

**Ninth Review Report: Role of the Opposition in Federal and
Provincial Assemblies of Nepal
Review of the political activities during the months
September and October 2021**



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As a part of the study on the Role of the opposition in the parliament, the following activities in the House and contemporary political issues has also formed a basis to complement for the study. It is published with the intention of further continuation of debate and interactions from the conscious public domain.

Background:

During the reporting period, while undertaking a thorough study of the Role of the Opposition in a Parliamentary system of governance, Nepal witnessed constitutionalism taking a firm hold in consolidating the democratic system of governance, which the judiciary played its proactive role and settled down the disputes and redressed the ambiguity on part of constitutional interpretation. The verdict of the judiciary, a precedent in the context of parliamentary exercise in Nepal, set a benchmark that the executive branch cannot interpret the constitution on its whim for a short political gain, for any such act of malevolence would be unconstitutional.

In a series of reports, this one should have covered province 1 and Bagmati Province. But given the unfolding events of highest consideration at the federal level that may have the ripple effects in the national politics, which in cognition with should be documented and get covered with priority.

Being faded with Nepal's impeded political history with the unstable and short-lived government after the reinstatement of democracy in 1990 and the political process after the second mass movement that brought in the federal republican form of democracy, the first general election held in 2017/18 after the promulgation of the new constitution of Nepal 2015 saw a majority government of Communist Party of Nepal with almost a two-third majority in the parliament. It was thought that the country was destined for political stability and progress. When KP Sharma Oli was elected prime minister in February 2018, he had a strong electoral mandate. The merger of his party CPN-UML with the Communist Party of Nepal (Maoist Centre) in May 2018 made him a prime minister with a near two-thirds majority in Parliament. Unfortunately, this could not prove to be true. Once again fractured politics played its game with breaking the way the parties and forming new ones.

Such a fractured politics gave a leeway to the main opposition to take once again a lead role in national politics. In a parliamentary system of governance, it is said that the main opposition is awaiting government. But it is also equally important to take into consideration that the existing numerical strength plays a pivotal role in the governance and opposition. In a present House of Representatives, there was a distant chance that the Congress or the main opposition pose any threat to the ruling by claiming to form a government in its own strength or aligning with one or two parties. The Congress after realising its numerical strength in the House, from the initial period, is insisting that it would be happy to sit in the opposition and play a constructive role as mandated them by the people's verdict.

One, the ruling party's over ecstatic for political victory, over excitement, underestimation of the strength of the opposition and other minor parties, authoritarian streaks of the then ruling party and its leader's intolerance of dissent and marginalising them, silencing the media, self-praise projecting own image as formidable national leader with the character through creating cyberwarriors put itself into political turmoil and shattered its unity with breakaway factions, squandered a historic opportunity handed to him by the people because of the arrogance, stubbornness and ego. The ruling party, however, misunderstood the electoral mandate as unlimited power given to it to rule the country with an iron fist. The main opposition with the help of other dissenting factions and parties formed the government.

After the Supreme Court's landmark verdict of July 2021, second time in a row to overturn the decisions of the then Prime Minister KP Sharma Oli's dissolution of the House of Representatives first on December 20, 2020 and second time on May 21, 2021, facilitated Hon. Sher Bahadur Deuba, the opposition leader and President of the Nepali Congress to become Prime Minister of Nepal with a composite strength of other parties alliance. Since the Sher Bahadur Government is formed through the Supreme Court's verdict, the opposition prefer to call it as mandamus government.

Despite presenting support of 149 lawmakers with their signatures, a number that was enough to prove majority in the House and form the government, the claim to the post by the opposition leader was wilfully denied by the president. Overturning the decision of the President as unconstitutional, the court quashed it with the order of certiorari and asked to restart the process from where the mistake was made. The court's decision reads, "Since Article 76 (5) of the constitution has the clause 'if any member of the House presents a ground on which s/he can obtain a vote of confidence in the House', and for that purpose, the claim with 149 members of the House (majority members) should be taken as a sufficient and appropriate basis," the bench said. "Therefore, an order of mandamus has been issued in the name of the Office of the President and the reinstated House to appoint the member of the House who presented his claim for the prime minister within two days from the date of this verdict and complete the process of getting the vote of confidence as per Article 76 (6) of the constitution."

The court after taking into consideration of all the aspects of the constitutional arrangement and political development came into a conclusion and delivered its verdict that the House of Representatives cannot be dissolved on a whim of Prime Minister for a short-term political gain. All politicians must understand the fact that when they are in power their duty is to serve the people, protect democracy, uphold the constitution and respect the system.

The House Prorogued without electing Deputy Speaker:

The Ninth Session of the House of Representatives, which was commenced on September 8 has been prorogued on October 29, 2021 despite 54 bills waiting for endorsement from the Parliament-some of them crucial including citizenship bill and bills related to implementation of federalism. The government decided to end the current session of Parliament as the main opposition CPN-UML had been obstructing House proceedings since September 8 when the new session began.

The post of Deputy Speaker is vacant for about two years since it felt vacant in October 2019. When Krishna Bahadur Mahara, the then Speaker of the House, stepped down in October 2019 following an attempt to rape allegation, Agni Sapkota became the Speaker of the House of Representatives. After Sapkota's name was decided for House Speaker, Shiva Maya Tumbahangphe resigned as Deputy Speaker on January 20, 2020, as constitutional provisions do not allow both posts to members of the same party. Ever since, the post of Deputy Speaker has been vacant. It is almost two years there is no interest of the parties to elect one to the post. Even after the replacement of Oli government by Deuba, more than three months has elapsed and the session of the House by the time has been prorogued without initiating to elect Deputy Speaker. This is explicitly is an act of negligence or apathy on their part to follows the constitutional obligations.

Experts on parliamentary affairs say in Nepal such crucial posts have been seen just as a technical process, ignoring so many constitutional obligations and values attached to them. The Deputy Speaker's role, as defined by the constitution, is to chair the House in the absence of the Speaker. But the deputy speaker is also a key member of the Constitutional Council that recommends appointments for various constitutional bodies which are mandated to put the government in check.

Among the seven parties in the House of Representatives, the Maoist Centre cannot claim the post of Deputy Speaker because Sapkota was elected Speaker from the party. The Rastriya Prajatantra Party and Nepal Majdoor Kisan Party don't have women lawmakers; hence they are not in the fray. Rastriya Janamorcha is not willing to take the position because it has only one member in the House. The Deputy Speaker's post now can either go to the ruling Nepali Congress or the Janata Samajbadi Party, unless the UML lays claim to it.

The Opposition launches attack on Ruling Alliance:

The leader of the opposition CPN-UML Chairman KP Sharma Oli, while speaking in the House of Representatives for his first address in Parliament after his ouster as prime minister on July 13, launched a scathing criticism of the coalition government led by Sher Bahadur Deuba and attacked his former comrades Pushpa Kamal Dahal and Madhav Kumar Nepal. The leader of the main opposition raised questions over the contents of the government's recently announced common minimum programme. In a lengthy speech, Oli stressed that the Deuba government was not formed on the basis of a popular mandate but through a mandamus order of the Supreme Court. He lashed out at the ruling coalition's common minimum programme and said the government had failed to make it public through the House even when it was in session. He also questioned the resolve of the Deuba administration to hold talks with India to reclaim Kalapani, Limpiyadhura and Lipulekh, the areas also claimed by India as its own.

From domestic issues to Nepal's foreign policy conduct, Oli questioned several issues incorporated in the common minimum programme of the Deuba government. Oli also raised the issue of corruption during the management of cantonments for former Maoist fighters following the signing of the 2006 peace deal.

The opposition leader also urged the coalition government to table the Millennium Challenge Corporation (MCC) Bill in the House, which has been pending for the last three years. He questioned the government why the MCC was not on its common minimum programme.

His vociferous attack against the common minimum programme was fitting for an opposition party leader.

Obstruction of the Sessions of the House of Representatives by the main Opposition:

The main opposition party obstructed the proceedings of the sessions of the House of Representatives from the first day of its commencement in protest of Speaker Agni Prasad Sapkota's alleged bias against it. After the split of the party and formation of a new party with the name CPN (Unified Socialist) under the Chairmanship of Madhav Kumar Nepal, the UML had written to Speaker Sapkota urging him to confirm the expulsion of 14 UML lawmakers, including Madhav Kumar Nepal, but Sapkota did not act on its letter until the Election Commission recognised the split. UML also accused Sapkota of aiding the split by not confirming the expulsion of 14 UML lawmakers. Sapkota while refusing the accusation said the issue was sub-judice in the Supreme Court and cannot be discussed in the House.

It is important to understand the cause of obstructing the House proceedings by the main opposition. Prior to the split from the UML by its dissenting members and forming a separate political party, the UML on August 17 had expelled 14 of its lawmakers including Madhav Kumar Nepal and informed the Parliament Secretariat about the decision. The UML wanted Speaker Sapkota to issue a notice regarding its decision to expel the lawmakers. The Speaker did not. On August 26, Madhav Kumar Nepal split from the UML and formed his own party, CPN (Unified Socialist) aided by an ordinance the Deuba government had introduced on August 18. The party is now a coalition partner in the Deuba government. Only on the 13th day of the UML's decision to expel Nepal and 13 other leaders did Sapkota issue a statement saying there was no need to issue a notice as the Nepal group had already formed a new party, much to the chagrin of the UML. When the House session began on September 8, the UML resorted to obstruction and sloganeering. The UML believes Sapkota played foul and aided the party's split and has regularly been staging protests in parliament since the start of the new session.

Political parties are holding Parliament hostage:

The Ninth Session of the House of Representatives, which was commenced on September 8 and prorogued by the Presidential order on October 29, 2021 became the hostage of the main

opposition by stalling the proceedings with its continuous and sometime violent obstructions not giving any space for the government to present any bills or ordinances before the House for discussion. Since the Constitution of Nepal makes it mandatory for the government to present ordinance(s), if there is any, at the first meeting of the new House session. Beginning with sloganeering against the Speaker for his alleged role in splitting CPN (UML) and defying to sack 14 of its lawmakers obstructed it with sometime physical strength. At one point heightened the situation with pandemonium in Parliament that the opposition lawmakers tried to breach security to reach the rostrum.

Amid protests by the main opposition, the ordinance to amend the Political Parties Act, 2017, which was issued by the Sher Bahadur Deuba government on August 17, was presented by using marshals to meet the constitutional and legal obligation. The government passed the revised budget amidst the UML's protest, but could not pass other bills in the House. The uproar and obstruction in the House had invited such a situation that the Government was almost facing a government shutdown in absence of budget endorsement by the parliament. If the replacement bill had failed to get its endorsement from both the houses it was almost sure of the situation like that in the United States of America- a government shutdown- a rare case in a parliamentary practice of Nepal.

In an attempt to resolve the crisis the House Speaker's call for an all-party meeting was boycotted by the main opposition, which helped to make the situation more complicated. On political and parliamentary affairs, if there exists any problem to be sorted out amicably a deliberate attempt from the stakeholders outside the House meeting should be prompted too, which was lacking in this fiasco, even the Business Advisory Committee idly watching the events.

Making the House of Representatives a hostage of a political party for such a prolong period without caring for the people's concern and governance simply for fulfilling one party's ego would harm the parliamentary system of governance. The ongoing House crisis serves as a great example of how Nepali parties have failed to imbibe parliamentary culture even after more than three decades of practice. Our political parties and leaders are indifferent to constitutional values and principles, let alone the parliamentary system, it seems so from their behaviour.

The UML, however, is not the only party to resort to such obstructions. When the UML was in power until a few months ago, the opposition parties too had tried to block the government from presenting ordinances. The constitution requires that any ordinance has to be presented at the first meeting of the House. It's not just the UML, all the parties are the same when it comes to fulfil their partisan interests undermine Parliament and the overall system.

A set record of disorderly malevolent actions of the lawmakers in the Parliament of Nepal:

In a rare scene in the parliament proceedings, a house is so disturbed with unruly actions of its members that halt all the actions of the parliament and became hostage of such unwanted behaviours. It was in 2015 AD when the distinguished Members of Parliament hurled microphones at each other and smashed furniture—conjuring up images of a nasty barroom brawl, first time in a parliamentary history of Nepal such unruly actions were witnessed in the Parliament. Again, repetition of same wanton actions from the lawmakers of the same UML party took place in 2021 in the House of Representatives, which has put doubt on their faith on parliamentary democracy.

However, the opposition always tries to find weakness of the government to put pressure over the ruling party using different means of protest- one such of the obstruction of the proceedings- but rarely resort to violent means.

Politicians are quick to point to Western democracies to illustrate the benefits of democracy, where representatives have meaningful discussions on issues far pricklier than what we here in Nepal can imagine; and yet, they are conducted in a manner most civil that makes them the envy of the world. We are yet to see such decorum practiced here in Nepal. The recent actions of the lawmakers jumping around and resorting to pushing and shoving have not only deteriorated their image of decency but also drawn the public's attention with their reservation against such malevolent acts.

The provinces follow the suit of the federal politics:

The UML, once a mighty party with a comfortable majority in the parliament is losing its prowess after its split into two and formation of another party by its splinter group led by Madhav Kumar Nepal. The formation of Government in the centre with a five party's alliance- Nepali Congress, CPN (Unified Socialist), NCP (Maoist Centre, Janata Samajbadi Party, and Rastriya Janamorcha Nepal- has caused ripple effects in the provinces as well. The UML, however using all its available tactical means to save its governments in Province 1 and Bagmati Province, could not save them. The five-party alliance toppled the government in Province 1 and Bagmati province led by Bhim Acharya and Astha Laxmi Shakya, who served for a short stint with less than three months of tenure. The alliance formed governments with its own Chief Ministers. In an attempt to save its government Bhim Acharya and Astha Laxmi Shakya, both were in the dissenting faction prior to the split of the party, had replaced Sherdhan Rai and Dormani Paudel in order to get its hold in the party and government.