

Inclusive Federalism in Nepal: Reality or a Myth?

Abstract: The paper's objective is to examine the constitutional provisions concerning inclusive governance and their practical implementation in Nepal. Additionally, it will assess the execution of constitutional measures related to inclusive federalism.

The 2015 Constitution of Nepal stands as the culmination of a decade-long conflict and numerous grassroots movements aimed at transforming society as a whole. A key aspect addressed through the constitutional discourse was the restructuring of the state. The comprehensive peace accord, which served as a blueprint for social inclusion and gender equality, has played a pivotal role in guiding normative frameworks, including the constitution. The constitutional elements that encompass inclusive democracy via a federal structure, republicanism, the rule of law, and equity-driven equality, along with frameworks such as National Human Rights Institutions (NHRIs), constitutional oversight bodies, and an independent and competent judiciary, constitute the essential pillars that can significantly contribute to social transformation when implemented with accountability. Furthermore, the Government of Nepal has exhibited a profound commitment to international human rights frameworks, participating in seven out of nine major international human rights conventions/covenants. Nepal has consistently accepted a substantial number of recommendations through universal periodic reviews and actively engaged in the implementation of the Sustainable Development Goals (SDGs) for 2030.

Both the judiciary and NHRIs have issued numerous decisions in response to public interest litigations and complaints concerning social justice, socio-economic issues, and the civil and political rights of women and marginalized communities. The constitution and other normative frameworks establish the foundational groundwork and an enabling environment for necessary actions, fostering trust and raising expectations toward the state. Failure to uphold commitments outlined in these frameworks could result in a critical situation.

Analyzing the trends in the federal structure concerning the fulfillment of constitutional commitments regarding social justice and transformation reveals several existing issues. Some of these issues pertain to accountability, while others, notably those deeply rooted in a defective and caste-based social structure, are critical. While the proportional electoral system, social justice as a fundamental right, inclusive representation in decision-making, and affirmative action for women and marginalized communities are expected to be institutionalized as per the constitution, there are shortcomings. The proportional electoral system appears to disproportionately benefit elites and women from so-called higher social classes and castes. An intersectionality approach is lacking, and the allocation of proportional representation seats to marginalized communities has not been implemented faithfully.

Local governments tend to prioritize infrastructural development, often neglecting social justice and social transformation in their work plans. Their service delivery methods are conventional and lack an inclusive approach. High enrollment rates in schools are insufficient without addressing the equally important issue of student retention, particularly among girls and students from marginalized communities. Efforts aimed at addressing structural discrimination and

enacting affirmative/protective provisions for women and marginalized communities appear to be lacking. While numerous laws have been enacted, only a meager number directly contribute to the empowerment of these groups. Lastly, there is a concerning trend regarding the representation and participation of women and marginalized communities in decision-making processes. They are predominantly considered for proportional representation, which is often inadequately implemented and highly politicized. Beyond the legislature, the representation of these groups in other state entities is significantly neglected.

The paper will conclude by offering recommendations for action points that should be considered by state authorities and constitutional bodies. Development partners, stakeholders, and civil society organizations will also need to formulate a unified action plan to support the government in combating discrimination. Until discrimination in any form is eradicated, it will continue to undermine the trust of marginalized communities in the ideals of inclusive democracy.