

Constitution & Federalism in Nepal

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Acknowledgment

Over a six decade long political struggle, Nepal became a success to promulgate its supreme law of the land by the Constituent Assembly (CA) in September 2015. The constitution restructured Nepal into a federal republic dividing the nation into seven provinces known as federal, provincial and local level. It has transformed the country from constitutional monarchy to republicanism and from a unitary system to federalism. Other features include: a bicameral parliamentary system with two Federal Houses at the centre and unicameral assemblies in each province. The constitution has also ensured Nepal as an independent, indivisible, sovereign, secular, inclusive, democratic, socialism-oriented, federal democratic republican state. Nepali federal system is based on co-existence, co-operation and co-ordination.

We have got a liberal and inclusive constitution with 31 fundamental rights. Exercising these rights depends on making required laws and regulations by the respective governments/parliaments on time and enforcing them effectively. Without political consensus and collective efforts from all quarters its Political implementing would not be possible. At this point of time the government and the political parties have to prove that they can do something for the country by implementing the constitution effectively.

This small booklet contains five articles; three from renowned lawyer com-politicians including the CA Chair Hon. Subash Chandra Nemwang, Hon. Radheshyam Adhikari, main opposition party leader in the National Assembly and Hon. Laxman Lal Karna, Senior Lawyer and political party leader of the Rastriya Janta Party Nepal. Other two articles are: one from a noted women leader with a long struggle for democracy and women rights Hon Mahalaxmi Updhyay Dina, and the fifth article is from Dr. Somlal Subedi, a senior most retired government bureaucrat.

This booklet is considered as a set of knowledge products related to implementation of constitution and federalism in Nepal. The article contributed by the experienced parliamentarians and a senior retired government official have reflected the current status of constitution implementation process, challenges and way forward.

We sincerely thank the Asia Foundation (TAF) and Department of Foreign Affairs and Trade (DFAT) of the Austrian Government for their financial and technical support. We would like to express our gratitude to Meghan Nalbo, Country Representative-, Priti Thapa, Deputy Country Representative, and Bishnu Adhikari, Program Director from TAF Nepal for their leadership and cooperation. Special thank goes to the program team members, Parshuram Upadhaya, Namit Wagle, Kamal Bist, Ujjal Maharjan and Amol Acharya for their sincere help to making the targeted programs a success.

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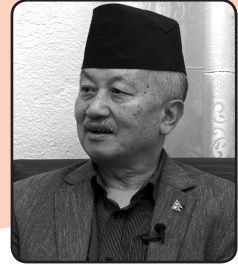
Ram Guragain

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Journey from Making the Constitution to Implementation of Federalism

 **Hon. Subash Chandra Nembang**



Background

The constitutions of Nepal before 2015 were made by the-then rulers of the country. The Rana rulers framed the first legitimate legal document of 1948 Likewise; the Shah Kings made the ensuing constitutions of the country. People's representatives had no role in making the constitutions.

Following the People's Movement of 2006, an initiative was taken to write the constitution of the country through an elected Constitution Assembly (CA). Accordingly, the constitution of Nepal was written by the Assembly in 2015. In this way, for the first time in the constitutional history of Nepal, people became source of the constitution of the country. For this reason, the preamble of the constitution reads, "As the representatives of the sovereign people, we, hereby, promulgate the constitution made by the Constituent Assembly (CA)." The present article is based on the practice and experience gained during the period between the time of writing of the constitution by people's representatives and the implementation of federalism in the country.

Inclusive Constitution

This constitution is important for two reasons. First, the constitution was written by the representatives of the sovereign people. There is not any power above the people in the country today. This is an important aspect

in the constitutional history of the country. Secondly, the constitution we made is very inclusive.

During the course of constitution making process two elections to the CA were held. The first election was held in April 10, 2008. Despite its tireless efforts, the first Assembly failed to write a constitution in its five-year term, and it was dissolved in 2012. The second election to the CA was held in November 19, 2013 and it worked for nearly two years. The draft prepared by the first CA and its experiences were extensively used by the second Constituent Assembly.

There were 32 political parties in the CA, representing almost all political ideologies. The political forces present there ranged from Panchayat era ideologues and those who believed in democratic norms and values. It also consisted of the political force that had waged an armed conflict in the country. There were several parties with only one representative in the Assembly. Both the CAs were not only ideologically diverse but also very inclusive in terms of caste, gender, region, language and religion. The views of the people from across the country as well as non-resident Nepalis are incorporated in the valuable document.

Discussions were held with people across the country before and after the drafting of the constitution, which was followed by clause-wise discussion in the Assembly. The draft was discussed again with the people, which included seeking suggestions for the name of the constitution. We began from scratch and the process was inclusive, involving both individual and institutional participation.

The constitution was written by an inclusive CA through a participatory process, which enabled us to produce a constitution based on the principles of federal democratic republicanism, secularism and inclusiveness.

Attempts were made to reach a broader consensus by holding extensive discussions during the course of constitution writing. That is why the constitution is a document of understanding and agreement. Each and every provision of constitution can be explained.

Constitutional Flexibility

Despite the fact that the constitution of Nepal of 1990 was considered to be one of the best constitutions of the time, some concerns were expressed for its reform. They used to say that there was no need to make any amendment in the provisions of the constitution for the next 60 years. It was, however, eventually abolished by the people.

Learning a lesson from this incident, we tried to make the new constitution very flexible. Except for the provisions relating to nationality, indivisibility and the sovereign power vested in the people, all other provisions of the constitution are amendable. Because of this constitutional flexibility, there will be no need for another people's movement to make any political change in the country. With popular support, such change could be made through the constitution. The constitution was promulgated with the hope that political movement will not be needed again.

Lessons, Understandings and Ownership

Apart from the consensus built through extensive discussions, we have also had a political history and the experience was used during constitution making process. For instance, we are exercising a parliamentary democratic system. While holding discussions on the constitution regarding system of governance and seeking people's mandate during the elections, some political parties were in favor of directly elected presidential system while others wanted a directly elected prime ministerial system. Some parties wanted to retain the Westminster system as well.

We have, however, adopted a reformed parliamentary system with a Prime Minister elected by the parliament, along with a ceremonial President. In the reformed system, a vote of no confidence cannot be tabled against the prime minister for two years from the date of assuming office. If a vote of no confidence is tabled and defeated, another motion cannot be tabled until one year has elapsed. The Prime Minister can neither dissolve parliament nor go to mid-term elections. The reformed system is aimed

at preventing instability in the country. The new system was adopted after holding extensive discussions among the political parties and in view of the lessons learned over the years.

While drafting the constitution, it was decided that parliamentary elections would be held in every five years although some CA members wanted to fix the date of such elections in the constitution itself which was, however, considered not practical.

Likewise, after holding extensive discussions about making a constitutional court, the political parties decided about a constitutional bench, which also reflects an understanding reached among them.

The consensus built during the course of discussions for a reformed parliamentary system has resulted in the ownership of the constitution among political parties representing the CA.

Inclusiveness in Practice

There were a number of constitutions following the framing of the first legitimate legal document by the Rana rulers in 1948. There was no guarantee of fundamental rights in the Pachayat constitution. Open political activities were denied. People were not allowed to raise voice against the then political system. We were imprisoned under Security Act while trying to engage in social works. I was charged with the crime of acting against the state and imprisoned for seven month when I criticized the then government. I was arrested under the Security Act when we assembled in Kathmandu to raise voice to bring about reform in social ill practices prevalent in the society.

The constitution promulgated by the then King Birendra in 1990 was comparatively more democratic than the Panchayat era constitution. The constitutional provisions were weak from the perspectives of politics and inclusiveness, giving rise to an atmosphere of uneasiness in the country. There were social and political unrest with people's aspirations for a

change. The Constitution of 2015 was the result of the aspirations shown by the people.

Constitutions are not written everyday and the members of the two CAs had the opportunity of a lifetime achievement to write a constitution. We had the historical opportunity to make constitutional provisions of secularism and inclusiveness, and we are proud to be a part of the process. A former Indian judge was surprised with our achievement and remarked; "You have made extraordinary provisions in the constitution, but how would you implement it?"

Compared to past constitutions of the country, the constitution of 2015 is more liberal, inclusive and has made remarkable provisions. It is flexible and it could be reformed as there are constitutional provisions to do so. No one will have to go to jail for pointing out its shortcomings. Such issues could be discussed within and among the political spectrum.

Constitutional provision allows voters to change their representatives. It also allows people to change political parties or register a new one. The constitution does not stop people's representatives to voice their voters' aspirations in the parliament. There are provisions of constitutional amendments as time and situation demand it. No constitution in the world is complete in the sense that it fulfills all the aspirations of all the peoples. We also have dissatisfactions, which need to be addressed according to the aspirations of people and the needs of changing times.

Constitution Implementation Status

The constitution is inclusive. It is, however, natural for the implementation process to be faced with challenges. In view of the possible challenges during the course of its implementation, and while addressing the CA for the last time as the Chairperson of the Assembly on the day of the promulgation of the new constitution in September 2015, I had said: "We have made a good constitution. It is a great achievement. It has specified rights, powers and responsibilities. We all have to join hands for its implementation. "

A constitution may be very good yet it cannot delegate common sense, wisdom and competency. We have to exhibit these qualities during the course of implementation of the constitution. What B.R. Ambedkar, the maker of the Indian constitution, had said is contextual here. He had said: "The Indian Constitution is good. If there are any mistakes and shortcomings, they are within us." For this reason, the effective implementation of the constitution will also depend on how we behave in practice.

One of the major achievements in the context of constitution implementation is the holding of elections for three levels of government in 2018. The constitution specifically has stated what and when something is to take place. It also states that Nepali citizens should be able to enjoy the specified fundamental rights within three years of its implementation. Laws relating to fundamental rights have been made according to constitutional provisions. The implementation of these laws will also have to go through certain process and procedures. Efforts are underway to make all laws and regulations according to the letter and spirit of the constitution.

The constitution also contains concurrent powers along with several other provisions. However, the provinces and local levels have their own complaints. The local level complains that the provincial governments have not made it easy for them to work, while the provinces have similar complaints against the federal level. Law making process has been started relating to the coordination between the federal, province and the local levels. After the formulation of this law coordination among the three tiers of governments will be easier.

Need for Exchange of Laws

The provinces and local levels are yet to make several laws. There is a need for the local levels of different parts of the country to know what they have done or are doing with regard to making local laws as to maintain uniformity and avoid duplications.

Cases were filed in the Supreme Court regarding the conditions of service and a benefit of local levels representatives, and the Supreme Court nullified the conditions of service and benefits in regard to six provinces except the province no 1. Some of such laws contradict each other. Such problems were created because of lack of coordination, cooperation and sharing of experiences among the local bodies concerned.

The laws of a province or local body should be known to other province or local bodies. The constitution could be implemented through coordination among the bodies concerned. The problem we are facing today is the result of lack of understanding in this regard, and questions are being raised whether or not the formulation of such laws are being widely shared with the people. This is an important aspect in the implementation of the constitution.

During the popular movement and while drafting the constitution we talked about developing the local level as local government. We also developed popular slogan about taking Singha Durbar to the villages, which meant that the executive, legislative, judicial, economic and other powers would be delegated to the village levels. The constitution was also written accordingly. Today, questions are being raised whether or not those powers have really been shifted to the villages. This question is linked to the implementation of the constitution.

Federalism in Practice

Federalism is a new system in Nepal and its implementation is a great challenge for us. Some provincial-level representatives say that since there is the federal level above them there is no need for the local levels to exist. Likewise, some local level representatives opine that there is no need for provincial level. Their logic, however, appears to be self-centered.

Attitudes such as not admitting the existence of others appear to work in this regard. In an incident, the minister of a particular ministry did not allow the construction of a building (for a certain tier) in the land which was under its ownership. In another case in Jhapa, the traffic police needed

to construct a building for its use but the ministry with the ownership of the land did not allow that. The special court needed a plot of land in Ilam to construct its office building, but it proved difficult to obtain the land. The delay in the implementation of federalism is the result of practical problems which could be mutually resolved.

As a new governance system, federalism is certain to be faced with problems. The system, however, is the outcome of extensive deliberations, discussions and consultations. Thus we have no choice but to address the problems and sincerely work for the implementation of the new system.

Despite the constitutional provisions of inter-state coordination council, a question was raised once regarding the coordination between the Prime Minister and the provincial Chief Ministers. This incident has prompted the council constituted under the leadership of the Prime Minister to be more active. No question has been raised in this regard ever since. The council meets as and when required. We have to tackle the practical problems that crop up during the course of implementation of federalism, and move forward.

The exclusive, concurrent and common powers of the three tiers as listed in the constitution are result of extensive deliberations. The implementation of which was certain to be faced with problems. Constitutional provisions need to be taken to the people for discussion. Even in the midst of discontent, discussions need to be continued. The drafting committees for Civil and Criminal Codes, headed by Mr Kalyan Shrestha and Mr Khilraj Regmi respectively, held extensive discussions on the matter. The draft was eventually presented before the Assembly, where it was stalled.

The aforesaid codes were to have far reaching impact on Nepali people, and, thus, were tabled once again following the commencement of the constitution. As the chairperson of the CA, I made special arrangements for its passage. I had also initiated a special ruling, saying that all related articles and sub-articles would be amendable even if no amendment proposal was made. The criminal code was passed following an extensive discussion on it. Arrangements were made to make it come into effect


only one year after its passage. It was thought people would be able to learn about the law within that period. Despite such arrangements, even the government lawyers were known to be unaware of the new law. For this reason, the need for regular interactions with the people is one of the important aspects of the implementation of constitution and federalism.

Conclusion

Political parties have played a pivotal role in the implementation of the constitution. They were involved in all its processes. I would like to claim that people from all caste, language, religion and culture groups including Madhesi, Dalit, Janjati and women were involved in the making of this constitution. Its successful implementation depends on its regular practice and in holding discussions and interactions with people and their representatives on related issues.



Present State of Constitution Implementation and Federalism in Nepal

 **Hon. Radheyshyam Adhikari**



Background

The year 1950 is a milestone in the modern history of Nepal. It witnessed the end of autocratic Rana regime and the beginning of a democratic governance system in the country. The change brought about by the revolution of 1950 opened new avenues in the political, social and economic sphere. It also gave Nepal the opportunity to be known to the outside world.

However, the institutionalization of democracy following the change of 1950 was not easy. Seven constitutions were written within a span of seven decades in the country. In addition to political instability, the country's economic and social development also suffered a setback. Following the political change of 1990, the constitution with a parliamentary democracy was introduced in the country. This constitution also could not remain unopposed. The Nepal Communist Party (Maoist) waged a decade-long armed conflict against the constitution and monarchy in 1996. Seventeen thousand Nepalis lost their lives in the conflict and the country faced a serious problem of internal displacement and unrest.

Even if the constitution of 1990 made the provision of a constitutional monarch in Nepal, the -then King Gynendra Shah aspired to rule the country directly. This made the parties to act against the king's move. Those political parties that were in favor of the-then constitution were

also opposed to it. Against this backdrop, a peace agreement was signed in 2006 between the seven-party alliance and the Maoist party. After signing the agreement, political forces started a popular movement against the King's move in 2006. And, after the success of the people's movement, the first election to the House of Representatives saw the Maoist Party as a powerful force in the House. On the other hand, the Madhes movement of 2007 eventually forced the country to adopt a federal system in the country. This was before the election to the first Constituent Assembly (CA), which failed to produce the constitution in the given timeframe. The second CA was elected in 2013, and it decided to write the new constitution in view of all these incidents and on the basis of the four principles as set by the first CA.

The four principles that were laid down before the writing of the new constitution were: (i) Nepal shall be a republic state (II) there shall be a parliamentary democratic governance system (III) The country shall move from unitary to a federal system of governance through restructuring of the state, and (iv) the principle of proportional representation shall be adopted. Accordingly, the first meeting of the CA declared Nepal a republic. The first decision of the CA ended the 200-year old monarchy in the country. However, the ensuing incidents show that republicanism was understood only as the abolishing of monarchy. It needs to be understood as a system where all citizens are equal, no one shall be superior or inferior on the basis of one's birth, and that there should be the supremacy of law.

The second principle adopted during constitution writing deals with democratic governance system. The countries with written constitutions regard democracy as an accountable and transparent governance system on the basis of constitutionalism. The hallmarks of this system are balance or separation of powers, protection of citizens' fundamental rights, press freedom, periodic elections and an independent judiciary.

There is a division of the State powers between federal, province and local level in the constitution on the basis of the principle of decentralization as specified in the above mentioned third principles. A neutral and powerful

mechanism needs to be instituted to deal with the conflicts between these three tiers.

The fourth principle adopted during the course of constitution writing deals with the representation and involvement of the marginalized and backward sections of society in governance as well as in political, economic, social and cultural spheres on the basis of the principle of proportional representation.

The first CA, which aimed at working on the basis of the aforesaid principles, failed to produce the constitution during its tenure. After the election to the second CA, the Nepali Congress became the largest party by defeating the Maoist party, which had the majority in the earlier Assembly. The Marxist and Leninist party (UML) became the second largest party, while the Maoist and Madhesi parties became the third and fourth largest parties respectively.

The second CA completed constitution writing within two years and promulgated in September 2015. This constitution was also not without any controversy. The present article is centered on the implementation aspects of the constitution and federalism in the country, and is divided into four sections. The first section deals with the state of affairs following the commencement of the constitution. The second section deals with implementation aspects such as the state of framing of laws, the difficulties faced during the jurisdictional use of powers, and the concept and lesson learned on constitution implementation with regard to the province and local level. Likewise, the third section deals with the achievements and challenges of constitution implementation. The last section deals with the conclusion.

The State of Affairs Following Implementation of the Constitution

Immediately after the promulgation of the constitution in 2015, those who were discontent with it, especially the Madhes based political

parties, decided not to accept it. And there was a popular unrest in the mid-southern lowlands of the country (now most part of state number 2). The Madhes movement and the economic blockade by India could not have been a coincident. The turn of event had a tremendous impact in Nepal, and the country had to pay a heavy price for promulgating the constitution.

Though the Madhes movement and economic sanction are still fresh in our mind, they are a part of the history today. Election to the parliament has already been held according to the constitution, which was actively participated by all caste and language groups of the country. Those who had expressed disagreements with the constitution now want to have an amendment in the constitution. Moreover, the mainstream political parties of the country have agreed on the four principles of the constitution as mentioned above.

Constitution Implementation

It is necessary to pay attention to the state of framing laws, the difficulties in exercising jurisdictional powers, and the relations between the province and local level with regard to federalism implementation.

The State of Framing of Laws

It was necessary for the political parties and their leaders to reach an understanding while writing the constitution. But it was not easy to build consensus among parties with diverse ideologies. For this reason the provision of the constitution could and could not be fulfilled immediately. There is an immense anomaly between the economic capability and the promise made with regard to the fundamental rights. For instance, there is a huge gap between the constitutional commitment and the capacity on the part of the provinces to make investment in the health and educational sectors. There is no option but to find and follow a middle path in this regard. Rights relating to employment and shelters are directly related to economic condition of the country. Without raising national income and

productivity, the implementation of fundamental rights and improvement of economic condition with the available budget would not be possible.

On the other hand, in accordance with the federal set up, the governance system has moved ahead by instituting federal, province and local level structures. For this, there is a need for new set of laws. Thus, it was decided that the old laws would continue for some time as it will be quite some before new ones will be made. However, the stipulated timeframe for this has already elapsed. Until now some laws have been made, while others are in the process of being passed. But we have not been able to make the required number of laws so far.

All the three tiers of the governments have the right to make their respective laws. However, the province and local level would not be able make their laws until the federal level has made its own laws because they will be dependent on it. Similarly, the local level will be in a state of confusion until the federal government makes its laws. For this reason there is a need for patience and understanding on the part of the federal, province and local levels until things start to run smoothly.

In view of the present state of affairs in the country, the federal parliament has prioritized and formulated a number of laws, while others are in the process of being made. The provinces and local levels are also in the process of making their laws.

However, some dissatisfaction has cropped up in the course of framing and implementation of such laws. The province and local levels, in particular, have complains against the federal government in this regard. They are dissatisfied because they say there is an encroachment by the federal laws in exercising their exclusive powers (as specified in the constitution). It appears that there is a difference in the understanding of the constitution between the federal, provinces and local levels. The cause of most of these problems is the result of unitary mindset prevalent among politicians and the bureaucracy.

For instance, the matter pertaining to internal security within the state falls under the state government. However, the chief district officer (CDO) as deputed by the federal government exercises more power than the state level Internal Affairs Minister. The CDO also has the power to monitor the offices that are responsible for service delivery. During the course of constitution writing, it was discussed that the federal government would not need to keep the police force. It was reasoned that the province level can have it under it. But the Committee concerned thought that it was necessary to consult experts as the matter was connected with internal security related issues.

Eventually, five reasons were given in support of keeping the police under the federal government. The reasons were: (i) In order to maintain uniformity of standards of training and new recruitment, (ii) to exchange secret information between and among states, (iii) to help in arresting criminal of one state hiding in another state, (iv) to make a central forensic laboratory, and (v) as a member of INTERPOL, to help prevent crimes connected with other countries and liaison with the police of other countries. Thus such situation necessitated the inclusion of the provision in the constitution itself.

It was also made clear that there would be only a limited number of police at the federal level to carry out the above mentioned functions. During the course of passage of the law, however, the Home Ministry (representing the federal government) made no attempt either to reduce the police force or to curtail its power. Instead, a draft federal Bill was tabled in the parliament to make a firm grip on the police organization. This caused a serious difference on the matter between the federal and state governments. The federal parliament has, however, made some changes in this regard. Whether or not this reform will be adequate is yet to be seen. This, however, is not only in the case of security, the federal Bills that were tabled with regard to forests, sports and education also appear to be affected by the unitary mindset.

The laws that have already been passed and those that are in the process of becoming laws are conducive to the unitary governance system. The federal laws are not being made according to the letter and spirit of the constitution. There is a growing discontent at the provincial levels as they think these laws are curtailing their powers. Today, only one party has its majority both at the federal parliament and in six out of seven provinces. Despite the comfortable majority, it is not a good sign that the discontent at the province and local levels has not been addressed.

We need to be aware of the positive aspects of negative comments. And, despite the inability in making all those laws according to the constitution, at least 16 laws relating to citizens' fundamental rights have been framed. The clause "as prescribed", however, appears time and again in the newly made Act and laws, which hints that the fundamental rights could hardly be regarded in the true sense of the word. It is good that the parliament has made the required Acts as desired by the government. An alert civil society will also be helpful in the implementation of new laws. Amendments have been made to nearly 200 Acts to suit the constitution, while new Acts are in the process of being passed.

Likewise, the provincial governments have taken the initiative to make their laws. Model laws are being provided to the local levels to facilitate them in framing their laws. Technical supports are also being provided in this regard wherever possible. Lack of competent, professional human resources is being felt while preparing the Bills according to the agreement reached at the political level. The federal government needs to send teams of experts to these levels; otherwise there will be a possibility of contravention of the constitution and infringement of jurisdictions. We need to think it through in time or it may give rise to misunderstanding and disputes between all three levels of the government.

Jurisdictional Confusions

The province and local levels are making laws with the objective of exercising their exclusive powers, ignoring the fact that some of which

could be in contravention of the federal laws. Here, one incident is contextual. The chief of Triyuga Municipality of Gaighat had once said in an interaction: "In some of the community schools of the municipality, there are more teachers in proportion to the students, whereas in other schools there are more students in proportion to the teachers available. Likewise, there are more teachers for a particular subject in some schools while in other cases the number such teachers is inadequate. We had to address this problem with the transfer of teachers and by applying other management options. The Municipality wants to make necessary laws and transfer those teachers even if it will be in contravention of existing Education Act." Because of the need to address local problems there is a possibility of ignoring the fact that such a law could be in contravention of the federal law.

During constitution making, it was felt that the provincial levels will need the power to recruit its required number of personnel and set the terms of service and benefits along with their professional development. Accordingly, arrangements were made to institute Public Service Commission (PSC) both at federal and the provincial levels. In practice, however, the federal PSC has been recruiting the required number of personnel for the provinces too until now. They are protesting against this practice of the federal government.

Incidents like these may give rise to misunderstandings and disputes, while also increasing the number complaint cases in law courts and creating tensions between different levels of government if laws are not made in time by defining their respective jurisdictions. In the above mentioned interaction at Gaighat case, I said: "Do not make any local laws that are in contravention of federal laws, otherwise it will mean the chief of the municipality going beyond the constitutional provision. This will create legal anarchy. It will be better to draw the attention of the federal government instead."

But the question is: Is the federal government ready to listen to these anomalies? Is it willing to be accountable and ensure the powers of

province and local levels? Otherwise, it will be necessary for those who are at the federal level to understand that matters like this can work both ways.

Constitution Implementation at the Provincial Level

The election to the federal and provincial parliaments and the formation of governments took place almost at the same time. The newly elected legislatures at the provinces had great enthusiasm. But the failure on the part of the federal parliament to make laws relating to the provinces in the stipulated timeframe made it difficult for the newly elected lawmakers to fulfill the promise they had made to the people.

Likewise, the state level complains that the power given to them by the constitution is rather limited. The state leadership thinks that it was mainly because the local level was not put under them. This issue had been strongly raised at the time of constitution writing. However, after much deliberation it was ultimately decided to give the local level a separate identity in the constitution. The constitution has specifically made the provision of three levels of government with the view that if the local level was to be under the provincial level its powers could be curtailed by the state. It was also thought that the process of delegating power could take a long time.

The constitution has clearly defined the jurisdiction of province and local level. The provinces complained when the federal level tried to curtail its power as provided for in the constitution. The attempt on the part of the federal level to intervene the powers of the province relating to internal security, forests, health, education and sports prompted the state leadership to complain against the federal government. This dissatisfaction is reflected in the meetings of Chief Ministers and other ministers.

State of Affairs at the Local Level

If compared with the provincial level, the situation at the local level is slightly better. There is a general feeling of enthusiasm and commitment

as the chiefs of local level are able to exercise their executive powers. The deputies also enjoy powers relating to judiciary and monitoring. Moreover, the ward chairpersons also enjoy the power given to them. The problem faced by the local level at the moment is relating to the management of staff members. Inadequate staff and unwillingness on their part to work at the local level are the major causes of this problem. There are instances of non-cooperation by bureaucracy when politicians show high handedness and go against the established norms and practices.

There are times when the Commission for the Investigation of Abuse of Authority (CIAA) raises questions about Institutional good governance mostly after the publication of news about corruption at the local levels. The Office of the Auditor General has been pointing out the need for reforming the accounting system. The works of the Judicial Committee are also being criticized in this regard. Sporadic incidents like these are often blown out of proportion. It is unjustifiable to judge all local levels and categorize them in the same manner when, in some cases, some local officials are found to be using expensive vehicles, or going abroad on government expenses. It will be wrong to say that all local officials have exhibited corrupt behavior. They should be allowed to work and move forward according to the expectations envisioned by the constitution. And those who are committing wrongs need to be punished.

The tax levied by the local level is the reason behind the negative attitude towards it. Local leadership will be unpopular if they levy tax which is beyond the people's capacity to pay. On the other hand, they will also have the opportunity to be accountable to people after levying tax. Because local people may raise questions about the tax they have paid and transparency in its use. The interrelationship between people and revenue also open the window of opportunity for a positive result regarding long-term self-rule, transparency and good governance.

Federalism is new in Nepal. Imitating other federal systems will not ensure its success. We have to improve the system by learning from our mistakes. We may make mistakes in the course of its implementation. Unintentional

mistakes should be regarded as irregularity, while an intentional mistake must be linked to corruption. Similar to the case of the state level, the laws of the unitary system also pose problems to the local level. The works of this level are important for various reasons. If the local level is able to perform half its work with the resources generated locally, it will have a positive impact on the people. It will be premature to judge the local level in a bad light (right away). Rather, it will be better to motivate the level to be successful in its endeavor.

Achievements and Challenges

Elections for all three tiers have been held according to the constitution. And, all the three structures are doing their works. The elected bodies are not even half way through their term. The performance of different levels of government and legislatures is yet to be assessed. Apart from a few research works, the news stories of media outlets form the only basis for the review of the whole system. Hence the time is not ripe yet to draw a conclusion.

This constitution had been made by the Constituent Assembly. Yet some people take it lightly and say it was made by a number of leaders, which is but a subjective point of view. Such views do not have a sound basis to support the argument. The constitution was made with the wide participation of people. The Madhes movement formed the basis for federalism. The popular movement was for republicanism and against the King's direct rule. And, there has been a continued struggle for democracy since 1950. Moreover, there is an attempt to improve the conditions of the marginalized and backward sections of society on the basis of proportional inclusion.

The political force that rejected the aforementioned four principles of the constitution is rather weak in the country. It is seen in the percentage of votes of the political parties that promoted monarchy in the country. Similarly, what is the percentage of voters who are against federalism? The

election following the promulgation of the constitution shows that voters gave a huge majority and mandate in favor the constitution along with republicanism, democracy, federalism and the principles of proportional representations. Individual view also has a place in democracy. The constitution does not ban those who are for a unitary, monarchical system in the country.

However, there is a discontent among Dalits, Madhesi, Janjati and other marginalized groups of the country. Likewise, women feel they lag behind in terms of gender representation. They complain that women are not represented according to proportional inclusion as provided for in the constitution. There is partial truth in it. It is true that it may not have been possible to translate the provisions of the constitution into reality right away. And it will be wrong, in principle, to say that the constitution is not inclusive. The preamble of the constitution says that Nepal shall be an inclusive democratic country. I think the question as raised by the Dalit, Madhesi and janjati communities as well as women are centered on the practical aspect of the constitution implementation rather than on its principle. What is important is to put into practice the concept of inclusiveness as envisioned by the constitution.

In this context, the aforementioned communities they could be consulted as to what can be done to make the democratic system more practical and inclusive-- and then we can move forward. Assimilation is still a problem among certain communities of the country. For instance, it seems that the assimilation of hill communities and the people of the lowlands is not possible in some context. Likewise, it is already late to remove the discrimination that exists between dalits and non-dalits in the society. A marriage between dalit and non-dalit is not easy. We would be able to resolve such problems through talks and concerted efforts. By exercising our common wisdom it will be possible to do that.

At present, we are in the process of implementing federalism as provided for in the constitution. We will need political understanding for this. The

experience of the past two years is not very pleasant. For instance, the government did not seem to have paid much attention to the dismissal of the Provincial Heads and in making new appointments. The appointments of the Provincial Heads had been made by the federal government itself. Their appointment should not have been regarded only as the appointment made by a particular government. Likewise, the appointments made by the constitutional committee are also rapidly being decided by majority voting. Such a practice will not be helpful in the appointment of positions like that of the chief commissioner of the election commission. Disputable appointments may give rise to political misunderstanding.

The government should think about making such appointments by reaching an understanding with other parties. The letter and spirit of the constitution should be followed in all honesty. The government of Nepal communist party needs to correct some of its ways. On the other hand, it should also be given the opportunity to implement the constitution for which it was mandated by the people in the last election. Past instability in the country was the result of an elected government failing to work its full term. We failed to establish transparency and accountability in governance. The political and economic sector was in a mess. Political parties blamed each other for the mess. For this reason the present government should be allowed to work its full term. Both the party in power and the opposition should know that the power behind the majority in the House is only a means of governing the country. If there is no general consensus among parties, the majority in number may fail to work. The case in point is the *Guthi* (Trust) Bill, which could have been easily passed in the House. However, when the people took the matter to the streets, the majority power in the House had to backtrack largely because of its political misunderstanding.

Conclusion

If there is no complain against the fundamental principles of the constitution, we need to put in a concerted effort to make it practical.

The intergovernmental council needs to be made more active to initiate dialogues at the political level. The council is headed by the Prime Minister and includes some federal ministers and the Chief Ministers from the provinces. Regular meetings of this council are to identify the problems faced by federalism, and help in addressing those problems as and when necessary. It has remedial measures against the federal or state level that tries to curtail the powers as provided for in the constitution. The constitutional bench under the Supreme Court is active in this regard. We should not think about an option for the present constitution without fully using the available mechanisms.

The Constitutional Bench also has an important role to play for the success of the constitution. The constitution will be a lively document only if the Bench wins people's trust and maintains its neutrality. All the three levels of government must have faith in the Bench. The constitution and federalism will last long only when the disputes between and among the three levels are settled fairly.


Lastly, I would like to conclude by relating an incident during my visit to the United States. I was one of the four team members of the "International Visitor Program" of the American government in 1990. There were altogether 25 members from different countries in the visiting program. We were taken to different cities. The incident I am going to relate is that of Jackson City of Mississippi, where the Black American community are said to be in majority. The organizers of the programs had invited a Black professor to speak on the history of black Americans. The professor made such a powerful presentation about the discrimination, pain and suffering the black people had to go through in the country, our guide, a white lady, complained against the talk. She said: "Your presentation has painted the US in a bad light in front of the visitors." The professor replied: "I was invited by you to make a presentation. I challenge you if you think what I have said is untrue. Otherwise, this dark phase of the American history cannot be erased."

The professor also added that the present status of African Americans had been ensured by the law of the land without the need for resorting to violence. I also found that the speaker had a strong support for the American constitution and the system.

In Nepal's context, if there is no complain against the fundamental principle of the constitution, the need of the day is to gradually increase the powers of the state and local level in practice. The American federalism that started with the idea of giving less power to the center has resulted in the center gradually possessing more power. In Canada, the agreement had been reached to give the provinces less power. Today, the provinces are becoming more powerful. Likewise, India has only one constitution and the practice of imposing presidential rule by dismissing the provincial government has almost come to an end. Instead of removing the mistakes and shortcomings of our constitution through practice and amendments, it will be inappropriate to look for alternatives to change the constitution.



Constitution has Shortcomings but Protecting its Achievements through its Revision is Essential

 **Hon. Laxman Lal Karna**



Background

The Constituent Assembly (CA) made the constitution of the country in 2015. Its achievements need to be protected. However, the required processes were not followed during course of constitution writing, wherein lies its shortcomings. The percentage of voting alone does not necessarily form the only basis in constitution making. The most important aspect was whether or not the related regulations were adhered to. The consequence of not following the required processes during constitution writing is the reason behind the discontent in one section of the society today, and they have remained rebellious. Even today marginalized groups such as Madhesi, janjati, tharu, muslims, dalits and others are in favor of amendment in the constitution. The difficulties that were confronted during the course of two years of constitution implementation have generated the need for a review of the constitution. And, as a result of which there are complications in its implementation. The first CA failed to produce the constitution but it had completed about 80 to 90 percent of the work. The regulations pertaining to the second CA had specifically stated that the matters considered undisputed by the first CA should be written, and the disputed matters were to be resolved through an all-party dialogue in the Constitutional and Political Dialogue Committee of the CA. A committee had been formed to decide the undisputed and unanimously agreed matters with regard to constitution drafting.

I was the chairperson of the committee that framed the regulations for the second CA. A proposition had been made at that time to agree to the provisions unanimously made by the first CA, and deal with the disputed matters. A committee had been made for this, which was headed by Mr. Bishnu Poudel. The committee duly submitted its report. A Constitutional and Political Committee was made under the leadership of Dr. Baburam Bhatarai to address the disputed matters. Likewise, a sub-committee was constituted to integrate those disputed matters. I coordinated the sub-committee. It had been assigned with the task of resolving all other problems except the matters relating to restructuring of state and governance system. Dr. Bhatarai had the responsibility of dealing with matters pertaining to restructuring of state and the governance system. At that time, the Regulations Committee had submitted a unanimously agreed report.

The fact that the state should be restructured on the basis of identity and capability was undisputed. For this reason a State Restructuring Commission had been formed during the last days of the CA with the mandate of restructuring the state on the basis of identity and capability. The Commission had submitted its report for nine provinces and a non-geographical province for Dalits. This report was rejected. In other words, the principle relating to undisputedly agreed matter was not accepted. Eventually, seven states were made without giving recognition to the identity of any group. It is said that the Madhesi identity has been given to the number two state which is but incomplete. The capability aspect (in this regard) is nowhere to be found. In this way rules were violated during the process of constitution writing.

The matters pertaining to division of powers between the federal and state level was also undisputed. Later, the process of constitution writing moved forward while stalling even the important suggestions made earlier. This is the reason behind the complexity in constitution implementation today. Voices are still heard about the violations of what was considered undisputed and unanimously agreed earlier.

We have already adopted federalism in the country. There will be nothing but a huge polarity if attempts are made to revert to the unitary system. There are instances of disintegration of the country when attempts were made by the center to curtail the powers of the states under it. We can take the example of Czechoslovakia and Yugoslavia. The communist governments in those countries kept on centralizing the powers of the state. Eventually, the country was disintegrated. In 1971, Pakistan was disintegrated and Bangladesh was born. We need to learn from these historical events.

The present article is divided into three sections: (i) the first part emphasizes on the need to make the state level powerful, (ii) the second section deals with the aspect of constitution implementation and the need to protect its achievements, and (iii) this section deals with the way forward and the conclusion.

The Need for an All Powerful State

Except for the Madhesi and Janjatis no other groups had prioritized the need for adopting federalism in the country. During the course of constitution writing, only limited power was given to the state level. The local level was created as a competitor of the state level. Attempts were made to make the local level powerful and weaken the state level.

At present the local level has not been able to function properly. There is corruption there. We had said in the beginning that if the local level was to be made powerful, they needed to be brought under the state level. In such a situation, it would not be difficult for the state level to keep a watch on and monitor the works of the local level. Rumors were made about taking Singhadurbar to villages by making village municipalities. However, Singhadurbar still has a firm grip on the state and local level. This is the ground reality of constitution implementation today.

Several Acts were made during the course of constitution writing and several laws are in process of being passed. With regard to articles 16 to

46, altogether 30 laws relating to fundamental rights and 156 Acts have been made by BS2076. The Schedules of the constitution state that the state police shall be under the state level, while the armed police and the Nepal Army shall be under the federal level¹. These provisions were undisputed in the first CA of 2008. It had been discussed at that time to keep the armed police under the state level. However, consensus could not be built on the issue and it remained with the federal system.

Presently, the Police Act was issued by the federal level. The state level has the full authority over the police organization. There is a constitutional provision in this regard.² The power is not associated with the federal level. However, the present Police Act has the provision of determining the police chief of the state, police officials and their dress by the federal level. On the other hand, the chief district officer (CDO) is the administrative chief of the federal level. The police have been deputed in the state in a situation when the center appears to have delegated authority to the CDO in maintaining a watch over and perform the monitoring works at the state level. It is but natural to wonder about what the role of the state home minister would be in such a situation.

Constitution Implementation and the Protection of its Achievements

The state level is dissatisfied that the constitution has not provided for adequate power for it in view of the federal system. However, the state level needs to make good use of the power it wields. Protection of the achievements of the constitution also means the implementation of the constitution. If we are for democracy, it is also necessary for us to understand that people are sovereign. There is a provision of periodic election in the constitution and the voters will have the opportunity to exercise their good sense if their representatives indulge in irregularities. The works of all three levels will also be evaluated if they indulge in such

1 Please see Schedule 5, 6 and 9 of the Constitution of Nepal, 2015.

2 Please see serial number 1 of Schedule of the Constitution of Nepal, 2015.

activities. For this reason the state level will have to keep on exercising the powers vested in it, which will eventually make it powerful.

Good universities could be opened to produce high level human resources. Medical facilities could be provided by establishing good hospitals. Private hospitals are doing good work in Terai. The eye hospitals of Bigunj and Lahan are also catering service to people from the neighboring Indian state of Bihar as there are not good eye hospitals there. Terai also has the prospect of developing industries. Even in the absence of mines and minerals, the available resources could be used to bring about prosperity in people's lives. Thus, even if the present federal structure and its practice is not satisfactory, it is necessary to protect the achievements made until now and continue to struggle for more power.

Program at the Grassroots Level

Both the federal and state levels have the housing program for people. Even if it is a good program it is yet to show results because of lack of coordination. It is a good plan to provide housing facilities to the Dalit community but because of the delay in its implementation they are in a state of plight. What would be the use of demolishing a Dalit's house saying that a new one would be constructed there, and, constructing the base of the house in a year and promise to complete the house by the fifth year? Where will they live during the long period? There are several instances of people whose houses were demolished, coming to their representatives with their dissatisfactions. There are practical complexities in this regard.

We have to learn lessons from these incidents and initiate work. There is an ongoing plan to construct 25 houses in Parsa district under the people's housing program. According to the plan there will be two rooms, one kitchen, bathroom and a veranda in a house. If the construction work could be started in winter (Magh) and completed before the rainy season begins (Asar), the families concerned will not have to face the problem in the rainy season.

Formulation of Laws

The state level should not delay in framing its laws. Its laws could be made by studying the laws of other states and the federal level. This is also forms a part of constitution implementation.

During my visit to Butwal, I collected a set of laws of the state number five. Such laws should be disseminated widely. The stakeholders should be encouraged to study the Gazette or the website of the level concerned. Some of the ministers may not have studied such legal documents. It is important to learn about the activities in other states. There are not adequate discussions on the framing of laws. The state level also does not appear to hold deliberations on the bill. The committees therein hold extensive discussions on important issues. Often, the bills appear to be passed through simple discussions. Even at the federal level, it is difficult to have the required quorum in such meetings. It is the same in the case of the state level also. Whatever the scenario, it is good to have the laws passed. Unintentional mistakes could be made while working, which could be corrected during the course of moving forward. National and international non-governmental organizations also need to provide support in framing laws. INGOs are not serious in this regard. Their support is limited to formality and in holding short discussions. Not much work has been done in the field. Teams should be sent to the seven states to work for at least four days in a state. The works of the respective teams also need to be evaluated. The report they produce should not contain only what somebody has said in his/her five-minute address. Academic research needs to support them.

Dispute Resolution

It is important to find out the nature of a dispute--whether it is political or legal. Most of the disputes originate politically, so, they should be resolved politically. The legal option should be taken only when it fails politically. It will always be better to look for the solution by putting in a concerted effort. The legal path could be taken only when practical methods are exhausted. If the legal option is to be taken, there are already 22,000 cases

in the Supreme Court. More cases could be added. Such legal battles could result in instability in the country. While talking about dispute resolution between the state and local level, it would be better to oversee and deal with such matters from up close. The state level is the nearest body to the local level. This level will be the appropriate level to settle local level disputes. Overseeing and monitoring the works of the local level by the federal body will not be as effective as the one by the state level.

Balancing Rights and Duties

The political rights won after a hard struggle needs to be enjoyed by backing them with duties and morality. This is connected with the implementation aspect as mentioned above. It is better to keep a flacks board while implementing a project. It will keep people informed about the progress made and increase their awareness. But such boards are not found in project offices. Project works lack in quality because they neither have people's participation nor their interest in the ongoing works. I would like to relate one incident. A culvert had been made at a certain place which was washed away by flood water in the rainy season. In the course of my monitoring visit, I lodged a complaint against the use of sub-standard material in its construction, which was neglected. Local people would have maintained a vigil if they had known about the construction work through a flacks board in the project office. For this reason we need to strike a balance between rights and duties by involving stakeholders in local projects.

Education

Several laws are yet to be made. The state level also does not have adequate laws to work with. Let us take the example of education Act. The social media is replete with stories about the federal level stopping the appointment of teachers while also sending out directives to initiate teacher appointment. At times it also instructs not to appoint teachers on contract. A clear guideline from the center would have saved all the trouble. During my two-month long visit to my constituency (4) in Parsa district I found out the standard of education well below par. In some

schools there are not adequate teachers, while in other schools graduate teachers are made to teach at the primary level. Teachers who can teach at the secondary level are made to work with the salary of a primary level teacher. In such a situation disappointment may set in and affect the pedagogic activities. The local level can appoint teachers according to local needs and well qualified teachers can bring about improvement in teaching. The federal level can delegate this authority to the village municipality. Why should the center take such an unnecessary burden?

The condition of education in Madhes is rather pitiable. The municipality adds class rooms in schools. The federal level also constructs school buildings. People's representatives make promises to do one or the other thing during their visits. Yet there is not any improvement in the standard of education. In the past, those who had studied under a tree had also performed well in the examination. School buildings alone will not be able to impart quality education. Only able teachers can bring about quality in education. Both the state and local level can take initiatives in this regard. The federal level needs to create a congenial atmosphere for pedagogic activities at the state or local level concerned. It can help the local level by providing guidelines to facilitate the process. But it appears that this level wants to retain the power. This practice needs to be changed.

The Way Forward

We now need to focus on four aspects of constitution implementation. The state and local level are better acquainted with local needs than the federal level. The powers of local and federal level together with the common powers need to be defined clearly. Secondly, the provision of state public service commission is in the process of being implemented. Thirdly, it is necessary to make the staff members and people's representatives more competent who are there accordance to concept of the principle of proportional inclusion. Fourthly, there was a need for a review when the constitution was being written. But it did not happen. It should be done now. It will not weaken the constitution. Rather, it will strengthen the supreme law of the land. These four aspects are briefly described below.

Division of Powers

The power of the state level with regard to Guthi (Trust) Act tabled in BS2076 has also been curtailed. Serial number 21 of the Schedule of the constitution specifically states it as the power of the state level. However, this Act provided for the power relating to *Guthi* to the federal level by curtailing the power of the state level. The protest rally in this regard in Kathmandu in the month of Shrawan and Bhadra of BS 2076, prompted the retraction of the Act. All these things expose our attitude and mindset. The mountain region, Madhes and the Kathmandu Valley have their own system with regard to *Guthi*. Thus the state level would have made their own *Guthi* Act according to their requirements. The state level is well informed about local needs than the federal level. For this reason the management of *Guthi* has been delegated to the state level.

The constitution has provided for the right to food sovereignty under the section of fundamental rights. The village municipality should be given the right for its management. This level will have the required information about the state of poverty. Difficulties will arise if the federal level wields this authority. It is not a bad idea to delegate the power relating to irrigation and education to the village municipality. Even if the laws pertaining to management of schools and university are made by the federal level, the management responsibility rests with the state level. The Education Act of 2019 also centralizes authority. Matters like these pose problems to constitution implementation.

It has been three years since the commencement of the constitution. The division of common power has not been made as yet. An effective system should be adopted for this purpose. We had said that levying institutional tax should be under the federal level, while individual income tax needed to be under the state level. However, it has been put under the common power. The division of power should be made between the federal and the state level with regard to generating tax. If the province is to be run on grant, what will be the difference between the district development committee under the unitary system and the present

provincial government? Presently, 33 million rupees has been provided as grant. Federalism will have no meaning if the country is to be run on grant. The state level should have the power to levy tax. The division of common power should have been decided before the commencement of the constitution. Moreover, related laws should have been framed at the time of the (formation of) legislature-parliament after the commencement of the constitution. This matter is yet to be decided.

The state level public service commission

The federal level anomalously recruited personnel for the state and local levels. In BS2076, the federal level recruited nearly nine thousand personnel. It was done in a hurry. The center did this even if the laws relating to state level public service commission (PSC) was already in place. What can the state level public service commission do in such a situation? Wrong reasons were put forward in this regard. Time and again questions were raised about this in Parliament, but the matter was not heard. When the question was asked about the federal level's advertisement for new recruitment, it was reasoned that the local level was a part of the government. The state level should have been allowed to recruit its personnel. No power has been delegated to the state level regarding the local level. The only power delegated to this level is relating to the recruitment of local level staff.

The state level is facing difficulties in personnel management in the last two years. The staff member deputed by the federal level often gets transferred in a few months. This has resulted in inadequate number of personnel at the state level. Likewise, the practice of transferring the principal secretary of the state in every three or four months has also created negative impact on the staff members. They do not want to stay there for long. The local levels are also known to complicate things. In an incident, the staff members wanted to get transferred because the state chief minister had scolded them. In this case the chief minister concerned was requested with the words: "The staff members are there to perform works for you. If you love and care for them they will fully help and support you. Do not use the quarters, let them use the facility." This has resulted in some

positive changes. However, the state level has not been able to function effectively because of the transfer of staff members in a very short span of time. If a village municipality is to be regarded as a government entity, it should not have been possible to transfer a staff member appointed for a particular body to another body. But this is happening. The local level is also not an exception. This is not in conformity with the spirit of the constitution.

On the other hand, article 42 (1) of the fundamental rights states that each (such) body in the country shall be formed according to proportional inclusion. This has also been written in the preamble of the constitution. But what is being practiced is in contravention of the constitution. How could it be inclusive if a village municipality requests for two positions. This has eroded the concept of inclusion.

There shall be PSC both at the federal and state level. However, the general standards of the Commission shall be set by the federal level. This level can formulate both its standards and policy. It would have been easier for the state level PSC to initiate work if such a standard had been set in time. At least we have such a standard now even if it was set rather belatedly. PSCs have already been constituted in at least two or three states. They should be allowed to work according to the spirit of the constitution.

Imparting Training to People's Representatives

Article 217 of the constitution provides for judicial committee at the local level. And, such committees were formed with great expectations. The committees also wield some power. Accordingly, women were made deputy mayor in most of the village municipalities. Men hold the position of mayor. There was an interesting incident. In one of the village municipalities, the husband of a lady deputy mayor used to represent her in the meetings of the municipality. The mayor allowed the husband to represent his wife in all other meetings except in the meeting that was to pass the budget of the municipality. This triggered a dispute which resulted in a stick fight. There are other incidents also. I attended a school program where a husband

was invited to represent his wife. How can the political responsibility of a wife shift to her husband? It may sound strange but this happens when a people's representative fails to understand his/her functions, duties and power. It is not only the staff members but people's representatives also need training on awareness, discipline, career development and capacity building. Winning an election does not necessarily mean the victorious candidate will understand everything. They also need to be made aware of their responsibilities. Only then the people's representatives or their family members would refrain from engaging in such activities.

Review of the Constitution

There should have been a review of the constitution (at least once) after the commencement of the constitution. The Legislature-Parliament should have been given the power to review the constitution made by the CA. In India also, the first Parliament following the promulgation of the constitution had reviewed the constitution. A review of shortcomings of the constitution may have been beneficial.

We have adopted federalism in the country. Many people were for the concept of identity and capability. I worked in most of the CA committees during the course of constitution writing. Not much attention was paid to the idea of the real rights. A political party may have its own views, which becomes an 'issue' in the CA. Much of its deliberations there were focused on territorial boundary with regard to state restructuring. This overshadowed the issues that had already been overlooked. The draft constitution was eventually finalized. We failed to review the constitution and now we are becoming aware of its drawback.

Matters pertaining to the position of the speaker of the House have stalled the proceedings. The deputy speaker can chair the meetings in the absence of the speaker but she does not have the authority to certify the Act passed by the parliament. The speaker will have to certify the Act passed by the House of Representatives, while the chairperson of the Upper House does that for Rajyasabha. Some of the Acts made in the parliament have already

been passed. Some are yet to be certified. A separate section deals with matters relating to the certification of Acts, which states that the deputy speaker has the right only to call the meeting. In BS2076, when position of the speaker was vacant, the deputy speaker could perform the function relating to certification of the law. The shortcomings of the constitution could have been removed, and a review (of the constitution) could have helped us to make necessary improvements in the document, which we failed to do. We can still review the constitution through an amendment.

Conclusion

In order to make the implementation of constitution and federalism more effective, the following four tasks need to be performed immediately. First, the laws relating to the state PSC, which have been framed by the federal and state level, need to be implemented. PSCs have been formed in several states. The problems relating to the recruitment of personnel at village municipality and the state level could be resolved if the PSCs are able to function properly. Secondly, the powers of the federal, state and local level need to be defined clearly and the enumerated powers should be put separately. If such a provision is made, the state will be able to make its laws according to the power vested in it, and implements them accordingly. This will help the process of federalization in the country. Thirdly, necessary training needs to be imparted not only to the personnel of the three levels of the government but also to the people's representatives. Training on theoretical as well as on practical aspects of governance needs to be imparted (to them) for their capacity enhancement. Fourthly, the constitution needs to be reviewed, which will help in finding out its shortcomings. It will also help in removing difficulties relating to the transitional rights. Moreover, it will help in removing duplications, if any. All political parties need to be involved and a timeframe of one month should be set for this purpose. A review of the constitution will benefit all.



Dimensions of Women's Rights

✍️ Mahalaxmi Upadhyay Dina



Background

Most of the countries striving for change have paved the way for ensuring women's rights by laws on the basis of social justice. However, some countries like Nepal have remained in status quo. As a result, women face social discrimination even today. Historically, it has been over a century since our leaders started a revolution for women liberation. The revolution against Rana oligarchy coincided with that for establishing women rights and ending gender discriminations. Nevertheless, till date Nepali women are facing gender discrimination, domestic violence, and other offenses. "Women Rights are Human Rights" is the main motto of all women led revolutions. Women occupy more than half of the population and until and unless we ensure constitutional rights of the women it is impossible to make an institutional development of a democratic system, its norms and values as expected by the country. Paradoxically, the State and our society seem to be prejudiced in dealing with women's issues. It is not only the question of women's rights; it also pertains to building a civilized society. For example, the Constitution has clearly provisioned issuing of citizenship in the name of the mother, however in practice, all state organs—from the lowest to the highest levels—have been sanctioning this issue with one pretext or another in exercising this right. This has raised a question against our civilization posing a grave challenge to us.

Role of Women Parliamentarians in Lawmaking Process

Women have been able to participate in the political process of the country due to the women's revolution and civil disobedience (Satyagraha) that was launched in 1947. Consequently, Dwarika Devi Thakurani was elected in the General Elections of 1958 and became the first woman minister of the country. While women continued their ideological and street revolution, the rulers imposed an absolute autocracy in the country in 1960. This highly affected the women's rights as well as the entire fundamental rights of the Nepali citizens. Seen from another perspective, the 30-year long autocratic system further fueled the revolution of the Nepali women. They have played a remarkable role in the revolution of the (Satyagraha) of 1979, 1985 and the People's Revolution of 1990. They poured out of their houses on to the streets and staged protests by beating dinner plates, carried brooms, and tied black strips. To some extent, that forced the society ridden with patriarchal thoughts and traditions to feel the need and justification of women's rights. This can be taken as a milestone in the path of establishing women's rights in Nepal.

After the People's Movement of 1990, a voice was raised that the political parties fielded at least 10 percent of women contestants in the general elections. As a result, the then Constitution made a mandatory provision for the political parties to allocate five percent of women contestants. This provision did not do the justice for the women. The thin voice raised by five percent in a parliament did make a difference dominated by 95 percent male dominated parliament and parties. However, gender issues got overly heard. In 1999, women parliamentarians made a proposal related with daughters' right to paternal property in proportion to their male siblings. It took long time and was endorsed only in 2008. The then constitutional provision gave a space to women participation in policy making process. It also got a legal status. Soon there were positive results in developing women leadership. Today it has ensured 33 percent at the federal and provincial parliaments and 40 percent of women participation in local elections.

During the People's Movement of 2007, women participation played a lead role. They shouldered with men and moved ahead with unfathomable courage, spirit, zeal, and dauntlessness. No denying that it all made the People's Movement a success. It resulted into one-third women participation in the then Constituent Assembly (CA). Thereafter Nepal occupies a fifth position in terms of women participation in politics. After the success of the political Movement many discriminatory Laws against women were amended. The Interim Constitution of 2007 ensured 33 percent women participation in the CA.

As a result, 197 women parliamentarians participating in the Constituent Assembly, 2008 constituted a women caucus above their respective parties. The caucus played a significant role in establishing women's rights. Women parliamentarians displayed unity in the Constituent Assembly and worked towards drafting women's rights and holding and initiating discussions in the committee concerned. The list of drafts made then is long. These included women's reproductive health rights, right to obtain citizenship (naturalization) in the name of one's mother, legal punishment for physical, mental or any other violence against women, victims' right to legal compensations, equal right of male and female and children to paternal properties, citizenships along with dynastic roots and gender identity, equal pay for equal work and social security and so on. Likewise, the drafts required every political party to nominate at least one-third of women as members and included significant rights of women's like rights to participate in all the state organs on the basis of the principle of proportionate representations; to avail special opportunity in the fields of education, health, employment, and social security in commensurate with positive discrimination; and equal rights of the couple in matters of property and family. All these rights were ensured and we succeeded in making the Constitution of Nepal, 2015 "women-friendly." with the help of women parliamentarians and all other stakeholders.

Current Status of Women's Rights

The Constitution has made all kinds of violence against women punitive. It has guaranteed the ensuring of participation of socially, politically, and economically backward women and their access in state structures and public services through inclusiveness. It has ensured mandatory presence of one-third of women. It has provisioned for one-third participation in all the state structures. Accordingly, it has clearly made mandatory the posts of either the President or Vice President, Speaker or Deputy Speaker, Chairperson or Vice Chairperson to be given to women. Else, the constitutional provision has not been implemented in the Cabinet and the parliamentary committees. However, the mandatory provision of giving 40 percent of Executive posts including Head or Deputy Head has increased women participation in politics. Above all, women participation at local levels is enthusiastic. Yet each party is found to nominate women contestants only for the posts of Deputy Heads. This is discriminatory. On the other hand, there have been ample grudges of Chiefs depriving their Deputies (women) from different programs and rights at the local levels.

Despite of all these issues, there has been increasing access of women in professional fields along with the establishment of democracy. Women participation has been increasing in government services and security organizations. The number of women has increased notably in courts as well.

Women's access in educational sector is satisfactory as 88.6 percent of women aged 15-25 have got access to education. In higher studies, women participation is 44.2 percent below doctorate; it is 11.4 in doctorate degrees. Comparatively, it is boosting enough in the last decade. The Public Service Commission (PSC) has provisioned for women up to the age of 40 for joining the government services. This has increased the women's access in the government services. However, it is relatively low in Federal and Provincial Governments.

The constitution of Nepal, 2015 has made a provision of a separate Women Commission for the sake of women empowerment. Programs of Gender Inclusiveness and Women Empowerment are run by 14 major ministries and the Office of the President and Office of the Prime Minister. Establishment of different international organizations (INGOs) in Nepal after the restoration of democracy in 1990, Nepal's presence in international forums and conferences, and Nepal being a party to international treaties and agreements have all played a significant role.

Women's Issues in International Forum

Nepal's participation in international meetings and conferences like International Convention on the Elimination of All Forms of Discrimination against Women, 1979 and Beijing plus 25 has brought positive results towards ending gender discrimination. Government of Nepal has made several initiatives to ensure fundamental rights, liberty, equality, and social justice as per its commitment on international forums. Special provisions have been introduced regarding their participation in national development, education, health, and employment. The Supreme Court has issued an order to establish Fast Track Court as an attempt to end women trafficking, rape, and domestic violence related cases.

A discussion was held together by the Government of Nepal and non-governmental organizations (NGOs) to review the 12 goals set by the recently concluded Beijing plus 25. They are as follows: 1. Women and Poverty, 2. Women and Health, 3. Women Education and Trainings, 4. Women and Violence, 5. Women and Armed Conflicts, 6. Women and Economic Rights, 7. Women at Decision Making and Power Sharing, 8. Structural Mechanism for Uplifting Women, 9. Women and Human Rights, 10. Women and Media, 11. Women and Environment, and 12. Women and Children.

Government has expressed its commitments to internalize the achievements made so far and make special programs in the coming days to end offenses like violence against women and rape, improve women health, enhance

women participation at decision making levels, and improve the financial conditions of women. During the conference, Government has expressed its commitments to effectively address such issues in its future policies and programs.

Making Necessary Laws for Social Inclusion

is necessary to make all the state organs aware and conscious about the implementation of the constitution and laws in order to safeguard the human rights of the women to live in the society with equal rights and respect. The government should make laws and adopt all the necessary schemes and procedures in order to include women in gender mainstreaming process. Likewise, it is necessary to involve women in decision making in accordance with the concept of “social inclusion” for they have been discriminated and deprived of their rights due to age-long traditions and practices. This will ensure and provide opportunities, means and resources, services, and fundamental rights to them.

“Gender-Equality” connotes the relationship between women and men within the social structure that has been formed by the culture and traditions. The social structure of Nepal is the by product of patriarchal ideology. Women have long been suffering from unequal and discriminatory culture. “Gender equality” refers to the issue of initiating towards rebalancing the unequal power relationships existing between women, men, and humans of other identities. The constitution of Nepal, 2015 has ensured to end all forms of discriminations against women. However, there is a problem in exercising the given rights due to the patriarchal ideology, attitude, and cultural malpractices. It is, therefore, necessary to make laws to accommodate the concept of inclusion of one-third women in all the spheres of life as provisioned in the Constitution. Thus the State should act seriously towards making one-third participation of women mandatory in all the organizations and structures of the society.

The State of Implementation of Gender-Responsive Budget

“Gender-responsive budget” means the process of making a gender-friendly and gender issue based budget while designing national planning, programs, and budgets. Implementing gender equality requires financial equality. It is, therefore, inevitable to conduct special programs and ensure necessary financial resources in order to provide equal access of women and men in enjoying the achievements of making investment in economic development initiatives. Gender-responsive budget is regarded as a significant tool for obtaining financial equality.

The Fourth World Women Conference (Beijing Conference) organized by the United Nations Organization (UNO) in 1995 in Beijing had expressed its commitments to adopt gender mainstreaming as a major strategy and effect changes in 12 sectors. The review made thereof after five years concluded that it failed to achieve the expected goals committed by Beijing Conference in absence of financial sanctioning. It drew the global attention towards using the method of allocating a gender-responsive budget necessary to achieve gender equality. Presently, many countries of the world are trying to implement the strategy of gender equality while ensuring the allocating the resources through the method of drafting a gender-responsive budget. Of late, Nepal has internalized the significance of economic empowerment for women development. Accordingly, “gender-responsive budget” has got a space in the economic strategy of the government. National Planning Commission has since 1992 included the concept of “gender-responsive budget” and has allocated budgets accordingly. However, “gender-responsive budget” of Nepal could not achieve the expected goals owing to different legal and policy level, institutional and structural, means and resources, and managerial problems in budget implementation. In absence of effective allocation of “gender responsive budget,” women lag behind in enjoying basic facilities such as education and health rights, in comparison to their male counterparts. According to the latest statistics, “gender-responsive budget” has been allocated 28.45 percent either directly or indirectly. The government has made a strategy to localize “gender-responsive

budget” and make it accessible down to the village levels. However, none of the state structures seem to be very serious and accountable towards implementing the “gender-responsive budget” in accordance with the strategy. This budget should be mobilized for the education, health, and income generation activities for women. Besides, it should be implemented in order to prevent rural women from deprivation of basic education and health rights. Such problems can be solved by effectively implementing the “gender-responsive budget” honestly.

Sexual and Reproductive and Health Rights Women

International Conference on Population and Development (ICPD) has accepted the human rights of the women as the major principle of reproductive health and population programs. Every woman should have sexual and reproductive health rights as individual rights including gender equality and identity. All the couples and individuals should be able to enjoy the fundamental rights of availing the highest standards of sexual and reproductive health rights. That is, women should be able to make an independent and responsible decision regarding the number and spacing of children. They should have an access to necessary information and means for strengthening this concept. The constitution of Nepal, 2015 has made an agreement in different international conferences on sexual and reproductive health rights, and accordingly it needs to ensure the right of every woman to safe maternity and reproductive health on the basis of international treaties.

In August 2017, the Supreme Court of Nepal issued an important order in relation to the cases of public concerns in order to ensure the right of contraception as guaranteed by the constitution of Nepal as the inseparable part of the right to reproductive health. Accordingly, it should be ensured that there is equal access to, availability of, and standardization of contraceptives, and related services and information. The Supreme Court has issued a Mandate of this regard to the Government of Nepal. It is necessary to implement the Mandate. Similarly, the recent Bill passed by the parliament has addressed several aspects and ensured the women’s

rights related to their health. It has provisioned that each and every adolescent has a right to education, information, and counseling regarding sex and reproductive health; to pre- and post-marital counseling regarding safe maternity; to make decisions about having or not having any children, spacing, and number of children. In addition, it has provisioned that women have a right to safe abortion; that pregnant women get balanced diet and emergency delivery services before, during, and after delivery; and that the babies get services and counseling. Besides, the Bill has provisioned for punishing the defaulting authorities concerned with such services and utilities.

Strategies for Women Representatives

Elected women representatives presence has been overall meaningful in accordance with the provision of the constitution of Nepal requiring 40 percent of women participation in local elections and for the posts of Executive Heads or Deputy Heads. Throughout the country, out of 753 local levels, 35 thousand representatives have been elected including 6 metropolitans, 11 sub-metropolitans, 276 municipalities, and 460 rural municipalities. Of them 40 percent of women, that is 14,000 have been elected. They have accepted this historical achievement as a challenge and have been working in their respective fields. Also, most of the Deputies at the local levels are women. As per legal provision, they chair the Judicial Committee. For the rest, women have been deprived of other rights. Such complaints have been ample. With the Chiefs dominating the decision regarding the process of development and construction and budget allocations, “gender responsive budget” also gets backlashed.

Prioritization Empowering and Uplifting Rural Women

It is well known that most of Nepali population lives in rural areas. We cannot imagine making an –round development of Nepal without its rural development. Youths’ brain-drain has in many respect has forced women and children alone in the villages. Therefore, it is imperative to reach the spirit of the State laws related to women rights down to the villages.

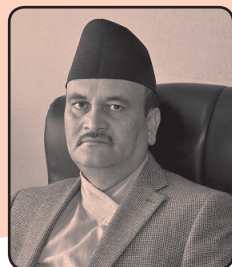
Special programs for strengthening the rural women should be extended. However, male dominate the agriculture and industry-related trainings but it is time now that we should stress on conducting such trainings on agriculture and cottage industries targeting for women.

Finally, the State should, in the coming days, remove all the laws discriminating against women as soon as possible. All the state organs should work unitedly towards implementing the laws made for women's rights without any administrative hitches. A separate unit should be formed at the apex of all the three tiers of the government for the implementation of gender-responsive budget. Proper attention should be taken while making plans and allocating budgets. An intensive orientation should be given at all levels and commitment should be made towards their effective implementation in order to meet the commitments made by our country in the international fields. Keeping in view the massive brain-drain of the youths, it is vital today to organize programs targeted for youths and women and utmost priority should be given to empowering women representatives of all levels.



Implementation of Federalism and Management of Human Resources in Nepal

 **Dr. Somlal Subedi**



Federalism is an important dimension of autonomy, participation and accountability under the governance system. Federal governance system has evolved from the desire to decrease too much centralization of the unitary system, the aspirations of building a powerful state by integrating smaller states, the necessity of a country, and through political consensus. The constitutional division of state power to different levels of the government is primarily done in three ways: unitary system, federal system and through a federation (Subedi BS2065).

The word federalism is derived from the Latin word 'Feds,' which means a contract or an agreement. The objective of which is to promote the specific and common aspirations of the parties in contract (Cormis and Norman, 2005). The federal governance system is the system in which the state power is divided between the center and lower levels of government as exclusive, common and concurrent power. States adopt federalism to achieve their common objectives.

According to George Anderson "Federalism is a constitutional system in which there are two levels of government with appropriate autonomy. These governments are accountable to the voters who elect them (George Anderson)."

Philipov and others give an in-depth definition of federalism. According to their definition federalism is normally understood as a principle of the governance system which maintains a control over the state power and

competitive aspirations. Powers are limited in such a system. Neither of the two levels can use too much power nor use it arbitrarily in the society. Federalism puts forward the concept of a government with limited power, and stresses on autonomy and competency development on the basis of equal freedom and justice (Philipov and others, 2004).

Federalism is such a system under which the state power, rights, resources and responsibilities are specifically defined for two or more levels (of the government). In addition to the exclusive powers, provisions are made to exercise common powers through cooperation and coordination. All the levels of the government are active to perform or get the works of the state performed separately or together on the basis of coordination, cooperation, autonomy and co-existence. There is not a single universally accepted model of federalism. It has evolved through constant reforms in it.

Administrative Federalism

Federalism could be categorized into political, fiscal and administrative federalism. Political federalism provides leadership to fiscal and administrative federalism. Likewise, the administrative federalism could be regarded as an organizational and expertise medium in exercising political and fiscal powers according to the constitution and law. Constitutional and legal provisions of power will have no meaning in the absence of an implementing body. For this reason administrative federalism is the actual system-wise, legitimate implementing body according to the need of the system. David S. Rubenstein says: "The federal agencies are the main players in federalism. How these agencies work and how the specified functions are appropriately performed are the crucial questions in federalism (Rubenstein 2015)." The nature of the administrative federalism is determined by politics. In addition to that, it is influenced by the practice of the principle of separation of powers as determined by the federal law. Moreover, the administrative federalism promotes participatory role together with the level-wise balance of power within different levels of government.

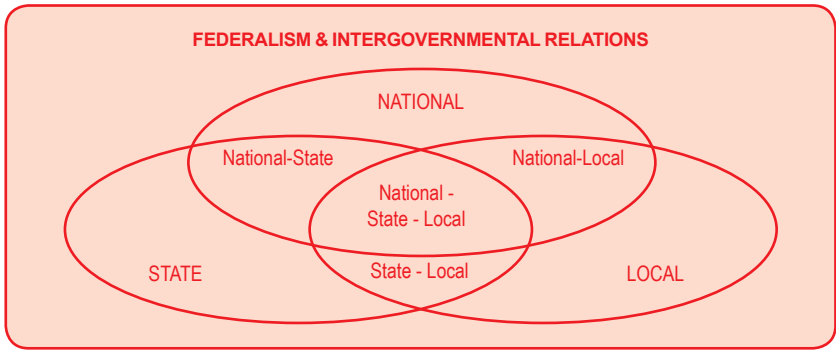
Dimensions of Administrative Federalism

Administrative federalism is adopted as a structural form of the governance system. Work performance and competency needs to be coordinated in institutional plurality. There is a division of even smaller works within the level-wise agencies, wherein lies institutional plurality. It is important to pay attention to this aspect of institutional structuring. The division of work between complexly structured different administrative units, the administrative processes and the nature of government service itself are likely to pose problems to the politically elected officials. Administrative culture, professionalism and expertise are the important features with regard to public administration and service delivery.

There are internal and external control mechanisms in administrative federalism. Legal principles, legal apparatus, legal plurality and institutional arrangements are important in terms work performance. Robert Schaefer says administrative federalism is always in favor of decentralization, and adds that the center determines the standards and quality of work under administrative federalism, while the local level makes decisions on the implementation of projects (Schaefer, 1999). In our planning process, however, the old attitude still appears to continue.

There is a competition between different levels and their governments within the administrative federalism, which increases competency in public affairs and helps in service delivery as desired by the people. Public service delivery must take social situation into consideration. The interrelations between political and administrative culture help in enhancing service delivery in administrative federalism.

Administrative federalism is present at all levels of federalism as it is also related to inter-governmental relations. The following diagram illustrates the point.



As shown above, administrative federalism has interrelations with level-wise administrative units. Its success depends on a cooperative work environment through the creation of a congenial atmosphere at all levels. The coordination and cooperation between and among all levels will help in yielding results in our context.

Administrative Federalism in Nepal

Article 56 of the Constitution of Nepal, BS 2072 provides for federal, state and local levels in the country. These three levels of government use the power of the state according to constitutional and legal provisions. The exclusive, common and concurrent powers have been constitutionally divided between the federal, state and local levels. According to the work division of the Government of Nepal, federal, state and the local level will have 873, 567 and 355 work responsibilities, respectively. Article 57 of the Constitution of Nepal specifically provides for the state power of the country to be used through the laws made by the federal, state and the municipality or rural municipalities according to the constitution (The Government of Nepal, 2072).

Nepal's federalism is based on holding together or decentralization of power-- and not on the principle of coming together. For this reason, the personnel of the previous unitary system also need to be used in the administrative federalism, for which article 302 of the constitution provides for the formation and use of government service at the state and

local levels. Accordingly, the Government of Nepal will make necessary arrangements to provide service delivery at the state and local levels.¹ According to the constitutional provision of adjusting government servants who were in government service at the time of the commencement of the constitution, the task of personnel adjustment has been completed in accordance with the Personnel Adjustment Act 2075 by deputing them to federal, state and local level to initiate service delivery according to related laws. Likewise, the section 11 of the Functions of Local Government Act, 2074, has a provision of administrative structuring and personnel management, which includes offices, positions for staff members, and subject-wise sections and divisions (Government of Nepal). This Act regards the local level as the basis of the administrative federalism. In practice, however, the federal level is more powerful, which shows our administrative federalism is top-down.

Since that the constitution provides for the federal, state and local levels to make necessary laws to implement the specified powers and work responsibilities, our administrative federalism is determined and run by related laws, organizational structures, available human resources and personnel positions, system of work and the process and procedures of the federal, state and local level.

Federalism Implementation and the Management of Human Resources

The preamble of the Constitution of Nepal, 2072, states that people's aspirations for stable peace, good governance, development and prosperity are to be achieved through the medium of (governance of) a federal, democratic republic.² During the course of constitution implementation, the federal, state and local levels under the federal set-up will have to manage human resources by paying special attention to the constitution and

1 Please see, The Government of Nepal, 2072. *The Constitution of Nepal. 2072*, Kathmandu, (Nepal Government).

2 Please see, The Government of Nepal, 2072. *The Constitution of Nepal. 2072*, Kathmandu, (Nepal Government).

related laws. There are new dimensions and complexities with regard to adherence to the constitution and related laws and in the implementation of federalism and the management of human resources, which need to be learned as we move forward. Several questions have been raised on matters such as:

Implementation of Federalism

1. Need for the political leadership to be the mentor of federalism and exhibit understanding and political culture.
2. With regard to constitutional provisions: Interrelations between different levels of the government, cooperation, coordination, co-existence and adjustment of personnel.
3. The implementation of overlapping powers listed as exclusive powers such as powers relating to health, education, water resources etc.
4. Methods of using common powers and the accountability therein.
5. Coordination, interrelations and implementation of policy.
6. Management of fiscal resources and the use of natural resources.
7. Distribution of income, programs aimed at poverty alleviation.
8. Disaster management and climate change adaptation.
9. Inclusive democracy, transparency, accountability in politics.
10. Separation of powers and maintaining balance in control.
11. Interrelations between state and local governments and working procedures.
12. Revenue policy, Its collection, distribution and use.
13. Level-wise relations in planning process, integration, categorization of projects and autonomy.
14. Ownership of sector-wise ministries (federal), leadership dynamism, coordination in work, classification of work, accountability, fairness and the commitment on the part of ministers and secretaries.

15. Institutional competency, Inter-state Council, National Natural Resources and Fiscal Commission, Fiscal Council and State Coordination Council, Policy Research Academy, Planning commissions and all other constitutional bodies.
16. Social awareness, patience, public engagement.
17. Inter-governmental relations are like a well oiled machine in federalism. If human resources are the machine, the elected representative is the driver. Does such a relation exist? It is yet to be seen.
18. There has not been an increase in and the use of political, administrative and technical professionalism according to the needs of federalism. While looking for expertise at the ward level and above, priority is given to favoritism and nepotism instead of people with professional skill and talent. It is an open secret that such people prefer to curry favor than carry out responsibilities with integrity.
19. Elites support and help a centralized system than federalism.

Human resources management

1. Administrative structuring and the management of human resources have not been done according to the extension of work.
2. There is an imbalance in work responsibilities, institutional structure and human resources.
3. Organizational plurality with several organizations, cases of overstaffing and understaffing in different places.
4. Even if the federal leadership (designer) is the primary actor, because of the prevalent center (federal level) oriented mind-set, the federal level is top heavy, while the state level is lighter and the local level structures more diverse.
5. Although there has been an adjustment of the personnel in practice, psychological problems still linger. There is no balance between human resources and the required skill. In other words, people's representatives complain that there is a mismatch of human resources.

6. While determining institutional development by setting a design and fixing the required number of positions, the existing structure and practice of adjusting human resources appear to have an upper hand.
7. Instead of full commitment of the personnel to the problems of plurality in law, adherence to them, maintaining coordination, and adapting to organizational structure and work performance, it appears to be widely self-centered and focused on their organizational working style.
8. There is a lack of level-wise integrated design and a plan of action for a reform in administration and good governance.
9. Development planning and integrated human resources management plan have not been formulated to address the delivery deficit of the past. There is acute shortage technical human resources at rural municipality, municipality and the state level, whereas the administrative positions at the federal level is on the rise.
10. There is no change in the practice of formulating plan and in human resources management of the unitary system in regard to the division of resources for organizational structuring, human resources management, service delivery and allocating budget for specified work responsibilities.
11. There is a lack of balance between coordination in work performance, facilitation, institutional development and competency.
12. The state and local level also appear to have adopted the past practices instead of building suitable organization, managing human resources and implementing administrative federalism. Instead of looking for technical human resources, making appointments on contract basis is on the rise as it is an easier option.
13. Works are being performed to suit transitional management, instead of out of the box. There is no change in the traditional style of working.

14. Instead of adopting optional methods, there is a growing tendency in the state and local level to make new appointments, hiring advisors and coordinators, and constituting commissions in the traditional way. Moreover, instead of the mobilization of existing organizations and human resources, the state level is inclined to constituting new organizations.
15. The unanswered question relating to human resources management as to how career development and different categories of personnel could be integrated at the state and local level and how those levels could be made more effective.
16. The staff members have a low morale and there is a lack of sense of ownership of the organization they belong to. Moreover, there is not any change in their tendency to avoid work.
17. There has not been much change in the working style of political leadership i.e., putting pressure on matters of their priority rather than using the competency of staff members and paying attention the technical aspects of these matters.
18. By imitating the federal level, the state and local levels have not been able to pay attention to the structures of technical organizations and providing incentive, as well as in mobilizing available human resources.
19. Voices of discontent are heard against the federal level for not respecting the aspirations of the lower levels in regard to not increasing public purchasing capability, not simplifying the procedures, and being inconsiderate to the framing of laws, constituting organizations and selecting programs.
20. The potential of the private sector is not being used because of the fact that the private public partnership (PPP) has failed to be effective.
21. The human resources management at the state and local level is uneasy because the state Public Service Commission is yet to begin its work.

Suggestions and the Way Forward

Constitution implementation and human resources management is a continuous process. There could be various methods to address the issues mentioned above. It is not easy to suggest a universal remedy. Some of the suggestions are:

Implementation of Federalism

1. Need for political understanding, political leadership, congenial atmosphere and an mechanism with accountability.
2. Delegated powers on the basis of extension of work.
3. Strengthening and effectiveness of inter-governmental relations.
4. The methods, bases and standards of using common power.
5. Participation, partnership and coordination in formulating federal policy.
6. In addition to supply, the bases of demand also need to be determined for the targeted and national programs.
7. The need to make the separation of powers and the level-wise control and balance more effective.
8. Designing and implementation of a federal monitoring mechanism (who and where to monitor needs to be made clear).
9. A fully fledged fiscal commission and its effectiveness is the soul of fiscal federalism.
10. Integration of planning (system), coordination and the classification of plans.
11. Formulation of plan and implementation of federalism by federal ministry.
12. Making more effective the federalism-oriented role of Rajyasabha (Upper House).

13. The adoption of a long-term plan and an inexpensive method for organizational structuring and human resources management.
14. Planning and coordination for revenue reform.
15. Coordination in disaster management and climate change adaptation.
16. Finding and using alternative method for service delivery.
17. Determining level-wise political responsibility and accountability, conducting regular review and working for reform.
18. Need for the management of growing popularity at different levels and aiming for lasting results.

Management of Human Resources

1. Need for a review of the administrative organizational structure and reforming it by determining its size with the required number of positions.
2. Need to address minimal requirements and anomaly by analyzing human resources management and their use. Level-wise work performance according to the work extension report.
3. Need to structure a small, fast-paced organization with a multi-skilled staff.
4. The Federal Ministry is to end transitional arrangements.
5. Paying special attention to the effectiveness of state-level public service commission.
6. Planning and implementation of an integrated administrative reform and good governance program.
7. Use of communications technology and automation.
8. Setting ceiling and strict adherence to administrative expenses.
9. Coordination in work performance and the adoption of an alternative method rather than on plurality of organization.

10. Evaluation of personnel work performance, a system of incentive and a career development plan. Putting an end to the practice of not punishing wrongdoers. Reward for good work performance.
11. Work description, accountability and benchmark for work performance of politically appointed officials.
12. Management and monitoring of the whole fiscal system on the basis of expenditure needs assessment.
13. Organizational structure, work culture and competency-oriented procedures and service delivery.
14. Management of competent people rather than following nepotism. There are instances from across the world about cases of letting down by such people.
15. Formulate and implement competency development plan and attract competent people.
16. Adopting public private partnership (PPP) by stressing on local development through a feasibility study of local (re)sources. Use of strong aspects of the private sector.
17. Preparation and implementation or have it implemented, an administrative structure, human resources management and working procedures in view of the state, local and the federal level. Need to adopt a working culture by stopping the practice of making and implementing *ad hoc* decisions and plans.
18. Determining and setting a benchmark for the commitment, willingness and accountability of bureaucracy with regard to the implementation of policies, laws, working procedures and the standards made at the political level. Implementation of the system of reward and punishment.
19. Need for coordination and implementation of administrative reform and human resources development by building an active bureaucracy to carry out its responsibilities.

20. Demarcation of powers and responsibilities between people's representatives and bureaucracy at all levels, and its implementation.

Conclusion

The long transitional period has come to an end with the commencement of the constitution and the implementation of federalism in the country. Through the level-wise division of powers and organizational structuring, the political, fiscal and administrative federalism are nearer to the people today. The local governments are transformed into strong governance units with the restructuring of local bodies. Likewise, the saying that federalism is the laboratory of democracy has become true through democratic practices following the elections to all three levels of the government. It now appears that there is a level-wise competition in the political and administrative field. However, even if there are expectations of an open, accountable and frugal governance system, the results are yet to be seen. There is a need for and the use of a governance system which will make both the political and administrative sector more responsible, accountable, and active in tandem with the management of organizational structuring, human resources management and the implementation of federalism. It is the need of the hour to strike a balance between good governance, service delivery and frugality, and move forward. In order to use federalism according to the constitution and the priority of people, political competency, administrative expertise and social harmony need to be combined positively. The aspirations envisioned in the constitution could be fulfilled if the responsible officials and stakeholders put in a sincere effort for the successful implementation of federalism through the extension of good working practices and by reforming shortcomings.

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