

Seventh Review Report: Role of the Opposition in a Parliamentary Democracy
Review of the political activities during the months
of March-June 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.

The political situation of Nepal, with the beginning of 2021, has seen its ups and down as the supreme political leaders in the government pursuing several political maneuverings for power play. The factional politics between the groups, within the Nepal Communist Party (NCP) after merger of two Nepal Communist Parties UML and Maoists Centre in May 2018 and Nepal Communist Party (UML) after the court ruling of March 7, 2021 that separated them into two political entities prior to the merger stage, with the rifts and cracks surfaced after the Prime Minister singlehandedly started running the government purposefully showing highhandedness bypassing the party in many important policy decisions and employments, which caused irritation and fomented the dissenting group to enroll their dislikes and resentments. Its repercussion was reflected in the Government resulting in the House dissolutions, court battle, reinstatement of the House and again House dissolution and again court battle. At present while making this report, the case is sub-judice in the Supreme Court waiting for its decision.

With the beginning from the first attempt of House dissolution in December 20, 2020 by the President at the recommendation of the Prime Minister, which was overturned by the court verdict of February 23, 2021 term the House Dissolution as unconstitutional to the second attempt in 22 May 2021 and subsequently calling for a mid-term polls in two shifts on 12 and 19 November 2021, the political course has taken several turns along with the legal battle in the court, the role of the opposition political parties seemed performing with duality, a strategy for survival and surge.

As the Prime Minister in his capacity as the leader of the largest party in parliament as per Article 76(3) is required to seek a vote of confidence in parliament within one month of the appointment as per Article 76(4) of the constitution. Instead of seeking for vote of confidence, the Prime Minister gave up and said that he has cleared the road for making a new government, since he did not see any chance of obtaining vote of confidence.

Since most of the issues are government centric, the report has also tried to cover up opinions and views of the constitutional and political experts in contemporary burning issues. It has also shed light on the governance and transparency.

Plans for Oli statue at industrial park is reflection of feudal culture:

It is indeed rare in the world, unless they are dictators, for a living politician to have one's statue to be put up. But democratically elected Prime Minister KP Sharma Oli will get this rare honor with a statue of his at China-Nepal Friendship Industrial Park being built in his home district of Jhapa. The industrial park is being built in 2,100 bighas (337.17 hectares) of land with an estimated cost of the project is Rs. 63 billion. It was announced during a foundation laying ceremony of the park by the Prime Minister Oli with the sobriquet 'Baa of Industrial Revolution' or 'Father of Industrial Revolution'.

There's House, there are political parties, but Nepal's politics is deadlocked

The country's politics is deadlocked. Oli has refused to resign despite the Supreme Court overturning his December 20 move of dissolving the House as unconstitutional.

The composition of the House does not allow to form a majority government on a single party's strength. But the largest party with 121 seats the Nepal Communist Party (UML) commands its hold to form the government at the support of any one of the other opposition parties. After withdrawing the support of the Maoist Centre with 53 seats, the government is in minority. Now, the failure to get vote of confidence at the House by the incumbent government of Prime Minister Oli, the government is a transitional. The situation further deteriorated for the government when the dissenting 23 party members of the CPN (UML) join hands with the Nepali Congress and presented their signatures in support of Sher Bahadur Deuba purposing him to lead the government.

Prime Minister Oli staked claim for the formation of new government saying that he had support of 153 lawmakers, while the Nepali Congress (NC) President, Deuba claimed that he had support of 149 lawmakers in parliament.

Judiciary in the spotlight as political process is halted

As the internal political wrangling of the Communist Party of Nepal (UML) heightened and did not see any way out for a political compromise or sign of subsiding it rather making wayward, the Prime Minister choose to dissolve the House and seek for a fresh mandate from the people a better option.

The reinstated House in March 7, 2021, could not get support of the government and sufficient business to keep it running. The Government rather choose to introduce ordinance than to give business to the reinstated House with legislative bills. In these five months after the first dissolution of the House, the Government brought 10 ordinances some of them highly controversial like Constitutional Council Act.

After the restoration of the dissolved House of Representatives by a court order on February 23, 2021 and sitting of the session of the House, the politics is not moving as anticipated by many instead horn-locked between the opposition parties calculating gains and loss of any move for them. A tricky question hover around the parties culminating the success of any actions that in connivance the government could initiate to move ahead.

The Government, which was claiming itself as majority government with almost of two thirds seats, lost its hold when its subsidiary partner Nepal Communist Party (Maoist Centre) withdrew its support, after the Government failed to obtain vote of confidence in a motion table by the Government itself, a mandatory constitutional provision to minority Government to seek vote of confidence within a month.

Yet again, at the recommendation of the Prime Minister, the President of Nepal, in a second attempt, in 22 May 2021 dissolved the House at midnight and subsequently called for a mid-term polls in two shifts on 12 and 19 November 2021. With the new development emerged in the political arena, the political course took several turns along with the legal battle in the court.

When Prime Minister KP Sharma Oli suddenly dissolved the House of Representatives twice within a span of five months, his motives and intentions on strengthening and promoting the present system of governance democratic federalism has come into scrutiny and raised questions from different quarters such as political analysts, constitutional experts and civil society. The move threatened the constitution's derailment. Many said democracy was under siege. The widespread concerns emanated from the fact that the political democratic process could go out of parties' hands, that non-political actors would start calling the shots and that the multi-party system would be hugely undermined.

According to Political analysts and legal experts, the current deadlock is the result of Nepali political parties' inertia, which could be risky because politicians' failure to take matters into their own hands could provide opportunity for non-political actors to take undue advantage. They believe that Nepal's politics of late is neither within the confines of Singha Durbar, the seat of power, nor New Baneshwor, where the legislature sits.

Is it the Constitutional Provisions that bars parties to be proactive?

After the second attempt of dissolving the House, the tricky question was the interpretation of the constitutional provision 76(5) and garner support of individual members to form government, which in capitalizing the opportunity with the support of the dissenting members of the ruling party, the leader of major opposition party Nepali Congress submitted its claim with the signatures of majority members to the President requesting to calling him to form the

government, which went in vain as similar claim by the sitting Prime Minister presenting parties support with majority number of seats made the President to make controversial decision allowing the present government to continue and call for a fresh poll along with the House dissolution.

Three major parties in Parliament control 142 seats, enough to unseat Prime Minister KP Sharma Oli, if they so wish, and form a new government. But the intrigues and counter moves are holding them to take any such move forward.

Analysts say one of the multiple factors that have led to the political stalemate is rigid constitutional provisions. In the constitution, drafters incorporated some strong provisions in search of political stability. In the parliamentary system, a no-confidence motion is a tool that parties can employ to express dissent with the incumbent government. All countries that practice the multi-party democratic system keep this provision of a no-confidence motion, as it is useful in keeping the government in check. However, stung by Nepal's history of frequent government changes, the drafters wrote a provision which allows a no-confidence motion only two years after the formation of a government.

Article 100 (4) of the Constitution of Nepal says one fourth of the total number of existing members of the House of Representatives may table a motion of no-confidence in writing that the House has no confidence in the prime minister. The provision, however, is caveated with a statement that a motion of no-confidence shall not be tabled until the first two years after the appointment of the prime minister..." What has made matters even more complicated is Article 100 (5), which says "motion of no-confidence shall also indicate the name of a member proposed for the prime minister."

Analysts say while drawing up the constitution, the drafters put excessive focus on technical issues and failed to comprehend the philosophy of the objective of writing the top law of the country. There were major oversights as the parties, mainly the same UML, the Nepali Congress and the Maoist Centre, were in a rush to adopt the constitution, not giving two hoots about concerns raised by various sections (The Kathmandu Post, April 8, 2021)

The dilemma of Primary Opposition:

The dilemma of the Nepali Congress's President is understandable that despite having support of majority number of members with their signatures in favor of him lead a new government. The offer may turn back anytime if the dissenting members of the ruling party find solution and compromise for party unity in their favorable terms. Keeping it in mind, the main opposition in the House, Nepali Congress, should have follow the tactical move and pursued the Prime Minister Oli to resign immediately after the reinstatement of the House. However, this stage has passed over long ago and new emerging political events have dictated the present moves for fresh start once the court delivers its verdict, the Congress should, instead of trying to form the government, pay attention to conducting its general convention.

According to observers and experts, Deuba has conspicuously failed to perform his duty as the leader of the opposition, as he could not stand firmly against Oli's unconstitutional and undemocratic move of dissolving the House. More importantly, at a time when Oli has been attacking the constitution and parliamentary democracy, Deuba has not been able to speak up, they say. Some leaders within the congress party also blame the leadership for the failure to take the right decision at the right time, which has weakened the party. They also believed that the party failed to take up the issues where the government is being embroiled in a slew of controversies and corruption scandals.

For Nepali Congress which has to take a decisive measures and adopt strategies in strengthening its party organization through concentrating on its upcoming 14th general convention putting ahead all the priorities to regain the lost confidence of the people, electoral constituencies in its favor in the elections.

Unregulated Conflict of Interests, Ethics and Accountability pose threat to good governance and democracy:

A former communication and information technology minister who was caught in a video tape bargaining for a bribe of 700 million rupees for a procurement deal of security printing press and forced to resign from the post and the case being investigated by the Public Account Committee of the federal parliament has once again been recommended to induct in the account committee by its parent party the CPN-UML violates the ethics and norms of the good governance of the implication of a case of conflict of interest. The event has resurfaced once again in the public domain raising serious concern over the intention of the present government's commitment to deliver good governance acting sternly against the corruption.

However, there have been many instances, where lawmakers are making their way in the parliamentary committees having their say in the issues they have their corporate interests, people's little faith on the commitment of the government has faded away with the present recommendation of a tainted figure with alleged graft case. Not only it is a tight slap on the face of those demanding accountability in public affairs but also it exposes the state of democracy and rule of law.

A subcommittee was formed under the parliamentary Committee on Education and Health in March 2019 to see if medical colleges were charging exorbitant fees. But the committee had lawmaker Umesh Shrestha, who owns many schools and colleges, and lawmaker Narayan Prasad Marasini, who runs private schools, too as its members.

Lawmakers who own 'A' Grade construction companies are members of the Development Committee that is authorized to oversee development works. Though Hari Narayan Rauniyar of Pappu Construction is now suspended, Jip Chhiring Lama, owner of Lama Construction, is a member of the committee.

Two lawmakers from the Nepali Congress— Jip Chhiring Lama and Bahadur Singh Lama are members of the Development Committee, whose mandate is to oversee development projects. Both members of Parliament are 'A' class contractors who have bagged government contracts worth billions. Even Hari Narayan Rauniyar, founder of the infamous Pappu Construction, was a member of the Development Committee before he was suspended as lawmaker following a corruption case filed against him.

Parties, leaders call for ousting PM, impeaching President

Constitutional experts and political parties have termed the move of President Bidya Devi Bhandari to initiate the process of forming a new government as per Article 76(5) without resignation after Prime Minister decided not to seek a vote of confidence, is undemocratic and unconstitutional.' The experts have termed that the call of President Bhandari is not only a crime against constitution, but also an attempt to sabotage the constitution itself, dissolve parliament and derail the ongoing political process in the country. They have maintained that the process to form new government as per Article 76(5) does not begin unless prime minister seeks vote of confidence in parliament and resigns in case he fails to win vote of confidence in parliament.

Shortly after the decision was made by the cabinet, the President had issued notice inviting political party leader who can claim for the formation of an alternative government as per Article 76(5) within 72 hours by producing bases that he or she may win the vote of confidence in parliament.

Election Commission's selective way of decisions comes into question

Once the embattled Prime Minister at his survival strategy took support of twelve lawmakers of the Janata Samajwadi Party and inducted eleven of them into his cabinet, the party vertically divided into two parts one led by Mahanta Thakur and the other by Upendra Yadav.

The Mahanta led group had submitted a letter with party's support to the Prime Minister, which was vehemently discarded by the Yadav group as an illegal attempt since he commands the majority of the Central Committee member and there was no party's Central Committee's meeting taking such decision. The Yadav faction had expelled three leaders of the opposing groups. In a similar attempt, Mahanta group also took revenge and expelled the members of Yadav groups. Both the group approached the Election Commission with request for validating his group as legitimate. As approached the Election Commission seeking legitimacy for their decisions to expel each other's leaders, the Commission came to a swift decision inviting the two factions for discussions. This was contrary to its recent tendency with regard to the case involved of Communist Party of Nepal to linger over decisions and this surprised many.

Reacting to the decision of the election commission, the former acting Chief Election Commissioner Dolakh Bahadur Gurung said, "The commission has taken a selective approach in taking decisions. This gives ample room to be suspicious about its intentions." He further said, "I appreciate that the commission took a prompt decision in the Janata Samajbadi Party's case, but why didn't it show the same level of urgency in the Nepal Communist Party's case?"

Following the December 20 move of the Oli government to dissolve the House of Representatives, the Pushpa Kamal Dahal and Madhav Kumar Nepal-led faction of then Nepal Communist Party (NCP) had approached the Election Commission on December 22 demanding legitimacy for the party they led. They had just sacked Oli as the party chair for his unilateral dissolution move and appointed Nepal in his place. Meanwhile, on the same day the Oli faction of the NCP enlarged the Central Committee to 1,199-member from 446-strong and presented the new list of members to the commission, also demanding legitimacy.

Oli faction had increased the size of the Central Committee in an effort to get recognition for the faction as the legitimate party as it had been in a minority in the committee formed after the merger between the CPN-UML and the CPN (Maoist Centre) in May 2018.

The commission took no decision on the matter for weeks. Even the former election commissioners have expressed their doubt raised question on the intention of the election commission whether it is deliberately refraining from any decision that affects Oli.

Political observers also cast doubts over the role of the Election Commission at a time, if the House is reinstated by the court order, the elections are to be held in November. Loosing trust of the election observers, political and legal experts as well as of the civic society is a grave concern for the sustainability of a democratic system of governance.