

Sixth Review Report: Role of the Opposition in a Parliamentary Democracy
Review of the parliamentary activities
From January to March 2021



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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 Supreme Court turns down the House Dissolution move as unconstitutional:

The House of Representatives, which was dissolved by the President of Nepal at the recommendation of the Prime Minister on 20 December 2020 has been reinstated by the order (Mandamus) of a constitutional bench led by Chief Justice Cholendra Shamsher Rana on 23 February 2021. The court also ordered to summon the House within 13 days from the date this order was passed (23 February). According to the constitution of Nepal, the interval between two sessions of Parliament should not exceed 6 months. The sixth session of the Federal Parliament was abruptly ended on 9 July, as per the constitutional provision, the winter session was due to begin before January 2 as the gap between the two sessions of the House must not be more than 6 months.

There were 13 petitions filed at the Supreme Court challenging the constitutionality of the House Dissolution move by the President. The petitions were heard by the Constitutional Bench, which consists of the Chief Justice and 4 other justices Bishwambhar Prasad Shrestha, Anil Kumar Sinha, Sapana Pradhan Malla, and Tej Bahadur KC.

The move of the Government was deemed unconstitutional and the dissenting factions and opposition parties were demanding the resignation of the Prime Minister. After Supreme Court's decision, the Oli Government for which the Communist Party of Nepal (Maoist Centre) has lent support in the Parliament is getting pressure mounting on him to prove his majority.

Role of the Opposition against the House Dissolution:

The Nepali Congress Party and its leaders unanimously objected to the House dissolution move as unconstitutional and undemocratic and blamed the Prime Minister for his authoritarian streak to destabilize the democratic system going against the people's mandates. While criticising the Government for its sinister move, the party president of the Congress also maintains the position that the party should not influence the judiciary by demanding its reinstatement as a case of sub-judice at the Supreme Court. The Congress party issued a statement condemning the move of the Prime Minister as a step to push the country towards instability because of intra-party conflict amid Covid-19. It reads, "We have taken this move as Oli's final attempt to fulfill his authoritarian desire." The party also called the decision unconstitutional and impulsive and appealed President Bidya Devi Bhandari to fulfill her role as a guardian of the constitution by rejecting it. The party further states, "We request all the party members, other political parties, organisations and citizens to come together to protect the constitution and democracy."

The Congress cautiously and strategically maneuvering the party and its cadres across the country raising voices against the move but not directly confronting the Prime Minister's dissolution move but fomenting and strengthening the voter base for possible elections. Amidst the conflicting opinions of the leaders within the party a faction in the party willing to launch agitation and another to begin the preparation for the polls instead, the Congress mobilized its cadres throughout the country and staged protest programs against the dissolution of the Lower House of the Federal Parliament in every 330 electoral constituencies and district headquarters opposing the Government's move.

The Congress alleged the Prime Minister of eclipsing the existing political establishment of the nation through his decision of dismantling the house and progressing towards autocracy. Furthermore, they also hold doubt and question on President Bidhya Devi Bhandari's loyalty to the citizens of this nation and sense of duty to working in cahoots with the Prime Minister approving promptly any recommendation brings in her without giving any second thoughts.

In retrospect, among several controversial moves the Oli Government had taken over the time, the House dissolution move was not only the flagrant violation of the constitutional text and spirit but also one of the sinister moves that may have had farfetched consequences in the nation's political history, if it was not quashed by the Supreme Court's verdict. Conducting fresh elections by itself is not an undemocratic action but violating the constitutional provision was a blunder.

Despite the weak numerical strength in the parliament and occasional presence as the main opposition party, the leadership's failure is the reason behind Nepali Congress' floundering in performing the role of an effective opposition in a democratic dispensation. Even the Congress has failed to effectively counter the regime's wrong moves. However, the Nepali Congress has spent three years doing nothing but lately, it seems a bit active these days.

It is because of the Congress Party and its failures to keep a check on the Oli administration over the last three years. If the Oli administration's actions are a threat to democracy and the system, then the Congress party is equally complicit. The Nepali Congress invariably failed to play the role of a good opposition. It lacked what every opposition party must have—the determination to hold the government of the day to account.

The status of those elected under the Nepal Communist Party (NCP) is in limbo:

When the Supreme Court annulled the merger of two Nepal Communist Parties- Nepal Communist Party (UML) and Nepal Communist Party (Maoist Centre) - into Nepal Communist Party (NCP) the status of the members elected under the NCP party's name after its merger has raised the questions of validity that which party they belong to. After the formation of the Nepal Communist Party (NCP) one member of the House of Representatives and sixteen others are elected to the National Assembly.

The Nepal Communist Party (UML) and Nepal Communist Party (Maoist Centre) were merged into Nepal Communist Party (NCP) in May 2018 after the election result and formation of the government.

There had been a case registered in the Supreme Court by the President of the Nepal Communist Party Rishiram Kattel, who had challenged the Election Commission's decision to award the Nepal Communist Party (NCP) name, NCP within brackets, to KP Sharma Oli and Pushpa Kamal Dahal as unlawful as it has already been registered under his name back in 2013. On March 7, a division bench of Justices Kumar Regmi and Bom Kumar Shrestha passed a verdict by invalidating the Nepal Communist Party (NCP), saying a party with a similar name was already registered with the Election Commission and revived the UML and the Maoist Centre. The Supreme Court has decided to award the Nepal Communist Party to Rishiram Kattel. The bench has said that a new party cannot be registered with the Election Commission when it already has a party registered with a similar name. Quashing the Election Commission's decision to award the Nepal Communist Party (NCP) to Oli and Dahal, the court has said then CPN-UML and then CPN (Maoist Centre) would return to the pre-merger stage and if they were to merge, they should apply at the Election Commission as per the Political Parties Act.

House becomes hostage to Political deadlock:

The parliament meeting took place after eight months since the prorogation of the budget session on July 2 last year.

Against the widespread belief that the reinstated House would bring back the derailed politics on track, but the reinstated House is becoming the hostages to the major political parties who are continued to be embroiled under uncertainties since the House is stalled without any business. It has been three weeks

since the house was reinstated through a court order, but there are no signs of politics returning to normalcy anytime soon. Parties have neither accepted the incumbent government's continuation nor have taken any decisive steps to dislodge it. The dissenting groups of the parties are becoming confused themselves without having any concrete read-map and plan for the future political course. The top court's verdict means that the single-party majority government led by KP Sharma Oli has effectively been turned into a coalition government. Now, there is no single-party majority in the parliament. As a coalition government, the number game in the parliament is the deciding factor and is tricky in itself. The main opposition Nepali Congress is not hurriedly deciding to lead the government given the complacency within the Maoist Centre and rift faction of UML, the Congress is not in a position to blindly rely and support their case. The rival factions of CPN-UML are also out of sync.

There has not been an agreement among the three parties regarding the formation of a new government to date. The fourth-largest party Janata Samajbadi Party Nepal (JSPN), has emerged as a kingmaker in forming a new government because NC and the Maoist party do not have sufficient numbers to create a new government.

The first meeting after the reinstatement of the House:

The parliament meeting took place after eight months since the prorogation of the budget session on July 2 last year. Members of parliament pay respect to martyrs as they begin the session.

The first meeting of the seventh session of the House of Representatives which was summoned after the decision of the Supreme Court and immediately after beginning and the Speaker, according to the constitutional provision that the ordinances of the Government to be tabled in the House, allowed a Minister to present ordinance in the House, the lawmakers belonging to the ruling Nepal Communist Party's (NCP) splinter faction led by Pushpa Kamal Dahal "Prachanda" walked out the session. Later, following the move, the meeting was also obstructed with protest by the lawmakers of the Nepali Congress and Janata Samajwadi Party against the presentation of the ordinances to the House. Main opposition party Nepali Congress (NC) and Janata Samabadi Party (JSP) lawmakers demanded the withdrawal of the controversial ordinance on the Constitutional Council (CC), prompting the Speaker to put off the session.

Ever since the lower house was reinstated by the Supreme Court, its meetings have been limited to holding zero-hour sessions and endorsing condolence motions on the deaths of lawmakers from the present and previous parliaments since the government is reluctant to provide it business.

Since the House is ineffective the House Committees are also seen as ineffective. The federal parliament has 16 committees—10 under the House of Representatives, four under the National Assembly and two joint ones with lawmakers from both houses. There were opportunities for the House Committees to perform their job of holding the government to account while the House of Representatives is limited to formalities. However, they too have failed poorly in fulfilling their responsibilities.

Ever since the House was reinstated by the Supreme Court a month ago, a majority of the House committees have met at least once. However, most of these committee meetings were rather a formality, a meet and greet session after the reinstatement of the House. Except for the parliamentary committees for development, law and justice, and state affairs, no other committees have started their work.

Ripple effect following the court's verdict:

Prior to the court verdict and after the dissolution of the House, when the rift within the ruling party was widening its effect was visibly reflected in the provinces with the filing of no-confidence motion against

the Chief Ministers of Province 1 and Bagmati Province. Now after the decision of the court and the party departing to its premerger stage, the politics in the provinces have also been affected accordingly reverted to the number game in some provinces losing prominence and gaining in some by the rival faction. Seemingly losing the eminence in the number game and chances of securing the support from the Nepali Congress to topple the existing government, the rival faction has withdrawn its no-confidence motion in both the provinces.

A single move of the Prime Minister put questions on the electoral system:

Since the ruling party's rival leaders are reeling under heavy pressure to seek upper hand consolidate power and strength in the party politics by using every trick regressive, persuasive, or suppressive that are advantageous to secure power and driving the other faction into the corner. In the process, the rival faction is blaming the Oli faction for its high-handed approach in the party. In this process, Oli as a chair of the party and leader of the Parliamentary Party in the Parliament has already amended his Parliamentary Party statute, authorising him to take action against lawmakers. By doing this Oli has also secured sweeping powers to change the closed list of proportional representation candidates, which means he can, if he wishes, replace any lawmaker elected under the system with someone of his choice. Before the statute was amended, such an authority rested with the party's Central Committee.

Currently, the UML has 120 members in the lower house, including 41 members elected under the Proportional Representation system. Of the 38 lawmakers from the Nepal-Khanal faction, 15 were elected under the Proportional Representation system. With the new rule, Oli now can replace those from the rival group represented under the proportional system with party members of his choice. And with an amendment to the Parliamentary Party statute, Oli can easily replace the 15 lawmakers elected under the Proportional Representation system. In that case, if the Nepal-Khanal group decides to split, at the cost of losing the post of lawmakers, Oli's UML will lose 23 seats in Parliament.

The pertinent question here is not how the Prime Minister secures power to govern, but the question is the proportional representation system itself is becoming the prey of a single person at his/her whim and impulse, which may detest and destroys the spirit and value of electoral constituencies, electoral system and election. With this case in hand, a debate over the importance, advantages, applicability and use of the proportional representation is essential.

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