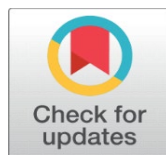
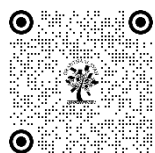


RIGHT TO RECALL ELECTED REPRESENTATIVE: MAKES SENSE IN INDIAN PARLIAMENTARY DEMOCRACY

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DOI

10.29121/shodhkosh.v4.i2.2023.3213

Funding: This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

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ABSTRACT

This study examines the relevance of 'right to recall the elected representative of the Parliament and assembly.' Recall of elected representatives is widely accepted in the western democracies and daily new development can be sensed in this area. It is considered as one of the reforms in electoral processes to strengthen democracy. Therefore, it contains a lot of information starting from definition, history, how western democracies practice this tool of recall and how flawed democratic countries are making effort to bring this instrument in their governance system with the benefits and shortcomings of this method. The work in view of the problem of evolving distrust in democracy, its institutions and manner of negating expectations of people attains its significance by presenting some viable options. It does take note of the desperate people throughout the world aspiring for reforms as their disappointment can be witnessed from demonstrations on the streets, famous squares, in front of institutions fearlessly. It considers how the misconduct of incompetent elected representatives especially at centre and state level is influencing governance and examines if right to recall can serve as an antidote in India. It focuses on two aspects that right to recall may address issue of non-accountability and strengthen the 'we the people' which is the real source of sovereign power of democratic set up. In last it contains conclusion and gives, suggestions for incorporating this tool with modern technology, in episodic and on trial basis in some state assembly for Constitutional governance in India

Keywords: Right to Recall, Constitutional Governance, We the People, Elected representative, Parliamentary Democracy

1. INTRODUCTION

सभा वा न प्रवेष्टया,
वक्तव्यं वा समंजसम्।
अब्रुवन बिब्रुवन, वापि,
नरो भवति किल्बिषी।

"One must not enter either an Assembly Hall, or he must speak there with all the righteousness, for one who does not speak or one who speaks falsely, Does himself in the equal sin involve."

Manu, The inscription on dome near Lift No. 2 of parliament

Whenever the Legislators endeavour to take away, and destroy the property of the people they put themselves into a state of war with the people, who are thereupon absolved from any further obedience, and are left to the common refuge, which God hath provided for all men, against force and violence.

Second Treatise of Civil Government John Locke (1690).

This study examines the relevance of 'right to recall the elected representative of the Parliament and assembly.' Recall of elected representatives is widely accepted in the western democracies and daily new development can be sensed in this area. It is considered as one of the reforms in electoral processes to strengthen democracy.

Modern politicians are Niccolo Machiavelli's 'Prince'. With the cunningness of fox. Politicians just focus on the way to play the game than to be morally good.¹ There is no self-righteous approach in the elected representative of today's world. Representatives are pretty experts at beguiling in people minds.² The threat to the democracy and democratic institutions is not posed by the people with arms in their hands like force theory of state formation and cold war coups but by elected representatives themselves. These leaders are subverting the same process which brought them to power like Hugo Chavez, Adolf Hitler, Benito Mussolini, Vladimir Putin, Saddam Hussein etc.³

In Indian scenario gone are the days when our parliament used to have statesman like Pandit Jawaharlal Nehru, Sardar Patel, Baba Saheb Ambedkar, Maulana Abdul Kalam Azad, Shyama Prasad Mukherjee, Gopala Swami Ayenger, Atal Bihari etc who strengthened roots of parliamentary democracy in India. With their punctuality, righteousness, truth etc. But lately the Indian Parliament has been taken for granted by the parliamentarians. Faizan Mustafa observes that they have narrow, selfish, temporary political interest. Leaders are laying down the expectation of people. The Parliament has very few speakers whose speech is heard without intervention. This is indication of weakening of institutions. PRS legislative research says that this is the result of structural issues that constrain the effectiveness of the Parliament and member of Parliaments.⁴ Every democracy needs effective dialogues and for these dialogues we require effective parliamentarians. Who can work for the institution. Alfred E. Smith opined that 'All the ills of democracy can be cured by more democracy.' The chosen representatives are scared of none and feel free to do anything what they wish to do. On the floor of House, members are lying, misleading, professing hatred. The House has been plunged into pandemonium at several instances. Throwing of paper to chair and violent activities of the legislators in house has turned the institution into battlefield. Theatrical manoeuvres like walkout and frequent interruptions of legislative proceedings by political parties or individual members⁵, and repealed lack of quorum⁶ during sittings of the House has become a norm. This type of behaviour is betrayal to the utilisation of opportunity that elected representatives are bestowed for serving the public interest but they are indulging themselves in shining their politics. Elected representatives are misusing their privilege and power. The will of electorate are not reflected, and electorate have to remain a silent spectator for next 5 years. Indian electorates have no option, except waiting for a fresh election. To curb this damage to democratic institutions by elected representatives there should be a reasonable check through democratic means.⁷ Therefore, there is need of time that electorate should have right to recall or right to de-elect the elected representative. Ram Manohar Lohiya cautioned that *Zinda Commen 5 sal tak intezaar nahi karti* (the lively nation doesn't wait for 5 years). The continuous evaluation of elected representative should be done to ensure their prospective vertical accountability. Recall elections are democratic, increase accountability, offer a safeguard against abuse and can help restore confidence in, and promote active involvement with, the political process. The spectre of being forced to an early election by the public could provide the stimulus needed for government.⁸

¹ Niccolo Machiavelli- *BBC Documentary*, 2016, available at: <https://youtu.be/wsMs-DuGy1o>.

² *Id.*

³ Steven Levitsky and Daniel Ziblatt, *How Democracies die* (Penguin Random House UK 2018).

⁴ PRS legislative research "Rethinking the functioning of the Indian Parliament". available at: <https://www.prsindia.org/uploads/media/Conference%20note/Functioning%20of%20the%20Indian%20Parliament.pdf> (last visited on December 07, 2020).

⁵ See: "House interrupted: it's proving costly" *Indian Express Archive* June 03, 2007 available at: <http://archive.indianexpress.com/news/house-interrupted-it-s-proving-costly/32627/2> (last visited on December 07, 2020).

⁶ "Parliament proceeding as it happened lack of quorum forces adjournment of Lok Sabha" *The Hindu* June 28, 2019. available at: <https://www.thehindu.com/news/national/parliament-proceedings-live-jk-to-have-six-more-months-of-presidents-rule/article28195404.ece> (last visited on December 07, 2020).

⁷ Vinod Bhanu "Right to recall legislators: The Chhattisgarh Experiment" *EPW* (October 4, 2008).

⁸ A Clennell, 'I'll back a recall bill, says O'Farrell', *The Sunday Morning Herald*, December 11, 2009 available at: <https://www.smh.com.au/national/ill-back-a-recall-bill-says-ofarrell-20091210-kmc5.html>.

2. DEFINITION OF RECALL

'Recall' is a term 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. Recall is seen as an important, directly democratic, tool for the electorate to remove from office those elected representatives seen to be ineffective.⁹ According to 255th Law Commission report, The right to recall (hereinafter "RTR") is one of the facets of direct democracy that refers to a process whereby an electorate is able to recall an elected representative for under-performance, corruption, or mismanagement while still in office, by filing a petition that triggers a re-election usually after a particular percentage of people sign the petition.¹⁰ As Vinod Bhanu about recall of the parliamentarians has observed that it is a democratic method, by which citizens have the power to remove or in effect de-elect a Member of (MP) before the end of the term of office. This power of removal of MP is an instrument for the constituents to scrutinise their performance, conduct observance of good practices and delivery of services that an elected representative is expected to follow. Vinod Bhanu further observed that recall is a unique political device exercised by the electorate to remove a particular elected representative from office. In India, this power is not granted to the citizens either by the Constitution or by a statutory device.¹¹

3. DEMAND FOR RECALL IN INDIA

Through this provision of recall, as a post-election approval mechanism, the continuation of a representative in office is frequently subjected to scrutiny by the voters even before the next general (regular) election. This is the people's prerogative which will boost the 'we the people' to determine whether their elected members should continue in office for a full term or not. Irresponsible, incompetent or erring MPs cannot hold office for the full term at the cost of the public exchequer.¹²

The former Lok Sabha Speaker Somnath Chatterjee strongly favoured a constitutional amendment to empower the electorate with the right to recall their representative in the Parliament or the state assembly, in case, he or she ignores the interests of the people and is guilty of malfeasance, corruption or criminal activity.¹³

"The President can be impeached and the Prime Minister can be removed, why the term of elected representative should be so sacrosanct".¹⁴ Since the inception of the Constitution the power of disqualification of Member of the Parliament or legislative assembly lies with the Speaker of the house. But the former Lok Sabha Speaker opined it as "In view of a contentious political atmosphere, it is high time that the power to disqualify an elected representative be taken away from the Speaker of the Parliament and the state assemblies and be vested with the Election Commission or any other agency," He further added that "Increasingly, the Speakers' decision on disqualification of MPs/MLAs are being challenged in the courts, lowering the dignity of the constitutional office."¹⁵

Currently, provisions for RTR have been in force for panchayat elections in Chhattisgarh, Madhya Pradesh, Rajasthan, Bihar, Haryana and Maharashtra.¹⁶

4. PARLIAMENTARY DEMOCRACY IN INDIA

The Parliament is a place where public opinion is reflected. The Parliament has been evolved out through its long history, to what it has come today. It started from 1215 when king John of England agreed to 63 rules set up by group of barons, popularly known as Magna Carta. The putting of seal on it by the king ensured that no one is above law even the king. Later in 1265, Simon de Montfort the Earl of Leicester invited the representative to choose his Parliament. Power to make law and to take decision for nation has passed from monarch to the Parliament. Whereas democracy is the rule of

⁹ Gareth Griffith and Lenny Roth "Recall Elections" NSW Parliamentary Library Research Service Feb 2010 (last visited on November 24, 2019).

¹⁰ Law Commission of India, "255th Report on Electoral Reforms" (March 2015).

¹¹ Vinod Bhanu "Recall of Parliamentarians" *EPW* (December 29, 2007).

¹² *Id.*

¹³ Ramesh Vinayak "Somnath Chatterjee makes Pitch for right to recall" *India Today*, September 23, 2008 available at: <https://www.indiatoday.in/latest-headlines/story/somnath-chatterjee-makes-pitch-for-right-to-recall-30367-2008-09-23>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Law Commission of India, "255th Report on Electoral Reforms" (March 2015).

people. Democracy in a political system with institutions that allows citizens to express their political preferences and always have constraints on the power of the executive and provides guarantee of civil liberties.

We the People of India, the beginning words of the preamble to the Constitution of India clearly indicate that the people of country are supreme. The preamble to the Constitution declares India to be a Democratic & Republic nation. Democracy is the basic feature of the Indian Constitution.¹⁷ Under democratic republic structure, it is the privilege given to citizen to participate in electoral process and they place the representative in the seats of power. Though the political parties' gives tickets to their favourite candidates and electorate have to choose the best in those given option.

Since 1947, India adopted parliamentary democracy like England. Indian Parliament is bicameral Lower House as the Lok Sabha and Upper House as the Rajya Sabha. The Lok Sabha is a democratic chamber elected directly by the people on the basis of adult suffrage. It is thus designed to reflect the popular will and in this lays its strength. The council of ministers is answerable to the Lok Sabha.¹⁸ Parliamentary democracy functions in certain way, the most important being responsibility of the executive to the legislature; and through the legislature ultimately to the electorate and to the country. Another way of functioning is a peaceful transfer of governmental authority from one party to another either as the result of an adverse votes in the Parliament or after a general election. It presupposes party government founded on collective responsibility.¹⁹ There are three designated roles for the Parliament in a democracy. It is responsible for legislation—laws of the land—by which people govern them. It must ensure accountability of governments—on policies or actions—to the people. It should engage in discourse and debate on issues that concern the nation and the citizens.²⁰

There are two types of accountability under parliamentary democracy. There is a distinction between horizontal and vertical accountability. Horizontal accountability is effectuated by regulatory and other supervisory bodies which are composed of officials acting on behalf of the public. Vertical accountability is mandated by the public itself, through a variety of mechanisms, including elections, complaint procedures, legal and judicial redress, the activities of civil society organisations, watch-dog groups, etc. In the public sphere, it is typically a combination of both the horizontal and vertical that ensures effective accountability.²¹

Though, the Parliament has provided some ways to disqualify elected representative in the Representation of the People Act, 1951 and in the Constitution itself. But once legislators get elected then electorate have no power to recall his representative before the fixed tenure. Even the President of India may be removed from his office, before the expiry of his term, for violation of the Constitution by the process of impeachment [Art. 56(1)(b); Art. 61(1)]. The position of the President in India is like the crown in England. In such a situation no harm arises if elected representatives should get recalled by the electorate, before the expiry of the term? The grounds of exercising authority of determining disqualification with the speaker in certain situation should be the alternative, not the sole instrument of recall. The Parliament has prescribed the necessary disqualifications for Member of Parliament in the Representation of the People act, 1951. These are as follow:

- Corrupt practice in an election;
- Conviction for an offence resulting in imprisonment for two or more years;
- Failure to lodge an account for election expenses;
- Having a subsisting contract for supply of goods to, or execution of any works undertaken by, the government;
- Being a managing agent, manager or secretary of a corporation in which government has not less than 25% share;
- Dismissal from government service for corruption or disloyalty to the state;

Some other types of disqualifications of Member of Parliament have been spelt under article 102(1) Indian Constitution. These are as under:

- 1) He holds an office of profit under the central or state government [Art. 102(1)(a)];

¹⁷ M.P. Jain "Indian Constitutional Law" 823 (7th edition Lexis Nexis, 2014).

¹⁸ *Id* 24.

¹⁹ Aloo J. Dastur and Aloo J. Dastoor "Parliamentary democracy in India" 19 *The Indian Journal of Political Science*, 329-334 (October-December 1958).

²⁰ Deepak Nayar, "Vibrant democracy, Dormant Parliament" *Live Mint*, July 14, 2017 available at: <https://www.livemint.com/Opinion/Bcy9Eg4aDIqGY8Kw7dKKMK/Vibrant-democracy-dormant-Parliament.html>.

²¹ Vinod Bhanu, "Recall of Parliamentarians" *EPW* (December 29, 2007).

- 2) A competent court has declared him to be of unsound mind [Art. 102(1)(b)];
- 3) He is an undischarged insolvent [Art. 102(1)(c)];
- 4) He is not a citizen of India, or has voluntarily acquired the citizenship of a foreign state, or is under any acknowledgement of allegiance or adherence to a foreign state [Art. 102(1)(d)].

5. HISTORY OF RECALL

If one trace the history of recall then finds some practice but not exact the same as world has today. In ancient Athens, institute “ostracism” was there through which the Athenians or free citizens who were entitled to vote can exile certain individual from the respective community for 10 years when one not abides the regulations of the community.²² But this removal was not extended to elected officials as such. For more association to recall provision we have to turn the pages of history and have to sail through English Channel and villages of Alps. In England “right of petition” against the king and no confidence motion in house of commons²³. Whereas, according to Swiss custom law, removal of elected officials was allowed.²⁴ Later it became part of formal law in many Swiss cantons. In India through PITs India Act 1784 the Governor General of Bengal or any other official were recalled through Parliament. It was also practised beyond Atlantic. In the erstwhile America colony of Britain, State legislatures can appoint their delegates annually to the US Congress and to recall them and later replace them with others if they so choose.²⁵ Currently many democracies and big like United states, England, Canada follows this right to recall practice.

6. CONCLUSION AND SUGGESTIONS

At the time of independence and while framing the new Constitution the Constituent Assembly members never hesitated and provides the right to vote on adult suffrage from very first general election. They don't give any swing to discrimination in right to vote like Europe and other democracies. Where right to vote was a long battle for women and black people. But Indian Constituent Assembly provides the same right to every citizen of India after attaining the age of majority i.e 18 years. Our leaders were much ahead of the time in comparison to other democracies. They took a huge risk and did experiment in India, where at that time literacy rate was very low. The country was not democratic at all. This experiment with democracy was called as the biggest experiment of all time. Today it is a largest democracy in world. But today people are more literate, educated and more rational than ever, only election of representative through right to vote is not sufficient enough. Indian people are now adapted to democracy. They know how to dissent and always carry different opinions and have ability to judge what is wrong and right with scientific temperament. In democracy the dissenters are always heard. Therefore, if a dissent comes on some reasonable issue on the working of representatives then his de-election should also be placed as a right. It is the demand of time that this right to vote should be assisted with an additional right to recall to engage people in the political process more seriously and diligently. This will strengthen the “we the people” of India.

It is not true that India is totally unknown to this instrument. This right to recall is present at local levels like panchayat and municipalities of few states. This is the time to extend the right to electorate in state and general elections. Because the larger interest of people is associated with MPs and MLAs. As their activities and decisions matter most to the constituency and country at large. Other democracies have included the same in their Constitution or in other statutes. The country through which we have taken our Parliamentary democracy, England, has also the provision to recall their MPs, then why not India.

As this instrument of recall ensures accountability, more democracy, discipline of elected representative. This is one of the fundamentals of social contract propounded by Hobbes, Locke, and Rousseau and even Kant as well. This process can be more effective than impeachment. There is a provision of impeachment in the Constitution of India for the judges and President of India. The impeachment is done by the members of Parliament only and they are of the same level. But the people are far ahead in status of these elected representatives as the Constitution rests sovereignty in ‘we the people’.

²² Anne Twomey “The Recall and Citizens’ Initiated Elections Options for New South Wales”
Constitutional Reform Unit Sydney Law school revised unit 2011.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

This depicts that elected representatives are answerable to the people. After all, people are in best position to judge. So, it is better to assign the right to recall to the people. It will strengthen the power in the hands of the people and will act as deterrent for elected representatives.

Rebecca Solnit says change is the measure of time. Whereas Richard Susskind says in his book 'online court and future of justice' that technology is an inseparable adjunct of the rule of law. Joining these two arguments with the Anuradhha Basin judgement of the honourable Supreme Court. It can be said that Indian society is accepting the power and importance of technology, AI and internet in governance. In this modern world, technology, AI is doing wonders daily by great inventions and making life easier. The outbreak of Covid-19 pandemic has moved very fast. Internet has shown its magic. World has been reduced to work online. Why we shall not apply the magic of internet in electoral process. As humans have developed from ballot box election to EVM. Internet based online voting for recall election as well. There is rating of application and service providers. In corporate world there is credit rating agency which rates agency and through that company rank is decided. Why can't this type of system be made applicable to elected representatives by rating our representatives. A standard can be set for the same and the politician who scores less than the required standard should be recalled. This will be a very interesting method and will attract the more engagement of people. Through this, huge chunk of youth will also participate in the political process. This will save the cost and reduce the burden on exchequer. Physical force, labour and huge mobilisation can be controlled. There is scope of various innovations in politics. This reform seems very much possible by each passing day.