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FEDERALISM IN NEPAL: DIVERGENT PERCEPTION AND CONVERGENT REQUIREMENT FOR DEMOCRATIC CONSOLIDATION

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THESIS

FEDERALISM IN NEPAL: DIVERGENT PERCEPTION AND CONVERGENT REQUIREMENT FOR DEMOCRATIC CONSOLIDATION

by

Narayan Silwal

March 2013

Thesis Co-Advisors: Thomas C. Bruneau
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FEDERALISM IN NEPAL: DIVERGENT PERCEPTION AND CONVERGENT REQUIREMENT FOR DEMOCRATIC CONSOLIDATION

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ABSTRACT

Democratization, decentralization, ethnic identity, federalism, rights of indigenous people and politics of consensus are often-used terms in the contemporary political debate in Nepal. Despite political consensus on federalism as the founding notion of the Interim Constitution (2007), political parties with Constituent Assembly have failed to forge consensus on the nature of federalism. This thesis analyzes the complexity of politics in multi-ethnic societies, and specifically, the rise of the ethnic politics and federalism agenda of political parties in Nepal. The lack of ethnic-specific regions makes the identity issue more complex given that the Maoist platform promised ethnic-specific regions in the country upon coming to power. The issue was made more complicated due to complex geopolitics, inter- and intra-party squabbles for power, and unhealthy party competition for political benefits and attention.

This thesis also suggests that the solution to state restructuring rests on the political parties and their commitment to democratic procedures because federalization and democratization of the state are mutually supportive, a lesson learned from India and Spain. Only political understanding at the highest possible levels and compromise of political interests putting people and national agenda at the center can solve the present political impasse revolving around federalism.

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LIST OF ACRONYMS AND ABBREVIATIONS

AC	Autonomous Community
ADB	Asian Development Bank
AP	Andra Pradesh
BC	Brahman Chhetri
CA	Constituent Assembly
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CHHEM	Caste, Hill, Hindu, Elites
CPA	Comprehensive Peace Agreement
CPN (UML)	Communist Party of Nepal (United Marxist Leninist)
ETA	Euskadi Ta Askatasuna
E.U.	European Union
FPTP	First-past-the-post
GOI	Government of India
ILO	International Labor Organization
INSEC	Informal Service Center
IP	Indigenous People
JUJEM	Board of Chiefs of Staff
MJF	Madhesi Janadhikar Forum
MP	Madhye Pradesh
NC	Nepali Congress
NEFEN	Nepal Federation of Nationalities
NEFIN	Nepal Federation of Indigenous Nationalities
NESAC	Nepal South Asia Centre
NFDIN	Nepal Foundation for Development of Indigenous Nationalities
NGO	Non-Governmental Organization
NSP	Nepal Sadbhavana Party
OHCHR	Office of High Commission for Human Rights
OLHAP	Organic Law for the Harmonization of the Autonomy Process
PSOE	Spanish Socialist Party

RPP	Rastriya Prajatantra Party
RSS	*Rastriya Samachar Samiti* (National News Agency)
SAARC	South Asian Association for Regional Cooperation
SDP	Social Democratic Party
SPA	Seven Parties Alliance
SRC	State Restructuring Commission
SRDSPC	State Restructuring and Division of State Powers Committee
TMLP	Terai Madhes Loktantrik Party
UCD	Union Democratic Center
UDMF	United Democratic Madhesi Front
UNCP (Maoist)	United Nepal Communist Party (Maoist)
UNDP	United Nations Development Program
UNDRIP	United Nations Declaration on the Rights of Indigenous People
UNMIN	United Nations Mission in Nepal
UP	Uttar Pradesh

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I.   INTRODUCTION

A.   MAJOR RESEARCH QUESTION

Nepal's attempts at producing a democratic constitution since the end of its Maoist-led civil war directed at the monarchy have been fruitless.[1] The political parties and elite class involved in the state-restructuring process have failed to arrive at a common understanding, primarily surrounding the issue of state restructuring. This is due to differing perspectives on federalism. Consequently, the Constituent Assembly (CA) has failed to promulgate a constitution despite four years of effort, taking double the time agreed upon in the interim constitution. The Nepali people's enthusiasm of finally achieving democracy after 50 years of democratic movements took a beating at the dissolution of the CA on May 28, 2012, and the decision to hold a fresh election for a new CA.[2]

Although the leaders of the four major political parties, United Communist Party of Nepal-Maoist (UCPN-Maoist), the Nepali Congress (NC), the United Marxist Leninist (UML), and the United Democratic Madhesi Front (UDMF), were able to compromise on many contentious issues, including the form of government, judicial and electoral systems, the negotiation between the ruling coalition and democratic opposition failed on the central issue regarding the design of the federal system.[3] The question of whether the federal constitution should be based on national, ethnic, or linguistic identity, which

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[1] Two major attempts in 1950 and 1990 did not translate into meaningful enduring democracy. The later popular uprising in 2006 managed to declare Nepal a democratic federal republic by abolishing the monarchy, but the difficult quest for consolidation of democracy is still unfinished. See Pramod Kantha, "Nepal's Protracted Democratization in Terms of Modes of Transition. " *Himalaya, the Journal of the Association for Nepal and Himalayan Studies* 28, no. 1 (2010): 59.

[2] Manesh Shrestha and Indrani Bagchi, "Nepal Misses Statute Deadline, Polls in November," *Times of India*, May 28, 2012, accessed October 12, 2012, http://articles.timesofindia.indiatimes.com/2012-05-28/south-asia/31876558_1_constituent-assembly-interim-constitution-nepali-congress

[3] There are four major political parties, as per their position in the dissolved CA, which are mainly considered driving political forces in the country. Maoist and Madhesi Front are in 15- party ruling coalition whereas, the other two, NC and CPN (UML) are in opposition.

would then shape the center state relations, led to the dissolution.[4] Following the Supreme Court's rejection of the extension of CA for the fifth time, Prime Minister Baburam Bhattarai called for a fresh election just before the CA was set to dissolve.[5] This move took the country into a constitutional crisis and deeper polarization. The two oldest political parties, the NC and Communist Party of Nepal (United Marxists and Leninists) (CPN [UML]), immediately opposed the move and appealed to the president not to endorse the election date, arguing that a fresh election without political consensus is both unconstitutional and authoritarian. President Dr. Ram Baran Yadav was assigned the role of custodian under the interim constitution. He declared the Bhattarai-led government (UNCP-Maoist-led) caretaker and called for all parties to come together to form a national consensus government to end the constitutional and political impasse.[6]

This thesis seeks to answer the question of why discussions around the federal design failed although all the political groups agreed on the idea of federalism. What were the main issues and why didn't the CA members reach a compromise despite the fact that all the parties agreed to establish federalism after overthrowing almost two and half centuries of an active monarchy? How did they reach this impasse that led to the collapse of the CA? This thesis then seeks to explore the various notions of federalism among various parties in Nepal and what are these various notions.

B.   IMPORTANCE

Transitioning democracies usually suffer through a vulnerable phase while dealing with several facets of democratization. This includes state restructuring in accordance with democratic norms, values and practices, as well as the relations between the state and the center. Ethnicity often becomes a source for mobilization as the elite utilize identity politics to gain support. In Nepal, state structuring around ethnic lines

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4 Prashant Jha, "There is No Alternative to Elections: Baburam Bhattarai" *Hindu*, June 4, 2012, accessed October 20,2012, http://www.thehindu.com/opinion/interview/there-is-no-alternative-to-elections-baburam-bhattarai/article3486846.ece

5 "Into the Wild: Nepal without a Constitution," *Economist*, May 28, 2012, accessed June 2, 2012, http://www.economist.com/blogs/banyan/2012/05/nepal-without-constitution

6 "Prez Declares Government Caretaker," *My Republica*, May 30,2012, accessed June 2, 2012, http://www.myrepublica.com/portal/index.php?action=news_details&news_id=35660

became one of the main points of contention in the CA in discussions around the federal design. This thesis will focus on what led to ethnic demands in Nepal by highlighting the role played by the elite in this process. The research will expand our understanding of the role of elites in democratic transitions.

Nepal also has its own unique complexities because it is one of the most socially and economically backward areas of the world.[7] Deprivation, disparity and discrimination in Nepal are appalling, which has a direct bearing on its social structure. In the course of its struggle for access to resources and opportunity, Nepal also has just come out from a decade-long insurgency in which ethnic and caste inequalities, the dominance of certain groups in state institutions, and socioeconomic disparities played a central role in motivating and sustaining support for the insurgents.[8]

Nepal's socioeconomic inequalities are deeply rooted and are difficult to address. Many indigenous people are facing social exclusion based on religion and language. According to Nepal South Asia Centre (NESAC), "The caste system of Nepal is rooted in Hindu religion. On the other hand, the ethnic system is rooted in mutually exclusive origin myths, historical mutual seclusion and the occasional state intervention."[9] Groups such as *sukumbasi* (squatter) and *kamaiya* (bonded labor) are victims of poverty, whereas *Dalits* (lower caste)*,* including women, are victims of poverty and social discrimination due to the fundamental practices of the Hindu religion.[10] The caste system in the Indian sub-continent, *Varna* on the basis of ritual purity in Hinduism, is the oldest surviving social system in the world. Untouchability and exclusion of *Dalits* from social and religious spheres is the hallmark of caste-based discrimination.[11] Discrimination based on

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[7] Kantha, "Nepal's Protracted Democratization," 60.

[8] S. Mansoob Murshed and Scott Gates," Spatial Horizontal Inequality and the Maoist Insurgency in Nepal," *Review of Development Economics* 9, issue 1(2005): 121, doi: 10.1111/j.1467-9361.2005.00267.x.

[9] Government of Nepal, Ministry of Health and Population, *Nepal Population Report 2011* (Kathmandu: MOHP Population Division, 2011), 58, accessed September 14, 2012, http://www.mohp.gov.np/english/files/new_publications/Nepal%20Population%20Report%202011.pdf

[10] Harka Gurung, "Social Exclusion and Maoist Insurgency" (Paper presented at National Dialogue Conference on ILO Convention 169 on Indigenous and Tribal Peoples, Kathmandu, January 19–20, 2005).

[11] Center for Human Rights and Global Justice, *The Missing Piece of the Puzzle: Caste Discrimination and the Conflict in Nepal,* (New York: NYU, 2005), 6, accessed June 18,2012, http://www.chrgj.org/docs/Missing%20Piece%20of%20the%20Puzzle.pdf.

religion, sex, caste, tribe, and ideological conviction is illegal by the Civil Rights Act of 1955 but remains difficult to implement because of the elite structure. This structure is dominated by the upper castes: the Brahman and Chhetri.[12] Surprisingly, one study says that about eighty five laws and 137 legal provisions remain discriminatory.[13] Ethnicity based on social divisions becomes a tool for mobilization by the elite.

Discussion on how to deal with such a social structure according to federal principles contributed to the collapse of CA. Nepal is at the crossroad of a political settlement to two decade-long conflict. Yet, disagreements over the design of federalism and an upsurge of ethnic politics may take the country deeper into turmoil. It is imperative for the political actors to negotiate and take a pragmatic approach towards the state restructuring approaches, putting ideological contentions and party or group interests aside.[14] This study contributes to an understanding of the issues around state restructuring by exploring the problems and difficulties surrounding the federal structure as perceived by different political elites in the multi-ethnic settings of Nepal. This contribution will not only help scholars of South Asia but also those studying democratization and the role of the elite in this process.

C.   PROBLEMS AND HYPOTHESES

The CA from 2010 sponsored several committees and reports on the issue of state restructuring in order to promote an understanding among political parties. These efforts, however, have failed to produce a majority agreement for the design of a federal structure. The question of how Nepal should be divided and what should be the relationship between the state and the center became a focal issue that could not be resolved despite major efforts. For instance, in 2010, a State Restructuring and Division of State Powers Committee (SRDSPC) approved the Maoist proposal of a federal

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[12] GSEA Study, *Unequal Citizens: Nepal Gender and Social Exclusion Assessment*, (Executive Summary), (Kathmandu: DFID, 2006), 7–11, accessed August 19, 2012, http://siteresources.worldbank.org/EXTSOCIALDEV/Resources/3177394-1168615404141/NepalGSEASummaryReport-part1.pdf

[13] Ibid.

[14]"Ideology vs. Inclusive Governance" *My Republica*, July 16, 2011, accessed September 8, 2012, http://www.lexisnexis.com.libproxy.nps.edu/hottopics/lnacademic/ .

structure with fourteen states that was mostly based on ethnic identity. Dissent, however, came from Nepal's oldest party and the second largest voting bloc, the NC, which has a history of seventy years of democratic struggle. With this disagreement, a two-thirds criterion was not met for passing the constitution, so it was sent to a constitutional committee for further consideration.[15]

In November 2011, the State Restructuring Commission (SRC) also proposed a similar plan: ten ethnic states and one non-territorial state for scattered *Dalits* in January 2012. Once again the NC-led minority group did not agree and instead proposed a six-state solution with no definite ethnic criteria.[16] The main leaders of CPN (UML), shifting from their earlier stance, opposed the idea of the formation of ethnic states and claimed that state restructuring along ethnic lines would lead the country into further conflict, possibly to disintegration. Intellectuals close to CPN (UML) stressed that ethnic-based states and one Madhesh (southern plain) province should not be allowed because they were not suited for a multi-ethnic society and were not an economically viable solution. Most of the UML leaders were in favor of states on the basis of cultural and historical contexts.[17]

The most important concern around the division of states is identity and economic viability, but the balancing act over these two is difficult. Some experts suggest the political architects of the new federal Nepal ought to consider financial self-reliance.[18] Dr. Mahat, a former finance minister and NC leader, highlighted the economic prospects of federalism: "To make each state autonomous, the states have to be divided based on the economic prospects so that each state gets some resources that help them in

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[15] NC, Plains Parties Differ on Issue of Federalism-Report," *BBC Monitoring South Asia*, March 17, 2012, accessed April 10,2012, http://www.accessmylibrary.com/article-1G1-283342780/nepali-congress-plains-parties.html

[16] Nepal Constitutional Foundation, *Constitutional Assembly Archives and Records: Constitutional Update*, accessed December 18, 2012, http://www.ncf.org.np/ca-archives/ca_updates23.htm

[17] "UML Leaders Oppose Ethnic States: Ethnic State Means Disintegration" *Kantipur*, February 22, 2012, accessed August 11, 2012, http://www.lexisnexis.com.libproxy.nps.edu/hottopics/lnacademic/ .

[18] "States should be financially viable", *Himalayan Times*, August 16, 2012, accessed September 11, 2012, http://www.lexisnexis.com.libproxy.nps.edu/hottopics/lnacademic/ .

generating income to run the states on its own."[19] Likewise, federalism is meaningless if its sovereign entities have economic disparity. A renowned economist, Dr. Chiranjibi Nepal says, "The federal structure will not work in the case the central government has to provide aid to the states."[20]

With the abolition of the monarchy in 2008, many envisioned an end to the traditional social hierarchies shaped by caste, ethnicity, clan and religion. The problem today lies in the contradictory journey of the national politics of Nepal guided by party interests and diverse perceptions regarding state restructuring. The eventual objective is to make a peaceful transition. Political tradeoffs, however, are heading from demos to ethnos.[21] How did this happen and how did the focus on the ethnic divisions bring the CA to an impasse? What are the specifics of these different notions of federalism and what is their background? In this study, reasons of failure of CA will be explored through the following hypothesis which has three aspects:

First, as the monarchy in the 1980s deepened its control over the country and the democratic parties mainly NC remained an elite movement unable to resolve the social and economic issues, new opposing movements (the Maoists) took on an ethnic angle. The political conditions produced a new movement, which relied on ethnicity. Therefore, the debates in the CA were centered upon whether the identity-based structure or regional-competence-based structure would work in Nepal. This thesis will show that the Maoists combined ethnicity and economic justice issues to mobilize the people against the establishment. Meanwhile, the democratic parties that had existed for a while had not mobilized along ethnic lines. Thus, the CA, consisting of various anti-monarchy movements, came to the table with different ideas of what the democratic structure was going to be like. Maoists, Madhes*i*s (people of Madhes) and several *Janajati* (indigenous-nationalities) leaders from different political parties stand in support of identity-based states, while NC and UML, along with other parties, stand firm on the capability-based-

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[19] Ibid.

[20] Ibid.

[21] "Demos or Ethnos," *My Republica*, July 5, 2012, accessed July 16, 2012, http://www.lexisnexis.com.libproxy.nps.edu/hottopics/lnacademic/ .

structure.[22] Interestingly, as pointed out previously, community in Nepal is characterized by multiple ethnicities with no single group as a majority in a particular geographical region. If a state with a single identity, based on demands by a few affluent ethnic groups, is formed, this may not satisfy all ethnic groups and may not be viable from an economic perspective.[23]

Second, party politics guided by ideological legacy, unhealthy competition of political parties for benefits and secured vote-bank, and underestimation of ethnic diversity caused political stalemate on the issue of federalism. Major political players failed to rise above party political lines and transient priorities. This was possibly due to drought of rational political leadership. This thesis will also demonstrate that the lack of compromise among the leadership combined with a very difficult setting contributed to the collapse of the CA.

Third, an influence of regional and international players has contributed to the failure of the CA when it came to the state restructuring issue. Given the Nepalese geopolitical situation, international players are also divided over the issue of federal structure. India is in favor of ethnic federalism because it is convinced that formation of Madhes province may address the Indian security concern in Nepal.[24] People in Madhes, however, include several ethnic groups with a distinct language and culture, such as the Maithili (12.30%), Bhojpuri (7.53%), Tharu (5.86%), and Abadhi (2.47%).[25] Since the late 1960s, a significant number of migrants from the northern hills also live in Madhes, therefore achieving a province for the Madhes is not so difficult to achieve. Since the European Union also gives high importance to the empowerment of marginalized ethnic groups, it believes in ethnic federalism. Meanwhile, China fears that Nepalese ethnic

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[22] "The Unending Debate," *My Republica,* July 25, 2012, accessed August 2, 2012, http://www.lexisnexis.com.libproxy.nps.edu/hottopics/lnacademic/ .

[23] Ibid.

[24] Ibid.,

[25] According to census data, there are more than 20 languages based on mother tongue in Nepal. The Nepali language is the mother tongue of almost half of the population; whereas, Maithili is 12.3% of the total population, but Maithili speaking people are concentrated in central and eastern *Terai* (plain). See Central Bureau of Statistics, *Population Monograph of Nepal 2003-Volume-1,* (2003): 141, accessed December 7, 2012, http://cbs.gov.np/wp-content/uploads/2012/Population/Monograph/Chapter%2004%20%20Language.pdf.

federalism will revitalize the "Free Tibet movement." Regional and international influence complicates the issue and undermines the Nepalese leaderships' ability to find consensus and mutual understandings.[26] This study will also go over this aspect and show that various political interests are connected to external players and are influenced by them.

D.   LITERATURE REVIEW

There is no dearth of academic literature on democratic struggle, but the issue of federalism and states restructuring is relatively a new topic in Nepal. Therefore, literature dealing with these aspects in the Nepalese context is limited. Meanwhile, federalism in general is an important subject in political science; hence, there is an abundance of academic contributions by leading scholars. The literature on federalism provides the perspectives to understand transitions and global cases to illustrate which model may be best suited for Nepal. In this thesis, several articles and papers by contemporary scholars will be reviewed to understand the different perspectives and approaches to understand the issue of federal system in Nepal. First, the general theory on federalism will be examined to help understand the demand for federalism. Second, literature on ethnic demands for federalism in multi-ethnic societies will also be examined in order to understand what causes such demands and what some possibilities are.

1.   Various Federalist Designs and Their Contexts

According to Ronald L. Watts, federal political order is constituted on the basis of combined shared rule and self-rule.[27] Hence, federalism is the model of such order, including principles of the separation of power between member units and a common institution often called central government or authority.[28] There are several forms of federal order, which range from federation of unions, confederations, leagues,

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[26] "The Unending Debate," *My Republica.*

[27] Ronald L. Watts, "Federalism, Federal Political Systems, and Federations," *Annual Review of Political Science* 1, no. 1 (1998): 120.

[28] Andreas Føllesdal, *Federalism,* ed. Edward N. Zalta (Stanford: The Stanford Encyclopedia of Philosophy*,* spring 2010), accessed November 17, 2012, http://plato.stanford.edu/archives/spr2010/entries/federalism/ .

decentralized unions to hybrid forms such as the present day European Union.[29] A federation involves constitutionally well-established territorial divisions of power between province/state/canton and central government in which both levels of government are from direct election and accountable to people. A confederation, however, is an arrangement, where member units outweigh the center; hence, confederation is a much weaker form than federation.[30] Similarly, symmetric and asymmetric federations mainly differ in terms of same or differential arrangements of power among member units.[31] In multinational and multi-ethnic contexts, such as India, Canada or Spain, it is very difficult to hold a multi-national polity together. Thus, according to Alfred Stepan, multi-national democracies often resort to constitutionally asymmetrical forms of federalism assigning different competences (linguistic, cultural, ethnic, legal etc.) to different member units.[32]

Robert P. Inman analyzes the performance ability of federal institutions based on three categories of "valued outcomes" among 73 countries including 13 well known established federal democracies and 11 federal dictatorships. [33] He argues that federal governance provides an institutional comparative advantage to enhance the transition to the democracy protecting the economic and civil rights of once ruling elites.[34]

According to Alexander Hamilton, the splitting sovereignty between member unit and the center encouraged the citizens to enjoy their individual rights and control the abuse of authority at each level.[35] But Madison and Hamilton made it clear that the power

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[29] Ibid.

[30] Watts, "Federalism Federal Political," 121.

[31] Føllesdal, "Federalism," section 1.

[32] Alfred Stepan, "Federalism and Democracy: Beyond the U.S. Model," *Journal of Democracy* 10, no. 4 (1999): 31

[33] "Valued outcomes" for the comparative advantage of federal governance are economic efficiency, democratic participation and protection of personal rights and liberties. See Robert P. Inman, "Federalism's Values and the Value of Federalism," (Working Paper no. 13735, The National Bureau of Economic Research Cambridge, January 2008): 3–10, accessed November 10, 2012, http://www.nber.org/papers/w13735.

[34] Ibid., 29.

[35] Alexander Hamilton, "The Union as a Safeguard against Domestic Faction and Insurrection," *Federalist No. 9*, accessed November 24, 2012, http://thomas.loc.gov/home/histdox/fed_09.html .

of defense and interstate commerce should rest on central authority.[36] Stepan argues, "Many of the new federations that could be created in the currently non-democratic parts of the world would probably be territorially based, multi-national and multi-lingual."[37]

Paul E. Peterson describes federalism with the help of two contrasting theories: functional theory and legislative theory. He prefers to call "perspectives of federalism " since it is in the initial developing stage of full-fazed theory.[38] Functional theory focuses on domestic policy mainly for developmental and redistributive purposes. The primary responsibility of redistribution rests on the national government, whereas state and local governments should be responsible for development.[39] Legislative theory, a less optimistic theory of federalism, is based on the assumption that policies are shaped by legislators as per their political needs. The elected representatives normally work for their own reelection. They always admire and get credit for good things and avoid the blame for bad things.[40]

According to Graham Smith, the constitutional subordination of government and democratic practices determine the true federation.[41] While describing the federation and its distinguishing characteristics, Burgess and Gagnon state that toleration, respect, compromise, bargaining and mutual recognition are its catchwords, and union with autonomy is its promise.[42] Similarly, H. Meadwell views federalism as a significant source of institutional capacity that promotes group mobilization due to ensured access to resources. The accommodation and cooperation are the fundamentals for sustaining federal institution.[43] P. King defines the federation as an institutional structure of

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[36] Føllesdal, "Federalism," section 2.

[37] Stepan, "Federalism," 32.

[38] Paul E. Peterson, *The Price of Federalism* (Washington: The Brookings Institution, 1995), 16.

[39] Ibid., 17–18.

[40] Ibid., 39–41.

[41] Graham Smith, *Mapping the Federal Condition: Ideology Political Practice and Social Justice*, ed. Graham Smith (New York: Longman, 1995), 8.

[42] M. Burgess and A. Gagnon, *Comparative Federalism and Federation: Competing Traditions and Future Directions* (London: Harvester, 1993), 7.

[43] H. Meadwell, "Transitions to Independence and Ethnic Nationalist Mobilization," in *Politics and Rationality* ed. W. Booth, P. James and H. Meadwell (Cambridge: Cambridge University Press, 1993), 200.

sovereign state. This incorporates all its units in a central decision-making process on the basis of constitutional authority.[44] Graham Smith argues, "The federal idea, in short, is generally conceived as a compromise, conveyed by the image of checks and balances between unity and diversity, autonomy and sovereignty, the national and regional."[45]

2.   Multiethnic Designs

Federalism in multi-ethnic societies, according to W. Livingston, can be said to be a form of functionalism, pluralism, or some form of corporatism, but not federalism.[46] Federalism, however, is conceived as non-territorial, particularly in the context of geographically dispersed ethnic communities. Austro-Marxists, Karl Renner and Otto Bauer—to secure the cultural rights of scattered ethnic groups—floor the idea of dispersed ethnic reconciliation by means of non-territorial based institution, with non-territorial form of political representation.[47]

Graham Smith describes inter-ethno regional tensions, in which provincial elites seek redefinition of regional boundaries, from four perspectives: cultural self-preservation, rectificatory justice, uneven development and the practices of federation.[48] In the issue of social conflict and success of federalism, Burgess and Gagnon state, "the success of federal system is not to be measured in terms of elimination of social conflicts but instead in their capacity to regulate and manage such conflicts."[49] Therefore, a federation is not a tool to bridge inter-ethnic gap, but it is a territorial approach of social control promoting coexistence and harmony among different ethnic and regional groups.[50]

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[44] P. King, *Federalism and Federation* (London: Croom Helm, 1982), 77.

[45] Smith, *Mapping the Federal*, 5.

[46] W. Livingston, *Federalism and Constitutional Change* (London: Oxford University Press, 1956), 2.

[47] Smith, *Mapping the Federal*, 6.

[48] Cultural self-preservation perspective can be linked to fear of wearing-away of cultural values and identity in which secessionist elites grossly perceive that their national culture is at grave risk. Rectificatory justice can be linked to secessionist demand to create sovereign state claiming that federation was forced incorporation. The level of inter-regional and inter-governmental conflicts is the function of political economy associated with distribution of wealth and resources. The institutional procedures and policies to manage and regulate ethno-regional tension are vital for the success of federal system. See Smith, *Mapping the Federal,* 10–13.

[49] Burgess and Gagnon, *Comparative Federalism*, 18.

[50] Smith, *Mapping the Federal,* 13.

According to Graham Smith, a federation upholds the minority interests against the tyranny of the majority by constraining centralized executive power through territorial institutional support often guaranteed in the constitution. Federalism, in the context of multi-ethnic federation, where polity is structured along multi-ethnic lines, may suffer from tyranny by a minority that acts as a hindrance to freedom of all. The core issues of federalism in multi-ethnic societies, according to Smith, are how to ensure the right to be different and to be a full citizen at the same time.[51]

The sovereignty and military capacity fall on the jurisdiction of national government because the notion of dual sovereignty and shared military capacity is not significant in modern federalism. Instead, according to Paul E. Peterson, federalism means government headed by elected political leaders in each level that enjoy the full exercise of their own financial arrangements for taxing and spending.[52] He outlines two fundamental features in federalism. First, every government, irrespective of level, needs to be made up of elected leaders by the people to avoid the sentiment that the government is an agent of somebody else. Second, the confirming authority at each level rests with the people.[53]

There is a symbiotic relationship between federalism and democracy in terms of institutional arrangements and management of ethnic diversity and growing aspirations. Considering intrinsic problems of ethnic federalism, chain reactions related to state demands from more and more ethnic groups and danger of continued ethnic tension, Lovise Aalen and Magnus Hatlebakk have recommended CA for Nepal.[54] This particularly so that the political elites must be responsible for looking into inclusive democracy, the careful balance of rights in federal units with strong legitimate political center, and to be flexible with enough transparency when creating federal units/sub-units.[55]

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[51] Ibid., 16–22.

[52] Peterson, *The Price of Federalism*, 10.

[53] Ibid., 14.

[54] Lovise Aalen and Magnus Hatlebakk, *Ethnic and Fiscal Federalism in Nepal*, Bergen: Chr. Michelsen Institute (2008): 5, http://issuu.com/cmi-norway/docs/3082-ethnic-and-fiscal-federalism-in-nepal/1

[55] Ibid., 6.

Democratic practices based on concept of sovereign people and inclusive democracy, perhaps, is the only way out so that balance rights in federal units and strong with flexible enough political center ensure the future of federalism in the country with ethnic diversity. Thus, federalism in multi-ethnic societies with geographically dispersed ethnic communities, so as in the case of Nepal, is very tricky to adopt balancing between the rule of majority and adequate rights to the minority at the same time.

3.   Possibility of Federalism in Nepal

In Nepal, there is a wide spread misconception among the traditional political parties that Nepal cannot accommodate a federal system effectively due to its geographical and demographical characteristics. Interestingly, Lal Babu Yadav argues Nepal is a larger geographical area and has a population more than two successful federal countries, Switzerland and Belgium, and these cases possess several similarities in terms of diversity of cultural and linguistic groups.[56]

Since the issue of inclusion and socioeconomic disparity among various deprived ethnic and backward indigenous groups in Nepal surfaced as the root cause of a decade long conflict, some argue that the federal structure establishes the foundation to resolve such conflicts specially related to identity-based issues and promotes communal harmony. The basic problem in Nepal, according to Lal Babu Yadav, lies in the status and recognition of all ethnic, linguistic, and regional groups. This includes equal access to state machineries and resources.[57] In fact, federal structure is in need of time that ensures the reasonable participation of the target population in both the development and in the democratic political process.

Most of the political parties are facing intense pressure from the party cadres in support of identity-based federalism that makes backtracking on federalism politically unworkable and disastrous. Several leaders from the minority ethnic and regionalist backgrounds are already suspicious of major political parties and label their commitment

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[56] Lal Babu Yadav, "Need and Basis for Federalism," *Weekly Telegraph,* January 9, 2008, accessed September 14, 2012, http://www.telegraphnepal.com/national/2008-01-08/nepal:-need-and-basis-for-federalism.

[57] Ibid.

to federalism as lip service.[58] An ICG report acknowledges federalism and proportional representation as a major step to deal with deep-rooted discrimination on the basis of caste, ethnicity, gender, religion and regional identity. It doubts, however, complete inclusion. This is due to the patronage-based nature of the state and the likely exploitation of grass root people by their respective ethnic, regional and *Dalit* elites.[59]

According to G. B. Thapa and J. Sharma, symmetrical federalism with the right to internal self-determination having federal provinces with identical powers is conducive to stabilizing and consolidating the democracy in Nepal.[60] Federalism is a key proposition of the Nepalese constitution-making process to overcome the challenges posed from the historical and complex structural inheritance of the society. Thapa and Sharma believe in a system of progressive or collaborative federalism with broad responsibility and accountability of the Nepalese political community. Consequently, it makes the system more inclusive in appearance, representative in practice and responsive in conduct. They clearly observe, however, that there is a drought of strategic or rational political leadership willing to struggle for democratic goals allowing variation in conceptions and formulation of politics for rational transformation.[61]

The main public debate, an issue hard to settle, is about how to frame the federal structure to ensure that the people are well represented. This is a huge undertaking of political elites accommodating a variety of ideas and concerns of local peoples.[62] Sheppard uses the term *New Nepal*[63] in the context of the declaration of Nepal as a

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58 ICG, *Nepal: Identity Politics and Federalism*, Asia Report No. 199, (January 2011), i.

59 Ibid., 26.

60 G. B. Thapa and J. Sharma, "The Democratic Deficit and Federalism in Nepal: Is It Cure or Part of the Problem," *Lex Localis- Journal of Local Self-Government* 9, no. 2(2011): 43.

61 Strategic leadership means that leadership who is capable to take difficult choices with clear priorities, balancing diverse demands and views to resolve conflict through arbitration and persuasion. Rational leadership is that leadership who maximizes the net gains through deliberate decision-making process. See Thapa and Sharma, "The Democratic Deficit," 45–50.

62 Julieclaire Sheppard, "Federalism in Nepal: A Tharu Perspective," *Contribution to Nepalese Studies* 36, no. 2 (2009): 214.

63 The term "New Nepal" became quite popular with the success of People's Movement (*Jana-Andolan*) - II in 2006. This term envisages the meaningful inclusion of all disadvantaged groups and members, as well as prosperous members of the society in the spirit of democratic and all-round socioeconomic development of Nepal.

Federal Democratic Republic in the Interim Constitution 2007. He stresses the requirement of some common unifying factor to execute federalism by breaking the country actually into smaller units. This in itself is an incredibly complicated issue to ensure that the government can be accessed down to the grass root people. [64]

According to Aalen and Hatlebakk, identity and the resources to sustain federal structures should be the two overriding bases for federalism. Given the present ground reality of the regional economic structure of Nepal, twelve districts out of seventy five districts contribute 94% of the government's revenue. There is a need for a strong national government to redistribute financial resources equally and reasonably to all states.[65] A successful and inclusive local democracy is needed to promote the interests of the minorities within all federal states. This is even after the final partition of the states and a strong national government to distribute financial and natural resources equally even to poorer states.[66]

The exclusion and inequality among ethnic groups and the failure of democratization are two derivatives of a long history of authoritarian rule. This promotes the domination of the CHHEM in Nepal despite its being the oldest state in south Asia.[67] Mahendra Lawoti gives credit to the decade of 1992-2002, a period of democratic regime under multi-party democracy, than to the collective efforts of Maoist, political parties and marginalized groups at the critical juncture in 2006. According to him, democratic openness and practices during that decade set the conditions for inclusive reforms sensitizing the larger segment of society and political parties toward more inclusive polity and transitions.[68]

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[64] Sheppard, "Federalism in Nepal," 217.

[65] Aalen and Hatlebakk, "Ethnic and Fiscal Federalism," 7.

[66] Ibid., 9.

[67] CHHEM stands for Caste, Hill, Hindu, Elites, and Males. High castes put exclusionary system and practices in place against many ethnic, castes, religious and linguistic groups along with the consolidation of state. See Mahendra Lawoti, "Introduction to Special Section: Ethnicity, Exclusion and Democracy in Nepal," *Himalaya, the Journal of the Association for Nepal and Himalayan Studies* 28, no. 1 (2010): 9.

[68] Ibid., 14.

Khanal in "Federalism in Nepal: Management and Implementation, " terms the present political chaos and internal tensions as an unprecedented phase of historic transition that is heading probably to inclusive multi-party democracy along with the promulgation of a federal constitution.[69] Arguing the efficiency and effectiveness of a federal system greatly depends on political players and their personal conviction, behavior and vision to make the system beneficial for people. Khanal states, "The first priority today has to be the creation of a truly federal, democratic, republican political system and to ensure its development rising above the party political lines and transient priorities. This task cannot be accomplished by limiting oneself to a certain political *ism* or *anti-ism*."[70]

Therefore, given the growing pressure of identity-based federalism from ethnic communities and federalism being the main agenda of Nepal's constitution making process, the careful and wise decisions by political players are crucial to take the country forward from present political crisis. Two factors—ethnic identity and resources to sustain the federal units—need to be considered while restructuring the country in federal system.

E.   METHODS AND SOURCES

This research will examine the conflicting approaches by different political parties and other concerned power centers about the issue of federal structure, which led to the failure of CA. Historical material and descriptive analysis of Nepalese democratization and state-building along with illustrative case studies from India and Spain on democratic federalism will be used to draw lessons and parallels for a smooth transition of the political deadlock. The perceptions and positions of major political parties, civil society, and ethnic groups about the issue of federalism will be analytically discussed. Their possible contributions to settle the dispute will also be analyzed. The focus will especially be on the divergent positions of parties and concern groups on federalism based on ethnic identity. Then, a logical conclusion will be derived with possible recommendations on the

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[69] Krishna Khanal, *Federalism in Nepal: Management and Implementation*, (Kathmandu: National Peace Campaign, 2009), 6.

[70] Ibid., 6–7.

present political impasse of federalism. This will be in light of a comprehensive study of Nepal's historical settings for democracy and state restructuring and an analytical study of the federal systems of Spain and India.

The research will be based on primary and secondary sources. The primary sources are limited to official documents, such as reports, agreements, press release, etc. released by government, parties or agencies and other reputable national and international organizations. The secondary sources consist of books, journals, articles, research papers and other pertinent materials available on internet/websites. Since the political situation is very fluid and difficult to predict in Nepal, and many stories and facts are unfolding, all those possible materials/sources which may available in the due course of research are incorporated.

F.   THESIS OVERVIEW

This thesis is structured as follows: the thesis consists of five chapters. In the introduction, general background information of the democratization process in Nepal is provided along with a brief overview about the failure of CA to formulate the constitution. This is mainly based on the issue of federalism arising from ethnicity. Chapter II is a historical account of democracy and state structure. This includes the people's mobilization in Nepal during the pre-1990 and post 1990 periods, with primary focus on Nepal's transition from a centralized authoritarian rule to a proposed democratic federal republic. Chapter III will be the main part of the thesis and covers the different political parties and other stakeholders, along with their conflicting perceptions, positions and contributions on the issue of federalism and ethnic identity. There is an examination of how they reached these perspectives. This chapter will provide comprehensive insights on the political players, civil society, regional and international players. It will also provide their contributions towards national reconciliation with the primary focus on the role of the political elites and the ground of common understanding for a forward-looking settlement. In Chapter IV, the cases of India and Spain are compared from the perspective of federal structure in a multi-ethnic society. There will be an attempt to derive some parallels and lessons. These can be fruitful to arrive at a common understanding in the

fragmented political context of Nepal. In the concluding chapter, all the findings and derived thoughts will be gathered to discuss the reasons of the collapse of CA and the possible options for a federal structure. Some policy recommendations to solve the issue of federalism and ethnic identity are also provided.

II. HISTORICAL SETTINGS: CASTE, ETHNICITY, DISCRIMINATION, IDENTITY POLITICS AND NEPAL'S TRANSITION TO FEDERAL SYSTEM

A. INTRODUCTION

Nepal entered the democratic era in 2008 after 240 years of the Shah Dynasty. There was a gradual shift from an authoritarian to a democratic system, as it progressed from the party-less *Panchayat* system to a multi-party democracy and to the current democratic federal republic. The current phase of democratization began when political compromise was reached in 1990 between political parties and the monarchy. It lasted about a decade and a half. This led to a rise of a popular movement in 2006, after which Nepal was declared a Federal Democratic Republic with the promulgation of an interim constitution. Yet the struggle to achieve federalism faces many tough issues. The primary issue is Nepal's political diversity underlined by its ethnic, caste, geographical and economic diversities.

The issues surrounding establishing federalism and the design of state structuring cannot be understood without detailed knowledge of Nepal's political history, social structures, and socioeconomic challenges. The people's perceptions and grievances against the state, related to their ethnic, cultural and religious rights, determine the political negotiations and possible national reconciliation. This chapter will focus on political developments leading to the CA election in 2008 and the complexities involved in determining the federal structure. It describes the issues of ethnicity and identity politics that emerged during the Maoist people's war. The purpose of this chapter is not simply to narrate history, but to identify the class, caste and ethnicity of those who were historically, excluded from the national main stream, and then were mobilized by the Maoists through identity politics.

B. BRIEF DESCRIPTION OF THE POLITICAL JOURNEY TO CONSTITUENT ASSEMBLY ELECTION

Nepal had been ruled by the Shah Kings since the unification of the country by King Prithivi Narayan Shah in 1768. In 1856, the country went under Rana dynasty's

oligarchical rule for 103 years as result of a military coup staged by Jung Bahadur Rana. During the Rana regime, Rana Prime Ministers monopolized the executive powers through royal decree (*Lal Mohar*).[71] Following the anti-British movement in South Asia which culminated with a democratic movement in India, the Nepalese middle class and some political elites also launched a democratic struggle and established a constitutional democratic state in 1950. It did not last long due to the competition of various institutions and elites. King Mahendra took power in 1960 backed by the military, dismissing the democratically elected government of the Nepali Congress (NC).[72] He banned political parties and introduced the party-less *Panchayat* system that lasted for three decades until 1989. He ruled the country for a decade and a half and died in 1972. He tried to keep the middle and lower classes in confidence and initiated a number of reforms. This included distributive land reforms in 1964 and the New Civil Code in 1963.[73]

Political parties and critical masses of civil society continued their campaign for democracy and civil liberty during the *Panchayat* regime. As a result of domestic and international pressure from some democratic nations, King Birendra announced the national referendum over the *Panchayat* system in 1980. Although a referendum resulted in the rejection of a multi-party democracy by a thin margin, it created a public space for the discussion of democracy among the political elites, civil society and the people as a whole.[74] It led to the collaboration of banned political parties with reformist, civil-society organizations (such as *Nepal Bhasa Manka Khala*), student and professional associations. Despite their opposing ideologies, the NC and a number of communist parties united under the Left Front and forged a working unity to establish the common goal of democracy.[75]

A multi-party democracy was established in 1990 through the joint struggle of the NC, United Left Front, and several civil society groups. The political parties in national

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[71] John Whelpton, *A History of Nepal*, (Cambridge: Cambridge University Press, 2005), 35–55.

[72] Ibid., 94–96.

[73] Ibid., 99–103.

[74] Ibid.,125.

[75] Ibid.,153–161.

politics and successive governments, however, were unable to consolidate and institutionalize their democratic achievements. According to John Whelpton, political parties could not rise above narrow, patrimonial party politics. Rather, they indulged in power games, sidelining the national agenda and the people's mandate.[76] Instead of consolidating democracy and the overall development of the country, the first phase of democratic politics created a setting conducive for the next series of conflicts. Dev Raj Dahal argues, "Inter-and intra-party squabbles, neglect of the mid hills, widening urban-rural disparity, social discrimination, economic decline, ethno-territorial assertiveness, and mal-governance of the ruling parties provided the structural and proxy causes of conflict and inspired the CPN (Maoist) to launch an armed insurgency –people's war in 13 February 1996."[77]

During a decade-long Maoist insurgency, which ended in 2006, the country experienced political instability. This included a royal massacre in 2001, an emergency rule to suppress the Maoists and direct rule by King Gyanendra. This brought an end to any democratic achievements of the 1990s. The opposition in 2005 formed an alliance of Seven Parties (SPA) against the autocratic rule of King Gyanendra. With the continuing, adamant position of the King, the SPA approached Maoists for a negotiated agreement for an end to conflict and the establishment of democracy. On November 22, 2005, a twelve-point agreement was signed between the SPA and CPN (Maoists) in Delhi under the facilitation of the Indian government. A joint movement of SPA and Maoists, which was the fusion of a Maoist rural insurgency and an urban protest by democratic parties, ended the King's direct rule. The King agreed on restoration of the House of Representatives in April 24, 2006. A Comprehensive Peace Agreement-2006 (CPA) between the government and Maoists brought an end to the Maoist people's war, which had cost the lives of more than 13,000 people since 1996. The SPA and UCPN (Maoist) failed to maintain the politics of consensus leading to the failure of the CA. They succeeded, though, in materializing CPA, formulating the interim constitution, managing

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[76] Ibid., 189.

[77] Dev Raj Dahal, *Elections and Conflicts in Nepal: Country Analysis*, (Berlin: Friedrich-Ebert-Stiftung, Department of Global Policy and Development, 2010), 3, accessed October 22, 2012, http://library.fes.de/pdf/iez/07722.pdf

combatants and arms, and electing the CA. The UCPN (Maoist) emerged as the largest political actor in the CA, but they were short of a majority. A two-thirds majority is needed to form a government and promulgate a constitution according to the interim constitution. The NC showed reluctance to hand over its power. After negotiation, in 2008, they all agreed to amend the interim constitution so that a president, vice president and speaker could be elected, and a government could be formed with a simple majority. This was the end of consensus politics as was envisioned in the interim constitution.[78]

C.   CLASS, CASTE AND ETHNICITY IN NEPAL

Nepal is a homeland of two major racial groups, Tibeto-Burmans and Indo-Aryans. They can be further divided into various subgroups. The Tibeto-Burman group is the largest population group, and they mainly reside in hills and high mountains in the form of various tribal communities. People with a Tibeto-Burman outlook speak an Indo-European language live in the Terai region, and are considered indigenous people (IP). The second racial group, the Indo-Aryan people, can be split into two distinct subgroups. First, the Hill Indo-Aryan subgroup has a majority of high caste-Brahman Chhetri (BC) and a nominal number of service castes/*Dalits*. Second, the Indo-Aryans, residents of the Terai belt, are relatively recent migrants from India. Finally, the Newars, possibly of Tibeto-Burman and Indo-Aryan descent, are the original people of the Kathmandu valley.[79]

The broad picture of the Nepalese ethnic distribution can be analyzed in terms of specialization in ecological zones based on a relationship among habitation zone, altitude, and socio-cultural proximity (see Figure 1). There are three ecological zones characterized by predominant ethnicity in Nepal: the northern mountain zone is dominated by the Tibetan culture and dialect; the middle hill zone is inhabited by groups who claim distinctive Nepalese, including some indigenous groups; the valleys are occupied by *parbatiya* (Hill BC); and the southern lowland is inhabited by Hindu,

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[78]Ibid., 3–5.

[79] T. Louise Brown, *The Challenge to Democracy: A Political History,* (New York: Routledge, 1996), 51–52.

Muslim and some IPs, such as Tharu.[80] Gerald Berreman describes the people inhabiting the middle altitude hill zones as "the distinctively Nepalese people who combine Tibetan, Indian and probably certain aboriginal elements common to neither and deriving from cultures that may have been preceded by both."[81]

This model oversimplifies the diverse ethnic picture of Nepal. Symbiotic interdependency among various groups in a region includes economic, ecological and social adaptations as the main features of Nepalese ethnicity.[82] Nancy E. Levine, who studied the ethnicity and caste system in Humla (the northern district of Nepal), concludes that, in the case of Nepal, the state is responsible for creating caste hierarchy and, thereby, recognition of ethnic identities.[83]

Figure 1.   Ethnic Distribution in Nepal (from
http://www.planetware.com/i/map/NEP/nepal-ethnic-groups-map.jpg)

No ethnic groups are characterized by common territories and the embrace of political institutions. There are no tribes in Nepal.[84] Heterogeneity within and between

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80 Nancy E. Levine, "Caste, State and Ethnic Boundaries in Nepal," *Journal of Asian Studies,* 46, no. 1 (1987): 75.

81 Gerald D. Berreman, "Peoples and Cultures of the Himalayas," *Asian Survey* 3, , no 6 (1963): 297.

82 F. Barth, *Ethnic Groups and Boundaries* (Boston: Little Brown, 1969), 18–19.

83 Levine, "Caste, State and Ethnic," 86.

84 Ibid., 74.

the main ethnic groups is prevalent. This makes the ethnic landscape of Nepal more complex (see Appendix). For instance, the Tamang of the western region are viewed as a single group, but they distinguish themselves as Sherpa, Gle, and Tamang. Similarly, state policies and available economic benefits also influence the ethnic groups and their interrelations. For instance, the Tamang link themselves to the Sherpa due to the opportunity of lucrative employment as trekking guides.[85] Likewise, people from the mid-hills group used ethnic identity and caste per demand to increase the probability of recruitment into foreign armies (Gurkha Soldiers).[86]

According to the 2001 census, there are 103 social groups listed in Nepal. No single group is predominant. The population can be broadly categorized into three groups: caste group 57.5%, *Janajatis* 37.2%, religious minorities 4.3% and others 1%.[87] The Nepal living standard survey of 2003/04 revealed that almost 31% of the people are struggling under the poverty line. IPs, Muslims, *Dalits*, and people living in the hills have a higher share of the population under the poverty line. For instance, more than half of the *Dalit* population is under the poverty line.[88] The *Parbatya* castes BC, which constitutes 31% of the Nepalese population, are the most politically and socially dominant group due to a caste-based social structure. They have ruled Nepal as a Hindu kingdom since its establishment in the1700s.[89] Major caste /ethnic groups are shown in Figure 2.

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85 Ibid., 74–75.

86 John T. Hitchcock, "Sub-Tribes in the Magar Community in Nepal," *Asian Survey* 5, no. 4 (1965): 208.

87 P. Ranjan, *Nepalese Minority Groups: Struggle for Identity and Representation,* (Kathmandu: Support Nepal, 2009), 5–8.

88 Ibid.

89 *Parbatya* means a Nepali-speaking Hindu of the hill region. Madhesi high caste and Newar are considered non-*parbatya* and not included in dominant group though they are a privileged group in Nepalese society. The 2001 Census counts *Parbatya* BCs as 30.8%, including Thakuri and Sanyasi. See Ranjan, *Nepalese Minority*, 6.
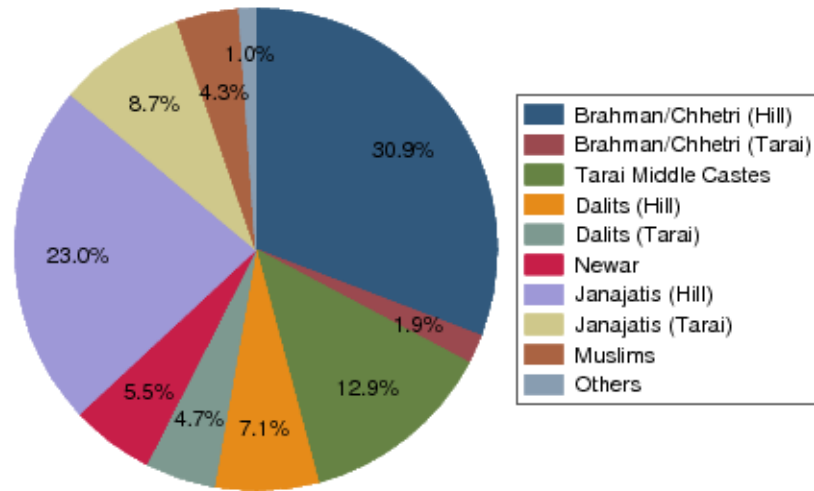
Figure 2.   Ethnic/Caste in Nepal (from http://ethinicgroupsnp. blogspot.com/2010_07_01_archive.html)

1.   National Caste System and Social Status

The Nepalese ethnic model is characterized by diversity, but with limited ethnic contrasts between Hindu and Buddhist, tribe and caste, and mountain, middle hill and lowland Terai. Nepalese ethnic relations, peculiar in terms of coexistence and mutual dependency, are more affected by interaction, interdependence and mobility than by contrast with each other. The present ethnic mix and complexity in Nepal is an obvious outcome of deliberate attempts by the state to manage the diverse ethnic landscape and the people's response to it.[90] Nancy E. Levine states that "ethnic relations today are the outcome of a historical process of accommodation between regional ethnic systems and the policies of the centralizing state."[91] After the territorial unification of Nepal, there was a necessity of time for the integration of diverse Nepalese societies to strengthen the state. Thus, state created a national caste system, which was the theme of the *Muluki Ain* (civil code) of 1854, to provide a space for each group per the ruler's perceived notion about caste.[92]

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[90] Levine, "Caste, State and Ethnic," 71–72.

[91] Ibid., 71.

[92] Nepalese society consisted of three distinct caste hierarchies: Parbatiya, Newar, and Terai caste system. These are considered historically autonomous and regionally influential. Tibeto-Burman-speaking communities in remote places and Tibetan ethnicity along the northern border also existed that further diversified the Nepalese ethnic landscape. For further details, see Andras Hofer, *The Caste Hierarchy and the State in Nepal: A study of the Muluki Ain of 1854* (Innsbruck: Universitatsverlag Wagner, 1979), 43–46.

The provision of legislation and different punishments based on caste tried to take care of the issue of commensality and physical contact among different social groups. State economic policies were also greatly discriminatory. Differentiated land tenures and job/trade rights were in place for specific caste ranking and ethnicity. This unequal treatment contributed to greater political and economic disparity. As a result, some people closed the ranks to retain benefits within a small group; whereas others merged to increase the size of the group so that they could claim more ethnic privileges. This kind of strategy perpetuated itself and influenced the people's perceptions regarding benefits and significance of ethnic identity.[93]

The basic aim of the national caste system was structural integration of the country, substituting for the existing regional systems. The goal was probably to legitimize the separate political identity of the state.[94] The customary laws and traditions were so deeply rooted that legislation turned to a process of mutual accommodation to address the preservation of traditional customs and to make the law beneficial to Nepal's diverse ethnic groups.[95] The Nepalese caste system granted middle rank to the non-Hindu groups residing in the hills and mountains. This is quite a different practice than the Indian caste system. It is a great example of mutual accommodation despite the socio-cultural variance from Hindu or Sanskrit ideals. Those ethnic groups of hills and mountains actually acquired the status well above the Hindu service caste and just below the high ranks of the Terai and Newar caste. Nancy E. Levine argues, "Caste was particularly effective in integrating such diverse groups because it is, at base, an incorporative model for ethnicity."[96] The code and other government policies, however, strengthened Hindu dominance and marginalized non-Hindu groups. There were two important effects of the legal code. First, non-Hindu groups, except for Tibetan speakers, accepted the state definition of caste. Second, middle-hill peoples were acculturated and sanskritized.[97]

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[93] Levine, "Caste, State and Ethnic," 72.

[94] Hofer, *Caste Hierarchy*, 40, 195.

[95] Ibid., 175.

[96] Levine, "Caste, State and Ethnic," 72.

[97] Ibid.

In today's view, the caste system and legal code was discriminatory as the fines and punishment were different for different castes of victims and perpetrators. Lower castes and non-Hindus could be enslaved for certain crimes; whereas higher ranks were at times exempted from such punishment or the punishment was limited to a downgrade in caste. This is the main reason that every group, irrespective of Hindu and non-Hindu groups, tried to improve their status in the law. For instance, the Khas upgraded or changed their title to Chhetri. Now addressing Chhetri as Khas is considered an insult.[98]

2.   People, Language and Migration

There is no distinction between ethnic group and caste in colloquial Nepali, as *Jat* is used for both to qualify as a descent group. The *Parbatiya*—people of the mountains— are more dominant in Nepalese culture and, consequently, in state politics. The language spoken by *parbatiyas* is called Nepali. This is one of the Indo-Aryan languages and quite close to Hindi. This is because there are common technical terms as they were borrowed directly from Sanskrit. Since its script and certain words are similar to Hindi, the relationship of Nepali to Hindi is almost the same as Spanish to Italian. It is believed that the Khasas*,* the native speakers of the present day Nepali language, were the first people to migrate around 1000 BC to the western Himalayas of Nepal from western Eurasia or the Iranian plateau. After 1000 AD, a small number of Rajputs fled to the hills and joined the Khasas as a result of Muslim invaders. By late medieval times, Thakuries were ruling the central and western part of Nepal and claiming themselves as Rajput descendents.[99] The arrival and origin of hill ethnic groups is not certain. John Whelpton states, "Many, though not all, of the other ethnic groups in the Nepal hills were there before the Khasas, but it is difficult to date their arrival…. Nepalese from many different ethnic groups will be at least partly descended from those earliest inhabitants."[100]

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[98] Prayag R. Sharma, "Caste Social Mobility and Sanskritization in a Tribal-Hindu Society: A study of Nepal's Old Legal Code," in *Changing Aspects of Modern Nepal*, ed. Shigeru Lijima (Tokyo: Institute for the Study of Languages and Cultures of Asia and Africa, Tokyo University of Foreign Studies, 1977), 112.

[99] Whelpton, *A History of Nepal,* 9–11.

[100] Ibid., 11.

A dialect spoken by the Kusundas of Mahabharat hill is considered the oldest linguistic stratum of Nepal. Similarly, the language spoken by Rautes and Tharu*s* reflects its closeness to the pre-Tibeto-Burman language. Bhotia, the Tibeto-Burman speaking people, is the second largest group in the hills. Sherpa, who live in and around Solukhumbu, migrated from the north in 1531-33. The Tamang*s,* Gurungs and Thakalis are believed to have migrated from Tibet to Nepal, and they speak the Tibeto-Burman language.

According to Kiranti legends, people residing in the eastern part of Nepal migrated from Assam as there are similarities between the Kiranti and Rong languages of Yunnan and Burma. It is believed that they migrated from South West China to Assam and then to Nepal following the Brahmaputra River. Whelpton argues that many ethnic groups existing in the hills could be the product of fusion between various groups that entered those areas.[101] Magars, the largest ethnic group of the mid-western region, has much diversity in terms of dialects and cultures. Whelpton states, "The term Magars was perhaps once simply a prestigious title that was adopted by numerous otherwise unconnected groups."[102]

The Madhes*i,* people of the plains are generally regarded as a single group, but Terai is a home of traditional Hindu people, a Muslim minority and a number of ethnic groups, e.g., Tharu. The language spoken by the Madhesi people consist of Indo-Aryan dialects. It is believed that those dialects entered north India along with migration down the Ganges basin from the Northwest. The ethnic diversity within the Terai is also prominent in terms of cultures, tribes, dialects and religion. About languages spoken in Terai, Whelpton says:

> For caste Hindus, and also for most of the 'tribal,' the Terai forms a dialect continuum with speech changing gradually from one village to the next, and no sharp divisions between one language and another. However, it is usual to recognize three main varieties: from west to east, Awadhi, Bhojpuri and Maithili, the last of which has the largest number of speakers in Nepal after Nepali itself.[103]

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[101] Ibid., 11–13.

[102] Ibid., 14.

[103] Ibid., 15.

Politicization of resettlement makes the issue of the Terai elite even more complex, and their influence in national socioeconomic landscape is contradictory. Brown says of them:

> The new hill derived Terai elite retained their place in the national political hierarchy because they also retained their credentials as authentic Nepalis … A section of Terai elite was not of hill, but of comparatively recent, Indian origin. Indian immigrants to Nepal fell into two categories. One was composed of wealthy, high caste Indians who were landowners, and especially businessmen and industrialists … A second category, which included the bulk of Indian immigrants to Nepal, consisted of poor, low caste peasants … Consequently, while the majority of Indian immigrants lacked both economic and political power, high caste Indians had significant economic influence but maintained a discreet political presence, acquiescing in the hill domination of politics because they had a vested interest in doing so. [104]

3. Indigenous People and Their Rights

A fair number of marginalized ethnic groups considered themselves indigenous people (IP), though Article 1 of the ILO convention 169 defines IPs as one who "inhabited the country or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of the present state boundaries."[105] IP mobilizations came into the limelight and expanded internationally through the sharing of experiences and strategies, along with the ILO Convention on the rights of IP and Tribal peoples 1989 (ILO Convention 169) and UN declaration on the rights of IP-2007 (UNDRIP). Nepal was a signatory of UNDRIP and ILO 169 in 2007.[106]

Nepali IPs are spread all over the country with a large number of smaller ethnicities, but they constitute almost 36% of the population in which Magars, Tharu, Tamang and Newars contribute 7.1%, 6.7%, 5.6% and 5.4%, respectively.[107] Although IPs are considered politically and economically marginalized, internal variation is significant. Newars and *Thakalis,* minor groups of the IPs, are economically in better

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[104] Brown, *The Challenge*, 80.

[105] Mikkel Berg-Nordlie and Arild Schou, "Who Are Indigenous and How Should It Matter? Discourses on Indigenous Rights in Norway and Nepal," *Ethno-politics Papers,* no. 13 (2011): 1.

[106] Ibid.

[107] Central Bureau of Statistics, *Population Census-2001*.

position than normal BCs. Newars are quite influential even in the political sphere. Public perception is that IPs are discriminated against through sanskritization in Nepal. The level of marginalization is even apparent in civil society, as BCs dominate in the NGO federations and the journalism sectors where they represent 76% and 80%, respectively.[108]

Nepalese IPs have been grouped together and called *Matwalis* (low-status category) since the unification of the country. The Nepal Federation of Nationalities (NEFEN) was instituted in 1990. This was renamed the Nepal Federation of Indigenous Nationalities (NEFIN) in 2003 after systematic inclusion of a qualifier *adivasi* (indigenous) in its charter.[109] The term "indigenous nationalities" (*Adivasi Janajati*) has been used in political and social forum since the 1980s, but it has some controversies. Some argue that *parbatyas* (hill BCs) are also IP due to their long presence in the hills; whereas others argue that the inclusion of Newars in IP is not justified as they are urban people with mostly full-fledged Hindu caste system.[110] When the Nepal Foundation for Development of Indigenous Nationalities (NFDIN) Act was endorsed, an official initiative at the government level materialized (2002).[111]

The issue of the right of self-government in the context of the Nepalese IP has been discussed much during the last decade. Peoples have been mobilized for ethnic federal states, but this is very hard to achieve due to the scattered nature of marginalized groups, such as the *Dalits* and *Muslims* all over the country. This results in no separate traditional homeland. *Dalit* politicians and leaders were concerned that the concept of IP right of self-government fails to address the traditional exclusion of *Dalits, Muslims* and women, and it overshadowed the issue of marginalized groups. Though minority politics is being developed as a zero-sum game, the IP rights movement should not be oppressive towards other societal groups.[112]

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[108] Berg-Nordlie and Schou, "Who are Indigenous," 8–9.

[109] ICG, *Nepal: Identity Politics,* 5.

[110] Berg, Nordlie and Schou, "Who Are Indigenous," 9.

[111] The NFDIN identified IP groups and provided the official platform for promotion of social, economic and cultural development of IPs by channeling the money through official programs. It has listed the geographical habitations of the 59 identified indigenous nationalities and categorized them in five different groups: endangered, highly marginalized, marginalized, disadvantaged and advanced, respectively. For further details, see http://www.nfdin.gov.np/.

[112] Berg-Nordlie and Schou, "Who are Indigenous," 14–15.

In recent years, BCs are forming organizations such as the Chhetri *Samaj,* Khas Chhetri *Ekta Samaj,* and *Brahmin Samaj.* These are campaigning to protect their rights and claiming also to be IP groups.[113] They maintain, however, that their organizations are an unfortunate necessity. They claim that they are not believers of ethnic politics and that discrimination has actually been started by politics based on ethnic lines as there used to be exemplary harmony among various ethnic groups in Nepal. BCs perceive the under-representation of marginalized groups in government positions is a result of incompetency and unwillingness to make career choices. This is because IPs have significant representation in army, police and foreign employment, including foreign military services.[114] Mikkel Berg-Nordlie and Arild Schou argues that " many BC activists seem blind to the fact that it is not meritocracy and career choices of the IPs that has led their own group to be over represented at the higher levels of society."[115]Hence, all IPs in Nepal are not deprived, and BCs are not in favor of federalism based on ethnic identity. This makes the issue of federalism more complex.

D.   ISSUES OF INCLUSION AND EXCLUSION

State policies under the Rana regime and the party-less *Panchayat* system continued to maintain the caste system of social stratification and work division. This obviously favored the higher castes. In fact, the monarchy and the Rana regime both supported the concept of one country, one religion and one nation.[116] Civil Code-1963 could not dismantle a caste system deeply embedded in the society except in formal official practice. Similarly, Land Reform-1964 could not reach to the grass roots—those at the bottom of society—and it merely served as a token step.[117]

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[113] ICG, *Nepal: Identity*, 19.

[114] Berg-Nordlie and Schou, "Who are Indigenous," 15–16.

[115] Ibid.,16.

[116] D. B. Gurung, "Ethnic and Socio-Cultural Dimensions to the Maoist Insurgency: An Overview," in *Conflict, Human Rights and Peace Challenges Before Nepal: Rishikesh Shaha Memorial Lectures 2003*, ed. Bipin Adhikari, (Kathmandu: National Human Rights Commission, 2003), 84.

[117] Brown, *The Challenge*, 54.

The Madhes*i* and *Dalits* are believed to be more marginalized than others. The *Dalits* and the untouchables of the Madhes are mostly landless.[118] Grievances and dissatisfaction of Madhes*i* communities appeared after 2006. This is not a new issue in Nepalese political history and practices. Fredrick H. Gaige argues that integration of the Madhesi people would be more realistic through their meaningful participation in the state's political system than through coercive measures. In that way, they would be motivated to accept national political and cultural ideals voluntarily.[119] Similarly, the issue of the *Dalits* is very complex and severe. Irrespective of the regions of inhabitance, ethnicity, religion or level of development, prevalent discriminatory practices exclude the *Dalits* from the socio-political and economic main stream.[120]

Though ethnic communities are deprived of cultural and linguistic rights, it would be grossly incorrect to analyze the issue only from the perspective of inclusion or exclusion without giving due consideration to variations amongst social sub-groups and individuals within the caste and ethnic communities. Most of the literature and studies in this field are focused on the common argument that BCs are the most privileged and that they have enjoyed positions and powers that shaped the societal values and favored their community with the required materials and resources.[121] Diversities and internal variations among various ethnic groups show that the general perception of ethnic population or caste as a homogeneous entity has lots of limitations. For instance, opportunities and privileges enjoyed by Newars and *Thakalis* (non-BCs) are out of proportion to any ethnic/caste groups. This is even though the BCs are considered the most dominant community/caste. [122] Nabin Rawal highlights the need to understand the issue of inclusion and exclusion in accordance with the national context and complexity of social structure, and argues:

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[118] S. R. Yadav, *Nepal Feudalism and Rural Formation* (New Delhi: Cosmo, 1984), 93.

[119] Fredrick H. Gaige, *Regionalism and National Unity in Nepal,* (Berkeley: University of California Press, 1975):195.

[120] Nabin Rawal, "Social Inclusion and Exclusion: A Review," *Dhaulagiri Journal of Sociology and Anthropology* 2 (2008): 175–176.

[121] T. R. Pandey, et al., *Forms and Patterns of Discrimination in Nepal: A Report (*Kathmandu: UNESCO, 2006), 76.

[122] Ibid., 77.

As is seen social exclusion/inclusion is contestable term, and thus its relevance to Nepal in its European Avatar is open to a lot of questions. Furthermore, given the diversities in Nepal, with its own social, cultural, historical realities, the concept needs more deliberation and needs to reflect the realities of Nepal going beyond popular discourse and emotive appeal for a segment of the population.[123]

Social exclusion and marginalization is not limited to IPs or any section of the society. Almost two-thirds of the Nepalese population is considered to be marginalized groups. This includes the *Dalits, Muslims* and Madhes*i*.[124] At the substructure of Hindu hierarchy, the *Dalits* represent almost 15% of the population. Though it is officially illegal to discriminate, due to the extreme social practices of untouchability, they are considered to be the most marginalized section of society.[125] The *Dalit* (lower segment) category is practiced in every social system. As a result, social discrimination is so deeply embedded that it is present even in the Buddhist and Muslim communities.[126]

1.   Social Exclusion and Disparity

Discrimination on the basis of caste prevails in employment, marriage and other general social interactions. These are preserved and reinforced by traditional practice and social intimidation. Untouchability and exclusion of the *Dalits* from social and religious spheres is the hallmark of caste-based discrimination.[127] The *Dalits* represent 80% of the ultra-poor in Nepal. Even though they comprise more than 20% of the population, they

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[123] Rawal, "Social Inclusion," 178.

[124] Berg-Nordlie and Schou, "Who Are Indigenous," 9.

[125] P. Ranjan, *Nepalese Minority groups: Struggle for Identity and Representation* (Kathmandu: Support Nepal, 2009), quoted in Mikkel Berg–Nordlie and Arild Schou, "Who are Indigenous and How Should it Matter? Discourses on Indigenous Rights in Norway and Nepal," *Ethno-politics Papers,* no 13 (2011): 9.

[126] *Dalits* of *Parbatya, Newar*, and Madhes*i* community are 8.7% 0.4% and 2.8% of the total population, respectively. *Muslims*, mostly residing in the southern plain and 4.2% of the total population, are highly discouraged from assimilating into other cultures. The core Madhesi people are marginalized due to dominance of hill, and their cultural closeness to India. Consequently, they are behind the hill-based groups on socioeconomic indicators. See K. Hachhethu, *Social Exclusion and Nepali Muslim: A Case Study of the Banke District,* ed. D. R. Dahal and D. Kumar (Kathmandu: Centre for Nepal and Asian Studies, 2009); M. Dastider, *Understanding Nepal: Muslim in a plural Society,* (New Delhi: Har Anand Publications Pvt. Ltd.); M. Haug and A. Aasland, *A Review of the Academic and Policy Debate*, ed. D. R. Dahal and D. Kumar (Kathmandu: Centre for Nepal and Asian Studies, 2009).

[127] Center for Human Rights and Global Justice, *The Missing Piece of the Puzzle*, 6.

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possess only 1% of the wealth. The *Dalits* and lower castes are denied economic activities and opportunities forcing them into severe and disproportionate economic vulnerability. The *Dalits* own less than 1% of the arable land and only 3% of *Dalits* enjoy more than one hectare of land. In contrast, bonded agriculture labors, the *haliyas*, mostly belong to the *Dalits* and the lower castes. As they have no alternative other than to live without toilets and running water, most *Dalits* have a miserable subsistence.[128]

According to the Reservation System Recommendation Committee (2003), women *Janajati, Dalit* and Madhes*i* are identified for affirmative action.[129] The ADB report identified *Dalit, Janajati, sukumbasi* (squatter) and *kamaiya* (bonded labor) as disadvantaged groups.[130] Similarly, the UNDP report released in 2004 recognizes women, *Dalit*, indigenous people, people with disabilities, children and senior citizens as vulnerable groups.[131] The Harka Gurung argues that indigenous people are mostly facing social exclusion based on religion, language, and cultures. The Sukumbasi and Kamaiya are victims of poverty. The *Dalits*, including women, are victims of fundamental Hindu practices.[132] Nepal's first democratic constitution of 1990, promulgated after restoration of democracy, still suffered from some contradictions. Article 11.3 guarantees that no discrimination against citizens based on religion, color, sex, caste, ethnicity or conviction. Article 19.1 guarantees each individual the right to follow and practice his ancient religion by maintaining the dignity of prevailing traditions. Yet the tenth amendment to social code 1993 enforces discriminatory traditional practices at religious places as prevailing traditions.[133]

The population census data for 2001 clearly reveals the social disparity in major occupations. Upper castes occupy 62% of professional and technical positions, 58% of

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[128] Ibid., 8–9.

[129] Gurung, "Social Exclusion and Maoist."

[130] ADB, *Country Strategy for Poverty Reduction*, (Kathmandu: ADB Country Office, 2002): 37–40.

[131] UNDP, *Nepal Human Development Report 2004: Empowerment and Poverty Reduction,* (Kathmandu: UNDP, 2004), 51–68.

[132] Gurung, "Social Exclusion and Maoist."

[133] Ibid., 3

legislative/administrative positions, and 53% of clerical positions, despite their share of only 35% of the economically-active population. On the other hand, *Dalits* with 12% and IPs with 38% of the economically-active population have at the most 4% and 30% involvement in such occupations, respectively. The proportions in production labor, however, are just the opposite: high caste shares are 19%; whereas *Dalits* and *Janajatis* share 20% and 38%, respectively.[134] In 2001, upper caste Brahamans held 57% in parliament and 89% in the judiciary. This is regardless that they comprised less than 20% of the national population. Only a handful of *Dalits* were represented out of almost 4,000 village committees across the country.[135] This also shows the under-representation of the *Dalits*, even in the grass root political system.

Since the rural population is predominant in the national demographic picture, the top 5% of people control 40% of cultivated land; whereas the bottom 60% control only 20%. The elite caste Brahman, Chhetri and Newars[136] represent 48%, 26%, and 15% of government officials, respectively.[137] According to a study carried out by Nepal South Asia Center, 12% of households own 71% of the wealth and the poorest 20% of the country's families own only 3.7% of national income.[138] There is also a disparity between city and rural health care. In rural areas, there are only five doctors available for every 100,000 people. Similarly, a majority of the population rely on agriculture for their subsistence.[139] Most economically and politically powerful ethnicities were controlling

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[134] Meena Acharya, et al., " Analysis of Caste Ethnicity and Gender Data from 2001 Population Census for Poverty Mapping and Wider PRSP Monitoring," *TPAM Foundation* (2004), quoted in Gurung, "Social Exclusion and Maoist," 4.

[135] Center for Human Rights and Global Justice, *The Missing Piece,* 16.

[136] Newars are believed an indigenous inhabitant of Kathmandu valley with business and commercial agriculture as major occupation. See Lara L. Manzione, "Human Rights in the Kingdom of Nepal: Do They Only Exist on Paper?" *Brooklyn Journal of International Law* 32 no. 1(2001–2002): 212.

[137] Subodh Raj Pyakurel and Bal Krishna Kattel, "Developing Options for Peace Negotiations," *Human Rights Journal: Informal,* South Asian Human Rights Solidarity (2003), 48.

[138] S. S. Pattanaik, "Maoist Insurgency in Nepal: Examining Socioeconomic Grievances and Political Implications," *Strategic Analysis: A Monthly Journal of IDSA* 26, no.1 (2002): 4, accessed June 7, 2012, http://www.tandfonline.com/doi/abs/10.1080/09700160208450028.

[139] Manzione, "Human Rights in the Kingdom of Nepal," 214–215.

almost 69% of civil service positions in the mid-1980s. Within a decade of the restoration of democracy, this figure saw a sharp increase to 98%.[140]

Discrimination based on castes and miserable condition of *Dalits* and backward people are very severe in Nepalese society. There is a huge gap between poor and rich people because national wealth is concentrated in certain high-caste elites and limited ethnic people. Since Nepal is rural, agro-based, multi-ethnic country, development is only possible when social inclusion and equality in resource distribution are ensured in the new structure of the country. Though domination of higher caste and under representation of *Dalits* and people of lower strata in state machineries are mostly prevailed throughout the country, women and *Dalits* are most oppressed section of the Nepalese society.

a. *Women and Dalits: Most Deprived Segment of the Society*

The caste system is preserved and reinforced in rural societies through traditional practice and social banishment. As a result, caste divisions prevail in most socioeconomic interactions, such as marriage, employment, and housing. At times, this exists even for basic needs, such as water.[141] The *Dalits* comprise one fifth of this population, possessing 1% of the nation's wealth, but they represent 80% of the ultra-poor in Nepal.[142] The *Dalits* are considered ritually impure and untouchable due to their work related to dead animals or human waste.[143] The *Dalits* face severe social discrimination as they are strictly denied free access to temples, restaurants, hotels, and even milk cooperatives. In turn, they are also denied any kind of compensation for their so called low-grade work—like handling of animal remains. This results in disproportionate economic vulnerability.[144]

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[140] Deepak Thapa and Bandita Sijapati, *A Kingdom Under Siege: Nepal's Maoist Insurgency, 1996 to2004* (London: Zed Books, 2004), 77.

[141] Human Rights Watch, *Caste Discrimination: A Global Concern,* (2001), quoted in Center for Human Rights and Global Justice, *The Missing Piece*, 6.

[142] Jana Utthan Pratisthan (JUP), *Dalit in Nepal and Alternative Report for WCAR*, (2001), quoted in Center for Human Rights and Global Justice, *The Missing Piece*, 8.

[143] Mani Srivastav and Keshav Gautam, "Reflect: A forum for *Dalits* to Organize for Their Rights in Nepal," *Education Action* no. 14, (2001), quoted in Center for Human Rights and Global Justice, *The Missing Piece*, 8.

[144] Human Rights Watch, *Caste Discrimination: A Global Concern*, (2001), quoted in Center for Human Rights and Global Justice, *The Missing Piece*, 8.

Dalits women and girls are victims of a double burden of caste and gender discrimination. As a result, they lag behind *Dalit* men and other women in the society.[145] The *Dalits* women are also very poor in terms of socioeconomic indicators. The literacy rate of *Dalits* women is 24%, almost half of the national literacy rate of women. It is more severe in some *Dalit* communities, such as Mushahar where only 9% of *Dalit* women are literate.[146] Discrimination based on religion, sex, caste, tribe, and ideological conviction is illegal per the Constitution and Civil Rights Act of 1955. Unfortunately, it is limited to paper since there is little enforcement in practice of such legal provisions. Discriminatory provisions still exist: the traditional practice of harassing *Dalits* from temples, denying inheritance rights to women, and refusing them the right to pass citizenship to their children. Surprisingly, Nepal still operates without a law for sexual harassment, and one study says that there are still about 85 discriminatory laws and 137 discriminatory legal provisions.[147]

A study conducted by a Kathmandu-based NGO revealed that there were still 118 provisions in Nepalese law and regulations that discriminate against women socially, economically and politically. Despite the fact that Nepal is one of the signatories of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), this includes rights of citizenship, marriage, adoption and abortion.[148]

2.   Issue of Ethnic Identity in Nepal

In 1990s, the Maoists used ethnic politics to mobilize ethnic constituencies, such as the Magars, Tamang*s*, Limbus and Gurungs, and *Dalits*, to rally them against the centralized monarchial system. In turn, those ethnic groups were assured federal states

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[145] Durga Sob, *Dalit Women in Nepal: Issues and Challenges,* (2001), quoted in Center for Human Rights and Global Justice, *The Missing Piece*, 12.

[146] UNESCO Institute of Statistics, *Literacy Rates by Country and by Gender for 2000-2004*, (2004), quoted in Center for Human Rights and Global Justice, *The Missing Piece*, 11.

[147] GSEA Study, *Unequal Citizens,* 7–11.

[148] Forum for Women , Law and Development, *Discriminatory Laws in Nepal and Their Impact on Women : A Review of the Current Situation and Proposals for Change*, (2000), quoted in Center for Human Rights and Global Justice, *The Missing Piece*, 15.

based on the right of self-determination.[149] As they believed they had been bypassed in the peace deal and negotiation process for power sharing, these ethnic groups raised their grievances against the political elites. Leaders from the Madhes*i*, Tharu*, Dalit* and *Janajati* blame Nepali nationalism based on a hegemonic nationalistic ideology that is deep rooted in the traditional power and authority of Hindu high-caste BCs.[150] The government had agreed to address the demands of various ethnic groups and organizations and has signed agreements with them.[151] Poor implementation of such agreements makes those ethnic groups more suspicious of the political leaders and government. Despite socioeconomic and caste hierarchy, patriarchy, and the existence of 103 ethnic and caste groups in Nepal, heterogeneity does not pose any threat to national integration and social harmony as long as all groups are conscious of a common national identity.[152]

There are unifying symbols among the various groups. Since the majority of the population is Hindu, most Hindu groups and activists want Nepal to be a Hindu state. Nepali is the mother tongue of the majority of the people, and it serves as a lingua franca among the groups (see Appendix). However, getting groups to agree on common national identity has been a difficult process. Madhesi parties prefer either Hindi or other Terai local languages as the national language for Madhes*i* in Terai. Following the promulgation of the interim constitution, an ethno-political coalition comprised of a few Terai-based parties surfaced. They united in the name of the United Madhesi Front during the latter phase of the Maoist insurgency and started a semi-militant political movement against the Centre. They demanded federalism with Madhesi identity, self-governance

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[149] Guenther Baechler, *Emerging Archetypes: A Comparison of Patterns of the Peace Processes in Sri Lanka and Nepal,* ed. Daniela Korppen, Beatrix Schmelzle and Oliver Wils (Berlin: Berghof Handbook Dialogue Series, 2008), 57.

[150] Ravi Bhandari, Nanda R. Shrestha and Dev Raj Dahal, "Rising Ethno-cultural Nationalism in Nepal: Post-modern Illusion or Democratic Delusion?" *Sociological Bulletin* 58, no. 1 (2009), 18.

[151] The heterogeneous nature of different groups and organizations, which is raising the issue of rights and inclusion of their groups in national mainstream, is making the situation more complex and difficult to address. Government has signed the accords with such groups on the bid to make CA election successful. Some of these ethnic group and organizations are Madhes*i* Jana Adhikar Forum*,* Joint Muslim Struggle Committee, Kirat Janawadi Workers Party*,* Tharuhat Struggle Committee*,* Chure Bhabar Ekta Samaj, Terai Mukti Morcha, Janamukti Morcha, etc.

[152] Dahal, "Elections and Conflicts," 13.

and a proportional election system. There was also a demand for one state for the entire Madhes ("one Madhes one Pradesh ").[153] Baechler states,

> Initially all parties—including the monarchists—tried to use the Madhesi upheaval to weaken the Maoist movement, which had some stronghold in western Terai; in particular, Maoist splinters used the Terai card to fight against their previous mother party and to strengthen their position vis-à-vis the central government."[154]

Similarly, after a series of negotiations, the government signed a twenty-point agreement with NEFIN in August 7, 2008, which agreed with the representation of 59 ethnic groups out of 103 and acknowledged the right of IP per ILO 169.[155] Dev Raj Dahal argues, "In the absence of any comprehension of a larger national community—the state, contesting demands could intensify the struggle of subsidiary identity politics in future elections and politicize the national political domain."[156]

In Nepal, the spirit of the ILO 169 convention has been misinterpreted by several groups. For instance, Newars claim to be one of the indigenous communities of Kathmandu, but they enjoy lots of privileges and a significant presence in political and administrative portfolios. This includes a leading role in business sectors in Kathmandu and their monopoly in trade of the country. Certain IPs need to be integrated and granted special rights, but some indigenous people, such as the Newars, are not tribal.[157] Muslims want to be registered as "Nepali Muslim " rather than categorized as "IP " so that they are eligible for the associated rights of a recognized minority, such as proportional representation in different layers of the state mechanism.[158] Similarly, NFDIN stands

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[153] Madhesi raised the issue of one Madhes, one *Pradesh,* possibly due to the fear of redistributive land reform agenda raised by all hill-based parties and left parties. This demand came into surface as country declared secular, probably, Hindu as common identity has been serving as binding between hill and Madhesi people.

[154] Baechler, *Emerging Archetypes*, 57.

[155] Convention No. 169 is a legally binding international instrument open to ratification, which deals specifically with the rights of indigenous and tribal peoples. For further details, see http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm

[156] Dahal, "Elections and Conflicts," 14.

[157] Berg-Nordlie and Schou, "Who are Indigenous," 17–18.

[158] M. Haug and A. Aasland, *A Review of the Academic and Policy Debate*, ed. D. R. Dahal and D. Kumar (Kathmandu: Centre for Nepal and Asian Studies, 2009), quoted in Berg, Nordlie and Schou, "Who are Indigenous," 19.

with the idea of incorporating "Terai other Caste " and "Terai *Dalits* " into the IP groups for justice of the marginalized people of the Madhesi community.[159] People believe Sherpa have been residing in Nepal since around 1553; whereas Hindus (BCs) have been around since 400-900 CE.[160] Such issues cause further polarization among communities, which continues to inhibit the federalization process.

3.   Ethnic Movement in Terai

Terai based political parties and groups, mainly the Madhesi Janadhikar Forum (MJF), Terai Madhesh Loktantrik Party (TMLP) and Sadbhavana Party (SP), created a United Democratic Madhesi Front (UDMF) polarizing the Terai people along ethnic lines in 2007. The main goal of UDMF was to establish an autonomous state of Madhesh to end long-standing traditional discrimination from Kathmandu and the Hills.[161] The UDMF encouraged racial and ethnic violence as it redefined the identity of Terai people. This excluded the hill-origin people residing in Madhesh because UDMF interpreted Hill settlers as encroachers. UDMF agitated against the state, Maoists and Hill people, and it negotiated a number of agreements with the government. Implementation of those agreements, however, is complex and difficult.[162]

The Madhesh movement could not cover all the people of Madhesh because later interpretation of Madhesi people referred to the non-tribal, Indian-origin, Hindu caste that lived in Madhesh. It highlights the racial and ethnic dimension instead of the geographical dimension. This new definition specifically excluded those, such as Muslims, Tharus, and Pahadis, who were residing there before Madhesi immigration.[163] The UDMF benefited from shifting the Madhes identity from one that was

[159] M. S. Lama-Tamang, *Adivasi Janajati Exclusion: Status and Trend Update(June 2005–April 2009),* Federation of Indigenous Peoples of Nepal in America (FIPN), August 28, 2010, http://fipna.net/articles/502-adivasi-janajati-exclusion-status-and-trend-update-june-2005april-2009.

[160] P. Sharma, *Unraveling the Mosaic: Spatial Aspects of Ethnicity of Nepal*, (Kathmandu: Himal Books, 2008) quoted in Berg, Nordlie and Schou, "Who Are Indigenous," 20.

[161] Jason Miklian, "Nepal's Terai: Constructing an Ethnic Conflict," *South Asia Briefing Paper#1* (Oslo: PRIO, 2008): 3, accessed July 17, 2012, http://www.prio.no/Publications/Publication/?x=4091.

[162] Ibid.

[163] David Gellner, "Caste, Ethnicity and Inequality in Nepal," *Economic and Political Weekly,* (May 19, 2007): 1825.

geographically-based to one that was racially and origin-based because Madhes origin people supported parties associated in UDMF as their true representatives than national parties. It mobilized its grass roots and tried to justify violence, capitalizing on historical grievances for political benefits. Miklian says Madhes-based political parties were responsible for exploiting the Madhesh identity and argues: "The UDMF has gained politically from selling Madhesh identity through the one Madhesh ideal."[164]

4. Citizenship Issue

During the last quarter of the18[th] century, King Prithivi Narayan Shah of Gorkha established a Hindu kingdom, conquering smaller kingdoms and principalities.[165] Nepal's first civil code (Muluki Ain), promulgated by PM Junga Bahadur Rana in 1854, was the first attempt to prescribe and legitimize the structure of the larger Nepalese society.[166] This civil code clearly categorized Europeans and Indians (*Mlechhas* and *Muglaniyas*) as non-citizens, so they became disqualified for land ownership and government jobs.[167] Until the second half of the 20th century, there was no change in the state's notion of citizenship and citizens as the ruler's subjects (*raiti*) not being a part of state system. After the 104-year-long Rana oligarchy, the Interim Government of Nepal Act of 1951 initiated the first legal document, produced a multi-party system and defined the citizen as a state component. The second constitution (1959) for the first time established the equality of citizens before law and the policy of non-discrimination based on gender,

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[164] Miklian, "Nepal's Terai," 3.

[165] There are contradictory interpretations as to why King Prithivi Narayan Shah was so interested in establishing a large Hindu state, but he defined Nepal as a real Hindu land (*Asali Hindustan*), expelled Christian missionaries and Muslim traders from Kathmandu, and declared a new capital of the country. This act clearly reveals his motive to establish a Hindu state based on norms and values of Hindu religion. For more, see Hem Raj Kafle, "Prithivi Narayan Shah and Post-colonial Resistance," *Bodhi: An Interdisciplinary Journal* 2, no.1 (2008):136–147.

[166] King Prithivi achieved half the unification process of modern Nepal. As a result, there was no concrete model of larger Nepalese state except his oral suggestions (*Divyo Upadesh*) till the second half of 19th century. Rana rulers, who ruled the country for 104 years in the form of a hereditary prime minister (executive head), provided the Hindu social and political institutions in Nepal, For more, see Ludwig F. Stiller, *The Rise of The House of Gorkha*, (New Delhi: Manjusri Publishing House, 1973), 99–138.

[167] Hari Bhattarai, "In a State of Statelessness: A Case Study of Citizens without Citizenship in Nepal,*" Lokniti* (May 2005): 3–4.

caste, religion, etc.[168] The citizenship Act of 1952 opened legal citizenship to Nepalese people based on their birthplace and a naturalized citizenship certificate to foreign nationals who qualified by staying in Nepal for more than five consecutive years. Some writers argue this provision of citizenship certificate to foreign nationals was too loose and suspect that it was aimed to attract Indian migration in the southern belt of Terai.[169]

After the royal takeover in 1960, King Mahendra promulgated the Constitution of Nepal-1962, the third one within 15 years. It declared Nepal a 'Sovereign Monarchial Hindu State.' Under this constitution, the Citizenship Act-1964 was relatively stricter and came into effect based on constitutional provisions.[170]It is considered a historical achievement because it made an acquisition of citizenship difficult even for genuine Nepalese citizens, but this was an intentional move to curb large-scale movement of Indian people to Nepal.[171]

The party-less *Panchayat* system, in its 30-year political history, put significant efforts into integrating Nepal's immense socio-cultural diversity promoting three pillars as its political ideologies: the institution of the monarchy, the Nepali language, and Hinduism along with the popular slogan 'Unity in Diversity.'[172] Kansakar points out that the Monarchy used fear of an Indian influx across open borders to consolidate and

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[168]Two important steps in institutionalization, Nepal's first constitution (1948) promulgated by Padma Shamsher and the Interim Government of Nepal Act (1951), were completely silent in defining the Nepalese citizen. The Constitution of Nepal (1959), though not in the elaborated form, defines citizen as "a person who is a citizen of Nepal in accordance with provisions of law."

[169] Dilli R. Dahal, "Economic Development through Indigenous Means: A Case of Indian Migration in the Nepal Terai," *Contribution to Nepalese Studies CNAS* 11, no. 1 (1983):17–20.

[170] For the first time in Nepal's legislative history, the Constitution of Nepal-1962 defines citizenship of Nepal as one, "who was born in Nepal; or either of whose parents was born in Nepal; or who, as a woman, has any kind of relations with a citizen of Nepal constituting of matrimony in accordance with the laws and customs of Nepal; or who has already obtained a certificate of citizenship in accordance with the laws of Nepal; shall be a citizen of Nepal at the commencement of this constitution." The Citizenship Act-1964 provisioned two types of citizenship: bloodline and naturalized citizenship. This is stricter than earlier in the sense that it made foreigners live in Nepal at least 12 consecutive years and be fluent in Nepali language, both reading and writing, in order to acquire naturalized citizenship. Similarly, submission of official proofs—land owner certificates, or parents' citizenship certificate, or birth certificate—were made compulsory even for the bloodline citizenship.

[171] Bishnu Pathak, "Nepal India Relation: Open Secret Diplomacy," *Situation Update: 84* ,*The Conflict Study Center*, (2009),7–8, accessed November 14, 2012, http://www.cscenter.org.np/uploads/doc/100524055050_SituationUpdate84NepalIndiarelations.pdf

[172] T. Louise Brown, *The Challenge to Democracy: A Political History,* (New York: Routledge, 1995), 75.

legitimize the *Panchayat* regime.[173] As a result of a reluctance to grant citizenship to the Terai people because of their ethnic and cultural similarity, they were deprived of citizenship during the *Panchayat* regime.

The Interim Constitution of Nepal (2006) promised recognition, rights, and respects to marginalized and deprived ethnic groups, *Dalits* and women.[174] The Citizenship Act (2006) and its immediate execution proved a landmark achievement. It relaxed previous contentious issues and provided citizenship certificates to nearly 2.6 million people of the low-lands. This was based on their descent, birth and marriage.[175]

Citizenship has remained a complex and contentious issue in the political history of Nepal, and it has significant political dimension in contemporary Nepalese transitional politics. Political borders and citizenship, fundamental factors of national identity and nationalism, are at a critical juncture due to open borders with India, a porous border with China, and sensible historical relations with both of them. Hence, domestic issues cannot be analyzed in isolation, instead, it has some influences also from the outside the country. Federalism based on ethnic identity in Nepal is tricky one because Madhesi people are culturally close to the India, and they are raising the issue of citizenship given the border is virtually open in all senses.

Given the disparity and discrimination along ethnic and caste lines, including other regional issues like citizenship issue, in Nepal, Maoists started their political adventure through people's war in 1996, raising issues related to socioeconomic conditions of backward and marginalized people. Next section discusses the socioeconomic aspect of Maoist insurgency which last for a decade.

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[173] Vidya Bir Singh Kansakar, "Indo Nepal Migration: Problems and Prospects," *Contribution to Nepalese Studies* 11, no. 2 (1984): 49–70.

[174] Provisions included in the Interim Constitution of Nepal (2006) reflect the deep desire of general people to establish a multi-ethnic culture. It defines Nepalese people as *multi-ethnic, multi lingual, multi-religious, multi-cultural;* state as *an independent, indivisible, sovereign, secular, inclusive state*; and all mother tongues spoken in Nepal are national languages. For more, see The Interim Constitution of Nepal (2007), accessed March 7, 2013, http://www.lawcommission.gov.np/en/documents/prevailing-laws/constitution/func-startdown/163/.

[175] Provision of Nepal citizenship Act (2006) made eligible for citizenship those a children of Nepali females and foreign nationals; child born before 1990 in Nepal; a foreign female married with Nepalese nationals desiring citizenship; a child of Nepali women and foreign national residing permanently in Nepal.

E. SOCIOECONOMIC PERSPECTIVE OF MAOIST INSURGENCY

The Maoist insurgency in Nepal was a consequence of the country's particular economic, political and social circumstances that had developed over time. The political instability, bad governance and the administrative suppression fueled grievances of deprived people.[176] Consequently, the masses were attracted towards Maoist ideology that promised them equality and redistribution of sources. The Maoist peoples' war began with attacks on police stations in the Rolpa, Rukum, and Sindhuli districts in 1996.[177] It changed the Nepali political landscape and promised to put the backward people in the drivers' seat. At the height of the insurgency, the Maoists compromised their ideology and accepted mainstream democratic politics. This also shows that political ideology was not the real reason people supported the insurgency; it was instead their economic condition.[178]

Although the constitutional arrangements and laws were not discriminatory in spirit, most of the people in the state machineries and politics were from higher castes. The Maoist insurgency started from the western hills where significant numbers of the population were *Janajatis* and *Dalits, the most deprived section of society*. Later Maoists developed those areas into bases for further expansion.[179] The *Janajatis* and *Dalits* became cheap sources of recruitment in the Maoist insurgency. The Maoist insurgency lasted for a decade from 1996 to 2006. Total casualty figures vary. This is because more than 2,000 people are still missing. According to the official data up to 2004, the highest casualties were from the western hills. The Terai, *Janajatis* and *Dalits* suffered large number of casualties (32%). [180]

The Maoist leadership argued that exploitation, external dependency, and discrimination based on religion, caste, gender, language, and ethnicity left no alternative

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[176] Pattanaik, "Maoist Insurgency in Nepal," 1.

[177] Thapa and Bandita, *A Kingdom Under Siege*, 85.

[178] Prem Shahi, "Prachanda: The Mastermind behind the Maoist Insurgency in Nepal," (Master's thesis, Naval Postgraduate School, 2010): 6–7.

[179] Gurung, "Social Exclusion and Maoist."

[180] INSEC, *Human Rights Year Book-2004*, ed. K Gautam, (Kathmandu: INSEC, 2004), 135.

but to take up arms against the government. The main Maoist leader, Baburam Bhattarai (present Prime Minister), explained the Maoist people's war from a political economic perspective as an obvious struggle against a semi-feudal and semi-colonial situation under the monarchy. Bhattarai said the principle objective of the people's war was "to develop the social productive forces and create a higher form of society through a continuous revolution …by putting 'politics in command.'"[181]

The demography of violent groups provides a lens into who was involved in the violence. More than 50% of the population was under 18 years old, and 93% of children lived in villages and had a 40% dropout ratio from elementary school. The bulk of illiterate or undereducated youth were constantly challenged to survive in poor socio economic circumstances because of a negligible presence of state mechanisms. The Dhami Commission (1997) and Deuba Commission (2000) both underlined abject poverty and hardship among the youth as indisputable factors in violent uprising.[182] Substantial number of unemployed youth proved to be a real weapon for the people's war. The idea of engaging such vulnerable groups had its origin in Maoist ideology.[183]

The basic Maoist strategy was to rally masses in the shortest possible time.[184] Women are also one of the most exploited and deprived section of the population in rural, caste-based societies, so the Maoist raised a voice against patriarchal exploitation and discrimination of women. They explained that full liberation of women and gender equality will only be possible in a classless or communist society. Thus, women got actively involved in the Maoist insurgency, breaking the normal trend of male political participation in electoral voting and occasional candidacy.[185] Maoists succeeded in recruiting significant numbers of motivated female guerillas, mostly from *Janajatis* and

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[181] Baburam Bhattarai, *Political Economic Rationale* of *the People's War in Nepal* (Kathmandu: Utprerak Prakashan, 1998), 43.

[182] Dhruba Kumar, "Proximate Causes of Conflict in Nepal," *Contributions to Nepalese Studies* 32, no.1 (2005): 57–58.

[183] Pattanaik, "Maoist Insurgency," 4.

[184] Walter Laqueur, *Guerilla: A Historical and Critical Study* (London: Weidenfeld and Nicolson, 1977), 243–244.

[185] Mandira Sharma and Dinesh Prasain, *Gender Dimensions of the People's War: Some Reflections on the Experiences of Rural Women,* ed. M Hutt (Indiana: Indiana University Press, 2004), 154.

Dalits communities. They did this by raising the issue of state discrimination based on caste, ethnicity, religion, language, and gender.[186]

1. Why Did Peasants Support Maoist Insurgency?

Although NC came into power as the first democratically-elected government in 1991, according to Madhav Joshi and T. David Mason, it could not uphold its popular slogan "the land belongs to tillers, and the house belongs to one who smears it."[187] People were very optimistic about meaningful land reforms in the democratic political set up, but none of the successive democratic governments settled the real peasants' problem.[188] Maoists liberated the peasants and poor people from the complex, interwoven, feudal nexus protected by the state. Maoists not only wiped out the structural dependency between feudal lord/elite and peasants, but they also established the right of peasants over the land they cultivated with a redistribution of abandoned land to landless people.[189] Initially, most of the deprived peasants submitted themselves to the Maoist's violent path to manage basic needs: food, shelter, and clothing. Later, hundreds of other poor peasants voluntarily rallied behind the Maoist campaign. They were inspired by justice for poor people through violence.[190]

2. Maoist's Agenda and Socioeconomic Relations

Maoists started people's war mainly on socioeconomic agenda and external imperialism, a cause of backwardness, to convince the people. The CPN Maoists defined Western imperialism and Indian expansionism as external factors. They defined the semi-feudal agrarian structure, regional disparity, bureaucratic capital expansion and

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[186] Ibid.

[187] NC had raised this slogan to ensure the landless and homeless for their rights on land in 1950s. Later, it could not translate this into practice through effective land reform. For further details, see Madhav Joshi and T. David Mason, "Land Tenure, Democracy, and Insurgency in Nepal: Peasant Support for Insurgency Versus Democracy," *Asian Survey* 47, no.3 (2007): 402.

[188] Ibid., 411.

[189] Ibid., 411–412.

[190] Bishnu Pathak, *Politics of People's War and Human Right in Nepal* (Kathmandu: BIMIPA Publication, 2005), 180.

oppression of nationalities as internal factors creating the melancholy of Nepal.[191] The Maoists started their people's war to fulfill 40 demands in February 1996. The majority of those demands were related to the socioeconomic and political grievances of backward people. Out of these 40 demands, seven were related to nationalism, 13 political, 13 economic and 7 to socio-cultural.[192] The Informal Service Center (INSEC), a NGO working for human rights and social justice, identified 10 causes responsible for discrimination and inequality of the *Janajati* population and the underdevelopment of their habitation.[193] Coincidentally, or intentionally, all those points are part of the Maoist's 40 demands. Later, Maoists again put forward a 24-point agenda comprised of 11 economic, eight socio-cultural, three nationalist and two political aspects during talks with the government in the 2003 ceasefire.[194]

The century-long centralized, exclusionary, socioeconomic, and feudal production system was the root cause for the Maoist people's war. Obviously, the nexus of bad governance and corruption helped to accelerate the insurgency. The untouchables and ethnic indigenous people were ruthlessly marginalized and exploited by the traditional feudal ruling class. Despite the majority of the population living below the poverty level, according to Surendra K. C., half of the national income was in the hands of 10% of the people.[195] He argues that Maoist leaderships were not basic communists. Rather they were simply communist-oriented intellectuals who used severe socioeconomic disparity of the people in their favor.[196] Druba Kumar rightly points out that the Maoist insurgency in Nepal is unique in that it was neither for secessionism nor for separatism or self-determination. It was, rather, a people's uprising to grab state power through an armed

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[191] Baburam Bhattarai, *Political Economy of People's War,* ed. Arjun Karki and David Sedom (Delhi: Adroit Publishers, 2003), 117.

[192] Gurung, "Social Exclusion."

[193] INSEC, *Human Rights Year Book*, 137–139.

[194] Thapa and Sijapati, *A Kingdom,* 202–205.

[195] Surendra K. C., "Maoist Insurgency in Nepal and Its Implications to India," *Telegraph Nepal,* July 8, 2011, accessed September 5, 2012, http://www.telegraphnepal.com/national/2011-07-08/maoist-insurgency-in-nepal-its-implications-to-india.

[196] Ibid.

revolution.[197] Since almost 40-45% of the GDP is from the agriculture sector and almost 80% of the population is still dependent on this sector, land reforms without structural transformation and real efforts to improve socioeconomic condition of the people could only be a strategy to permanently eliminate the cause of the insurgency/conflict.[198]Hence, failure of state mainly political parties and often king to address the real concerns of grass-root people provided Maoists a stage for people's war.

3.   Hope in Radical Solution

With the restoration of democracy in 1990, most privileged elites consolidated their control in the management of the country. Consequently, people willingly accepted the call for a radical, violent insurgency to alter the existing socioeconomic and political order. Deepak Thapa termed this "hope in radical solution, " and an "option-less function of severe poverty and grievances rather than ideological motivation."[199] Blieck argues that the fundamental reason for the persisting Maoist rebellion in Nepal—and South Asia, at large—is deep-rooted in inequality and poverty that have not been addressed by successive democratic governments. This left no peaceful means to alter the catastrophic socioeconomic situation.[200]

F.   CONCLUSION

This chapter looked at the political history of Nepal that led to the election of the CA to make a sovereign people's constitution. Also, it looked at the transition to democracy from the centralized authoritarian regimes of the past. It mapped the diverse picture of Nepalese society in terms of caste, ethnicity, religion and language. Nepalese society, due to intertwined region, ethnicity, language and prevailing cross-ethnic/caste divisions made the issue more complex to address. The issue of inclusion, identity and decentralization surfaced in the political debate along with democratic transformation. This was more prominent after a decade-long Maoist insurgency. First, it was seen that

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[197] Kumar, "Proximate Causes," 52.

[198] Prem J. Thapa, "The Cost Benefit of Land Reform," *Himal* 14, no.10 (2001): 30.

[199]Thapa and Sijapati, *A Kingdom*, 64,79.

[200] DeBlieck, "Why Mao," 31.

political consensus among political parties and their commitment of democracy and peace made the CA election possible. It over-threw the almost two and half centuries long Monarchy. Second, the chapter found Nepalese society diverse and complex in terms of culture, ethnicity, language and religion. Third, issues of exclusion and discrimination based on caste, gender, culture, language, religion and identity were discussed. Lastly, this chapter described the socioeconomic perspective of the Maoist insurgency. Also it discussed the Terai movement that established the urgency of restructuring the state to address the issues related to ethnic identity and empowerment of backward communities throughout the country.

Nepal is widely recognized as a multi-lingual, cultural and ethnic society. The heterogeneous nature of the society is so intense that the size, shape and distribution of various caste/ethnic groups all over the country are hard to determine.[201] People's aspirations and awareness regarding their political and socioeconomic rights have increased many folds. A Maoist people's war and subsequent political development have brought several issues, such as equal access to resources, self-governance, right of IPs, secularism, federal structure of the state, and so on, into the public realm. The People's Movement-II (2006) was launched not only for democracy but for inclusive democracy and equal participation in the decision-making process of the state. This eliminated disparities between dominant high castes and privileged minorities and the rest of the people who were victimized by historical discrimination and deprivation.[202] The Brahmans and Chhetris of the hill are the two dominating groups. Each of them represents more than 10% of the population. Together they constitute less than one third of the total population.[203] Though there is relatively better cultural and religious harmony among the different ethnic groups, the competition among them has increased with the

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[201] Badri P. Niroula, "Caste/Ethnic Composition of Population of Nepal," *Contribution to Nepalese Studies* 25, no.1 (1998): 15.

[202] Lynn Bennett, Dilli Ram Dahal, and Pav Govindasamy, *Caste, Ethnic and Regional Identity in Nepal: Further Analysis of the 2006 Nepal Demographic and Health Survey,* (Maryland: Macro International Inc., 2008), 4.

[203] Niroula, "Caste/Ethnic Composition," 17.

introduction of identity politics at the national level, particularly by Maoist and Terai-based political parties. This has now been spread throughout the country.

Nepal has been declared as the Democratic Federal Republic in the interim constitution, but turning this federalism into reality is the big challenge. Political parties and other stakeholders find it very difficult to address federalism and issues related to identity politics given the diverse and complex picture of Nepalese society. Discrimination, deprivation and marginalization of one group by another are deeply rooted. National institutions have never been so weak, possibly because of fragmented national politics and a decade-long people's war. Nepal is at a crossroad, and it is up to the political elites who have responsibility to move the country forward.

III.   STRUCTURE OF CA, POLITICAL PARTIES AND OTHER STAKEHOLDERS ON FEDERALISM

A.   INTRODUCTION

With the successful completion of the CA election on April 10, 2008, the SPA and Maoists spent some time in negotiations. On May 28, 2008, the long awaited first meeting of the CA convened. It declared Nepal as a federal democratic republic passing a proposal to amend the interim constitution. The election results produced a hung CA. Maoists failed to secure the absolute majority despite their emergence as the largest party securing 38.1% of total seats. Since there was a provision of a two-thirds majority for promulgation of a constitution, without the Maoists, the CA was going to be ineffective. It made the role of Maoists in CA crucial. The federal republic and democratic constitution through CA were the long-standing political agendas of the Maoists. Later, all other political parties agreed on the Maoist agenda in response to their commitment to become a part of the political main stream respecting people's sovereignty and multi-party democracy.

This chapter tries to answer the question of what prevented the political parties from reaching a consensus on federalism. In order to do this, this chapter first describes the constitution drafting process. Then the chapter will discuss the political parties, their background, constituencies and agendas in the CA, what kind of federal system they want and contentious issues among them. Lastly, the role of civil society and international communities, including their influence on Nepalese politics, will be highlighted. Points of contradictions among different stakeholders will be analyzed to answer the issues that caused the collapse of the CA. The stakeholders under study in this chapter are: the main democratic political force (NC), left-oriented parties, regional parties, civil society, and the international communities, mainly the neighboring countries, E.U. and U.S.

B.   STRUCTURE OF CA AND CONSTITUTION DRAFTING PROCESS

The result of the CA election gave 25 parties a role in constitution drafting—nine parties secured their position in direct election, first-past-the-post (FPTP); whereas 16

other political parties got seats in the CA through proportional system. Also, few independent candidates got elected.[204] During the CA election, Nepal, for the first time, adopted a mixed electoral system. In a 601-member CA, 240 were elected through first-past-the- post (FPTP); 335 through the proportional electoral system and the remaining 26 were nominated by the cabinet. To make the CA more inclusive, parties were required to ensure representation of minimum percentage of several socioeconomic groups, such as women, *Madhesis, Dalits*, and other ethnic and indigenous people. [205] Major political parties and their seats in CA are shown in Table 1.

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[204] Constituent Assembly Restructuring of the State and Distribution of State Power Committee, *Report on Concept Paper and Preliminary Draft-2010*, accessed December 12, 2012, http://www.ncf.org.np/upload/files/311_en_Concept_Paper_Restructuring_State_GTZ_ENG.pdf.

[205] Parties are required to submit the closed list to the Election Commission for selection of candidate under a proportional system. The percentage of several groups required in that list are: *Dalit* 13% (half female), oppressed caste and indigenous groups 37.8% (half female), backward region 4% (Nine districts of western Nepal based on lowest human development index; half female), *Madhesi* 31.2% (half female), other groups 30.2% (half female).

S.N	Political parties	FPTP	Proportional	Nomination	Total	%
1	CPN(Maoists)	120	100	9	229	38.10
2	NC	37	73	5	115	19.13
3	CPN(UML)	33	70	5	108	17.97
4	Madhesi Jana-adhikar Forum Nepal	30	22	2	54	8.98
5	Terai Madhesi Loktantrik Party	9	11	1	21	3.49
6	Rastriya Prajatantra Party	0	8	-	8	1.33
7	Communist Party Nepal (Marxist-Leninist)	0	8	1	9	1.50
8	Sadbhavana Party	4	5	-	9	1.50
9	Janamorcha Nepal	2	5	1	8	1.33
10	Nepal Workers and Peasants Party	2	2	1	5	0.83
11	Rastriya Jana Morcha	1	3	--	4	0.66
12	Others (political Parties and Independent)	2*	28	1	31	
	TOTAL	240	335	26	601	100

Table 1.   Parties in CA (after www.election.gov.np); *independent candidate

The representation of *Dalits* was significant in the CA. A total of 49 *Dalits* were elected; among them 22 were women. UCPN (Maoist) got a total of 21 *Dalits*; NC got 10, CPN (UML) got 10 and MJF got 2 in the CA. There were 7 *Dalits'* candidates of UCPN (Maoist). These were elected from the FPTP; whereas no *Dalits'* candidates of the NC and CPN (UML) were elected in the direct election. The attraction of *Dalits* in NC and UML was comparatively less than in Maoists because there were one and four *Dalit* candidates contested in the FPTP from NC and CPN (UML), respectively.[206] Nearly half of the *Dalit* representation was from UCPN (Maoist).

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[206]Election Commission of Nepal, *CA Results-2008*, accessed December 11, 2012, http://www.election.gov.np

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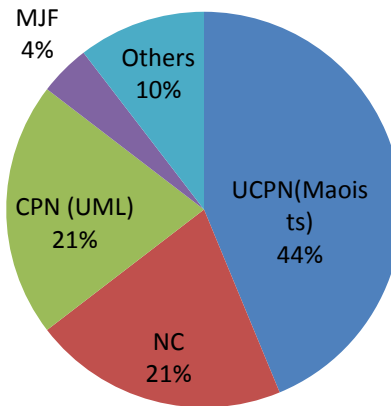
Figure 3.   *Dalits* Representation in CA (after Election Commission Nepal)

Similarly, women's participation in the CA was 32.8%. This is according to the one-third mandatory participation by the interim constitution. There were a total of 191 (FPTP and proportional) women CA members out of 575 elected members and an additional six were appointed out of 26 seats allotted for appointment.
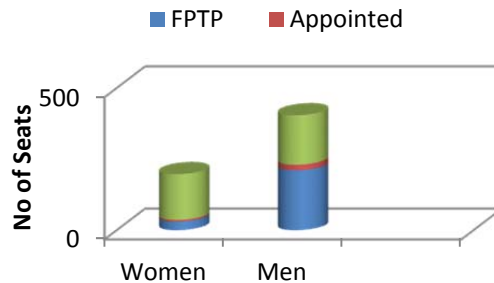
Figure 4.   Women's Representation in CA (after Election Commission Nepal)

The IPs won over one-third of the seats. They got nearly one-third of the FPTP, more than one-third of proportional seats and half of the 26 appointed seats. A total number of IPs was 212 out of 601, i.e., 35.2%. More than 90 of them were from the Maoist party. 50 out of 79 elected were under FPTP and 43 out of 120 elected were from the Maoists party. This represented the indigenous communities. Similarly, NC won 10 from FPTP and 27 from proportional; CPN (UML) won 11 from FPTP and 25 from proportional. There was a 12.3% increment of *Janajati* representation in the CA

compared to the 1990 general election. Unlike the Madhesi, they supported different political parties according to their aspirations and beliefs (Figure 3). Nearly half of the IPs representation was from the UCPN (Maoist). The CA results made the IPs' representation almost close to their share in population—37.8% of total population—and ensured the representation of historically disadvantaged groups of the Nepalese society.[207]
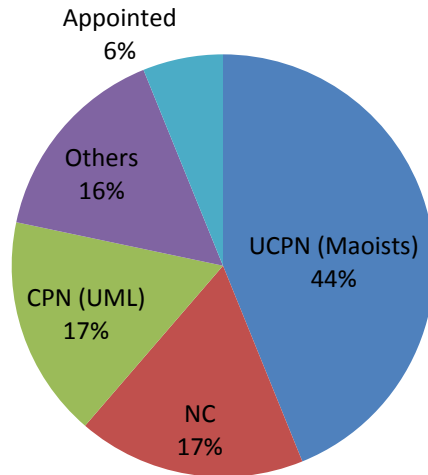
Figure 5.   IPs Representation in CA (Election Commission of Nepal)

2. **Constitution Drafting Process**

Article 64 of the Interim Constitution had a provision of CA tenure of 2 years. This was from the date of the first meeting of the CA that was held on May 28, 2008. Though there was a provision of extension of its tenure for six months in cases of unavoidable circumstances, the CA remained until 2012 with four extensions to its tenure.[208]

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[207] U.S. Embassy Cable '08KATHMNDU815,' *Indigenous Candidates to Control One-third of Nepal's Constituent Assembly*, (July 21, 2008), accessed December 26, 2012, http://cables.mrkva.eu/cable.php?id=162782.

[208] This was the first step of Nepal's journey to institutionalize the federal structure, and CA got the role to promulgate a constitution with federal structure. See Constituent Assembly Restructuring of the State and Distribution of State Power Committee, *Report on Concept Paper and Preliminary Draft, (May 2, 2012)*, accessed January 25, 2013, http://can.gov.np/en/publications/view/69.

The main objective of the CA was to prepare and ratify the draft constitution, addressing the people's spirit of sustainable peace. The CA had five major functions: to prepare and ratify the constitution, to confirm the issues for referendum, to implement the republic in the first meeting of the CA, to restructure the state with federal form, and to work as a legislative-parliament.[209] The CA managed to complete only one out of those functions, the implementation of republican set-up before its demise. The first meeting of the CA on May 28, 2008, passed the resolution to implement a republican set-up, as directed by Article 159(2) of the Interim Constitution and proclaimed Nepal a Federal Democratic Republic.[210]

Although the CA was empowered by Article 78 of the Nepal Interim Constitution (2007), it took more than four months to approve its regulations and working timetable. This was due to a disagreement among parties in forming the government. According to Interim Constitution, the CA had also to perform the role of legislative assembly. Later, it amended the working schedule a couple of times to meet the target on the extended terms of the CA. To make the constitution process systematic, the CA organized itself in 10 thematic committees, three procedural committees and a constitutional committee. The State Restructuring and Distribution of State Power Committee (SRDSPC) is one of the thematic committees constituted as per Rule 59 of CA Regulation (2008). The CA Chairman constituted this committee of 43 members based on a proportional representation from the various parties and minority groups. Rule 66 of the CA Regulation gave SRDSPC the responsibility of drafting the federal structure, its names, demarcation, power sharing between the center and provinces, and to submit the report on CA. SRDSPC elected Lokendra Bista, a CA member from UCPN (Maoist), its Chairman, unanimously. According to Article 138 clause 2 of the Interim Constitution, the Nepal government, after three years of CA election, constituted the State Restructuring Commission (SRC) to recommend the structuring of the state on November 22, 2012.[211]

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[209] "Constituent Assembly" accessed December 10, 2012, http://www.can.gov.np/en.

[210] Constituent Assembly Restructuring of the State and Distribution of State Power Committee, *Report on Concept Paper and Preliminary*.

[211] Ibid.,

Article 138 Clause 1 and Clause 1 (a) of the Interim Constitution had mentioned the purpose of restructuring and its basis.[212]According to constitutional provision, Rule 66 of CA Regulations mandated SRDSPC for the following:[213]

- The structure of the state in the federal republic set up
- The principles and grounds of demarcating the areas of the provinces
- Naming each province and demarcating the boundary
- The division of legislative, executive and judicial power among various tiers of federal agencies
- The determination of the common and specific contents of the rights of various tiers of federal agencies
- The determination of interrelation of legislative, executive and judicial rights among the federal units
- The mechanism to resolve the conflicts that may crop up between the federal units
- Other tasks relating to the mandate of the committee

Rule 73(2) had a provision that all members of the SRDSPC need to attest the report, if not unanimous, at least by majority members in the case of disagreement. The Chairperson had the responsibility to include any member's notes of descent.[214] Though the CA demised on the issue naming proposed states and basis of federalism, the SRDSPC had clearly mentioned the probable basis of names in its report and preliminary draft. The report says:

> The demand of identity should be considered while naming federal units in areas where a particular ethnic population had its dominance. In a region with the dominance of a certain language, it would be reasonable to choose name on the lingual basis. In areas having dominance of no ethnic

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[212] Article 138 Clause 1 says— nation would be restructured with an inclusive democratic federal system of governance to end any forms of discriminations based on class, caste, language, gender, geography, culture and religion—by dismantling unitary structure. Similarly Article Clause 1(a) provisioned—to structure Nepal a federal republic consisted of autonomous and powerful provinces— accepting the wishes of self-rule of backward regions, Madhesis, indigenous communities and other people.

[213] Constituent Assembly Restructuring of the State and Distribution of State Power Committee, *Report on Concept Paper and Preliminary*.

[214] Ibid.

nationality and language, there are many alternatives left the names can be chosen in such a way that hurts nobody's feelings.[215]

The report further says in Chapter 5.1.3 that the priority on naming of federal units should be given to the acceptable and common identity of communities living in that unit. Actually, the SRDSPC had collected the public opinion on the following bases of naming of states:

- Ethnicity
- National heroes
- Mountain Peaks
- Regional Identity
- Religious Places
- Language
- Rivers
- Cultural Identity
- Geography
- Historical places

The Constitutional Committee, formed under CA Rule 65 of the Constitution Assembly Rules 2008, was responsible to prepare a draft of the constitution incorporating the reports of thematic committees and suggestions of the CA during the discussion of various reports. It was also responsible to prepare reports and drafts on the issues outside the working areas of the thematic committees. The constitution committee had a total of 63 members. Nilamber Acharya was elected as chairperson of the committee.[216] It had power to form several task forces and sub-committees to complete the given job. On February 2011, the Constitutional committee formed a 5-member Dispute Resolution Sub-committee under the chairmanship of Maoist Chairman Prachanda. This was comprised of senior leaders from the four main parties. It streamlined the 78 disputes on the report prepared by the various thematic committees. Among them, 25 were related to the state restructuring issue. Right at the last moment, the dispute resolution sub-

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[215] Ibid.

[216] Nepal Constitution Foundation, *Constituent Assembly Archives and Records: Constitutional Committee* accessed Jan 25, 2013, http://www.ncf.org.np/ca-archives/constitutional_committee.htm.

committee resolved almost all contentious issues except for a few related to federalism—mainly number, name, demarcation and basis of state restructuring.[217]

Article 70 of the Constituent Assembly Rules (2008) described the procedure of passing bills related to the constitution. According to Clause 1 of this Article, a motion could be passed unanimously by at least two-thirds of the total CA members. Similarly, Clause 3 described the role of parliamentary leaders of different political parties in the cases of disputes over the preamble or Article of the bill of draft of the constitution. Clause 5 provisioned the voting process to pass the bill with two-thirds of those present in the meeting, but a minimum requirement was that those present represented two thirds of the total CA members. A decision, however, was unanimous if none of the members voted against the bill.[218]

C. POLITICAL PARTIES, THEIR CONSTITUENCIES AND AGENDA OF FEDERALISM

The political parties in Nepal started to emerge in the latter half of 20th century. The oldest democratic-party, Nepal Congress (NP) was established in 1947 influenced by Indian political parties and the independence movement. Two years later, on April 1949, some socialist leaders founded the Communist Party of Nepal (CPN) in Calcutta, India.[219] These political parties and their cadres played a significant role to establish democracy in 1949 by abolishing the Rana regime and also in restoring democracy in 1989 by overthrowing the *Panchayat* regime. Besides political parties, civil society also played a role in *Jana Andolan*- I (People's Movement) in 1989 and *Jana Andolan* II in 2006. Some regional parties, mainly Madhes-based parties emerged in the 199s in the

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217 Nepal Law Society, *Constitution Making Process of Nepal: Brief About the CA Update,* (Kathmandu: October 2011).

218 Nepal Constitution Foundation, "Constituent Assembly Archives."

219 Actually, Nepal Praja Parishad, the first political party in Nepal, was formed in 1940, but Rana regime crushed it brutally, and it was formally dissolved in 1941. Most of the active members got capital punishment. Remaining members later joined NC or CPN. Thus NC is considered oldest surviving political party in Nepal, which contributed leading role in every political movement. NC ruled the country more than any parties in Nepal's history. CPN faced the multiple divisions in due course of time. Present CPN (Maoists) and CPN (UML), two major communist parties, are the derivatives of mother party CPN.

Nepalese political arena. Madhes-based parties played a role in the second people's movement and became the fourth political force in the CA.

None of these parties offered an ideological stand on issues including federalism and mainly benefitted from another party's moves. They also often deviated from their party policies. Almost all, including the top parties in national politics, were divided in every national issue. Thus, it was unlikely that the most serious national issues—the issues of federalism and its basis—would be resolved. Yuba Nath Lamsal writes in his editorial on Gorakhapatra—a government-owned national daily— "when there is no unanimity within a party, it would be unwise to expect consensus and unanimity among parties of different ideologies and orientation."[220] No parties were ready to lose their constituencies, so apparently the CA collapsed on the issue of federalism despite four years of effort to make the constitution.

A month before the demise of the CA, there were voices preaching the reinstatement of the old constitution from 1990; whereas others were for the referendum of federalism, republic and secularism. Moreover, significant numbers in the NC and UML were not in favor of federalism. They had taken the issue either for their political futures or for tactical maneuvers. ICG claimed in the Asia briefing on April 7, 2007, "While NC and many in the UML are deeply uncomfortable with federalism; they and other parties will make tactical decisions on it, based on the comparative political gains of reaching partial agreement, delaying all agreement, or bartering for other deals such as integration."[221]

1.   Nepali Congress

The NC ruled the country a couple of times after the restoration of democracy in 1990. The NC and its president, late GP Koirala, dominated the Nepalese multi-party democratic politics in the first half of the 1990s. Later, with growing Maoist insurgency, the King's direct role in party politics weakened the party. Sher Bahadur Deuba, an

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[220] Yuba Nath Lamsal, "Class Conflict Behind Political Crisis," *Gorakhapatra,* March 29, 2012, http://gorkhapatra.org.np/gopa.detail.php?article_id=65189&cat_id=7.

[221] ICG, *Nepal's Fitful Peace Process*, Update Briefing: Asia Briefing No. 120 (April 7, 2011): 6.

influential leader, broke-off from the party opposed to G. P. Koirala's hegemony and served the bidding of the king. This forced G P Koirala into an alliance with other political parties and Maoists in 2005 to oppose the King's direct rule. Following the peace process and the Comprehensive Peace Agreement (CPA), Deuba led the NC-Democratic and merged back into the mother party. Factionalism in the NC is basically driven by personality clashes and group interests. Most of the leaders are skeptical about the peace process and federalism, despite its official commitment on federalism. Consequently, the NC is losing its political space.[222]

The NC adopted democratic socialism as its political fundamental principle in the 1950s and, later, closely associated itself with the international Socialists. This was because of the priorities of the time—to destroy the institutionalized feudal order based on land ownership and socioeconomic exploitation—and aspiration of democracy in the region. Nehru led Indian National Congress provided a guide for this. There is a big debate that the NC had abandoned democratic socialism (this was the platform upon which B. P. Koirola developed the party) after the party came into power in 1990.[223] The NC leader, Ram Sharan Mahat, argues that the NC did not abandon the democratic socialism; rather, it has transformed with the new world order. He states, "Seemingly antagonistic in terms, capitalism and socialism are interrelated in the sense that the socialist objective will not be achieved without capitalist development."[224]

The NC faced a serious backslash in Terai—its strongest constituencies—after the Madhes movement (2007) as many senior leaders and mid-level cadres from Terai left the party. As a result, the NC suffered heavily in the CA election. Some indigenous leaders who are also active in NEFIN—again after demise of the CA on the identity-based federal structure issue of the country—threatened to quit the party. They claimed to form a new indigenous party if the party continued to distant itself from identity

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[222] ICG, *Nepal's Constitution (II): The Expanding Political Matrix*, Asia Report No. 234, (August 27, 2012), 15.

[223] Ram Sharan Mahat, "BP, Socialism and Nepali Congress," *Kathmandu post*, September 13, 2012, accessed September 18, 2012, http://www.ekantipur.com/the-kathmandu-post/2012/09/13/oped/bp-socialism-and-nepali-congress/239597.html.

[224] Ibid.

politics.[225] Some party leaders doubted the party's commitment to federalism. The ICG report states that leaders are vocal about federalism only in front of their constituents. The Madhesi leaders continued in the party even after the Madhes Andolan felt embarrassed by the party's strong position against identity-based federalism.[226]

The NC had formally included state restructuring and inclusive democracy in the political document in the eleventh party convention in September 2005. It stressed equal political participation with full rights and autonomy of the people. During the CA election, the NC cleared its party stand on pluralism for setting up the democratic federal republic.[227] It released its CA election manifesto on March 13, 2008. It was committed to the rule of law and the federal governing system based on ethnicity, language and geography.[228] According to the election manifesto, the NC put its position as,

> The bases of provinces will be Nepal's national integrity; geographic location and feasibility; population; natural resources and economic feasibility; interrelationship between provinces; language, ethnicity and culture majority, and political and administrative feasibility[229]

The election manifesto committed to recognize the unique characteristics of Madhesi, indigenous, and *Dalits* during re-structuring of the country, but it remained silent on the number of provinces.[230] Although the manifesto was more like a plan for government, it also stressed the significance of the CA and its constitution drafting process, and reminded the people that the NC was the one who demanded the elected CA to draft the democratic constitution in 1950. It advocated liberal democracy with a

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[225] Roshan Sedhai, "NEFIN Meet: Leaders Give Thumbs up to New Party," *Kantipur,* July 7, 2012, accessed August 4, 2012, http://www.ekantipur.com/2012/07/06/capital/nefin-meet-leaders-give-thumbs-up-to-new-party/356661.html.

[226] ICG, *Nepal's Constitution*, 16.

[227] Tilak Pathak, "Party Concepts on State restructuring," *Alliance for Social Dialogue,* (October 6, 2010): 3, accessed November 23, 2012, http://asd.org.np/en/transition/constitution/restructuring/73-party-concepts

[228] "Nepali Congress Manifesto Proposes Executive PM, Ceremonial Presidency," *BBC Monitoring South Asia - Political,* March 13, 2008, accessed October 14, 2012, http://www.lexisnexis.com.libproxy.nps.edu/hottopics/lnacademic/.

[229] "Nepali Congress Election manifesto-2007," 11.

[230] Pathak, "Party Concepts on," 3.

Westminster government structure, i.e., upper and lower houses, prime minister-led cabinet and ceremonial president.[231]

The NC's federal rights concept paper had proposed that the central government should have rights on international relations, national security, currency policy and inter-state coordination issues, such as air transport, highways, customs, tax, and projects of national importance like hydropower projects. In regards to powers that provinces should enjoy, the NC proposed that provinces should be given all rights related to social, cultural, linguistic, and economic rights, including agricultural, forest, health, education, , employment, property tax, housing and land, and other sources of income.[232]

In April 2012, almost a month before termination of the CA tenure, the NC for the first time proposed seven-province model of federalism in the four-party meeting to end the disagreement on a number of provinces, its name and basis. Maoist and Madhesi parties were quick enough to reject this because it was not based on the ethnic identity that they were fighting for. Maoists, in response to the NC's proposal, stepped back from its proposal of 10 provinces and claimed that its 14-province model was its official stand. The model produced by congress was not named and responsibility to name it was given to the future provincial assembly. The NC, however, claimed its proposal as the best balance between identity and capability as well as population and geography. They put the existing 75 districts—administration division since the *Panchayat* time—intact and grouped them together to form seven provinces.[233] Since time was running out and there was less than a month left, the NC, in response to Maoist's 10-province model, floated by Prachanda last month, proposed a nine-province model comprising four provinces in

231 ICG, *Nepal's Election and Beyond*, Asia Report No. 149 (April 2, 2008), 3.

232 Constituent Assembly Restructuring of the State and Distribution of State Power Committee, *Report on Concept Paper and Preliminary*.

233 Kamal Dev Bhattarai, "Congress Comes up with 7-State Model," *Kathmandu Post*, April 27, 2012, accessed August 18, 2012, http://us.ekantipur.com/2012/04/28/national/cong-comes-up-with-7-state-model/353086.html.

Terai and five provinces in the hills. The Maoists and Madhesi parties strongly rejected the proposal.[234]

The NC has benefited to some extent from the movement of the highest class and caste against federalism, but elite-promoted anti-federalism spectrum put the NC in skepticism about secularism and republic. The NC also took serious risks by playing upper class politics. This was because the mid-level Chhetris often feel deprived in the decision-making level of the party.[235] The NC had a strong understanding about taking leadership of the government before the election to regain its influence in national politics. Factional struggles, primarily in the center, poor communication between party headquarters and field, weak leadership and personal ambitions of the top leaders, and financial constraints are responsible for weakening the party. The NC's recent claim over leadership of the government possibly could be the result of fears of leadership about losing the election without an extra advantage. Most of the leaders, however, believed that congress will remain home to democrats and recover its position in coming elections. This is because of the split in the Maoist party, internal disputes in UML and poor performance of ethnic groups and regional parties.[236]

After collapse of the CA, leaders from ethnic and indigenous groups submitted the memorandum to leadership demanding a clear party stand on federalism. The NC Central Working Committee formed an 11-member study committee to clear the party's official stand on federalism. The Study Committee submitted the report suggesting that a federal state based on multi-ethnic identity should be the party's bottom line.[237] The Nepali Congress is traditionally perceived as representing the anti-federalist and higher caste party. The NC initially rejected the announcement of fresh elections of the CA by

234 Kiran Chapagain, "NC Now Floats nine-Province Model," *My Republica*, May 9, 2012, accessed July 25, 2012,
http://myrepublica.com/portal/index.php/twb/post_cartoon_comment.php?action=news_details&news_id=34802.

235 ICG, *Nepal's Constitution,* 16.

236 Ibid., 17.

237 "Multi-Identity Federalism to be NC's Bottom Line," *My Republica*, July 19, 2012, accesses August 7, 2012,
http://myrepublica.com/portal/index.php/twb/news_rss.php?action=news_details&news_id=38251.

the government and later expressed that the election should be for legislative parliament that could also function as the CA. Nevertheless, the latest stand of the NC is to form a consensus government in its leadership and to conduct the fresh election.[238]

2.   United Communist Party of Nepal (Maoist)

After rising as the largest political force in the CA, the UCPN (Maoists) became the United Communist Party of Nepal (Maoists) absorbing some fringe communist parties, including *Janamorcha* Nepal. The Maoist agenda on an ethnicity-based federal structure—a calculated political move assessing political and ethno-cultural situations of Nepal—aimed to gain political mileage. The Maoists were encouraged from the results from the CA election due to their political mobilization of the hitherto oppressed groups of various lingual and ethnic communities.[239]

The UCPN (Maoist) successfully mobilized various ethnic constituencies— Magar, Gurung, Rai,Tamang, Limbu, Tharu and Madhesi people—against the high caste-based monarchial feudalism during the people's war.[240] In return, ethnic communities were promised federal states or autonomous units based on right of self-determination. They formed a *Jatiya Morcha* (caste/ethnic front) selling the slogan of liberation from the centralized feudal system.[241] Subsequently, the Madhesi and Tharu felt themselves neglected in peace and power sharing negotiations, and started agitations against the establishment in Kathmandu in 2005/2006. Then Madhesi parties and IPs like Tharu initiated ethno-political agitation and accused that present Nepali nationalism is based on an axis of power and authority of high caste Hindu.[242]

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[238] ICG, *Nepal's Constitution,* 15.

[239] Lamsal, Yuba Nath. "Class Conflict Behind."

[240] Maoist took great advantage from the Kham Magars living in mid-western region (mainly in Rolpa and Rukum) who were having serious grievances with the state. They actively participated in Maoist people's war and contributed to establish strong base during conflict period. For more, see Kiyoko Ogura, *Maoists, people and the state as seen from Rolpa and Rukum*, ed. H. Ishi, D.Gellner & K. Nawa (New Delhi: Manohar, 2007).

[241] Baechler, *Emerging Archetypes*, 57.

[242] Bhandari, Shrestha and Dahal. "Rising Ethno-cultural Nationalism, 18.

Regarding federal rights, the UCPN (Maoist), in its CA election manifesto, had proposed that a central government should control the issues of foreign relations, national army, border security, monetary, inter-state trade, customs revenue, mega hydropower projects, air/land routes, including national highways and airports, metrology and central university. Similarly, regarding powers of provinces, Maoists proposed all residual powers except those defined for central government to the autonomous states.[243]

The Maoist's election manifesto was extensive and deliberate compared to others. They explained Nepal's historic problems caused by feudalism and imperialism, along with explaining that the election of the CA is not the same as the periodic election of the house of representative. In the commitment paper, they claimed that Maoists was the only party that can implement the agenda of the republic and state restructuring. They proposed party president, Prachanda, for future president and offered compromises on their economic principle, e.g., a public-private partnership and foreign investments.[244]

During the people's war, the Maoists proposed a division of the country into nine autonomous republics based on ethnicity and region.[245] When joining the CA, however, they revised their previous concept and proposed 11 autonomous provinces and the possibility of numerous autonomous sub-units in their commitment paper for the CA election. They outlined the basis of state restructuring—ethnic, geography, feasibility and language—in their election manifesto. They added two provinces, Limbuwan (for Limbu community) and Kochila (for Tharu rajbansi and satar community) in eastern Nepal. This was separate from their earlier set-up during the people's war. They proposed Mithila Bhojpura and Abadh sub-autonomous units in the Madhes province. These adjustments were, possibly, due to the Madhes movement in Terai and the Limbuwan movement in

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243 Constituent Assembly Restructuring of the State and Distribution of State Power Committee, *Report on Concept Paper and Preliminary*.

244 ICG, *Nepal's Election*, 7–9.

245 Those nine autonomous republics were mostly based on ethnicity and few on geographic region. Kirant, Madhes, Tamang, Newa, Tamuwan, Magarat, Tharuwan, were based on ethnic groups, and Bheri-Karnali and Seti Mahakali were based on geography.

eastern Nepal because Madhesi people and IP of eastern Nepal launched their movement demanding autonomous status after Maoist come into peace process.[246]

The Maoist, however, submitted a 13-province model to the SRDSPC as their party stand in CA. They added two more ethnicity-based provinces, Sherpa and Bhotela, and they further proposed four regions, Bijayapur, Tamakoshi, Ridi, and Narayani, as centrally-administered territories due to the oppressed ethnic groups in the minority.[247] The Maoist changed party's position on number of provinces time and again because they did not want to lose their constituencies. The Maoist commitment paper claimed their understanding of ethnicity and regional identity most practical and scientific, and it states:

> …ethnic we mean common language, common geography, common economy, and group of people with similar history and culture or 'nationality 'and not ethnicity or race or caste. Also, attention must be paid to the fact that there will be sub-national units within a province and liberation of one ethnicity should not be at the cost of other nationalities, and rights of minorities should be ensured in the provinces with mixed nationalities.[248]

Political parties, in the last ditch of negotiation, were almost in agreement on the mixed form of governance though details to work out the power sharing was yet to be done. Prachanda refused to backtrack from the 10-point proposal based on identity, floated by his party, as it is the most scientific and practical. The Newa community and other ethnic groups supported this Maoist proposal.[249]

After the collapse of the CA, the UCPN (Maoists) faced splits in the party. The UCPN (Maoist) had long rivalries between its top three leaders—chairman Prachanda, Vice chairman Mohan Baidya and Vice Chairman Baburam Bhattarai—on the issues of ideology and completion of the revolution in Nepal. These disagreements surfaced during

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246 Pathak, "Party Concepts on," 1.

247 Ibid., 2.

248 UCPN (Maoists), *Commitment Paper,* (2007): 20

249 RSS, "10-Province Model is Final: Prachanda," *Himalayan Times*, April 27, 2012, http://thehimalayantimes.com/rssReference.php?headline=10-province+model+is+final%3A+Prachanda&NewsID=329796.

the plenum in Palungtar in 2010.[250] There had been sharp differences between Baidya-led hard liner factions and Prachanda establishment-led over the integration of the Maoist's army, ethnicity-based federalism, party line to view India and tactical alliances with other parties, including growing corruption and greed in party leaders. In addition to differences in strategy and ideology, competing personal ambitions and dogmatic characters of Baidya-led faction made a vertical split in the party.

On June 19, 2012, the Baidya-led faction of Maoists announced the new party—Communist Party of Nepal-Maoists (CPN-Maoist)—claiming themselves the real Maoists. This new party is now working for its organizational build up. Some wartime party members and former combatants, including some ethnic cadres, have joined this new party. The CPN-Maoist managed to slice a third of the Central Committee members and former CA members from its mother party, UCPN (Maoists).[251] Failure of the CA to promulgate the new progressive constitution was an easy excuse to split the party, but the ICG report argues, "The new draft constitution could also have triggered the break with the Baidya faction arguing that it was not revolutionary enough and that ethnicity-based federalism had been abandoned."[252]

3.   Communist Party of Nepal (UML)

The CPN (UML) appeared as major political party in1990, which believes in the ideals of democracy and socialism for the material development of society. Its guiding principle is the People's Multi-party Democracy along with Marxism-Leninism and Socialism as its ultimate goal.[253] The CPN (UML) became the largest party in the mid-term election held in 1994 securing 88 seats out of 205, and formed the minority government in December 1994. The government under the leadership of party chairman, Man Mohan Adhikari earned popularity in a short time. As a result, a conspiracy hatched to collapse the minority government, and the NC formed the coalition government. The

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250 ICG, Nepal's Election, 9.

251 ICG, Nepal's Constitution, 3–4.

252 Ibid., 6.

253 "Ideology and People's Movement", *CPN (UML)*, accessed on January 18, 2013, www.cpnuml.org/en/pmovement.php

CPN (UML) again returned to power under the leadership of RPP, and successfully conducted local elections. It became the largest in the local bodies. [254]

The ICG states in its *Asia Report* on August 27, 2012, "The UML has ignored its ethnic constituency previously and this is not the first time it has lost out to the Maoists on ethnic issues."[255] The UML reached out to indigenous groups in the 1990s promising their representation in state institutions and politics and promotion of their culture, language and heritage. The indigenous, however, witnessed continuous dominations of higher caste not only in party politics but also in state machineries and national institutions.[256] A controversial decision of Sanskrit news broadcasting on national radio was taken during the UML-led government from 1994–1995.[257] Any efforts to promote Sanskrit are considered to be the promotion of the Brahmin–-dominated culture of hierarchical Hinduism.[258]

The CPN (UML) returned to ethnic-politics and raised pro-indigenous agendas following the peace process in 2006. Since the CPA committed to address long-lasting issues of socio-political exclusion through broad-based social transformation, it almost confirmed that the Maoist would further mobilize their identity-based organizations in open environment. So the UML endorsed the regional and ethnic autonomy in August 2006 to save the party from the Maoists. It also accepted IP rights based on ILO's Convention 169. It promised federalism based on identity and capability in its manifesto of the CA election. It had submitted a 15-province model of federalism as a party suggestion—based on single identity states and a homeland of particular ethnic groups—to SRDPC of CA in 2009. Coming to the final negotiation earlier in 2012, however, the party stepped back from its earlier stand and opposed federalism based on single-ethnic

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254 "Participation in Election and Government", *CPN (UML)*, accessed on January 18, 2013, www.cpnuml.org/en/pelection.php

255 ICG, Nepal's Constitution*,* 19.

256 Ibid.

257 "Party on Verge," *Kathmandu Post*, May 26, 2012, accessed June 22, 2012, http://www.ekantipur.com/2012/05/26/top-story/party-on-verge-of-split-maoist-hardliners/354520.html.

258 T. Louise Brown, *The Challenge to Democracy in Nepal: A Political History,* (London: Routledge, 1996), 224.

identity because party corrected its previous position due to intense differences in party central committee over federalism and ethnic identity.[259]

Regarding federal rights, the CPN (UML) proposed that the issues related to national security, foreign relations, monetary policy, air and land routes, including highways and railways, customs revenue, mega hydropower projects, protection of human rights and fundamental rights, central university and sharing of heritage should come under the jurisdiction of the central government. Likewise, it, being more elaborative in its CA election manifesto, had proposed the rights of the provincial government in the issues—provincial court, service commission, management of public security, trade industry and labor, education, health and protection of provincial roads and heritage. Whereas it proposed that rights related to local roads and transport, gas power, and water supply, including local education, health and promotion of local resources and heritage, should fall under the authority of local government.[260]

Although the UML presented its concept of restructuring of the state in 2006, it was not clear on a number of provinces and basis of formation. Later in the election manifesto, it provided the bases of restructuring—ethnicity culture language and geography. The manifesto, however, stressed political consensus for restructuring the state. It refrained to provide any number of provinces and models of federalism.[261]

Before the demise of the CA, during hot negotiations of the issue of federalism, the UML Standing Committee proposed two models in response to the Maoist proposal: a 10-province model based on a single ethnic identity, an eight-province model based on multi-ethnicity and an 11-province model with provisions of neutral names. This policy shift of party annoyed indigenous leaders. An intra-party revolt by ethnic leaders further deepened after the demise of the CA. They sought for an immediate correction of party decisions. The party expelled Ang Kaji Sherpa, who was general secretary of NEFIN, because he defied party policy and made inflammatory remarks to top party leaders.

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259 ICG, "Nepal's Constitution, 19.

260Constituent Assembly Restructuring of the State and Distribution of State Power Committee, *Report on Concept Paper and Preliminary*.

261 Pathak, "Party Concepts on," 4.

Subsequently, the next day another leader of the Solukhumbhu district, Dandu Sherpa, who was also a treasurer of NEFIN, resigned from the party blaming that the party's later stand of opposition on ethnic-based federalism was the main cause of the dissolution of the CA. It proved that the party undermines the identity of IPs.[262] On June 19, 2012, the UML CC endorsed the proposal of a seven-province model—an attempt to compromise between two extreme views in the party—based on multiple ethnic identities and mixed names as prepared by the standing committee. It could not, however, hold the agreed party line because five divergent views floated against this proposal in the CC meeting. Those were officially registered in the party Secretariat.[263] Significant numbers of ethnic leaders, including senior vice president Asok Rai, left the party because of the issue of the failure to address their demands for an ethnic-based federalism. Around a dozen indigenous leaders, including Rai, left their responsibilities in July 2012.[264]

Upon failing, the SRC proposed a common model of a state restructuring. The CPN (UML) formally came up with two options of federalism: an eight-province model with three in Terai, and a twelve-province model with four in Terai. This included three tiers of government: central, provincial and local. This proposal actually was an attempt to search for a middle ground between two extreme stands of the NC and Maoist along with the Madhesi parties. The UML claimed that, after wide consultation with people and leaders all over the country, a provision of 11 metropolitan cities achieved economic empowerment and social integration, and 150 metro cities and five autonomous regions addressed the country's ethnic diversity. [265]

The CPN (UML) constantly passed through the crisis related to ideology and identity and emerged as the third largest party in the CA. It has a past of division and

262 Thira Bhusal, "CPN UML Stands Against Ethnicity- Based Federalism," *My Republica*, June 18, 2012, http://www.myrepublica.com/portal/index.php?action=news_details&news_id=36545

263 Ibid.

264 Bhadra Sharma, "CPN-UML Indigenous Leaders Relieved of Responsibilities," *Kathmandu Post*, July 19, 2012, accessed July 22, 2012, http://us.ekantipur.com/2012/07/20/top-story/cpn-uml-janajati-leaders-relieved-of-responsibilities/357436.html.

265 "In Bid to Strike Accord, UML Comes up with Two Federal Set-up Models," *Kathmandu Post*, February 14, 2012, accessed July 22, 2012, http://www.ekantipur.com/the-kathmandu-post/2012/02/14/top-story/in-bid-to-strike-accord-uml-comes-up-with-two-federal-set-up-models/231564.html.

unity due to personality-based factionalism and ideological differences. Some enthusiastic indigenous leaders alienated from the party due to serious refutation of senior leaders on ethnic- based federalism. Those indigenous leaders were active in cross-party indigenous caucus of the CA, and its chair was also from CPN (UML). They blamed their own party as a primary reason of the CA's failure. They termed the role played by the UML as a later phase of the CA tenure "sabotaging " federalism.[266] Top party leadership was not convinced with the structural discrimination in Nepal, so they did not follow the identity politics. There was common criticism that European donors and INGOs were behind the identity-based movements, and identity based federalism was purely a Maoist agenda.[267]

The UML party faced serious revolt from dissident and indigenous leaders after the demise of the CA. Those leaders blamed party leadership for leaving identity based federalism. They argued that our official stand was for identity based federalism, as a result UML voted in favor of 14 province proposal in SRDSP committee along with CPN Maoists and other parties. Dissident leaders including one of the party vice president Asok Rai and other influential Madhesi and indigenous leaders accused the high caste dominated Central Committee for the conspiracy.[268] Consequently, some indigenous and Madhesi leaders left the mother party and formed another party taking dissident indigenous and ethnic leaders from other parties.

4.   Madhes-Based Parties

People from the southern belt started to mobilize for political purposes after the 1990 restoration of democracy. The Nepal Sadbhavana Party (NSP) was the first political party represented as a regional party in parliament in the 1991 election. Subsequently, political elites in Madhesh acknowledged the importance of mobilization of people using

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266 ICG, Nepal's Constitution, 17.

267 Ibid., 18.

268 Raj Kumar Kamat, "Pressure on UML to Embrace Identity-Based Federalism," *Himalayan Times*, 12 June 2012, http://www.thehimalayantimes.com/printNepaliNews.php?id=335824

ethnic division to pressure Kathmandu (center).[269] They built the politics of Madhesi identity mobilizing the Madhesi ethnic people against hill people, indigenous people, Tharu and non-tribal people. Maoists, in fact, had used the same strategy to mobilize the people against authoritative unitary establishment. Upendra Yadav, an activist from the Terai people, formed the MJF in 1997 and cashed the grievances and discrimination of Madhesi by the hill people. They became more active and politically-motivated during the Maoist insurgency. As a result, most of the activists of the MJF helped the Maoist insurgency.[270]

After the peace agreement in 2006, most of the Madhesi who were active and high ranking in the Maoist movement, blaming sidelining and neglect, broke away from the Maoists and started their own movements. Shortly, several groups erupted under the Madhesi banner, exploiting the people's aspiration for change and the political vacuum due to 10-year Maoist insurgency. Those groups successfully used Maoist tactics and knowledge of how to mobilize the people and how to strategically tackle the state from their active involvement in the Maoist people's war. Later in 2007, the three largest Madhesi organizations—Madhesi *Janadhikar* Forum (MJF), Terai Madhes Loktantrik Party (TMLP) and NSP—came together to distance themselves from their violent activities and formed the United Democratic Madhesi Front (UDMF). They grew the UDMF as a legitimate political entity of the Madhes and used this platform for negotiations with the government. They, by doing so, distanced themselves from a number of criminal gangs who used the Madhesi slogan and the people's sentiment to disguise their criminal activities.[271]

The Sadbhavana Party, in its concept paper of the constitution regarding federal rights, had proposed that three issues—national security, foreign relations and currency–needed to be handled by a central government. It proposed all powers to province except

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269 Madhesh and Terai are often used interchangeably. Terai in its literal meaning refers fertile lowland, a band of 20–35 km wide between foothills of Himalaya and Gagetic plain. In Nepal Terai is known as southern strip stretching east and west, which is highly fertile. Majority of the population is Hindu.

270 Susan Hangen, *Creating a New Nepal: The Ethnic Dimension*, Policy Studies Report #34 (Washington: East-West Center, 2007), 36.

271 Miklian, *Nepal's Terai: Constructing*, 5.

those outlined for center. While the Madhesi Janadhikar Forum, in addition to the issues raised by the Sadbhavana Party, had proposed that policy related and topics of central concern should be handled by center. In its CA election manifesto, it had proposed all rights related to internal security and administration, trade and resource management, education and public health, agriculture and micro industry, transit and housing development to the provincial government.[272]

MJF (Nepal), in his manifesto, demanded that the entire Terai region be a single autonomous province. It stressed their demand of a Madhes province—in response to Maoists division of Terai into several autonomous state, such ase Kochila,Tharuhat, Bhojpura, Awadh—and claimed that a single province could only free Terai from internal colonialism. [273] Similarly, TMLP also demanded a Terai-Madhes Autonomous unit in its election manifesto.[274]

The UDMF managed to sell the Madhes identity by turning historical grumbles to political benefit. Madhesi leaders mobilized the grass root people and justified the violence against the state that shifted the connotation of Madhes from its geographical origins to ethnic identity. UDMF leaders took every opportunity to remain in power in the government and stick with the agenda of the Madhes in order to maintain their political base in Terai. Miklian states in his briefing paper,

> UDMF leaders alternate between threatening rhetoric and conciliatory statements to press their demands…The UDMF has shifted allegiances several times among political parties on the left and right in Kathmandu since elections, hoping to strike the deal with any party that will support One Madhes."[275]

Perhaps that could be the reason why the present ruling coalition of Maoist and UDMF sticks with identity-based federalism.

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[272] Constituent Assembly Restructuring of the State and Distribution of State Power Committee, *Report on Concept Paper and Preliminary*.

[273] Pathak, "Party Concepts on," 4.

[274] Ibid.

[275] Miklian, "Nepal's Terai: Constructing," 6.

Many Madhesi people who were supporting UDMF during election openly questioned the interest of their leaders on securing exclusive rights and power in Terai rather than seeking and ensuring a reasonable share of power in the center, Kathmandu. That substantiated the fear of secession as a final goal of the Madhesi movement.[276] It is not that "One Madhes " demand was unopposed in Terai. Tharu, who claimed IP of Terai, opposed their inclusion in the "One Madhes " agenda and demanded a separate autonomous unit. Though less in number than the Madhesi, they are located mostly in Terai.[277]

The government signed two agreements with the UDMF in August 2007 and Feb 2008 following the agitations in the entire Madhes. The principle demand was for a single autonomous unit in the entire Terai with the right of self-determination, and other demands related to equal participation in national institutions, government machineries and politics in center.[278] The UDMF dissolved during the CA election period and it again revived immediately after election, possibly, to make the Madhesh voice effective in the CA. The UDMF with 81 out of 601 seats secured the fourth position in the CA. the election results, however, showed that they had less hold in western Terai.[279]

In August 2009, the Madhes-based parties again came to the street and protested with widespread strikes immediately after Supreme Court declared the oath in Hindi language by Vice President is unconstitutional. Supreme Court ordered the Vice President to retake the oath in Nepali language. Vice President was from the Madhes origin and affiliated with one of the political parties of Madhes. Earlier, he had taken the

276 Prashant Jha, "Plain Speaking Things Fall Apart: Will the Madhesi Centre Hold?," *Nepali Times*, February 1, 2008, accessed January 5, 2013, http://nepalitimes.com/news.php?id=14438.

277 U.S. Library of Congress, Congressional Research Service, *Nepal: Political Developments and Bilateral Relations with the United States*, by Bruce Vaughn., CRS Report RL34731 (Washington, DC: Office of Congressional Information and Publishing, April 7, 2011), 3.

278 Miklian, "Nepal's Terai: Constructing," 5–6.

279 Madhesi parties exploited their political slogan of "one Madhesh" during election and Madhesi parties got over 1,150,000 votes, and majority of voters were from eastern Terai. This was great achievement for Madhes based politicians as they had a very weak representation during 1991 election, hardly a half dozen in 205 constituencies in House of Representative. For further details, see ICG, *Nepal's Election: A Peaceful Resolution,* Asia Report No.153, July 3, 2008.

oath in the Hindi language.[280] Madhesi, after the CA election, appeared as an important regional dimension in the political stability of Nepal. Since the majority of people in the Terai region, especially eastern Terai, are ethnically and culturally-close to the northern states of India, significant presence of Madhesi parties in the CA and both president and Vice president being from Madhes posed new threats to the political stability of the country.[281] Furthermore, Hindu radicals from India were alleged for the frequent violence in Terai. Religious groups--like Shiva Sena-Nepal--are active in the region, which has close connections to the South.[282]

The Madhesi party, in formation of the SRC, argued that the proper place to discuss this is the CA and no other body would be more legitimate than they CA. They feared that SRC would be overwhelmed by major political parties and it would delay or disrupt the federalism. So they constantly opposed the SRC.[283] The Madhesi party had pressed systematic pressure against the other national parties and government several times in history. They often times pressed either to promulgate the constitution with federalism or to dissolve the CA. It is widely believed that they are closer to the Indian establishment. A few influential leaders from the Madheshi parties visited India in March 2011, and they threatened the government to dissolve the CA or be ready to face the Madhesh movement.[284]

The UDMF flatly rejected the 11-province model and reiterated that no other proposal would be acceptable except a 14-province model proposed by the SRDPC or a 10-province model proposed by the SRC. Earlier there was agreement among three

280 "Madhesi Parties Call Terai Bandh," *Plus News Pakistan*, August 31, 2009, quoted in U.S. Library of Congress, Congressional Research Service, *Nepal: Political Developments and Bilateral*, 9.

281 U.S. Library of Congress, Congressional Research Service, *Nepal: Political Developments and Bilateral,* 9–10.

282 "BJP Has No Role in Terai Violence: Yashwant Sinha," *Indo-Asian News Service*, July 25, 2007, quoted in U.S. Library of Congress, Congressional Research Service, *Nepal: Political Developments and Bilateral*, 10.

283 ICG, *Nepal's Fitful Peace Process*, Update Briefing: Asia Briefing No. 120 (April 7, 2011): 7–8.

284 Bijaya Gachhedar of MJF (Loktantrik), Rajendra Mahato of SP, Mahanta Thakur of TMLP, visited Delhi and had high level meetings on mid of March 2011, when dead line of CA was approaching and country was in serious negotiations among political parties. For further details, see, ICG, *Nepal's Election: A peaceful Revolution?* Asia Report No. 155, July 3, 2008.

parties on an 11-province model comprising five states in Terai in a meeting where the UDMF was not present. The UDMF even threatened to walk out from the coalition and to go to the street for protest. Then Prachanda asked the UDMF leaders to calm down, and assured them that he would withdraw the 11-province model after consultation with the NC and UML. Prachanda stressed the continuation of the present coalition because it was taking progressive agendas forward.[285]

5. Other Parties

Other parties' voices in the CA did not mean a lot due to their negligible numeric representation. Many fringe parties are polarizing to either of side depending upon the immediate political benefit. Certain small parties, however, represented the certain sections of society and stood firmly against the federalism issue inside the CA and outside in the street. The RPP (N) campaigned for constitutional Monarchy and a referendum to decide the future of Monarchy, federalism and secularism. The RPP and the RJP, however, expressed their commitment to follow the decision of the CA on monarchy. RPP's manifesto embraced the concept inclusive of multi-party democracy and reasoned the upper house is ethnic- based, but it remained silent on the future of the Monarchy[286]. Similarly, Rastriya Janamorcha Nepal, with four members in the CA, opposed federalism claiming it was not viable and would disintegrate the country. It not only opposed federalism in Nepal, but strongly advocated a unitary system of governance with democratic decentralization and local autonomy for oppressed communities. The rest of all political parties who were in the CA included federalism in their manifestos.[287]

Several indigenous leaders from major political parties—after dissolution of the CA on the issue of ethnic-identity-based federalism—felt neglected. Leaders from the NC and CPN (UML) forced party leaderships to clear their stand and threatened to quit the party. They blamed their party leaderships for failing to address the demand of the ethnic

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285 Kosh Raj Koirala, "UDMF Sticks to its Guns," *My Republica*, May 18, 2012, accessed September 13, 2012,
http://www.myrepublica.com/portal/index.php/ads/ads/printable_news.php?action=news_details&news_id=35196&show_comments=true.

286 ICG, *Nepal's Election*. 14.

287 Pathak, "Party Concepts ," 5.

people.[288] The dissatisfaction of ethnic leaders was serious in the national parties. The vice president and other leaders from the UML left the party because of this issue and opened a new party of indigenous people, the Social Democratic Party (SDP). This step hinted at the further polarization in politics and society. Asok Rai, former vice president of CPN(UML), however, failed to accommodate other ethnic leaders of the NC differing in ideology as he was rigid with Marxism and others, such as Chaitanya Subba, an influential indigenous leader of NC, refused to accept the Marxism ideology.[289] The NC and CPN (UML), along with other several parties in opposition, following the dissolution of the CA, demanded the resignation of the Bhattarai-led government and the formation of a national consensus government to conduct an election of a fresh CA. They termed the decision to dissolve the CA as 'unconstitutional,' but no consensus on draft constitution and the order of Supreme Court not to extend the term further, possibly, forced the government to dissolve the CA just a few hours before its natural death. Then they announced a fresh election.[290]

D.   ROLE OF CIVIL SOCIETY AND INTERNATIONAL COMMUNITIES IN NEPAL

Nepal being a poor country with economic dependence on foreign assistance, neighboring countries, donor countries and international communities have been contributing significantly in its transition to democracy. Considering the geopolitical situation and dependent economy, India, China, E.U., and U.S. have special roles and interests in Nepal's political impasse. The democratic world had a close eye on the political development in Nepal, and it often put pressure towards the democratic transition of the country.

Nepal had used the "China card " to counterbalance the hegemonic relation with south in the past, and, at times, sought for independent foreign policy. Prachanda's first

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[288] Binit Gurung, "The New Force," *My Republica,* June 15, 2012, accessed September 11, 2012, http://www.myrepublica.com/portal/index.php?action=news_details&news_id=36463.

[289] "Ashok Rai to Launch a New Party Today," *Himalayan Times,* November 22, 2012, accessed November 26, 2012, http://www.lexisnexis.com.libproxy.nps.edu/hottopics/lnacademic/.

[290] Gurung, "The New Force."

visit to China as a prime minister in 2008—breaking the tradition of a first visit to India by new prime minister—was viewed as the strategic closeness of Maoists to China.[291]

1.   Ineffective and Divided Civil Society

Civil society in Nepal started to organize itself along the movement for democracy. It has played an important role in the restoration of democracy since 1990.[292] Its role in the People's movement II in 2006 was very significant for pressuring the political parties into a decisive end. At the height of the people's struggle for democracy, civil society's role in regime change overshadowed the leadership of parties and proved it irrelevant to the centrality of civil society. The role and significance of civil society, however, slightly eroded in the years after completion of the second people's movement. Civil society has lost its credibility about representing the voice of the common people, and it has started to reflect the political mouth piece with certain political leaning—a serious concern for the future role of the civil society[293]

Civil society ideally should work as watchdog on activities of the political parties and government so that the voice of the poor and marginalized groups and common people will not be suppressed. It needs to check the political forces to serve the greater interest of the nation and welfare of the people. There is a need that Nepalese civil society should come up with its own language and maintain the old image on the logical conclusion of the peace process institutionalizing democracy.[294] Since federalism and the institutionalization of democracy is the national agenda, civil society should come forward and take this agenda out of political debate and bargain. The inactivity and

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291 U.S. Library of Congress, Congressional Research Service, *Nepal: Political Developments and Bilateral,* 13.

292 Civil society is defined as the sphere of voluntary organizations and organized activities that are neither part of government, business, nor family, either delivering services or trying to influence development policies and practices of key stakeholders in society. For further detail description and role of civil society in Nepal, see http://www.ndf2004.gov.np/ndf2000/civil.php#part1.

293 Manish Thapa, "Role of Civil Society and political Party in Current Nation/State Building Process in Nepal" (Paper submitted at national seminar on 'New Dynamics of Development: Challenges and Prospects,' organized by Center for Economic and Technical Studies(CETS) in cooperation with Friedrich-Ebert-Stiftung (FES), Nepal Administrative Staff College, Jawalakhel, Lalitpur, November 12– 13, 2008).

294 Ibid.

politicization of civil society had contributed to the failure of the CA without promulgation of constitution. Since people are not organized in such a manner, political forces did not feel accountable to them. Civil society could have filled this vacuum.

The role of civil society and donor agencies so far has not seen coherence to peace building in society. Some projects financed by donor agencies and INGOs have been blamed for causing ethnic tension exacerbating violence in the harmonized society for centuries. It is hard to find an apolitical civil society in Nepal. Since it is divided by partisan lines and linked to one of the political parties, their ideal function of the facilitator between government and community has not materialized. Similarly, relation between private organizations and civil society also lacks cooperation and mutual understandings.[295]

Social organizations for the welfare of community due to dependency on foreign aid and technical support, often contradict with national and social agendas. Chandra D. Bhatta puts his view of mixed results regarding donors' roles in Nepal as:

> Some large donors are circumventing the state and its institutions promoting within civil society clients to sell their agendas. Other donor countries—Germany, Finland, and Japan—are operating at the grass roots level with mandates from the government…German development organizations are seldom criticized because of their engagement at the grass root level and aligning with national priorities.[296]

2. India's Concern in Nepal

Nepal's economy is heavily dependent on its southern neighbor, India. India, for Nepal, is the primary source of import, export and, most importantly, the only access to a sea route. India is a major donor country of Nepal. Nepal's proximity with India is not limited to geography and economy, but people of both countries, particularly residing in the Terai belt, share religious and cultural traditions. India perceives that the instability in Nepal contributes to the potential threat in its troublesome Northeast and Northern

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295 Chandra D. Bhatta, "Reflections on Nepal's Peace Process," International Policy Analysis, (Berlin: Friedrich-Ebert-Stiftung | Department for Asia and the Pacific, 2012), 5–6, http://library.fes.de/pdf-files/iez/08936-20120228.pdf

296 Ibid., 6.

states.[297] In January 2011, Indian Foreign Secretary Nirupama Rao visited Nepal and conducted political consultations with Nepalese PM Madhav Kumar Nepal and leaders of other political parties, including Maoist chairman Prachanda. It was reported in the media that she asked about Maoist's anti-India posture and Prachanda requested to review the India-Nepal Treaty of Peace and Friendship (1950)—popularly known as the 1950 Treaty.[298]

India, a regional hegemon, believes Nepal is within its area of influence and its involvement in Nepalese internal politics—guided by its own national interest—often makes the situation complicated. India always assumed that the growing Maoist in Nepal meant greater influence by China. This is because of the ultra-nationalist and anti-Indian sentiments in Maoist leaderships and cadres.[299] India is worried about the strong Maoist role in Nepalese politics because it would have a spillover effect in the provinces that are already crippled by the Maoist movement. India certainly wants stability across the border for its own security and stability. Sudden visits of a few top Madhesi leaders in March 2011 to consult with Indian leaders in Delhi, at the time of political hot debate on federalism in Kathmandu, could possibly be viewed as Indian influence in Nepalese politics.[300] Adam Bergman argues in his report,

> Whether this meeting was to discuss Madhesi violence and secessionist steps to force Kathmandu to concede on federalism, or whether it was a move with Nepal's stability and unity at heart is difficult to know, but very act of inviting regional political parties that have strong ties to Delhi for secret discussions does not send positive signals about India's intentions."[301]

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297 U.S. Library of Congress, Congressional Research Service, *Nepal: Political Developments and Bilateral,* 13.

298 Prashant Jha, "Nirupama Rao Concludes Nepal Visit," *Hindu*, January 21, 2011, accessed November 25, 2012, http://www.thehindu.com/news/national/nirupama-rao-concludes-nepal-visit/article1106193.ece.

299 ICG, Nepal's Election, 15.

300 Adam Bergman, *Ethnic Federalism in Nepal: A Remedy for a Stagnating Peace Process or an Obstacle to Peace and Stability?* Minor Field Study Report-Department of Peace and Conflict Research, (Uppsala: Uppsala University, 2011): 19. , accessed October 20, 2012, http://www.pcr.uu.se/research/publications/mfs_reports/#2011.

301 Ibid.

The presence of the U.N. mission in Nepal was a matter of concern for India. Possibly, it might have reduced the Indian role in the region. India pushed both the United Nations Mission in Nepal (UNMIN) and the Office of High Commission for Human Rights (OHCHR) to scale down. Since the UNMIN rolled back from Kathmandu in January 2011, India filled the vacuum of political influence. Regarding Indian Interest in Nepal, Adam Bergman argues, "…an Indian interest in Nepal plays a key role in the prospects for federalization to end with peace and stability."[302]

Since Nepal is going through complicated democratic transition with weak state institutions and political instability mainly due to mistrust among political parties, competitive geopolitical actors also have their respective interests. India, for its strategic interest in Nepal, wants less outside influence, especially from China, U.S. and E.U. The domestic political forces of Nepal are also polarized along these geopolitical lines.[303] Chandra D. Bhatta views the present security vacuum due to fragile political environment and Indian interest in Nepal as:

> The absence of National center has caused a security vacuum. Given this state of affairs it appears that India will continue to cultivate pro-Indian leaders in main stream parties, support Madhesis and engage with armed non-state actors hiding in India. Political analysts view it as an attempt to shift Nepal's political heartland from the hills to the Terai-Madhes.[304]

3.   China's Interest in Nepal

Considering China is a rising global power and of its problem with Tibet—Nepal's bordering autonomous state of China—it has key interests in Nepal. China is extending its influence to the SAARC region as it received Observer status in the SAARC since 2005. In 2011, China announced that it seeks strong economic and political relations with South Asia.[305] China had significantly good cooperation with some of the South Asian countries in

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302 Ibid., 20.

303 Bhatta, "Reflections on Nepal's Peace," 5.

304 Ibid.

305 "China to Strengthen Cooperation with SAARC," *Xinhua*, March 1, 2011, accessed December 13, 2012, http://www.china.org.cn/world/2011-03/02/content_22033813.htm.

the recent past, possibly with economic interest, but it may encircle India strategically. Some view this Chinese approach as a geopolitical concern to India.[306]

Chairman Mohan Baidya of CPN-Maoist, a new faction split from the UCPN (Maoist), revealed in July 26, 2012 that China was seriously concerned with growing foreign influence about federalism. China had sent a strong message that such illicit activism under cover of federalism will not be tolerable. According to him, Chinese leaders doubted that federalism may risk the unity and integrity of Nepal. China, at the same time, reiterated the policy of non-interference in Nepalese domestic affairs, he added in the media. China was for strong alliances among communist parties and political stability in Nepal.[307]

China also has great security concerns due to frequent activities of the free Tibet movement of Tibetan communities in Nepal with the support of a few political leaders from different parties, such as the INGOs and the Human Right organizations. In the recent past, China increased its engagements in Nepal. It had not only increased investments on infrastructure development and high level political visits, but also expressed its desire to strengthen the capabilities of security organizations, such as Army, Armed Police Force and Police. The primary interest of China in Nepal, with all these supports, appears to nullify the growing congregating interest of India, E.U. and U.S. on the Tibeten issue.[308] Though federalism is the issue of state restructuring and domestic political debate, it will be very hard to totally undermine the interest of neighbors and their views on the issue with given geopolitical scenario of Nepal.

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306 U.S. Library of Congress, Congressional Research Service, *Nepal: Political Developments and Bilateral,* 13.

307 "Nepal Political Leader Says China Curious Over 'growing Foreign Influence'," *Annapurna Post*, July 27, 2012 accessed November 13,2012, http://www.accessmylibrary.com/article-1G1-297951725/nepal-political-leader-says.html. ; "Foreign Meddling Irks China," *Himalayan Times*, July 26, 2012, accessed November 13, 2012, http://www.thehimalayantimes.com/fullNews.php?headline=Foreign+meddling+irks+China+&NewsID=341137.

308 Bhatta, "Reflections on Nepal's Peace," 5.

4. E.U.'s Role in Nepal

The assistance and support of E.U. in development and transformation is very important. It ranks as one of the top donor parties of Nepal. The role of E.U., however, has often been criticized for instigating roles to ethnic and regional groups. Its involvement in Nepal is mostly through donor agencies and INGOs implementing numbers of projects with the promotion of constitutional democracy, social justice, human rights, peace and several development projects mainly in remote places.[309]

On November 14, 2008, Danish ambassador to Nepal, Finn Thilsted, cautioned Nepalese politicians for blindly copying the model of federalism from other parts of the world. He said federalism in Nepal could be impractical, and urged the politicians—who have no clue of the federalism type that is best suited for Nepal—to consider the possible consequences of federalism.[310] He expressed his view regarding his understanding of Nepalese socioeconomic structure as,

> Since there are various ethnic groups within a single village development committee in Nepal it would be difficult to find the foundations for federalism…If federalism is adopted under such conditions there will be unnecessary costs in the basic needs of the people like education and health.[311]

He highlighted the urgency of ground work, based on his tour of remote villages, to empower the rural people to be included in the decision-making process. He, citing the example of his own country, said that the Danish constitution was written by a single person almost one and a half centuries ago without federal structure, and it successfully worked with amendments to match the time and need of people to achieve socioeconomic development.[312]

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309 Ibid.,6.

310 "Denmark Envoy Advises Nepal Against Federalism," *Radio Nepal*, 1315 GMT, Nov 14, 2008, accessed December 15, 2012, http://www.lexisnexis.com.libproxy.nps.edu/hottopics/lnacademic/ .

311 Ibid.

312 Ibid.

5.   U.S. and Nepal

The U.S. policy for Nepal is to help build a peaceful, prosperous and democratic society. The U.S. has provided development assistance worth more than $1.2 billion since 1951 and it has increased significantly in recent years. Annual bilateral assistance now has reached to about $54 million. Trade between the two countries is not significant, and the total two-way trade amount was $86 million in 2009.[313] Democracy, rule of law, promotion of human rights and regional stability are the U.S concerns in Nepal. Initially, Maoist violence, along with its policies of a one-party Republic, class enemies, and export of revolution were some of the serious concerns.[314] Due to its violent past and Maoist ideology, the United States put the UCPN (Maoist) on its terrorist list. Recently, this has been corrected after reviewing the Maoist commitment to multi-party democracy and peaceful political settlement. According to Media Note released from the U.S. Department of State on September 6, 2006,

> The Department of State has revoked the designation of the Communist Party of Nepal (Maoist) (CPN (M)) and its aliases as a Specially Designated Global Terrorist entity under Executive Order 13224, and as a "terrorist organization " from the Terrorist Exclusion List (TEL) under the Immigration and Nationality Act (INA).[315]

U.S. foreign policy in Nepal basically is guided by democracy, human rights and other international norms, and it differs from policy practiced by India and China. The U.S., however, continuously advised Nepal about constructive engagements with both its giant neighbors.[316] The U.S. policy of continuing engagement and assistance for institutional development is being supportive in the democratic transition in Nepal. U.S. interest in Nepal has grown significantly after the Maoist insurgency reached at height, and it is continuously monitoring ongoing political debates primarily logical ending of

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313 U.S. Library of Congress, Congressional Research Service, *Nepal: Political Developments and Bilateral,* 11.

314 Ibid.

315 State Department, *Delisting of the Communist Party of Nepal (Maoist),* Media Note (Washington, DC : U.S. Department of State, September 6, 2012), accessed December 18, 2012, http://www.state.gov/r/pa/prs/ps/2012/09/197411.htm .

316 Bhatta, "Reflections on Nepal's Peace," 6.

peace process and democratization of the country. U.S. being the world power has lot of influence in every political development given the unique strategic location of Nepal.

E. ISSUES ON FEDERALISM AND RECENT DEVELOPMENT

The Madhesi and indigenous people sparked protest immediately after the release of a draft interim constitution in December 2006, demanding explicit commitment to federalism and a proportional electoral system in constitution. The protest further accelerated after the legislature parliament passed the interim constitution in January 15, 2007. The MJF and NSP turned to violent protests in Terai demanding Terai as a single province. G. P. Koirala, then prime minister, in response to protest across the country, addressed the nation twice, and he expressed his commitment to federalism, the electoral system and to representation of the Madhesi and minorities. The government had signed several agreements with the Madhesi and ethnic groups during January and February, assuring a mixed electoral system and a federal republic, possibly, to make the environment conducive to the CA election.[317] Protests, however, stopped only after declaring Nepal a "Democratic and Federal State " in the first amendment of the constitution on April 12, 2007.[318]

1. Why Number of Provinces Matter?

The SRDSPC of the CA—the most democratic institution to decide any political matter—came up with 14 province models with the authority to grant autonomy to more than 30 ethnic groups. Similarly, the SRC—a body of political consensus to forge the stalemate of federalism in Nepal—came up with 11-province models (10 territorial states and one non-territorial state for *Dalits*) based on ethnicity of the country (see Figure 6). Political leaders in the CA, however, could not come up with a common consensus of the number of provinces and its basis and naming. Mahendra Lawoti, an scholar advocating the right of the IPs, writes in the National Daily,

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317 United Nations Resident and Humanitarian Coordinator's Office, "Federalism Discourse in Three Districts in the Eastern Terai," *Field bulletin* Issue 42 (Kathmandu: June 2012): 1, accessed November 18, 2012, http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_4171.pdf .

318 Ibid.

…putting forward various excuses and explanations, the status quoists are attempting to adopt a six-eight province model where Bahun-Chhetri will become the majority or the largest group in most of the provinces. The six-eight-province model is primarily a mono-ethnic model where one ethnic group will dominate the center and most, if not all, provinces, and rejects autonomy to numerous other ethnic groups, including by not envisioning local autonomy for many small populated groups.[319]

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[319] Mahendra Lawoti, "Bahun Leadership and Federalism," *Kathmandu Post,* April 27, 2012, accessed September 14, 2012, http://www.ekantipur.com/the-kathmandu-post/2012/04/26/related_articles/bahun-leadership-and-federalism/234220.html.

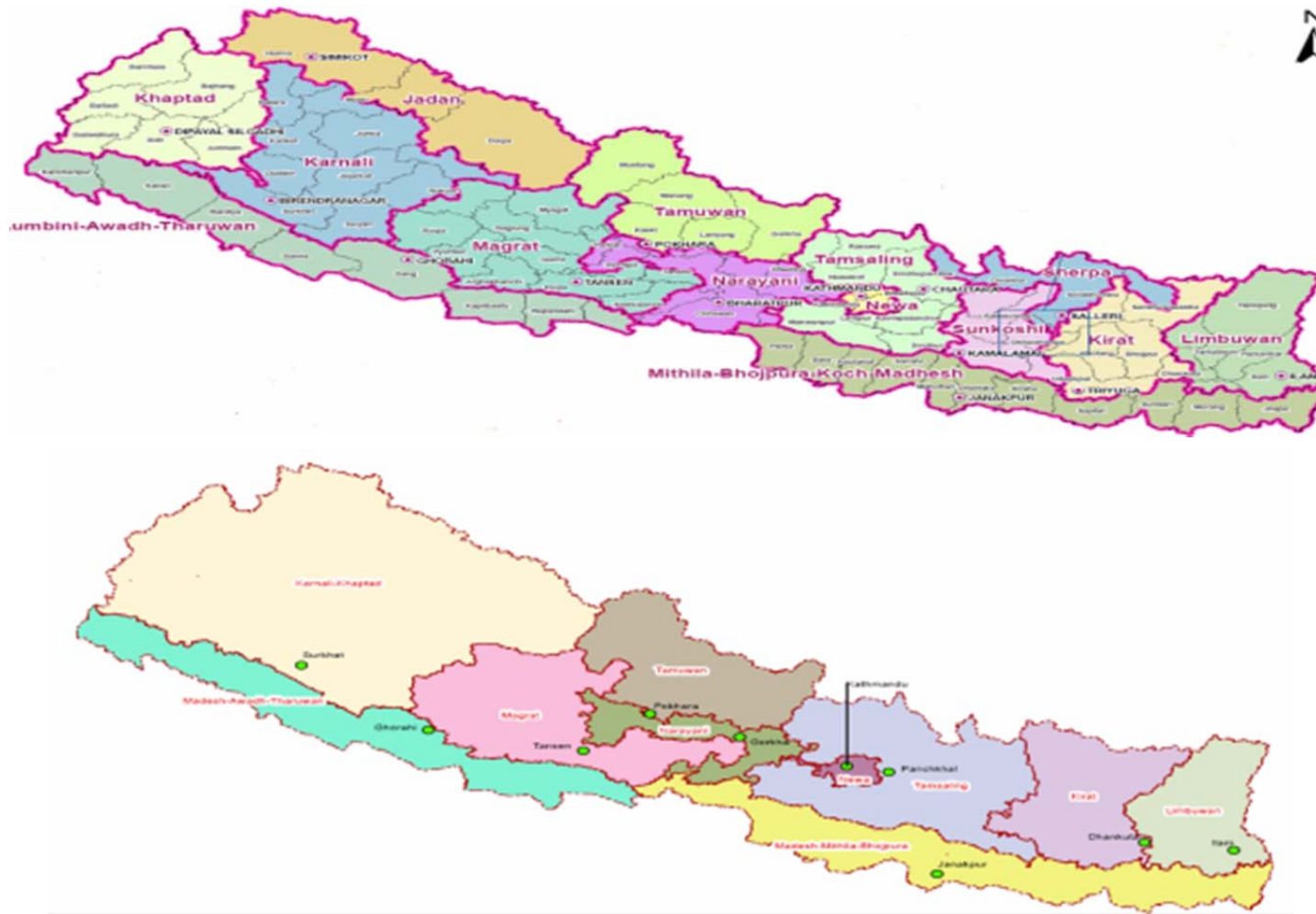Figure 6.   14-Province Model Proposed by SRDSPC and 10 Province Model proposed by SRC
(from http://linguae.weebly.com/nepali.html)

He further argues that all federal models are basically ethnic. The basic difference is that six-eight province models will be mono-ethnic and 11-14 province models will be multi-ethnic. He counters the idea of viability to more than 10 provinces by saying that the experiences of countries around the world validated the fact that countries with larger number of units are less susceptible to collapse. As any decisions in the SRC or SRDSPC were unanimous, the question on protection of minority voice needs to be addressed. This is true, however, only in the democratic process when the minority is harmed by the majority. Regarding the role of the higher caste in the two models—11 and 14 province models—he claims:[320]

> Bahun Chhetri's interest will not only be protected in both models, but they will continue to dominate the polity but less than before. First, they will be large group in most provinces hence their interest cannot be undermined in electorally based polity … Two, the Bahun Chhetri will continue to be the largest group in the country and will dominate central politics …Third, Bahun-Chhetri will in fact be the majorities or the largest group a few provinces in the 14 province model and continue to influence politics in multiple provinces whereas other ethnic groups will dominate only one province each. In fact, without autonomy, minority rights of the Bahun Chhetri groups will be violated because they will have to live under the policies formed by the dominant group whose culture, values, needs and preferences are different in many instances.[321]

In the 14-province model, nine provinces were crafted based on ethnicity and economic viability was neglected over sentiments for ethnicity. For efficient work of any model of federalism, three factors—availability of resources, its mobilization and capacity to engage trade—at least need to be seriously considered. Complete reliance on the center of any province ultimately loses the basic meaning of federalism and autonomy. The issue of resource distribution and identity often tends to increase the number of provinces. Take the case of Nigeria currently with 36 states which originally was planned for three states.[322]

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[320] Ibid.

[321] Ibid.

[322] Pranab Kharel and Bhadra Sharma, "A Question of Viability," *Kathmandu Post*, January 6, 2012, accessed August 4, 2012, http://www.ekantipur.com/the-kathmandu-post/2012/01/06/features/a-question-of-viability/230122.html.

Mahendra outlined two basic reasons that supporting the 11 to14 province model more suited to Nepal. First, Madhesi and most of the IP will not be satisfied in the case of the five-six province models and there is ample chance that they will join the hands that may threaten the stability of the country. Second, more province means the provincial government will reach for the best of his people to help democratization of the country by empowering the real grass root's people. There is the question of sharing resources and interdependence. This question is not only limited to a country; rather, it is a global phenomenon of today's globalized world.[323]

Criticizing the 14-province model the NC argued that this model tried to address the ethnic groups but failed to address the 103 ethnic groups of the country. The 14 province models were basically based on the representation of provinces by the largest community within that province. The very fact of the country is co-existence of the communities all over the country because of mixed settlements and, interestingly, no community or province named enjoys a majority. No province existed with a simple majority of any ethnicity/caste/community. [324]

A point to note is that the high caste leaderships lost considerable political leverage once they tried to omit federalism in the Interim Constitution that gave birth to the Madhesi parties through the Madhes movement. Thus, an attempt to enforce the six to eight-province models essentially harms the main political parties because of significant segmentation of ethnic leaders within each party who are uniting for their individual causes.[325]

2. Last Minute Efforts in CA

Later, Terai-based parties formed the United Democratic Madhesi Front (UDMF) and joined the club of decision makers. Nepal witnessed the power games among the

323 Mahendra Lawoti, "Weighing the Options," *Kathmandu Post*, April 21, 2011, accessed November 21, 2012, http://www.ekantipur.com/the-kathmandu-post/2011/04/21/related_articles/weighing-the-options/220869.html.

324 Thira L. Bhusal and Kosh Raj Koirala, "The CA Can Reject the 14-Province Model and Come Up with the New One," *My Republica*, Jan 28, 2010, accessed July 17, 2012, http://www.myrepublica.com/portal/index.php?action=news_details&news_id=14563.

325 Lawoti, "Bahun Leadership."

CPN (Maoists), NC, CPN (UML) and UDMF. During the last week of the CA tenure, the NC and CPN (UML) flatly rejected the joint proposal of the ruling coalition (Maoists and UDMF) for 10 provinces based on single ethnic identity. Disputes persisted among political parties on the name and number of provinces. The NC and UML proposed to promulgate a draft of the constitution by May 27, 2012 with provisions to settle the issues of federalism—number, boundary and name of provinces—by transforming parliament. The UCPN (Maoists) and UDMF, in response, accused the NC and UML for conspiring against the constitution without guaranteeing federalism. Political parties, however, restrained from participating in the voting method to resolve the disputes. They considered that voting on the CA would danger democracy, federalism and the republican set-up.[326]

One day before demise of the CA, the Maoist and UDMF proposed a 14-based province based on a single identity; whereas the NC and CPN (UML) proposed an eight-province model based on multi-identity in terms of language, ethnicity and culture. The ruling coalitions, the UCPN (Maoist) and UDMF, blamed opposition parties, mainly the NC and CPN (UML), for turning down both proposals: the 14-province model proposed by the SRDPC and the 10-province model prescribed by the SRC. [327]

Initially, a fresh election of the CA was scheduled for November 2012, but it could not meet because of the failure to form a consensus government to conduct the election. Now, May 2013 is the target, yet there is no signal of a consensus in government. The president, in ceremonial role, has been urging to forge a consensus and is giving ultimatums for parties to do so. Neither opposition nor ruling coalition is showing flexibility. There are 27 opposition parties, including the NC and UML, stating that the government's decision to dissolve the CA and call for a fresh election as unconstitutional, and they started a campaign to remove the present coalition—as they

326 Kosh Raj Koirala, "NC, UML Reject Single Identity Provinces," *My Republica,* May 22, 2012, accessed November 13, 2012, http://www.myrepublica.com/portal/index.php?action=news_details&news_id=35364 .

327 "Federalism Proves Hard Nut to Crack," *My Republica*, May 27, 2012, accessed November 24, 2012, http://www.myrepublica.com/portal/index.php?action=news_details&news_id=3556 9.

term unholy—and to form the consensus government to conduct the election.[328] The present government—coalition of UCPN (Maoist), UDMF and some other parties—want to stay in power till the election, but the opposition is demanding first resignation of the present Bhattarai government before any negotiation.[329] Presently, failing on several options of power sharing and form of government, both the opposition parties and ruling coalition are on the street to show their muscle. This is not the solution of the political crisis.

F.   CONCLUSION

This chapter analyzed the structure of the CA and the role that the political parties play in it on the issue of federalism. It summarized the constitution drafting process, various positions of parties on federalism and the possible reasons behind such positions. The chapter highlighted the inconsistency of parties in the issues related to federalism and the role of international communities, including the civil society in Nepal's transition to democratic federalism.

State restructuring through federalism and republican set-up were two radical agendas established by the People's Movement (2006). The first meeting of the CA implemented the republican set-up; whereas, the next one remained undecided due to lack of political consensus and sincerity. Political parties polarized into two camps—ethnic-based federalism and federalism based on economic viability with a multi-ethnic state. Parties backing identity-based federalism—mainly the UCPN (Maoists), Madhesi parties and various ethnic groups—to accommodate large numbers of ethnic groups, pushed for a greater number of states. While the other camp is comprised of the NC, CPN (UML) and other traditional parties in order to achieve economic viability, they are pressed for the minimum possible number of provinces so that all could run their state affairs independently.

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328 Utpal Parasar, "Nepal Maoists Won't Budge on Ethnicity-Based Federalism," *Hindustan Times*, June 15, 2012, accessed November 26, 2012, http://www.hindustantimes.com/StoryPage/print/872958.aspx

329 S. Chandasekharan, "Nepal: Possibility of Polls in May Fast Receeding," *Indian Strategic Studies*, January 5, 2013, http://strategicstudyindia.blogspot.com/2013/01/nepal-possibility-of-polls-in-may-fast.html

Since its establishment, as it led the every political movement in Nepal, the NC has its own constituencies. Likewise, left-oriented parties, mainly the CPN (UML) and CPN (Maoist), have their own constituencies, mostly grass root and deprived sections of the people, including the ethnic IPs and *Dalits*. Though all political parties agreed upon federalism and democracy, they differed about the basis of federalism, forms of government, and such other issues that kept the CA in the prison of indecisiveness. Basically, new revolutionary forces of the Maoist and Terai-based regional parties advocated for ethnic-based federalism. Other parties, however, mainly the NC, CPN (UML) and other traditional parties, opposed the ethnic identity-based federalism and pressed for multi-ethnic federalism based on geography and viability.

Two major parties—the NC and CPN (UML), appeared reluctant federalist at their best. They pressed to promulgate the constitution without the federal set-up. The UCPN (Maoists), Madhesi parties and ethnic communities, however, stood firm on the constitution with identity-based federalism as their bottom line. In addition, parties lacked proper homework and vision regarding the federal structure. They often changed the stand as per the political calculation in the power game. Polarization of parties and geopolitical impacts on national politics caused crystallization of the contentious issue. Defunct and politicized civil societies and international communities with diverse interest added to the complexity of the problem.

The issue of the number of provinces and their basis of creation made the drawing of provincial borders more challenging. The pattern of demographic distribution and growing regional politics in the recent past further complicated the issue of federalism. The Newar community of Kathmandu Valley, for instance, the most historically concentrated group in the country also falls short of majority as they constitute 36% in the valley.[330] Similarly, Chhetri may claim for the autonomous region as a largest single caste group, but they also are only 16% in that province.[331] So, political parties cheaply

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[330] Adam Bergman, *Ethnic Federalism in Nepal: A Remedy for a Stagnating Peace Process or an Obstacle to Peace and Security*, Minor Study Report-Department of Peace and Conflict Research, (Sweden: Uppasala University, 2011): 12, accessed October 24, 2012, http://www.pcr.uu.se/research/publications/mfs_reports/#2011

[331] Ibid.

committed to the people during the democratic movement and election. Later on, the spread out of IPs and ethnic communities put them in difficult positions to finalize the number of provinces and basis of formation, including its border and naming. Drawing the border is not only difficult but politically very sensitive as it divides the community in one way or another.

Every party is focused on its own party's interests. All aim to finish the process under their leadership so that their own party would get political credit for the smooth transition, and interests of their respective class and groups would be best represented. Class interest and fear of losing constituencies are the fundamental causes of the present day deadlock. It is unlikely to resolve unless the parties compromise their political interests, putting national agenda in the center.

IV.   SPAIN AND INDIA: ILLUSTRATIVE CASE STUDIES ON DEMOCRATIC FEDERALISM AND LESSONS LEARND

A.   INTRODUCTION

Spain is a multi-ethnic, diverse state in terms of language, history and traditions. The government of Spain structured the country into 17 self-governing regions, each with its own government and legislature in 1980s, after the end of Franco regime. This federalist solution successfully managed the issue of ethno-territorial cleavages, and it kept the country unified in a democratic political structure.[332] Great ethnic diversity and a long legacy of authoritarian regime did not derail the democratic consolidation process in Spain, unlike in Russia and other newer democracies that witnessed repression and exclusion of ethnic minorities. Linz and Stepan term the Spanish democratic transition case 'paradigmatic' because of its unique characteristics.[333] An authoritarian regime-initiated transition under tremendous pressure from society and continued the cultural work of a civil society before and during the transition. Spain used its lessons of civil war to promote further transition and problems of diverse ethnicity and nationality as well as the democratization, all at the same time.[334]

India's political leaders, after independence in 1947, faced the challenge of forming a government to satisfy people diverse in caste, religion, culture, ethnicity, language and class. There was a strong demand of good governance and effective development from the people at the grass roots, but nation-building was the priority of the political leaderships. They encountered tough challenges particularly due to a vast territory and an extremely heterogeneous, pluralist, economically rural society.[335] Political leaders after independence, Jawaharlal Nehru in particular, adopted liberal

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332 Omar Guillermo Encarnacion, "Democracy and Federalism in Spain," *Mediterranean Quarterly* 15 no. 1 (2004): 58–59.

333 Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*, (Baltimore and London: John Hopkins University Press, 1996), 87–88.

334 Ibid.

335 Kushal Pal and Anita Aggarwal, "Dialectics of Democracy and Federalism in India," *International Politics* 3, no. 5, (2010):70.

democracy and federalism for the future socioeconomic structure of India. Indian political elites were already in trauma with the partition of sub-continent into two countries, India and Pakistan, based on religion. Additionally, smooth integration of princely states in the wake of independence from the British Raj and continental size nation-building with a large population of multiple identities left no other alternatives. The Unitary system of addressing those issues was out of the question because of opposition. Hence, democracy and federalism proved to be the sole political solution to managing India, a vast country with social and ethnic diversity.[336]

Spain and India, two countries with a lot of dissimilarities, have two things in common: multi-ethnic societies, and successful federalization and transition to democracy from an authoritarian/colonial past. Though every case is unique, these two cases establish the fact that democracy and federalism, or decentralization in a broader sense, are mutually supportive in pluralistic society. This chapter analyses the process of federalism and gradual institutionalization of democracy in each case. Furthermore, this chapter attempts to draw some lessons for consolidation of democracy in Nepal.

B.   SPAIN: A CASE OF DMOCRATIC FEDERALISM

Despite complications of overlapping levels of representation and regional politics based on nationalities and ethnic lines, Spain is a case of successful federalization of a multi-ethnic state. It took the process of democratization forward, establishing federal institutions without jeopardizing its territorial integrity. Contrary to the case of the Soviet Union, Czechoslovakia and Yugoslavia—where disintegration, chaos and protracted civil war loomed over years—Spain managed its problem peacefully by means of federalization, dividing the country into self-ruled units. Spain adopted a constitutional process to address the demand of all ethnic and culturally diverse groups, keeping the democratic norms alive.[337]

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336 Ibid., 71.

337 Encarnacion, "Democracy and Federalism," 61.

1.   Ethnic Diversity of Spain

Language had the main role in the Spanish cultural diversity. Though Castilian Spanish was the dominant language throughout the country, it is believed that one fourth of Spanish used to speak a mother tongue other than Castilian in the late 1980s. Ethnic group boundaries do not coincide with administrative jurisdictions. As a result, diversity becomes more complex to determine. The native tongues, other Iberian languages, served mostly for the informal communication; whereas, Castilian continued to be dominant in formal and official use.[338] Besides dominant Castilian, there were three distinct peripheral ethnic groups, possibly, whose historical existence was older than state. Catalan was the first, Galician second and Basques was third in terms of their respective sizes. Basque drew the attention due to its influence in Spanish politics and society in late 1980s by its violence struggle against Spanish state. Catalans and Galician were less violent than the Basque. Additionally, Andalusia in the south was a center of fragmenting regionalism. Gypsies were very negligible in numbers, but represented a troublesome and depressed cultural minority in Spain.[339]

2.   Political History of Spain

Spain is one of the oldest, traditionally centralized states in Europe with ethnic and linguistic diversity. The project of federalization that materialized after the end of Franco's authoritarian regime, in fact, was not the first but the third endeavor to institutionalize federal structure in Spain. First, during 1873–74, Spain was declared a republican confederation (First Republic), possibly due to the direct influence of the liberal progressive upsurge of the nineteenth century. Republican leaders actually planned for 17 states (13 peninsular and 4 overseas) with their separate constitutions and legislation.[340] This could not be implemented and remained on paper as it attracted serious criticism and strong resistance from the

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338 Eric Solsten and Sandra W. Meditz, ed. *Spain: A Country Study*, (Washington: GPO for the Library of Congress, 1988), accessed November 24, 2012, http://countrystudies.us/spain/35.htm

339 Ibid.

340 Encarnacion, "Democracy and Federalism," 63.

wider range of societal and political forces. Consequently, the first attempt of federalization collapsed with the military rebellion against it in 1874.[341]

The second effort for federalization, 'The Second Republic,' was considered the first deliberate attempt. It was carried out by a diverse coalition of leftist parties from 19311939.[342] Republican leaders granted Basque and Catalonia self-rule in haste. They were all set to create a third autonomous region, Galicia. These politically unplanned and hasty steps dragged Spain into catastrophic and tragic civil war and into ethno-political violence that took the lives of nearly a million people. The political consequence of this catastrophe meant that Spain was ruled by Franco's authoritarian regime, a dictatorship from 1939 to 1977. Franco ruled the country as a centralized state, successfully rallying forces—military, Catholic Church, traditional conservatives and nationalist—behind him. The federal structures, political parties and trade unions, Franco believed, were the root causes of civil war. Franco perhaps believed that the multiple nationalities and ethnic diversities of Spain were the sources of civil unrest and separatist movements. Hence, at the very beginning, he abolished the federal set-ups/institutions, and banned political parties, including all kinds of trade unions, to strengthen his regime.[343]

3.   Issues of Federalism and Democracy in Spain

The territorial dimension of Spain in terms of distinct ethno-territorial entities were strengthened in the19th century along with a process of industrialization in Catalonia and the Basque region. Consequently, elements of distinction among ethnic communities prevailed despite several attempts at nation-state harmonization. The subsequent process of state-building could not guarantee the meaningful integration of the existing ethnic communities.[344] The permanent dispute between the center and the periphery of Spain was the product of traditional, political and economic dissimilarities.

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341 Ibid.

342 Encarnacion, "Democracy and Federalism," 63–64.

343 Ibid.

344 Luis Morena, "Ethno Territorial Concurrence and Imperfect Federalism in Spain," *Working Paper 93–10, Instituto de Estudious Sociales Avanzados (CSIC)* (1993): 3, http://digital.csic.es/bitstream/10261/2010/1/dt-9310.pdf.

Despite being the most dynamic economies, Catalonia and the Basque—from northern peripheral Spanish ethnic communities—enjoyed very little influence in the state's political affairs. The provision of a regional model of territorial organization in the Spanish constitution (1932) provided ethno-territorial autonomy to Catalonia, the Basque region and Galicia. Nevertheless, hyper-centralization under Franco's authoritarian regime managed to destroy the emerging consensus of territorial consideration of various Spanish nationalities.[345]

Franco's regime received wider support from other democratic countries, especially the U.S., due to the cold war. An agreement between Franco and Eisenhower in 1953 strengthened the centralized authoritarian regime. It adopted a policy of "sacred unity of the homeland " and "Castilian spirit " of universal language and ideals. Franco imposed homogeneous and powerful centralism for almost 40 years, banning all political institutions of self-governance. He also banned the use of minority languages, including Basque, Catalan, and Galician. Interestingly, ethnic minorities such as, Basques and Catalans, surprisingly with the highest living standard in Europe, had never been economically marginalized. They only became victims of political and cultural marginality. The Spanish civil war was never between regions, but between the center and the ethnic minorities concentrated in some regions. Unlike other cases, such as Africa, the Middle East and Eastern Europe, an element of ancient hatreds was not significant in Spanish context.[346]

By the end of the 1970s, the popular grievances reached a climax in the peripheral areas of Spain. As a result, there was an aspiration of self-governance not only from historical nationalities—Catalonia, the Basque region, Galicia—but also from the Canary and Balearic Islands. The transition to democracy started immediately after the death of Franco in 1975, with the broad understanding of political parties in regards to self-government and political decentralization. Though the Spanish constitution of 1978

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345 Ibid., 4.

346 Encarnacion, "Democracy and Federalism," 66–67.

emerged from the wider consensus among the political parties, there was clear cut lack of an agreed model of decentralization ensuring the home-rule for all Spanish nationalities.[347]

While adopting a federal structure in Spain, the political conflict over domination of a single language was also addressed in 1977. The policy of regional bilingualism provided the regional languages, including Euskera (a Basque language), a co-official status in their respective autonomous regions, and substituted the Castilian mono-lingualism. Since it aimed to end the monopoly of a single language, it produced a serious debate over the constitutional rights of regional governments to promote regional languages. In addition, the issue of linguistic discrimination surfaced due to the requirement of a regional language for government employment in the region where a majority of the population was non-native, particularly minorities such as Andalusians residing in Catalonia.[348]

The arrangements under the new democratic constitution were not specifically aimed at undermining the military and their professional prerogatives. Some military leaders perceived that self- rule of regions weakened the central state, and that could be the point of departure towards disintegration of the country itself. So, they, some military factions opposing autonomy of Catalans and Basques, attempted a coup in 1981. The radical separatist group *Euskadi Ta Askatasuna* (ETA) of the Basque region was not convinced that the regional autonomy was stipulated in the constitution. It started a violent separatist movement for outright independence of the Basque region from Spain. Unlike in history, military hardliners and radical separatists could not derail the overall process. Hence, federalization and democracy in Spain continuously flourished.[349]

4.   Democratic Federalism: A Solution to Ethnic Diversity

The promulgation of a democratic constitution in 1978, a fresh step of transition to democracy after the long authoritarian regime, was the third attempt for federalism in

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347 Morena, "Ethno Territorial Concurrence," 4–6.

348 Encarnacion, "Democracy and Federalism in Spain," 60–61.

349 Ibid., 65.

Spain. Omar Guillermo Encarnacion describes the democratic constitution (1978) one that "encapsulates an exquisitely ambiguous compromise that recognizes the historic indissoluble unity of Spanish nations together with the existence of multiple Spanish nationalities."[350] Since any constitution is a political agreement, the constitutional provisions in Spain tried to address the concerns of nationalist loyalty to Franco and regionalists, particularly from Catalonia and Basque.

Spain confirmed the conventional notion of federalist distribution of political and decision making authority between central government and federal state. The democratic constitution (1978) did not directly refer to Spain as a federal state. It took Spain on the path of federalization through institutional innovations, such as regional self-governance. Omar Encarnacion argues that the constitution was carefully drafted without mentioning the word federalism because there was fear of offending the military and nationalist supporters of the Franco regime as they were historically supporters of a unitary state.[351] A provision written in Article 2 of the constitution actually opened the door for self-governing units.[352] This provided Spain a constitutional recognition of nation of nations, but this self-governance in many regions made it a hybrid state rather than a complete unitary or federalist state.

The unitary nature of Spain was very well represented because regional communities did not have any direct decision-making role in the Centre. The autonomous communities did not enjoy the power to amend the constitution and to alter the powers enjoyed by the center. Although Spain adopted a federalist system of governance (though not federalist in name), it successfully created 17 autonomous communities within less than a decade of the democratic journey. Such autonomous regions enjoy power of administration in several fields, such as education, social-cultural law enforcement and

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350 Ibid.

351 Ibid., 72–73.

352 Article 2 of constitution says "The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards; it recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed, and the solidarity amongst them all." See, Spanish Constitution-1978, Article -2 in http://www.wipo.int/wipolex/en/text.jsp?file_id=185360

taxation policy. [353] The process of federalization in Spain had come through a series of agreements and pacts. It validates the notion that federal arrangements can be achieved through various agreements and supportive actions of successive governments.[354]

All Spanish ethnic/nationality regions except the Basque region sorted out the issue of self-governance with great mutual respect and without any violent struggle. Catalonia—a region claiming to be a separate nation for a long time—and Galicia—a region with inherited distinct ethno linguistic identity—were accommodated in the federal structure without any impediments. Notwithstanding the tense relationship at times with the central government and the complex arrangement of self-rule to the regions, political violence did not play a deciding role in acquiring regional autonomy through the process of federalization in Spain except in the case of the Basque region. Though socialist government from 1983 to 1987 came heavily on ETA's provocation and got criticized by human rights organizations, the democratic consolidation and policy of decentralization was never compromised.[355] The survey data of Freedom House reveals that the democratic persistence of Spain is noteworthy because Spain was rated *not free* to *partly free* after Franco, yet free after the election in 1977. Since then, Spain has remained in the free category and in recent years its ratings regarding civil and political rights stand at par with older and reputedly consolidated democracies, such as the United States and other European countries.[356] The Spanish case of federalism and transition to democracy has some uniqueness in the following aspects:

a.   Elite-Led Dual Transition

Spain is a case in which the country succeeded to a *dual transition* from an authoritarian regime to democracy, and a more structured economic reform from fragile

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353 Encarnacion, "Democracy and Federalism," 72.

354 Moncloa Pact in 1977, signed between UCD government and all political parties, opened the pre-autonomy process to address the demand of Basque and Catalan, and combined economic measures with political actions. The *Acuerdo Autonomico* -1981, between UCD and PSOE basically was aimed to harmonize the process of granting autonomy. For further details, see Robert Arganoff, "Federal Evolution in Spain," *International Political Science Review* 17 no. 4 (1996): 390–393.

355 Encarnacion, "Democracy and Federalism in Spain," 62–63.

356 Freedom House, *Freedom in the World,* accessed December 16, 2012, http://www.freedomhouse.org/reports .

economy. The greater vision of the political elites and electoral sacrifice of the first ruling party, in particular, played a significant role for this dual transformation of Spain.[357] Nancy Bermeo describes the Spanish model as the transition based on sacrificial sequencing and ruling party strength, and she states:

> Concentrating on the task of consolidating the transition to democracy, the first ruling party delays many of the potentially destabilizing aspects of structural reform and uses the state's economic resources to mitigate political conflicts. As a consequence political problems worsen, the ruling party is punished at the polls, and a new party is voted into office ... a new phase of the dual transition begins because this second party has the autonomy to take the political risks that a deepened structural adjustment program involves. Spain's successful dual transition thus rests on an unintentional sequencing of tasks between the nation's first two ruling parties. The first party concentrates, out of necessity, on democratic consolidation while the second, electorally stronger party, concentrates on economic reform.[358]

The Spanish case is an elite-led transition, in which King Juan Carlos contributed an exemplary role towards democratization followed by Adolfo Suarez, who led the first democratically elected UCD (Union Democratic Center) minority government. Despite credibility problems of the UCD government, due to its long association with Franco's regime and an unpredictable situation due to regional separatist and labor movement, Suarez contributed much the democratic consolidation of Spain.[359]The political environment, at the time of the Spanish Socialist Party (PSOE) won the election in 1982, was relatively stable as a democratic constitution was already in place and political parties, including civil societies, were optimistic in democratic consolidation.[360]

Prime Minister Suarez in 1977 managed to convince regional leaders, such as Catalan leader Joseph Tarradellas, to postpone their self-rule agenda until the national democratic institutions matured. This provided the full leverage to push forward the

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[357] Nancy Bermeo, "Sacrifice, Sequence, and Strength in Successful Dual Transitions: Lessons from Spain," *The Journal of Politics* 56 no. 3 (1994): 601.

[358] Ibid., 602.

[359] Ibid., 604.

[360] Ibid., 619.

process of democratic consolidation. Contrary to all these positive moves with national political consensus, the extreme pro-independence group, mainly the ETA, launched a violent political struggle. Those extremely violent activities actually provided moral incentives to the government and opposition parties to work together for the promotion of democracy in Spain. The culture of wider political consensus was well sustained till the mid-1980s. By the time, Spain was well ahead in the journey of democratization and federalization.[361]

b. Consociational Politics

Since Spain was in a dual political transition—from an authoritarian dictatorship to democratic system and from a strong unitary state to a decentralized federal structure—a higher level of political consensus was vital to consolidate the fragile democracy. Luis Moreno states,

> Conservatives, centrists, nationalists, socialists, and Communists hammered out an agreement of a type of quasi-federalism or asymmetrical federalism that would not jeopardize the constitutional consensus on the issue of decentralization. It proved to be among the most delicate constitutional concerns to be agreed upon in the period after the demise of Francoism (1975-1978).[362]

The historic Moncloa Accords (1977/78) were the outcome of high level of political consensus in Spanish history of post-civil war.[363] All political elites were committed to privileging democratic consolidation. According to those Accords, all other contentious tasks, including economic reform and institutionalizing the federal system, would not be allowed to overshadow the democratic leap forward. The crux of the Accords was to create broader political consensus among key players on political and

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[361] Encarnacion, "Democracy and Federalism in Spain," 69–70.

[362] Luis Moren, "Federalization and Ethno-territorial Concurrence in Spain," *Publius* 27, no. 4 (1997):70.

[363] Moncloa Accord was brokered by first democratically elected Prime Minister Adolpho Suarez of Union Democratic Center. It is the agreement to settle all conflicting issues through peaceful manner between central government and parties in opposition. This accord encompassed almost all political players/entities of that time ranging from communist to democrats and hard liner nationalist to die-hard regionalist. Collective commitment in peaceful settlement of any political and economic problems looming during democratic transition was the icon of the Accord. For further details, see Omar G. Encarnacion, "Federalism and Paradox of Corporatism," *West European Politics* 22, Issue2 (1999).

economic issues, such as inflation control and military reform at the national level so that drafting of a new democratic constitution would go unobstructed. Moreover, this nationwide political consensus led the country towards democratic consolidation. It not only ensured that federalization and democratization could go together, but they were complementary to each other.[364]

Consociation politics in Spain during the post-Franco period got positive encouragement from several standpoints. First, there was significant pressure from international players for a peaceful settlement of domestic conflicts. Europeanization through the E.U. and N.A.T.O. actually overshadowed the issue of regionalism because Spain as a stable democratic state became prerequisite to get membership of N.A.T.O. and E.U. Second, the culture of political compromise and accommodation based on a broader consensus played an instrumental role for the transition of democracy. Third, the Moncloa Accords—wider socio-political accords from the entire political spectrum—committed the country to a democratic regime and peaceful settlement of any disputes. Finally, varieties of political institutions, including credible bureaucracy, civil society, and political parties emerged, and they played a positive role in promoting the policy of cooperation and compromise to address the issues originating from the multi-ethnic settings of Spain.[365]

c. *Asymmetry in Federalism*

The Spanish case is an example of asymmetric federalism. The historic three regions were granted the highest degree of self-rule; whereas, new autonomous regions, such as Aragon, enjoy the least autonomy. Each federal state/region in Spain had its own degree of negotiated autonomy between the region and the central Spanish state. There was a provision for periodic revision and revision needs to be requested by the regional authority. The central government had been revising the federal system for the devolution of some kind of administrative power to the federal autonomous regions. The

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[364] Encarnacion, "Democracy and Federalism in Spain," 68.

[365] Omar G. Encarnacion, "Managing Ethnic Conflict in Spain," *Orbis* 47, issue 1(2003): 101–102.

Organic Law for the Harmonization of the Autonomy Process (OLHAP)-1982 was one attempt of the Spanish central state to reduce the imbalance of administrative power among regions.[366]

The Spanish case, however, was a pragmatic evolution in federalism with certain contradictions suited to the special historical context of a multi-ethnic/nationalities country. The contradictions in the Spanish constitution and gradual decentralization of centralized power with full asymmetry among autonomous communities and regions supported the description of Spain as 'a covertly federal state, the hybrid federalism, an imperfect/incomplete federation.'[367] Nevertheless, the peculiar process of federalization in Spain succeeded in addressing the problems associated with a deeply-rooted unitary government and a diverse and distinct ethno-linguistic plurality in the specific context so that it emerged as a modern democratic state with regional autonomy.[368]

d.   *Constitution for Unity in Diversity*

Like all constitution should be, the Spanish constitution (1978) is a document of political negotiation and compromise, fused unity and pluralism. It adopted the quasi-federal principles in a state structuring.[369]The framers of the Spanish constitution showed their reluctance to label the Spanish system "a federal " because of its possible diverse implications. On one hand, unreformed nationalities perceived the federal country a larger state of several independent states; whereas, Basque and Catalan activists were suspicious that equal treatment to all units under a federal system would undermine their discrete identity and self-governing capacity. So, Article 145.1 confirmed the power of treaty and agreement of a central government to avoid the probable problems of claiming independence from the Spanish nation as faced during the First Republic. The Spanish constitution, however, rested on the twin pillars of national

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[366] Encarnacion, "Democracy and Federalism in Spain," 71.

[367] Encarnacion, "Federalism and Paradox," 96.

[368] Encarnacion, "Democracy and Federalism in Spain," 73–74.

[369] Smith, *Mapping the Federal Condition,* 7.

unity and plurality. Though balance between diversity and unity was always a challenge, the national unity—as Article 138 stresses, an adequate and just economic balance between Autonomous Communities (ACs)—was strengthened by the principle of solidarity among the regions. It granted no economic and social privileges based on status of ACs.[370] The main focus of constitution framers in Spain was to cast the system as one that maintains unity and addresses the issue of diversity in a meaningful way.

5. Role of Military in Democratic Federalization

Military intervention in politics, until the end of the 1970s, was a regressive phenomenon in Spanish history. Adrian Shubert argues that "the presence of military in politics has been a constant in Spanish politics since the end of the Napoleonic wars…However the nature of this military intervention varied."[371] The Franco regime (1939–1975) was the result of military revolt against the civilian government. Earlier, General Primo de Rivera had ruled the country nearly a decade as military dictator from 1923.[372]

The armed forces during the Franco regime were primarily the regime's safeguard. They were isolated not only from society, but also from the international arena. There was lack of assertive military leaders to represent the armed forces as a whole after the Franco regime, and King Juan Carlos acted a legitimate successor in power. The King played a moderate and firm role, so he managed to transfer loyalty from Franco to him.[373] Article 8 of the democratic constitution of Spain (1978) defines the mission of the military as defending the constitution of the country. The democratic election of Congress in June 1977 for the first time stopped the military officers from appearing in parliament and playing a direct role in politics. By the end of 1980, institutionalization and legislative reforms of the military had achieved

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[370] Arganoff, "Federal Evolution in Spain," 390.

[371] Adrian Shubert, "The Military Threat to Spanish Democracy: A Historical Perspective," *Armed Forces and Society* 10 (1984): 530.

[372] Ibid.

[373] Jose Garcia Caneiro and Eduardo Arranz Bueso, "The Military Transition to Democracy in Spain: Looking for a New Democratic Soldier," (Research Paper no. I/1-2007, Peace Research Institute Frankfurt (PRIF), 2007), 8.

significant progress. There was still ambiguity, however, in practice and interpretation of the provisions. Caneiro and Bueso state,

> The commander in Chief of military was the King, and Government was the one that direct the Military Administration. Concretely, the President was responsible to direct and to coordinate the Policy of Defense and the Minister of Defense who organized and executed the Military Policy. The Board of Chiefs of Staff (JUJEM) composed for the Chiefs of Staff of the three Branches of the Armed Forces was the collegiate superior organ of the chain of command should be subordinated to executive power.[374]

The economic crisis of the seventies made the situation bad to worse in Spain because the country's priority was political reform, not economic reform. As a result of massive inflation, unemployment and depletion of resources, the armed forces did not see any hope for improvement. There was clear division in the military so that some were willing to break the law and military discipline. Caneiro and Bueso see the attempted coup in 1981 as a product of internal division in the armed forces. They argue,

> What happened with the eleven commands of the Military Regions (nine at the peninsula and two at the islands) was a significant indicator of the internal division in the Armed Forces. A region was joined to the coup, three were pronounced clearly against it, and the others did not define their postures.[375]

The professionalism and effectiveness of the Spanish military was the great question even after the Franco regime. Mostly the allocated budget of defense was for salaries and other office administration purposes. Furthermore, besides the major portion of defense budget being dedicated to salaries, civilian official equivalent to military rank, even in 1982, enjoyed a higher salary, almost double in some cases, than the military. As a result, Shubert argues that *Moonlighting* was a common phenomenon in the military, and records reveal that two-thirds of officers were forced to have second jobs to maintain them. This was mainly due to the heavily swelled size of the officer corps—an unresolved historical problem since the nineteenth century.[376]

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374 Ibid., 10.

375 Ibid., 13.

376 Shubert , "The Military Threat to Spanish Democracy," 534.

The first elected democratic government of Spain had a variety of challenges, in addition to military reform: promoting social harmony, crafting constitutional framework, modernization of national economy and integration to Europe. They were interrelated as well as interdependent.[377] Shubert argues that the Spanish military tolerated the transition mainly because it propounded the leadership role of King Juan Carlos, keeping the military in confidence for peaceful and orderly political transition and avoiding any abrupt rupture.[378] He states, "The King's resolute defense of democracy has deprived future conspirators of the hope of his support."[379]

Spanish transition to democratic federalism after the end of Franco regime did not face any significant opposition from military because of exemplary role of King Juan Carlos and simultaneous military reforms along with political transition. Thus, democratic transformation of military with past of frequent interventions in national politics and democratic transition of any country should go concurrently, and it greatly depends on wise decisions of political leaderships.

C.   INDIA: A CASE OF DEMOCRATIC FEDERALISM

The democratic constitution of federal union of India was enacted in January 1950. The elites of India dominated the decision-making process and constituted the

system of federal democracy with a center strong enough to impose decision onto states. Kushal Pal and Anita Aggrawal argue,

> Indian leaders and makers of the constitution opted for democracy not only because of their liberal orientation imbibed from the western

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377 Rafael Mortinez, "The Democratic Consolidation of the Military Administration: Objectives to be Met in Light of the Spanish Experience," *Arab Reform Initiative* (2012): 2, accessed November 13, 2012, http://www.arab-reform.net/democratic-consolidation-military-administration-objectives-be-met-light-spanish-experience

378 The funeral ceremony of military governor of Madrid (killed by ETA on January 1979) unexpectedly turned into serious demonstration of right wing with involvement of few military officers, and crowd chanted the slogan Spain yes, Democracy No . Then King Juan Carlos had publicly called the army to maintain order and discipline cautioning that an emotional excitement ultimately degrades the overall image of armed forces and process of democracy. For further details, see Shubert, "The Military Threat to Spanish Democracy," 537–539.

379 Shubert, "The Military Threat to Spanish Democracy," 541.

education on one hand and the consensus developed during the national movement on the other, but also because they believed no other form of government could work and gain legitimacy in this multi-regional, multi-religious, multi-lingual, multi-caste, and multi-ethnic society.[380]

There was consensus on the British model of parliamentary democracy within the Congress party—a major driving political force of that time. Furthermore, the Nehru committee[381], comprising all political parties, went along the line of the Congress party. They rejected the presidential democracy because of fear of degenerating into a dictatorship and lack of strong party-culture with democratic ethos. Thus, India adopted the British model of parliamentary democracy as a legacy of colonial rule because there were no other opinions surfaced in political debate for it.[382]

The three pillars of Indian federalism—strong center, flexibility and cooperative federalism—were the derivatives of historical experiences suited to address the Indian context of feudal societal structure and diverse identities with wider variations.[383] The Indian constitution adopted the process of accommodation at greater extent so that vast territory with ethno-cultural diversity remained integrated into the Indian Union. The constitution-making process followed the culture of consensus that had embedded in the Indian tradition of *Panchayat*, where verdict was given based on consensus and contesting parties feeling a win-win situation. The technique of accommodation concession and compromise were applied during the process that:

> Those opposed to socialism were accommodated by excluding the word *socialism* in the preamble…Hindu- nationalists were accommodated by excluding the word *secular*. The landlord and capitalist classes were accommodated by giving them right to property. Gandhians were accommodated through directive principles of state policy. Minorities were accommodated by giving the right to educational institutions and maintain their own culture. Princes were accommodated by giving them

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[380] Pal and Aggarwal, "Dialectics of Democracy," 72.

[381] A committee of the All Parties Conference chaired by Motilal Nehru with his son Jawaharlal acting as secretary to work out the details of the constitution in 1928. There were nine other members in this committee including two Muslims.

[382] Pal and Aggarwal, "Dialectics of Democracy," 75–76.

[383] M.P. Jain, "Some Aspects of Indian Federalism," *Max-Planck-Institut fur ausländisches öffentliches Recht und Völkerrecht* (1968): 303 accessed December 17, 2012, http://www.zaoerv.de/28_1968/28_1968_2_a_301_364.pdf.

privy purses and by constituting part B states and by making the ruler of largest state as the Rajpramukh (A position and status equal to the governor of the state) of that part B state. Jammu & Kashmir in general and National Conference in particular were accommodated through article 370 that gave special status to Jammu & Kashmir. Schedule castes were accommodated by giving them reservations for 10 years. The Hindi speaking people were accommodated by making Hindi as a national language and non-Hindi speaking areas were accommodated through the provision that the English should be retained as the official language for 10 years.[384]

1.   Complex Picture of Indian Society

India is the seventh largest country in terms of area and second most populated country of the world. India, a federal republic consisting of 28 states and seven union territories has been governed through a parliamentary form of democracy. The picture of Indian society is complex and diverse. There are 114 languages spoken at least by 10,000 people and out of which 22 are spoken at least by a million people. There are 461 indigenous groups and more than 216 dialects in India. Although estimation reveals 850 languages and 1652 officially listed dialects, 22 languages have acquired constitutional recognition for political, educational and regional purposes.[385]

Though the majority of populations are from high castes, there are 16.2% scheduled castes and 8.2 % scheduled tribes (Indigenous people) of the total population. Distribution of scheduled caste and tribes are so diverse that Punjab has the highest number of scheduled caste with 28.9%; whereas, Mizoram has the lowest with 0.03%. Similarly, Mizoram has 94.5% that ranks highest in proportion of tribes; whereas, Goa stands as lowest with 0.04%. The religious picture is dominated by Hindu with 80%, but Muslim comprises 13.4%, Christian 2.3%, Sikh 1.9%, Buddhist 0.8% and Jain 0.4%.[386] Despite government efforts of land reform and development, still in the mid-90s, 90% of

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[384] Pal and Aggarwal, "Dialectics of Democracy," 77–78.

[385] Bishnu Pathak, "Federalism: Lessons from India," *Transcend Media Service (Solution-oriented Peace Journalism),* (2009):1, accessed November 18,2012, www.trenscend.org/tms/2009/06/federalism-lessons-from-india/.

[386] Office of Registrar and Census Commissioner, MOHA, Government of India, *India at a Glance: Statistics on Demographic and Socioeconomic Characteristics*, (2001), accessed November 27, 2012, http://www.censusindia.gov.in/Census_Data_2001/India_at_Glance/glance.aspx.

scheduled castes were found living in rural areas, and 50% of them were landless agriculture labor.[387]Therefore, ethnic distribution in India was complex and single basis of identity was very hard to adopt for federal structure throughout the country.

The issue of minorities and ethnic diversity in India was essentially multi-dimensional in nature, and this was more complex to address as it had been envisaged by political elites. Jonathan Porter argues:

> The different ethnic groupings within India are in themselves very stratified. Political power for the elites in Punjab will not necessarily pacify those lower down the social hierarchy. India's history as a civilization defined by castes denotes a clear stratification even within social groupings, thus undermining the effectiveness of any attempt to politically include or give state resources to minorities.[388]

2. Political Journey of Federalism and Democracy

Federalism in India has a history dating back to colonial rule. The constitutional development process started with the Indian Council Act of 1861. The process of gradual federalization proceeded with the Indian Council Act of 1892 & 1909; Government of India Act of 1919 introduced diarchy governing system. The GOI Act of 1935 granted provisional autonomy creating federal courts and anticipated the Indian federation incorporating British India provinces and several princely/satellite states. Similarly, the Cripps Mission as well as the Cabinet Mission Plan in 1940s recommended federalism a prescribed solution of growing Indian unrest. The political elites responsible for constitution-making decided India should have federal system for its sustenance and continuation. After the declaration of independent India in 1947, federalism served as a bind for more than 500 princely states and various ethnic groups with diverse identities into one nation, despite the partition of sub-continent on the basis of religion as an identity.[389]

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[387] James Heitzman and Robert L. Worden, ed. *India: A Country Study*, (Washington: GPO for the Library of Congress, 1995), accessed January 17, 2013, http://countrystudies.us/india/89.htm.

[388] Jonathan Porter, "Federalism and Consociationalism in India," *e-International Relations,* March 5, 2012, accessed November 28, 2012, http://www.e-ir.info/2012/03/05/federalism-and-consociationalism-in-modern-india/

[389] Pal and Aggarwal, "Dialectics of Democracy," 76.

India opted for the Westminster model of parliamentary democracy from the available three options: parliamentary, presidential and participatory types of democracy. The constitution drafters, possibly, had considered the same experiences of working under the Act of 1919 and 1935 along with the daily and periodic responsibility of the government and its accountability to parliament.[390] The role played by the national political leaders, mainly Nehru, Rajendra Prasad, Ambedkar, Sardar Patel and Maulana Azad, believed in the highly-acclaimed consensus. Kushal Pal and Anita Aggarwal argue, "…the constitution was made when India was having euphoria of independence and trauma of partition. In such a situation the possibility of consensus building became easier."[391] The Indian case established the dialectical relationship between federalization and democratization as they were complementary to each other. Nehru, who ruled independent India for more than two decades, followed the principle of accommodation and consensus that flourished democracy and federalization.[392] Considering a peculiar socio-cultural set-up of Indian society, democracy would not be possible in the absence of a federal polity because it rooted the democracy through a power structure at various levels of governance: national, state, local and even to several small ethnic, religious, cultural and linguistic groups/minorities.

3.   Democratic Federalism: A Solution to Ethnic Diversity

The Indian National Congress since 1917 started to form a linguistic-based organization in order to mobilize large masses against colonial rule. Gandhi was also in favor of linguistic provinces than administrative zones formed by colonial rule based on their divide and rule philosophy. Nehru, discouraging separatist tendency, focused the security, unity and an economic prosperity of the country. Nevertheless, he reorganized provinces on linguistic lines due to massive mobilization in favor of a language-based

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[390] Ibid., 75

[391] Ibid., 78.

[392] J. Nehru always took Chief Ministers into confidence while appointing governor of the states. He kept informed about central policy and stance writing letters to CMs every month. Nehru not only promoted the inner-party democracy, but also agreed reorganization of states in 1956, further division of Bombay in 1960, and introduced Panchayat Raj in 1959. These step further strengthened the federalization and democratization. See, Pal and Aggarwal, "Dialectics of Democracy," 78–79.

division and, most importantly, death of Sriramulu—Gandhian Potti—after a hunger strike for nearly two months in 1952. Subsequently, India moved into the path of federalism with the formation of provinces, such as Punjab, J&K based on religion, the Northeast based on ethnicity, and so on.[393]

The chairmen of the Constitutional Drafting Committee, Ambedkar and Prime Minister Nehru, were leaning to a unitary state, but the Minister of Home Affairs, Sardar Patel, played a crucial role to adopt federalism in a new constitution. With the promulgation of a constitution in 1950, India constituted large federal states based on geo-political foundations, except Orissa (based on ethno cultural identity). Bihar and UP, in fact, enjoyed partial autonomy before the enactment of a new constitution. The State Reorganization Act-1956 formed eight new states (AP, Karnataka, Kerala, MP, Punjab, Rajasthan, Tamilnadu, and Tripura) on the basis of ethno-linguistic identity. Similarly, five more new federal states (Gujarat, Maharastra, West Bengal, Nagaland and Haryana) from 1960 to 1966; three more (Meghalaya, Manipur, Himanchal Pradesh) in 1971 and 1972, and Sikkim in 1975, were created based on ethno-linguistic identities. Three more states (Arunachal Pradesh, Goa and Mizoram) in 1987 based on ethno-linguistic and historical basis and the latest three states (Uttarakhand, Jharkhand, and Chattishgarh) were created based on territorial backwardness that counted a total of 28 states in India.[394] The State Restructuring Committee officially started its work in 1956, and so far 28 states and seven union territories are in place. Most of the states constituted based on linguistic coverage and ethnic identities, but recent states, such as Uttarakhand, Chhatisgarh and Jharkhand, were constituted based on relative backwardness to the mother state.[395]

The Indian Constitution (1948) confirmed the social structure and its cultural orientation. Various ethnic communities and aspiring nationalities, joining the Indian

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[393] Mahendra Lawoti, "Lessons from India," *Kathmandu Post,* December 25, 2009, accessed December 11, 2012, http://www.ekantipur.com/2009/12/25/Oped/Lessons-from-India/305081/.

[394] Pathak, "Federalism: Lessons from India," 3–4, http://www.transcend.org/tms/2009/06/federalism-lessons-from-india/

[395] Jayant Prasad, "Evolution of Federal India," *Kathmandu Post,* September 4, 2012, accessed December 11, 2012, http://www.ekantipur.com/the-kathmandu-post/2012/09/04/oped/evolution-of-federal-india/239242.html.

union, have been preserved as distinct entities in a multi-cultural mosaic. Political accommodation of socio-cultural diversities and competing aspirations has been achieved through power-sharing mechanisms. Multiple and cross cutting social fragmentation and scattered nature of demographic distribution, however, provides a shared feeling of minority to every community. [396] Indian federalism, transiting to thriving democratic country from colonial rule, has some distinct features.

a. *Strong Center*

Lack of adequate experiences and democratic institutions under the colonial rule made the Indian political masters, after independence, less confident and suspicious vis-à-vis success of democracy. As a result, they leaned towards supremacy of a strong center. Some special powers given to center and a number of other provisions actually made the form of government with features of a unitary system. Furthermore, center was constitutionally empowered with emergency powers in the wake of external aggression and internal crisis, including natural disasters and manmade conflicts. Hence, the Indian constitution was unique in nature as it had incorporated several features of unitary as well as federal system of governance. [397]

The Indian constitution of 1948 had envisioned the federal system based on a need of a strong center in federation to respond to emergencies due to war, socioeconomic consequences of industrial societies and any kind of disasters. A federation needs to be flexible enough to meet contemporary needs and to establish cooperative federalism for social welfares. Founding fathers of Indian constitution applied some innovative techniques, besides lessons learned from other federal systems of the world that made Indian contributions distinct and original. The turbulent history and partition in the eve of independence forced them towards a strong center to avoid further disintegration of the country. Growing hostility with Pakistan, along with the hot

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[396] Yogendra Yadav, "Federalism, Diversity& Minority Rights: What can We Learn From India," *Ethnic Nationalities Council(Union of Burma),* accessed on December 7, 2012, http://www.encburma.net/index.php/feature/54-feature/164-federalism-diversity-a-minority-rights.

[397] Pal and Aggarwal, "Dialectics of Democracy," 72–73.

issue of Kashmir and prevailing socioeconomic stagnation, validated the role of a strong center to maintain the status of unified country.[398] M. P. Jain argues,

> The present day Indian federalism is thus the product of two processes, that of disintegration of British India from a unitary to a federal system and that of assimilating the hitherto autonomous princely India with the rest of the country.[399]

Taking the lesson from federalism practiced in other parts of the world, the built-in mechanism of powerful center was there in the Indian constitution. The amending procedure of the constitution for the federal aspects not for fundamental rights is flexible. According to Article 368, any bill of amendments needs to go through both houses by majority of the total members.[400]

b.   *Spirit of Federalism in Constitution*

India is sovereign, secular, socialist, democratic republic, and structurally it is union of states. The very nature of union is unalterable and inviolable, but it is not the case of the Indian states and their boundaries. We cannot find a single word of federal or federalism in the entire text of Indian constitution, but the verdict of the Supreme Court in 1994 clearly states, "India's states are neither satellites nor agents of the center and have an important role to play in the political, social, educational and cultural life of the people of the Union."[401] The issue of Center State power-sharing in Indian federalism had been a controversy since its inception. B. R Ambedkar, chairperson of the Constitution Drafting Committee, responding to the criticism of the draft constitution as too centralized and states are no more than the municipalities, clarified the foundation of center state relationship,

> The basic principle of federalism is that the legislative and executive authority is partitioned between the Center and the state not by any law to be made by the center but by the constitution itself. This is what our

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[398] Jain, "Some Aspects of," 308.

[399] Ibid., 309.

[400] Ibid.

[401] Prasad, "Evolution of Federal India."

constitution does …The center cannot, by its own will, alter the boundary of that partition. Nor can the Judiciary.[402]

The Indian constitution had arranged the Finance Commission and the Planning Commission to regulate the fiscal matters of the states. The executive channels through union ministries provide fiscal resources to state counterparts. The Finance Commission is the key institution to maintain fiscal balance between center and the states.[403] This strengthens the notion of federalism in economic and financial practice.

c.   *Federalism for Unity and Integrity*

Jayant Prasad, the current Indian Ambassador to Nepal, argues that Indian federalism is more than a constitutional construct. Rather, it is a dynamic and evolutionary idea that contributes to national integrity. The diverse ethnic and socio-cultural pluralist impulse is getting stronger and well-articulated within the constitutional parameters.[404] Strengthening the national integrity apparently became the high priority national project after the independence because of growing hostility with newly-born Pakistan through painful partition. Furthermore, there was growing aspirations in princely states that made compulsion to established strong centralized state. The chain reaction of ethnic violence on the partition issue, communist uprising in Telengana, and INC's social and economic roadmap, made Indian orientation towards unitary bias. Jayanta Prasad, describing the merits and uniqueness of Indian federalism, argues,

> The Indian context may not be perfect text. It has, however, a distinct merit, that of its adjustable capacity by the facility of easily amending its provisions … the federal structure has helped maintain India's unity and integrity. Indeed, India's relative stability and progress would not have been possible without the institutions to promote democracy and federalism.[405]

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402 Ibid.

403 M. Govinda Rao and Nirvikar Singh, "The political Economy of India's Fiscal Federal System and its Reform," *Publius: the Journal of Federalism* 37, no. 1(2007): 28-29.

404 Prasad, "Evolution of Federal India."

405 Ibid.

Constitutional construct of Indian federalism with strong center and dynamism in practice has strengthened the unity of the country. Democratic institutions and its rightful use in the structuring of the country have actually contributed to transform India into a matured democracy with vibrant economy.

d. Secularism and Reservation for Backward People

The secular India, despite domination of Hindu majority in socioeconomic life of the country, brought an equality and harmony among religious groups, notwithstanding occasional communal riots in some parts of the country. Similarly, the policy of reservation to *Dalits*, tribal and socially backward community in education, legislature and government apparatus has made grass root people not only benefitted, but it developed sense of ownership of a democratic system. Mahendra Lawoti argues in his paper,

> Of course reservation has faced backlashes from upper caste Hindus; but Indian democracy have survived the revolt, which was avoided through *Dalit* cooptation that was bound to come after the *Dalits* became mobilized, especially if they were continued to be excluded?[406]

e. Political Consensus

The federalization of the country and consociation politics to manage the growing political and cultural aspirations of citizens in multi-ethnic societies, are always awaited by the people. The rights and leverages permitted to such ethnic/religious group, however, may eventually become volatile and dangerous for unity and cultural harmony of the country.[407] Consociationalism, in the true sense, would demand proportional representation of all minorities, but it was almost impossible in Indian case with vast ethnically diverse society. So, federalism with three levels, in which each state organized itself as federation of minorities within, served as the ideal solution.[408] The consociational political arrangements did not appear in Indian constitution, but distribution of cabinet portfolio based on proportional approach and broader political sharing in practice made the

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406 Lawoti, "Lessons from India."

407 Graham. Smith, *Federalism: The Multiethnic Challenge*, (New York: Prentice Hall, 1995), 4–5.

408 Porter, "Federalism and Consociationalism."

Indian political practices more inclined to consociational theme.[409] Furthermore, the dominant political party—Indian National Congress—had given minorities' mainly linguistic, ethnic, and religious groups, an overriding right while formulating religious and social legislation. This also strengthened the notion of consociation politics that has been practiced.[410]

f.   *Asymmetry in Federalism*

According to Louise Tillin, there is *de facto*, but not *de jure* asymmetry in Indian federalism.[411] In the attempt to accommodate a wider range of diversities of Indian society and processes of political accommodation, the Indian constitution contained some features of asymmetry, particularly to accommodate Jammu and Kashmir, and the new states of the Northeast Region in the political mainstream of united India. Louise Tillin, however, argues that asymmetric provision in India does not provide any special protections of minorities, and it is totally different than in the case of Canada and Spain. Likewise, provisions of some kind of asymmetry had no significant role to strengthen India's ability to *hold together*. The Muslim personal law was not limited to territorially-concentrated religious/cultural groups. Similarly, the provision of linguistic reorganization did not necessarily intend for differential protection of any regional or local languages; rather, it adopted to accommodate linguistic differences so that no groups should be deprived on language.[412] Article 370 of the constitution exempted Jammu and Kashmir from uniform constitutional arrangements applicable to other states.[413] This asymmetrical solution made the Indian case a poor example of asymmetrical federalism, but such provision was aimed for eventual resolution of the conflict.[414]

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409 A. Lijphart, "The puzzle of Indian Democracy: A Consociational Interpretation" *American Political Science Review* 90, no. 2 (1996): 261.

410 S. I. Wilkinson, "India: Consociational Theory and Ethnic Violence," *Asian Survey* 40, no. 5 (2000): 769–770.

411 De facto asymmetry refers to differences of units/sub-units in size, wealth/resources, culture/ religion or language, and differential provisions of representation and autonomy. De jure asymmetry refers to conscious constitutional design allocating different amount of power /autonomy in certain policy areas to some units /sub units of the federation. For further details, see Louise Tillin, "United in Diversity? Asymmetry in Indian Federalism," *Publius: The Journal of Federalism* 37, no. 1, (2006): 48.

412 Louise Tillin, "United in Diversity? Asymmetry in Indian Federalism," *Publius: The Journal of Federalism* 37 No. 1 (2006): 61.

413 Michael Burgess, *Competing National Visions: Canada-Quebec Relations in a Comparative Perspective*, ed. A. G. Gagnon and J. Tully (Cambridge: Cambridge University Press, 2001), 265.

414 Tillin, "United in Diversity?" 62.

4.   Role of Military in Democratic Federalization

The India, a contrast to Spanish case, inherited military structure from the British bureaucratic set-up. Military greatly co-operated the independence movement as well as the subsequent democratic process. Indian military organizations, set-up by the British, were one of the professional organizations with experience of wars being a part of the Allied Forces during the great wars. On the eve of independence, the British decided to break the military proportionally into India and Pakistan based on the agreed norms of partition negotiation. The Joint Defense Council, a body to decide a partition of armed forces, favored the Indian side a lot. As a result, most of the defense industries and military ordinance stores, in fact, remained on the Indian side, which contributed to a growing sense of insecurity in the Pakistani establishment.[415] It boosted, however, the sense of ownership and professionalism of Indian military. The military obeyed the order of partition as the Indian army inherited most of the assets and acted as a firm and founding organization of independent India. This could be the reason that the Indian army did not pose any opposition in the process of federalization and the democratic transition of India, since it was the continuation and extension of independence movement.

Jawaharlal Nehru, founding architect of modern democratic India, played a key role in maintaining civilian control and professional autonomy of the military. The military, in turn, perceived itself as a custodian of the constitution and promoter of popular will. The popular aspiration was to promote democracy along with inclusive participation of different ethno-linguistic groups in national politics through federal structuring of the country. All political parties and citizens of the country viewed the military as an extension of the British Indian Army and, hence, a tool of coercion. Anshu Chatterjee argues, "By focusing on the British Institutional legacy and the Jawaharlal Nehru administration's development of civil defense ministry, such literature explained why the military authorities did not seek to control the Indian polity… "[416]

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[415] Ian Talbot, *Pakistan: Modern History*, (Oxford: Oxford University Press, 1999), 99–100.

[416] Anshu N. Chatterjee, "Shifting Lines of Governance in Insurgencies: India," in *The Routledge Handbook of Civil-Military Relations,* ed. Thomas C. Bruneau and Florina Cristiana Matei, (London and New York: Routledge, 2013), 167.

Indian military, because of its strong bureaucratic structure and a great sense of ownership in democratic transition and independence movement, did not intervene in the process of democratization and federalization of the country. In turn, political leadership—mainly Nehru in early days of independent India—did not drag military in any political debates. Thus, the role of the Indian military throughout the transition process remained supportive and extremely positive to the political leader.

D.   LESSONS FROM SPAIN AND INDIA

India's federal system with strong center probably is the best suited model for Nepal due to its proximity to ethno-cultural diversity, socioeconomic particularity and the political notion of liberal democratic ideology. The presidential power to dismiss any elected state government on due recommendation of the union cabinet in the case of constitutional and political conflicts, and center's power to impose state of emergency, represent the strong center. Whereas, 28 states and seven union territories with state government and autonomous governance represent the federalism in India. Nepal, considering its geo-political context and organic pluralist characteristics related to ethno-cultural identities of various groups of the country, needs to account for several aspects for successful federalism: economic viability, population concentration, ethno-linguistic diversity, religious heterogeneity, unequal development, and spatial element.[417] Bishnu Pathak argues regarding federalism in Nepal,

> …Nepal should give extreme attention to national security, foreign affairs, minority policy, big hydro-powers, national highways, and an international airport in the course of declaring a federation of states. Indeed Nepal can neither be '*One Himal One Pradesh*' nor '*One* Madhes*h One Pradesh.*' Rather, the country needs ethno-cultural-regional states … federal states without inclusive democracy would ultimately lead to the corrosion of Nepalese identity, united strength, and harmony as each would fight for its own supremacy.[418]

The biggest lesson from the Spanish transition is that the management of any type of conflict is only possible in a democratic context. This is because political elites and ethnic leaders can benefit from freedom and transparency in democracy to express their aspirations

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417 Pathak, "Federalism: Lessons from India," 9.

418 Ibid., 9–10.

and grievances.[419] The state should be inclusive. Contrary to domination of major ethnicity in the nation-state, de-ethnicized inclusive states provide equal opportunities to all its constituencies irrespective of minority or majority ethnic groups.[420] Daniel Conversi argues, "…the Spanish experience of dealing with ethno conflicts provides a model for other political elites. It should be particularly illuminating for those states trying to dismantle decades of centralized administration."[421]

The Spanish process of democratization and federalization suggests a number of lessons to multi-ethnic countries. Constitutional and political arrangements, decentralization and inclusiveness in particular can be supportive to manage ethnic conflict. Wider nationalist revival and aspiration of autonomy based on ethnic identity serves for successful democratization. Committed political leaderships and institutionalization of coherent democratic politics can effectively settle the conflicts due to diverse ethnic and cultural identities. Democratizing and vibrant civil society can absorb incivility, disorders and violence emitted from ethnic conflict.[422]

Contrary to the basic notion of federalism in territorial terms, Spain's transition to democracy progressed along with political acknowledgement of ethnically pluralistic country emphasizing multi-cultural and the multi-linguistic character of Spain.[423] Daniel Conversi argues that Spain is a unitary state, but its open character for regional autonomy actually contributed towards the development of a federal nature. The complete translation of this openness in decentralization of governing power between center and regions greatly depends on political will and vision of the ruling parties. The Spanish Senate in the center, as in the case of traditional federations, provides full range of regional representation.[424] Spanish experience of post-modern federalism suggests that formal constitutionally guided federation

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419 Daniele Conversi, "The Spanish Federalist Tradition and the 1978 Constitution," *Telos Summer 1998* 112(1998): 142.

420 Pierre L. van den Berghe, "Denationalizing the State," *Society* 33, Issue 2 (1996): 64–68. http://link.springer.com/article/10.1007/BF02700325.

421 Conversi, "The Spanish Federalist," 144.

422 Omar G. Encarnacion, "Managing Ethnic Conflict in Spain," *Orbis* 47, Issue 1(2003): 104.

423 Conversi, "The Spanish Federalist," 125.

424 Montserrat Guibernau, *Spain: A Federation in the Making*, ed. Graham Smith (New York: Longman, 1995), 239–256.

is not the only means to federalism, but wider arrangements of decentralization that foster autonomy from a non-federating constitution might also lead to federalization of a country.[425]

E.   CONCLUSION

This chapter studied two successful cases of federalism in the multi-ethnic societies of Spain and India and looked at how federalism and democratic transition are mutually supportive of each other. It described the ethnic diversity and role of political elites to balance the growing demands of different ethnic communities to self-rule, consolidation of democracies and in maintaining the integrity of the country. It tried to deduce lessons from both cases that can be useful in the Nepalese context.

Despite the fact of a predominantly rural and agrarian society with the majority of its population being illiterate, political elites of India flatly ignored the notion of western scholars that democracy would only flourish in modern industrialized literate societies where political consciousness and economic prosperity is at a profound level with developed media and communications. They showed their political wisdom and a sincere conviction of democracy. They accepted the calculated risk of introducing federal democracy in India, a semi-feudal country with conservative and parochial societies. [426]

Though conflicts in Kashmir, the Northeast and occasional tension due to Hindu-Muslim riots are not resolved completely, India is seen as a mature democracy. Despite a high level of socioeconomic and regional inequality present all over the India, and Maoist insurgency posing serious threat to almost half of India, sustenance of democracy and economic growth suggests the strength of Indian democracy.[427] The amount of India's achievement in democratic consolidation and economic development in the context of poor and diverse societies is acknowledged by the world as a large and well-functioning democracy. The political institutions functioning in India have successfully managed diversity in caste, ethnicity, language, religious, and conflicts associated with it. India's

425 Arganoff, "Federal Evolution in Spain," 386.

426 Pal and Aggarwal, "Dialectics of Democracy," 74.

427 Lawoti, "Lessons from India."

federalism, mainly based on linguistic, religious, and ethnic lines, have accommodated diverse and complex social groups. For instance, India has 22 officially-recognized languages and many states are supporting and promoting three languages: Hindi, English and the locally spoken language.[428]

Spain started its democratic journey with its democratic election in 1977. Perhaps Spanish leaders and people had learned great lessons from their political extremism and autocratic rules of the past. The dynamics of federalization and democratization and its complementary effect are considered keys to Spanish success in transition. The lesson from the Spanish case is that consensus, compromise and restraint are three fundamental aspects for decentralization, and a democratic framework is the right stage to orchestrate the federalization of any country. [429] There is a crucial equilibrium that needs to be forged between the central state and the regionalist. Hence, political elites should show their commitment to decentralization and regionalist leaders should show restraint in their demands of home rule in accordance with the pace of democratization.[430]

One may deduce from the Indian and Spanish experiences that proper recognition of identities by the state effectively diffuses popular mobilization based on any form of identities; whereas, repression and discouragement of the same certainly can instigate conflicts and violence. So, being diverse a country in terms of demography, geography and socioeconomic-cultural, Nepal should take lessons from India and Spain to manage its diversity. "Unity in diversity, " however, only comes into reality once all citizens, political elites/masters in particular, open their eyes and minds to acknowledge the things that exist and address the same for the overall betterment of people and the country.

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428 Ibid.

429 Encarnacion, "Democracy and Federalism in Spain," 66–67.

430 Ibid.

V.   CONCLUSION

This thesis assessed the political development leading to the declaration of a Federal Democratic Republic and contentious issues of a federal design in Nepal. It was to answer the question why the CA failed despite the agreement on the concept of federalism in principle among political parties. It analyzed the complex picture of multi-ethnic societies, the rise of ethnic politics and agenda of political parties of federalism. Two case studies of federalism, Spain and India—in order to compare and deduce lessons learned for the Nepalese context—discussed in depth and established the importance of federalism in a transitional democracy to maintain its integrity and to address the grievances of the people. The findings of thesis are as follows.

First, people's aspirations to self-rule and the ethnic identity were obvious political demands against a century-long centralized exclusionary feudal system. The Maoist insurgency raised the political consciousness and provoked the demand to decentralize the state. Hence, the demand of the federal system based on ethnic identity surfaced as a political demand. The UCPN (Maoist) and regional parties, mainly the Madhes-based parties along with IP groups, carried this agenda forward in political negotiation. The IP movements, Madhes movement and Joint People's Movement II (2006), established the agenda of federalism. This is embedded deeply in every community. It covered the entire political spectrum of Nepal; even the conservative *panchayat*-based party (RPP) accepted this agenda. The traditional democratic parties of the NC and UCPN (UML) included federalism and republic in their political program with growing pressure from constituencies and vote banks.

Second, political parties were divided into two camps: first, the UCPN (Maoist), Madhes-based parties and indigenous groups supporting single identity-based federalism with more number of provinces and, second, the NC, CPN (UML) and other smaller parties supporting multi-ethnic federalism with a lesser number of provinces. The voice against federalism was almost insignificant since people from all over the country were supportive of federalism. Most of the parties, however, were unclear why federalism is needed and to address problems associated with it. As a result, different models of

federalism were floated around by both camps. Political parties took acceptance or rejection of their model in the CA as horse-trading and prestige issues. They, in one way, were under tremendous pressure from their constituencies and ethnic leaders within their individual party and outside, but they, in other ways, worried about the ground reality of multi-ethnic societies, questions of economic viability and fear of losing their traditional constituencies.

Third, political parties used the federalism issue as a ladder to achieve to power and to blame each other. At times they competed to claim the ownership of the federalism agenda, but failed to devise the model to satisfy all ethnic communities. In fact, people want federalism to eliminate discrimination and inequalities that they had faced in the past. So, parties with clear programs to uplift backward people with equal access in state mechanism and economic development certainly would convince the people of any model of federalism. The first important step to resolve the dispute on federalism is to agree on a democratic process and respect the procedure if it goes against the expectation of political leaderships. If home politics finds political consensus then only international communities and neighboring countries could be supportive on any agenda.

Fourth, despite dissimilarities—in historical context, socioeconomic conditions, geography and people—multi-ethnic societies and aspirations of people for ethnic identity along with democratic transition were similar between Nepal and in the cases of Spain and India. The biggest lesson from the illustrative case studies of India and Spain for democratization and federalization is political will power and commitment to change major political forces and political consensus for the national agenda are most important to make a smooth transition. Democratization and decentralization (restructuring the state) to empower all backward and oppressed communities should be concurrent. Though the CA collapsed, apparently due to a disagreement on federal models and possibly vested political interests of parties, the solution is again an agreement on democratic process and the people's sovereignty.

Nepal, with diverse demography and geography, remains one of the poor countries in South Asia and the world. It is a multi-cultural, multi-lingual and multi-ethnic country. At the same time, this is complicated by religious hierarchies that add to

the problematic political and social set-up. Domination of Hindu religion and high caste elites made the situation worst. The discrimination of state to the people of lower strata and disparity of resources and opportunities were so embedded in society that certain sections of the population found themselves with no option except to raise weapons against the state.

Since two thirds of the population are considered marginalized, social exclusion is not limited to the IPs or any particular ethnic group. Women and *Dalits* are the most marginalized section of society. Political parties are univocal for inclusive democracy and against any type of discrimination based on caste, gender, religion and ethnicity. *Madhesi* and *Dalits* are believed to be victims of systematic marginalization of state and political elites. The main political issues, in the later phase of political movements, are the systematic discrimination and under-representation of deprived sections of population in the state machineries. With this analysis, the Maoist problem is viewed as an offshoot of severe socioeconomic conditions of Nepalese society coupled with discrimination and inequality based on caste, region, and religion. As a result, identity politics came to the forefront of national politics. The present situation is such that different ethnic groups are mobilized towards the federal structure with ethnic identity, and main political parties are polarized for and against federalism based on ethnic identity.

The political forces behind the 1990 democratic movement could not uphold popular aspirations, and there was significant growth of frustration and resentment among ethnic groups and minorities. This chronic problem of wide spread feelings of ethnic groups regarding systematic marginalization of their culture, religion and language greatly undermine the growth of the economy. Hence, political crisis deepened in the post 1990 period due to instability, bad governance and a widened sociopolitical disparity with lack of inclusiveness of the wider spectrum of the population. In this backdrop, the Maoist people's war started in 1996 and lasted for 12 years. This not only derailed Nepal from democratic consolidation, but resulted in a loss of more than 13,000 lives and huge infrastructural damage. Interestingly, certain ethnic groups who had long been discontented with the state backed the Maoist people's war.

An unhealthy competition, conflict within the parliamentary system racing to acquire support from the traditional institution of the monarchy, unacknowledged popular aspirations, and use of people as raw materials and self-perpetuating behavior of leaders further aggravated the fragile situation to the verge of conflict. Blunt neglect of the leadership in every aspect of statecraft and great deficiency in democratic culture make the state irresponsive to societal demands. The monarchy also played an intervening factor rather than to play the facilitating role in national polity.

The interim constitution stands on the bedrock of the principle of political consensus. So, it is the moral obligation of all political parties, their responsible leaders in particular to abide by the fundamental principle of federalism, democracy, republicanism, secularism and inclusion, and to reaffirm their commitments that they have made to the people during elections and to the People's Movement II in 2006. If parties continue with their brinkmanship and blame game to each other, they not only lose their base in the people, but risk the political achievements and peaceful democratic transition of the country.

Political parties in Nepal were not clear enough in their agenda and design of federalism during and after the CA election. They simply raised the aspirations of people many fold and distributed fake commitments just for votes. People did not get a chance to discuss and debate regarding the pros and cons of different federal options. Party leaderships took the agenda so cheaply that they acknowledged every ethnic community as a viable nationality for federal structure.

A very important lesson of the collapsed CA is the need to make an agreement of political parties to respect to the parliamentarian procedures. The Nepalese people now are sensitive and politically aware enough that they will not accept anything short of a democratic constitution with the proper amount of decentralization whether anybody names it federalism or not. The political forces representing the change, Maoists and regional parties are setting 'constitution from the CA and constitution with federalism based on ethnic identity' as their bottom line of negotiation. Similarly, democratic forces of the NC and UML with other smaller parties are showing reluctance to accept identity-based federalism and more number of states considering heterogeneous society and

viability to sustain such a federal structure. They argue that a single identity and a larger number of provinces weaken the national integrity and compromise the sovereignty of the country. This argument cannot be ruled out considering fragile economic conditions, geographical distribution of population and various sub-groups in multi-ethnic society. Responsible parties, however, should compromise their political interests without compromising the national interest and people's aspirations. The way out of the current constitutional and political limbo is always possible as long as there is genuine political will.

The political journey to the CA election provided new hopes for the people, but the political parties continued to indulge in inter and intra-party squabble. The CA failed to settle the basis of federal structure. As a result, it has collapsed without promulgating the constitution. In Nepal, the people are mobilized on ethnic lines by political parties, particularly by the Maoist party. Yet, there are no ethnic groups characterized by common territory and embracing political institution. The heterogeneity within and between ethnic groups prevails. Thus, federal structure based on single ethnic identity is hard to adopt. A few recommendations follow in order to arrive at an agreement for the basis of federalism and standard procedures to adopt after they are democratically agreed upon with room for amendment in the future.

Firstly, considering the provision of the Interim Constitution and the people's aspiration of federalism, it is hard to backtrack from restructuring the state. The basis for federalism, however, can be finalized primarily by negotiation. If not, all political forces need to agree upon democratic procedures. Democratic procedures could be through referendum or voting in the CA. There should be political understandings at the highest level possible and political sincerity in the implementation of any agreement. The right to disagree or oppose does not mean to oppose everything that rose by political parties in opposition. The minority voice of referendum or voting in the CA needs to be respected by means of several political arrangements, such as autonomous units within province and reservation quotas in the case of multi-ethnic province and strong center with a number of provisions to promote ethnic harmony in the case of identity-based federalism. Whatever would be the verdict of such democratic decision-making procedures; there

should be zero tolerance for any discrimination based on caste, ethnicity, region, religion, gender, language and beliefs. This will gradually pacify the importance of ethnic identity to enjoy the rights and privileges of a citizen.

Secondly, democracy is the solution to every dispute. This issue of federalism will be solved once democratic institutions are strengthened and function properly. Democratic cultures and practices inside and outside political parties eventually help to promote the understanding. So democratization and federalization, as in the case of Spain and India, need to be concurrent because these are mutually inclusive and supportive. Sooner or later, fresh election of the CA and to abide by democratic procedures is the only solution. Political parties need to use their influence to convince all ethnic communities that federalism without democracy and democracy without decentralization of power to empower grass root people will not sustain for long.

Thirdly, politics of consensus need to develop so that political parties can compromise their party's interest for the betterment of the people. Every political party should cultivate the culture of co-existence and tolerance of pluralism. The issue of identity automatically dilutes once the country adopts the policy of the rule of majority and respect of the minority in the political culture and institutional development along with economic empowerment of the people. No party should make a question of win or lose in democratic procedures. All parties need to be sensitive for communal harmony and historical coexistence. No model is perfect. Thus, sincerity in implementation and other arrangements, to make any model perfect, need to adopt to compensate weaknesses of certain model.

The credibility of parties, considering intra-party fractured pictures and politics for the power they are playing so far, is seriously damaged. To rescue the country from the present political stalemate, however, they are the ones who need to forge a consensus and abide by fair play based on democratic norms putting national interest and people's desire to change at center. There is no alternative way forward towards political consensus or abide by democratic procedures for any political decisions. They have to come with a clear cut vision and roadmap for democratic federalization. They need to work together to provide a justification to rely upon them again.

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APPENDIX: CASTE, ETHNICITY AND LANGUAGE IN NEPAL[431]

1. Parbatiyas (Nepali speaking)		40.3%
Twice born:		
	Brahmans:	12.9%
	Thakuris	1.6%
	Chhetries(khasas)	16.1%
Renouncers:		
	Dasnami, sanyasi and Yogi	1%
Untouchable:		
	Kami(Metal worker)	5.2%
	Damai(Tailors)	2.0%
	Sarki(Cobblers)	1.5%
2. Newars (Newar or Nepali speaking)		5.6%
Higher pure caste:		
	Brahmans	0.1%
	Bajracharya/ Shakya	0.6%
	Shresthas	1.1%
	Uray (tuladhars etc.)	0.4%
Other Pure caste:		
	Maharjans(jyapus)	2.3%
	Ekthariyas and other small groups	0.7%
Impure caste (*Khadgi, Pode* etc.):		0.4%
3. Hill or Mountain ethnic groups (Tibeto burman language or Nepali)		20.9%
	Magars	7.2%
	Tamang	5.5%
	Rai	2.8%
	Gurung	2.4%
	Limbu	1.6%
	Sherpa	0.6%
	Chepang	0.2%
	Sunuwars	0.2%
	Bhotiyas	0.1%
	Thakalis	0.1%
	Thamis	0.1%
4. Madhesis(Speaking north indian dialects, including Awadhi, Bhojpuri and Maithili)		32.0%
a)Caste (16.1%)		
Twice born:		
	Brahamans	1.0%

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[431] John Whelpton, *A History of Nepal,* (Cambridge: Cambridge University Press, 2005), 9–10.

Kshatriyas:	Rajput		0.3%
	Kayastha		0.3%
	Rajbhats		0.2%
Vaishyas(Baniyas)			0.5%

Other Pure Caste:

Yadhav	(herdsman)	4.1%
Kushawahas(Vegetable growers)		1.1%
Kurmi(Cultivators)		0.9%
Mallahs	(Fisherman)	0.6%
Kewats(Fisherman)		0.5%
Kumhars(Potters)		0.3%
Halwais	(Confectioners)	0.2%

Impure but touchable:

Kalawars(Brewers/merchants)	0.9%
Dhobis(washerman)	0.4%
Telis(Oil-Pressers)	0.4%

Untouchable:	Chamars(Leather worker)	1.1%
	Dushandhs(Basket makers)	0.5%
	Khatawes(labourers)	0.4%
	Musahars(Labourers)	0.8%

b) Ethnic group (9.0%)

Inner Terai:	Kumals	0.4%
	Majhis	0.3%
	Danuwars	0.3%
	Darais	0.1%
Terai proper:		
	Tharus	6.5%
	Dhanukas	0.7%
	Rajbanshis	0.4%
	Gangais	0.1%
	Dhimals	0.1%

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