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Stability and the need for constitutional change: did the federal system fail or was it rather the politicians and parties?¹

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There is a lot of talk these days about the lack of political stability and how the latter can be achieved. KP Oli and SB Deuba, as leaders of CPN (UML) and Nepali Congress respectively, have declared that the overthrow of the PK Dahal-led government was necessary to bring about such stability. A good two months later, the two parties have finally presented a Common Minimum Programme on how they intend to achieve this stability. But shouldn't it be a basic rule in a democratic system that such a programme is agreed upon before entering into a coalition government?

Continued political instability thanks to political leaders

All of this indicates that this change of government is no different to the many that Nepal has experienced in recent years. The primary motive was always the personal quest for power of three politicians - Khadka Prasad Sharma Oli, Pushpa Kamal Dahal and Sher Bahadur Deuba. To achieve this, the aforementioned politicians were prepared to use any means that led to the desired goal. Earlier agreements, even written ones, were not worth the paper they were written on. Alliances concluded before elections, in which the parties involved sometimes agreed in advance on joint candidates in the constituencies and called on their supporters to vote for these joint candidates, were null and void immediately after the elections if the party leaders involved were unable to realise their power interests as they had imagined.

It can only be described as electoral fraud if, for example, PK Dahal enters into a coalition with the previously declared political opponent immediately after the 2022 elections and drops the partners of the electoral alliance. Yet the CPN (MC) had only the supporters of the alliance partners to thank for many of the direct mandates. To repeat once again: This is voter fraud and gross abuse of the electoral system. To make matters worse, Dahal based his claim to power on a meagre 11 per cent of the PR votes. This marked a political party in free fall from around 30 per cent of the vote in a period of just 14 years. The voters' judgement of Dahal and his party could hardly be clearer. The Maoist party addressed and achieved important issues during its militant insurgency and also in the run-up to the elections to the first Constituent Assembly. Hence, the high voter support in 2008 was justified. After that, however, the party gradually forgot its former principles completely. In part, this was certainly due to the democratic rules of the game to which

¹ A similar version of this article has been published in [Khabarhub](https://www.khabarhub.com), 3 October 2024

they now had to submit. To a large extent, however, the leaders of the party have gradually adapted to the other mainstream politicians.

It is needless to emphasise that the ruthless power politics of the three top politicians has made a decisive contribution to political instability. Even more serious is the way in which they have secured their positions of power. As none of the parties was able to win an absolute majority of parliamentary seats after 2015, but each of the top politicians involved in the coalitions laid claim to the top post of prime minister, an agreement always had to be reached between them. So it was agreed that the post of prime minister would rotate between the two 'indispensable luminaries' of democracy involved halfway through the expected duration of the coalition. The planned consequence was that the entire government had to be replaced halfway through a coalition.

But that's not all! In most cases, numerous civil servant posts and other officials are also replaced, including ambassadors, for example. At least the latter is the case when one coalition government is completely replaced by another, which has been the case every few months since 2015. This is deliberate political instability at its best. People who I regularly have to teach in country analysis on Nepal in Germany have been complaining for years that their contacts in Nepal are constantly changing. This makes trust-based development cooperation extremely difficult.

Alleged instability due to electoral system and constitution

Of course, this misbehaviour of the so-called top politicians is the main reason for the ongoing political instability. Just as naturally, however, these politicians will never openly admit this. So they have looked for a reason that they can cite for the political instability. And lo and behold, according to them, the reason lies primarily in the electoral system and its constitutional foundations. So the CPN (UML) and Nepali Congress, in their Common Minimum Programme launched two months after the formation of the government, have taken up the cause of changing the system.

The Interim Constitution of 2007 introduced a two-track electoral system for the Constituent Assembly, which was intended to ensure that the extreme dominance of male Khas Arya would be broken and that all social groups in the country would participate to some extent in proportion to their share of the population. 40 per cent of the members of parliament were to be elected via a direct election system, the rest via a so-called proportional representation system (PR system). The PR system was based on precise proportions of the main social groups based on the 2001 population census. To ensure that the bottom line figures were also reasonably accurate, Article 63 (4) of the Interim Constitution stipulated that the parties should also apply these proportions when selecting direct candidates. However, they did not do so in either the first or the second Constituent Assembly, which was a clear violation of the constitution. But law and order often seem to be of little interest to top politicians. The 26 Members of Parliament, which the government was supposed to use to compensate for inclusion deficiencies, were also misused in the sense of nepotism, especially in the elections to the second Constituent Assembly.

The consequence of this anti-inclusion policy of the political parties was the continuation of the clear preponderance of male Khas Arya, especially male Bahuns, in the body that was to draft the new constitution. It was therefore not surprising that this ruling elite took the opportunity to change the electoral system in their interests in 2015 in the Constituent Assembly, which was unfortunately not socially inclusive. The proportion of MPs elected via the direct election system was increased to 60 per cent. At the same time, the passage in the Interim Constitution stating that the selection of direct election candidates also had to be socially inclusive was cancelled without replacement.

In the two elections held so far under the new system, the direct election candidates of all parties were predominantly male Khas Arya. In order to further strengthen the dominance of these Khas Arya, they were awarded another 30 per cent of the 110 PR seats. The stark consequence for the other social groups is that they are only rarely nominated as direct candidates and there are only a few options via the PR system. This is particularly difficult for males. As there are only a few female direct candidates - in 2022, for example, only 9 of the 165 directly elected MPs were women - the constitution stipulates that the PR system must ensure that the proportion of women in parliament is at least 33 per cent, which is positive, but still far too low. Incidentally, the parties have taken great care to ensure that there is not even one more woman in parliament than this rule provides for.

The leaders of the political parties, and therefore also the leaders of the two parties now in power, are therefore absolutely right when they claim that the electoral system does not work like this. The reason is quite simply that the male Khas Arya elite are abusing it to secure their supremacy. The system envisaged by the Interim Constitution could probably have worked if the ruling elite had allowed it. But this would have ended their supremacy in the long run, an aspect that incidentally also played a prominent role in the long-disputed design of the federal state.

Of course, the ruling party elites are not calling all this by that name. Instead, they are considering abolishing the PR system altogether. This would be a step further than in 2015, and Nepal would once again have a purely direct election system, which did not work under the 1990 constitution. The few achievements of the traditionally marginalised social groups would be reset to the status quo before the Maoist insurgency. The big question is whether these groups would accept this again today without a word. In any case, Nepal's politicians have learnt nothing from the recent events in Bangladesh.

The ruling parties are also considering raising the percentage threshold for parties in elections from three to ten per cent. This too, they claim, will make a decisive contribution to political stability. All parties that do not receive at least ten per cent of the vote in elections would automatically be excluded from parliament. The CPN (UML) and the Nepali Congress are obviously focussing on a two-party state. The CPN (MC) is likely to remain in free fall and the RSP is facing hard times after Rabi Lamichhane's numerous scandals. All other parties would be out of the game anyway. It is important to bear in mind that the UML and Nepali Congress together received just over 50 per cent of the vote in 2022. In other words, almost half of the votes would be swept under the carpet. Democracy sends its warm greetings. Political stability would not be achieved through this further manipulation of the electoral system anyway. The excluded parties would fight back. Moreover, the main problem of political instability lies with the top politicians

of the major parties and their power struggles would continue unabated, even in a two-party system.

Directly elected President

Calls for a switch to a presidential system are currently being voiced somewhat less loudly. Such demands are mentioned from time to time by the political parties. This was also the case when the current constitution was being drafted. Significantly, it is mainly smaller parties or those whose leading politicians have little hope of gaining control of the government through the parliamentary system that are calling for this. However, the Maoist party has also repeatedly called for a presidential system. The fact that this is currently the case again is probably related to Pushpa Kamal Dahal's increasing realisation that his party could hardly get into a situation where he could claim the office of prime minister under the current political system, no matter how he tries to manipulate it. It is also doubtful that a directly elected president would make better policy than someone who is elected to the office of head of government by a parliamentary majority and is answerable to parliament. At best, directly elected presidents named Oli, Dahal or Deuba could act even more uncontrollably.

Criticising the federal state

The federal state must be seen as one of the most important achievements of today's political system. The insurgent Maoists had taken up this idea in the 1990s, when similar ideas already existed within the Janajati organisations. Along with the abolition of the monarchy and the Hindu state, it had been one of the fundamental demands of the Maoists, which they had insisted on throughout their insurgency.

The background to this was to help the country's numerous largely marginalised ethnic groups to participate better in the state. Since the Maoists relied heavily on cadres from the ethnic sector, this was also a certain necessity for them if they wanted to gain greater support from the population. Against this background, it is also understandable that the Maoist party in the first Constituent Assembly, when it was clearly the strongest party, supported the interest of the larger ethnic groups in creating areas in which ethnic groups or languages were represented in particularly large numbers when the future provincial territories were carved out. This was intended to give the Janajati groups and their mother tongues greater significance in the state of Nepal as a whole.

This proposal met with massive resistance from the other major parties, which had always mainly represented the interests of the traditional male high-caste elite, i.e. the Nepali Congress and CPN (UML). They declared that a federal state along the lines of the Maoists and the Janajati would promote separatist ideas. They insisted that certain ethnic or linguistic majorities in the provinces should be avoided as far as possible when carving up the provinces, similar to the way Mahendra had once handled the creation of the 14 zones. Congress and UML went even further by not even accepting province names with ethnic, linguistic or historical connotations. The two parties ultimately enforced this principle in the second Constituent Assembly, when together

they had almost a two-thirds majority of MPs and the Maoist party had long since abandoned its old ideologies. Only the names of the provinces could not be agreed upon and this was left to the provincial assemblies to be elected.

The federal system was enshrined in the constitution with numerous unresolved issues. A great deal should have been worked out in more detail and developed further. Unfortunately, the national party leaders soon showed that they had no intention of transferring any power and authority to the newly created provinces. Rather, they still regard the provinces as dependent institutions of their centralised thinking. The provinces must remain under the control of the national party elites, who decide how policy is to be implemented in the provinces and what the provincial governments should look like. The provincial assemblies, with a total of 550 MPs, are a welcome option for the central party elites to satisfy the second and third levels of their party clientele and keep them happy. The constant changes of government and coalition must always be followed directly in all provinces. In this way, the national party elites are taking the idea of federalism ad absurdum. Rational and development-orientated work is made completely impossible in the provinces.

Criticism of this type of federal state is therefore urgently needed. Unfortunately, supporters of the centralised state use this to declare the federal state as such a failure. Yet the federal system could ideally contribute to better decentralisation and regionalisation and thus to greater social inclusion in the multi-ethnic, multi-religious and multilingual state of Nepal. It is therefore not surprising that parties in favour of a return to the Hindu state of the male high-caste elite or even the monarchy are trying to discredit the federal system. Didn't Mahendra say back in December 1960 that Nepal's democratic system, just 18 months old, had proved totally unsuitable for the country? At the time, this was just as fabricated and contrived as today's criticism of federalism. The latter did not fail after 2015, but the national party elites simply did not allow it.

Abolition of the secular state?

Another issue that jeopardises the foundations of the 2015 constitution and at the same time one of the most important achievements of the modern Nepalese state is the demand for an end to secularism and a return to the Hindu state, usually linked to a reintroduction of the monarchy. Of course, such a demand is primarily supported by the high-caste Hindu state elite, which, as described above, has managed to maintain its dominance and supremacy in the state with many tricks and constitutional violations.

This elite comprises only around 30 per cent of the country's total population, even if one counts the women who are only marginally involved. The remaining 70 per cent have no benefit whatsoever from the Hindu state, apart from the fact that it has been the reason for their marginal existence in the state of Nepal for centuries. This applies to the Janajati groups, which are more numerous than the Khas Arya if the Tharu are correctly included, as well as to the Madheshi, who are often not even regarded as true Nepalis. The Dalits and Muslims certainly do not benefit from a return to the Hindu state. The Dalits, for example, are also more numerous than the Bahuns. However, while the latter dominate all offices and functions in the state, the Dalits are more or less left empty-handed.

In short, Nepal is a multi-ethnic and multi-religious state, as has rightly been stated in the constitution for 34 years. The 1990 system failed to link this fact with a commitment to secularism. This half-hearted change in 1990 was one of the reasons for the Maoist insurgency, which cost the lives of over 17,000 people.

A large number of Nepalis belong to Hinduism. The state's definition as a secular state does not impose any restrictions on their religious and cultural way of life. But there are also many people in Nepal who belong to other religions and cultures. According to the latest census data, we are talking about a fifth of the population, but ethnologists and cultural scientists have been putting the figure much higher for decades, as categorisation is not always easy.

The Shah monarchy has deliberately manipulated the allocations since the times of Mahendra, as can be seen from the development of the census figures. The monarchy needed the Hindu state to legitimise itself. As part of his return endeavours, Gyanendra is therefore still fighting for it today and is the symbol of his commitment for like-minded people.

The supposedly democratic politicians and parties are certainly also responsible for the fact that the endeavour to return to a Hindu state and monarchy is not being forgotten. Not only are there many high-caste politicians who flirt with a Hindu state or even a monarchy, even among the major parties, including those supposedly on the left, but the media must also be criticised for reporting far too intensively on Gyanendra and his family. Who cares, for example, whether the ex-king travels to Bhutan or India or whether he visits any Hindu festivals or places. Let him, after all, he is a Hindu and he is entitled to this right like any other citizen. But there is no need for the media to constantly report on this and give arguments to staunch monarchists like the RPP or Durga Prasai about how much support there is for the Hindu state and monarchy.

A country with as many religions and cultures as Nepal can only be defined as a secular state in which all people can practise their faith and celebrate their festivals in the same way. Only then is mutual tolerance and peacefulness possible. The 2015 constitution finally created the legal basis for this. The fact that this has not been further developed and maintained is a failure on the part of the high-caste male state elite.

Conclusion: Is a constitutional amendment urgently needed?

The 2015 constitution contains a number of shortcomings and, in some cases, contradictions. This is also due to the fact that it was drafted by the male leaders of the major parties after the earthquakes of 2015 and was not actually discussed in the Constituent Assembly, contrary to the provisions of the Interim Constitution. The elected representatives had to vote under party pressure.

Another shortcoming is the patriarchal stamp that these top male politicians have once again put on the constitution. Women are not categorised on an equal footing with men in several places in the constitution. This urgently needs to be corrected.

The constitution describes the state as a secular and federal republic, but leaves both terms somewhat vague. Thus, secularism is defined more in terms of religious freedom and even this is restricted. Secularism should imply a clear separation of state and religion, especially given the

fact that the centuries-long association of the state with Hinduism is still very much present in the minds of the high-caste male elite. The disdainful view of women and their corresponding treatment by the constitution also has its roots here. This is therefore another important aspect that should be addressed when the constitution is amended.

The definition of Nepal as a federal state should not be underestimated in view of the numerous regional, ethnic and cultural differences of its divergent population. For too long, Nepal has been treated as a centralised state by the power centre of Kathmandu Valley and the state elite based there. This aberration is the responsibility of the Shah monarchy and its remaining supporters want this centralised state back under the leadership of the Hindu monarchy, as if the latter had not done enough harm already.

The problem with the federal state in Nepal is not its idea, but rather what the ruling party elites have made of it. Urgent changes must be made to the constitution to fundamentally prevent the misuse of the federal system for the power struggles of the national party elites. The power, tasks and working methods of the provinces must be anchored exclusively in the latter. The national party elite must no longer be allowed to determine how the provincial governments are formed and how the coalitions there are put together. It is completely perverse that when a coalition is changed at national level, the composition of the coalitions in the provinces is also always adjusted. There is an urgent need for appropriate constitutional regulations here, including the allocation of financial resources, so that the provinces are finally put in a position to pursue rational policies in the interests of their regional areas.

The two major governing parties, Nepali Congress and CPN (UML), apparently also want to change the electoral system. By drastically increasing the percentage threshold, the smaller parties are to be excluded from the democratic process. They are also discussing further changes to the PR system. Some apparently even want to abolish the latter altogether. In view of the extreme abuse of the direct election system by the patriarchal, high-caste party elites, however, a ratio of direct and PR system similar to the regulation of the transitional constitution would be much more appropriate. In order for all social groups to be involved to a reasonable extent, the rules of the PR system would also have to be made binding for the selection of direct candidates. Above all, the infiltration of the PR system through nepotism and similar abuses should be made impossible. Certain rules would also be appropriate for better social inclusion with regard to the cabinet, the constitutional bodies, the entire administrative apparatus, the judiciary, the political parties, the media, NGOs, etc., but this will certainly be difficult. So far there have only been appeals or promises, but not even those who have issued them are honouring them.

As you can see, there are numerous options for constitutional amendments. Some of the most urgent have just been mentioned. However, what the political parties have come up with is not one of them.