

Chaos In The Judiciary Of Nepal
Siddhi B Ranjitkar

Common folks, advocates and reporters have been saying and reporting that unfortunately, chaos has prevailed in the judiciary for several weeks concerning the date of birth of Chief Justice Gopal Parajuli. Chaos prevails only when the rule of law becomes weak or the law enforcement personnel is weak to enforce the law strictly. Probably, the nearest analogy to the chaos in the judiciary might be the traffic chaos when a traffic police is not available or the traffic police could not enforce the traffic law then the chaos prevails and consequently cause traffic jam. Probably, a number of lawsuits must be waiting for clearance or hearing when one justice after another boycotted the bench set by Chief Justice Gopal Parajuli. Ultimately, Parajuli's tenure ended probably clearing of the case jam. The senior most justice took over the rein.

Gopal Parajuli has been in the crosshairs of the media and the civil society leader such as Dr Govinda KC for weeks. They have demanded the public disclosure of the several different dates of his birth in different documents and the school certificate. A team of the Kantipur publication has been charged with the contempt of court for publishing the news about the different birth dates of Parajuli, and Dr KC with the same charge.

Probably, Parajuli had tried every possible means to cover up the issue of his birth dates; obviously he did not succeed in it, as the record of his birth dates at the Judicial Council and the document received from the Examination Controller Office revealed the different birth dates, and the Judicial Council informed Parajuli on his retirement based on his earliest date of birth.

Finally, a letter from the Judicial Council hit Gopal Parajuli probably as a lightning did without any prior notices, the letter stated that the term of office of CJ Parajuli has ended about seven months ago, and Parajuli is no more a CJ. What a wonderful surprise to all the folks that love the rule of law rather than a rule of a person.

Unofficial translation of the letter

Judicial Council Secretariat

Letter No. 074/075
Dispatch No. 223

Date: 2074/11/30 (March 14, 2018)

Subject: Notification of not remaining in the position

Honorable Mr. Gopal Parajuli
Chief Justice
Supreme Court, Kathmandu

According to the Clause 31 of the Judicial Council Act of 2073 (2016), if the term of office of any justice is ended because of the age limit it has to be informed to the concerned justice and the concerned agencies. Based on the citizenship certificate, educational qualification, seat role of the honorable sir available at the Judicial Council Secretariat, and the letter dated 2074/11/30 (March 14, 2018) cha .no 424/074/75 received today from the Examination Controller Office, Sanothimi, Bhaktapur, the age of honorable sir has already reached 65 (sixty five) years on 2074/4/21 (August 5, 2017). So, I would like to inform you that the honorable sir is no more in office following the secretarial level decision made today on 2074/11/30 (March 14, 2018) pursuant to the Sub-clause 7 of the Clause 31 of the Judicial Council Act.

I would like to wish the honorable sir the happy retired life and thank the honorable sir for the contribution made to the judicial sector.

Signature
(Nripa Dhoj Niraula)
Secretary

For reference and for enforcement, copies to:

Office of the President, Sital-niwas, Kathmandu
Office of Constitutional Council
Office of Prime Minister and Council of Ministers, Singh durbar
Supreme Court, Ram Shah Path
Ministry of Law and Parliamentary Affairs
Civil Servant Registration Office, Pulchok – for providing pension card
Provident Fund
Civil Investment Fund
Honorable Justice Mr. Deepak Raj Joshi, senior most justice, Supreme Court
Honorable Mr. Padam Prasad Baidik, Member Judicial Council
Honorable Mr. Ram Prasad Sitaula, Member Judicial Council

This letter would probable end the chaos prevailing in the judiciary. Speaking to the anchor of the Radio Nepal morning program “antar-sambad” on March 15, 2018, former justice of Supreme Court Krishna Jung Rayamajhi said that the Judicial Council is the final authority for keeping the records of the justices and judges; so, the term of office of Chief Justice Gopal Parajuli ended as stated in the letter of the Judicial Council to the chief justice. Former Justice Rayamajhi also said that the President would appoint the senior most justice to the Acting Chief Justice until then the senior most justice would officiate the office of the Chief Justice.

Former Justice Rayamajhi also said that it was unfortunate such chaotic conditions prevailed at the judiciary of Nepal; it should not have happened; so, the judiciary needed to build the credibility on trust of the common folks. He also said that the chief justice needed to be a role model; unfortunately, the chief justice fell in controversy for so long. The letter of the Judicial Council ended the protracted controversy.

Newly elected President Bidhya Bhandari took the oath of office from Chief Justice Gopal Parajuli on March 14, 2018 the day the Judicial Council sent the letter to the Chief Justice stating his term of office ended because of the age limit. Probably, the office of the President has not received the letter otherwise the President-elect would not take the oath of office from the retired Chief Justice. Some local newspapers in print and on the Internet have raised the question of the validity of the oath the President has taken from the Chief Justice whose term of office ended.

Speaking to the anchor of the Radio Nepal morning program “antar-sambad” on March 15, 2018, former President of Nepal Bar Association Harihar Dahal said that Cholendra Shumsher JBR came alone out of the seven-justice bench and declared that he would not sit on the bench CJ Parajuli set and then left the courtroom: all the seven justices needed to enter the courtroom following the protocol of seniority, and sit accordingly then only any justices could speak, and boycott the bench or so on.

The news on <https://setopati.com/politics/140528> in the Nepali language on March 12, 2018 stated that defendant Dr Govinda KC, and a team of the Kantipur publications had

been waiting in the courtroom for the hearing on the contempt of court cases against Dr KC and the Kantipur team but even after an hour of waiting none of the justices showed up, and finally Cholendra Shumsher JB Rana popped in, and said, "yesterday, we have checked all the documents concerning the academic qualifications (of Parajuli), and we found out three different dates of his birth such as Sawon 2009 (July/August 1952), Baishak 2010 (April/May 1953), and Sawon 2011 (July/August 1954); according to the Judicial Council Act, if anybody has different dates of birth then the earliest date of birth is counted for the official purpose, consequently, he must have retired last Sawon (July/August)." Chief Justice Parajuli had set his different date of birth through the Judicial Council and has been serving until now, said Justice Rana. He also said, "Previously we did not know it. Now, we could not keep silent. Legally and ethically none could sit on the bench set by the retired person. So, from now on, I would not sit on the bench of Parajuli."

The State-run newspaper "gorkhapatra" in the Nepali language published the news in the front-page headline titled "Pradhan Nyaya-dhish Parajuli Pad-mukta" on March 15, 2018. The news content is as follow.

Parajuli has become the chief justice since Sawon 2, 2074 (July 17, 2017). Previously, he had been an acting Chief Justice for about a month and a half. A single bench of the then Chief Justice Sushila Karki had ruled the date of birth of Parajuli the Judicial Council has set now as the date of birth, and set the age limit accordingly. However, after Parajuli became the chairman of the Judicial Council, he rescinded the ruling of CJ Karki and set a new age limit. Then, he would have been in service until Baishak 15 (April 28, 2018). However, based on the additional documents, the Judicial Council terminated his service one-and-a-half months before the term of office would end stating his term of office had ended seven months ago. All the work Parajuli had done even after he was retired would be legal following the precedent the Supreme Court had set on the case of the civil servants. He would not need to return the salaries he had received.

The news also stated that before the information on the termination of service of the Chief Justice was publicly known, justices who had been not satisfied with the performances of the Chief Justice had decided to go on leave. However, their leave request was not approved. They had decided to be aloof from the controversy the chief justice has been fallen in, and had even urged the Chief Justice not to be involved in the legal business; however, his action has not been following the advices given; so, they decided to go on leave. They were justices such as Hari Krishna Karki, Ishwore Khatiwada, Ananda Mohan Bhattarai, Biswambhar Prasad Shrestha, Prakash Man Singh Raut, Anil Kumar Sinha, and Sapna Malla Pradhan. The news report ends.

Members of Nepal Bar Association (NBA) have expressed the different opinions concerning the protracted controversy Chief Justice Gopal Parajuli has caused. Members of the NBA have come out with different opinions after Justice Cholendra Shumsher Rana boycotted the full bench led by CJ Parajuli for hearing on the contempt of court cases against Dr Govinda KC and a team of the Kantipur publications. In a press statement issued by NBA President Sher Bahadur KC and General Secretary Khamma Bahadur Khati on Monday evening, March 12, 2018, a group of NBA members condemned the Rana boycotting the full bench and called it against the code of conduct. In a counter statement issued by Vice President Usha Malla Pathak, and members Bishnu Basyal and Krishna Angdembe on Tuesday, March 13, 2018, they said that the Monday's statement was issued without discussing with all the members of NBA. They deemed that the statement issued on Monday supporting CJ Parajuli would adversely affect the building of a strong, capable and independent judiciary. NBA President KC, General Secretary Khati and others had met CJ Parajuli on Monday before the NBA meeting that eventually decided to issue the press statement. The news on <http://setopati.net/political/119035> stated on March 13, 2018.

Eight Supreme Court justices boycotted the bench they were assigned to on Tuesday, March 13, 2018 after CJ Parajuli refused to recuse himself from the hearing on the cases and then the delivery of justice as advised by them. The eight justices have not taken part in any bench assigned to them for Tuesday. The eight justices are Hari Krishna Karki, Sapana Malla Pradhan, Ananda Mohan Bhattarai, Ishwore Khatiwada, Biswambhar Prasad Shrestha, Anil Kumar Sinha, Deepak Raj Joshi and Prakash Singh Raut. "We have taken the decision after deliberating among ourselves," a justice who has boycotted the bench told Setopati. Hearing on the assigned benches at the SC generally starts after 11 in the morning. But the eight justices did not report to their respective benches. Justice Cholendra Shumsher Rana, who boycotted the Parajuli-led full bench for hearing on the contempt of court cases against Dr Govinda KC and the Kantipur publications on Monday, was not included in any of the benches on Tuesday. The news on <http://setopati.net/political/119031> stated.

Acting Chief Justice Deepak Raj Joshi has claimed that he instructed Judicial Council Secretary Nripa Dhoj Niraula to update the date of birth of CJ Gopal Parajuli that led to the immediate fall of CJ Parajuli after a new date of birth was found. Justice Joshi is a senior-most justice of the Supreme Court claimed so while talking to the media reporters after taking office as an acting CJ on Thursday, March 15, 2018. He also said that he was informally in contact with secretary Niraula during the age controversy of Parajuli. Joshi also claimed that secretary Niraula was right to sack Parajuli. "He can. It is the duty of secretary to update the record according to the law," he said. Joshi, however, did not answer why he had not opposed when Parajuli changed his date of birth through a Judicial Council meeting in which Joshi was also present as a member. The news on <http://setopati.net/political/119150> stated on March 15, 2018.

CJ Gopal Parajuli has resigned a day after he was fired by the letter of Secretary of the Judicial Council Nripa Dhoj Niraula. Parajuli met President Bidhya Bhandari, and submitted his resignation to the President earlier on Thursday, March 15, 2018, Attorney General Agni Kharel confirmed with Setopati. Parajuli has not gone to the Supreme Court after his 'sacking.' Senior-most justice Deepak Raj Joshi has set up benches at the SC as an acting CJ on Thursday. The news on <http://setopati.net/political/119129> stated.

Reporters, political analysts and common folks questioned whether Parajuli needed to resign after he was found that he was overdue to be retired quite a long time ago. However, his resignation might validate the oath of office newly elected President Bhandari took from him. His resignation has cleared of the chaos prevailed at the judiciary and the judicial administration must have been running smoothly after the departure of Parajuli.

Some folks even questioned whether Parajuli was not the subject to the indictment of the felony of forgery because he had kept the date of birth mentioned in the school certificate out of the Judicial Council record in other words he did not submit it to the council. Parajuli even dared to change the ruling of the then Chief Justice Sushila Karki that had set the date of birth of Gopal Parajuli as stated in his school certificate and set his age limit accordingly.

The news posted on <http://www.myrepublica.com/news/38159/> on March 17, 2018 has the following report on the need for the reform at the judiciary.

Former justice Krishna Jung Rayamajhi, who retired from the apex court 15 years ago, is very much worried about the current situation of the judiciary. "I can hardly believe the current changes," he added. "There might be both good and bad people but we cannot tolerate people of bad conduct or character as judges," Rayamajhi said adding, "Even though people may think that judges might have been taking bribes this is not true every time."

Following the retirement of Chief Justice Gopal Parajuli there is heated debate in political and legal circles on how to reform the judiciary. Some folks believe that the parliamentary hearing on the appointment of justices to the apex court adopted a decade ago has caused such a controversy. Rayamajhi believes that the lawyers have to take the main responsibility for creating such a situation. "The judges are corrupt but lawyers also are not good."

The reputation of the courts, judges and lawyers has been deteriorated. The practice of appointing judges at the recommendation of the political parties has been responsible, as they have to work following the political party line. So, they could not be independent and work on their merits. Those who have spent a lifetime practicing law in the judiciary, including senior advocates Krishna Prasad Bhandari, Mahadev Yadav and Sarvagya Ratna Tuladhar, worry about the worsening situation of the judiciary. More than 80 percent of needy people are still excluded from the access to the judiciary but no one is worry about ensuring their access to the law court when they need it.

According to former justice of the apex court Balaram KC who retired six years ago, the tendency in the judiciary is to divide and rule; and the lobbyists are also very active. "The judicial leadership is not doing anything to break out of this situation," he said adding, "If the situation is not improved at the earliest, it may lead us toward further problems." <http://www.myrepublica.com/news/38159/> The news story ends here.

Probably, the activities of Gopal Parajuli demonstrated that how a person in the position of power could manipulate the rule of law for personal benefits disregarding the ethics s/he has to follow while in the position of power.



न्याय परिषद सचिवालय



पत्र संख्या :- ०६४०६८
चलानी नं. :- २२३

मिति: २०७४।११।३०

विषय :- पदमा नरहेको जानकारी सम्बन्धमा ।

सम्माननीय श्री गोपाल परजुलीज्यू,
प्रधान न्यायाधीश
सर्वोच्च अदालत, काठमाडौं ।

न्याय परिषद ऐन, २०७३ को दफा ३१ मा कुनै न्यायाधीश उमेरका कारणले अचकास हुने भएमा सो को जानकारी सम्बन्धित न्यायाधीश र निकायलाई गराउनु पर्नेछ भन्ने प्रावधान रहेको सन्दर्भमा सम्माननीय महोदयको यस न्याय परिषद सचिवालयमा रहेको नागरिकता, शैक्षिक योग्यता, सिटरोल विवरण तथा परीक्षा नियन्त्रण कार्यालय सानोठिमी भक्तपुरबाट आजै मिति २०७४।११।३० को च.नं. ४२४।०७४।७५ को प्राप्त पत्र समेतका आधारमा उपरोक्त ऐनको दफा ३१ को उपदफा (७) बमोजिम समेत सम्माननीय महोदयको ६५ (पैसट्टी) वर्षको उमेर २०७४।४।२१ मा नै पूरा भईसकेको देखिन आएकोले आज मिति २०७४।११।३० को सचिवस्तरीय निर्णयानुसार सम्माननीय महोदय पदमा नरहनु भएको जानकारी गराउँदछु ।

सम्माननीय महोदयले न्याय क्षेत्रमा पुन्याउनु भएको योगदान प्रति हार्दिक धन्यवादका साथ सेवा निवृत्त जीवन सुखमय रहोस् भन्ने कामना गर्दछु ।


(नृपध्वज निरौला)
सचिव

बोधार्थ तथा कार्यार्थ

श्री राष्ट्रपतिको कार्यालय, शीतल निवास, काठमाडौं ।
श्री संवैधानिक परिषद्को कार्यालय ।
श्री प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, सिंहदरवार
श्री सर्वोच्च अदालत, रामशाहपथ ।
श्री कानून, न्याय तथा संसदीय मामिला मन्त्रालय ।
श्री निजामती किताबखाना, पुल्चोक :- निवृत्तभरण अधिकार पत्र (पेन्सन पत्र) उपलब्ध गराउने व्यवस्था हुन ।

श्री कर्मचारी सङ्घ कोष ।
श्री नागरिक लगानी कोष ।
माननीय श्री दीपकराज जोशी, वरिष्ठतम् न्यायाधीश सर्वोच्च अदालत ।
माननीय श्री पदमप्रसाद वैदिकज्यू, सदस्य न्याय परिषद ।
माननीय श्री रामप्रसाद सिटौलाज्यू, सदस्य न्याय परिषद ।