

**Federalization, Ethnicity and Natural Resources: Debates on Nepal's Rural Development –
--- By Pandey, S. & Baral, A.**

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Abstract

The federal transformation of Nepal with its three-tier federal governance system, endowed to decentralize authority, recognize ethnic diversity, and enhance localized management of natural resources. This paper critically examines the intersections between federalization, ethnicity, and natural resource governance in rural Nepal by deploying systematic review and content analysis approach thereby accessing constitutional texts, legislative instruments, policy reports, and scholarly literature. It interrogates the legal and institutional frameworks shaping Indigenous peoples' rights to land, territories, and resources, while highlighting the socio-political dynamics of marginalization rooted in caste, ethnicity, and geography. The findings reveal persistent pressure between state and ethnic communities in course of ownership, utilization and control over natural resources compounded by historical injustice, legal incompetencies, entrenched class and caste-based hierarchies and inconsistent policy implementation which is further intensified with intensified by climate change, demographic pressure and structural inequalities. This ultimately hinders equitable distribution of natural resources and social justice approach envisioned by federal model. The paper also figured out that despite of international commitments such as International Labor Organization (ILO) Convention No. 169 and the United Nation's Declaration on the Rights of Indigenous Peoples (UNDRIP), implementation of commitment at the domestic level remains partial and inconsistent. The paper concludes that coherent multi-tier governance, stronger institutional capacity, and the integration of Indigenous knowledge into

policymaking are essential to achieving inclusive, equitable, and sustainable natural resource management in rural development of federal Nepal

Keywords: Federal Nepal, ethnicity, natural resources

Introduction

Nepal experienced a transformative moment with the promulgation of the Constitution of Nepal in 2015, bringing about significant changes such as the delineation of jurisdiction across three levels of governments and the establishment of a three-tier federal governance structure comprising seven provinces and 753 local governments. This transition to federalism promised transformative rural development through decentralized governance, recognition of ethnic diversity, and localized management of natural resources. Notably, Schedules 5 to 9 of the constitution served as crucial role in course of providing exclusive jurisdiction to federal, provincial and local government with Schedule 7 specifies concurrent jurisdiction between federal and provincial level government and schedule 9 outlines that power shared among three tiers of government (Constitution of Nepal, 2015). Additionally, the constitution explicitly acknowledges Nepal as a multi-ethnic, lingual, religious and multicultural nation, laying the groundwork for policies that support ethnic communities and validate their presence in plural societies. The constitutional reform is mainly aimed to drive Nepal's economic and social development by effective and efficient utilizing its rich natural resources (ADB, 2020).

The management of natural resources falls within the domain of both federal and state and likely to produce conflicts within provinces in relation to possession of resources and their utilization of province development. A report of (ILO, 2005) revealed that Nepal economic and social structure governed by deep-rooted hierarchy of ethnic, caste and gender resulting disproportionate representation of indigenous people among country's poor. Along with this, persistent natural resource conflict in Nepal on resource appropriation, distribution and control primarily revolved around issues who and how the resource is managed, allocated and utilized (Upreti, 2000). This paper critically examines interplay of federalism between governance, ownership and management of natural resources in rural Nepal and analyze the role of ethnicity their legal, political and institutional framework that shape the rights of indigenous people to natural resources.

Objective and Methodology

The objective of this paper is to critically examine the legal, political, and institutional frameworks of federalism in Nepal, with the objective of assessing their impact on the ownership, management, and governance of natural resources in rural areas, specifically from the perspective of Indigenous ethnic groups. In doing so, this paper deploys a systematic review approach, primarily based on secondary sources in order to explore past and current scenario of intersection of federalization, ethnicity and natural resource governance in Nepal by using content analysis of constitutional texts, legal documents, academic publication, policy reports and historical records. According to (Onyekachi, 2016), desk study defined as the examination, analysis, and interpretation of policy documents and institutional reports serves as the primary mode of data generation. Hence by critically analyzing diverse scholarly perspectives, institutional findings and legal instruments, the paper constructs its arguments and findings through interpretative analysis so paper does not incorporate empirical field work or field-based observation.

Findings: Ethnicity, Federalism and Inclusion

From the centuries, Nepal holds the identity of multi-ethnic nation with abundant diversity in cultures, castes, languages, religions, and belief systems. However, this diversity has been historically overshadowed by systemic discrimination, gender inequality, and major geographical disparities (Bhattachan, 2001; Bista, 1991). Despite of being constitutionally recognized as multi-ethnic and multi-lingual country since 1990, centuries long Brahman and Chetri hegemony has resulted to marginalize various ethnic groups from main stream politics and socio-economic sphere (Bhattachan, 1995; Lawoti, 2005).

Federalism refers to distribution of power among multiple tiers of government, typically between a central (federal) authority and regional (provincial or state) governments and form of governance which combines national government with local administration (Kyle & Resnick, 2016; Kharel, 2022). As a result of historic people movement of 2006, Nepal embraced federal governance system and adopted of its new constitution in 2015. Article 50(1) of Nepal's Constitution (2015) affirms the importance of decentralization in preserving national sovereignty, independence, and unity. It emphasizes the of citizens' property, equality, and freedom. Similarly, it highlights the rule of law, fundamental rights, human rights, gender equality, proportional representation, active participation, and social justice as essential principles for ensuring fairness across all aspects of

national life. Additionally, constitution clearly recognized Nepal as multicultural, multi-ethnic, lingual, secular nation so that this clearly manifests the significance of ethnic diversity as part of Nepal federal identity which pertain as foundation of policies to support ethnic communities.

There is an ongoing debate on effectiveness of multiethnic federalism in order to foster unity in diversity within multiethnic and multilingual countries like Nepal.

Some scholars perceive multiethnic federalism as institutional framework to address ethnic issues. It offers structured way to serve identity related demand of ethnic communities (Kymlicka, 2007; Burgess, 2012; Elazar, 1991). Conversely, the other critics contend that countries like Nepal multiethnic federalism is not an institutional mechanism to address identity related demands. Ethnic groups residing in geographically isolated rural area have raised their voices against adequate political representation and resource governance which shows that federalism has exacerbated regional and ethnic tensions. Similarly, Madhesi communities from terai region showed their concerns on marginalization. Additionally, specific ethnic or regional agendas sometimes apparently backed by external actors has further complicated domestic political environment of Nepal (Strasheim, 2018). In contrast, Gurung (2012) argues that indigenous nationalities in Nepal have demanded their accommodation through identity-based federalism arrangement rather than seeking separate state. Mishra (2012) argues that federalism in Nepal need to focus for country's integration based on its diverse and interdependent geographic and economic linkage among mountain, hills and terai into single federal unit rather than homogeneity.

Nevertheless, the constitution of Nepal, 2015 affirms to end all forms of racial discrimination and discrimination based on ethnicity, and language; to ensure social justice and build an egalitarian based on proportional inclusion and participatory principle¹. Over the course of time, the ethnic movement in Nepal has aligned with global indigenous rights initiatives and expressed their solidarity on recognition, marginalization issues and limited control over land and resources. Such ethnic groups movement have drawn support via international legal frameworks i.e. International Labor Organization (ILO) convention No. 169 and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in course of claiming their rights, identity which influence national policy discourse in certain extent. The National Census, 2022 has identified 142 ethnic groups in Nepal which is an increase from 125 ethnic groups recorded in census of 2011. Majority of ethnic

¹ Para.4 of the preamble of the Constitution of Nepal, 2015

groups are still enormously dependent on natural resources for their livelihood generation particularly in rural areas.

According to data from the National Population and Housing 2021 Nepal, shows that Kshetris form the largest group, accounting for 16.45 percent of the total population, followed by Hill Brahmins at 11.29 percent. Among indigenous groups, Magars (6.9%), Tharus (6.2%), Tamangs (5.62%), and Newars (4.6%) represent significant proportions. The Muslim population holds at 4.86%, while Dalit communities such as Bishwokarma, Pariyar, Mijar, and Chamar/Harijan/Ram collectively make up a notable share. Other indigenous groups like Rai (2.2%), Gurung (1.86%), and Yakthung/Limbu (1.42%) also feature prominently.

Table 1. Major ethnic communities of Nepal

Caste/ethnicity	Population	Percent
Kshetri	4,796,995	16.45
Brahman - Hill	3,292,373	11.29
Magar	2,013,498	6.9
Tharu	1,807,124	6.2
Tamang	1,639,866	5.62
Bishwokarma	1,470,010	5.04
Musalman	1,418,677	4.86
Newa: (Newar)	1,341,363	4.6
Yadav	1,228,581	4.21
Rai	640,674	2.2
Pariyar	565,932	1.94
Gurung	543,790	1.86
Thakuri	494,470	1.7
Mijar	452,229	1.55
Teli	431,347	1.48
Yakthung/Limbu	414,704	1.42
Chamar/Harijan/Ram	393,255	1.35
Koiri/Kushwaha	355,707	1.22

Source: National Statistics Office, 2023

Similarly, National Foundation for Development of Indigenous Nationalities (NFDIN), a statutory body under the Government of Nepal established to promote the welfare and rights of indigenous nationalities (Adivasi Janajati) has classified the ethnic groups of Nepal in five categories i.e. endangered, highly marginalized, disadvantaged groups and advantage people.

Table 2. Classification of ethnic groups in Nepal

Category	Ethnic groups
1. Endangered	Kusunda, Bankariya, Raute, Sural, Hayu, Raji, Kisan, Lepcha, Meche, Kusbadiya
2. Highly Marginalized	Majhi, Siyar, Lohmi, Thundam, Dhanuk, Chepang, Satar, Jhagad, Thami, Bote, Danuwar, Baramu, Sunuwar, Tharu, Tamang, Bhujel, Kumal, Rajbansi, Gangai and Dhimal
3. Marginalized	Bhote, Darai, Tajpuriya, Dolpo, Free, Mugali, Pahari, Larke, Lhopa, Dura and Walung, Topkegola.
4. Dis-advantaged groups	Chhairotan, Tangbe, Rai, Limbu, Sherpa, Yakkha, Chhantyal, Jirel, Byansi, Tinga ule Thakali, Barhagaule Thakali, Marfali Thakali, Gurung, Magar and Hyolmo
5. Advantaged people	Thakali & Newar

Source: NFDIN, 2003

Right to lands territories and natural resources

In Nepal, indigenous people have historically maintained their connection over land, territories and natural resources via their customary laws and traditional practices. Before 1968 indigenous lands were recognized as plural legal system including customary land rights and treaty rights over lands, territories and natural resources. The Land Reform Act of 1964 explicitly acknowledged such arrangements, particularly the Kipat land system of the Limbu community according to act " In the case of Kipat, a person who possesses such land on payment of government revenue following customs, tradition, and practices or a person, who possesses such land on making payment of revenue to such person"². However, despite this, there is no clear recognition or de-recognition of indigenous peoples' land rights in subsequent legal reforms.

² Sec.2(2a) of the Land Reform Act, 1964

The Land Survey and Measurement Act, 1963 classified the land into seven categories, including community property, public property, and trust property. Although community ownership is recognized under the definition of "Saamudayik Jagga," "Land kept for community purpose by the respective community or any structure constructed in such type of land or lands under the ownership of a community."³ The community and trust property does not exclusively protect indigenous community lands. In federal structure, The Local Government Operation Act, 2017 provides jurisdiction to rural municipalities and municipalities to manage and protect records of community property. Despite these provisions, the laws are often inadequate and inconsistent with Nepal's international commitments, including ILO Convention No. 169, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Convention on the Elimination of Racial Discrimination (CERD).

Although Article 32(3) of the Constitution of Nepal 2015 guarantees the fundamental right to protect and promote culture and heritage, yet without secure access to their lands and resources, these rights remain difficult to exercise. Majority of indigenous communities have continued to struggle for legal recognition of their historical claims. Many of them face land dispossession and forced eviction under the pretext of development and public interest. Loopholes in existing laws are exploited, leaving indigenous populations vulnerable. Nepal Federation of Indigenous Nationalities (NEFIN) representative umbrella organization of the 59 indigenous nationalities or peoples has identified at least 40 common and special laws as discriminatory against indigenous communities.

Among them the following acts directly connected to the use of land and natural resources : the Land Ownership and Registration Act, the Nationalization of Private Forest Act, the Local Self-governance Act, the Land Related Act, the Nationalization of Pastures Act, the Land Taxation Act, the Forestry Act, the Protection of Water Animals Act, the National Park and Wildlife Protection Act, the National Nature Preservation Fund Act, the Plant Protection Act, the Land and Water Resources Protection Act, the Water Resources Act, the Mine and Mineral Products Act, and the Guthi Corporation Act. These acts and laws have significantly undermined indigenous people access and control to their land and natural resources. For instance, The Nationalization of Private Forest Act of 1957, for example, placed all forests under the government ownership. Ethnic groups did not receive any compensation for these forests and the uncultivated lands lying there (Subba

³ Sec.2 (f1) of the Land Survey and Management Act, 1963

et al., 2002). In eastern Nepal, the Rais and Limbus have been marginalized through processes such as the cadastral survey and the establishment of protected areas, including national parks, conservation areas, and hunting reserves, which have encroached upon their traditional territories, restricted their customary access to pasture, swidden lands, and forest resources, and placed their traditional skills and knowledge under increasing pressure from large-scale capital and industrial enterprises, as their locally produced goods struggle to compete in the modern market (Daniggelis, 1997; Gurung, 2010; Subba et al., 2002).

Nepal is endowed with remarkable socio-cultural diversity, home to 59 Indigenous communities, the majority of whom reside in rural areas and rely heavily on agriculture and forest-based harvesting activities. These communities face significant challenges from biodiversity degradation driven by deforestation, climate change, and other environmental pressures. The loss of biodiversity is closely linked to the erosion of cultural diversity, a process intensified by socio-political assimilation and the exclusion of Indigenous peoples from both governmental and non-governmental initiatives. Indigenous Knowledge (IK) holds a wealth of information on the conservation and sustainable use of biodiversity. This knowledge is preserved within community memory and practices, and is expressed through stories, songs, folklore, proverbs, dances, myths, cultural values, beliefs, rituals, customary laws, and agricultural traditions (Grenier, 1998; Weng & Yang, 2016).

Similarly, Institute for Integrated Development Studies (IIDS, 2002), reports states that indigenous people of Nepal pursued seven livelihood strategies : (a) nomadism, practiced only by the Raute, who continue their forest-based lifestyle despite pressures to settle; (b) foraging and horticulture, common among the Bankariya, Chepang, and Kusunda; (c) a mix of foraging, horticulture, and agriculture, as seen among the Hayu, Raji, and Thami; (d) horticulture and agriculture, practiced by groups such as the Baramo, Bhujel, Chantyal, Dura, Limbu, Magar, Pahari, Rai, Sunuwar, Tamang, and Yakkha; (e) pastoralism, agriculture, and industrial activities, followed by communities like the Gurung, Thakali, Jirel, and others; (f) exclusive reliance on agriculture, as in the Bote, Majhi, Danuwar, Dhimal, Rajbanshi, Santhal, Tharu, and related groups; and (g) agriculture combined with industrial activities, practiced by the Marphali Thakali, Newar, and Thakali. These strategies reveal diverse ecological, cultural and socio-economic adaptation of ethnic communities of Nepal which directly connected to land and natural resources.

Nepal is a signatory to several key international conventions, including the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (1969), the UN Convention on the Rights of the Child (1989), and the Convention on Biological Diversity (1992).

In 2007, it ratified ILO Convention No. 169, directly addressing Indigenous and Tribal Peoples, which, along with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), serves as a crucial framework for Indigenous communities in Nepal to engage with the government and assert their rights. ILO Convention No. 169 (Articles 6, 13(1), and 14) mandates respect for Indigenous cultures, spiritual values, and relationships with lands and territories, while UNDRIP and the Convention on Biological Diversity (Articles 8(j) and 10(c)) recognize their rights to biodiversity and genetic resources. UNDRIP Articles 26 and 27 further affirm land rights even in areas not exclusively occupied but traditionally accessed, extending protection to nomadic groups like the Raute and shifting cultivators. By endorsing these instruments, Nepal is legally bound to adopt concrete measures to safeguard Indigenous peoples' rights to land (Adhikari, 2000; K. B. Bhattachan, 2005; K. Bhattachan, 2012; Roy, 2005).

Natural Resource Governance and Conflict

In Nepal's rural context, land, water, pasture and forest are the most important natural resources and since early 1980's community-based natural resource management has started responding to top-down natural resource conservation and tackle against environmental degradation (McDougall et al., 2008). This program expanded to perpetuate over 18,000 community forestry user groups (CFUGs) across the country with aim to consolidate their interest in wider national policies as a result of which large number of CFUGs transformed & institutionalize them as formal umbrella organization Federation of Community Forest Users Nepal (FECOFUN), a membership body of all CFUGs in 1995. Forest Users Nepal (FECOFUN), a membership body of all CFUGs. FECOFUN aims to amplify CFUG voices, ensure forest policy decisions do not compromise the interests of forest-dependent people, and mobilize citizens on environmental issues (Paudel, Monterroso, & Cronkleton, 2012). The frequent ongoing dispute between FECOFUN and the government observed on the forest governance issue thereby resulting in stalemate and detrimental impacts on forest conservation and the wellbeing of local communities (Satyal et al., 2018).

Similarly, Buckles and Rusnak, (1999) state that resource conflicts may have class, social, political and cultural dimensions. Likewise, Resource-related conflicts frequently emerge in contexts of scarcity, where the demand for critical natural resources such as land, forests, and water exceeds their available supply which compounded by climate change, natural disaster, demographic pressures and social inequality ((Burnett, 2016). In Nepal, natural resource governance intricately shaped by interconnected of policies, institutions and procedural frameworks that are intended to ensure citizen participation and sustainable management of resources however, persistent conflict occurs in course of their appropriation, distribution and control and challenges of natural resource management particularly persists on its governance, exploitation, disputes, corruption (Upreti,2001; Khanel,2021). However, Upreti (2000) revealed that natural resource management of Nepal has undergone rapid transformation along with technological advancement, broader social & political change coupled with market liberalization and enhancement of information access.

After the federalization, Constitution of Nepal (2015) clearly states that Federation, State and Local level shall provide for the equitable distribution of benefits derived from the use of natural resources or development. Certain portions of such benefits shall be distributed, pursuant to law, in forms of royalty, services or goods to the project affected regions and local communities. If, in utilizing natural resources, the local community desires to make investment therein, the Federation, State and Local level shall accord priority to such investment in such portion as provided by law on the basis of the nature and size of such investment. It needs to analyze geography and natural resources because community is developed by the nature and culture (Badal, 2020).

Khatri and Pasa (2023) found that for federalization to successfully manage resources and climate change, local communities in Bagmati Province need the freedom and ability to create their own adaptive strategies. Therefore, it is essential to critically examine how the state exercises ownership and control over natural resources, and analyze how the governance decisions that can maximize equitable benefits for provinces, local communities, and the federal system as a whole. In this context, federal Nepal must need to work proactively to adopt preventive strategies for potential resource related conflict as similar kind of conflict witnessed in various province of India and Pakistan (Pandey, 2016a). Without addressing this historical legacy of exclusion and unequal access deeply entrenched in ethnic, caste and gender-based hierarchy, contemporary reform

initiative seems useless to resolve the underlying structural drivers of natural resource conflicts in Nepal. Hence, in order to address such issues, all three tiers of government need to possess not only necessary technical expertise but also have to ensure policy coherence and nuanced understanding of socio-economic and political dimensions of resource governance.

Conclusion

Constitution of Nepal, 2015 has formally recognized country as multi ethnic and multi lingual thereby upholding the principal of social justice with affirming the inclusion of ethnic communities in access to natural resources. Along with this federal transformation has brought both opportunities and challenges in order to reconcile ethnic diversity with equitable natural resource governance in rural development context.

Even though state has offered some mechanism to integrate ethnic communities with sustainable natural resource management via policies and programs but legislative inconsistencies, policy loopholes coupled with social political hierarchies complicated the transformative process brought by federalism resulting many ethnic communities vulnerable in course of accessing and controlling natural resources particularly in rural setting. Indeed, structural inequalities resulting resource related conflicts in terms of their ownership, distribution and control further exacerbated by environmental degradation and climatic variability.

It is evident that legal recognition alone is not enough for addressing historical structural inequality and injustice of ethnic communities regarding access, ownership and control of natural resources but policy coherence, participatory governance framework and effective and efficient institutional mechanism in all three tiers of government along with effective implementation of national and international commitment in different forums deemed to be essential. Additionally, strengthening technical, administrative, and conflict-resolution capacities of all three tiers of government with synchronizing indigenous knowledge of local communities is imperative to ensure natural resource governance equity, sustainability, and interethnic harmony for rural development in federal context

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