
Local Government and its Jurisdiction in Federal Nepal: A Theoretical Analysis

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Abstract

This paper examines jurisdiction power of local government in federal Nepal. Specifically, it entails on how the local bodies exercised their jurisdictional power on the system of federal. Local government administration in federal Nepal are now struggling the high degree of autonomy. Even, 80 percent of the Local laws are delegated or the secondary law. Presently, 70.16 percent male and 17.93 percent female elected representatives headed the LGs. Most of the employees are disinterested to join the local bodies. Further, Local bodies are highly ineffective and inefficient due to concentration of power at the center, inadequate fund, grants, loans and limited resources. The study is based on secondary data with descriptive design of qualitative method. Therefore, local bodies of federal Nepal has equal share of power, equitable distribution of fiscal transfer and the all-inclusive participation.

Keywords: autonomy, boundaries, jurisdiction, local bodies, power

Introduction

Simply Local government (LG) is the government of the local people. So, it's called as the government of local autonomy (aka *Self-rule*). Further, it also defines as local fiscal discretion, decentralization government (Wolman et al., 2008) and government of ensuring the spirit and willingness of communities (John and Jacob, 2016, p.xv). As per this, LG drives the system of management of local affairs and resources. Another portion, LG is the infra-sovereign government and its jurisdiction services held in a particular area (Humes, 1959, p.3) and preserving the life and liberty of the local residents, creating space for democratic participation and civic dialogue, supporting market-led and environmentally sustainable local development (Shah, 2006, p.2). Thus, the LG is the soul chamber of the local levels.

Nepal is a federal state. Its constitution declares Nepal as a "Federal Democratic Republic." Unlike unitary system, federal system has vested much power in the local government. Unprecedentedly, this Constitution established the autonomous rights for the LGs. It provides the higher degree of autonomy rather than Local Act 1999. It is laid on the three tiers of government realm. The government structure is devolved, with a generally "pyramidal distribution of duties" (Devkota and Khanal, 2024, p.347). According to Article 56 (1) and 56 (4) of the Constitution accelerated the creation of the LG. It has strong constitutional jurisdiction. In the realm of local level have divides into two forms of governments; the Urban and the Rural. Additionally on the *Local Governance Operation Act 2017* also vested enormous rights and jurisdiction power to the local government. In contrast, jurisdiction of the residual power, however vested in the central government.

This research paper explore how the jurisdiction power exercised by the local governments of federal Nepal. But the high degree of autonomy of the local government still not completely functioned. Despite that the crucial aspect in federal Nepal is the lack of decentralization of fiscal power. And, also the provinces and local governments have limited taxing power (Pokharel, 2024) and heavy dependency on federal (Devkota, 2024; Bhusal and Acharya, 2024, p.2). Similarly, the constitution has granted LGs 22 exclusive and 15 concurrent rights. Further the 2017 Act also added more granted rights and duties. Unfortunately, these rights haven't been effectively utilized (Devkota, 2023). For this, the descriptive research paper draws the review of local government that captures the jurisdiction on political, fiscal, and administrative bodies. Therefore, the formation of local government process was democratic. The elected representatives of the local people govern the grass root level of the society. For this paper examines its role in intergovernmental system. How the LG drives its structural and functional jurisdiction and responsibility free from central and provincial governments.

Review of Literature

LG is the government of local bodies including urban and rural. However, it must be accountable and participatory. In term of this, most of the scholars have divergent conceptualization of the term. Some scholars; Kaul (1987), Kuditshini (2008) and Chiweza (2010) use local government interchangeably with decentralization, other such as the Elsbree (1931) put a fine line, arguing that LG is the only way to avoid extreme centralization, and at the same time provide for efficient administration. This is lack of conceptual consensus on local government is observed not only among scholars but also among national and regional institutions, said by another scholar Etaka (2021). Meanwhile, Robson (2022) identifies the legal dimension of the LGs. He defines organization jurisdiction and authorities of the LGs. Thus, in local government, as elsewhere, progress is a condition of stability. Scholars; Zhou and Tan (2017) asserted the various aspects of central-local government relations. They further identify their relations within multiple aspects such as finance, personnel, political affairs and administration, and involve many complicated fields. Similarly, Mullin (2014) focus on local government boundaries. He defines boundaries create clear lines of division that determine the extent of a government's responsibilities and obligations. Further, he also defines fundamental rights and jurisdictions territory. Scholar Stoker (1988) explained about LG in his book entitled, *"The Politics of Local Government"* addressed that changed world of LGs politics. He also defines the LGs relations, their local theories, and the fate of the LGs. Furthermore, other scholars such as Tschudin and Trithart (2018) explores that LG as the government of good governance because of providing better public services, promotes local resources, enhanced sustainable development efficacy. They also focus to giving people voice with inclusion and nurturing political will based on sustaining peace. Shah (2006) states that there are various patterns of LG in developing countries, however, continue to suffer political imbalance. There is absence of clear power division. Due to this, LG has often itself as dysfunctional governance systems in developing countries. They also asserted that the inappropriate allocation of resources, inefficient revenue and taxation process, inadequate services and facilities to the people. Such variables change the dimension of local governance. Mazzucato and Anderson (2023) asserted about jurisdiction of the LGs. They further define as there is need of strong local jurisdiction and authority. The both scholars anticipated that proper capabilities and structures will need in the local level which would create and shaping market and resources within owns. Additionally, Agranoff (2014) focus on the relations between local-central governments. He also

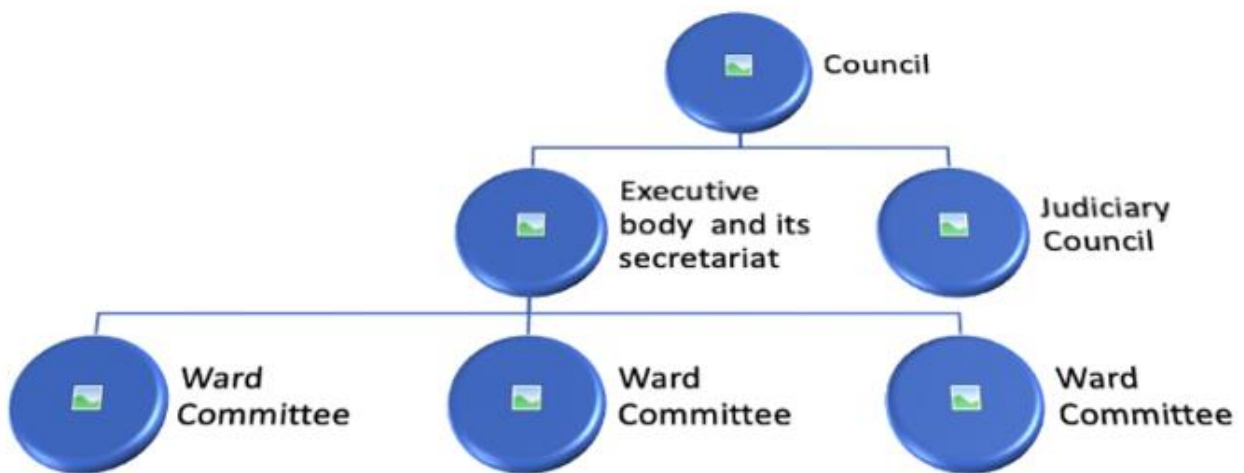
examines the interrelationship between national and local governments within a particular dimension such as fiscal federalism, revenue dependence and shared governance i.e. self-rule system.

Methodology

This research adopted the qualitative method of data collection, using the descriptive design. The qualitative method was used to collect and analyze data. Also, the data from this study was collected from secondary sources. The secondary source was obtained from books, related academic journals, articles, internet sources and study is largely descriptive.

Structure of Local Government in Federal Nepal

The structure of LGs in federal Nepal has been framed within two levels; urban and rural. There are currently 753 new local governments, many were created by amalgamating previously created Village Development Committees (VDCs) and Municipalities under the LSGA (1999) (Bhusal, 2020). In Constitution there is the demarcation of rights of the three tiers of governments of article 56 (4), article 214 (2), article 221 (2) and article 226 (1). As per this, the structure of government not only provides their structural power jurisdiction but also determined its character. Today's the LGs of federal Nepal are broadly consists of rural municipalities (460) and urban municipalities (293) with further classification into municipalities (276), sub-metropolitan cities (11) and metropolitan cities (6). In addition to these local governments, there are 77 District Coordination Committees (DCCs) which are created to work as coordinating mechanisms between different levels of the government (federal, provincial and local) as well as among public and private sector agencies in a given territory. In annexure 8 of the constitution, areas concerned with the rights of local governments. There have been 22 specified local rights including itself has 12 forms of taxes authorities. In the Local Government Operation Act-2074, the fiscal rights of local government are specified under part 9 section 54 to section 67 ((MoFAGA, 2020). Despite that some of the LGs are financially weaker to challenge the federal government. However, the current regime of the LGs structure in federal Nepal is:



Source: Bhusal, 2020.

In the above structure provides an idea of federal Nepal. Furthermore, the Constitution and Local Government Act, 2017 requires the paradigm shift of the political system of Nepal. It involves their elected and non-elected structure of the system, policy formulation and so on. Presently, 70.16 percent male and 17.93 percent female elected representatives led the LGs (MoFAGA and PLGSP, 2024).

Boundaries of the Local Government

In most countries including Nepal have function their LGs under a legal framework defined by the Constitution. In the context of Nepal, the Constitution and operation act, 2017 identifies their power and authorities. Constitution puts local governments as the third tier in the federation; any legislative arrangements decided through local councils can be regarded as laws (Bhusal, 2020). Under the clauses (4) and (5) of article 56, the Government of Nepal (GoN) shall constitute a commission for the determination of the number and boundaries of the LGs bodies (GoN, 2015).

In annexure 8 provides the 22 rights of the local bodies. Annexure 9 has the provision of concurrent list shared their subjects matter with federal, provincial and local levels. Primary law associated subject matter of local levels are cooperatives, local level taxes (property taxes, rental taxes, entertainment, advertisement), agriculture, local roads, drinking water and disaster management and thereof. According to the Article 226 of the constitution, the LGs have their own jurisdiction. The constitution has endowment their necessary laws on the matters listed in the annexure 8 and 9 respectively. Additionally, also the article 102 of the LGs Operation Act, 2017 legally affirms “the constitutional provision, authorizing local governments to formulate primary laws on rights within their jurisdiction” (Devkota, 2024). The act also empowers the executive to issue delegated laws (secondary laws), including regulations, guidelines, procedures and standards (Ibid). Under this act right to impose and collect local taxes, fees, charges, fine penalties; raise the debt; formulate the local revenue advisory committee; supervision of source and determination of budget limit; formulation and implementation of the budget (Sharma, 2021).

On the other hands, the other matters of the LGs shall be constituted under the provision of State law. It includes the conducts of assemblies, rules of procedures of meetings, formation of committees; conditions in which the office of members falls vacant, facilities are under the state law. According to the constitution provision, local bodies have power to exercise their jurisdictions in some subject matters; mainly the political jurisdiction (legislative power), fiscal jurisdiction (financial power), and administrative jurisdiction (executive power). It includes;

Local Entities		Political Jurisdiction (Legislative Power)	
		Vested Power of LGs	Recommendation to Federal
1.	Article 51 (C)	Social & Cultural Transformation	----
2.	Article 56 (4) & (5)	-----	No. of Wards; SA/Protected/ AR*
3.	Primary Law	Rural and Municipal Assembly	----
		Not to be inconsistent to central	----
4.	Article 214	Local Executive (based on FPTP)	-----

		Fiscal Jurisdiction (Financial Power)	
1.	Local Legislative	Make law/discuss for Fiscal Year	-----
2.	Local Executive	Annual Budget-formulate & Implement	-----
3.	Vested to Central	Time for Submission of Local Budget	-----
4.	Local Executive	Use of Resource with Local Priority	-----
5.	Vested to Central	Budget deficits and Fiscal Discipline	-----
6.	Local Executive (Art. 60)	Source of Revenue-Tax/Revenue	-----
		Administrative Jurisdiction (Executive Power)	
1.	Executive Head	Mayor/Deputy mayor and Chairperson/Vice Chairperson	
2.	Conduct of Business	Under the Village and Municipal Executive respectively	
3.	Other provision to executive	Art.219, provided by the Federal law.	
4.	DA and DDC*	Led by both village and municipal bodies	
5.	Judicial Committee	Chaired by the Vice-Chairperson in Village and Deputy Mayor in Municipality	

Source: Research itself based on Government document (*The Constitution*). ^{SA/Protected/ AR*=} Specialized Area/ Autonomous Region, DA and DDC*- District Assembly and District Coordination Committee.

In the above table showcased the power jurisdiction of the local bodies in federal Nepal. With the 77 districts of geographical size of Nepal, it has practiced the concept of high degree of autonomous local bodies.

Discussion and Findings

In contrast to unitary, federal system needed of central-local relationship. Federal institution has an enormous power jurisdiction with local governments. The Constitution of Nepal defines the three tiers of governments. Thus, it focuses on the jurisdictions on political, fiscal, and administrative on the local institutions. Despite that, the provision and jurisdiction of soul authority for Local levels to making primary law, but there unable to formulate law. Most of the LGs are dependent on delegated law. According to the Delegated Legislation Committee of the National Assembly (NA) analyzed that 80 percent of the local laws are delegated (Devkota, 2024). For this, central government reduced their role in Local levels in law making process but shared their coordination and cooperation. Similarly, the jurisdiction disputes among local representatives with constant tussles and highly politicized matters drag on their smooth functioning (Baral, 2022). Therefore, the conflicts between the central-local governments have been on various aspects which suffer the implementation of local bodies. Mainly in the pace, direction, and scope of decentralization (Yashino and Morgan, 2017, p.7) has been restructured or the reshaped. Without engagements and cooperation in the issues of mobilization resources, taxation, and revenue collection difficult to address their delivery to the people, this is the biggest challenges for the local government.

In terms of political power of local bodies is more inclusive and participatory since the enshrined of 2006 political development. According to Article 50 incorporates the local autonomy and process of decentralization. The proportional ratio of elected female representatives has steadily increased. Not only female representation, there has been all-inclusive system held by the LGs of Nepal. Despite that, LGs *De-facto* leadership has been in the hands of male leaders. Female representative had only the de-factor power on the leadership of judicial committee (Article 217). Similarly, in the 8-year of federal history of LGs, central

government intervenes the PJ of autonomous bodies. According to the report of NA, asserted that federal government breaches the jurisdiction of local entities. Therefore, overall analysis of PJ of LGs of Nepal is on smoothly operating their theme, however, central-local dispute ongoing. Also, there has been crisis in jurisdiction dysfunction in LGs due to “lack of human resources and necessary expertise” (MoFGA, 2021). Further, only 98 LGs implementing code of conduct on preventing misconduct in the workplace (MoFAGA, 2024).

Additionally, the fiscal jurisdiction connected to economy, resources, and process of development. Constitution has shared the relationship of financial between federal, provincial and local entities. According to the Article 59 gives the power of financial to the local governments. Further, the Constitutions give further power within equitable distribution such as use of Natural resources, development, benefits for local communities, priority of local, revenue relations, respective collection of revenue, equitable distribution of the collected revenue, fiscal transfer through the recommended of the National Natural Resource and fiscal commission (NNRFC). Similarly, the Article 228 also provides the jurisdiction power of no tax shall be levied and collected and no loan rose in the Local entities. However, in 2018, “federal government bowed to the pressure of local governments and stopped collecting the tax” (The Kathmandu Post, 2024). In the practice of fiscal federalism typology, there is absence of inadequate resources in Nepal’s LGs. Even though, the central government failure to provides equal distribution of financial assistance. LGs are struggling to provide better government system. They don’t have enough resources and most of the financial power are intervenes by the central government. The process of “revenue remains centralized” (Devkota, 2024). Thus, it has been necessary to end the hangover of the centralization. Similarly in the process of revenue collection of Local government are as follows;

Revenue/ Tax of Local Governments				
	Local equalization	Percent/Rs.	Fiscal Year	Remarks
1.	Grant	41.38%	FY 2018/19	Ratio of Grant decrease
	Grant	29.61%	FY 2023/24	
2.	Collect Property Registration	40%	-----	Share with Provinces
3.	Royalties	25%	-----	Various Matter of LGs
4.	Revenue (749 units)	659 billion	FY 2020/21	Rs.35.75 billion for internal tax
5.	Internal Tax Revenue	35.28 billion	FY 2019/20	
6.	Share Property Tax	15 to 20%	2020	World Bank Report
7.	Revenue and Grant Decline	8%	FY 2022/23	Local governments
8.	Own Revenue of LGs	70%	-----	Property & Govt. Fees.

Source: The 60th report of the Office of the Auditor General, Nepal Fiscal Federalism Update 2024 and Property Tax Diagnostic Manual 2020 (WorldBank).

In the above data interpretation illustrated that fiscal jurisdiction determines the reality figure of how the LGs function or not. In the context of Nepal, central interfere also in the fiscal distribution. There has been unequal distribution of grants, loans and thereof. The ratio of grants decreased gradually within a huge proportion. However, the LGs internal tax and property revenues contributed to provide steering for drive their own self-management governments.

Furthermore, in the administrative jurisdiction held on the power of devolution /or the de-concentration to the local entities. Nepal federal administration distributed their power through

vertically. Yet there is absence of laws to devolve their power jurisdiction in the local entities. In the ratio of 753 local units, there have been “67,503 administrative staffs in the local level” (The Himalayan Times, 2023). Due to the staff adjustment suffer the operation of local entities within their own jurisdiction. Therefore, the administration of LGs is dysfunctional due to reason of “disinterested to join the local level administration away from the capital, worried as they are about their promotion, career opportunities and financial re-ward” (*Ibid*). Further, the *de-facto* power has also used by the centrally allocated officers in local level jurisdiction. Thus, this jurisdiction also stresses that central authority work on the spirit of federalism. In the context of Nepal, country is established as federal but its feature yet function as the basis of unitary or the centralized mindset. Since 2017, “the Centre has already changed the names and the headquarters of 102 local levels-headquarters of 62, names of 18, and names and headquarters of 22” (The Himalayan Times, 2019). So, the central-local relations and jurisdiction function as per the Article 235 of the Coordination law of the Constitution and the theme of the 2074 act.

Conclusion

In terms of this, “successful governance brings purposeful change. Failure is punished by unrest, disaffection, and stagnation” (Bloom et al., 2003). This statement is necessary to change in the implementation of local bodies in federal Nepal. Thus, the federal Nepal has ensuring the art of governing in the local levels. Theoretically, this paper studies the condition of LGs in federal Nepal. During the FDR principle, Nepal has three tires of government models. Despite that, degree of autonomy government was LG. Constitution give the *de-facto* jurisdiction power to all the local entities. But the process of centralization yet suffers the jurisdiction of LGs. As per this, the researcher examines to identify LG works on the spirit of federalism enhanced the betterment of LGs capabilities and provide as a sense of good governance. Judicial bodies, revenue collection and law making process of the local entities struggling to function itself. Various government reports also clarify that influence of central government increased their role in local jurisdiction. Even 80 percent of the local bodies’ laws are delegated. Also, the jurisdiction disputes among local representatives with constant tussles and highly politicized matters drag on their smooth functioning. Presently, 70.16 percent male and 17.93 percent female elected representatives led the LGs. LGs are struggling to provide better government system. They don’t have enough resources and most of the financial power are intervenes by the central government. The process of revenue remains centralized. Likewise, the administration of LGs is dysfunctional due to reason of “disinterested to join the local level administration away from the capital, worried as they are about their promotion, career opportunities and financial reward. Therefore, Local bodies deals the jurisdiction of political, financial and administrative as per the volume of equal share of power, equitable distribution of fiscal transfer and the all-inclusive participatory approach.

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