

Review Report: Role of the Opposition in a Parliamentary Democracy  
Review of the parliamentary activities during the months of  
March 2020 to May 2020

(The Sixth Session of Parliament Tests the ingenuity, accountability and wisdom of the Ruling and  
Opposition Parties)



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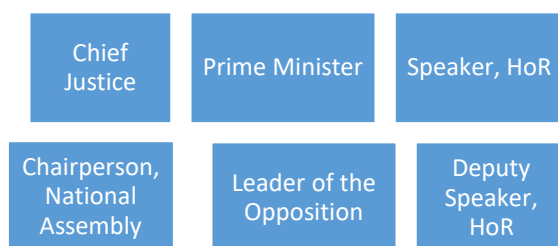
*As a part of the study on the Role of the opposition in the House of Representation and National Assembly, the following activities in the House has also formed a basis to complement for the study. It is published with the intention of further continuation of debate and interactions from the conscious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

## The ordinances, which stir the political calmness:

The Government on 21<sup>st</sup> April 2020 introduced two ordinances at a time when the country is lockdown to control the spread of coronavirus. The ordinances came into effect after the President approved them. The two ordinances are issued with amendments on the provisions of Political Party Act and Constitutional Council (Functions, Duties and Procedures) Act and published in Nepal Gazette immediately on the same day.

The constitution allows the government to introduce ordinances when the Parliament is in recess. But what prompted the government to issue ordinance, when the country is fighting against the pandemic and intended to put whole focus on mitigating it, providing relief to the most affected people. Deviating from the main focus, the government has issued ordinance amending the provisions of Political Party act and Constitutional Council Act. The government could have waited few more days to regularly introduce any amendment bill on budget session of the Parliament, which is due to be called soon. Last year the budget session of the Parliament was started on April 28. A bill seeking amendment was in the Federal Parliament, instead of pursuing the House for its amendment, the government reverted to bring it through the ordinance. It is a tactical political move intended to fill the vacant positions of the Constitutional Bodies at the earliest. After the appointments, the relevance of this amendments will cease to get attention of the opposition party.

**Formation of Constitutional Council:** Article 284 of the Constitution of Nepal provisions the formation of a six-member Constitutional Council consisting of The Prime Minister as its Chairman and other five members The Chief Justice, The Speaker of the House of Representatives, the Chairperson of the National Assembly, Leader of Opposition Party in the House of Representatives, and Deputy Speaker of the House of Representatives as its members for making recommendations for appointment of the Chief Justice and Chiefs and Officials of the Constitutional Bodies in accordance with the constitution. This can be presented in the following diagram:



At present the position of Deputy Speaker is vacant. According to the Constitutional Council (Functions, Duties and Procedural) Act 2066, a unanimous decision was required to reach in any decision. It also had the provision that unanimity among the

Council Chair and members to make any matters decided was essential. With this stringent measure, the Prime Minister was unable to recommend members for appointments in many constitutional bodies. The ruling party blames it to the opposition for demanding fare share to them on major appointments. However, with the amendment in the existing Act through ordinance, it has made the Prime Minister all-powerful in the council. According to the new provision, the decision can be made with the majority of its members. The first meeting of the council will try to find consensus of the members on matters presented before it, and in case the meeting cannot find consensus, a second meeting will be called within 24 hours and this meeting will take decision on majority basis. Since the position of Deputy Speaker is vacant, the Council has only five members. Let's assume the leader of the opposition and the Chief

Justice did not attend the meeting either or did not agree on the names proposed for appointments having differences of opinion over the nomination of the candidates, according to the proposed amendment to the Constitutional Council Act, if the first meeting fails to take a decision, the next meeting shall be called within 24 hours and decision will be taken based on majority. (Such provision included in the amendment is intended to make the Prime Minister more powerful for recommending members for appointments in vital constitutional positions, which goes against the spirit of the check and balance system). At the time of ordinance came in there are 27 vacant positions in the Constitutional Bodies.

1. Commission for Investigation of Abuse of Authority	2 Commissioners
2. Election Commission	2 Commissioners
3. National Women Commission	1 Chairperson, and 4 Members
4. National Inclusion Commission	1 Chairperson, and 3 Members
5. National Dalit Commission	1 Chairperson, and 4 Members
6. National Natural Resources and Fiscal Commission	4 Members
7. Indigenous Nationalities Commission	1 Chairperson, and 4 Members

The ordinance has invited wide criticism not only within the ruling party but from the opposition political parties as well.

**Amendment on Political Party Act:** The existing provision of the Act required a forty percent support of both the central members of the party and parliamentary committee members for the split of a party. After the amendment in the Act, forty percent support of any of the two can split from the main and register a new party. The amendment on the political party act making inroads for disgruntled members to break away from the mother party and form a new own party might have been a political manoeuvring making smaller party break away and join in the ruling party so that it can control two thirds of majority in the Parliament. In the 275 member Parliament, the ruling party commands 174 seats with 121 from the former CPN (UML) and 53 from Maoist Centre, which is 10 seats short for acquiring two-thirds of majority. Earlier in 2018, first the Samajbadi party and later Rastriya Janata Party had joined the government giving two thirds of majority to the government. The Samajbadi Party and Rastriya Janata Party have 17 and 16 seats respectively in the parliament. The introduction of controversial ordinance may have intended to first split the Samajbadi Party and then Janata Party bringing their lawmaker into PM Oli's fold so that he can secured his position by suppressing the dissent voices within the party and in the government.

There could have been chances of keeping alternative safe route to remain in the helm of power through manipulating the internal party equations within the ruling party. It should be seen from the point of simple majority as well. The internal party wrangling between the two factions UML and Maoists, in case of split the UML faction requires 17 seats to hold on to power. Based on the new provision, some members of the Samajbadi Party had sought to split the party, which could not be materialised due to timely intervention from its senior leaders. Consequently, brought two parties Samajbadi Party and Rastriya Janata Party in one platform and hurriedly took a decision of merging them.

A high casting of a political drama was instigated during two days in the political spectrum after the issuance of ordinances that lawmakers were scuttled from Janakpur and brought to Kathmandu. The allegation is that two prominent persons, one from retired senior police officer and another a close ally and MP of ruling party, which they successfully did on their part. But failed in the mission after they were run away from Hotel Marriott.

The ordinance drew controversy with severe criticism labelled as ill intended. Whatever may be the motives behind the introduction of ordinance with the amendment easing the parties to split, the move failed on its own right, after the two parties Samajbadi Party and Janata Dal merged into one instead to split.

Whichever may be the interpretation on the intention of the Government, from democratic perspective, any Machiavellian tricks of weakening or breaking other power centres with ill intention cannot be justified as a sound move of the government.

**The Government Repeals the Ordinance:** Amidst the growing criticism from both the opposition political parties and dissent ruling party members as well as the political analyst labelling it against the spirit of the constitution and democratic values, after five days of issuing the two ordinances, the Government backtracked from its stand and withdrew both of them. The President repealed them on the recommendation of the Government, which was decided to recommend the President to repeal the two ordinances on Political Party Act and Constitutional Council (Function, Duties and Procedure) Act by a cabinet meeting. The action of the Government, issuing ordinance without giving serious thought and proper consultation with the political parties and its own party committee, has raised the moral questions of the Prime Minister.

#### **The Opposition consents to endorse Bill on Special Service:**

After thorough discussion for over two months in the Legislation Management Committee of the Upper House where the government agreed to incorporate the provisions for the actions against the misuse of the provisions, the sixth session of the National Assembly has endorsed the Bill on Special Service on 19 May 2020, which was registered in the House of Representatives in the fifth session of Parliament, and delayed to table for its endorsement due to wide protest from the Opposition parties and civic society. The bill was criticised because many believed that the proposed act would be misused and target the dissents if they are allowed to intercept the conversation. The opposition also argued that it would also breach of the right to privacy and allow the intelligence agencies to intercept the conversation between the 'suspects' using the electronic medium. However they supported the bill after the government agreed to introduced a stern actions if the officials in the intelligence service are found misusing the surveillance provisions.

The government thinks it necessary to control acts of "secession, espionage, sabotage and subversion" and "protect national sovereignty, national integrity and communal harmony." The revision in the proposed draft has incorporated a provision of a seven year jail term for any official found involved in intercepting conversions between the individuals and institutional levels without justification.

The critics kept doubt on the moves of the incumbent government as intended towards the curtailing the right to freedom. They have the reasons to suspect that the administration has introduced around half of a dozen bills including the Media Council and Information Technology Bill and Media Council Bill, which are still in consideration in the Parliament, with the provisions that could be used to shrink civic space, and curtailed freedom of expression and press freedom.

### **Cartographic warfare and Constitutional amendment:**

In November 2019, the Government of India, incorporated the Nepalese territories of Limpiadhura, Kalapani and Lipulekh in its map. However the presence of Indian military barrack in Kalapani even after the end of India-China border war in 1962 regarded as a strategic point for India and the Government of Nepal knowing the presence of military unit in its territory kept silence, which the Indian establishment regarded it as tacit acceptance of Nepal. Encouraged with the passivity of Nepal for not insisting Indian government to vacate the place, it further consolidated its barrack with further construction work and addition of military personnel. Deferring the original source of Kali River, which according to Sugauli treaty obligation is the legitimate border between Nepal and India, India started claiming Lipulekh from where a small stream flows down meets at the confluence of Mahakali River as a main source of the Mahakali River propagating border dispute between Nepal and India. Now the situation has evolved as cartographic warfare between Nepal and India presenting their claim over the disputed territories. The dispute took a turn when the Indian government inaugurated a construction of 75.54 Kilometre link road from Ghatibagar in Darchula to Lipulekh of which 20 Kilometre lies within the Nepali territory that connects Chinese border.

In response of the unilateral assertion of India to include Nepalese territories 335 square Km in its map and construction of link road via its territory compelled Nepal Government to react with objection and claim its sovereign territory. Nepal Government released its revised political and administrative map depicting Limpiadhura, Lipulekh, and Kalapani within its sovereign territory.

In order to validate the move, the government has registered a bill at the Parliament Secretariat for the 2<sup>nd</sup> amendment in the Constitution. The bill will seek to amend Schedule 3 of the Constitution to revise the country's map in the national emblem as per the new political map of Nepal. Prior to getting cabinet decision on releasing the revised map of Nepal, the Prime Minister called leaders of the major political parties to hold consultation on this pertinent issue and get the national consent on border issues.

**Role of the opposition:** The President of the Nepali Congress issuing a press statement supported the initiatives of the government to issue a new political and administrative map reclaiming its territory occupied by India for over five decades. Speaking to Nepali and Indian media, Dr. Minendra Rijal, Member of the House of Representative and one of the influential members of the main Opposition in the House of Representative Nepali Congress party said that with regard to the claim of Limpiadhura as the source of Kali River as legitimate border between Nepal and India and release of new political and administrative map, the opposition

stand by the Government. However the view of the main opposition Nepali Congress over the border issue is indicative of its stand on national issues, now it has to be seen in the Parliament during the discussion over the constitution amendment proposal how the other opposition political parties present themselves their views and opinion over the national agenda. There has been national consensus with regard to western boundary of Nepal, the political differences exists between the ruling and opposition parties. The amendment of the constitution with regard to Schedule-3 could be passed unanimously or by more than two thirds of majority. However the political bargaining by the regional parties has sprouted up in the meantime. The regional parties have demanded to address their demands including as a comprehensive package at the same time for the constitutional amendments. Their demands include redrawing of the provincial boundaries, recognition of regional languages, addressing issues related to the citizenship, and representation in the National Assembly.

As per the constitution, a constitutional amendment bill needs to be endorsed by a two thirds majority in both the Houses. In the National Assembly the ruling party commands the required number comfortably. The ruling party falls around ten votes short in the House of Representatives, but still it is likely to get through as even opposition parties are with the government on map issue.

**The National Assembly's Legislative Management Committee discusses the bills to amend the Prevention of Corruption Act, 2059 (2002 AD) and Commission for the Investigation of Abuse of Authority Act, 2048 (1991AD):**

These amendment bills were registered at the Upper House on 20 January 2020 and were sent for discussion to the Committee on February. Once the National Assembly passes the bills, they will be sent to the House of Representatives for discussion. The proposed amendments seek to expand the jurisdiction of the CIAA to also include the private sector. Currently the Commission has the authority to investigate public institutions, which have been defined as government funded or semi-government bodies. The amendment seek to include all institutions registered as per the law, if passed, all registered companies, private institutions and non-governmental organizations will come into its purview and scrutiny.

With regard to the proposed amendments, many experts believe that corruption in the private sectors require scrutiny. They are also of the opinion that the jurisdiction of the CIAA need to widen further with the inclusion of political parties within its ambit. While indicating the political sector as the most corrupt institutions followed by the bureaucracy, the expert point figure to the level of policy corruption emanating from the source, require to be controlled and prevented through effective legal measures. For policy corruption, most of the expert blame for the expensive elections, when the politician collect massive donations to cover election campaign finance, which often involve in quid pro quo deals. The amendments have also failed to incorporate the provision to bring into the jurisdiction of the anticorruption body of the corruption related cases of the Council of Ministers of the Federal and Provincial Governments as well as Committees functioning under them, which means the cabinet and committees are immune for their decisions. Since the Policy decisions are immune from the corruption charges, the proposed amendment bill has poorly failed to specifically define the term 'policy.' The bill has attempted to establish that all the decisions of the Council of Ministers become the policy decisions, which is utterly unjustifiable.

The opposition, while participating in the discussion express their apprehension of misuse of the act directing to dissents and opponent political supporters as a means for suppression.

However the government has registered the amendment bills, according to experts, intellectuals, senior bureaucrats and social activists, the bill lacks in many front to address the genuine concern, which are articulated as follows.

1. Many articles proposed in the amendments with regard to prevent the corruption in the country are taken as regressive steps;
2. Many believe that the initiatives rather is determined to institutionalise the policy corruption;
3. The proposed amendment bills are against the provision of the United Nations Convention on Prevention and Control of corruption. It is believed that the convention, which was rectified by Nepal in 2011 has failed to fulfil many obligatory procedures and provision until now. The proposed amend also goes against the letter and spirit of the convention;
4. The amendment has not clarified the term 'conflict of interest;'
5. It has completely ignored the subject to promote conduct of ethics and ethical behaviours;
6. It has not covered to protect and guard the Whistle-blower;
7. The amendment has proposed if any corruption case is not initiated within five year the alleged cannot be prosecuted. Such a provision would help in protecting political leaders, who are in the power.

#### **Numbers of Legislative Bills pending in the Parliament:**

The sixth session of Parliament has to deal with several legislative bills pending in the parliament. There are 38 bills pending in the House of Representatives and 15 in the National Assembly. Thirteen bills are pending in the House Committees for the detail discussion. This session of House has to deal with prominent issues including second amendment in the Constitution, domestic legislative bills and bilateral and multilateral agreements and treaties including the most controversial Grant Agreement between Nepal and the United States of America Aid Agency Millennium Challenge Corporation or Millennium Challenge Compact. However all legislative bills are equally important, but some of them, which have attracted public concern like National Human Rights (First Amendment) Bill, 2075, National Security Council Bill, 2075, Nepal Special Service Bill, 2076, Media Council Bill, 2075, Nepal Citizenship (First Amendment) Bill, 2075, Bill concerning on Information and Technology, 2075, Corruption Control (First Amendment) Bill 2076 and Commission for the Investigation of Abuse of Authority (Third Amendment) Bill, 2076, are more prominent in the eyes of the public, experts and policy analysts.