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Critical Analysis of the Election System in Nepal

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Abstract

This study critically examines the election system of Nepal. It is based on closed observation of the past elections held in Nepal, interviewing with intellectuals and political leaders and using secondary data and information from different sources - research articles, reports and constitutions. Nepal has practiced different election systems at different times after the first election for parliament held in 1959. There have been political changes many times. The Constitution has changed accordingly and so has the election system. From 1959 to 2006, Nepal has practiced first past the post-election system in the parliamentary election. After the mass movement of 2006, there has been a paradigm shift in the election system. Thereafter, Nepal has adopted a mixed election system - both first past the post-election system and proportional representation system. Two elections for the Constitutional Assembly (CA) and first federal election have followed the mixed model of election. However, despite the changes in the election system, some pertinent problems and issues in Nepalese election system still exist. It has not been fair; money and muscle have greater influence on the election; and there has been increased political corruption in Nepal. The election in Nepal has been expensive and it has not favored the rights of honest leaders. The spirit of proportional representation is to bring inclusiveness in the election system. However, political parties have violated and severely misused the system. Further, it has failed to address people's aspiration for institutionalization of democracy and development.

Keywords: Election system, inclusiveness, legitimacy, mixed system, proportional representation.

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Introduction

The election system is an essential component of the democratic System. It provides legal legitimacy to the government and political parties. There are various forms of election systems in practice. Among them, first past the post system (Philip Norton, 1997), two round systems, proportional representation and mixed system are the popular ones. First past the post system is

the plurality electoral system, in which the candidate getting the highest votes wins the election. Two-round system is the majority electoral system in which the winner must get more than 50 percent votes. And, according to Abramson, Aldrich, Blais, Diamond, Diskin, Indridason & Levine (2010), in a proportional representation electoral system each vote is counted and each party gets seats in the parliament in proportion to the votes obtained. Nepal has adopted a mixed election system which consists of first past the post system and proportional representation system. The importance of periodic elections is that it provides peoples' mandate periodically. Free and fair elections are the foundation of democracy. Periodic elections are important for the success of parliamentary systems as well. Nepal has followed the Westminster system of parliament. In Nepal, the first general election for parliament was held in 1959 (Dahal, 2020). However, the elected parliament was dissolved by then king Mahendra and he started a partyless panchayat system. In the party less Panchayat system, there was no practice of periodic elections; rather political authorities were directly nominated by the king. After the referendum in 1980, the Panchayat regime also began the periodic election. The people's movement of 1990 restored multi party democracy in Nepal after constitutional provision was made for periodic elections in Nepal. The failure of authoritarian and totalitarian regimes spurred a global surge in democratization in the 1980s. However, efforts at democratization have been challenged by path-dependent institutional and political variables that can inhibit the growth of western-style democratic pluralism (Thapa & Sharma, 2009).

There have been four general elections of parliament and two constitutional assembly elections in Nepal since 1991. Also, one mid-term general election was held in 1994. Now the constitution of Nepal has adopted a different election system for different units of government. Among three tiers of governments, the federal and provincial governments have practiced both first past the post system and proportional election system while local government has practiced first past the post system only.

Why is there the need of periodic elections for the government and political parties? If the government believes in democracy and sovereign power of the people, the government should obtain political legitimacy that comes through periodic elections. In general, political parties are supposed to work for the betterment of the people after gaining political legitimacy through the election. However, the political parties of Nepal have been found misusing their political legitimacy. There are many different electoral systems in use in the world. Most countries have chosen an electoral system based on their government system and national aspirations. Nepal has been practicing both first past the post system (FPTP) and proportional representation (PR) systems. Among 275 members of the House of Representatives in the parliament, 60% members are elected from first past the post and the rest 40 % members from proportional representation system.

Free and fair elections are the basic building blocks of democracy (Wanna, 2004). Periodic election is the backbone of democracy. It provides legitimacy to the government. A free and fair

election brings the micro-institutions of governance closer to the people. People as stakeholders of democracy are subject to the authority of elected leadership and, therefore, can claim to share direct control over them (Dahal, 2004). Similarly, it provides legitimacy of the leadership to the institution. In democratic system, election is an important epitome.

Defense of first-past-the-post frequently assume a certain view of legislative power: a party enjoying an overall majority can govern effectively without making deals with other parties (Blau, 2004). An electoral system in a democracy is required to perform two functions-first, to ensure that majority and second to ensure all significant minorities are represented (Pint & Duschinsky, 1999).

The government needs legitimacy for governance. In democratic nation the government gets legitimacy from the people's vote. In democracy, the people choose their representatives through voting. Elected representatives are chosen by the people. The people participate in the election for the overall betterment of the nation. In democracy, we need periodic elections obligatorily.

Objective

The main objective of this study is critical analysis of the election system of Nepal. Nepal has been practicing parliamentary system since 1959 (although Party less Panchayat and direct rule of King Gyanendra interrupted the course for some time) and the election of the parliament has been held under different election systems, from first past the post system to mixed election system. And, the purpose of this study is to evaluate merits, demerits and implication of such election systems.

Methodology

This study has used both primary and secondary data. The primary data has been collected through observation of the past elections held in Nepal by the researcher himself and interviews with intellectuals and leaders of the political parties. Interviews are taken with 7 intellectuals and leaders of major political parties. The researcher first got appointments for telephone interviews and then interviewed the respondents on various issues of the election system in Nepal. The telephone interview was conducted from March 10 to 25, 2020. The researcher himself had observed the elections of 1991, 1994, 2000, first CA election of 2008, second CA election of 2013, and federal election of 2017. The observations of these elections have been used as another tool for the analysis of this study. Similarly, this study has used secondary data from the constitutions of Nepal, related books, research articles, and research reports. Then the results and conclusion have been drawn to bring this study to completion.

Constitutional and Legal Provision

Constitutional Provision

The constitution of Nepal-2015 has a clear provision on the election system of Nepal (The Constitution of Nepal, 2015). The constitution has made a provision that parliamentary election for 275 seats of the house of representative would be held every five years. Out Of the 275 members, 165 members are elected from first past the post system and remaining 110 members are elected through proportional representation (House of Representative Law, 2017). Nepal has been practicing both first past the post system (FPTP) and proportional representation (PR) system since the first CA election. Among the 275 members of the House of Representatives in the parliament, 60% members are elected from first past the post and the rest of the 40 % members from proportional representation. Similarly, the national assembly, upper house, consists of 59 members, of which 56 are elected by the Electoral College and 3 members are appointed by the president on the recommendation of the council of ministers.

Legal Provision

Election of House of Representatives is held periodically in every 5 years, according to House of Representative Law 2017. If the parliament dissolves within 5 years due to any reason, a midterm election should be held (House of Representative Law, 2017). Under such circumstances, the president should announce the time of midterm election within six months. There are two different ballot papers, one for the first past the post system and another for the proportional representation. In the first past the post system, people directly cast vote to the candidate they prefer while in the proportional representation, they cast vote for the political party that they like the best.

Election System of Nepal

First general election was held in 1959 after the establishment of democracy in Nepal. The Constitution of Kingdom of Nepal, 1959 had made a provision of bicameral legislature, Pratinidhi Sabha as lower house and Rastriya Sabha as upper house of Nepal (The Constitution of the Kingdom of Nepal, 1959). There were 109 seats in the lower house and 36 seats in the upper house. The members of the lower house were elected from the first past the post system. In the first general election, Nepali Congress won 72 seats out of 109; two third majority for the government (Baral, 1975). BP Koirala was the first elected Prime Minister of Nepal. However, after eighteen months, late king Mahendra dissolved the parliament, took over the executive power into his hand and banned all the political parties. This party less Panchayat system sustained for almost 30 years until 1990. During the Panchayat system, all political parties became underground and were doing their political activities secretly.

In reaction to the existing political system, a joint mass movement was called for in 1990 that could restore the multiparty democracy. The Constitution of the Kingdom of Nepal 1990 also made a provision of a parliamentary system with a bicameral legislature. The House of Representatives had 205 members and the National Assembly had 60 members. The members for the House of Representatives were, again, elected from the first past the post system while the members of the National Assembly were elected from the proportional representation system. Three general elections were held under this constitution- the general election of 1991, the midterm general election of 1994 and the general election of 2000 (Election Commission, 2017). However, the parliament could not work efficiently and Prime Minister Sher Bahadur Deuba dissolved the parliament in 2002 and ultimately King Gynendra took over the executive power into his hand accusing that PM Deuba failed to conduct election in time.

The Joint Mass Movement of 2006 restored the parliament and the new Interim Constitution was provisionally drafted and brought into operation for until the new constitution is promulgated by the to be formed constitutional assembly. This constitution had specifically made a provision for the Constitutional Assembly election. The Constitutional Assembly (CA) was a unicameral legislature. According to the Interim Constitution of 2007, the CA had 601 members (The Interim Constitution of Nepal, 2007). Among the 601 members, 240 members were directly elected from 240 constituencies through the first past the post system, 335 members were elected by proportional representation and 26 members were appointed by the president on the recommendation of the government. First CA election was held in 2008. However, it failed to promulgate a new constitution. The first CA was dissolved on 28 May 2012 (Gellner, 2014). Then the Second CA election was held in November, 2013 that made the Constitution of Nepal 2015. This new constitution adopted a mixed election system for the federal and provincial parliament and first- past-the-post system for the local level election. The federal parliament has a bicameral legislature. The House of Representative has 275 seats, of which 165 members are elected directly and 110 members are elected through proportional representation system. The National Assembly has 59 seats of which 56 members are elected by the Electoral College and 3 members are appointed by the president on the recommendation of the Council of Ministers. For direct election, 165 constituencies have been determined based on population and geography with each district having at least one constituent area.

Data Analysis and Discussion

Election system is the backbone of democracy. Nepal has been practicing an election system for the fresh mandate of the people. But in Nepal, the parliamentary election has become too expensive. Money has played a big role in election results. Candidates who can spend millions of money have a higher probability of winning the election. The political party's top leaders have exercised a monopoly on giving tickets to the cadres and leaders for competing in the election. Right candidate is not the only criteria for getting the ticket. Cadres' closeness to the top party leaders has a big role in getting a ticket for the election (Khatriwada, J., personal communication,

10 Oct, 2020). Opportunist candidates are often chosen for the election and right candidates are often shadowed. There is no scientific approach for giving tickets for the election. Honest and deserving candidates have the least chance of winning the election. Similarly, vision and ideology have been shadowed by the muscles. Deserving politicians, who cannot spend money, hardly get the ticket for the election from their own party. Even if they get the ticket, it is hard for them to win the election without spending millions of money. The best voting system that could be adopted in an under-developed or developing democracy can be determined by analyzing the reliability, security, neutrality and efficiency of the voting system (Kumar, Vamsikrishna, Tyagi, Bommisetty, & Kandala, 2016, October).

Merits & Demerits of FPTP

First past the post-election system is the majority electoral system. It provides a clear cut choice for voters among main political parties, according to their election manifesto and its past activities for the leading role of the government. Here, the winner takes everything and the losers' all votes are wasted. FPTP is the bridge between the people and political parties. Elected leaders are directly accountable to the people. They are close to the people of their election region. During election time, candidates pay a home to home visit asking for people's vote. So, it facilitates them to understand people's interest as well as aspirations. It gives a chance for popular candidates to be elected. These are the main advantages of first past the post electoral system. On the other hand, it is a very expensive election system. There is more competition between candidates of the various political parties. It is difficult for the voters to identify the party that best represents their interests as elected candidates forget their promises soon after winning the election and the governing party does not feel a compulsion to fulfill the promises it made in its election manifesto. Also, it excludes smaller parties from 'fair' representation. Similarly, candidates from backward society are easily rejected because they are not popular in the whole societies. The clever and eloquent candidates can easily influence the voters through their speech. They mostly convey false promises to their people and win the election.

Merits & Demerits of Mixed System

All the people with multiethnic, multilingual, multi-religious, multicultural characteristics and from geographical diversities having common aspirations and being united by a bond of allegiance to national independence, territorial integrity, national interest and prosperity of Nepal, collectively constitute the nation (The Constitution of Nepal, 2015). So, mixed system seems more suitable for Nepal. Mixed election system is expected to materialize inclusive democracy as it ensures equal participation of diverse groups and marginalized communities on the policy level. It is also expected to empower those people who have been deprived socially, economically and politically. However, political parties have misused election system. The proportional representation is for those who have the least chance of securing a seat in the parliament by directly winning the election. Also, it is designed to make the parliament inclusive in all respects. However,

proportional representation has promoted nepotism and favoritism. Rich and resourceful candidates have entered the parliament through this way and the targeted groups have been, again, left behind. This mixed system has not delivered what it was actually expected for.

Critical Issues

In the time of election, the political parties spend huge amounts of money for election campaigns. Present election system is more expensive to the honest party cadres. The political party mainly aims to serve the people and the nation. Honest party cadres, who do work always for the betterment of the party and the nation, do not get a ticket for the election. The candidate who is clever and can collect money from rich people and businessmen for the election campaign generally wins the election. Candidates from different parties spend too much money on election campaigns and even they spend money to buy votes. Also, candidates from major parties collect a huge amount of money in the name of donation. For proportional seats, there is an allegation that parties offer some proportional seats in exchange for a handsome amount of money.

Our election system is more expensive for the honest political party leaders (Sharma, H., Personal communication, 15 Oct., 2020). One who has the capacity to spend enough money in the time of election and who can spend money for the party and for the top leader of the party has more chances of getting party tickets? Vision, mission and goal of the elected leader play an important role for nation building and statesmanship is essential for better leadership, (Karki, R., personal communication, 20 Oct., 2020). However, people do not consider the vision and statesmanship capacity of the candidate while casting the vote. Money and muscle ring out good candidates easily from the election process. Lack of free and fair election and independent election commission are our problems (Khatiwada, J., personal communication, 10 Oct., 2020). Independent candidates are not appointed as members of the election commission. The Election Commission has not been institutionalized and its independent role has been questioned for several times. Furthermore, the role of the chief of the election commission and its members has been controversial (Devkota, K., personal communication, 25 Oct., 2020). Ruling party always has unfair influence on the election commission. Election code of conduct should be followed in the election time. However, it has been regularly violated and the culprit is left unpunished (Karki, R., personal communication, 22 Oct., 2020). Widespread impunity has restricted fairness of the election system. Moreover, people are not independently choosing their representative because they are not aware and they do not know the value of the voting rights (Panday, S. personal communication, 15 Oct., 2020).

Election System & Stability of Government

Election is the medium of fresh mandate of the people for governing the nation. It helps to strengthen democracy as well as democratic practices. It brings stability of the government through transferring sovereign power to their representatives. Nepal has adopted the parliamentary system of the government with a mixed electoral system combining first past the post system and

Proportional Representation system. These kinds of systems will help society get a better participation in the governance of a country, because they will make people be heard by their government and will increase general public awareness (Arias, Garcia, & Corpeno, 2014). It is very useful in developing countries like Nepal. If we study and analyze the election history of Nepal after the establishment of democracy in 1951, there was no stable government except in the party less panchayat system. The first elected Prime Minister BP Koirala could work for only 18 months, though he was elected for 5 years (Baral, 1975). Similarly, after the restoration of democracy in 1990, elected Prime Minister Girija Prasad Koirala had a majority in the parliament but he dissolved the parliament and recommended for the midterm election. Likewise after the midterm election of 1995, there was no majority deserving party in the parliament. As a result, party leader of the Communist Party of Nepal (United Marxist and Leninist)- the largest political party- Man Mohan Adhikari led the coalition government for only nine months. After that none of the governments could work for more than 2 years. From 1990 to 2017, there have been 24 governments in Nepal.

The new constitution of Nepal was promulgated in 2015 and general election was held in 2017. Communist Party of Nepal (CPN) has got nearly $\frac{2}{3}$ majority in parliament and Khadga Prasad Sharma Oli has been the Prime Minister of Nepal. It was expected that this government would be stable, but in December 2020, due to the party conflict, Primeminister KP Oli dissolved the parliament and has called for the midterm election.

Election System & Representation

Mixed model of the election system was expected to ensure representation of all people in the parliament. However, the proportional representation system has been heavily misused by the parties. It has been used to bring leaders' close relatives and near and dear ones in the parliament. Proportional seats have been exchanged for money.

Election System & Corruption

At the election time, candidates of various political parties spend a huge sum of money for election campaigns. This has institutionalized political corruption in Nepal. Once a candidate wins the election by spending money, his major concern would be to get back the spent money in return after reaching on the chair. Candidates receive money in the name of donation during the election campaign. Donors influence the elected representatives to work in their interest which brings policy level corruption in the country.

Conclusion

Election is required for the institutionalization of democracy. General elections for parliament have been held under different constitutions. After the advent of democracy in 1951,

Nepal has so far observed five general elections held in 1959, 1991, 1994, 2000, 2017 and two CA elections of 2008 and 2013. Different election systems have been practiced at different times. Before the people's mass movement of 2006, Nepal followed the first past the post-election system. However, FPTP failed to address the issue of inclusiveness in the parliament. It was felt that a proportional representation system could ensure the representation of different castes, ethnicities, genders, religions and languages in the parliament and mainstream politics. So, Nepal has adopted a mixed election system since the first CA election. In this way, Nepal has observed from FPTP to a mixed model of election. However, none of the election systems could bring stability of the government. There have been frequent changes in the government. Election has not been free and fair. Election campaign has become too expensive. It is hard for the honest party cadres to contest in the election as they cannot bear the cost of election. Huge sum of money is invested in the election and donors have greater influence on the elected representatives that gives rise to corruption. Money and muscle have heavily influenced the election results. The spirit of proportional representation is to bring inclusiveness in the election system; however, political parties have violated the spirit of the constitution and severely misused the system. Further, it has failed to address people's aspirations for the institutionalization of democracy and development.

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APPENDIX

List of Respondents

Name	Number	Date	Location
Khatiwada, J.	Respondent 1	10 March, 2020	Kathmandu
Panday, S.	Respondent 2	15 March, 2020	Chitwan
Devkota, K.	Respondent 3	15 march, 2020	Chitwan
Sharma, H.	Respondent 4	15 March, 2020	Kathmandu
Karki, R.	Respondent 5	20 March, 2020	Kathmandu
Devkota, K.	Respondent 6	25 March, 2020	Kaski
Bhandari, C	Respondent 7	15 March, 2020	Gulmi

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