

Federalism and the Madheshi People: A Struggle for Equality and Inclusion

Sabita Kumari Mallik*

Abstract

This article presents the view of the federal structure of Nepal and the issues related to Madhesh and Madheshi people along with their struggle for equality and inclusion. Federalism was felt necessary in Nepal due to the dissatisfaction of diverse group of peoples' demand of self-governance, inclusion, identity, rights etc. and to strengthen the democracy and sovereignty of the nation if the social diversity is addressed. The study is primarily based on conceptual and narrative literature review, used the liberal philosophy of political science, a contemporary institutional approach, and a descriptive and analytical methodology that mostly uses secondary sources of data. As federalism is introduced in the country in recent past, it is still in transition period to fulfil the will and aspiration of the people because it is not addressing full autonomy and self-governance to the provinces. Though Madheshi peoples' fight for inclusion and equality, through which the Madheshi Movement forced the government to amend the 2015 constitution in order to improve sustainability, national integrity, and inclusive democracy and equal status, Madheshi people are not satisfied in concern with proportional representation and power sharing. Yet, we cannot forget the significance of federalism which is the outcome of a struggle for equality and inclusion in Nepal concerning with Madhesh and Madheshi people and it paved the way of balanced development and self-decision making power to the provincial and local government.

Keywords: Hegemony, pluralistic, renunciation, sovereignty, quasi-autonomy

Introduction

Federalism is the separation of a nation into multiple autonomous areas that share a common government. It is the system of local or regional self-government or power sharing. It is a system of government in which power is divided between a central authority and constituent political units. Increased territorial autonomy or power sharing boost national groups' confidence. If they were to become constitutional partners, they would receive additional legal protections and autonomy regarding matters pertaining to maintaining their uniqueness, which would increase their level of confidence even more. Federalism is not just a form of governance. It is also an ongoing negotiation process, a conflict resolution art, and a cooperative, compromise-based strategy. Since solutions to issues must be negotiated among constitutional partners rather than imposed by a single central authority, nothing is ever established once and for all. One of the main benefits of federalism is its flexibility (Auclair, 2005).

In most instances of legal consideration in world today, federalism is actually treated in this way, however the political sciences have described a somewhat broader meaning of it. Thus, one also may find a definition according to which federalism in its broadest sense marks a multilayer or pluralistic concept of social and political life. The political power is divided from central to smaller sub divisions such as federal, regional and local levels for decentralization and autonomy to make their own system and laws according to the provision of the constitution. Ben Clarke states: "A system in which sovereignty is shared by several levels of government. In addition to giving decision-making authority, sovereignty also bestows constitutional protections." The concept of federalism appeared in ancient times from the historical perspective, federalism has originated as one of the forms of internal setup of the state.

Federalism refers to the dual government-ship marked at broadest sense as a multilayer or pluralistic concept concerning with power devolution. It is said that federalism is fruitful in heterogeneous

* Asst. Prof. of Political Science, Padmakanya Multiple Campus, T.U., E-mail: sabitamallik1@gmail.com

society which removes the renunciation of hegemony and creates the feeling of unity and union. Federalism is a political theory that involves dividing a country into several autonomous areas, each with varying degrees of power and autonomy. The allocation of authority within this system of governance facilitates the exchange of duties and decision-making between the federal government and the local or regional administrations. Numerous nations worldwide have witnessed a shift in favor of federalism during the past few decades. There are several reasons for this, such as the necessity to accommodate diversity, the desire for more autonomy and autonomy, and the pursuit of more effective and efficient governing systems.

In 2015, Nepal implemented a federal system of governance, after an extended period of civil conflict and political erraticness. A substantial amount of power was transferred to the provincial administrations by the new constitution, which also established seven federal provinces. Significant contributions to the movements that resulted in the new constitution came from the Terai and the province of Madhesh. But, in the Terai, mobilizations were frequently centered on issues of ethnic identity and exclusion, in contrast to other regions of Nepal where inclusion was also fervently demanded. The study examine how the evolution of the political settlement in Madhesh may affect the future of federalism in Nepal, and in particular the development of the critically important Madhesh provincial sphere of governance through inclusion and equality.

Statement of the Problem

Federalism is the concept of division of the country in to different units and have full or quasi-autonomy of governance. The study focuses on the core concept of federalism and its implementation in Madhesh. Do the recent political development in Nepal have led to more representation of Madheshi people to achieve equality due to federalism? How far the efforts towards the accommodation of diversity and inclusion concerning with Madhesh successful after the declaration of federalism in Nepal? Were the issues of Madheshi people addressed in the present constitution?

Research Questions

This paper the researcher tried to discuss:

- How the federalism does supports the social diversity in Nepal?
- How does the federalism address and problems of Madhesh?

Objectives

The major thrust of this research paper is to describe the challenges and prospects of implementation of federalism in concern with Madhesh. The federalism is concerned with good governance for which the accommodation of diversity is must and it is only possible with the implementation of the federalism in Nepal.

Some of the specific objectives are:

- To discuss the core concept of federalism in Nepal
- To analyze the federalism to address the problems of Madhesh

Literature Review

The literature review is primarily based on the conceptual and narrative review with the initial idea of Madhesh's demands and the struggle of Madheshi people for equal rights and inclusion through federalism. Federalism is a system of government in which sovereignty is constitutionally divided between central and regional governments, and each government has some degree of autonomy within its own jurisdiction (Horowitz, 2000). The central government has authority over certain matters, such as foreign policy, national defence, and interstate commerce, while the regional governments have authority over other matters, such as education, healthcare, and law enforcement (Elazar, 2012), (Dahl, 2001).

In a federal state aside from federal element, also unitary elements can find a footing, while federalism can find its realization not only in federal state but also in other multilayer form of state organization

in particular in an association of sovereign states (Bataveljic, 2012, pp.1-5). The first principle is the basis of democracy and the cornerstone of the federalism, while the last quoted principle enables the states to transfer a part of their duties to the federation as well as to regions, local authorities or the private sector. This actually mean that an analysis must be drawn up and it must be determined on which level the task can be performed best (ibid). Stephen Benz states: "A federal government is a structure that distributes authority between a powerful federal government and weaker local governments. We will examine the distribution of power between the federal government and local governments as well as the advantages of having a federal government" (Source?/page no.?)

The purpose of the study is to describe federalism and the Madheshi people and their struggle for equality and inclusion. Nepal faced a decade long Maoist insurgency with the demand of equal right of all socially diverse group of people which were excluded in social, economic and political arena of the society. The issues of ethnicity and cultural diversity along with marginalized groups, advocating inclusion and the right to political self-determination through federalism was the demand of Madhesh that all people of Nepal are equal citizens, irrespective of ethnicity, caste, religion, culture or community belonging.

The movement continued for 22 days believing that the existing number of electoral constituency allocated for Madhesh belt would not guarantee the proportional representation in Constituent Assembly election (Chaudhary, 2020. p. 568). 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 (Kharel, 2022. p.42). Federalism is the result of the dissatisfaction of the people over a century long aristocratic feudal unitary system of ruling in which the centralised governing system was practiced. This ruling system failed to address the diversity of the country and was very poor in service delivery. It is important for power sharing at local and regional level. There is no consensus among the political parties and they blame each other for the mess (Adhikari, 2020. p. 16-19).

The Madheshi people are an ethnic group that lives in the Terai region of Nepal, which is located in the southern part of the country. The Madheshi people have long been marginalized and discriminated against by the central government. They struggled for their representation according to population, equality and inclusion. They believe that federalism is the best way to ensure that their region is a just and equitable society for all Nepalese people. When talking about federalism as a political idea, it has to be stated that the same is regarded as a principle of state organization (Chaudhary, 2020. Pp. 573-75). In Madhesh province in particular, there was a strong desire for strong provinces centered on ethnic identity. A strong role for the provincial sphere was a specifically Madheshi demand (Khan, et al. 2022. P. 3). There is significance of the study on this topic because there are insufficient literature found with relation to Madhesh and their struggle for equality and inclusion.

Methodology

This paper is founded on the liberal philosophy of political science, a contemporary institutional approach, and a descriptive and analytical methodology that mostly uses secondary sources of data from books, journals, and other secondary sources. As a research instrument, it made use of primary sources drawn from the author's firsthand knowledge of society and understanding the meaning of words associated with the subject is the focus of this interpretive approach and the qualitative method. The data and supporting documentation have been gathered from reliable and credible sources, including websites and relevant external links that are utilized to investigate genuine theories and notions. The study thoroughly examines the various aspects of federalism and struggle of Madheshi people for their inclusion and equal representation which is founded on the analysis based on qualitative data. Therefore, a suitable conclusion is drawn from this investigative research through a thorough review of information collected.

Discussion and Findings

Global Trend of Federalism

Federalism is a compound form of government that combines, within a single political system, regional administrations at the provincial, state, territory, or cantonal levels with a general government at the federal level. Its unique quality is best shown by the original case of modern federalism. Federalism is a type of governance where two tiers of government have different powers from one another. Although it differs from confederalism, the Latin word "Foedus," which meaning "treaty, pact, or covenant," is the source of both words. Up until the late eighteenth century, they were commonly understood to refer to a straightforward league or intergovernmental association between sovereign states that was based on a treaty.

In order to support the nation's democratic culture, the term federalism addresses issues of social fairness, autonomy, national unity, and diverse freedom. The constitutional framework for the division of political, economic, and administrative authority is known as federalism. It comes in a variety of models and forms that vary from nation to nation. This intricate and costly system of governance necessitates a number of institutional arrangements and equitable power distribution among the many authorities.

Characteristics of Federalism

Auclair outlined the structural characteristics of a federation, which include:

- i. two orders of government, each in direct communication with its constituents;
- ii. a formal constitutional division of powers between the legislative and executive branches, as well as the distribution of revenue sources between them to guarantee each has certain areas of genuine autonomy;
- iii. a supreme written constitution that cannot be changed by one party on its own but needs the approval of a majority of federation members.
- iv. The federal second chamber is likely to guarantee the designated representation of distinct regional opinions within federal decision-making institutions.
- v. An arbitration mechanism (such as courts or referendums) to settle intergovernmental disputes; and
- vi. Institutions and procedures created to promote intergovernmental cooperation in situations involving shared domains or inevitable overlapping of responsibilities (Auclair, 2005. p. 5)

Models of Federalism

There are several models of federalism practiced in the world. The American Federalism was evolved through three patterns. They are 'Dual federalism, Cooperative federalism and new federalism.' The term 'layer cake federalism' and 'marble cake federalism' are sometimes used to describe two different types of federalism. In layer cake federalism (also called coordinate federalism) each level of government has discrete areas of responsibility separated by 'cleanliness' with no overlap. However the complexity of modern society and a modern economy and the effects of globalization mean that all federations have significant albeit different levels of overlapping responsibility (Gabunia, 2023). Unions, Constitutionally decentralized unions, Federations, Confederations, Federacies, Associated states, Condominiums, Leagues, Joint functional authorities, and hybrid are the models explained by Watts (Watts, 1993. p. 2-4).

Practice of Federalism in Nepal

Nepal was practicing unitary system of governance with the provision of monarchy as the head of the state since the beginning of its unification by king Prithvi Narayan Shah. In the course of time, the rulers were concerning about decentralization of power through division of a country. King Mahendra divided Nepal into 14 zones and 75 districts on April 13, 1961, while King Birendra declared four development regions in 1972 and eight years later in 1981 fifth development region was created. These divisions were introduced to address the disparity and imbalance development, so that the people may

feel the presence of administration in regional and local level but it didn't fulfil the will and aspiration of the diverse group of people. This dissatisfaction led to conflict in the nation. The Maoist party was the catalyst for bringing the concept of federalism in Nepal. Even they struggled to implement it through the insurgency they started from February 13, 1996. Other major parties supported Maoist during People's Movement II which took place in April 2006 against the rule of King Gyanendra who ascended the throne after the Royal Family Massacre on June 1, 2001. (MoFA, 2020)

The comprehensive Peace Accord was signed on November 21, 2006 between Nepal government and Maoist under the supervision of UNMIN which brought Maoist in peaceful stream of Nepalese politics. On December 28, 2007 the Interim Parliament passed a bill and declared Nepal as a "Federal Democratic Republic" country and is officially implemented the declaration on May 28, 2008. As we know Nepal is divided in to three geographical/ecological region and have imbalanced diversity of population. It is multi-cultural, multi-lingual, multi-ethnic and multi- religious country. People believed that the declaration of federalism will accommodate the diversity of Nepal. The Constituent Assembly I could not complete the drafting of constitution and dissolved. The constituent Assembly II promulgated the constitution on 20th September 2015 and formally the federalism was implemented with the declaration of "Federal Democratic Republic of Nepal" in the constitution and Nepal was divided into 7 provinces to address federalism. Federalism is a new form of government in the nation, so issues are bound to arise. On the other hand, the system is the result of protracted consideration, negotiation, and consultation. Furthermore, as we have already discussed, the constitution is a statement of intent and consensus. Therefore, we are forced to deal with the issues and diligently work to put the new system into place. (Nembang, 2020. p. 7).

Power Sharing of Federalism in Nepal

According to the constitution, Nepal is divided in to seven provinces based on the geographical location, availability of resources, demand of identity and capability. The division of power was separated among the federal, provincial and local level. According to the constitution of Nepal Schedule 4 has the provision of seven provinces. Schedule 5, Annex 1 grants federal government with exclusive power of 35 matters. Schedule 6, Annex 2 lists the provincial competency in 21 matters. Schedule 7, Annex 3 deals with concurrent powers with federal and province in 25 matters. Schedule 9, Annex 5 has the provision of concurrent power sharing between province and local government with 15 matters. Schedule 8 gives exclusive powers to local government in 22 matters. The constitution also have the provision of arrangement of relationship among federal, provincial, and local governments in Part 20, Article 231-237 on legislative and executive basis. Article 231 deals with territory and law, Article 232 explains with the relationship between federal, provincial and local governments (Constitution of Nepal).

The federal government of Nepal exercises central power to maintains sovereignty all over the country, makes law for the nation, controls national economy, issues currencies and formulates national monetary policy, mobilizes army, declares emergency and looks after important national issues, looks after foreign affairs, signs treaties and contracts, appoints and receive ambassadors, establishes diplomatic relations and embassies, construct big national projects of development while the provincial governments share the power to maintain sovereignty at province level only, make law for province, collect revenue and set monetary policy for provinces, maintain the provincial security, mobilizes provincial police and looks after provincial issues, looks after the provincial development activities such as education, health, transport, electricity, drainage, water supply etc. and construct the small provincial project of development.

Federalism in Madhesh

The present Terai/Madhesh was annexed after the unification and treated as colony of Nepal with state sponsored discrimination in citizenship, exclusion from political integration, restriction in state army, exploitation of natural resources like forest and land and cultural repression have been the major Madheshi's issues that created identity crisis and statelessness condition to Madheshi people (Chaudhary, 2020. p. 573). A central actor in this regard is the Madhesi movement followed by

indigenous/ Janajati, and Tharu movements. The Madhesi movement started in 2007 as a broad coalition of civil society organizations taking to the streets to advocate for the inclusion and rights of the Madhesi population of the Terai region in southern Nepal. The demand of their identity in democratization process in Nepal that had seen significant step forward in terms of increasing political participation of historically excluded groups and the political communities and the parties have built up to fulfill their interest. Madhesh movement broke out on 1st January 2007 when the Interim constitution did not include federalism as political system and proportional representation based on population. The Interim Constitution was amended twice to ensure federalism as per the agreement with government to address the demand of Madheshi and incorporated the increment of constituency numbers, inclusiveness and proportional representation.

Following the Madhesh movement in 2007, the Madheshi and Madhesh identities emerged. Even though Terai Madhesh makes up the majority of Nepal's plains, agricultural regions, and densely populated areas, the Madheshi people have long faced discrimination on the basis of race, geography, language, and sociocultural identity. They are multilingual, multiethnic, multicasite, and multicultural. The government has agreements with various armed groups and parties based in Madhesh (DRCFC. P. 9). The central government has long marginalized and discriminated against the Madheshi people. They fought for inclusion, equality, and representation based on population. They think that the best way to guarantee that their region is a fair and just society for all Nepalese citizens is through federalism. Madheshi wanted self-rule and broader participation in politics and believed that only the federal system can boost up their native identity. When the constitution was promulgated in 2015, the demand for stronger provincial power was ignored which led another Madheshi movement which was supported by Janajatis and Tharus of western part. The movement was based on the identity of the nationality of Madheshi, Tharu and Janajatis.

Problems and prospects of Federalism in Madhesh

Federalism is new concept in Nepal and had a lot of controversy for its implementation. Some political leaders and scholars were in the favour of federalism while some were not. There were discussions and debates in the Constituent Assemblies to introduce federal structure of Nepal in the constitution. It has many prospects along with challenges.

Problems

The effective implementation of federalism still faces numerous obstacles. The federal, provincial, and local governments are at odds with one another over the distribution of power and the exercise of authority. Federalism allows provinces to pursue the establishment of a new state using their own power, gravely endangering the stability and integrity of the union. Ethno-cultural variety also creates the problem of choosing the official state language while preserving equal recognition for every cultural group. Uneven development and misunderstandings between the states might result from the unequal distribution of resources and means among the subnational divisions, and if these issues are not immediately resolved, they may even spark bloodshed.

These are the difficulties Madhesh encounters.

Mal Governance: Though there is much agricultural production, poverty prevail in Madhesh and has low literacy rate. It faces the challenge of transparency and accountability in governance too (Online Khabar, January 9, 2023).

Absence of Federal Civil Service Act: Lack of laws to transfer the civil servants and teachers within and between the provinces. The issue of the establishment of Public Service Commission in the province for the recruitment of government officials and provincial police personnel (ibid).

Unequal distribution of resources: Madhesh does not have the access of Hill and Himalayas as its resource. Therefore, there is issue of making the laws in provinces and local bodies to exercise the power to utilize its limited resource (Chaudhary, 2020. p. 574-575).

Resources: There is major issue of sharing resources of Madhesh for its development and Madhesh

Province had filed different cases against the federal government for the utilization of natural resources like land and forests within its territory (ibid).

Ethnic and Regional Tensions: The blame game that degenerate into a violent social dispute of Pahadi vs Madhesi and Hindu vs Muslims. Dissatisfactions stemming from geographical differences, religious beliefs, and gender discrimination are also present. A new constitution must be created to handle all of these. Community leaders need to have frank and in-depth conversations about this, and that is not what is happening (ibid).

Economic power: Though they possessed organizational power, Madhesi politicians were still weak economically. At first, they lacked access to resources such as land and the networks that the Kathmandu elite used to obtain official access (SOAS, p. 10).

Prospects

The people's discontent with the aristocratic feudal unitary system of governance, which was based on a centralised system of governance over a century, led to the creation of federalism. This political structure did a terrible job of providing services and neglected to take into account the diversity of the nation. It is crucial for regional and local power sharing. The following information clarifies Madhesh's potential for federalism.

Inclusion: Madhesi people got more opportunity in every sector including politics because there is inclusion of Madhesi people in state mechanism (SOAS, p. 22)

Representation: Federalism drives politics in new directions, for instance, Madhesi female representation has undoubtedly increased and Muslims get certain percentage of their share in politics (ibid).

Governance: People of Madhesh province get opportunity to fulfil their desire of self-governance, better service delivery and end of all types of inequality and discrimination (Constitution of Nepal)

Economic relationship: New ties between political actors and the business community are already being forged in Madhesh thanks to the emerging politics of young political entrepreneurs frequently at the expense of more established elites (SOAS, p. 11).

Findings

Based on the above discussion, the paper identifies the main area of the study is to analyse the practice of federalism in Madhesh which includes the problems and prospects. Nepal had a long history of unitary system of governance either in absolute monarchy, Ranas or democracy. Federalism was the demand of majority of people who felt themselves excluded from the state politics and it is the outcome of the Maoist insurgency and Madhesh Movement. Madhesi discontent over the federal demarcation was subsided by federal government and the demand for a greater devolution of power and resources to the sub-national spheres (provincial and local) remains strong in Madhesh Province. Federalism and proportional representation was the major achievement of Madhesh though it did not satisfy the people of Madhesh. The government of Madhesh politicians have also demanded revisiting the population weightage that is used to determine electoral constituencies across the provinces, or to disburse federal government revenues. As madhesi people were discriminated on the basis of their language and geographical identity, they struggled for equality and inclusion which they acquired through the promulgation of the constitution. The Madhesi female representation has undoubtedly increased but to exercise power, female politicians need to belong to powerful informal networks. Still there is some difficulties in concern with federalism that Madhesi identity politics cannot create the space for a meaningful Dalit and Muslim representation.

Summary, Conclusion and Suggestion

Federalism is a form of government which has the provision of dual government ship that works with the principle of power sharing between central government and sub- regional governments. It is suitable for the country which has large territory or huge population or heterogeneous society or all these elements. It helps to make the country prosperous through public participation as it is the top

priority of federalism. It satisfy the population, manages the internal conflict, protects diversity and identity, works for public wellbeing, and maintain the democratic practices. Federalism is much more relevant to Nepal because it has ethnic, cultural, lingual, regional, religious, and social diversity overlapped on each other. The core concept of federalism is to decentralize the power and insure the self-governance and self-reliance of the country. It also strengthen the national unity and creates the feeling of diverse groups into one. Even though Terai Madhesh makes up the majority of Nepal's plains, agricultural regions, and densely inhabited areas, the Madheshi people have long faced discrimination on the basis of race, geography, language, and sociocultural identity. They are multilingual, multiethnic, multicaste, and multicultural. The government has reached multiple deals with armed groups and parties with a base in the Madhesh, but its execution has not been equitable.

Though there are many good aspects of federal system in Nepal. It benefits the nation and creates satisfaction to the entire population. The concept of "Ghar Ghar ma Singh Durbar" was the popular slogan of political party (CPN UML) to implement federalism in Nepal, the provinces don't enjoy full autonomy. There are controversy of power sharing, citizenship issues, lack of proper appropriate laws etc. are the challenges which make Nepal still in transition period. The incorporation of Madheshi voices did not satisfy Madheshi people for their struggle of equality and inclusion though the Madheshi Movement compelled the government to amendment in the constitution introduced in 2015 to strengthen inclusive democracy and enhance sustainability and national integrity.

Finally, Madheshi's concern had been with broader participation in socio-political sector with full dignity and recognition. Political parties have chosen to capitalize on these sentiments for their short-term political goals at the expense of the long-term interests of the country rather than controlling these extremisms through the sharing of a vision for a new Nepal based on inclusion, social justice and equal opportunity, unity in diversity, and live and let live principles. We must not undervalue the significance of federalism, which emerged from the fight for inclusion and equality among the Madhesh and Madheshi people in Nepal. Federalism cleared the path for equitable development and gave provincial and local governments the ability to make their own decisions.

The government needs to honor its commitments and grant the Madheshi people complete control over their right to equality in accordance with inclusive policies and a proportionate basis in order to satisfy the Madheshi people and strengthen national integrity and sovereignty in the nation.

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