

[ADRN Issue Briefing]

Nepal's Supreme Court Overturned PM K.P. Oli's Decision to Dissolve Parliament

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“On recent Supreme Court judgment that overturned PM K.P. Oli's decision to dissolve parliament illegally (In Nepal)”

Following the declaration of the 2015 Constitution of Nepal, the successful elections on all three tiers of the government, federal, provincial, and local, became a sign of hope for Nepal, a fledgling democracy. Upon assuming office in February 2018, the ruling Nepal Communist Party (NCP) was expected to deliver its promises on development, good governance, and the implementation, as well as the amendment of the constitution. However, in reality, Prime Minister K.P. Oli failed to deliver all aspects of his promise. It can be said that the peak of Oli's failure was when he announced the dissolution of the lower house of the Parliament after the rift in the NCP began.

The Dissolution of the NCP and the Parliament: the Demise of Oli's Legitimacy

The Maoist Center (MC) merged with the Communist Party of Nepal (Unified Marxist-Leninist, UML) to create the Nepal Communist Party (NCP). This coalition was viewed as a historical leap for the "communist movement" as voters for both parties believed that a unified party would not only bring on stability but would also ensure good governance and prosperity. As the party emerged victorious with winning a majority of seats in the federal parliament, even critics hoped for a stable government that would put economic development and good governance at the core of its agenda. However, due to internal disagreement the coalition dissolved with the departure of MC.

On December 20, 2020, the cabinet led by Oli recommended the dissolution of the House of Representatives. Oli called for a fresh mandate through parliamentary elections and stated that the lower house would be dissolved based on Article 76(1) and (7), and Article 85 of the

constitution. Article 76 (1) states, "The President shall appoint the leader of a parliamentary party that commands the majority in the House of Representatives as the Prime Minister, and the Council of Ministers shall be constituted under his or her chairpersonship." Article 76 (7) states that if the Prime Minister fails to obtain vote of confidence or cannot be appointed, the President, on recommendation of the PM, can dissolve the House of Representatives and declare a date of election within six months of the dissolution. However, these clauses were insufficient to justify the dissolution. Therefore, PM Oli also took to Article 85 to support his decision: "Unless dissolved earlier pursuant to this Constitution, the term of the House of Representatives shall be five years." He also stated that the internal disagreement prevented swift and effective decisions from being made regarding development. President Bidya Devi Bhandari also did not question nor call into discussion the seemingly significant political move of the incumbent. It was also found that the recommendation was made based on Oli's misinterpretation of the constitutional provision. Therefore, many opinion-makers and newspaper outlets termed the move to dissolve the parliament as "a coup orchestrated by premier Oli."

As the legitimacy crisis ensued, politicians from the same faction began to ban together against Oli. They questioned the excess of power Oli had in making party decisions and pointed out how he and his government were unable to fulfill any of his promises. His poor performance during the global pandemic and several UML-related political scandals added to the distrust of Oli. These factors, along with the dissolution of the parliament, shattered Oli's much-touted slogan of prosperity. Three senior leaders also asked for his resignation his authoritarian characteristics.

The Voice of the People is Heard as the Parliament is Reinstated

The dissolution pushed Pushpa Kamal Dahal Prachanda, Madhav Kumar Nepal, and Jhala Nath Khanal, members of the UML rival faction, to take to the streets. They called for a street movement and organized huge protests in the capital city and other parts of the country. The civil society movement called Nagarik Aandolan, took to the streets of Kathmandu as they believed that the dissolution of the parliament was unconstitutional and undemocratic. The protestors also stated that President Bhandari was a rubber stamp for the Oli government as she supported and approved every undemocratic decision he made. An editorial of a mainstream daily pointed out that the collusion between President Bhandari and Prime Minister Oli was equally problematic: "President Bhandari has thrown the legitimacy of the revered Office of the President—along with whatever little

legitimacy she had—to the trash pile of politics¹."

As there was news of unusual interaction between PM Oli and Chief Justice Cholendra Sumsher Rana before the dissolution of the parliament was declared, many voiced skepticism on the Supreme Court. Though all parties and groups protesting against the dissolution formally stated that they were hopeful about the Supreme Court correcting the wrong move of Oli and Bhandari, very few believed that the verdict by the court would restore the parliament. Civil society members, retired chief justices, lawyers, intellectuals, the majority of opinion-makers, and mainstream media consistently spoke against the move while maintaining hope in the Supreme Court. The issue of dissolution was not merely a legal question but also a question of how to maintain the faith of the people in parliamentary democracy as 13 writ petitions were filed against Oli's House dissolution.

Two months of uncertainty followed the dissolution of the Parliament. Sporadic protests were organized in different parts of the country and, a huge section of Nepali people supported the movement protesting dissolution. Chief Justice Cholendra Shumsher Rana made a verdict that overturned PM Oli's decision to dissolve the House of Representatives. The Supreme Court found that the decision to dissolve the Parliament was unconstitutional as there was a possibility to form a new government under Article 76 (7). Though members of the Constitutional Bench unanimously agreed to give the verdict against the dissolution, insiders of the Supreme Court say that Chief Justice Cholendra tried hard to support PM Oli's decision of dissolving the House of Representatives.

After the Verdict: the Political Expectations and Reality

It was expected that PM Oli would resign from his post after the verdict overturned his decision to dissolve the parliament. This would have brought the politics back on its normal track. However, Oli did not resign and formally welcomed the Supreme Court's verdict. He stated that he would reinstate the house but also stated that he never regretted his original decision as it was right and democratic. It is interesting to note that the main opposition party Nepali Congress (NC) did not directly or strongly call for Oli's resignation even though it had previously maintained that Oli's move was unconstitutional. Insiders of the party privately mentioned to journalists that, Party Chairperson Sher Bahadur Deuba is an ally of Oli and that he doesn't want Oli to resign right now. As India is backing Oli, Deuba did not want to make India unhappy by not cooperating. According to these party insiders, Deuba believes that India will play a significant role in the upcoming general

¹ "Democracy Undoing." *The Kathmandu Post*, December 20, 2020.
<https://kathmandupost.com/editorial/2020/12/20/democracy-s-undoing>

assembly of the Nepali Congress. As he is vying for the post of Chairperson, people believe that he wanted India to back him up to win the party election.

The other opposition in the parliament, Janata Samajvadi Party (JaSaPa), led by Mahantha Thakur, did not call for Oli's resignation after the verdict. Even though the two top leaders of the party—Baburam Bhattarai and Upendra Yadav—have been very vocal against Oli's authoritarian impulses, the faction led by Mahantha Thakur and Rajendra Mahata, have been saying that the present crisis is the result of an intra-party feud in the communist party. Instead of asking for the resignation of PM Oli and collaborating with NC and Maoist Center to oust Oli from the post, they took this opportunity to bargain with Oli to fulfill some of their longstanding demands such as resolving court cases filed against their cadres who had participated in the Madhesh Movement. According to party insiders, if JaSaPa succeeds in freeing the jailed leaders and cadres, it would help them placate their constituency. To finish his full term, PM Oli promised to fulfill everything that was demanded.

From the two cases mentioned above, it can be said that the old game of parliamentary politics that was present when the NCP was first amalgamated has returned. By rule of the same game, Oli is trying to win the support of NC and JaSaPa parliamentarians. The Kathmandu Post editorial on the ongoing crisis paints a clear picture of this disorderly situation, "The citizens' quest until the end of February was about saving democracy from the authoritarian tendencies of Prime Minister KP Sharma Oli. After the reinstatement of Parliament, however, it is all about saving that very democracy from parliamentary politics."²

It should also be noted that although the Parliament has been reinstated, the government has not given it any agenda. Adding to the stalemate, the government announced the end of the ongoing parliamentary session without even informing the Speaker of the House. In other words, even though the parliament was reinstated, the Supreme Court's verdict has not ended the political crisis. Therefore, politics has not returned to normalcy to prioritize the well-being and rights of the people. ■

² "Turning the Tide." The *Kathmandu Post*, March 10, 2021. <https://kathmandupost.com/editorial/2021/03/10/turning-the-tide-1615382336>

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