

# Federalism: Challenges and Opportunities in Nepal

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## Abstract

It is assumed that the main aspect of the Constitution of Nepal promulgated on September 20, 2015 is the transfer of power from central/federal to the provincial and local government. However, the devolution process has not been satisfactorily experienced as had been expected when it was promulgated by the overwhelming majority of the then Constituent Assembly. One of the reasons for this slow progress might be some confusion and/ or problem in matters of power sharing between different levels of governments. So, the primary objective of the researcher is to review the power sharing modality existing in the new constitution on different sectors and areas of the state machinery. This paper focuses on the federal structure, demography, power sharing between the provincial and local level, opportunities and challenges of federalism in Nepal. It argues that the restructuring initiatives have not been successful in minimizing the political, social, economic, regional and ethnic inequalities that were inherent in the previous political systems for nearly 240 years of a unitary system of governance in Nepal. This paper also explores the implications of Nepal's new Federal Constitution for local governance, fiscal policies, cultural identity and other related issues.

*Key Words:* Constituent Assembly, decentralization, power sharing, heterogeneous society, power structure, fiscal autonomy.

## Introduction

The political system which is based on the federal governance, balanced power sharing, rule of law, values and other governing systems is called federalism. It is a political philosophy in which a group or body of members are bound together with governing representative head. The term "federalism" is used to describe legal and political structures that distribute power territorially within a state. It requires the existence of two distinct levels of government, neither of which is legally or politically subordinate to each other. Its central feature is therefore the notion of shared sovereignty. Examples of federations are, to mention only a few, the United States, Switzerland, Germany, Belgium, Canada, Australia, India, Nigeria and Malaysia. We assume that these nations-states have successfully running federal system.

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Federalism differs from devolution, which is defined as the transfer of power from central government to subordinate regional institutions that have, however, no share in sovereignty. The term "devolution" has been used, for example, for decentralization efforts in Great Britain since the 1970s (Arb and Zimmerman, 2004). Instead, it is a system of government in which power is divided between a national (federal) government and various regional governments. As defined in the Constitution of the United States, federalism is a fundamental aspect of American government, whereby the states are not merely regional representatives of the federal government, but are granted independent powers and responsibilities. With their own legislative branch, executive branch, and judicial branch, states are empowered to pass, enforce, and interpret laws, provided they do not violate the Constitution. This arrangement not only allows state governments to respond directly to the interests of their local populations, but also serves to check the power of the federal government. Whereas the federal government determines foreign policy, with exclusive power to make treaties, declare war, and control imports and exports, the states have exclusive power to ratify the Constitution. Most governmental responsibilities, however, are shared by state and federal governments: both levels are involved in such public policy issues as taxation, business regulation, environmental protection, and civil rights.

The precise extent of state and federal responsibility has always been controversial. Federalism is a political framework that divides power between a central governing body and an assessment of smaller, more local government. The purpose of federalism is to bring government closer to the people and to help them have a more meaningful voice in their own governance. There are 27 countries in the world whose governments are structured on federalist principles, and 40% of the world's population resides in these 27 countries. They account for almost half the territory in the world (Baral, 2008). Often, federalism is considered most appropriate for large countries with a lot of heterogeneity. 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 were not particularly applicable to their specific circumstances.

### **Objectives, Methodology and Data Source**

The overall objective of this article is to analyze the present situation of federalism in Nepal. The specific objective is to describe the social-political aspects, opportunities and challenges of federalism in Nepal. Regarding the above-mentioned objectives, analytical and descriptive methods are applied in this study. In this paper, the descriptive method is applied to obtain information concerning the current status and implications of federalism in Nepal. The purpose of this method is to reveal what exists in federalism with respect to the current situations in Nepal. Similarly, the analytical method is

applied for the analysis of the constitutional and federal phenomena in Nepal. Mostly it involves the secondary data before contemplated change due to the implementation of new constitution in Nepal. The data used in this study are quantitative and descriptive which are collected from the Ministry of Local Affairs, Election Commission, CBS, Ministry of Finance, journal articles, scholarly journals, news papers and reports of international organizations like UNDP and European Union as well as national organizations like subject committees of parliament.

### **Federalism: The Nepali Context**

Federalism as a state structure in Nepal had been bubbling under the surface for a long time. Already in the middle of 20th century, efforts were made by the Madhesis in the south of the country to develop a federalist region. As the decades passed, such demands permeated throughout the country, and seemed to largely have been a reflection of the perceived inequalities between the capital and the countryside. The Maoist insurgency, when it broke out in 1996, included federalism in their 40 point agenda. This seems to have been a Madhesi-influenced move by the Maoists to capitalize on growing discontent to enable a mobilization of armed violence, in particular in rural communities (Bergman, 2011). In 1996, CPN-M employed the concept of 'embedded autonomous' (Evens, 1996) as a strategy for the advantage of the people's war. They declared several autonomous regions like Tharuwan, Tamuwan, Tamang Saling, Kirat and Madesh. These are ethnically and regionally marginalized areas which were raised o conceptualize the autonomous federal states in the country. Despite having been on the Maoist agenda throughout the conflict, the Maoists only started politically pushing for federalism after the Madhesi uprising in 2007. The Madhesi population which resided in the southern parts of the country along the Indian border have strong ties to the regional hegemony. As such, this group has the ability to halt the influx of goods to Kathmandu from India, Nepal's biggest trading partner. This bargaining leverage exerted over the Maoists, however, does not seem to have started the initiative on federalism, but only facilitated its introduction to mainstream politics after the conclusion of the war.

By and large seen as a result of the introduction of federalism into mainstream politics, Nepal signed the International Labor Organization's Convention on Indigenous and Tribal People (ILO 169) in August 2007, being only the second country in all of Asia to do so. ILO 169 emphasizes the important contribution of indigenous peoples to social development and stability, and recognizes that indigenous peoples have the right to “self-determination”. Exactly what “self-determination” means is ambiguous at best, and this has proven to significantly complicate the post-2007 political landscape, since the ratification of this convention has elevated expectations amongst ethnic and indigenous minorities. Activists from the latter often interpret the right to “self-determination” as

equitable to political autonomy and, if necessary, secession. Although the issue of federalism in and of itself is not largely contested, the modality of federalism (i.e. political, ethnic, geographic, linguistic etc) is debatable (Bregman, 2011).

The Interim Constitution was intended to serve as a temporary tool for governance during the two year intervening period until the new constitution could be written and ratified by the Constituent Assembly. As of April 2009, the Interim Constitution had been amended 6 times. Amendments range from changes to technical stipulations, such as the procedure for the resignation of the Prime Minister, to larger themes such as the classification of the state of Nepal from a "fully democratic State" to "Federal Democratic Republican State" (Interim Constitution, 2007). Ideally these amendments would simply have been expressed as provisions in the new Constitution, instead of materializing as amendments to a temporary document. This structural irregularity suggests that the fear among Nepalese is that the Interim Constitution may end up being the "New Constitution."

The Interim Constitution 2007 calls for the formulation of "federal democratic republic" as a method of restructuring the state. Nepal has to choose from different federalist models practiced in different countries of the world: (i) geographically divided federations (e.g. Switzerland, Canada and Russia), (ii) corporate federation (eg Nigeria), (iii) unequal/mixed federation (e.g. Quebec in Canada, Kashmir in India), (iv) confluence federation (e.g. Belgium) and (v) union federation (eg USA, EU) or could develop or adopt a mixed federation suitable for the country. Nepal's model of federalism has to respond to the specificities and needs of the country and should not be influenced by foreign ideologies, however, in view of similarity of culture and experience, Nepal might find the example of India useful (UNDP, 2007, p. 11).

From the above discussions of the models, what we can deduce is that firstly, all the federations are not created through the same process, that is: some federations are created through enlargement or what we call "aggregation process"; while others including Nepal are created through the process of "disaggregation", through devolutionary process. It can be interpreted that it was rather, the internal security threat which can be considered as a cause behind the government of Nepal to adopt federalism as a new political system as it was in the response of various agitating movements, failure of previous democratic government and protests of the people. Federalism which is based on the socio-economic as well as cultural theory developed by Livingston (1956), has more relevance in the context of Nepal, as the area under study has semblance with its theoretical manifestation i.e. it is the plural nature of the society which is territorially concentrated in different pockets of the country which have expressed its demand of federal autonomy through various protests, movements so as to exert pressure on the

government of Nepal for adopting federal restructuring. At last Nepal adapted federalism on its own necessity which can address the diversity i.e. multi-ethnic, multi-lingual, and multi-cultural aspects within the state; balance in development i.e. healthy, sound competitive and proportional development of all the nooks and corners of the country; sharing and transferring the power to the provincial and local level and best mobilization and allocation of the resources for balanced and justifiable development.

### Brief Description of Seven Provinces of Nepal

Article 4 sub article 1 in the part 1 of The Constitution of Nepal (2015) declares that Nepal is a Federal Democratic Republican State. The new constitution of Nepal, adopted on 20 September 2015, provides for the division of the country into 7 federal provinces. These provinces were formed by grouping together the existing districts of Nepal. Two districts, however, are to be split between two provinces. According to Article 295 (2), the provinces shall be named by 2/3 vote of the respective province's legislature. Up to this period, only three provinces declared their names i.e. province 4 - Gandaki Pradesh, province 6 - Karnali Pradesh and province 7 Sudurpashchim Pradesh. The key demographic and economic components population, geographical area, Human Development Index (HDI) and number of household vary in the seven provinces.

**Table 1**

Area, Household, Population density and Population

Provinces	Area (%)	Household	Population density	Population (%)
1	17.60	991750	211	17.12
2	6.56	932087	564	20.40
3	13.79	1269144	754	20.87
4	14.13	578045	153	9.31
5	14.93	915029	208	17.33
6	19.70	267539	79	5.34
7	13.28	469703	1211	9.63

Source: CBS, 2011.

Table no.1 shows that Province 3 has the highest population (20.87 percent) followed by Province 2 (20.40 percent) and Province 1 (17.12 percent) respectively. Provinces 6 and 7 are the least populated states with only 4.82 and 9.63 percent of the total population of the country. The population of Province 3 is 4.33 times higher than that of Province 6 while the population of Province 2 and 3 is almost equal. With regards to HDI, Province 6 has the lowest index followed by Province 7 and 2 respectively. Province 3 and 4 have the highest HDIs. Out of ten districts with the lowest levels of HDI in Nepal, four lie in Province 6 while three lie in Province 7 and Province 2 respectively. The ten districts are: Bajura, Bajhang, Kalikot, Humla, Achham, Rautahat, Mahottari,

Jajarkot, Rolpa and Mugu. Similarly, Province 7 has the lowest level of income, below Province 6 and 5, while Province 3 and 4 have the highest levels of income (Bhatrai, 2017). It indicates that, demographic and human developments of the provinces are not similar and these variables will vary in the future.

Provincial dynamics is very crucial in changing forms of the governing system in Nepal. With the old ways dying and anything new not yet fully formed, what is clear is that the modes of collective decision-making and capabilities of the local and federal governments will not be the same in the future. Provincial structure, geographical location, electoral constituencies, ethnic and linguistic variations, population size, etc. are very diverse in the federal structure of Nepal (See table 2). There are many questions about whether the federal government will focus more on its diverse structural issues and conventional forms of control, or whether it will open up to new ways of working with provincial and local governments. New ways of working patterns with provincial assemblies and local councils are needed which must form the mutual trust between and among governmental bodies and elected representatives (International alert, 2018).

**Table 2**  
Capital, number of districts, electoral constituencies

Province	Capital	Chief Minister	Number of Districts	No. of House of Representative Constituencies	No. of Provincial Constituencies
1	Biratnagar (Temporary)	Sher Dhan Rai	14	28	56
2	Janakpur	Mohammad Lalbabu Raut	8	32	64
3	Hetauda (Temporary)	Dormani Poudel	13	33	66
4 (Gandaki)	Pokhara	Prithivi Subba Gurung	11	18	36
5	Butwal (Temporary)	Shankar Pokhrel	12	26	52
6 (Karnali)	Birendranagar	Mahendranagar	10	12	24
7 (Sudurpachhim)	Godawari	Trilochan Bhatta	11	16	32
Total			77		330

Source: MoLA and Election Commission, 2017

Province 3 has the highest constituencies for house of representative and provincial and province 6 has the lowest. Similarly, province 1 has largest and province 2 has lowest districts. The population, area and other related data on Nawalparasi and

Rukum districts have been divided into 50-50 in the provinces they fall in. Similarly, the distribution of economic resources is the most debatable issues in the formulation of federal government in Nepal. With regards to central revenue collection figures, Province 3 contributes the highest share followed by Province 2, 5 and 1. Currently more than 80 percent of the revenue headings come under the jurisdiction of the federal/ government. But Province 4, 6 and 7 would not be economically viable even if the revenue was to go directly to the provinces instead of the central government. In terms of revenue sharing and local taxation, Province 4 seems to be in a relatively better position. In conclusion, even though the seven provinces are asymmetrical in nature, Province 6 and 7 consistently rank the lowest in all the variables.

(Source: <http://www.catchnews.com/world-news/nepal>). It shows the general figures of the economic situations of provinces but it is the vague and more researchable topics in Nepal.

### **Power Structure and Sharing of State**

The main structure of the Federal Democratic Republic of Nepal has three levels, namely the Federation, the State and the Local level. The Federation, State and Local levels have to exercise the power of State of Nepal pursuant to this Constitution and law. According to the Constitution of Nepal (2015), (a) there shall be States consisting of the Districts as mentioned in Schedule-4 existing in Nepal at the time of commencement of this Constitution. (b) There shall be Village Institutions, Municipalities and District Assemblies under the Local level. The number of Wards in a Village Institution and Municipality shall be as provided for in the Federal law. (c) Any Special, Protected or Autonomous Region can be set by the Federal law for social, cultural protection or economic development. (d) The Federation, State and Local levels shall protect Nepal's freedom, sovereignty, territorial integrity, independence, national interest, overall development, multi-party, competitive, democratic, republican, federal system of governance, human rights and fundamental rights, rule of law, separation of powers and check and balance, egalitarian society based on pluralism and equality, inclusive representation and identity.

Similarly, according to the constitution (2015), the distribution of State power is mentioned on the following points: (1) The powers of the Federation shall be vested in the matters enumerated in Schedule-5, and such powers shall be exercised pursuant to this Constitution and the Federal law. (2) The powers of a State shall be vested in matters enumerated in Schedule-6, and such powers shall be exercised pursuant to this Constitution and the State law. (3) The concurrent powers of the Federation and the State shall be vested in matters enumerated in Schedule-7, and such powers shall be exercised pursuant to this Constitution, the Federal law and the State law. (4) The powers of the

Local level shall be vested in matters enumerated in Schedule-8, and such powers shall be exercised pursuant to this Constitution and the law made by the Village Assembly or Municipal Assembly. (5) The concurrent powers of the Federation, State and Local levels shall be vested in the matters enumerated in Schedule-9, and such powers shall be exercised pursuant to this Constitution, the Federal law, the State law and the law made by the Village Assembly or Municipal Assembly. (6) Any law to be made by the State Assembly, Village Assembly or Municipal Assembly pursuant to clause (3) or (5) shall be so made as not to be inconsistent with the Federal law, and any law made by the State Assembly, Village Assembly or Municipal Assembly which is inconsistent with the Federal law shall be invalid to the extent of such inconsistency. (7) Any law to be made by the Village Assembly or Municipal Assembly pursuant to clause (5) shall be so made as not to be inconsistent with the State law, and any law made by the Village Assembly or Municipal Assembly which is inconsistent with the State law shall be invalid to the extent of such inconsistency.

### **Challenges of Federalism**

Nepal is an underdeveloped country with diverse geography, ethnic groups, linguistic groups and various political parties. Poverty, regional imbalance, improper infrastructure and unemployment remain Nepal's major problems. The idea of federal structure emerged as a political agenda against unitary system after the success of people's movement in 2006. From the experiences of other federal countries, provinces demand the additional expenditure as they face new challenges (Subedi, 2018), which are also for the newly formed federal government of Nepal. Some of the challenges are listed on following points:

1. Meeting additional parliamentary, administrative and bureaucratic expenses is a new challenge in Nepal. The inadequate number of civil servants with low technical skill and minimum logistic support are other constraints.
2. Distribution of resources among the states can be another daunting issue for the federal management. The new constitution has envisioned equitable distribution of benefits derived from the use of natural resources (or development) by federal (central), state and local levels. Proper distribution and allocation of natural resources like river, forest, mines etc. between the federal states is one of the major problems of federalism. It also creates the problems of disaster management, plans, policies, and guidelines to mitigate these problems.
3. There is also a practical problem in the creation of ethnically and linguistically homogenous regions, which is very relevant for Nepal. Ethnic and linguistic homogeneity is hardly possible in any territory in multi-ethnic states, due to the



diversity and mixture of peoples across ethnic boundaries. Therefore, new minorities are likely to be created within the subunits, who are in danger of being victimized, intentionally or not (Adeney 2000)

4. Tax burden and duplication is another potential problem in which local governments and the federal states may decide on different tax rates between the local municipalities and states, and between commodities and services within states. In both cases people may adjust to these tax differences by moving economic activities to other states, or between sectors within states.
5. Vertical intergovernmental relations will demand more time until provincial and federal governments are elected. However, horizontal relations establishment process may have to be initiated immediately even if support of vertical (especially central) authorities will remain inadequate (Dhungel, 2017). Out of these challenges, there are other vital challenges of the federal structure and its implementation processes in Nepal. Some of them are: territorial debate of provincial and local bodies, use of natural resources, duplication of revenue and tax burden, ethnic and Madhes issues, neighboring countries perception on federalism, debates on foreign policies, educational policies etc. But these all challenges can be solved by making consensus among the provinces and by changing the attitudes of leaders as well as general people of Nepal

### **Opportunities of Federalism**

As unitary system failed to deliver equality among the people, it has been felt that unitary system existed in confrontation with the democratic values. Unitary system also failed to mobilize the resources for the balanced development. So, to protect and well utilize these resources, there is important role of local government and local people which can be effective in federal system. Federal system of governance can facilitate the nation with higher economic growth by formulating and implementing proper policies. Potential exists in the form of conventional sectors such as hydropower, agriculture, tourism and hospitality, forestry and herbal, minerals along with crime, health and education services being the newer ones. From the experiences and practices of federal government system of the world, there are lots of opportunities in the context of Nepal. Some of them are listed on following points:

#### **Ensure the Local Effective Governance**

In the federal context, some functions such as secondary education, health, agriculture and other local services have been assigned to the local bodies with the basic principle that functions should be assigned to the lowest level of government. There are numerous advantages of democratically-elected local governments. Some of the

advantages include improved governance, enhanced development and citizen's participation. In addition, it also has several other benefits such as increased legitimacy, effectiveness in overseeing public expenditures, improved services, engaged public for democratic governance, among others. Federalism ensures division of power clearly stated in the constitution. In the context of local governance, it has some advantages which are: 1. It ensures that government remains close to the people as they are more in tune with the daily needs and aspirations of people from small and isolated places. 2. It encourages development of the nation in a decentralized and regional manner and allows for unique and innovative methods for tackling social, economic and political problems. 3. It provides a barrier to the dominance of the majority. Under the federal system, if the state government is found to be ineffective and unsuccessful or when national emergency is declared, the federal government controls and directs the respective states until another appropriate arrangement is made (Local Governance Act, 2074).

### **Social Inclusion and Pluralism**

Inclusivity and democratic pluralism are two major conceptual as well as institutional devices created under the federal governance structure in order to mitigate discrimination and ensure 'unity in diversity', one of the core values of multi order government system. It ensures increasing participation of women from all caste groups was observed at the recently conducted local level elections. It also guarantees the minimum representation of other marginalized or minority groups are made at the local executive and legislature in the form of quota system.

### **Fiscal Autonomy**

Extensive fiscal autonomy and resource mobilization and management responsibilities are entrusted to the local bodies by the Constitution. Building administrative capacity and skills of planning and managing budget will continue to remain a challenge for the local leadership. It ensures the local and federal governments fiscal capacities and self dependent economy.

### **Reduced Conflict**

Federal system of government represents the unified government of people which reduces gap between people and leader as well as people and government. It helps to access the equal use of means and resources which reduces the conflict at local, regional and national level.

### **More Responsiveness towards Citizen**

The local and provincial governments can be more responsive to the needs of citizen. A government entity is to its citizens; the more likely it is to respond to the needs of citizens, the more likely are the states to listen to citizen needs.

## Equal Development

One of the main objectives of the federal system is to develop equally and as per equitable manner to the grassroots level. Nepalese constitution has assumed that all sectors would be developed with the participation of local people at all spheres of the development (Basnet, 2017). The concept of equitable development is based on the constitution which focuses on the gender, region, class, ethnicity, caste and other aspects of the society.

## Conclusion

The major objective of federalism in Nepal is to eliminate disparities caused by class, caste, ethnicity, language, religion, region and gender. However, while federalism can be a mechanism for eliminating some disparities caused by socio-cultural variables, it does not ensure inclusion or democracy. The constitution of Nepal be required to facilitate a deep-rooted and inclusive democracy where all minorities are protected. Irrespective of the final partition, there will be a number of ethnic minorities within all federal states. A thriving and inclusive local democracy is necessary to secure the interests of all local people or local minority groups and not only the local elites. Furthermore, the constitution and practices should secure the interests of groups defined along non-ethnic cleavages such as class, caste, urban/rural and religion. To the possible extent, each federal state must be established as an economic center (Aalen & Magnus, 2002). The federal government must ensure the rights of people and should guarantee the security and prosperity of the country.

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