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Origins of federalism: A case of Nepal

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Abstract

There is debate in the academic literature about the origins of federal political system since long time back. This study is an attempt to unfold the issue by analysing the socio-political developments and circumstances vis-à-vis origin of federalism in case of Nepal. This study finds that the Livingston's "sociological theory" adequately explains the formation and origin of Federalism in case of Nepal. Firstly, Nepal is a case of federalism that has been created through the process of devolution (dis-aggregation) not through aggregation; secondly it has been created through many political negotiations held by the government of Nepal in response to the demands of various ethno-regional groups of the society, thirdly federalism as a political system has been adopted to replace the centralised monarchical unitary system dominated by single identity. Fourthly it has been evolved as the antidote to the exclusionary nature of the state as well as to accommodate the socio-cultural diversity.

Keywords: Federalism, Indigenous Nationalities, Madheshi, Ethnicity, Autonomy, Inclusiveness.

Introduction

Nepal declared itself as a Federal State by amending its "Interim Constitution- 2007"¹ so as to the formal federal restructuring to be done through an elected constituent assembly (CA). By the time of preparation of this work the second constituent assembly (CA-II) is forging the common ground of consensus for formal federal restructuring and its institutions. The debate of "Origin theory of federalism" is full of controversies as far as causative factors responsible for it are concerned. For some, formation and origin of a federation is exclusively a political issue which arises out of political causes and circumstances. While for others, it emanates as a result of socio-economic realities of the society, the cultural diversities and allied aspirations on part of various communities of that society. Those causative factors have varied case to case, thus the context of the country itself becomes an imperative for the cause of the investigation. Since last two decades, the issues of ethnicity, regionalism, autonomy, inclusion have become burning agenda of the political discourse of Nepal. Thus an attempt has been made to fill the contextual gap of the theoretical problem under this study. Moreover, intellectual debates in context of Nepal around; what should be the basis for creating provinces? How many of provincial units? What kind of federal institutions, probably, can and should be resolved by knowing the forces and factors behind the origin of federalism. This paper is aimed at unfolding the process and forces behind the origins of federalism in context of Nepal so as to explore which theory regarding the origins of federalism better explains the case of Nepal.

The paper claims that the adoption of federalism in case of Nepal is in the response of various "ethnic and regional groups" demand of federal autonomy. The demands are inspired by inclusiveness, proportional representation, and motivated by getting recognition of socio-cultural plurality, by replacing monolithic centralised unitary political system of the constitution of the kingdom of Nepal-1990. Therefore, the central argument is that the federal solution in Nepal was necessitated by the desire to achieve 'Federal Autonomy' and this was made possible by the presence and demand of certain socio-economic forces. Put differently, the paper brings to the fore the gaps in Political theory of origin of federations in general and contextualising the case of Nepal in particular. In this paper therefore, an attempt is made to shed more light on those circumstances and forces that culminated in the Federal Nepal, with a view to proving that the socio-economic theory of federal formation best explains the birth of the Federation in the case.

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¹ Preamble of the Interim Constitution of Nepal-2007

The remaining part of the paper is divided into four main sections. The first examines various theories of federal formations in general, while the second, which focuses on the socio-cultural causes behind the demand of federal autonomy in case of Nepal. The third section identifies the socio-political forces behind the demand of federalism, in addition to the major political developments that paved the way for a federal Nepal and the fourth section, which concludes the paper, highlights the evidence in support of social theory of federal origin.

Review of Literature

Theoretically, according to Stepan², federalism can be achieved in two ways: “Coming-together federations”, and “Holding-together federations.” The first one, i.e. “coming together federation” appears when sovereign states decide to form a federation voluntarily due to various reasons such as security purposes, governmental efficiency and so on. The second one, “holding together,” mostly emerge after consensual parliamentary decisions to maintain a unitary state by establishing a multi-ethnic federal system largely to avoid or settle ethnic, regional and other type of group conflict. Federation may develop as result either from a centrifugal political force-the breaking down of a unitary form of government; or from centripetal action- the building up of parts into a new entity³.

Riker (1964) saw the issue as an exclusively political affairs rather than socio-economic one. This way Riker emphasize, the creation of federal system is the result of a political bargain in the situation when traditional empires collapse. (i) A desire on part of the politicians who offer the bargain to expand their territorial control by Peaceful means usually to meet an external military or diplomatic threat. (ii) Willingness on part of politicians who accept the bargain to give up some independence for the sake of union because of the military-diplomatic threat⁴. Michel Burgess, through his case studies analysis of Switzerland, Canada, Australia, India, Malaysia, Austria and Germany, demonstrates that a complex amalgam of socio-economic, historical and political variables were also present at the creation of these federations⁵.

Ronald L. Watts identified a series of ‘motives for union’ and concluded that most of them were ‘present to some degree’ in each case, but that the ‘relative importance of different factors has varied with each federation’⁶. What distinguishes the newer federations from the older ones is that these particular divisive forces have been generally of much greater significance. Ethnic and cultural diversities have been prominent in all the new federations and the contrasts have invariably been sharper and deeper⁷. Wheare’s analysis found that in communities which opt for the federal system there co-exist two desires: (i) the desire for union and the desire for establishing independent regional governments and (ii) the capacity to give reality to that desire⁸.

By developing alternative argument beyond legalism of federal studies, Livingston, offered sociological interpretation by saying that the essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces economic,

social, political and cultural, that have made the outward forms of federalism necessary. Federalism, like most institutional forms, is a solution of, or an attempt to solve, a certain kind of problem of political organization. It is true, on the whole, that federal governments and federal constitutions never grow simply and purely by accident. They arise in response to a definite set of stimuli; a federal system is consciously adopted as a means of solving the problems represented by these stimuli⁹. The essence of federalism lies not in the institutional or constitutional structure but in the society itself. Federal government is a device by which the federal qualities of the society are articulated and protected. Differences of economic interest, religion, race, nationality, language, variations in size, separation by great distances, differences in historical background, previous existence as separate colonies or states, dissimilarity of social and political institutions- all these may produce a situation in which the particular interests and the segments of the larger community must be given recognition. The total pattern of these diversities produces a demand for some kind of federal recognition of the diversities. This demand must in most cases meet a counter-demand for increased unity or for increased unity or integration. The federal system is thus an institutionalization of the compromise between these two demands, and the federal constitution draws the lines of this compromise¹⁰.

Social Diversity and Political Exclusion in Nepal

Social diversity in Nepal is highly complex: there are multiple and over-lapping categories of identity and specific ethnic labels have shifted over time, Ethnicity, caste, religion, language, and region are salient axes of identity. Regional divisions between the mountain region (*himal*) in the north, the hill region (*pahad*) across the centre, and the plains (*tarai*) stretching along the south further fragment the population. The 2001 census recorded data for one hundred ethnic (Indigenous Nationalities) and caste groups (Hindu Caste Groups) and tabulated a total of ninety two Languages and at least seven religions¹¹.

Table 1: Fifteen Major CE Groups in Nepal (by population)

S.N.	*CE Groups	Rank	Percent	Social Groups
1	Chhetri	1	16.6	Hill Caste
2	Bahun	2	12.2	Hill Caste
3	Magar	3	7.1	Hill Ethnic
4	Tharu	4	6.6	Tarai Ethnic
5	Tamang	5	5.8	Hill Ethnic
6	Newar	6	5	Hill Ethnic
7	Kami	7	4.8	Hill Caste/Dalit
8	Muslim	8	4.4	Tarai Religious
9	Yadav	9	4	Tarai Caste
10	Rai	10	2.3	Hill Ethnic
11	Gurung	11	2	Hill Ethnic
12	Damai	12	1.8	Hill Caste/Dalit
13	Thakuri	13	1.6	Hill Caste
14	Limbu	14	1.5	Hill Ethnic
15	Sarki	15	1.4	Hill Caste/Dalit
Percent of Total Population			77.1	

Note: CE stands for caste/ethnic groups.

Source: Some Aspects of Nepal’s Social Demography: Census 2011 Update

The high-caste Hindus from the hill region constitute the dominant group in Nepal. They gained the upper hand in the

² Stepan, 2001: 320-23

³ Maddox, 1941: 1121 and Bryce, 1919: 350-51

⁴ Riker, 1964: 42

⁵ Burgess, 2007: 101

⁶ Watts, 1966: 65

⁷ Ibid, 92

⁸ Wheare, 1951: 35-6

⁹ Livingston, 1951: 84

¹⁰ ibid, p.89-90.

¹¹ Gurung(2003) quoted in Hangen,2007:3

political arena during the period of state formation in the last half of the eighteenth century, when Prithvi Narayan Shah, the king of a principality called Gorkha, conquered and annexed the numerous small kingdoms that existed throughout Nepal. Since this “unification” of the state, the Shah, high-caste Hindus who claim to be descendants of royal clans from India, have reigned as Nepal’s monarchy. The Process of state building resulted in ethnic stratification as different groups of people were incorporated in the state on unequal terms. High-caste Hindus residing in Nepal’s central hills were closely aligned with the state from the beginning and have continually held positions of power¹². Nepali political history, this way, can be divided into four distinct phases- The Shah-Rana oligarchy before 1950. Politics during the phase occupied by the Shah rulers, their courtiers and the Rana family patronages, with exclusion of their subject. The second phase with interaction of the Palace with party politics began in 1950 which couldn’t survive long because of 1960s Palace coup. The third phase with the revival of multi-party parliamentary democracy & constitutional monarchy, in post 1990 as a result of Peoples Movement. The fourth phase began by the peoples movement-II (2006) led by seven party alliance (SPA) Which heralded the peace process with the Maoists and abolished the Monarchy and Unitary form of political system¹³.

Ethnic inequality existed was considered politically contentious throughout the authoritarian Panchayat era (1962-90) and most of the 1990s. During the Panchayat era, the state promoted the “myth of inter-group harmony”, with the slogan of “One nation! One language! and One culture!” the idea that the conflicts between Nepal’s myriad ethnic groups were non-existent¹⁴. Throughout the period, people were treated as passive subjects and were kept aloof from the entire social and political processes which caused and contributed to all kinds of social, economic and political malaise and cultural homogenisation. The centralisation of state power in Kathmandu alienated the vast majority of those excluded groups by the feeling of continued monopolisation of power by small elite based on identity and region¹⁵.

Secondly, in words of Lawoti, political exclusion has increased in the parliament, cabinet, administration and judiciary after 1990 as compared to the autocratic panchayat years (1962-90) and the 1959-60 democratic years for some groups like the indigenous nationalities (*adibasi janajati*). For the Dalits, the near total exclusion still continues. Likewise, the presence of Madhesi and Muslims in the parliament is on the decline since 1991¹⁶. In addition to political exclusion, the socio-cultural groups also face cultural discrimination. Inequality between native languages, religious and culture has been widespread in Nepal. The declaration of the state as Hindu in 1990 itself rendered non-Hindus as second class citizens, as Hindu norms influence laws, public policies and every-day life. Cultural discrimination also contributed to exclusion as the culturally disadvantage groups couldn’t compete on equal terms with others who were favoured by the state and its

institutions¹⁷. Thus if the exclusion had only been due to historical factors, the exclusion should not have increased. SIRF (2011), one of the leading organizations working in the areas of inclusion/exclusion, provides an account of the social inclusion in Nepal, outlined that four groups of people are excluded from the contemporary development processes either through political exclusion (decentralized efforts of development, basic citizenship rights, etc.) or through economic exclusion (concentrated urban market centres) or through social exclusion (socio-cultural attributes, a legacy of age old culture, etc.). These four groups are: i) Dalits or lower caste people, ii) Indigenous people or Janajati iii) Madhesi or Terai inhabitants and iv) Women¹⁸.

Nation building was the prime objective of the education system after the end of Rana regime. The education system worked to assimilate Nepal’s diverse population into a unified nation by using the Nepali language as the sole medium of instruction¹⁹. State published school textbooks and curriculum delivered nationalist ideology to children. These books excluded the cultures, histories, and languages of Nepal’s ethnic groups²⁰. Another means through which the state sought to depict a homogeneous Nepali nation was the census. From 1952-54 until 1991, citizens were enumerated on the basis of linguistic and religious affiliation as well as caste and ethnic identity, but the state did not process or publish this data²¹.

Forces and Processes for Federalism

By having discussed the overall exclusion on part of marginalised sections, now the political events and incidents regarding the formation of federalism with a view to identify the forces behind its genesis will be elaborated. The demand of federal restructuring or federal autonomy have been made by various ethno-regional groups. But equally important are other political events that led to the adoption of federalism in the country. In this section we will analyse that:

Peoples War led by CPN-Maoists

Primarily in response to the class conflicts along with the other gender, ethnic and regional realities, violent resistance against the state in 1996 A.D. began by the communist party of Nepal –Maoist (CPN-M). The CPN-Maoist, which rose from a small party to become a significant power broker over the past decade, and the indigenous nationalities movement, had a complex, mutually influential relationship. Many indigenous nationalities and other marginalised peoples, including women and Dalits, participated in the decade-long People’s War. Indigenous nationalities have supported the Maoist insurgency for a variety of reasons. The Maoist raised the ethnic issues with more force than any of the mainstream political parties. Shortly before launching the People’s War in 1996, the Maoists incorporated into their platform many issues that the indigenous nationalities movement had voiced including the right to self-determination. In 2000 A.D. the boundaries of nine autonomous regions were drawn under the parallel people’s government of Maoist, based on ethnic criteria that would give ethnic groups the right to self-determination and

¹² Whelpton, 1997: 41

¹³ Dahal, 2007: 85 & Baral, 2012 :25

¹⁴ Bhattachan, 1995 :11

¹⁵ Ghai & Cottrell, 2008 : 11

¹⁶ Lawoti, 2005: 19

¹⁷ Ibid, 20

¹⁸ Arun Kumar Lal Das, et al., 2014 :68

¹⁹ Gaige, 1975: 108-09

²⁰ Ragsdale, 1989: 194-95

²¹ Gurung, 2003:1

secession²². This led to making a fertile ground for aspiring 'autonomy' on federal line among various ethnic communities who already were feeling alienated and excluded in all terms.

Peoples Movement II

King Gyanendra's coup in 2005 in the backdrop of royal family massacre paved way for another movement for the cause of restoring parliamentary democracy, for what; between Seven Parties' alliance (SPA) & CPN-Maoist, an understanding was facilitated by New Delhi that was signed into twelve point agreement to challenge the "Royal rule" through popular mass movement (II) 2006, which was also inspired by inclusiveness through progressive restructuring of the new Nepal²³. In addition, the role of peace process between the government of Nepal and the Maoists also facilitated for restructuring of state, as the CPA (comprehensive peace agreements) recommended that the centralized and unitary structure of the state be deconstructed and that an inclusive and democratic state be established for socio-economic and cultural transformation through the decision of an elected constituent assembly (CA)²⁴, but there was absence of the word "Federalism".

Indigenous Nationalities' Activism

The constitution of Nepal 1990 itself became a source of dissatisfaction among various ethno-regional communities because, during the constitution making process of 1990, majority of suggestions on issues of regional, linguistic, ethnic, and religious identity were overlooked²⁵. But the multiparty democratic system of the new constitution allowed a space for public and intellectual debate over the issues un-tackled because people expected that the representation of the nation would become more inclusive. Thus, the homogenizing form of nationalism and unequal power relations upheld and concealed by it, became central issues of public debate after the People's movement of 1990. This dissatisfaction among the ethnic communities led them to unite and search for a grand but common identity this led to the formation of an umbrella organisation made of fifty six such indigenous nationalities called Nepal Federation of Indigenous Nationalities (NEFIN)²⁶. Under this organisation frequent struggles began by them, the overarching aims of that were to increase the social, economic and political power of these people, and to end the dominance of the high-caste Hindus in the state. Although the earlier phases of the movement emphasized cultural politics, the movement increasingly focused on explicitly political demands at later stages. While language, religion, culture were key to the movement in 1990, the later emphasis was on the right to self-determination and ethnic autonomy. Since April 2006, the indigenous nationalities movement came closer to seeing its goals realized. The Interim Constitution was adopted on January 15, 2007. This constitution upholds many of the decisions of the peace accord but it failed to meet the demands of the indigenous nationalities²⁷. This was taken as sheer deceive by the

governments to them due to which movements brook out through-out the country before the election for Constituent Assembly. It was only on 7th August, 2007, the agreement was signed between the NEFIN and the government of Nepal which expressed the commitment for inclusive and federal Nepal²⁸.

Madhesh Regional Activism:

Madhesh – south of Siwalik Hills – is distinct from the middle hills of Nepal, ecologically, linguistically, and culturally. Their lifestyle, food habits, dress, language and culture are common with people who live across the Indian border in Utter Pradesh and Bihar²⁹.

The Anglo-Nepal war of 1814-16 – in which at least some Madheshis took the side of British India³⁰ – was the starting point of the existing discrimination against Madhesh. The prohibition on Madheshis in the security forces was its legacy. Madheshis had to obtain a written permission to enter the Kathmandu Valley during the Rana regime (1846-1950). Only in the post-1950 period did the Nepali state actively and aggressively launch several programmes to integrate the Tarai, culturally, economically and administratively. The state designed scheme of national integration and acculturation through the imposition of Nepali language (as the only official language and medium of education) and hill culture adversely impacted to the Madheshis. The Citizenship Act of 1963 is biased against non-Nepali speaking population and consequently many Nepali citizens of the plains origin were either deprived from citizenship certificate or they faced much difficulty in process of acquiring citizenship cards.

The post-1990 period witnessed the rise of ethnicity and regionalism because the new vigour of inclusive democracy failed to feed ethnic and regional aspirations of the Madheshi people. The post-Peoples' Movement II (2006), transitional government arrangements offered some benefits to Janjatis, women, and Dalits, but they granted nothing in the case of the Madheshis. Thus, The Madhesh movement was an outburst of anger against systematic exclusion of Madhesh since long ago. The January-February, 2007 Madhesh uprising – a 21 day long mass movement participated in by large masses of the Madheshi population – was an unprecedented event. It was a landmark event in bringing out regional based ethno-nationalism as one of the prominent issues in the national discourse on restructuring the Nepali state. It was so powerful and effective that Girija Prasad Koirala, the Prime Minister of the eight-party coalition government including the CPN (Maoist), was forced to proclaim twice within a single week that federalism would be instituted. Accordingly the Interim Constitution was amended twice within less than three months of its promulgation. The Madhesh uprising, thus, has to its credit the achievement of federalism³¹.

²² Sharma, 2002:18-19

²³ Twelve point understanding between seven party's alliance(SPA) and the communist party of Nepal (Maoist)

²⁴ Comprehensive peace accord between the government of Nepal and the communist party of Nepal (Maoist)

²⁵ Hutt, 1994: 35-36

²⁶ Hansgen, 2007:17-18

²⁷ Ibid: 45

²⁸ From Conflict to Peace in Nepal: Peace Agreements, ASPECT, 2011:94

²⁹ Gaige, 1975: 12 & Gellner *et al.* 1997:240

³⁰ Goait, 2007: 3

³¹ Hacchetu,2007: 1-11

Table 2: Agreements concluded between GON & various ethno-regional groups vis-à-vis issues of Federalism in Nepal.

S.N.	The Government of Nepal signed agreements with	Key Point of Demand	Mode of Demand	Nature of the Group	Type	Date
1	Agreement Between the Government of Nepal, Nepal Adiwasi Janajati Mahasangh and Adiwasi Janajati Samyukta	Federal restructuring of the state	Protests	Umbrella organisation of various Indigenous nationalities	By written agreements	August 7,2007
2	Agreement Between the Government of Nepal and the Madhesi Janadhikar Forum, Nepal	Federal restructuring & Federal Autonomy	Movement	Regional groups of southern plains	By written agreements	August 30,2007
3	Agreement reached on the Fourth Phase of Talks Between The Talks Team of the Ministry of Peace and Reconstruction and Chure Bhawar Pradesh	Federal autonomy	Protests	Regional groups	By written agreements	September 13,2007
4	Agreement Between the Government of Nepal and the United Democratic Madhesi Front (UDMF)	Federal restructuring & Federal Autonomy	Movement	Political alliance of Madhesh (region) parties	By written agreements	February 28,2007
5	Agreement Between the Government Talks Team comprising the Seven Political Parties and the Federal Republic National Front (FRNF), Nepal	Federal restructuring of the state	Movement	Front of Ethnic organisations(Lim bus,Khambus,Tharus,Tamang,Dalits) for Federalism	By written agreements	March 2,2007
6	Agreement Reached between the Government Talks Team comprising Seven Political Parties and the Federal Limbuwan State Council	Federal autonomy	Movement	Ethnic organisation of Limbus	By written agreements	March 19,2008
7	Agreement between the GoN and Tamsaling Samyukta Sangharsha Samiti, Nepal	Federal autonomy	Movement	Ethnic organisation of Tamang	By written agreements	April 11,2009

Source: Compiled from “*From Conflict to Peace in Nepal: Peace Agreements, 2005-10*”; Asian Centre for Peace & Conflict Transformation (ASPECT), Kathmandu, 2011

Conclusions

From the above discussions, what can we conclude are that firstly, that all the federations are not created through the same processes that is: some federations are created through aggrandizement or what we say “aggregation process”; while others including Nepal are created through the process of “disaggregation”, through devolutionary process. In the case of Nepal, political theory of Rikerian approach doesn’t provide support. It is so because, both the expansion condition and the military conditions are not present at all in case of Nepal, as the decision to adopt federalism in Nepal was not in response of making any grand coalition for the sake of deterring any perceived or real external diplomatic/military threat. It can be interpreted that it was rather, the internal security threat which can be considered as a cause behind the government of Nepal to adopt federalism as a new political system as it was in the response of various agitating movements and protests. As far as the bargain condition of the political theory of origins of federalism is concerned, it is very common to every political incident that is why this condition doesn’t qualify to be a condition at all.

Rather, it is the socio-economic theory of origins of federalism, developed by Livingston, has more relevance in context of Nepal, as the area under study has semblance with its theoretical manifestation i.e. it is the plural nature of the society which is territorially concentrated in different pockets of the country which have expressed its demand of federal autonomy through various protests, movements so as to exert pressure on the government of Nepal for adopting federal restructuring. Regarding the socio-cultural causes vis-à-vis demand of federal autonomy, it was the socio-cultural exclusion as the major reason coupled by the aspirations of overall inclusion in various state apparatuses that motivated to demand federal restructuring. The demands of federal autonomy were for recognition of manifold identities (self –rule) and aspiration of representation in overall governance of the state (shared–rule), germinated into a new federation in south Asia.

Moreover, the case of Nepal is also related with the peace and conflict resolution where the Maoist led civil war got resolved on the agreements including the provision of progressive restructuring of the state which actually overtly or covertly meant for some sort of federal restructuring, so

as to ensure the ending of the exclusions of various ethnic and regional groups and eliminate the monolithic nature of the state coupled with aspiration of inclusive society. Thus it becomes imperative here, to assert that while restructuring the state and its institution on federal line, these ethno-regional forces and their aspiration should be given due attention for durability of the upcoming constitution and political system in Nepal.

But what were the motivations and the aspirations of these ethnic and regional groups behind their demand of federal autonomy deserves a micro level scrutiny in detail as this study is limited and based only on the secondary sources.

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