

Right to Recall: An Analysis of Its Utility in Present Indian Perspective

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ABSTRACT:

The issue of right to recall has recently gained the attention of political scientists, philosophers, politicians and jurists. The arguments are a mixture of principles and political calculations. The right to recall is a right of electorate and it may be proved beneficial for effective and vibrant democracy. India has adopted parliamentary system of democracy based on Westminster model of Great Britain. Free and fair election is inevitable for good governance in democracy. To have a moral control over elected representatives during their tenure, recall may be proved a better instrument. This article casts a skeptic eye on the claims, by emphasizing how complex political issue may be sort out within the existing legal system. Hence, while there are good reasons to worry about voter turnout in established democracies worldwide, the idea for right to recall is persuasive in India. After judicial pronouncement to introduce a new idea of 'none of the above' (i.e. NOTA) in the electoral process, the Indian politico-legal system is emerging into a new arena. Therefore, before turning to the arguments in its favour or to disfavour this matter, it requires threadbare discussion. The present paper will embark upon this contemporary issue to analyse its utility in present Indian perspective.

KEYWORDS: *Democracy; Good Governance; Election; Right to Recall; Right to Reject (NOTA).*

INTRODUCTION:

If the people who are elected are capable and men of character and integrity, then they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them. It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large for the sake of smaller groups and areas. We can only hope that the country will throw up such men in abundance.

History believes in its hopes. Time went marching on. There were progress, development, movement and revolutionary change not only in the realm of ideas, but in every single domain of social and political life. What seemed immutable and universally valid was rejected and replaced by new ideas, institutions and societies. However, in spite of the lessons taught by history, democracy has been established as the best form of governance in the contemporary political arena across the globe and universally recognized ideal as well as best goal, which is based on common values shared by people throughout the world community irrespective of cultural, political, social, economic and trans-boundaries differences. It is a system in which basic rights of citizenship may be exercised under condition of freedom, equality, and transparency with due respect for the plurality of views and also in the interest of polity. Democracy is the system of governance which brought people from private to public domain, legitimated and

institutionalized the rights of mankind and recognized man as Human and therefore identified a system of governance having potential to make all governmental decision making transparent, rational, just, fair and responsive. It promotes public participation, self - administration and self-management and decentralises power from gross root level and realises self-rule i.e. *Swaraj*. Good governance is crucial for economic development, equity and social participation of common people. Independent India has been a large-scale experiment in democracy. Though, Indian representative democracy faces several problems and challenges. Limited participation of people has significantly reduced responsiveness of the elected representatives. Moreover, policies made by these representatives are not aligned with the wishes of the people. The problem is not more unique to India. Representative democracies around the world have searched for solutions to structural flaw in it. The right to recall is one of them.

Originally, this system was evolved and existed in the Greek City states for the first time and adopted in the rest of the world gradually in a form of direct democracy in different ways. In India, the existing legal framework is not sufficient and effective to address the real problem of good governance. The parliamentary institutions have been showcased as the pillars of a functional democracy even though they have not been working for the people and therefore, the idea of Right to Recall has become an interesting and pertinent subject matter of discourse and discussion to eliminate the corrupt and unworthy representatives. Our founding fathers made India a republic in which various institutions were set up for the welfare of the people. Good - governance could be seen as an integral component of the democracy, and the common people in India assume that there is government without governance. Though, there are certain other control devices which aim to have good governance, however, due to failure in achieving the intended purpose, there is a vehement demand for having recall provisions at the 1 Dr. Rajendra Prasad, President, Constituent Assembly of India, 26th November, 1949 before putting the motion for passing of the Constitution on the floor of Assembly.

In this backdrop, the present paper analyses and judges the justification of right to recall in India from various angles.

RIGHT TO RECALL: AN OVERVIEW

The term 'Recall' is used to describe a process whereby the electorate can petition to trigger a vote on the suitability of an existing elected representative to continue in office. Basically, it gives an opportunity to the voters to remove elected representatives whom they feel not doing good job. 'Recall procedure' is adopted in direct democracy system that allows the appropriate authority and/or a specified number of citizens to demand a vote for the electorate on the issue whether an elected holder of public office should be removed from that office before the end of his or her fixed term. To be considered as an instrument of direct democracy, the process of legally interrupting the period in office of an elected official must involve the initiative and/or the vote of the electorate. The electorate's right to recall Legislators is a means to ensure their accountability towards the people. It is prerogative of citizen to determine whether an errant or non-performing representative should continue in office for a full term or not.

In direct democracy, right to recall is a method for calling back to elected representatives from their office due to non- optimum performance or sometimes misuse of their position. Contrary to this, when an initiative and decision in this regard comes exclusively from legally established authorities, such as the legislative or the judicial branch, that does not require the voters' involvement at any phase of the process, the procedure is more properly called impeachment. Its definition implies that the recall should fulfill a set of requirements, which distinguish this procedure from others aimed at terminating an elected official's period in office, such as

impeachment. Among the procedures adopted by the countries in direct democracy, the recall process is the least widespread, and consequently the least applied.

In a democratic set up, if citizens (electorates) are morally bound and legally entitled to elect the representative to run the Government, they should have a right to de-elect their representatives before the completion of their fix tenure if they fail to ensure good governance. Democracy requires public participation and transparency in decision-making and accountability. A recall procedure is more familiar where there is Presidential form of government with a directly elected executive.

RIGHT TO VOTE AND FAIR ELECTION:

Election is *sine qua non* for a vibrant, dynamic and participatory democracy. The Election of India- the largest democracy of the world is not effective unlike other Nations. The Constitution of India does not provide any mandate for the constitution and working of the political parties, nevertheless, they are at the heart of a parliamentary democracy. A parliamentary democracy without political parties is inconceivable. The Law Commission of India has rightly noted that it is essential to make our electoral system more representatives, fair and transparent, to strengthen our democracy, to arrest and reverse the process of proliferation and splitting of political parties and to introduce stability in our governance.

The Commission, further, quoted from a judgement of Supreme Court to note that the political parties are integral to the governance of a democratic society. They perform the critical function of mobilising and organizing public opinion and will, and function as a link between the public at large and the government, particularly its political wing. While they are a necessary mechanism for the functioning of a democracy, it is paradoxical that a number of them are highly undemocratic in their own internal functioning. We all know of political parties and leading ones at that— nationally and regionally—in which internal elections are hardly ever held. It is these internally undemocratic parties which often claim to be the upholders of the democratic tradition in the country or in their respective states.

The Indian electoral process has not been able to keep out criminals, undesirable and anti-social elements from participating in and even dominating the political scene and polluting the electoral and parliamentary process. To strengthen Indian democracy and to bring major structural reforms in electoral system, there has been growing concern over the years in India about different aspects of electoral system, and issues were discussed by a number of committees. But, in absence of an effective 'postelection control mechanism' over the elected members, particularly in system of indirect democracy, elected representatives are not accountable to the 'People' during their tenure in performing their job honestly. In India, where a caste oriented societal structure prevails over the general elections, regionalism, backing of money and muscle power is common practices, it results into corrupt practices and misuse of power across the Nation. It is praiseworthy to note the observation of the apex Court that corruption in a civilised society is like cancer, which if not detected in time is sure to malignise the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spread like a fire in a jungle.

Since, right to vote and the exercise of this franchise by eligible citizens is the pulse of every democracy and citizenship has traditionally provided the basis for voter eligibility in national elections throughout the world, so the right to vote has emerged as fundamental human rights of eligible citizens. It is a well-recognized right *at par* not only under domestic law but also in international instruments and covenants. Unlike the other rights articulated in the fundamental human rights treaty (i.e. ICCPR), the right to vote has been presumed a privilege of citizens.

There is proximity in right to vote and right to recall. Triumph of democracy depends on the portrayal of public will.

The European Convention on Human Rights stating simply that the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

In India, democracy being the basic feature of the constitutional set-up, there can be only one opinion that free and fair elections would alone guarantees the growth of healthy democracy in the country. The fair denotes equal opportunity to all people.

Universal adult suffrage, conferred on the citizens of India by the Constitution, has made it possible for these millions of individual voter to go to the polls and thus participate to form government of the country. Adult Suffrage gives Right to Vote to every citizen of India, who is above the age of eighteen years, with a vision of maximum participation and provides an opportunity to the youth to select their leaders with inherent strategies of electoral process that every citizen of the country would have right to know, enquire and ensure the particulars of the candidate who is going to represent them in the Legislatures. It is also essential that the best available men should be chosen as people's active representation for proper governance. As the Supreme Court of India opined that Free and Fair election is a basic structure of the Constitution and necessarily includes within its ambit the right of an elector to costs his vote without fear of reprisal, duress or coercion.

RIGHT TO RECALL: GLOBAL LEGAL PERSPECTIVE:

Right to Recall is integrated with direct democracy system; it is enshrined in the constitutions and electoral laws of that country where it exists. The subjects of recall are elected officials working at national, regional and local levels. However, some countries provide for the possibility of removing appointed officials from office through procedures that involve citizens' participation. In Europe, Karl Marx had demanded right to recall in 1871. In the modern world, many countries like Venezuela, some states of the United States (US), Switzerland, Uganda, Canada and Philippines etc. have already made provision in varying forms in their respective constitutions and legislations. The late twentieth century earmarked in South America as the most identified region of the world where the recall increased its presence, in the new constitutions enacted, following a growing trend to combine representative democracy with participatory democracy. However, they significantly differ to others in design, legal rules, level and opportunity to the citizen in its exercise. The countries like United Kingdom (UK), Germany, New Zealand, Sweden and India, are indulged in the debate on recall process in their Legislatures.

The Right to recall is not new to India. The system of recall has its origin with human civilization and evolution of institutions like state and sovereign. It is worthwhile to note here that India has the oldest system of governance based on principles of democracy in the world. No other country has a more ancient or exalted pedigree where people (*Praja*) had right to remove King (*Raja*). Kautilya says that in the happiness of his subjects lies the king's happiness, in their welfare his welfare. He shall not consider as good only that which pleases him but treat as beneficial to him whatever pleases his subjects. Therefore let the King be active in working for the prosperity and welfare of his people.

Sri Ramcharitmanasa describes the suggestion of Lord Ram to Lakshman that a King whose reign brings suffering to his beloved people surely deserves an abode in hell. Such ruler is not entitled to remain on the throne as King; he should be called back.

The Constitution of India and Union Legislation both do not contain any provision relating to right to recall. It is needless to say that our Constitution-makers had deliberated and acknowledged the absence of right to recall. The members were of opinion that they do not think by votes a government becomes the people's government, and it may be right to prove by logic that since the people had voted for the government, the government shall have to be the people's government, and it may claim that the people themselves carry on the government. It is not so in fact. They had exercised their votes once. But as the elections were over, they got out of politics, now they have no control. Till the next elections or till such time as they have another chance to exercise their choice, they must remain like sleeping partners of democracy. They have not got the right to recall the Government. People once cast the vote to form the Government, have no right of recall or to censure its officials unless there is a fresh election. So whatever rights they give to the State or the Government those rights are not necessarily to be used in the interest of the people. For the present type of democracy in India, people do not count at all.

However in India, the move for right to recall started in pre-independence era when Sri Manabendra Nath Roy, a *radical humanist* and *political theorist*, proposed an alternative system of political economy in the year 1944 by emphasizing decentralisation and devolution of power, which was in tune with his humanistic approach of restoring sovereignty to the individual in society with a right to recalling their representatives. Sri Jayprakash Narayan, alias *Loknayak*, initiated a demand in the year 1950 for the same and reiterated again in his movement '*Total Revolution*' (*Sampoorn Kranti*) in 1974. Since corruption and democracy go parallel, and with due regards it may be submitted that unfortunately India is witnessing a constant rise in unethical and irresponsible behavior on the part of elected legislators except some.

Thus the issue being a matter of great deal, was discussed in 1998 by the Indrajit Gupta Committee on electoral reform. Subsequently, to accept the repeated public demand, the matter brought into the floor of the House of the People (Lok Sabha) for consideration and deliberation at several occasions, but could not reach to any conclusion. Though in the States' Legislations, statutory provisions are made particularly to deal with local bodies like Maharashtra; Madhya Pradesh; Chhattisgarh; Jharkhand and Bihar for experiment basis.

RIGHT TO RECALL: POSSIBILITY

In a parliamentary system of democracy, the proponents of this right suggest that right to recall strengthens the very root of the system; promotes accountability, fairness and transparency in governance and imposes an obligation upon the Legislators to be just, fair, reasonable and responsive to the common-cause. On the other hand, the opponents argue that right to recall is a double edged weapon if available in the hand of people certainly would promote instability in governance, hardship in decision making and proper functioning of the public offices. Thus, to analyse these issues thoroughly, it is necessary to examine the plausible implications of introduction of the 'Right to Recall', its viability and feasibility in a country like India, where a larger section of local populace reside in multi-cultural, multifarious and multi-lingual diversity. In the light of the aforesaid facts, an acrimonious debate continuously goes on since pre-independence era to till date to improve our democratic set up.

The fundamental characteristics of right to recall has been aptly explained centuries back by George Washington (the first US President) in a letter written to his nephew. He wrote that the power under the federal constitution will always be in the People. It is entrusted for the certain defined purposes, and for a certain limited period, to the representatives of their own choosing; and whenever it is executed contrary to their interest, or not agreeable to their wishes, their servants can, and undoubtedly will be recalled.

The Common Wealth Parliament Association debated on the matter and considered the right to recall as a strategy to enforce greater accountability of Parliament to the people. People are disillusioned with the conduct of Parliamentary business. The very process of legislative functioning is subverted, leading to incalculable harm to the representation of democratic institution. The National Commission to Review the Working of the Constitution has rightly pointed out in its report how a Parliamentary system, unlike Presidential system, lays emphasis on accountability? Commission reviewed that the Parliament is the pivotal institution of our representative parliamentary democratic polity. Its role in navigating India's voyage in the post-independence period of momentous developments stands in comparison with the best of legislatures anywhere in the world. We can take legitimate pride and comfort from the impressive record of the uninterrupted continuity of our parliamentary institutions for over half a century. However, like all living institutions, Parliament needs to keep under constant review its structural-functional requirements as also the entire gamut of its operational procedures. Also, it has to be remembered that in parliamentary democracy just as Government is responsible to Parliament, Parliament is also responsible to the people who are the supreme sovereign.

The National Commission also referred in particular to the emergence of the unhealthy role of money and mafia power and to criminalisation, corruption, communalism and casteism. The electorate has no role in the selection of candidates for election and the majority of the candidates are elected by minority of votes under the first-past-the-post system.

If right to recall would be introduced in Indian political system, it will enlighten the dark ages of democracy. Political rivals would make issue out of the smallest one. People may scrutinise the activities of their elected officials and they serve the Nation under deterrent power of the common people.

RIGHT TO REJECT OR NOTA AND INDIAN JUDICIARY:

Political parties in India have few rules to regulate themselves. They have no agenda in their political manifesto neither to improve the process of general elections nor to strengthen the democratic system of governance for the long run. Subsequently, a gradual deterioration came in electoral process. The Election Commission, therefore, changed its traditional procedure of superintendence, direction and control of election and made efforts in several areas to respond to some of the concerns. The Central Information Commission (CIC) took a landmark step in an order on a complaint application filed by the Association of Democratic Reforms and Mr. Subhash Agrawal (an RTI activist), under a Right to Information (RTI) and decided that the six respondent political parties are public authorities as they are substantially financed by the Government.

It was, further, determined by the CIC that the political parties would be answerable to the citizens of the country for the issues like their sources of Funds; details of expenditures; and also criteria of distribution of party tickets in general elections to the candidates. Thus, the political system has gained considerable ground by the efforts of the Central Information Commission.

The Supreme Court has led to a great furore in the political circle of the country while delivering path-breaking verdicts. The apex court judgment is latent with the possibility of revolutionizing the way Indian democracy functions by excluding convicted persons from the electoral process and giving the electorate an option for negative voting. The court has directed to the Election Commission of India to include the option "none of the above" with the view to cleansing politics and it to foster greater participation among voters. The Court rightly underlined the importance of providing this right of not to vote and kept it *at par* with the right to vote in a pluralistic democracy.

The court opined that the strength of any democracy ultimately hangs on its ability to ensure voter participation and commitment to democracy. The right to negative voting will not only attract that vast majority to polling booths who avoid exercising their franchise due to absence of worthy candidates but also check the rampant malpractice of proxy-voting encouraged by political parties.

The Supreme Court, further, held that the provisions of Rules 41 (2) & (3) and 49-O, the Election Rules, 1961 are impugned and stand *ultra- vires* to the extent they violate secrecy of voting provided by Sections 128 of the R P Act and Article 19(1)(a) of the Constitution of India. Indeed, NOTA option gives the voter the right to express his disapproval with the kind of candidates that are being put up by the political parties.

CONCLUSION:

Indian politics is gripped by a steadily declining standard and the citizens were longing for a mechanism that allows them to register their disapproval of the choices offered to them by the political outfits. Indian election process requires to be reformed to the extent that it should express the real will of the people of the country but, recall process may ensure vertical responsibility as opposed to horizontal accountability. The entire public debate and discourse relating to the introduction of right to recall in India, goes beyond the fact that this right is a means to achieve certain end-objectives but not an end itself. It is a post-election measure having an idea to ensure accountability and responsiveness, and to achieve this goal, focus should be given to enhance the political sensitisation and awareness among masses. Therefore, unless the existing system is reformed and implemented with the beginning of the pre-process, such move may create several problems. This is an attractive idea in theory but certainly, it would entail practical difficulties and bring unwilling repercussions. Of course, there are other useful measures to improve pre-election process, which may be applied. Needless to say that recall is novel idea that minimises entry of corrupt, criminal, dishonest, greedy and non-responsible representation in the legislature. The right to recall is being proposed having two basic intentions- one, to correct the limitations and flaws of existing electoral/ representative democratic practice; two, hanker after some form of democracy and to replace the representative democracy by direct democracy as all-time favourite of Utopian democrats who have little patience for matters of scale and level. In Indian perspective, this idea enjoys an evocative space irrespective of its feasibility or practical implications. Today's supporters of this right are tomorrow's radical democrats who always wish to rewrite the idea of democracy. But they are not in position to clarify that whether they are fundamentally disagree with the current idea of democracy rather than disagree only with the current practice of democracy.

India is a country of paradoxical position. In current version of Indian representative democracy, people's power to govern themselves, is operationalised within a framework that secures justice-social, economic and political; equality of status and opportunity and - one person- one vote, and free access to electoral participation which ensures a minimum threshold of inclusiveness, but the measures of direct democracy can easily be the less inclusive ones on the other. Keeping in view the above discussion based on different committee's report, its anti- social implication, judicial pronouncements and several moves, it may be summed up that the right to recall is worth noticed in recent years to keep representatives on a leash.

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