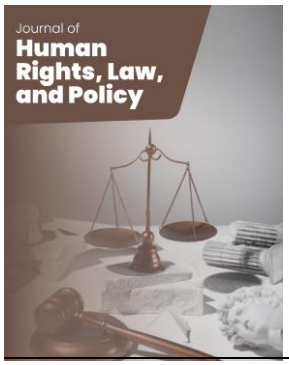

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Decolonizing Human Rights Law: A Qualitative Study of Indigenous Legal Perspectives

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ABSTRACT

This study aims to explore how indigenous legal perspectives critique, reinterpret, and resist the dominant framework of universal human rights law, with a focus on identifying culturally grounded conceptions of justice, law, and legal authority. Using a qualitative research design grounded in interpretivist epistemology, data were collected through semi-structured interviews with 21 participants residing in Tehran, including legal scholars, community elders, cultural advocates, and human rights practitioners with indigenous heritage or expertise. Participants were selected through purposive sampling, and data collection continued until theoretical saturation was achieved. All interviews were transcribed and analyzed thematically using NVivo software, following a coding process that included open, axial, and selective coding to identify key categories, subthemes, and conceptual patterns within the data. The analysis revealed four overarching themes: (1) critique of the universal human rights framework, including perceived cultural incompatibility, epistemological colonialism, and legal exclusion; (2) indigenous conceptions of justice centered on relational accountability, restorative practices, and spiritual cosmology; (3) the limits of current legal pluralism, characterized by tokenistic recognition and structural subordination of indigenous law; and (4) decolonial strategies such as the revitalization of customary law, community-based legal education, and intercultural legal dialogue. Participants emphasized the need for meaningful recognition of indigenous legal systems and called for a transformation of legal norms to accommodate multiple epistemologies. The study underscores the epistemic and structural limitations of dominant human rights discourses in addressing indigenous legal realities. It advocates for a paradigm shift toward genuine legal pluralism and decolonial engagement that affirms indigenous sovereignty, legal authority, and cultural specificity in shaping justice.

Keywords: *Decolonization; Indigenous Law; Human Rights; Legal Pluralism; Epistemic Injustice; Customary Law; Qualitative Research*

Introduction

The universalist framework of international human rights law has long been promoted as a foundational pillar for global justice, human dignity, and the rule of law. Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, the dominant discourse in international legal systems has advanced a largely Western conceptualization of human rights, emphasizing individual autonomy, civil and political liberties, and formal equality before the law (Donnelly, 2013). However, this universalist approach has increasingly come under scrutiny, particularly for its limited cultural pluralism and tendency to marginalize non-Western and indigenous legal traditions (Mutua, 2001). Scholars and activists alike have criticized the structural asymmetries embedded in the global human

rights regime, which often function as a vehicle for normative imperialism rather than a truly inclusive and emancipatory legal paradigm (Anghie, 2007; Tully, 2008).

At the heart of this critique lies the concept of decolonization—both as a political process and an epistemic imperative. Decolonizing human rights law involves challenging the assumptions, institutions, and knowledge systems that underpin its current architecture and re-centering alternative legal traditions that have been historically dismissed or subordinated. For many indigenous communities around the world, law is not merely a set of codified rules but a living, relational, and land-based practice deeply embedded in spiritual, social, and ecological contexts (Borrows, 2010). These conceptions often conflict with the human rights system's reliance on positivist legalism, universal categorizations, and state-centric enforcement mechanisms (Anaya, 2009). The persistence of colonial legal structures in postcolonial states further complicates this relationship, as indigenous legal orders continue to be marginalized or tokenistically recognized within plural legal systems (Charters & Stavenhagen, 2009).

Indigenous legal systems are diverse, context-specific, and rooted in long-standing traditions of community governance, cosmology, and restorative justice. As such, their marginalization within international legal discourse constitutes not only a political exclusion but also an epistemological injustice (Fricker, 2007). Legal scholars argue that the human rights framework must evolve beyond a one-size-fits-all model and engage in genuine intercultural dialogue to recognize the legitimacy of multiple legal ontologies (Coulthard, 2014; Santos, 2014). While international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) have symbolically acknowledged indigenous rights, critics contend that these frameworks still operate within a colonial logic that subordinates indigenous law to the dominant state legal system (Niezen, 2003).

The process of decolonizing human rights law thus requires a dual focus: interrogating the colonial underpinnings of existing legal norms and affirming the agency and authority of indigenous communities to define justice on their own terms. This necessitates a paradigm shift in both legal theory and practice—one that is open to relational ontologies, ecological jurisprudence, and community-based epistemologies. As Alfred (2005) notes, indigenous resistance to legal assimilation is not simply a matter of cultural preservation but a fundamental reassertion of sovereignty and self-determination. Similarly, legal pluralism must be more than the coexistence of multiple legal systems within a state; it must entail structural reforms that allow for meaningful recognition and integration of indigenous legal orders into governance and adjudication processes (Merry, 1988).

The tension between indigenous legal traditions and human rights law is particularly evident in settler-colonial and postcolonial contexts, where legal pluralism is often implemented in ways that re-inscribe colonial hierarchies. In countries such as Canada, Australia, and New Zealand, indigenous legal systems are often treated as secondary or symbolic, lacking formal jurisdiction or enforceability unless mediated through state apparatuses (Povinelli, 2002). In other cases, such as Latin America, recent constitutional reforms have granted formal recognition to indigenous law, yet implementation remains limited by political resistance, institutional fragmentation, and legal ambiguity (Yrigoyen Fajardo, 2007). These dynamics reveal the gap between normative commitments to pluralism and the actual practices of legal exclusion and assimilation.

In addition to structural limitations, the language and logic of human rights law itself pose epistemological barriers to the recognition of indigenous worldviews. The dominant legal discourse privileges a rationalist, secular, and individualistic model of rights, which often conflicts with indigenous conceptions of relationality, spirituality, and collective obligations (Tully, 1995; Dudgeon et al., 2010). For example, many indigenous legal traditions prioritize balance, reciprocity, and responsibility over adversarial litigation and punitive sanctions. Furthermore, the Western

emphasis on codification and written documentation fails to account for the oral, experiential, and performative nature of indigenous legal knowledge (Napoleon, 2007). As such, engaging with indigenous perspectives requires not only translation of concepts but also transformation of legal norms and practices.

In recent years, indigenous scholars and activists have advanced the notion of "legal resurgence" to describe the revitalization of traditional legal practices, institutions, and pedagogies in defiance of colonial legal regimes (Borrows, 2016; Simpson, 2011). These efforts include the re-establishment of customary courts, community-based dispute resolution, and the integration of elders and knowledge keepers into legal decision-making. Such practices serve not only as modes of resistance but also as pathways toward decolonial futures grounded in indigenous law and governance. Importantly, these initiatives highlight the agency of indigenous communities in shaping legal discourses rather than merely resisting external impositions.

Despite these developments, much of the existing literature on indigenous law remains concentrated in specific geopolitical regions, particularly Anglo-settler states. There is a relative paucity of research exploring indigenous legal perspectives in other socio-political contexts, including urban and multicultural settings where indigenous individuals and traditions may coexist with state legal systems in complex ways. Moreover, qualitative research capturing the subjective experiences and interpretations of indigenous actors is essential for understanding the lived realities of legal pluralism and the transformative potential of decolonizing legal frameworks (Smith, 1999).

In Iran, where diverse ethnic and cultural communities possess distinct customary legal systems—such as those among Kurdish, Lur, Baloch, and Turkmen populations—the relationship between indigenous legal traditions and state law remains understudied. While Iran's centralized legal system formally emphasizes Islamic jurisprudence, customary law continues to play a role in informal community governance, conflict resolution, and ethical norm-setting (Goodarzi, 2014). In urban settings like Tehran, indigenous knowledge holders, scholars, and cultural advocates navigate a landscape shaped by both state control and plural cultural traditions. Understanding their perspectives offers valuable insight into how decolonial legal thinking can emerge in non-Western and post-revolutionary contexts.

This study contributes to the growing body of literature on legal decolonization by exploring the ways in which indigenous legal perspectives challenge, reinterpret, and potentially transform dominant human rights discourses. Through in-depth qualitative interviews with 21 participants residing in Tehran—including legal scholars, cultural practitioners, community elders, and rights advocates—this research examines how indigenous frameworks conceptualize justice, rights, law, and authority. The central research questions guiding the study include: (1) How do participants articulate the limitations of universal human rights frameworks in addressing indigenous concerns? (2) What alternative legal principles and practices emerge from indigenous epistemologies? (3) How do participants envision pathways for legal recognition, autonomy, and intercultural dialogue?

By centering the voices of indigenous legal actors and knowledge holders, this study seeks to illuminate the epistemological and normative dimensions of decolonizing human rights law. It underscores the need to move beyond symbolic inclusion and toward substantive legal pluralism that affirms the legitimacy, autonomy, and relational logic of indigenous legal systems. Ultimately, the findings aim to inform scholarly, legal, and policy efforts to create a more just and culturally responsive human rights regime.

Methods and Materials

This study employed a qualitative research design to explore the lived experiences and legal perspectives of individuals familiar with indigenous worldviews and their implications for human rights law. The approach was rooted in interpretivist epistemology, emphasizing the subjective meanings that participants assign to legal norms, colonial legacies, and cultural sovereignty. The research sought to elicit nuanced insights into how indigenous frameworks conceptualize rights, justice, and legal legitimacy, especially in contrast to dominant state-centric and Euro-American human rights paradigms. Participants were selected through purposive sampling to ensure maximum relevance to the research objectives. A total of 21 participants, all residing in Tehran but with professional or academic backgrounds in indigenous legal studies, anthropology, or human rights law, were included. The selection process continued until theoretical saturation was reached, at which point no new concepts or categories were emerging from the data.

Data were collected through semi-structured interviews, allowing for both guided exploration and emergent dialogue. An interview protocol was developed to focus on participants' interpretations of indigenous legal norms, critiques of human rights universality, experiences with cultural misrecognition, and perceptions of legal pluralism. Interviews were conducted in-person in private settings to ensure confidentiality and were audio-recorded with informed consent. Each session lasted approximately 60 to 90 minutes. Follow-up questions and clarifications were posed where necessary to deepen the understanding of complex ideas. Ethical approval was secured from the appropriate institutional review board, and all participants were assured of voluntary participation, anonymity, and the right to withdraw at any time.

The recorded interviews were transcribed verbatim and analyzed using thematic content analysis. NVivo qualitative data analysis software was employed to manage, code, and organize the data systematically. Open coding was first applied to identify discrete concepts and expressions. These were then grouped into axial codes that reflected broader thematic patterns related to indigenous legal epistemologies and critiques of human rights law. Finally, selective coding was used to integrate these categories into a cohesive interpretive framework that addressed the central research question. Constant comparative methods were employed throughout the analysis to refine emerging themes, ensure internal consistency, and preserve the depth and contextual integrity of participants’ narratives.

Findings and Results

Category 1: Critique of Universal Human Rights Framework

Incompatibility with Cultural Contexts:

Participants consistently emphasized the lack of congruence between universal human rights frameworks and their indigenous cultural values. Many viewed the global human rights discourse as one that marginalizes indigenous systems of belief. One interviewee stated, “These rights speak to the Western mind, not to our ways of living with the land and each other.” The ethnocentric lens through which rights are defined was seen as dismissive of spiritual, communal, and relational worldviews embedded in indigenous traditions.

Epistemological Colonialism:

Another dominant theme was the imposition of Western legal epistemology, often perceived as a form of intellectual colonization. Participants highlighted the dominance of written over oral traditions, legal positivism over cosmological law, and rationality over embodied knowledge. As one respondent put it, “Our laws are not in books.

They're in the mountains, the rivers, and our elders' voices." This epistemic hierarchy perpetuates structural injustice by validating only certain modes of knowledge production.

Rights Without Duties:

Participants criticized the human rights model for privileging individual entitlements while neglecting corresponding communal obligations. Many argued that in indigenous systems, rights are inseparable from responsibilities to others and to the environment. A participant reflected, "In our community, you don't have rights unless you're taking care of people. Rights are earned through responsibility." The Western model's emphasis on autonomy was viewed as socially fragmenting.

Ignorance of Land-Based Worldviews:

There was also strong sentiment that human rights law ignores the spiritual and relational connections indigenous peoples maintain with land. Participants described the legal abstraction of territory as erasing the sacredness and ecological significance of their homelands. "When they draw borders and pass laws, they don't see the ancestors who live in those trees," remarked one interviewee.

Marginalization through Legal Terminology:

The use of formal, legalistic language was perceived as exclusionary and alienating. Several participants described feeling powerless in legal forums due to the use of inaccessible terminology. "It's like a coded language that keeps us out of decisions that affect us," one respondent noted. This linguistic gatekeeping was seen as a subtle form of structural violence.

Category 2: Indigenous Conceptions of Justice

Restorative Justice Emphasis:

Participants emphasized that indigenous systems prioritize healing, restoration, and social harmony over punishment. Justice is not merely retributive but restorative, aimed at repairing damaged relationships. One participant shared, "We sit together in a circle, not to find someone guilty, but to find a way to heal." This process involves dialogue, empathy, and reintegration of the wrongdoer into the community.

Spiritual and Cosmological Dimensions:

Justice, in many indigenous frameworks, is grounded in spiritual principles and cosmological understandings. Participants spoke of legal norms that align with the cycles of nature, sacred teachings, and the wisdom of ancestors. As one elder noted, "Justice is not a courtroom matter; it's about living in balance with the spirit world." These dimensions are often absent from state-based legal models.

Relational Accountability:

The concept of responsibility to others was deeply ingrained in participants' legal worldviews. Accountability was framed not as punitive but as relational — rooted in kinship ties and communal well-being. A participant explained, "We answer to the community, not just to a judge. Our actions affect everyone." This interdependent perspective challenges individualistic notions of justice.

Non-Adversarial Dispute Resolution:

Several participants emphasized non-confrontational methods for resolving conflict, such as storytelling circles, elder-led mediation, and consensus-based dialogues. These practices foster understanding rather than competition. "You can't fight your cousin in court and expect to share food with them after," remarked one respondent, underscoring the value of social cohesion.

Intergenerational Knowledge Transmission:

Legal knowledge was described as something passed down through generations via storytelling, ceremony, and direct observation. Participants lamented the loss of these methods under modern legal pressures. “My grandmother taught me law when we gathered herbs. That was school for us,” said one interviewee, highlighting the informal yet powerful pedagogical traditions in indigenous cultures.

Justice as Balance:

Justice was also described in metaphors of balance and harmony. Rather than strict legal dichotomies of guilt and innocence, participants focused on restoring equilibrium within relationships and the environment. “When something breaks, we don’t throw it away. We mend it so it fits again,” said one participant.

Category 3: Legal Pluralism and Recognition

Institutional Blindness to Plural Systems:

Many participants reported frustration with state systems that ignore or dismiss the coexistence of indigenous legal orders. They described a legal regime that insists on uniformity, often invalidating indigenous systems as informal or illegitimate. “They only recognize their laws, not ours — as if we’re invisible,” one interviewee commented.

Tokenistic Inclusion Practices:

Several participants noted that while some institutions superficially acknowledge indigenous rights, their involvement often lacks substance. Representation was described as ceremonial rather than decision-making. “They ask for our songs at the opening of a conference, but not our opinions when policies are made,” remarked a participant. This performative inclusion fails to address power imbalances.

Calls for Self-Determination:

There was a strong call for legal autonomy and the right to self-govern according to indigenous principles. Participants expressed a desire for formal recognition of indigenous jurisdictions and governance. “We don’t want to be included in their laws; we want our laws respected,” one participant asserted.

Conflict between Statutory and Customary Law:

Participants described tensions arising when state laws contradict indigenous customs. These conflicts often lead to confusion or punitive consequences for adhering to traditional practices. “What’s just in our village can be illegal in the city,” explained one participant, illustrating the disconnect between overlapping systems.

Jurisdictional Overlap and Negotiation:

Despite tensions, some participants spoke of emerging practices of co-governance and legal negotiation between indigenous and state institutions. These models, though limited, were seen as potential pathways for equitable legal pluralism. “When we sit together to make rules, there’s more peace,” said one interviewee, referring to a collaborative land-use agreement.

Category 4: Decolonial Legal Strategies and Resistance

Revitalization of Customary Practices:

Participants highlighted the importance of reviving traditional legal practices, languages, and ceremonies as acts of legal resistance and cultural survival. “Every time we hold a traditional council, we remind the world that our law lives,” shared one elder. This resurgence was framed as a counter-colonial assertion of sovereignty.

Legal Activism and Advocacy:

Several participants were involved in legal activism, including organizing indigenous law clinics and litigating against state violations of cultural rights. They emphasized the importance of using the legal system tactically to

advance indigenous interests. “We know their laws better than they do — that’s how we protect ours,” stated a young activist.

Community-Based Legal Education:

Education was seen as a critical strategy for ensuring the survival of indigenous legal knowledge. Participants described community-led initiatives to teach youth about their own legal traditions. “Our schools must teach our laws, not just the colonizer’s laws,” one teacher explained.

Strategic Engagement with State Systems:

While critical of state institutions, participants also saw value in selective engagement. Legal hybridization, participation in advisory councils, and lobbying were cited as practical ways to influence outcomes. “Sometimes we have to speak both languages — theirs and ours,” said one participant.

Role of Elders and Knowledge Holders:

Elders were revered as custodians of legal wisdom and were often the final word in community disputes. Their interpretive authority was based on lived experience and spiritual insight. “You don’t need a law degree to know what’s just — you need a life lived in truth,” an elder shared.

Cultural Resilience as Legal Power:

Cultural continuity itself was framed as a form of legal resilience. Even under external pressure, participants noted that customs adapt and endure. “They tried to erase us, but our songs still carry law,” one respondent said, invoking the connection between cultural expression and legal identity.

Intercultural Legal Dialogues:

Finally, participants advocated for mutual legal translation and dialogue between indigenous and non-indigenous legal systems. This was seen as a means of achieving respectful coexistence. “We don’t want dominance, we want dialogue,” said one interviewee. Such intercultural negotiation was framed not as assimilation, but as mutual recognition.

Discussion and Conclusion

The findings of this qualitative study underscore the complex and often contentious relationship between indigenous legal perspectives and the universalist framework of human rights law. Participants articulated a shared critique of the dominant human rights paradigm as conceptually narrow, epistemologically colonial, and culturally dissonant with indigenous understandings of justice, law, and relational responsibility. At the same time, the data revealed rich insights into the legal philosophies embedded in indigenous worldviews—emphasizing restorative justice, spiritual cosmology, collective obligation, and community-based legal authority. These results highlight both the limitations of current legal pluralism models and the need for deeper engagement with indigenous legal epistemologies in the pursuit of decolonizing global human rights regimes.

One of the central findings was the widespread perception among participants that international human rights law fails to adequately account for cultural specificity and indigenous conceptions of justice. The subtheme “Incompatibility with Cultural Contexts” captured participants’ experiences of exclusion from legal systems that prioritize individualistic, secular, and codified forms of legal expression. This aligns with previous critiques asserting that the human rights framework, though outwardly universal, is deeply rooted in Western Enlightenment traditions that emphasize autonomy and reason over collective and relational ethics (Mutua, 2001; Merry, 2006). Several

scholars have warned that this universalism often functions as a mask for cultural imperialism, undermining the legitimacy of alternative legal worldviews (Donnelly, 2013; Anaya, 2009).

The theme of “Epistemological Colonialism” further elaborates on this critique, with participants highlighting the dominance of state-centric and positivist legal logic that marginalizes oral, spiritual, and relational forms of knowledge. This finding resonates with the work of Santos (2014), who describes this dynamic as "epistemicide"—the erasure of subaltern knowledge systems through institutional and legal suppression. Similarly, Fricker’s (2007) concept of epistemic injustice is useful in interpreting participants’ testimonies about how their lived legal knowledge is devalued in formal legal contexts. Such epistemic hierarchies not only produce knowledge asymmetries but also maintain structural inequalities in legal recognition and authority.

Another key insight concerns the indigenous critique of rights discourses that separate entitlements from responsibilities. Participants in this study emphasized that in their legal traditions, rights are earned and upheld through duties to the community, ancestors, and environment. This is consistent with Tully’s (2008) argument that indigenous political thought often rests on a reciprocal conception of justice, where responsibility and accountability are central. The modern rights-based approach, in contrast, tends to isolate individuals from their social obligations, thereby eroding communal cohesion. Alfred (2005) similarly observes that indigenous governance systems are rooted in responsibilities rather than rights, challenging the very foundation of liberal legal theory.

The study also revealed that land is not merely a resource but a source of legal and spiritual knowledge. Participants expressed frustration with the abstraction of territory in human rights law, which fails to reflect the deeply relational and sacred connection indigenous peoples maintain with land. This perspective aligns with the work of Borrows (2010), who argues that indigenous law is often “land-based,” emerging from ecological relationships and spiritual geographies. The failure of dominant legal systems to recognize these ontologies contributes to dispossession and environmental degradation, reinforcing colonial patterns of land use and control (Coulthard, 2014).

Themes related to indigenous conceptions of justice also demonstrated a sharp contrast with adversarial and punitive models dominant in formal legal systems. Participants described justice as a process of restoring balance, guided by community consensus, elder wisdom, and spiritual principles. This echoes the restorative justice literature, which has long documented the success of non-adversarial legal mechanisms in indigenous contexts (Zehr, 2002; Llewellyn & Howse, 1999). The relational, cyclical, and dialogical approaches described by participants in this study further support Simpson’s (2011) notion of “resurgence,” whereby indigenous communities are reclaiming and reactivating legal practices rooted in tradition rather than assimilation.

Legal pluralism, as discussed by participants, was widely perceived as superficial or tokenistic in its current form. The subtheme “Tokenistic Inclusion Practices” revealed the frustration many felt toward symbolic gestures of recognition that do not translate into structural power or jurisdictional authority. This finding is echoed by Povinelli (2002), who critiques multicultural legal systems for offering recognition without redistribution or real autonomy. Similarly, participants’ calls for “Self-Determination” reflect a deeper desire for legal sovereignty and the ability to govern according to customary norms—a position supported by international legal instruments like UNDRIP, but rarely implemented in practice (Charters & Stavenhagen, 2009).

The tension between statutory and customary law was a recurring concern, particularly in urban contexts like Tehran, where participants must navigate multiple legal regimes. This legal pluralism was not inherently negative; some participants acknowledged opportunities for negotiation and hybridization. However, the asymmetry of legal

power remains a barrier. These findings align with studies by Yrigoyen Fajardo (2007), who notes that while Latin American states have made strides in constitutional pluralism, implementation remains inconsistent due to entrenched legal hierarchies and state resistance.

Importantly, participants also offered pathways forward, demonstrating that decolonization is not merely a critique but a constructive project. The revitalization of customary practices, the resurgence of indigenous languages, and the expansion of legal education rooted in local epistemologies were highlighted as practical strategies of resistance and renewal. These strategies resonate with the concept of "legal resurgence" advanced by Borrows (2016) and Simpson (2011), wherein indigenous law is not only preserved but dynamically rearticulated to address contemporary challenges.

The study's participants also engaged in strategic advocacy within formal legal systems, indicating a pragmatic approach to decolonization. This dual engagement—simultaneously resisting and navigating state law—echoes Tully's (1995) call for "intercultural constitutionalism," wherein indigenous and non-indigenous legal systems engage in dialogic negotiation rather than assimilation or subordination. Participants emphasized the importance of elder authority and oral knowledge as legitimate sources of law, affirming Napoleon's (2007) insistence on methodological pluralism in legal research and practice.

Finally, the desire for "Intercultural Legal Dialogues" reflects an aspirational vision of coexistence based on mutual respect and genuine negotiation. Rather than seeking to replace the human rights framework, many participants envisioned a transformed system that accommodates diverse legal ontologies. This vision aligns with Santos' (2014) proposal for a "post-abyssal" legal order—one that overcomes the colonial divide between the visible and invisible, the legal and the illegal, the modern and the traditional.

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Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adheried in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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