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Power struggle in the Technical and Vocational Education and Training (TVET) sector in Nepal

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Abstract

The governance of Technical and Vocational Education and Training (TVET) in Nepal was heavily centralized in the past as the country was operating under a unitary government system. The 2015 Constitution has opened the avenue to operate the TVET sector in a federalized setting with the sharing of TVET functions along with power and authority by three tiers of government. However, the sharing of power and authority between the federal and sub-national governments has not been easy as highlighted by the Constitution. This paper attempts to analyse the challenges that are hindering the smooth transition of centrally held power and authority towards the sub-national governments. It argues that although there is a general support and optimism for the federal transition, many challenges remain for the implementation. The existing political economy of the TVET sector limits the realisation of the Constitution's goals of transformation for the TVET sector in a federal setting.

Keywords

Federalism, power, TVET, government, Nepal

A) Context

Technical and Vocational Education and Training (TVET) is considered as a crucial means to enable human resources to contribute to and benefit from the labour market. TVET plays a significant role in developing countries in providing competitive human resources to contribute to the social, economic and environmental development of the country (Pavlova, 2014). It is part of lifelong learning, can take place at secondary, post-secondary and tertiary levels and includes work-based learning and continuing training and professional development intended to lead to qualifications (UNESCO, 2015). It includes a wide range of skills development opportunities embedded in national and local contexts. Learning to learn, the development of literacy and computational skills, transversal skills and citizenship skills are integral components of TVET (Field & Guez, 2018). There are different terms for TVET but they share similar meanings. Alternative terms include vocational education and training (VET), vocational and technical education and training (VTET), technical and vocational education (TVE), vocational and technical education (VTE), further education and training (FET), career and technical education (CTE) (McLean & Lai, 2011).

Nepal has a seven-decades long history of TVET. It has been considered as a vibrant sector for the socio-economic development of the country. In the early 1950s, Nepal started to implement vocational training courses to provide livelihood opportunities to its people (Sharma, 2005). Since then, the development in TVET sector was continued but as need based and in a sporadic way until the establishment of the Council for Technical Education and Vocational Training (CTEVT) in 1989. The CTEVT was established with the aim to produce technically competent mid-level human resources to contribute to the long-term development of the country. Since its establishment, with the form legal mandate, the CTEVT was the sole agency to operate TVET all over Nepal. It had a sovereign right for setting the framework and standards for the TVET programs as well as design, develop and implement these programs along with the examination and certification. It was operating more than sixty TVET schools by itself and steering more than five-hundred private or government run TVET schools and institutions ¹(CTEVT, 2020).

With the promulgation of a new constitution in September 2015, Nepal has transitioned from a unitary state to a federalized democratic Republic, with powers shared between the 1 federal, 7 provincial, and 753 local governments. The state restructuring and the transfer of power among federating units are very important and novel aspects of the constitution of Nepal. The Unbundling Report of the Constitution has elaborated to clarify the roles and responsibilities of three tiers of government in several sectors, including education. Accordingly, TVET functions, roles and responsibilities are divided as the concurrent rights of three tiers of government, each with its own mandate. With a federal structure in place, provincial and local governments are now responsible for implementing TVET programs. The sub-functions of TVET system that are assigned to three tiers of government by the Unbundling Report of the Constitution are as follows:

¹ Private TVET schools and institutions are established and operated by either an individual or a group of people or by the industry.

Figure 1: TVET mandates of three tiers of government

Federal Government	Provincial Government	Local Government
<ul style="list-style-type: none"> • National policy, curriculum model, qualification, standardization of skill test and regulation of technical education and vocational trainings • Determination of national standards of educational institutions • Determination of equalization/equal status of educational qualification • Determination of national standard relating to scholarship and stipend 	<ul style="list-style-type: none"> • Provincial human resource projection and formulation of education plan and implementation • Provincial policy curriculum and course materials preparation, implementation and regulation of technical education and vocational trainings • Provincial policy, standards and regulation relating to technical education and vocational trainings • Scholarship management of technical education and vocational trainings • Labour Market Study • Decent work and occupational health and safety 	<ul style="list-style-type: none"> • Plan formulation, operation permission and regulation of technical education and vocational training • Distribution and implementation of curriculum and teaching material • Management of school teachers and employees • Construction and maintenance of educational infrastructures • Management of students encouragement and scholarships • Protection and standardization of educational knowledge, skills and technology of local level <p>LGOA: Plan formulation, operation permission and regulation of technical education and vocational training</p>

Source: Unbundling report of constitution, 2015, Government of Nepal

However, the devolution of state power to subnational governments in the TVET sector has not been easy. Even after a half decade of the promulgation of 2015 Constitution, the TVET responsibilities and authority are mostly centralised. Although, all three tiers of governments have the rights and responsibilities to implement their TVET mandate in line with the constitutional division of powers, in practice, subnational governments are unable to utilize their constitutionally devolved powers and responsibilities. One of the reasons of this inability is largely due to the absence of an enabling legal and regulatory framework (e.g. federal TVET act) that could clarify the functions of three tiers of government in line with the Constitution (Niti foundation, 2022). Moreover, delay of these legal and regulatory frameworks is the centralizing tendency of the federal government that allows them to continuously steer the TVET functions, ignoring the rights and responsibilities of provincial and local governments.

The CTEVT was supposed to formulate a restructuring plan along with a strategy to devolve its functions in line with the constitutional mandate much earlier. This would initiate the determining of the mandated sub-functions of TVET governance of the federal level along with those needs to be devolved/transferred to subnational governments, and shared as common functions among the three tiers of government. However, using the excuse of the un-clarity and confusion of roles and responsibilities among the federal and sub-national governments, because of absence of federal TVET act, the CTEVT has been continuously performing its old functions that were granted during the unitary government system. Amidst this confusion of roles, few province governments have taken the initiative to make their own TVET act in line with the constitutional mandate. For example, Bagmati Province and Gandaki province have endorsed Provincial TVET acts. However, they are not able to implement these acts due to the absence of federal TVET act, against

which the provincial TVET act should be aligned. An Intergovernmental Cooperation and Relationship Act of Government of Nepal mentions that the alignment of acts is mandatory in all sectors (Government of Nepal, 2020).

In this context, this paper discusses the power distribution in the federal system and analyses the challenges for accepting the power distribution between the federal and subnational governments in the TVET sector in Nepal. Based on the secondary information and the author's personal experiences, the paper argues that these challenges are the result of existing political economy of the TVET sector that prevents a smooth operationalisation of the constitutional mandates of three tiers of government.

The paper has four sections. Section 1 is the context that elaborates the updates of the TVET sector in brief. Section 2 highlights the meaning and features of federalism in general along with the power distribution in different models of federalism. Section 3 discusses the challenges of power distribution in the TVET sector in Nepal and underlying causes. The last section provides the conclusion.

B) Understanding federalism

Federalism is a constitutional mechanism that divides power and functions between different levels of government, enabling the federated units to enjoy substantial, constitutionally guaranteed autonomy along with sharing of power in certain policy areas (Bulmer, 2017). Federalism is the constitutional distribution of economic and administrative powers in a state. It is taken as a political and legal response to underlying social and political realities (Kharel, 2022). While delineating the concept of federalism, it is important to understand the difference between federalism, decentralisation and devolution. Decentralization is top-down strategy for increasing the head-offices' capacity to achieve proposed objectives (Bresser Pereira, 2022). It is the transfer of powers from central government to lower levels in a political-administrative and territorial hierarchy (Yuliani, 2004). Devolution is usually a response to demands for more local or regional autonomy to which government officials in the central government reluctantly accede. Decentralization is a public management strategy, but devolution is a political decision with managerial consequences (Bresser Pereira, 2022).

Federalism is different from decentralisation and devolution. Federalism is referred to as a division of power and functions between different levels of government, enabling them to enjoy their constitutional mandates. Andrés (2020), quoting Harvey (2019), advances that devolution differs from federalism in that the devolved powers of the subnational authority may be temporary and are reversible, ultimately residing with the central government (Durante, 2020). For instance, federal states are those that adopt federalism, while decentralised, regionalised or devolved states are those that adopted some form of devolution (Violi, 2018). Federalism is a system where state power, rights, resources and responsibilities are delineated between two or more tiers of government. Arrangement are made for the exercise of concurrent rights in a cooperative and coordinated manner and all levels of government work to make the state function, either separately or together on the basis of cooperation, autonomy and co-existence (Subedi, 2020).

Theoretically, federalism has four features (Studlar, 2022). First feature is the existence of a division of authority at vertical and at horizontal level. A vertical authority is between a central and a regional (or states or provinces) level and a horizontal authority is the division of authority among

the governments, usually called separation of powers e.g. legislature, executive and judiciary. Second feature is uniformity of the authority in all jurisdictions that are fully-fledged coequal states, provinces, or republics. A third feature is that the people within a jurisdiction choose and hold accountable with the ultimate authority at the second level. A fourth feature is that in federal systems, one house of a bicameral legislature at the central level usually represents the second level. Thus, the second level of government in a federal system has a formal voice at the central level as well (Studlar, 2022). This is probably a meaning of shared rule and self-rule as created by Elazar. Bertus (2012) quoting Elazar elaborates that the shared rules are the common power-sharing mechanisms that characterise federations. On the other hand, self-rule refers to the autonomy of the national and state governments to make and implement decisions within the limits set by the constitution. Therefore, federalism is based on the assumption that all levels of governments are to some extent self-organized and self-managed.

Regarding the models of federalism, there is no single universally accepted model. Federalism is a dynamic process and evolves continuously based on country context within a basic democratic framework. Schütze (2009) highlights two most influential manifestations of the federal principle as "dual" and "cooperative" federalism. Dual federalism is based on the idea that the federal government and the state governments are equal and each is legislating in a separate tier. Cooperative federalism, on the other hand, stands for the principle that both governments legislate in the same tier. They are hierarchically arranged and complement each other in solving a social problem. They regard themselves as partners in government, sharing powers for the common good. The states or provinces have extensive involvement in the formulation of federal policies, on the one hand, while the federal government relies on the states for the implementation of its policies, on the other. The system of dual federalism is a synonym of a layer cake, the separated layers of the cake symbolizing the distinct spheres of power between the state and federal governments (Grodzins, 1966). While cooperative federalism is rather understood as a marble cake, in which the roles and responsibilities of the various levels of governments, and the revenues they generate and share, are mixed together in an inseparable mingling of differently colored ingredients (Grodzins, 1966).

C) Federalism and power struggle in Nepal's TVET sector

Federalism is a scheme of power sharing among federating units (Belbase, 2022). Article 56 of the Constitution of Nepal 2015 has provisioned federal, provinces and local levels as key power structures of the country. These three tiers of government use exclusive, concurrent, and residual powers according to constitutional and legal provisions. According to the Unbundling Report 2017, federal, province and local levels will have 873, 567 and 355 work responsibilities respectively (Government of Nepal, 2017). Article 57 of the Constitution of Nepal specifically provides for state power to be used through the laws made by all three levels according to the constitution (Government of Nepal, 2015).

Considering the core objective of the federal system, which is to promote accountability, standards with respect to the regional and local need and preferences (Wong, et.al, 2017), Nepal has adopted a cooperative federalism, where the powers are shared by all tiers of the government (Kharel, 2022). A typical instrument of cooperative federalism, for example, is the framework law, whereby the federal legislature lays down basic goals and principles for a policy area and

then allows states to implement these in their own ways (Bulmer, 2017). When Nepal's Constitution (2015) states that "the state power...shall be used in accordance with (this) constitution" based on "the principles of cooperation, coexistence and coordination", it suggests that all three tiers of governments are authorized to entertain their respective sovereign powers from the constitution within their jurisdictions. However, a power sharing among three tiers of government in Nepal has been stalled in profound uncertainty, risking the implementation of the Constitution. Even after a half decade of promulgation of the latter, it exists a debate on defining power relationships among three tiers of governments. The Nepal's TVET sector is suffering from this reality. Followings are few major underlying causes.

1. Centralist mind-set

Despite the fact, that Nepali political parties and their leadership have committed to federalism, their political culture and mind-set continues to favour centralization of power (Niti foundation, 2022). Power sharing has been a major issue in TVET sector in Nepal, influencing against the implementation of constitutional mandate, mainly by the subnational governments. The federal government continuously encroaches the rights and responsibilities of the provincial and local governments. For example, based on the Local Governmental Operational Act (LGOA), plan formulation, operation permission and monitoring, evaluation and regulation of skills training are the mandate of local governments (Government of Nepal, 2017). Notwithstanding this provision, while reviewing the budget books of the Government of Nepal, it is evident that several ministries at federal level plan and allocate funds for skill- training, despite the fact that these are clearly the rights of the local governments (Government of Nepal, 2020, 2021 and 2022). In some cases, conditional grants² are provided to local governments to implement such trainings, which are planned and regulated by the federal government with limited or no involvement of local governments. The reason for such holding back of the power is due to the mind-set of the federal government. It may be due the reason that Nepal's federalism is the top-down process. In such design, although provincial and local governments have exceptional scale of autonomy, federal government is the sole authority in determining public policies at all levels of the federation (Finnegan, 2019).

In spite of this, there are few notable milestones, which illustrate the commitment to the sharing of power and authority to the sub-national government. In line with the Constitution, the National Education Policy (2019) and the 15th National Plan 2018/19-2023/24 have widened the scope of TVET sector. While the National Education Policy elaborates the roles and authority of three tiers of government in TVET sector, the current National Plan has provisioned to expand TVET programmes extensively to ensure opportunities and access to TVET at the local level. However, the existing legal provisions are not updated in line with the policy's aspirations. The endorsement of federal TVET act has been pending for several years. This purposeful delay has allowed federal institutions to continuously navigate the TVET functions that are not their mandate rather these are under the jurisdictions of provincial and local governments. It appears that the causes of most of these problems are the result of a unitary mind-set prevalent among politicians and the bureaucracy (Adhikari, 2022).

² Conditional grants are earmarked for specific programs, projects or activities to be carried out by the local or province governments as per the schedule 6 and 8 of the Constitution of Nepal.

2. Bureaucratic setback

Under the new legal avenues, provinces can develop their own policies, laws, standards and guidelines to govern the TVET system. However, this provincial autonomy comes into question as all policies, laws and directives need to be constrained within the federal framework. The provinces are not able to draft or implement their own TVET act until the federal government has made its own TVET act on areas of concurrent and overlapping competencies. Furthermore, despite federalization and the devolution of power, the bureaucracy in Nepal continues to hold a great amount of power when it comes to law making. Although elected representatives are stronger on paper after the 2017 local elections, on the one hand, the bureaucracy continues to believe that provincial and local governments do not have adequate understanding and capacity to make policy decisions (Niti foundation, 2022). On the other hand, elected representatives lack the capacity and interest to actively engage in the law-making process (Niti foundation, 2022). As a result, laws in Nepal are developed without any participatory discussions with major stakeholders. Federalism facilitates negotiations and consultation both vertically between the central authority and local entities as well as horizontally among diverse interests (Wong, et.al, 2017). However, notwithstanding the spirit of the Constitution, provincial and local governments expressed that they are hardly consulted while drafting the federal TVET act. Therefore, they are in doubt regarding the encroaching upon their right to exercise exclusive powers as specified in the Constitution.

3. Fear of losing power

Enactment of the proposed federal TVET act will limit the current authority of the CTEVT. Especially, it will shift the affiliation and training implementation rights of the CTEVT towards the sub-national governments in line with the constitutional mandate. The current affiliation rights of the CTEVT place it in a position of privilege and power when providing affiliations to private sector institutions (Niti foundation, 2022). As the CTEVT will remain with limited but core functions such as setting standards and frameworks for the programs, accreditation of institutions and certification but without training implementation rights, there is a tendency to restrain the approval process of TVET act with the notion of holding of current power and authority.

4. Diverse political interests

The reform of TVET sector is a strong political agenda in Nepal. Almost all political parties consider TVET as necessary skills for livelihood of people as well as for increased economic activities to attain prosperity of the country. Niti foundation (2022) highlights that elected representatives at all levels of government are keen to promote TVET for three crucial reasons. these are: i) the potential increase in income and employment opportunities both at home and abroad, especially among marginalized groups; ii), the potential to gain influence within political parties by imparting skills training to cadres along with allowances and rent-seeking opportunities; and iii) the pressure to be seen as being responsive to local needs expressed directly by local constituents. For instance, although promoting TVET has remained in the government's agenda, it has remained so as a mere slogan only and hardly translated into the strategic vision to federalise TVET sector according to the constitutional mandate. Unfortunately, it is a missed opportunity for the political parties if they fail to lead the systemic development of TVET sector to harness its benefits for the livelihood of people and contribute to socio-economic development of the country.

D) Conclusion

Federalism is a paradigm shift in Nepal's governance system. Nepal's Constitution 2015 suggests that all three tiers of governments are authorized to entertain their respective sovereign powers within their jurisdictions. As Nepal has adapted the cooperative form of federalism, it is important that the TVET related power is shared among the three tiers of government in line with their constitutional mandates. However, power sharing among the three tiers of government has been challenging in many sectors including TVET. In the case of TVET governance, authorities and power remain with the federal government, which is supposed to be devolved at the level of sub-national governments as per their constitutional mandate. This holding back of power is due to the existing political economy factors, which are mainly the centralist mind-set of the bureaucrats and the politicians as well as fear of losing power by the existing ruling institutions. It is also due to the lack of strategic vision about harnessing the benefit of TVET to contribute to the development of the country, which is of course a major political agenda of the Government of Nepal. Unfortunately, this has seriously hampered the systemic reform of the TVET sector, a sector that is considered inevitable for the socio-economic development of the country. Nevertheless, some notable development in the TVET sector indicates a light of hope that the political and bureaucratic mind-set will gradually be tuned to the federal system.

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