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The Persistence of Colonial Legal Legacies: Structural Barriers to Legal Pluralism in Postcolonial Legal Orders

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ABSTRACT

Background. Service learning connects academic study with community engagement, yet its integration into higher education often remains fragmented across curricula, institutional policies, and partnerships.

Purpose. This study examines how service learning can be integrated into university teaching to support student development and mutually beneficial community relationships.

Method. Using a qualitative conceptual review, the study synthesizes scholarly discussions of experiential education, reflective practice, curriculum design, and university community collaboration..

Results. The analysis identifies four interrelated conditions for meaningful integration: alignment between academic objectives and community priorities, structured student reflection, reciprocal partnerships, and institutional support for assessment and continuity. Existing literature suggests that these conditions can strengthen opportunities for critical thinking, civic responsibility, and the application of disciplinary knowledge, although outcomes vary with implementation quality and context.

Conclusion. The proposed framework offers universities a basis for designing, evaluating, and sustaining service learning while calling for longitudinal and community centered research to establish educational and social outcomes across diverse higher education settings.

KEYWORDS

Civic Engagement, Community Partnerships, Experiential Learning

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INTRODUCTION

Colonial legal systems profoundly transformed the institutional foundations of law, governance, and social authority across territories subjected to European domination. Colonial administrations introduced legal classifications, judicial hierarchies, and administrative structures that frequently subordinated Indigenous normative traditions to state-sanctioned legal institutions. Political independence did not necessarily dismantle these arrangements, leaving postcolonial societies with legal systems shaped by enduring institutional inequalities and contested sources of authority (Chen, 2025; Moore, 2024).

Legal pluralism provides a conceptual framework for understanding the coexistence and interaction of multiple

normative orders within the same social environment. State legislation, customary practices, religious traditions, and community-based dispute resolution mechanisms may simultaneously influence legal behavior. Griffiths (1986) distinguished state-controlled forms of legal pluralism from broader normative plurality operating beyond official legal recognition.

The persistence of colonial legal institutions raises questions about whether postcolonial legal reforms have meaningfully transformed inherited relationships between state authority and non-state normative systems. Constitutional recognition of customary or religious law may coexist with judicial hierarchies that restrict their autonomy. Understanding these tensions requires examining the historical formation and contemporary reproduction of unequal legal authority (Lepore, 2023; Nagel, 2022).

The central problem concerns the persistence of colonial institutional structures that constrain substantive legal pluralism within formally independent states. Inherited judicial hierarchies, procedural requirements, and legislative classifications may privilege state law while subordinating Indigenous and customary legal traditions. Such arrangements create disparities between official recognition of normative diversity and the authority exercised by communities in practice.

Colonial legal classification presents further difficulties because customary and religious traditions were frequently reconstructed through administrative interpretation. Colonial authorities sometimes transformed flexible normative practices into standardized categories that facilitated governance and judicial supervision. Contemporary reliance on these classifications may perpetuate historically constructed understandings of local law, limiting communities' capacity to define and develop their normative institutions (Hatfield, 2024; Vechten, 2026).

Institutional inequalities also affect access to justice, land governance, cultural autonomy, and the resolution of disputes involving competing legal authorities. State courts may recognize customary norms selectively while requiring compliance with procedural standards established through inherited legal frameworks. These tensions raise questions concerning legal legitimacy, equitable recognition, constitutional rights, and the boundaries of institutional reform.

This study aims to critically examine how colonial legal legacies continue to shape institutional barriers to legal pluralism in postcolonial legal orders. Its primary objective is to identify inherited legal structures that influence the recognition, interpretation, and enforcement of customary, religious, and Indigenous normative systems within contemporary state institutions.

The research further investigates the mechanisms through which judicial centralization, legal codification, jurisdictional hierarchies, and administrative practices reproduce unequal relationships among normative orders. Particular attention is directed toward institutional authority, legal representation, community participation, and access to justice. Examining these dimensions enables a clearer understanding of how historical legal arrangements influence contemporary pluralist governance.

The study ultimately seeks to develop an analytical framework connecting colonial institutional continuity with the conditions necessary for meaningful legal pluralism. This framework evaluates relationships among normative recognition, institutional autonomy, jurisdictional coordination, and constitutional safeguards. Its intended contribution is to identify pathways toward more equitable legal arrangements without assuming that every non-state normative practice warrants unconditional recognition (Bennett, 2026; Manteaw, 2025).

Existing scholarship has extensively examined legal pluralism as a social and institutional phenomenon. Griffiths (1986) challenged state-centered conceptions of legal authority, while Tamanaha (2021) analyzed how colonial governance transformed customary institutions and

produced enduring legal complexities. These contributions establish foundations for understanding normative plurality and its historical development.

Historical studies have also demonstrated that colonial administrations sometimes maintained multiple legal systems as deliberate instruments of governance. Burset (2023) examined strategic legal pluralism within British colonial policy, highlighting its political and economic purposes. Further comparative investigation is needed into how inherited institutional arrangements continue to constrain meaningful legal autonomy after political independence.

The remaining analytical challenge concerns the relationship between historical legal classifications and contemporary institutional barriers. Scholarship addressing colonial legal transformation does not automatically establish which inherited mechanisms most strongly influence present-day recognition, jurisdictional authority, or access to justice. This study addresses that question by connecting historical institutional analysis with contemporary legal pluralism and constitutional accountability.

The proposed research advances a structural interpretation of postcolonial legal pluralism that distinguishes formal normative recognition from substantive institutional autonomy. Its conceptual contribution lies in examining colonial legal legacies as continuing mechanisms of institutional hierarchy rather than exclusively historical influences. This perspective highlights how recognition policies may reproduce unequal authority when inherited judicial arrangements remain unchanged (Hasnain, 2026; Lorenzetti, 2023).

The study introduces an integrated analytical framework encompassing historical legal continuity, jurisdictional hierarchy, normative recognition, institutional autonomy, and procedural accessibility. Its proposed originality concerns the interaction among these dimensions and their implications for equitable legal governance. The framework also incorporates constitutional safeguards to distinguish legitimate normative diversity from practices that undermine fundamental rights (Devereux, 2022; Suiter, 2023).

The significance of this investigation extends to comparative jurisprudence, postcolonial legal theory, constitutional governance, and access to justice. Identifying persistent institutional barriers may assist lawmakers, courts, and communities in evaluating legal reforms more critically. The research offers a foundation for developing pluralist legal arrangements that respect normative diversity while preserving equality, accountability, and fundamental rights.

RESEARCH METHODOLOGY

This study adopts a qualitative comparative legal research design combining historical institutional analysis, doctrinal interpretation, and critical legal pluralism. The inquiry examines how colonial systems of legal classification, court organization, and administrative supervision continue to shape the recognition of customary and Indigenous normative orders after independence. Comparative analysis focuses on Indonesia, India, and South Africa, selected for their different colonial trajectories and postcolonial approaches to normative diversity. The design distinguishes legal pluralism as a social phenomenon from state recognition of nonstate law, thereby avoiding the assumption that formal constitutional protection necessarily ensures meaningful jurisdictional autonomy (Huysmans, 2022; Khumalo, 2025).

Historical institutional analysis traces continuities and changes in legal authority rather than treating contemporary restrictions as automatically colonial in origin. Doctrinal examination evaluates constitutional safeguards, legislation, and judicial reasoning concerning recognition, jurisdiction, and rights limitations. Cross-jurisdictional comparison considers alternative explanations, including postindependence state building, democratic reform, and constitutional

rights protection. The study does not equate community authority with unrestricted legal legitimacy; gender equality, due process, and individual rights remain essential standards for assessing pluralist institutions.

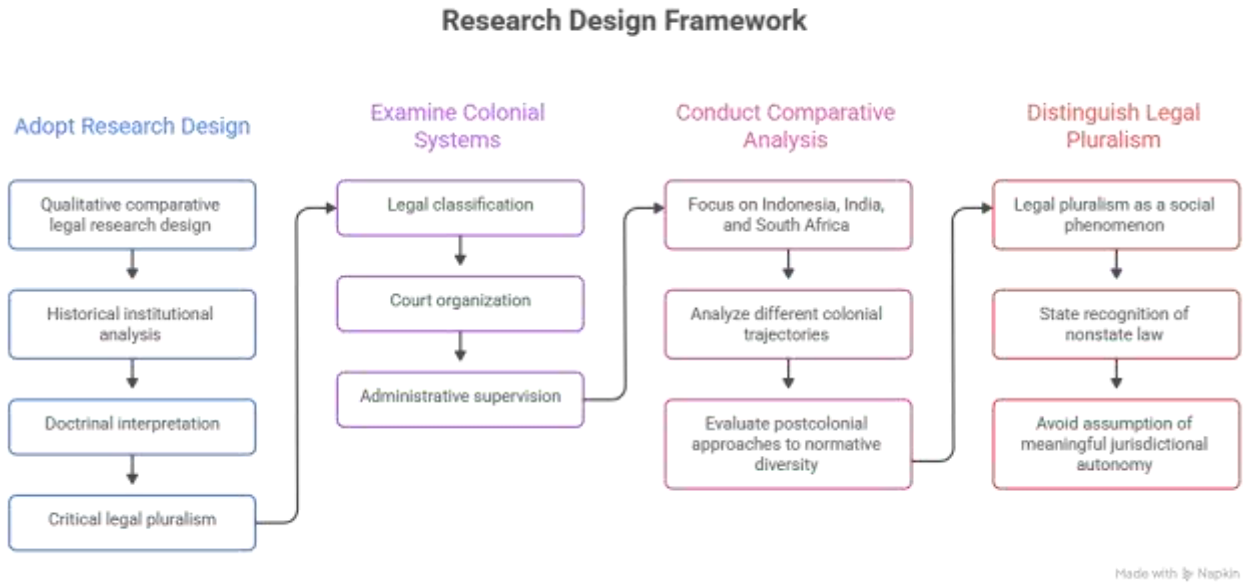


Figure 1. Research Design Framework

The documentary population consists of accessible primary and secondary legal sources concerning colonial governance and contemporary pluralism within the three jurisdictions. Primary sources include historical statutes where obtainable, constitutional texts, current legislation, authoritative judgments, and official policy documents. Secondary sources include peer-reviewed scholarship on customary law, religious personal law, Indigenous rights, and postcolonial jurisprudence. The unit of analysis is the legal rule or institutional arrangement affecting the recognition, interpretation, or exercise of nonstate normative authority, rather than individual community members.

Purposive sampling selects materials for legal authority, historical relevance, institutional significance, and comparative usefulness. Core reference points include Article 18B(2) of Indonesia's Constitution, India's constitutional and personal law arrangements, and Section 211 of South Africa's Constitution. Judicial materials are selected to illustrate identifiable conflicts between state institutions and customary or religious legal authority. Sources addressing pluralism only rhetorically, without identifiable institutional mechanisms, are excluded. The corpus is not statistically representative, and documentary availability is recorded to expose uneven historical archives and publication practices (Betz, 2024; Palakshappa, 2022).

A structured legal document matrix organizes extracted evidence under six domains: colonial classification, legal recognition, judicial hierarchy, administrative discretion, community participation, and constitutional safeguards. Each record identifies its jurisdiction, historical period, source type, binding status, relevant passage, institutional actors, and interpretive uncertainty. Operational indicators distinguish recognition conditioned on state approval from recognition permitting meaningful community decision making. Separate fields capture evidence that apparently restrictive arrangements originated after independence, preventing colonial continuity from becoming an untested explanatory assumption.

A qualitative coding guide supports consistent interpretation through predefined definitions, analytical memos, and an explicit record of disputed classifications. Codes address codification, jurisdictional displacement, official customary law, institutional autonomy, procedural accessibility, and rights-based review. Source triangulation compares legislative language with judicial interpretation and historical scholarship whenever the materials permit. Repeated reading and negative case analysis assess whether rival explanations better account for observed institutional arrangements. Reliability is understood as transparency and interpretive defensibility rather than numerical agreement among nonexistent survey raters (Anselin, 2024; Machibroda, 2026).

The procedure begins with searching official legislative and judicial repositories, historical legal collections, and academic databases. Search combinations cover colonial law, legal pluralism, customary jurisdiction, personal law, recognition, and postcolonial institutional reform, with jurisdiction-specific terms added as appropriate. Documents undergo screening for authenticity, relevance, legal currency, and sufficient contextual information. Eligible texts are catalogued chronologically, allowing colonial legal structures to be compared with subsequent constitutional provisions, statutes, and judicial decisions without presuming uninterrupted institutional survival.

Doctrinal interpretation first reconstructs each jurisdiction's rules governing recognition and adjudicative authority. Historical process tracing then tests proposed continuities against documented changes, reform episodes, and alternative causes. Thematic comparison identifies shared barriers and context-dependent differences while preserving the distinct positions of customary, religious, and Indigenous legal traditions. Normative synthesis evaluates possible reforms against institutional autonomy, democratic accountability, equality, and access to justice. Conclusions remain confined to documented legal structures; actual community experiences and implementation effects require later interviews, observation, and empirical validation. The final analytical report presents a jurisdiction-specific evidence trail, identifies unresolved archival gaps, and differentiates documented judicial constraints from broader claims concerning lived legal practice, thereby clarifying what the documentary method can and cannot establish (Goi, 2024; Wachira, 2023).

RESULT AND DISCUSSION

The comparative examination of Indonesia, India, and South Africa reveals persistent institutional tensions between inherited colonial legal arrangements and contemporary constitutional commitments to normative diversity. The documentary analysis identifies three constitutional systems, four principal judicial decisions, and selected legislative provisions addressing customary recognition, personal law, and institutional authority. Indonesia recognizes customary communities through Article 18B(2) of its Constitution, while India maintains differentiated personal law arrangements within its constitutional system. South Africa explicitly recognizes customary law through Section 211 of its Constitution. These frameworks demonstrate that political independence has not necessarily eliminated historically constructed distinctions between state law and community-based normative traditions.

The secondary legal materials identify three recurring structural barriers: conditional recognition, centralized judicial interpretation, and the institutional classification of non-state normative systems. Indonesia's Constitutional Court Decision No. 35/PUU-X/2012 demonstrates continuing tensions surrounding customary forest recognition. India's State of Bombay v. Narasu Appa Mali (1951) illustrates constitutional uncertainty concerning personal law and fundamental rights. South Africa's Bhe (2004) and Shilubana (2008) judgments demonstrate contrasting

responses to inherited customary law classifications. Table 1 summarizes these differences through qualitative comparison rather than statistical measurement of institutional performance.

Table 1. Comparative Legal Recognition and Structural Barriers to Legal Pluralism in Selected Postcolonial Jurisdictions

Analytical dimension	Indonesia	India	South Africa
Colonial legal inheritance	Dutch legal classifications and differentiated legal administration	British colonial legal administration and personal law arrangements	Colonial and apartheid-era racial legal administration
Constitutional reference	Article 18B(2)	Articles 13 and 372; constitutional equality provisions	Sections 211 and 212
Principal judicial authorities	Decision No. 35/PUU-X/2012	State of Bombay v. Narasu Appa Mali (1951)	Bhe (2004); Shilubana (2008)
Recognized normative orders	Customary law and Indigenous community institutions	Religious personal laws and customary practices	African customary law and traditional leadership
Structural barrier	Conditional recognition and administrative classification	Personal law categorization and constitutional review tensions	Historical codification and state-mediated interpretation
Judicial approach	Constitutional review of state recognition and customary land rights	Judicial distinction between personal law and legally recognized custom	Constitutional review and development of living customary law
Institutional concern	Recognition procedures and territorial rights	Equality, legal classification, and reform	Community authority, equality, and legal development
Comparative implication	Recognition may remain dependent on state procedures	Normative diversity operates through differentiated legal categories	Customary autonomy operates within constitutional safeguards

The comparative evidence indicates that colonial legal legacies persist through institutional arrangements rather than through unchanged historical legislation alone. Indonesia's constitutional recognition of customary communities remains subject to conditions concerning their continued existence, societal development, and national constitutional principles. India's differentiated personal law framework reflects historical relationships between state authority and religious normative traditions. South Africa's constitutional provisions recognize customary law while requiring compatibility with constitutional rights. These distinctions demonstrate that contemporary legal pluralism involves different configurations of normative recognition and institutional supervision. Their historical origins remain significant, although present arrangements also reflect independent constitutional decisions and subsequent legal reforms.

The observed differences further demonstrate why constitutional recognition cannot be equated with institutional autonomy. Legal provisions may acknowledge customary or religious norms while reserving final interpretive authority to state institutions. Such arrangements can protect constitutional consistency but may also restrict communities' influence over the interpretation of their legal traditions. The documentary evidence therefore distinguishes recognition, jurisdictional authority, and procedural accessibility as separate dimensions of pluralism. A legal system may formally accommodate normative diversity without ensuring equivalent institutional standing or meaningful participation in decisions affecting community-based normative practices.

The documentary analysis identifies historical codification, judicial centralization, administrative classification, and conditional recognition as recurring mechanisms influencing postcolonial legal arrangements. Colonial authorities frequently interpreted local normative practices through administrative categories intended to facilitate governance. These classifications could transform flexible community practices into standardized legal rules enforced through state institutions. Contemporary legal systems may preserve elements of these arrangements even after substantial constitutional transformation. Their persistence is particularly evident where state institutions determine which communities qualify for recognition, which customs possess legal force, and how normative conflicts should be resolved.

The examined jurisdictions reveal different responses to these institutional continuities. Indonesia's customary forest jurisprudence challenges the classification of customary forests as state forests. India's personal law jurisprudence demonstrates the enduring significance of distinctions between religious personal law and customary practices. South African constitutional decisions address the historical distortion of customary law through colonial and apartheid administration. These examples identify a recurring tension between official customary law and the changing practices of communities themselves. Historical continuity must nevertheless be distinguished from contemporary restrictions adopted for legitimate constitutional purposes, including equality protection and procedural fairness.

The inferential analysis suggests that inherited legal hierarchies become barriers to substantive pluralism when state recognition determines the practical authority of community-based normative systems without adequate participation or accountability. Colonial classifications may continue to influence contemporary institutions through evidentiary requirements, judicial doctrines, and administrative procedures. Constitutional recognition can mitigate these constraints, but its effectiveness depends on how courts and public authorities interpret normative autonomy. This inference emerges from comparative doctrinal interpretation rather than statistical evidence establishing a causal relationship between colonial history and present-day institutional inequality.

The findings also indicate that judicial intervention can both challenge and reproduce institutional asymmetries. Constitutional review may invalidate discriminatory rules inherited from colonial administration, as demonstrated by South Africa's Bhe judgment. Judicial interpretation may simultaneously privilege formal representations of customary law over community practices when courts rely on historically constructed legal categories. The relationship is therefore conditional: judicial authority can facilitate pluralist reform when informed by community participation and constitutional safeguards, but may constrain autonomy when legal interpretation remains exclusively state-centered.

The comparative analysis identifies an interaction between historical legal classification, institutional autonomy, and contemporary access to justice. Recognition procedures determine which communities or normative practices receive official legal status. Judicial hierarchies establish

which institutions possess authority to interpret and enforce recognized norms. Procedural requirements subsequently shape whether affected communities can exercise their rights effectively. These dimensions are mutually reinforcing because restrictive recognition can limit jurisdictional authority, while centralized interpretation may reduce opportunities for community-led legal development. The resulting relationship offers an explanation for the persistence of structural inequalities despite constitutional acknowledgment of normative diversity.

The findings also reveal that constitutional safeguards and normative autonomy need not operate as opposing principles. South Africa's Shilubana v. Nwamitwa demonstrates judicial recognition of a community's capacity to develop customary law consistently with constitutional equality. This approach differs from preserving customary practices as historically fixed rules. The comparative evidence suggests that meaningful pluralism requires institutional arrangements allowing normative development while protecting individuals from discrimination and arbitrary authority. Recognition becomes substantively significant when communities participate in interpreting their norms and when constitutional oversight addresses identifiable rights violations.

The Indonesian case examines Constitutional Court Decision No. 35/PUU-X/2012, delivered on May 16, 2013, concerning Law No. 41 of 1999 on Forestry. The Court invalidated the classification of customary forests as state forests, recognizing that customary forests exist within the territories of customary law communities. The judgment represents a significant challenge to state-centered interpretations of customary territorial rights. Its reasoning nevertheless preserves conditions concerning the existence and legal recognition of customary communities. The decision therefore illustrates both constitutional correction of restrictive legal classifications and the continuing significance of administrative recognition mechanisms.

The Indian and South African cases illuminate different dimensions of inherited legal authority. In Narasu Appa Mali, the Bombay High Court distinguished personal laws from laws subject to Article 13(1), reflecting complex relationships between religious norms and constitutional review. South Africa's Bhe judgment invalidated discriminatory inheritance arrangements associated with the Black Administration Act 1927 and customary male primogeniture. The subsequent Shilubana decision recognized the development of customary leadership practices through community processes consistent with constitutional principles. These decisions demonstrate that postcolonial judicial institutions may preserve inherited classifications, invalidate discriminatory arrangements, or recognize the evolving authority of customary communities.

The Indonesian judgment demonstrates how constitutional litigation can challenge historical patterns of state control over customary resources. Reclassifying customary forests strengthens the legal distinction between Indigenous territorial rights and government-administered forests. Nevertheless, recognition remains connected to legal determinations concerning the existence and status of customary communities. The case indicates that eliminating a restrictive classification does not necessarily remove procedural obstacles to effective rights protection. Additional administrative arrangements and institutional decisions remain relevant to implementation. The findings consequently distinguish judicial recognition from the practical realization of customary authority over territory and resources.

The Indian and South African decisions illustrate contrasting relationships between constitutional adjudication and normative diversity. Narasu Appa Mali reflects a judicial distinction that complicated the application of constitutional rights review to personal law, although its continuing authority and implications require attention to subsequent jurisprudence. Bhe demonstrates judicial intervention against discriminatory inherited arrangements, while Shilubana acknowledges customary communities' capacity to develop their own legal practices. The

comparison suggests that institutional transformation requires both rights-based accountability and recognition of living normative traditions. Neither unconditional preservation nor comprehensive state control provides a sufficient foundation for equitable pluralism (Campbell, 2024; Fanatico, 2025).

The combined findings reveal that colonial legal legacies persist most significantly through institutional relationships determining recognition, interpretation, and enforcement. Historical legal categories continue to influence contemporary pluralism even where constitutional reforms acknowledge normative diversity. Indonesia illustrates tensions surrounding conditional customary recognition, India demonstrates difficulties associated with differentiated personal law classifications, and South Africa provides examples of constitutional intervention against inherited discrimination. These observations support interpreting colonial continuity as a historically mediated institutional process rather than an unchanged body of colonial rules. Contemporary legal barriers may reflect colonial inheritance, subsequent political decisions, or interactions between both.

The research supports a structural framework connecting historical institutional continuity, normative recognition, jurisdictional authority, community participation, and constitutional safeguards. Its principal finding is that substantive legal pluralism requires more than the coexistence of multiple legal traditions within a national system. Effective pluralism depends on whether normative communities possess meaningful opportunities to participate in legal interpretation and institutional decision-making while remaining protected by fundamental rights. The documentary evidence does not establish the prevalence of barriers or their measurable effects on community experiences. It identifies legal mechanisms through which unequal authority may persist and provides a foundation for subsequent empirical investigation (Aliaga, 2026; Arnot, 2025).

The findings demonstrate that colonial legal legacies continue to shape postcolonial legal pluralism through institutional hierarchies, administrative classifications, and centralized judicial authority. Comparative analysis of Indonesia, India, and South Africa reveals that constitutional recognition of normative diversity does not necessarily establish substantive institutional autonomy. Historical legal structures remain influential when state institutions retain decisive authority over the recognition, interpretation, and enforcement of customary and religious legal traditions.

The comparative evidence identifies three recurring structural barriers: conditional legal recognition, historically constructed normative classifications, and unequal institutional authority. Indonesia illustrates tensions surrounding customary community recognition and territorial rights, while India demonstrates complexities involving religious personal law and constitutional interpretation. South Africa reveals how constitutional adjudication can challenge discriminatory legal inheritances while recognizing customary law as an independent normative source.

The documentary case studies demonstrate contrasting judicial responses to inherited legal arrangements. Indonesia's Constitutional Court Decision No. 35/PUU-X/2012 challenged the classification of customary forests as state forests. India's Narasu Appa Mali decision distinguished personal law from statutory law for constitutional review purposes. South Africa's Bhe and Shilubana judgments addressed discriminatory inheritance rules and community-driven customary law development.

The central finding concerns the distinction between formal legal pluralism and meaningful normative autonomy. Constitutional recognition may acknowledge multiple legal traditions while preserving institutional structures that privilege state-defined legal categories. Substantive pluralism requires community participation, accessible procedures, legitimate interpretive authority, and

constitutional safeguards. These dimensions explain why legal reform must address institutional relationships rather than recognition provisions alone.

The findings support Griffiths' (1986) distinction between weak and strong legal pluralism. His critique of state-centered recognition remains relevant where customary institutions exercise authority only within boundaries established by national law. The present study extends this argument by identifying institutional mechanisms through which conditional recognition and centralized interpretation may preserve unequal relationships between state and community-based normative systems.

The findings also correspond with Merry's (1988) analysis of legal pluralism as a relationship between overlapping normative systems shaped by historical power. Colonial administrations frequently reorganized Indigenous practices through administrative classifications and official legal categories. The comparative evidence strengthens this perspective by demonstrating how historically constructed distinctions can remain influential within contemporary constitutional institutions, even when governments formally endorse normative diversity.

The analysis complements Tamanaha's (2008) account of legal pluralism as a phenomenon involving multiple interacting legal orders. His approach challenges narrowly state-centered definitions of law and emphasizes contextual relationships among normative authorities. The present research develops this perspective through closer attention to institutional recognition, judicial hierarchy, community participation, and constitutional constraints as mechanisms shaping substantive pluralism.

The South African findings provide a qualification to approaches emphasizing the persistence of colonial domination. Shilubana v. Nwamitwa demonstrates that constitutional institutions can recognize communities' capacity to develop customary law while protecting equality. Postcolonial courts therefore need not reproduce inherited hierarchies uniformly. Judicial authority may facilitate legal transformation when it respects living customary practices rather than treating historical classifications as permanently authoritative (Busey, 2025; Rodriguez-Operana, 2026).

The findings signify that political independence and institutional decolonization represent distinct legal processes. Sovereign governments may replace colonial political authorities while retaining judicial structures, legal classifications, and administrative procedures developed under foreign rule. These institutional continuities can shape contemporary legal authority without requiring explicit preservation of colonial legislation. Postcolonial transformation must consequently be evaluated through institutional practice rather than political independence alone (Chidwick, 2024; Sampantamit, 2025).

The comparative evidence also reveals an enduring tension between legal recognition and interpretive power. State institutions may acknowledge customary law while controlling the conditions under which it becomes enforceable. Community participation may remain limited when judicial authorities prioritize codified interpretations over contemporary normative practices. Such arrangements demonstrate how recognition can coexist with institutional subordination, particularly where historically constructed classifications remain authoritative.

The findings further indicate that customary law should not be understood as an unchanging collection of ancestral rules. Communities continuously interpret and adapt normative practices in response to social, economic, and constitutional developments. Official legal systems risk reproducing colonial assumptions when they demand rigid historical consistency as evidence of authenticity. Recognition of living customary law consequently requires attention to contemporary community practices (Harpine, 2024; Parker, 2024).

The research also highlights the importance of distinguishing institutional autonomy from unrestricted normative authority. Community-based legal systems may provide culturally legitimate mechanisms for resolving disputes, yet particular practices can conflict with equality, dignity, or procedural fairness. Meaningful pluralism therefore requires negotiated relationships between community authority and constitutional protection. Neither automatic state supremacy nor unconditional customary autonomy provides a sufficient normative solution.

The theoretical implications concern reconsidering legal pluralism as a problem of institutional power rather than merely normative coexistence. Multiple legal traditions may operate within one society without possessing comparable recognition or authority. A structural understanding of pluralism therefore requires examining how legal institutions distribute interpretive competence, jurisdictional responsibilities, and procedural opportunities among different normative communities (Hollenbeck, 2024; Walker, 2022).

The constitutional implications involve improving recognition frameworks while preserving fundamental rights. Conditional recognition should rely on transparent criteria and accessible procedures rather than discretionary administrative classifications. Courts should distinguish historically imposed versions of customary law from contemporary community practices. Constitutional supervision should address identifiable rights violations without unnecessarily replacing legitimate community decision-making with exclusively state-defined interpretations.

The practical implications are particularly relevant to Indigenous territorial rights, religious personal law, inheritance, and customary dispute resolution. Indonesia's customary forest litigation demonstrates how recognition procedures influence community access to legally protected resources. South African succession jurisprudence illustrates the importance of addressing discrimination within inherited normative classifications. Effective reform requires attention to both procedural accessibility and substantive protection (Azzam, 2026; Muir, 2023).

The policy implications emphasize participatory legal reform and institutional accountability. Governments should involve affected communities when reviewing customary recognition requirements, jurisdictional arrangements, and dispute resolution procedures. Legal reforms should establish accessible remedies, transparent administrative decisions, and mechanisms for resolving conflicts between normative authorities. Institutional change becomes more defensible when communities participate meaningfully and constitutional safeguards remain enforceable.

The persistence of colonial legal structures partly reflects the institutional advantages of retaining established judicial systems after independence. Newly independent states frequently confronted administrative demands requiring functioning courts, legislation, and governance mechanisms. Existing legal institutions offered organizational continuity, although their inherited classifications could preserve unequal relationships. Institutional stability therefore sometimes developed alongside incomplete transformation of colonial legal authority.

The findings also reflect the historical use of legal classification as an instrument of colonial administration. Distinguishing customary, religious, and state law enabled colonial authorities to regulate populations through differentiated institutional arrangements. These classifications sometimes transformed flexible community practices into officially recognized rules. Their continued use can reproduce historical inequalities when contemporary institutions treat administrative categories as definitive descriptions of normative traditions (Malka, 2023; Vinokur, 2024).

Postcolonial state-building provides another explanation for continuing institutional centralization. Governments may prioritize national integration, judicial consistency, and administrative coordination when designing legal institutions. These objectives can justify

particular regulatory arrangements without necessarily reproducing colonial intentions. Their implementation may nevertheless constrain community autonomy when recognition procedures remain inaccessible or institutional discretion operates without meaningful accountability.

Constitutional rights protection additionally explains why formal recognition does not always produce unrestricted customary authority. Legal systems must address conflicts involving equality, inheritance, representation, and individual dignity. South Africa's Bhe judgment illustrates judicial intervention against discriminatory succession arrangements, while Shilubana recognizes community-driven normative development. These decisions demonstrate that constitutional transformation can require both institutional correction and respect for legitimate customary authority.

The findings support developing a structural framework for evaluating postcolonial legal pluralism through historical continuity, normative recognition, institutional autonomy, community participation, and constitutional accountability. Comparative assessments should distinguish inherited colonial restrictions from contemporary regulatory decisions. This approach would prevent historical explanations from becoming overly deterministic while identifying institutional mechanisms requiring meaningful reform.

Future empirical research should examine how recognition procedures influence access to justice among customary, Indigenous, and religious communities. Interviews with community representatives, judges, legal practitioners, and administrative officials could reveal differences between formal legal provisions and everyday institutional experiences. Such investigations would provide evidence concerning procedural barriers, interpretive authority, and the practical consequences of institutional recognition.

Additional comparative investigations should examine postcolonial jurisdictions beyond Indonesia, India, and South Africa. Research involving African, Asian, and Pacific legal systems could clarify how different colonial trajectories influence institutional development. Longitudinal analysis of legislation, judicial decisions, and administrative implementation would help distinguish historical continuity from reforms introduced after independence and assess their consequences.

The proposed research agenda ultimately emphasizes institutional transformation rather than symbolic recognition alone. Meaningful legal pluralism requires arrangements that respect community-based normative authority while maintaining equality, judicial accountability, and fundamental rights. Future legal reforms should strengthen participatory interpretation, accessible recognition procedures, and institutional coordination. Sustainable postcolonial legal development depends on transforming unequal legal relationships without replacing historical subordination with new forms of unaccountable authority.

CONCLUSION

The central finding of this study is that colonial legal legacies persist less through the unchanged survival of colonial statutes than through institutional arrangements governing recognition, interpretation, and enforcement of nonstate normative orders. Comparative analysis of Indonesia, India, and South Africa reveals that constitutional acknowledgment of customary, religious, and Indigenous traditions can coexist with state-controlled classifications and unequal decision-making authority. Indonesia's customary forest jurisprudence illustrates how judicial correction of restrictive categories may leave administrative recognition requirements intact. Indian personal law doctrine exposes enduring tensions between differentiated legal regimes and constitutional scrutiny, while South African decisions demonstrate both the rejection of discriminatory inherited rules and recognition of living customary law. These contrasts suggest that

substantive pluralism depends not simply on the presence of multiple legal traditions, but on who can define, develop, and invoke them within constitutional institutions.

The study contributes a structural analytical framework connecting historical legal classification, conditional recognition, jurisdictional hierarchy, community participation, and constitutional safeguards. Its principal contribution is conceptual and methodological: it differentiates documented colonial continuity from restrictions introduced or maintained through postindependence political choices. This distinction avoids treating every contemporary barrier as an inevitable colonial inheritance. The comparative approach also separates formal recognition from effective normative autonomy and examines judicial oversight as a potentially protective as well as constraining institution. Legal pluralism should therefore be assessed through the distribution of interpretive authority, the accessibility of recognition procedures, and the ability of communities to adapt their normative practices. The framework offers a basis for evaluating reforms without assuming that community autonomy overrides equality, due process, or individual rights.

The research is limited by its qualitative documentary design, selective jurisdictional coverage, and reliance on prominent constitutional decisions rather than a systematic sample of institutional practice. Historical archives are uneven, and court judgments cannot establish how customary or religious norms operate in everyday disputes. The analysis consequently cannot measure the prevalence of structural barriers, attribute their effects exclusively to colonial rule, or establish whether particular reforms improve access to justice. Future research should combine archival process tracing with interviews involving community representatives, judges, lawyers, and administrative officials. Comparative longitudinal studies could examine recognition delays, participation in legal interpretation, dispute outcomes, and implementation of judicial remedies. Greater attention to gender, class, and inequalities within communities would also test whether reforms distribute authority fairly. Such evidence could inform institutional arrangements that recognize normative diversity while safeguarding constitutional rights and meaningful participation.

DECLARATION OF AI AND AI ASSISTED TECHNOLOGIES IN THE WRITING PROCESS

During the preparation of this work the author(s) used Google Assisted to assist in improving grammar, language quality, and overall readability of the text. After using this tool/service, the author(s) reviewed and edited the content as needed and take(s) full responsibility for the content of the publication.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

Author 2: Conceptualization; Data curation; In-vestigation.

Author 3: Data curation; Investigation.

DECLARATION OF COMPETING INTEREST

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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