

## Proceedings of the panel discussions at the NASPAA South Asia Virtual Conference

### *PREPARING PUBLIC LEADERS IN SOUTH ASIA FOR A POST-PANDEMIC WORLD*

14 November 2021

#### Panel on Reforming Government Institutions in Nepal, post-Covid

##### Introduction

Nepal Policy Institute (NPI) and Kathmandu University School of Management (KUSOM) jointly hosted a panel session at the 2021 NASPAA South Asia Virtual Conference on the above-mentioned subject matter. The primary objective of the panel session was to shed further light on the scope for strengthening relevant institutions of governance in Nepal in light of the move in the country in 2015 to a federal form of government.

The four panelists comprised the following noted experts in this field:<sup>1</sup>

1. Prof. Achyut Wagle, Professor of Economics, KUSOM
2. Dr. Amina Singh, Faculty Member, KUSOM
3. Dr. Gopi Khanal, Joint Secretary, Ministry of Federal Affairs and General Administration, Government of Nepal; and
4. Ms. Kalpana Jha, Member, Board of Directors, Nepal Policy Institute.

##### Context of Federalism

Opening the session, **Prof. Achyut Wagle** touched upon the overall context of federalism in Nepal, laying particular focus on the issue of federal design and institutional effectiveness, and arguing that the rationale to adopt a federal polity for Nepal was never convincingly established in history. In many ways, this is at the root of the difficulties the country is now facing in federalizing. Even though the 2015 Constitution clearly states the intent for a cooperative federal design, whether it provides the basis for such federalism is an open question. The term ‘cooperative’ seems to have been inserted only for its obvious sanguinity.

The federal institutional arrangements currently in place in Nepal seek four broad institutional outcomes, that on existence, efficiency, interactions, and interplays. Key among the institutions in the federal design are the three branches of government at federal, provincial, and local levels; the constitutional bench in the Supreme Court; the Inter-State Council (to settle political disputes among the three tiers of government); and the National Natural Resources and Fiscal Commission (NNRFC). On this latter institution, Prof. Wagle’s view is that unlike in India, for instance, where the Finance Commission has strong powers, is independent, and serves as a quasi-judicial body, the NNRFC has been made constitutionally subservient to the government, which – in a couple of instances to be able to ‘determine’ – can only ‘recommend’ or ‘suggest’ fiscal measures to the government. Furthermore, the NNRFC is not only deprived of setting its own procedures, the ensuing law (the National Natural Resources and Fiscal Commission Act, 2017) has further diluted the Commission’s authority supposedly given by the constitution.

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<sup>1</sup> The panel session was moderated by Dr. Gambhir Bhatta, Executive Director, NPI; Visiting Professor at KUSOM; and Adjunct Senior Research Fellow, Lee Kuan Yew School of Public Policy, Singapore.

Finally, in looking at the issue of legal-institutional gaps in the federal design in Nepal, Prof. Wagle touched upon key issues of capacity constraints at local level, unresolved and contentious issues (such as tax-point transfers, public loans, etc.), deputation and retention of civil servants, and extreme fiscal imbalance across the jurisdictions. His concluding remarks on the issue of Covid and leadership centered on these points: (i) the elected executives at subnational levels during last four years in their office now seem to have greatly appreciated and exercised the federal devolution of power; (ii) the local levels have served as a 'leadership lab' for ambitious political cadres of all ideological hues; (iii) democracy has taken root and the rules of the games are largely observed, at local levels in particular; and (iv) during the first wave of Covid, the local governments did exemplary work in setting up quarantine centers, arranging transportation, enforcing health protocols, and coordinating with the federal/provincial governments to set-up testing labs, etc. This was a true demonstration that federalism had indeed begun to work in Nepal.

### Critical Issues in Fiscal Federalism

Prof. Wagle's discussion of the federalism debate in Nepal was a good segue to that on fiscal federalism by **Dr. Gopi Khanal** who looked at the critical issues in its institutionalization. These are most evident across several domains, including in the main:

- a) Expenditure assignments, where the primary challenges have included: (i) overlapping and duplication of functions; (ii) unbundling of functions still not completed; (iii) lack of enactment of many laws that are related to the current functions between the federal and sub-national governments; and (iv) unproductive expansion of provincial and federal agencies as well as issues of unfunded mandates.
- b) Revenue assignments, where the challenges include, among others, limited tax capacity of local governments, claim of federal government on corporate rental tax, and limited use of ICT in local tax administration.
- c) Borrowing, with a focus on fiscal rules on internal borrowing (5.5% of GDP for the federal government; 12% of internal revenue and revenue sharing for provinces and local governments alike); hard budget constraints on sub-national borrowing, and limited borrowing capacity of subnational governments.

On the NNRFC, Dr. Khanal's views were that it has limited roles, is plagued by capacity constraints; and is characterized by weak coordination. Inasmuch as key challenges of fiscal federalism were concerned, Dr. Khanal posited three key ones: (i) controlling fiduciary risks, (ii) preventing fiscal risks, and (iii) ensuring fiscal equity. Others include: quality of public expenditure, expansion of unnecessary organization for political purposes rather than of service delivery, fiscal populism, use of grants for unproductive purposes, and limited fiscal space.

Dr. Khanal had several recommendations on the way forward for the government on this issue:

- a) Need to build the PFM capacity of all levels of government;
- b) Require precautions for fiscal risks from the very beginning;
- c) Need to adopt stringent measures to control fiduciary risks;
- d) Performance-based financing will be an important instrument to improve the productivity of fiscal transfers;
- e) Strong and credible NNRFC to ensure fiscal equity;

- f) Unbundling of concurrent functions is necessary to avoid duplication and overlapping of public functions;
- g) Reorientation of public finance for economic growth and equity; and
- h) That any reform on fiscal federalism should be home-driven.

### **Citizen Participation in Local Governance**

The discussion then shifted from the macro and central level focus to that of citizen participation in local governance in Nepal in the context of federalism. **Dr. Amina Singh** first talked of the shifts in local governance as a result of the 2015 Constitution, which has resulted in an unprecedented level of budget and resourcing to the sub-national governments. The presence of elected members of the locality has meant a greater focus on local government being directly accountable to the people. However, there are challenges in citizen participation as well. Four key ones include: (i) increased and unrealistic expectations of the public of governments; (ii) participation being generally non-representative and driven by individualistic interests; (iii) fragmented planning based on 'wish-lists'; and reinforcement of existing power relations based on gender, ethnicity, caste, and class.

Dr. Singh then elaborated on the FEST Approach that she has applied for ground level research; FEST focuses on facilitation for empowerment and social transformation, and is an approach to local development focusing on enabling marginalized communities, local institutions, and local government; and where the emphasis is on problem analysis, community deliberation, and critically informed collaborative action. The outcomes of the practice are rather encouraging including enhanced self-dignity and respect, enhanced life skills, creation of livelihood opportunities, and accountable local government and responsible citizens.

Issues and challenges remain, however; including that brought on by the unstable political situation in the country. She argued that the manner in which the aid industry works is also an impediment. The outcome of the approach is also highly contingent on the process facilitator, and it requires highly skilled, experienced educators with a critical understanding of the wider social and political context that give rise to the local conditions. Her concluding thoughts revolved around the fact that building effective citizen participation in local governance is a process that requires deliberations on the very notions of what it means to be a 'citizen' and the practice of 'citizenship' in the shifting political context of Nepal.

### **Inclusive Institutions**

**Ms. Kalpana Jha** then took this concept of citizen participation a step further by looking at the challenges of, and opportunities in, building inclusive institutions in Federal Nepal. Given that inclusion was at the centre of adopting the federal system in Nepal, it has been catered to address the structural marginalization and exclusion of different ethnic communities in Nepal. In this regard, provisions of distinctive inclusive treatment for minorities and women is one of the remarkable progresses made towards the realization of inclusive electoral system in the country.

Coining the term 'The Reluctant Inclusion', Ms Jha presented the argument that during the last elections, out of 13,484 non-quota ward member positions, only 2% went to women. Similarly, out of the total 6,742 ward chair seats, women won only 1%. And in a survey conducted by the Asia Foundation in 2018, respondents were less affirming of the engagement of women in politics. Women representatives and officials are not trained adequately in law, and in many instances women representatives from marginalized groups

are not assigned any specific role in the local government. More broadly, as the Constitution does not specifically say the representation shall be in proportion to the population, there is huge under-representation of Dalits, except for ward members.

Ms. Jha also talked of the economic costs of exclusion in the country, arguing that the question that needs to be asked now is not how economic growth can contribute to inclusion but how inclusion can contribute to equitable and even economic growth. She pointed out that in Nepal, social exclusion is primarily driven by institutions and processes that uphold or exacerbate income- and capacity-poverty on the basis of gender, ethnicity, and caste. For this, the removal of institutional constraints that currently bar the poor from accessing resources, and thus render them powerless to help themselves, is essential. As for financial planning and exclusion, Ms. Jha said elected representatives conducted planning non-transparently and prioritized plans and programs for personal gains. Thus, citizen-led participatory planning has remained limited to mere formality.

Social exclusion translates into limited opportunities in economic and political spheres. This is reflected in the inequitable distribution of development and growth among various ethnic and caste groups. Although affirmative actions and quotas have been introduced by the government, the entrenched power relations have led to marginalization of the marginalized groups in the decision-making processes.

In concluding the session, the Moderator summarized the main points raised by the various panelists, with a very clear sense that many issues raised by them merit further in-depth focus. There was general consensus that while federalism had indeed broadened the space for inclusive development the entrenched institutional deficiencies were holding back full gains from the shift to a federal form of governance.

*The recording of the panel is available from the Conference organizers; please contact the Executive Director of NPI (email: [director@nepalpolicyinstitute.org](mailto:director@nepalpolicyinstitute.org)) to access the recording.*