

Dipendra Jha. 2018. *Federal Nepal: Trials and Tribulations*. New Delhi: Aakar Books.

*Federal Nepal: Trials and Tribulations* is a *tour de force* overview of Nepal's federalization both in terms of process and outcome written by Madhesi activist lawyer Dipendra Jha. Divided into sixteen chapters, the volume presents a deeply personal account of the key moments and issues in Nepal's post-conflict constitution-making process through the work of the first and second Constituent Assemblies (CA), which operated during 2008–2012 and 2013–2015 respectively. Jha's endeavor is, on the one hand, to commit to history his own version and analysis of the events that led to the promulgation of the 2015 Constitution—many of which the author had direct involvement in. On the other hand, he aims to provide a critique of the constitutional settlement that was eventually reached in September

2015. The book also contains two chapters on the first amendment of the constitution, and on the failure of the second amendment. These chapters are a useful platform to reflect on what Nepal's constitutional future may hold as the 2015 document remains contested, especially among Nepal's historically marginalized groups.

Organized in chronological order, the volume begins with a contextual chapter focusing on the history of Nepal's dominant classes and their relationship with the Nepali state. Jha explicitly draws a causal connection between the Pahadi upper-caste Hindu groups' historical control of the Nepali state and the enduring marginalization of many social groups on the basis of gender, language, ethnicity, caste, region, and religion. As a result, the history of Nepal's post-conflict constitution-making process is analyzed through the prism of identity politics, with particular emphasis on Madhesi activism.

In Chapter Two, Jha looks back at the failure of the first CA as a lost opportunity and with deep regret. He concludes that it was a mistake not to have done more to save it: "Had the First CA promulgated the constitution with the 11 Province Model, other provisions of the constitution regarding inclusion, proportional representation, citizenship and judiciary would have been far better" (p. 27). According to Jha, federalization was a crucial instrument to secure the inclusion of Nepal's many marginalized groups and to break the hold on state power by the dominant groups; and this is why federalism was fiercely opposed and resisted. It is in this light that the author urges the reader to understand the sixteen-point agreement, inked by the leaders of the main political parties on June 8, 2015 to fast track constitution building after the April 2015 earthquake.

Chapter Three on the successful litigation conducted by Jha himself in the Supreme Court against the postponement of federalization under the agreement makes for an incredibly interesting read. Jha's success in court, however, came at a high personal cost: the author details a number of efforts by political opponents to tarnish his reputation and derail his career. Attacks were also leveled at the Supreme Court itself for "overreaching." Subsequently, the political leaders defied the Court by issuing a first draft of the constitution that postponed the naming of the federal units and the fixing of their boundaries in clear violation of the judicial order. However, the parties backtracked in August 2015 due to the intensification of protests in the Tarai. The new constitution at the time of its promulgation expressly

named the provinces (even if by only using numbers), and delimited their territorial extension securing federal restructuring.

Jha devotes a great part of the volume to analyze what he views as the most embattled and problematic aspects of the 2015 Constitution: citizenship (Chapter Five); language and secularism (Chapter Six); state restructuring (Chapter Seven); the judiciary (Chapter Eight); political representation (Chapters Twelve); affirmative action (Chapter Thirteen). The common thread across these themes is that the new constitution failed to make good on the promise of social inclusion held out as the ultimate goal of the peace process back in 2006. More specifically, Jha argues that the new document backtracks from the more inclusive 2007 Interim Constitution. To highlight a few examples discussed in the book, Jha criticizes the following aspects of the new constitution in terms of outcome: the reintroduction of gender-based discrimination in citizenship matters; the limitation of secularism to the protection of *sanātan* religious culture (namely, protection of religion as handed down from time immemorial); the restriction on the use of local languages at provincial level by having Nepali as the only official language; the limitation of the transformative potential of federalization by gerrymandering the boundaries; the omission of the requirement for social inclusion in judicial appointments; the reduction of the percentage of seats allocated under proportional representations; and the introduction of the controversial category Khas-Arya in the list of protected categories entitled to affirmative action measures.

*Federal Nepal* combines a fast-paced narrative that conveys a sense of political urgency with a terse quasi-journalistic prose dotted with more intimate personal anecdotes and musings. The author is not just “a witness and close follower” (p. 5) but an active participant in Nepal’s constitutional drama. Jha purports to offer his own account from the frontline of the story behind the making of the constitution; he does not pretend to offer a theoretically grounded scholarly account of Nepal’s latest constitution-making endeavor. His intent can be clearly evinced by the paucity of references, a limited engagement with academic literature, and the lack of an index. In my view, the urgency stems from the author’s conscious choice to provide as soon as possible a comprehensive record of the making of the 2015 Constitution, consign his version to history, and leave evidence of his engagement and assessment for posterity. This is particularly significant in light of the staggering lack of official records pertaining to the work of

the second CA, which has opened the door to competing and contrasting narratives about the process through which Nepal's new constitution was made. *Federal Nepal* is hence the result of the urgency felt by its author to seek to exercise a degree of control over the narrative in the public domain.

Jha's verdict is unequivocal: the second CA was a "flawed process" (p. 5). The author's unforgiving assessment of the process that led to the making of the 2015 Constitution is matched by an equally damning evaluation of the outcome. "This constitution is stained with blood. It does not matter how many amendments you carry out now; it will remain a controversial document" (p. 14). In this respect, Chapter Eleven discusses at length the shortcomings of the first amendment, while Chapter Sixteen details the failure of the second amendment. What starts to emerge from the book's last chapter is indeed a reticence on the part of the political establishment to amend the constitution any further. In fact, as of November 2018, it appears to be rather clear that there is no political appetite at the center for further revisions of the 2015 Constitution. This appears to be an even more worrying factor than the dramatic political circumstances in which the document was forged. Retaining the flexibility of any constitutional document is quintessential to adapting a country's fundamental law to changing political circumstances, and as such it is integral to its survival. Amendments can be a useful safety valve to resolve or defuse political conflict through public and open deliberations; *a priori* closing the door to amendments may prove very dangerous, especially when aspects of the constitution are as embattled as they remain in Nepal today.

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