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Abstract

Laws are an indispensable element for the smooth running of any system of governance. Since Nepal entered into federalism, efforts and achievements that should have happened in law implementation and enforcement have not been satisfactorily completed. In recent years, Nepal's law-making processes have been rife with issues. Parliament is not very active, and even parliamentary committees are not working as expected. In some committees, bills have been stuck for three years. To date, no law has yet been enacted regarding the drafting of a law. It is important to formulate such a law to determine the basic criteria related to the creation and publication of legislation and to maintain uniformity and quality in law making.

This paper provides a descriptive analysis of Nepal's law-making processes. The analysis is based on the constitution and documents issued by the Federal Parliament. The author is a member of the Federal Parliament, and some of the issues that the author has seen and experienced inform this analysis. The paper focuses on developments after the promulgation of the federal constitution in 2015 and excludes subnational-level issues.

Keywords: Nepal, federal parliament, bill, law, committee, House of Representatives, National Assembly, first-past-the-post electoral system

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1. Background

Nepal adopted a new constitution in September 2015, which marked a paradigm shift in the mechanism, structure, and functioning of the entire governance system. Following the declaration of the federal republic through the interim constitution in 2006, the election for the Constituent Assembly (CA) was held in 2008. The first meeting of the CA abolished the 240-year-long monarchy. The CA failed to draft a constitution and was dissolved in 2012. The second election for the CA was held in 2013, and that CA succeeded in promulgating the constitution in 2015. The CA had 601 members. But when the constitution was issued, there were only 597 members. Of those 597 members, 538 (90.12 %) had signed the constitution. The constitution was signed by 90% of parliamentarians, a symbol of ownership. When the constitution of India was created in 1949, only 73%² of parliamentarians had signed it.

With the promulgation of the constitution, the federal democratic republican system of governance was initiated. Accordingly, state power has been divided into three levels of government, namely federal, provincial, and local.

Structurally, there are seven provinces and 753 local governments (LGs). The functional responsibility of federal, provincial, and local governments (federal units) are enumerated in schedules 5, 6, 7, 8, and 9 of the constitution. The schedules outline the exclusive and concurrent lists of functions of government units at each of the three levels. There are 35 functions on the federal list; 21 on the provincial list; 22 on the LG list; 25 on the concurrent federal and provincial list; and 15 on the concurrent federal, provincial, and local list. Table 1 lists the assignment of some important governmental powers (expenditure assignment).

² Out of 389 CA members, 284 members had signed the constitution. Source: <https://web.archive.org/web/20110511104514/http://parliamentofindia.nic.in/ls/debates/facts.htm>.

Table 1. Exclusive and Concurrent Powers by Assignment

	Exclusive Powers	Concurrent Powers	
		Federal and Provincial	Federal, Provincial, and Local
Federal	Defense, central planning, currency, foreign affairs, citizenship, passport, etc. (Schedule 5)	Civil and criminal procedure, supply and distribution of essential goods, population management, social security, casino, etc. (Schedule 7)	Cooperatives, education, health, agriculture, irrigation, mines, minerals, disaster management, environment, forest, personal events, archaeology, motor vehicle permits, etc. (Schedule 9)
Provincial	Provincial police administration, provincial civil service, higher education, provincial-level development activities such as electricity, irrigation, roads, land management, etc. (Schedule 6)		
Local	Town police, management of local services, basic and secondary education, basic health, local roads, drinking water, etc. (Schedule 8)		

Source: Constitution of Nepal, Devkota (2020).

In Nepal’s federalism, functional responsibilities have been constitutionally relegated to the subnational levels (provincial and local); however, revenue-raising powers (revenue assignment) are still centralized, meaning that said powers can be and are subject to different assignments than functions are (see Table 2). Indeed, the federal government owns more than 80% of all revenue. Analysis of revenue assignments reveals that the constitution assigns most revenue-raising powers to the federal government. However, this does not mean that the federal government *uses* all the revenue it raises. Part of this revenue goes to the subnational³ governments through the fiscal transfer channel (Devkota, 2020).

³ In this paper, the word “subnational” and the sub-federal levels are interchangeable. Both of these terms refer to the provincial and local levels.

Table 2. Revenue-Raising Powers by Assignment

	Federal	Provincial	Local
A. Tax Revenue	(1) Custom Duty (2) Excise Duty (3) Value-Added Tax (4) Corporate Income Tax (5) Personal Income Tax (6) Remuneration Tax	(1) House and Land Registration Fee (2) Vehicle Tax (3) Entertainment Tax (4) Advertisement Tax (5) Tax on Agricultural Income	(1) Property Tax (2) House Rent Tax (3) House and Land Registration Fee (4) Vehicle Tax (5) Land Tax (Land Revenue) (6) Entertainment Tax (7) Advertisement Tax (8) Business Tax
B. Non-Tax Revenue	(1) Passport Fee (2) Visa Fee (3) Tourism Fee (4) Service Fee (5) Gambling/Lottery (6) Fines and Penalties	(1) Service Fee (2) Tourism Fee (3) Fines and Penalties	(1) Service Fee (2) Tourism Fee (3) Fines and Penalties
C. Other Revenue	Other tax and nontax raised/levied according to federal and other prevailing laws	Other tax and nontax raised/levied according to provincial law and other prevailing laws on the provincial jurisdiction	Other tax and nontax raised/levied according to local law and other prevailing laws on the LG-level jurisdiction

Source: Devkota (2020).

In Nepal, the head of state is the President, and the Prime Minister (PM) is head of the executive branch. The role of the President is largely ceremonial. The functioning of government is managed entirely by the PM, who is appointed by Parliament. The constitution limits the number of federal ministers to 25, including the PM. In the case of a province, the number of ministers, including the chief minister, is 20% of the total members of the province assembly.

To be a recognized political party, according to election law, one must achieve 3% of votes in the proportional electoral system and win at least one seat in the first-past-the-post electoral system. The procedures and rules of a political party should be democratic, and party office bearers should be elected every five years. In the general election held in 2017, five political parties were

able to fulfill these criteria. The Communist Party of Nepal (CPN) Unified Marxist–Leninist (UML), Nepali Congress (NC), and CPN-Maoist Centre are the major political parties in Nepal. In the 2017 elections, these three parties won 121, 63, and 53 seats, respectively, in the 275-member HoRs (for details, see Appendix 7).

The UML-led government was formed with the support of the CPN-Maoist Centre. Within a few weeks of the government’s formation, these two political parties united. However, the government failed within three and a half years due to internal disputes.⁴ Later, the UML party also split. As a result, the NC-led government was formed by a coalition of political parties other than the UML.

Nepal’s legal system is primarily based on common law, which has been largely influenced by the British common law system. The Supreme Court⁵ is the highest legal authority in Nepal, with substantial autonomy from other branches of government. Under the Supreme Court, there are seven High Courts (Court of Appeal) across the country and a District Court in each of 77 districts. Judges are appointed by the Judicial Council⁶ and headed by the chief judge of the Supreme Court.

With the constitutionally three-tier government, the law-making process has changed more

⁴ It has been charged that the court also played a role in this. But more importantly, the relationship between the party and the government was not good, the government was also not fully accountable to Parliament. Due to the lack of good relations between the government and the party, the HoRs was dissolved twice. Some detail in this regard is also included in Appendices 5 and 6. But if only the issues of party unity and division between UML and the Maoist Centre are discussed, large documents can be prepared.

⁵ The Supreme Court is composed of the chief justice and twenty justices. The chief justice is appointed by the President on the recommendation of the Constitutional Council. S/he is appointed from among the justices having at least three years as a Supreme Court justice. Justices of the Supreme Court are appointed by the President of Nepal on the recommendation of the Judicial Council. The chief justice and the justices of the Supreme Court have to be confirmed by the Parliamentary Hearing Committee before they can be appointed by the President. Article 284 of the constitution stipulates provisions for the formation of the Constitutional Council. The Council chaired by the PM has the chief justice, speaker of the HoRs, chairperson of the NA, leader of the opposition party in the HoRs, and deputy speaker of the HoRs as members.

⁶ The Judicial Council is a five-member independent body headed by the chief justice along with a minister of law and justice, most senior justice of the Supreme Court, and two distinguished jurists representing the PM and the Nepal Bar Association.

than ever. The constitution provides the federal government with the right to make federal law, the provincial government the right to make provincial law, and the LG the right to make local laws. But there is a constitutional provision that the federal government should make laws regarding the concurrent powers of the three tiers of government, and provincial and local governments (sub-national levels) should abide by it. Similarly, there is a constitutional provision in the law of concurrent powers related to two tiers of government that the lower government should follow and implement the law formulated by the upper government.

Since the constitution divides the state legislative power among the three tiers of government, these tiers of governments have the power to make laws. This paper discusses the law formulation procedure at the federal level and is organized as follows:

- The first section of this paper, above, provided background on Nepal's government and constitution.
- The second part of this paper discusses the formation of the legislative structures of subnational governments. Again, the legal system in Nepal is primarily based on common law, largely influenced by the British common law system.
- The third section provides a brief overview of law history and the basis for formulating laws.
- The fourth section discusses in detail the drafting of laws. This section is the central part of the paper. It discusses aspects before the bill is introduced in Parliament, the process after the bill is presented, and the process after the bill is approved by Parliament.
- In the fifth section, a brief analysis of parliamentary committees is described. There

are a total of 14 parliamentary committees in Nepal. Nepal's Parliament is a bicameral body. The Lower House is called the “House of Representatives” (HoRs) and the Upper House is called the “National Assembly” (NA).

- The sixth section deals with the interrelationships and differences between the HoRs and NA.
- The seventh section explores parliamentary activities, including House meetings, bill tabling and approval processes, and how much time is taken by MPs.
- The eighth and final section provides conclusions and the way forward.

2. Formation of Legislative Bodies

2.1 Formation of federal legislative body

The Federal Parliament of Nepal is the bicameral legislature structure composed of the HoRs (Lower House) and the NA (Upper House). Out of 275 members in the HoRs, 165 come from the first-past-the-post electoral system, and the remaining 110 come through the proportional electoral system. The NA consists of 59 members. Out of these, 56 come from an electoral college composed of provincial parliamentary members and chiefs and deputy chiefs of LGs. The President, on the recommendation of the Government of Nepal, nominates the remaining three members. The NA has no role in government formation.

The term of the HoRs is five years unless it is dissolved before completing its term (Art.85). The NA is a permanent structure (Art. 86). The term of office of its members is six years. However, when it was formed for the first time, the term of office of the members was determined on a two-year, four-year, and six-year basis by a lottery voting system. Due to this, one-third of the members are elected every two years. There is a legal provision for the election of members of the NA before 35 days, the expiration of their term. Additional interrelationships and differences between the

HoRs and NA are highlighted later in section six.

2.2 Formation of provincial legislative bodies

The provincial legislature is a unicameral province assembly. It has double the number of members as elected from the concerned province to the HoRs according to the electoral system. For example, if there are two constituencies in the HoRs, then there will be four constituencies in the provincial assembly (i.e., double that of HoRs constituencies). Out of 550 members across all the provinces, 330 (60 %) come from the first-past-the-post electoral system and the remaining 220 come through the proportional electoral system. The term of the province assembly is five years unless dissolved earlier pursuant to the constitution (Art. 177). The provincial assembly has the power to make laws on matters within the jurisdiction of the province.

2.3 Formation of local legislative body

The rural and urban municipality executive branches serve as the executive organs at the LG level, whereas the rural and urban municipality councils are their legislative bodies. In each local-level unit, the chief and deputy chief (mayor and deputy mayor in urban municipality and chairperson and deputy chairperson in rural municipality), ward chair, and ward members are elected through the first-past-the-post electoral system. These elected representatives nominate two additional members in the rural municipality and three in the urban municipality. Local assemblies formulate policies, rules, laws, and standards and approve the annual budget and periodic plan. Local elections are held every five years. The rural and urban municipality assemblies can make necessary laws on the issues mentioned in the list as per schedules of the constitution, and the process of making laws in this way should be in accordance with the provincial law (Art. 226).

Province-wise, the number of HoRs constituencies on a first-past-the-post electoral basis is provided in Table 3, which also includes province assembly numbers in all provinces and LG

units. As shown below, the Bagmati province has the greatest number of HoRs constituencies (33), whereas the Karnali province has the lowest number (12). The constituency number of the province assembly is twice that of the HoRs. In Bagmati, for example, there are 33 constituencies for the HoRs and 66 for the province assembly. In the Bagmati province, these 66 members come through a direct election method, whereas the remaining 44 members are elected through a proportional representation tool. The total number of assembly members in the Bagmati province is 110.

Table 3. Provincial HoRs Constituencies and Units

Province	No. of HoRs Constituencies	Province			No. of LG Units	No. of Ward Units ⁷
		Direct Election	Proportional Election	Total Province Assembly		
Province No. One ⁸	28	56	37	93	137	1,157
Madhesh	32	64	43	107	136	1,271
Bagmati	33	66	44	110	119	1,121
Gandaki	18	36	24	60	85	759
Lumbini	26	52	35	87	109	983
Karnali	12	24	16	40	79	718
Sudurpaschim	16	32	21	53	88	734
<i>Total</i>	<i>165</i>	<i>330</i>	<i>220</i>	<i>550</i>	<i>753</i>	<i>6,743</i>

Source: Devkota (2020)

3. Brief Law History and Basis for Formulating Laws

The process of organizing a law-making system in Nepal began with the promulgation of the Muluki Ain⁹ in 1853 (1910 BS¹⁰). In the period up to 1947 (2004 BS), some acts of social

⁷ The key service delivery mechanism of LG is the ward-level office. They are the smallest LG units in Nepal. Most of the former rural municipalities have now been converted to wards. It is important to understand that a ward serves as a crucial service delivery center.

⁸ When the constitution was promulgated, the right to name the provinces was given to the province assembly. By March 2022, only this province remains to choose its name.

⁹ The law code with constitutional features drafted at the initiative of then-PM Janga Bahadur Rana is the foundational legal text for modern Nepal.

¹⁰ The BS (Bikram Sambat) is a Nepali calendar that is 57 years ahead of the Western calendar.

reform took place through the abolition of Sati Pratha¹¹ and Das Pratha.¹² Methods of formulating and implementing law existed during the Rana period (1846–1950),¹³ and the Government of Nepal turned these methods into statutory law in 1947 (2004 BS) to make the process more systematic. However, this systematization was short lived and not executed properly.

After the end of the Rana rule, the general election was held in 1958 (2015 BS); for the first time in Nepal, the process of drafting laws started in the Parliament. During the Panchayat period¹⁴ (1960-90), laws were formulated through a popularly elected Parliament but under the direct supervision of the king. Systematic formulation of law began only after the establishment of the multiparty system in 1990. After the promulgation of the constitution of 2015, there has been a radical change in the state power of Nepal. In the changed context, laws have to be made in a way that is aligned with the constitution.

So far, no dedicated law¹⁵ has been enacted yet on how to formulate the law or its basis and criteria. However, the Nepal Law Commission¹⁶ formulated a directive manual in 2009. Until now, the same directive has been used as the basis. As per this directive, constitutional supremacy, rule of law, provisions of international law and conventions, general principles of law and justice,

¹¹ The practice of burning the body of the husband along with the wife is called “Sati Pratha.” For detail, see <https://risingnepaldaily.com/mustread/101-years-of-sati-pratha-abolition-in-nepal>.

¹² Slavery is the inhumane act of buying and selling people like animals for various purposes. In Nepal, PM Chandra Samsheer officially declared the end of slavery in 1924 (1981 BS). Reportedly, he released 59 thousand previously enslaved individuals.

¹³ The family rule of the Rana is called the Rana period. In Nepal, this period started from 1846 (1903 BS) and lasted until 1950 (2007 BS). There was a rule that the post would be transferred to his brother. The people of the Rana dynasty were also appointed to the most powerful positions in the country. There were no fundamental rights during that period. Whatever Rana said was lawful.

¹⁴ The Panchayat system was introduced in 1960 (2017 BS) after the Parliament and the cabinet of Bishweshwar Prasad Koirala were dissolved through a declaration saying that the multiparty parliamentary system has proved to be a failure in Nepal. It was a one-party system. The people's movement of 1990 (2046 BS) forced the monarchy to make constitutional reforms and form a multiparty parliament. As a result, multiparty democracy was restored in Nepal with the end of the Panchayat system.

¹⁵ On June 17, 2021, the Delegated Management and Government Assurance Committee of the NA directed the government to formulate a law related to law formulation and delegated legislation.

¹⁶ The Nepal Law Commission is a statutory independent body created by the Nepal Law Commission Act, 2007, to keep the law under review and to recommend reform where it is needed. For details, see https://www.lawcommission.gov.np/en/?page_id=58

policy clarity, possible liability, welfare of the citizens, coordination and consensus, inclusive principles, and other aspects should be followed while drafting any law.

Once the bill enters Parliament, its rules of procedure have to be taken as the basis. In this regard, Rules of the HoRs, 2018, and Rules of the NA, 2018, are in operation.

After the promulgation of the new constitution, three tiers of government are in existence. They have the power to make necessary laws regarding their exclusive and concurrent authority and to implement such powers. Regarding law and policy making, article 59(1) of the constitution states, “The Federal, Province and Local level shall make laws, make annual budget, decisions, formulate and implement policies and plans on any matters related to financial powers within their respective jurisdictions.” The issues to be considered while making a law on the subject of exclusive powers are listed in Box 1, below.

Box 1. Laws on Exclusive Rights
(1) Federal, provincial, and local levels shall necessarily make laws concerning their exclusive authority list and implement such power. (2) When formulating or implementing any law on any matter, provincial and local levels shall comply with conditions or standards of the constitution, if any are given in the constitution, and federal law enacted as per the federal policy on such matters. (3) Provinces shall not encroach upon federal law, and local-level units shall not encroach upon federal and provincial law while making and implementing laws on matters that concern the exclusive powers of more than one level (federal, provincial, and local).
Source: Federal, Province, and Local Levels (Coordination and Interrelation) Act, 2020

Article 235 of the constitution stipulates that the relationship between these three tiers of government should be based on principles of cooperation, coexistence, and coordination and that the Federal Parliament should make laws on issues concerning intergovernmental relationships. Using this constitutional power, the Federal Parliament enacted a law on coordination and

interrelationship between the federal, provincial, and local levels in 2020. This law covers issues that these governmental levels need to consider when making laws or policies. According to the law, the federal, provincial, and local levels can make their own laws¹⁷ within their exclusive and concurrent powers per the constitution. The basis for formulating any laws or policies by three tiers of government is summarized in Table 4.

Table 4. Basis for Formulating Laws or Policies

Government	Areas of Laws or Policies
Federal	<ul style="list-style-type: none"> a. Shall not encroach on exclusive powers of provincial and local levels b. Involving provincial and local levels in implementing those subject matters justified from the point of view of the cost, sustainability, or effectiveness of service delivery c. Continuity of the role of federal, provincial, and local levels without duplication in the implementation of any subject matter
Provincial	<ul style="list-style-type: none"> a. Shall not encroach upon the exclusive powers of federal or local level b. Not to be inconsistent with federal law c. Compliance with national policy and priorities and helpful for their implementation d. Implementation of those subject matter through local level is justified from the point of view of cost, sustainability, or effectiveness of service delivery e. Continuity of local role without duplication in the implementation of any subject matter
Local	<ul style="list-style-type: none"> a. Shall not encroach upon the exclusive powers of federal or provincial level b. Not to be inconsistent with federal and provincial laws c. Compliance with national policy and priorities and helpful in their implementation d. Compliance with provincial policy and priority and helpful in their implementation e. No duplication in the implementation of any subject matter

Source: Federal, Province, and Local Levels (Coordination and Interrelation) Act, 2020.

The issues to be considered while formulating the law on concurrent responsibilities are listed in Appendix 4.

¹⁷ However, the law restricts two areas for the sub-federal levels. These include (1) restricting or limiting the exercise of fundamental rights, constitutional rights, or rights guaranteed by federal laws and (2) restricting any action allowed by the provisions of federal law or allowing any action restricted by provisions of federal law.

4. Law-Making Procedures and Implementation

The constitution provides policy and legal guidance on legislative processes. Parliament in Nepal, like other countries, has an important role in it. Procedurally, Nepal's legislative process can be divided into three phases: pre-legislative, legislative, and post-legislative. A brief explanation of these phases follows.

4.1 Pre-legislative phase

This process includes policy identification, subject analysis, drafting, scrutiny, and other elements. The drafting of a bill¹⁸ starts from the concerned ministry on the issues related to the jurisdiction determined by the Government of Nepal, Allocation-of-Business-Rules, 2018.

After realizing the need to make a law on any issue, the concerned ministry should hold a discussion with the Ministry of Law indicating the need to make such a law and the contents to be included in it. Similarly, if the matter to be included in such a law falls within the jurisdiction of other ministries, the opinion of such ministries should also be sought. After receiving the opinion and consultation accordingly, the concerned ministry should submit the bill to the Council of Ministers for the purpose of gaining policy approval.

If financial matters are needed, the consent of the Ministry of Finance is required. Similarly, the consent of the Public Service Commission should be sought in case of legal arrangements being made regarding the conditions of civil service. The consent of the Public Service Commission should be sought on the basis of the decision of the Council of Ministers. Before making a decision on presenting the bill in the Federal Parliament, the Council of Ministers can send it to the Bill Committee of the Council of Ministers for discussion or decide on its own. After the bill is principally approved by the Council of Ministers, there is an arrangement for the

¹⁸ The bill becomes law (act) only after it is approved by Parliament and ratified by the head of state.

concerned minister to send the bill to Parliament for registration. The bill thus received is registered with the Federal Parliament Parliament Secretariat.

Most of the bills are introduced by the executive body (these are also known as “government bills”). These bills should be introduced in the Parliament by the respective ministers. Apart from ministers, members of the Federal Parliament can also introduce bills. Such bills are called “private bills.” The framework and process of law making should be followed even when introducing a private bill.

A brief analysis of the pre-legislative stage is presented in Box 2, below.

Box 2. Pre-Legislative Stage
<p>The various processes taking place before the draft bill is registered in the Federal Parliament constitute what is called the pre-legislative phase. This phase generally includes the following:</p> <ul style="list-style-type: none">• Policy identification and subject analysis• Preparation and approval of bill proposal• Bill drafting• Preparation of bill proposal• Approval of proposed bill• Bill drafted• Draft bill sent to the Ministry of Law• Draft bill reviewed• Presentation to the Bill Committee at the Council of Ministers• Bill discussion and approval in the Council of Ministers

4.2 Legislative phase

Part 9 of the constitution deals with the introduction, approval, withdrawal, authentication, and so on of the bill. Based on the provision of the constitution, the legislative phase is discussed in detail in the Rules of the HoRs, 2018, and Rules of the NA, 2018. Accordingly, the bill may be introduced in any House of Parliament subject to the constitution. However, the finance bill can be presented only in the HoRs. A finance bill and a bill concerning a security body, including the Nepal Army, Nepal Police, and Armed Police Force, shall be introduced only as a government bill.

The member wishing to present the bill should attach with the bill the details including purpose and reason, financial and explanatory details, and delegated legislation.

If it is a government bill, it should be given five days in advance and if a private bill, seven days in advance to the Secretary General of the Parliament or, in his or her absence, to the Secretary. The finance bill can be originated only in the HoRs and other bills in any House. Government bills will be distributed to members within two days after registration and private bills within four days. The bill can be presented at any meeting after seven days of registration (five days in the case of a government bill). Members who wish to give notice of dissent to the presentation of the bill must register in the HoRs one day before the proposal is tabled and within five days of the date of distribution of the bill being registered and distributed in the NA.

At the next meeting after the introduction of the bill, the proposing member may present one of the proposals to consider or to publicize the bill to get the response of the general public. After that, except if it is deemed necessary to clarify the intention of the bill on the proposed bill, the clause of the bill will not be discussed—only the conceptual aspect will be discussed. A proposal should be submitted to the House to consider the opinion and suggestions received regarding the bill that has been disseminated for public opinion. There are legal provisions both (1) to provide 72 hours after the end of the conceptual discussion to members who want to submit amendments to the bill and (2) that after the proposal for detailed discussion with amendments is presented in the House, it will be discussed in the House or sent to the concerned sectoral Parliament committees for detailed article-by-article discussion.

In the NA, it is customary to discuss all the bills in the Legislative Committee,¹⁹ while in

¹⁹ There is a legal provision to discuss all the bills tabled in the NA only in this committee.

the HoRs, discussions are held in different sectoral thematic committees. There is a debate in the NA whether, like in the HoRs, bills should also be discussed in all sectoral committees. After extensive deliberations in the committee, the report comes up in the House again with at least a majority decision.

A bill passed by one assembly is sent to another. The bill received in this way will be distributed after it is tabled in the relevant assembly, and all the procedures related to the above mentioned procedures (except in case of notice of protest) will be followed. Regarding the Advance Expenditure Bill, Supplementary Appropriation Bill, and Borrowing Expenditure Bill, it is customary to follow the procedure as deemed appropriate by the speaker/chairperson. For the Annual Estimates of Revenue and Expenditure According to Article 119 of the constitution, there is a legal provision that a copy should be tabled by the finance minister in the joint meeting of the Federal Parliament.

After the finance bill is passed by the HoRs and sent to the NA with the message, the Secretary should table it in the NA House as soon as possible. If the finance bill is not returned within 15 days of its receipt by the NA, the speaker shall inform the HoRs session and certify it in accordance with the constitution and submit it to the President for authentication.

If the NA rejects a bill other than the finance bill or does not return it within the stipulated period (two months) or if the amendment of NA is not accepted, it is decided to be passed by more than 50% of the current members of the HoRs. After that, the speaker certifies and forwards the bill to the President for authentication. If the NA has passed and sent the bill to the HoRs but the HoRs has rejected and sent it back to the NA with amendments the NA does not agree to, then

there is a legal provision allowing the bill to be introduced in the HoRs and NA joint committee.²⁰

A bill that is to be submitted to the President for assent shall be submitted by the speaker or chairperson of the House in which the bill originated after it has been certified by him or her.

After the bill is authenticated by the President, the information should be given to both the assemblies (to be read out in the assemblies) as soon as possible. Similarly, when there are no assembly meetings, the secretariat should publish it in the newsletter. There is a legal provision that a bill authenticated by the President will be enacted, published in the *Nepal Gazette*, and implemented from the date mentioned in the act.

There is a constitutional provision that the President may issue an ordinance on the recommendation of the Council of Ministers if it is necessary to do something immediately except during the session of both the assemblies of the Federal Parliament. Each such ordinance must be introduced in both assemblies of the Federal Parliament after its issuance. It will be automatically deactivated if not accepted by both assemblies. The ordinance can be repealed by the President at any time, and if it is inactive or not repealed, it automatically becomes inactive 60 days after the sitting of both the assemblies. If both Houses approve the ordinance, there is a legal provision to start the process of making parliamentary law through the replacement bill.

A brief overview of the legislative stage is presented in Box 3, below.

²⁰ Article 97 (2) of the constitution states that if a resolution is passed by either House demanding that a joint committee of both Houses be formed for the purpose of managing the working procedures between the two Houses of the Federal Parliament, resolving disagreement on any bill or for any other specified function, the joint committee shall be formed. The joint committee shall consist of a maximum of twenty-five members in the ratio of five members from the HoRs to one member from the NA on the basis of inclusion.

Box 3. Legislative Stage

The phase after the bill is registered in the Federal Parliament Secretariat is called the legislative phase. This phase of law making can be understood as follows:

- Bill registered in Parliament
- Notice of Disagreement to the bill
- Decision of Notice of Disagreement
- Bill presented in the House
- Conceptual discussion of the bill
- Amendment to the bill
- Amendment approval
- Clause-by-clause discussion of the bill with amendments
- Clause-by-clause discussion of the bill in the House
- Clause-by-clause discussion of the bill in the committee
- Report of the committee with amendments presented and discussed in the House
- Bill approved by the House
- Bill forwarded to another House, then returned and approved
- Certification of the bill and authentication by the President

The procedures for presenting and approving a bill and its flow chart from HoRs to NA and NA to HoRs is included in Appendices 8 and 9.

4.3 Post-legislative phase

The pre-legislative and legislative phases of the legislative process concern law *making*, while the overall content of the post-legislative phase is related to law *implementation*. Basically, conducting a parliamentary study and researching and closely monitoring the parent acts and delegated legislations is the post-legislative phase. In the Nepalese context, the Legislative Committee of the NA highlights the following procedures²¹ in the post-legislative phase:

- After the approval of the bill, the Ministry of Law will publish it in the *Nepal Gazette* to inform the public.
- To make necessary rules and procedures for the purpose of implementing the law.

²¹ See page 28 at <https://na.parliament.gov.np/uploads/attachments/5xodo4aetkhjeqed.pdf>.

- To make structural arrangements for the implementation of the law.
- To test the implementation of the act and the achievement of policy objectives.

The overall work of this phase falls under executive responsibility. To make this work accountable to the people, the practice of parliamentary monitoring and evaluation is considered a constitutional, legal, and traditionally established democratic practice. In this context, the parliamentary committees monitor the work done by the government and give instructions and suggestions as needed and draw attention.

In Nepal, the post-legislative phase can be analyzed mainly from two perspectives: (1) post legislative scrutiny and (2) delegated legislative management. Post-legislative scrutiny involves policy monitoring and inquiry into the current state of the acts enacted by Parliament and identifying how these laws have come to the implementation after enforcement. In other words, what is the status of implementation of the law made by Parliament? Has the law's objective(s) been achieved? What achievements have been made while implementing the law? What are the key problems? How can it be improved? These and other questions are addressed using post-legislative scrutiny tools. For example, in January 2022, a resolution was initiated in the NA in the execution of federalism and the overall aspects of the challenges seen in its implementation²².

Laws are made by the legislature/Parliament, so it is accepted as an important source of law. When the workload of the legislature is not manageable, the power to make ancillary laws for the executive branch is delegated to the parent law. The delegated legislature is accepted as an established norm of jurisprudence and parliamentary practice. According to this belief, Parliament delegates some of its powers to the executive body and other officials in making laws. Legislation

²² <https://english.nepalpage.com/2022/01/resolution-proposal-on-implementation-of-federalism-in-parliament/>.
<https://www.nayapatrikadaily.com/news-details/78041/2022-01-06>

created using the power delegated in this way is called "delegated legislation."²³ Rules of regulation, bylaws, order, procedure, guideline, standard, direction, notification, and power to remove difficulties are the areas of delegated legislation.

Regarding the scope of work of the parliamentary committees, there is a legal provision that all the sectoral committees of the HoRs can carry out the post-legislature scrutiny function and monitoring of delegated legislation matters. In the NA, the work related to post-legislative scrutiny is looked after by the Legislative Committee, and the delegated legislation matters are handled by the Delegated Legislative Management and Government Assurance Committees. The committees of the NA are more active in these areas than the committees of the HoRs. In fact, post-legislative scrutiny also includes the issue of delegated legislation. There is a practice of analyzing the study in one place or separately.

The practice of post-legislative scrutiny has not yet risen to the implementation level. However, the Legislative Committee of NA has so far examined the scrutiny of four laws.²⁴

The provision of post-legislative scrutiny has also been included in the discussion by parliamentary committees of the bills registered in Parliament. There are provisions in this regard in approximately a dozen bills that have been approved by Parliament. According to the section titled "Measurement of Act implementation," there is a provision that the concerned ministry should measure the implementation of the act within five years after the commencement of the act and submit its report to the related committee of the Federal Parliament.

Regarding the delegated legislation, the Delegated Management and Government

²³ Delegated legislation is law made by some person or body other than Parliament but with the permission of Parliament. The authority is laid down in a parent act of Parliament, known as an "enabling act," which creates the structure of the law and then delegates powers to others to make more detailed law in the area (<https://www.lawteacher.net/>).

²⁴ These include the Public Procurement Act, Social Behavior Reform Act, Infectious Diseases Act, and Land Act.

Assurance Committee has been examining whether the necessary rules, directives, procedures, and standards have been formulated for the implementation of the act in accordance with the spirit of the act, whether any tax is levied or not levied, etc. The committee has convened more than a dozen discussions with various ministries and agencies of the government and has even instructed them not to do something if it goes beyond the law. Those who have drafted the delegated legislation indiscriminately have been instructed not to do so.

Box 4, below, mentions some issues to be considered by Parliament committees regarding delegated legislation.

Box 4. Issues of Delegated Legislation
<p>The following issues should be considered by the parliamentary committee while monitoring subordinate laws:</p> <ul style="list-style-type: none"> • Whether or not the subordinate law encroaches on its jurisdiction • Whether or not the subordinate law is formed within its jurisdiction • Whether or not the subordinate law is in harmony with the essence, spirit, and purpose of the parent law • Whether or not the subordinate law impinges on principles of justice including natural justice • Whether or not the extent of discretionary power in the subordinate law is abnormal • Whether or not provisions related to tax levy, collection, or expenditure are included in the subordinate law • Whether or not there is unnecessary delay in publishing the subordinate law and submitting it to the Secretariat of the Federal Parliament <p>Source: Rules of the HoRs, 2018, and Rules of the NA, 2018.</p>

5. Parliamentary Committees and Number of Laws

Article 97 of the constitution provides for the formation of committees by Parliament to make government accountable to Parliament, to monitor and evaluate governmental work, and to give necessary instructions and advice. The parliamentary committees can direct policy and program issues to the government and follow up on those directions. Formation of parliamentary committees are also called “Mini Parliaments.” These committees oversee the activities executed

by different ministries. There are 10 committees in the HoRs and four in the NA (see Table 5, below). Further, there are two joint committees, including the Parliamentary Hearing Committee.²⁵ The other joint committee looks into the state's directive principles and policies. The main function of this latter committee is to monitor and evaluate the implementation of the states' guiding principles, policies, and responsibilities mentioned in Part 4 of the constitution.

An NA committee can have a maximum of 15 members, and an HoRs committee can have a maximum of 27. Each committee is headed by a chairperson, who has the rank of minister of state. There is a legal provision in the committee to invite the PM and the ministers to take interest and give instructions about various activities of the ministries. The HoRs committee is directly linked to the various ministries of the government. Thematic discussions of the bill are held in these committees²⁶ on a ministry-wise basis. However, the jurisdiction of the NA committees is not limited to the ministries of the government. Bills are discussed only in the Legislation Committee in the NA. There is a legal provision for the MPs of other committees to participate in the Legislation Committee and express their views. By participating in the committee, one can express an opinion about the amendments made by him/her.

²⁵ Article 292 (1) of the constitution provides that parliamentary hearings shall be held in accordance with federal law before the appointment of the chief justice, judges of the Supreme Court, members of the Judicial Council, heads or office bearers of constitutional bodies, and ambassadors appointed on the recommendation of the Constitutional Council.

²⁶ Except for the Accounts Committee, all committees of the HoRs and the Legislative Committee of the NA discuss the bill. The work of the Accounts Committee focuses on public accounts and the annual report of the Office of the Auditor General.

Table 5. Parliamentary Committees

Parliament	Committee	
HoRs	1. Finance 2. International Relations 3. Industry, Commerce, Labor, and Consumer Rights 4. Law, Justice, and Human Rights 5. Agriculture, Cooperative and Natural Resources	6. Women and Social 7. State Affairs and Good Governance 8. Development and Technology 9. Education and Health 10. Public Accounts
NA	1. Sustainable Development and Good Governance 2. Legislation Management	3. Delegated Management and Government Assurance 4. National Concerns and Coordination
Joint Committees	1. Parliamentary Hearing 2. Directive Principles and Responsibilities of the State of the Constitution Implementation and Monitoring	

Source: Rules of the HoRs, 2018, and Rules of the NA, 2018.

Although there are many committees in both of the Houses, in practice, most of them have not been able to do the expected work. Their impact is minimal. Per a report released in February 2022 by the Parliamentary Secretariat, only 15% to 25% of the directives given by the committees have been fully implemented. The report also reveals that 50% to 70% of directives have been only partially implemented and 15% to 25% have not been implemented at all.²⁷ In addition, the meetings of some committees have not been held for months, while bills have been stalled in some committees for three years. For example, the “Insurance bill” has been under consideration in the Finance Committee of the HoRs since July 18, 2018. Similarly, bills related to “Banks and Financial Institutions” and financial and “Public Debt Management” have been in the same

²⁷ This report has been prepared by analyzing the policy, structural, managerial, practical, and other difficulties encountered in the implementation of the directives given by the committee from the formation of the committee of the Federal Parliament until January 23, 2021. The report finds 15 challenges in the implementation area of the committee. Similarly, 13 suggestions have been given to make the committees more effective.

committee since February 2020. Nepal's prominent newspaper *Kantipur* published headline news on March 15, 2022, regarding the idleness of the parliamentary committees.²⁸ The paper also published an editorial²⁹ the next day, and the author wrote on the ineffectiveness of the committees in the same daily paper³⁰ on October 3, 2021.

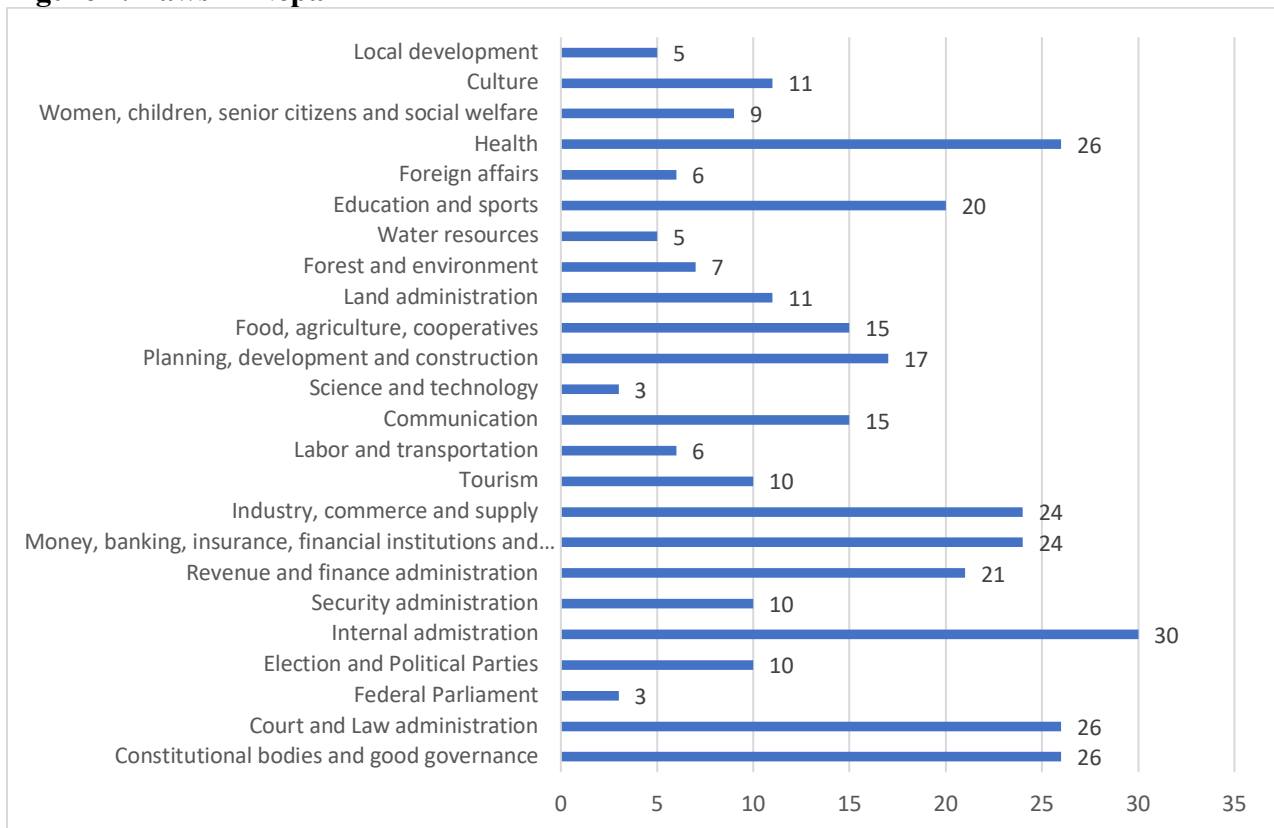
With regard to the number and types of laws, including delegated legislation, there are no up-to-date details so far. However, based on the information received from the Nepal Law Commission, there are 340 parent laws in Nepal as of March 2022. Most of these laws fall under the purview of the federal government. The sectoral classification of the laws received from the commission is presented in Figure 1, below. The figure shows that internal administration accounts for the largest number of laws, followed by constitutional bodies and good governance, court and law administration, and health. In fact, post-legislative scrutiny of all these laws is required.

²⁸ For details, see <https://ekantipur.com/news/2022/03/15/164730662623413518.html>

²⁹ Source: <https://ekantipur.com/opinion/2022/03/16/164739434679659097.html>

³⁰ Source: <https://ekantipur.com/opinion/2021/10/03/163322537677187556.html?author=1>

Figure 1. Laws in Nepal



Source: Based on information received from the Nepal Law Commission, 2022.

There are approximately 350 parent acts, and it is difficult to estimate the number of delegated legislation. Parliamentary committees, government ministries, and other related agencies do not have the exact details. The Delegated Legislation and Government Assurance Committee of the NA studied delegated legislation on the basis of around two dozen or so parent acts during the last three years (2019–2021). In the course of the study, it was found that there are approximately four pieces of delegated legislation (secondary laws) per one parent act. Based on this fact, only 20% of the parent acts in Nepal are formulated by Parliament, and the remaining 80% are issued by the executive and judicial bodies.

6. Interrelationships and Differences between the HoRs and the NA

The constitution defines the Federal Parliament as the joint structure of the HoRs and the NA. These two entities are interrelated. Although only the HoRs is responsible for forming and changing the government, both Houses have an equal role³¹ in drafting laws. The constitution states that any bill can be introduced in either House of the Federal Parliament. However, a finance bill shall be introduced only in the HoRs (Art. 110). Article 111 of the constitution provides for interrelationships in law making. Accordingly, a bill passed by one House should be sent to the other House as soon as possible, and after passing by that House, it should be submitted to the President for authentication. The budget bill passed by the HoRs and sent to the NA should be returned to the HoRs within 15 days and other bills within 60 days

If the NA does not return the bill in time or if the recommendations of the NA do not seem appropriate, then the HoRs can decide by a majority vote and send the bills to the President for authentication. But if it is passed by the NA, rejected by the HoRs or sent back to the NA with amendments by the HoRs, and the NA does not agree to such amendments, then the bill should be presented in the Joint Committee of both Houses.³² If the HoRs is dissolved or its term expires when any bill introduced in the HoRs is under its consideration or when any bill passed by the HoRs is under consideration in the NA, such bill shall lapse. The interdependence and differences between the HoRs and the NA are presented in Table 6, below.

³¹ In the four years of experience of the Federal Parliament, the role of both the Houses has been seen equally. But the role of the NA in the constitution has been weakened.

³² The joint committee shall consist of a maximum of twenty-five members in the ratio of five members from the HoR to one member from the NA on the basis of inclusion.

Table 6. Interrelationships and Differences between HoRs and NA

Benchmark	HoRs	NA
Lower or Upper House	Lower House	Upper House
Structure	Temporary	Permanent
Number of members	275	59
Tenure	5 years	6 years ³³
Election procedure	165 through “first-past-the-post” electoral system & remaining 110 from proportional electoral system	Elections held for 56 members, eight from each province. Other three are nominated by President ³⁴ .
Minimum age of members	25 years	35 years
Role in the bill	Important and active	Does not have as important and active a role as the HoRs
Role in government formation	Only a member of this House can be the PM	No role in forming the executive
Presentation of policies and programs	The President presents in the joint House meeting	Must be approved by a majority of both Houses
Impeachment against: a. President and Vice President b. Chief Justice, Supreme Court's judges, members of the constitutional body, others	Tabled only in HoRs	Should also be passed by a two-third majority from the NA
	Tabled only in HoRs and approved by two thirds majority	Members of the NA have not been given any role in this
Parliamentary hearings	Presence of both Houses mandatory	Out of 15 members, only three included from this House
Declaration of emergency	By two-thirds majority	By two-thirds majority
Amendment of the constitution	By two-thirds majority	By two-thirds majority
Ratification of treaties and agreements	By two-thirds majority	By two-thirds majority. However, simple treaties or agreements can be approved by a simple majority of the HoRs
Referendum approval	By two-thirds majority	By two-thirds majority
Number of sectoral committees	10	4

Source: Constitution of Nepal and Rules of the HoRs, 2018, and Rules of the NA, 2018

³³ In the first year of the formation of the NA, the term was fixed at two years, four years, and six years. On this basis, one-third of the membership expires every two years

³⁴ The members of the NA are elected through an electoral college. The electoral college consists of members of the provincial assembly and chairperson/mayor and vice chairperson/deputy mayor of the LGs within the province. Each provincial assembly member's vote has a weight of forty-eight, whereas each chairperson/mayor/vice chairperson/deputy mayor vote has a weight of eighteen. The electoral college elects 56 members to the NA and three members, including one woman, are nominated by the President on the recommendation of the Government of Nepal.

Further details of the relationship between the two Houses in the drafting of a bill are provided in Appendices 8 and 9.

No major problems between the HoRs and the NA were seen during the four years (2017–2021) subsequent to the constitution’s implementation after the 2017 election. During this period, relations between the government and Parliament were not very good. It is the role and responsibility of the government to make Parliament more functional. However, rather than making Parliament more functional, the government twice dissolved it. The government had not shown sincerity in drafting laws and implementing federalism.³⁵

Due to internal politics within the political parties, the MPs have not been very active. A two-thirds majority government dissolved the HoRs twice. It was confirmed that Parliament was dissolved due to internal reasons within the ruling party. In both dissolutions, the Supreme Court reconstituted the HoRs. The government had been changed. But the restored HoRs is not functioning well. Some details in the dissolution of the HoRs and the obstruction of Parliament are included in Appendices 5 and 6. Due to this political turmoil, the parliamentary committees could not function as expected (refer to Section 5).

The core task of Parliament is to make laws. However, due to the lack of cooperation between the ruling political parties and government, the government and Parliament, the parliamentarians and political parties, the constitution and federalism implementation period of four years has not been satisfactory.

³⁵ A resolution proposal on the implementation of federalism has been registered in the NA.
<https://english.nepalpage.com/2022/01/resolution-proposal-on-implementation-of-federalism-in-parliament/>.

7. Parliamentary Activities after the Federal Constitution

After the promulgation of the new federal constitution by the CA in 2015, the first general election was held in November–December 2017. The first meeting of the Federal Parliament (both HoRs and NA) was held on February 23, 2018. The first session of the HoRs and the NA was held in February 2018 and the 11th session³⁶ was held on December 14, 2021. But it was the 10th session for the HoRs and the 11th for the NA. According to the constitution of Nepal, a gap between parliamentary House meetings should not be more than six months. The HoRs was dissolved twice³⁷ during this periods, and both attempts were declared unconstitutional by the Supreme Court (for more details, see Appendix 5). The duration of the session is different due to the constitutional obligation to convene a meeting of the NA even in the absence of the HoRs. Meeting schedules of the Houses at different time intervals is included in Appendix 1.

Unfortunately, the Parliament was obstructed for the entire periods from the Ninth (10th for the NA) to the 10th sessions of the HoRs (11th for the NA). In the midst of the obstruction of Parliament, the government closed the current bill session without discussing a single bill. Parliament had been obstructed for more than six months. The main opposition party (CPN-UML) had obstructed the House meetings. More detail on this is provided in Appendix 6.

7.1 House meetings

The first session's meeting of Parliament lasted only nine days. During this period, 11 meetings of the HoRs and 10 meetings of the NA were held. The longest meetings of Parliament

³⁶ According to Nepal's constitution, the difference between parliamentary House meetings should not be more than six months. The HoR was dissolved during the ninth session of the NA. The Supreme Court later reconstituted the HoR. In the process of preparing this paper, the 10th session of the HoR and the 11th session of the NA are being held starting December 14, 2021. But the main opposition party is obstructing the meeting. Until the first week of March 2022, these sessions have not passed a single bill, and even the parliamentarians have not been able to speak due to the obstruction.

³⁷ On December 20, 2020, PM KP Sharma Oli dissolved the HoRs and called for snap polls for April 30 and May 10, throwing the country into political uncertainty. However, the Supreme Court overturned his decision on February 23, calling it unconstitutional. For the second time in five months, PM Oli again dissolved the HoRs on May 22, 2021, and announced mid-term elections for November 12 and 19. The Supreme Court on July 12, 2021, declared that the dissolution was unconstitutional. After the reinstatement of the HoRs for the second time, Leader of the Opposition Party Sher Bahadur Deuba became PM.

were held in the second session. The HoRs meeting lasted for 72 days and the NA for 52 days. There were 79 sittings of the HoRs and 61 sittings of the NA. The 10th House meeting of the HoRs was held only 11 times in 19 days. The meeting was postponed at the last minute even when some meetings were called. Similarly, the 11th House meeting of the NA lasted only two days. The number of those meetings was also two. Number of meeting days and meeting numbers (sittings) is included in Table 7, below.

Table 7. House Meetings

Session	Meeting (Day)		Meeting (Number)	
	HoRs	NA	HoRs	NA
First	9	9	11	10
Second	72	52	79	61
Third	32	27	46	35
Fourth	62	47	65	51
Fifth	23	26	24	26
Sixth	25	31	26	35
Seventh	9	4	9	4
Eighth	9	6	10	6
Ninth	12	12	13	12
Tenth	19	10	11	13
Eleventh	-	2	-	2

Source: Federal Parliament Secretariat.

The number of days and the duration of the session meeting have an important place in parliamentary practice. Regular sitting of Parliament and discussions also means increasing accountability to the people. Except for the second and fourth sessions, the House meeting sessions have been adjourned for a short time. It also conveys the message that the government is not fully accountable to parliamentary business.

7.2 Bill table and approval

In the first session, parliamentary business was concluded only after the government formation. Not a single bill was registered in the first session. However, the second session took a

relatively longer time due to the constitutional obligation to amend the old laws that were in conflict with the constitution within a year of the first meeting of the Federal Parliament.³⁸ As informed by officials of legislation committee of NA, in this session, a bill aimed to amend 111 old acts and another bill to amend 56 acts. (Altogether, 167 acts were amended at the same time without any in-depth discussion.)

In terms of time (the sum of the time spent by each meeting throughout the parliamentary sessions), the fourth session has taken a bit longer (see Appendix 2). In the second session, 26 bills were registered in the HoRs and eight in the NA (see Appendix 3). Since the first session meeting of the Federal Parliament, the pace of drafting bills has not picked up as it should have. By the time of the 10th session (approximately three and a half years after the first federal election), only 73 laws had been enacted. The Ministry of Law had stated that a minimum of 315 acts would be required for the constitution to be effective, but even the most important laws, such as on citizenship, civil service, financial institutions, public broadcasting, food, civil aviation, and police adjustment at province, have not been enacted. Parliament is slow in drafting laws. In drafting the law, the government has to work with Parliament in full confidence. The task of the government is to table the bills in Parliament, which is to discuss and approve the bills in a good atmosphere after consulting with the main opposition party. But it does not show the seriousness of the government. There is a growing tendency to run away from Parliament.³⁹ It is very unfortunate that the government did not register a single new bill in the 10th session of the HoRs (11th for the

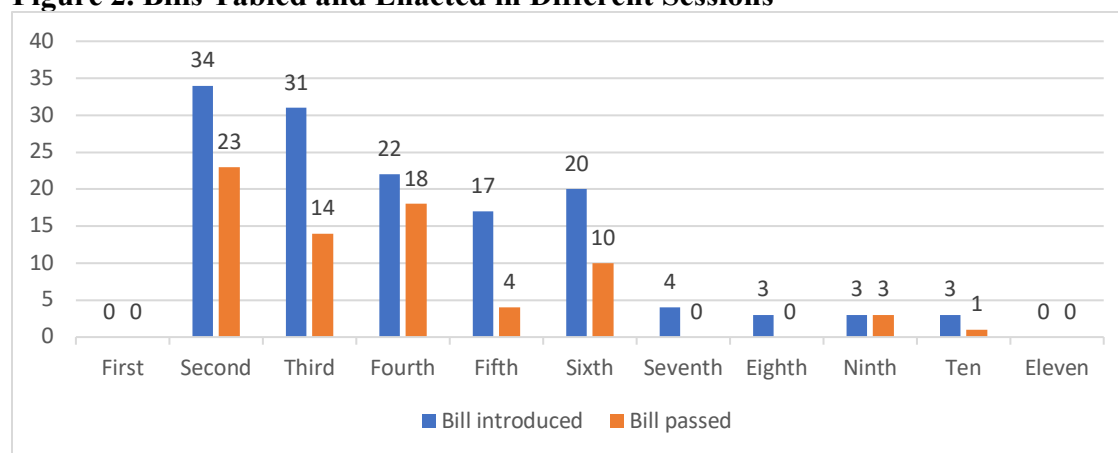
³⁸ Article 304 (2) of the constitutions states that any law which is inconsistent with this constitution shall ipso facto be invalid to the extent of such inconsistency, after one year of the date on which the first session of the Federal Parliament set forth in this constitution is held.

³⁹ <https://ekantipur.com/opinion/2021/09/19/16320190426978678.html?author=1>. The meeting of the NA was convened on December 14, 2021, and ended on March 15, 2022, lasting only 2 days and 40 minutes. It is also an example of negligence toward Parliament.

NA), which began on December 14, 2021, and ended on March 15, 2022.⁴⁰

The number of the bills enacted from the first to the 11th session is reported in Figure 2, below. As per Figure 1, the government seems to have been reluctant in its bill formulation procedures since the seventh House sessions. The main obstacle seen in the law-making process is the dissolution of the HoRs. The obstruction of the main opposition party in Parliament has also created problems in the law-making process. The details of the HoRs dissolution and House obstruction are provided in Appendices 5 and 6.

Figure 2. Bills Tabled and Enacted in Different Sessions



Source: Federal Parliament Secretariat.

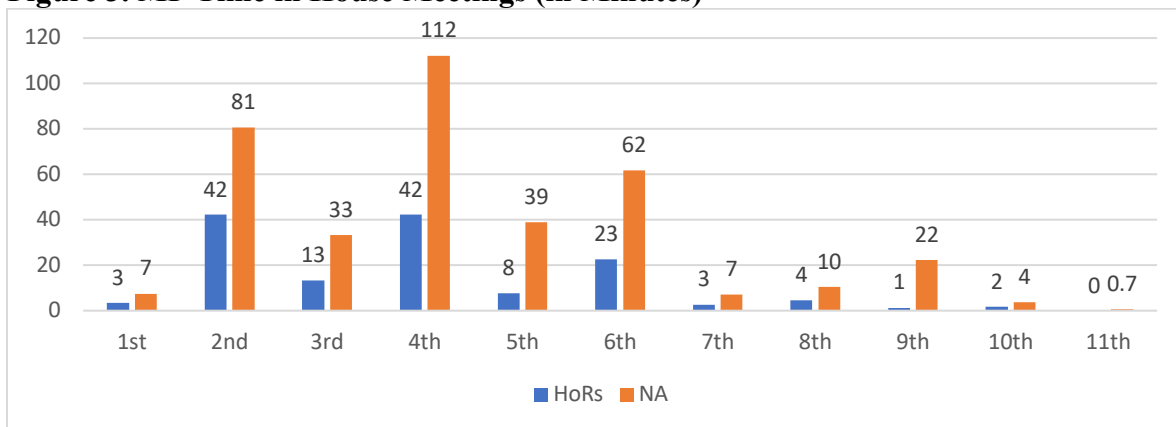
7.3 How much time do MPs take?

The main function of Parliament is to make laws. Parliament is also the place to make the government accountable to citizens and to address citizens' daily problems. With an active Parliament, government accountability improves. It also helps to solve the problems of the citizens. The more Parliament speaks, deliberates, or holds continuous meetings and discussions, the louder the voices of the citizens become. Parliament is important at all times. This will also help in

⁴⁰ The summer sessions of Parliament were the bill sessions. The fact that the government has not introduced a single bill, and the main opposition party has been obstructing it, should be considered unfortunate for parliamentary practice.

establishing democratic norms and procedures. In Parliament, MPs are given “Zero Hour” and “Special Hour” time to express their views on current affairs. Details of Zero and Special Hour time since the first session of the Federal Parliament could not be obtained.⁴¹ Based on the total time spent in the House sessions, the members of the NA have gotten more time than the HoRs (Figure 3). The timing comparison between the HoRs and the NA also conveys the message that the NA is friendlier toward the MPs and NA is more democratic than the HoRs. In the fourth session of the NA, each MP got about two hours of time. In the context of the HoRs, MPs have obtained only 42 minutes in the second and fourth sessions. Overall, members of the NA have received about three times as much time as the HoRs. It is important to take care of the parliamentarians’ time, especially for the HoRs parliamentarians.

Figure 3. MP Time in House Meetings (in Minutes)



Source: Federal Parliament Secretariat.

8. Conclusions and the Way Forward

In the modern era, law is not only the rule of general discipline but also the main basis for creating rights and responsibilities balanced between the state and citizens. Law gives legitimacy to the executive branch. The right to make laws belongs to the sovereign citizen who transferred

⁴¹ The NA has generally kept and updated the details since the third session. However, the HoRs has not provided any details so far.

it to the people's representatives through elections. The legislature is the composition of elected people's representatives. It is a supreme, powerful, and citizen-approved body.

In principle, the main responsibility of Parliament is to make laws. According to the parliamentary system of government and constitutional provision, since the executive body is formed by the Federal Parliament, such a body should be accountable to Parliament. Parliament is a place to exercise the sovereign rights of the people that enhances accountability and transparency. It plays an important role in making executive powers people-oriented and accountable and in upholding the rule of law by monitoring and controlling the executive branch of the country.

The overall law-making process in Nepal can be divided into three phases: pre-legislative, legislative, and post-legislative. Steps from policy identification to the drafting and approval of a bill by Nepal's government can be considered the pre-legislative stage, while the registration to the verification of the bill in Parliament is known as the legislative stage. The post-legislative stage continues after the verification of the bill and involves the procedures to be adopted for the implementation of the act, the status of delegated legislation, and the measurement and evaluation of the law's implementation. Parliament should keep abreast of the laws it enacts. It is Parliament's responsibility to monitor, measure, and evaluate laws' implementation, as well as a law's impact on the people.

Although there are provisions in the Rules of the HoRs, 2018, and Rules of the NA, 2018, of the Federal Parliament regarding the structure and form of a bill, the standards are deteriorating day by day due to noncompliance in practice. Bills introduced by the government in the Parliament do not include much discussion with stakeholders. Similarly, the law directive manual has not been followed literally. The issue of the powers of subnational levels has not been given much attention while introducing bills. For all these reasons, Parliament has not been able to create and enact

excellent laws. To make the government accountable to Parliament, parliamentary committees have been formed to monitor and evaluate the work done by the government and to give necessary instructions and advice. There are 10 committees in the HoRs and 4 in the NA. Except for the Accounts Committee, all the committees of the HoRs and the Legislative Committee of the NA discuss the bill.

The parliamentary committees estimate that out of Nepal's total laws (parent acts and delegated legislation), 20% have been issued by Parliament and 80% by the executive and judiciary bodies. In fact, law must be enacted by Parliament, and post-legislative scrutiny is necessary for all sets of laws. Parliamentary committees are not very active, and bills have been stuck in some committees for years.

Some of the laws made under the delegated legislation seem to have been made contrary to the intent and spirit of the parent act. Delegated legislations made by the government should be made within the powers delegated by Parliament. Government bodies do not have official details on the number of delegated legislations. Delegated legislations are out of the reach of citizens, as there is no practice of publishing them. It has also fueled corruption. Such laws should be published and monitored, regulated, and controlled by Parliament. Parliament needs to pay due attention in this regard. At the same time, it is necessary to widen the scope of evaluating and monitoring of laws made on the basis of delegated legislation.

The legislative scrutiny of laws enacted under delegated legislation is very weak. There is a tendency for delegated laws to exceed the limits of the parent act and to increase the number of delegated legislation in law making. This aspect needs to be improved.

The inclination to draft private bills is almost negligible. If the main task of Parliament is to draft laws, then private bills should be given priority. Since the drafting of government bills is

carried out by the executive branch, it rarely includes the suggestions of the parliamentarians. There is no practice of taking the suggestions of the parliamentarians during the drafting phase. Bills tabled in Parliament do not change much. Pro-government lawmakers are not in the habit of commenting on the bill introduced by their government. They have some limitations as well. It is important for the parliamentarians to at least get out of the party circle while drafting the bills. Despite the role of the parliamentarians in forming the government, the parliamentarians should be given discretionary power while making laws. Only then can the quality of the law be improved.

The task of informing citizens about the pre-legislative and legislative stages of law making and taking suggestions from them on the law is very weak. The situation of post-legislative scrutiny is even more deficient. Although there is a provision in Rules of the HoRs, 2018, and Rules of the NA, 2018, to take public opinion on the bills during the formulation of the law, this is only superficially followed. Therefore, by increasing the participation of the people in law making, it is necessary to establish a method to get the opinion of the people regarding the bills directly related to the people submitted to Parliament for making practical and enforceable laws. Stakeholders, including Parliament, need to be attentive to this.

There is a tendency to create duplicative, ambiguous, confusing, and conflicting laws. There are also complaints that some laws made by the Federal Parliament have crossed the jurisdiction of the subnational level. Some laws are made with a centralized mindset. There is a practice of external interference in the formulation of some laws and pressure by interest groups. While formulating law, Parliament should take this issue into consideration so as not to interfere in the jurisdiction of the subnational-level governments and not allow any influence in a law's formulation.

In Nepal, no law has yet been enacted regarding the drafting of bills. Rules of the HoRs,

2018, and Rules of the NA, 2018, contain some details about the process inside the Parliaments. However, there is no legal document on the process before entering Parliament and the process of implementation after it is approved by Parliament. In particular, it is very important to formulate such a law in order to determine the basic criteria related to the formulation and publication of legislation and to maintain uniformity and quality in law making, including managing the delegated legislations. It is important for the government to pay attention to these issues.

Due to political ups and downs, the parliamentary meetings could not be held regularly. But even under normal circumstances, there is a problem with the predictability of parliamentary meetings. It is not known whether the parliamentarians have been informed about the issues to be discussed in Parliament one or two days in advance. They get information only a few minutes before the meeting begins. When the agenda is not informed in advance, then how can Parliament be effective? This is a serious problem. If the agenda of Parliament business is to be given to the MPs some time in advance, they will come with necessary preparations. But if the meeting agenda is not communicated in advance, they will not be able to use their voices effectively. This weakens Parliament and needs to be improved.

There is a need for closer ties between the HoRs and the NA on the issue of law making. Parliament should not be obstructed for a protracted amount of time. It destroys the rule of law and parliamentary values. The constitution needs to be amended so that the NA can do the work of the HoRs in the absence of the HoRs. Similarly, it is necessary to end the practice of devaluing Parliament and bringing in many ordinances unnecessarily.

Finally, in some cases, government drafts policies only after making laws. This process should be reformed and, first of all, policy should be formulated in the sectoral areas and attention paid to law making.

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Appendices

Appendix 1. Session Start and End

Session	Session start		Session end	
	HoRs	NA	HoRs	NA
First	11/21/2074	11/21/2074	12/20/2074	12/20/2074
Second	1/23/2075	1/23/2075	6/11/2075	6/11/2075
Third	9/11/2075	9/11/2075	12/10/2075	12/10/2075
Fourth	1/16/2076	1/16/2076	6/2/2076	6/2/2076
Fifth	9/4/2076	9/4/2076	12/24/2076	12/6/2076
Sixth	1/26/2077	1/26/2077	3/18/2077	3/18/2077
Seventh	12/23/2077	9/17/2077	1/6/2078	9/26/2077
Eighth	4/3/2078	3/17/2078	4/32/2078	3/28/2078
Ninth	5/23/2078	4/3/2078	7/12/2078	4/28/2078
Tenth	8/28/2078	5/23/2078	12/01/2078	7/12/2078
Eleventh		8/28/2078		12/01/2078
Special	1/27/2078		1/27/2078	
Joint	1/23/2075		2/15/2075	

Source: Federal Parliament Secretariat.

Appendix 2. Parliamentary Session Time (hours and minutes)

Session	HoRs	NA
First	15 hours and 30 minutes	7 hours and 20 minutes
Second	193 hours and 25 minutes	79 hours and 20 minutes
Third	61 hours and 5 minutes	32 hours and 40 minutes
Fourth	193 hours and 40 minutes	110 hours and 20 minutes
Fifth	35 hours and 30 minutes	38 hours and 16 minutes
Sixth	103 hours and 25 minutes	60 hours and 50 minutes
Seventh	12 hours and 25 minutes	7 hours and 5 minutes
Eighth	20 hours and 15 minutes	10 hours and 15 minutes
Ninth	5 hours and 40 minutes	21 hours and 48 minutes
Tenth	7 hours and 50 minutes	3 hours and 37 minutes
Eleventh	-	40 minutes
Special	9 hours and 5 minutes	
Joint Session	9 hours and 20 minutes	

Source: Federal Parliament Secretariat.

Appendix 3. Bill Table and Approval

Session	Registered			Approved		
	HoRs	NA	Total	HoRs	NA	Total
First	0	0	0	0	0	0
Second	26	8	34	18	5	23
Third	23	8	31	10	4	14
Fourth	17	5	22	16	2	18
Fifth	6	11	17	2	2	4
Sixth	14	6	20	7	3	10
Seventh	1	3	4	0	0	0
Eighth	0	3	3	0	0	0
Ninth	3	0	3	3	0	3
Tenth	0	3	3	0	1	1
Eleventh	-	0	0	-	0	0
<i>Total</i>	<i>90</i>	<i>47</i>	<i>137</i>	<i>56</i>	<i>17</i>	<i>73</i>

Source: Federal Parliament Secretariat.

Appendix 4. Areas of Consideration when Formulating Laws on Concurrent Powers

(1) Federal government should consider the following matters when making law or implementing a concurrent rights list:

a. Determination of crime and punishment, infrastructural development of national level or importance expanding from more than one province and determination and regulation of national standards or quality to be implemented equally in all provinces shall be according to the federal law.

b. Following matters shall be according the provincial law:

- i. Development of infrastructure and operation of provincial level roads, electricity, drinking water, and irrigation
- ii. Public awareness in education, health, and environmental sector
- iii. Employment promotion, entrepreneurship development, social security,
- iv. Service delivery at provincial level
- v. Province-level regulation of public health, consumer's interest, quality in public service delivery

c. Public health and service delivery at local level, consumer's interest, regulation of quality in public service delivery at local level and public awareness shall be according to local level laws.

(2) When implementing any matters in the federal and province concurrent rights list, province shall make laws compatible with federal law in that regard

(3) Notwithstanding anything written in subsection (2), province can legislate and implement matters in the list if a federal law is not enacted.

(4) On matters relating to Schedule 9 of the constitution, if a federal law is not enacted, then

province can implement such matters by enacting necessary laws remaining subject to the constitution and this act, and if federal or provincial law is not enacted, then the same is true for the local level.

Source: Federal, Provincial, and Local Levels (Coordination and Interrelation) Act, 2020

Appendix 5. Dissolution of HoRs

The aspiration of Nepal to write a constitution through the CA was fulfilled after seven decades. But within a few years, this constitution faced ups and downs. Then-Prime Minister (PM) KP Sharma Oli, elected by a two-thirds majority, dissolved the HoRs three years after the government was formed. The Supreme Court declared the dissolution of the HoRs unconstitutional. He dissolved Parliament for the second time after the Supreme Court ruled that the Parliament could not be dissolved despite having the option of forming a government. For the second time, the court also ruled that the dissolution was unconstitutional.

PM Oli had tried unsuccessfully to attack Parliament, as he could not solve the internal problems of his own party. The main function of Parliament is to draft laws. But Oli tried to run the country through ordinances by bypassing Parliament. During his three-year rule, he brought three dozen ordinances. Not only this, there is a provision of Constitutional Council in the constitution for the appointment of the office bearers of the Constitutional Commission. Reversing the legal provision that all the members should be present in this council and unanimously appoint the office bearers, an ordinance was brought to allow the appointment of majority members on the basis of majority decision. The office bearers of the Constitutional Council must be approved by the Hearing Committee of Parliament. However, during the dissolution of Parliament, in the absence of the Leader of the Opposition and the HoRs speaker, the authorities of constitutional commissions were appointed. There are currently approximately four dozen officials working without a parliamentary hearing. The case has been pending in the Supreme Court for more than a year now.

PM Oli continued to devalue Parliament. Even during the two-thirds majority government was formed, he brought in ordinances relating to political parties to split other opposition parties.

The ordinance was withdrawn due to strong opposition from his own party, opposition political parties, and civil society. Parliament was dissolved twice when he was PM.

In the second HoRs dissolution, even his own party MPs filed a case with the opposition in the Supreme Court. PM Sher Bahadur Deuba, who became PM after the restoration of Parliament, also brought an ordinance on the division of political parties. The tradition of issuing ordinances to end the crux of the law, which was enacted after a long discussion in Parliament, has started. This weakens Nepal's parliamentary practice and ends the MP's privilege.

Last time, the government brought an ordinance by withdrawing the bill related to railways, which was approved by the NA and sent to the HoRs. The government withdrew the civil service bill⁴² that was passed by the State Affairs Committee of the HoRs. The government can withdraw any bill with the approval of Parliament, but it would not be appropriate to withdraw a bill that is in the stage of approval and bring an ordinance. In fact, Parliament has been devalued. The privilege of the parliamentarians to make laws has been attacked. Such things should not be done for the strengthening of democratic governance and parliamentary supremacy.

⁴² A bill related to the formation, operation, and conditions of service of the Federal Civil Service 2018 was registered in the HoRs on February 10, 2019. A meeting of the HoRs on February 22, 2019, had decided to send it to the State Affairs and Good Governance Committee. The committee had debated 61 times for clause-by-clause discussion of the bill. After much deliberation, the bill was approved by the committee on June 29, 2020. It is unfortunate that the government has withdrawn the law that was finalized by the committee after a long time. It is also an insult to the committee.

Appendix 6. Parliament Obstructed for 187 Days

Parliament is a place to exercise the sovereignty of the people. Parliament forms government. Parliament makes laws. Parliament also has a role to play in electing the President and Vice President and indicting them. Parliament approves the annual estimates of revenue and expenditures submitted by the government. Parliament is responsible for amending the constitution, imposing a state of emergency, holding a referendum, ratifying treaties, etc.

Parliament also conducts parliamentary hearings of the chief justice, judges of the Supreme Court, members of the Judicial Council, ambassadors, and other officials of constitutional bodies. Parliament's scope of work is wide, but judging by the four-year experience of the entire Parliament, its role has been overlooked. The HoRs was dissolved twice in December 2020 and May 2021. Parliament has not been able to function properly even after the dissolved HoRs has been reinstated by the court twice.

The Ninth session of the HoRs and the 10th session of the NA began on September 8, 2021. Even after sitting for two weeks, the House meeting could not proceed smoothly. Opposition CPN-UML obstructed the Parliament sitting. The 10th House meeting of the HoRs and the 11th House meeting of the NA were being held starting December 14, 2021. But every day, the meetings were obstructed. The government ended the Parliament session on March 15, 2022, amid the obstruction.

The main opposition had obstructed the Parliament saying that the House speaker did not take action against the lawmakers they had recommended to take action. The opposition has filed a case in the Supreme Court in this regard. The issue is currently under discussion.

According to the constitution of Nepal, the issues pending in the court cannot be discussed in Parliament. However, the main opposition obstructed Parliament. Not only that, but the main

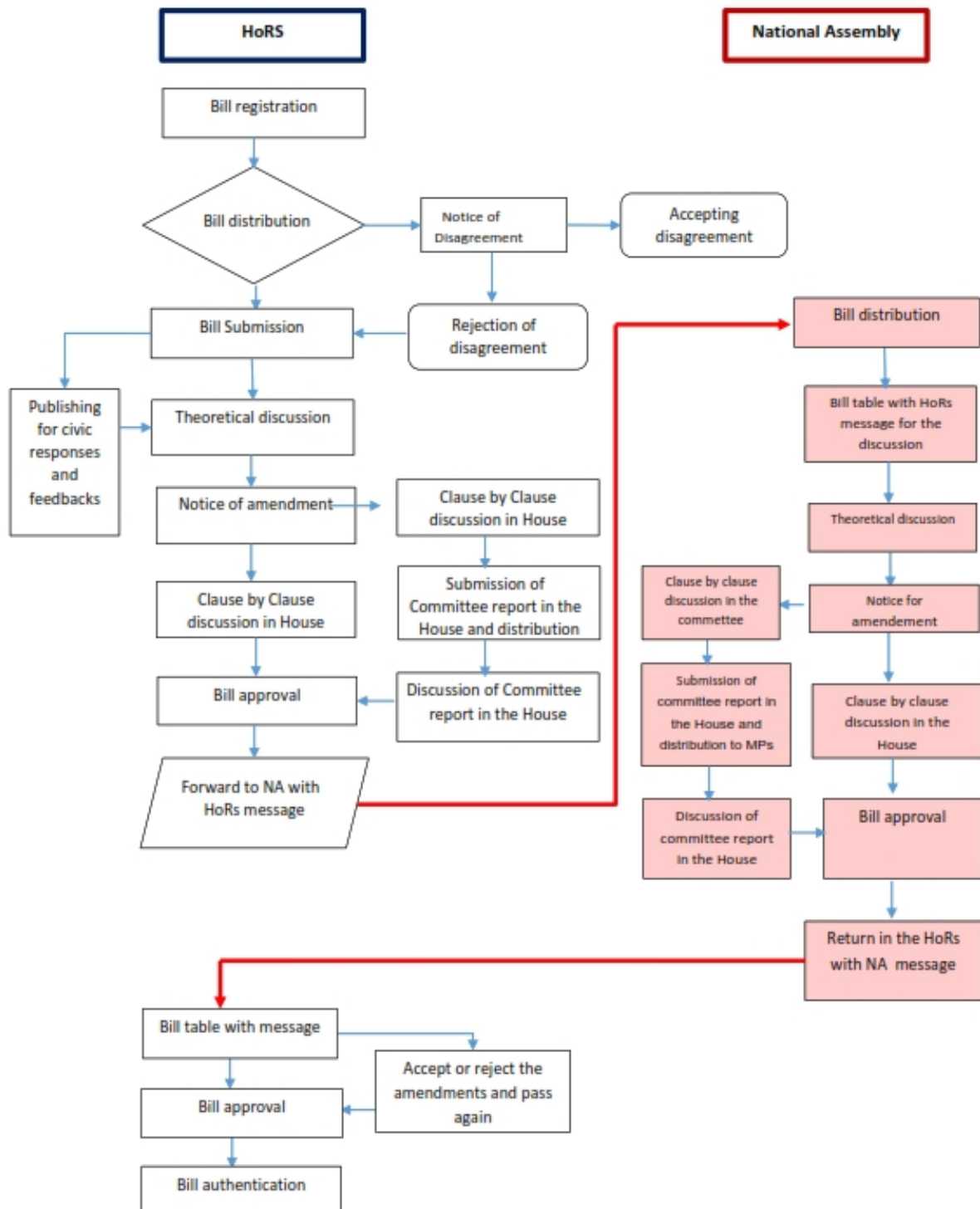
opposition obstructed the NA on the issue of the HoRs. It is unfortunate that the NA was obstructed due to the HoRs for more than six months. In fact, this has reduced the NA's stature. Repeated parliamentary obstructions have brought disrepute to the entire Parliament. Certainly such activities are fatal to democracy and the rule of law. During these six months, no laws were discussed except for the approval of budget bills. Due to the House obstruction, 57 bills are pending. Among them, 42 bills are in the HoRs and 15 are in the NA.

Appendix 7. The Number of Seats Won by Political Parties in First Federal Election in 2017

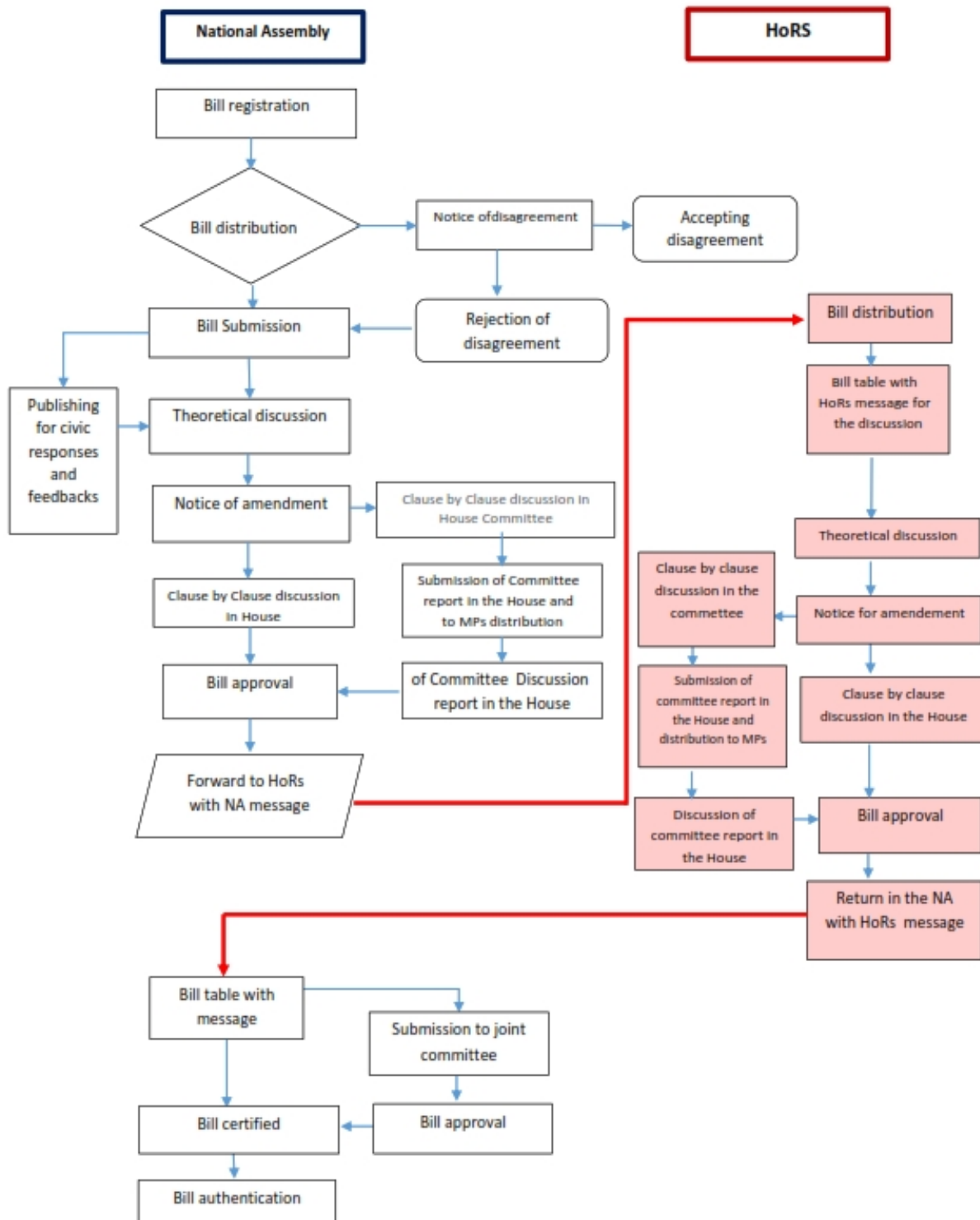
S.N.	Political Party	First-past-the-post electoral system	Proportional electoral system	Total
1	Communist Party of Nepal (Unified Marxist–Leninist)	80	41	121
2	Nepali Congress	23	40	63
3	CPN (Maoist Centre)	36	17	53
4	Rashtriya Janata Party, Nepal	11	6	17
5	Federal Socialist Forum, Nepal	10	6	16
6	Rashtriya Prajatantra Party	1	0	1
7	Nayashakti Party Nepal	1	0	1
8	National People's Front	1	0	1
9	Nepal Workers' and Peasants' Party	1	0	1
10	Independent	1	0	1
	<i>Total</i>	<i>165</i>	<i>110</i>	<i>275</i>

Source: Election Commission of Nepal.

Appendix 8. Flow Chart of Bill Originated in the HoRs



Appendix 9. Flow Chart of Bill Originated in the NA



Source: Legislation in Parliament (Practice and situation), unpublished Nepali version document, Federal Parliament Secretariat, 2021