

Right to Recall, Right to Reject, Right to Free and Fair Election: A Review in the Perspective of Indian Democracy

Dr. Jagbir Singh

Assistant Professor in Political Science
Govt. College- Julana (Jind),
Haryana, India.

Abstract: *Today, in a democratic setup, if all electorate are morally obligated and legally entitled to elect the representative to run the government, they should reserve the right to un-elect their representatives before the completion of their fixed term if they fail to ensure good governance. India is a well-known largest democracy in the world and in a democratic system; free and fair elections play a vital role for good governance. A democracy requires public participation and transparency in independent accountability and responsibility. Therefore, to hold elected representatives accountable during their term, the concept of recall might be a better solution. Today, despite valid concerns about voter turnout in established democracies around the world, the idea of recall is gaining traction in India. The introduction of the groundbreaking concept of "None of the above" (NOTA) in the electoral process has opened up new avenues in the Indian political landscape. Before delving into the arguments for and against recall, it is important to engage in a thoughtful and nuanced discussion on this topic. The present paper is a modest attempt to review 'Right to Recall', 'Right to Reject' and 'Fair Elections' in Indian democracy.*

Keywords: *Right to Recall, Free and Fair Elections, Responsible Govt., NOTA.*

I. INTRODUCTION

Most of the scholars assume the fact that individuals who are elected are competent and men of character and respectability, then they would be able to make the best even of a flawed Constitution. If they are deficient in these qualities, the Constitution cannot help the country. A Constitution, like a machine, is something inactive. It comes to life because of the ones who control it and operate it, and India needs today just a handful of sincere men who will have the interests of the country before them. It requires men of strong character, men of vision, men who won't sacrifice the interests of the country at the expense of smaller groups and regions. We can only hope that the nation will produce such men in abundance.

Actually, India exercises the parliamentary democracy where the fundamental rights of citizenship may be exercised under a state of freedom, equality, and transparency with due consideration for the views of the majority and also in the interests of the country. Democracy is the system of government which brings individuals from the private to the public sphere, legitimizes and regulates the freedoms of humankind and recognizes man as human, and therefore acknowledges a system of government capable of making all decisions in a transparent, rational, just, fair, and responsive manner. It promotes public interest, self-governance, and self-administration, and decentralizes power from the gross defeat level and accepts self-rule, for example, Swaraj. Good governance is critical for economic development, equity, and social empowerment of ordinary citizens. Independent India has been a massive experiment in democracy. However, Indian representative democracy faces several issues and challenges. The limited participation of citizens has significantly decreased the responsiveness of elected representatives. Furthermore, policies made by these representatives are not aligned with the desires of the citizens. The issue is not unique to

India. Representative democracies all over the planet have sought solutions to the primary defect in it. The right to recall is one of them.

Initially, this framework was introduced and was highly developed and prevalent in the Greek City states. It then gradually spread to the rest of the world, taking on different forms of direct democracy. In India, however, the current legal system has been deemed inadequate and ineffective in resolving the issue of good governance. Despite being presented as the cornerstone of a functional democracy, the parliamentary organizations have not been serving the people effectively, leading to the rise of "Right to Recall" as a relevant and compelling topic of discussion and debate. The aim is to eliminate corrupt and ineffective representatives. When India was established as a republic, various institutions were established for the benefit of the people. Good governance should be considered an integral part of the democratic system, but in India, the common people believe that there is government but no governance. There are various other control mechanisms that aim to ensure good governance, but due to their failure in achieving their intended purpose, there is a growing demand for review mechanisms.

II. RIGHT TO RECALL

As we know that the practice of "Right to Recall" has been a prominent feature of Swiss political system and it allows the citizens of a direct democracy to initiate a vote on the continued eligibility of a currently elected representative to hold office. Essentially, it provides an opportunity for the electorate to remove elected officials who are not performing their duties effectively. The "Recall procedure" is adopted in a direct democratic system that enables the appropriate authority, or a specified number of citizens, to request a vote by the electorate on the issue of whether a currently serving public official should be ousted from office before the end of their intended term.

Moreover, for the recall process to be considered as an instrument of direct democracy, the legally mandated procedure to interfere with the duration of an elected official's term in office must involve the active participation and the vote of the electorate. The collective right of the citizens to recall their legislators is a means to ensure their accountability towards the people. It is the right of the citizen to determine whether a misbehaving or under-performing representative should continue in office for a full term or not.

In direct democracy, the "Right to Recall" serves as a mechanism to remove elected representatives from office due to poor performance or, in some cases, abuse of their position. Conversely, when the drive and decision in such cases comes solely from legally established authorities, such as the executive or the judicial branch, without the participation of the electors at any stage of the process, the procedure is more appropriately referred to as impeachment. Its definition implies that the recall process should meet a set of criteria, which distinguish this system from others aimed at ending a elected official's term in office, such as impeachment. Among the practices adopted by nations with a direct democratic system, the recall process is the least widespread and hence the least implemented.

III. RIGHT TO VOTE & FAIR ELECTION

All of us know that the political decision is an indispensable requirement for an energetic and participatory democratic system, as seen in India, which is the world's largest democracy. Despite the absence of constitutional provisions for the formation and functioning of political parties, they are at the heart of a parliamentary democracy. It is impossible for a parliamentary democracy to exist without political parties. The Law Commission of India has rightly pointed out that it is necessary to make our constitutional framework more representative, fair, and transparent to strengthen our democracy, counter the trend of fragmentation and disintegration of political parties, and ensure stability in our governance.

The Commission further cites a Supreme Court judgment to emphasize that political parties are essential to the governance of a democratic society. They serve the critical role of articulating and aggregating public opinion and will, and act as a bridge between the general public and the government, particularly its political wing. Although they are a critical component of a democratic system, it is disheartening that many of them are extremely undemocratic in their internal workings. We are all

aware of political parties, especially prominent national and regional ones, in which internal elections are rarely held. These internally undemocratic parties often claim to be the guardians of democratic tradition in the country or in their respective states.

The Indian electoral process has failed to keep out criminals, rowdy, and anti-social elements from participating and, in some cases, even dominating the political arena, contaminating the constitutional and parliamentary process. Over the years, there has been growing concern in India about various aspects of the electoral system, and issues have been discussed by various committees. However, without a powerful post-election control mechanism over elected representatives, especially in a system of indirect democracy, elected officials are not accountable to the people during their term in performing their duties honestly. In India, where a caste-based cultural structure influences general elections, regionalism, sponsorship of money and muscle power is a common practice, leading to corrupt practices and abuse of power across the country. As the Supreme Court rightly observed, corruption in a civilized society is like a disease that, if not recognized in time, is sure to tarnish the commonwealth of the nation leading to tragic consequences. It is a scourge that is not only infectious but, if left unchecked, can spread like a fire in the wilderness.

Since the right to vote and its exercise by eligible citizens is the essence of any democratic system, and citizenship has traditionally provided the basis for electoral eligibility in public elections throughout the world, the right to vote has emerged as a crucial civil liberty of eligible citizens. It is a well-recognized right under both domestic law and international instruments and agreements. Unlike other rights enshrined in major human rights treaties the right to vote has been deemed a privilege of citizens. There is a close connection between the right to vote and the right to review. The success of a democratic system depends on the expression of public will.

The Constitution of India has granted all citizens of the country with the right of adult suffrage, enabling them to participate in the election process and help shape the nation's governance. The concept of adult suffrage provides every resident of India, who is above the age of eighteen, the right to vote with the aim of maximizing participation and providing young citizens the opportunity to choose their leaders through the established mechanisms of the electoral process. It is crucial that the best individuals should be selected as representatives of the people for effective administration.

The Supreme Court of India has stated that free and fair elections are a fundamental component of the Constitution and include the right of a voter to cast their vote without fear of retaliation, coercion, or pressure. The National Commission has also highlighted the rise of undesirable practices such as the use of money and mafia power, as well as the criminalization, corruption, communalism, and casteism that pervade the election process.

Unfortunately, the electorate often has no say in the selection of candidates for elections and most of the contestants are chosen by a minority of votes under the first-past-the-post system. If the right to recall were introduced in the Indian political system, it would brighten the dark times of the democratic system. Political opponents would make a fuss about even the smallest issues. People would be able to scrutinize the actions of their elected leaders and ensure that they serve the nation under the watchful eye of the common citizens.

IV. INDIAN JUDICIARY & RIGHT TO REJECT

It is widely recognized that most of the political parties in India lack a clear framework to govern themselves. They have no plan in their political manifesto to guide their actions during general elections or to strengthen the democratic system of governance for the long term. As a result, there has been a gradual decline in the electoral process. The Election Commission has therefore changed its traditional approach to the administration, regulation, and control of elections and taken steps in various areas to address some of these concerns.

The Central Information Commission made a significant move in response to a complaint filed by the Association of Democratic Reforms and Mr. Subhash Agrawal, an RTI activist under the Right to Information Act and ruled that the six

respondent political parties are public authorities as they are heavily funded by the government. This ruling by the CIC has made it mandatory for political parties to be accountable to the citizens of the country for issues such as their sources of funds, details of expenditures, and the rules for the distribution of party tickets in elections to candidates.

The Supreme Court has caused a great uproar in the political circle of the country by delivering groundbreaking decisions. The court's judgment has the potential to change the way the Indian democratic system operates by disqualifying convicted individuals from the electoral process and providing the electorate with the option of negative voting. The court has directed the Election Commission of India to include the option of "none of the above" (NOTA) in order to clean up politics and encourage greater participation among citizens. The court properly emphasized the importance of granting this right of not voting and equated it with the right to vote in a pluralistic democracy.

The court held that the strength of any democratic system ultimately depends on its ability to ensure citizen engagement and accountability to the government. The option of negative voting will not only encourage a larger majority to go to the polling booths who do not exercise their franchise due to the absence of worthy candidates but also curb the uncontrolled practice of proxy voting supported by political parties. The Supreme Court also held that the provisions of Rules 41 (2) and (3) and 49-O of the Election Rules, 1961 are invalid and ultra-vires to the extent that they violate the secrecy of voting mandated by Sections 128 of the Representation of the People Act and Article 19(1) (a) of the Constitution of India. The NOTA option gives the voter the ability to express their objections with the type of candidates being put forward by the political parties.

V. NEED OF ACCOUNTABILITY

The Indian political system is facing a steady decline in standards, and the citizens are in dire need of a system that allows them to express their dissatisfaction with the candidates put forward by political groups. The aim of the Indian electoral process is to truly reflect the will of the people, but the current system fails to ensure vertical accountability. The introduction of the right to negative vote in India goes beyond the mere aim of achieving certain objectives, and is instead a post-election measure aimed at ensuring accountability and responsiveness. This requires increased political sensitization and awareness among the masses.

However, unless the current system is changed and implemented during the pre-election process, it may lead to some challenges. This is an attractive idea in theory, but in reality, it may bring about practical difficulties and unwilling consequences. There are other measures that can be taken to improve the pre-election process. The right to negative vote limits the entry of bad, criminal, exploitative, greedy and unqualified representatives in the council. This idea has gained popularity among the upcoming leftist revolutionaries who wish to rework the idea of democracy, but they are unable to explain whether they are opposed to the current concept of democracy or just the current practice.

VI. CONCLUSION

Now we can point out that in India, the current form of representative democracy operates within a structure that ensures social, economic, and political justice, equality of status and opportunity, and one person, one vote and free access to voting rights, which provides a minimum level of inclusiveness. However, the implementation of direct democracy can easily lead to less inclusive outcomes. Based on various committee reports, legal opinions, and various other factors, it can be concluded that the right to negative vote is worth considering in the current political scenario in India, in order to keep elected representatives in check. Therefore, India needs to provide Right to reject in the perspective of Right to Recall for the establishment of responsible government in the changing scenario of parliamentary democracy in the era of coalition governments.

References

1. Ajay Amitabh Suman, 'Right to Recall', Times of India, 17 Jan. 2021.
2. Law Commission of India, 170th Report on Reform of the Electoral Laws, 1999.
3. International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI).

4. Goswami Committee on Electoral Reform (1990), Vohra Committee Report (1993), Indrajit Gupta Committee on the State Funding of Elections (1998), The Second Administrative Reforms Commission (2008).
5. Indira Gandhi vs. Raj Narayana, AIR 1975, SC 2299, para. 45.
6. Kihoto Hollohan vs. Zachilhu, 1992, SCC 651.
7. The Recall of Elected Representatives Bill, 2013.
8. Right to Recall: Solidarity of Democracy. Available at: upscportal.com (visited on Dec. 29, 2013).
9. R.R. Roy, 'Right to Recall- Whether a viable option in the Indian Context', Pleaders, 23 March, 2018.
10. <https://www.iasparliament.com/article/the-right-to-recall>.
11. <https://timesofindia.indiatimes.com/readersblog/ajayamitabhsumanspeaks/right-to-recall>.
12. <https://www.legalserviceindia.com/legal/article-8221-need-for-recall.html>.