



# Leadership and Federalization Debate in Nepal

Shandiya Chaulagain<sup>1\*</sup>, Khimlal Devkota<sup>2</sup>

<sup>1</sup>School of Nursing and Midwifery, Karnali Academy of Health Science, Jumla, Nepal

<sup>2</sup>Faculty Institute of Crisis Management Studies, Tribhuvan University, Kirtipur, Nepal

Email: \*sandhyapranjal 54@gmail.com

**How to cite this paper:** Chaulagain, S. and Devkota, K. (2020) Leadership and Federalization Debate in Nepal. *Open Access Library Journal*, 7: e6368. <https://doi.org/10.4236/oalib.1106368>

**Received:** April 28, 2020

**Accepted:** June 26, 2020

**Published:** June 29, 2020

Copyright © 2020 by author(s) and Open Access Library Inc.

This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

## Abstract

Nepali politics and leadership were ruled by a centralized, unitary, monarchical and exclusionary Hindu Kingdom before 2006. As a result of a decade long “Peoples war” as well as Maoist movement, the country has declared as republican, federal, secular and inclusive. The root causes of the conflicts are class, caste, gender and regional disparities. The violent conflict was political and it was purely byproduct of discriminatory state structure. It was considered that federalization of the state is prime solution. The peace process was initiated with the firm commitment of forward looking state restructuring. The paper tries to identify the federalization debate among the political parties during the peace process. This paper tries to capture the debates from both federalists and anti-federalists. Paper also tries to compare with the expectations and reality with lapse and gaps. This study is based on available information, literature and political statements, election manifestos and other related documents. Qualitative data has been used. A descriptive and analytical method has been applied to assess overall process of federal design. Data/information has been obtained from the historical document of political parties, government repository and views and ideas expressed by different stakeholders on federalization of the state. Finally some recommendations to the concerned authority for meeting the expectations within the constitutional framework have been made. The draft constitution prepared by 1<sup>st</sup> Constituent Assembly had adopted the spirit of identity. Identity was the basis of the federal design and a bottom-line of the federalist section of the society. However, in the constitution, the issue of identity based federalism has been badly diluted. There is a huge gap between the pre and post constitution stage. The challenge now is to mitigate the principles of federalism and simultaneously implement the constitution. The constitution is a compromised document and therefore my recommendation is again compromised for implementation of constitution and federalism.

## Subject Areas

Sociology

---

## Keywords

Leadership, Federalism, Identity Politics, Post-Constitutional Debate, Conflict and Peace

---

## 1. Introduction

Leadership always led the organization, society and states designed by them. For leadership state is an authority of power. Based on power, whether it is centralized or federalized the state is called Unitary or Federal. Generally a Unitary state concentration power in center and federal believes in devolution of power to the federal unites. Federal systems do this by distributing power among general and constituent governments in a manner designed to protect the existence and authority of all the governments [1]. According to federalism encyclopedia federal states are constituted by two different concepts. The federal idea is conceived as a means to unite people already linked by bonds of nationality through distribution of political power among the nation's constituent units or is also conceived as a means to unify diverse group of people for important but limited purposes, without disrupting their primary ties to the individual policies that constitute the federal system. Nepal is declared as a federal democratic republican country. Unitary and Centralized state has changed into federal states in Nepal which is a huge change in Nepali political history. The constitution of Nepal has changed the country from unitary to federal, monarchy to republican, Hindu kingdom to secularism, exclusionary to inclusionary system, which (*Constitution of Nepal* 2015) are the major achievements of Nepali politics. Normally for general public and intellectual communities there is not much difference whether a country is being run as a unitary and centralized system or as a federal system. If we look into the global context, both countries with unitary and centralized nature or federal nature are doing their best in their context. There are roughly 25 federal countries in the world today, which together represent 40 per cent of the world's population [2] and the rest of others are following unitary and centralized. Unitary and federal system is a character of the state structure. Any country can accept any characteristics as per their need and requirement. However assessments of the very nature of the state and their changing pattern and debate on the shaping of the structure of the country will be very interesting for academicians, practitioners and researchers. The main objective of this paper is to analyze the process of shaping state structure of Nepal. Having these limits within the objective of this paper, researchers have done brief analysis of leadership on pre-constitution debate, during-constitution debate and post-constitution debate of the federalization. Most of the references have been taken from the archival materials. Some of the facts have been collected from conversations.

According to Devkota "State restructuring means the total transformation of the state rather than just territorial restructuring". Again the author stressed that

“State restructuring covers scientific land reform based on worldwide experiences of land issue in the conflict” [3]. According to Dahal [4] “State restructuring is cannot be replicated from anywhere because every solution should be country specific based on their verities of conditions”. State structure itself doesn’t mean anything if it has not taken its services into account. If state service delivery is not effective and efficient then proper action and response have to be made based on the findings. Most of the problems of violence, conflicts and other issues happen due to the structure of the society. Nepali context is also not different. Debate on drafting new constitution started with an agenda based on state restructuring. The root cause of violent conflict was the then state structure and to resolve the violence the existing structure had to be changed. Therefore restructuring the state was a hot debate in relation to federalism. The debate of state restructuring was also related with the conflict. In this context during the constitution making process state restructuring task also had to be completed simultaneously. State restructuring was one of the main tasks of constitution making process where leadership was badly divided.

The basic understanding of the state restructuring was that the unitary structure had to be changed into federal structure. Therefore federalism debate is a part and partial of the state restructuring. Now the paper mainly highlights the issues related to constitution making, federalism and state restructuring with leadership understanding.

The structure of the research is divided into seven sections including introduction. The first section introduces federal debate in Nepal in general and specifically expectation and reality. The second section is on briefing about Nepali context which is unique journey from unitary to federalism. The third section of the research is real debate between federalist and anti-federalist with their logic. The fourth section has tried to recap expectation of federalism. The fifth section has dealt with reality in practice. The sixth section has explained the gap between expectation and reality, mainly pre-federalism and federal structure. The final section has concluded the research with recommendation and limitation of the research.

## 2. Nepali Context

Leadership of Nepal either ruled by or ruled with unitary state. The debate of federalism came up occasionally. Because of monarchy federal ideas were rejected then and there. Therefore, Nepal remains unitary and a centralized state for a very long time. Terai based parties including terai Congress had raised the issue of federalization, but monarchy did not pay attention. Gajendra Narayan Singh had asked many times for federalization. Later on Nepal’s Maoist movement had picked up it. Maoist leadership raised it with the question of nationality. Identity based federalism has got popular support from the different corners of the societies including culture, ethnics, languages and so on. The ‘People’s War’ in 1996, their 40-point demands and manifesto included autonomous areas for ethnic minorities where they constituted a majority, equal standing for all

languages and the right to education in the mother tongue. According to Suhrke “As the Maoist movement gathered momentum, they established nation (ethnic) fronts who were named after the principal nationality groups, proposed a federal structure based on nine autonomous regions mainly based on ethnic criteria, and set up presumptive ‘people’s governments’ for these nine regions” [5]. After that debate on federalism became a major agenda along with the Maoist movement. Although issue of federalism had been under various discussions since very beginning, the status of debate had remained only as an intellectual debate. According to Roy “During the series of interactions with the leaders of the political parties, Prachanda was also able to convince them on two of the major Maoist demand, *i.e.*—holding the Constituent Assembly Election and abolishing the monarchy” [6]. These demands later became a bottom line of the constitution drafting process as well as peace process. According to Karki and Edrisinha “Initial stages of the state restructuring debate as well as federalism debate were in quite opposite to each other. Only one party in the first Constituent Assembly Rasriya Janamorcha, with four members argued that federalism, a system that has been rejected worldwide was not an appropriate system for a small and underdeveloped country like Nepal” [7]. They are arguing federalism is needed to keep the country intact while others opined that if federalism is adopted then the country will divide. Again authors stressed “The main task in the formation of a new Nepal was to end the centralized unitary state structure and restructure it as a federal state”<sup>1</sup>. Federalism is a core to duly integrate the country or in other words federalism will be a core element to control the country from disintegration. Two opposite ideas were prevailing in whole discourse.

### 3. Federalization Debate

Federalization is a key part of the constitution. Constitution is a fundamental law of the land. Nepal has never been without constitution. The very fact is that Nepal has its 7<sup>th</sup> constitution within the span of seven decades. It means one constitution for one decade on an average. However only the last constitution of Nepal is drafted and promulgated by peoples elected representatives. Whereas, all other constitutions were promulgated by the king. 1990s constitution was also drafted by the group of experts but promulgated by the king. Interim Constitution of Nepal 2006 was also drafted by the experts appointed by the negotiation team and endorsed by the parliament and approved by interim parliament. The very differences with other constitutions were that all previous constitutions were promulgated with unitary system and the current constitution is promulgated by federal system. The main concern of the constitutional debate was not about promulgating the constitution but was not about its promulgation through people’s representatives and federal system. Federal constitution was promulgated only after a long and rigorous debate among leadership. The nature

<sup>1</sup>Views expressed by Chitra Bahadur KC on behalf of Rastriya Janamorcha, 2008, in Constituent Assembly.

of the debate was basically for and against the federalism and the nature of the federalism was the secondary issue. Leadership, federalization and constitution directly related each other. Ultimately leadership matters for sustainability of the constitution and political stability.

### 3.1. Pre-Constitution Debate

When the April movement completed leadership agreed upon to hold the election of constituent assembly and federalized the country which is Hercules task of political leadership. Debate started federalization process and content. The very fact is that the debate was limited within for and against federalism. Why federalism overlooked all the issues. What kind of federalism and how it's implemented, was badly diluted. Leadership was handicapped with the given situation. Nepal's first constitution was promulgated in 1947 during the time of Chandra Samsher Rana though it was never implemented. The second constitution was promulgated in 2007 in the name of Nepal interim constitution 1950 by the then king. 3<sup>rd</sup> constitution was promulgated in 2015 BS which was well drafted by nominated personalities with the help of Sir Ivor Jennings from the UK. The constitution of Nepal was issued in 1962 with the introduction of the party less panchayat system by the king Mahendra. Political parties were band. However, leadership fought against panchayat regime led by king Mahendra and later by King Birendra. Numbers of constitutional amendments have been made to accommodate dissent voices. Referendum was also conducted. After the people's movement of 1990 the then king announced for the drafting committee to draft the new constitution. However, 1990s constitution also failed to address people and political parties' aspiration and revolutionary section of the society were not satisfied as well. Leadership negotiated a number of times with the king until a revolutionary initiation was taken against the king. As a result Maoist people's war was declared with 40 points demand. The main demand was constitution from constituent assembly and federalism with autonomy. Negotiation process was initiated in the spirit of restructuring the state on November 8 2006 (Government of Nepal, Ministry of Peace and Reconstruction, 2015). The main concern of state restructuring was "to solve the problem of existing class, caste, gender and regional disparities" which is also mentioned in comprehensive peace accord 2006 [8]. Agreement signed on 23 December 2007 and 25 June 2008 has agreed upon "to setup state restructuring commission" [8]. Conflicts are always evident between forward looking change aspiring leadership and leaderships maintaining status-quo. When unitary and federal system was divided into two parts, the society also divided into pro-federalist and anti-federalist leadership and followers. In 2006 Interim Constitution was promulgated through the interim legislature-parliament which focused on "dismantling the unitary system and centralized state structure and prioritized federalism and restructuring of the state"<sup>2</sup>. But Madhesh faction expressed their dissatisfaction towards interim constitution

<sup>2</sup>Views expressed by Naranya Man Bijukchhe on behalf of Majdoor Kisan Party, 2008, in Constituent Assembly.

on the issues of federalism. The preamble of the interim constitution has mentioned that “Putting democracy, peace, prosperity, progressive socio-economic transformation and sovereignty, integrity independence and prestige of the country in the center; Declaring Nepal as a federal, democratic republican state upon duly abolishing the monarchy” [9]; The Interim Constitution has clear mention on recognition of the past and reality of the current status and expectation of the society as mentioning “HEREBY DECLARE, with a view to institutionalizing the achievements made through the revolutions and movements till now”, the promulgation of this Interim Constitution of Nepal 2063 (2007), which has been made through a political understanding and to be in force until a new constitution is framed by the Constituent Assembly (Interim Constitution, 2006).

The preamble of the Comprehensive Peace Accord has agreed that the root cause of the conflicts are class, caste, gender and regional disparities and state restructuring is the only solution for it<sup>3</sup>. The pro-federalists were always in favor of state restructuring. It is because existing state mechanism was not able to end conflict. Every conflict is structure specific and society relatives. They all are waiting to resolve the problem through state structuring which is not possible within the framework of the existing structure. Political problem can be resolve by political action. Mainly they are resolve by political change. Social and economic problems also can be changed by changing their model and structure. Similarly, problem created by structure has to be resolved through restructuring. Structural problems cannot be solved by political or any other means. Structural violence demands structural solution Pre constitution phase was especially for negotiation. Peace negotiation is based on change agenda. State party had always favored the existing structure and peaceful negotiation without having a drastic change whereas; the rebellion party wanted a drastic change. Negotiation was also a kind of game. Mainstreaming the Maoist party without any fundamental changes was the step to success of the state party whereas; negotiating for fundamental changes would be the success of the rebellion. Therefore state party wanted to continue the existing structure and rebellion wanted change. During this phase of restructuring, besides state and rebellion forces, many other stakeholders were being active and taking advantages of the fragile situation. As a result every sector of the society was impacted.

In a chapter of obligation of the state the nature of state restructuring has been defined to make an inclusive, democratic and progressive restructuring of the State, by ending the existing centralized and unitary structure of the State so as to address the problems including those of women, *Dalit*, indigenous people, *Madhesi*, oppressed, excluded and minority communities and backward regions, while at the same time doing way with discrimination based on class, caste, language, gender, culture, religion and region [10].

Anti-federalist camp is dominated by status-quo. Anti-federalist are restricted

<sup>3</sup>Views expressed in Constituent Assembly by Meena pun CA Member, Rastriya Janamorcha, 2010.

to any change with least expectations with a concept that federalist divides the country<sup>4</sup>. It believes that the agenda of federalism has been imported from foreign world and those who raised those agendas were badly inspired and misused by foreign power and are anti-nationalists [11]. It also strongly believes that the system gradually weakens the country. During the time of negotiation, a faction of people were seen holding a concept of supporting the agenda of federalism and wanted negotiation to succeed and some who didn't want federalism were with the view that it will divide and weaken the country. Therefore, didn't want the negotiation to be successful. The strong logic of anti-federalist is that the federalism issue has actually not been stated in 40 points demands, 12 point understanding and Interim Constitution. They believe that for a small country like Nepal, having huge diversity it is better to remain in the unitary system. And hence if we adopt federalism, country will die sooner or later Asti will be not able to manage this change.

### 3.2. During Constitution Debate

After successful negotiation, finally election of constituent assembly took place. Federalism was declared after some amendments in the Constitution. Some features of federalism have also been stated in the Interim Constitution. As per the mandate of rule of procedure, 11 thematic committees were formed to draft the Constitution. Thematic committee drafted the preliminary concept notes in consultation with general people under its own jurisdiction. All committees submitted their task to the constitutional committee for final draft of the Constitution. Agenda of anti-federalism and pro-federalism has been one of the main topics of debate during the finalizing phase of the Constitution. The main objective of state restructuring was "to end all those discriminations based class, caste, language, gender, culture, religion and region. The process was "by ending the centralized form and unitary system, a progressive restructuring of the State was demanded for inclusion, democratic federal system of governance" (*interim\_constitution\_of\_nepal\_2007*) mentioned in the Interim Constitution.

The opening paragraph of the State restructuring and distribution of state power committee of the Constituent Assembly was as following:

"The structure of a country or a state is normally unchangeable. However, it can be and is changed as per the need of the rulers or the wishes of the people. To rethink about the vertical structure of the governing system and the structure and the role of the institutions that exist horizontally under the existing governing model is the subject of restructuring the state. The nature of existing power structure in Nepal is unitary and the form of governance centralized. In view of the sentiments expressed in course of the People's Movement and on the basis of the characteristics and unique fea-

<sup>4</sup>The Converted parliament changed the government three times but enactment of laws was not in priority. Even the Local Government Operation Act 2017, passed after the election of local government and provincial assemblies started without any infrastructures.

tures of the Nepalese society and the aspirations of the communities left behind, the nature of Nepalese nation state will be based on federalism and the governing system in the structure of self-rule with the rights and responsibilities among the governments of various tiers clearly defined. In this sense, the building of new institutions in the form of integrated, indivisible and sovereign nation on the basis of geographical, caste-based, linguistic, cultural and regional autonomy is understood as restructuring of the state. The restructuring of the state does not mean the carving out of a new state; it is rather the transformation of the existing structure. Thus, in the present context of Nepal, the building of new institutions by resetting or re-demarcating the internal boundaries (of development regions, districts, municipalities and villages) keeping intact the national border can be understood as restructuring of the state [12].”

Diversity within the country is the main foundation of federalism. However, political need necessitates a federal structure. In spite of this, countries big or small, rich or poor have embraced a federal model. Only 28 countries in the world have adopted a federal system. According to report “In terms of population and geographical area, though, about 40 per cent of the globe is covered by federal system” [13]. With this statement the committee report has been made. Pro-federalists always felt that federal system is the best system among others and will be very helpful to solve all the problems as power in the federal system is decentralized to each State. Having the bitter experiences of the unitary and centralized system federalists are never ever ready to give up their ideas. Federalist’s think their idea is the best amongst all and therefore against the idea of maintaining unitary and centralized system. Pro-federalists are mainly identity based federation. According to them only after effectively implementing the provisions of the constitution all indigenous, marginalized and oppressed and suppressed class will be rewarded. The main problem of the conflict was class, caste, gender and territorial disparities. They believe that all the root cause of the conflict will be addressed by the federalism and identity based federalism will provide access to power and justice to all marginalized communities. In their majority areas they will have their own representatives in the government and that; they will have chosen their own language and protection of the culture. Development work also can be done as per their choice and wish.

The main concept of anti-federalism is that the federalism is not the only solution and is also not fit for the country like Nepal. Several questions on survival of local and provincial level and their functioning capacity were raised when federalist were raising the issue of autonomy, it also stated that the local and provincial government will be easily influenced against the national interest which will threaten and weaken nationality. According to them voiced that many countries have failed to manage federalism then returned back to unitary has to be taken into account [14].

### 3.3. Post-Constitution Debate

Post-constitutional debate on federalism is different from pre-constitutional debate. There was a strong protest from Anti-Federalist group regarding the Constitution which now has a federal structure. Anti-federalist always stood with the concept that federalism is not our own agenda but is imported for disintegrating the country. However, Pro-federalist always stood with the concept that federalism is purely a local agenda that will help to manage our diversities. The final version of the constitution came up with modification. Mostly federalist wanted to have identity based federalism and anti-federalist were dead against federalism. But Anti Federalist's bottom line for federalism was territory based federalism. With this background the logic of federalism as per each respective group is as follows:

Pro-federalists are in favor of the provision of the constitution which is a federal democratic republican. However the federal design is not as per their expectation. Mostly pro-federalist were in line with identity based federalism which is more or less understood as ethnic federalism. Pro Federalist was also in favor of nationalities based federalism. Nationality means a group of people with common language common culture, common territory and common economic status. It is not ethnicity and idea of Casteism [15]. Federalists also are not very happy with present federal design it is because existing federal design is not in line with identity based federalism. For the purpose of the number and demarcation of the provinces the committee had recommended as following;

“In the restructuring of the federal state, formation of autonomous and self-governed provinces is necessary. While doing so, the following points should be considered: Regions with geographical continuity and ethnic concentration should be placed within a single unit as far as possible. Regions with certain lingual concentration should be placed in the same unit. Regions with certain cultural concentration should be kept in the same unit. Regional disparity should be taken into consideration while determining the federal regions. Emphasis should be placed on the historical and communal features.”<sup>5</sup>

The very problem of the pro-federalists is that the federal structure in the constitution is different than how it was envisioned earlier. Moreover, the constitution implementation commission is also not in place for effective implementation of the constitution. Power struggle between various groups is obvious. Legal arrangements for the implementation of the provisions of the constitution had to be made by converted parliament after the promulgation of the constitution but it was not done properly<sup>6</sup>.

Anti-federalists are also not happy with this federal design because they be-

<sup>5</sup>Committee Report, 2010, p. 88.

<sup>6</sup>The Converted parliament changed the government three times but enactment of laws was not in priority. Even the Local Government Operation Act 2017, passed after the election of local government and provincial assemblies started without any infrastructures.

lieve that the country will not be able to sustain the burden of federalism. The anti-federalists always voiced that sooner or later the federal structure will come to an end. It is not because of its nature but it is because the agenda is not local and therefore there is no ownership of the agenda. It will not be able to cope in our society. The agenda of federalism was never there during the time of movement.

#### **4. Expectation of the Federalism**

A huge challenge of the leadership was to promulgate the federal constitution at the point but now proper implementation. Peoples are looking for implementation of the constitution as per public discussion had happened in drafting process. Leadership is bound to fulfill their commitment. Principles of the federalism were envisioned during the time of constitutional debate. Perfect federal structure has been the main agenda and autonomy is a key of the federal structure. Self-rule and shared rules are the core of the federalized process. List of the powers such as exclusive power, concurrent power were well designed and fixed in the preliminary draft. Right to self-determination and special rights for oppressed class, gender, caste and territory were the topics of major concern. Many ideas including formation of special regions were envisioned during the Constitution making process. There were huge expectations that were raised during the time of Constitution making process. Fixed identity and viability of federations were the main principles while forming the federal structure. In this respect, five criteria on identity, four bases of viability based were main topics of discussion during the Constitution drafting phase. Other concerns such as region with geographical continuity and ethnic concentration within a single unit, regions with certain lingual concentration in the same unit, region with certain cultural concentration in the same unit, regional disparity to be taken into consideration while determining the federal region and emphasis to be placed on the historical and communal features were some other major topics of concern during the Constitution drafting phase. Besides, economic capability and potential, availability of natural resources and means and administrative accessibility should be considered in such a way that each province of Nepal will have the dominance of major ethnic, lingual and cultural group. In the provinces thus formed, a situation may arise where a regional language may have to be used for official purpose. These were the expectations during the Constitution drafting phase. However, the final draft of Constitution was not able to fulfill all these expectations. Now leadership and federalization both are in discussion. Are they in line with previous discussion or deviated?

#### **5. Reality of the Federalism in Place**

When constitution was promulgated, the question of identity and viability based federalism were diluted. It neither considered the principle of identity nor viability but only adopted the territorial based principle which was the continuity of

the past practice and structure. The preamble of the constitution has mentioned, “Ending all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, unitary system of governance”, (*Constitution of Nepal*, 2015). The structure of the state has been mentioned in the constitution part 5 article 56. According to the constitutional provision the structure of State shall be as following:

“(1) the main structure of the Federal Democratic Republic of Nepal shall be of three levels, namely the Federation, the State and the Local level. (2) The Federation, State and Local levels shall exercise the power of State of Nepal pursuant to this Constitution and law. (3) There shall be States consisting of the Districts as mentioned in Schedule-4 existing in Nepal at the time of commencement of this Constitution.” (*Constitution of Nepal* 2015, p. 44).

In addition to that article 52 of the constitution has mentioned the state obligation which is very relevant to new mode of state restructuring. “It shall be the obligation of the State to make Nepal a prosperous and affluent country by protecting and promoting fundamental rights and human rights, pursuing directive principles of the State and gradually implementing policies of the State, while keeping intact the freedom, sovereignty, territorial integrity and independence of Nepal.” (*Constitution of Nepal* 2015, p. 43).

In reality there is no sign of basis of federal structure naming and boundary of the provinces. The principles of Identity and viability have been diluted badly. New provinces that are formed were almost the continuation of past structure. Concept of forward looking state restructuring has been limited to the debate and intellectual exercise. 14 provinces with the basis of identity and viability were discussed and formally passed by the committee earlier but finally 7 provinces without the basis of identity and viability was adopted. Hence what was envisioned and what finally was adopted by the constitution with regard to formation of provinces are non-comparable at all in order to principles, basis and perspectives.

Along with the committee report the government of Nepal had established a high-level commission on state restructuring in November, 2011. The commission has submitted the report with a proposal for a formation of 10 + 1 provinces by majority members; six out of nine<sup>7</sup> and 6 provinces as a dissenting opinion against the committee report with 14 provinces. In addition to 14 and 7 provinces most of the members of Constituent Assembly had registered their note of dissent after the report was passed by simple majority<sup>8</sup>.

Leadership debate and constitution in reality is quite different. Therefore leadership has defensive in this line again trying to convince gaps will be fulfilled

<sup>7</sup>Government of Nepal, High-level state restructuring recommendation Commission, 2011.

<sup>8</sup>Dissenting opinion registered by Hon. Narahari Acharya, against the State restructuring and division of state power committee report in 2010.

during the phase of implementation, whereas implementation is again not satisfactory. Federalization and leadership both face strong criticism.

## **6. Gap between Expected and Given Reality**

Promulgation of the constitution is a Hercules task performed by the leadership which is really appreciated. However aspiration of the people and leadership commitment is always in question. Management of diversity is not the only concern of the federalism in Nepal. Access to state power and recognition of identity was the real dream of the leadership, communities and country itself. Federalism was supposed to be developed on the basis of principles of identity and viability. Nepal is the country of diverse ethnic groups and various languages speaking communities but having no majority of a single community. However, the constitutional debate was quite different at the time of pre-constitutional debate and post-constitutional debate. It can be explained as follows:

### **6.1. Principles Gap**

In the report prepared by the committee, the principles of the state restructuring were explained as “A federation is a shared form of sovereignty”. The report also explained that the federal state is divided into different provincial units, having its own distinct identity, autonomy and self-governance. Unity in diversity shall be a feature of the federal state of Nepal. Finally, the aim of the restructuring according to the committee report was to replace the unitary setup of the existing state. The logic for the need of federalism was explained as the deep rooted structural inequalities that are linked to ethnic identity, language, religion, gender and economic status resulting in a range of discriminatory practices [16].

### **6.2. Naming and Border Gap**

Ethnic/communal, Lingual, Cultural, Geographical/ continuity of regional identities, Continuity to historical identities and basis of capacity, Economic inter-relationship and capability, Infrastructure development and potential, Availability of natural resources and means, Administrative accessibility were the basis to come up with a name of each province. The border issue is still in debate and except for few provinces others have failed to finalize the name of the province. Those provinces that have given the name of the provinces are based, neither as per the committee’s report nor as per principles of identity. Mostly the names are based on the name of the river or religious values.

### **6.3. Number Gap**

There were fourteen provinces recommended by the committee but the final constitution had a provision of only seven provinces. There is also no provision of any special (special, autonomous and protected) region. Fourteen provinces were envisioned on the basis of identity and viability. For example it was felt that at least one percent of the ethnic community deserved to get their state. There-

fore Sherpa and Jadan provinces were also proposed. Based on identity the committee has proposed 23 different autonomous regions with the rights of autonomy, self-rule and identity<sup>9</sup>.

#### 6.4. Gap Related with the Provision of Special Structure

The report has mentioned that there will be a constitutional provision to carve out a special region/autonomous region/protected region characterized by uniform or multi-cultural identity, wherever it is so deemed necessary, based on the density of caste/language/community as recommended by the province, proposed by the federal government and approved by the federal legislature. In reality there is no provision in the constitution on special structure. However local government is given a right to establish the special structure on their own territory.

#### 6.5. Power Gap

The report had envisioned that the constitution will have a provision that will make each federal unit autonomous and having a right to self-determination. Local level federal units were proposed to be more powerful and are stronger than others. But in reality only slight changes were made on the provisions related to power structure of local level without much right to self-determination. Even on the authority issue, an exclusive and concurrent list was proposed. But in the constitution the list has been mismatched with each other and double concurrent list has been added without any justification and explanatory notes.

### 7. Conclusion

Based on my research, my conclusion is that, the constitution of Nepal is a rare product of compromise of leadership. The federal structure is also not in the line of people's exception. Federalism is the agenda which has been established by the Maoist leadership. Maoist leadership is responsible at any cost. Mr. Devkota has mentioned in this matters as following:

“Maoist movement has played a vital role for the state restructuring issues. Therefore it has taken as achievement in the Marxist history, whereas Marx propounded theory; Lenin implemented in Russia as an insurrection; Mao did in China as a protracted people's war. In Nepal, we decided to develop a mix of MLM and fusion of both theories. The tangible achievements of the People's war can be presented as state restructuring along with Interim Constitution, Constituent Assembly election, Inclusion and Republic”<sup>10</sup>

#### Limitation of the Research

The research is based on political debate in constituent assembly, their commit-

<sup>9</sup>The Constituent Assembly, 2013.

<sup>10</sup>K Devkota Paper Submitted to Conference held jointly by Goldsmiths, University of London and University of Oxford at Wolfson College, Oxford on 11th and 12th July 2011 and Paper submitted to Kyoto University, Japan 3rd Dec 2011.

tees' reports and views expressed by the leaders. Using such limited resources findings may not be fit for generalization. Limited time and resources may not supplement the ideas. Even though based on formal debate of the then constituent assembly, their reports and views of the leaders are most reliable source.

### **Findings**

Having not only different but opposite schooling the parties were able to manage their differences based on compromise formula. The political parties of Nepal belonging to different political ideologies fought with each other for a very long period of time. Finally political parties of Nepal chose the way of negotiation for conflict transformation and hence we have a new constitution made by the representatives of the people as a precious product. They agreed upon to end armed struggle by addressing the root cause of the conflict with peaceful means. None of the parties are in a position of winning and losing but both sides adopted a win-win strategy from the negotiation table. Based on the win-win negotiating strategy country achieved the people's constitution. The parties have to understand that this is the best product of the situation. This is not only a piece of paper as a constitution but it is the best tool of peace and conflict transformation. It is a huge peace dividend for the country and people which resolved the decade long arms conflict.

### **Recommendations**

The research based on the findings that compromise is only the solution to implementation of the constitution. If constitution is made by compromise then implementation strategies also have to be developed along with the same. Addressing the dissent voices through amendment of the constitution will enrich the constitution and fulfill the demand of the masses of the people. This is a prime duty of the leadership including main stakeholders of the country as well as academia of the country and abroad to sustain proper implementation of rare product as federalism and constitution. Until and unless federalizing the parties federalization of the state will not be completed. Therefore the first and foremost duty of the leadership is to federalize the party to proper federalization of the state.

### **Conflicts of Interest**

The authors declare no conflicts of interest regarding the publication of this paper.

### **References**

- [1] Devkota, K. (2014) International Experiences on Land and Land Reform, Volume 5. In: *Bhumi Sandesh*, Nepal National Employee Organization Land Department, Kathmandu, 10.
- [2] Dahal, R.A. (2000) On Democracy. Yale University Press, New Haven.

- 
- [3] Suhrke, A. (2014) Restructuring the state: Federalist dynamics in Nepal. CMI CHR Michelson Institute. <https://doi.org/10.13140/2.1.4321.9521>
- [4] Roy, A. (2008) Prachanda: The Unknown Revolutionary. Mandal Book Point, Kathmandu.
- [5] Karki, E., *et al.* (2014) Support of Participatory Constitution Building in Nepal (Project). UNDP, Kathmandu, p. 5.
- [6] Government of Nepal (2015) Collection of Agreement between Different Parties. Government of Nepal, Ministry of peace and Reconstruction, Kathmandu.
- [7] Government Ministry of Law and Justice Law Book Management Committee (2006) Interim Constitution. Government of Nepal, Kathmandu.
- [8] Government Ministry of Law and Justice Law Book Management Committee (2007) Interim Constitution of Nepal 2007. Government of Nepal, Kathmandu.
- [9] Constituent Assembly (2010) Constituent Assembly, Restructuring of the State and Distribution of State Power Committee, Constituent Assembly Secretariat, Kathmandu.
- [10] UCPN-Maoist (2008, 2013) UCPN-Maoist Election Manifesto 2008 & 2013. UCPN-Maoist Publication Department, Kathmandu.
- [11] Government of Nepal (2011) Government of Nepal, High-Level State Restructuring Recommendation Commission. Government of Nepal, Kathmandu.
- [12] Acharya, N. (2010) Dissenting Opinion against the State Restructuring and Division of State Power Committee Report. Constitution Assembly Secretariat, Kathmandu.
- [13] Reyes, J. (2017) Diagnostic Study of Local Governance in Federal Nepal 2017. The Australian Government and the Asia Foundation Partnership in Nepal, Kathmandu.
- [14] Devkota, K. (2011) Maoist movement in Nepal. *Conference on Maoist Movement around the World*, University of Oxford Wolfson College, Oxford.
- [15] The Parliament Secretariat (2013) The Constituent Assembly, 2013. The Parliament Secretariat Singhadurbar, Kathmandu.
- [16] Reyes, J. (2017) Diagnostic Study of Local Governance in Federal Nepal 2017. <https://asiafoundation.org/wp-content/uploads/2018/07/Diagnostic-Study-of-Local-Governance-in-Federal-Nepal-07112018.pdf>