

Distribution of Authority in Federal Structure

Bhuwan KC/ Tilak Pathak

Published date: 29 September 2010

<http://www.asd.org.np/en/transition/constitution/restructuring/71-federal-structure>

Among the thematic committees in the Constituent Assembly, the Committee on State Restructuring and Distribution of State Power was the last to submit its draft report. The Committee was formed on 15 December 2008 and UCPN (M) CA member Lokendra Bista was elected its chairperson on 13 January 2009. Even after 13 months of discussion on state restructure structuring and distribution of state power, no consensus could be achieved. After repeated attempts at consensus, the Committee submitted its draft to the CA on 24 January 2010.

To restructure a unitary state and distribution of power itself is a challenging task. It was challenging not only because there was no consensus on the basis of restructuring but there is no consensus within the parties. The largest party in the CA, the UCPN (M) did not hold on to one stand on the draft of the future structure. It changed its views several times from its stated stand in its manifesto and commitment papers before the CA election.

The UML leaders could not agree among themselves on a draft of the structure. The parties proposed one model while its leaders like Mangal Siddhi Manandhar, Shankar Pokharel, Rajendra Shrestha and others proposed a different model. While it reflects poorly that different proposals come from within the same party, what is important is how the party takes the dissent proposals and whether the leaders accept the party proposal. The dissenting views within the UML did not affect the party proposal.

The NC leaders including Narhari Acharya and Govinda Raj Joshi advocated their own proposals. The party task force on restructuring under vice-chairperson Gopal Man Shrestha could not come up with a draft. Despite repeated requests from the Committee, the NC could not submit its written views states restructuring.

The lack of consensus among the parties and the attempt at following the Interim Constitution also affected the Committee's work. There is a provision in the Interim Constitution for formation of a state restructuring commission, and on 27 April 2009, the State Restructuring Commission was formed with Ganesh Gurung as its chairperson. However, the Interim Constitution is silent on the Commission's working area, procedures, and the number of its members and representation, which, combined with disputes among the parties, rendered the Commission pointless, so much so that its Chair Gurung refused appointment.

The situation was made complicated by the talk of restructuring within the Committee but delays in forming the Commission and its working procedures, and by the refusal to draft of state restructuring without the report of the Committee. In particular, the NC leaders were of the view

that there should be no report without the report from the Committee. Despite this, the Committee prepared the report after holding discussions in 113 meetings.

End of the Unitary Structure

The Committee has tried to justify the need for state restructuring and distribution of state power in the preamble of the report to the CA. The preamble of the report states the restructuring is needed “to solve the prevailing issues of class, caste, regional, gender, and community by ending the unitary structure of the state and transforming Nepal into a progressive democratic, inclusive and proportional federal republic”.

The preamble further specifies the need, “for establishing independent, autonomous, and sovereign provinces, local-level and special structures with constitution-given right to self-determination and based on identity and capacity, by distributing the authority exercised by the centre, to create peaceful, sovereign, secular, equitable and prosperous Nepal, desiring representation and rights of all castes, regions, genders, and communities in all structures of the stated”.

The draft report defines federation, state, local level, special structures, autonomous region, protected area, special area, state authority, and categories. It defines federation thus, “federation should mean the highest level of the federal structure. This word denotes the combined form of the federal Nepal and its states, local levels, and special structures”.

Similarly, it defines state as a unit and form of federal Nepal, and local levels refers to village development and municipal development councils; state authority signifies the executive, legislative and judiciary of the state. The draft states three structures at federal, state and local level. There is a provision of executive, legislative, and judiciary at the federal and state level. At the state level, there is a provision for an elected council with executive, legislative, and judicial authority.

14-state model

A 14-state federal model has been proposed with the following states: Limbuwan, Mithila-Bhojpur-Koch-Madhes, Kirant, Sunkoshi, Sherpa, Tamsaling, Newa, Narayani, Tamuwan, Magarat, Lumbini-Awadh-Tharuwan, Karnali, Jadan, and Khaptad. Identity and capacity have been taken as the main basis. “The basis for identity includes ethnic, language, cultural, geographic/regional continuity and historic continuity. Capacity denotes the economic interrelationship and capacity, status infrastructure development and possibility, availability of natural resources and means, and administrative convenience.”

The Committee has proposed that to change the name of a state, a two-thirds majority of the federal parliament will have to approve on the recommendation of the two-third majority of the state parliament. Similarly, two-third majority approval is needed for merging two states, carving a new state, or redefining borders after the recommendations of two-third majority from the respective

states. There is a provision for state referendum on these issues if the recommendations do not get two-third majority in the federal parliament.

In the Article 4 of the draft report, there is a provision to form autonomous regions within the states where there is an ethnic/community or language majority or substantive settlement. However, the basic structure of federal Nepal will be federation, states, and local level. The proposal also includes the provision of creating protected areas for minorities, cultural areas, endangered and marginalised communities for their promotion and development. Special geographic regions will be created for backward areas and/or economically and socially backward areas.

Distribution of authority

The report has also tried to clarify the powers of the federation, states, local levels, special areas and other autonomous regions. Defence and army, central force, central bank, fiscal policy, foreign aid and grants and loan will be under the purview of the federal authority along with central telecommunications, allocation of radio frequencies, television, postal service, customs, inland revenue, value-added tax, institutional tax, passport, visa, tourist fees, and service taxes.

Royalties from natural resources, management of central civil service, central bureau of statistics, centre-level hydropower, irrigation, and other projects will also be under the centre. Central university, central library, central health policy, federal parliament, federal legislative-related issues, international trade, foreign exchange, ports, quarantine, international and interstate aviation, foreign and diplomatic relations and United Nations-related issues will be handled by the central authority.

International treaties, extradition, international border management, management of train and highways, national secret service and investigation, Supreme and Constitutional Courts, citizenship, passport, visa, immigration laws, nuclear power and space flights also fall under the federal authority. In addition, war and defence, arms and munitions factory, department of measurements, mining, insurance policy, criminal laws, and intellectual property will be under central authority. The authority related to the Election Commission, National Human Rights Commission, Commission for Investigation of Abuse of Authority, Civil Service Commission, National Women's Commission, Proportional Inclusive Commission, Dalit Commission, National Planning Commission, Indigenous Janajati Commission, Madhesi Commission, Commission for Betterment of Minorities, Marginalised, Backward Areas, and Muslim Commission are also under the federal authority. Any issues not listed under the authorities of the federal, state, local-level, and autonomous or not defined by the constitution or laws fall under the purview of the central authority.

Authority of the States

The state constitution, police, administration and peace maintenance, banks and financial institutions fall under the under the authority of the states. The Committee has also proposed that under the agreement with the centre, the states can levy and oversee foreign aid and grants, radio, FM, television, personal income, property tax, business tax, land tax, labour tax, house registration fee, vehicle tax, entertainment tax, advertisement tax, agricultural income tax, and service tax.

Royalty from the natural resources, state civil service, state-level hydropower, irrigation and other projects, universities, higher education, libraries, museums, health service, state parliament, and authority of local-level and special areas fall under the state authority.

Interstate trade, state aviation, state trains and highways, state investigation bureau, electricity projects, irrigation project, state court, family court, children's court, management of citizenship and passports, state-level projects, land management, keeping of land records and levying land taxes are under the authority of the states.

Mine exploration and management, insurance management, protection and use of language, culture, script, and religions, management and use of state forests, water resources, development and agricultural and animal husbandry, manufacturing industries, industrialisation, trades, transportation, production of alcoholic substances and sale, books and publishing, and trust management also fall under the state authority.

Common list of Authority

The issues relating to the relationship between the federation and the states has been listed under the common list. "Federation and states can enact laws for use by both. The laws so made can be in contradiction of both federal and state laws so there is a provision for defining the basic principles, values and structures of the common list and based on this state parliaments can enact necessary laws," states the draft report.

Under the common list, criminal and civil law procedures, evidences and oath, supply and distribution of necessary goods, price control, quality control and supervision, protective custody related to defence of the state, management of prisons and detention centres, peace fall under the common list of the federal and state authority. Similarly, the Committee has proposed that waterways, media related, family issues, land policy, insurance, industries and mines, and physical infrastructures should be under the common list. Casinos, lottery, vehicle license, tourism, drinking water and sanitation are also proposed to be included the common list.

Authority of Local Level and Special Areas

Local levels have authority over municipal police, community police, cooperatives, FM transmission, local tax, service tax, tourist fees, advertisement fees, lax tax, royalty from natural resources, management of local services, keeping of local statistics and records, local-level development projects and programmes, primary and high school education.

In addition, basic health and sanitation, local market management, local roads, local courts, reconciliation and mediation, citizenship and passport distribution and record keeping, distribution of house/land ownership, agriculture and animal husbandry, management of old and elderly, disabled, women, single women and vulnerable, data collection of unemployed, management and control of agriculture extension, maintenance of personal details like birth and death records fall under the authority of the local level.

The Committee has also listed the authority of the special areas to be set up as autonomous areas. The Committee argues that this provision is there for the constitution to delineate their authority for autonomy and self-governance and regulate the areas within the authority granted thus. The Committee has proposed that in case of contraction of laws of the state and the autonomous areas, the laws of the state will automatically supersede. Police, cooperatives, management of FM radio and televisions, health service, roads, electricity projects, services fall under the authority of the autonomous areas under the special areas. Thus, the Committee has tried to define the authorities of the federal, state, local-level, and autonomous areas, and a list of common authority enjoyed by federal and state structures.

The List of Authority of Different Levels

Authority of States

1. state constitution
2. police, administration and peace
3. bank and financial institutions, cooperatives, and foreign aid and grant with the approval of the centre
4. radio, FM, televise
5. personal income, property tax, business tax, land tax, labour tax, house/land registration fee, vehicle tax, entertainment tax, advertisement tax, agricultural income tax, service tax
6. royalty from natural resources
7. state civil service management
8. state bureau of statistics
9. state-level electricity, irrigation projects and other programmes
10. university, higher education, libraries, museums
11. health services
12. state parliament, local governments, and special structures
13. interstate trade
14. state aviation
15. state trains and highways
16. state investigation bureau

17. hydropower project, irrigation project
18. state court, family court, children's court
19. management of citizenship and passport
20. state-level commissions
21. land management, land records and valuation of land tax
22. mines exploration and management
23. insurance management
24. protection and promotion of language, culture, script, and religion
25. utilisation of state forest and water resources
26. development of agriculture and animal husbandry, industries, industrialisation, trade, transportation; production and sale of alcoholic drinks
27. books and publishing
28. guthi/trust management

The Common List

1. criminal and civil law procedures and evidences and oath (legal norms, public works and records and judicial process)
2. supply, distribution, price control, quality control and supervision of necessary goods
3. defence-related protective custody, prisons and detention centres management, and peace
4. extradition of accused, person in custody, prisoners from one state to another
5. laws concerning family issues (marriage, property transfer, divorce, endangered, orphans, adopted children, heir and united family)
6. laws regarding property acquisition, requisition and rights
7. contracts, partnerships, and agency related
8. bankruptcy and insolvency
9. medicines and pesticides
10. economic and social programmes, family planning and population control

11. social security and employment, trade union, rights of industries and labour related works
12. medicine, legal, and other professions
13. vital statistics, birth, death records
14. waterways
15. media related
16. archaeology, ancient monuments, and museum related
17. industries, minerals, and physical infrastructure
18. casino, lottery, vehicle license
19. fire and natural disaster control and relief and reconstruction
20. tourism, drinking water and sanitation
21. films, cinema halls related
22. insurance
23. poverty alleviation and industrialisation
24. scientific research, technology, and human resources development
25. interstate distributed forests, wild animals, birds, mountains, national parks and water usage
26. national and interstate environment management
27. land policy

Authority at Local Level

1. municipal police, community police
2. cooperatives
3. FM radio transmission
4. local taxes (property, land rent, vehicle tax, etc.), service tax, tourism tax, advertisement tax, land tax
5. royalty from natural resources

6. management of local services
7. local statistics and records collection
8. local-level development projects and programmes
9. primary and high-school education
10. basic health and sanitation
11. local market management
12. local roads/rural roads/agricultural roads
13. local court, reconciliation, and mediation
14. citizenship and passport distribution and records management
15. distribution of land ownership certificate
16. agriculture and animal husbandry
17. management of old, elderly, disabled, women, single women, and vulnerable
18. data collection on employed
19. management and control of agricultural extension
20. records of personal details like birth, death

Authority of Autonomous Regions

1. police
2. cooperatives
3. FM radio management and television
4. primary and high-school education, libraries, and museums
5. healthy services
6. independent elected councils
7. property tax, business tax, house/land registration fee, vehicle tax, entertainment tax, tourism fee, land tax, labour and agricultural income tax
8. royalty from natural resources

9. roads
10. electricity project, irrigation project, and other projects
11. citizenship/passport management
12. land records and certificate of land ownership
13. mine exploration and management
14. protection of language, culture, script, and religion
15. natural resources and their utilisation
16. development of agriculture and animal husbandry and their trade
17. services
18. statistics and records collection
19. courts
20. other state-sanctioned authority