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FEDERALISM: HISTORY, PRACTICE AND IMPACT IN NEPAL

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ABSTRACT

This article is prepared by means of primary and secondary sources in the printed books and online portals; and questionnaire. Qualitative approach was applied to collect and analysis of the data. This article intends to explore the concept of federalism, history, practice and impact in Nepal. Federalism is a kind of governance system in which the political power is divided among the central or federal government, provincial government and local level territorial units. Currently, federal executive and federal legislature; state executive and state legislature; and local executive (village executive and municipal executive) and local legislature has been in practice in Nepal. Likewise, Supreme Court, high court, special court, district court and judicial committee in the local level under the vice-chair person of village executive and municipality are the organ of current judicial system in Nepal. Federal system has not been implementing as the will of people, a fewer services of central administrative system has been arrived in local level. There are so much challenges and there is to be done so many things to overcome the challenges.

Key words: Federalism, concept, structure, practice, implementation, federal executive, federal legislature, state executive, state legislature, local executive, local legislature, judiciary

Introduction

The discourse of federalism is not very matured in Nepal. By the constitution of Nepal, Nepal has been exercising the three-level federal system of government. Thus, this article found out the meaning of federalism, types of structure of federal government, How the federal system has been implementing? What are challenges in the implementation that does the central political power come in the local level or villages as mentioned by the political parties since its' foundation; and suggestions for proper implementation of federalism.

Objectives

The objective of this paper is to explore the concept of federalism, history, practice and impact of federal system of government in Nepal. Under the periphery of following research questions are obtained.

1. What is your opinion on federal system of government Nepal?
2. How the federal system has been implementing?
3. Do the Services of *Singhdurbar* (central administrative building) arrive in the villages?

4. What are the challenges in its implementation?
5. What are the suggestions to implement the federalism in Nepal?

Methodology

This article was prepared by reviewing empirical literature both in published books and journals in printed forms and online portals; and questioning with local people, elected persons in the local level organizations both in unitary and federal structure of government are chosen purposively and questionnaire was applied to collect the information as a tool. Collected information depending on the research questions, were analyzed by qualitative approach reducing overlapping of the data, coding in the different sections, discussion and findings and analyzing the conclusion.

Concept of Federalism

Federalism is the system of government in which sovereignty is constitutionally divided between a central governing authority and constituent political units. It is based upon democratic rules and institutions in which the power to govern is shared between national and state governments, creating a federation (<https://brewminate.com>). It is a political system through which two or more governments have shared authority over the same geographical area. Most democratic countries in the world are governed by a federal system, including Canada, the U.S., Australia, India and Argentina (<https://www.historyonthenet.com>). In federalism there exists the ideas, theories and philosophical federalists' doctrines one hand and federal structure and institutions other hand (<http://www.recim.org>).

Furthermore, federalism describes how governing power is shared between a central government (federal government) and regional governments (provincial, state, cantonal, territorial or other sub-unit governments) in a single political system (<http://factmyth.com>). In other words, federalism is a form of two or more level of governments having a feature of decentralization of political power. In federal country a political order is divided between multiple states and one in center.

A federation of the states has been composed to enable the people with historic and contemporary inequalities, discrimination and marginalization in a diverse geographical, multicultural, multilingual and multiethnic nation like Nepal. Moreover, the aim of federation of the states is to transfer the political power to the local level as well as flexible governance and boost the pace of the development at local level (<http://www.madhesiyouth.com>).

Usually a constitutional division of power is established between the national government, which exercises authority over the whole national territory, and provincial governments that exercise independent authority within their own territories (<https://www.britannica.com>). Furthermore, federation means a union of states and community of individuals. Federalism is considered a way of institutionalizing democracy.

In short, federalism is a kind of government system in which the political power is divided among the central or federal government and provincial (cantons, states) government and local level territorial units. Each level has certain political rights and duties to govern the territory. Thus, in federal countries, government reaches in local level individuals to guarantee certain constitutional freedoms or take out and impose taxes directly from citizens. Federalism is distinguished form of unitary government, in which sub-national institutions derive their authority from the central government and are therefore subordinate to it (Kandel, 2009). It is a system of government in which sovereignty is shared between two or more level of government thus the national government and other governments are equally supreme.

Types of federalism

The types of federalism are varying. Following common types of federalism are described.

Dual federalism

Dual federalism is the idea that the union and states share power, but a central or federal government holds more power than the individual states. This type of federalism is known as more conservative form in the policy point of view due to it can dictate state policy to some extent. It is also a political arrangement in which power is divided between national and state governments in clearly defined terms, with state governments exercising those powers accorded to them without interference from the national government (<https://brewminate.com>).

Cooperative federalism

This is the idea that the federal government and the state government share power equally. This type of federalism is known as more liberal form that allows for a wide range of differences between states. In this form, states have more flexibility to rule own of free from central control or dictation.

Confederation federalism

Confederation describes a union of states or other self-governing bodies that cooperate, a union by compact or treaty between states, provinces, or territories that creates a central government with limited powers. Confederation federalism is a very classically liberal solution to unionism with a focus on states' rights over central government (<http://factmyth.com>).

Principles of federation

There are so many principles about the federation, some common principles are as follows.

Coming together federation

In this type of federation, independent states come together on their own to form a bigger unit; all the constituent states usually have equal power, like the federation of USA, Switzerland and Australia, Germany, Malaysia, and Russia

Holding together federation

In this type of federation, a sovereign country decides to divide its power between the constituent states and national government like Canada, Brazil and Nigeria. Under this, central government tends to be more powerful. Likewise, some units are granted special powers; for example, India, Spain and Belgium have holding together federation.

Secede- federalism

On this principle of federalism is a system, where a unified country of states but which has right to separate alone in any time like Russia, Argentina, Austria and India. Russia deserves both principles of coming together and secede-federalism (Kandel, 2009).

Features of federalism

The main features of the federalism are that governments can be more responsive to citizens and improves efficiency of people and governing styles. It is made of by a better understanding among the state and helps to manage conflicts. Federalism embraces diversity and separation of power. Additionally, it checks on government power and people feel more involved. In federation there is innovation in law and policy encouraged as well as protects local or regional interests (<http://iraqnation.org>).

History of Federalism in Nepal

In the history of federalism in the world, first of all federal government was formed in 1789 in USA as a national constitutional republic based on the principle of federalism, where power was shared between the federal government and state governments (<https://brewminate.com>).

Reviewing the history of federalism in Nepal, there is diverse geographical, multicultural, multilingual and multiethnic nationalism. There are 125 different castes/ethnic groups (Dalhal, G. 2017) and 120 languages in Nepal.

The inequality based on geography and caste system was prevalent in Nepal since 18th century thus, Nepal needed federalism to address the historic inequality. To make political system more accountable and to overcome the inequality and systematic political system; and rule of law, Nepal government prepared different constitutional codes from the very beginning. The *Muluki Ain* (codified law) of Nepal was adopted the first national legal code (set of laws) in 1854. (<http://www.madhesiyouth.com>).

The first written constitution of Nepal is the government act 1947 made by Rana Prime Minister Padma Shamsher (Dalhal, G. (2017). Likewise, Nepal interim government act 2007 B.S. (1950), the constitution of kingdom of Nepal 2015 B.S. (1958), the constitution of Nepal 2019 B.S. (1962), the constitution of Nepal 2047 B.S. (1990), the interim constitution of Nepal 2063 B.S. (2006) and constitution of Nepal 2072 B.S. (2015) (<https://www.kullabs.com>) were promulgated. Before the interim constitution of Nepal 2006, Nepal exercised the decentralization policy among the region, zone, district and local level of the political system. Recently, the federal system has been recognized in Nepal.

So far as the history of discourse of federalism in Nepal, the voice of the federal model of new Nepal was initially raised by Nepal Terai Congress for an autonomous Terai (plain land) province in 1950s. Nepal Sadhvavana Party demanded for a federal model of government with five provinces in the House of Representatives after the general elections in 1992. This concept was cleared after *Madhesh Andolan* (movement by the people of Terai) in early 2007. The downfall of monarchy was key point to the establishment of federalism in Nepal. The constitution of Nepal recognized the seven federal states from eastern region to the far western region of Nepal (<http://www.madhesiyouth.com>).

Practice of Federalism in Nepal

In the constitution of Nepal, the main structure of the Federal Democratic Republic of Nepal has three levels of government, namely the Federation, the State and the Local level.

Federal Executive

The constitution of Nepal recognized the nation as a multi-party, competitive, federal, democratic, republican, parliamentary form of government based on pluralism. There is a Council of Ministers in which the president appoints prime minister to the leader of a parliamentary party that commands majority in the House of Representatives and the ministers be constitute under his or her chairpersonship. There is a limitation of maximum of twenty-five ministers including the prime minister, in accordance with the inclusive principle, from amongst the members of the Federal Parliament.

Federal Legislature

According to the articles 83 and 84 of the constitution of Nepal there is a federal legislature consisting of two houses known as the House of Representatives and the National Assembly, which is called the Federal Parliament. The composition of House of Representatives consists of a total of two hundred and seventy five members like one hundred and sixty five members are elected through the first past the post electoral system, in which one is elected from each election constituency of one hundred and sixty five election constituencies delimited in the country on the basis of geography and

population and one hundred and ten members are elected through the proportional electoral system where voters vote for political parties, with the whole country being considered as a single election constituency.

State Executive

The states are consisting of the districts as mentioned in Schedule-4. The executive power of a state is vested in the State Council of Ministers and all state executive functions is performed in the name of the State Government. There is a Chief of State in each State, as a representative of the Government of Nepal nominated by the president. The Chief of State appoints the leader of the parliamentary party commanding a majority in the State Assembly as the Chief Minister, and the State Council of Ministers constituted under his or her chairpersonship. On the recommendation of the Chief Minister, the Chief of State constitutes the State Council of Ministers consisting of a maximum of twenty percent of the total number of members of the State Assembly, including the Chief Minister, in accordance with the inclusive principle, from amongst the members of the State Assembly.

State Legislature

In accordance with the articles 175 and 176 of the constitution of Nepal, there is a unicameral legislature of a State called the State Assembly. The composition of each State Assembly consists of a number of members is twice as many as the number of members elected to the House of Representatives from the concerned State, through the first past the post electoral system and the number of members is set of a sixty percent, and the rest forty percent members is elected, through the proportional electoral system.

Local Executive

The executive power of the local level is vested in the *Goun Palika* (village executive) or the *Nagar Palika* (municipal executive). The executive functions of the village body and the municipality is performed in the name of the Village Executive and the Municipal Executive.

There is a Chairperson of Village Executive in each Village Body. The Village Executive is formed under his or her chairpersonship. The Village Executive consists of one Vice- Chairperson, Ward Chairperson elected from each Ward and members. The Chairperson and the Vice-Chairperson are elected by the voters residing within the concerned Village Body area by secret ballots based on one person one vote, in accordance with the first past the post electoral system. The members of the Village Executive are included four women members elected by the members of the Village Assembly from amongst themselves and two members elected by the Village Assembly from the *Dalit* or minority communities

Each Municipality has a Mayor and the Municipal Executive is formed under his or her chairpersonship. Likewise, every municipality consists of one Deputy Mayor, Ward Chairperson elected from each Ward and members elected pursuant to clause. Mayor and the Deputy Mayor is elected by the voters residing within the concerned Municipal area by secret ballots based on one person one vote, in accordance with the first past the post electoral system.

The members of the Municipal Executive include five women members elected by the members of the Municipal Assembly from amongst themselves and three members elected by the Municipal Assembly from the *Dalit* or minority communities.

Local Legislature

In accordance the articles 221, 222 and 223 of the constitution of Nepal, the legislative powers of Local Level is vested in the Village Assembly and the Municipal Assembly. The composition of each Village Assembly consists the Chairperson and Vice- Chairperson of the Village Executive, Ward Chairpersons, and four members elected from each ward and Members of the Village Executive elected

from *Dalit* and minority communities and representation of at least two women from each ward. Each ward of a Village Body has a Ward Committee composed of the Ward Chairperson and four members. Such Ward Chairperson and Ward members is elected in accordance with the first past the post electoral system.

Likewise, the composition of each Municipal Assembly consists of the Mayor and the Deputy Mayor of the Municipal Executive, Ward Chairpersons, and four members are elected from each Ward and members of the Municipal Executive elected from *Dalit* or minority communities and representation of at least two women from each Ward. Each ward of a Municipality has a Ward Committee composed of one Ward Chairperson and four members as provided for in the Federal law. Such Ward Chairperson and Ward members are elected in accordance with the first past the post electoral system.

Judiciary

According to the articles 126 and 127 of the constitution of Nepal, powers relating to justice in Nepal have been exercised by courts and other judicial bodies in accordance with this Constitution, other laws and the recognized principles of justice. Supreme Court, High Court and District Court are main body of the court structure.

Supreme Court

Supreme Court is the highest court of Nepal recognized as a court of record. The constitution also establishes the Constitutional Bench in the Supreme Court to hear the disputes related to jurisdiction of Federal, State and Local level as well as the disputes on qualification of elected member of federal or state Parliament (<http://www.supremecourt.gov.np>).

High Court

At present, there are 7 High Courts along with nine permanent Benches and two temporary Benches of the High Court (<http://www.supremecourt.gov.np>).

Special Court

A special court is a court with limited jurisdiction, that deals with a particular field of law rather than a particular territorial jurisdiction. Special Court consists of the Chief Justice of the Federal Court, who is the chairman, the chief Judges of the High Courts, and two other persons who hold or have held office as judge of the Federal Court or a High Court appointed by the Conference of Rulers (<https://www.lawyerment.com>).

District Court

There are District Courts in 77 districts.

In addition to the judicial bodies are formed at the Local level to try cases under law or other bodies as required may be formed to pursue alternative dispute settlement methods (<http://www.supremecourt.gov.np>).

Judicial Committee

According to the article 217 of the constitution of Nepal there is a three-member judicial committee in each local level body coordinated by its Vice-Chairperson in the case of a Village Body and by its Deputy Mayor in the case of a Municipality, in order to settle disputes under their respective jurisdictions in accordance with law.

Discussion and results

Based on the literature and responses from the respondent it can be say that federalism is a political system in which constitutionally sovereignty or governing power or decentralized political

power is divided among the constituent political units or between multiples states and one in center of a nation. In federal system, certain political power is divided into central government and multiple states to enable the people with historic and contemporary inequalities, discrimination and marginalization in a diverse geographical, multicultural, multilingual and multiethnic nation like Nepal. Holding together federation principle has been applied to systematize the federalism.

In Nepal, federal system has been systematized in the name of federal, provincial and local government. According to the structure of federal system comprised in the constitution of Nepal, federal executive and federal legislature; state executive and state legislature; and local executive (village executive and municipal executive) and local legislature has been in practice. Likewise, supreme court, high court, special court, district court and judicial committee in the local level under the vice-chair person of village executive and municipality are the organ of current judicial system in Nepal.

So far as the understanding of people of Nepal on federal system and its practice, in the view of key respondents, federal, provincial and local level type of government is federal system where the state power is decentralized. It has been established after a long-time struggle, challenges and sacrifice of the people. Although federal system is good for geographically big countries, but Nepal is small country and compact multi-lingual and multicultural and people are living harmoniously from the very ancient period thus it is not suitable in Nepal that there is confusion among the federal, states and local bodies to the exercise of the power. Federal government has been curtailing to handover the right of the local government. It may open fire of fight between Nepalese people. Decentralization policy is better for Nepal.

In the question of implementation part of the federalism in Nepal, respondents view that administrative bodies are so large that people have to walk more than three hours on foot to reach in headquarters, heavy tax has been imposed and federal system is not implementing for public wellbeing, but leaders are becoming luxurious that their facilities has been increasing. More than fifty percent of the total budget has been freezing. There is a confusion to select the priority of the development. A few people who are nearest and dearest of leaders are taking advantages form it.

In the view of does the Singh Durbar reached in the village to village level, respondents' opinion that a very few services have been arrived in the local level but there is no clarity that federal government still does not willing to handover the rights. Concept of federalism is limited in speech of the leaders. Even the federal government could not be able to justiciable adjustment of civil servants in the federal, provincial and local level government.

In the question of challenges in its implementation, key respondents replied services giving by the leaders; they are getting payment as civil servants, there is no proper new mechanism as the concept of federalism for delivering services, no clear cut division of rights and responsibilities of three level government, lack of training to leader as well as civil servants to overcome the poor experience of implementation of federalism, interference of federal government over the provincial and local bodies, unnecessary burden of tax, representatives of central, provincial and local are elected but they could not able to tell the people what the federalism is, corruption and internal dispute, international interference, coordination among the parties for national consensus as well as inter-ministries relation, nonexistence of the policy of right man in the right place and reward and punishment, lack of transparency in governments, unequilibrium of production and industrialization and disbalance of import and export are the main challenges to implement the federalism in Nepal.

So far as the suggestions to overcome the above challenges respondents view that representatives are server of the people but they are being as payable civil servant thus they could be server of the people! Immediately payment to the huge number of elected leaders as a salary must be excluded, habit of the corrupt leader must be improved to establish socialism oriented political system, create a good

and effective structure of governance, zero tolerance over corruption, right man in right places and reward and punishment, justiciable adjustment of civil servant in three level of government, clear cut demarcation between the right and responsibility of local, provincial and federal level governments for proper implementation of federal system, clear vision and mission of the leader, strictly prohibition of nepotism and favouritism or kinship and gratified, awareness programmed for the leaders; civil servants and people about the federalism and its implementation, coordination among the parties; among the governments of three levels, agricultural production; and renovate and establishment of job oriented industrialization, certain educational qualification for the leaders to be elected, priority to the local level government, sustainable planning and proper investment to drastic change in vocational oriented education, tender system must be fair and the system of reward and punishment to the contractor and not allowing another contract after accomplishing first contract are the main way to sustain our federalism in Nepal.

Conclusion

Federalism is a political system in which constitutionally, sovereignty is decentralized among the constituent political units. In Nepal, federal system has been systematized in the name of federal, provincial and local governments.

The practices of federal system comprised in the constitution of Nepal, are federal executive and federal legislature; state executive and state legislature; and village executive and municipal executive; and local legislature has been in practice. Likewise, Supreme Court, high court, special court, district court and judicial committee in the local level under the vice-chair person of village executive and municipality are the organ of current judicial system in Nepal.

So far as implementation part of federal system, local administrative bodies are so large than previous, imposed heavy tax, leaders' luxury, actual budget has not been spending and a fewer people nearest and dearest of leaders are taking advantages. A few services of central level have been reached in provinces and local level bodies.

There are so many challenges to implement it. People and leader's awareness about importance of federal system is necessary that service giver leaders are becoming as salary taker civil servants. Federal executive does not willing to handover the right and responsibility to the states and local bodies.

Right man in a right places and reward and punishment in both to the political leaders and civil servants is required, sustainable planning and fair tender system is mandatory for proper implementation of federal system in Nepal. Furthermore, renovate the earlier industries and establishment of new one would create more jobs to sustain federalism and develop the country.

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