

Federalism in Nepal: Issues and Challenges

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1. Background:

After 10 years armed conflict and 19 days people's movement, Nepal has entered to the phase of making a new constitution. It is evident that new constitution will not only be a democratic, also will be federal and inclusive too. Though the idea of federalism was mooted in Nepal around the 1990s when Constitution of the Kingdom of Nepal 1990 was framed, but at that time it got no importance. Establishment of the multi-party democracy, and parliamentary system were the major political issue of that time. Nepal has been exercising a unitary and centralized system for more than 240 years. During this period rulers always preferred to the concentration of power and opposed to every effort of the devolution of power. During Panchayat and Parliamentary period decentralization was adopted as the constitutional provision but no sincere efforts were made to implement such provisions. Even the legal instruments like Local Self-Government Act were not properly used to implement the provision made in the constitution.

The successful completion of the Second People's movement brought two basic issues to the fore. That was Republic and Federalism. The constitutional amendments made after constituent assembly elections declared Nepal a Federal Republic. Now a vast majority of the people stands in favour of these provisions. As its result, 240 year old monarchy is abolished by the parliament and country is involved in to the debate what sort of federal structure is to be adopted for Nepal? In regard to this issue many diverse views prevail in Nepalese politics. This paper is intended to throw light on the issues and challenges to proposed federalism in Nepal.

2. Notion of Federalism:

Federalism is a territorial distribution of power based on the sharing of sovereignty between central (usually national) bodies and peripheral ones. The term federalism was originated from the Latin term "foedus" means unions.¹ Federalism is based on the assumption that its constituent parts are to a considerable degree self organized and self managed. The generally common structural characteristics of federations, as a specific form of federal political systems 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 other;
- provisions 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, provisions for referendums, or an upper house with special powers);

¹ <http://en.wikipedia.org/wiki/federalism>

- processes and institutions to facilitate intergovernmental collaboration for those areas where governmental responsibilities are shared or inevitably overlap².

Federalism is increasingly important in the world. Out of 192 countries in the United Nations approximately 28 are federal. Federalism has been chosen to bring together formerly separate units into a new country, or to rearrange a previously unitary country, and even as a product of both processes together³. Modern federation has its origin in the United States Constitution of 17 Sept. 1787. The name of Switzerland, Australia and Canada also appear in this rank. Federation is a legal term and it is subject for constitutional law and theory in general. But it is remarkable if one looks for examples of federal government, it is not sufficient to look at constitutions only, what matters just as much is the practice of government. A country may have federal constitution, but in practice it may work that constitution in such a way that its government is not federal. Or a country with a non federal constitution may work it in such a way that it provides an example of federal government⁴. Federalism is considered as one of the highly democratic systems. The eventual choice of federalism was in response to democratic political pressure for devolution because of country's multiple languages, religions or ethnicities, and perhaps, major economic differences between regions⁵. Also there is a theoretic discussion about the difference between "federalism" and decentralization. In the words of Duvenger and Maurice; as a matter of fact there exists no difference of quality but only one of degree: decentralization is reduced federalism, federalism is decentralization very emphasized⁶. There are various forms of federation. Every federal system is dynamic. The balance between centre and units once achieved, does not remain static. It has to adopt itself continuously to new circumstances. Because federalism, the constitution's division of governing authority between two levels-nation and states is the result of political bargaining. But at present another level is added and three orders of government-federal, state and local governments are common to all federal systems. And it is hoped that federalism can protect liberty, moderate the power of government and provide the foundation of an effective government.

3. Nepalese Scenario:

Nepal a landlocked country exercises a unitary system from its inception. Recently republic turned Nepal is a multi-ethnic and multi-cultural country. Ecologically, Nepal is divided into three regions-mountain, hill and terai. Ethnically, Nepal is a garden of more than 101 cast/ethnic groups and none of the ethnic groups holds majority within the country. Among 101 ethnic groups, only 18 groups have population more than one percent⁷. Likewise among 93 Mother Tongues, only 12 are spoken by more than one percent⁸. The Mountain region covers about one third (35 percent) of the land area of the country and it accommodates only 7.3 percent population of the country. The hill region covers largest area (42 percent) and 44.3 percent population. The terai region comprises 23 percent of the land area and accommodates 48.4 percent population.

Apart from the ecological divisions there are five development regions and fourteen zones. These regions stretch north to south across the three ecological regions. For administrative purpose; the country is divided into 75 districts. Sixteen districts in the north constitute the

² Ronald L. Watts, *Comparing Federal Systems*, Third Edition, London: McGill-Queen's University Press. 2008, p.9

³ George Anderson, *Federalism: An Introduction*, Newyork: Oxford, 2008, p. 7

⁴ K.C. Wheare, *Federal Government*, Fourth Edition, London: The ELBS and Oxford University Press, 1968, p. 20

⁵ *Supra* note 3, p. 8

⁶ Max Frenkel, *Federal Theory*, Australia: Centre for Research on Federal Financial Relations, 1986, p. 58 quoting Duvenger, Maurice: *Institutions politiques et droit Constitutionnel*, Sixieme edition, Paris, 1962, 71

⁷ Central Bureau of Statistics, *Statistical Year Book of Nepal*, Kathmandu, 2003, pp. 27-32

⁸ *Ibid*, pp. 21-26

mountain region, 39 in the middle constitute the hill and 20 in the South fall in the terai region. Districts are further divided into number of village Development Committees (VDC) and Municipalities. Currently there are 3915 VDCs and 58 Municipalities including one Metropolitan and four Sub-Metropolitan cities.

Nepal primarily an agro-based country falls under the category of least developed countries. The national economic growth is 5.40 percent and the population growth is 2.25 percent. 31 percent population of the country falls below the poverty line. For the all round development of the country a careful utilization of natural resources is necessary. Three major resources are: water, mineral and forest. Nepal is a second richest country in the world possessing about 2.27 percent of the world water resource⁹. Studies indicate that there is availability of mineral resources in different parts of the country. Likewise forest is also a major natural resource of the country. The economic development of the country depends upon proper utilization of those resources. While involving in the process of restructuring of state, one cannot forget the matter how these resources can be utilized for common benefit for all the Nepali people. Hence, Nepal being a landlocked country faces some compulsions in regard to foreign policy. Thus non-alignment has remained Nepal's compulsion instead of choice. While restructuring state, Nepal must not forget foreign policy dimension too.

Though, Nepal has been exercising unitary model of state structure and parliamentary model of ruling, but the long exercise of both these models proved ineffective. The effort to frame new constitution intends to find better alternatives to both these models.

4. Issues Regarding Federalism in Nepal:

Federalism is now almost a national consensus issue. Almost all the political forces (except few) are in favour of federal structure. The Interim Constitution of Nepal, 2006 has already made the provision to bring an end to discrimination based on class, caste, language, gender, culture, religion and region by eliminating the centralized and unitary form of the state, the state shall be made inclusive and restructured into a progressive, democratic federal system¹⁰. The constitution also made the provision that the final decision relating to the structure of the state and federal system shall be made by the Constituent Assembly¹¹. After above provision made in the constitution, the political parties of Nepal started to make their ideas public in regard to federalism in Nepal.

NCP (Maoist) has proposed three levels of state structure (centre, autonomous republics and local level) based on ethnic formation, geographical suitability, lingual basic, economic possibility and other things¹². Party has proposed 11 autonomous republic states and three sub-states. Among them-Seti-Mahakali and Bheri Karnali are the states to be formed on the basis of geography and Magarat, Tharuwan, Tamuwan, Newa, Tamsaling, Kirat, Limbuwan, Kochila are the states to be formed on the basis of ethnicity and, Madhesh is a lingual state. But under Madhesh, Mithila Bhojpura and Awadh sub-states are proposed to be formed on the basis of language¹³.

Nepali Congress has proposed three level state structure. The party proposes a federal state with autonomous regions to be created by abolishing unitary and centralized state structure of present Nepal. Main basis of the creation of autonomous region will be national internity of Nepal, geographical location and suitability, lingual/ethnic and cultural affinity,

⁹ *Ibid*, p.iv

¹⁰ *Article 138 (1) of The Interim Constitution of Nepal, 2006* (as amended by First Amendment 2006)

¹¹ *Ibid*, (3)

¹² *Commitment Letter of NCP(Maoist) for the Constituent Assembly Elections 2008* p. 21

¹³ *Ibid*.

political/administrative possibility etc. The party also has emphasized on the creation of decentralized local units with power of autonomy¹⁴.

CPN (UML) also stands in favour of three level federal systems. Party emphasizes on the creation of federal structure on the basis of ethnic, lingual, cultural and geographical specialties. There will be centre, region and local units created with distribution of rights and responsibilities. There will be co-operative and co-ordinated relationship among three levels¹⁵.

Likewise, Madhesi People's Rights Forum stresses on the formation of "Federal Democratic Republic" having autonomous and powerful regions. Different legislative assemblies will be created in different regions as the people's representative bodies. Under the states, there will be different autonomous regions and districts elected by the people in order to strengthen local self or autonomous governance within the country¹⁶. Forum also has demanded to create a single state by incorporating whole terai region. Terai-Madhesh Democratic Party also poses same views in regard to federal structure of the country¹⁷. Additionally, different indigenous groups have demanded for creation of states on the basis of ethnicity.

Along with the issues raised by major political forces, different pertinent issues are pinpointed in regard to federal structure of the country.

- i) One issue is regarding the nature or basis of federalism. Whether the federations must be created on ethnic, geographical or lingual basis? On the one hand NCP (Maoist) and ethnic groups are emphasizing on ethnic federation, on the other NC is emphasizing on the creation of federation on geographical basis. Also some of the parties are not clear about the nature and basis of federalism.
- ii) Number of federations is one of the vital issues. Till now NCP (Maoist) is suggesting 11 states and 3 sub-states. Madhesi parties stand in favor of creating three states- Madhesh, Hill and Mountain respectively. Rests of the parties are not sure about number of the federations. But the number is vital in the sense that more the number of the states, more the expenditure will be necessary to run the federations. Number of the federations will affect to their nature of federalism.
- iii) Power sharing is another issue regarding Nepalese federalism. Federalism is a scheme of power sharing among federating units. Since Interim Constitution has committed to the creation of autonomous federal states. Moreover, how power will be shared among states, it remains to be decided and that issue may invite great controversy.
- iv) Autonomy is an issue to be discussed seriously. Autonomy is the freedom of any unit to take decisions on its own internal matters. In context of Nepalese federalism, some parties have promised that federation will not only be autonomous, also will be equipped with the right to self-determination¹⁸. Right to self-determination is the highest form of autonomy. Self-determination is defined as free choice of one's own acts without external compulsion, and especially as the freedom of the people of a given territory to determine their own political status or independence from their current state¹⁹. Where NCP (Maoist) has accepted it as the right to secede, other political parties disagree to such rights. NCP (Maoist)'s assertion to this right has created great controversy among the political forces.

¹⁴ Nepali Congress, *Constituent Assembly Elections, 2064, Manifesto of Nepali Congress*, p. 22

¹⁵ NCP (UML), *Constituent Assembly Elections, 2064, Manifesto of NCP (UML)*, p.20

¹⁶ *Madhesi People's Rights Forum, Manifesto for the Constituent Assembly Elections 2064*, p. 7

¹⁷ Madhesi People's Rights Forum, Terai-Madhesh Democratic Party and Nepal Sadhvahana Party are making such demand.

¹⁸ *Supra* note 12

¹⁹ en.wikipedia.org/wiki/self.determination

- v) Federalism not only intends constitutional divisions of powers of government among two or more orders of government, it is equally devoted to the allocation of resources. In the absence of proper allocation and utilization of resources federalism cannot be survived. In Nepalese context, mountain region is known to herbal products, hill region for animal husbandry and terai for food grain. Proper allocation of these resources is necessary and a balanced approach must be adopted for this while creating federations.
- vi) While federalizing the country, nature of the government can be an important issue. Whether the nature of state legislature will be unicameral or bi-cameral? What will be the form of executive-presidential or parliamentary? And what will be the structure of judiciary-unitary or dual? These are the matters for serious discussion and for sincere applications.

5. Challenges to the Federalism in Nepal:

Federalism in spite of being a democratic governmental mechanism will face some challenges. The challenges to the Nepalese federalism can be discussed as below;

- i. Nepal being a multi-ethnic, multi-religious and multi-cultural state, has survived with a unitary culture. It would be a great challenge to every federal units to substitute unitary political culture by a federal culture. It is certain that in initial stage, Nepal will be facing competitive federalism where the constituent governments of federation may compete with each other in offering their own range of public services and tax structures to enhance overall socio-economic efficiency and effectiveness.
- ii. In Nepal more than 101 ethnic groups reside. They all have their own culture and ethnic values. If federalism is to be introduced on the basis of ethnicity, certainly every ethnic group will demand their own federations. Thus creating federalism on ethnic basis may lead to the creation of many federations.
- iii. At present many models of federalism are suggested by political parties and ethnic groups. All of the sides are forcing to their own ideas. It will be difficult to reach at the consensus among these forces by accommodating their choices.
- iv. Federalizing the Nepal is a part of restructuring of state. Article 138(2) of Interim Constitution of Nepal, 2006 makes a provision that a high level Commission shall be constituted to make recommendations for restructuring of the state in accordance with clause (1). The composition, function, duty, power and terms of service of such commission shall be as determined by the government of Nepal²⁰. The constituent assembly has started discussing about the model of future constitution. But still above mentioned high level Commission is not constituted. Government's inaction in such matter creates serious challenges to the proposed federalism in Nepal.
- v. In regard to the issue of federalism diverse views are put forward by different ethnic and lingual groups. But political parties are not seen serious about this issue. They have been adopting policy of appeasement in this regard. Such policy can be proved detrimental to the whole constitution making process.
- vi. In Nepal, constitution making process has emerged as the part of peace process. But due to confrontation among major political forces the peace

²⁰ Article 138 (2) of *The Interim Constitution of Nepal, 2006* (as amended by First Amendment of the Constitution)

process is in dilemma and there is the challenge to the issue of federalism and the constitution making process as well.

6. Conclusion:

Federalism has become a major agenda for constitution making in Nepal. Almost all the political forces have supported this agenda. But an anomaly with political forces is that except NCP (Maoist) no other forces have presented clear views about it. Some Madhesi political parties also have raised the demand of creating single Madesh State, but they also have not presented clear view for federalizing the whole country. In comparison to political forces, ethnic forces have come to the forefront with their views of ethnic federalism. That view is very near with that of NCP (Maoist). But the opponents of ethnic federalism argue that ethnic federalism would not work so well for Nepal. Such federalism weakens the sense that people have of belonging to a single nation because, often people's primary (and some times exclusive) loyalty turns out to be loyalty to the ethnic community to which they belong²¹. While talking about Nepalese federalism it must not be forgotten that there is strong reservation about the issue from the side of a political sector and intelligentsia. NCP (Maoist) has been strongly denouncing the idea of federalism labeling it as a move to divide the nation. Experience of different federal countries shows that whatever the basis they have chosen to federalize the country that was suitable to their situation. But in Nepal there are various ethnic and language diversities. So only these criteria cannot be the basis for federalism. Territorial division and allocation of resources also must be the criteria for Nepali federalism. We must be careful about the fact that once we start federalizing the country, the number of federal units will not remain static it will go on increasing. Federalism on ethnic basis will be opening of Pandora's Box and it will enhance the idea of competitive federalism. Our need is to create co-operative federalism. Only co-operative federalism can preserve national integrity, promote harmony among the people and satisfy people's willingness to self-rule. Let us come above the narrow and parochial thinking and devote ourselves in creating genuine federal state suitable to Nepaliness.

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²¹ Yash Ghai/ Jill Cottrell (eds.), *Creating the New Constitution: A Guide for Nepali Citizens*, Lalitpur: International IDEA, 2000, p. 178

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