

Socio-cultural Challenges on Federal Structure Nepal

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Abstracts

Socio cultural change is a dynamic concept and change on different time periods. These variables are change and main determinants of political and economic change. The cultural, ethnic and economic diversity across the country is very hard to have homogeneity within such heterogeneous characteristics. Therefore, new minorities are likely to be created within the subunits. Such units and subunits among various socio-cultural and ethnic groups may create instability. The disagreement on the geographical division of the states has already created instability in the Terai region. Why is socially and culturally diverse Asia still overwhelmingly unfederal ? The issue seeks to answer the question by identifying the factors responsible for the adoption of federalism in some countries as well as its rejection in others, with particular reference to existing research and the practices of federalism in India, Pakistan and Malaysia.¹ The central argument is that the federal discourse in Asia is to be conjoined to democracy discourse in order to assess the democratic effect of federalism, which is an important key to federal success. On the basis of a conceptual distinction between diversity- claims and equality-claims, it is emphasized that federalism in Asia needs to strike a balance between its concern for management of diversity and for the production of some equity in the social-cultural and economic realms.

Key Words : dynamic, determinants, homogeneity, heterogeneous.

Introductions :

From the early 1990s, the movement for democracy started campaigning against Hindu Monarchic autocracy for the lifting of the ban on political parties, the recognition of multiculturalism and freedom of religion² (Torri, Religious Identities and the Struggle for Secularism: The Revival of Buddhism and Religions of Marginalized Groups, 2019) Ethnic, linguistic, and religious identities have emerged during the past decade as major challenges to the institutional capacity of the modern state to cope with cultural diversity. As such, multilingualism, which formulates a response to this challenge, has emerged as a new focus of empirical research on federalism. This provides a contrast to classic studies of federalism, which concentrated on the institutional division of powers between a state and its constituent units. Language plays a double role in this: As a thin bond for communication and negotiation between political actors, and a thick system of meanings, carrying the burden of history, religion, culture, ritual, and memory. The article studies this ambivalence of language through a comparison of India and Switzerland, two quite

different cases of relatively successful accommodation of linguistic diversity and discusses the constitutional means and policy measures that might enable a modern state to balance regional diversity and national unity in the face of the multi-ethnic challenge.

Schmid (1981) and Steinberg (1996) agree that while useful in explaining the Swiss case, the notion of cross-cutting cleavages cannot entirely account for the emergence of a modern nation

state around sometimes deep differences.³ Other crucial factors in the coalescence of a Swiss national state include: its historic protection of multilingualism, a historic commitment to political accommodation and power sharing; its astonishing contemporary per capita wealth; its specialized economy (banking, watches, chocolate, etc.); its geographic location and topography, the instrumental interest that outside countries such as France and Germany had in its neutrality; external pressures and threats, most notably World War II; its unique system of military service and conscription for all Swiss citizens; and its relatively small size.

After 10 years armed conflict and 19 days people's movement, Nepal has entered to the phase of making a new constitution. It is evident that new constitution will not only be a democratic, also will be federal and inclusive too. Though the idea of federalism was mooted in Nepal around the 1990s when Constitution of the Kingdom of Nepal 1990 was framed, but at that time it got no importance. Establishment of the multi-party democracy, and parliamentary system were the major political issue of that time. Nepal has been exercising a unitary and centralized system for more than 240 years. During this period rulers always preferred to the concentration of power and opposed to every effort of the devolution of power. During Panchayat and Parliamentary period decentralization was adopted as the constitutional provision but no sincere efforts were made to implement such provisions. Even the legal instruments like Local Self-Government Act were not properly used to implement the provision made in the constitution (Belbase, 2020).

Struggle Within and Between Different Ethnic Groups

Federalism is inserted in any governance system to provide the identity, recognition and a feeling of ownership in the government. Nepal also adopts the same notion of federal rule. Nepal is a common playground of more than 123 casts and more than 125 religions.⁴ The culture and custom of these ethnics are sparse along with their livelihood and aspiration. Federal rule by nature is a creation for the accommodation of all such variability and diversity. But it is not possible to satisfy all the wants and aspiration which can have a threat of creating new minority. Such units and subunits among various socio-cultural and ethnic groups may create instability. Such a scenario can invite an ethnic war as Srilanka, Sudan, Nigeria, Afghanistan and other African territories had gone through in the past.

Nepal is in infancy phase of federal rule. The nomenclature and political boundary of Province is still not shut-out in all the provinces. The indigenous and ethnic communities demanding the autonomous ethnic regions and provinces are still agitating and the peace

process is still remaining to conclude. Like the struggle of farmers and herders in Nigeria for the sake of resources, the Nepalese ethnics like Raute, and Kusunda are nearly displaced from the forests as per federal division of the forest land. The Tharu community is not ready to be identified as a Madeshi Community where other Madeshi termed them as a Madeshi.

The Muslim minority, the Kirats, Limbhuwan, Makarats of the Maoist conflict are still struggling making the small ethnic political fronts. The ethnic-based autonomy desire inserted on the conflict era still has influence in those communities.

The religious and ethnic struggle occurred in India is not yet ended. Three ethnic or religious conflicts have stood out of late: two occurred in the states of "Assam and Punjab; another, the more widely known Hindu-Muslim conflict continues to persist. The Assam problem is primarily ethnic; the Punjab problem is based on both religious and regional conflicts, while the Hindu-Muslim problem is predominantly religious.⁵

Nepal primarily an agro-based country falls under the category of least developed countries. The national economic growth is 5.40 percent and the population growth is 2.25 percent. 31 percent population of the country falls below the poverty line. For the all round development of the country a careful utilization of natural resources is necessary. Three major resources are: water, mineral and forest. Nepal is a second richest country in the world possessing about 2.27 percent of the world water resource⁹. Studies indicate that there is availability of mineral resources in different parts of the country. Likewise forest is also a major natural resource of the country. The economic development of the country depends upon proper utilization of those resources. While involving in the process of restructuring of state, one cannot forget the matter how these resources can be utilized for common benefit for all the Nepali people. Hence, Nepal being a landlocked country faces some compulsions in regard to foreign policy. Thus non-alignment has remained Nepal's compulsion instead of choice. While restructuring state, Nepal must not forget foreign policy dimension too. Though, Nepal has been exercising unitary model of state structure and parliamentary model of ruling, but the long exercise of both these models proved ineffective. The effort to frame new constitution intends to find better alternatives to both these models.

Federalism is now almost a national consensus issue. Almost all the political forces (except few) are in favour of federal structure. The Interim Constitution of Nepal, 2006 has already made the provision 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 restructured into a progressive, democratic federal system¹⁰. The constitution also made the provision that the final decision relating to the structure of the state and federal system shall be made by the Constituent Assembly¹¹. After above provision made in the constitution, the political parties of Nepal started to make their ideas public in regard to federalism in Nepal.

The latter day's dissatisfaction in Nepal comprises of provision of Secularism in the constitution, the open and wide-spread preach of Christianity. The Hinduism, its cultural practice and followers tremendously found to be unsatisfied which may out broke the religious conflict ending with the threat of monarchial reinstatement.

Complexities on Accommodation of Diversities

The world context:

Decentralization typically refers to various forms of territorial devolution or delegation of political and administrative power i.e. spatial decentralization. The best known of these things is in federalism, which gives a high degree of constitutional protection to the constituent units, but less extensive or legally secure arrangements for delegation or transfer of power are more common. Another form of decentralization consists of arrangements for autonomy for one part of the country only as with Zanzibar in Tanzania, Hong Kong and Macao vis-à-vis China after July 1997, Aland Islands in relation to Finland, and in this respect it differs from federalism where in general the devolution of powers is granted to all constituent parts of the state. It is, however, possible in a federation to have one part of the country with greater self-government than others and this arrangement may be conceived of a special case of autonomy, as former Kashmir in the Indian federation before converting it into Union Territory, Quebec in Canada or the Basque country in Spain. Equally a federation, and indeed a unitary state, may contain a territory where the central authorities may enjoy a special and sometimes exclusive jurisdiction which may be called 'enclaves', as with Indian reservations in the United States and Canada.⁶

Nepalese Context

Nepal is a homeland for more than 123 casts and 125 lingual and many religious groups. Here the indigenous groups, the followers of Nature as religion celebrates Lhosar differently as per ethnic culture for the four times. The newar communities of Capital city of Nepal are different from other parts of Nepal and are stickler of their cultural norms and traditions. Likewise the Hindu communities are always in the favor of Nepal as a Hindu Nation, raising the voice of referendum in such issue. In Terai region also there are different castes and creed, the caste and racial discrimination though ended by law still exist in society, which restricts the equitable access on the resources and the facilities provided by the nation.⁷ The reservation, quota system in fact is not enjoyed by the needy class within the included group. The flourished members of such inclusion group grasp the chance over such reservation, which is the eminent dissatisfaction widespread in the Nepalese society. The immature governance can creature arbitrariness and misuse of the natural and fiscal resources, which are the main causes of denying the accommodation of diversities and being the challengeable issue of Nepalese Federalism.

Behavioral Pattern as Hindrances on Implementing Federalism New Laws

Democracy is the means of success and development in present era. The opinion seems failure when the Chinese and Russian model of development prevails even today. The behavioral practice knowingly and unknowingly a key of success and failure of the society and nation.

Education system, technology and skill are the modes of transformation. Our federal system seems in trouble due to the behavioral pattern, because the bureaucracy still is executing in the traditional way as of Rana Regime. The accountability and responsibility are not the part and parcel of the governance till now. The third countries federalism is in risk due to the unmatched linkage of the ruler and its administration. The people are even not ready to trust on the government, its different level executives and its governance networks. The tax-paying behavior of the citizens and the use of tax revenue in proper manner is another hindrance in our federalism.

The federalism can be institutionalized by applying the new laws replacing the laws of the older unitary state. But our behavioral practice is that we simply oppose the law which counters our general interest without considering its full phase implications, like that of drafted trust act and media act.

The politics is the service rather than business but the practical behavioral panorama in Nepalese Federalism is just opposite, it is very hard to find a single leader of clean and sound personality to imply federal rules seriously and honestly. For the federal success, the feeling of ownership in government, governance is the most which seems lacking in our governance. The ruler and administrator in Nepalese governance behave as the master of the people, never as the service provider and facilitator of their concerned issues. The third world's leadership choosing methods and trend is not sound, is based on unhealthy competition, showing the undue influence, expending large amount of money, the creation of unfavorable, conflicted, unnatural situation.

Ethnic Nationalism versus Patriotism

The meaning of nationalism and patriotism is same in the federation constitutes by aggregation because there is similarity in aspiration and objective. The federalism is need to strength the common nationalism, the case of USA and Germany. The patriotism differ from nationalism in the federalism formed by de-aggregation because the federation is the need to fulfill the distinct diverse aspiration and objectives. The case of India, Switzerland, Nigeria, and Nepal reveal differences between nationalism and patriotism.

The nationalism in the de-aggregation federalism means the integrity and unity of the particular small ethnic group, which is a threat of this kind of federalism for the long term sustainability.

The Nepalese federalism also recognizes the ethnic and communal identification and promotes their socio-cultural and economic autonomy in the local level, which may give

rise to ethnocentrism and shadowed the patriotism that invites the ethnic conflict, unwanted tussle and even the war as in Nigeria.

Hardship for the Adoption of Change

The challenges to Nepal's federalism are not independent of its history, origin, background, or context, and rooted in the fact that reason d'être of inevitability to adopt the federal polity in Nepal is neither logically nor democratically. The federal systems were established mainly in four phases of history, pre-WWII, post-WWII, Post 1990 and after advent of 21st century. Nepal's federalism is centripetal in nature which has its own characteristics and challenges.

Our governance system from the very older days acquainted with monarchy, anarchy, plutocracy and aristocracy. The habitual acceptance of such nobility is the way of our administration and political execution. The general people are still not aware on what are their right, privilege and facility to them. The legal structuralism and functionalism seems unmatched with the structural functionalism of Society. The numerous laws of different levels, their formation under particular situation may not address the real problematic issues of the society. The critical constitutional bodies are rendered toothless. Example: NNRFC.

The local level is in practice from the very beginning, the centre as the power reservoir even in the unitary governance, but the state government appears to be sandwiched, a mere postmasters between powerful federal and local governments. The governments in all levels feel troublesome task to manage the administration in each level, the people at the same time in dilemma which level does what task for them. The rationale for the taxation can't be proved by the different level governance. So the Nepalese federalism is encompassing threat which shows for the future great challenge.

Localization versus Globalization

The notion of Nepalese federalism is to accommodate the local verdict in governance which promotes the localization of the international skills, technologies, knowledge and education. At the mean time the globalization of the local market for the federal sustenance is necessary. Our federal structure is standing in that point, which can't way forward for the globalization of the local products because the federal set-up initiates without the infrastructure of the provinces to determine its focal point for the existentiality.

The different provinces have different resources to be kept on priority but the basic federal law must recognize it for the multidimensional productivity and use of the resources. To import from the foreign global market, it is better if have the object of replacement, so what in our context. The globalization of local issue seems not probable rather localization of the global market can seem to happen one-sided.

Ethnocentrism and Devaluation of National Laws

The discourse of federalism was initiated as early as 1950. A regional party named the Tarai Congress demanded a Tarai Autonomous Region in a federal set-up. Nepal Sadbhavana Parishad established by late Gajendra Narayan Singh in 1983, explicitly demanded a federal set-up with special rights to Terai-based (potential) sub-national units. After restoration of democracy in 1990, out of 44 political parties registered with the Election Commission, 3 included federalism in their manifestos. The Nepal Rastriya Jana Party favoured federalism based on ethnicity, the Sadvanaban Party was for autonomy in the Tarai region, and Nepal Rastriya Jana MuktiMorchafavoured administrative federalism. In its 40-point demand in 1996 Dr Baburam Bhattarai (United People's Front Nepal), implicitly demanded federalism demanded state restructuring and regional autonomy, power to local government and recognition of ethnic diversity in so restructuring the state in his list of political demands.

The Nepalese Federalism base is ethnocentric which is ended in reservation and accommodation of the interest through constitutional bodies. The indigenous, janajatis, dalits, the geographically backwarded, etc were uncultured with the autonomy, ethnocentrism as the basis of federal governance, the motto is not fulfilled today, which results the devaluation of the national laws. The situation seems that the legal frame of the past need to be changed as per the federal notion but the citizens even today are not ready to accept the xenocentrism. The Trust Bill is the latest illustration. These hindrances are obstructing the federal success in Nepalese context.

Challenges on Social Solidarity

The federalism is inserted to accommodate the diversity and variability inherent in the people. Nepalese society in the monarchical governance system tied with one language, one costume, and one religion as Hinduism under the protection of State. The struggle in different point of time in history, the longitudinal conflict between Monarch and political parties, the decade long maoist movement and the Terai movement establish the ethnic autonomy in the local level, the recognition of the culture and tradition. There is conflicts among various groups in the society. It is barrier for social and cultural transformation of society. It can lose the sprite of development and it is sometime convert into insulator of development. Such types of practices should be corrected in time. Movements are the originator of various change in identity of different ethnic groups.

The contemporary society took certain cast creed and class as their enemy, the source of obstruction of their success and progress. A sort of ethnic centrism occurred in Nepalese Society.⁸ The laws of reservation, the constitutional bodies of certain ethnics as provisioned by constitution create hindrances on the social solidarity. The nationalism is divided into the protection of the ethno-cultural aspect rather than the country as a whole. The federalism in fact prefers governance by own, which can't by nature accommodate and

accept others' will for governing him, so solidarity is maintained within small unit of favored groups but hard to maintain solidarity in National level.

Unexpected Problems Ethnic, Socio-cultural Minority Situation

The Sinhalese and Tamil ethnic war of Srilanka last for nearly 27 years which ended with the military suppression to Tamil Tigers. Likewise the ethnic and religious conflict of Nigeria occurred between Northern Nigeria, clashes between Muslim groups mainly ethnic Hausa and Fulani and Christian and traditionalist communities have become a monthly affair, with devastating consequences. In this charged environment where religion functions as the primary idiom of political identity, conflicts over resources, cattle, land, and political offices have often taken on a religious coloration, with Muslims pitted against Christians.

In Nepal also the constitution mentioned secularism where almost 81.30% follow Hinduism⁹ (Government of Nepal National Planning Commission Secretariat Central Bureau of Statistics, 2014), the adoptance of state neutrality in our context seems not a conscience decision. The Anti- Pahadi protest in Terai region, the integrated SudurPashim protest and the formation of SudhurPashim State seems intolerance of other lingual and ethnics in that province. The hegemony of particular ethnic, culture, religion can't be a favourable context of Federalism. The division of small sub-groups in Religious schema, the strong majority of particular religious attitudes can outspread the religious conflict any time with ant issue.

The cultural celebration is always a matter of controversy. The Federal Nepal on the one hand mentions a nation as a secular state. On the other hand the head of the state, head of the government and other officials recognize and participate the particular socio-cultural event from the nation's side which is against the notion of neutrality.

Scrutinizing Challenges over Prospects from Socio-cultural Aspect

In the attempt of Socio-cultural accommodation, the fierce heterogeneity may be produced, creating new minorities. The provisions made for the recognition of identity, culture and customs can help to seeds the feeling of ownership in governance on the one hand, but the another part is that the raise in the struggle within the different ethnic groups which cements the feeling of ethnocentrism. The complete just accommodation is not possible because some human error may occur which may become the great issue of unrest and struggle.

The present constitution drafting process offers a unique opportunity for Nepal to demonstrate commitment to realize all human rights, including by incorporating economic, social and cultural (ESC) rights in the highest law of the land. By ensuring that the economic and social rights of all Nepalis are guaranteed, and the interests of marginalized and disadvantaged groups are protected in the new Constitution, the government will fulfill the aspirations of Nepalese people for economic and social justice voiced during the Jana

Andolan II. Constitutionalisation of ESC rights as fundamental rights provides a framework of social justice, which will not bankrupt the government, but will ensure consistency of governmental policies with fundamental human rights, thereby enhancing rule of law and redressing social injustice (ICJ, 2020).

The ICJ supports the constitution-making process under way. Nevertheless, if ESC rights were not to be integrated in the constitution on an equal footing with civil and political (CP) rights, such negative signals would be highly detrimental to the full realization of all human rights. They would also be widely regarded as a retrogressive step and one which contravenes the existing obligations of Nepal under the International Covenant on Economic, Social and Cultural Rights (ICJ, 2020).

The promotion of mother tongue, education in the mother tongue is great achievement on the area of enhancing knowledge, but the voice of the community to recognize as an official language is not possible most of the time and can be the issue of conflict. The excess on the facilities promptly and with respect is the positive aspect whereas the access to all needy people can't be provided due to the variation and limitation of the resources, the disadvantaged group may start struggle against the government. The unity in diversity is the crucial matter to keep the social solidarity, the case of Nigeria is to be considered where the social disintegrate can create the death of thousands of people. The federalism asks for the compromise in certain issues as nationalism vs. patriotism, the over use of resources vs. use of limited resources, the competition on the governance vs. the cooperation. If such aspect can be taken positively, the federal rule sustains but the mentality to consider federalism as the governance just for the self- sustenance and self-development can end in the destruction of the federalism. The ethnic autonomy in our context must be understood as the self-governance in the local level and right to self-rule is to determine the socio-cultural, traditional norms and values of the community, but when it is understood as the federal notion of Russian federation of self-determination, definitely the country will go on the internal war.

The inclusion and recognition of Women, Dalit, Senior Citizen, Indigenous people, Geographically Backwarded people, the Religious minorities, the sexual minorities in the national policy and mainland is the appreciable provision. But the real benefit of the federal provision do not reach to the targeted individuals and their socio-economic status remain same and in some aspect getting worst. The equality among equals as mentioned by is not implemented in Nepalese context.

Conclusion

Social and cultural change should be development supportive. In federal set up people expectation is very high and achievement is low. On the basis of economic point of view, these political division seems to be unrealistic. Change in political system and structure definitely bring change in social and cultural practices. Now society became more self-centric and cultural values are deteriorating day after day. Lot of administrative problems are common in various administrative

units of Nepal. Migration, import of product and reverse style of supply chain are the serious threat of federal Nepal and its longevity is in question. The social security and the social justice is the fruit of federal rule, but the question is that is it sufficiently distributed or just like a demo of the cinema. The localization of the global tradition can have the benefit on the behavioral tolerance but the real identity and the culture get shaded. The federalism in Nepal though done for the socio-cultural accommodation is a threat of maintenance of Social solidarity and national unity if not considered consciously by all the concerned stake holders.

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