

Nepal's Constitution and Federalism

Vision and Implementation

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Preface

After over sixty years of political struggles, including an armed conflict, Nepal succeeded in promulgating its new constitution through an elected Constituent Assembly in September 2015. The constitution restructured Nepal into a federal republic, moving away from constitutional monarchy and a unitary system of governance.

Constitution implementation has its own challenges. Our background as an underdeveloped country, mired down by poverty, illiteracy, poor resource management, and the exodus of youth, can make the implementation difficult. It is necessary that the political forces who devised the constitution take heed of these issues.

This booklet contains five articles by renowned figures in Nepalese politics, activism, and administration. Hon. Subash Chandra Nembang, who chaired the CA when the constitution was passed, provides background to the history of constitution writing in Nepal and underlines why this constitution is different from all earlier ones. Hon. Radheshyam Adhikari, the main opposition party leader in the National Assembly today, gives an overview of the state of the implementation of the constitution - the challenges and ways to possible solutions. These two articles are prepared based on an interview taken with Hon. Nembang and Hon. Adhikari, later edited by them.

Hon. Laxman Lal Karna, a senior lawyer and leader of the Rastriya Janta Party Nepal (now Janata Samajbadi Party), provides context as to where the constitution has shortcomings and underlines the need for reevaluation and amendments to protect the achievements of Nepal's period of transition. Constituent Assembly Member Mahalaxmi Upadhyay Dina, who has a long history of contributions in the struggle for democracy and women rights, writes about where women's rights stand with regards to the constitution and how its implementation can be made more inclusive for women. Finally, Dr. Somlal Subedi, a former Chief Secretary of Government of Nepal, writes with an administrator's

perspective about how state restructuring could be made more efficient. We would like to express my heartfelt gratitude to all of them for sharing their experiences, views and suggestions.

The articles contributed by all the authors reflect the current status of constitution implementation process, challenges and ways forward. The writers argue that the constitution was written in an inclusive manner. They write that a wide range of political ideologies were consulted and that relevant issues like ethnicity, religion, class, caste, gender and regional inequalities were addressed. Consequently, ongoing movements for indigenous, Madheshi, and women's rights are explored in the articles. We consider the contents of this booklet as valuable knowledge and insight related to the formulation and implementation of the constitution, and the new concept of Nepal as a federal republic.

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List of Abbreviations

CA	Constituent Assembly
CDO	Chief District Officer
CIAA	Commission for the Investigation of Abuse of Authority
ICPD	International Conference on Population and Development
INGO	International Non-Governmental Organization
MP	Member of Parliament
PPP	Public Private Partnership
PSC	Public Service Commission
UML	Unified Marxist and Leninist

From Constitution Writing to Implementing Federalism

 **Hon. Subash Chandra Nembang***



Background

All the constitutions of Nepal written before 2015 were made by the-then rulers of the country, not the people. The Rana rulers framed the first legitimate legal document of 1948. Likewise, the Shah Kings made the latter constitutions.

Following the 12-points agreement between Maoist and the agitating seven parties, there was political consensus to write the constitution of the country through an elected Constituent Assembly (CA). Accordingly, this happened in 2015. In this way, for the first time in the history of Nepal, a constitution was based on the people's mandate. It is for this reason that the preamble of the constitution reads: As representatives of the sovereign people, we, hereby, promulgate the constitution made by the Constituent Assembly.

This article is based on the practices and experiences gained during the period of the constitution writing by people's representatives and the implementation of federalism in the country.

* Hon. Subash Chandra Nembang: Chairman of Constituent Assembly, Nepal, Senior Constitutional Lawyer and Deputy Leader of Federal Parliament of the ruling party, Nepal Communist Party (NCP).

An Inclusive Constitution

This constitution is important for two reasons. First, the constitution was written by the representatives of the sovereign people. There is no power higher in the country today to make a constitution. Second, the constituent assembly that made the constitution was inclusive in every way.

There were 31 political parties in the first CA, ranging from Panchayat era ideologues to those who believed in democratic norms and values, represented almost all political ideologies. Also participating was a political force that had waged an armed conflict in the country. Several parties had only one representative in the Assembly. That CA was also very inclusive in terms of caste, gender, region, language and religion.

During the course of the constitution making process, two CA elections were held. The first election was held on April 10, 2008. Despite its many achievements, the first Assembly failed to write a constitution during its four-year term and was dissolved in 2012. The second election was held on November 19, 2013. All the experiences and achievements of the first CA were incorporated in the constitution promulgated by the second Constituent Assembly.

We began from scratch and prepared a draft constitution on our own; the process was inclusive, involving both individual and institutional participation. Discussions were held with people across the country before drafting the constitution. The draft was then again discussed with the people and their opinions were collected. Even the opinions of non-resident Nepalis are incorporated in the valuable document.

In short, the constitution was written by an inclusive CA through a participatory process. We made attempts to reach a broader political consensus by holding extensive discussions throughout the course of constitution writing. This enabled us to produce a constitution based on the principles of federal democratic republicanism, secularism and inclusiveness. That is why the constitution is a document of understanding and agreement.

A Flexible Constitution

We considered the constitution of Nepal of 1990 to be one of the best constitutions of the time. But some calls for amendments and modifications were raised, naturally. We said, “no amendments to this constitution was necessary for the next 60 years. But with time some calls for reform were made. Eventually, it was abolished by the people.

This experience taught us a valuable lesson and led us to make the new constitution very flexible. Except for clauses on nationality, indivisibility and the sovereign power vested in the people, everything else in the constitution can be amended. There is no need for another mass movement to make more political changes in the country. Necessary changes can be made through amendments in the constitution. The constitution was promulgated with the confidence that the days of mass revolutions in Nepal are over.

Lessons, Understandings, and Ownership

Apart from consensus built by the parties through extensive discussions, they also have a common political history; this experience came to much use. For instance, we have adopted a parliamentary democratic system. During discussions about the system of governance in Nepal, some political parties were in favor of an electoral process that would directly elect a President, while others wanted a directly elected Prime Minister. 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, with a ceremonial President as head of the state. In this reformed system, a vote of no confidence cannot be tabled against the Prime Minister for two years after he/she assumes office. If a vote of no confidence is tabled and defeated, another motion cannot be tabled until one more year has elapsed. The Prime Minister can not dissolve parliament and announce fresh elections. A candidate cannot contest elections from more than one constituency. The reformed system

is aimed at preventing instability in the country, a result of extensive inter-party discussions and lessons learnt over the years.

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

Likewise, after holding extensive discussions about making a constitutional court, the political parties opted for a constitutional bench in the Supreme Court. This reflects an understanding reached among them. Such consensus built during the course of discussions for a reformed parliamentary system has resulted in the ownership of the constitution among all political parties present in 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. In the constitutions of Panchayat regime, there was no guarantee of fundamental rights. Open political activities were denied. People were not allowed to raise voices against the existing system. We were imprisoned under the Security Act while trying to engage in social work and I was charged with the crime of acting against the state and imprisoned for seven months. In reality, we had assembled in Kathmandu to raise voices for reform against social ills and malpractices prevalent in society.

The constitution promulgated by the then King Birendra in 1990 was comparatively more democratic than the preceding one from the Panchayat era. Constitutional provisions, however, were weak from the perspectives of politics and inclusiveness, giving rise to an atmosphere of uneasiness in the country. There were social and political unrests because people aspired for change. The Constitution of 2015 was the result of the aspirations held by the people.

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 can be reformed, thanks to the presence of constitutional provisions to do so. No one will have to go to jail for pointing out its shortcomings.

Current constitutional provisions allow 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 for constitutional amendments if and when needed. No constitution in the world is complete in the sense that it fulfils all aspirations of all people. We also have dissatisfactions which need to be addressed in the future.

Constitutions are not written every day and the members of the two CAs had the opportunity of a lifetime to write one. We had the historical opportunity to make constitutional provisions based on secularism and inclusiveness, and we are proud to be a part of that process. Some experts were surprised with our achievement and remarked, "You have made extraordinary provisions in the constitution, but how would you implement it?"

Status of Constitution Implementation

The constitution is inclusive. It is, however, natural for the implementation process to be faced with challenges. While addressing the CA for the last time as the Chairperson of the Assembly, on the day the new constitution was promulgated in September 2015, I had hinted at this: "We have made a good constitution. It is a great achievement. It has specified rights, powers and responsibilities. I think a constitution may be very good one, yet it does not automatically cause us to have more common sense, wisdom and competence. We have to work together to implement it. "

It is up to us to judiciously show these qualities when we implement the changes and visions we have set on paper. B.R. Ambedkar, the maker of the Indian constitution, said back then: "The Indian Constitution is good. If there are any mistakes and shortcomings, they are within us."

The elections for local, province and federal parliament held in 2018 are major achievements in terms of constitution implementation. The constitution is quite specific about the hows and whens of such significant processes. 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 passed by the parliament and now are in line to be implemented after fulfilling all required processes and procedures. Efforts were made to make all pre-existing laws and regulations comply with 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 processes relating to coordination between the federal, province and the local levels have been started. We expect that the three layers will function more smoothly after this is complete.

Need for Exchange of Laws

The provinces and local levels are yet to make several laws. Tied to this process is the need for one local level to be aware of what other local levels are doing in terms of law formulation. They must do this as reference for their own lawmaking processes, to maintain uniformity and avoid making laws that go beyond their jurisdiction.

Cases were filed in the Supreme Court regarding the conditions of government service and benefits for local levels representatives. The Supreme Court nullified the conditions of service and benefits in all provinces except Province 1. Some laws like this contradict each other. Such problems were created because of a lack of coordination, cooperation and sharing of experiences among those provinces.

The laws of one province or local level should be known to other provinces or local levels. The constitution could be implemented through

coordination among all the bodies concerned. The problems we are facing today result from a lack of understanding and awareness. Questions are even being asked if lawmakers are sharing the details of law formulation with the public. This is an important aspect in constitution implementation.

During the popular movement and while drafting the constitution we talked about developing the then local bodies as local governments. We also developed popular slogans about taking the government (Singha Durbar¹) to people's doorsteps. This meant that executive, legislative, judicial, economic and other powers would be devolved to the local levels. The constitution was written with such kind of power devolution in mind. Today, questions are being raised whether or not those powers have really been shifted to the local levels. This question is again linked to proper implementation of the constitution.

Federalism in Practice

Federalism is new to Nepal and implementing it is a great challenge. Some province-level representatives say there is no need for local levels to exist since there is a federal government superior to them. Likewise, some local level representatives think the same about province governments. Their logic of not acknowledging the existence and requirement of another administration, however, appears to be self-centered.

Exclusive and concurrent powers of the three levels are listed in the constitution. As a governance system new to the country, federalism is certain to be faced with problems. The system, however, is the outcome of extensive deliberations, discussions and consultations. And, we have already mentioned that the constitution is a document of understanding and agreement. Thus, we have no choice but to address the problems and sincerely work to implement the new system.

1 Singha Durbar resembles the center of political and administrative power in the country. Taking Singha Durbar to People Doorsteps is an analogy for devolution/federalization of power to local level and beyond.

In a case from Jhapa, the traffic police needed to construct a building for its use but the ministry which owned the land did not give permission. The District court needed a plot of land in Ilam to construct its office buildings, but obtaining the land proved difficult. The delay in the implementation of federalism is the result of such practical problems that could be mutually resolved.

The Bill drafted for coordination between central, province and local should be approved. Despite the constitutional provisions for an Inter-Provincial Coordination Council, a serious question was once posed regarding coordination between the Prime Minister and the provinces' Chief Ministers. This incident has prompted the council, constituted under the Prime Minister's leadership, to be more active. No further questions have since been raised and the council meets when required. We must tackle such problems in a proactive way.

Constitutional provisions need to be taken to the people for discussion. Even in the midst of discontent, discussions need to be continued. For example, the Civil and Criminal Codes, whose drafting committees were headed by Mr. Kalyan Shrestha and Mr. Khilraj Regmi respectively, were put under extensive discussions. A draft Bill was prepared and was eventually presented before the Assembly. But it was stalled at the Assembly. The aforementioned codes would have far reaching impact on Nepali people, and, thus, were tabled once again after the constitution was promulgated. As the Speaker of the legislature parliament, I had also initiated a special ruling, saying that all related articles and sub-articles could be amended even if no amendment proposals were made. The criminal code was then passed following extensive discussion on it. Arrangements were made to make it come into effect only one year later. The thinking behind this was that people would be able to learn about the law within that period. Despite such arrangements, even the government's lawyers were unaware of the new law. For this reason too, the need for regular interactions with people about the constitution is a must.

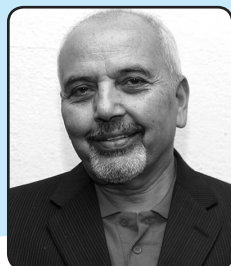
Conclusion

Political parties have played a pivotal role in the implementation of the constitution. They were involved in all its processes. There have been some issues with the implementation of all the changes brought about by the constitution. Despite these challenges, I would like to claim that people from all castes, languages, religions and culture groups, including Madheshis, Dalits, Janjatis and women, were involved in the making of this constitution. Its successful implementation depends on the regular practice of holding discussions and interactions with people and their representatives on all related issues. We are following this process and thus the constitution has become a consensus document for all in a short span of time.



The State of Constitution Implementation and Federalism in Nepal

 **Hon. Radheshyam Adhikari***



Background

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

Institutionalizing democracy following the change of 1950, however, was not easy. Seven constitutions were written in the subsequent seven decades. In addition to the instability caused by such political changes, economic and social development also suffered a setback. Following the political changes of 1990, a constitution that lay the legal groundwork for a parliamentary democracy was introduced. This constitution also did not remain unopposed. The Nepal Communist Party (Maoist) waged a decade-long armed conflict against the constitution and monarchy starting in 1996. Seventeen thousand Nepalis lost their lives in the conflict and the country faced a serious problem of internal displacement and unrest.

The constitution of 1990 had provisions for a constitutional monarchy in Nepal, but the-then King Gyanendra Shah aspired to rule the country

* Hon. Radheshyam Adhikari: Member of Constituent Assembly, Senior Constitutional Lawyer and Leader of main opposition party in the National Assembly.

directly. This made the political parties stand against the King's move in 2005 of suspending the existing government. Those political parties that were in favor of the 1990 constitution also came to oppose it. Against this backdrop, an agreement was signed in 2006 between an alliance of seven parties and the Maoist. Subsequently, these political forces started a popular movement against the King in 2006. Later, the Madhesh movement of 2007 eventually led the country to adopt federalism. All this happened before the election to the first Constituent Assembly (CA). After elections, the Maoist party was elected as the largest force, but the CA failed to write a constitution within all self-set deadlines. The second CA was elected in 2013, and it went on to write the new constitution in view of all these incidents and on the basis of four principles.

The four principles set by the first CA 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 was to end the country's more than 200-year old monarchy. 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 law is supreme.

The second principle adopted during constitution writing deals with democratic governance system. 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 are provisions for a division of the State powers between federal, province and local levels in the constitution on the basis of the principle of decentralization. This was agreed as the third principle. A neutral and

powerful mechanism needs to be instituted to deal with 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, and also 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, in place of the Maoists. The United Marxist and Leninist party (UML) became the second largest party, while the Maoist and Madheshi parties came third and fourth in terms of seats. The second CA completed constitution writing within two years and it was promulgated in September 2015. This constitution did not come about without controversy.

The present article is centered on the implementational aspects of the constitution and federalism in the country, and is divided into four sections. The first section deals with the state of affairs after the new constitution was adopted. The second section deals with implementational aspects such as the state of framing of laws, the difficulties faced during the jurisdictional use of powers, and the concept and lessons learned in constitution implementation with regard to the province and local levels. Likewise, the third section deals with the achievements and challenges of constitution implementation. The last section is the conclusion.

The State of Affairs Following Implementation of the Constitution

Immediately after the constitution was promulgated in 2015, those who were discontent with it, especially Madhesh-based political parties, decided to reject it. And there was widespread unrest in the mid-southern lowlands of the country (now mostly part of Province 2). The Madhesh movement after the promulgation of the constitution and the subsequent economic

blockade by India could not have been simply been a coincidence. The turn of events had a tremendous impact in Nepal, and the country had to pay a heavy price for promulgating the constitution.

Though memories of the Madhesh movement and economic blockade are still fresh, they are a part of history today. Elections to the parliament have already been held according to the constitution, which saw active participation of all caste and language groups of the country. Those who had expressed disagreements with the constitution now want to amend it. Moreover, the mainstream political parties of the country are in agreement over the four principles.

Constitution Implementation

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

The State of Framing of Laws

It was necessary for 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, there are constitutional provisions that can be fulfilled immediately or not. There is an immense anomaly between the economic capability of the country and the promise made about fundamental rights. For instance, there is a huge gap between the constitutional commitment and the country's capacity to make investments in health and education. There is no option but to find and follow a creative middle path in this regard. Rights relating to employment and shelters are directly related to the country's economic condition. Without raising national income and productivity, implementing such fundamental rights and improving economic condition with the current resources is impossible.

On the other hand, in accordance with the federal set up, the governance system has been transformed into federal, province and local level

structures. For this to work smoothly, a new set of laws are needed. Thus, it was decided that old laws would continue for some time before new ones are made. The deadline for this has already passed, with some laws formulated and others still in the process of being passed. But we are lagging behind.

All three tiers of the governments have the right to make laws. However, the province and local levels will not be able to do this until the federal government has made its own laws on areas of concurrent and overlapping competencies. The situation is similar between the provinces and the local levels too. The lower levels will be in a state of confusion until this happens. 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 this, 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 of federal laws encroaching upon their right to exercise exclusive powers (as specified in the constitution). It appears 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 a unitary mindset prevalent among politicians and the bureaucracy.

For instance, matters pertaining to internal security within a province falls under the province's government. However, a chief district officer (CDO) deputed by the federal government exercises more power than a province's Internal Affairs Minister. The CDO also has the power to monitor offices that are responsible for service delivery. During the course of constitution writing, it was debated that the provinces, and not federal government, would keep the police under its control. But the corresponding Committee thought it was necessary to consult experts as the matter was connected with security.

Eventually, five reasons were given in support of keeping the police under the federal government. The reasons were: (i) to maintain uniformity of standards of training and new recruitment, (ii) to exchange secret information between and among provinces, (iii) to help in arresting criminals 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 in liaison with the police of other countries.

It was also made clear there would only be a limited number of police personnel at the federal level to carry out these functions. During the process of framing of the law, however, the Home Ministry (representing the federal government) made no attempt either to reduce the police force under it or to curtail its powers. Instead, a draft federal Bill that would put the police in the firm grips of the central government was tabled in the parliament. This caused a serious difference of opinions between federal and province governments. The federal parliament has, however, made some changes in this regard but it is yet to be seen if they are adequate. Tabled federal Bills regarding forests, sports and education also appear to be affected by this kind of unitary mindset.

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

We need to be aware of the positive achievements in the midst of negative comments. And, despite the inability in making all laws according to the constitution, at least 16 laws relating to citizens' fundamental rights have been framed. The clause "as prescribed", however, appears frequently in

the newly made laws, which makes it hard to disagree that the fundamental rights have lost their meaning. In any case, if the government wants to implement, the parliament has paved the way by making laws in accordance with the constitution. An alert citizenry will be necessary to help implement these laws. Amendments to nearly 200 Acts have been made to suit the constitution, while new Acts are in the process of being passed.

Likewise, province 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. Wherever possible, technical support is also being provided in this regard. The lack of competent, professional human resources has made it harder to prepare the Bills according to broader political agreements. The federal government needs to send teams of experts to these levels. Otherwise there is a real possibility that the constitution is contravened and constitutionally guaranteed jurisdictions are infringed upon. We need to think it through in time or it may give rise to misunderstandings and disputes between the three tiers 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 could be in contravention of federal laws. The mayor of Triyuga Municipality of Gaighat once said in an interaction: "In some community schools in this municipality, there are more teachers in proportion to the number of 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 schools the number of such teachers is inadequate. We have to address this problem by transferring teachers and by applying other management options. The Municipality wants to make necessary laws and transfer those teachers even if this will contravene the existing Education Act." Because of the immediate need to address local problems, it is highly possible that local administrations will ignore the fact that such laws could go against federal law.

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

Incidents like these may give rise to misunderstandings and disputes, while also increasing the number of complaint cases in courts and creating tensions between different levels of government if laws that define their respective jurisdictions are not made on time. At Gaighat, I advised: "Do not make any local laws that are in contravention of federal laws, otherwise it will mean the mayor of the municipality is going beyond constitutional provisions. 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 in ensuring the powers of province and local levels? Otherwise, those at the federal level will have to soon understand that non-cooperation goes both ways.

Constitution Implementation at the Provinces

The election to the federal and provincial parliaments and the formation of governments took place almost simultaneously. Newly elected province legislatures had great enthusiasm. But the failure on part of the federal parliament to make laws relating to the provinces has made it difficult for the newly elected lawmakers to fulfil promises they had made to the people.

Likewise, the provinces complain that the power given to them by the constitution is rather limited, the reason being their lack of control over the local level. 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

provisions for three tiers of government with the view that provinces could curtail the power of local levels if they were put under the control of provinces. It was also thought that the process of delegating power could take a long time.

The constitution has clearly defined the jurisdiction of provinces and local levels. The attempt on the part of the federal level to intervene in the provinces' jurisdictions relating to internal security, forests, health, education and sports prompted the provinces to complain the federal government was acting against the spirit of the constitution. This dissatisfaction finds voice at meetings between province Chief Ministers and other ministers.

State of Affairs at the Local Level

When compared with the provinces, the situation at local levels is slightly better. There is an opportunity to perform and deliver something as the heads of local level are able to exercise their executive powers. The deputies also have powers relating to judiciary and monitoring, and the ward chairpersons too have power given to them. The problem faced right now by local levels is related to staff management. Inadequate staff and unwillingness on the part of current as well as other staffs to work at local levels are the major causes of this problem. There are instances of non-cooperation by bureaucracy when politicians show high handedness and go against the laws.

Sometimes the Commission for the Investigation of Abuse of Authority (CIAA) raises questions about institutional good governance. The Office of the Auditor General has been pointing out the need to reform the accounting system. The works of the Judicial Committee are also being criticized. And, sometimes, sporadic incidents are often blown out of proportion. It is unfair to weigh all local units in the same manner when only 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 are corrupt. The local governments should be allowed to

work and move forward according to the expectations envisioned by the constitution.

At this time, due to the taxes levied by local levels, there is a negative perception towards them. Local leadership will be unpopular if they tax people beyond their capacity. On the other hand, people can also hold them accountable about the tax they have paid and ask for transparency in its use. The interrelationship between people and revenue also opens the window of opportunity for positive results 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 mistakes that we make in the course implementing it. Unintentional mistakes should be regarded as irregularities, while intentional mistakes must be linked to corruption. Like provinces, the laws of the unitary system also pose problems to local levels. The works of the bottom-most levels are important for various reasons. If local levels are able to perform half of their 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 them to be successful in their endeavors.

Achievements and Challenges

Elections for all three tiers were held according to the constitution's provisions. And, all the three levels are doing their works. The elected governments are not even halfway through their terms. The performance of different levels of governments and legislatures is yet to be assessed. Apart from a few researches, news stories from media outlets are the only basis for the review of the whole system. The time to draw conclusions has not arrived yet.

This constitution was made by a Constituent Assembly. Yet some people take it lightly and say it was made by a number of leaders. This is subjective point of view and does not have sound arguments in its favor. The

constitution was made with wide participation of people. The Madhesh movement formed the basis for federalism. The popular movement of 2006 was for republicanism and against the King's direct rule. Besides, there had been a continued struggle for democracy since 1950. Now, 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 four principles of the constitution is rather weak in the country. For example, parties that promoted monarchy in the country represent very small percentage of vote. And how many voted for parties who were against federalism? Election results show that voters gave a mandate in favor of the constitution, along with republicanism, democracy, federalism and the principles of proportional representations. Having said that, individual views also have a place in democracy. That is why the constitution does not ban those who still want a unitary monarchy.

However, there is discontent among Dalits, Madheshi, Janjati and other marginalized groups of the country. Likewise, women feel they lag behind and complain they are not represented according to the principle of proportional inclusion as provided for in the constitution. There is partial truth in this. It is true that it may not have been possible to translate the provisions of the constitution into reality right away. But 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 questions raised by the Dalit, Madheshi and Janjati communities and women are centered on the practical aspects of 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 could be consulted as to what can be done to make the democratic system more practical and inclusive. This is how we should 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 contexts. Likewise, discrimination that exists between Dalits and non-Dalits in society is a really difficult issue. For example, a marriage between Dalit and non-Dalit is not easy. We would be able to resolve such problems through talks and concerted efforts and by developing our collective conscience.

At present, we are still in the process of implementing federalism as provisioned 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 province heads and their replacements. Their appointment should have been taken as appointments made by the state, not as political appointments made by a particular government. Likewise, appointments made by the constitutional council are also rapidly being decided by majority. Such an appointment will not increase the dignity of important positions, like the chief commissioner of the Election Commission. Disputable appointments will only give rise to political misunderstandings.

While making such crucial decisions, the letter and spirit of the constitution should be followed with honesty. The Government of Nepal run by the 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 elected governments failing to work through their full terms. We failed to establish transparency and accountability in governance, leading to chaos in all political and economic spheres. Political parties blamed each other for the mess. For this reason, the present government should be allowed to work a full term. At the same time, both the ruling party and the government should understand that the power of majority in the House is only a means of governing the country. If there is no general consensus among parties, the majority of numbers may fail to work. For example, the Guthi Bill (concerning trusts) could have been easily passed in the parliament. However, when the people took the matter to the streets due to political misunderstandings, the ruling party had to retreat.

Conclusion

If there are no objections against the fundamental principle of the constitution, we need to put in a concerted effort to put it in practice. A more active intergovernmental council could initiate dialogues at the political level. The council is headed by the Prime Minister and includes some federal ministers and Chief Ministers from the provinces. This council must, through regular meetings, identify difficulties faced in the implementation federalism and help resolve them as and when necessary. It has remedial measures against federal or province governments that try to curtail the powers as provided for in the constitution. We should not think about an alternative to the present constitution without fully using its available mechanisms.

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

I would like to conclude by mentioning an incident during my visit to the United States in 1990. We were in Jackson City, Mississippi, where the black American community are said to be in the majority. The organizers of the programs had invited a black professor to speak about 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 that our guide, a white lady, complained.

She said, "Professor, your presentation has painted the US in a bad light in front of our visitors." He replied, "I was invited by you to make a presentation. Please correct me if what I have said is untrue. Otherwise, this dark phase of the American history cannot be erased." Most importantly, the professor added the present status of African Americans had been ensured by law without them 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 are no objections against the fundamental principle of the constitution, the need of the day is to gradually increase the powers of the provinces and local levels in practice. American federalism, which started with the idea of giving less power to the federal level has resulted in the federal government gradually possessing more power. In Canada, the provinces granted with fewer powers initially are becoming more powerful today. Even though India has only one constitution, the practice of imposing presidential rule by dismissing the provincial government has almost come to an end. Instead of looking for alternatives to the current constitution, we must remove the mistakes and shortcomings of our constitution through practice and amendments when needed.



Reevaluate the Constitution for Longevity

 **Hon. Laxman Lal Karna***



Background

The Constituent Assembly (CA) made the constitution in 2015 and its achievements need to be protected. However, all required processes were not followed during course of constitution writing, and this is where its shortcomings lie. Majority voting alone is not necessarily the only basis in constitution making. The most important aspect is whether or not the CA adhered to related regulations. The consequence of not doing so is the reason why one section of the society remained dissatisfied and agitated. Marginalized groups such as Madheshi, Janjati, Tharu, Muslims, Dalits and others are still in favor of amending the constitution. The difficulties that have surfaced during the years since the constitution was promulgated, including complications that have arisen in its implementation, have generated the need for amendments.

The first CA failed to write a constitution but it had done up to 80-90 percent of the work. The regulations pertaining to the second CA had stated that matters considered undisputed by the first CA shouldn't be contested; and that disputed matters were to be resolved through an all-party dialogue under the Constitutional and Political Dialogue and Consensus Committee of the CA.

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I was the chairperson of the committee that framed the regulations for the second CA. A proposition had been made then to deal with disputed matters and keep unanimous agreements from the first CA as they were. A committee formed for this duly submitted its report. Dr. Baburam Bhattarai headed a Constitutional and Political Dialogue and Consensus Committee made to address disputed matters. Likewise, a sub-committee, which I coordinated, was constituted to integrate those disputed matters. It had been assigned with the task of resolving all other problems except matters relating to restructuring of state and governance system, which Dr. Bhattarai had the responsibility of dealing with. The Regulations Committee had even submitted a report which was unanimously agreed upon.

That the state should be restructured on the bases of identity and economic strength was undisputed. A State Restructuring Commission had been formed during the last days of the first CA for this purpose. It submitted its report with recommendations for nine provinces and a non-geographical province for Dalits. This report was rejected. In other words, the principle relating to not revisiting undisputed matters was rejected. Eventually, seven provinces were made without recognition to identity. It is claimed that the Madheshi identity has been given to Province 2. This is incomplete because economic strength was overlooked. In this way, rules were violated during the process of constitution writing.

Matters pertaining to the division of powers between federal and province levels were also undisputed in first CA. 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 violations of what was considered undisputed and unanimously agreed upon earlier.

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

The Need for Powerful Provinces

Except for the Madheshi and Janajatis, no one else wanted federalism. During the course of constitution writing, only limited power was given to the provinces. The local level was created as a competitor of the provinces. Attempts were made to make the local level powerful and weaken the provinces¹.

At present, local levels have not been able to function properly. We had said in the beginning that if local levels were to be made powerful, they needed to be brought under the province's jurisdiction. In such a situation, it would not be difficult for the provinces to keep a watch on and monitor the works of local levels. Rumors about taking Singha Durbar² to villages, through structural changes in the form of local levels, exist only on paper because Singha Durbar still has a firm grip on both province and local level. This is the ground reality of constitution implementation today.

Several acts were made during the course of constitution implementation and several laws are in the process of being passed. With regards to Articles 16 to 46, altogether 30 laws relating to fundamental rights and 156 Acts have been made. The Schedules of the constitution state the province police shall be under the control of provinces, while the armed police and the Nepal Army shall be under the jurisdiction of the federal government. These provisions were undisputed in the first CA, and it had even been discussed at that time to keep the armed police under the province. However, consensus could not be built on the issue and they ended up remaining with the federal level.

A Police Act³ was recently issued by the federal level. Provisions of the constitution state the provinces, and not the federal level, have full

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

2 *Singha Durbar* resembles the center of political and administrative power in the country. Taking *Singha Durbar to Villages* is an analogy for devolution/federalization of power to local level and beyond.

3 Nepal Police and State Police (Operation, Supervision and Coordination) Act.

authority over the police.⁴ However, the present Police Act enables the federal government to determine the police chief of the province, police officials and their dress. Similarly, the chief district officer (CDO), appointed by the federal government, is the administrative chief of the federal government. The federal level appears to have delegated authority over police to the CDO so that he/she can watch and monitor activities in the provinces. It is but natural to wonder what the role of a province's internal affairs minister is.

Constitution Implementation and Protection of its Achievements

Provinces are dissatisfied that the constitution has not provided adequate power to them in the way that federal systems allow for. However, the provinces need to make good use of the power they wield. Protecting the achievements of the constitution also means implementing the constitution. If we are for democracy, it is also necessary for us to understand that people are sovereign. There is a provision in the constitution for periodic elections and the voters will exercise their rights if their representatives indulge in irregularities. The works of all three levels will also be evaluated. For this reason, the province will have to keep on exercising the powers vested in them, which will eventually make them powerful.

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

4 Please see serial number 1 of Schedule - 6 of the Constitution of Nepal. 2015.

Program at the Grassroots Level

Both the federal and province levels have people's housing programs. It is a good plan to provide housing facilities to the Dalits, but because of the delay in implementation, the families are in a sorry state. What is the use of demolishing a person's house, laying foundation after one year and completing it in fifth year? Where will they live during all these years? There are several instances where people whose houses were demolished were dissatisfied and went to their representatives with complaints. Such good programs are yet to show results because of a lack of coordination, pragmatism, and law.

There is an ongoing plan to construct 25 houses in Parsa district under the people's housing program. According to the design, there will be two rooms, one kitchen, bathroom and a veranda in a house. If the construction work could be started in winter and completed before the rainy season begins, the families will have a roof above them during the monsoon.

Formulation of Laws

Provinces should not delay in framing laws and they could start by studying the laws of other provinces and the federal level. This is also a part of constitution implementation.

During my visit to Butwal, I collected a set of laws of Province 5. Such laws should be disseminated widely. The stakeholders should be encouraged to refer to Gazettes and the websites of other governments. Some ministers may not have studied such legal documents. It is important to learn about the activities in other provinces because adequate discussions on the framing of laws are not held.

Provinces suffer from a lack of rigor in the formulation of laws. Apart from the committees therein holding extensive discussions on some important issues, there are inadequate deliberations on Bills. Often, the Bills are passed easily based on general discussion. Even at the federal parliament it is difficult to maintain quorum and it is no different at the

provinces. All the same, it is good to have laws passed. Unintentional mistakes, when they occur, have to be corrected.

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 formalities and in holding short discussions. Not much fieldwork has been done. Teams should be sent to seven provinces to work for at least four days in each province. The works of these teams also need to be evaluated. The reports they produce should contain academic research, not only what somebody said in a five-minute speech.

Dispute Resolution

It is important to find out whether a dispute is political or legal. Most disputes are political, so they should be resolved politically. Legal options should be taken only as a last resort, only when practical methods are exhausted. One must remember there are already 22,000 pending cases at the Supreme Court. Legal battles over political disputes could result in instability in the country. While talking about dispute resolution between provinces and local levels, it would be better to oversee and deal with such matters locally. A province is nearest government to the local level and is the appropriate one to settle local disputes. They would be more effective in overseeing and monitoring the local levels than the federal government.

Balancing Rights and Duties

Political rights won after a hard struggle need to be enjoyed by backing them with duties and morality. This is connected with implementation. All pertinent information needs to be made public while a project is implemented. It will keep people informed about the progress made and increase their awareness. But such information boards are not found at project sites. Project works lack quality because they have neither people's participation nor interest in what is ongoing.

A culvert made at a certain place was washed away by floodwater in the monsoon. In the course of a monitoring visit, I lodged a complaint against the use of sub-standard material in construction but it was neglected. Local people, if they had seen an information board about the project, they would have monitored the construction. For this reason, we need to strike a balance between rights and duties by involving stakeholders in local projects.

Education

Several laws related to education are yet to be made. Provinces also do not have adequate laws to work with. Let us take the example of the Education Act. Social media is replete with stories about the federal government stopping teachers' appointment while also sending out directives to initiate teacher appointment, at other times. A clear directive would have provided solution to many troubles. During a two-month long visit to my constituency in Parsa district, I found out the standard of education well below par. Some schools do not have teachers, while in other schools highly educated persons are made to teach at the primary level. A person who is qualified to teach at the secondary level is paid the salary of a primary level teacher. Disappointment may set in such situations and in turn affect students' learning. The local level can appoint teachers according to qualification and can bring about improvement in teaching. The federal government can delegate this authority to the municipalities. Why should the federal government take such unnecessary burdens?

The condition of education in Madhesh is rather pathetic. Municipalities build more classrooms at schools. The federal level constructs school buildings. People's representatives also promise to build one or the other thing during their visits to schools. However, the quality of education has not improved. In the past, those who did not have classrooms and had to instead sit under a tree also did well in exams. School buildings alone do not make education better. Quality education only comes through capable teachers. Both provinces and local levels can take initiatives to solve this.

The federal level needs to create a favorable environment for improving education quality. It can help local levels by providing directive to facilitate the process. But it appears that the federal level wants to retain power. This practice needs to be changed.

The Way Forward

We now need to focus on four aspects of constitution implementation. The provinces and local levels are better acquainted with local needs than the federal level. The exclusive powers of local, province and the federal levels, together with their concurrent powers, need to be defined clearly. Secondly, the province public service commission should be made functional. Thirdly, it is necessary to make staff members and people's representatives more competent, especially those who have come from inclusive and proportional policies. Fourthly, there was a need for more discussions when the constitution was being written. It did not happen, so amendments should be made 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 provinces has been curtailed in the *Guthi* Act tabled by federal government in 2019. As per serial number 21 of the Schedule 6 of the constitution, provinces have total jurisdiction over *Guthis* (trusts). Instead, the Bill proposed to hand *Guthis*' jurisdiction over to the federal level, bypassing the provinces completely. The protest in Kathmandu in August-September 2019 prompted the government to retract the Bill. All these things expose our prevailing attitudes and mindsets. The mountain region, Madhesh, and Kathmandu have their own systems regarding *Guthi*. Thus, each province would have made their own *Guthi* Act according to requirements. Provinces are better informed about local needs than the federal level. For this reason too, the management of *Guthi* was delegated by the constitution to the provinces.

The right to food sovereignty is a fundamental right. Municipalities should be given the right for its management because they will have all the information about what is required for whom. Difficulties will arise if the federal level wields this authority. It is not bad that the power relating to irrigation and education are with municipalities. Even if the laws pertaining to the management of schools and university are made by the federal level, the management of these institutions' rests with the provinces. The Education Act of 2019 also centralizes authority. Matters like these pose problems to constitution implementation.

It has been three years since the new constitution was adopted, but the government is yet to begin division of concurrent power. An effective system should be adopted for this purpose. We had said that levying institutional tax should be under the federal level, while personal income tax would belong to the provinces. However, it has been put under the concurrent list of powers. The division of power concerning tax should be made clear as soon as possible. If provinces are to run on grants, what is the difference between the old district development committees and the present province governments? Presently, 32-33 billion rupees is provided as grant. Federalism will have no meaning if the provinces run on grants. Provinces should have the power to levy tax. The division of concurrent power should have been decided before the constitution was promulgated. Moreover, related laws should have been framed at the time of the legislature-parliament, after the constitution was promulgated. This matter too is yet to be decided.

Province Public Service Commission

In 2019, the federal level surprised everyone by recruiting nearly 9,000 personnel for provinces and local levels. The federal public service commission (PSC) did this even while the laws relating to provinces' PSC were already in place. What can the provinces' public service commission do in such a situation? Wrong justifications were put forward in the defense of this step. The issue has not been heard in the parliament. On the contrary, the federal level has been arguing that the local level is also a part

of the government to justify Public Service Commission's advertisement for new recruitment. Provinces should have been allowed to recruit their own personnel. No power has been devolved to the provinces regarding local levels except that relating to the recruitment of local level staff.

Provinces have also been facing difficulties in managing personnel in the last two years. The staff members deputed by the federal level often get transferred in a few months, thereby causing shortage of personnel. Likewise, the practice of transferring the principal secretary of the provinces every three or four months has also created a negative impact on the staff members. They do not want to stay there for long. Local levels are also known to complicate things.

In an incident, the staff members wanted to get transferred because the province's 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 them, they will reciprocate and support you. Do not use the quarters yourself, let them use the facility." This resulted in some positive changes. However, the provinces have not been able to function effectively because of frequent transfer of staff members after they are appointed. If a municipality is to be regarded as a government entity, transferring a staff member appointed for a particular entity to another entity is not logical. But this is happening and it is not in conformity with the spirit of the constitution.

On the other hand, Article 42(1), relating to fundamental rights, states that each (such) body in the country shall be formed on the basis of proportional inclusion. This has also been written in the preamble of the constitution. But what is practiced is in contravention of the constitution. How can it be inclusive if a municipality requests the government to recruit two staffs? This has eroded the concept of inclusion.

A PSC exist at both federal and province levels. However, the standards and policies of the Commission is set by the federal level. If such standards had been formulated in time it would be easier for the provinces' PSC to initiate work. At least we have such a standard now even though it was

brought rather belatedly. PSCs have already been constituted in at least two or three provinces. 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 committees at local levels. And, such committees were formed with great expectations. The committees also wield some power. Women were made deputy mayor in most of the municipalities while Men hold the position of mayor.

In one of the municipalities, the husband of a lady deputy mayor used to represent her at municipality meetings. The mayor allowed the husband to represent his wife at all other meetings except at the one that was to pass the budget. This triggered a dispute which resulted in violence. 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 people's representatives fail to understand their functions, duties and power. It is not only the staff member but people's representatives who also need training on awareness, discipline, career development and capacity building. Winning an election does not necessarily lead to automatic understandings of all issues. 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.

Reevaluate of the Constitution

The constitution should have been reevaluated (at least once) after the promulgation. The Legislature-Parliament should have been given the power to do this. In India, the first Parliament following the promulgation of their constitution had reevaluated the constitution. A reevaluate 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 economic strength. I worked in most of the CA

committees during the course of constitution writing. Not much attention was paid to the idea of rights. A political party may have its own views, which becomes an 'issue' in the CA. Much of its deliberations were focused on territorial boundaries with regards to state restructuring. This overshadowed other important issues which had already been overlooked. The draft constitution was eventually finalized. We failed to reevaluate the constitution and now we are becoming aware of its drawbacks.

Matters pertaining to the position of the speaker of the House have stalled the proceedings. Only the speaker is authorized to certify the Acts passed by the House of Representatives, while the chairperson of the Upper House does that for that body. Some Acts made in the parliament have already been passed. Some are yet to be certified. The deputy speaker can chair meetings in the absence of the speaker but she does not have the authority to certify Acts passed by the parliament. Before, when the position of the speaker was vacant, the deputy speaker could have performed functions relating to certification of laws. The shortcomings of the constitution could have been removed, and a reevaluation could have helped us to make necessary improvements in the document, which we failed to do. We can still reevaluate the constitution through amendments.

Conclusion

In order to implement the constitution and federalism more effectively, the following four tasks need to be performed immediately. First, laws relating to provinces' PSCs, which have been framed by the federal and provinces, need to be implemented. PSCs have been formed in some provinces so far. Problems relating to the recruitment of personnel at municipalities and provinces could be resolved if province PSCs are able to function properly.

Secondly, the powers of the federal, province and local governments need to be defined clearly and the enumerated powers should be put separately. If this is done, provinces will be able to make their laws according to the power vested in them, and implement the laws accordingly. This will help the process of federalization in the country.

Thirdly, necessary training needs to be imparted not only to the staff members 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 enhance their capacities.

Fourthly, the constitution needs to be reevaluated. This will help us find out its shortcomings. It will also help in removing difficulties related to the transitional rights. Moreover, it will help in removing duplications, if any are present. All political parties need to be involved and a time frame of one month should be set for this purpose. A reevaluation of the constitution will benefit all.



Dimensions of Women's Rights

 **Mahalaxmi Upadhyay Dina***



Background

Most countries striving for change have ensured women's rights through laws based on social justice. However, some countries like Nepal have remained in the status-quo. It has been over a century since our leaders started a revolution for women's liberation. The revolution against Rana oligarchy in the late 1940s coincided with that for establishing women rights and ending gender discriminations. Nevertheless, Nepali women still face gender discrimination, domestic violence, and crime.

"Women Rights are Human Rights" is the main motto of all women's liberation revolutions. Until and unless we translate the constitutional rights of the women into practice, it is impossible to institutionalize democracy, and its norms and values as desired by everyone. Unfortunately, the State and our society still seem to be prejudiced while dealing with women's issues. For example, the Constitution has clear provisions for mothers to pass citizenship onto their children; in practice, all state bodies – from the lowest to the highest levels – have barred women from doing so, citing one excuse after another. This raises questions over the state of our civilization.

* Ms. Mahalaxmi Upadhyay: Member of Constituent Assembly, former Chairperson of NFPPD

Role of Women Parliamentarians in the Lawmaking Process

Women are able to participate in the political process of our country thanks to the women's revolution and civil disobedience launched in 1947. Consequently, Dwarika Devi Thakurani was elected in the General Elections of 1959 and became the first female minister of the country. But just as women had begun their ideological and street revolution, the rulers imposed an absolute monarchy in the country in 1960. The fundamental rights of Nepali citizens were severely affected as were women's rights.

Seen from another perspective, the 30-yearlong autocratic system further fueled Nepali women's aspirations. They went on to play a remarkable role in the revolutions 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 their bodies. To some extent, that forced a society, ridden with patriarchal customs, to feel the need for and justify women's rights. This is a milestone for women's rights in Nepal.

After the mass Movement of 1990, women demanded that at least 10 percent of all candidates in general elections should be women. As a result, the then Constitution made it mandatory for political parties to field at least five percent women contestants. This provision did not do much justice. The five percent were no match for and did not make a difference in a parliament dominated by 95 percent males. However, gender issues were discussed in the mainstream. In 1999, women parliamentarians made a proposal related with daughters' right to paternal property in proportion to their male siblings, which wasn't endorsed until 2008. Over time, encouraging results began to emerge in women's leadership development. Today, rules say federal and province parliaments should have 33 percent female lawmakers and that 40 percent of all candidates in local elections ought to be women.

During the People's Movement of 2006, women played a lead role. They shouldered the duty of civil disobedience along with men and

moved ahead with unfathomable courage, spirit, zeal, and fearlessness. This is what made the People's Movement a success. It resulted in the Interim Constitution 2007 ensuring 33 percent women participation in a future Constituent Assembly (CA), which really did happen after the first CA elections in 2008. The success of the political movements led to the amendment of many discriminatory laws against women. As a result, 197 women parliamentarians in the first Constituent Assembly (2008-2012) formed a women caucus across party lines. The caucus played a significant role in establishing women's rights. Women parliamentarians displayed unity in the Constituent Assembly and worked towards drafting documents on women's rights and holding and initiating discussions in the committees concerned.

The list of drafts made then is long. These included women's reproductive health rights, right to obtain citizenship (naturalization) through one's mother, legal punishment for physical, mental or any other violence against women, victims' rights to legal compensations, equal right of male and female 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 have at least one-third of women elected as members and included other rights: to participate in all the state organs on the basis of the principle of proportionate representations, to avail special opportunities in the fields of education, health, employment, and social security 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 access of socially, politically, and economically backward women in state structures and public services through participation and proportional inclusiveness. The Constitution has ensured

one-third mandatory presence of women Member of Parliaments (MPs) and 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. But this constitutional provision has not been implemented in the Cabinet and in parliamentary committees. However, the mandatory provision has increased women participation in politics. Above all, women's participation at local levels is enthusiastic. Yet each party is found to nominate women contestants only for the posts of Deputy Mayor/Chairperson. This is discriminatory. On the other hand, there have been ample grudges of the mayor/chairperson depriving their female deputies of different rights at many local levels.

Despite all these issues, the access of women to professional fields has increased after democracy was established. Women's participation has been increasing in government services and security organizations too. The number of women has increased notably in courts as well. The Constitution of Nepal 2015 has provisioned for a separate Women Commission for the sake of women empowerment. Gender Inclusiveness and Women Empowerment programs are run by 14 major ministries and the offices of the President and the Prime Minister.

Women's access to education is satisfactory. Over 88 percent of women aged 15 to 25 have access to education. In higher studies, it is over 44 percent up to post-graduate levels, and just over 11 percent in doctorate levels. When seen across a larger time period, the last decade shows significant boosts. The Public Service Commission (PSC) provisioned a higher age limit of 40 so that women can join government services. This has increased the women's access to careers in government service. However, it is relatively low in Federal and Province Governments.

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 +25 has brought positive results towards ending gender-based discrimination. The Government of Nepal has made several initiatives to ensure fundamental rights, liberty, equality, and social justice according to its commitment at international forums. Special provisions regarding participation in national development, education, health, and employment have been introduced. The Supreme Court has issued an order to establish a Fast Track Court as an attempt to end women-trafficking, rape, and domestic violence related cases.

The Government of Nepal and non-governmental organizations held a discussion to review the 12 goals set by the recently concluded Beijing +25 conference. They are as follows: 1. Women and Poverty, 2. Women and Health, 3. Education and Training of Women, 4. Violence against Women, 5. Women and Armed Conflict, 6. Women and the Economy, 7. Women Power and Decision Making, 8. Institutional Mechanism for Uplifting Women, 9. Human Rights of Women, 10. Women and the Media, 11. Women and the Environment, and 12. Women and Children.

The government has expressed commitments to internalize the achievements made so far and make special programs in the coming days to end offences like violence against women and rape, improve women health, enhance women participation at decision making levels, and improve the financial conditions of women. The Government has also expressed its commitments to effectively address such issues in future policies and programs.

Making Necessary Laws for Social Inclusion

It is necessary to make all state organs aware and conscious about the necessity of implementing the constitution and laws to safeguard the rights of women to live with equal rights and respect. The government should make laws and adopt all necessary schemes and procedures to mainstream women. It is essential to involve women in decision-making in accordance with the concept of “social inclusion” because they have been discriminated and deprived of their rights for a long time. This will

ensure and provide opportunities, means and resources, services, and fundamental rights to them.

Gender denotes the relationship between women and men within social structures formed by culture and traditions. The social structure of Nepal is the byproduct of a patriarchal ideology. Women have long been suffering from unequal and discriminatory culture here. "Gender equality" means initiating steps to rebalance unequal power relationships existing between women, men, and people of other identities. The Constitution of Nepal 2015 has ensured an end to all forms of discriminations against women. However, there is a problem in exercising the given rights due to deep-set patriarchal ideologies, attitudes, and cultural malpractices. It is, therefore, necessary for the State to make laws to accommodate the concept of inclusion of one-third women in every structure and organization of society as provisioned in the Constitution.

The State of Implementation of Gender-Responsive Budget

The process of designing national plan, programs, and budgets sensitive to gender issues results in a 'gender-responsive budget'. Implementing gender equality requires economic equality. To provide both women and men equal access to and opportunities in economic development, they need to have a guaranteed financial support. A gender-responsive budget is regarded as a significant tool for women to obtain financial equality.

The Fourth World Women Conference (1995) in Beijing had expressed its commitments to adopt gender mainstreaming as a major strategy and effect changes in twelve sectors. The review made thereof after five years concluded that expected goals committed by the Beijing Conference were not achieved due to the absence of financial allocation. It drew global attention towards the idea of forming a gender-responsive budget to achieve gender equality. Presently, many countries are trying to implement gender equality strategies by allocating resources through gender-responsive budgets.

Nepal has internalized this concept and since 1992 National Planning Commission has worked to include it in the annual budgets of the government. However, such gender-responsive budgets have not achieved expected goals owing to different problems in legal and policy levels, institutional and structural spheres, and due to the lack of means and resources, and managerial nous in budget implementation. In absence of effective allocation, women lag behind in enjoying basic facilities, such as education and health rights, in comparison to men. According to the latest statistics, 28.45 percent of the budget, directly or indirectly, has been gender-responsive. The government has made a strategy to localize this concept and make it accessible down to the lowest levels of administration. However, none of the state structures seem to be serious and accountable towards implementing gender-responsive budget in accordance with national strategy. This budget should be mobilized for the education, health, and income generation activities for women, and to prevent rural women from being deprived of basic education and health rights.

Reproductive and Health Rights of Women

The International Conference on Population and Development (ICPD) has accepted the human rights of women as the major principle for reproductive health and population programs. Gender equality and the individual rights of every woman are guaranteed in her reproductive health rights. All couples and individuals should be able to enjoy the highest standards of sexual and reproductive health rights. Women must be allowed to make independent and responsible decisions regarding the number and spacing of children. They should have access to necessary information and means for strengthening this concept. The Constitution of Nepal 2015 agrees with the resolutions of different international conferences on sexual and reproductive health rights and it ensures every woman's rights related to safe maternity and reproductive health.

A Bill recently passed by the parliament has addressed and ensured, amongst others, women's access to and rights of reproductive health. It has provisioned that every adolescent has rights to education, information,

and counselling regarding sex and reproductive health; to pre- and post-marital counselling regarding safe maternity; to make decisions about having or not having any children, spacing, and number of children. In addition, it has legal provisions for pregnant women to get balanced diets and emergency delivery services before, during, and after delivery, and for babies to get services and counselling. Besides, the Bill has provisioned for punishing any non-complying authorities.

In August 2017 the Supreme Court of Nepal issued an important order, related to cases of public concerns, that the right to abortion is an inseparable part of reproductive health rights. Accordingly, it should be ensured that there is equal access to, availability of, and standardization of abortion means, services, and information.

Strategies for Women Representatives

The presence of elected women representatives has been the most meaningful achievement so far and it comes in accordance with constitutional provisions for compulsory women's candidacy at elections. Throughout the country, out of 753 local levels, including 6 metropolitans, 11 sub-metropolitans, 276 municipalities, and 460 rural municipalities, 35 thousand representatives have been elected. No less than 14,000, of them are women. They have accepted this historical achievement as a challenge and have devoted themselves to work. Also, most of the deputies at the local levels are women and chair the Judicial Committee as per legal provisions. Women representatives have complained that they have been deprived of other rights: executive heads veto decisions regarding development, construction, and budget, and the idea of gender-responsive budgets have been sidelined.

Prioritizing the Empowerment of Rural Women

The migration of people to cities and foreign countries has kept back only women and children in the villages. Therefore, it is imperative to take women rights as provided for by law down to the villages. Special

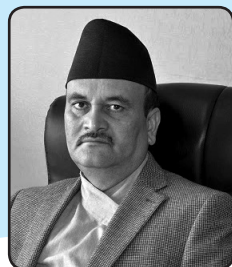
programs for strengthening rural women should be implemented. However, agricultural trainings are mostly attended by men. Trainings on agriculture and operation of cottage industries must also target the participation of women.

Finally, the state should remove all the laws that discriminate against women as soon as possible. All state organs should work unitedly towards implementing laws made for women's rights and remove administrative hurdles. A separate unit should be formed at the apex of all the three tiers of the government to implement gender-responsive budgets, while formulating plans and annual budgets that are gender sensitive. To this end, intensive orientations should be given at all levels to meet commitments made by our country at international forums. It is vital to right away organize programs targeted at young females as well as to women representatives at all levels.



Implementation of Federalism and Management of Human Resources in Nepal

 **Dr. Somlal Subedi***



Background

Federalism is an important dimension of multi-tiered governance systems characterized by greater autonomy, participation and accountability. In many parts of the world, the federal system of governance has been evolving due to the desire for greater security, better economic opportunities, reduction of unwanted centralization caused by unitary systems, aspirations to integrate smaller states into a larger one, and 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, 2009).

The word federalism is derived from the Latin word ‘foedus’, which means a contract or an agreement. Its objective is to promote the specific and common aspirations of the parties in contract (Karmis and Norman, 2005). A federal governance system is a system in which the state’s power is divided between the federal and lower levels of government as exclusive, concurrent and residual power. States adopt federalism to achieve their common objectives as stipulated in the constitution /contract.

According to George Anderson, “Under Federalism there are two constitutionally established orders of governments, which are suitably

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autonomous from each other. The governments at each level are primarily accountable to their respective voters.”

Ostrom (1991) has a more specific definition that calls federalism a “theory of government that uses power to check power amid opposite and rival interests. Authority is limited, and no single body exercises supreme control nor has a monopoly over the use of force in society (as cited in Filippov, Ordeshook and Shvetsova, 2004)”. Federalism advocates limited government and emphasizes self-governance and capacity building on the basis of equal freedom and justice.

Federalism is a system where state power, rights, resources and responsibilities are delineated between two or more tiers of government. Other than exclusive rights, arrangement are made for the exercise of concurrent rights in a cooperative and coordinated manner. All levels of government work to make the State function, either separately or together on the basis of cooperation, autonomy and co-existence. There is no single universally accepted model of federalism. It is dynamic and evolves continuously based on country context within a basic democratic framework.

Administrative Federalism

Federalism can be categorized into political, fiscal, and administrative federalism. Political federalism leads fiscal and administrative federalism. Likewise, administrative federalism can be regarded as an organizational form and expertise to exercise administrative and fiscal powers according to the constitution, law and procedure. Fund and functions are of no use without functionaries. For this reason, administrative federalism is the actual, legitimate, and institutionalized implementing body that acts according to political mandates. David S. Rubenstein says: "Federal agencies are the main players in federalism. How these agencies work and how their specified functions are best performed are crucial questions in federalism (Rubenstein, 2015)." The nature of administrative federalism is determined by politics. In addition, it is influenced by the dimensions

of separation of powers determined by the constitution and federal law. It promotes the participatory roles of all tiers together with balance of power within the different tiers.

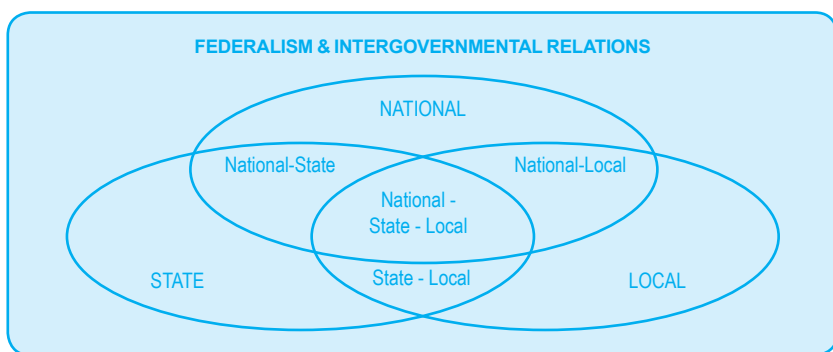
Dimensions of Administrative Federalism

Administrative federalism is adopted as a structure of the governance system. Work performance and competence need to be coordinated amidst institutional plurality. There is a division of even smaller works within the corresponding agencies of each tier, wherein lies functional and institutional plurality. Therefore, it is absolutely important to pay attention to functional and institutional design. The division of work between complexly structured different administrative units and processes and the nature of government service themselves are likely to pose problems to politically elected officials. A culture of professionalism and expertise must be cultivated for public administration and service delivery.

There are internal and external control mechanisms in administrative federalism. Legal principles, legal apparatuses, legal plurality and institutional arrangements are important for work performance. Robert Schwger says administrative federalism is always in favor of decentralization, and adds that the federal level sets quality and standards and the local level decides which projects are carried out (Schwger, 1999). In our planning process, however, past legacy, attitudes and behavior still resurface.

Administrative federalism fosters competition between the different tiers. This increases competence in public affairs and help in service delivery as desired by the people. The interrelations between political and administrative culture help in enhancing service delivery. Administrative federalism prevails at all levels of federalism because it is also interlinked with inter-governmental relations.

As shown below, administrative federalism has interrelations with level-wise administrative units. Its success depends on creating a collaborative work environment and willingness for coordination at all levels. This mantra of success is applicable in the context of Nepal as well.



Administrative Federalism in Nepal

Article 56 of the Constitution of Nepal 2015 has provisioned federal, provinces and local levels as key power structures of the country. These three tiers of government use the power of the state according to constitutional and legal provisions. Exclusive, concurrent, and residual powers have been constitutionally divided between federal, province and local levels. According to the Unbundling Report 2017 federal, province and the local levels will have 873, 567 and 355 work responsibilities respectively. Article 57 of the Constitution of Nepal specifically provides for state power to be used through the laws made by all three levels according to the constitution (The Government of Nepal, 2017).

Nepal's federalism is based on holding together or decentralization of power and not on the principle of coming together. Therefore, the personnel of the previous unitary system also have a vital role as the country adopts administrative federalism. For this purpose, Article 302 of the constitution has spelled out the formation and use of government service at province and local levels. Accordingly, the Government of Nepal will make necessary arrangements to provide service delivery at province and local levels.¹ According to the constitutional provision of adjusting civil servants who were in government service at the time of the commencement of the constitution, the task of personnel adjustment

¹ Please see, The Government of Nepal, 2015. *The Constitution of Nepal*. 2015, Kathmandu, Nepal Government).

(to the federal, state and local level) has been completed in accordance with the Employees Adjustment Act 2019. Likewise, Section 11 of the Local Government Operation Act 2017 has a provision for administrative structuring and personnel management, which includes offices, positions for staff members, and subject-wise sections and divisions (Government of Nepal, 2017). This Act has recognized the local level as the basis of administrative federalism. In practice, however, the federal level is more powerful with power holding attitude which shows our administrative federalism is top-down.

Since the constitution provides for all three tiers 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, system of work, and the process and procedures of the federal, province and local levels against the big-bang approach of decentralization adopted by the constitution.

Federalism Implementation and Management of Human Resources

The preamble of the Constitution of Nepal 2015 states that people's aspirations for sustainable 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, province and local levels will have to manage human resources by paying special attention to the constitution and 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. Such issues need to be learned as we move forward. Several questions have been raised on the way federalism has been implemented so far. They are:

2 Please see, The Government of Nepal, 2015. *The Constitution of Nepal*. 2015, Kathmandu, Nepal Government.

Implementation of Federalism

1. Role of political leadership on mentoring the implementation of federalism and culture of cooperation.
2. Interrelations between different levels of the government, situation of cooperation, coordination, co-existence and transforming administrative culture through adjustment of personnel.
3. Separation of powers at all the tiers and effective checks and balances. Policy coordination, interrelations and implementation. Level-wise relations in planning process (integration, categorization of projects) and autonomy.
4. Implementation of overlapping exclusive powers relating to health, education, water resources etc.
5. Methods of using concurrent powers and the accountability thereof.
6. Interrelations between state and local governments and working procedures.
7. Ownership of federal ministries, leadership dynamism, coordination, and role delineation; coordination between and accountability of ministers and secretaries.
8. Management of fiscal resources and use of natural resources.
9. Distribution of income, poverty reduction and targeted programs.
10. Collaboration on disaster management and localizing global initiatives like sustainable development and climate change adaptation.
11. Revenue policy, collection, distribution and its credible use.
12. Inclusive democracy, transparency, and political accountability.
13. Institutional capability of bodies like Inter-Provincial Coordination Council, National Natural Resources and Fiscal Commission, Intergovernmental Fiscal Council, Province Coordination Council, Policy Research Academy, National Planning Commissions, and other Constitutional Commissions
14. Lack of use of political, administrative and technical professionalism according to the needs of federalism. In each tier and every federal

unit, there is big professional gap and comprehensive plans to narrow down the gap.

15. Elites support to federalism.

Human Resources Management

Some of the major issues on human resource management in the federal set-up are as follows.

1. Administrative restructuring and the management of human resources have not been done according to Unbundling Report 2017.
2. There isn't proper balance between expenditure assignments, 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 is the primary actor (designer), because of the prevalent federal-oriented mindset, the federal level is likely top-heavy, while the provinces are lighter and the local tier more diverse.
5. Although there has been an adjustment of personnel in practice, psychological problems still linger. There is no balance between available human resources and the required skill. People's representatives (at the province and local level) complain there is a mismatch of human resources.
6. While determining institutional design for administrative federalism, matching of the likely existing structure and practice of existing human resource management appears to have an upper hand.
7. Instead of full commitment of personnel to the problems of plurality in law, adherence to them, maintaining coordination, and adapting to organizational structure and work performance, they appear to be widely self-centered and focused on maintaining organizational status quo and unitary working styles.
8. There is a lack of level-wise integrated designs and plans of action for reforms in administration and good governance.

9. Development planning and integrated human resources management plans have not been formulated to address delivery deficits of the past. There is an acute shortage of technical human resources at rural municipality, municipality and the province, whereas the administrative positions at the federal level are on the rise.
10. Rather than identifying budgetary need of levels of government for carrying out functions assigned to them (as per the Constitution) and distributing resources in regards to organization, human resources, service delivery and development, there is no change in the unitary system of allocation and human resource management.
11. There is a lack of balance between coordination in work performance, facilitation, institutional development, and competency.
12. The province and local level also appear to have adopted past practices instead of building suitable functional organizations, managing human resources and implementing administrative federalism. Instead of looking for technical human resources, appointing generalists on contractual basis is on the rise because that is the easier option.
13. Works are being performed to suit transitional management, instead of thinking 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 province and local levels to make new appointments, hire advisors and coordinators, and constitute commissions in the traditional way. Moreover, instead of mobilizing existing organizations and human resources, provinces are inclined towards constituting new organizations.
15. There are unanswered questions relating to human resources management - as to how career development and different categories of personnel could be integrated at provinces and local levels and how those levels could be made more efficient and effective.
16. 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 and be non-responsive.

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 competence of staff members and paying attention towards technical/legal/procedural aspects of these matters.
18. By imitating the federal level, the province and local levels have not been able to pay attention to the structures of technical organizations, in providing incentives and mobilizing available human resources.
19. Lower levels complain the federal level does not respect their aspirations. It does not increase public procurement capability, simplify procedures, and is inconsiderate to the framing of laws, constituting organizations and selecting programs.
20. As public-private partnership (PPP) has not been effective, the potential of the private sector has not been exploited.
21. Human resources management at province and local level is complicated because the provinces' Public Service Commissions are not functional and pro-active.

Suggestions and Way Forward

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

Implementation of Federalism

1. Create political understanding, political leadership, congenial atmosphere and a strong political accountability. Determining level-wise political responsibility and accountability, conducting regular reviews and focusing on reform.
2. Devolve powers on the basis of schedules of the constitution and unbundling report.
3. Strengthen inter-governmental relations for effectiveness.
4. Develop models, bases and standards of using concurrent power.

5. Participation, partnership, and coordination in formulating federal policy.
6. Instead of supply-based model, specific and national programs should be demand-based
7. Make separation of powers and tier-wise checks and balance more effective.
8. Design and implement a federal monitoring mechanism (who and where to monitor needs to be made clear).
9. A full-fledged fiscal commission and its effectiveness is the soul of fiscal federalism.
10. Integrate of planning (system), coordination and the classification of projects.
11. Formulate a comprehensive work plan for the implementation of federalism.
12. Make the federalism-oriented role of Rastriya Sabha (Upper House) more effective.
13. Adopt a long-term plan and economic method for organizational structuring and human resources management.
14. Prepare revenue reform plans and coordinate for its implementation.
15. Coordinate in disaster management and climate change adaptation.
16. Find and use alternative method for service delivery.
17. Need for management of growing populist programs and distribution at different levels with focus on sustainable results and realism

Management of Human Resources

1. Review, modify and adjust the administrative organizational structure to appropriate size and number.
2. Conduct human resource management and utilization analysis, manage level-wise work performance as per the Unbundling Report 2017.

3. Smarten organizations with a multi-skilled staff.
4. End transitional arrangements of the federal ministry in tune to the constitution.
5. Pay special attention to the effectiveness of province public service commission.
6. Plan and implement integrated administrative reforms and good governance programs.
7. Use information and communications technology, and automation in service delivery.
8. Set ceilings and strict adherences to administrative expenses.
9. Coordinate work performance through the adoption of alternative methods rather than relying on plurality of organizations.
10. Evaluate personnel's work performance, introduce incentive systems and career development plans. Remove impunity to wrongdoers. Reward for good work performance.
11. Form job descriptions, accountability standards and benchmarks for work performance of politically appointed officials.
12. Manage and monitor the whole fiscal system on the basis of expenditure needs assessment.
13. Build service delivery and competency-oriented organizational structures, working culture and procedures.
14. Manage competent people rather than relying on nepotism. There are instances from across the world about cases of being let down by such people.
15. Formulate and implement capacity development plans and attract competent people.
16. Adopt public private partnerships (PPP) for local economic development by utilizing the potential of local resources. Use strong aspects of the private sector.

17. Prepare and implement administrative structures, human resources management systems and working procedures in view of province, local and the federal levels. Adopt a working culture that stops making and implementing *ad hoc* decisions and plans.
18. Determine and set benchmarks for commitment, willingness and accountability of bureaucracy with regards to implementation of policies, laws, working procedures and standards made at the political level. Implement a system of rewards and punishments.
19. Coordinate and implement administrative reform and human resources development by building an active bureaucracy to carry out its responsibilities.
20. Demarcate powers and responsibilities between people's representatives and bureaucracy at all levels, and implement it.

Conclusion

The expanded transitional period has come to an end after the constitution was promulgated and the federalism was implemented in the country. Through tier-wise division of powers and organizational structuring, political, fiscal, and administrative federalism are nearer to the people today. The local governments are transformed into strong governance units through the restructuring of their preceding local bodies. Likewise, federalism as the laboratory of democracy has become true through democratic practices following elections for all three tiers of the government. It now appears that there is competition in the political and administrative spheres across all levels. 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 to use a governance system that will make both the political and administrative sector more responsible, accountable, and active in tandem with 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 exercise federalism

according to the constitution and the priorities of the people, political competency, administrative expertise, and social harmony need to be ably combined. The aspirations envisioned in the constitution can be fulfilled and shortcomings overcome if responsible officials and stakeholders sincerely implement federalism through good working practices.

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