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Models of Federalism and Nepal's Practices

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Abstract

Many countries at recent are well governing under federalism; meanwhile, a few of the countries are struggling hard to sustain their federal form of government. This research purposes to explore federalism, federal forms, models of federalism that are being practiced in different countries, including the issues, challenges, practices and their relevance of federalism in Nepal. I investigated the significance of federalism in the paper through an intensive analysis of the positive aspects and drawbacks of federalism. For the research, various reference books, articles, and reports are taken under consideration whereas secondary data is supported by primary data. It is qualitative and descriptive research. Federalism, a structure of government combining a general government with regional governments, is roughly found in over 25 countries in the world. Federalism has a federal/central government at the top while the regional governments such as provincial, state, territorial, cantonal, or other sub-unit governments are below the central government. These different tiers of government function cordially in various sectors of development, planning and policy-making of the state and its parts. In the paper, going through the study of models of federalism, the present context of countries exercising federalism and the strength and weakness of the federal model, we can conclude the significance of federalism, its necessity, and ways of achieving it. One shall predict the future of federalism passing through this paper.

Keywords: Federation, governance, power, decentralization, devolution

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Introduction

Federalism is an expensive and complex form of government that requires a series of structural formations for its balanced operation. Models and forms of federalism differ from country to country. Federalism is successful in some countries while it has failed miserably to meet the wants for the development of several countries. Hence, the effectiveness of federalism is uncertain, especially in newly adopted countries. This paper tries to answer the significance of federalism through a descriptive analysis of the pros and cons of the federal form. The research has its importance to picture a larger image about the relevance of federalism at the recent time. It helps to understand the relation between changing dynamics of society and the emerging needs of federalism. Various secondary data sources reflect the progressive aspects of federalism. Qualitative data analysis around the effectiveness of federalism will help to conclude the ideal practice of federalism and its present relevance to Nepal.

Federalism can be viewed as a form of government designed to get the better of two worlds: the advantages of a unified state and the benefits of the diversity that is inherent in the people and the regions which make up the state (Johnson, 1998). Federalism is commonly associated with countries having a population with huge cultural diversity or countries having larger territory. Federalism is about the co-existence of multiple loyalties and identities and shared and divided authority (Robinson & Simeon, 1995). In federalism, generally, both the national government and the smaller political subdivisions are provided with a certain level of autonomy with the authority to make laws at their levels. It emphasizes both vertical power-sharing across different levels of governance, and at the same time, the integration of different territorial and socio-economic units, cultural and ethnic groups in one single polity (Brown, McLean & McMillan, 2018). In many diverse societies, a federal system of government permits recognition both of the diversities and common interests and identities.

Federalism is the constitutional distribution of economic and administrative powers in a state. It is taken as a political and legal response to underlying social and political realities. Various political systems having federal form differ in many ways, however having few of the common characteristics and principles such as written constitution, non-centralization, areal division of power and so on. Before 1787, the term "federal" had been used to signify confederation, a system in which sovereignty remained with the constituent states that ceded certain elements of authority to a central government and in which the central authority's legislature merely could propose measures to the states for approval (Scheiber, 1986). Then onwards, federalism has significantly been changing its forms and proceedings as per the states' needs.

Federalism is referred to as freedom addressing diversity, retaining unity, and promoting constitutional instruments such as nationalism, democracy, and justice. There are varying models of federalism out of which the major ones are categorized as follows:

Centralized Federalism

Centralized federalism revolves around the idea that all the national policies of a state are set by the federal government meanwhile the regional and local governments are obliged to carry out those federal policies (Ghosh, 2020). The national planning, as well as policy-making power, is given to the federal government ultimately making it superior to regional

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and local governments. It allocates the chain of government handlings from federal to regional units.

Competitive Federalism

Competitive federalism witnesses the competition between the central government and state governments regarding economic growth and development. Healthy competition among governments in their executive functioning is necessary for maintaining a successful economy (Kincaid, 2006).

Cooperative Federalism

Cooperative federalism has powers and policy assignments shared between states and the national government. The administrative costs and functions are also shared. Cooperative federalism reflects as a marble cake in which the marble or swirly part symbolizes cooperative federalism, where the powers are shared by all levels of the government (Schütze, 2009).

Dual Federalism

In dual federalism, both the states and the national government remain supreme within their spheres and each is responsible for specific policies. It is also known as layer cake federalism as it advocates distinct separation between the duties of federal and regional governments, allocating them the same level of power (Kincaid, 2006).

Fiscal Federalism

Fiscal federalism is a grant system having the distribution of the federal pie among the levels of government. Funds and budgets are allocated from the national government to the regional governments to support any national program. The grants can be categorical grants, such as project grants and formula grants, or can be block grants (Kincaid, 2006).

Federalism enhances the concept of decentralization, where the delegation of power from the center to the regional level takes place. Since the unification, Nepal had been practicing a unitary form of government. This centralized unitary government could not achieve all the desired developmental goals of the country, reflecting it as an exclusive form of rule. Because of this reason, Nepal introduced federalism through the declaration made on May 28, 2008, to execute the inclusive practice of governance. Since the initiation period, federalism is struggling hard to sustain and function well here in Nepal.

According to classical theorists, a written and rigid constitution, an independent judiciary and the allocation of adequate sources of revenue for the government at each level of state are the major pre-requisites for a federal system to sustain. Federalism can be designed on the racial ground, ethnicities or population and territory. The concept of federalism became popular in both developed and developing countries after World War II in balancing the power structure between federal and state or lower-level governments, maintaining a governing system, and strengthening institutional capacity (Keating, 2007). The agenda of establishing the structure of federalism always comes in concern where the political parties of a country put up the various underpinning of their opinions. Form of federalism is a big issue of debate in any country. Different levels of government, jurisdiction, constitutional guarantee, changing the provisions, power of a court in disputes are the common features of

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federalism. Federalism is more suitable to the countries with geographical, ethnic and cultural diversities as in Nepal. States with larger territories also demand federalism. Decentralization and devolution of power throughout different tiers of government take place under federalism. The larger the population, the greater will be the diversity that enhances the need for decentralization. Accordingly, federalism meets the aforementioned need. Countries are exercising different forms of federalism as per the state's convenience, which broadly includes "coming together" and "holding together."

The Constitution in Nepal, which was promulgated in 2015, adopted the federal political system, which projected novel forms of competition, created new methods of public management and generated new governing codes for central-local relations (Acharya, 2018). It accepted a model of holding together federalism, comprises federal government, the political authority is divided between two autonomous sets namely provincial states and local governments, relies on the national government. The demand for federalism, originally, in Nepal roots back in the Maoist insurgency of 1996 to 2006 that voiced dimly for federalism with few regional political parties demanding for the same over time. The main aim of federalism was established to end regional imbalance and centralization of power, avoidance of local issues and problems, to accommodate ethnic and lingual diversities and reduce poverty. Political turbulence and instability throughout the time have raised concern about the sustainability of the federal system in Nepal.

Literature Review

Federalism is a means of ensuring peace, stability and mutual accommodation in countries that have territorially concentrated differences of identity, ethnicity, religion or language. Federalism, especially in large or diverse countries, can also improve service delivery and democratic resilience, ensure decisions are made at the most appropriate level, protect against the over-concentration of power and resources, and create more opportunities for democratic participation (Bulmer, 2015). A federation is a compound polity combining constituent units and a general government, each possessing powers delegated to it by the people through a constitution, each empowered to deal directly with the citizens in the exercise of a significant portion of its legislative, administrative, and taxing powers, and each directly elected by its citizens (Watt, 1998). As a normative concept, federalism represents an organizing principle that prescribes the adoption of institutional arrangements that is generically referred to as federal political systems, a descriptive term that encompasses a range of possible kinds of unions, federacies, associated states, league and cross-border functional authorities (Fessha, 2010). In the modern period, the Constitution of the United States, of 1787, is treated as the first experiment in establishing a federal system of government. Subsequently, federalism as a mode of political organization was embodied in the Constitutions of Switzerland, the Dominion of Canada and the Commonwealth of Australia and India (Paleker, 2006). During the past decade, interest has revived in the confederal form of political organization. Confederations have generally been distinguished from federations as a species of the federal system in which the institutions of the shared rule are dependent on the constituent governments, being composed of delegates from the constituent governments and therefore having only an indirect electoral and fiscal base (Watt, 1998). A crucial variable affecting the achievement of a balance and the internal political dynamics of federations has been the executive-legislature relationship within the shared institutions. The different forms of this relationship—exemplified by the separation of powers in the presidential-congressional structure in the United States, the fixed-term collegial executive in Switzerland, and the executive-legislative fusion with responsible

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parliamentary cabinets in Canada, Australia, Germany (with some modifications), Belgium, India, and Malaysia—have shaped not only the character of politics and administration within the shared institutions but also the nature of intergovernmental relations and the generation of cohesion or conflict within federations (Watt, 1998).

Federalism seeks to divide the power structure in a planned manner within a comprehensive political system to maintain political integrity through negotiations and bargaining (Riker, 1964). In Nepal, the space for federalism expanded after the implementation of the Comprehensive Peace Accord in 2006 envisioning to promote power-sharing, address ethnic and caste-based discrimination, integrate development programs, and scale-up local economic growth. The monarchical democracy in Nepal had failed in enabling people's participation in the decision-making process at the local, regional, or central levels (Dhakal, 2013; FGDs). To address structural-procedural gaps, federalism was seen to provide the wherewithal to create opportunities systematically, ensure access and inclusion of the marginalised, poor, backward and exploited, and guarantee citizens' rights and security, and effectively manage human resources at all levels (Karki, 2014). But there has been inadequate legislation and institutional frameworks, human resources management, accounting and procurement systems, and revenue administration inside federalism (Acharya, 2018). Federalism has immerging challenges that are needed to be resolved for the well-functioning of the federal system.

Materials and Methods

The research is based on the study of federalism, its facets, its changing models, and its relevance in the current world. It is an interpretive approach concerned with understanding the meaning of words that are attached to the topic. For the study, different secondary resources backed by primary sources of data are taken. Various reference books, articles, journals and reports based on the topic are studied thoroughly to collect reliable data and for data analysis and interpretation. Primary information is collected through interviews regarding opinions and experiences of people, private and public institutions on performing their respective federal functions in Nepal. The research is based on qualitative data analysis, where federalism and its aspects are thoroughly studied. I analyze the difference in the practice of federalism in several countries along with Nepal. Therefore, through a deep review of a series of data, a suitable conclusion is drawn from this investigative research.

Data Presentation

The power distribution between the central body and the constituent units of government is federalism. Devolution of power is profoundly seen in the federal government. The study of various research materials reflects the two broad practices of federal models observed in the recent world, which are 'federation through coming together' and 'federation through holding together.'

Coming together Federalism

Independent states come together on their own to form larger units under coming together federalism. During the process, states pool their sovereignty, keeping the identity to increase their security. States usually have equal power and are strong in such federation. Several militarily weak or economically backward states come together to form a bigger nation without losing sovereignty and maintaining identity. USA, Australia, and Switzerland are the countries that belong to coming together federations (Muluye, 2020).

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Holding together Federalism

When a large state divides its authority between its member states and the central government, they recognize it as holding together federalism. The central government is more powerful than its member states in such a federation. There is the absence of pooling sovereignty and keeping the identity. Central government subordinates over the constituent units. Sometimes, constituent units of the federation are distributed unequal or special powers. India, Nepal, Belgium and Spain are some of the states that execute holding together federalism (Breen, 2018).

Federalism in Nepal

Federalism, a new democratic political system, was introduced in Nepal because of people's frustration over a century-long capital-city-centric governance system, the feudal system behavior of mainstream political parties, weak service delivery and growing inequality in the country. Therefore, the demand for federalism must have been driven by the desire for local self-governance, improved service delivery and true political and economic empowerment of people through grassroots democracy (Adhikari, 2020).

The second Constituent Assembly that was elected in November 2013 in Nepal drafted the constitution of Nepal on 20 September 2015, introducing federal structure in the country formally. Nepal adopted a three-tiered governmental system with the federal government at the top, provincial government in between and local government at the bottom. These three spheres of government are recognized constitutionally with their respective executive and legislative powers.

Schedule 5 of the constitution of Nepal (Annex 1) provisions federal government with exclusive powers in 35 matters; schedule 7 (Annex 3) provisions concurrent powers with provinces in 25 matters and schedule 9 (Annex 5) provisions concurrent powers with provinces and local government in 15 matters and residual power in constitutionally provisioned areas. Schedule 4 of the Constitution of Nepal advocates for seven provinces in Nepal while schedule 6 (Annex 2) lists exclusive provincial competencies in 21 matters along with 25 concurrent powers with the federal government in Annex 3 and concurrent power with federal and local government in 15 matters (Annex 5). Local government units in Nepal also have extensive legislative, executive, and judiciary roles and responsibilities (Nepal Law Commission, 2017). Schedule 8 of the Constitution of Nepal 2015 gives exclusive powers to the local government in 22 matters and concurrent power with federal and provincial governments in 15 matters (Annex 4 and Annex 5).

Articles 231-237 of part 20 of the Constitution of Nepal, 2015, have provisioned a series of arrangements for the relationship among federal, provincial and local governments in both legislative and executive aspects. Both, Articles 59 and 60 of the Constitution (Annex 7 and Annex 8) mention the provisions for the fiscal powers and distribution of the source of revenue between different spheres of government. Legislative interrelation between federation and states/provinces in Article 231 explains the territorial applicability of the federal law and the state law. Article 232 explains the principles of the relationship between the federal, state and local levels to be based on the essence of cooperation, co-existence and coordination. Relations between states in article 233 explain mutual co-operation and the duty of the states or provinces to render assistance in the execution of legal provisions or judicial and administrative decisions of another state, exchange of information and mutual

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assistance. Article 234 provisions for an Inter-state/provincial council (IPC) to settle political disputes that may arise between the federal level and states and/or between states. Under the title, 'Co-ordination between the federal, state and local level' in Article 235 of the constitution, federal parliament makes necessary laws to maintain coordination between the federal, state and local levels. The provincial/state assembly maintains the coordination between the state and village bodies or municipalities and settles political disputes if any that have risen in coordination with the concerned village body, municipality and the District Co-ordination Committee. Inter-State trade under article 236 prohibits any state or province to obstruct the carriage of goods or extension of services to another state or province or local level or the carriage of goods or extension of services to any state/province or the local level. It also prohibits them from levying tax, fee or any financial charge thereon or to make any kind of discrimination on the carriage or extension of such services or goods across the state borders.

Articles 250 and 251 of the constitution of Nepal 2015 provisions powerful constitutional body, 'National Natural Resources and Fiscal Commission of Nepal (NNRFC)' with its functions, duties and powers included in Annex 9 assuring its responsibility for laying down a broad framework for the distribution of natural resources among federal, provincial and local levels along with making reforms in revenue mobilization and expenditure at all three units of the government.

The model of the federation in Nepal is hybrid that is different from the Western model of federalism because of the consideration of ethnicity adding up territorial and viability factors in the Nepali federalism. Also, the division of the state into seven provinces was made based on the identity and capability of the states, considering geography, resources, and efficiency. Powers accommodated by the federal government are the protection of national unity and territorial integrity; management of national security; central planning of financial policies, monetary and banking policies, foreign grants, aid and loans; handling of foreign and diplomatic affairs, international relations and United Nations related matters; formulation and supervision of national transportation policies, management of national highways and so on (Sharma, 2020). But provincial powers include management of state-level civil services, electricity, irrigation, and water supply services; supervision of state-level universities, higher educational institutes, libraries and museums; handling of the matters related to state assembly and state council of ministers; regulation of intrastate trade; promotion of state highways, health services, lands and land records. On the other hand, the local unit governs local development projects and programs; promotes basic and secondary education; manages basic health sanitation; distributes land and building ownership certificates; preserves and develops local language, culture and arts; operates drinking water projects, small electricity projects, and alternative energy usages; collects tax and enhances co-operatives in the local level (Lamsal, 2019).

Positive aspects of Federalism

Federalism has a series of positive outcomes when executed effectively. It promotes policy innovation and participation, accommodates a diversity of opinion, enhances power decentralization, maintains a better understanding of local issues and demands, increases the responsiveness of governments to their citizens and performs many more coordinating functions (Watts, 1998). Federalism maintains close relation between the state and its people, settles conflict at the local level, uses means of resources in optimum amount, accelerates development activities, conserves local and ethnic art, culture and heritage and

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helps to manage balanced population distribution. It is an efficient process that encourages a system of cooperation. It creates checks and balances throughout society to create an equal governing process. A single branch of government doesn't get complete control over the whole structure in federalism, therefore it ensures uniform distribution of powers to all tiers of the government (Walker, 2015).

Issues and Challenges of Federalism

Federalism is the best form of democratic and participatory governance, may face several challenges during its execution. Ideally, it would allow each different group to mould the local government to their idiosyncratic needs instead of having to abide by national laws that did not apply to their specific circumstances (Gyawali, 2018). Despite having various positive aspects, difficulties equally prevail in maintaining the sustainability of the federal form in any country. In federalism, unequal distribution of means and resources between the sub-national divisions may cause non-uniform development with misunderstanding among the states that might transform into conflict if not resolved on time. The federal system is an extensive budget consuming form of government that might face failure in operation because of the lack of adequate budget in the state, needed for the very purpose (Gyawali, 2018). Confusion and misunderstanding might also occur between federal and regional governments regarding the sharing of power and authorities. Sometimes, provinces may demand a separate state using their autonomous power that highly threatens national security and integrity. Also, ethno-cultural diversity causes a challenge to choose the language of the state and maintain equal recognition to all the cultural groups (Sharma, 2020).

The idea of federal structure in Nepal emerged as a political agenda against the unitary system after the success of the Democracy Movement in 2006 that finally turned into reality after the promulgation of the constitution of Nepal, 2015. Nepal being one of the youngest federal states in the world faces a crucial challenge of meeting additional parliamentary, administrative and bureaucratic expenses to operate its federal structure throughout the country.

Way Forward

Federalism disperses power across multiple jurisdictions to encourage more responsive government enhancing the competitive pressure on governments to respond to the preference of citizens in their jurisdictions. Federalism seems to be equally relevant even today if practised effectively in the states where the federal form of governance has been already set. But reforms are needed to increase its workability and grow its productivity. Things to be kept in consideration are maintenance of non-overlapping and non-influencing set of powers and authorities to all the tiers of the federal government, co-ordination between and among each federal unit for the common purpose of development, uniformity in fiscal distribution, provision of technical skills to working bureaucrats, management of common and collective usage of resources located in between borders of any two or more states, all of which play an important role for the effective execution of federalism. Provincial governments have not yet been able to utilize and spend their allocated development expenditure budgets and are deprived of using exclusive powers in the content of establishing provincial power administration due to which their efficiency is questioned day and often. Provincial units need to set up their laws, increase their technical capacity, wisely use the budget allocated in the developmental works and become a strong bridge to

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connect local governments with the federal government. Ethnic, cultural, religious and linguistic diversities should be well preserved in harmony and garnished with social tolerance and cooperation. If all these measures are well-executed, then federalism will work effectively being an ideal form of governance.

Conclusion

Federalism is a form of government that works under the principle of power-sharing between a central government and sub-divisional governments. It has its crucial importance for making governments responsive towards their citizens to expand opportunities for the public, to participate in various levels of government, to lead against the centric ruling system, to manage conflicts among the commanded group, to protect diversity and to maintain democratic practice throughout the country. Though being an expensive form of governance, federalism is suitable for the countries with large populations, territory or sound cultural heterogeneity. The loopholes in federalism can be carefully resolved with the collective approach of all the units of government for development. Models of federalism may differ according to the countries, but the common goal is to develop and make the country prosperous, peaceful and well-functioning which should be kept in top-notch priority.

Federalism has its relevance in a country with heterogeneity in ethnicities, cultures and social behaviours. Filled with many positive aspects such as decentralization of power, fulfillment of local needs and necessities, public participation in developmental activities, conservation of ethnic cultures and religions, federalism seems to be ideally relevant to Nepal. But when it comes to operational difficulties, proper measures are to be taken by the governmental bodies to solve those problems. They should equally distribute federal rights and powers to all functional units of the state. However, the question still exists on the sustainability of federalism in Nepal because of budgetary and agenda issues, recurring political turmoil, the ineffective performance of provincial government and changing public sentiments regarding the federal forms. Coming time will disclose the answer to the very question.

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