

EXPERIENCES IN BUILDING FEDERALISM: REFERENCE OF NEPAL AND OTHER FEDERAL COUNTRIES

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ABSTRACT

Unitary and federal are the main systems of governance; however, there are other systems of governments as well in modern politics. Some of the systems of politics have been changed due to the immediate needs of the country and the desire of the political leadership. Actually, the basis of a modern nation state is the monarchy and the unitary system of governance. Gradually, new state systems and systems of government have emerged due to the will of the people and the desire for the democracy. The first modern federal state of America was created out of its own immediate needs. With the development of time, some federal states have been formed. Lately, Nepal has also adopted the federal system of government in its place of the long-standing unitary system of government. In this article, by studying the basis of the formation of federalism in the selected countries such as United States, Ethiopia, Germany, India and Switzerland an attempt has been made to address the issue; 'Are there any justifications for the formation of federalism in Nepal?'. In addition, effort has been made to find the basis for the construction of federalism in those countries and the basis for the structure of federalism in Nepal.

KEYWORDS: *Constitution, Federalism, Governance, Need, System*

INTRODUCTION

In modern politics, there are different types of governance systems and forms. In those systems, federalism is also a form of governance. The unitary system controls the power of the state by devolution it from top to bottom on the basis of law, whereas in federalism, the power of the state is constitutionally dividing to regulate by the lower organs. Therefore, federalism is understood as a kind of system of governing by dividing the statutory power of the state on a constitutional basis. There has been long history of division of power in the systems of government. Almond, Powell, Strom, & Dalton (2004) stated that;

In modern politics, this subject has to be link as far as Montesquieu and John Locke. From the beginning of the nineteenth and early twentieth centuries, two practices appeared in political theory. The United Kingdom used the parliamentary system of government, while the United States used the presidential system. (p. 104)

Some federal states have been formed for the power to governing issues and political participation as well as some crucial national needs.

The United States is the first country to adopt modern federalism. Although it is the leader of modern federalism in presidential system, but not all federal countries have a presidential system. "Federalism has no specific principle and no universally accepted nature", (Ray, 1999, p. 150). That is why the countries have adopted by their own methods. However, there may be unavoidable and necessary reasons for every country to form an association. Currently, 28 countries in the world have adopted federalism. They may have their own obligations to adopt federalism in those countries. In this context, five countries have been selected for the study, such as the United States, Ethiopia, Germany, India and Switzerland along with Nepal. These countries are chosen on the basis of ethnicity, geography, population and construction. The context of the formation of Nepal's federalism has become the subject of the research. The basis for the establishment of federalism in Nepal and the grounds for the establishment of federalism in the countries mentioned have been discussed in this article.

The will of the people of and the current situation of the country play a very important role in determining the governance system. In the same way, some issues have played an important role in the formation of federalism. This article also has some study problems which are focused on the following research questions:

- Were obligatory or vigilant conditions on the part of the federal countries the main reason for building federalism?
- Was it necessary for Nepal to implement federalism instead of unitary system?

METHODOLOGY

Was federal system inevitable and necessary system instead of a unitary system in Nepal or not? This is the main objective of the study. In addition, what were the reasons for the implementation of federal system in the five mentioned countries? In that context, the issue of the establishment of federalism in Nepal has been discussed and analysed about justifications for the formation of federalism. The effort of the study has been made to find the basis for the construction of federalism in those countries and the basis for the structure of federalism in Nepal. Some significant characteristics play an important role in the restructuring process for the nation. This study has analysed those features which were in obligatory and vigilant condition for building a federal state. Some facts of the country have played an important role in state building. Attempts have been made to discuss Nepal's federalism in the context of the countries mentioned. In the study, descriptive and analytical approaches are applied. Only secondary data were used to analyse for the descriptive method. Different information based on the theoretical review of federal systems is used. Identification, dependent variables, and other methodological parts are consulted in its appropriate conditions.

DISCUSSIONS

Today, scholars of political science have come out with clever statements about federalism and sovereignty. Because some questions about federalism and sovereignty are still unanswered. "In the context of sovereignty and federalism, Jean Bodin's old theory of sovereignty has been reinterpreted. Today, federalism is seen as a measure between the confederation and the unitary system", (Merkl, 1975, p. 331). This is a topic that can be discussed and researched differently. The article seeks to discuss the possible conditions for the formation of federalism in some of the countries that have adopted federalism, such as the United States, Ethiopia, Germany, India and Switzerland along with Nepal. In federalism, there is not any compulsory principle of construction. However, some natural rules are present. Even in federalism, there are some similarities. A written constitution, at least a two-tier constitutional government, and constitutional certainty about the rights of those governments are indispensable conditions for all forms of federalism.

If we look at the political history of the world, there are countries that have adopted federalism from a unitary state, and on the other hand, there are many countries that have adopted federalism after the dissolution of federalism. "Federalism is certainly no miracle cure and may not be appropriate for all countries and all situations. There are successful examples of federal states, but also a long list of failed federations" (Topperwien, 2009, p. 80). The models of federalism could be success by the situation which has been depends upon the state's values, consent of people, and level of political desired. Even, the situation will be pre-favourable for the each state to adopt federalism on the basis of own legal and political solution. This may also be the subject of a separate study.Regarding the federal system of Nepal, there was no discussion and debate on advanced decentralization before the implementation of federal system. This topic has been kept secret. On the other hand, the issue of federalism or unitary system with decentralization was not even discussed. This issue was also kept secret. These questions will also be the strong subject of separate studies.

Changes of state governances can take place according to the needs of the country and the will of the people. While studying the relation of federalism implemented in the world, it is found that federalism has become indispensable due to some inevitable issues. The issue of federalism in Nepal is linked to the Maoist movement and the drafting of a new constitution. The constitution, which was drafted in conjunction with the management of the Maoist movement in Nepal, replaced the unitary state with a long history, though the Interim Constitution 2007 had designed to bring the Maoists into the mainstream. In this article, an attempt has been made to research to find why it was necessary to implement federalism instead of unitary system in Nepal like other countries that had to implement solidarity were inevitable and compelled. In this case, the issues that are seen as questions in the research, the binding issues of federalism in the countries mentioned and the issues related to that in Nepal have been discussed as follows.

The United States of America

The first history of federalism has been made by drafting constitution of the United States America. It had obliged to implement the federal system. There was no basis for the USA to adopt any other arrangement of state governance system than that. This system of the United States has a history of nearly 250 years. In modern politics, with making a new Constitution in Philadelphia it has been accompanied by three new inventions. Among those new inventions is the United States a new country, modern federalism, and a presidential system. "The United States had adopted federalism as an organized principle for the formation of the government in 1787, following the Convention of 1777", (Watts, 2008, p. 29). All of these new constitutional features are America's own domestic product.

The first American continental congress of Philadelphia in 1774 marked the beginning of today's America. The issue of British taxation has caused the disgust among Americans. After that, there were many such gatherings. "On June 7, 1776, just as the unrest in the United States began, Richard Lee of Virginia had called for a proclamation of independence", (Bhagawan & Bhushan, 1988, p. 90). That meeting's proposal was submitted for approval, becoming the first document of the American Confederation. During the ten years that followed, there were many disruptions in the Confederacy. After that, today's constitution and system of governance have been created. In fact, American federalism is an outcome of American confederation. The new states and federation has followed the model of inter-governmental relation but not dominion theory of empire when it was being reorganized. "Following the American Revolution the newly independent states established a confederation in 1781. Its deficiencies, however, led to its transformation in 1789, following the Philadelphia convention of 1787, in to the first modern federation", (Watts, 2008, p. 3). There was not the

issue to establish an association of federal structure and was not a long question and great effort during the formalizing time. It was a new discover by following the American Revolution for the necessity of sovereign political identity.

The draft of confederation law in the United States did not control all the participating states at that time. In fact, that acceptance was unstable and weak. Bhagawan & Bhushan (1988) Wrote that;

In 1787, the Congress convened in Annapolis. At the same meeting, Alexander Hamilton proposed a new constitution. In 1787, a meeting of 12 states in Philadelphia agreed to draft a constitution, and after 12 weeks of discussions, the draft constitution was drafted. The draft was initially signed by 13 states. (p. 6)

Looking at the history of the United States, it is clear that all the states in the territory were not only independent of the British colony but were also obliged to be independent. Due to this compelling situation, the unification of the states without merger has created a new kind of federalism.

Federal Democratic Republic of Ethiopia

Federal democratic republic of Ethiopia is a multi-ethnic and religious federal parliamentary country. In Ethiopia, which has a large population, a federal system has been adopted by forming units on the basis of ethnicity. Following the peoples' revolution of democratic front federal democratic Ethiopia was established in 1995. Ethiopian federation was designed with the goal of accommodating a high degree of ethnic and religious diversity.

Many powers are developed to the region states to accommodate the many ethnicities and significant Muslim and Christian population. Although the country's official language is Amharic, all the regions are able to determine their own language, to accommodate the more than 80 languages and 200 dialects spoken by Ethiopia's citizen. Indeed with the aim of accommodating its ethnic diversity, Ethiopia has one of few constitutions that outline a right of sub national units to secede from the federation in addition to outline a process for ethnic groups within existing states to form new region. (Watts, 2008, p. 48)

In fact Ethiopia is an ethnically based federal country. Now it has nine predominantly ethnic regions and two chartered cities. Ethiopia is experiment ethnic federalism with faced crucial challenges from the highest level of poverty and rainfall-based Economy. Ethiopia's insight challenge is ethnical diversity. "Ethiopia has long been unstable because of its long history of ethnic conflict. Therefore, the constitution of 1994 has adopted federal system by forming units on the basis of ethnicity" (Ethiopia government portal, 2020-09-16). In fact, in the unitary system, Ethiopia, which had become very unstable due to various ethnic groups, had reached a point where national integrity was not maintained. That is why federalism has been used there to manage all these challenges.

Democratic federal state structure was established, comprising nine states that are delineated on the basis of the settlement patterns, identity, language, and consent of the people concerned. The newly named Federal Democratic Republic of Ethiopia has two houses; the Council of the People's Representatives (547 seats), which is the highest authority of the federal government; and the Council of Federation (155 seats), which has the power to interpret the Constitution. The position of the head of state is purely honorary, while executive power is held by the prime minister. It is the prime minister, elected from among the members of the Council of People's Representatives, who names the government ministers, members of the Central High Court, and the auditor general. He also monitors the execution of laws and decisions, presides over the Council of Ministers, controls the armed forces, and sets Ethiopia's foreign

policy', (<http://www.nationsencyclopedia.com/ethiopia.2020/09/23>). Formally it has adapted parliamentary democratic governing system. Prime minister is the head of the state and exercising the executive power by government. Federalism has been adopted for ethnic management in Ethiopia, which has been in instability for a long time. It was inevitable to adopt a federal system there. The federal system of Ethiopia depends on rain-fall economy which is still in the testing phase.

Federal Republic of Germany

Germany is a geographical glory of European continent. In Germany, there have many explorer paradise diversities with its historic political impotence. Actually, Germany is a truly beautiful and capable country, it has a history of being discussed and disputed politically. Germany is divided into two parts after the World War II, may have played a role in such important reasons. After the unification of Germany in 1990, it has adopted a federal regime. Despite its American character, it has a parliamentary system of government. According to Wheare (1963);

The constitution of the German empire of 1871-1918 is often described as a federal. It also was formed upon a principle which is distinct from that embodied in constitution of the United States. The empire of 1871 was an association of twenty-five states... if the Austro- Hungarian Empire and the German empire were organized upon the principle of dependence of the general upon the regional government. Federalism of Germany has guided from German Empire. It does not need any argument to show that this principle was clearly embodied in the League of Nations. Indeed it is clear from a study of covenant of the league and forms its practice that as a league states not a league of nations. (p. 6)

Germany has obliged to adopt federal system of earlier experience of the German Empire. It has not required any pre-condition to adopt new federal system. Modern Germany is as a union of pre-governing states. Till now, there are executing several rules of 'Basic Law' at the time of Empire.

Politics of Germany is a federal parliamentary representative democratic republic where by the Chancellor is the head of government, and of a plurality multiparty system. Federal legislative power is vested in the parliament (Bundestag) and Bundesrat as the representation of the regional states. Since 1949 the party system has been dominated by the Christian Democratic Union and the social Democratic party of Germany. The Judiciary of German is Independent of executive and legislature. The political systems laid out the constitution, Basic Law, which remained in effect with minor amendments after 1990's German reunification (Gyawali & Raj, 2010, p. 145). Bundesrat is a main institution of Landers of reunified Germany. There is symmetrical power to Lander. They (Federal and Lander) are formed by parliamentary system.

The bicameral legislature (the federal parliament) consists of a federal council (Bundesrat) and a federal diet (Bundestag). Members of the Bundestag are elected for four-year terms by universal, free, and secret ballot, and may be re-elected; voters and candidates must be at least 18 years of age. The Bundestag had 497 voting deputies in 1987; 22 nonvoting deputies represented West Berlin. Following unification, Bundestag membership was raised to 662 deputies; as of 2003 it stood at 603. The Bundesrat, which has absolute veto power over legislation affecting the provinces, consists of 69 representatives appointed by the provincial governments according to the population of each province. Disagreements between the two chambers are handled by a conciliating committee, (<http://www.nationsencyclopedia.com/Europe/Germany.2020/09/28>). The head of the Government in Germany is called Chancellor. The Chancellor and cabinet are responsible to the Bundestag. Bundestag is directly elected represents of people and Bundesrat represents the Lander.

Following the unification of Germany in 1990, the revised constitution of 1949 came into force. "After 1648, German-speaking Europe was divided into hundreds of pieces. Countries such as Persia and Austria were coordinated at the local level. The Vienna Convention of 1840 united forty Union states into today's Germany" (Eric, 1943). Due to the history of Germany, its linguistic diversity, the nature of the connected and separated states, Germany never seems to be of a unitary nature. As a result, the federal system has been implemented in Germany in recent times. It will be difficult to maintain stability in any system other than the federal system.

The Republic of India

World largest federal democratic republic state India is a seventh largest in terms of area and most-populous country. Constantly India is being as a Federal country due to its in cultural and geographical diversity. Due to the language, culture and geography of India, it has never been seen as unitary. The constitution of modern India has adopted a federal system. But some politicians do not consider India a fully allied federal system. That is why the federalism there is called semi-federalism. "The Constitution of the republic of India is quasi- federal only, and I do not propose, as I have said already, to discuss it as an example of a federal constitution, but in one respect at least it is of interest and that is the way in which it dealt with division of powers" (Wheare, 1963, p. 77). Indian Constitution 1950 encloses the certain lists of legislative power. There are fixed legislative power under the union and regional states, where are some foundations of flexibility. Regional government cannot rule continue in conflict time because, supremacy of Presidency will be executed. The history of India and the nature of the country as a whole may be the main reason for that. Singh (2009) stated that;

Structurally federalism in India operates broadly at three levels, namely Union-State level, Interstate level and intra state level. At the first level we find two executive sets of relationship-one, generic and general relationship between the centre and the state, and two, the constitutional of India does provides for the union having executive and special relationship with some states with a view to promote and to accommodate ethno cultural perspective with the mould and measures of Indian federalism. At the second level only one set of relationship between two states exists. ...At the intra State level, we find two or three sets of federal relationship- one the state and regional autonomous; two between regional council the Panchayat Rajya Institutions and lastly between state and Panchayati Institutions. (p. 9)

Constitutionally, Indian federal system has divided vertically in three levels, Union, regional states and local autonomous units. There have been providing certain authority executing power.

The nature of federalism of India is not complete itself. Indian federal system is a quasi-type of federalism because; union has more power to govern than regional units. Special relationship is stated there between union, regional states and local autonomous units.

The Indian constitution is heir two different ideological legacies, in fact multiple. The founding myths of the Indian constitution in terms of its genesis are two-1, legal transfer of power by British Parliament to the Constituent Assembly of Indian, and 2, 'We people of India...' as the source in the political power invoked in the Preamble to Constitution. (Saxena, 2011, p. xxv)

Actually, there are controversy between parliamentary sovereignty and popular sovereignty. In fact, after the independence of 1950, the constitution adopted federalism. The issue of unity in the sovereignty seen after independence is

also an important reason for the implementation of federalism. Even today, India's diversity is preserved by its federal system.

The Swiss Confederation

Switzerland has been a country of federal nature since the thirteenth century, long before the beginning of the state nation. Although modern federalism is the first time the United States has implemented federalism since the constitution was drafted, the oldest country of federalism is Switzerland. Switzerland's official name is until today *Confoederatio Helvetica*, or Confederation of Switzerland. The name has only historical significance and is not descriptive of the actual state organization. In, 1291, Switzerland was created as a confederation of independent states. The founding act was the signing of a treaty by three cantons (formerly called Orte), mainly for purposes of defence against outside enemies and arbitration and included with new treaties so that, over time, a complex treaty system developed. With industrialization and nation building in the surrounding states, con-federal arrangements became too inflexible and disputes over the future organization of the union started. These states culminated in a short civil war in 1847 between the conservative Catholics and more progressive Protestants (Topperwien, 2009, p. 84). This fact shows that federalism of Switzerland is a historical country built from confederation.

The Swiss Constitution of 1848 follows the American constitution in many respects. In two matters it contains a modification in the strict application of federal principle. First of all it provides that the upper house of the legislature-the council of stats shall be composed of two representatives from each of the cantons and those representatives shall be paid by their cantons and their period of office and method of lection shall be determined by their cantons.... The second modification upon the strict application of the federal principle in the Swiss Constitution tends in direction of Unitarianism (Wheare, 1963, p. 16). Swiss constitution has protected to the Swiss cantons. Some principles of American Constitution are flowed by Swiss federalism. Representatives of upper house and inflexible character of federal systems are applied there.

The Swiss federation is notable for its significant degree of linguistics and religious diversity, although the German Swiss continue to dominate in overall numbers and economic power. Its three official languages (German, French, and Italian; a fourth Roman is recognized as a 'national language') and two dominate faiths. However, there is in practice a high degree of decentralization because the constitution leaves the federal government highly dependent upon the autonomous cantons for the administration of a large proportion of its legislation (Watts, 2008, p. 31). The Swiss federation has adapted more democratic constitution. The regional and local units be able to appreciate in their right to self-government in federal unites and confine levels. Other hand Swiss constitution has become a symbol of uphold diversity.

The preamble of Swiss Constitution of 1999 relies on a concept that, if diversity in unity. '... We the Swiss People and the cantons...are determined to live our diversity in unity respecting one another'. Article 2 (purpose) goes even further by stating that 'the Swiss confederation... shall promote... the cultural diversity', (Topperwien, 2009, p. 86). Swiss constitution has consisted existing pre-constitutional diversity. Switzerland is the country that protected pre-constrained diversity. Switzerland has acknowledged that collective governing system is different from any other country in the world. This country, which has always carried a federal character, still retains the old special rights of its cantons. Switzerland, which has always adhered to the principles of federalism, still has a direct election system there.

Federalism and Nepal

The Maoist insurgency, which was born out of dissatisfaction with the government during the second democratic period in Nepal, was the cause of state restructuring. Behind the Maoist movement and the political changes in the country, it has been said that the power of outside the country has an important role to play. This topic should be the subject of in-depth research. It is a fact that when the current constitution was drafted in Nepal, there was no public opinion on secularism, federalism and monarchy. Even today, raising this issue is not considered good by some. The question is whether it can be democratic or not. Was the democratic process completed in that work or not? The answer to the question has not come from anywhere. Since these are related to empirical issues and big political events, so that there is a lot of controversy and discussions.

After the third amendment of Interim Constitution 2007, Nepal has promised formally a 'federal democratic republic' country. Although, the first amendment of Interim Constitution had declared the forward restructure of Nepal shall be made with inclusive, democratic and federal structure. Even the demand of federalism in Nepal was not an agenda of Maoist people's war and has not become a strength slogan of people's movement 2006. It was not strength point till the people's movement II in Nepal. Also, Interim constitution did not feel necessary to include forward looking federal restructure of Nepal.

Federalism is a kind of state formation. "Federal idea is now more popular internationally than any time in history, this suggests that state builders should be wary of rejecting the advantages that so many elsewhere see in federal solutions" (Watts, 2008, p. 7). The production of federalism there are many preparative stages that have developed. Early history of federalism is seeing that two kinds of procedure are followed as Federalism by de-aggregation and federalism by aggregation. De-aggregation process is a kind of procedure that character is centrifugal trend and federalism by aggregation is another kind of procedure which character is centripetal trend. In the modern era of the state nations, American federalism is the first federal state among the federal states. The American federalism had been made by centripetal process. Nepal has restructured in federalism by centrifugal process.

The idea of federal structure state in Nepal has originated to send away discriminate character of unification nature. That formation base is on religion and cast system. "It was surprising to observe that such cast based politics could not make a major break with the past in the post Rana period also. The end of Rana rule in 1951 and the drawn of multiparty democracy could not bring about a qualitative change in the power structure", (Baral, 2009, p. 26). In the changing contest after restoration of democracy, some ethnic groups were raised for demanding federal structure Nepal; though Terai Congress had demanded a 'Terai autonomous state' after 1950. National Janamukti party, Nepal Rastriya Janjati party as well as other different ethnic organizations had demanded for the federal structure State just after the movement of 1990 (Khanal, 2009, p. 116).

But the claim of federal structure gradually had gone on shadow. After the people movement second, monarchy has dissolved. Maoist has suffered that Nepal will develop behind the monarch. After the circumstances, demand for applying of federal system in republic Nepal had emerged. Aspiration of people movement of 2007 was able to break up absolute monarchy and establish new democratic Nepal. The Constituent Assembly, which had sought permission to draft the constitution, had overthrown the monarchy, while the issue of monarchy was not raised in any of the manifestos of the political parties participating in the Constituent Assembly. The constitution, 2007 had changed on federal Nepal by

strength of Madhesh movement. Although Maoist has applied a kind of local distinctive autonomous government during its movement time as well as its demand is being now. Of course, the demand of federalism has evolved due to Maoist movement and Madhesh andolan even if, Terai congress and other some ethnic organization had begun to raise voice for the federal structure of state after the people's movement of 1950. But they could not continue in their place until the right time. The issue of federal structure in Nepal has not become a long question and great effort. In other hand it is saying that the demand of federal system is not national spirit and people's voice which can be unsafe to nationality, regionalism, social order and national unity as well as it is saying that federal system is not an only alternative way for improvement too.

Federalism is one the form of state organization. Quite a number of countries with multi-ethnic, multi-religious and multicultural societies regard federalism, or aspects of it, as an appropriate element of state organization. Throughout history people have been concerned with the question: What is a good state? In other words, how should a state be structured or governed? The answer to this question varies greatly depending on the time and the context in which the question is asked. Theorist, politicians and revolutionaries have all answered this question, sometimes at fundamentally different answers. (Topperwien, 2009, p. 79)

This question is still relevant in Nepal today. Because the role of any factor such as the impact of the Great War, the revolt of ethnicity or regional disintegration is not seen in the state restructuring of Nepal. On the other hand, Nepal is not a country with a large population and geography, nor does it have a history of any movement or demand for state restructuring. Due to the geographical structure and emotional unity of the society as well as the economic resources, it has become difficult to run this system and the voice that federalism should be abolished has become stronger. The history of the above mentioned countries and other federal countries shows that it is inevitable to implement federalism in those countries. But there is no inevitable reason to implement federalism in relation to Nepal.

CONCLUSIONS

Looking at the way of the formation of federalism, it is found that the federal state was formed to immediately maintain the national integrity or to preserve the existing integrity. Looking at the history of nation-building, it seems that the constitution has determined the system of government after a great war, internal conflict or when building a new nation. There are many examples in the history of the country of what kind of system of government to adopt and how to form a state system. The history of the country seems to have determined what kind of state to form a unitary or federal state. Countries like the USA, India, Switzerland, Germany, etc. have become the federal state due to their federal character since their history, while countries like Ethiopia, Spain and like other counties have adopted federalism in order to preserve their national unity. In the case of Nepal, there has been no demand for federalism. In the absence of such a federal history and without any challenge to the unitary system for national unity, it seems that the centrifugal federal system of Nepal has been implemented without a referendum. Due to this, there is a possibility of raising voice against it.

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