

Cooperative Federalism in the Nepali Constitution: *A Comprehensive Analysis*

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Abstract:

Cooperative federalism has emerged as a pivotal concept in governance structures worldwide, facilitating collaboration and coordination among various levels of government. In the context of Nepal, the adoption of federalism represents a significant shift in the country's political landscape, aiming to address historical grievances, promote inclusivity, and foster socio-economic development. This essay provides a detailed examination of cooperative federalism within the framework of the Constitution of Nepal. Through an in-depth analysis of constitutional provisions, historical background, implementation challenges, and case studies, this essay elucidates the role of cooperative federalism in promoting unity, diversity, and equitable development in Nepal. By identifying key opportunities and obstacles, this study offers insights into the prospects for effective governance and democratic consolidation in the federal structure of Nepal.

Keywords: Cooperative Federalism, Nepali Constitution, Federalism, Governance, Division of power, Inclusivity, Socio-Economic Development

Introduction

Cooperative federalism is a model of intergovernmental relations that recognizes the overlapping functions of the national and state governments. This model can

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be contrasted with the model of dual federalism, which maintains that the national and state governments have distinct and separate government functions.¹ The adoption of federalism in Nepal represents a transformative moment in the nation's democratic evolution, signaling a departure from a centralized governance model towards a more power devolution with a revolutionized and inclusive system. Cooperative federalism lies at the heart of this transition, emphasizing collaboration, autonomy, and shared governance among federal, provincial, and local levels of government. This article aims to explore the concept of cooperative federalism within the context of the Constitution of Nepal, analyzing its historical roots, federalism debates, constitutional provisions, and implementation challenges, implications for governance and development, and way forward for effective implementation. By delving into these dimensions, this study seeks

To provide a comprehensive understanding of the role of cooperative federalism in shaping Nepal's political landscape and fostering inclusive and sustainable development.

Historical Context:

There is no doubt that any debate on federalism in Nepal would center on the Maoist movement. As per federalism expert writes in his article "‘People’s war’, were related to identity, power sharing, and decentralization" (Karki 2014). It is proud to say that, Nepal is now a federal democratic republican secular, and inclusive country. The constitution of Nepal was promulgated by the people's elected sovereign body the Constituent Assembly in 2015. The election of the Constituent Assembly was a most awaited event in the country's politics held in 2008. Almost seventy years of political aspiration have been fulfilled only after the decade-long people's war launched by the Maoist party and the result of the joint popular movement of 2006. Very interestingly, Nepal is a country that has produced seven constitutions in seven decades. This is the only constitution promulgated by the Constituent Assembly and written by the people's duly elected representatives. Interim Constitution 2006 was written by a group of technical experts appointed by the government and Maoist negotiating team, endorsed by the reinstated parliament, and approved by the interim legislative

¹ https://encyclopedia.federalism.org/index.php/Cooperative_Federalism

parliament.² The constitution has institutionalized the republicanism, federalism, secularism, and inclusion at a time. A country departed from Monarchy to Republic, Unitary to federalism, Hindu kingdom to secularism, and exclusion to inclusion. The four major political achievements achieved and institutionalized in the constitution are most of the countries have spent almost four generations.

The trajectory towards federalism in Nepal has been shaped by a complex interplay of historical, political, and socio-economic factors. The Nepalese society has been facing problems of class, caste, gender, and territorial disparities for a long time. Several initiatives had been taken though were not able to be translated into reality. In the 1950s the then king Tribhuvan had already agreed upon a republican and the political system as fixed by the people's elected legitimate body. The election of the Constituent Assembly had never happened³. The movement held around the 1980s resulted in the referendum, again no substantial change had been seen. The country's transition from an absolute monarchy to a constitutional democracy in the early 1990s marked a significant milestone in its democratic journey. However, deep-rooted inequalities, ethnic tensions, and regional disparities persisted, fueling demands for greater autonomy and representation from marginalized communities. The decade-long armed conflict between the government and Maoist insurgents further underscored the need for a more inclusive and participatory governance system. The Comprehensive Peace Accord of 2006 laid the groundwork for political reconciliation and constitutional reform, culminating in the Interim Constitution of Nepal 2007. This interim Constitution provided for the establishment of a Constituent Assembly, tasked with drafting a new constitution, with federalism emerging as a central theme in ensuing deliberations. The promulgation of the Constitution of Nepal in 2015 represented a historic moment, institutionalizing federalism as the guiding principle of governance and laying the foundation for a federalism and inclusive political order.

Federalism debate:

The very differences with other constitutions were that all previous constitutions

² Interim Constitution drafting committee headed by Justice Laxman Aryal and Originally six members including *Khimlal Devkota, Sindhunath Pyakurel, Mahadev Yadav, Harihar Dahal, and Shambhu Thapa*.

³ https://ciaotest.cc.columbia.edu/olj/sa/sa_jan02pas01.html

were promulgated with a unitary system and the current constitution is promulgated by a federal system. The main concern of the constitutional debate was not about promulgating the Constitution but about its promulgation through people's representatives and the federal system. (Chaulagai, S. and Devkota, K.2020). Nepal's transition from a unitary system to a federal structure has been marked by intense debate, negotiation, and constitutional reform. The federalism debate in Nepal reflects the country's diverse socio-cultural landscape, historical grievances, and aspirations for inclusive governance. Federalism has emerged as a central theme in the political discourse of Nepal, shaping the country's democratic transition and constitutional evolution. The federalism debate in Nepal is rooted in historical grievances, socio-cultural diversity, and demands for inclusive representation and governance. Moreover, the federalism debate in Nepal has its roots in centuries-old grievances related to identity, representation, and resource allocation. The country's diverse ethnic, linguistic, and regional communities have long advocated for greater autonomy and recognition of their distinct identities. The end of the decade-long armed conflict in 2006 provided a catalyst for political transformation, leading to the signing of the Comprehensive Peace Accord and the establishment of an interim government with an interim parliament called Legislature Parliament. The socioeconomic transformation of the society with the restructuring of the state was the task of the country which has been agreed upon in the Comprehensive Peace Accord signed between the government and the Maoist party as a rebellion⁴. Based on the Comprehensive Peace Accord, the Interim Constitution of 2007 laid the groundwork for federal restructuring, setting the stage for a constituent assembly to draft a new constitution.

No one can underestimate the contribution of the Maoist movement in federal restructuring of the country, as learned personality (Lawoti, 2003). With due consideration, the drafting of the Nepali Constitution of 2015 marked a significant milestone in Nepal's federalism debate. The identity and viability of the principles of federalism have been accepted by the concerned committee. However, the Constituent Assembly grappled with complex issues related to federal boundaries, power-sharing, and resource allocation. Very little time had been given to the list of the power of the federal units. The final document enshrined federalism as a guiding principle, devolving powers to three tiers of

⁴ Comprehensive peace Accord 2006 signed between the Government of Nepal and the NCP Maoist party.

government: federal, provincial, and local. However, the process was not without controversy, as debates over federal boundaries, ethnic identity, and representation led to political deadlock and protests. Despite these challenges, the promulgation of the constitution represented a historic achievement in Nepal's democratic transition.

The federalism debate in Nepal has been characterized by a range of contentious issues and challenges. One of the primary issues is the delineation of federal boundaries, particularly in identically diverse regions with competing claims for autonomy and representation. Additionally, questions regarding resource allocation, fiscal federalism, and inter-governmental relations have posed significant challenges to effective implementation. Furthermore, issues such as political polarization, bureaucratic inertia, and institutional capacity constraints have hindered the smooth functioning of federal structures, impeding progress toward inclusive governance and development.

The federalism debate in Nepal has profound implications for governance, democracy, and socio-economic development. The preamble of the constitution is highlighting as mentioning the *"eliminating all forms of discrimination and oppression resulted from the feudalistic, autocratic, centralized, unitary system of governance of the State; protecting and promoting unity in diversity, social and cultural solidarity, tolerance and harmony, by recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and geographically diverse characteristics; and resolving to build an egalitarian society based on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity, and social justice by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability"*⁵ this is a whole spirit of the constitution and as well as federalism express by the constituent assembly. By division of power and decision-making authority, federal structures have the potential to enhance citizen participation, accountability, and responsiveness to local needs. Moreover, federalism promotes inclusivity, diversity, and social cohesion by recognizing and accommodating the unique identities and aspirations of various ethnic, linguistic, and regional communities. Furthermore, devolution of the power of governance can facilitate more efficient resource allocation, service delivery, and infrastructure development, thereby contributing to equitable and

⁵ Preamble of the constitution.

sustainable development outcomes across the country.⁶

Prospects for Effective Implementation:

As Breen (2018) revealed the fact after research, "the character of armed conflict appears to be important. Where only two conflict actors were present such as in Nepal, successful conflict resolution and health system reforms enshrined in peace accords and legislated appeared to support health system performance under decentralization." It is a huge impact of federalism that inspired effective implementation. Despite the challenges, federalism holds promise as a means of addressing historical grievances, promoting democratic governance, and fostering socio-economic development in Nepal. Strengthening inter-governmental mechanisms, enhancing fiscal federalism arrangements, and fostering a culture of dialogue and consensus-building are essential steps towards effective implementation. Moreover, investing in capacity-building, promoting intercultural understanding, and empowering local communities can enhance the effectiveness and legitimacy of federal structures. By harnessing the potential of federalism to promote unity in diversity, equitable development, and democratic governance, Nepal can pave the way for a more prosperous and inclusive future for all its citizens.

In conclusion, the federalism debate in Nepal reflects the country's complex socio-political landscape, historical grievances, and aspirations for inclusive governance. While significant progress has been made in institutionalizing federal structures, challenges persist in their effective implementation. Addressing these challenges requires concerted efforts from all stakeholders, including political leaders, civil society, and the international community. By embracing the principles of federalism and promoting dialogue, cooperation, and inclusive development, Nepal can realize the full potential of federalism as a catalyst for democratic governance, social cohesion, and sustainable development.

Constitutional Provisions:

The Constitution of Nepal (2015) embodies the principles of cooperative federalism, enshrining a comprehensive framework for the distribution of powers, resources, and responsibilities among the federal, provincial, and local

⁶ Preamble of the Comprehensive Peace Accord.

levels of government.⁷ Chapter 5 of the constitution is related to state structure and division of state power and Chapter 20 is concerned with the interrelation between federal, provincial, and local levels. Furthermore, if anyone wants to know the spirit of federalism, they need to go through the state restructuring and delineation of the state power committee report of the constituent assembly. With this background, Article 56 of the constitution mentioned that the federal democratic republican Nepal has been divided between federal, provincial, and local levels. All levels of government can exercise state power. The interpretation of the state power includes legislative, executive, and judicial powers. Article 57 of the constitution delineates the powers and functions as per the list of the annex of the constitution including exclusive and concurrent lists. The power and functions of the federal government includes defense, foreign affairs, and currency issuance, while granting provinces autonomy in areas such as education, healthcare, and agriculture. Moreover, Article 217 establishes mechanisms for resource-sharing and fiscal coordination through the National Natural Resources and Fiscal Commission, tasked with ensuring equitable development across provinces. Additionally, the Constitution mandates the establishment of an Inter-governmental Fiscal Council to promote dialogue and cooperation on fiscal matters among different tiers of government. Furthermore, provisions for the formation of the National Council, comprising representatives from provinces and local bodies, underscore the commitment to inclusive decision-making and representation at the national level.

Coordination mechanisms

The Constitution of Nepal incorporates various mechanisms for coordination among different tiers of government to ensure effective governance and cooperation. These coordination mechanisms are essential for fostering harmonious relations, resolving disputes, and promoting the smooth functioning of federal structures. The Constitution delineates specific provisions and institutions to facilitate coordination at the federal, provincial, and local levels.

Firstly, the Constitution establishes the National Natural Resources and Fiscal Commission (NNRFC)⁸ as a key institution for coordinating fiscal matters among the federal government, provincial governments, and local bodies. The

⁷ The Constitution of Nepal 2015

⁸ The Constitution of Nepal, Article 217.

NNRFC is mandated to formulate principles for the distribution of natural resources and revenues, ensuring equitable development across provinces. By providing a platform for dialogue and negotiation, the NNRFC promotes consensus-building and cooperation on fiscal issues, thereby enhancing inter-governmental relations.

Secondly, the Constitution mandates the establishment of an Inter-governmental Fiscal Council (IFC)⁹ to facilitate coordination and cooperation on fiscal matters between different tiers of government. The IFC serves as a forum for federal, provincial, and local governments to discuss revenue-sharing arrangements, budgetary allocations, and fiscal transfers. Through regular meetings and consultations, the IFC promotes transparency, accountability, and mutual understanding among all levels of government, thereby strengthening the fiscal framework and promoting fiscal discipline.

Furthermore, the Constitution provides for the establishment of an Inter-state Council¹⁰ to address disputes and conflicts arising from inter-provincial relations. The Inter-state Council serves as a mechanism for resolving disputes related to politics, such as jurisdiction, resource allocation, and boundary demarcation among provinces. By providing a platform for dialogue and arbitration, the Inter-state Council helps prevent conflicts and promotes cooperation among provinces, thereby safeguarding the unity and integrity of the federal structure. The constitutional bench¹¹ in the Supreme Court is responsible for resolving constitutional and legal disputes between federal, provincial, and local governments. The National Coordination Council¹² under the act passed by the federal parliament, the provision of Article 235(1) states that the provincial assembly¹³ is responsible for resolving the political debate and coordinating local and provincial levels and inter-local level disputes.

Additionally, the Constitution empowers the federal government to coordinate and supervise the activities of provincial governments in matters of national importance, such as national security, foreign affairs, and inter-provincial infrastructure projects. This coordination mechanism ensures coherence and consistency in policy formulation and implementation across different levels of

⁹ Intergovernmental Fiscal Transfer Act 2015

¹⁰ Article 234.

¹¹ Article 137

¹² Article 235(1)

¹³ Article 235(2)

government, thereby promoting national unity and coherence.

The Constitution itself has declared in Article 232, that "the relation between federation, provinces, and locals shall be based on the principles of cooperation, co-existence, and coordination."¹⁴ With this fact, in conclusion, the Constitution of Nepal incorporates various coordination mechanisms to facilitate effective governance and cooperation among different tiers of government. From the establishment of institutions such as the National Natural Resources and Fiscal Commission and the Inter-governmental Fiscal Council to provisions for resolving disputes through the Inter-state Council, the Constitution provides a robust framework for promoting harmonious relations and ensuring the smooth functioning of federal structures. By fostering dialogue, cooperation, and mutual respect among all levels of government, these coordination mechanisms contribute to the stability, unity, and prosperity of Nepal.

Implementation Challenges:

Despite the constitutional mandate for cooperative federalism, Nepal faces numerous challenges in its effective implementation. One significant challenge is the capacity constraints and resource disparities among provinces, leading to uneven development outcomes and service delivery. The unequal distribution of human and financial resources exacerbates these disparities, hindering the ability of provinces and local governments to fulfill their mandates effectively. Moreover, issues such as overlapping jurisdiction, vertical fiscal imbalance, and inter-governmental conflicts pose hurdles to effective cooperation and coordination between different levels of government. Political instability, bureaucratic inertia, and institutional weaknesses further impede the smooth functioning of federal structures, undermining the realization of the full potential of cooperative federalism. The biggest problem faced by the provincial and local level government is the lack of staff and police. The federal government has yet to provide the required police force and staff. This is the biggest implementation problem faced by the provincial and local levels.

The federal level of government seems to be reluctant to devolve their power to the provincial and local levels. At the same time, provincial and local levels are also confused and lack confidence to assert their power as divided by the constitution itself. To date, provincial and local governments hesitate to assert

¹⁴ Article 232

the power given by the constitution to establish their service in provincial and local level.¹⁵

Political will has not been reflected in reality is another challenge. Politicians who write the constitution and are reluctant to implement it hinder the implementation. At the same time, bureaucracy and police are almost not comfortable to federalize the country and institutions. The most important issue is federalizing the political parties. Federal state structure and unitary political party structure have a great contradiction which hinders to implementation of the federal constitution.

Performances at the provincial and local levels are also not satisfactory. Most of them concentrated on power concentration rather than empowering the people. Most of the legislation approved by the provincial and local levels is related to the facilities of the elected officials rather than service delivery to the people is a more criticized point from the public arena.

Implications for Governance and Development:

Cooperative federalism holds profound implications for governance, democracy, and socio-economic development in Nepal. By division of power and decision-making authority, federal structures can enhance citizen participation, accountability, and responsiveness to local needs. Moreover, cooperative federalism promotes inclusivity, diversity, and social cohesion by recognizing and accommodating the unique identities and aspirations of various ethnic, linguistic, and regional communities. Furthermore, decentralized governance can facilitate more efficient resource allocation, service delivery, and infrastructure development, thereby contributing to equitable and sustainable development outcomes across the country. Additionally, cooperative federalism fosters innovation and experimentation at the subnational level, enabling provinces and local governments to tailor policies and programs to their specific contexts and priorities. By empowering local communities and fostering collaboration among all levels of government, cooperative federalism can contribute to the consolidation of democratic institutions and the promotion of peace, stability, and prosperity in Nepal.

Case Studies: justified cooperative federalism

¹⁵ Article 302

Several initiatives exemplify the spirit of cooperative federalism in Nepal, showcasing successful collaboration and synergy among different tiers of government. The establishment of the National Reconstruction Authority following the devastating earthquake of 2015 demonstrated coordinated efforts between the federal government, provincial governments, and local authorities in rebuilding infrastructure and restoring livelihoods. Similarly, the implementation of the Health Sector Strategy during the time of COVID-19 was outstanding. People who were not in favor of federalism thought they appreciated the provincial and local levels initiatives related to COVID control. More specifically, the devastating earthquake and pandemic period at the provincial and local levels underscored the importance of devolution of the power of planning, resource allocation, and service delivery in improving healthcare outcomes. Moreover, initiatives such as the Provincial Assembly Development Fund and the Local Infrastructure Development Partnership Program have empowered provinces and local governments to mobilize resources and undertake development projects tailored to local needs and priorities. These case studies highlight the potential of cooperative federalism to address pressing challenges, deliver essential services, and promote inclusive and sustainable development across Nepal.

Prospects and Recommendations:

The effective implementation of the federal structure in Nepal is crucial for realizing the objectives of division of power, inclusivity, and democratic governance. To move forward successfully, several key steps must be taken:

❖ Strengthening Inter-governmental Mechanisms:

Constitutionally established inter-state council for political dispute resolution, constitutional bench under Supreme Court for legal and constitutional dispute settlement, National Coordination Council for coordination between federal, provincial and local level, provincial assemblies for coordination and political disputes resolution between provincial and local, local and local level are crucial and have effective role to play. It was expected that establishing strong inter-governmental mechanisms is essential for facilitating cooperation, coordination, and dialogue among different tiers of government. This includes enhancing the capacity and functioning of all institutions such as the National Natural Resources and Fiscal Commission (NNRFC), the National Coordination Council (NCC) and their subject and specialized committees (SCs), the Provincial

Coordination Council (PCCs), and the Inter-governmental Fiscal Council (IFC). These bodies should be empowered with clear mandates, adequate resources, and impartial leadership to effectively address issues related to resource allocation, fiscal transfers, and inter-governmental disputes.

❖ **Enhancing Fiscal Federalism Arrangements:**

Improving fiscal federalism arrangements is critical for ensuring financial autonomy, accountability, and sustainability at all levels of government. This involves revisiting revenue-sharing formulas, enhancing revenue-generation capacity at the sub-national level, and promoting transparency in budgetary processes. Additionally, mechanisms for monitoring and evaluating fiscal performance should be strengthened to ensure prudent fiscal management and prevent fiscal imbalances. The National Natural Resources and Fiscal Commission (NNRFC) is responsible for resource allocation and distribution by creating separate formulas specifically mentioned in the constitution. However, before the formation of the commission separate laws had been made by parliament, and the distribution and allocation of the revenue had been fixed. It is against the constitution and encroachment of the jurisdiction of the NNRFC, but no one questioned it. These are some problems with implementing federalism. Now time has come to make compatible laws to the constitution and fully implement it.

❖ **Promoting Capacity-building and Institutional Strengthening:**

Investing in capacity-building and institutional strengthening is essential for enhancing the effectiveness and efficiency of federal structures. This includes providing training and technical assistance to government officials at all levels, enhancing the administrative capacity of provincial and local governments, and promoting the adoption of best practices in governance and service delivery. Furthermore, efforts should be made to enhance the professionalism, integrity, and accountability of public institutions to build public trust and confidence in the federal system.

❖ **Fostering Dialogue and Consensus-building:**

Promoting dialogue and consensus-building among political parties, civil society organizations, and other stakeholders is crucial for overcoming political polarization and promoting inclusive decision-making. This involves creating spaces for constructive dialogue, promoting transparency in decision-making processes, and fostering a culture of cooperation and mutual respect.

Additionally, efforts should be made to address the grievances and concerns of marginalized communities and ensure their meaningful participation in decision-making processes.

❖ **Empowering Local Communities:**

Empowering local communities to participate in governance and development processes actively is essential for promoting grassroots democracy and inclusive development. This includes devolving decision-making authority, resources, and responsibilities to local governments, strengthening local governance structures, and promoting community-based initiatives. Additionally, efforts should be made to build the capacity of local institutions and empower marginalized groups, including women, youth, and ethnic minorities, to participate effectively in local governance.

❖ **Addressing Socio-economic Disparities:**

Addressing socio-economic disparities and promoting inclusive development is central to the success of the federal structure. This involves investing in infrastructure development, promoting equitable access to basic services such as education and healthcare, and implementing targeted poverty reduction programs. Additionally, efforts should be made to address regional disparities in development outcomes and promote balanced regional development through targeted investments and policies.

In conclusion, effective implementation of the federal structure in Nepal requires concerted efforts from all stakeholders, including the government, political parties, civil society organizations, and the international community. By strengthening inter-governmental mechanisms, enhancing fiscal federalism arrangements, promoting capacity-building and institutional strengthening, fostering dialogue and consensus-building, empowering local communities, and addressing socio-economic disparities, Nepal can realize the full potential of federalism as a catalyst for democratic governance, inclusive development, and social cohesion.

Despite the challenges, cooperative federalism offers significant opportunities for promoting unity, diversity, and equitable development in Nepal. Strengthening inter-governmental mechanisms, enhancing fiscal federalism arrangements, and fostering a culture of dialogue and consensus-building are essential steps toward realizing the objectives of cooperative federalism. Moreover, investing in capacity-building, promoting intercultural understanding,

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and empowering local communities can enhance the effectiveness and legitimacy of federal structures. Furthermore, leveraging technology and innovation to improve governance processes and service delivery can enhance the efficiency and responsiveness of government institutions at all levels. By harnessing the principles of cooperative federalism, Nepal can navigate the complexities of diversity, promote sustainable development, and build a more resilient and prosperous future for all its citizens.

Conclusion:

As Schütze, R. (2009) stated, the federal principle stands for constitutional arrangements that find "unity in diversity". Taking into account this statement, in conclusion, cooperative federalism stands as a key feature of the Constitution of Nepal, reflecting the nation's commitment to unity in diversity, inclusive governance, and equitable development. While challenges persist in its implementation, the principles of cooperation, collaboration, and solidarity offer a pathway to address governance deficits, promote socio-economic progress, and strengthen democratic institutions. Through concerted efforts and pragmatic reforms, Nepal can harness the potential of cooperative federalism to build a more resilient, prosperous, and harmonious society for generations to come. By embracing diversity, promoting inclusivity, and fostering collaboration among all levels of government, Nepal can realize the vision of cooperative federalism and pave the way for a more prosperous and inclusive future for all its citizens. As the father of federalism, Ronald Watt (2007) says "Political events in various parts of the world during the past decade have attracted new attention to the strengths and weaknesses of federal solutions as a means of resolving political problems" Let's try to justify.

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