



The Right to Recall – A Step Forward to Strengthen the Democracy

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Power tends to corrupt and absolute power corrupts absolutely.

Lord Acton

Introduction:

Right to Recall is an idea to ensure greater accountability of the elected representatives. It helps in bringing forward the system of good governance by getting rid of the corrupt and non-performing officials. One may call it to be the basic tenet of democracy. The Recall in simple terms is a process through which the electorate has the power to remove the elected representatives and officials even before the expiry of their term.

Right to Recall is practiced in various jurisdictions across the world in countries like United States of America, Canada, Venezuela, Switzerland and many other countries.

India is going through a constant rise in unethical and irresponsible behavior on the part of the elected legislators. There are numerous instances of scams and negligence from legislators to denote this. Due to this situation, there has been a constant and wide spread demand to have a Right to Recall or the right to de-elect the elected representative. Right to Recall (RTR) confers the voters a right of recall that can be initiated by any voter within a particular constituency through a recall petition signed by not less than one-fourth of the total number of electors. It is found in many contemporary constitutions. Countries like Canada and the US allow the right to recall on the grounds of misfeasance and misconduct. With a view to strengthening the functioning of a democratic system of the government, the fundamental value of the right to vote in terms of its nature and ambit is required to be constitutionally explored, understood, and appreciated. This would, in turn, prompt the citizens to go to the polling booth and not just to vote but exercise their right to elect their representatives in the light of their judgment. The right to vote could be usefully invoked and applied in making various political arrangements truly functional and thereby provide motivation to the democratic system of governance. The masses are required to be encouraged to participate and exercise their right to vote in the first instance.



With the increasing participation of citizens, the possibility of a ‘fractured’ mandate is considerably reduced, because, notwithstanding illiteracy coupled with poverty of the large section of our population, their collective vision of a relatively good government they would like to have cannot be faulted. The Right to Recall is not a modern-day concept. In India, the concept has its roots in Vedic times when the lack of effective governance was a cause for the removal of a king. The right to vote should eventually include the ambit of the right to recall. It will be based on a simple axiomatic premise that the ‘right to do’ inheres the ‘right to undo.’ The right to recall can be an effective method by which accountability is ensured in a democratic State.

Indian scenario:

The concept of “**Rajdharm**” during the Vedic times is similar to the concept of Right to Recall. In this system, the King was removed, when there is a lack of effective governance. One of India’s leading humanists, M.N. Roy, in 1914 proposed the Recall of the elected representatives. In 1974, Jayaprakash Narayan spoke extensively on this subject. Sh. Somnath Chatterjee, the then Lok Sabha Speaker, sought the system of ‘Right to Recall’ be introduced for better accountability of the elected representatives.

The Right to Recall must co-exist with the Right to Vote in order to deepen our democratic roots. Logic and justice make it essential that if the people have the power to elect their representative, they should also have the power to remove these representatives when they engage in any misdeeds or fail to fulfill their duties. There exist no resources for the electorate if they are unhappy with their elected representatives.¹

Recall has been operational only as No – Confidence Motion (NCM) at the National and State levels in India and as Recall at Municipal level in some of the States of Madhya Pradesh, Rajasthan, Chhattisgarh and Bihar whereas it has been practiced in Punjab as NCM. The debate over Recall of elected representatives has along history in the Indian democracy: the matter was even in the Constituent Assembly. The debate over Article 8A(3) was centered on the belief that the Right to Recall must accompany the Right to Elect and that the voters must be provided with

¹The Right to Recall legislators, Feroze Varun Gandhi, 5th April, 2017. <http://thehindu.com/opinion/op-ed/the-right-to-recall-legislators/article17818590.ece>; accessed on 18th Jan., 2018



a remedy 'if things go wrong'.² However, Dr. B.R. Ambedkar did not accept this amendment. While some members believed that Recall would help in political education of the people and would encourage voters to think,³ while others argued that it would be improper to provide a Recall provision at the infancy of the Indian Democracy.⁴ Sardar Patel said while discussing this proposed amendment on power to Recall that if there are any stray instances or some black sheep who having lost the confidence of their constituency still want to continue to represent that constituency in the House; for some such bad instances we should not disfigure our Constitution. We should leave it as it is, to the good sense of the members concerned.

It was felt that Recall provision would render the Constituencies a battleground between candidates and unnecessarily make them victims of political rivalry. The concerns for maintaining accountability and responsibility of the elected representatives towards voters were addressed, though collective responsibility of the elected House, failing which there would be a No Confidence Vote against the incumbent.⁵

Recall in Municipalities and Panchayats:

Recall has been implemented at the municipal level in Madhya Pradesh and Chhattisgarh, and as a form of No – Confidence provision in Bihar and Punjab. Recall provision in these States is based on the principle of NCM that allows the House to replace elected Representatives. The Bihar Panchayat Raj Act and Rajasthan Municipal Bill, 2011 explicitly mentions No – Confidence practice where the elected members initiate the process of Recall.⁶

Need for the refinement of Democracy:

The need to have a corruption free government was highlighted by the Hon'ble Supreme Court in *State of Madhya Pradesh &ors v. Shri Ram Singh*, and Recall of delinquent

²Loknath Misra on Nov. 29, 1948 while proposing amendment in Article 8A(3) in Constituent Assembly Debates: Official Report, 2009, Vol. VII, New Delhi: Lok Sabha Secretariat.

³Constituent Assembly Debates: Official Report, 2009, Vol. IV, New Delhi: Lok Sabha Secretariat, Debate held on 18th July, 1947.

⁴*Ibid*

⁵Right to Recall in India: An Analysis by K. Neelima, Journal of Constitutional and Parliamentary Studies, Vol. 49, No. 1-4, Jan – Dec 2015

⁶*Ibid*



representatives undoubtedly seems to be one way of achieving that. The very basic objective of Recall is to ensure ‘good governance’ by eliminating the corrupt, unworthy officials.

India has certain other mechanism which aim at having ‘good governance’, however, due to their failure to serve the purpose, there is an intense demand for having Recall provisions at both State and the National level.⁷

India witnessed its first Recall election in the year 2008 wherein three local body Chiefs were de – elected by the people in accordance with the Chhattisgarh Nagar Palika Act, 1961.

Time and again the demand for Right to Recall has been made by social workers and even the legislators themselves, but still pending. This Right to Recall first came before the Lok Sabha in 1974 by C.K. Chandrappan, when he introduced Constitution (Amendment) Bill about Voters’ Right to Recall elected representatives. It was supported by Atal Bihari Vajpayee but the bill didn’t pass.

The BJP legislator Varun Gandhi moved a Private Members’ Bill, Representation of the People (Amendment) Bill, 2016, in Lok Sabha in March 2017, that seeks to Recall parliamentarians for non – performance. Renowned social activist Anna Hazare also backed him as he had also been demanding a similar legislation since 2008. Anna Hazare says that it would ‘revolutionize the elections’.⁸

The proposed Bill has sought an amendment to the representation of the People Act, 1951 to introduce Right to Recall Parliamentarians and Legislators if 75% of their voters are dissatisfied with their performance. The legislation proposes that the process to Recall an elected representative can be invoked by a constituency voter by approaching the Speaker of the House. Such petition seeking invalidation of the membership of an MP or an MLA should be signed by at least 25% of the total number of electors in that constituency.⁹

After the petition is filed and authenticated, the Election Commission would have to verify the signatures on the petition, if a majority of the voters vote to Recall the legislator, the

⁷Right to Recall Elected Representatives: Whether viable in the Indian Scenario? Sonika Bajpayee, http://indialawjournal.org/archives/volume6/issue_1/article8.html; accessed on 18th Jan, 2018.

⁸<http://thehindu.com/news/national/hazare-bats-for-right-to-recall-legislators/article18490406.ece>; accessed on 20th Jan, 2018

⁹Right to Recall – Can the Indian electorates remove an elected official from office through a direct vote before their term ends? By Akansha Singh, <http://blog.pleader.in/right-to-recall/>; accessed on 20th Jan, 2018.



Speaker or Election Commissioner then have to have the seat vacated by the sitting MP or MLA.¹⁰

But this Right has been opposed by the Election Commission of India. The Chief Election Commissioner Mr. S.Y. Qureshi, has opposed the idea, on the ground that it cannot be implemented and that it could ‘destabilize’ the country in areas ‘where people already feel alienated’.

Conclusion:

The main focus of Right to Recall is revolving around the accountability of the representatives. Everything has its pros and cons with it and so does this Bill in India, the Right to Recall can be justified on the following grounds –

- i. It will improve the accountability of the elected representatives and make them truly representative of the elector’s voices and will increase the legitimacy of the government and the State.
- ii. It could be a solution to minimize the corruption in public area.
- iii. The Right to Recall will strengthen the institute of democracy as it will better ensure that the legislative members enjoy the support of the public.

This kind of Right has its own shortcomings and needs to be formulated with sufficient safeguards –

- i. The petition process shall be in such a way that it should reflect the voice of the majority of electorates.
- ii. The process shouldn’t become tool for the opposition to consistently harass the representative.
- iii. As we follow first-past-the-post system in our elections elected members don’t usually end up winning more than 50% of the votes. So, the percentage of the votes needed for Recall could be set for more than 50%, or may be 60%.

¹⁰[http://scroll.in/latest/830567/varun-gandhi-moves-bill-in-lok-sabha-to-recall-legislaors-for-non-performance;](http://scroll.in/latest/830567/varun-gandhi-moves-bill-in-lok-sabha-to-recall-legislaors-for-non-performance)
accessed on 18thJan, 2018



- iv. Elected representatives should be given at least a year since their term starts, so that they have sufficient time to give results. Otherwise, it will force them to make short term quick decisions to keep the confidence of the electorates.

The way forward:

India is unfortunately suffering from irresponsible unethical approach of the legislators who are chosen by the people. Therefore, the Amendment Bill proposed in the Parliament is a great step. This Bill would put power back in the hands of the people which is the cornerstone of our democracy. At the same time, having a Recall framework in India would not just make superfluous mayhem because of recurring Recall elections, but also would destabilize the legislature. Recall in a Nation like India would be extremely helpless against manhandle by persuasive political gatherings and would give us those crooks as our pioneers who could utilise solid outfitted strategies to keep was practiced in their favour. There is also an issue of practicability of directing a review which would include huge measures of money, labour and time etc. But the initiative has to be taken someday, then why not to start the discourse now to work out the finer details of implementation. So, this idea should be debated and discussed in the Parliament and Civil Society forums.