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Interprovincial Relations in Formative Phase of Federal Nepal

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Abstract

This article discusses several features of interprovincial relations (IPR), paying a particular attention to IPR in federations. A number of recent trends and challenges are identified, and implications are drawn for the analysis of IPR. This article delves into how IPR has dominated political power relations, institutionalization status can broader certainty and protection for sub-national governments in dealing with federal government. IPR is more concentrated to the horizontal relations among the provinces.

Keywords: *Interprovincial relations, federalism, vertical and horizontal relations*

Introduction

A state government is the government of a country's subdivision into a federal, which shares political power with the federal or national government. A state government may have some level of political autonomy, or be subject to the direct control of the federal government. Such relations could be defined by the constitution. The Constitution of Nepal describes its relations on cooperative federalism.

The reference to "state" denotes country's subdivisions which are officially or widely known as "states", and should not be confused with a "sovereign state". Most federations designate their federal units "state" or the equivalent term in the local language. In Nepal, province is known as second layer government of federal structure of Nepal.

Provinces are usually divisions of unitary states but occasionally the designation is also given to the federal units such as the Provinces of Argentina and Canada.

Federalism is, at least, two orders of government, namely one for the entire country and the other for the regions. Each government has its direct relations with the citizens. The regions

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have many names: we shall refer to them as the 'constituent units' of the federation. (Anderson: 2008; 4). The most common names of constituent units are 'states' (Australia, Brazil, Ethiopia, India, Malaysia, Mexico, Nigeria and the US) and 'provinces' (Argentina, Canada, Pakistan, South Africa). But other terms are Lander (Austria and Germany) and cantons (Switzerland). There are both regions and communities in Belgium and autonomous communities in Spain. Russia has regions, republics, autonomous areas, territories, and cities of federal significance. Some small federations have islands (Anderson: 2008; 4).

Provincial governments are known as the sub-national governments, state governments and governments of autonomous area and regions. Interprovincial relations denote the ties among the provinces, and the relations between central government and federal government. Basically, it is a study of horizontal relations between and among the provinces.

Taken one step further, the definition could be slightly expanded to denote relations between governance processes at these different levels. Thus, multi-level governance refers not just to negotiated relationships between institutions at different institutional levels but to a vertical 'layering' of governance processes at these different levels (Pierre and Stoker, 2000). The important point here is that although we tend to think of these institutional levels as vertically ordered, institutional relationships do not have to operate through intermediary levels but can take place directly between, say, the transnational and regional levels, thus by passing the state level (Kohler-Koch, 1996; Marks et al, 1996; Scharpf, 1997; Puchala, 1999).

Interprovincial relations are known as the relations of intra and inter-states. We can define intergovernmental relations (IGR) as the processes and institutions through which governments within a political system interact. All countries, whether unitary or federal, have IGR of some sort, provided they have more than one level of governments (AJPA; Vol: 3).

According to Opeskin (1998), the term "intergovernmental relations" is commonly used to refer to relations between central, regional, and local governments (as well as between governments within any one sphere) that facilitate the attainment of common goals through cooperation. Used in this sense, mechanisms for intergovernmental relations may be seen as employing consensual tools for the mutual benefit of the constituent units of the federation (Van der Waldt and Du toit, 1997).

Intergovernmental relations refer to the mutual relations and interactions between government institutions at horizontal and vertical levels. This is in line with Thornhill's (2002) definition that 'intergovernmental relation is all the actions and transactions of politicians and officials amongst the national and sub-national units of government and organs of the state' South African cooperative model. Intergovernmental relations (IGR) are conventionally defined 'as important interactions between governmental units of all types and levels'. In this regard, intergovernmental relations are defined as an interacting network of institutions at national, provincial and local levels, created and refined to enable various parts of government to cohere in a manner more or less appropriate to our institutional arrangements. It is an evolving system of institutional cooperation that seeks to address the relations of equality and interdependence as defined by the constitution.

The nature of intergovernmental relations is itself a complex phenomenon. As David Cameron puts forward, there are at least six different factors that work in a complex

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environment of government to shape the relationship amongst federal units: demographic and geographical; social and cultural; historical; constitutional and institutional; political; and circumstantial. From the discussions above, the Nepal's federalism seems to be encountering with all of these factors in a way that every single factor needs to be redefined in the changing political context. The current state of poor implementation of federalism in Nepal should be viewed on the same fabric. Definitions certainly impact the interpretations and hence practices are affected.

Federalism is a system of division of power among different forms of government; such division of power may divide into vertical axis as well as horizontal axis.

Relation is known as among the provinces is called interprovincial relation. While the unitary state enters into federal structure, the previous hegemony is always prevailing. Central state is ever strong and powerful than province governments.

The interprovincial relation in Nepal can be traced out into three phases. We can divide time periods into three categories: clearly centralizing, ambiguous, clearly provincializing. I choose to use the word provincialization rather than decentralization because the former is less suggestive of an act on the part of the central government to devolve authority to a power level (Pradeep Chhiber, Ken Kollman; 1956: 102).

Conceptualizing Inter Provincial relation

Contributions of several scholars of federalism and institutional analysis have been drawn to develop a conceptual framework within which to situate the evolution of interprovincial relations in Nepal. Concepts of self rule and shared rule have been used to assess centralizing and decentralizing dynamics in the management of public policy between central and sub-national regions (provinces) across the dimensions: the political, fiscal and administrative. The self-rule properties relate to policy making autonomy (political dimension), devolution of responsibility for planning, financing and delivery of public services (administrating dimension), and sub-national revenue autonomy (fiscal dimension). The shared rule properties along these three dimensions involve: participation in public policy making through common institutions; sharing of centralized tax revenues and joint responsibility of planning, financing and delivery of public service. Thus, a process of centralization is marked by reduction in self-rule properties of the states without a compensatory increase in their shared rule provisions.

Since this paper focuses on intra and interprovincial interactions, particular emphasis is placed on changes in the extent of shared rule across the three dimensions. Where shared rule becomes more common, federalism moves into a cooperative direction. In the cooperative literature, the term comparative federalism is generally understood to mean that states are given more autonomy to pursue their political, fiscal and policy goals without interference of the centre (Sharma, swen den; 2018: 56).

In this article, two key conceptual moves have been proposed for explaining emerging dynamics of interprovincial relations after the promulgation of Constitution of Nepal in 2015. The first is putting position of federal province interaction (shared rule) and the second is analyzing the nature and extent of shared rule along each of the three dimensions

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while being mindful of the overlap, especially the fact that political actors tend to interact across each of the dimensions simultaneously.

Political Dimension of interprovincial relation

Primarily, political dimension is driven by the constitution and constitutional spirits. Constitution fails to define the objectives of federalism as well as provinces. The preamble of the present constitution states that sustainable development, good-governance, development and prosperity are the means of federalism. But it is not fully exercised. Major political parties are expressing their dissatisfaction over the provinces. Beyond them, small political groups and regional parities are also denying the formation of provinces. It shows that there is a lack of political ownership and raising a political question on real owner of Nepal's federalism. On the other, Madeshi parties claims Nepal being a multinational state.

The reflection of federal government automatically transmits towards the provincial government. Provinces have no intra and inter political relations. They are competitively engaged in law making process without any political relation to each other. Politically, provinces seem weaker rather than the local governments.

Provinces	Registered bills in Province Assembly	Bills withdrawn	Passed bills
Province 1			49
Province 2			42
Bagmati Province	99		59
Gandaki Province			46
Lumbini Province			59
Karnali Province	51	3	36
Sudur Paschim			42

This table shows that the provinces are creating political spaces by formulating various laws as per the needs of society and provinces.

Rebel Maoist party raised the issue of federalism in Nepal, but some argued that it was the party's tool to enlarge the movement. Likewise, the Madesh-based political parties were always engaged in agitations and the debate on federalism was not advanced in a genuine political manner. Due to a very limited debate on the contents of federalism, political parties put their views just for and against the federalism. Against this backdrop, it is too early to evaluate the federalism in Nepal but people are not prideful of Nepal's federalism and its functioning. A section of political force including former royalist party is opposing the federal political system.

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Nepal is highly divided on ethnic lines. In the past, social coherence was maintained under the auspices of monarchy but it was dethroned after the movement in 2006, which was also fueled by the royal massacre of 2002. Monarchy seized the power from a coup in between 2002 and 2006. But, the coup remained offered leverage for republic political system and federalism in Nepal.

Fiscal dimensions of intergovernmental relations

The financial aspect of the federalism is relatively more crucial than other factors when it comes to defining, maintaining and sustaining intergovernmental relations. There are three obvious reasons for this argument. The first is the extent to which local and provincial governments are equipped with taxation rights. Each level of government is allowed to impose taxes on the policy areas listed in Schedule 5, 6, 7, 8 and 9 of the constitution. Furthermore, the constitution requires all the three levels of government to establish federal (Part 10), provincial (Part 16) and local (Part 19) consolidated funds. Each level of government is obliged to put money into these consolidated funds to be spent only in the consent of the relevant federal, provincial and local legislative assembly.

The second aspect is the question of revenue sharing responsibilities among the levels of government. Obviously, not all provinces and local governments are equally capable in generating internal revenue hence, as the constitution envisions, the federal government needs to play several roles to, inter alia, balance the financial strength of sub-national governments. Article 250 forms a high-level national resource and fiscal commission with the aim of "... determine extensive grounds and measures regarding the distribution of revenue from the federal consolidated fund to the federal, provincial and local governments, and make recommendations on the distribution of equalization grants to provincial and local governments" (Article 251).

In accordance with this constitutional provision, three different fiscal transfer categories are adopted in the financial spectrum of intergovernmental relations. The first is the general-purpose transfer which aims to transfer unconditional grants to sub-national governments. These include block grants (for health, education etc.) and discretionary grants (to be decided by local councils). The second is the specific-purpose transfer which aims to distribute grants for achieving certain policy objectives. This scheme also has two major types: matching grant (the recipient government must contribute certain percentage of investment to be matched) and non-matching (no matching is needed but the grant is still conditional). The third and perhaps the most important grant is performance-based grant in which local governments are distributed grants based on results. Despite these impressive provisions of financial management, there are transcending ambiguities in some aspects of imposing, collecting, distributing and spending revenues across federal units.

Administrative dimension of interprovincial relation

Administration is a key driving factor of provinces. While the provincial boundary was declared, the administration mechanism was not federal political system oriented. Only by Local Government Operation Act 2074 was issued and local government was operated.

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Two aspects of public administration reform in recent times showcase important insights into this debate. The foremost is the hardware, i.e. the process of transforming the infrastructure of public administration from traditionally formed unitary structure to newly created federal governance. The government has taken actions to dissolve many ministries and departments at the federal level in order to devolve the roles and duties of such ministries at the state level. The second aspect of transformation is about the changes in software, i.e. reforms that aimed at transforming the roles, responsibilities and accountability of bureaucrats. Of the 110,000 permanent employees, about 80,000 personnel were recruited by the Public Service Commission (PSC) in accordance with the principle of meritocracy. These officials were supposed to work for the then-central government, which means that their accountability would remain with the (now) federal government. However, as the federal government has only a few functions to carry out in the new governance landscape, approximately 45,000 officials will be required at the federal level. Although the reintegration process of civil servants into federal, provincial and local government has already taken a good speed, questions related to the career and accountability are specifically contested as majority of the bureaucrats are unwilling to be shifted to lower echelons in the administrative structure.

Weakness of inter provincial relation in Nepalese perspectives

Lack of ownership of provinces it still remaining in political parties; they are the major agent of ownership taker. They are the change agent but they are not heartily welcoming the provinces. Constitutional provision regarding the political parties is fully democratic. Part 29, Article 269-272 of the present constitution states in this regard but internal practice of political parties is autocratic.

Where the country is stable and constant? The political system, ideology, development, law are governed by the spirit of people (an interview with Prof. Dev Raj Dahal dated on 2076-6-8) Justice always come from the politics and the judiciary is always conservative. Politics maintains law and order because politics is always changeable but judges are mostly inclined to the particular political parties' ideologies. If we use force to execute the law, the importance of law will decline and the importance of force will increase. Political system performs itself but public goods and services have to be delivered by the state. There are five public goods that cannot privatize and divide: They are -Nature, Air, Water, sunlight and security (Ibid, Dahal).

Intergovernmental Coordination

In a federal system, various frameworks and mechanisms are needed to keep the interrelationship between governments efficient and effective. Relations are established between governments through both formal and informal channels. The constitution and prevailing laws define and direct formal relations while meetings, assemblies and other forms of contact result in informal relations. Also, the relationship between governments in a federal structure is either cooperative or conflicting in nature. A cooperative relationship derives from consent based decision making, coordination and interaction while a conflicting relationship is the result of competition, control and oppression.

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The constitution provided some formal structures for the establishment of effective intergovernmental relations. Article 234 envisions an Inter-Province Council to address political conflicts arising between the federal government and provincial governments, and between two or more provincial governments. Section 105 of the act relating to Operation of Local Government, 2017 allows for the Province Coordination Council to coordinate on various issues relating to the Management of Interrelationship and Coordination between the Federation, Province and Local Level, 2020, which is expected to provide greater clarity on the functional responsibility of three tiers of governments. The implementation of this law as per the spirit of the constitution would facilitate the healthy relationship between three tiers of governments.

Inter-Province Council

The Inter-Province Council was formed as provided by the constitution under the chairmanship of the Prime Minister, and has already held some meetings. The council comprises the Home Minister of the federal government, the Finance Minister of the federal government, and the chief ministers of all seven provinces. This council is provided for in the constitution with the aim of resolving conflicts that may arise between the federal and provincial government, and among provinces.

Although the main responsibility of the Inter-Province Council is to resolve political disagreements, its meetings have also been used to direct the implementation of federalism. At the council's first meeting held on December 9, 2018, chief ministers of provincial governments had complained about the reluctance of the federal government in implementing federalism. A committee was formed with the federal Home Minister as the coordinator to address these complaints and the committee prepared a 29-point working plan. The working plan included a wide array of issues pertaining to the implementation of federalism and set an ambitious deadline for accomplishing all the tasks by mid-April of 2019. The plan included tasks like the enactment of federal civil service commission, police, and the formation of the fiscal commission, etc. Most of those tasks were not accomplished within the stipulated timeframe. Quite a few still have not been accomplished. The federal government bears most of the responsibilities with respect to the tasks included in the working plan. Some issues have gained priority in subsequent meetings of the council.

Decisions taken by the Inter-Province Council are important in institutionalizing federalism. But the performance of the federal government in implementation has been disappointing. Six out of the seven chief ministers attended the meeting just two days before the first official meeting of the Council. They prepared a nine-point demand charter to present before the prime minister. But, the prime minister, upset by the chief ministers demands and their separate meeting cancelled the meeting of the council. Then, only after a delay of three months, the council could finally sit for its first meeting. The fact that the prime minister in his capacity as the chairperson of the council would cancel the meeting indicating that implementation of federalism is not his priority. In such a context, questions arise about how effective the Inter Provincial Council can be in addressing political conflicts.

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Province Coordination Council

Section 105 of the Act in relation to Operation of Local Government 2017 provides for a province coordination council in every province under the coordination of the chief minister of the province. It comprises provincial ministers, chief secretaries, secretaries, heads and deputy heads of district coordination committees of the province, chairpersons and deputy chairpersons of rural municipalities and mayors and deputy mayors of municipalities with the secretary of the ministry responsible for local level acts as the member secretary of the council. The aim of the councils is to synergize the policies of provincial and local governments create strategic cooperation on project management utilization of concurrent jurisdiction and coordinate the utilization and sharing of natural resources. Every province has held at least two meetings of such council so far. From such meetings, Province 1, Gandaki Province, Lumbini Province and sudurpashchim Province have already made the procedures for the council's meetings. Their procedures focus mostly on the operation and management of council meetings. Each province has also issued common commitments through this council.

These councils passed various decisions such as to regularly share plans and programs on budgets and fiscal management which they have passed with each other. Through these council meetings local governments also shared their experiences and achievements in policy making to the provincial governments. Local governments also called for the attention of the federal government towards conditional grants from the federal government as they had very small budgets and areas of implementation, which would make the results of implementing programs under these grants less effective. Among other decisions made by councils were decisions to not interfere in each other's jurisdictions while determining rates and types of taxes to not impose parallel taxes and to make available shares in revenue hitherto not mutually shared etc. recognizing that provincial and local governments cannot enact laws within areas of concurrent jurisdiction until the federal government passes the necessary laws the councils decided to send suggestions to the federal government to make laws that clearly delineate the rights of provincial and the local governments within the areas of concurrent jurisdictions. Most of the decisions taken by various provincial coordination councils were similar in nature.

With respect to administrative aspects the councils have taken decisions on issues like contacting provincial civil service commissions to fill unoccupied positions at provincial and local levels requesting the province to immediately pass the Local Civil Service Act essential for local government and requesting the province to facilitate the administration for service delivery. Apart from these other major decisions were to give District Coordination Committees the responsibility of monitoring and regulating development and construction projects and service delivery being operated and implemented at the local level resolving conflicts related to natural resources and heritage sites establishing a contact unit at the respective office of the Chief Minister and Council of Ministers to coordinate with the provincial and local levels and to appoint contact persons in every provincial ministry.

Although a variety of decisions were made by councils most elected local representatives questioned the utility of such decisions. Both elected representatives and officials at the local level complained that council meetings were irregular that the meetings were more like crowded fairs that not all elected local representatives received the opportunity to present their concerns at these meetings that often the meetings felt as if representatives were

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present there only to listen to the provincial government and that the decisions of the council were seldom implemented.

Local representatives held the opinion that although the councils aim to coordinate between the province and its local units to resolve mutual misunderstandings; it had failed at achieving anything substantial. Some elected local representatives asserted that the chance of concerns being addressed at Province Coordination Council meetings were minimal since there were no opportunities to openly express issues and that it was easier to get work done at the provincial level through informal meetings and contacts. Province coordination councils have become limited to passing decisions they have not been able to issue substantial procedures or guidelines on the interrelationship between local and provincial levels. Although District Coordination Committees have been given the authority through the council decisions to resolve political conflicts arising between two or more local governments, many elected local representatives side that it would not be effective since DCCs lack legal basis or resources.

Conclusion

To conclude, intergovernmental relations in federal settings are relatively complex but can be harmonized gradually by adopting effective policy, organizational and procedural measures. The Nepali experiences of perceived complexities in institutionalizing federalism offer some aspects of political, administrative and fiscal conflicts among federal entities but are not serious until now. However, considering the principle of federalism i.e. cooperative, there requires clarification about the extent to which each level of government in Nepal is committed to strengthening the vertical cooperation and horizontal coordination amongst political units.

Instead of awaiting federal framework laws in areas of concurrent jurisdiction, provincial governments can legislate and implement in accordance with the spirit of the Constitution of Nepal. Provincial governments should begin enacting and implementing laws pertaining to their jurisdictions with determination and confidence.

Specific work plans should be created and implemented through extensive consultations to establish long term policy level coordination with local governments.

Regular meetings of the Province Coordination Council must be held; efficient representational sub-committees in order to facilitate nuanced discussions on issues with local governments must be established regular discussions of the subcommittee must be held and decisions must be passed through council meetings. Such decisions must be disseminated to all local governments.

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