barghar* system of Tharu in the Western part of Nepal.

Among the officially recognized 61 IPs¹ under the National Foundation for Development of Indigenous Nationalities Act , 2002 very few of them have been exercising self-rules with the proper functioning of their customary institutions. After the establishment of the modern state their system of governance have been gradually displaced by the alien laws and structures established by conquerors. Due to this, distinct systems of governance of many IPs

¹ In 2002, 59 groups were officially recognized as Indigenous Nationalities in Nepal. Later, Rana Tharu and Humlo were enlisted under the Indigenous category by the government in 2013 and 2024 respectively.

disappeared for ever. However, few IPs still practice their self-rule parallelly with the state system, which are more effective and efficient than the state system in several instances within their respective community. As IPs tradition is based on orality very limited written documents are available on their governance history. Scholarly works are also available limitedly, most of the researches accomplished particularly after 1990. This article tends to review the existing scholarly work and state legal provisions relating to the customary system of governance. It tries to address the following research questions: What are the legal instruments that recognize IPs' customary governing systems in Nepal and to what degree those instruments ensures self-rule and autonomy? How self-rule and autonomy is exercised among IPs of Nepal? How customary governance systems interact with state governance systems? This article is divided into six chapters: second chapter presents the source and methods, where the details on location, selection process of literatures and analysis method of the review is presented; third chapter includes critical review of state legal systems arguing their relevancies and compatibility in the context of functioning of operation of customary governance systems; fourth chapter covers issues pertaining to practices of self-governance and autonomy of IPs based on the review of the selected literatures; following chapter present briefly about the state-customary institutions interactions; and the final chapter presents the conclusion.

Source and Method

This review employs the systematic literature review method to examine the literature relating to the Indigenous customary governance systems in Nepal. A systematic review is a process for locating, evaluating, and interpreting existing research relevant to a particular research question, topic, or phenomenon (Kitchenham & Charters, 2007), with the utilization of explicit, systematic approaches to minimize biases in the identification, selection, synthesis, and summarization of studies, supplying reliable data for making informed judgments (Moher et al., 2015). While undertaking a new study, researchers use a systematic review to understand the literature that summarizes the available data thoroughly, identifies knowledge gaps, and proposes a framework for guiding research endeavors (Okoli, 2015).

Review Questions

The research question is crucial to any systematic review, as it guides the entire systematic review process (Kitchenham & Charters, 2007). In this review, the author utilized the PICo tool to formulate the review question that represents the Population or Problem, Interest, and Context (Mohamed Shaffril et al., 2020). Here, Population implies IPs, Interest refers to the customary governance system, and Context indicates Nepal. The following review questions, adhering to the afore framework, are devised for this study: What are the legal instruments that recognize IPs' customary governing systems in Nepal and to what degree those instruments ensures self-rule and autonomy? How self-rule and autonomy is exercised among IPs of Nepal? How customary governance systems interact with state governance systems?

Systematic Searching Strategies

Identification of the Literature

Relevant literature for this review was sourced, searching between March 2023 and August 2024, from a wide range of online, including DOAJ, Google Scholar, JSTOR, ProQuest, ScienceDirect, SocINDEX, NEPJOL), Tribhuvan University eLibrary, and physical sources, such as renowned journals, books, and dissertations, categorizing resources into broader academic works and Nepal-specific content. Library sources were relied on identify the physical resources. Keywords such as Customary Institutions, Traditional Institutions, Indigenous Governance, Tribal administration, and Native government were used to locate literature in online and physical sources. The identified 316 papers were cataloged in Mendeley computer software. After removing duplicates, 210 pertinent items remained.

Screening of the Literature

A Microsoft Excel spreadsheet has been instrumental in updating the details of the collected 210 pieces of literature. The primary criterion for the inclusion/exclusion of articles was pre-determined criteria and research questions that provided a clear focus and direction for this literature review (See Table 1). Time constraints for inclusion/exclusion of articles were considered from 1990 to 2024. The author utilized publications containing empirical data to ensure the quality of the literature. However, no restrictions were imposed on the process of selection of journals or institutions. In terms of language constraints, literature published in Khas-Nepali and English were included in the review. After this rigorous process, 160 pieces of literature were excluded, leaving 50 articles for further review.

Eligibility

Table 1: Inclusion/Exclusion Criteria

Criteria	Inclusion	Exclusion
Time Line	1990-2024	<1990
Social Group	Indigenous Peoples	Non-Indigenous Peoples
Document Type	Journal Articles, Books, Book Chapters (Empirical Data), Thesis/Dissertation	Review articles, Conference Proceedings, Opinions, NGO Reports
Language	English-Khas Nepali	Non-Khas Nepali and Non-English
Geography Country	Nepal	Non-Nepal

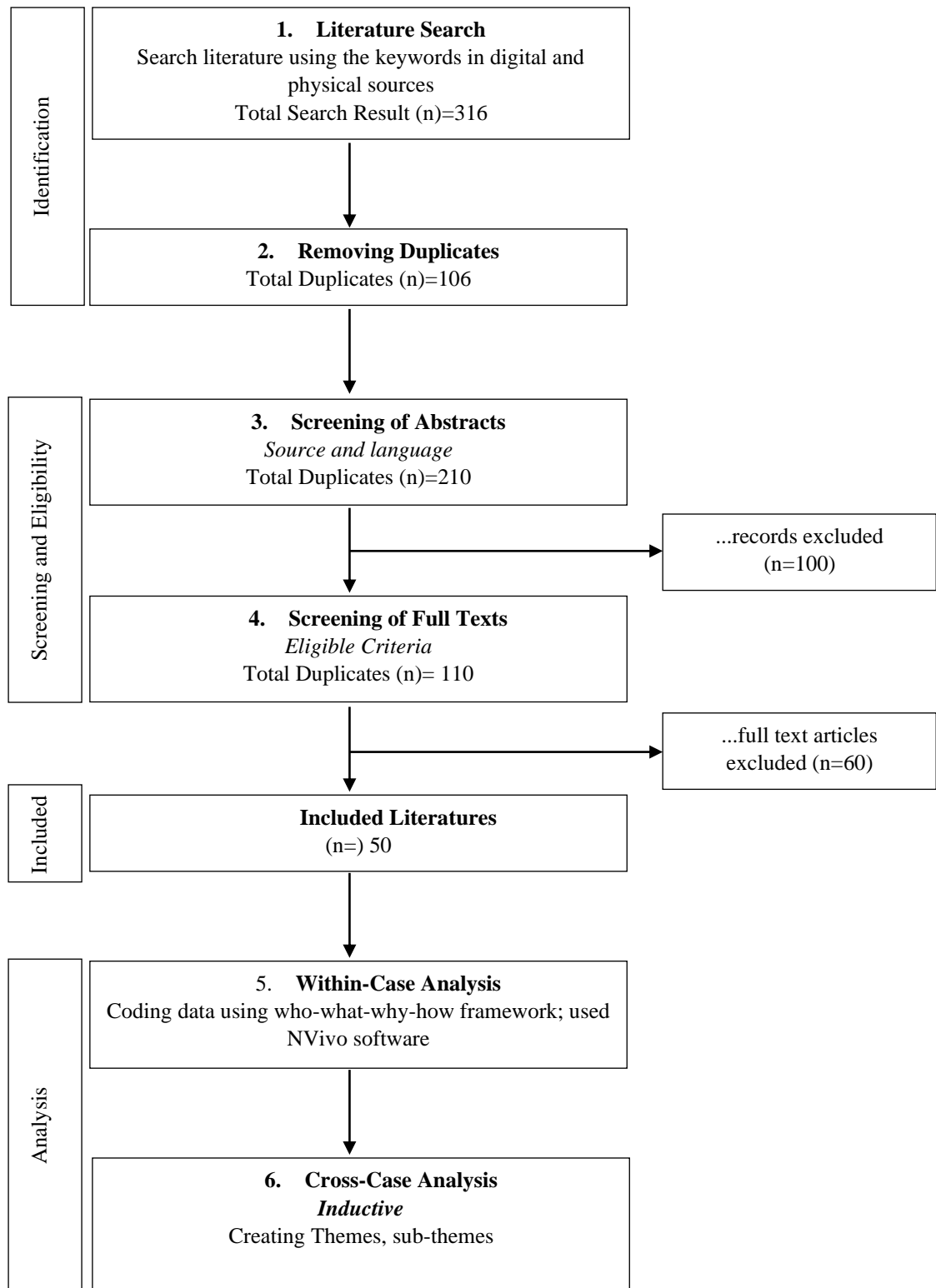


Figure 1. This systematic review process is based on the PRISMA flow diagram

Quality Appraisal

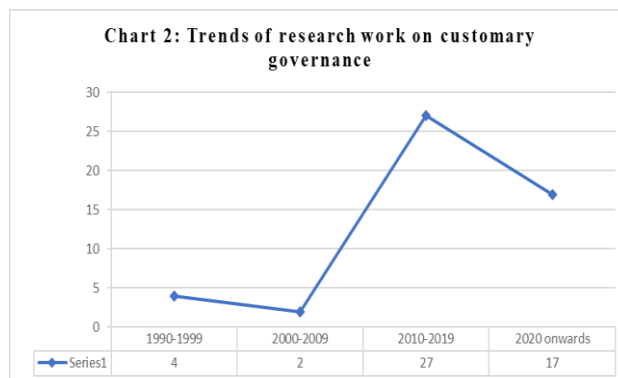
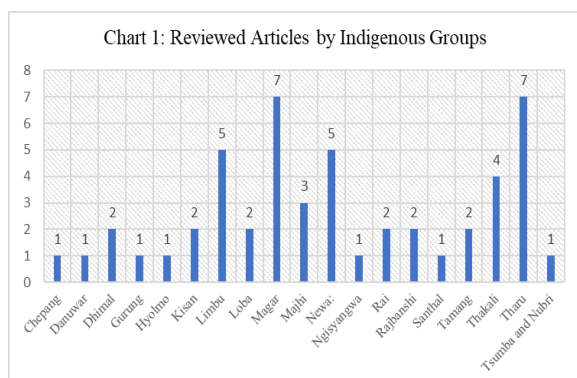
To ensure the quality of the selected articles, the author received suggestions and opinions from experts and scholars on customary governance. Furthermore, the reputation of journals, publications, authors, and institutions is an indicator for determining the standards of articles. In additions, the articles' research methodology and adherence to the IMRD format are also considered quality-determining factors.

Data Abstraction and Analysis

Following the process above, 50 selected articles were categorized based on review questions and transferred to NVivo computer software. The articles were thoroughly studied and coded, and the relevant texts were then transferred to Microsoft Word. The concepts from the sources were compared and synthesized.

Background of the Selected Articles

A total of 50 articles were selected for review (Chart 1). Three major themes were identified and reviewed accordingly. These themes were further divided if necessary. The selected articles represent 20 ethnic groups, with Magar and Tharu having the highest numbers at seven each. The articles related to Tharu cover issues relating to the Barghar system and their roles in conflict management and management of internal (Bellamy, 2009; N. Chaudhary, 2018, 2021; S. P. Chaudhary, 2015a; Khadka, 2016; Sarbahari, 2068, 2079). Similarly, the bheja of Magar, although not as vibrant as bargahr, also plays crucial roles in some parts of the Magar settlement in Nepal (Chidi, 2013; Danai et al., 2023; Dhakal, 1996; O. P. Gurung, 1996, 1999; P. T. Sherpa, 2079; Thapa Magar, 2015).



Five articles each cover the customary institutions and their governance systems of Limbu (Anghuhang, 2011; A. Limbu, 2023; Subba et al., 2017; Subba Mabuhang, 2016; Tigela Limbu, 2023) and Newa: (Dangol, 2010; Prajapati, 2015; Sarveswar & Shakya, 2021; Singh, 2015; Sundar, 2064) respectively. There are four articles that deal with issues of Thakali customary governance Ghampa/Mukhiya (Acharya et al., 2016; Bhattachan, 2023; Gauchan, 2015; Thakali, 2012) and three article pertaining to the native governance of Majhi Indigenous group (C. M. Majhi & Majhi, 2022; D. B. Majhi, 2015; S. K. Majhi & Thapa Magar, 2079). Similarly, the reviewed articles cover Chepang (Chepang, 2079), Danuwar (Khatry, 1995), Gurung (Poudel, 2020), Hyolmo (Hyolmo, 2015), and Santhal (Subba et al., 2017), Ngisyangwa (P. Sherpa, 2016), Tsumba and Nubri (P. D. Sherpa, 2021) each. In the same way, two articles each of Dhimal (Dhimal, 2015, 2016), Kisan (Dulal, 2021; Kattel,

2011), Loba (Khattri & Pandey, 2023; Pyakurel & Bhatta, 2021), Rai (Dahal, 2021; M. Rai, 2073), Rajbanshi (B. P. Rai, 2016, 2020), and Tamang (NGO-FONIN, 2013; Parajuli et al., 2019). Research and publication on customary governance are growing rapidly in the 21st century. Among the reviewed articles, 92 percent of research was accomplished in this period. Only 4 percent of articles were in the first decade of the 21st century, while 54 percent were in the second decade and 34 percent in the ongoing decade. Only 8 percent of research was in the last decade of the 20th century (Chart 2).

Finding and Discussion

Customary Governance and State Legal Frameworks

Customary governance systems are gaining recognition globally. In the period of last fifty years, customary laws have been incorporated into international law in both legally binding conventions (e.g. ILO convention No. 169) and non-binding declarations (e.g. UNDRIP) (Cuskelly, 2011), and these are crucial steps towards their recognition, execution, and process of revitalization.

Rights of IPs relating to lands and resources are recognized in considerable international legal instruments, that are crucial pursuing their self-rule and right to self-determinations, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973, the Convention on the Conservation of Migratory Species of Wild Animals, 1979, and the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, 1971. Similarly, the Convention on Biological Diversity, 1993 and Kunming-Montreal Global Biodiversity Framework, 2022 are also crucial for acknowledging the rights of IPs regarding biological diversity. However, UNDRIP (United Nations, 2007) and Indigenous and Tribal Peoples Convention, 1989 (No. 169), are crucial and comprehensive international instruments focused on the rights of IPs, the former is a morally binding instrument, while the latter is a legally binding one. Those instruments ensure multiple aspects of Indigenous rights at the global level. The UNDRIP places greater emphasis on the political rights of IPs, while Convention 169 addresses matters related to resource management and developmental concerns. The UNDRIP provides IPs with the right to establish autonomous areas or self-government, among others (Preambular Paragraph 16 and Art. 4), as well as the right to maintain and revitalize political institutions (Arti. 5 and 20 (1)). Further clarification is provided in Articles 34 and 36, which recognize IPs' right to promote, develop, and maintain their institutional structures, networks, and distinctive customs. The ILO Convention No. 169 provisioned that IPs' customs and traditions must be respected and recognized (Article 2(2)), and special measures taken to protect and promote them (Article 4(1)). The Convention stipulates that these customs and traditions should find continuity by remaining within the norms of national and international instruments (Article 9(1)). Right to self-determination is one of the fundamental aspects of self-governance of IPs. It is expressed in the Charter of the United Nations, 1945 (art. 1 and 55), International Covenant on Civil and Political Rights, 1966 (ICCPR) (art. 1), and the (United Nations, 1966) (ICCPR) (art. 1). This is also one of the major provisions enshrined in the UNDRIP (art. 3) in the context of IPs.

In the context of Nepal, no single federal law ensures the rights of IPs pertaining to customary laws and indigenous governance. The Constitution of Nepal, 2015 envisaged the creation of a special, protected, or autonomous region for "social, cultural protection or economic development" (art. 56.5) without specifying particularly for the promotion and protection of customary governance and political rights of IPs. However, no structural framework or policy measures have been devised for execution of this provision. Similarly, there are no specific provision for recognizing customary governance in Local Government Operation Act, 2017 and the National Civil (Code) Act, 2017. Rather the latter discarded the "custom or tradition contrary to law" while dispensing of justice (Section 15). That apparently prevails in state supported tradition of ruling caste group and Indigenous cultures. For instance the slaughtering of cow and consumption of beef is criminal act in Nepal according to the national law as the Constitution of Nepal declare cow as national animal (art.9.3) favoring Hindu religion of ruling group and provisioned for three years of imprisonment for killing cow by the National Penal (Code) Act, 2017 (Section 289, sub section 2) that contradict to the cultural and tradition of IPs (Thami, 2022). Despite this, there is opportunity for IPs to exercise and reclaim of their self-rule as Nepal has demonstrated commitment, through signing², for implementation of the aforementioned international instruments. Nepal government is obliged to enforce those international treaties as national laws (Nepal Treaty Act, 1990; The Constitution of Nepal, 2015) after the ratification. However, thorough revision and amendments of existing legal provisions is necessary to comply with those instruments.

After the promulgation of the 2015 Constitution local governments³ have started to develop local laws for "regulating" the customary governance system. For instance Barghar system of Tharu in the western part of Nepal is recognized in 15 local levels (e.g. Barbardiya Municipality, 2077; Madhuban Municipality, 2077; Rajapur Municipality, 2078; Suklaphata Municipality, 2078; Thakurbaba Municipality, 2078); Tsum Nubri rural municipality of the Gorkha district has law to "regulate" *Śyāgyā* system of Tsum Nubri community (Tsum Nubri Rural Municipality, 2079); in Kirtipur municipality of Kathmandu promulgated a law for promotion and protection of "cultural protected area" of Newa: community (Kirtipur Municipality, 2078). On one hand the IPs have welcomed the endeavors of local governments for recognizing the importance and existence of customary systems of self-rule, but on the other hand those local laws are limiting their scope imposing hierarchies based on the current state structure, i.e. municipal, ward and village level (Thami, 2024). For example, *Barghar* relating laws limit rights to determine territories of governance of *Barghar*. Because, often,

² On September 13, 2007, Nepal voted in favor of the UNDRIP in the 61st General Assembly of the United Nations and in the following day (September 14, 2007) it has ratified the ILO Convention No. 169.

³ In Kanchanpur district (Krishnapur, Belauri, Laljhadi, and Shuklaphanta municipality), in Kailali district (Tikapur municipality and Kailari, Janaki and Joshipur rural municipality), Dang (Tulasipur Sub-metropolitan city) and Bardiya (Thakurbaba, Bansgadhi, Barbardiya, Madhuban and Rjapur municipality and Badhaiyatal rural municipality) has passed Act. for "regulating" the Barghar system of Tharu. Similarly, the Tsum Nubri rural municipality of Gorkha district introduced law recognizing *Śyāgyā* system of the Tsum Nubri community. In Kirtipur municipality of Kathmandu district promulgate the law ensuring the cultural, protected area of Newa: community. Similarly, the draft laws have been prepared to recognized the Majhi Hādām system of Santhal in Jahada Rural municipality of Morang district.

the demarcation of current local units divides their traditional lands and populations. Apart from that there are also the provisions for the annual renewal of customary institutions to the local governments submitting financial and progress reports, almost similar to the NGOs, (section 5 (1) (2) of those Acts) and issuance certificate and identity cards to the indigenous leaders (Section 4, Schedule 1 and 2 of those Acts) by the municipalities (rural and urban), that also lead to shrink their jurisdiction of self-governance. Further those laws also established the criterion for becoming the leaders (*Barghars*) as: must be Nepali citizen; residing in the location continuously for at least five year; must be remain in the village round the year; hold high character in the society; and must be age of 21, almost similar to the qualifications applied for the candidates of local level elections⁴. Such kind of provision constraint their self-rule and autonomy in selecting leaderships. Further, it also opens avenues for other community member to be leaders of *Barghar* as there is no restriction for ethnicity. Furthermore, the introduction of the structure of prevailing hierarchical organization structure, such as chair, vice-chair, secretary, treasure, members, into the customary system of governance is other aspect of penetration of state into the customary system of governance (See Kirtipur Municipality, 2078; Tsum Nubri Rural Municipality, 2079). This also adversely impacts to the core values, circular and egalitarian, values of IPs.

Thus, this apparently indicate the urgency for distinct legal frameworks for recognition of distinctiveness of IPs' self-governance and its continuation with their core values and belief system. Further, de-Hinduization, de-Sanskritisation, de-Nepalization, and de-Brahminization should be the focus of IPs' while urging state recognition legally as those are the forms of colonization in Nepal (Chemjong, 2020; Tamang, 2020), because the prevailing legal system only lead their customary institutions to NGO-ization, making political parties easy to extend their influence in customary institution as in representative organizations. Thus, prevention from Party-ization should be another agenda of IPs for safeguarding their system of self-governance.

Indigenous Peoples Practices of Self-Governance and Autonomy

Institutions provide the framework for social interaction and are crucial social structures (Hodgson, 2006). Customary institution are distinct decision-making platforms that regulate diverse aspects of Indigenous societies, including social, political, economic, cultural, and judicial affairs. Such institutions are often referred to as "informal," "volunteer," "traditional," "customary," "Native," "Tribal," and "Indigenous". They consider traditions, customs, moral standards, religious beliefs, and other codes of conduct as a basis for governing societies representing community worldviews, accumulated knowledge, and values known as culture (Pejovich, 1999). The IPs of Nepal often use single terminology to indicate their customary

⁴ According to the 2015 Constitution following are the qualifications for the local level election candidates: For Rural municipality Chairperson, Vice-Chairperson, Ward Chairperson and member: being a citizen of Nepal; having completed the age of twenty one years; being a voter whose name is included in the electoral rolls of the Village Body; not being disqualified by any law (art. 215(5)). For urban municipality Mayor, Deputy Mayor, Ward Chairperson and members: being a citizen of Nepal; having completed the age of twenty-one years; being a voter whose name is included in the electoral rolls of the Municipality; not being disqualified by any law (art. 216 (5)).

institutions and authorities. For example, the Santhal call their institution/authority *Majhi Hādām* or *Majhi*, the Thakali use the term *Ghampa/Ghempa/Thuimi/Mukhia*, Tharu employ the word *Barghar/Bhalmansā/Mahatawā*, and Magar use the term *Bhejā*. Similarly, Majhi call their customary institution/leaders *Majhesabā*, Dhimal call *Mājhi Wārāng*, and Tamang prefer to say *Choho*.

Selection of leadership unanimously for a stipulated tenure, often for a year, with consensus in the leading method of transition of leadership in customary institutions. Majoritarian rule as envisioned under the existing state system is discarded in the customary institutions. Thus, there are no space for oppositions in those institutions. Which is instrumental for effective functioning of those institution in an amicable, meaningful, and collective way. These institutions hold periodic assemblies (half-yearly, annually, biennially, triennially) as their supreme body to select leadership and make critical decisions that directly concern their specific groups (Bhattachan, 2023; Chidi, 2013; Dhimal, 2016; FAO, n.d.; Gautam & Thapa-Magar, 1994; Hyolmo, 2015; Subba et al., 2017). During such gatherings, the group members review the previous year's achievements and provide their collective approval or disapproval. Disapproval indicates the wrongdoings of authorities and collectively decides fines and penalties. It is customary for all participants and customary leaders to be treated equally. Therefore, customary governance, unlike state governance, is not hierarchical. However, elders hold respected positions during assemblies and other occasions as well. One of the drawback of customary governance is the male dominations in the leadership position (Bhattachan, 2023; Hachhethu, 2014). Thus, it needs to be rectified to ensure the greater inclusion of female in the leadership roles. The change, however, is taking place as women are also gradually taking the roles of leadership (Thami, 2024)

Customary authorities and leaders serve their respective groups without financial or other kind of benefits. This voluntary service sometimes leads to financial hardship for them. Leaders and authorities are primarily responsible for implementing the mandates of their respective groups and taking necessary measures for peace, security, harmony, and social development. Community members are also responsible for enforcing those decisions and respecting them. As part of their role, they offer free labor for developmental activities, participate in decision-making processes, offer suggestions and advice for the collective good, and provide financial assistance for the work of leaders and authorities.

Indigenous self-governance is guided by Indigenous worldviews. Unlike codified laws of nation-states issued by "sovereigns" as "commands" (Hart, 2012), Indigenous guiding principles emerge from their experiences, traditions, cultures, values, and belief systems, which are orally transformed from generation to generation as binding social norms. Such social norms are subject to change in accordance with time, context and group necessities.

Customary systems of governance are distinct forms of self-rules continued in Indigenous societies' ancestral lands for generations. Such systems are different than the existing state governing mechanisms. In Nepal, the rise of modern nation-states in their traditional

territories through invasion in 18th century badly impacted their autonomy. Due to state interventions many communities' customary systems have lost forever. Despite state interventions, some Indigenous communities, such as Tharu, Thakali, and Santhal, have succeeded to uphold their traditional self-governing traditions maintaining considerable sway within respective communities. The fundamental attributes of such systems include collective decision-making, consensual leadership selection, and participatory adjudication of community decisions, unlike individual focused representative system laden hierarchical structure.

Customary institutions/authorities mostly play a facilitating role, unlike the state system, where the state authorities act as sovereign rulers authorized to rule over their subjects, to administer the socio-political and economic affairs of IPs. Traditional leaders do not make decisions in isolation; rather, community members are engaged in every decision, and decisions are made collectively with the facilitation of traditional leaders.

Historically, the Nepalese IPs have governed their social, political, and economic affairs using their native law and institutions within their lands and territories (Thami, 2024). Customary institutions function under an integrated approach, covering judicial, political, economic, developmental, and socio-cultural aspects. Nathuram Chaudhary (2021) identified six key roles of *Barghar*: leadership, judicial, planning and development, ritual, administration, and unifying. There are no "separation of power" traditions in traditional institutions as states do, i.e., legislative, executive, and judiciary. Nevertheless, work divisions are there among the authorities of customary institutions. For instance, Tharu *Barghar* looks after the overall administration of their customary institutions; *Chirākiyā* supposed to disseminate information in the community; *Guruwā* looks after ritualistic matters; *Chaukidār* acts as the security agency, and *Likhandār* is assigned to maintain a record (in written form in these days) (See Bellamy, 2009; N. Chaudhary, 2018; Khadka, 2016; Thami, 2024); Similarly, the *Ghampa* is the in-charge of Thakali customary institutions. *Ghundal* and *Chowa* are assigned to work as *Ghampa's* assistant and act as messenger respectively (See Bhattachan, 2023; Thakali, 2012; Thami, 2024).

Justice dispensation is one key aspect of customary institutions' intervention. Justice dispensation is one key aspect of customary institutions' intervention. Such institutions settle family disputes, personal quarrels, property, and natural resources-related conflicts (forests, pasture lands, and irrigation). The process of conflict settlements is done in a collective manner, often the conflicting parties admit their mistakes and come to an agreement. Customary leaders make decisions after a thorough investigation and hearing of both parties and concerned persons. Opinions of reputed members of the society and elders are also obtained for making decisions. Forgiveness is one of the crucial aspects of the customary judicial process that leads to establishing sustainable peace and social harmony.

Continuation of cultural practices and regulations of social practices are other areas of interventions of customary institutions. Customary leaders organize and mobilize

communities during the observation of cultural practices, such as festivals, rituals, and rituals (See Chidi, 2013; Sarveswar & Shakya, 2021).

Developmental and economic activities are also among the areas of intervention of customary institutions. Such institutions mobilize communities for community development-related activities, mostly through voluntary labor contributions. Similarly, customary institutions also fix the prices of agricultural products produced and buy/sell them within the community (See S. P. Chaudhary, 2015b; Chidi, 2013).

State-Indigenous Governance Interaction

Expansion of the Gorkha principality in the 18th century led to subjugation of the autonomous rules of IPs. Before territorial expansion through conquest and vision of establishment of "*asali Hindustān*." in the lands of various IPs there were prevalence of customary systems of governance and administration (Adam, 1936; O. P. Gurung, 1996). The Hindu religion guided system of governance was formalized through the enactment of the *Muluki Ain*'s in 19th century (1854) that established the ruling caste group's supremacy undermining IPs self-rules. Further, the caste based hierarchical system was strengthened and institutionalized by successive regimes, the Rana oligarchy, Panchayat regime. It continues to date, despite its claim of being federal democratic republic⁵ with religious secularism⁶.

Though the local governments began to recognize customary governance system at the local level, there is less hope for protection and promotion of such systems as those enacted laws carry the structural framework and values of nation-states rather than promotion of continuation and promotion of indigenous worldviews and practices. However, the vibrant customary institutions, such as *Barghar*, *Ghampa*, are influential at the local level and working side by side with the state mechanism. Local governments also invite customary leaders for resolving socio-cultural issues. The federal Nepal is divided into 753 local-level governments, comprising Metro political city (6), Sub-metropolitan city (11), municipalities (276), and Rural Municipalities (460). Within that structure, there are 6,743 ward-level governments and the Indigenous Customary government mostly functions and interact with ward level state structure, sometimes time with the municipal (rural/urban) level as well, rarely having access to the high-level state institutions. Another crucial aspect is that the state often looks down to the customary institutions that lead to the conflict between state and traditional institutions. It is crucial to recognize self-rule and autonomy of IPs Constitutionally within their territory.

Conclusion

Despite unfavorable state policies, the customary systems of governance are vibrant among certain Indigenous groups in Nepal. Such institutions are effective in dealing with social-

⁵ Constitution of Nepal 2105, art.4.

⁶ Constitutionally "secularism" is defined as "religious, cultural freedoms, including protection of religion, culture handed down from the time immemorial." However, in the original Khas-Nepali text it included the term "*Sanatana Dharma*" that tend to support and promotes the Hindu religion as it refers to the name of Hindu gods Shiva, Bishnu, Brahma, Laxmi and Saraswati and it indicates the contemporary Hindu religion based on Veda, Purana, Tantra, and Idol worship (Thami, 2022; Const. of Nep, art 4 Explanation).

political, economic, judicial, and cultural issues within the community. The essential traits of customary governance systems are collective decision-making, consensual leadership selection, and participatory adjudication of community decisions. The significance of customary governance for good governance, democracy, peace, human rights, and climate change mitigation is growing globally, especially following its recognition at the United Nations level. However, in the context of Nepal, customary governance in national laws is not recognized. Despite that local governments have begun to recognize the customary system of IPs in various part of nation, using their constitutional jurisdictions and following the provisions of international legal instruments, including ILO Conventions No. 169 and UNDRIP. However, such state endeavors are intended to subordinate IPs governing system under the framework of state structure that does not, in fact, ensure their autonomy and self-determination. Thus, de-Hinduization, de-Sanskritisation, de-Nepalization, and de-Brahminization should be the prime consideration of IPs themselves while advocating and demanding for the state legal recognition of customary governance systems. Mere acceptance of state legal recognition under the current legal framework lead to NGO-ization of their traditional institutions causing, ultimately, Party-ization.

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