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Issues and Different Forms of Federal Systems: An Analytical Study

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Abstract

The study, titled “issue and challenge of federalism” provides and focus on the critical analysis of the federal systems. It explores their fundamental principle, comparative politics, and implications for governance and sustainability. The research identifies the principle and types of government. The objective of this research is to generate the political ideology based on the federal system and its base foundation and issues and challenges. The study highlights the factors of federalism such as state system. Federacy in term of methodological paradigm, the doctrinal method is applicable on the basis of its nature of data collection. The secondary data and information has been taken from the various scholarly works, based on, different forms of federal system based on its origin, design and jurisdiction and the types of government and its constitution. The findings reveal significant merits and demerits of federal systems. Federal systems are recognized for their ability to maintain rules and regulations across the entire country, ensuring consistency and simplifying governance. In contrast, federal systems distribute power between central and regional governments, promoting regional representation and flexibility but potentially leading to inefficiencies and conflicts over jurisdiction.

Keywords: Comparative politics, design, federalism, generate, jurisdiction

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Introduction

Federalism is a constitutional mechanism for dividing power between different levels of government. Federated units can enjoy substantial, constitutionally guaranteed autonomy over certain policy areas. Thus, federalism combines partial self-government with partial shared government (Elazar, 1987). Federal systems are usually associated with culturally diverse or territorially large countries. Notable examples of federal countries (or countries with federal like characteristics, sometimes referred to as ‘quasi-federations’) include Argentina, Belgium, Brazil, Canada, Germany, India, Malaysia, Nigeria, Pakistan, Spain, South Africa and the United States. For example, United States are Coming together and others country are holding together. Historically, small states that were confronted by common enemies or existential challenges would sometimes come together in unions, leagues or confederations that were bound together by a treaty or founding agreement. This would enable these states, without sacrificing autonomy in most aspects of domestic policy, to share certain powers and functions, particularly in relation to foreign affairs, defense and trade. In several respects, however, these early unions were more like today’s intergovernmental organizations than modern federal countries. Their nonfederal assemblies were conventions of delegates from the states, not truly national parliaments.

The United States, under the Articles of Confederation (1781–89), was initially such a loose union. Congress had no direct ability to levy taxes and was dependent upon the state governments to execute its decisions. In response to these shortcomings, the US Constitution created a new type of federation that was able to produce a more cohesive union while still respecting the reserved rights of the states in many domestic matters. Enacted in the name of ‘We the people’ (not ‘We the peoples’), this new Constitution was not a treaty between sovereign states but the constituent act or fundamental law of a new, composite, federal state. The federal government did not derive its powers from the states but directly from the people of the United States as a whole. Under it, US citizens would be subject to two overlapping authorities i.e. the federal and the state governments, each having direct legislative power in their respective constitutionally prescribed spheres of competence. This federal system have been directly derived. Through successive waves of democratization, federalism has spread around the world.

Federal systems can now be found in emerging and consolidated democracies; in common and civil-law jurisdictions; in countries with presidential, semi-presidential and parliamentary executives; and on every inhabited continent. As federalism has spread, and as the number of names by which federalism is known has grown, it has increasingly been used as a means by which an existing state can decentralize power and, as such, has become a tool for holding large or diverse countries together in the face of autonomist or secessionist pressures. For example, thus are two approaches to federalism: a ‘coming together’ federalism in which formerly independent countries unite into a federal state, and a ‘holding together’ federalism in which a formerly unitary state seeks a federal solution to the problems of scale and diversity (Elliot, 2017).

Methods

This study employs an analytical approach to federal systems of governance, relying primarily on secondary data. Authentic and credible sources, including books, scholarly articles, government reports, and census data, are systematically reviewed and analyzed. These resources provide a robust foundation for understanding the theoretical and practical distinctions of the federal systems, particularly in the context of Nepal. The study also incorporates insights from civil society, which plays a critical role as a watchdog of democracy and governance. Observations from civil society organizations are used to evaluate the functioning of federal democracy in Nepal. A library study supplements the secondary data analysis, with an extensive review of existing literature to capture diverse perspectives on the topic. This enables the identification of key themes, challenges, and implications associated with both governance systems. By critically examining these resources, the study aims to present a nuanced understanding of the two systems. It emphasizes the socio-political and administrative dynamics, offering insights into their respective strengths and weaknesses. This comprehensive approach ensures a well-rounded analysis of the federal governance frameworks.

Discussion and Results

Overview of Federalism is a system

Federalism is a system of government in which the same territory is controlled by three levels of government. The example of federal system is that where, power is shared by a powerful central government and states or provinces that are given considerable self-rule, usually through their own legislatures. Some areas of public life are under the control of the national government, and some areas are under control of the local governments. Federalism is a system of government in which the same territory is governed by two levels of authority. Both the national government and smaller political subdivisions, such as states or provinces, possess the power to make laws and maintain a certain degree of autonomy from one another (Khanal, 2017). Federal systems typically involve the sharing of power between a strong central government and regional governments that enjoy significant self-rule, often through their own legislatures. Examples of federal systems include the United States, Australia, and the Federal Republic of Germany.

A federal government divides power between a central national government and local state governments, which are interconnected through the national government. Some areas of public life fall under the jurisdiction of the central government, while others remain under the control of local governments. This division of responsibilities is a defining characteristic of federalism. Most of the studies on federalism centre on the legislative, financial and administrative relations between the Centre and the States (Khanal, 2021). Very little attention has been paid to the theory-building.

In this paper an attempt has been made to deal with certain theories of federalism. The paper deals with a conceptual analysis of federalism. Here in this research propose trying to focus on classical theory, origin theory and functional theory. In the modern period, the Constitution of the United States, of 1787, is treated as the first experiment in establishing a federal system of government. Subsequently, federalism as a mode of political organization was embodied in the Constitutions of the Switzerland, the Dominion of Canada and the Commonwealth of Australia and India. K.C. Wheare, a leading exponent of federalism conceded in 1945 that under pressure of war and economic crises the trend in existing federations was towards a concentration of central powers sufficient in some cases to threaten the federal principle (Benoit, 2003). A look at the remarkable array of constitutions, enacted and adopted since the end of World War II would show how federalism has been taken to as a means to political unity among the new nations in Europe, South America, Asia and Africa.

The growing popularity of federalism in recent years as a model of political organization, the survival of the older federations through the challenges posed by changing circumstances like economic crisis and global wars, Globalization and International terrorism and the launching of functional federalism provide a strong justification for a re-examination of the various approaches to the definition of federalism, and analysis of the federal political system. Attempts to explain the concept of federalism have given rise chiefly to three categories of theories of federalism (Teresa, 1997).

The classical theory of federal System

The classical federalism is the route of many third world countries that are federal in character. From the analysis it is crystal clear that, the two-tier government system and judicious autonomy of these two governments are the essential characteristics of any federal government. A careful management of autonomy of regional government and the realization of interdependence between national and regional government by both is the main essence of classical federalism.

The origin theory of federal System

The origin theory of federalism explains the circumstances favorable to the establishment of a federal system, and which there by seeks to define federalism in terms of the circumstantial factors and forces. The origin theory can be sustained by three categories of definitions such as:

The Sociological theory

William Livingstone is recognized to be the first exponent of the sociological theory. The central thesis of the sociological theory is that it is the federal nature of society that gives birth to the federal political system. A federal society, according to Livingston, is one which contains within its fold elements of diversity. Usually, diversity is caused by differences of economic interests, religion, race, nationality, language, separation by great distances, and differences

in historical background, previous existence as independent states, or separate colonies and dissimilarity in social and political institutions. One important condition laid down by Livingston is that diversities must be territorially grouped, in order to result in the formation of a federal union. These diversities must not be too great to break up the community into independent groups. The sociological approach is also applied by Aaron Wildavsky who distinguished 'social federalism' from 'structural federalism'. He cites the Commonwealth of Australia as an example of structural federalism, a framework devised and adopted to retain the unity of the Australian people as a nation. To him the United States serves as a good example of "social federalism" adopted because of the social make-up of territorial, religious and other diversities in distinct geographical areas, corresponding roughly to boundaries of the State which united under the constitution.

The multiple-factor theory

Some scholars of federalism, Karl Deutsch in particular, have enunciated what may be called the multiple-factor theory in order to explain the origin of modern federations. This theory takes into account the necessary as well as the sufficient conditions of the birth of federal system.

Political Theory of federalism

The principal thesis of the political theory is that federalism is a solution to what is essentially and primarily a political problem. The solution is political because it centres around power and stands for the division of political power (as distinct from its concentration and monopolization). Hence, it is to be recognized that political motives play a dominant role in the origin of the federal systems (Palekar, 2006).

The functional theory of federal System

The origin theory of federalism tries to explain the causes responsible for the creation and sustenance of a federal system of government, but it fails to point out how federalism, despite its extinction, tries to persist in the face of new challenges that have raised their heads in the present century. To explain this gap, one should have resorted to the functional theory of federalism which has found a vigorous exposition in the hands of a number of modern researchers of federalism. The classical definition of federalism has given rise to the concept of "dual federalism" on the basis of the existence to two coordinate and independent levels of government in a federation. The advocates of "dual federalism" claim that in a truly federal system the central and regional governments must have their respective demarcated spheres of activity in which each can operate independently of the other, and that the maintenance of functional division between the two levels of government is the key to the maintenance of a genuine federal system. The theory of "dual federalism" has come in for severe criticism on several counts.

In fact, the emphasis has gradually shifted to their partnership, interaction, and interdependence in the performance of functions allocated to each of them. Dual federalism fails to stand the empirical test of relevance and continuing applicability to older federations, and to new experiments in federalism as well. In its applicability to the American federal system the theory of "dual federalism" has been rejected by M.J.C. Vile. They suggest that the traditional conception of federalism as involving a sharp demarcation of responsibilities between two independent sets of sovereignties has never worked in practice in the United States. According to them, in the nineteenth century, as in the twentieth century, administrative cooperation and political interdependence between federal and state government was a dominant characteristic of the American federal system, in spite of the formal division of powers of the constitution. (Palekar, 2006).

The redistributive programs reallocate societal resources from the 'haves' to the 'have nots'. These issues include social welfare programs for the elderly, the poor, the unemployed, single-parent families, and those who are ill. Jordan Peterson argued that the national government has primary responsibility for redistributive policies whereas state and local government mostly implement developmental policies. He reported that state and local government spends about twice as much as the federal government on developmental policies; the federal government, in contrast, spends about three times as much as state and local government on redistributive policies.

Atkeson and Partington, explained the implications for political communication of functional federalism: National-level politicians should emphasize in their work and communications with citizens a more heavily redistributive and international agenda. In contrast, state leaders and state elected officials should emphasize in their work and communications with citizens a more localized, state agenda oriented around developmental policies such as

education, taxes, infrastructure, and crime. (Atkeson and Partin, 2001) Similarly, Stein (1990) argued that Voters are aware of the differences in functional responsibilities assigned to local, state, and federal governments.

Specifically, they understand that responsibility for state economic conditions depends significantly on the actions of the national government and market factors. Unemployment, interest rates and economic growth are largely, if not exclusively, the domain and responsibility of the national government (Stein, 1990). Robert m. Stein reported public opinion poll data indicating that economic issues are thought by voters to be important reasons for senatorial, but not gubernatorial, vote choice. He also found in the 1982 elections that “Senatorial voting exhibits clear and unambiguous economic voting” evidence for economic voting in gubernatorial elections is less strong (Benoit, 2003).

Cooperative federal System

The classical federalism is the root of many federal nations in the Third World. Hence, the essential characteristic of federal government, the two-tier government system – federal and regional government, does exist in all these federations. Another equally important characteristic of federalism, the independence of these two levels of governments ceases to exist. As already noted, the popularity of planned economic development, asymmetry of socio-economic and political strengths of territorial groups, facilitated the evolution of strong, dominant national government and relatively weak and dependent regional governments. This does not mean that the process will culminate in a unitary state. Administratively the national government is dependent on regional governments for the implementation of its socio-economic programs. Besides, the regional representation in national legislature also makes the national government dependent on regional governments.

A careful consideration of these characteristics of federal systems in the newly independent Third World countries led RL Watts to describe these federations as ‘Co-operative Federalism’. He said, “Both constitutionally and politically..., the situation has in fact been one of mutual dependence of central and regional governments on each other (Preston, 1982). This interdependence has found expression in the proliferation of institutions and arrangements for consultations and cooperation between governments in a wide variety of fields, and in the special weight given to regional balance within the institutions of the central government itself.

Thus, by comparison with the older federations, a distinctive characteristic of the new federations has been the degree to which central and regional governments have been made more interdependent and their relations more flexible”. It is easy to designate a nation as federal or non-federal if we use the yardstick of classical federalism.

The concept of co-operative federalism highlights the feature of interdependence between national and regional governments. As the degree of this interdependence varies between countries, so are the federal constitutions, arrangements of federal institutions. Hence, the concept of co-operative federalism covers a range of federal nations which differ in the degree of interdependence between national and regional governments. This is a classical definition of ‘Federal Government’ was based on the characteristics of American federalism. He described most other federations as ‘quasi-federal’, for example, Canada, Australia and India. We know that Canada, though a country may be constitutionally quasi-federal, yet it may remain federal in practice. But the constitutions of almost all federal countries today emphasize interdependence between the two levels of governments. Hence, ‘co-operative federalism’ is conceptually more suitable than classical federalism in the analysis of present-day federations (Kenyon & Kincaid, 1991).

Different forms of federal system

In creating a federalist system the founders were reacting to both the British government and the Articles of Confederation. The Articles of Confederation represented an opposite form of government, a confederation, which has a weak central government and strong state governments. Federalism is a political-constitutional construction based on political, economic, socio-cultural and geographic reasons of the country concerned. And it is designed accordingly. Lately it is the product of power-conflict/bargaining by the marginalized elites. Broadly speaking they are designed as Territorial federalism, Non-territorial federalism Ethnic federalism and Identity-based federalism.

Territorial federal System

Territory is an essential element of a state irrespective of the type of states- federal or unitary. The underlying principle in this category of federalism is territorial autonomy of the constituent units is respected. In this category of

federalism, the territorial constellation of a given country is the key element behind the federal setup. It is not only the size, but also the regional variations determine the nature of the provinces (e.g. breakdown of Bihar and UP in India). In some cases, like in Nepal, provinces are carved out mainly by the administrative and economic considerations. Interest of power elites plays vital role in this type of federal design (Burgess, 1993).

Non-territorial federal System

There is a tendency of talking about 'non-territorial' federalism, but the question arises whether it really exists. It is basically the problem of representation and sharing of power by ethno-linguistic communities rather than the constituent unit in the federal setup. The distinct example is the Belgium. The linguistic communities - the French and the Dutch speaking communities - are given representation and autonomy in the Belgian federation. The Belgian Constitution recognizes three language groups: the French-speaking, the Dutch-speaking, and the German-speaking Communities which constitute the non-territorial units.

Ethnic federal System

Ethno-regional identity is one of the most pressing elements behind the federal system. But it is not necessary to characterize them as ethnic federalism. India, Belgium, South Africa, Spain and many other have this element but they are not known as 'ethnic federalism'. Ethnic federalism is such in which ethnicity are the underlying organizing principles. Ethiopia is the typical example of ethnic federalism. The preamble of the constitution of Ethiopia begins with "We the nations, Nationalities and Peoples of Ethiopia". The Nationality right is the main feature and principle of the Ethiopian federation and also the key factor in the determination of the division of power. The House of Federation, i.e., the upper house, which is the apex body in terms of representations of Nations and Nationalities, is the custodian of the constitution. It has the ultimate authority to interpret the constitution (Stepan, 1999).

Identity-based federal System

Sharing sovereignty, providing autonomy to a complex, costly and inequality raising, national integration-threatening system of identity-based federalism is an unbearable risk for Nepal. Identity-based politics is turning out to be a reality for South Asia. Nepal is at the juncture to accept it or leap forward to continue the famed existence of past. A proposal of amendment to the constitution of Nepal, for fresh demarcation of two provinces out of seven provinces for implementation of federalism, issues of naturalized citizenship and representation has jeopardized the country with a series of protests. A fully operational decentralization can be more effective than identity-based federalism for inclusive democracy, development, equality and to fulfill the state's responsibility of efficient and effective service delivery to the citizens.

In contest of Nepal, the Local Self-Governance Act of 1999 and the relating regulations are prominent. Devolution of power is a basic criterion. Other improvements are formations of commissions for Dalit, Janajatis and other inclusion related institutions. By jurisdiction division of state powers between the federal government and the constituent units is a key issue of federalism. The federal system may vary depending on the division of powers (Wheare, 1963). Normally foreign policy, defense and currency are kept with the federal government. But over the years the sphere of federal government has grown significantly because of international trade, issues expanding over more units and commitment for environment preservation. Based on the division of powers it may further classified as Centralized or decentralized federalism, Competitive or cooperative federalism and Symmetric or Asymmetric federalism. These days revenue raising and sharing have become the matter of prominent concern in the federal system which has received a separate denomination as 'fiscal federalism' (Stepan, 1999).

Centralized or decentralized federalism

Based on distribution of powers there is a tendency to characterize whether a country has centralized or decentralized federalism. If the jurisdiction of the constituent units is limited and the federal government prevails over them the system is considered as centralized federalism. The location of residual powers is another factor to judge whether it is centralized or decentralized. In Belgium this power is held by the federation, but it is considered highly decentralized. India, Canada, Germany, South Africa, Malaysia are considered as some examples centralized

federalism. But today Canada is considered as a highly decentralized and India is also moving fast to that direction (Bryce, 1921).

Competitive or cooperative federalism

Competitive federalism refers to the existence and desirability of competition among governments and jurisdictions in a federal political system (Preston, 1982). Competition among governments can be defined as rivalry whereby each government attempts to obtain some scarce benefit or resource (e.g., foreign investment) or to avoid a certain cost (e.g., a large welfare population). Competition is likely to be stifled when a federal system is highly centralized, constituent governments enjoy little power, and population mobility is low. (Daphne, A. and John, K. 1991). Cooperative federalism, also known as marble-cake federalism, is defined as a flexible relationship between the federal and state governments in which both work together on a variety of issues and programs (Bryce, 1921).

Symmetric or Asymmetric federalism

Normally in a federation all constituent units have equal status and rights. In the US, Switzerland, Australia, Germany, Brazil, Nepal is considered as having symmetric federalism. However asymmetry of size, population, development and resources are found everywhere. Ronald Watts talks about two types of asymmetry: Political and Constitutional (Watt. 1998).

Political asymmetry due to uneven distribution of population causes uneven representation of the units at the federal legislature especially in the lower house, is found in all federations (Watts, 2008). A huge political and resource gap among the units tends to create the conflicts of the federation and often may cause disintegration if failed to hold balance, e.g. former East and West Pakistan, Serbia and Montenegro, Czechoslovakia. Such tensions exist in Pakistan, Belgium, Bosnia and Herzegovina, Ethiopia and in India before the division of UP and Bihar. The fear of one or two combined taking most powers of the federation persists.

Constitutional asymmetry refers to differences in status, powers of the units. In some federations some of the units enjoy special status and more rights than others. Such federations are called asymmetric ones. India before the Modi Government scrapped art 270 of the constitution relating to the special status of Jammu and Kashmir, and special rights given to Nagaland, Mizoram and Sikkim makes it an asymmetric federation (Hachhetchu, 2021). In Canada the French-speaking province of Quebec enjoys more legislative powers than others. In Spain three states - the Basque country, Catalonia and Galicia – have the residual power whereas others have not. In South Africa Western Cape and KwaZulu-Natal provinces have their own constitutions. The traditional monarchical culture still prevails in KwaZulu-Natal province. Though no political power Zulu monarchy is preserved. (Wheare, 1963).

Conclusion

In conclusion that the experience of classical federations in the recent past, the characteristics of new federations, formed in the light of these recent experience of classical federations have exhibited three issues. One the necessity of interdependence between national and regional governments. Two, certain compelling economic issues, result in the creation of a strong national government. Three, the process of evolution of strong national government, affects the regional sentiments in the federal set up. This fuelled the growth of secessionist forces in many federal nations. To encounter this problem in the present-day federations, we need to start from square one, that is, a re-examination of the concept of 'federalism' is essential. Hence, each theory of federalism contains some elements of validity and usefulness, though it suffers from gaps and inadequacies. For a proper understanding of federalism as a system, we conclude that all the three theories are separate. In contrast, federal systems distribute power between central and regional governments, allowing for greater autonomy at the local level.

This decentralization facilitates better responsiveness to regional issues and preserves cultural and political diversity, as seen in countries like India and the United States. However, the complexity of power-sharing in federal systems often leads to disputes over jurisdiction and policy disagreements between levels of government, complicating governance. The challenges in federal systems, such as resource allocation and conflicting priorities, highlight the difficulty of maintaining cooperation and balance between the central and regional authorities.

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