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Legal System Practices of Local Bodies in Federal Governance

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Abstract

The rule of law is the most important concept of modern democratic governance. Through its successful and effective practice, democracy can be made beautiful and alive. Therefore, legal system become the soul of constitutionalism, good governance and human rights. In this context, this study examines legal system practices of Likhu rural municipality of Nuwakot district through document analysis and review method. The study found dilemma among the local Politicians or elected representatives. For them is it still a local government or a division of the provincial and federal administrations at the municipal level? However, it is seldom given much thought that municipal governments have power in the executive, legislative, and judicial branches. The constitution contains a framework for allocating power among the executive, legislative, and judicial branches of a government. Nepal's local government practices of the legal system over various time periods.

Keywords: vice-chairman, federal governance, legal system, local government, municipalities

Introduction

Municipalities ward offices are the basic unit of service delivery. The primary structure of that brings the state to the doorsteps of the people. That is the lion court of door to door which is clearly arranged in the constitutions (parts 17,18, and 19) so that municipality itself is a mini country, which is has own geography, fields water forests and many others resources. Along with it are various heritages and culture. The municipality has the constitutional right to manage it all smoothly.

The new constitution has given the authority to operate in a variety of legal areas to the local bodies. The nation's current legal frameworks need to be completely revised and amended in order to ensure uniformity and address discrepancies with the Constitution, in addition to creating and passing important new laws. The municipal level now has the same legislative, executive, and judicial authorities as the provincial and federal levels according to the constitution. Local governments have the authority to pass laws when necessary. They are able to manage them. Each local level has a judicial committee that adjudicates local disputes. Together with state and federal governments, local governments share power (Shrestha & Ghimire, 2020).

The Local Government Operating Act does not place the vice chairman or deputy chairperson of the local level in the symbolic role of acting in the absence of head such as vice president, deputy prime

minister or deputy speaker. The revenue consultative committee which play a decisive role in terms of the rate and range of revenue at the local level. The coordination of the program and budget drafting committee, which prepares the final draft of the annual program budget and submits it to the executive and assembly in federal context.

Federalism is about the coexistence of different identities, loyalties, and forms of shared and overlapping authority (Robinson & Simeon, 1995). The deputy chief, who oversees the program and the infrastructure that needs to be created and determines if it is playable or not, has been given a significant position by federal law. The main individuals who coordinate and facilitate with the thematic committees, including the coordinator of the local judicial committee, the coordinator of the committee looking at organizations and the social sector, and so forth. If he can perform his role effectively, he is not only qualified to hold the position of vice president or deputy chief executive, but also established as a popular public representative who has achieved effectiveness in resource allocation and spending. If s/he has successfully performed these roles given in the law, then no one else can present a stronger claim to the position of chief than the current vice president.

The LGOA gives these judicial committees the authority to resolve disputes involving 13 particular issues, including disagreements over property lines, the use of water, unpaid salaries, and the neglect of the old, children, and spouses. Judicial committees have the authority to mediate in 11 other cases, including divorce, minor assaults, and intrusion on private property. The district court can hear appeals of the committee's decisions.

The constitution enshrines access to justice as both a fundamental human right and a fundamental government function. The framers intended for judicial committees to exist in each of the 753 LGs in order to reduce the shortcomings of the formal system, improve access to justice, and reduce the gap between official and informal justice. Three-member committees with the authority to judge, arbitrates, and recommend cases for mediation at the local level is chaired by the municipality's deputy mayor (the vice chairperson in rural municipalities). In this respect, the purpose of this study was to examine legal system practices of Likhu rural municipality of Nuwakot district in the federal context.

Methods and Materials

This study is based on review method particularly document analysis technique. The study collected and analyzed legal system practices related documents and information provided by Likhu rural municipality of Nuwakot district. This study applied secondary data such as empirical studies, profile of rural municipality, newspapers, journals and Websites etc.

Discussions of Findings

Federalism, Local Government and Leadership

The focal points of federalism are local and provincial governments. The representatives of these two governmental levels, as well as their roles, responsibilities, and powers, will be up for public debate. Only news from the federal and provincial governments is covered by the media. In the federal system, the local or junior government has always been assigned to shadow.

There are three levels of governance in Nepal: a central federal government, seven province governments within federal divisions, and 753 local governments at the bottom. There are 293 municipalities and 460 rural municipalities among the 753 local levels. Metropolitan, sub-metropolitan, and municipalities are the three divisions used to classify municipalities. This division lists 276

municipalities, 6 metropolitan areas, and 11 sub-metropolitan areas (MoFAGA, 2017). In total, there are 6,742 ward committees at the local level (Shrestha & Ghimire, 2020).

Nepal's federal system is a relatively new political structure. Under coming together federalism, independent states join together on their own to create larger units. States pool their sovereign authority while maintaining their individual identities to improve security. In such a federation, states often have equal power and are powerful. Several economically or militarily underdeveloped governments join together to create a larger nation while retaining their sovereignty. United States, Australia, and Switzerland are the nations that are a part of confederations (Muluye, 2020).

Is leadership born of learned? Especially in politics, there use to be a lot of charismatic leadership with magical abilities however many studies have proven that while some leadership qualities are innate; many are acquired through learning reading and experience. A study conducted by the University of Illinois of USA showed that 70 percent of leadership skills are learned and 30 percent are innate.

Similarly, in Gallup's State of America Managers 'survey, 57percent of front line managers said that they gained leadership skills through trial and error. What this shows is that suspecting that they don't have experience and cannot do the job is just an excuse to not go into leadership. Even if we look at the example of Nepal, some of the people's representatives (especially women) who come in proportional quota in the house of representative and local election have no experience in politics and policy making. There was no formal education either, but many feeding themselves through training, experience formal and informal education took no matter how generous you talk in your speech, in the practice can women do it? There are many questions like "no self-confidence", at first glance, Nepali women may seem a bit shy and less confidence due to culture but that does not mean that no one with an introverted nature would be able to because a leader. As for confidence it will grow with experience. Learning and experience increase confidence.

Legal System Practices of Judicial Committee

Although the natural qualities required for leadership are more in woman it does not mean that only women should lead. Across the globe the ways of working, from politics to the professions, are becoming more complex and dynamics. There are many challenges, it is not enough to have same thinking or approach to address them, for that along with the leadership diversity and inclusion is needed in the team he works with. Inclusion is not just about gender caste or geography. It requires the participation of people of all age's backgrounds temperatures, abilities, skills and mindsets. The judicial committee at Likhu Rural Municipality of Nuwakot District has been solution following cases headed by deputy Mayor:

Form No 17 — Judicial Committee Details Fiscal year 2077

S.N.	Type of Complain	Reminder of last year	More	Total	Farchaut	Still to be done	Reason for bearing farcheut in time.
1	Relating to land		11	11	7	4	Opponent is absent
2	Boundary to Land		2	2	2		
3	Transaction to related		4	4	3	1	Both side is absent
4	Teacher Management		1	1	1		
5	Cofflict Related		3	3	3		
6	Abuse Related		2	2	1	1	Opponent is absent
7	Parenting Related		1	1	1		
8	Road related		3	3	3		
9	Canel Related		2	2	2		
10	Environmental Related		1	1		1	Under consideration
11	Public Consern		1	1	1		

Source: Likhu Rural Municipality Profile, 2020

This is the one of the simple sample of cases headed by deputy mayor. It was really inconvenient to solve the problem by elected representative of political party. Due to flavor of party politics will be appearing in decision by judicial committee.

Form No 17 — Judicial Committee Details Fiscal year 2078

S. N.	Type of Complain	Reminder of last year	More	Total	Farchaut	Still to be done	Reason for bearing farcheut in time.
1	LGOA 2074/47/1,2 related with	10	34	44	26	18	Opponent is absent / Due to the reason of MELMILAP in local level

Source: Likhu Rural Municipality Profile, 2020

Local election is the main basis for increasing the number of women in national politics. With the opportunities to lead at the local level they can learn and prepare themselves for other positions at the national level. When raising the issues of women in leadership, it should not be only those women with access who are getting opportunities time and time again. It should be included it is necessary to bring with expertise in various field including youth, dalits tribal's to leadership. If everyone from the party to the family, society and the state can think about it the whole country will get the benefit. Inconvenient provisions of judicial committee at local level are as follow:

The foundation for a mechanism to enhance people' pursuit of justice is in place, at least in theory. The judicial committee's procedures, however, are still not apparent.

A connection between alternative justice service providers and the traditional justice system is also unclear.

In order to maintain excellent conflict resolution at the municipal level, the Constitution and the existing legislative frameworks fall short in establishing sufficient support and quality control measures (Gyawali, 2075)

The inability to agree on how power should be distributed among the various levels of government may be one of the causes of this delayed to growth. Therefore, the main goal is to evaluate how the new constitution's power-sharing provisions apply to various governmental departments and agencies. The federal system, demography, power distribution between the provincial and local levels It claims that despite efforts to restructure the government, the political, social, economic, regional, and ethnic inequities that existed in Nepal for nearly 240 years under a unitary form of government have not been significantly reduced.

The characters of the federal structure of Nepal are unique and original. To some extent it is similar to South Africa. Constituency is found in the constitutions of both countries specially in terms of empowering the local level. The constitution of South Africa clearly states that local governments are autonomous political administrative bodies of equal status and not subordinate to the central and provincial governments. The constitutions of south Africa have established the importance and meaningful role of local government in the flow of public service delivery like education health drinking water, housing. Relatively Nepal's constitution is more progressive and local government friendly than South Africa.

Nepal constitution 2072 has brought a great change in the government structure and form of the structure and form of the state. It has reorganized the centralized unitary structure of Nepal and the corresponding form of the government into the democratic federal form. The construction and transformation of the federal structure of Nepal should be considered easy, correct and orderly. In some countries a long Even after conflict and violent upheaval, it is not possible to change the centralized form and character of the state. Rather there are examples of the state political parties/groups involved in to violent activities by demanding a federal system.

According to constitution of Nepal 2072 in article 217, there is a provision to form a three-member judicial committee under the coordination of the deputy mayor to solve disputes within their jurisdiction in Urban/Rural Municipalities. There is provision for two members elected form the municipal assembly in the judicial committee formed under the coordination of the deputy head of the local government. Provisions made in the Constitution regarding the judicial committee have been mentioned in detail in sections 47 to 54 of the local government operation Act 2074.

According to section 471 the judicial committee to give decisions in a win-lose manner. However, if an agreement cannot be reached thought negotiation/dialogue, it seems necessary to review the justification, significance and importance of the judicial committee, which has the power to make decisions in the nature of one side winning and the other side losing, just like a court. In the Federal Democratic Republic of Nepal, it is very unusual to confidently give people's representative elected through party completion to the local government, which in the past even the village /town panchayat laws did not allow the local body to decide on the case without hesitation. Even the former local self-governance Act 2055, which was formulated after the restoration of multi-party democracy in 2046,

does not give such rights to wards and municipalities. Although there is a provision of judicial rights as there is confusion regarding its correct implementation, a provision was made to implement the prescribed provisions gradually by publishing a notification in the *Rajpatra*. The provisions related to the judicial authority of the local government, which was enacted in the Local Self Government Act 2055, could not be formally implemented. Provisions related to community reconciliation are well covered with in this right an environment for implementation was created.

UNDP, The Asia foundation such as DFID collaboration with development partners, some non-governmental organizations have done some important work with the aim of enhancing the capacity of rural communities by collaborating with local bodies to implement the concept of community reconciliation. When drafting the provisions related to judicial committee- related reconciliation in the constitution of judicial Nepal 2072 and local government operating Act, 2074, it was not seen that the aspects of good practice related to community reconciliation will accepted. As a result, it is not appropriate to repeat the provision of judicial rights in the constitution of democratic republic of Nepal, which has failed and is incompatible with the autocratic independent panchayat system, where the local body can decide on the dispute.

It is mockery of democratic values to expect the deputy mayor of the local government to set up a bench and decide the case like a judge. Arranging a judicial committee to resolve disputes in a functioning municipality as a people elected political administrative democratic institution appointing the deputy mayor as the coordinator of such a committee is against the principle of separation of powers which is an important principle of democracy in the local government operating Act 2074. The deputy mayor of the local government has been assigned major responsibilities in matters such as political economic, social development and prosperity. They are coordinating and facilitating the activities of non-government operating at the local level, coordinating the work related to consumer welfare monitoring and supervising plans and programs and submitting reports, facilitating and coordinating the work the committees forms by the assembly and the executive, submitting the budget at the local level, and consulting the local revenue committees and Budget and programs consolidation of drafting committee etc. Therefore, giving the responsibility of a judicial committee separate from his political administrative subject area to the deputy mayor of the local government, who is responsible for the mobilization and development of political economic administrative and local resources of completely inconsistent?

According to Montesquieu, the interpreter of the theory of desperation of powers to implement non-governmental organization in a democratic system of governance, the three main organs of the government the executive the legislature and the government have independent and separate rights and the ability of the community. Judiciary the right of vested in any one organization and persons is a violation of justice powers are vested in one persons or institution, justice dies and tyranny begins. When discussing the importance of separation of powers and control and balance in democracy, Justice Coke's resistance to king James 1st stake in ruling Britain in an autocratic manner and exercising all the rights of the state by himself is also memorable. James 1st claimed that he alone had the right to decide on matters of state of any nature, and he was supported by the church. Dispute resolution requires long study and experience regarding the knowledge of law and its application. This responsibility should rest with a separate body that is trained in matters related to law and justice. On the other hand, giving

judicial responsibilities to people's representatives who do not have expertise in justice/ law will hinder their political leadership and capacity development (Kantipur Daily 2079, 06 09).

Due to the Local/Provincial/House of representative elections politicians returns to their villages. They were busy in publicity for many days. Again he gave a speech showing big dreams of development. Again he talks about facilitating facilities such as roads water supply and electricity. However, what are the real problems and challenges faced by farmers in their livelihood, along with the difficulties not getting fertilizer seeds on time to the lack of irrigation, they often did not think about what other difficulties the farmers have to face and how solve them.

Constitutional Arrangement of Judicial Committee

In accordance with Article 217 of the Constitution, the rural municipality of municipality has a judicial committee. In order to resolve conflicts within their purview in accordance with the legislation, the Committee has been organized as a three-member judicial committee, which is coordinated by the vice chairman in the case of a rural municipality and the deputy head in the case of a municipality. Two additional members of this committee were chosen by the Municipal Assembly from among themselves.

A local judicial body may be constituted to consider the case, or other bodies may be formed as needed to adopt other ways of conflict settlement, in accordance with Article 217, Subsection (2) of the Constitution of Nepal. Even if the local level is taken into account in this system, it should be remembered that under the current constitutional framework, local level courts or judicial bodies may be established in accordance with the law. Jurisdiction can be provided by law to the judicial committee. Analyzing the legal right so far, it appears that the judiciary committee has jurisdiction over the following matters.

1. *Sandhi Serpan, Aalidhur, Dam Paini, Kulo*, Pool or Water sharing and the dispute over the road or exit, the wage labor.
2. Bali Armal
3. According to civil act, the poor, the four footed losing and gaining, house No 8 of the makers' castle. And 9 no *kalyandhan*, 10 No, of *Anshbanda mahal*, Disputes regarding the issues of food and water according to the income under the *Izzat*.
4. Issues related to the local use of water resources and the use of *Panighatta* and issues related to security of public property
5. Issues related to pasture grass/ Land
6. Firewood Disputes between landlords and tenants.

Disputes under federal and state laws are exercised by the judicial committee, which is collectively exercised by the coordinators and members. This committee is semi-judicial in nature. It has the right to issue notices of deadlines to the courts, understands standards, understands witnesses etc. This committee has not been given the right to take action and punish for deformation.

The decision or opinion of the majority in the judicial committee shall be considered as its decision. Even if there are two members for the proceedings of the case, there must be at least two members including the coordinator to make a judicial decision. But the fact that the position of the coordinator is vacant does not seem to hinder the unanimous decision of the other two members. In the same way it rests of concern related to the dispute of the coordinator or members or etc. Banda's Mahal no 30 if

there is a dispute within the relationship, only the other two members can decide. But if the interests of all or two people are intertwined, the assembly can form another three-member judicial committee only for the purpose of such dispute. Such action is also appropriate based on the principle of natural justice.

It is necessary to appoint a lawyer who has studied the law of the local court as a judge and to make a local court regulation and follow the procedure from the registration of the case to the execution of the judgment. According to the constitution, the subject of conciliation and mediation management has been placed in the list of rights of the local level. Jurisdiction procedures and management between local court and the judicial committee should be considered when considering from this point of view. There is a big difference between a judicial committee and a local court. If there are politicians in the judicial committee, then the opinion of the local court is to be decided judicially by a lawyer. Judicial committee is quasi-judicial in nature while local court is judicial in nature. If a local court is to be formed, it seems desirable to form it according to the judgment of the judiciary. If the authority of the local court is to be included within the judicial committee, it is necessary to determine its management in accordance with the constitution and the laws of the local level. Alternatively, it is necessary to facilitate all the local bodies to make a kind of law for the establishment and operation of the local court and keep the local court as a judicial body according to the local law. It is necessary to have a provision for appeals from such local courts to district courts.

Conclusion

Eliminating inequities brought on by class, caste, ethnicity, language, religion, geography, and gender is the main goal of federalism in Nepal. The local governments are portrayed in the new constitution as strong, useful, and independent institutions of government. However, putting the constitutional provisions into action still presents many difficulties. The ability to understand quality legal system practices is another ability of Mayor/Deputy Mayor of local government. The elected representative must have the ability to understand different needs and dreams of the citizens including three major aspects: sustainability, quality service and justice. Even development without social justice does not reduce discrimination. The consciousness of understanding and changing unfair games that have been passed down from tradition is inspirable from justice others wise development without judicial awareness is just contractarianism. A federal government shares authority with provincial and local governments according to the federalism system of government. It is vitally important to make governments responsive to their constituents in order to resolve disputes within the judicial group. Federalism appears to be the appropriate form of government for Nepal as it has offered legal system services in the local level. And the judicial committee members must be responsive and responsible for offering effective legal services to the citizens.

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