Identity Based Federalism and its Implications: An Analytical Study

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Abstract

The article has focused upon identity-based federalism practiced in some of the countries in the world. It has clarified the fears and the suspicions about secession if identity-based federalism would have been implemented in Nepal. Thus, it has been explored to get answers about the probability of secession, the constitutional procedural for the implementation of secession rights and its linkage. The content analysis method with comparative assessment has been used in order to meet the objectives. Because of the provisions made in those constitutions, social-economic and political dynamism of the states, the research has found that there is negligible secession probability. The countries having secession rights, with some constitutional disputes in a long row, have shown less chances of secession. The article has examined constitution of all these federal countries. The Experience of Ethiopia, Bosnia and Herzegovina (BiH), Belgium and Canada have obviously shown the fearless probability about secession. Experiences in these countries have conclusively shown that the fear and suspicions about the fragmentation of Nepal as imposed does not relatively occur.

Key Words –Federalism, Identity based federalism, secession and secession rights

Introduction

Federalism refers to the mixed or compound mode of government, combining a central government with regional governments. The term "federal" is derived from the Latin word, foedus, meaning covenant (Elazar, 1991). An institutional arrangement, taking the form of a sovereign state, and distinguished from other such states solely on the fact that its central government incorporates regional unites into its decision procedure on some constitutionally entrenched basis (King, 1993). The term 'federation' and consequently 'federalism' derives from the Latin word foedus which means covenant, contract or pact. Such covenants were concluded in ancient Rome between allied states or foederati. In the UK, for example, the term is associated with fragmentation and disunity, while in the USA or Germany with unitedness (Burgess, 2003).

Hence, in essence a federal arrangement is one of partnership between a territorially based regional units and a central government whose relationship is regulated by a constitution or covenant. Based on this covenant power is divided and shared between the regional units and the center.

Elazar (1991) defines federalism as 'self-rule plus shared rule'. Federalism has been defined as a polity combining self-rule of central and regional governments and shared rule among these governments (cited in Benz, 2018). As a state-building theory, federalism has three essential components: (i) formation of states and territorialization of federal-local administration in such a manner as to promote closer contact between people and government; (ii) distribution of federal powers on a relatively no centralized basis, and (iii) creation of the institutions of shared rule. The first component essentially seeks the creation of the institutions of 'self-rule' ranging from full-fledged state system at the macro level. The second component refers to the division of federal powers and functions on a relatively autonomous basis. The third component, role of the institutions of shared rule, assumes critical salience in striking uniformity of outlook and commonality of purpose (Singh, 2008). Stephen (2004) has emphasized the distinction between federations created by the 'coming together' of formerly separate units and those resulting from 'holding together' regions in a formerly united polity.

Federalism based on identity means accepting the diversity of the Nepalese society and the building of Nepalese state institutions accordingly. Federalism based on identity, on the other hand, means accepting the diversity of the Nepalese society and the building of Nepalese state institutions accordingly (Serchan, 2012).

In an ethnic or identity based federation, the land has ethnic dimensions perceived by a community as its 'homeland' vested with religious or emotions. Thus, a certain ethnic group is likely to centralize power in the name of language, culture and others. A major argument in favor of ethnically based federations is that the country's ethnic sub-division ensures that the various ethnic groups will form a local majority in one or more of the sub-units.

The aim of identity-based federalism is to create an incongruent and not a congruent federal system. In incongruent federations, the social, cultural and linguistic compositions of the constituent units differ from one another and from the country as a whole. A congruent federal system, on the other hand, has its constituent units as miniature reflections of the important aspects of the whole federal system (Lijphart, 1999).

In Nepalese context, new issues like ethnic autonomy, identity and federalism have been coming up in the Nepalese politics since 1990. The issues related to identity-based federalism, ethnic autonomy and proportional representation have become main agendas in mainstream Nepalese politics especially of the Maoist. After 2006 people's movement, Nepalese state assured to transform to federal system. The issue of federalism was for the first time demanded by ethnic and regional parties: Nepal Sadvawana Party (NSP) since Panchayat era, Rastriya Janamukti party (RJP), Mongol National Organization (MNO), Nepal Rastriya Janajati Party (NRJP) in 1990 election.

RJP and MNO demanded non-ethnic administrative federalism. NRJP demanded ethnic based federalism and NSP demanded federalism with Terai autonomy. Among the total 44 political parties registered in election commission in 1990, only two parties, RJP and NSP raised the issue of ethnic federalism.

Particularly after 2006 people's movement, the federalism became the common agenda of the whole country. The Interim Constitution 2063 (2007) declared 'to bring an end to discrimination based on class, caste, language, gender, culture, religion and region by eliminating the centralized and unitary form of the state, the state shall be made inclusive and restructure into a progressive, democratic federal system. However, there is a huge debate on the bases of federalism.

Indigenous Intellectuals and leaders in various parties favoured to propose ethnic identity-based federalism while non-indigenous leaders opted for administrative-based federalism. Due to this debate, some leaders from CPN-UML and NC revolted and form new parties: Sanghiya Samajbadi Party (SSP) and Sanghiya Loktantrik Party ((SLP) respectively. Tharuhat Party, Nepa: Rastriya party etc, had been formed for identity based federalism with resources (Serchan, 2012).

During the CA election, it included the call for Federal Democratic Republic without the demarcation and naming of the provinces. The Manifesto of NC (Nepali Congress, 2009) committed to proportional representation and positive discrimination for marginalized groups. However, the manifesto was silent about how to represent them. A concept paper of 2009 of NC contained model for both six and thirteen states, the former based on 'resources and viability' and the later on 'identity and protection of representation with special focus on linguistic and cultural specialties' (International Crisis Group, 2011).

The NC proposed constitution of May 2010 decided in favoring of the six provinces model, two of them pure Terai provinces but all of them with at least some access to the southern border. It has concluded that a maximum of seven federal states will be economically viable. Finally, it has proposed a map of a Federal Nepal, delineating seven states based on economic viability and identity.

After the success of revolution in April 2006 and Madhesh Movement, CPN-UML, too agreed upon federalism. It's 12th central committee meeting opted federalism based on eight factors i.e., territory, population and caste inhabitance, mother tongue, status of cultural cohabitation, administrative accessibility, socio-economic interrelation, availability of means and resources and historical identity. The 15th central committee meeting approved of democratic republic, inclusive democracy, federal system, sustainable peace and transformation of socio-economic conditions through the CA election.

CPN-UML proposed two options-one having eight and other having 12 provinces (H. Shakya, personal communication, October 12, 2011). The first option proposes at least three provinces in the Terai and others in the mountain regions. The second option has four in the Terai and eight in the mountain regions. It has put forth the procedure on the state reconstruction as: process of cultural identity and coexistence; procedure which emphasize on human happiness, creativity and capability; bottom to top approach. The UML wanted mixed cultural identity with common name or neutral name comprises of the sentiments of multiple ethnicity.

Except the Maoist, the other major parties were not clear about federal states appropriate in Nepal. The Maoists were the only main political party with a strong public

commitment to federalism. The Maoist draft constitution envisages a federal structure with twelve provinces established on the basis of 'caste, language and region'. The Maoist proposed 10 identity-based states and two region based states. The names proposed for the states appear to be more neutral in comparison with previous ones that stressed on ethnicity.

The Maoist had favoured the ethnic identity and Madhesi identity should be given to the oppressed nationalities with a right to self-determination and autonomous rule in their territories within the framework of the New Democratic system in democratic republic.

It means accepting the multi-ethnic/multinational, multicultural, multi-lingual, multi-religious and the multiregional reality of the Nepalese society in the national polity. While an administrative federalism means giving continuity to the one people/nation, one language and one culture policy that Nepalese state has espoused over the last two centuries. It totally negates the multi-ethnic/multinational, multicultural, multi-lingual, multi-religious and the multiregional reality of the Nepalese society.

Nepal is a plural society having multi-ethnicity, culture, language and religion. Geographically, there are castes and ethnic based differences even among the population living in any side of the country. Since the establishments of liberal democracy in 1990, there has been an impressive growth of debates of issues of social injustice, inequity (Shrestha, 2016).

Though Nepal is multi-ethnic/multinational, multicultural, multi-lingual, multi-religious and the multi-regional in reality, the debate of federalism upon the identity had risen up many curiosities about fears and suspicions. Not only, people and the political elites but also among the great scholars, these disputes are hovering round them. Thus, the article has aimed to discuss about the identity-based model of federalism and its key issues. And, main objective of this paper was to explore the possibility of the secession in the federalism and the federalism upon identity. To achieve the objective of this research content analysis research methodology was applied. And, Ethiopia, Belgium and BiH have been taken for samplings while Canada has been taken for the rationale sample.

Does the identity-based federalism lead to secession? Is the identity-based federalism appropriate in Nepal? Is there exclusion of the rights of minorities in the identity-based federalism? Is there social and political disturbance in the identity-based federalism? Is sustainable economy viable in the identity based federal states?

Method

Content analysis and comparative research method was used to derive this study. The related books, constitution, documents, articles, websites, research books, manifestos of various parties were used. Constitutions of Ethopia, Bosnia and Herzegovina, Belgium and Canada were purposively selected for content analysis, where identity based federalism have been implemented. The constitutions of selected countries were compared with constitution of Nepal.

Experiences of Identity based federal countries

Ethiopia, Bosnia and Herzegovina (BiH), Belgium and Canada examined in this article reflect, as a predominant objective, efforts to accommodate territorially based racial, ethnic, religious, cultural, and linguistic diversity and thus to preserve cultural identities along with national unity. Ethiopia and BiH have been federalized after the conflict while Belgium and Canada have become federal states from constitutional monarchy. Moreover, Belgium has been federated from unitary state and Canada has opted federalism from confederation. These federal states are patronized by the constitutional monarch in this modern era too. The residual powers are inherited to the Central legislative in Belgium and Canada while in Ethiopia and Bosnia and Herzegovina, the powers are given to the constituent units.

Ethiopia

In the Ethiopian constitution, the right of self-determination with secession has been guaranteed; it is very difficult to exercise in the practical world. More on, in the two decades long way, there have been many disputes and political upheavals, but of no any sign of secession voices. Though the rights of secession have been guaranteed in Ethiopian constitution, the practical arrangements are very tedious and long-time process. As the Ethiopian experience shows, one party coalition with Ethiopian People's Revolutionary Democratic Front (EPRDF) controls all the seats of parliament and the provincial assembly, any movements against the integrity of Ethiopia will not be addressed. Because of it, the Ethiopian federalism has been the centralized.

In this context, Fiseha & Habib (2010), while remaining critical of other aspects of Ethiopian federalism, nevertheless maintain that Ethiopia's choice of multicultural federalism rooted in its constituent nationalities is a step in the right direction. This is because it has opened a political space for the various ethnic groups and has diffused the various conflicts out into local arenas, making them less a threat to the Centre (Fiseha & Habib, ibid).

Bosnia and Herzegovina (BiH)

The state of Bosnia and Herzegovina (BiH) had been formed by "forced together", now it has been regulated through "holding together". Neither the federation of Bosnia and Herzegovina (Bosniac-Croat federation) nor the Republika Srspka have right to secede from the Union (Serchan, 2012). Because of the Dayton Agreement and Bonn's power, the condition has been privileged. The Republika Srpska is a region that gained its legitimacy through Dayton, and should therefore be viewed as any other regional political unit, such as Flanders or Catalonia (Serchan, 2012). Controversy and debate has been generated in recent years by some Bosnian Serb leaders who have made calls for Republika Srpska to secede from Bosnia. Much of the debate regarding the possible secession of Republika Srpska centers on whether the Dayton Accords is a legitimate treaty and governing structure for Bosnia. The secession largely depends upon the legitimacy of the Dayton Accords.

On the other hand, the Bosnian experience shows the possibility of a weak Centre, when there is over focus on consensus and peace building. Although it might be too early to offer an assessment on the success of the two systems, it is clear that Ethiopia, at least with the provisions of self-determination with secession rights, has shown the way with regards to management of ethnic diversity.

Belgium

Belgium is only country having double federation, territorial and non-territorial identity-based constituents. All the constituent's regions and communities have been given each of the government, legislation and own constitutions. A century ago, in 1912, a French speaking citizen of Belgium in a letter to the King Albert of Belgium had stated that there were no Belgians anymore, only Flemings and Walloons (Deschouwer, 2005).

Federalists maintain that if the boundaries between the components of the federation match the boundaries between the relevant ethnic, religious or linguistic communities (what has been called a federal society) then federalism can be an effective conflict-regulating device. Belgium, Switzerland and Canada are all examples of federal societies whereby due to historical accident; the relevant ethnic communities are reasonably geographically segregated. Federalism is more difficult, however, for communities which cannot control federal units, because of their geographical dispersion-as with Quebec Anglophones, Francophone outside Quebec, Flemish Speakersi n Wallonia, Francophone in Flanders, and indigenous peoples in North America. This is one of the problems flexible federalism is intended to get around. Flexible federalism offers the possibility of developing institutions which empower distinct cultural groups whose members are scattered throughout the national territory (Casandra, 1996).

Canada

Canada is the most developed countries in the world which has recognized a constitutional right to secession. The Canadian Supreme Court in 1998 ruled that Canada is divisible as Francophone Quebec had voted twice in the secession referendum. Before it, Canadian constitution didn't have such type of rights for and linguistic community. The Supreme Court not only gave rights of secession, but also strictly gave guidelines for the purpose of secession proposal and its constitutional procedural. Despite some barriers in the process, the high court of Quebec province has given green signal about 50 percent plus one vote will be clear majority.

Alike Belgium, Canada has the democratic process for each and every amendment, though the clear vote debate finalized in the provincial level, the debate has gone to the national level. Had it been accredited to the Clarity Act by Quebec legislative assembly; more and more constitutional debates have to be resolved in the national polity. The secession rights for Quebec province has becomes melodrama. It is a dream of French community to make New France in Canada.

Although there is the possibility of fragmentation associated with federalism, the reality is nevertheless more complex. Given this, it has been said that if Quebec is divisible, so is Quebec. A particular territorial group may opt for secession from existing state, but there

may well be other sub groups within that particular territory who may also want to secede from the territory and the larger group (Serchan, 2012).

Comparison with Nepal

"Comparative and cross-national findings have shown that all democracies with territorially concentrated ethnic and linguistic groups have federal state systems" (Stephen, 2001) and "that ethnic autonomy, in many parts of the world, has contributed to mitigating ethnic conflicts" (Gurr, 1993). Both Nepal and the country's ethnic politics are undergoing significant transitions. The emergence of poly-ethnic politics could eliminate the prevailing mono-ethnic hegemony and create a just and equitable society. However, new democracies are at particular risk of seeing ethnic mobilization turn violent if not dealt with in the right way (Snyder, 2000).

Through the research of the Ethiopian model, it is not only naming the province after the minority population within that province, but also can be politically guaranteed in polity possible. The Harari state is the good example after the Harari community of Arabian Muslim. Harari ethnic are 8.65 percent while 56.41 percent are Oromos and 22.77 percent are Amharas, while the remaining 12.17% is composed of different ethnic groups, including Tigreans, Gurages and others (Ethopian Human Rights Council, 2009). However, the constitutional and political environment of the region only recognizes the Harari and the Oromo ethnic groups as the legitimate owners of political power in that Harari region. Thus, the naming of the province can be appropriated where ethnics are not in higher proportion (Ethopian Human Rights Council, 2009).

For the scattering communities all over the country and minorities can be constitutionally addressed finding out the results of Belgium double federation. Each Dutch, Francophone and German Speaking communities have been exercising the non-territorial constitutions and governments in the federalism.

Being not federal states in the nature, the unitary states like Finland, Sweden and Norway have given non-territorial parliament for the minorities Sami indigenous. Hence, either federal or unitary nature of the state, non-territorial autonomous parliament, council, government can be afforded to communities which have been dispersed elsewhere inside the country.

Following all the four countries, the naming after the ethnicity, linguistic, religion and cultural have shown various results. Had given the political rights to the communities of larger groups or somewhere in minor groups, distracted the political rights to vice-versa. Thus, the principle of shared rule and self-rule gives not only the rights to disadvantaged groups, but also disturbs the social relationship among the citizens.

The good example for this fear is again the state of Harari. The Amharas who have more than 22 percent population and other minorities 12 percent within the State of Harari are excluded. Harari ethnics (8.65 percent) and Oromos (56.41 percent) are the political owners in the State of Harari. The people who do not characterized into nation or nationalities in the states of Ethiopia lag behind the political ownership (Gedamu, 2017). Bosnia and Herzegovina and Canada have some different practices about such rights.

Aforementioned readings reveal that the federalism with identity-based model has the mixed answers. The identity of the states or provinces is economically sustainable according to the country, policy for allocation of revenues and taxation, foreign investment, natural resources. Though Ethiopia was the weakest economy, it has been economically developing. The economic growth rate is more than Bosnia and Herzegovina. The Republika Srpska has poor economy compared to the federation of Bosnia and Herzegovina. Belgium and Canada are the rich countries. The Flanders is economically rich compared to the Walloons. In Canada, Alberta, Ontario and Quebec have the highest economic strengths. Quebec and Ontario have the manufacturing and finance concentrations. Other Aboriginal indigenous territories: The Northwest territories, the Yukon and the Nunavut in the north Canada have less economic power. These territories have been now-a-days functioning as the state. The state naming after the identity has too mixed reflections in the economic viability. Thus, the identity is viable on the context of sustainable economy too.

Having results of various countries, I have attempted briefly to compare Nepal with Ethiopia, Belgium, Canada and BiH. Nepal has been transformed to the Federal Democratic Republic from the unitary Kingdom. Although the new constitution has declared Nepal as a federal democratic republic with secularism, proportionate representative and inclusive state, identity politics in Nepal has not been fully addressed.

In practice, Communist Party of Nepal (Maoist) established Magarat, Tharuwan, Madhesi, Khambuwan, Tamsaling, Tamuwan, Newa and Dalit National Liberation Front in 2000 AD. After some years, the Maoist party declared eleven identity based autonomous regions all over Nepal. They addressed such regions as people's government. During the first Constituent Assembly (CA-I), the sub-committee of the restructuring of government of CA-I has proposed 14 federal provinces according to the identity of ethnicity, language and region. They were Jadhan, Seti-Mahakali, Bheri-Karnali, Tharuwan, Magarat, Tamuwan, Narayani, Tamsaling, Newa, Sunkoshi, Sherpa, Kirat, Limbuwan, Kochila and Madhesh. Narayaniand Sunkoshi provinces were named after the holy river and others were named after the old inhabitants of those regions. Narayani, Sunkoshi, Jadhan and Seti-Mahakali have the Khas-Arya caste, while others have each ethnic community with the highest population (Serchan, 2012).

Because of the disputes among the major political parties and its members, the high level commission of the restructure of government (HLCRG), could not made national consensus upon the basic line of the federalism. Thus the majority members proposed federalism with identity having 10 provinces while minor members proposed federalism with economic viability having seven provinces without name.

HLCRG in its proposal removed the Sunkosi, Sherpa, Jadhan provinces and merged the Karnali and Khaptad provinces into one province, thus proposing a total of 10 provinces (Serchan, 2012).

As the national consensus could not build for restructuring of the country, the CA-I had been dissolved. And, after fresh election for CA-II, the political scenario had changed. On the eve of 20 September 2015, the President of Nepal, Dr. Ram Baran Yadav,

promulgated the Constitution of Nepal formulated by the Constitution Assembly CA-II. The New Constitution declared 'Nepal is an independent, indivisible, sovereign, secular, inclusive, democratic, socialist, federal republican state' with seven proviences. Despite the promulgation of new constitution on 20th September 2015, Madhesi, Janajati including Tharu, Limbuwan and Dalits were protesting against the constitution accusing that the constitution ignored their basic issues of identity and identity based federalism.

Now Nepal has only five officially declared provinces, i.e. SudurPachhim, Karnali, Lumbini, Gandaki, and Bagmati. They have been named after identity of regions and rivers only. No any provinces have been named after the identity of castes or nationalities. The province No 1 and 2 have not been declared their names yet. There are least chances of naming after identity of nationalites (ethnic) in these two provinces too.

Having the similarities with different aspects from those four samples, Nepal could have been named after ethnic identity based federalism.

Conclusion

In conclusion, the analysis above makes the research question that there is apprehension that the identity-based federalism leads to secession isinvalid. The experiences of Ethiopia, BiH and Belgium have made it obvious that identity-based federalism does not lead to secession. Though Canadian federalism has exercised the mixed model of federalism, Quebec province has been a long way demanding secession through democratic referendum. Because of Quebec model of secession formula, the Catalan of Spain and the Scotland of United Kingdom have referendum. Scottish community still wished to integrate in UK having more political and economic privileges. Though Catalans have passed to secede with majority of 90 percent of legislative members of Catalans, Spain suspended the Catalan legislative body and issued the warranty to the Catalan President and Catalan ministers to surrender. The special autonomy given to the Catalan province has been suspended and direct rule to the Catalan has been imposed by the government of Spain. Thus, the fear about the fragmentation of Nepal as imposed does not relatively occur.

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