

Fifth Review Report: Role of the Opposition in a Parliamentary Democracy
Review of the parliamentary activities
From November and December 2020



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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.

Again the same Ordinance promulgated once it was withdrawn on protest:

The government once again brought in with the promulgation of an ordinance with the amendment on Constitutional Council Act (Function, Duties and Procedures) 2010, the same which was withdrawn seven months before in April after a serious protest from the opposition and many alike. What prompted the government to bring it again was the cause of power dynamics within NCP itself and failure to garner a required quorum for the council meeting, which was supposed to recommend names to appoint in the vacant position of the constitutional bodies. The President who promptly endorsed and announced it has come into controversy for making the institution dishonoured. After facing criticism from leaders within his party and outside as well as analysts and experts on constitutional matters, NCP's Standing Committee directed the Prime Minister to withdraw the ordinance.

The existing provision requires at least four members of the council to be present in the meeting, which is headed by the Prime Minister. It also requires to make its decision on the consensus basis. The Council composed of six members; the Prime Minister, The Chief justice, The Speaker of the House, the Chairperson of the National Assembly, the Vice-speaker of the House and the Leader of the Opposition, is the culmination based on the principle of check and balance of the power between the executive, judiciary, legislative and opposition party. Since, according to the provision of the rule of the House of Representative, the one of the two positions, the Speaker and Vice-Speaker should represent from the different political party and gender, where the position of the Speaker was occupied by the Ruling Party, obviously the Vice-Speaker position should have gone to the opposition. In such a formulation, it would have been difficult for the Prime Minister to nominate and recommend its own preferred candidate without seeking confidence of the leader of the opposition. Since the deputy Speaker was yet to be elected, one member's absence could stop the Council from holding the meeting.

This is the main bone of contention that hindered for the appointment in the vacant positions of the constitutional bodies, where the authoritarian instinct of the Prime Minister was seen as hurdle filling these position with his staunch supporter.

The amended provision has cleared this hurdle and paved the way for Prime Minister to take the decision on a majoritarian basis having three persons at his side.

With the introduction of the ordinance even without consultation with the members of its cabinet members, many have raised question of the intention of the Prime Minister for its authoritarian streak and blatant attack on constitutional spirit of check and balance. Some also blamed the Prime Minister's move of introducing the ordinance a mockery of democracy. The main opposition party has demanded to withdraw it, since it regards this as an unconstitutional step of the Prime Minister and utter disregard of the Parliament, which is due to be summoned in 15 days of time. The Working Committee of the Parliamentary Party of the main opposition Nepali Congress has urged the Government to, withdraw the ordinance and call the House Session. In the meantime, seeing soft stance on the Government despite several misadventures from the Prime Minister including one of the issuance of ordinance, many raised doubt whether the leader of the opposition and the Prime Minister had a tacit understanding with regard to governance. However lately, the main opposition demanded for the regular session of the Parliament.

The way the President acted in favour of the head of the government and exhibited her promptness to promulgate, has disregarded and disgraced the institution, many observers believe. As the same ordinance which was repealed after heavy criticism in April, the government brought in to reintroduce again in the vein of political play, the President should have taken time to review it prior to giving her consent on it, which she badly failed.

The issuance of Ordinance and recommendations of names for appointments in the Constitutional bodies and Cabinet re-shuffle is questioned as Unconstitutional:

Writ petitions are filed in the court against the controversial Constitutional Council, which recommended names for the appointment in the vacant constitutional bodies questioning the actions issuance of ordinance and decisions thereafter as unconstitutional.

Since the question of legality and constitutionality is being fought in the court, and subsequently the reshuffling the Cabinet with the induction of ministers is also being questioned that a Prime Minister automatically becomes a caretaker after the dissolution of the House of Representatives and lacks the authority to induct new ministers in the cabinet. Some constitutional experts have blamed the current government making unconstitutional moves one after another- first by dissolving the House, and then by expanding the Council of Ministers. Whereas the Prime Minister is insisting his move as constitutional and based on international practice in the parliamentary system of governance and constitutional provision of the Constitution of Nepal, the House is dissolved as a prerogative right and privilege of the Prime Minister when he/she feels to test popularity and acceptability to govern through a fresh mandate from the electoral poll and the decision is purely as a political one which does not attract the constitutional interpretation by the constitutional court, the experts on constitutional fields, politicians, intellectuals and political parties differ the views of the Prime Minister.

The vacant Constitutional Bodies gets Office bearers:

The Constitution of Nepal has envisioned 13 different commissions with the purpose of ensuring check and balance of the state power so that the rights of the people are ensured. The purpose of the constitutional commissions is to make the government accountable towards implementing the constitution and maintaining the rule of law. But due to the indifference of the government to recommend appropriate candidates for the positions, the appointments in the constitutional commissions remained vacant for a long time. The Constitutional Council, a body headed by the prime minister and mandated to make appointments to the commissions, was not held a meeting since March 25 last year. More than three dozen positions in the 13 commissions, were remained vacant. Some have not had a full quota of members since the constitution was promulgated in 2015. However, it is a mandatory constitutional provision to recommend names for the appointment a month before they become vacant, the appointments are deferred for a long time breaching the constitutional provision. Taking note of this shortcomings, even the United Nations had expressed its concern that the pandemic could be an excuse or pretext for the government to trample on individual rights. Of the seven inclusion commissions—Madhesi, Dalit, Tharu, Muslim, Women, Indigenous Nationalities, and Inclusive—three have just the chair and one a member, five years after the promulgation of a federal republican statute by the constituent assembly. Other constitutional commissions include the Election Commission, the Commission for Investigation of Abuse of Authority, Language Commission, Natural Resources Commission and Fiscal Commission.

A Constitutional Council meeting after the promulgation of new ordinance on Constitutional Council, which had paved the way to hold the Constitutional Council meeting even there was a presence of three of the six members of the Constitutional Council meeting, held on 15th December and recommended the names to fill the vacant positions of the Constitutional bodies. The council meeting has, however, drawn into controversy due to its quorum and presence of its members, announced the 38 names after four days of its meeting and formally informed to the Parliament Secretariat. It has been presumed that the candidates recommended by the leader of the main opposition party and Chief Justice, as reported in the media, were also included in the list of appointments. Since the House of Representatives has been dissolved by the President and a fresh election has been called for April 30 and May 10 of 2021, the nominated candidates

have not to go through the Parliament Hearing process, thus after 45 days they all can assume their office, if the otherwise the political events does not turn around.

The six-member council has the chief justice, the speaker and the deputy speaker of the House of Representatives, chairperson of the National Assembly, and leader of the main opposition as members. The minister for law and justice is also present when the appointment is related to the judiciary. The deputy speaker's position has remained vacant for around a year after the resignation of Shiva Maya Tumbahangphe, who assumed office as law minister, in January.

Opposition is silent amidst the increasing issues to take into account:

Because of intraparty rift within the ruling party, at the recommendation of the Government the 6th Session of the House was abruptly prorogued on July 2, 2020 pending around half a dozens of crucial bills among them related to the implementation of federalism. It was four months since the Parliament was in recess and there were no signs of the winter session commencing anytime soon the rift between two chairs of the ruling party resurfaced and the squabbling reached in its peak the House is dissolved by the President at the recommendation of the Prime Minister. Amid the increasing piles of issues before the country, including addressing the Covid-19 problems and making the government accountable and responsible, while the necessity of the Session of the House was apparent, the country is once again heading towards midterm election. Amidst the growing tension within the ruling party and the pulse of its intensity unmanageable, some members of the ruling and opposition parties feel the need of calling for resumption of a winter session of the House through the petition to the President for Special Session, which the principle opposition was neither interested nor took any step or pressed for it. Sensing the heat within the Nepal Communist Party and their bickering for power struggle, there was speculation that the Prime Minister, in order to consolidate his power, may play political move to encounter the ever deteriorating situation, which proved to be correct after his sudden call for a fresh poll along with the dissolution of the House. In fact, the opposition should have register a petition for a special session to discuss piles of issues pending before the nation. Since the interval between two House sessions shall not be exceed six months and it was near to end, the Government was in a hurry to take any political move to have its position secured. After the dissolution of the House the fifty legislative 50 bills pending in the federal parliament have become ineffective.

Transitional justice bodies in limbo:

The constitutional arrangement of the Commission of Investigation on Enforced Disappeared Persons and the Truth and Reconciliation Commission in order to reach into a logical conclusion has come into limbo due to the termination of the tenure of both the commission in three months of time from now. It is unclear what happens to the existence of these commission, since the cases are impending in the commissions without any further progress. There are 2,506 complaints of disappearances and 63,718 victims with serious cases of human rights violation including cases related to rape, and extrajudicial killing pending in the commission after preliminary investigation.

According to the Comprehensive Peace Agreement signed fourteen years ago had envisioned to make public the information about the disappeared or those killed during the decade-long conflict within 60 days of signing of the deal. Despite the agreement, it took over nine years to establish two commissions. And although it's over five years since the transitional justice commissions were formed, not a single case has been investigated so far. The commissions took four years just to receive the complaints from the victims.

Since the high political figure, the then Prime Minister Sher Bahadur Deuba and rebel leader Pushpa Kamal Dahal "Prachand," are attached with the serious cases of human rights violation, it seems a herculean task to complete the transitional justice. More importantly it is the stumbling block that came across with the

order by the Supreme Court in 2015 that the existing the Enforce Disappearance Enquiry, Truth and Reconciliation Act, 2014 did not adhere to the international principles of transitional justice, which means if established the convicts in cases related to rape, extrajudicial killing, enforced disappearance and torture cannot be granted amnesty. The cases of serious nature of human rights violations may draw attention of international jurisdiction.

Peoples' Frustration pours in the streets:

The streets of the major townships and cities are seen with demonstrations and rallies arising against the federalism and secularism with reading the banner demanding for reinstating the monarchy, declaring Nepal as a Hindu nation by scrapping the federalism is seen as a frustration of the people over the inaction and failure of the government to deliver the electoral promises and good governance. The demonstration is also seen as an expression and sceptics towards the opposition for failing to play meaningful role in a democracy. The mass rallies are being held in Kathmandu, Hetauda, Butwal, Dhangadhi, Nepalgunj, Mahendranagar, Bardiya, Birgunj, Janakpur, Nawalpur, Pokhara, Rautahat and Biratnagar. There may be the backing of the political parties, but in the front the presence of some pro-monarchist and religious organizations are seen with the banner and national flags with Rastriya Shakti Nepal as coordinating it.

After the historic change in the political system and an elected government with overwhelming majority in the parliament was regarded as an epoch making event for substantial change in socio-economic lives of the people through implementing the constitution, strengthening the federalism and ensuring the good governance. Though with the performance indicators badly failing in many fronts and being unable to keep electoral promises as well as engaged in promoting impunity on corruption cases has annoyed the people.

All-party meeting called after anti-constitutional forces rallies in different cities:

The Prime Minister called an all-party meeting on 8 December for political consultation to discuss on contemporary national political issues, amid a growing concern with the demonstration in the street by the pro-monarchist and antifederalists, with the senior leaders of political parties those represent in the Parliament including the principal opposition. In the street the slogan were chanted against the system calling for the end of federal system and return of constitutional monarchy.

It is a healthy practice in a democracy that the head of the government seeks periodic consultations with the leaders of the political parties for seeking their advice on major policies issues and other concurrent national and international issues. Such a practice was held while forming a single united voice and stand on amending the schedule of the constitution for the incorporation of territories including Kalapani and Limpiadhura in the administrative and geographic map of Nepal and update in the national emblem. Once again the Prime Minister initiated to have consultative meeting with the political parties but with different motives albeit to divert the attention of his rival faction in his own party and strengthen his deescalating position.

Instead of calling an all-party meeting, many dissenters view that the Prime Minister should have recommended the President to call the session of the House which was abruptly prorogued in June after 56 days of its session to have discussion of major issues that nations are confronting at present. Since the Prime Minister is facing intense pressure from own party to resign, it could be a tactical move to pacify his opponents in the party, which other major political parties disown to involve them in their rift and squabbling. According to the principal opposition, "This government has lost the moral ground to rule."

In the meeting, the Prime Minister sought support from the other political parties to counter the ongoing anti-federalism and pro-monarchy demonstration that have been going on in different parts of the country

in recent days. Most of the leaders who participated in the meeting expressed their views against the wish of the Prime Minister and accused and criticised him as the main cause to provide the space for the anti-constitutional activities and instigate the situation. The political leaders have the opinion that instead of strengthening the subnational government under federalism the Prime Minister is found vehemently engaged in strengthening the central administration. They also blamed that the Prime Minister lacked interest and ability to play a meaningful role to coordinate among the political forces. It has been also known that all the party leaders speaking at the meeting had lashed out at the government's failure on all fronts including proper implementation of the constitution.

Many observers view that the recent protest in the street is the outcome of the frustration with varied reasons including the incompetency of the government, promotion of impunity and patronizing corruption, mishandling of the pandemic, grievances on unemployment and decreasing the level of income are some of them.

The Prime Minister has been criticised for acting against the spirit of federalism for various decisions like pressuring provincial lawmakers to agree on Dang Deukhuri as the capital of Lumbini, and allegedly instigating provincial lawmakers in Karnali to table a no confidence motion against the chief minister of his own party who belonged to the rival faction. There have been dozens of draft laws are pending in the Parliament waiting for their legislation, which were instrumental in strengthening the federalism. However, the government was least bothered to call the session of the House and work on these matters seriously. It has been noticed that in many cases the provincial government has resorted to legal solution filing cases in the constitutional court against the federal government. The prominent one is from the Province 2 as an example. The province 2 government has filed six writ petitions at the Supreme Court seeking its intervention to stop the federal government from allegedly breaching the provisions of the constitution.

However, the opposition parties are not less responsible for the result with their failing to play constructive roles in holding the government accountable. Many blame the President of the main opposition party fostering understanding on power sharing issues with the government and acting as hands in glove with the government and therefore likes to remain mum in many cases. The Janata Samajbadi Party, the third largest party in the House of Representative, has its own teething problems to become a political party with clear ideology and roadmap.

The primary opposition stage protest against the Government:

Even the present administration failed on multiple fronts, the main opposition was barely seen, occasionally issuing statements, except for a handful of leaders on some occasions thundering at Parliament, making any impact. Most of the time after the 2017 elections loss, the party is hardly making any headway to reinvigorate itself and make a noise of its presence in the larger populace. By the time many critics alleging it for failing to play a significant role in and out of the parliament. A divided house in itself, the Congress party has been struggling to get back on its feet ever since it faced a defeat in 2017 elections.

While there has been widespread growing resentment against the government for its incompetency to handle the epidemic, making its hostage of the parliament with forceful closure of its session and trying to govern by introducing several ordinances, the main opposition was indifferent towards the government by not resorting to any activities to make the government accountable for its actions. However, after an incident of manhandling the senior top leader of Nepali Congress while inaugurating a small bridge in Tanahun on December 2 from the security personnel, the main opposition parties has not only staged a strong protest against the government for the maltreatment to its leader but also decided to call a nationwide mass street demonstration with rallies in all seventy-seven district headquarters of Nepal as a symbolical protest against the government for its incompetency and failure to govern.

There had been several prominent political and constitutional issues lingering waiting to be addressed for which the ever increasing internal party feud and wrangling around the two party chiefs of NCP, the political environment making it more complex. Some of the core issues were (a) the election of the Vice-Speaker of the House of Representative, which was vacant for over a year, (b) issuances of ordinances as becoming a modus operandi of the government, (c) appointment in the vacant position of the constitutional bodies, (d) anarchy, failed governance and corruption, (e) incompetency of the government to bring in the relevant laws to strengthen the federal structure and sub-national government, (f) There were over 50 bills, including those needed to implement federalism, pending in the federal parliament, (g) addressing the pandemic with top most priorities etc. Many observers also expressed their view that at an electoral strength, the present government was exerting its muscle to impose an authoritarian attitude through using different means to curtail freedom of speech, shrink civic space, curb the media and centralise power.

Many political analysts and observers also believed that the opposition also failed to play its role in making the government accountable. Since the House Session was idle for five months and government was not willing to call the session of the House, to pressure the government to call for the resumption of the session of the House would have been the appropriate way to raise issues in the House and force the government to be accountable. It was obvious that when the government turn irresponsible, in democracy it is the obligation of the opposition to be active and be responsive towards the people and stand by the people. While being so obligated towards its responsibility, it may not be the prudent decision to bring people at a mass in the street at a time of pandemic. According to the main opposition, the government was also indifferent towards the pain of the people in the Covid-19 pandemic, failed to maintain law and order and protect the people against the pandemic.

In a single strength the main opposition with its 62 members in the House may not be able to file petition to the President demanding for a special session, it could have alliance with the likeminded other political parties to jointly initiate to file for it, for which upon such a call it was constitutionally mandatory to call a special of the House.

Now after the dissolution of the House and the case is being under the jurisdiction of the Supreme Court, there has been chances of its revival and equally so of approving the recommendation of the Prime Minister for a fresh poll. In whatsoever of the outcome and in any condition, the role of the opposition has increased tremendously to lead the vacuum as a constructive and responsible stakeholder of the state.

Amidst a growing uncertainty, the main opposition despite a call from a splinter group of the NCP for a joint protest and agitation in the street against the government's unconstitutional action, has decided to lodge protest programmes singularly in own strength and announced programmes of phase-wise protests in the all the local level governments to the ward level.

The political context turns around after the Dissolution of House of Representatives and Announcement of Election on April 30 and May 10, 2021:

In a surprising move the Prime Minister recommended the President of Nepal for the dissolution of the House of Representatives and announcement of polling dates on April 30 and May 10, 2021, which was endorsed and stamped by the President almost immediately within hours of its recommendation. With this sudden announcement, the country has once again erupted in dismay and despair with a fear of backsliding of hard earn democracy by a stroke of whimsical move of the Prime Minister. Such a sinister trick played against the popular faith in a political system could be detrimental to regain the lost confidence of the people. At the hindsight it has been argued that the election strengths the democracy, but at the context where an overwhelming majority of the elected government is dismissed due to the failure and inability to manage interparty wrangling and discord could become a bane for the democracy with the farfetched

repercussion that the country may plunged into yet another vicious cycle of uncertainty and instability thereafter. The move of the Prime Minister has been considered, as has come, an unconstitutional by the civil society members, political analysts and constitutional experts.

The move of dissolution of the House has come amid the deepening crisis in the Nepal Communist Party (NCP), where the Prime Minister was losing the ground in which the dissenting faction were hell bent on forcing him to step down from one position either the Prime Ministership or the Chairman of the party. It was said that the Prime Minister took this hard step after the majoritarian members of the parliamentarians of his party opted to lodge no confidence motion against him at the Parliament.

The Constitution of Nepal promulgated in 2015 does not have a clear provision for House dissolution. The constitutional provision Article 76 (1) and (7) and Article 85 of the constitution cited in the announcement does not explicitly speaks about the dissolution of the House when the government is headed by a party which holds with absolute majority. Article 76 (7) states, “In cases where the Prime Minister appointed under clause (5) fails to obtain a vote of confidence or the Prime Minister cannot be appointed, the President shall, on recommendation of the Prime Minister, dissolve the House of Representatives and appoint a date of election so that the election to another House of Representatives is completed within six months.” The clause, if otherwise interpreted, in its entirety of words and spirit of the constitution, explains about the government which could not command the majority either or obtain the confidence of the House is subject to dissolution and call for a fresh mandate through poll.

The opposition party has described it as an utter disregard to democracy and the move of the prime Minister is motivated by the desire of becoming an authoritarian and thus unconstitutional.

The ripple effect of political manoeuvring of the centre to the provincial level:

The dissolution of House of Representatives of the federal parliament in December 20, 2020 has created domino effect in provincial level governments as well. Some political pundits level the dissolution of the House by the Prime Minister as his misadventure, since side effects are being sprouting up in every organ of the CPN party’s rank and file fragmenting in two groups, which has been directly reflected in the Provincial Parliaments with the submission of no-confidence motions against the sitting government starting from Bagmati Province and following to Province one. It seems the other Governments of the Provinces Gandaki, Lumbini are also under the close surveillance and an undercurrent of political calculation is going on against the government.