

POLS3029

Unit II

Emerging Constitutional Practices in South Asia (Pakistan, Nepal, Bhutan, Sri Lanka)



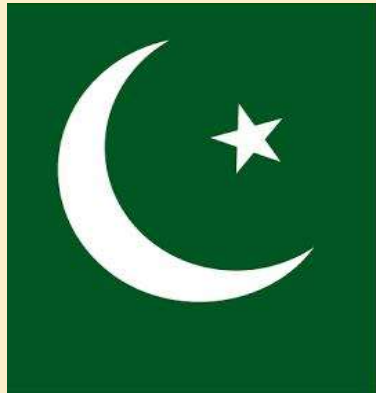
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Introduction



- South Asia is a vast geographic region consisting of countries with distinct constitutional regimes and traditions.
- To accommodate diversity and ensure political and social participation , federalism offers a broad range of institutional arrangements that can help strive for autonomy to exercise political action and augment benefits while maintaining identity for political groups.

Federal Experiments in Pakistan



“The theory of Pakistan guarantees that federal units of the National Government would have all the autonomy that you will find in the constitution of the United States of America , Canada and Australia. But certain vital powers will remain vested in the Central Government such as monetary system , national defence and federal responsibilities.”

- M.A.Jinnah, Nov,1945

Political Experiments in Pakistan in 70 years



- National Government (1947-1954 and 1972-1977)
- Bureaucratic Rule (1954-1958)
- Unitary System (1954-1970)
- Presidential System (1962-1969)
- Civilian Martial Law (1971-1973)
- Military Martial Law (1958-1962, 1969-1971, 1977-1988)
- Non Party System (1985-1988)
- Two Party System (1988-1999)
- State of Emergency (1999-2002, 2007-2008)
- Parliamentary System (2008-till date)

Overview...



- ❖ The state of Pakistan was envisaged as a federal state at the time of its inception. But its federal structures have been the subject of controversy since beginning. The vertical distribution of powers, the number of provinces, their representation in central institutions , and the inequitable distribution of resources have exacerbated tensions between the provinces and the center, some of which have taken a violent turn. Since 1973, the constitution has been amended several times, often by military rulers.
- ❖ The 18th Constitutional Amendment of 2010 introduced major changes to the federal system of Pakistan, agreed by Consensus.

Federalism : Constitution of 1956



- The first constitution of Pakistan promulgated in 1956, envisaged Pakistan as a “decentralized federation with significant fiscal and administrative responsibilities being assumed by the lower levels of government.”
- The central government on other hand, was given a greater discretion over developing its revenue base requisite for direct federal expenditures and transfers. It was aimed to ensure standardization of public service delivery and redistribution to ensure inter-religion parity.
- The 1956 Constitution was a comprehensive document with 13 parts and 6 schedules. It detailed out the federal structure , relations between the centre and the provinces .



- Pakistan was designed as a parliamentary system of government with a unicameral National Legislative Assembly.
- It adopted the provision of parity of representation between the two wings of Pakistan – East and West.
- It created controversy between the Bengalis and other ethnic groups in Pakistan.
- The constitution provided for the delegation of considerable powers to the two constituent units.
- It also paved the way for the range of powers that the central and the provincial governments would exercise in future.

Federalism : Constitution of 1962



- In contrast to the 1956 Constitution, the Constitution of 1962 marked a drastic departure from Parliamentary to Presidential system of government.
- The political party system was suspended for the time being.
- The National Assembly was given limited legislative powers and limited control over the national budget.
- All executive powers remained concentrated in the hands of the President.
- It sounded like that the President was a genuine dictator with a democratic guise.
- Nothing in the Constitution or in the country could in any way challenge President Ayub Khan.

Federalism: Constitution of 1973



- After experiencing secession in 1971, a new constitution was drafted in 1973 which replaced the interim constitution of 1971.
- It created a bicameral legislature – Senate (Upper house) and National Assembly (Lower house).
- A Council of Common Interest (CCI) was created in order to strengthen the spirit of federation.
- Unfortunately the Constitution of 1973 was not implemented in letter and spirit and military dictatorship led to further centralization.

The 18th Constitutional Amendment, 2010



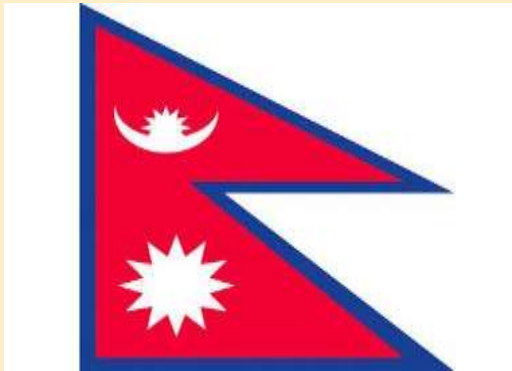
- The 18th amendment enacts more than 100 changes to the constitution of Pakistan.
- The amendment limits the presidential powers.
- It transfers greater authority to the Parliament and Prime Minister.
- Judicial appointment procedures have been one of the most contentious parts of the amendment.
- The 18th Amendment emerged as the most recent and comparably expansive decentralization reform that has fostered an environment conducive for federalism.
- Perhaps the greatest merit of this round of reform has been the underlying political consensus and its constitutional embeddedness.

Way Ahead...



- Passage of the 18th amendment to secure provincial autonomy was rightly hailed as a major accomplishment, yet all provincial governments remain hesitant to let their own power devolve further to lower tiers.
- The 18th amendment stands well on the grounds of democratic consolidation but it cannot be considered a panacea for the governance constraints of Pakistan as it is at best an incomplete process.
- Its completion will require more fundamental reforms that can ensure greater public responsiveness and also a stable political and economic union resulting in greater efficiencies and accountability mechanisms.

Constitutional Debate in Nepal



The people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived.

Overview...



- After the democratic movement of 1951, democracy was established in Nepal. During the period between 1951 and 2008, there were different systems of governments: multiparty systems of one decade after the establishment of democracy in 1951, Partyless Panchayat system of three decades from 1961 to 1990, multiparty system with constitutional monarchy after the restoration of democracy in 1990, direct rule of the then king Gyanendra from 2002 to 2006 and the republican system after the success of peoples' movement in 2006.
- Finally, the constitution of Nepal 2015, replacing the Interim Constitution from 2007, defines Nepal as a federal democratic republic and provisions three tiers of government: local, provincial, and federal.

The Succession of Constitutions



- The Constitution of 1948
- The Constitution of 1951
- The Constitution of 1959
- The Constitution of 1962
- The Constitution of 1990
- The Interim Constitution of 2007
- The Constitution of 2015

Emergence of State Restructuring Agenda in Nepal



- Nepal is a unique case in terms of the way state restructuring was put forward as a political agenda.
- State restructuring was one of the major issues that brought together the different political forces with their fundamentally different political ideologies.
- They were all fighting against the royal regime and the takeover by King Gyanendra on 1 February 2005.

Objectives of State Restructuring



- Ending the centralized and unitary structure
- Ending discrimination
- Political restructuring
- Fiscal restructuring
- Social restructuring

The Underlying Principles of the 1990 Constitution



- Multiparty Democracy based on Adult Franchise
- Parliamentary system of government
- Constitutional Monarchy
- National Unity

Collapse of the 1990 Constitution



- The fact that some people proclaimed the 1990 constitution as the 'best in the world', while others rejected it shows that it was divisive from the very beginning (even among its drafters).
- The greatest failure of the 1990 constitution lay in its inability to address the diversity of the Nepali people.
- Several commentators have said that the representation of the marginalized groups worsened under the 1990 constitution. The disparity increased in the favour of high caste communities.

The Making of the New Constitution



- In Nepal, the seven parliamentary parties that had negotiated apolitical alliance with the Maoists in 2005 were in favour of using 1990 constitution, with its unsuitable provisions modified or deleted, as an interim constitution.
- On 15 January 2007 that Interim constitution was adopted by the former house of Representatives and ratified by the(new) Interim Legislature- Parliament.
- Presently , Nepal is governed according to constitution which came into effect on September 20 , 2015, replacing the Interim constitution of 2007.

Current Debate



- ❖ Currently, there are some major issues under debate with regard to federalism of Nepal.
- The naming process of the provinces and the question of where their headquarters should be located, as it has been an unsettled issue for some of the provinces.
- The overall direction of the new federal structure and its relevance to the devolution of power and ensuring the effective delivery of services.
- The communication and coordination between the three tiers of government regarding the functional division of power and authorities.
- The operational costs to run and sustain federalism.
- And in all, there is a dominant conversation around administrative, political, and fiscal federalism, but very limited interactions around the social, behavioural, and civic participation aspects of federalism.

Way Ahead...



Political transitions have been a characteristic feature of contemporary Nepal. Since, the present constitution of Nepal was passed amid deadly protests in September 2015, Nepal's new constitution has deepened ethnic, social and political aspects. The country's national parties and protesting groups need to find ways to address constitutional disagreements and underlying dispute. There is a clear risk of escalating violence unless all sides understand that without compromise and good faith Nepal faces an existential threat.

Constitutional Debate in Bhutan



The Constitution must go beyond mere words and become the golden pillar, which will support and enable the political system to safeguard the sovereignty of the country and the rights of the people.

Overview...



- The tiny Himalayan kingdom of Bhutan , which had remained isolated from the world until the 1970s, embarked on a series of transformational reforms in the new millennium that included the replacement of the country's old absolute monarchy with a parliamentary democracy and the enactment of a written constitution.
- The 'democratization' process was unique because the impetus for change came from the monarch, who pressed ahead with his modernization agenda in the face of palpable opposition from his people, arguing that popular democracy was the only viable way forward for Bhutan in the modern age.
- The process of constitution making involved the striking of a delicate balance between tradition and modernity and ensuring that the monarchy continued to play a meaningful role in the country's affairs.

Factors animating the Bhutanese experiment in constitution making



- Pressures brought about by social tensions within the country
- Events in Bhutan's neighbourhood
- The ruling monarch's determination to continue his program of liberalization and democratization.
- The influence of 'Western' ideas suggesting that democracy was the best bulwark against tyranny and injustice.

The Birth of the Constitution



- The constitution-making process began with the Prime Minister (as chairman of the council of ministers) writing to the Chief Abbot of the Central Monastic Body of Bhutan, the Je Khenpo, and the Chief Justice of Bhutan, asking them to nominate members to the Constitution Drafting Committee that had been envisaged by the royal decree issued on 4 September 2001.
- The committee, chaired by the Chief Justice, began its work on 30 November 2001.
- A number of sittings were held in various parts of the country between November 2001 and June 2003.



- The finalized first draft was unveiled to the public in March 2005.
- This draft was widely circulated for comment, and arrangements were made to collate and consider the feedback received.
- When all the suggestions received were taken on board and the necessary changes made, the constitution was finally adopted in a grand ceremony on 18 July 2008.

Evaluation



- The constitution of Bhutan is comprehensive with brevity. It combines tradition with modernity to usher the nation into the 21st century as the harbinger of peace and advocating scientific temper with a spirit of humanism.
- In case of Bhutan , it is a short period for the meaningful assessment of the performance and long-term durability of its constitution.
- Even so, Bhutan approaches the 12th anniversary of its experiment with a process that remains historically significant for this region.

Devolution Debate in Sri Lanka



Devolution

The statutory delegation of powers from the central government to regional and local governments - aims to make governance structures more efficient and responsive to local needs.

Overview...



- The concepts of decentralization and devolution are not new phenomena to Sri Lanka. Since independence (1948), the process of decentralization and devolution have taken place at a varying pace to address changes in socio-economic and political conditions.
- The devolution framework and consequential amendments to the Constitution were set out in the 13th amendment bill.
- The more detailed statutory framework of devolution was set out in the Provincial Councils Bill.

Important Innovations...



- Divisional department councils - 1971.
- District political authority - 1973
- Decentralized capital budget – 1974
- District minister system – 1978
- District development councils – 1981
- Provincial councils - 1988

Establishment of Provincial Council



- The provincial council systems were influenced by the Indian government as a mode of solving ongoing internal conflict.
- The main impetus for the establishment of provincial councils was the devolution of political and administrative authority to sub-national level to address the Tamilian interests.
- The provincial councils have become the second tier of the administrative structure of Sri Lanka.
- Prior to the 13th Amendment , Sri Lanka was an archetypal unitary state, in which legislative power was exercised by Parliament, executive power by the President, and judicial power through courts.



- While Sri Lanka has a long tradition of local government dating from colonial period, there had never been a tier of government at the provincial level even for administrative purposes.
- After independence, the principal demand for the decentralization of power came in the form of the desire of the Tamil people for territorial autonomy in the northern and eastern areas of the island within the framework of a federal Sri Lankan constitution.
- In the absence of any success in securing federal autonomy, Tamil nationalism had taken to the espousal of a separate state in the North and East.
- By the 1980s, the unresolved claims to power-sharing reached a situation of serious armed conflict between the state and Tamil militant groups.

Thimpu Principles



- In July 1985, Tamil nationalist groups collectively articulated a set of four 'cardinal principles' as the basis of a new constitutional settlement. These were :
 - ❖ The recognition of the Tamils of Sri Lanka as a distinct nationality;
 - ❖ The recognition of a Tamil traditional homeland in the North and East;
 - ❖ Based on (1) and (2), the recognition of the inalienable right of self – determination of the Tamil nation; and
 - ❖ The recognition of the right to full citizenship and other fundamental democratic rights of all Tamils, who look upon the island as their country.
- These demands known as “Thimpu Principles” were rejected by the Sri Lankan government on the grounds of constituting a negation of the sovereignty and territorial integrity of Sri Lanka.

The Indo-Lanka Accord



- The 'Indo-Lanka Agreement to Establish Peace and Normalcy in Sri Lanka' commonly known as Indo-Lanka Accord, was signed by the PM of India, Rajiv Gandhi and the President of Sri Lanka, J.R. Jayewardene, on 29th July 1987 at Colombo.
- This bilateral agreement addressed a number of issues pertaining to the resolution of the conflict in Sri Lanka.
- It contained a joint declaration of the broad principles of a new settlement, and it committed Sri Lanka to establish a system of devolution to Provincial Councils.

13th Constitutional Amendment of Sri Lanka



- ❖ 13th Amendment to the Constitution of Sri Lanka is based on the Indo-Sri Lanka Accord which incorporated the devolution of power to provinces.
- ❖ The Sri Lankan Parliament passed the 13th Amendment to the constitution on November 14, 1987.

Key Provisions of 13th Amendment



- The establishment of Provincial Council
- The appointment and powers of the Governor of Provinces
- Membership and tenure of Provincial Councils
- The appointment and powers of the Board of Ministers
- The legislative powers of the Provincial Councils
- Alternative arrangements where there is a failure in the administrative machinery
- The establishment of the Finance Commission
- Tamil as an official language
- English as a link language
- The establishment of the High Court of the Province

Opposition to 13th Amendment



- Although gaining support from sections of the society, 13th Amendment has also been subjected to certain opposition.
- It is believed that this amendment is a colossal waste of public funds as the people in these provinces receive no benefit .
- There are fears that the amendment will be a danger to the unity and the territorial integrity of Sri Lanka if police and land powers are transferred to the Northern Provincial Council.

India's Stance...



- ❖ India has been pressing Sri Lanka to implement the 13th amendment on devolution of powers in “letter and spirit” and to fulfill the aspirations of the ethnic Tamils.

Conclusion



- ❖ Despite impediments and threats to the autonomous functioning of local governments, support for devolution is of critical importance to the deepening of democratic structures and institutions as well as for the cultivation of future democratic leaders.



Thank you...