

Characters of Nepali Society for Federal Government in Nepal

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Abstract

Nepal is in the making of history. A Unitary and Monarchical state has been already declared as Federal and Republican by the third amendment of Interim Constitution of Nepal, 2007. Further Nepal is having first ever popular constitution through a Constituent Assembly, elected in 2008. Though there is no debate on the form of the state or government, as major political parties agreed on federal form of the government [including UCPN (Maoist), CPN (UML), Nepali congress and MJF], yet it is a big debate what could be the basis of federation. As Nepal is in the process of devolution, always it is not easy to set out the basis of drawing the boundary. Nepal is having multicultural, multilingual, multi ethnic and diverse geographical country though no dominating cultural lingual and ethnic unit in existing. This character led us in complex situation. We need to analyze the character of Nepali society and the concept of Federalism and its character. It is further necessary to localize and develop international experience while pursuing the concept from international scenario. In this piece of work, authors have tried to explore the some basis of suitable structure of for the Federal Structure of Nepal.

FEDERALISM: HISTORICAL DEVELOPMENT

Ancient Period

Though federalism is popular as a government structure in modern time, its inception as a political system has long back to ancient period. It was the Israel where this concept came into existence, around 32 century ago.(Elzar,1995) The confederations of the Bedouin tribes and the Native confederacies in North America are more examples of ancient time. The early leagues of the Hellenic city-states in what is today Greece and Asia Minor were designed to aggregate communal democracies to foster trade and secure defense. The Roman Republic established asymmetrical arrangements whereby Rome became the federate power and weaker cities were attached to it as federal partners(Watts,2009).

Medieval Period

Western Europe witnessed some loose confederation in Germany, Italy and Switzerland, especially for the purpose of defense and trade. The Swiss confederation established in 1291 lasted despite some disruptions until 1798 and was renewed 1815–47. In the late sixteenth century an independent confederation, the United Provinces of the Netherlands, was established during a revolt against Spain. Both the Swiss and Netherlands confederations were affected by the Reformation, which sharpened internal divisions.

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As a political theory, the term federalism first used by Althusius (1557-1630), often regarded as the father of modern federalist thought. He argued in *Politica Methodice Digesta* (Althusius 1603) for autonomy of his city Emden, both against its Lutheran provincial Lord and against the Catholic Emperor. Althusius developed a non-sectarian, non-religious contractualist political theory of federations that prohibited state intervention even for purposes of promoting the right faith. Accommodation of dissent and diversity prevailed over any interest in subordinating political powers to religion or vice versa.

American Revolution and onward

USA is first modern country that adopted the federal concept. Firstly they, the newly independent states, established a confederation in 1781 and turned into federation in 1789, following the Philadelphia Convention of 1787. Switzerland, after a brief civil war, transformed its confederation into a federation in 1848. Canada became the third modern federation in 1867. In 1871 the North German Federation of 1867 was expanded to include south German states. The world witnessed more federations in 20th century. Some of large countries like Australia, India, Brazil, and Argentina adopted federal system of government during this period. The wave of federalism caught small countries like Belgium.....etc. as well.

There is another wave of federalism in 21st century. Some unitary countries like Sri Lanka, the Philippines and of course Nepal is leaning towards this. In Italy too there has been an evolution towards the adoption of a federal system. The United Kingdom has adopted new devolutionary arrangements for Scotland, Wales and Northern Ireland.

Emergence of European Union as a federation

European Union will have its first Presidential Election in 2010. It will be a perfect federation by that time. Yet, various character of the Union exhibits that is a federation. It's a new variants in the application of the federal idea. European Union, where individual federations, unions and unitary states have "pooled their sovereignty" (as they express it) in a hybrid structure, has come to involve elements of confederation and federation. Progress towards greater integration in what has become the European Union has heightened interest in federal ideas.

CHARACTERS OF FEDERALISM: ESSENTIALS OR PRE REQUISITES OF FEDERAL STATE

Federalism: The concept

Federalism is a concept which defines the system of state that divided into centre and local units. Various scholars have tried to define this concept in different way but the thrust of those attempts lies on strengthening and securing the role of the communities in governance, in particular at political level. Federalism is an appropriate means of welding potentially incompatible communities into a nation state. (Wheare, 1964, 11). It is the theory or advocacy of federal political orders, where final authority is divided between sub-units and a center (Stanford Encyclopedia on Philosophy on Federalism, 2003). In federalism, unlike a unitary state, sovereignty is constitutionally split between at least two territorial levels so that units at each level have final authority and can act independently of the others in some area. Generally, federations broadly reflect the ethnic configuration of their constituent populations. They must mirror the sense of community that exists in the lived experience of their citizens (Ian Copland and John Rickard, 1999).

Richard Laming is with the conclusion that the most important aspect of a federal system is that it recognizes that there are different types of political issues which need different types of institution to deal with them (Laming, 2001). Federalism is not an artificial construct, as such; it is naturally recurring paradigm that has its roots in the face-to-face negotiation over territory of neighboring communities. The

essence of Federalism lies not in the constitutional or institutional structure but in the society itself. It is a logical system of a government for diverse society (Ian Copland and John Rickard, 1999).

Federalism means an association of states which has been formed for certain common purposes, but in which the member states retain a large measure of their original independence. It defers about the particular form or type of association of states which they think it proper to describe as a federal government. In federalism, there are two forms of government: first general and second regional. Both the general and regional governments directly operate upon the people; each citizen is subject to two governments. By the federal principle, we understand the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent.

The generally common structural characteristics of federations as a specific form of federal political system are the following:

- At least two orders of government, one for the whole federation and the other for the regional units, each acting directly on its citizens;
- A formal constitutional distribution of legislative and executive authority and allocation of revenue resources between the two orders of government ensuring some areas of genuine autonomy for each order;
- Provision for the designated representation of distinct regional views within the federal policy-making institutions, usually provided by the particular form of the federal second chamber;
- A supreme written constitution not unilaterally amendable and requiring the consent for amendments of a significant proportion of the constituent units;
- An umpire (in the form of courts, provision for referendums, or an upper house with special powers); and
- Processes and institutions to facilitate intergovernmental collaboration for those areas where governmental responsibilities are shared or inevitably overlap.

Federalism: The Variations

While certain structural features and political processes common to most federations can be identified, federations have exhibited many variations in the application of the federal idea. There is no single "ideal" or "pure" form of federation. Among the variations, as listed by Watts, to meet particular circumstances that can be identified among federations are those in:

- The degree and distribution of cultural or national diversity that they attempt to reconcile;
- Their creation by aggregation of constituent units, devolution to constituent units, or both processes;
- The number, relative size and symmetry or asymmetry of the constituent units;
- The distribution of legislative and administrative responsibility among governments;
- The allocation of taxing powers and financial resources;
- The roles of federal and constituent-unit governments in the conduct of international relations;
- The character and composition of their central federative institutions;
- The processes and institutions for resolving conflicts and facilitating collaboration between interdependent governments;
- The ratification of constitutional amendments by regional legislatures or referendums;
- The degree of political centralization or non-centralization and the degree of economic integration.

FEDERALISM: THE MODELS

United States of America (1789)

The United States of America, the first modern federation, adopted federation as the organizing principle for its structure of government in 1789 following the Philadelphia Convention of 1787. This resulted from the failure of a confederal form of government established under the Articles of Confederation of 1781. Originally comprising 13 states, the United States has evolved into a federation of 50 states plus 2 federacies, 3 associated states, 3 local home-rule territories, 3 unincorporated territories and over 130 Native American domestic dependent nations, with a total population of about 300 million.

Characters of US federalism

- It is marked by a relatively homogeneous society. There are significant black and Hispanic minorities, but in no state do they constitute a majority.
- The federation is moderately decentralized.
- Jurisdiction assigned to the 50 states is symmetrical, although this does not apply to the relationship of the various federacies and associated states.
- The major feature of the distribution of powers is the arrangement whereby the constitution lists subject matters under federal authority — most of which are concurrent and some of which are made exclusively federal by prohibiting the states from legislating on them — and leaves the unspecified residual matters to the states.
- The federal institutions are based on the principle of the separation of powers

The Swiss Confederation (1848)

The Swiss Confederation, which had existed in various forms since 1291, broke down in the brief civil war of 1847. The new constitution of 1848 established “the Federal Constitution of the Swiss Confederation,” converted it into a federation. Switzerland, a small country of some 7 million people, now comprises 26 constituent units called cantons, of which 6 are designated “half cantons.”

Characters of Swiss Federalism

- The Swiss federation is notable for its significant degree of linguistic and religious diversity, although the German Swiss continue to dominate in overall numbers and economic power. Its three official languages (German, French and Italian; a fourth, Romansh, is recognized as a “national language”) and two dominant faiths (Roman Catholic and Protestant) represent territorial cleavages that cut across each other.
- A significant proportion of the constitutional distribution of powers is assigned to the federal government, with the residual powers to the cantons.
- Constitution leaves the federal government highly dependent upon the autonomous cantons for the administration of a large proportion of its legislation.
- There is a relative symmetry in the jurisdiction of the cantons, although 6 of the 26 cantons are classified as “half cantons” and therefore each of these has only half the representation in the federal second legislative chamber, the Council of States.
- The principle of the separation of powers has been applied to the federal institutions, but the executive (the Federal Council) is a collegial body elected by the Swiss federal legislature for a fixed term and composed of seven councilors among whom the presidency rotates annually.
- The federal legislature is bicameral, composed of the National Council (Nationalrat) and the Council of States (Ständerat); in the latter, cantons have two representatives each and half cantons one.

- The electoral system based on proportional representation has resulted in a multiparty system, but the fixed-term executive has provided stability, and the tradition has developed that it should encompass the four major political parties representing an overwhelming majority in the federal legislature.
- Swiss political process has been the widespread use of referendums and initiatives.
- Dual membership in the cantonal and federal legislatures is permitted

Canada (1867)

Canada became a federation in 1867. The federation grew out of efforts to overcome the political difficulties and deadlocks within the United Province of Canada created by the Act of Union of 1840. This was to be achieved by splitting it into the two new provinces of Ontario with an English-speaking majority and Quebec with a French-speaking majority, and by the addition of the maritime provinces of Nova Scotia and New Brunswick both for trade and defense purposes.

Characters of Canadian federalism

- The continuing existence and vitality of a French Canadian majority concentrated within one province.
- The Canadian federation has been marked both by the French-English duality and by a strong regionalism expressed through the provinces.
- The constitution specifically listed three forms of legislative powers: exclusively federal, exclusively provincial, and concurrent, with the major residual powers assigned to the federal government.
- In contrast to the United States and Swiss federations, which emphasized the separation of the executive and legislature in their federal institutions, Canada was the first federation to incorporate a system of parliamentary responsible government in which the executive and the legislature are fused.
- The Canadian federation is of particular interest because of the way in which it has attempted to deal with the English-French duality of its society.

The Republic of India (1950)

India became independent in 1947 and its parliament, serving also as a constituent assembly, drafted the new constitution that came into effect on 26 January 1950, establishing the federal Union of India.

Characters of Indian Federalism

- Indian federation is “a federation with a strong Centre.”
- India is a diverse multilingual society.
- States were reorganized largely on an ethno-linguistic basis and in one case (Punjab) on a religio-linguistic basis.
- Some unitary elements, the ethno-linguistic basis of many of the states and the powerful forces of regionalism within the Indian sub-continent have meant in practice a federation that is only partially centralized and that has powerful states.
- The constitution provides for three exhaustive lists of legislative powers — exclusive federal powers, exclusive provincial powers and concurrent powers (with federal paramountcy) — and for residual powers assigned to the Union government.
- Formally, the Union government possesses very substantial powers, especially powers of intervention and pre-emption in emergencies, but it functions within an ethnopolitical and multiparty context that requires that those powers be used for the most part to preserve federalism in form and spirit.

- The institutions of the Union and state governments are parliamentary in form with responsible cabinet governments at both levels.
- India as a federation is of particular interest because of the way in which it has used federal institutions and processes to hold together a linguistically diverse society for over half a century.

FEDERALISM: NEPALI CONTEXT

Federalism is the cause of participatory democracy by enhancing community access to government and promoting governmental accountability to the voters. Federalism involves much more than simple centre-state relationship but it is also about the way different regions interact with each other, in other words about the horizontal relationship between the several sub-units. Generally we tend to think a federalism as the vertical relationship between centre and region; but it is also about the way different regions interact with each other, in other words about the horizontal relationship between the several federal units.

Inception of the debate of federalism in Nepal debate goes some time earlier, though it's a new phenomenon in Nepali politics. At the beginning few ethnic scholars and activists started the debate of federalism claiming their participation in mainstream politics. Prof. Krishna Khanal(2061BS), Govinda Neupane(2000), Krishna B. Bhattachan(2003), Mahendra Lawati(2005), Balkrishna Mabuhang(2009), Narahari Acharya and Govinda Raj Joshi etc. have forwarded scholarly debate.

The Madesh Movement and Movement of Ethnic group just after the proclamation of current Interim Constitution created immense pressure to state political actor to enter into agreements that led the way for the declaration of Nepal as Federal Republic country. Now, there is no debate [barring few e.g. CPN (Masal), RPP] on the structure of the state for the next era of Nepali politics, the Interim Constitution has already indorsed Nepal as a Federal Republic.

Reasons for a federal structure in Nepal

Many arguments for federalism have traditionally been put in terms of promoting various forms of liberty in the form of non-domination, immunity or enhanced opportunity sets (Elazar 1987a). When considering reasons offered in the literature for federal political orders, many appear to be in favor of decentralization without requiring constitutional entrenchment of split authority. We exercised decentralization of power even in Panchayat System. The constitution of Kingdom of Nepal, 1990 also advocated the concept of decentralization and Local Self Government Act is in existence at the moment as well. But this did not served the interest of people and there was immense demand of another kind of decentralization i.e. Federal Structure of the Sate.

We can summarize some of the reasons which lead us to Federal Government as follows:

- Federations can promote economic prosperity by removing internal barriers to trade, through economies of scale, by establishing and maintaining inter-sub-unit trade agreements, or by becoming a sufficiently large global player to affect international trade regimes,
- Federal arrangements may protect individuals against political authorities by constraining state sovereignty, placing some powers with the center.

- Federations can facilitate other ends where credible commitments, coordination or control over 'spill-over' effects and externalities by sovereign states is desired but difficult to ensure without transferring some powers to a common body.
- Federal arrangements may protect against central authorities by securing immunity and non-domination.
- Constitutional allocation of powers to a sub-unit protects individuals from the center, while interlocking arrangements provide influence on central decisions via sub-unit bodies.
- Sub-units may thus check central authorities and prevent undue action contrary to the will of minorities.
- Federal orders may increase the opportunities for citizen participation in public decision-making; through deliberation and offices in both sub-unit and central bodies that ensures character formation through political participation among more citizens
- Federations may facilitate efficient preference maximization more generally, as formalized in the literature on economic and fiscal federalism - though many such arguments support decentralization rather than federalism proper.
- Federalism addresses the optimal allocation of authority, typically recommending central redistribution while local provision of public goods.
- Federations may thus allow optimal matching of the authority to create public goods to specific affected subsets of the populations.
- Granting powers to population subsets that share preferences regarding public services may also increase efficiency by allowing these subsets to create such 'internalities' at costs borne only by them.
- Federal arrangements also shelter territorially based groups with preferences that diverge from the majority population, such as ethnic or cultural minorities, so that they are not subject to majority decisions severely or systematically contrary to their preferences.
- Non-unitary arrangements may thus minimize coercion and be responsive to as many citizens as possible.
- Federal arrangements may promote mobility and hence territorial clustering of individuals with similar preferences, and allow sub-unit autonomy to experiment and compete for individuals who are free to move where their preferences are best met.

Overview of Nepali Society

Nepal is a multi-ethnic, multi-lingual, multi-religion and multi-cultural country. No community has absolute majority in any territory. We have a very cordial relation among the various groups. There is a separate graph and table presenting the characters or Nepali society (See Annex)

Federalism in Nepal: Some Model Proposals

As the most debated issue of this area is how to devolute the unitary Nepal into a federal structure. Various political parties, political leaders as well as scholars have various solutions.

Proposals made by political parties:

CPN Maoist

CPN (Maoist) has proposed 11 sub-units in their CA manifesto. With the conclusion that Nepal as a multi lingual, multiethnic, multi cultural, multi religious country CPN (Maoist) has proposed a federal structure of government on the basis of ethnic and geographical as well. They have proposed: Seti Mahakali and Veri-Karnali on the basis of geography whereas Magarat, Tharuwan, Tamuwan, Newa, Tamsaling, Kirat, Limbuwan, Kochila Madhesh on the basis of ethnicity.

Nepali Congress

Nepali Congress has not proposed a clear cut structure of the state. However, Nepali Congress favors a Federal Democratic Republic of Nepal and has promised to restructure the country on the basis of indivisibility of the nation, geographical order, density of population, availability of natural resources and economic possibility, cultural, lingual and ethnic dominance and administrative & political consideration. The special characters of the various interest groups are to be considered and addressed. Congress is clear on allocating the powers to be exercised by center and sub-units by Constitution itself. Nepali Congress has proposed three tier political administration viz. Federal government, state government and local authority.

CPN (UML)

UML has also proposed Federal Republic of Nepal. UML has also stresses that Nepal will be multi ethnic, multi lingual, multi cultural nation state. The basis of structuring of the state shall be ethnic, lingual, cultural and geographical character. Further, the density of ethnic population, linguistic similarity and cultural character, historical background and geographical area shall be considered. There shall be three tiers of administrative structure, centre, state and local authority. These units shall be cooperative and coordinative. They will have autonomy and right to determination (under limited definition).

MJF

MJF, emerged as a major political party after Madhesh movement and advocate of Madhesh as single subunit has also not proposed clear cut structure. However, they have proposed a federal structure based on ethnic, geographic, religious, cultural, lingual and other determinant characters of the society ensuring the autonomy of the subunits with right to self determination(with limited definition). On the other hand, MJF has proposed "Whole Madhes : an Autonomous State" as well.

Proposals of some political leaders

Govinda Raj Joshi Central Member, Nepali Congress Working Committee. (See figure);
Narahari Acharya, Central Member, Nepali Congress Working Committee (see figure)

Some proposals of scholars

Dr. Karna Bohara: Imphasising the need of Cooperative federalism, Dr. Bohara proposed four subunits in Himal Khabar Patrika viz. Karnali, Gandaki, Koshi, Kathmandu. Prof. Dr. Pitambar Sharma, has proposed six subunits in his scholarly article 'Political and provincial structure in Democratic Republic of Nepal', Naya Nepal(Ed.) viz. , Eastern Province, Mid Zone Province, Western Province, Farwestern Province, National Capital Province.

Bal Krishna Mabuhang, advocating division of units on the basis of ethnic dominance in his contribution, 'Federal State System and Management of Social diversity: Ethnic Self Governance and positive initiation" (2009) has proposed 9 subunits viz. Limbuwan, Khambuwan, Tamsaling, Tamuwan, Magarat, Tharuwan, Khasan, Mithila/Tharuhat, Newa: Autonomous

Basis of Division of Sub-units

It's not easy to draw any borderline within the state. As we have complex society it is also complex to divide it. While drawing the boarder we need to take some serious consideration of the true character of the Nepali society. At the moment the basic issue is that what could be the basis of division of subunits is a big issue. We cannot have a classic separation as we are not forming an association of various independent states. In this context, some scholars have come with the ethnic and lingual division where as some have raised their voice in favor of geographical subunits. Another school of scholars are also there who are in favor of amalgamation of both. (See above)

There are several problems on the division merely on the basis of ethnical and lingual basis. We do not have a majority holding of a particular ethnic / linguistic group. Our society is a diverse society. Similarly there is a huge interdependency among the ethnic and linguistic group, as well. Another problem with this basis is geographical and economic factor. We have unequal distribution of natural resources and special geographic expansion. And of course, if we create the subunits on the basis of ethnic/lingual basis, minority people may disown the subunits and it may lead further tension in the area.

The division on the basis of ethnic/linguistic basis may lead to starve condition for few subunits in future. Similarly the division on the basis of geographical area also have plenty of problems among them unequal distribution of land and fear of non-fulfillment of desire of participation in the power of ethnic/lingual groups.

Issues in the design of federations that affect their operation:

As we are in designing phase of Federal structure of Nepal, it would be wise to discuss some of issues in designing the federal structure of any state, as suggested by Ronald Watts (2009)

- the character of the constituent units in terms of their number, absolute and relative sizes, and absolute and relative wealth
- whether the drawing of constituent unit boundaries and constituent units should represent differences or cut across them
- the distribution of functions in terms of the following:
 - the form of distribution, including the significance of exclusive, concurrent residual authority assigned to each level
 - the allocation of legislative and administrative responsibilities
 - the scope of functions allocated to each level

- the allocation of financial resources
- structures and processes relating to intergovernmental relations within federations
- degrees of symmetry or asymmetry in the allocation of powers to constituent units
- degrees of decentralization and non-centralization
- degrees of autonomy or interdependence of governments
- identification of commonly regarded essential federal powers and their differing impact
- special provisions for proportionate representation of constituent units in the federal executive, legislative institutions (particularly second chambers), public service and agencies
- the role of constituent unit representatives in common decision making

CONCLUSION

Considering above issues and realities we need more research and discussion. It's better to involve grass root people in the process. Though the devolution is a political decision and to be done by the political body which has political mandate to do it, it would a very wise step to rely on the research and recommendations of the 'State Reorganizing Commission' visualized by the Interim Constitution, as it is a very technical. We recommend to constitute this that consists expert panel.

Further, we see more rational on the division that is based on geography. In this regard, we advocate a cooperative federalism based on various elements.

As we don't have major dominance of any ethnic group, there is rare chance of dominance on the basis of racial and ethnic biasness. So, we advocate a strong centre in Nepali context.

We suggest to entrust federal apex judiciary on settling deputed between centre and state and between state or among states. We see more rationality on the consideration of followings:

- Inclusiveness
- Natural Resources Distribution, especially watershed
- Majority of particular ethnic/lingual groups
- Inter-state distribution of territory complementing each other's development