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# Accounting for Nepal's Chaotic Democratic Transition

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**Aliva Mishra\***

## **Abstract**

*Democratization involves state transition from authoritarian, whether monarchical or republic variety, towards a full-fledged liberal democracy. In most cases, the transition period is marked by political uncertainty and instability. While analysts attribute this either to the structural limitations or institutional deficiencies, role of political agency is often ignored. In explaining the recent political crisis in Nepal following the dissolution of the parliament in December 2020 by Prime Minister Khadga Prasad Sharma Oli, the article argues that the absence of behavioural and attitudinal changes among political actors along with the problems of institution-building accounts for the countrys chaotic transition since the democratic breakthrough in 1990.*



## **Introduction**

Democratic transition refers to a complex historical process when a state moves from authoritarian rule towards liberal democracy. It takes place either through incremental reforms or rupture with the old authoritarian system, whether monarchical or republican. Much of the theoretical literature pertaining to democratic transition holds that success or failure of democratization depends on certain structural pre-requisites, namely the level of socio-economic

development, literacy rate and structure of international/regional politics.<sup>1</sup> Contesting this correlation logic, the transitologists<sup>2</sup> argue that a group of 'wised political elites can bypass the structural limitations' in transition to democracy because "they know what, when and how to act."<sup>3</sup> In other words, when democratization goes wrong it is, by implications, because "individuals get it wrong."<sup>4</sup> What thus accounts for the democratic transition in a country is not the presence or absence of favourable structural conditions but the agential factors comprising

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choices, strategies, policy decisions and style of functioning on the part of the political elite. Democracy, in the words of Doh Shin, "is no longer treated as a particularly rare and delicate plant that cannot be transplanted in alien soil; it is treated as a product that can be manufactured wherever there is democratic craftsmanship and the proper zeitgeist."<sup>5</sup>

Based on the above conceptual understanding, this article attempts to examine Nepal's chaotic democratic experiment in the light of the political crisis triggered by the dissolution of the *Pratinidhi Sabha* (House of Representatives) in December 2020 by Prime Minister Khadga Prasad Sharma Oli. While several analysts from Nepal have attributed the state of uncertainty that followed this move either to the authoritarian conduct of the incumbent Prime Minister or to the lack of coordination between the government and the ruling party, others point to the institutional inadequacies in making political actors accountable.<sup>6</sup> Not much attention has been paid to the weak agential factor, especially in terms of leadership capability that has contributed to what Whitehead calls 'periods of stagnation'<sup>7</sup> in Nepal's thirty years of experience in democratic transition since the

historic breakthrough in the wake of *Jan Andolan* of 1990. Highlighting the salience of the agential factor in expediting the transition process, the article argues that unless there is qualitative change in the political actors' style of functioning in sync with the process of institution-building, Nepal's democratic experiment may not be sustainable in the long run, regardless of whether the country overcomes the ongoing crisis in the short-term.

### **Historical Background**

A cursory glance at the political history of the Himalayan State would reveal that it has gone through phases of democratic transition followed by either what O'Donnell has termed 'sudden death'<sup>8</sup> or period of stagnation since the middle of the 20<sup>th</sup> century. In a way, its current transition experience is the continuation of the historical process that began in the early 1950s when the pro-democracy Nepali activists allied with the exiled King Tribhuvan Shah had launched an armed struggle against the century-old autocratic rule of the Ranas.<sup>9</sup> Although the New-Delhi-mediated Tripartite Agreement of 1951 paved the way for the establishment of multi-party democracy in Nepal, the political elites, bereft of prior experience and internally divided, failed to take

advantage of the historic opportunity. As a result, the country's first constitution was drafted not by the elected representatives but by a Commission appointed by King Mahendra who had succeeded King Tribhuvan in 1955. In the 1959 general elections (18 February) for a national assembly, the Nepali Congress (NC), which had led the anti-Rana movement, won an overwhelming victory (74 out of 109 seats) and formed the first popular government.<sup>10</sup> A week before the elections, the King announced a new constitution, which provided for a bicameral legislature and vested all powers with the King.

While the newly elected NC government was engaged in consolidating parliamentary democracy and bringing about reforms, (the King abruptly dismissed the government in December 1960, in the pretext of restoring law and order and imprisoned most of the leaders of the party. In 1961, the King set up a four-member committee, consisting exclusively of officers from the Central Secretariat, to work on a new constitution with provisions to abolish political parties and introduce a "National Guidance" system based on local *panchayats* and led by the king. With the promulgation of this new Constitution in 1962 that established the crown as the ultimate

source of authority, the nascent democratic experiment ground to a halt. In the following nearly two decades, Nepal was ruled by a form of governance that can be aptly described as 'liberalised autocracy.'<sup>11</sup> In the 1960s, promoted by the king as a 'uniquely Nepalese' system, the so-called non-party 'Panchayat democracy' based on elections at the village and district level served as a means of legitimizing the authoritarian character embodied in the executive pre-eminence of the monarchy.<sup>12</sup> Reflective of this, political parties were banned and their leaders were either exiled or imprisoned. B.P. Koirala spent next eight years behind the bars. Ironically, however, such repressive measures contributed in creating conditions conducive to the rise of people's movement (*Jan Andolan*) for democracy with political leaders like B. P. Koirala acquiring iconic status in the country despite constant harassment by the regime.

The following decade witnessed the rise of the King, as the undisputed force concentrating all authority in him despite the façade of representative democracy, which was maintained through the four-tier panchayat system introduced by him. While the King was revered as the avatar of Vishnu by the lay Nepalese people, many leaders of

the ruling NC either chose to cooperate with the King or work within the panchayat system with the hope that it would lead to real democracy in future. Encouraged by the weakening of the NC, in October 1968, the King released B.P. Koirala, who subsequently fled to India and organised a democratic movement advocating use of violence for the restoration of democracy if necessary. Despite several shortcomings of the panchayat system, King Mahendra did manage to bring in some development in the country in the shape of building infrastructure and giving a boost to agriculture. With the death of Mahendra in January 1972, the opposition to his largely personality-based system of *panchayati* democracy gathered momentum with attacks on security forces, assassination attempts and even a hijack.

In May 1979, King Birendra called for a national referendum to decide between non-party and multi-party-political systems. Although political groups supportive of the non-party system won the 1980 referendum securing 55 percent of the votes and opposition leaders including B.P. Koirala accepted the verdict, King Birendra, aware of the public sentiment in favour of greater freedom and representation, chose to

liberalize the political system by providing for direct election for the National Panchayat and allowed the banned political parties including the NC to fight elections on a 'party-less basis' in May 1981.<sup>13</sup> The partial movement towards democracy, however, satisfied neither the supporters of the multi-party constitutional monarchy nor the radical leftist factions opposed to the continuation of monarchy in any form. In the political turmoil that ensued, the panchayat system started showing its limitations in the shape of acute factionalism, corruption and mis-governance. The mis-management of Nepal's relations with India during this period, due to the shortsightedness of the king, also partly aggravated the situation leading India to put Nepal virtually under a trade seize. Labouring under difficult circumstances engendered by strains in Nepal-India relations, and disillusioned with the politics of the monarchical system, a popular movement for democracy ensued, coinciding with 'third wave of democratization'<sup>14</sup> already sweeping across the world during the early 1990s. Nepal, for the first time ever, was witness to a people's movement or the *Jan Andolan* demanding an end to the unrepresentative style of government and restoration of multiparty democracy.

### **Democratic Breakthrough of 1990**

In a rare display of unity, which usually eludes Nepali political scene, the movement brought together the opposition forces including the NC and various Communist factions, notably the centre-left Communist Party of Nepal (Unified Marxist-Leninist), popularly known as the CPN-UML, for the common cause of democracy. People from all walks of life participated in this countrywide campaign with Kathmandu valley and other urban areas functioning as the nerve centres for mobilization. Unable to quell the popular movement for restoration of multiparty democracy, King Birendra eventually lifted the ban on political parties, annulled the repressive security ordinances and appointed an interim coalition government headed by the President of the NC, Krishna Prasad Bhattarai in April 1990. The interim government was assigned the task of drafting a new constitution and holding general elections to the National Assembly.<sup>15</sup>

Accordingly, the draft constitution prepared by a broadly representative government-appointed Commission was submitted to the cabinet in September 1990. After two months of deliberations over the central features of Nepali national identity

related to monarchy, the status of Nepali language and the secular nature of the state, an amended version of the constitution was promulgated by King Birendra in November 1990. Among others, the new constitution provided for a constitutional monarchy and multiparty parliamentary democracy in the place of the 'guided' form of democracy. The overwhelming victory of the NC in the general elections held on 12 May 1991 and the reverses suffered by the two 'Pancha' parties associated with old system revealed popular endorsement of the systemic change that ushered in an era of democratic pluralism in Nepal.<sup>16</sup>

### **Maoist Insurgency**

Despite the groundswell of popular support, Nepal's fledgling democracy struggled to survive multifarious challenges, ranging from the episodic power tussle with the monarchy and leadership squabbles within the ruling party to the mounting pressures from the historically marginalized ethnic, caste and religious groups. While at the political level, the democratic movement itself remained fragmented and the NC government found it increasingly difficult to forge consensus on the kind of hard-hitting economic and social reforms that the

Panchayat governments had earlier avoided, at the popular level there was growing disillusionment due to the transitional system's failure to measure up to the expectations raised by the *Jan Andolan*.<sup>17</sup>

Amid the prolonged instability and political confusion spawned by frequent changes of government, a far-left splinter group of the Communist Party of Nepal (CPN) emerged in the early 1990s and established the Communist Party of Nepal (Maoists), the CPN-M. In registering its opposition to the 1990 political reforms, the radical left outfit threatened to launch an armed struggle unless its 40-point demands were addressed by the state.<sup>18</sup> As the government decided not to respond, the Maoists on 13 February 1996 attacked a police post in the western district of Rolpa, which marked the beginning of a decade-long 'People's War'. Claiming to champion the cause of landless rural poor and excluded socio-cultural groups, the Maoists justified their violent campaign against the '*samantavad*' (feudalism) and controlled much of the country outside the urban areas, posing a serious threat to the government.<sup>19</sup> In analyzing the operational tactics of the Maoist rebels, the International Crisis Group (ICG) in one of its reports reveals how the cadres all through scrupulously

maintained a non-aggressive and benign image by refraining from attacking civilians and foreigners so as to ensure that international opinion was not outraged.<sup>20</sup> If they eventually came around to accept the Comprehensive Peace Agreement in November 2006, it was because they were wary of losing the local as well as international support to sustain a protracted armed struggle.

### **From Constitutional Monarchy to Republic**

Meanwhile, the killing of King Birendra and most members of the royal family in 2001 by the crown prince who also died due to self-inflicted wounds had turned Nepal politically vulnerable at a time when the government-initiated peace talks with the Maoists had yielded precious little save further loss of its credibility and legitimacy. Taking advantage of the political confusion and inability of the successive governments to contain the Maoist movement, the new King Gyanendra Shah, Birendra's younger brother, sought to restore the pre-eminence of monarchy first by dissolving the parliament in 2002 and later in February 2005 by seizing full power after declaring a state of emergency.<sup>21</sup> The king's move to return the country to its autocratic Panchayat days set off *Jan Andolan 2.0* as the

mainstream political parties and the Maoists launched joint agitation. The opposition forces met in New Delhi to release the Twelve-Point Agreement in November 2005, describing the 'autocratic monarchy' as the potent barrier to democratic deepening in Nepal. After weeks of countrywide protests in April 2006, King Gyanendra agreed to reinstate parliament, which swiftly moved to curtail the royal authority and declared it sovereign. Later that year, the UN-mediated Comprehensive Peace Agreement between the government and the Maoist rebels led to the formal termination of the decade-old people's war while paving the way for the latter to join the government and participate in elections.<sup>22</sup>

The new government promulgated an interim constitution on 15 January 2007 following which elections for the Constituent Assembly responsible for drafting a new constitution as laid down by the Peace Agreement were held in April 2008. The Maoists entered competitive politics under the banner of Unified Communist Party of Nepal (Maoist), UCPN (M) and emerged as the largest party since 2009 with twice the number of seats secured by the Nepali Congress.<sup>23</sup> The new Assembly on May 28, 2008 voted to declare Nepal

a federal democratic republic, bringing an end to the 240-year-old rule of monarchy. In July 2008 Ram Baran Yadav of Nepal Congress was elected by the Assembly as the country's first President. The process of constitution-making, however, dragged on for the next seven years partly because of frequent change of governments and in greater part, absence of broad political consensus on a host of contentious issues, notably ethnic based federalism and Hinduism as the state religion.<sup>24</sup>

The 2008 Constituent Assembly was dissolved in May 2012 as it had failed to draft a new constitution within a stipulated time-frame and the second Constituent Assembly was elected in November 2013 with a record-breaking 78 percent turnout. Unlike the 2008 elections, the Maoists this time suffered a huge setback winning only 80 seats, whereas the Nepali Congress gained the largest number of seats followed by the Centre-left, CPN (UML). Despite its reduced presence and split into various factions, the CPN (Maoist Centre) led by Pushpa Kumar Dahal, popularly known as Prachanda, remained a key player in the making or unmaking of the governments until the general elections of 2017. In the wake of two devastating earthquakes in April

and May 2015, the Constituent Assembly finally promulgated a new constitution on 20 September reaffirming Nepal a secular federal Republic.<sup>25</sup>

The promulgation, however, provoked violent protests by some marginalized groups, especially the Madhesis from the southern Terai region on the grounds that their rights were not adequately protected by the new constitution. They were mainly opposed to the boundaries of new provinces drawn on geographic rather than ethnic basis as they feared this would deprive the Madhesis of control over government in areas where they claim to be numerically strong.<sup>26</sup> Although Maoists supported the Madhesis demand as part of their effort to gain support from the ethnic minorities, other national parties, particularly the CPN-UML led by Khadga Prasad Sharma Oli considered it as potentially divisive and hence, steadfastly opposed the idea of ethnic federalism.<sup>27</sup> Despite the month-long sustained protest, violent clashes and Indian blockade, major parties of Nepal decided to go ahead with the implementation of the constitutional provisions without addressing to the Madhesi demands by holding three-phase local council elections across the country in 2017, which was followed by provincial and federal polls later in the year.

### **Left Alliance and the Oli Episode**

On the eve of the national elections, the two leftist parties, Oli-led CPN-UML and Pushpa Kumar Dahal 'Prachanda' CPN (Maoist Centre) announced a broad-based electoral alliance. Promising the voters a stable and strong government, the Left Alliance won a resounding victory with nearly two-third of parliamentary seats. Following a power-sharing agreement between Dahal and Oli, the two erstwhile rivals merged in May 2018, forming Nepal Communist Party (NCP).<sup>28</sup> Under this agreement, Oli became prime minister and Dahal was to take over the post halfway through the five-year term. Two years later when Oli refused to honour the deal, Dahal set out to unseat him first by winning over Oli's detractors, notably Madhav Kumar Nepal and Jhala Natha Khanal from within his CPN-UML faction and then, expelling Oli from the NCP. When Oli learnt that the Dahal group was planning to initiate no-confidence motion against him, he decided to recommend that the president dissolve the House of Representatives and call early elections.

At the Prime Minister's recommendation, President Bidya Devi Bhandari dissolved the

Parliament on 20 December 2020 and called for snap elections between April and May 2021. In the following days, widespread protests broke out against Oli's controversial move and its constitutionality was challenged in the Supreme Court.<sup>29</sup> While the Supreme Court on 23 February 2021 overturned Oli's decision by restoring the status quo ante as of 20 December 2020, it failed to yield the desired results in terms of breaking the political logjam. Even after the parliament was reinstated, Nepal's political uncertainty dragged on as Oli refused to relinquish the office of Prime Minister and those opposed to the continuation of his government made no concerted efforts to dislodge it. The ruling NCP, for instance, chose not to withdraw its support despite being vertically split into two near-equal factions. So did the main opposition Nepali Congress (NC), which preferred early elections to joining a wobbly coalition government though many of its members were not well disposed towards the Prime Minister.<sup>30</sup>

It was only after the formal separation between CPN-UML and Maoist Centre as a result of the 7 March 2021 Supreme Court verdict to invalidate the formation of the NCP that Nepal's major parties came together to put up a united front against the incumbent government

supported by dissidents within Oli's CPN-UML.<sup>31</sup> When Prime Minister Oli failed to win the vote of confidence on 10 May 2021, the opposition alliance staked claim to provide an alternative government even though it lacked the required number of seats. Pitted against Oli's CPN-UML, which was the largest party with 121 seats in a 275-strong House, the Nepali Congress and Maoist Centre with 61 and 49 seats respectively relied on the support from the Janata Samajbadi Party (JSP), the fourth largest party with 32 seats. The Madhesh-based JSP was, however, a divided house. While one faction led by Upendra Yadav and former Prime Minister, Baburam Bhattarai joined the opposition alliance, the Mahantha Thakur and Rajendra Mahato group with as many members decided to throw its weight behind Oli in return for his assurances to address its long-standing regional demands.<sup>32</sup> What, however, ultimately undermined the opposition chances to prevail in the number game was the Nepal-Khanal faction's backtracking on its decision to resign from the ruling CPN-UML.

When the opposition parties failed to demonstrate majority support to form a new government, President Bhandari on 14 May 2021 reappointed Oli as Prime Minister considering him as the leader of the

largest party, and on the recommendation of Oli, the caretaker Prime Minister, she dissolved the parliament and declared mid-term polls for 12 and 19 November. The reappointment of Oli as Prime Minister who had lost the trust vote in the House, only four days before, set off a fresh political crisis as the opposition parties filed a joint petition to the Supreme Court challenging what they called the President's 'unconstitutional and undemocratic move.'<sup>33</sup> Oli carried on with his caretaker prime ministership as the case was being heard in the Supreme Court. There were moves by Oli to strengthen his ministry by inducting leaders from Mahant Thakur-Rajendra Mahato faction of JSP and from within UML to ensure that they continue to support him. However, the Supreme Court removed all the new ministers appointed by through reshuffle in June 2021. Going further, on 12 July 2021, it declared the dissolution of the house as unlawful and ordered appointment of Sher Bahadur Deuba of NC as the next prime minister. As Deuba government prepares for the next elections, Oli has got himself re-elected as the chairman of the main opposition party CPN-UML for the next five years, defeating Bhim Rawal and vowed to come back to power as prime minister. The political

struggle in Nepal continues as the leaders jockey for power without bothering to strengthen the foundations of democracy in the country.

### **Behavioural and Attitudinal Dimensions**

The on-going political crisis in Nepal amidst the ravaging Corona pandemic is not so much about 'muddied constitutional politics', as argued by some analysts or about the 'institutional collapse in Nepal'.<sup>34</sup> It, instead, brings to the fore the country's chronic political malaise related to the behavioural and attitudinal dimensions of a transitional democracy. In other words, what lies at the heart of Nepal's painful and protracted democratization process since the onset of constitutional monarchy in 1990 is the marked absence of behavioural and attitudinal changes, especially among the political actors (the Koiralas, the Thapas, Deuba, Bhattarai, Dahal, Oli and Madhesi leaders like Thakur, Mahato etc.) corresponding to changes in the institutional structure of the polity. Nowhere has this been more pronounced than in the peculiar phenomenon of alliances and re-alliances based on political expediency rather than any concerns

for the democratic institutions, norms and practices. As a result, Nepal has achieved the distinction of having had 26 prime ministers in the past thirty years.<sup>35</sup>

In the early 1990s, for instance, frequent changes in governments due to internal rifts within the dominant Nepali Congress (NC) created conditions favourable to the Maoist movement, which grew in strength cashing in on people's disillusionment with the mainstream parties' failure to rise up to their expectations spurred by the *Jan Andolan I*. Ten years later, once again, the ruling NC's inability to ensure continuity in governance led to the eclipse of the transition process with the King seizing state power in an attempt to re-establish monarchical rule. While nationwide protest spearheaded by a united opposition [*Jan Andolan II*] resulted in the restoration of multiparty democracy followed by the overthrow of monarchy, the ensuing power struggle between the two numerically strong Communist parties rendered the transition process chaotic. So much so that the 2008 Constituent Assembly was dissolved in 2012 and the constitution-making process was delayed by seven-long years.

Even after the promulgation of the new Constitution in September 2015, the left parties continued with their political gambit to topple a relatively stable government led by the Nepali Congress (NC) since February 2014 so that they could secure key positions in a transitional polity including president, prime minister and speaker. Accordingly, the CPN-UML leader Oli and the Maoist patriarch Dahal reached a 'gentleman's understanding' to govern together on rotation basis. The arrangement, however, did not last long as Oli refused to hand over premiership to Dahal, forcing the Maoist faction to withdraw support from the coalition and strike a power-sharing deal with the NC instead. With the formation of the NC-Maoist coalition government in July 2016, Nepal had the ninth government in eight years. The left parties fought the 2017 legislative elections together and won nearly two thirds of parliamentary seats but failed to deliver the level of political stability to Nepal that the Left Alliance had pledged during the election campaign.<sup>36</sup>

Given the country's past experience, the framers of the 2015 constitution incorporated strict provisions to ensure political stability

by minimizing the possibilities of easy dissolution of parliament and frequent change of governments. The constitution, for instance, does not allow a vote of no-confidence against a Prime Minister in the first two years of the five-year term.<sup>37</sup> Further, a non-confidence vote must include the name of the Prime Minister candidate and if it fails, another motion may not be initiated for a year. Despite all these restrictions, Prime Minister Oli unilaterally decided to recommend the dissolution of the Parliament, dragging the country into an avoidable political quagmire and undermining the prospects of its transition to a full-fledged liberal democracy.

### **Conclusion**

Evidently, what the Oli episode reveals is the weak agential factor in terms of leadership skills, and choice and strategies of political elites and failure of leadership to rise to the occasion to prevent the polity from sliding and to forge consensus on set of norms and values that accounts for the country's interrupted democratic transition since the historic 1990 breakthrough. Nepal is, indeed, an illustrative example of cases where process of democratization has gone through spells of stagnation, reversal and revival because progress in

institution-building is not accompanied by parallel behavioural and attitudinal changes among the political actors. While the former includes free and fair elections, independent judiciary, constitution and parliament, the latter refers to the individual elites' accepting democracy as 'the only game in town', abiding by the rules of the game and above all, avoiding choices that increase the probability of regime instability.<sup>38</sup> After all, progress in transition to democracy largely depends on the role played by a group of 'wised political elites' who Huntington has aptly designated as 'causers' of democracy.<sup>39</sup>

In the specific context of Nepal, the absence of corresponding behavioural and attitudinal changes can be attributed to a variety of factors, ranging from ideological background of Maoists and Communists incompatible with democratic principles to rent-seeking tendencies, patron-client relationship and external intervention.<sup>40</sup> Of all the most important factor cutting across the country's political divide is the lack of political maturity in terms of comprehending the difference between democracy as a system comprising certain structures and democracy as it functions based on a set of definite rules, norms and

values. The recent turn of events has, however, laid bare the fact that 'ethical politics and procedures are not in the dictionary of Nepali politicians.'<sup>41</sup> As long as the transition process remains hostage to individual idiosyncrasies of the 'causers' (political elite) of democracy, Nepal is unlikely to escape periodic flare-up of political uncertainty, increasing the risk of democratic backsliding.<sup>42</sup> ■

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32. Support of Thakur-faction of the JSP is crucial to the survival of the Oli government, taking advantage of which it has put forth tough conditions such as the release of its leader Resham Chaudhary who was implicated in the 2015 killing in Kailali districts during the anti-Constitution protests in the Terai region and removal of constitutional provision that denies citizenship to Nepali women married to foreigners, notably Indians. While this provision has recently been withdrawn through a presidential ordinance, there are concerns about its implementation.

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