

Space for Language: Constitutional engineering for national consent in Nepal

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Abstract

Nepal is in the process of drafting a new constitution through an elected Constituent Assembly (CA). Like many countries in the world, it is also concerned about the need to preserve its cultural and linguistic diversity according to the best formula that one can think of in the face of competing claims of different communities and cultures. In this context, the CA Committee on the Determination of Grounds of Social and Cultural Solidarity has already proposed an inclusive multilingual language policy for the purpose of national debate.

The preliminary draft on the issue provides that all native languages spoken in Nepal are national languages. It is the obligation of the state to ensure equal protection, promotion and development of all national languages. Every native language community has the right to experience their linguistic identity and their relationship with it in dignified ways. Featuring additional changes, the draft recognizes Nepali — the present official language of Nepal — as the official language of the central government. Along with Nepali, each province has been given the competence to decide how many provincial languages it wants as its official languages. The local units within the provinces may also employ the local language of the area as the official language for their particular region as per the law enacted by the respective provincial legislature.

The committee draft also provides that the official language of the central government shall be the language to be employed for the communication between the centre and the provinces. There are two exceptions, however. First, a province may decide to communicate with the centre in one of the languages it has approved for official business within the province. Secondly, the provinces are to conduct their official business with each other in the official language of the centre and any other language to be mutually agreed upon between them.

Finally, according to a draft provision, the central government may choose to recognize a language that fulfils certain required standards as its official language upon the recommendation of the language commission. The only requirement is that such a recommendation be passed by a simple majority of the central legislature.

The challenge now is to see whether this country can sustain what it has proposed; and also find out whether the multilingual policy in its effect benefits the long deprived indigenous languages of Nepal.

Space for Language: Constitutional engineering for national consent in Nepal

Nepal is an ancient country. It lies on the southern flank of the Himalayas and is situated between two big neighbours - India and China. Nepal covers an area of 147,181 square kilometres, and stretches 145-241 kilometres north to south and 850 kilometres west to east.

Background: It was 1951, when the Nepalese monarch in cooperation with the democratic forces ended the century-old system of rule by hereditary premiers and instituted a cabinet system of government. There was a long transition, and a period of instability, until 1959, when the first general elections were held. After a brief experiment with parliamentary democracy for sixteen months, the King dissolved the parliament, arrested the prime minister and then introduced a party-less political system with limited role for the opposition politics. This system placed the king in leadership role. It also severely limited the role of democratic forces, especially the mainstream democrats and nationalist leaders, in the process of nation building.¹

A multiparty democracy was reinstated in 1990 with significant reforms within the framework of a constitutional monarchy. While democracy was restored, and the country was moving forward through open politics, an insurgency led by underground Maoist extremists broke out in 1996. This affected the democratic development of the country once again.

The Maoist insurgency led to ten-year civil war. It stalled the process of democratization that had begun under the 1990 constitution. This led to the dissolution of the cabinet and parliament and assumption of absolute power by the king. Several weeks of mass protests in April 2006 to restore democracy. Several months of peace negotiations between the Maoists and the new government constituted according to the aspiration of the forces of mass movement culminated in a November 2006 peace accord and the promulgation of an interim constitution.

Following a nation-wide election in April 2008, the newly formed Constituent Assembly declared Nepal a federal democratic republic and abolished the monarchy at its first meeting the following month. The Constituent Assembly is supposed to draft and adopt a new democratic constitution for Nepal by May 27, 2010 to sorting out all political problems of the day.²

Political Variables

¹ See, i. e., Ganesh Raj Sharma, B. P. Koirala's Atmabritanta (late life recollections of Prime Minister B. P. Koirala in Nepali) (Kathmandu: Jagadamba Press, 2055/1998); L. E. Rose @ Margaret W. Fisher, The Politics of Nepal: Persistence and Change in An Asian Monarchy (Ithaca: Cornell University Press, 1970); B. L. Joshi and L. E. Rose, Democratic Innovations in Nepal (University of California Press, 1966) (explaining the forces behind the operation)

² The World Factbook of the US Central Intelligence Agency provides many background information relevant for this paper. See <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html>

Nepal is a multiethnic, multi-religious multi-lingual country with more than 92 languages. The estimated present population of Nepal is 28,563,377. Among them, according to the census of 2001, 47.8% speak Nepali, which is the only *lingua franca* in Nepal,³ 12.1% Maithili, 7.4% Bhojpuri, 5.8% Tharu (Dagaura/Rana), 5.1% Tamang, 3.6% Newar, 3.3% Magar, 2.4% Awadhi, 10% other, and 2.5% unspecified. Nepal's diverse linguistic heritage evolved from its major language groups: Indo-Aryan, Tibeto-Burman, Mongolian and various indigenous language isolates. Nepali is the sole official language of Nepal. It comes from the Indo Aryan Group.

The Nepali language⁴ - also known as *Gorkhali* or the *khasa kura* - in the *Devnagari* script has historically received the patronage of the state in Nepal. With the unification of Nepal during the last quarter of the Seventeenth century, Nepali vernacular quickly became a regal or state language to reflect its status as a *lingua franca* which it had already become by that time. Although a Sanskrit language by derivation, the gradual decline of Sanskrit afforded Nepali an opportunity to develop in interaction with other local languages in the hills of Nepal and military campaigns of expansion and conquest in the Himalayas allowed the *khasa kura* to spread quickly. Nepali borrowed significantly from Magar and other ethnic languages; and contributed immensely to them as well. As rulers were native Nepali speakers, Nepali gradually got the opportunity to be the official language of the unified Nepal. There had never been any white paper on this score. Its gradual expansion amidst no language policy meant the gradual marginalization of the local languages from the local administration of the centralized state.⁵

During the last years of the nineteenth century, Nepali literature entered the age of printing and swept the country. It faced little internal competition in this process. The first standard grammar of the language was published in 1912, one year before the Gorkha Language Publication Committee was established by Prime Minister Chandra Shamsher. All mountain and hill ethnic communities with Tibeto-Burman mother tongues, as well as non-Nepali Indo-Aryan languages of inner *tarai and tarai* did not get this opportunity at all.

After the changeover of 1950 the government further promoted Nepali as an instrument of national integration and unity. Here again the rulers found no viable alternative to the new establishment. Official policies started favouring Nepali recognizing this *de facto* status. It gradually became the language of school and colleges, national newspapers, businesses, popular entertainment, arts and science, and so on. As such, the 1959 and 1962 Constitutions recognised this new found status of Nepali as the national and official language of Nepal. After the mid-seventies, even the use of English as the medium of

³ There is so far no evidence if any *lingua franca* existed in Nepal other than Nepali during the past several centuries.

⁴ For a discussion in English of the Nepali language generally, and related issues, see M Hutt, *Nepali: A National Language and Its Literature*; New Delhi: Sterling Publishers (1988).

⁵ See S. Dhungel, B. Adhikari et al, *Commentary on the Nepalese Constitution 79-81* (Kathmandu, DeLF, 1998)

higher education gradually had to co-exist with Nepali several disciplines falling under the humanities, science and law.

The one language policy thus resulted in further narrowing down of the free space for other indigenous languages. In a political framework, which had enough space for the improvement of minority rights, the rights of indigenous people and social inclusion, the effect on the languages other than Nepali had been enormous.

The 1990 Constitution, promulgated after the mass movement early that year, brought some affirmative policy changes. After decades of the complete disregard of Nepal's indigenous languages, its instrumental role in terms of cultural, educational and economic empowerment and more importantly its role in nation building were being acknowledged.

Article 6 of this Constitution laid down:

(1) The Nepali language in the Devnagari script is the language of the nation of Nepal. The Nepali Language shall be the official language.

(2) All the languages spoken as the mother tongue in the various parts of Nepal are the national languages of Nepal.

The constitution recognized that the country abounds in a variety of communities, both ethnic, language based and religious. In this context, Article 6(2) declared for the first time all the native (indigenous) languages spoken in Nepal as national languages. This declaration was given practical effect by other provisions of the constitution as well.

Article 18 guaranteed each community in Nepal the right to preserve and promote its language, script and culture. It also guaranteed each community the right to operate schools up to the primary level in its own mother tongue for imparting education to the children. Most notably Article 26(2), which charged the state to assist with the promotion of these languages, their literature, and their scripts in order to develop cordial social relations amongst the various religions, caste, tribes, communities and linguistic group, was something very new to Nepal. Additionally, these protections were consolidated by Article 11 (2) which guaranteed that no discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological conviction or any of these.⁶

The fact however remained that Nepali was the only official language in the country, and the constitution did not offer this status to any other regional language in the concerned region, however widely spoken in terms either of numbers or geography. As such, this formulation had a problem, which had discernible effects.

The Interim Constitution of 2007

⁶ Ibid.

The 1990 Constitution was replaced by the 2007 constitution as an interim arrangement for the period until Nepal drafts a new constitution through its elected Constituent Assembly. Nevertheless, it has very important formulations for the interim period.

Article 5 of the Interim Constitution laid down:

(1) All the languages spoken as mother tongues in Nepal are the national languages of Nepal.

(2) The Nepali language in the Devanagari script shall be the language of official business.

(3) Notwithstanding whatever is written in clause (2), the use of one's mother tongue in a local body or office shall not be barred. The State shall translate the language used for such purposes into the language of official business for the record.

Clause (3) was definitely a new arrangement. Besides Article 17 of the interim constitution has guaranteed each community -

(1) the right to receive basic education in their mother tongue as provided for in the law.

(2) the right to receive free education from the state up to secondary level as provided for in the law

(3) the right to preserve and promote its language, script, culture, cultural civilisation and heritage.

The state is supposed "to carry out an inclusive, democratic and progressive restructuring of the state by eliminating its existing form of centralized and unitary structure in order to address the problems related to women, Dalits, indigenous tribes [*Adivasi Janajati*], Madhesis, oppressed and minority communities and other disadvantaged groups, by eliminating class, caste, language, gender, cultural, religious and regional discrimination, [Article 33(d)]. It also has a duty to "bring an end to discrimination based on class, caste, language, gender, culture, religion and region by eliminating the centralized and unitary form of the state, the state shall be made inclusive and restructured into a progressive, democratic federal system." [Article 138]

Current Issues

While the Constituent Assembly of Nepal is busy in the constitution making business, there is intense debate in the house and outside about the treatment to be given to the language issues in terms of policy changes and institutional framework for the protection, maintenance and promotion of all of these languages. The major issues are -

- How many official languages should Nepal have? Should the new constitution strip off the status of Nepali as the official language of Nepal; and create equal space for all languages, or recognize alternative official languages along with Nepali, to mitigate the existing injustices?
- What does official language status actually mean under the new constitution? In what sense non-official languages should be considered non-official?
- How can constitutional design respond to linguistic diversity in a country which has more than 93 languages? Giving a straight answer to this question could be most erratic because not all languages have equal strength in terms of their capacity to expand or get recognized by all communities; and to many of them, equality of protection hardly means equality in effect.
- Decisions must be based on the realistic assessment of the scope for linguistic choice for the national and provincial units and the consequences of those choices
- The relationship between official language policies and devolution of power to the provinces
- What about capacity related issues?

Proposed constitutional designs, institutions and processes

Like many countries in the world, Nepal is also concerned about the need to preserve its cultural and linguistic diversity according to the best formula that one can think of in the face of competing claims of different communities and cultures. It not only needs to respond to the human rights obligations under international law, but also fulfil the aspirations of the non-Nepali speaking communities in the country. Emotional considerations are always there that limit the realistic assessment of the situation. Similarly, there are compulsions created by history, which are at times difficult to wish away. But these issues must be discussed in a broad nation-building perspective. This is again not without difficulties.

Many factors affect the existence and usage of any given language. Some of them may include the size of the native speaking population, its use in formal communication and the geographical dispersion and socio-economic weight of its speakers. Additionally, the current status of the other competing languages, their relationship with each other, their academic or professional strength, etc could also be the consideration. A new constitution providing a policy in this regard can either mitigate or exacerbate the effects of some of these factors. It is, therefore, very important to be holistic and not to miss the jungle for the trees when working on a language policy.

In this context, it is necessary to put in perspective the language policy proposed by the Constituent Assembly (CA) Committee on the Determination of Grounds of Social and Cultural Solidarity for discussion at the CA plenary session.⁷ The policy is still a proposal of the said thematic committee. The policy was not adopted unanimously. There were some dissenting voices as well. It therefore needs to be discussed thoroughly before the

⁷ This is so far largely undone by the constituent of the constitution building process, not to mention the constitutional experts watching the process from outside.

committee recommendations are cleared by the full house of the CA for the Constitutional Committee of the house, which has the responsibility to produce a coordinated draft of the constitution.

The preliminary draft on the issue⁸ is very important in several respects. First, it is the first language policy of the country. Secondly, the policy has come based on thorough discussion between major political parties in the country. Thirdly, it has come in the perspective of change that Nepal is passing through. The draft provides that all native languages spoken in Nepal are national languages as a matter of general principle. It is the obligation of the state to ensure equal protection, promotion and development of all national languages. Every native language community has the right to experience their linguistic identity and their relationship with it in dignified ways. Those without sight and voice will also have the right to use Braille and non-verbal communications. This broad policy framework creates a common setting to all the languages of Nepal correcting the patterns that showed up in the history so far.

Featuring additional changes, the draft recognizes Nepali — the present official language of Nepal — as the official language of the central government. This is based on a sensible assessment of the situation of modern Nepal. No other language can assume this status immediately. This does not mean provinces cannot have their own language based on the objective assessment of the local situation. As such, along with Nepali, each province has been given the competence to decide how many provincial languages it wants as its official languages. There is no limit on it. The local units within the provinces may also employ the local language of the area as the official language for their particular region as per the law enacted by the respective provincial legislature. This allows even the smaller languages, even the dialects with local touch, to have their linguistic domain. This is no doubt a very liberal arrangement.

None of these provisions, however, are deemed to restrain anybody from the use of his or her native language to receive public services from the state. Although it will be necessary to define the nature of this provision by law, the first three provisions are clear enough and mostly address many of the demands of Nepal's non Nepali speaking natives.

The committee draft also provides that the official language of the central government shall be the language to be employed for the communication between the centre and the provinces. There are two exceptions, however. First, a province may decide to communicate with the centre in one of the languages it has approved for official business within the province. In other words, every province can decide which of the provincial official languages it wants for official communication with the centre. It goes without saying that the central government has to prepare its bureaucracy — civil, military or judicial — to receive and process business in at least seven or eight languages and respond to the corresponding province as necessary. While this is a very liberal arrangement, it is ambitious as well.

Secondly, the provinces are to conduct their official business with each other in the

⁸ Please see the attachment for the details.

official language of the centre and any other language to be mutually agreed upon between them. In this setting, Nepali will continue to be the interprovincial official language as a matter of policy. But it allows choosing any other language that the negotiating province agrees on with each other. There is no provision which addresses the stake of a third province, for example, a province which is a little far from the provinces which have mutually decided to employ a particular language in their dealings with each other. Again, it could be a language, for which the central government has to be better equipped with — whether it is its choice or within its logistical capacity or not. It is assumed that this language policy can maintain the business requirements of the state as well as the cultural and social harmony in the country.

Many commentators, in the Constituent Assembly or down the street, think that the language problem in the country has more or less been solved, at least at the committee level. While it generally appears to be so, there are some concerns as well.

According to a provision in the committee draft, the central government may choose to recognize a language that fulfils certain required standards as its official language upon the recommendation of the language commission. The only requirement is that such a recommendation be passed by a simple majority of the central legislature. In other words, the status of the Nepali language as the *lingua franca* of the nation may not continue for long. It may no longer be the language of choice for the provinces, as an operative language between the central government and a province, or practically, even as the official language of the centre.

Practically, at present or in the next few decades, it is not possible for any native language of Nepal to acquire the status of *lingua franca* for the whole nation. Despite that the draft policy provides that a language commission can always recommend a language as the language of the centre. This provision thus must be understood in the context of some smaller political parties which want Hindi, which is not the native language of even one percent of the national population, as the second official language at the centre. They plead that Hindi is a *lingua franca* for the people of Terai region of Nepal bordering India. The issue has been raised in the dissenting note of the committee report. There is fierce opposition against such a demand from those who consider it will cost dearly to the indigenous languages of Nepal. Hindi is a foreign language. It is much more resourceful than any of the Nepali languages. Many natives oppose it on several grounds including that it could be used as a strategic, expansive tool against the language and culture of this country.

Additionally, the above provision, which enables the central government to adopt any other language as the official language for its purpose can give exit to Hindi or any other language as the second official language of the centre through the backdoor. The argument is while the indigenous Nepali language and the treatment given to it by the proposed preliminary draft will have to be subjected to heated discussions and passed by a two-thirds majority in the Constituent Assembly, Hindi can now be the second official language by the decision of the government of the day. Many fear the language commission could have no other reasonable use in Nepal's context.

A language commission, or the fragile government of Nepal, may not be able to check the tide of events that unfolds here when it decides on a crucial national issue. If it is to be accepted as an official language either of the centre or of any province, many critiques argue, it must be proposed and voted according to the Constituent Assembly process. There is a danger that a process to empower the natives and their language and cultures might further marginalize them through a provision whose effect is disastrous to the nationalist aspirations of the Nepalese people.

Finally, the committee report, which is very progressive in many important senses, is without a transitional plan. It is important to have transitional arrangements, whatever the language policy applied. No matter how sound are the principles adopted, they have economic implications in a developing country like Nepal. These principles need carefully thought-out strategies to bring changes without affecting stability. As such, a realist transitional plan can help the governments, both at the centre and proposed provinces, to implement the constitutional pledges over a period of time.