

Federalism in Nepal

Management and Implementation

The Constituent Assembly (CA) in its very first meeting held on May 20, 2008 formally declared Nepal a Federal Democratic Republic. In conformity to this declaration, the Interim Constitution was duly amended and elections have been held for the positions of the president and vice-president. However, the federal state structures have yet to be formed. Unlike declaring the country a republic, the federal state structure cannot be formed by mere agitation and declaration. For this, it is essential to visualize federal constituent units at the very outset. We do not have the historic circumstances on our side as in the United States or Switzerland where already functioning state entities with long history of separate political and administrative existence came forward to form a new federation. The territory comprising Nepal which has long been administrated as a unitary state has now to be carved into different self-governing provinces. For this purpose, we have to identify the principles and foundations for creating new provinces and establish consensus regarding them. Notwithstanding some risks and apprehensions, there has been a general consensus at political level in favor of federalism. A glimpse of manifestos or commitments expressed by political parties during the CA elections and the election outcomes thereafter confirms the comprehensive mandate of the people for the federal state; however, the entire gamut of work to translate this mandate to forming state structure and administrative apparatus remains to be realized. A few political parties have initiated some homework at their party levels. However, at the state level, apart from few ad hoc agreements and understandings, not even a minimum of spade work has been carried out till the time of going to press of this publication.

To transform the state into a federal nation, it would be imperative for the constitution to specify at least in broad terms the names of geographical regions and identity of population to constitute the federal units. The names of provinces would have to be listed in the constitution itself. In the same way, the provincial administrative structure–formation, functions and powers of the executive, legislature and judiciary – would have to be clearly specified in the constitution along with the provision of division of powers and jurisdiction between the centre and provinces. The constitutional framework for a federal state could be prepared through experts teams to work on various constitutional and technical issues such as carving state boundaries, choosing names for provinces, identifying the systems of governance and electoral processes, classification and management of natural resources, revenue allocation and sharing of resources, fiscal management, conflict resolution mechanism in case of disputes between the centre and province or between the provinces, among others. But to demarcate the boundary lines of provinces, a separate technical task force can be assigned even after the constitution is adopted and it would be an appropriate process. Once the constitution is adopted and the state structure is formalized, federalism enters to the stage of governance/administration. The state will be considered to have

been formally transformed into a federal polity only after elections are held for the provinces and legislature, executive and judiciary with proper administrative structures are formed in place.

Federalism is a new exercise for Nepal. Until a few years ago, federalism was an academic subject for students of political science and constitutional system, which has now emerged as a political reality of the Nepali state. As a result, there is a paucity of studies and expertise in this field. Since the last few years, various ethnic groups and Madhesi communities have brought federalism at the forefront of the issue of state restructuring. A number of studies, reflections and proposals have been presented in this context (Neupane, 2000; Acharya & Khanal, 2002; Shrestha, 2003; Khanal, 2004; Yadav, 2003; Yonjan, 2004; Gurung, 2004; Bhattachan, 2003; Baral, 2004; Lawati, 2005). However, these studies offer less of substantial discussion on federal state theories, concepts, values, exercises and experimentation than sentimental expression on these issues. No doubt these studies have their significance, but formation of state structure and operationalization of administration cannot be achieved on sentiments only. There are a number of universally acknowledged values of a federal state, there are also models and experiences of various countries before us. These matters can be of relevance to us. But we need not copy and adopt them here, though their studies can help us broaden our understanding and devise suitable alternatives.

Currently of the 193 UN member nations, 24 are classified as federal states¹. Nepal has just proclaimed itself a federal state. Iraq, Italy, Sudan and the Philippines are taking steps towards federal system. U.K., France, Japan and two dozen other countries have political systems with autonomous regions which have features of federal system of governance (Watts, 2008). Federalism has emerged as the most widespread system of governance –a political reality of the 21st century. However, within federalism, each state maintains its own structures framework, develops its own constitutional practices and many things differ from each other. This is considered natural because each county has its own specific historical background, geographical conditions, social cultural make up, life style of people and political-economic structure. While creating new state structures, all of these issues will have to be addressed appropriately. We cannot expect a well formed federal system to present itself before us on a fine morning. For this a lot of homework, comprehensive consensus on all sides, understanding, agreement and coordination will be required. At present, we are at the very initial stage; we have to cover a lot of ground by way of giving continuity, refinement and development in this regard.

This book **Federalism in Nepal: Management and Implementation** is divided into six chapters and each chapter is devised focusing on the implementation aspect of federalism in Nepal. For the first time in Nepal, National Peace Campaign (NPC) organized an interaction for

¹The Canada based Forum of Federations lists the following 24 countries as federal entities: Argentina, Australia, Belgium, Bosnia & Herzgovina, Brazil, Canada, Comoros, Ethiopia, Germany, India, Malaysia, Mexico, Micronesia, Nigeria, Pakistan, Russia, St. Kilts & Nevis, South Africa, Spain, Switzerland, UAE, USA and Venezuela (www.forumfed.org).

the central level leadership of major political parties on the principles and concepts of federalism in the context of Nepal in April 2006 that brought together a number of working papers which resulted into the publication of the book **Federal System of Governance in Nepal: Challenges and Opportunities** . The present book also marks the continuation of similar interaction among the public figures of Nepal. As the interaction at this moment was focused on implementation aspect of federalism, the contributors to this volume also engaged in mutual consultation and further refining the approaches to a functioning federalism for Nepal. Though the articles compiled in this volume were prepared at short notice, they reflect serious studies, research and personal experiences of the respective authors. These articles seek to cover greater issues on the path of implementation of federal system in Nepal rather than analyze theoretical and conceptual concerns pertaining to federalism. These articles were written mainly to conduct direct interaction and dialogues among leaders of the political parties in the backdrop of elections to the Constituent Assembly and efforts to draw up a new constitution; this is the reason why implementation aspect of federalism has been given the central focus in this book

The first chapter of this book by Sanjib Pokharel after briefly highlighting the concept of federalism focuses on the issues of relevance, expectations and challenges of federalism in the Nepalese context. Various scholars writing on federalism have characterized the federal governance as the new political wave of the 21st century (Watts, 2008). Because the federal state structure can address the concerns of group/community identity, autonomy and self-rule of people inhabiting multi-ethnic, multi-lingual and multi-cultural societies, and thereby it can lead to shared governance, it is also expected to facilitate in the path of internal conflict management as well. Federalism is based on the principles and values of democracy. A federal state cannot be conceived without democracy at its foundation. The federal experimentation in the former Soviet Union and Yugoslavia collapsed because of this. The exercise of self-rule cannot be fully achieved in a one party structure and it always faces the danger of disintegration. This too is confirmed by the experience of the former Soviet Union and Yugoslavia. For a healthy federal state, a competitive multi-party system, internal democratic order in the political parties as well as civil organizations conducive to federal structure would be required. If the organizational structure and leadership body of major political parties do not reflect the regional and ethnic/linguistic ambitions, then the rise of influence of regional parties becomes inevitable. These points have been raised and linked in a passing way to the overall situation of the county by Pokharel in his contribution.

The second chapter by Balkrishna Mabuhang proposes linguistic community as the major basis for carving out a province and presents a comparative experience of India and Switzerland in this regard. Indian states and Swiss cantons are largely created on linguistic basis. The people there identify themselves with pride as belonging to the linguistic community rather than as members of an ethnic group or a geographical region. However, in both countries one language, one state/canton provision did not become feasible. In Switzerland we find the situation of one

language with multiple cantons and one canton with multiple of languages. In India, the states were restructured on linguistic lines in 1956. Broadly speaking the policy of one language one state was embraced, but the state of Bihar, Uttar Pradesh, Madhya Pradesh and a few others were not created on linguistic lines. Even now, there are calls for carving out more than two dozen states on linguistic lines. The provinces to be formed in Nepal would inevitably take the shape of multi-ethnic and multi-lingual provinces. Mabuhang presents a detailed description of the proposed states currently being discussed in public, including the states proposed by the Maoists and highlights the presence of linguistic and ethnic minorities in those states and the potential for management of such diverse elements in the future federal structures.

If states/provinces were created on ethnic/linguistic basis, it could address the ethnic/linguistic identity of barley 10/12 major caste/ethnic groups. Such provision could assuage the sentiment of the respective groups encouraging the sense of belonging to newly created entities, but the issue of identity and sense of inclusion to be promoted among other ethnic and linguistic groups in such states and management of such concerns would remain like open questions. This is the major question to be raised regarding ethnic-centered state creation. Mabuhang in his article tries to address concerns of some two dozen linguistic minority groups who would find themselves as resident in states now being talked about as major federal units of Nepal. In India because the ethnic and linguistic diversity could not be addressed satisfactorily, particularly in states like Assam, Bihar, Uttar Pradesh and others, new states had to be created subsequently. The provinces to emerge in a federal Nepal will remain, in whatever form, multi-ethnic, multi-lingual and multi-cultural. If certain constituent groups felt their identity has been overshadowed by the dominant ethnic group or they are marginalized by the provincial administration, this will give rise to an unending cycle of demand for new autonomous provinces. In this sense, the proper management of linguistic and ethnic diversity in each province deserves serious consideration by all.

The third chapter of the book by Krishna Khanal (the editor) dwells on the system of governance and constitutional provisions for power sharing in the context of federation in Nepal. This article is more concentrated on the structure of the executive and legislature providing references to the experience and models prevalent in a number of countries which have adopted the federal system of government. Basing its analysis on the points raised in the manifesto of political parties and commitments declared during the CA elections, this article covers the issues of formation of executive and legislative bodies at the centre and provinces, choice of electoral system, determination of jurisdiction and division of powers between the centre and provinces and constitutional provisions for local governments. All too often the subjects of local government are sidelined in debates on federalism. This article discusses this issue even though the treatment has been brief. In the past, under the parliamentary system of governance the political game was on the principle of winner takes all under which the ruling party controlled government and the losing side stayed in the opposition. But the parties did not choose to learn to

act effectively to play the role of the opposition. Moreover this system did not open reasonable access to state structures for women and marginal groups. Now that the state has accepted the principle of proportional representation and inclusiveness in governance, the makers of the constitution should pay attention to the constitutional alternative to governance as raised in this article. Sticking to traditional system and approaches cannot help transform the state structure in a new way. The political parties need to show readiness to adopt new but appropriate and valid alternatives.

The fourth chapter of this book by Surendra Kumar Mahato is centered on the structure and composition of judiciary for federal Nepal. Judiciary too does not feature prominently in debates on federalism in Nepal. The article by Mahato makes a small but significant contribution in this field. The key feature to separate a federal state from a unitary one is the composition of three state organs --the executive, legislature and judiciary-- at the federal and provincial levels. The constitution makes a clear and independent provision for it. Like several other provisions of a federal state, the structure of judiciary does not appear identical in all states. Judiciary stands out more autonomous and federal in character in USA and Switzerland whereas it appears unitary in nature in India. In a number of federal states, each province also maintains its own separate constitution. However these constitutions do not conflict with the federal constitution. Federal judiciary is empowered to decide on issues of constitutionalism, disputes between the centre and provinces and between/among various provinces. Surendra Mahato picks up these issues, illustrates those concerns in the light of judicial structures in use in India, Switzerland and South Africa among others and proposes a federal judicial structure for Nepal, which deserves serious attention.

Whether federal or unitary, no state can function without proper arrangement for its finances. Moreover, in a federal state the allocation of revenue resources and management of finance could become more complicated and contentious. All provinces do not enjoy the same level of resources and economic development. Even in advanced federal democracies like USA, Germany and Switzerland, there are some provinces which are rich and others poor. If each province were to rely completely on its resources for its sustenance, then going federal would have no meaning. The main reason for the delegates of the American Union to gather at a convention in Philadelphia in 1787 was to make necessary review on the customs and tax policies of the 13 colonies who had declared their independence from Britain and propose amendments on the Articles of Confederation of the new state. But these delegates came at formulating a Federal Constitution for the United States of America. When the ratification procedure was duly completed in 1789, USA emerged as the first federal state of modern era. This is the concrete evidence to prove how important the question of fiscal arrangement is for a federal state. Equitable redistribution of resources between the affluent and underdeveloped provinces is another important fiscal aspect of federalism.

The fifth chapter of the book jointly written by Shankar Prasad Sharma and Som Lal Subedi presents a detailed discussion on various aspects of expenditure and resource management for Federal Nepal. As the contributors are well familiar with policy making and execution side of the government machinery, this piece reflects pragmatic concerns for implementation. As this piece also incorporates theoretical concepts regarding fiscal federalism, the authors have done a commendable job of presenting detailed account of potential liability and division of expenditure, allocation of resources, sources of taxation, internal borrowing, determination of fiscal responsibility and other concerns for federal Nepal. It can be pointed out that this piece has provided a detailed checklist for the framers of constitution regarding fiscal management of federal Nepal.

Administering a federal state is a system of regular interaction among the constituent units. It is far from certain that framing a constitution, installation of administrative machinery and creation of conflict resolution mechanism would automatically lead to a functioning federal state. To coordinate and manage the diverse elements within a federal system would require a regular interaction between the centre and provinces and among the various provinces. In fact when Nepal enters into a federal system, it is almost inevitable that new dimensions of conflict will emerge in the Nepalese political scene. It is not enough merely devising constitutional and legal remedies, it would equally require lively dialogue and interaction among diverse sectors of society. This issue has been taken up by Shri Krishna Anirudha Gautam in the sixth chapter. Gautam's contribution can be said to have endeavored to bring together all the diverse view points and issues presented in this volume, from Sanjib Pokharel's arguments to Shankar Prasad Sharma and Som Lal Subedi's analysis to fit into a functioning federal system for Nepal.

Finally, it is incumbent upon all concerned to realize that at present Nepal has entered into an unprecedented phase of a historic transition. Certainly Nepal had passed through historic political changes of 1950 and 1990. But those changes did not translate into the path of a firm democratic governing system and socio-economic advancement. The transition this time encompasses much wider ramifications. This is not limited to just changing governance from one system to another. The monarchy with a history of 240 years of existence has ended. In place of the unitary state structure, we are going to create a federal system with provision for autonomous provinces. Many people have been asking constantly -- would a change of state structure result into the resolution of all problems? Of course external state structure alone is not everything. It provides a comprehensive framework, its efficiency and impact would depend on the political players and their tendencies who stand to put the system at work. We are now at the initial stage of putting the system into a definite shape. This is no time to limit oneself on party interest and political stand of certain party leaders. The first priority today has to be the creation of a truly federal, democratic, republican political system and to ensure its development rising above the party political lines and transient priorities. This task cannot be accomplished by limiting oneself to a certain political 'ism' or going 'anti-ism'. Right now the country expects its politicians to

transform themselves into the role of system builders. That role has to be inspired by the life-view, personal conviction and behavior of those occupying leadership positions; such a role should come to be seen as an ideal role model for further generation as well. If this can happen, the federal republic of Nepal would turn out to be a truly 'New Nepal'.

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