Theoretical Paper

Quest for Identity:
Re-Examining the Process of Federal Restructuring of the Nepali State

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Abstract

The agenda of restructuring the state has been the most deliberated issue for all intellectuals, political leaders and civil society activists in Nepal. The restructuring of Nepali state became a central component of the 2006 peace deal. Federalism was, however, included in the interim constitution as a binding principle for the Constituent Assembly on the verge of violent protests in the Tarai in 2007. The fundamental question during the Maoist insurgency remained whether federalism based on ethnic affiliation will be materialized. But after the Madhesh mutiny, the question that dominated the public discourse was whether "ethnic federalism" can be materialized as a mean to achieve more inclusive, institutionalized and sustainable democratic polity in Nepal. This article re-examines the process of federal restructuring of Nepali State on the backdrop of contemporary politics of identity.

Keywords: *Identity Politics; Nepal; Ethnicity; Federalism*

Introduction

On the aftermath of the Janaandolan-II, the predominant public discourse favoured federal restructuring the state and thereby transform feudal Nepal into "naya Nepal" based upon secular and democratic federal principles. The articulation of federalism has caught much attention than other issues because of the varied context of ethnicization and regionalization (Baral, 2012, p. 266). Nonetheless, the restructuring of Nepali state by providing autonomy based on identity to the subaltern ethnic groups came into public debate and discourse since the restoration of multi-party democracy in 1990. In fact, the federal restructuring of the state has been the core demand of ethnic groups in post-Madhesh uprising politics in Nepal. The urge for federalism was not only for the decentralization of power but also for a wider agenda of inclusion that encompasses other institutional reforms to ensure proportional representation of all the ethnic groups and recognition of the ethnic and cultural diversity by redefining Nepali nationalism. The

ethnic groups also demanded the introduction of affirmative actions to guarantee proportional representation of marginalized groups in government and administration. The Maoists' promoted for ethnicity-based federalism or "ethnic federalism" by renaming provinces after the most numerous ethnic and regional groups. Few indigenous groups claimed preferential rights to natural resources of the region they live and priority entitlement to political leadership positions in the future provinces. Many people from CHHE, conversely, protested the introduction of ethnic quotas and federal restructuring although their resistance was mostly unorganized and fragmented. Open opposition only came from a fringe of the political left who feared Nepal's unity. The Pro-monarchy groups and the Hindu rights, less concerned for federalism than with the republic and secularism, opposed the redefinition of Nepali nationalism.

Making Sense of Politics of Identity

Making sense of identity is essential in our day-to-day life. We simultaneously belong to divergence category of identities based on different contexts. When these identities "compete for attention and priority over each other (they need not always, since there may be no conflict between the demands of different loyalties), the person has to decide on the relative importance to attach to the respective identities" depending on a certain context (Sen, 2006, p. 19). However, two distinct issues are to be carefully addressed in this connection – one, "the recognition that identities are robustly plural, and that the importance of one identity need not obliterate the importance of others"; two, "a person has to make choices – explicitly or by implication about what relative importance to attach, in a certain context, to the divergent loyalties and priorities that may compete for precedence".10 Identity movements express two complementary types of collective demands – the protection of interests and the promotion of rights of certain groups of individuals who feel discriminated against, and the search for symbolic recognition by a significant other. Identity movements defend the interests, world visions, and values of groups of individuals or communities defined by such characteristics as phenotype (or race) and ethnicity; sex; language; sexual orientation; mythical origins and ancestral territory.

Recitation of the Idea of Federalism

Federalism is a normative political philosophy that recommends the use of federal principles – combining joint action and self-government. "Federal political systems" are a democratic catch – all terms for all political organizations that combine "shared rule and self-rule". There are, however, three different perspectives dealing with the interrelationship between federalism and nationalism. The first one holds that federalism and nationalism are mutually exclusive. French Jacobins, for instance, believed that federalism was hostile to the necessity of linguistic homogenization, a roadblock in the path of authentic, indivisible, monistic popular sovereignty. Federalism, therefore, belongs to an entirely different co-operative philosophy - a non-nationalist logic of legitimacy and/ or the anti-dot of nationalism. The second perspective, by sharp contrast, holds that federalism and nationalism are synonymous. The third perspective, however, unites the perspectives viz, "federalism and nationalism can intersect and be compatible" and "not all federalisms are compatible with all federalisms". This agreement, although, marks an important difference between mono-national federalists and multi-ethnic federalists. The former argue that the primary objective of federalism is to "unite people living in different political units, who nevertheless share a common language and culture". The latter, on contrary, advocate federalism to "unite people who seek the advantages of membership of a common political unit, but differ markedly in descent, language and culture". A remarkable change was witnessed in 1990s both in established as well as new democracies in the World commensurate with the ethno-cultural composition. The constitutions of many Third World countries attempted to address the issue of multi-ethnic nature of the polity. Furthermore, the Latin American experiments with "multi-cultural constitutionalism" have successfully transformed many "divided" Latin American societies into peaceful multicultural polities. The salient features of this multi-cultural model were "formal recognition of the multi-cultural nature of their societies and of the existence of indigenous people as distinct, sub-state social collectivities", "recognition of indigenous peoples' customary law as official public law", "collective property rights with restriction on the alienation of division of communal lands", "official status for indigenous

languages in territorial units", "a guarantee of bilingual education" (Khanal, 2011, p. 167).

In the federal system, there will be generally two governments – the state and central governments. The foreign, monetary, defence are under the central government whereas the local government is responsible for local security, development and other local issues. The constitution delineates the duties and jurisdiction of the two governments. Federal system is called citizen oriented as it is likely to provide services promptly and embrace diversity. If equal powers are given to the constituent states, then such federations are called symmetric federation. Australia is an example of a symmetric federation. If distinction is made between states, then such federations are called asymmetric federations. Canada has asymmetric federation because Quebec province has been given more autonomy in comparison to other provinces. The federal form where emphasis has given to the autonomy of various states and power is clearly divided, it is called dual federal structure. There is legislature and executive in every level. Since the states and the centre act autonomously, several works can be duplicated. This kind of federation is in Belgium, Australia, Brazil and Switzerland. The federal form where works are divided level-wise between the centre and the state is called cooperative federal system. In this duties and rights are distinctly divided between the centre and the state. The states also equally participate in formulating the policy of the centre. In such countries the centre formulates policy and makes laws and acts and the agencies lower than this implement the same. Cooperative federal structure is in Germany, Ethiopia, South Africa, and Canada. At this point, the question remnants what kind of modular form of federalism is suited to Nepal considering the nature of prevailing identity politics.

Contextualizing Ethnicity and Politics of Federalization in Nepal

The ethnic scenario in Nepal can be explained more empirically and effectively in the light of the Foucauldian theory of power-relations. Foucault challenges the idea that power is wielded by people or groups by way of "episodic" or "sovereign" acts of domination or coercion, seeing it instead as dispersed and pervasive. "Power is everywhere" and "comes

from everywhere", hence in this sense, power is neither an agency nor a structure (Foucault, 1998, p. 63). Foucault uses the term "power/knowledge" to generalize that power is constituted through accepted forms of knowledge, scientific understanding and "truth". Power subsists only when it is applied, and it does not depend on agreement or resistance (Foucault, 1998, p. 63). Power operates only upon free subjects, presupposes the concept of freedom since the relations between power and the freedom of a person are inseparable. In addition to this, resistance to power is also a part of the power relations because power is the force that produces the resistance, determines its place, and administers it. In fact, from the existing form of power, resistance to power draws its means of struggle and its actual social position. A successful exercise of power, therefore, means promotion of certain forms of resistance no less than effective mobilization of means against this resistance (Minson, 1986). Those resistances and individual forms that are promoted by the existing power relations also create conditions for preventing the appearance of other may be more dangerous and subversive forms of resistance. Foucault, therefore, defines various kinds of resistances, all

of which finally questions the status of the basic identity of an individual- "who are we?" The quest for individual identity and the desire to be different from others are the most important wisdom that a person possesses.

This kind of "identification with difference" can be happened at different levels - national and international, education and knowledge, culture and religion. It consists of analysing power relations through the opposing strategies rather than analysing it from the point of view of its internal rationality. Foucault, therefore, explains that a historical awareness of our present situation shapes our conceptualization of power relations which varies over a period. In this context, an analogy can be drawn to explain ethnicity. Ethnic groups claim for their unique identity in order to be different from others which results in a profound struggle that replaces the initial order of power and transforms power-relations.

It is, therefore, noteworthy here that although, "power-relations change positions of power in a political system, power, in essence, remains intact; it is the processes of the world and its systems that administer power, that change" (Minson, 1986). Ethnic

politics is, thus, not exclusively a struggle to rectify the grievances of minority groups, but it is fundamentally about the distribution of state power along ethnic lines. It is the exclusion of the ethnic groups from state power and competition over sharing national resources that breed ethnic conflict. The traits of general ethnic upsurge have, therefore, been to attain power in order to modify their position in the "power binary"[i]. But what is unique in Nepal's case is the existence of multiple "power binaries" grounded on different contexts like in the region wise, Pahadi (Dominant) versus Madheshi (Subaltern); in the milieu of Religion, Hindus (Dominant) versus Non-Hindus including Buddhists and Muslims (Subaltern); in the perspective of Hindu Caste hierarchy in the Hills and Mountains, Bahun- Chhetri (Dominant) versus indigenous ethnic groups and Dalits (Subaltern); in the background of Hindu Caste hierarchy in Tarai, higher caste Hindus including Brahmins and Kshatriyas (Dominant) versus indigenous nationalities like Tharus and Dalits (Subaltern); and so on. Hence, in order to understand and conceptualize the cultural diversity in the Nepali society one requires to adopt deconstructionist approach[ii]. Almost all the ethnic groups in Nepal simultaneously hold multiple identities based on different circumstances. Thus, the question of marginalization or exclusion or subalternity is fluctuated from context to context. The Brahmans and Kshatriyas are dominant groups in the power binary of Madhesh based on the Hindu caste hierarchy, but these groups become subaltern in relation to the Bahuns and Chhetris of the Hill. Muslims of the Tarai region, in a different example, Madheshis are subaltern vis-a-vis the Pahadis, however, they are placed in the subaltern position within the Madhesh. Therefore, a "relative subalternity" or multiple subalternity is found within such broad ethnic constructions. In addition to this, ethnic groups can also be branded as "dominant within subaltern" and "subaltern within subaltern". For illustration, the Pahadi Newars, Gurungs and Limbus are dominant within Indigenous

Nationalities of Hills or, the Madheshi Brahmins and Kshatriyas are dominant within Madheshis. On contrary, the Pahadi Janajaties like Bhonte, Tamang, Rai along with Dalits can be considered as subaltern within the greater subaltern segment of Indigenous Nationalities. In Tarai also, Tharus, Muslims, Dalits and Tarai Janajaties can be placed at the

margin of Madhesh. The division of groups in line with dominant and subaltern can, therefore, be useful in dealing with the question of inclusion and exclusion in Nepal. Weber came across that society is an "arena of conflict and struggle" over resources, between dominant and subordinate groups. He argues that there are many "status" groups in a society which possess varying degrees of social power. The conflict between ethnic groups in Nepal are, therefore, self-explanatory of the existing uneven power distribution in the society and polity.

Brief History of Demand of Autonomy and Self Determination in Nepal

The demand of autonomy and self-determination in Nepal is neither new nor imported from the west. Prithvi Narayan Shah himself granted internal autonomy to Limbus back in the latter half of eighteenth century (Lawoti & Hangen, 2013, p. 144). A royal order was issued in this connection in 1774 by King Shah which said, "Although we have conquered your country by dint of our valour, we have afforded you and your kinsmen protection. We hereby pardon all your crimes, and confirm all the customs and traditions, rights and privileges of your country" (Regmi, 1978, p. 13). Limbus from far- Kirat, however, revolted for the encroachment of ethnic autonomy in 1792. Then, Khambus from Mid- Kirat, demanded for local autonomy in 1808. In the eastern hills, Kirats launched an insurgency for local autonomy and supersession in 1950. Tamangs also revolted for the same in 1951. Moreover, the demands of autonomy and self-determination by different ethnic groups may be presented as follows:

Table 1: Demands of Autonomy and Self-determination by Ethnic Groups

Ethnic Groups	Practical Demand	Strategic Demand	Mechanism of Inclusion
Indigenous Groups	Inclusion	Autonomy and Self-rule	Reservations, Proportional Representations, ethnic/ indigenous autonomy with right to self determination

Madheshi	Inclusion	Regional Autonomy	Reservations, Proportional Representations, regional autonomy with right to self determination
Dalit	Inclusion	Inclusion	Reservations, Proportional Representations
Muslim	Inclusion	Inclusion	Reservations, Proportional Representations

(Source: Lawoti, 2013)

Attempts of State Federalization Till 1990

The political process of restructuring the state had started since the time of unification of Nepal by the Prithvi Narayan Shah in the mid-eighteenth century when he brought together a number of small principalities to give the shape of a single Nepali state (Stiller, 1973). During the Shah-Rana regime the political and administrative structures were organized under feudal lines and the nature of the state was completely dictatorial. The only significant shift in terms of the source of authority in this phase was the transition from tutelary Shah Monarchy to dictatorship of the Rana oligarchy. By seizing his de facto power, their families ruled over the country for more than a century until a political movement threw them out from power in 1951.

The political events in the 1950s had dismantled the oligarchic feudal dictatorship of the Ranas may be marked as the beginning of the second phase of state restructuring in Nepal. The introduction of multiparty type of political structure as a result of pro-democracy movement opened an opportunity for the expansion of ruling circle of society. As a result, the downfall of Rana rule brought two different types of forces to operate in political life of society. One such a force was represented by the king. His political role no longer remained into suspension. He was placed into his original place as a sovereign head of the state. Another type of political force was represented by the multiparty leaders. They were representing the emerging political force of society. There was no space for this force under existing organization of the state. A separate political niche had to be carved out for the accommodation of this force. This task was accomplished through the

introduction of the multiparty type of political structure.

Federalization in the Post-1990

There was no substantial change in the main policy and formation of the state even after the mass movement of 1990. After the reinstatement of democracy, the Nepali people started to search for their status, identity and influence in the state apparatus. As a result, Nepali Constitution of 1991 accepted the multi-lingual and multi-ethnic nature of Nepal for the first time, but nothing was done to contrivance this. After the political change of 1990, though the Janajatis, Dalits, Madheshis and other communities of the Tarai elevated the issues of secular state along with ethnic, regional, lingual autonomy, the Constitution did not incorporate this. Consequently, unitary and centralized state was given continuity. Because of this character of the state, there was no equal access of all to the ruling state. Certain class, family and particular caste became dominant. This has not only intensified centralization in politics but also kept the state under the control of group of courtiers and elites. It was felt that the centralized state structure erected because of "one language, one dress" was unable to guarantee justice to the people of all ethnic and language groups and classes. Thus, the issue of equal participation in the state and in the policy-making level was upstretched. Because of the caste and cultural influence under the centralized state, many people have supposed a conception that "Nepal is our country but not our state". Since all the facilities and opportunities are centred at one place, regional imbalance in development has been created. In order to eliminate socio-economic conflict and discriminations seen in the society, restructuring of the state became necessary. Many have said that the act of making Nepal a Hindu-Khas state after the extension of Gorkha kingdom there have been ethnic, linguistic, cultural, gender and class discriminations and oppression, against which struggles have been elevated. This could be the reason behind demands like ethnicity-based federalism.

The Janaandolan-II had provided twin mandates of restructuring the state in an inclusive manner and of taking the peace process to a logical conclusion. In order to challenge the royal rule, the Maoists and the alliance of seven democratic parties signed a twelve-point

agreement in 2005. The very next year, the Comprehensive Peace Agreement (CPA) ended the decade-long Maoist insurgency once King Gyanendra gave up power, thus, began the process of institutionalising the idea of federalism at a time of rapid political change. The CPA called for a democratic restructuring of the state and social, economic and cultural transformation through the decisions of a constituent assembly. During the drafting process of the Interim Constitution of 2007, Madheshi and Janajati leaders within the UML and NC had unsuccessfully lobbied their respective parties for the inclusion of an explicit commitment to federalism (International Crisis Group, 2011). Even in the negotiations between the Seven-Party Alliance (SPA) and the Maoists, only the latter had raised the issue, but had quickly given in when UML and NC negotiators dug in their heels (International Crisis Group, 2011). The interim constitution therefore reiterated the commitment to state restructuring but did not mention federalism which in turn sparked outrage among Madheshi activists. The Madheshi Janadhikar Forum (MJF) and the Nepal Sadbhavana Party (NSP) organised protests demanding the amendment of the interim constitution to attain "ek Madhesh, ek Pradesh". The

protests turned into violent, as Maoist cadres killed one Madheshi activist and the security forces shot dead more than 30 protestors and wounded 800. The Madheshi led blockade at key transit points caused severe shortages and price hikes in Kathmandu. Consequently, Prime Minister G.P. Koirala in a television address on 31 January 2007 supported and federalism and the proposal of re-delimitation of constituencies. As the protest continued further, he promised representation of minority groups in elected state bodies and administration on a proportional basis.

The Madheshi protest, however, continued until the parliament on 12 April 2007 passed the 1st amendment to the interim constitution, which calls for the state to be restructured into a "democratic, federal system". A series of subsequent agreements between the interim government and agitating ethnic and regional activists reiterated the commitment to federalism and proportional representation[iii]. But considering extremely limited legal consequences, one legal expert termed "they were painkillers, not treatments" (International Crisis Group, 2011). However, these agreements certainly raised expectations amongst Janajaties

and Madheshis about "ethnicity-based federalism". In fact the fifth amendment of the Interim Constitution stated "accepting the aspiration of the Madheshis, indigenous nationalities, the marginalised and peoples from other areas for autonomous provinces, Nepal shall be a Federal Democratic sealed in the minds of many" The restructuring debate has, thus, focused more on "state nation" rather than "nation-state". 'Nation-state advocates making one-caste state whereas state nation considers the whole communities' resident within the geographical limit of the state as the nation' (Shrestha, 2004, p. 12). The Maoists were the only mainstream political party with a strong public commitment to federalism. They used it not only during the war to build support, but they campaigned on it in the elections, giving more detail than others on how "ethnic federalism" should work (International Crisis Group, 2011). The Maoists utilized the subaltern discourse of marginalized ethnic groups by expanding their alliances with these groups. The Maoist insurgency, which was initially underestimated by other political forces and assumed as "revolutionary romanticism" by insignificant group of radical youths, spread all over the country especially among the

marginalized groups within a short span of time. The failure of the post-1990 democratic regime to cope up the political and legal-administrative challenges and the inherent weakness and contradictions of the polity including the political parties had contributed significantly to the radicalization of Maoist political agenda (Khanal, 2011, pp. 164-165). There was, however, a different reason behind the political mobilization of subaltern ethnic groups by the Maoists. Despite of restoration of democracy and promulgation of new constitution, the Nepali society remained feudalistic in a general sense. The feudalistic mode of production had been sustained by the hegemonic presence of Monarchy for centuries. The very existence of feudalistic norms and elements in the society was the major constrain for the emergence and expansion of civil society outside the Kathmandu valley. The historical examples of socialist revolution both in Russia and China suggest that feudalism provides more favourable condition to the subaltern discourse compare to capitalism because of the dominance of hegemonic class in the civil society (Gramsci, 1999). The Nepali Maoists, therefore, used this golden opportunity by mobilizing the unorganized primitive

ethnic groups based on Mao's famous "mass-line" theory. The rapid growth of Maoist insurgency was thus due more to the circumstantial advantages than their organizational strength (Khanal, 2011, p. 165). The Maoist agenda of federal restructuring of the Nepali nation came as a surprise to the mainstream political parties. Many democratic forces, even, feared that it would further fragment the Nepali nation-state, which had already been weakened by the insurgency and the de-stabilization of the democratic process.

The initial steps to develop a framework for federalism and to fix proportional quotas for the constituent assembly were taken by signing 20 point agreements between the government and the Nepal Federation of Indigenous Nationalities (NEFIN) and the Madheshi People's Rights Forum (MPRF) in August 2007. The fourth point of the agreement stated:

'A state restructuring commission will soon be formed to present recommendations to the constituent assembly regarding a federal state structure based on ethnicity, language, geographic region, economic indicators and cultural distinctiveness while keeping national unity, integrity and sovereignty of Nepal at the forefront. The commission will include indigenous janajatis, Madheshis, dalits, women and eminent experts from various groups, regions and communities.

The eighth point of the agreement stated:

'The Government of Nepal has agreed in principle that all groups, genders, communities, castes and ethnicities should be represented in political parties at all levels. A fully representative task-force will be formed immediately to conduct a study in order to ensure inclusive participation and proportional representation of all castes, ethnicities, groups, communities, genders and regions in all bodies and levels of the state'.

The MJF signed 22-point agreement with the government of Nepal about the reconstruction of the Nepali state on August 30, 2007. The fifth point of the agreement prescribed for the establishment of a commission for state restructuring if it comprises of experts in an inclusive manner. The sixth point of the same agreement further stated:

'Arrangements will be made for a federal state with regional autonomy

while the sovereignty, national unity and integrity of Nepal will be kept intact during the restructuring of the state. The rights, nature and limits of regional autonomy will be as decided by the constituent assembly'.

Role of Constituent Assembly-I

The CA-I had formed three types of committees i, e., thematic committees[iv], process-related committees[v] and a constitutional committee to deal with the concept papers for the constitution (Bhattachan, 2010, p. 45). The demand of separate thematic committees for excluded groups was, however, denied by the mainstream political parties like UCPN, CPN-UML, NC, etc. due the fear of a Madheshi takeover during constitution making (Bhattachan, 2010, p. 46). This had resulted in an "early warning" from the UN body for eliminating racial discrimination on March 13, 2009. The Chairperson of the aforesaid committee, Fatimata-Binta Victore Dah, had stated that political parties are reminded to "ensure that members of indigenous people have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent" (Bhattachan, 2010, p. 46). The committee issued a follow up note in this connection on September 28, 2009, called for "the establishment of a thematic committee for indigenous peoples to guarantee their full representation and participation in political life" (Bhattachan, 2010, p. 47).

The role of State Restructuring and Division of State Power Committee was incredibly significant for federalism. The committee had identified two main parameters of the basis of federalism i, e., Primary Basis (Identity) and Secondary Basis (Ability). The former includes ethnicity, language, culture, geography/ region and history whereas the later covers "economic interdependence and ability", "condition and prospect of infrastructure development", "availability of natural resources" and "administrative accessibility" (Bhattachan, 2010, p. 48).

Table 2: Demands for Autonomy by Indigenous Ethnic Groups

Ethnic Autonomous State/ Ethnic Group	Ethnic Autonomous State of more than two Ethnic Groups	Undecided for territorial or non-territorial autonomy	Undecided
Limbuan (Limbu) Tamsaling (Tamang)	Kirata (Rai, Limbu, Sunuar, Lepcha, Sherpa and Bhote)	Majhi	Remaining Indigenous Ethnic Groups
Nepal Mandala or Nepa (Newar) Tamuan (Tamu)	Morang (Meche, Dhimal, Gangai, Tajpuria, Urao and Santhal)		
Magarat (Magar) Tharuhat (Tharu) Khambuan (Khambu or Rai) Rong (Lepcha) Sunuar (Sunuar) Chepang (Chepang) Kochila (Ranjbanshi) Thakali (Thakali)	Himali (Mountain Ethnic Groups) Bhote-Lama (Western, Mid-Western and FarWestern Mountain Ethnic Groups)	Bhujel Raji	
Baramu (Baramu)			

Source: Data Compiled by the author based on field work [Nepal Federation for Indegenous Nationalities (2015). Lalitpur].

The preamble of the report states that the restructuring is needed "to solve the prevailing issues of class, caste, regional, gender, and community by ending the unitary structure of the state and transforming Nepal into a progressive democratic, inclusive and proportional federal republic" by "establishing independent, autonomous, and sovereign provinces, local-level and special structures with constitution-given right to self-determination and based on identity and capacity, by distributing the authority exercised by the centre, to create peaceful, sovereign, secular, equitable and prosperous Nepal,

desiring representation and rights of all castes, regions, genders, and communities in all structures of the stated" (Mistry, 2019, p. 122). The draft report defines federation, state, local level, special structures, autonomous region, protected area, special area, state authority, and categories. It defines federation thus, "federation should mean the highest level of the federal structure. This word denotes the combined form of the federal Nepal and its states, local levels, and special structures" (Gautam, 2015, p. 89). The draft report further recommended for three structures of political system at federal, state and local level. The committee proposed a "14-state federal model" with the states: Limbuwan, Mithila-Bhojpura-Koch-Madhesh, Kirant, Sunkoshi, Sherpa, Tamsaling, Newa, Narayani, Tamuwan, Magarat, Lumbini-Awadh-Tharuwan, Karnali, Jadan and Khaptad. The basis of such model was Identity including ethnicity, language, culture, region, etc. and capacity denoting the economic interrelationship, status of infrastructure development, availability of natural resources, administrative convenience, etc. The Article-4 of the draft report recommended the provision to form autonomous regions within the states where there is an ethnic/community or language majority or substantive settlement. The draft report also includes the provision of creating protected areas for minorities, cultural areas, endangered and marginalised communities for their promotion and development. It further recommended for various commissions under the federal government such as Women's Commission, Proportional Inclusive Commission, Dalit Commission, Indigenous Janajati Commission, Madheshi Commission, Muslim Commission and the Commission for Betterment of Minorities (Mathema, 2011, p. 64).

Outlook of Mainstream Political Parties:

The eight political parties and the state have in principle reached consensus about forming a federal structure. On the aftermath of the Madhesh movement, then Prime Minister Girija Prasad Koirala in an address to the nation on 7th February 2007 has committed, "the Interim Constitution will be amended immediately to effect change for federal state structure and electoral constituency delineation". Article 138(1) of the Interim Constitution of Nepal 2007 also committed "to bring an end to

discrimination based on class, caste, language, sex, culture, religion and region by eliminating the centralized and unitary form of the state, the state shall be made inclusive and restructured into a progressive, Democratic Federal System". Both the Nepali Congress (NC) and the Communist Party of Nepal (Unified Marxist-Leninist), UML, had accepted federal restructuring. They had actively participated in drafting a federal model in the Constituent Assembly. There was an agreement on most institutional arrangements including the division of powers between provinces and centre. But this process had been driven by longstanding proponents of federalism within both parties, none of them very influential. Both parties had agreed to federalism in the spirit of bargaining; neither of them owned the agenda. Behind the official positions there was a significant resistance to it. The NC and the Pahadi elites of CPN (UML) opposed the proposal of the thematic Committee on State Restructuring and Distribution of State Power, however, the UCPN (Maoist) and the CPN (UML) leaders belonging to indigenous groups support these recommendations. The NC and CPN (UML) had proposed to reactivate the State Restructuring Commission to review the recommendations and reduce the number of federal unites to six or seven based on geography and economic ability but the UCPN (Maoist) disagreed. The Maoists wanted the commission to suggest the technical aspect of the divisions that remain to be worked out.

The political parties have brought out their proposed models of federal and inclusive state with economic and social transformation in their election manifestos during the Constituent Assembly election, 2008. The Maoists manifesto proposed the possibility of restructuring the state along ethnic, geographic feasibility, linguistic base, economic feasibility into 11 autonomous provinces and further sub-regional provinces or units. Among these, Seti Mahakali and Bheri-Karnali are based on regional basis, and Magarat, Tharuwan, Tamuwan, Newa, Tamsaling, Kirant, Limbuwan, Kochila and Madhesh are based on regional identity. Within Madhesh, Mithila, Bhojpura and Awadh have been proposed as subprovinces based on linguistic basis. In fact, this proposal was a revision of the concept of nine autonomous provinces during the insurgency period. Then proposed Kirant province has been divided into

Limbuwan and Kirant, and Kochila has been proposed to be carved out of Madhesh province. Chitawan which had been put in Madhesh has been included in Tamsaling. Furthermore, within Madhesh, Mithila, Bhojpura and Awadh were proposed as sub-provinces based on language. Thus, the reflection of Madhesh and Limbuwan movement is clearly visible in this proposal.

In addition to this, Ridi, Tamakoshi, Narayani and Bijayapur have been proposed as centrally administered geographic regions as other castes outnumber the oppressed ethnicities in these regions. The Maoists have proposed to establish ethnic autonomous zones and protected villages for endangered communities within the provinces. Thus, the Maoist proposal on federalism is basically an ethnic and regional one. UCPN (M) Commitment Paper, 2008 also advocated for sub-national units within a province so that liberation of one ethnicity should not be at the cost of other nationalities, and rights of minorities should be ensured in provinces with mixed nationalities.

The Nepali Congress had decided to go for restructuring of the state and inclusive democracy at the 11th General Convention of the party. Referring to the various discriminations existing in Nepali society, the political proposal and working direction paper further of NC stated, "Inclusive democracy should get rid of discriminations and it is necessary to have reservations in the state mechanism itself to ensure participation and economic and social equality and justice. Nepali Congress will strive to work towards achieving inclusion". The NC, therefore, constituted a task force under the coordination of central member Dr Rambaran Yadav to design a model of state restructuring. NC had decided to go for representative federal democratic model of state restructuring based on pluralism. The CA election manifesto of NC also promised to recognise the unique characteristics of Madheshi of Tarai, Janajati of the hills, Dalits and others in the federal structure.

CPN (UML) had presented its concept about states restructuring in 2006. UML had further stated its bases for federal restructuring in its election manifesto of CA election of 2008. It advocated for federal restructuring based on characteristics of ethnicity, language, culture and geography. The manifesto states that ethnic concentration, language affinity and cultural

characteristics, historicity and geographic distinctiveness should comprise any one entity. Madheshi Janadhikar Forum (Nepal) asked for making Tarai a single autonomous political and administrative province. Its manifesto mentioned that their demand for a Madheshi state was not for an ethnic Madheshi state but instead was for a regional one. Tarai Madhesh Loktantrik Party in its manifesto had stated that it is in favour of an administratively unified and Tarai-Madhesh autonomous unit. The party manifesto gave it rationale for a single autonomous region as there is geographic uniformity, cultural and language affinity, similar climate, agriculture as the backbone of economy, identity of being similarly oppressed and colonialised, unity of feeling and purpose in the struggle for respect and dignity. Rastriya Prajatantra Party advocated for an inclusive, participative and just state by ending centuries-old discriminatory practices based on caste and gender, problems in language and culture, oppression and inequality.The election manifesto of Communist Party of Nepal (Marxist-Leninist) stated, "federal provinces will increase the administrative expenses and the issues of additional expenses should be taken seriously. Economic sustainability will

be the chief measure of federal restructuring" (Baral, 2012). Nepal Communist Party (Unified) had stated that "ethnic-regional principle and autonomy will be the chief basis of federalism". With just only exception of Rastriya Janamorcha which advocated for the establishment of unitary government system based on democratic decentralisation and local autonomy and governance, all the other parties with representation in the 601 member CA accepted federalism in their manifestos.

Civil Society Reactions

Federations are basically constituted in two ways – one, federations that are formed with mutual agreement among the pre-existing territorial political units – e, g. Federations in America, Switzerland, Canada, Australia, etc.; two, some federations that are determined by decentralising and devolving power of the unitary state – e, g. Austria, Brazil, Belgium and Spain, etc. Since Nepal does not have any pre-existing territorial political units, therefore, the second option i, e. the "consensus-based model of federalism" is suitable. Academicians like Geographer Dr. Pitamber Sharma has proposed a model of federalism that

includes 6 federal units i, e. Purbanchal (eastern), Madhyamanchal (central), rajdhani (the capital), Paschimanchal (western), Karnali, Sudurpaschimanchal (far-western), and 19 districts based on the availability of the natural resources and means. His idea has been to put emphasis on the possibilities of future development and the interrelation of the hills and the Tarai rather than ethnicity. Sharma mentions three important issues defining federal units - the ethnicity and language, economic capacity and feasibility and interregional complimentary economic activity. Professor Krishna Khanal, eminent political scientist of Nepal has suggested the determination of units of regional or federal rule based on ethnic, language and cultural affinity. He has proposed 14 election constituencies with multi-members. Khanal has not pointed out categorically what should be the regional or administrative structure. But later he has suggested that 10 to 13 such regions can be formed. Development expert Dr. Harka Gurung (2006) had proposed 25 development districts. Giving emphasis on economic viability, he has given importance to reduce the administrative expenses in his proposal. He has suggested amalgamating two to four present districts into on in his proposal. The names of the provinces in his proposals are based on rivers (10), mountains (7), historical place (5), and religious place (3). However, the assertiveness of ethnic and regional movements has led to considerable anxiety as well. A significant minority of the Nepali population opposes federalism altogether. More than a quarter of respondents in a 2009 poll said they did not want it. Of the almost 50 per cent who supported federalism, less than half wanted to see the country divided along lines of ethnicity or language. There are three broad responses critical to identity-based federalism.

Promulgation of the New Constitution and the Politics Aftermath

In the aftermath the devastating earthquake, the Constituent Assembly finally ratified the revised constitution. However, the federal restructuring based on geographical proximity and administrative connectivity, not on ethnicity remained a matter of disagreement for the Madheshis. As a result, violence spiked in southern Nepal. Demonstrators slew eight police officers and a child. On the other hand, the police force responded rather violently killing officially 35 of the

demonstrators and slaughtering human rights as documented by Amnesty International.

In the Post-Disaster scenario, the international community (especially the donors) not only stressed priorities of transparency for the relief effort but also took the opportunity to reiterate the need for "political stability" – ostensibly an implicit reference to rapid settlement on the much-delayed constitution as a prerequisite for the release of funds. Nepal's senior political leaders assembled soon after the earthquake to review the constitution under the banner of post- disaster requirements and unity of the nation. The Nepali Congress (NC), the Communist Party of Nepal- Unified Marxist-Leninist (UML), the Unified Communist Party of Nepal-Maoist (UCPN-M), and the Madheshi Janaadhikar Forum-Democratic (MJF-D) had reached a 16-Point Agreement on issues, which had been extremely disputed for many years, like the number of federal provinces and the nature electoral system. The UML was keen to take its turn heading the government once the constitution had been promulgated. On the other hand, the Maoists were losing ground rapidly in the Constituent Assembly and hunt

for the constitution passed with as much of their agenda. This coming together of two major parties have brought the NC and the MJF-D to the table as well. In the month of July, the Constituent Assembly came out with a draft constitution for the nation. The plan was to distribute copies of the same in all 240 constituencies for feedback from citizens through telephone and public hearings. However, for this only two days were consigned. Such a reduced process appears to be just a concealment for a genuine consultation. Most of the Madhesh-based parties had felt that they had been side-lined by the Kathmandu centric politics that disseminated their persistent under-representation providing fuel to the burning fire of Madheshi discontent.

The proclamation of the draft constitution and the ongoing debate over the 16-Point Agreement elicited protests in the planes. These were resonant of the 2007 and 2008 uprisings over the Interim Constitution as Madheshis sensed that the imposition of another constitution which did not address their age-old demands was the final evidence of state's ignorance of Madhesh. As a result, by end of August 2015, the Tarai was in serious turmoil. The most severe/violent incident took

place in Kailali district where protests in quest of recognition for an autonomous Tharuhat province turned out as violent and consequently seven policemen were slaughtered. Mass public rallies were quickly corresponded by mobilisation of state security forces across the region. A coalition of Madheshi political parties protested the delimitation of the federal provinces. For them, this would unfairly dilute their political expression in favour of CHHE. Campaigners also claimed proportional representation in all state bodies and the delimitation of election constituencies based on population ratio. Despite the protests in the Tarai, the constitution making process was "boosted" and a new statute was accepted on 20 September 2015. Nonetheless, it was an unfinished document with several contentious issues deferred to be reviewed later. Less than a month later, Prime Minister Sushil Koirala of the Nepali Congress hesitantly stepped down and UML leader KP Oli took over. This had placed Oli at the head of a coalition government that included both the far-left Maoists and the far-right monarchists.

Appraisal

Federalism is in essence a remedy of and respect to diversity. Constituting of homogeneous federal units helps to reduce communal tension and clash. For the creation of homogeneous federal units, the boundary of the present vertical divisions of the country into five development regions, 14 zones and 75 districts should be obliterated first. This means, in the perspective of Tarai, taking out the landscape of the north of Siwalik from Madhesh which in turns help to rejuvenate cultural territories of the diverse plains' origin groups of the Tarai. Although factions within both NEFIN and MPRF were quick to criticise the agreements that their leaders made with the government for not going far enough to ensure proportional representation and ethnic/regional autonomy, they offered few substantive alternatives to foster genuine inclusion. Madheshi leaders have yet to demonstrate how they will bridge the differences between the multiple geographical, linguistic, religious and ethnic groups that make up the Madhesh in order to achieve a genuine mandate. Despite the rhetoric of "social inclusion" and "state restructuring", proponents seldom acknowledge the immense challenges

that the Nepali government shall face in reworking administrative boundaries along ethnic, linguistic, and regional lines, as well as in implementing new policies of affirmative action in a country where there has been inadequate provisions for certifying individuals as members of recognised marginal groups. These inconvenient realities simply cannot be overlooked.

On the backdrop of the above argument, it is upheld that a radical transformation is necessary in Nepal in order to substantiate the procedures of federalism to immediate effect. However, it necessities a thorough evaluation of the administrative and social complications. Such details are for the most part left undiscussed by the groups demanding these reforms, as well as the government that will be responsible for implementing them.

Disclosure Statement

I do hereby declare that this article is an original piece and there exists no potential conflict of interest.

Notes

i. Power binary refers to a bi-power structure comprising an omnipotent or a hegemon and a powerless or a subaltern.

ii. Deconstructionism is a movement of postmodern architecture which appeared in the 1980s gives the impression of the fragmentation of the constructed building. It is characterized by an absence of harmony, continuity, or symmetry. Its name comes from the idea of "Deconstruction", a form of semiotic analysis developed by the French philosopher Jacques Derrida.

iii. An agreement between the interim government, NEFIN and the Indigenous Nationalities Joint Struggle Committee. "Agreement between the Government and Janajatis", 7 August, 2007. Agreement between MJF and the government. "Agreement between the Government of Nepal and the Madheshi People's Right Forum, Nepal", 30 August 2007. Between the government and the Chure Bhawar Pradesh Ekata Samaj. "Agreement letter", 13 September 2007. The 28 February 2008 eight-point agreement between the government and the Samyukta Loktantrik Madheshi Morcha (SLMM) reiterated the commitments of the earlier 22-point agreement, adding group entry of Madheshis into the army and increasing the Madheshi quota for CA seats from 20 to 30 per cent. The 2

March 2008 agreement between the government, the Federal Limbuwan State Council (FLSC), the Federal Democratic National Forum (FDNF), the United Tharu National Front, the Dalit Janajati Party and the Tamang consequence sailing Autonomous State Council promises within a federal Nepal. The 19 March 2008 agreement between the government and the FLSC includes the formation of a Limbuwan state within a federal Nepal. [URL-www.unmin.org in, Retrieved on 12/04/2015].

iv. Ten thematic committees were formed. These were: National Interest Prevention Committee; Form of Legislative Body Committee; Committee on Determining the basis of Cultural and Social Solidarity; Committee on the Distribution of Natural Resources, Financial Rights, Public Revenue; Committee on Determining the Structure of Constitutional Bodies; Judicial System Committee; Committee on Determination of forms of Governance of State; Restructuring State and Distribution of State Power Committee; Committee on the Protection of Fundamental Rights of the Minority and Marginalised Communities; and Committee on Fundamental Rights and Directive Principles.

v. There were three Process-related Committees i, e., Citizens Committee, Public Opinion Collection and Coordination Committee and Capacity Building and Resource Management Committee.

References

Baral, L. R. (2012). *Nepal- nation- state in the wilderness: Managing state, democracy, and geopolitics*. Sage.

Bhattachan, K. B. (2010). State building: Proposals for federalism. In K. Stokke & M. D. Manandhar (Eds.), *State and society: Social exclusion and inclusion in Nepal* (pp. 19-62). Mandala Book Point.

Foucault, M. (1998). *The history of sexuality: The will to knowledge.* Penguin.

Gautam, K. C. (2015). *Lost in transition: Rebuilding Nepal from the Maoist mayhem and mega earthquake.* Nepa~laya

Government of Nepal. (2007). *The interim constitution of Nepal.*

Gramsci, A. (1999). *Selections from the Prison Note Books.* The Electric Book Company.

Hachhethu, K., Yadav, L. B., & Gurung, D. (2010). Nepal: State and ethnicity. In K. Stokke & M. D. Manandhar (Eds.), *State and society: Social exclusion and inclusion in Nepal* (pp. 63-90). Mandala Book Point

Hangen, S. I. (2010). *The rise of ethnic politics in Nepal: Democracy in the margin*. Routledge

International Crisis Group. (2011). *Nepal: Identity politics and federalism.*

Jha, P. (2014). *Battles of the new republic: A contemporary history of Nepal.* Aleph

Khanal, K. P. (2011). The Maoist agenda of restructuring the state: An appraisal. In L. R. Baral (Ed.), *Nepal: Facets of Maoist insurgency* (pp. 164-184). Adroit.

Lawoti, M. (2013). Dynamics of mobilization. In M. Lawoti, & S. Hangen (Eds.), *Nationalism and ethnic conflict in Nepal* (pp. 200-201). Routledge.

Lawoti, M., & Hangen, S. (2013). Nationalism and ethnic conflict in Nepal. In H. Lawoti & S. Hangen (Eds.), *Nationalism and ethnic conflict in Nepal: Identities and mobilizations after 1990* (pp.132-149). Routledge.

Lecomte-Tilouine, M. (2009). *Hindu kingship, ethnic revival, and Maoist rebellion in Nepal*. Oxford.

Mathema, K. B. (2011). *Madheshi uprising: The resurgence of ethnicity*. Mandala Book Point.

Minson, J. (1986). *Genealogies of morals: Nietzsche, Foucault, Donzelot and the eccentricity of ethics.* Macmillan

ishra, B. P. (2009). *The Nepalese peace process*. Fine Print.

Mistry, A. (2019). *The question of ethnicity: Implication for the process of nation-building in Nepal*. LAP LAMBERT.

Sen, A. (2007). *Identity and violence: The illusion of destiny.* Penguin.

Minson, J. (1986). *Genealogies of morals: Nietzsche, Foucault, Donzelot and the eccentricity of ethics*. Macmillan.

Regmi, M. C. (1978). *Thached huts and stucco palaces: Peasants and land lords in 19th century Nepal.* Vikash Publishing House.

Sen, A. (2006). *Identity and violence: The illusion of destiny*. Penguin.

Shrestha, D. K. (2004). Ethnic autonomy in the east. In *People in the 'Peoples' War'* (p. 12). Himal Association.

Sharma, P. R. (1997). Nation building, Muti-ethnicity, and the Hindu state. In D. N. Gellner, J. Pfaff-Czarnecka, & J. Whelpton (Eds.), *Nationalism and ethnicity in a Hindu Kingdom: The politics of culture in contemporary Nepal* (pp. 129-152). Harwood.

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