

Deficit of Local Government Operating Act 2074 B.S. in the Implementation of Federalism and Local Governance in Nepal

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Abstract

This study was to examine the relating to deficit of local Government Operating Act (LGOA) 2074 B.S. in the Implementation of Federalism and Local Governance in Nepal. Descriptive and analytical research design was used in this study. The data collected through questionnaire from 200 respondents were used for analysis of Local Government Operating Act 2074 B.S. in the Implementation of Federalism and Local Governance in Nepal are found to be the milestones of federalism in Nepal and the extent of deficits for capacity building efforts have been inadequate and uncoordinated was found high. The findings from this study can provide information about local government operating act. 2074 B.S. It could be helpful to provide some special guidelines to the policy makers for improving local governance. In addition appropriate policy must be adopted and sound communication and information system should be developed.

Keywords: Capacity building, budget constraints, capacity of local government, overlapping and duplication of functions, inconsistency between Local government operating Act, (LGOA) and other existing laws and guidelines, strategic framework.

Cite this paper

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Background of the Study

Federalism and local governance are mutually inclusive and complementary at times but they are different concepts. Federalism is the political system which is based on the power sharing, rule of law, values, and other governing systems. It is a philosophy of Politics in which a group or body of members are bound together with governing representative head whereas local governance can be affected by federalism processes. For example, if the local governments are to provide services that were formerly provided by the national level organizations it may or may not be followed by federalism, representative or participatory democratic processes, transparency, accountability or other defining characteristics of 'good' local governance (UNDP, 2014).

Federalism is the transfer of political, fiscal and administrative powers to the local government of the government. Whereas, local governance is a set of institutions and mechanism regarding the process of planning, implementing, maintaining, and evaluating and monitoring the affairs that impact on local population.

Statement of the Problem and research question

The concepts of local governance and federalism are considered important phenomena in the study of public administration; traces of their existence can be observed in Nepal since pre-historic times. Self-organized irrigation systems that farmers created to meet their needs for water and conflict resolution mechanism at the local level was a reality long before the current emphasis on development emerged (Adhikari, 2016). Bajracharya (2011),

governance has been an overarching development issue for the developing countries. Development challenges for the twenty-first century revolve around the issues of successful governance. To make development efforts people-centered, effective local governance should be ensured. The core issue of local governance is to ensure social justice and make development inclusive (LGOA, 2017). It encourages access and participation of the marginalized people in local development affairs. Governance is participatory, people-oriented, and it involves government bodies, private sector agencies, social groups, communities and the civil society at large in the process. Federalism assumes that local governance encourages local leadership and empowers grassroots level for enhancing local capacity.

The present constitution of Nepal that was issued on September 20, 2015, has divided the country into 7 provinces where there are 3 levels of government, central, province and local government. Article 50(1) of the present constitution states: The political objective of the state shall be to establish a public welfare system of governance, by establishing a just system in all aspects of national life through the rule of law, values and norms of fundamental rights and human rights, gender equality, proportional inclusion, participation and social justice, while at the same time protecting the life, property, equality and liberties of the people, in keeping with the vitality of freedom, sovereignty, territorial integrity and independence of Nepal, and to consolidate a federal democratic republican system of governance in order to ensure an atmosphere conducive to the enjoyment of the fruits of democracy, while at the same time maintaining the relations between the federal units on the basis of cooperative federalism and incorporating the principle of proportional participation in the system of governance on the basis of local autonomy and federalism. In this context the following factors are critical to consolidate federalism and LG (Nepal, 2007): federalism could be achieved with proper institutional arrangements; constitutional and legislative frameworks are vital and should be self-explanatory in many cases; a number of central level, regional level and local level institutions are required to support local governance; particularly, resource mobilization policies and practices are to be placed in different levels of federalism. In this context, the research question may arise as, was there any deficit that seemed apparent during the implementation of local government operating Act 2074 B. S.?

Objectives of the Study

The purpose of this study is to analyze the extent of local governance in relation to federalism in Nepal. The specific objective of the study is to assess the deficit that seemed apparent during the implementation of local government operating act. (LGOA) in Nepal.

Review of Literature

Review of Literature captures a number of areas of federalism and federal process and local governance.

Aspects of Federalism and Local Governance

Interim constitution of Nepal 2063 B.S. and Present Constitution of Nepal established a federal system of governance. This system is comprised of seven provinces and 753 local governments. The constitution assigns important functional responsibilities to local and provincial governments and mandates that they have significant autonomy in deciding how services will be delivered. Federalism is a Form of governance in which power is constitutionally divided between different authorities in such a way that each authority exercises responsibility for a particular set of functions and maintains its own institutions to discharge those functions.

Federalism and local governance are mutually inclusive and complementary at times but they are different concepts. Federalism is basically a national political, legislative, institutional and fiscal process whereas local governance can be affected by federal processes. For example, if the local governments are to provide services that were formerly provided by the national level organizations it may or may not be followed by federalization, representative or participatory democratic processes, transparency, accountability or other defining characteristics of 'good' local governance (UNDP, 2014) and (Adhikari, 2023).

Federalism is widely used in the public affairs management as one of the measures of improving managerial efficiency. It is normally understood as the redistribution of authorities so that there is a system of co-responsibility

established between the institutions of governance at the central, regional/provincial and local level within a defined legal and administrative framework. It is about empowering the local government. The essence of federalism and decentralization is the transfer of the responsibility of public service delivery to local bodies (Nepal, 2007 and Thapa, 2007).

UNDP (2004) defines Local governance as "local governance comprises a set of institutions, mechanisms and processes through which citizens and their groups can articulate their interests and needs, mediate their differences, and exercise their rights and obligations at the local level. The building blocks of good local governance are many: citizen participation, partnerships among key actors at the local level, capacity of local actors across all sectors, multiple flows of information, institutions of accountability, and a pro-poor orientation.

Looking beyond the narrow perspective of legal frameworks and local government entities has been emphasized by local governance. The multiplicity of formal and informal relationships between different actors in development for instance, local government, private sectors and CSOs which outline and influence the effectiveness of political and administrative systems at a sub-national level has been included in it.

There is a large degree of synergy and coherence between supporting national governance processes and local governance, as many of the aspects are in fact the same. Therefore, it is necessary to work with governance principles at local levels to strengthen local governance processes.

Strong institutions at central and local government level are needed for effective local governance which would bring together all the stakeholders, to work in partnership for local governance; both the local and central government institutions must be strengthened. There is need for institutional buildings in all the sectors (Kauzya, n.d). An effective local governance mechanism plays a critical role in economic development and social justice (Haque, 2009).

The key issues relating to effective local governance are (Cheema, 2014): Local Governance can be defined as the process to exercise economic political and administrative authority in the management of local affairs; it comprises mechanism, processes and institutions through which citizen and groups articulate their interest, mediate their differences and exercise their legal rights and obligations; it includes three sets of actors-those from the state, the civil society and the private sector; local governments should not only be democratic and participatory but also effective. On the basis of above issues, the effectiveness of local governance follows the consideration of local capacity building which constitutes an important foundation of effective local governance. It is for the purpose the following elements have been considered as contributing elements (for details see Cheema, 2014): institutional framework that creates partnership between the center and local levels through political and fiscal devolution; new methods and techniques of public Administration; capacity of the local leaders to mobilize resources for service delivery and its accessibility to citizens; partnership with private sector and civil society organizations.

Adhikari (2016) and Olsen (2007), "The main differences between federalism and local governance are in the actual actors participating in the process and the mode of interaction between governments, the private sector and civil society. Federalism pertains to public sector institutional and organizational reforms and processes and the support thereof, whereas local governance pertains more to supporting the creation of an enabling environment where multi-stakeholder processes - including public and private sector, as well as civil society". Based on the experiences and lessons learned in this field by eminent experts and practitioners, the key policy messages and recommendations for local governance-decentralization, or Decentralized Governance, can be summarized as follows (Adhikari, 2016) and (Rojas R. , 2014).

1. There is need of sustained commitment, coordination and strengthened capacities of all stakeholders at various levels for poverty reduction through federalism.
 2. There must be an enabling environment at the national/federal level in order to ensure power/authority to the local level for community empowerment.
 3. There is need to give importance to administrative and fiscal federalism and not just political federalism, in order to contribute to poverty reduction.
 4. Participatory monitoring and evaluation at all levels should be given emphasis for effective federalism.
 5. Initiatives of federalism should be context specific for motivating local people for their own development.
- The Nepalese constitution 2072 B.S. led to the creation of a high level federal execution committee. The LGOA

was promulgated in 2074 B.S. , based on the recommendations of the committee. This led the foundation for self-governance system in the country. There has been remarkable progress if we look back over the past decade and a half. The LGOA built on and improved the existing legal framework for federalism. Some of its major features and contributions/achievements (Adhikari, 2016) include the following: it legitimized the concept of self-governance and the expenditure and revenue rising functions to local governments; for the first time, it enumerated the objectives, principles, duties and responsibilities and inter-agency relationships for local governance in the country; it provided financial support to local governments through revenue assignments, federal government grants and domestic borrowing; operational autonomy to set up organizational structures/positions; for accountability and transparency mechanisms, for setting up a local government service cadre, and for ensuring representation of women and disadvantaged groups, among others; it helped develop a “federalism Implementation Plan” (FIP), with short and long term actions aimed at speeding up the federalism process; and a federalism Implementation Monitoring Committee (FIMC) was set up. It also established fiscal grant transfer commission, to make recommendations to promote fiscal autonomy and fiscal federalism. However, there are limitations (deficits) in the regulation and implementation aspect. The LGOA did not go far enough in providing a clear and strategic framework and a time bound action plan for implementation; several inconsistencies between LGOA and other existing laws and guidelines, , hampered effective implementation to local governments (local level service delivery in primary education and basic healthcare, and agricultural extension services) was far more limited than envisaged in the LGOA; and even that did not actually happen till much later .There was also considerable overlap and duplication of functions between the line agencies and local Governments; funding was inadequate for carrying out even the devolved functions, in part due to budget constraints of the federal government; while necessary technical support was not provided by line agencies; ‘capacity building efforts have been inadequate and uncoordinated; despite donor/government efforts to help build capacity of local governments, technical capacity of such government to plan, design and implement devolved activities remained highly inadequate. Seven key issues were identified concerning the implementation process of local government operating act 2074.

Unclear Strategic Framework for Implementation

Strategies framework for federalism vary according to the socio-economic and political circumstances of individual countries. The current strategic framework for implementation of federalism has not paid adequate attention to establish coherence between strategy, plan and procedure which are critical to democratize the system and to manage the activities of federal institutions. There will be a greater chance of local elite capturing the benefit of federalism, decision made on a less transparent, predictable and responsive manner if rules and procedure are not established to manage federal activities (Adhikari, 2016)

Inconsistency between LGOA and Other Existing Laws and Guidelines

There are a several inconsistencies between LGOA and other existing laws and guidelines, hampered effective implementation as well as contradictions between federalism policy and prevailing practices (Hesselbarth, 2007) and (Adhikari, 2016).

Overlapping and Duplication of Functions between the Line Agencies and Local Government

The actual devolution of expenditure functions/responsibilities to local governments (local level service delivery in primary education and basic healthcare, and agricultural extension services) was far more limited than envisaged in the LGOA; and even that did not actually happen till much later. There was also considerable overlapping and duplication of functions between the line agencies and local bodies (Hesselbarth, 2007) and (Adhikari, 2016).

Budget Constraints of the Federal Government

Funding was inadequate for carrying out even the devolved functions, in part due to budget constraints of the

federal government; while necessary technical support was not provided by line agencies.

Efforts of Capacity Building

Capacity building refers to strengthening the skills, competencies and abilities of people and communities in developing societies (Adhikari, 2013). A fundamental component of local governance capacity building should be dedicated to strengthening the capacity of local communities to generate sustainable income .Capacity building in respect to priority setting, planning, local capital investment, and eventually consumption (Kauzya, .n.d.).Capacity building efforts have been inadequate and uncoordinated (Hesselbarth, 2007) and (Adhikari, 2016)

Donor/Government Efforts to Help Build Capacity of Local Governments

Donor/government efforts to help build capacity of local governments, technical capacity of such governments to plan, design and implement devolved activities remained highly inadequate (Adhikari, 2007) and (Hesselbarth, 2007).

Methodology

The study is based on the survey design. An interview schedule was administered in 2023.For analyzing "Deficit of Local Government Act in the implementation of federalism and local governance in Nepal", the population for this study was taken from two districts Kathmandu and Kaski. Such population was comprised of NGO/ CBO officials and employees of municipalities Sample size of 200 was taken from an unknown population. Purposive quote sampling technique was used. The sample was selected from those who were involved in federalism for more than two years. For collecting primary data, interview method was used. As a data collection instrument, structured questionnaire schedule were administered. Variations of deficits of LGOA were measured by the in terms of the variation of groups of stakeholders.

Data Presentation and Analysis

Data presentation and analysis provides an overview of research on extents of deficits of local government operating Act 2074.

Deficits of Local Government operating Act. 2074 B. S.

Local Governmentoperating Act 2074 B. S,has a number of deficits are briefly summarized below (Hesselbarth, 2007) and (Adhikari, 2016): The LGOA did not go far enough in providing a clear and strategic framework and a time bound action plan for implementation, Several inconsistencies between LGOA and other existing laws and guidelines, , hampered effective implementation, The actual expenditure functions/responsibilities to local government(local level service delivery in primary education and basic healthcare, and agricultural extension services) was far more limited than envisaged in the LGOA; and even that did not actually happen till much later .There was also considerable overlap and duplication of functions between the line agencies and local governments, Funding was inadequate for carrying out even the devolved functions, in part due to budget constraints of the federal government; while necessary technical support was not provided by line agencies, ‘Capacity building efforts have been inadequate and uncoordinated, Despite donor/government efforts to help build capacity of local government, technical capacity of such government to plan, design and implement devolved activities remained highly inadequate. Respondent's view regarding extent of Deficits of Local Government Operating Act (LGOA) 2074 B.S. is shown in the Table 1.

Table 1

Extent of Deficits of Local Government Operating Act. (LSGA) 2074 B.S.

Deficits of LGOA	Extent of Deficits					Weighted Mean Score Range = (1to5)	Rank
	VH	H	N	L	VL		
a. Capacity building efforts have been inadequate and uncoordinated;	11	71	70	38	10	3.17	1
b. Due to budget constraints of the federal government, line agencies did not provide their support;	5	25	107	53	10	2.80	2
c. Donor/Government efforts to help build capacity of local government remained highly inadequate.	4	17	114	59	6	2.77	3
d. Overlapping and duplication of functions between the line agencies and local government;	14	31	69	66	20	2.76	4
e. Inconsistency between LGOA and other existing laws and guidelines;	9	21	48	83	39	2.37	5
f. Unclear strategic framework for implementation;							
	2	14	60	92	32	2.31	6

Number of respondents = 200

The views expressed by different respondents are listed in above table 01 on the extents of deficits of Local Government Operating Act (LGOA) 2074 B.S. As stated above, capacity building efforts have been inadequate and uncoordinated and were found very weak because the weighted mean score value of it is 3.17 which is greater than the median value 3.0. As per the respondents for weak capacity building efforts being inadequate and uncoordinated is elite capture over capacity building exercise i.e. capacity building exercise is done for the federal government staff and for federal level. On the other hand due to budget constraints of the federal government, line agencies did not provide their support, Donor/government efforts to help build capacity of local governments remained highly inadequate, overlapping and duplication of functions between the line agencies and local governments, inconsistency between LGOA and other existing laws and guidelines, and unclear strategic framework for implementation are normal because the weighted mean score value of such are 2.80, 2.77, 2.77, 2.37 and 2.31 which are smaller than the median value 3.0. Majority of the respondents express similar views regarding the issues of LGOA.

Conclusion

Federal system of governance is a means of promoting effective local governance, democracy, poverty reduction and development. Nepal adopted federal system as a process of mobilizing people's participation in development since 2015. The constitution of Nepal 2015 has adopted federalism/decentralization and local autonomy as a principle of inclusion in the system of governance of the country. Local government operating Act (LGOA), 2017 has further clarified the roles and responsibility of local government for federalism.

The milestones of federalism include approval and enactment of Local Government Operating Act, 2017. The creation of federalism Implementation Monitoring Committee (FIMC) according to the provision made in the LGOA, the establishment of a common platform called Joint Coordination Forum for Federalism involving government agencies, civil society, the private sector and donor representatives, the preparation of the federalism

Implementation Plan approved by the FIMC as well as the establishment of the Local Government Fiscal Commission (LGFC) and funding window for local governments. Article 50(1) of the Constitution of Nepal 2072 B.S. has made some provisions regarding Federalism/decentralization. But the constitution is yet to be executed. The extent of deficits for inadequate and uncoordinated capacity building efforts was found high (i.e. weighted mean score = 3.17) which is higher than the median value 3, whereas the mean score of deficits of LGOA like Budget constraints of the federal government; Donor/Government efforts to help build capacity of local government remaining highly inadequate; Overlapping and duplication of functions between the line agencies and local governments; Inconsistency between LGOA and other existing laws and guidelines; and Unclear strategic framework for implementation were 2.80, 2.77, 2.76, 2.37 and 2.31 respectively.

Local Government Operating Act, 2017 is found to be the milestones of federalism in Nepal. Nepal had been restructured from a unitary government to a new Federal Democratic structure. Article 50(1) of the Constitution of Nepal-2072 B.S. has made some provisions regarding federalism. The study concludes that, federal policy of Nepal was found satisfactory, but the extent of deficits for capacity building efforts has been inadequate and uncoordinated, because of poor implementation.

Limitations and Direction for further Research

This study focuses only on the deficit that seemed apparent during the implementation of local government operating Act in Nepal. The study has been chosen on the basis of researcher's convenience. The perception analysis done on the two areas might not represent the entire national state. Despite the efforts to make the respondents aware about the federalism and local governance, due to the difference in level of the respondents there might have been some biasness in the response which is not considered in this study. This study was conducted in implementation process of federalism, so the perception of the respondents might be influenced by that period. This study revolves around the fact that the local governance is affected by the federalism. Thus, this study focuses only the extent of deficits of LGOA. This study does not analyze the cause and effect of the relationship of deficits of LGOA and federalism/local governance. In order to identify the actual relationship between deficits of LGOA and federalism/local governance, the cause and effect relationship study would be suggested.

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