



## Enduring Force Behind Nepal's Federalization

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**ABSTRACT:** Federalism comes in many varieties: Some federations are highly centralized with concentration of power in the central government, while some others are more decentralized with extensive autonomy and discretion allocated to sub-federal units. As the youngest federal country in the world, Nepal holds a unique position to share the experiences of how her transfer from a unitary to federal state has unfolded. By tracing a case of setting up and operationalizing Provincial Public Service Commission, a key administrative infrastructure for sub-federal governments to become able to recruit and manage civil service staffing, this study attempted to provide an insight into the transfer to federalism of the youngest federal country in the world, Nepal. The study approached the case from explanatory angle in pursuit of illuminating truth behind the phenomenon observed. The study found that there is a systemic force within the pre-existing political and bureaucratic domains that impeded swift launch of Provincial Public Service Commission to serve their constituency. And this force has caused Nepal's federal balance to tilt towards a more centralized, 'weakly federal' model.

**KEYWORDS:** centralization, decentralization, explanatory case study, federal balance, federalism.

### I. INTRODUCTION

Constitution of Nepal 2015 has made Nepal the youngest among 25 of the world's federal countries that represent 40 percent of the global population (Forum of Federations, 2025). Benz (2013, p. 72) defines federalism as a constitutional form of a state that balances 'centralization and decentralization of powers as well as self-rule and shared rule.' In the transition process from unitary to a federal state, new public functions are assigned to sub-federal governments, accompanied by structure and system creation as well as resource allocation, so that these newly endowed sub-federal governments can kick start performing their given functions (Smoke, 2015). Inherently, this transition process

requires a top-down stewardship of the federal government.

Federalism comes in many varieties: Some federations are highly centralized with concentration of power in the central government, while some others are more decentralized with extensive autonomy and discretion allocated to sub-federal units (Anderson and Forum of Federations, 2008). For example, Ostwald (2017) observes that Malaysia is federal in form but highly centralized in practice due to widespread reluctance to meaningfully decentralize administrative and fiscal competences to subnational levels. In the case of Canada, Lecours (2017) states that the Canadian federation has avoided overall centralisation and kept a reasonably good federal balance.

As the youngest federal country in the world, Nepal holds a unique position to share its transfer experience to a federal state. By tracing a case of Provincial Public Service Commission establishment, a Constitutional mandate for Nepal's transition to federalism, this study attempted to provide an insight into Nepal's transfer to federalism and analyzed what seemed to dictate the process from the viewpoint of centralization and decentralization dichotomy.

### II. RESEARCH DESIGN

This empirical study took up a case that illustrated how Nepal's transfer to federalism proceeded. Within the case study genre subdivided into three categories, that are 'exploratory, explanatory, and descriptive' (Sadovnik, 2007, p. 422), this study approached the case from explanatory angle in reference to Harder (2010) who emphasizes on the openness of the researcher to new discoveries during the research process. While predominantly informed by publicly available print materials, for the on-going nature of the target phenomenon, where necessary and available, the study triangulated the data with 'all possible sources of data that may shed light on the phenomenon'



(Harder, 2010, p. 370). Such data included personal interviews and confirmatory hearing with the experts.

Van Evera (1979, as cited in Riccucci, 2010) pointed to five uses of case studies in public administration: to create theories; to test previously established theories; to identify antecedent conditions; to test the importance of these antecedent conditions, and to explain cases of intrinsic importance. This study falls under the last domain described, that is to seek to illuminate truth behind the phenomenon observed.

### III. FINDING

In the following sections, the first five years of federation building is viewed with a focus on creation and operationalization of Provincial Public Service Commission as a case of sub-federal government's administrative infrastructure.

#### **Legislative Streams for Establishing and Operationalizing Provincial Public Service Commission**

For the country to move from a unitary set up to a federal one consisting of a federal government, seven provincial governments, and 753 local units, there arose an immediate need to create new administrative infrastructures at the local tiers of the governments and to man them with civil servants. In the case of provincial governments, that meant a) creating Provincial Public Service Commission in reference to Provincial Public Service Commission Act and b) operationalizing the Commission in reference to Provincial Civil Service Act.

For laying out legislative framework to newly create Provincial Public Service Commission, Constitution's Article 244 (Ministry of Law Justice and Parliamentary Affairs of Nepal, 2016) instructed the Federal Parliament to determine the bases and criteria of Provincial Public Service Commission. Accordingly, 'Legislation Related to the Bases and Criteria for Establishing Provincial Public Service Commission with Its Formation, Functions and Duties' was enacted on March 29, 2019 paving a way for each province to prepare its own Provincial Public Service Commission Act. For operationalizing Provincial Public Service Commission, enactment of Provincial Civil Service Act was required, that needed to be preceded by the establishment of the parental legislation, Federal Civil Service Act (to be renamed from Federal Civil Service Bill, upon approval at Federal Parliament).

**Legislative stream one: Provincial Public Service Commission Act for establishing the Commission.** In reference to 'Legislation Related to

the Bases and Criteria for Establishing Provincial Public Service Commission with Its Formation, Functions and Duties,' provincial governments proceeded to drafting its own Provincial Public Service Commission Bill. The timing of the adoption of the Bill into Act varied among the provinces, but within the same fiscal year since the enactment of the federal law, all the seven provinces passed the Bill into Act.

In terms of the contents of the Act, there were not substantial variances in clauses and provisions in the texts of the Act by different provinces. It covered topics such as Commission's scope of work, consultation procedure for appointment/promotion, and punishment for offense. The only notable difference was found in the elaboration of the details relating to fulfillment of vacant post by Province Number 2 (present Madhesh Province) and Bagmati Province. The Act of these two provinces delved into exam paper preparation and exam execution, followed by exam results publication. The Act of Bagmati Province even went further into noting on the coding and checking of exam answer sheets.

With regard to the onward process for establishing Provincial Public Service Commission in reference to the newly created Public Service Commission Act, by the end of the fiscal year 2019/2020, four out of seven provinces established the Commission and appointed its chairperson and members.

As discussed in the next section, there was a distinctive order in the legislative arrangement that cascades from federal level creating framework legislation based on which provinces draft and adopt their version of the act. For Provincial Public Service Commission to become able to recruit civil servants, it required Provincial Civil Service Act to be prepared in reference to Federal Civil Service Act. As Federal Civil Service Bill was yet to pass Federal Parliament, the concerned parties at the provincial governments believed that their further move beyond Commission appointments would only add unjustifiable expenses (Keshav Prasad Upadhyaya, Information Officer, Office of Chief Minister and Council of Ministers, Karnali Province, Personal Communication, June 23, 2020). Thus, some provinces deliberately remained at a step before establishing the Commission.

**Legislative stream two: Provincial Civil Service Act for operationalizing the Commission.** Provincial Public Service Commission's operational arrangement as well as terms and conditions of civil servant hiring by the provincial governments could only be determined based on Provincial Civil Service



Act. However, none of the provinces had this Act enacted yet, as its reference legislation, Federal Civil Service Bill, had not passed the Federal Parliament.

Federal Civil Service Act (to be renamed from Federal Civil Service Bill, upon approval at Federal Parliament) would define civil servants' terms of service, conditions, and benefits. Article 133 of the Constitution determines that any law enacted by the provincial governments would be void if it is inconsistent with any federal law. Thus, until rules were clearly laid out by Federal Civil Service Act, provincial governments were compelled to wait around, as they did not want the provincial laws to be null and void retroactively (Ghimire, 2020).

On February 10, 2019, a draft Federal Civil Service Bill was registered at the Parliament Secretariat. The draft Bill sparked huge debates among law makers, experts, and civil servants, and was moved to clause-wide deliberations led by State Management and Good Governance Committee of the House of Representatives (The Record, 2019). On June 29, 2020, draft Federal Civil Service Bill finally passed the State Management and Good Governance Committee by a majority vote.

There were multitude of divergent opinions and dissatisfactions by the concerned parties on the contents of the Bill. One example came from the federal government who proposed that Provincial Chief Secretary, Provincial Secretary and Executive of the local level be assigned from the federal civil service to maintain control, balance and coordination at the federal, province and local levels (Naya Page, 2020). The Committee rejected this proposal and instead included in the Bill that only the Provincial Chief Secretary be assigned by the federal civil service.

Another example came from a segment of the civil servants (non-gazetted first class officers) who staged a protest on June 30, 2020 claiming that this draft Bill discriminated against the junior level staff in the civil service (Khabarhub, 2020). The proposed Bill stipulated a provision that vacancy of section officers (gazetted third-class officers into which many of the non-gazetted first-class officers are hoping to slot into) would be filled through open competition (80 percent) and promotion (20 percent). The proposed Bill also determined the age limit of 40 years for non-gazetted first-class officers to vie for the post of section officer through open competition (Himalayan Times 2020). The protesting civil servants considered this provision would grossly narrow down the prospects of their promotion into the post of section officer.

That same day (i.e. June 30, 2020), the Parliament Secretariat announced immediate

prorogation of the session without determining the rescheduled dates due to COVID-19 risk (Ghimire, June 30, 2020). Federal Civil Service Act was among the crucial bills remained at the table for endorsement. Subsequently, on September 19, 2020, the country ended up celebrating the fifth Nepali Constitution Day since the promulgation of Constitution 2015, without having endorsed Federal Civil Service Act. This was how Provincial Public Service Commission had not been able to initiate day-to-day operations of civil service-related business although many of the provincial governments having installed the Commission.

#### IV. DISCUSSION

Slow development on the creation and operationalization of Provincial Public Service Commission as captured in the Finding appeared to contain deep-rooted force that obstructed smooth move for the sub-federal governments to take up their function. The following sections discuss such enduring force from five angles.

##### Views of Sub-Federal Level

The case illustrated the cascading order of legislative framework set-up where the Federal Civil Service Act must be in place for provincial governments to have their Provincial Civil Service Acts to guide to fill the vacancies for the necessary staffing through Provincial Public Service Commission. As the Federal Parliament took time to endorse the Federal Civil Service Bill, the provincially hired civil service positions continued to remain vacant for prolonged time.

Having managed to adopt Provincial Public Commission Act, provincial governments kept calling on the center to endorse the Federal Civil Service Act. The impasse created was interpreted by the concerned as a reflection of the absence of political will to institutionalize federalism. Numerous lamenting comments by people associated with the provincial governments were captured by the media, including:

- We might have been in power for over two years now, but we have not yet run the government in true sense.
- There can be no government without its own administration and police force.
- At present, both the civil administration and police are working under the directive from the federal government, making the provincial governments toothless.
- Politicians in Kathmandu continue to work with the centralized mindset.



- People in Kathmandu are making every effort to delay the devolution of power (Ghimire, August 24, 2000).

### **Centrifugal Nature of Federalisation Process**

Already back in 2017, the negative effects from the absence of parental legislations on local governments' operation had been raised, for instance, by a diagnostic study carried out by Australian Aid and Asia Foundation (2017, pp. 16-17) that documented local governments running their business 'in a state of confusion, and on an ad hoc basis.' While Nepal's federalism is an officially agreed promise, federal government has come to be seen as an entity who does not let go of the reign (Bhusal, 2019).

The seven provincial governments had completed the first two years in the office, trying to make sense of their achievements. On their inability to have performed at par to their expectation, scope and potential, Wagle (2020) reported that the provincial chief ministers attributed to the non-cooperation from the federal government in formulating required laws, devolving authority, designating the required number of technical and regular civil servants and supporting the capacity building of the sub-federal government. Such views started to solidify the belief that those in the central power were simply opting for "cosmetic adjustments over fundamental change" (Niti Foundation, 2019, p. 1).

### **Political Dynamics at the Core of Centrifugal Force**

Among the federal states in the world, Nepal is largely classified as a nation that chose federalism as a part of peace process (see, for example, Anderson and Forum of Federations 2008). In order to uncover what is at stake for the impasse evidenced and remarked, it is important to understand why the conversion from unitary state to that based on federalism was adopted in Nepal in the first place.

At the closure of a decade-long internal armed conflict, labeled as Maoist insurgency (1996-2006), Nepal abolished a 240-year-old monarchy and established a republic run by a coalition of democratic political parties and the Communist Party of Nepal (Maoist). Federalism was written into the interim constitution in 2007 when an uprising in the southern part of the country demanded political guarantees that 'territorial autonomy would be part of the new framework' (Lecour, 2014, p. 610).

Federalism appeared as a necessary approach to govern an overly complex society coming out of the conflict, and it was in no way a

unanimously applauded choice by the dominant political parties. Lecours (2014) recalls that two of the three main political parties (Nepali Congress and Communist Party of Nepal-Unified Marxist-Leninist) had no history of opposing the state centric governance and exemplified little appetite for identity-based federalism. It was a call by Madheshi parties from the southern plains and leaders of the country's 'indigenous nationalities' as they wanted federal structures based on ethnic identities. Then "the decision to federalize Nepal came out of the circumstantial political dynamics of the transition rather than from a political agreement on federalism" (Lecours, 2014, pp. 616-617). Since, there have never been a strong core political support base in the center to push for this circumstantially adopted federalism. Allison-Reumann and Baogang (2016, p. 69), in referring to Nepal, observe that 'the extent to which political actors support or reject federalism, and indeed a particular version of federalism, can influence whether federalism will take hold.'

### **Bureaucracy's Gravity to the Center as Force Solidifier**

Himself having been a civil servant of the Government of Nepal, Shakya (2009, p. 49) called the unwavering mindset that runs through the DNA of Nepalese civil service as 'bureaucratic resistance.' It means that bureaucrats are resistive to changes and react negatively towards attempts to implement reforms unless reforms include the possibility of increasing their personal benefits. The protest staged on June 30, 2020 by a group of non-gazetted first class officers is one such evidence that this culture still exists today.

Rijal (2020) explained that the top-heavy bureaucratic structure of Nepal is being kept post transfer to federalism without being restructured. In his view, the prolonged deliberation in the parliament on Federal Civil Service Bill indicates that bureaucracy was seemingly lobbying in keeping their preferred provisions in the proposed Bill to ensure that the central bureaucracy has control over the sub-federal government. Although the Constitution clearly states "cooperation" at the heart of the spirit of federalism, these is no specification as to how to cooperate, including how to share or even where to give up. Based on how things have emerged thus far, the share of the self-rule part of federalism's principle to be provided to sub-federal governments does not seem sizable unless dynamics of highly centralized state bureaucracies alters its gravity.



### Extrapolation Based on the Landscape of Federal States

Benz (2013, p. 72) stated that 'federalism is determined to balance centralization and decentralization of powers' as a constitutional form of a nation. On decentralisation, Smoke (2015, p. 98) explained as 'the assignment of public functions to subnational governments along with structures, systems, resources, and processes and that support implementing these functions to meet specific public sector goals.' Transition from unitary to federalism, thus, inherently involves the central level to take up the role of assigning and/or sub-allocating the functions to the lower tiers of the government as a top-down process.

In the case of Nepal, creation of compatible legislative framework to support the transfer for effective roll-out of federalism had strongly been emphasized as a priority agenda. For example, Policy Note for the Federalism Transition in Nepal by the World Bank (2019) endorsed and recommended prioritized enactment of the priority legislations, top of which on the list was passing the legislation for Provincial Public Service Commission.

Yet, the federal government seemed to be keeping for itself "the centrifugal forces" (Litvack, Ahmad, and Bird 1998, 1) that enables them to forge asymmetric federalism. There are suggestive predecessor federations who came to solidify such central forces. For example, centralisation and decentralisation co-exist in Brazil (Tavares de Almeida, 2006), and Malaysia is a highly centralized federal country (Ostwald, 2017). This is what federalism specialists call 'federal balance' (Dardanelli et al., 2018, p. 1), de/centralisation dynamics inevitable in all federal systems and what can greatly affect the operation and nature of the system. Depending on this balance, some federal states are centralized and 'weakly federal' (Anderson and Forum of Federations, 2008, p. 4). The situations in Nepal discussed in the study suggest that the country gravitated towards this category.

### V. CONCLUSION

By tracing a case of setting up and operationalizing Provincial Public Service Commission, a key administrative infrastructure for sub-federal governments to become able to recruit and manage civil service staffing, this study attempted to provide an insight into what seemed to be dictating Nepal's federalization process. The study found that there was a systemic force within the pre-existing political and bureaucratic systems that impeded swift launch of the Provincial Public Service Commission to serve their constituency. And this

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