

## RIGHT TO RECALL (HOW TO ENSURE ACCOUNTABILITY TO VOTERS?)

By

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*"Politics without principles, Education without character, Science without humanity, and Commerce without morality are not only useless, but also positively dangerous". —Sri Satya Sai Baba*

India is the largest functional democracy in the world with over 122 crore population and each Lok Sabha MP has an average electorate of 15 lakh. Among the liberated nations, in the post-colonial world, India has the unparalleled record of successive elections. It also owns the glorious distinction of being the world's largest functioning democracy. Democracy is a system of living on the basis of certain social values. Freedom, Equality, Fraternity, Fundamental rights, Social Justice and Independence of judiciary in total one can say as "Democracy is not just a form of Government, but also a way of life". India follows Representative Democracy. Election is an inevitable process of Representative Democracy. Right of the people to elect their representative is the fundamental feature of this system. Now days, the evil of corruption has become rampant deteriorating the features of democracy. The people are become vexed and forming an opinion of right to recall the elected member if he or she does not discharges the functions in an efficacious manner. Even though, earlier he or she is an honest, after chosen as elected yielding to corruption, abuse of power *etc.*, without standing on their promises. The other reason is criminalization of politics also. Imagine having the power to recall your MLA or MP if he stopped paying attention to his constituency. Recall is a powerful tool to

make politicians accountable since it does not require any corruption charges against them<sup>2</sup>.

The Dictionary meaning of the Recall is the right or procedure by which a public official may be removed from a position by a vote of the people prior to the end of the term of office. Recall is the retiring of an elected officer by a vote of the electorate. Some State constitutions prescribe the procedure that must be followed in a recall—for example, requiring the filing of a petition containing the signatures of a specific number of qualified voters. The right or procedure by which a public official, commonly a legislative or executive official, may be removed from office, before the end of his term of office, by a vote of the people to be taken on the filing of a petition signed by a required number or percentage of qualified voters.

Specifically and in simple terminology it is a kind of mechanism designed to enable voter not satisfied with an elected representative to remove him/her before completion of fixed period of office initiated when sufficient voters sign a petition. Through an electoral procedure, this power of removal, constitutionally, is either granted to or reserved by the people, depending on the theory of Government and sovereignty in the country in question. The Author brings out the information on democracy and elections, consequences of not acting as per norms.

1. The author is Faculty Member, IFHE (ICFAI), Hyderabad and this paper is modified version of Paper Presentation in National Seminar on 'Electoral Reforms in India in Contemporary Constitutional Perspective' dated 22nd April, 2012 organized by Faculty of Law, University of Lucknow, Lucknow.

2. *Udit Mishra*, 'What If We Had the Right to Recall Our Leaders' Sep 13, 2011 Forbes India available at <http://forbesindia.com/article/what-if/what-if-we-had-the-right-to-recall-our-leader/28332/1> (Last Visited on June 15, 2012).

### **Brief History:—**

Recall has a history dating back to the ancient Athenian democracy and is a feature of several contemporary constitutions. The concept of recall originated in Switzerland but became operative in several American States. The recall device began in the United States in a municipality in Los Angeles in 1903. Michigan and Oregon, in 1908, were the first the States to adopt recall procedures for State officials

### ***Democracy of a high standard — ancient example<sup>3</sup> in India***

The inscriptions on the walls of the Sundaravarada Temple in Uttiramerur, near Kanchipuram, show how democracy was practised 1,000 years ago. This temple was built around 750 A.D. during the Pallava rule, but underwent a second great renovation in the hands of *Rajendra Chola* in 1013 A.D., and again in the reign of the great Vijayanagar Emperor, *Krishnadevaraya* in 1520 A.D. The village is known for its historic inscription of a written constitution that deals with elections to the village assembly, qualifications required of candidates contesting in elections, circumstances under which a candidate may be disqualified, mode of election, tenure of the elected candidates and the right of the public to recall the elected members when they failed to discharge their duties properly and so on. It is interesting how in every aspect of life the highest standard of democracy was enforced in Uttiramerur. Uttiramerur, in this context, has a message to be acknowledged.

An election is a formal decision-making process by which a population chooses an individual to hold public office. Elections have been the usual mechanism by which modern representative democracy has

operated since the 17th century. A well-evolved democratic system was functional, starting at the Saba level, between the eighth and the 16th century in South India, irrespective of the ruling dynasties: the Cheras, Cholas, Pallavas, Pandyas and Vijaynagar. The most important point to note here was the issuance of strict guidelines by the rulers, inscriptions give fair indication of the clarity of thought and zero tolerance towards financial bungling. The Sabas had to be dissolved before the election of the new one and the elections were generally conducted by the village accountant and a Judge called 'Madyasthan'. In the public services there were no holidays and therefore no one in authority could neglect public duty. "It was categorically mentioned that the elected members should provide their service for 360 days. The elected members' term of office was only one year and automatically should resign after completion of the term." They also actively practised the right to recall<sup>4</sup>. In those days if an elected member of the Saba committed a crime or violated law, he was immediately sacked. Such has been our rich and exemplary past.

### ***Genesis and current day state of affairs***

Switzerland and the USA pioneered this concept in the late 19th century. But most constitutional experts and political observers have panned the idea of recall in India. In India it was the late *Jayaprakash Narayan* who had first given a call for the right to recall the elected representatives on November 4, 1974 during his Sampoorana Kranti (Total Revolution) movement against the Congress Government headed by *Indira Gandhi* at the Centre followed by the Janata Government in 1977 and again during the National Front Government

3. Dr. R. Nagaswamy, Democracy of High Standard-Ancient India' available at <http://www.hindu.com/fr/2003/10/10/stories/2003101001421200.htm> (Last Visited on June 15, 2012)

4. Brij Khandehval, 'How ancient India upheld democracy, kept corruption at bay' available at [http://www.dnaindia.com/scitech/report\\_how-ancient-india-upheld-democracy-kept-corruption-at-bay\\_1610437](http://www.dnaindia.com/scitech/report_how-ancient-india-upheld-democracy-kept-corruption-at-bay_1610437) (Last Visited on June 15, 2012).

in 1989. The right to recall the elected representative has remained notional. The process of formulation any legislation on the subject has been derailed by the political parties. It is well established fact that political leaders are reluctant to enact any legislation which depicts that they are hesitant to maturing into participatory democracy.

In *State of Madhya Pradesh and others v. Shri Ram Singh*<sup>5</sup> Hon'ble Supreme Court observed that, "Corruption in a civilized 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 spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but also aimed and targeted at them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence shaking of the socio-economic political system in an otherwise healthy, wealthy, effective and vibrating society".

In the US, where 18 States have the provision to recall at the State level and 36 at the local level, 75 percent of all recalls happened at the city council or school board level. At the State level, California initiated 32 gubernatorial recall attempts since 1911, but the 2003 recall, when *Arnold Schwarzenegger* became governor, was the first ever to lead to a vote. In India, the winning candidate has just 10 percent to 20 percent of the total votes. A recall may work against the electorate since the politician will be wary of taking tough decisions that may endanger his position in the short-term even though they may be beneficial for the public in the longer term.

5. AIR 2000 SC 870

Criminalization of politics is a serious issue for any democratic polity and more so for a developing democracy such as India. The growing influence of mafia over every constitutional institution and growing need of unlimited amounts of money for fighting an election are some of the most worrying factors, which presently threaten the very purpose of electoral democracy and representative governance. If law does not prevent the entry of lumpen elements and ill-gotten money it will not be possible to protect the fabric of democracy and rule of law as envisaged by our Constitution.

### ***Steps towards Right to Recall:***

The Nitish Kumar Government has decided to empower the voters of the urban civic body polls to call back their elected representatives if they are not satisfied with their performance. The state cabinet has agreed to the 'right to recall' proposal in this regard by giving its nod to the amendment to the Bihar Municipal Act. It will enable the Government to remove the elected representatives of the municipal corporations – Nagar Parishad and Nagar Panchayat -if two-thirds of the voters of their constituencies submit a signed petition to the urban development department against them. The department will look into the merit of the petition and take steps for the ouster of the councillors if it is convinced that they have lost the confidence of two-thirds of the voters. Earlier, the Act had a provision for the removal of a councillor only if two-thirds of fellow councillors filed a written petition against him. But now, the Government has vested the power directly with the voters. There is already a provision under the Panchayati Raj system in the State for the recall of elected mukhiyas<sup>6</sup> (village headmen). It

6. Bihar gets right to recall corporators available at <http://indiatoday.intoday.in/site/story/urban-civic-polls-bihar-gets-right-to-recall-elected-representatives> (Last Visited on June 15, 2012).

will now be applicable to the elected representatives of the urban civic bodies as well.

### *Advantages*

1. Recall is a process which enables voters dissatisfied with an elected official to replace him before the expiry of his term of office, which will make them more accountable to the people.
2. The 'recall' device has also the potential to encourage the citizens to keep themselves side by side of contemporary public issues in order to monitor the conduct of their elected representatives.
3. It provides a way for citizens to retain control over elected officials who are not representing the best interests of their constituents, or who are unresponsive or incompetent.
4. This mechanism holds that an elected representative is an agent, a servant and not a master in a democratic State.

### *Disadvantages*

1. How will the Government determine whether the petition submitted to it for the recall of the elected representatives carry the signatures of the genuine voters?
2. How will it be ensured that the signatures of such a large number of people have not been forged?
3. It can lead to an excess of democracy, where the threat of a recall election lessens the independence of elected officials.
4. It undermines the principle of electing good officials and giving them a chance to govern until the next election, and that it can lead to abuses by well-financed special interest groups.
5. It will only compound an already problem-ridden system.
6. Country like India is not in a position to hold election so frequently.

It is obvious that recalling the elected representatives is elaborate and expensive process. For this, the people have to choose the representative with good track record. It became prevalent practice, the alleged representatives on certain criminal and civil cases which are in pending stage, contesting in elections without pronouncing the representative as innocent or acquittal. For this purpose Special Courts has to be established for the expedite disposal of cases.

### *Special Courts for Speedy: The Remedy*

The National Commission for Review of Working of Constitution, a commission which had been set up by the Government in the face of tremendous opposition, also suggested that the criminal cases against politicians pending before Courts either for trial or in appeal must be disposed off speedily. If necessary, Special Court may be established for this purpose. A potential candidate against whom the police have framed charges may take the matter to the Special Court. This Court should be obliged to enquire into the matter and take a decision in a strictly time bound manner. The function of this Special Court basically should be to decide whether there is indeed a *prima facie* case justifying the framing of charges. The Special Courts should be constituted at the level of High Courts and their decisions should be to decide whether there is indeed a *prima facie* justifying the framing of charges. The Special Court should decide the cases within a period of six months. For deciding the cases, these Courts should take evidence through Commissioners. Unfortunately, there are no takers for these suggestions.

### *Attentive People and Energetic Media*

If the people are not vigilant and media vibrant, the opinions would not consolidate into pressures and develop into social movements to effectively manage the democracy. In this country with so much

of illiteracy, poverty and exploitation, people cannot afford to be dormant, inactive or reluctant. Freedom and Democracy has to be protected by everyone. They cannot be left with groups of person with vested interests, called political parties. The voters are expected to draw their information from the manifestos and commitments made by political parties and insist on their realization. Instead of blaming only politicians and political parties for the present state of affairs forgetting the fact that a minimum of forty percent of voters do not run to political booths, people should exercise their right of franchise. Only with the support of efficient groups and systems such as active citizenry, exposing media, effective legal frame work, efficient enforcement mechanism and responsive judiciary it is possible to achieve a reformed electoral system.

### ***Consolidation of Voter's Right to Recall by Statute in irredeemable circumstances***

Hence, there is a need for the Parliament to stand together and raise above petty political consideration and make a comprehensive law consolidating the right to recall by voters for eliminating the criminals and encouraging responsible citizen to enter the fray of democratic election and fortify the system.

### ***Views on 'Right to Recall'***

Union Finance Minister *Pranab Mukherjee* claimed that the provision for right to recall elected representatives and reject candidates is not feasible in a huge country like India and if implemented, would only create political instability<sup>7</sup>.

Karnataka Governor *H.R. Bhardwaj* has said that right to recall elected representatives was not feasible in a "huge" democratic

country like India as it would create political instability. He also said that instead of pitching for right to recall, voters should exercise their voting rights prudently by choosing a good candidate.

Some opine that it was a dangerous trend that would encourage mobocracy<sup>8</sup> in the country.

Recently the Chief Election Commissioner has said that Right to recall elected representatives and fixing retirement age for them are "not practical solutions" to address issues related to performance of politicians<sup>9</sup>.

### ***Conclusion and Suggestions:***

1. Right to reject— the idea that there should be an option on a ballot paper (or a voting machine) to reject all candidates needs extensive and thorough discuss on this issue.
2. It is the choice of the people to elect the member. People should not elect bad elements to Parliament and State assemblies.
3. Political parties to shun using caste factor to fight elections as it divides communities.
4. The authors suggest that in favour of reforms like auditing the accounts of political parties and ensuring that donations given to them are subject to checks.
5. There should be thorough vigilance over criminals in politics and use of black money during elections creating an embarrassment.
6. It is safer and would not lead to constant political upheaval. Parties

7. *Pranab* says right to recall not feasible in India, November 20, 2011, The Times of India available at [http://articles.timesofindia.indiatimes.com/2011-11-20/india/30421868\\_1\\_minister-pranab-mukherjee-today-lokpal-issue-anna-hazare](http://articles.timesofindia.indiatimes.com/2011-11-20/india/30421868_1_minister-pranab-mukherjee-today-lokpal-issue-anna-hazare) (Last Visited on June 15, 2012).

8. A condition in which the lower classes of a nation control public affairs without respect to law, precedents, or vested rights.

9. Right to recall, retirement age for politicians not practical: *CEC Quraishi*, Times of India available at <http://timesofindia.indiatimes.com/india/Right-to-recall-retirement-age-for-politicians-not-practical-CEC-Quraishi/articleshow/12561549.cms> (Last Visited on June 15, 2012).

would be forced to give ticket to a candidate with clean and good past record. Good representatives can actually be expected to keep up their performance for next five years.

7. In our parliamentary constituency in India has 20 lakh to 30 lakh voters. If 50 percent of them need to petition for a recall through a signature campaign, it would be impractical to verify all signatures.

## BONDED LABOUR SYSTEM IN INDIA - AN OVER VIEW

By

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### *Abstract*

Bonded labour, which is characterized by a long-term relationship between employer and employee, is usually solidified through a loan, and is embedded intricately in India's socio-economic culture, a culture that is a product of class relations, a colonial history, and persistent poverty among many citizens. Also known as debt bondage, bonded labour is a specific form of forced labour in which compulsion into servitude is derived from debt. Categorized and examined in the scholarly literature as a type of forced labour, bonded labour entails constraints on the conditions and duration of work by an individual. Not all bonded labour is forced, but most forced labour practices, whether they involve children or adults, are of a bonded nature. Bonded labour is most prevalent in rural areas where the agricultural industry relies on contracted, often migrant labourers. However, urban areas also provide fertile ground for long-term bondage.

Characterized by a creditor-debtor relationship that a labourer often passes on to his family members, bonded labour is typically of an indefinite duration and involves illegal contractual stipulations. Contracts deny an individual the basic right to choose his or her employer, or to negotiate the terms of his or her contract. Bonded labour contracts are not purely economic; in India, they are reinforced by custom or coercion

in many sectors such as the agricultural, silk, mining, match production, and brick kiln industries, among others.

### **Origins and Causes of India's Bonded Labour Problem**

Bonded labour systems from a variety of causes, which are highly debated in the literature:

- Ingrained legacy of caste-based discrimination,
- Poverty and inequality,
- Inadequate education system, unjust social relations, and

Additionally, India's colonial background and caste system have made it difficult to delineate the history of labourers' "unfreedom," as termed by several authors, and to understand legal and actual differentiations between slavery under British rule and debt bondage and child labour today.

There are many cultural reasons for the persistence of child labor in India. An expectation that children should contribute to the socioeconomic survival of the family and community, as well as the existence of large families, land scarcity, and inadequate enforcement of labor laws are contributing factors to this problem. In urban areas, following the migration of families to overpopulated cities, the disintegration of such