

## Right to Recall: A Way Forward for Democracy

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### Abstract

*“There can be no doubt, that if power is granted to a body of men, called Representatives, they like any other men will use their power not for the advantage of the community but for their own advantage, if they can.”*

— James Mill

Democratic countries like India have numerous political parties. Party who has desirable number of seats in election would form the government and rule the country. For securing majority in election, political parties make various promises during election. It makes no difference to political parties, whether work is being done or not. The primary importance of political parties is that the work is properly promoted. Such statements are made solely for political purposes by the leaders. It makes no difference to them whether it is good for the country or not.

The most serious issue is that there is no law to prohibit and criminalize such false claims and promises. There is no penalty provision. It's a need of hour to implement the “Right to Recall”, so that if a leader demonstrates that he is incapable of fulfilling the promises made during his political campaign, the public has the right to elect him before he is able to remove that leader. In this Article, the author attempts to demonstrate how false promises influence voters, as well as mentioned some examples of countries where Right to Recall prevails. The author has also analyzed the advantage and disadvantage of ‘Right to Recall’.

**Keyword:** Election, Political Party, False Promise, right to recall, Electoral Reform.

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## 1. INTRODUCTION

In a democracy, MPs and MLAs are directly elected by the people. The Citizen assumes that there is free and fair election. They cast their votes freely, fairly and after due consideration. Their votes are based on the candidates' promises or the performance of the incumbents in power, as well as a perception generated by information provided by the media, including social media.<sup>1</sup> If an electorate is dissatisfied with their elected representative, they have no recourse.<sup>2</sup> In such a case, electorates have no choice but to wait until the next election to remove the representative from office.

To address this shortcoming, some democratic states have adopted the 'Right to Recall' (henceforth, Recall) and the No Confidence Motion (henceforth, NCM), which involve the re-election or replacement of one elected representative with another for the same position in the house. Although not identical, both measures seek to hold elected governments more accountable for promises made to voters. Recall gives the right to vote to his elected representative any time before the representative's usual tenure expires. In other words, it gives voters the power to 'de-elect' their representatives from legislatures through a direct vote.<sup>3</sup> In a parliamentary democracy, on the other hand, No-Confidence Motion means there are no more confidence in the elected government either partially or entirely.<sup>4</sup>

In a direct democracy, Recall authorizes the governments to be responsible to the voters even after being elected for a time period. For example, in the US, the right to recall allows the voters to demand recall of an elected representative at the city and state levels for specific reasons, which included dissatisfaction with their works.<sup>5</sup> A recall

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<sup>1</sup> Philipose Pamela, can an election be retweeted to victory, (June 5, 2021, 10:05 AM), <http://www.epw.in/Journal/2015/7/web-exclusives/can-election-be-tweeted-victory.html>.

<sup>2</sup> Ipsita Mishra, Right to Recall- Can this clean up the Indian political system? The Hindu, Sept 30, 2017

<sup>3</sup> Bajpeyee, Sonika, Right to Recall Elected Representatives: Whether Viable in the Indian Scenario? (June 5, 2021), [http://www.indialawjournal.org/archives/volume6/issue\\_1/article8.html](http://www.indialawjournal.org/archives/volume6/issue_1/article8.html).

<sup>4</sup> Kota Neelima, Right to Recall in India: An Analysis, 49 JCPS 1(2015)

<sup>5</sup> National Conference of State Legislatures (2016), Recall of State officials, (june 8, 2021) <http://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx>.

decision is made at a special election in which voters in a constituency decide whether an elected representative should remain in office or not. If the elected representative fails to win the Recall election, the position is declared vacant and new elections are held.

However, it is pointed out that the founding fathers of the Indian Constitution did not envision the right to recall elected representatives. Although right to recall is discussed in Constituent Assembly. The founding fathers could not have predicted the rise of an unhealthy role for money and mafia power, criminalization, corruption, communalism, and casteism in Indian democracy.

## 2. MEANING OF RIGHT TO RECALL

Recall means removal of an elected person during his term of office by the electorate.<sup>6</sup> In a democratic country, right to recall can be used for removal or de-elect a member of parliament before the end of his term of office by citizen. The recall power is a tool to analyze an elected representative's performance. The recall process can be said as a unique political device that can be used to remove the particular member of legislature for nonperformance of his duty.

Right to Recall means if you are dissatisfied with the performance of your elected representative, you have the right to recall him or her and elect a new representative. If they do not fulfill their '*Chunavi Jumla*' (false election promise) during election, they can be removed from the office.<sup>7</sup> The members of parliament, legislatures or other local bodies can be removed either by the action of legislature through expulsion or by the voters through a recall procedure. Procedure of expulsion is a function of internal authority of legislative body. It is their general powers and proceedings over the members. Whereas recall is a special process that is practiced by the people. Recall is exercised as a special procedure outside the legislature. Procedure of recall for the

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<sup>6</sup> Ipsita Mishra, Right to Recall- Can this clean up the Indian political system? The Hindu, Sept 30, 2017

<sup>7</sup> Ajay Amitabh Suman, Right to Recall, The Times of India, Jan 17, 2021

officers of state as well as local bodies became popular particularly in western countries during early 20<sup>th</sup> century. It is known as “Progressive Movement”.

### **3. COUNTRIES WHERE RIGHT TO RECALL IS PERMITTED**

There are few countries all over the world where Right to Recall is prevails. United States of America, Philippines, Switzerland, Province of British Columbia in Canada, Venezuela as well as South Korea, Taiwan, Argentina, among other places are some important examples of it.

#### **3.1 The United States of America**

In 1903, provision of recall was first time come into the light in United States. New city charter for Los Angeles 7 was approved by voters. After this, recall of state officials was permitted in the United States.

In the United States, only two state officials (governors) were eliminated successfully with the help of right to recall. Lynn J. Frazier in North Dakota was removed in 1921. Gray Davis in California was eliminated in 2003. In the case of Arnold Schwarzenegger's election, sufficient signatures were received to eliminate the Arizona Governor Evan Mecham through the provision of right to recall but Representatives of state's House impeached him before the date of recall election.<sup>8</sup>

Recalling members of state legislators in the United States has been somewhat more successful than in other countries, though it is still uncommon. Previous history shows that 107 attempts have been made for a recall election in the state of California from the year of 1911 to 1994. Among these recall elections only four recall elections were successfully completed with the necessary number of signatures on the petition of recall.<sup>9</sup>

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<sup>8</sup> Rose Richard, International Encyclopedia of Elections, 2000.

<sup>9</sup> Ibid

These four petitions are mentioned below-

1. Recall election of a state senator in 1913.
2. Recall election of a state senator in 1914.
3. Recall election of a state senator in 1994. State senator survived election with 59% vote.
4. Recall election of two Assembly members in 1995.

### 3.2 The Switzerland

There is a limited literature on Swiss recall procedures. Although recall is not used at the federal level in Switzerland, recall provisions for cantonal legislatures exist in six of the country's 26 cantons. It has been observed that for the further proceeding of recall petition, signature of required number of voters were not based on the percentage of the whole voters in case of Switzerland.<sup>10</sup>

### 3.3 The Philippines

Recall is also permitted in the Philippines. It was noticed that because of funding problems, recall elections were suspended for a short period of time in 13<sup>th</sup> November, 2008. Order of suspension was uplifted after three-year. The recall election can be held only after the signatures of 25% on the recall petition. In this election, the name of the candidates as well as representatives is mentioned. If the representative receives the most votes, the recall is deemed a failure, and they retain their position. If, on the other hand, another candidate receives the most votes, then they are duly elected. (The Philippines Commissions on Elections: Press release)

### 3.4 The Venezuela

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<sup>10</sup> Sanjeev Kumar Chaswal, *A Paradox of Right to recall and Reject- A Boon or Bane*, Dissertation, The Institute of Constitutional and Parliamentary Studies, [https://www.academia.edu/7768945/A\\_Paradox\\_of\\_Right\\_to\\_Recall\\_and\\_Reject\\_-\\_A\\_boon\\_or\\_bane](https://www.academia.edu/7768945/A_Paradox_of_Right_to_Recall_and_Reject_-_A_boon_or_bane).

In Venezuela, provision of recall was appeared in 1999 after the approval of new Constitution by the electorate in a referendum. The provision of recall is used in this country with subject to the provision of new constitution.

### **3.5 The Uganda**

In Uganda recall provision allows to recall election of a member of parliament for any of reason given below- physical incapacity, mental incapability, and incapacity to perform the office function, contempt, and continue deserting of the electorate without reasonable cause.

### **3.6 The British Columbia**

The Recall and Initiative Act 1995 was passed in the Canadian province of British Columbia in 1995. This act gives the right to replace the member of legislative Assembly in the mid of office of term. A successful recall petition under the Recall and Initiative Act of 1995 provides the replacement of the Legislative Assembly member. If a recall petition is passed with majority, the Chief Electoral Officer considers it and within 90 days an election must be held.

There are also some other countries which have adopted Right to recall for better ruling.

### **3.7 The India**

India, as the world's largest democracy, is viewed as a role model by the world's new and emerging democracies. The Indian constitution's founding fathers chose parliamentary democracy as the best model for a large and diverse country like India. The Indian constitution guarantees the people political justice. As a result, there is a free and fair election.

It can be said that the principle of Right to Recall was not a new concept in India. It is prevailing as a “Rajdharmā” during Vedic times. “Rajdharmā” means the removal of a king when he cannot run his kingdom with a proper rule and regulation.

The issue of recalling elected representatives has a long history in Indian democracy; it was even debated in the Constituent Assembly (Sardar Vallabhbhai Patel on 18 July, 1947 while discussing proposed amendment on power to recall). Manabendra Nath Roy suggested decentralization of government in 1944 and allows the recall of representatives in the term of office. Somnath Chatterjee also supported the view of M. N. Roy by saying that right to recall is necessary for the responsibility of elected person.

Debate over Article 8A (3) was focused on the belief that the Right to Recall must go with the Right to Elect, and voters must be given with a remedy if things go wrong (Loknath Misra on Nov 29, 1948 while proposing amendment in Article 8A (3). Dr. Ambedkar denied this Amendment. While some members believed that recall would help in political education and encourage voters to think (Debate on July 18, 1947 in Constituent assembly debates: Official Report, 2009). Other members argued that it would not be proper to give a Recall provision at the childhood of Indian democracy. It was feared that recall would turn the constituencies into a battleground for candidates, making them unnecessarily victims of political rivalry.<sup>11</sup>

Further, India embraced democracy system in which the elected person is removed by the Parliament. This is a fact that people elect the representative but the office of term of representative is not with the choice of the people. It is strange to think that the elected persons are firstly the member of political party rather than the elected representatives.<sup>12</sup> The representatives are elected because they belong to a particular political party.<sup>13</sup> It can be said that there is no importance of their work and commitment. The candidates for election are selected by the head of political party. Generally, in the process of the selection of candidates, the principle of particular party is not followed. For the selection of candidates in election, the political party should consider the choice of the public. The choice of the people should be given importance

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<sup>11</sup> Vinod Bhanu, Recall of Parliamentarians: A Prospective Accountability, 42 EPW 20-23 (2007) <https://www.jstor.org/stable/40277121>

<sup>12</sup> Jennings Ivor, *Parliament*, 25, (Cambridge University Press, Cambridge, 2<sup>nd</sup>edn.) (1957).

<sup>13</sup> Tomkins Adam, Talking in Fictions: Jennings on Parliament, (67 *The Modern Law Review* 777) (2004)

in the selection of a candidate for the election. The consideration of a public choice in candidate selection is the base of free and fair election.

Further, Right to Recall is also included in The Representation of Peoples Act, 1951. Although, there is no provision of recall under the Representation of Peoples Act, 1951 in case of dissatisfaction or incompetence of the elected person. There is only some provision regarding the vacant of seat in case of certain offence. Varun Gandhi presented the 'Representation of the People (Amendment) Bill in 2016 regarding the recall of MPs and MLAs in case of avoiding their duties.<sup>14</sup> In present time, Right to recall is prevailing in Bihar, MP and Chhattisgarh.

The Representation of Peoples Act (RPA) 1951 talks about Right to Recall. RPA does not account the ground of incompetence or the dissatisfaction of the electorate as the ground for recall and vacation. It only provides for the vacation of the office upon the commission of the certain offence. In 2016, Varun Gandhi introduced the 'Representation of the People (Amendment) Bill' in Lok Sabha, with the intention of recalling MPs and MLAs for non-performance.<sup>15</sup> Presently, Right to recall exists in the local bodies of Bihar, Madhya Pradesh and Chhattisgarh.

#### **4. ADVANTAGES OF RIGHT TO RECALL**

- It gives the authority to decide the commitment of an elected person.
- There is less chance of criminals for entering in politics.
- It promotes dimensions for direct democracy.
- For strong democracy, the right to recall must be granted as well as the right to vote.
- The recall system restricts candidates from spending crores of dollars during election because of recall procedure.
- Election promises would be kept by the representatives due to the fear of being kicked out if he did not keep promises.

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<sup>14</sup> Ipsita Mishra, Right to Recall- Can this clean up the Indian political system?, The Hindu, Sept 30, 2017

<sup>15</sup> Ibid



- The very essence of democracy is a free and fair election. People should vote, who should be elected and who should be removed based on their trust in the elected official.

## **5. DISADVANTAGES OF RIGHT TO RECALL**

- There is uncertainty about how long an elected representative will retain in the office. Because of uncertainty, it is difficult to make a plan for public welfare.
- Opposition member can make issue in the smallest mistake of elected person and can favour a recall election.
- An elected person would continue to spend large sums of money in order to please the public.
- There would be constant political turmoil, and politicians would be preoccupied with retaining their seats rather than working for development.
- Although the right to recall is an innovative idea, it must be avoided because of the pragmatism test.
- In a democratic country like India, it can be pointed out whether the right to recall has accomplished its purpose in the minimum local government frameworks that gives such a right to the voters.
- It gives an additional burden on Election Commission because of re-election.
- There is a more chance of misusing right to recall rather than public welfare.
- The elected person works under continuous pressure for best performance.

## **6. CONCLUSION**

Before implementation of the Right to Recall, democratic country should analyze this system whether it is easily understandable by the public. The evolution process would not end there; we would need to educate people about the issue, its pros and cons, and the results of anti-incumbency votes or signatures. It would need to be audited by an independent authority under the election commission or some newly formed agency.

For example, if ten lakh people sign a petition against the incumbent in a constituency, who will verify and audit the signatures? Who will be in charge of the recall process? What if the incumbent files a legal challenge? Isn't it likely that the court would take years for deciding the matter, and then it will cause instability in the system?

No one can deny that because of this situation, it would be very easy for the defeated candidates to support against the winning candidate. Furthermore, no one, no matter how good they are, can satisfy everyone. As a result, in the absence of a proper evaluation system and with widespread ignorance about the government's policies and procedures, many people are likely to make decisions based on perception and ignorance rather than reality.

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