

Federalization is a Tool of Conflict Resolution : A Case Study of Nepal

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Nepal was enduring with a perpetuating conflict due to class, ethnic, linguistic, regional and other discrimination created by a unitary and centralized state structure. Regional autonomy, identity, decentralization of power and preserving the right of minorities were major demands of the movements. The political change of 2006 along with the restoration of democracy built the strong ground for the federalism in Nepal. After this, the state promulgated a new federal constitution on 20 September 2015. The regional, ethnic and class conflicts are being managed with the implementation of the federalism. In federalism, the rights of minorities get preserved than in the unitary system of government. The provision of right of the minorities in the central, provincial and local level helps the assurance of their right. While the governing community does not behave with justice the minorities may demand for separate region, so they are alert for well being of the minorities. Thus federalism is considered to be one of the most important tools for establishment of peace. In this article I argue that the federal system has played an important role for conflicts resolution in Nepal which was active since decades. A major and common demand of various conflicts in Nepal was autonomy which is assured by the federalism. Protection of minorities' rights, recognition of all linguistics, ethnic, religious, minorities' identity and power sharing from central to local level through constitution has led to the long felt conflicts towards solution. Thus, federalism has played the vital role for power-sharing and assuring the autonomy for minorities groups in Nepal. It seems to be important tool for the ending Maoist, ethnic and regional movements in Nepal.

[Keywords : Federalism, Federalization, Conflict, Conflict resolution, Multi-dimensional conflict, Nepal]

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1. Introduction

Nepal was enduring with a perpetuating conflict due to class, ethnic, linguistic, regional and other discrimination created by a unitary and centralized state structure. In particular, the Madesh movement and ethnic movement due to the regional exclusion after the political change in 2006 and Maoist movement started from 13 February, 1996. Regional autonomy, identity, decentralization of power and preserving the right of minorities were major demands of the movements. The political change of 2006 along with the restoration of democracy built the strong ground for the federalism. After this, the state promulgated a new federal constitution on 20 September 2015 replacing the Interim Constitution of Nepal 2007. The various types of conflicts are being managed with the announcement of federalism. In this context, is federalism an important tool for conflict resolution in Nepal? This tries to answer this question.

This article is based on the secondary data and the content analysis method is applied to collect the data. The article is divided into five sub-chapters. First one is the introduction, second is understanding of federalism and conflict resolution, third one is historical development of concept of federalism and multi-dimensional conflict in Nepal. Similarly, fourth is federalism as a tool for conflict resolution in Nepal and finally, conclusion.

2. Understanding of Federalism and Conflict Resolution

There is no universally applicable definition of federalism and federal mode of governance. Many scholars have defined the federalism in several ways. However, there exist few similarities in those. Federalism is an approach to governance that divides public powers not only horizontally but also vertically. Generally, we can understand that federalism is traditionally considered to be a useful system or mechanism of limiting governmental power and constitutionally establishing balance between self-rule and shared rule. Similarly federalism is a non-centralized political system where legitimate authority is constitutionally guaranteed and it shares power through constitutional frameworks.

Federalism as a mode of governance is concerned with combining 'self-rule and shared rule' (Elazar, 1987). In this, self rule states for constitutional units of federal state which is able to conduct the governance system independently and autonomously while shared rule means participating in the decision making process through upper chamber. The definition of William H. Riker's (1975) seems more elaborated. According to him;

“Federalism is a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decision” (Riker's 1975 cited in Lijphart, 1999; 186).

Elazar (1997; 239) emphasizes on non-centralization mode of governance. According to him federalism is the assignment of the powers to multi-level governance structures. He also focuses on constitutionally guaranteeing a division of power between central and non-central government. According to Elazar (1987; 190) Federalism should be understood both in its narrower sense as intergovernmental relations and in its larger sense as the combination of self-rule and shared- rule through constitutionalized power sharing in a non-centralized basis. Watts (2008) also focuses on self-rule and shared-rule. According to him “federalism is multi-tiered government combining elements of shared-rule and self-rule...It based on presumed value and validity of combining unity and diversity of accommodating, preserving and promoting distinct identities within a political union...it is both union and non-centralization in the same time” (p.8).

Federalism can be defined as a mode of governance that establishes more or less unity while preserving more or less diversity (Moreno and Colino 2010). Roy and Saunders (2006) give more emphasis to power sharing. According to them, power is constitutionally divided and shared between a general (usually national) government (or state) having certain nation wide responsibilities and constituent governments (or states) having broad regional or local responsibilities. The constituent members of the federal union can govern themselves autonomously while they and their citizens also participate together in the common national governing regime, which is autonomous within its sphere of constitutional authority (Kincaid, 2011).

Global experiences show that federalism can be established in two ways. First one is through coming together of different political states or communities to form a federal nation-state. For examples, United State in 1787-88, Australia in 1901 and Switzerland in 1848. Second way is to devolve powers from a unitary national government to regional and local governments through constitution. Spain 1978, Germany in 1949, Nepal 2015 are few examples of this kind of federalism. Elazar (1987:114) linked federalism to a dual political interest of the contemporary modern era; first, in creating more viable units of government ...to undertake vast new responsibilities and second in enhancing citizen participation in government to foster democracy.

While looking at definitions above, we can say that federalism is not only a division of power between central, provincial and local levels of governments but also it is powerful non-central mode of governance where power is available in each level of governments.

Similarly, the world is threatened by numerous conflicts between ethnic communities and states. Some conflicts are violent and some are hidden. Especially, economic injustice, historic revenge for lost self-determination, past discrimination, exclusion of recognition of the minority culture, lack of proper power sharing are the causes for increasing the conflicts in multicultural state

(Fleiner et al. 2003; 44). The lack of management for bringing religious, linguistic, ethnicity, regional, racial minorities in mainstream and assurance of their right augment the conflict. The major conflicts in the latest time around the world seem to be centered in identity and assurance of their right (Calhoun, 1993).

Majority of the unitary system states seem to give emphasis on the concept of single state, single language and single culture. These states either ignore or eliminate the multicultural diversity. This leads to conflict in multicultural, multi-religious, multi-linguistic, multi-ethnic states. These states do not take the diversity as sensitive aspect. Culture is an important factor for state-building. But in many unitary states, culture may be considered threat to the state and ignore it and promote the conflicts in the society (Fleiner et al. 2003). They do not accommodate the multi-cultural nature in the mainstream. If a cultural minorities demands political recognition, identity and autonomy, the unitary states mostly reject the claims and try to suppress the identity of minorities. As a result, the conflict gets elicited. More than half of internal conflicts around the world since 1989 have concerned disputes about controlling part of the state's territory (Topperwien 2009; 4).

While studying this nature it seems that federalism is an important tool for resolving the conflict. In particular, the federalism for resolving the minority-led conflict is being popular. Federalism can be a topic in peace negotiation. According to Topperwien (2009;3) federalism might be a useful means of conflict resolution in that it can provide a viable power between majority and non-majorities, groups and individual citizens.

Principally, federal mode of governance has adopted the policy of tolerance and equalizing minorities and majorities. For assuring the right of minorities, the asymmetric power sharing may be adopted. Asymmetric federal model has been a tool to facilitate cooperation in federal systems (Topperwien 2009;2). Federalism provides the minorities citizens and communities' autonomy and self-governance. Fleiner et al. (2003) argues that;

“Federalism offers a constitutional mechanism that not only tolerates but can also promote diversity... a federal state need not exclude culture but can use the value of cultural diversity to enable the whole society to participate in the endeavor of the state to seek justice, promote peace and protect liberty...so, federalism is a tool for a multicultural state to derive maximum benefit from diversity” (p.48).

Fleiner et al. (2003) further add that “only a balance between self-rule and shared rule can give communities the opportunity to promote their cultures within their territories. Only on this basis is it possible to provide the necessary base for the balanced development of all communities together with the majority of citizens and the people”.

3. Historical Development of Concept of Federalism and Multi-dimensional Conflict in Nepal

While dissecting the history of the origin of federal concept in Nepal, it seems to be connected with the regional and ethnic exclusion, centralization of power and inequitable distribution of resources. With the unification of modern Nepal by the Prithvi Narayan Shah in 1769, the Caste Hill Hindu Hill Elite Males (CHHEM) monopolized the political, economic, social and cultural power. Bahun, Chhetri, Newar and other Terai 'high caste' got better access to material resources while Dalit, indigenous nationalities, mid-level Madhesi caste, and Muslims are generally worse off (Lawati and Pahari 2010; 10). This kind of exercise has made the minorities deprived while hegemony of high caste Nepali language speaking class existed. This led the regional, ethnic and linguistic exclusion. The concept of federal governance seems to have elicited for the management of this.

The democracy was established in Nepal in 1951 by abolishing the 104 year long Rana Regime. At that time the regionally excluded madeshis, ethnic minorities and citizens from various communities were suffering the problem of exclusion. The minorities were deprived in every aspect and were discriminated. Madesh was made victim of internal colonization (Gautam, 2008:6). The problems of madshi went on increasing because Nepali society was multicoloured like rainbow while Nepal was mono-coloured with the hegemony of particular caste, class and region (Gyawali, 2007). The long felt exploitation, discrimination and exclusion in Madesh got institutionalized. While Madesh could not come into the mainstream of governance even after the establishment of democracy, it was in the mood of movement right after this (Gaige, 1975, Mishra, 2008, Yadav, 2003). Right after the restoration of democracy in 1951, a regional party named Terai Congress was established in 1952 and had demanded for autonomous Terai (Madesh) inside a federal system (Karki, 2015: 73). The major aim of that party was to establish the true democracy by dividing the Hill and Terai region of Nepal into two or more federal provinces on the basis of language, geology, financial and social organization, accommodate those self-governed and autonomous provinces in a single system called "Nepal Union" and power sharing for internal governance (Devkota, 1979: 22). But this concept could not get mass support even in Madesh and then got languished. Nevertheless, the demand for federalism in a way or the other got raised.

The report presented by Communist Party of Nepal in its general conference on January 26 to 30, 1954 stated "the right to regional autonomy should be provided to Madeshi according to the local self-governance" (Basnet, 2013 : 5). Though this party did not clearly demanded for the federalism, it had raised the concept of power sharing.

On 15 December of 1960, the then King Mahendra abolished the democracy and established one party Panchayat system. This system tried to eradicate the

multi-cultural Nepali society by establishing one language (Nepali), one dress (Daura-Suruwal) and basis of nationality (Monarchy) (Mathema, 2011 : 7). During that time, the Hill elites high class called themselves civilized and behaved Madhesi people as low class by calling them “Madhise” (Humo, 2007 : 17). The suppressed enthusiasm towards religion, language, dress and identity was ferreting for the way out. At the mean time, the Madhesh based Sadbhawana Party was emphasizing this issue (Singh, 2007: 7). The political reformation of 1990 provided good environment for drive out this kind of suppressed voice. Particularly, this political reformation was the establishment of democracy but there was no improvement in the unitary governance system. Nepal is a multi-ethnic, multi-linguistic, multi-religious and multi-cultural state where, 101 different castes, 92 languages, 10 religious groups exist (Rakesh, 2008: 13). But the Constitution of Nepal 1991 could not accommodate these multi-aspects and neither gave priority to autonomy and proper power sharing. Rather, it protected the concept of one caste (Brahmin, Chhetri) and one language (Nepali). This led to the movement on identity and autonomy one after another. The established democracy in the country, couldnot manages the diversity of Nepal that led to various conflicts (Mabuhang, 2012: 332). The Nepali language was made one language and the different caste people who had their own mother language had to study in Nepali without any alternative. The Constitution of Nepal 1991 provided religious freedom but people did not fully enjoy this freedom. For example, the some people from different religion than Hinduism were not allowed to kill cows because cow is considered national animal by constitution. The religious freedom was thus for only Hindus, not others (Shrestha, 2008: 130). Neither were they provided with autonomy by power sharing. Rather, this constitution made the unitary governacne system more strengthened (Baral 2007: 32)

Though the state could not accommodate the minorities in the mainstream it had provided the freedom of forming the political parties and become organized. On the basis of this, political parties, after this political change had presented their own agenda of federalism. Of the 44 new political parties registered in the Election Commission (EC) after 1990 political change 3 parties had stated their agenda of federalism in their statute. In this, Nepal Rastriya Jana Party demanded for ethnic based federalism, Sadbhawana Party demanded autonomy in Terai region and Nepal Rastriya Janamukti Morcha Party had demanded for administrative federalism (Karki, 2015: 33). The Janajati Party which was not registered in the EC also advocated for the federalism, in which it had proposed for reforming the unitary state into federal state. In this, they had included 12 lines in the party flag which meant the 12 province in the federal Nepal (Baral 2007: 33). Similarly, the Sadbhawana Party had proposed five provinces in Nepal which included Eastern Terai, Western Terai, Eastern Hill, Western Hill and Himal (Budha, 2011: 62). But this party could not bring considerable seats in the election and the state did not consider to this demand. This led to the confliction situation went on augmenting.

In the meantime, on February 13, 1996, the armed conflict of CPN Maoist started. Just before some days on February 4, 1996, the party had proposed a 40 point demand to the government which included the formation of autonomous units and addressing the ethnic and religion based discrimination providing the local autonomy. The point 20 stated the proposal of autonomy for ethnic dominated regions; point 22 stated the demand of powerful local autonomous bodies. With this, for eradicating the discrimination between Hill and Madesh, the regional autonomy was demanded for marginalized regions (Sharma and Pokharel, 2004: 139-42). According to Thapa (2014: 172), of the 40 point demands of Maoists, five points were based on ethnic group. This included i) Nepal should be declared a secular nation. ii) All racial exploitation and suppression should be stopped. Where ethnic communities are in the majority, they should be allowed to form their own autonomous governments. iii) Discrimination against downtrodden and backward people should be stopped. iv) All languages and dialects should be given equal opportunities to prosper. The right to education in the mother tongue up to higher levels should be guaranteed. v) Backward areas should be given regional autonomy. Right after proposing this the party started its armed conflict. CPN (Maoist) controlled a large swath of territory within a decade of launching an insurgency. The armed conflict led to the death of more than 13,000 people, in addition to many other costs of civil war such as destruction, displacement and gross human right abuses (Lawoti and Pahari 2010; 3).

While Maoists were actively intensifying their armed conflict all over the country, ethnic groups and Madeshi were also conducting their movement in different ways. Though, the state did not present any solid project of local autonomy, power-sharing and inclusion. This led for the indigenous nationalities movement in the eastern hills of Nepal for ethnic based inclusion, autonomy and proportional representation in parliament (Pokhrel and Pokharel, 2014: 5). This movement brought numerous politically and culturally marginalized ethnic groups together to end the political and social dominance of high caste Hindus, demand greater representation in the political system and revive their own waning cultural practices (Hangan, 2010; 1) and autonomy (Baral, 2007; 32).

In September 1994, just four years after a multi-party political system was restored in Nepal, the ethnic based Mongol National Organization party was established in eastern part of Nepal. This party demanded the autonomy to ethnic groups, create a federal rather than unitary polity and institute a proportional system of representation in all public institutions (Hangan 2010; 1-2).

In the meantime, the peace talk was held between the CPN Maoist and government of Nepal in 2002. In this peace talk the Maoist demanded for the assurance of ethnic and regional self-autonomy for exploited and excluded minority groups (Sharma and Pokharel, 2004: 158). Due to this demand the peace talk could not reach a conclusion and was breached. After this, the then King Gyanendra took the control over the democratic government by coup on January

14, 2005 and the autocratic monarchical system got resurgent (Karki, 2015: 74). After this, CPN (Maoist) ethnic groups, Madhes and Seven Party Alliances (SPA) started pro-democracy movements in different forms. But no result was gained.

The SPA and the CPN (Maoist) made a 12-point common understanding for fighting for the end of absolute monarchy and establishment of full democracy on November 22, 2005. This common understanding included “ending the absolute monarchy and establishing full fledged democracy to solve class, ethnic, caste, gender, and regional based political, economic, cultural disparities and progressive state restructuring for implementing the full fledged democracy” (Pokharel and Pokharel, 2004 : 5).

In response to this common understanding, people’s movement started from April 6, 2006, the SPA and CPN (Maoist) jointly started the street movement. The 19 days long movement was successful to ending the absolute monarchy and the parliament was restored. The first meeting of the assembly on May 18, 2006, announced the establishment of the inclusive state system with restructuring of state. After this on June 16, 2006, a 8 points agreement was held between 7 party alliance and the Maoist party. The point no. 7 of that agreement contained “the restructuring of the state will be done for solving the class, ethnic, caste, gender and regional based problems through Constitution Assembly (CA) election. Then on November 21, 2006, there was a Comprehensive Peace Agreement (CPA) between the Government of Nepal and the CPN (Maoist) party”. The point no. 3.5 of the agreement states :

“In order to end discriminations based on class, ethnicity, language, gender, culture, religion and region and to address the problems of women, Dalit, indigenous people, ethnic minorities (Janajatis), Tarai communities (Madheshis), oppressed, neglected and minority communities and the backward areas by deconstructing the current centralised and unitary structure, the state shall be restructured in an inclusive, democratic and forward looking manner”.

On this basis, on January 15, 2007, the interim constitution with unitary governance system was promulgated without considering the federalism. The day after this, the Madesh movement started with the demand of federalism. The movement demanded for the federal governance system with autonomy by eradicating the discrimination, exclusion and inequality. It also demanded for population based proportional representation in the all mechanism of the government (Rakesh, 2008). An agreement was held on February 7 of the same year. Until then 38 Madhesi people were killed in the street movement (Gautam, 2008: 16). On February 7, an announcement was made by the contemporary Prime Minister Girija Prasad Koirala which stated that the interim constitution would be amended including federalism (Karki, 2015: 74). At the same time, the ethnic groups also started movement demanding the federal state. In agreement with the

Madhesh people and ethnic groups the amendment was made to article 138 and sub article (1. a) was added in the Interim Constitution. It states:

“Accepting the aspirations of indigenous ethnic groups and the people of the backward and other regions, and the people of Madhes, for autonomous provinces, Nepal shall be a Federal Democratic Republic. The provinces shall be autonomous with full rights. The Constituent Assembly shall determine the number, boundary, names and structures of the autonomous provinces and the distribution of powers and resources, while maintaining the autonomy, unity and integrity of Nepal”.

With this amendment, the agenda of ethnic groups, Madheshi and other minorities who were excluded got the constitutional status. After this, the federalism became common agenda of almost all the parties of Nepal. On April 10, 2008, the CA election was held. This CA could not solve the issue of state restructuring and it got dismissed on June 2012 (Karki, 2012:95). The next election of CA held on November 19, 2013. This CA promulgated the new constitution on 20 September 2015 with the provision of federalism.

4. Federalism is the Tools for Conflict Resolution in Nepal

In federalism, the right of minorities gets preserved than in the unitary system of government. While the political power is divided into various regions and communities, the monopoly of one community does not exist. If a community with majority tries to suppress the minority group in any region, the centre or other entities raise voice and solve the problem. The provision of right of the minorities in the central and provincial level helps the assurance of their right. While the governing community does not behave with justice the minorities may demand for separate region, so they are alert for well being of the minorities. Thus federalism is considered to be one of the most important tools for establishment of peace.

Federalism is an important tool for ending the multi-dimensional conflict in Nepal. Nepal faced Maoist armed conflict from 1996 to 2006 and ethnic conflict in eastern part and regional conflict in the southern part of Nepal. The major common demand of these all conflicts are to ensure the autonomy, protection of minority rights, secularism, power sharing and federalism as well. First amendment of Interim Constitution of Nepal 2007 assured and the Constitution of Nepal 2015 institutionalized the federalism in Nepal. It is believed to be successfully addressing the Maoist, Madheshi and ethnic conflict.

The federal governance system with local autonomy, power sharing and secularism has helped in management of class, ethnic, caste, religion, gender and regional based exploitation and exclusion in Nepal. The Maoist, ethnic and Madheshi movement, had presented their demands specially recognition of diversity, autonomy and power sharing. These groups demanded for accommodating the multiculturalism and diversity in the mainstream of politics of

Nepal. The unitary state mechanism did not give concern to this issue rather it taking as a threat to national sovereignty. In this context, the federalism has played important role as a tool for the management of multi-dimensional conflicts in Nepal.

The federal constitution of Nepal 2015 has provided the local autonomy. Similarly, there exists power sharing between central, province and local level through constitution. There are 7 provinces and 766 local governments in Nepal. There are various provisions in the constitution for protection of minorities rights and has included the issues like secularism, linguistic freedom and regional autonomy among others.

The constitution of Nepal 2015 has managed the issues raised by the ethnic groups, Madhesi and CPN (Maoist). The preamble of constitution includes eradicating forms of discrimination and oppression created by the feudalistic, autocratic, centralized, unitary system of governance. Similarly it has also ensured for protecting and promoting social and cultural solidarity, tolerance and harmony, and unity in diversity by recognizing the multiethnic, multi-lingual, multi-religious, multi-cultural and diverse regional characteristics, resolving to build an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability. It has accommodated and recognized the diversity in the main stream of Nepalese society. More than 92 percent members of CA have passed this constitution. In this way, federalism provides the minority citizens and communities' autonomy and self-governance by providing the favourable ground.

5. Conclusion

The federal system has played an important role for conflicts resolution in Nepal which was active since decades. The minority people had been struggling a lot due to the unitary system of governance in Nepal along the history. They desired autonomy and identity which had been ignored by the unitary government. As a result the conflicts were rife in the country. The constitution of Nepal 2015 assured for the federalism and along with this the conflicts have been minimized.

Gurr (2000; 195) says, conflicts are often rooted in a desire for increased autonomy from the central state. A major and common demand of various conflicts in Nepal was autonomy which was assured by the federalism. Similarly, protection of minorities' rights, recognition of all linguistics, ethnic, religious, minorities' identity and power sharing from central to local level through constitution has led to the long felt conflicts towards solution. Thus, federalism has played the vital role for power-sharing and assuring the autonomy for minorities groups in Nepal. It seems to be important tool for the ending Maoist conflict and ethnic and madhesi movement in Nepal.

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