

Federalism: Some Important Issues to Consider

Dr. Yubaraj Sangroula

Over the last some months, the 'battle for restructuring of State's system based on federalism has been intensified'. Especially, ethnic indigenous groups have come out in fore front. The Constituent Assembly election's date has been announced, and only very few months have been left for 'polls'. Yet, streets of Kathmandu and many districts are increasingly 'put into fires'. One of the most popular 'demands' is that the 'Government of Nepal' must declare the 'federal structure' before the CA polls with denomination such as Limbuwan, Khambuwan, Tamsaling, Madehese etc.

Undisputedly, the people of Nepal have made up mind to 'restructure the Nepali state' with federalism as most opted approach. One can safely argue that 'the federal structure may provide a 'stronger ground' for 'unity of people in order to develop, preserve and consolidate Nepal as a nation state. Undoubtedly, the federal structure itself contains potentiality to be a 'common bond, of ground for unity, of people for national integration and social progress. A nation survives and grows with consistently progressing socio-economic development and national unity. One of them necessarily buttresses the other. Examples in many countries have shown that national unity without socio-economic progress suffers badly, and the vice versa. In a country like Nepal, which is predominantly a society minorities' nation, the federalism can prove an opportunity to boost up the national unity. However, the scheme of federalism must be able to clearly work out the 'vision of socio-economic progress' of the people. That is to say that the any scheme of federalism in oblivion of socio-economic progress of grassroots people might be a cause for 'increased distrust and sense of alienation'. These few very fundamentally crucial advantages of federal structure can be utilized properly to 'ensure a peaceful and prosperous Nepal'.

Nevertheless, the problems generated by abundance of misconceptions to the fundamental elements of the federalism and tendency of interest groups to demonstrate apathy to realistically investigate issues positively or negatively affecting the 'national unity, social progress and democracy are seriously hindering the smooth course of restructuring process. Many leaders of interest groups, political parties and civil society have stubbornly neglected the need of 'deeply understanding' the features of federalism in the context of Nepal. Many people 'are prone to luxuriously think of Swiss Model, American Model, and South African Model' and so on. It sounds that 'they want to pack up federalism of those countries and bring to establish in Nepal'. This sorry state of affairs is 'dismantling the prospect of conflict transformation' in Nepal. Federalism in Nepal has becoming a 'luxury of tea-talks among political leaders and intellectuals'. The foremost need of toady is to 'organize a national forum to discuss the unanswered questions as to whether Nepal is going to pursue a model that devolves unlimited powers to 'provincial states', or it will exhaustively lay-down powers of such states in the constitution'. Theoretically speaking, is Nepal going to going to adopt 'symmetrical' model that determines the powers of the units or asymmetrical model that leaves the

'powers in the hands of provincial states undefined'. These questions are not only fundamental, but it is also dangerous to embark into the process without clearly evolving the 'consensus among the stakeholder'. One must not ignore a fact that any model or shape of federalism would be serious blow to the 'national unity if the same is imposed without overwhelming consensus of the entire population'. The federalism should not be taken by any group to 'separate existence of a group from the whole', rather each group must work with a basic philosophical understanding that 'the concept of federalism is a boon to buttress the co-existence' of all groups.

One has to very clearly understand that the concept of 'federalism in the conventional sense' or *sense strictu*, it presupposes existence of 'sovereign states'. Such sovereign states by their free consent come to an agreement to 'form a union'. This process in constitutionalism is called 'partial abrogation of conventional sovereignty' being entertained by states in the before forming of the union. As a consequence, by free and mutual consent, a 'federal or super government' is created for benefit of all of constituents. In such type of federalism, the so-called super-government exists only till the time the constituents agree to be the part of it. For instance, in United States all constituent states (52 states) are believed to be sovereign states. It means that 'the existence' of constituent is not 'dependent on federal state', whereas the existence of federal government is 'dependent on constituents'. The Soviet Union as federal state did not exist once the constituent states made a choice to separate and remain independently sovereign.

America, Switzerland, Russia and many other countries are federal countries made up of 'pre-existing sovereign' states. Nepal, however, is a unitary state through out its history. India, on the other hand, had identity of several princely states prior to it fell into British colonialism. During and after the 'independence' these states agreed to form a union. Nepal's position is quite different to these well-known federal countries. One can very obviously observe that it does not have 'pre-existing' sovereign states, as constituents of the state of Nepal. Nepal is not a 'united states' of pre-existing states. Obviously, the federalism that we are talking today is not exactly what USA, Switzerland and similar other countries have. The concept of federalism we are discussing today is a process of 'creating units out of a unitary state for the sake of the better governance, utilization of local resources, ensuring the national unity and devolution of powers. This process is a 'devolutionary' process, not 'evolutionary' one as in USA. It means that we have to develop a number of criteria and standards while creating such units. The most important issue to decide immediately is, therefore, whether we are 'following the symmetrical or asymmetrical' model of federality. Such criteria or modalities are to be determined by the consensus of people. No agreement or contract of political parties or interest groups can alone decide such a vital issue of the state. The Constituent Assembly is the only legitimate platform for developing or evolving such criteria and standards. Only this platform has powers to decide on what kind of modality or structure of the federal units must be mad of. Hence, no group of political parties can compel the government to 'declare the units' before the constituent assembly decides on this issue.

The federal or central government is 'not a physical unit' in the conventional federalism. But in the country like ours' the central government also represents the physical unit in itself. Minus central government, no state of Nepal exists. To speak other way, in absence of Nepal we cannot see prospect of independent existence of any other state prospective state such as *Limbuwan*, *Khumbuwan* etc. So that the 'structure' of the federalism cannot be imported from other countries. The competition for adopting alien federalism will be a tragedy for the country.

Unfortunately, the State has been totally ignorant of the intelligentsia of the country. As a matter of fact, the issue of Constituent Assembly is becoming a kind of 'football game' without a referee, in which a nasty and powerful player can kick on foot too. Ultimately, this game might destroy the country itself. What one should not forget to understand is that 'their identity of any group' is ultimately a consequence of the identity of the country itself.

The issue of legitimacy of any political change or restructuring of the state system is crucial during the transition of any nation. The primary source of 'legitimacy is the sovereignty' of the people. In any nation, pursuant to democratic values and doctrines, the supremacy of the people is what no institution of state can undermine. The legitimacy on the other hand is expressed or exercised by the 'sovereign people' through electoral process to 'elect representatives'. During the transition, a number of interest groups may emerge and often pretend to be the 'true representatives' of their respective groups. However, they are not *de jure* representatives. Similarly, there are political parties that may pretend still to be true representatives of the people. But they are also not representatives of the people till they face the election. The competition for representation of people by political parties and interest group is sometimes very sharp. The situation of Nepal presently reflects this 'sharpness of the said competition'. Nevertheless, no political parties and interest groups have legitimate powers to 'reach on vital national interest' such creation of federal structure before CA is constituted.

In fact, no political party or interest group can claim that 'it is the only true representative' of the people or group. For this status, they have to first prove that position by 'contest in the electoral process'. As a matter of fact, no interest group or party has right or power to demand 'declaration of the federal constituent' prior to Constituent Assembly. The group of party before claiming such position must prove 'the legitimacy of its capacity and authenticity of representation'.

Even the political party's legitimacy is to be reconfirmed by the election. In this context, every political actor irrespective of its size, political ideology, demands and so on, must face the elections with its vision, mission, strategies and programs with regard to its 'proposed scheme of restructuring'. It would be fatal to press the government to concede the demand in this regard simply because the 'group or party likes' so. As per the doctrine of constitutionalism, such group or party has no power to do so, because the power concerning restructuring exclusively belongs to people. But group has legitimate power to 'revolt against the government's proposition'. In this context, the State also possesses the power to 'react to the revolution'. It is safe to conclude that 'the power towards

restructuring of the state's system solely belongs to the people', and therefore only CA can take such decision.

But if the parties and interest groups prefer to democratically address the problem, they have no rights and powers to impose their favorable agenda prior to the elections.

(This article is published in 'The Kathmandu Post' National Daily, Nepal, 5 sept 2007)