

Recall of Parliamentarians: A Prospective Accountability

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It is time Indian voters got the right to recall non-performing elected representatives and a chance to suggest to the parties their choice of candidates. An extra-parliamentary body must also be set up to scrutinise the conduct of Members of Parliament inside and outside the House.

The views expressed here are personal and not meant to represent the opinions of the organisation with which the author is associated.

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Recall of parliamentarians is said to be a democratic method, by which citizens have the power to remove or in effect de-elect a Member of Parliament (MP) before the end of the term of office. This power of removal of a MP is an instrument for the constituents to scrutinise their performance and conduct and ensure good practices and delivery of services that an elected representative is expected to follow. Recall is a unique political device exercised by the electorate to remove a particular legislator from office. In India, this power is not granted to the citizens either by the Constitution or by a statutory device.

The topic surfaced in the recently concluded Commonwealth Parliamentary Conference as the host country's plenary subject for deliberation.¹ Somnath Chatterjee, speaker of the Lok Sabha appears to be an ardent advocate of this right.

Under this manner 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 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. In general, MPs seem to be uncomfortable about the recall process.²

In India we adopted a representative parliamentary democracy where the power of removal of a representative is with the Parliament alone. The prospect for determining the continuation of representatives in office till the end of a term is not with the people, though the power of electing them lies directly with them. Candidates who contest the election in nearly all cases are not the peoples' choice. It may seem strange to consider members as party politicians before considering them as elected representatives; however, they are elected because they are party politicians [Jennings 1957]. They are elected not because of personality, personal achievements or personal policy preferences, but because they are their party's candidates [Tomkins 2004]. The choice of candidature is determined by the leaders of political parties, which need not always follow principles of inner party democracy. People should be given a chance, (and it is fair to have a mechanism by which people have this choice) to suggest to the parties their preference of candidates for the election. The question is one of legitimacy of representation unless the electoral system is corrected accordingly, and public will must be reflected in the choice of candidates. Inclusion of the provision for public choice of

candidates should be among the standard features of free and fair elections.

Recall Around the World

There are a few examples of a successful recall process in the us where recall was introduced as a populist movement. The us constitution does not make provisions for the recall of us senators, representatives to Congress, or the president or vice-president of the country. But in some states, recall efforts against state legislators come up once in a while. The recall device began in the us in a municipality of Los Angeles in 1903. There are some partly successful recall efforts in California, where only four recall petitions qualified for the ballot among 107 recall efforts initiated from 1911 to 1994 [Data Paper 2007]. In Canada also, support has been growing for the recall measures. The popularity of the recall instrument is not in question. The Reform Party of Canada has recall as a part of its political agenda, and the recall bill³ was introduced in

parliament through a private member's bill [Marquis 1993].

In Uganda, the constitution itself provides the right of recall to its citizens.⁴ Electorates of any constituency and of any interest groups (referred to in article 78) have the right to recall their MP from office before the expiry of the term of parliament on any of the following grounds:

- Physical or mental incapacity rendering that member incapable of performing the functions of the office; or
- Misconduct or misbehaviour likely to bring hatred, ridicule, contempt or disrepute to the office; or
- Persistent deserting of the electorate without reasonable cause.

The process, in Uganda, requires a petition in writing setting out the grounds relied on and signed by at least two-thirds of the registered voters of the constituency or of the interest group and the petition to be submitted to the speaker.⁵

In Guyana, the national assembly recently passed a recall legislation.⁶ It will enable representatives of parliamentary

parties to ask the speaker of the national assembly to declare a seat vacant on the basis that the party has lost confidence in a party member.⁷ This recall power is not with the electorate but with the parties in Guyana. This legislation was aimed at addressing the issue of crossing-the-floor or defection.

In Switzerland, the provisions for recall currently exist but are seldom used. Venezuela, where the president is elected directly and may be subject to recall, is unique in applying the system very broadly. Countries like Sweden, New Zealand, Zambia and Germany are also reported to have started debating the recall process of incompetent and corrupt elected members as a significant democratic tool for ensuring accountability among the elected representatives of the people.

Provisions of the recall should not be mishandled. An infallible mechanism without any loopholes, with non-complicated rather than stringent measures, can add to its significance. Overuse

and misuse of the recall process cannot be permitted at any cost.

Scope for Misuse?

The right to recall would enable the electorate to exercise control over their representatives who do not pay enough attention to their constituents. Recall as a direct democracy mechanism, the critics of direct democracy point out, weakens representative democracy by undermining the role and importance of elected representatives. Since it is unlikely that any democratic system will ever be purely direct, weakening elected representatives has a negative effect on the democratic system. It is also argued that direct democracy disciplines on the behaviour of elected representatives, ensuring that they fully consider the likely views of voters when taking decisions on their behalf [International Institute for Democracy and Electoral Assistance 2004].

The other side of the argument is that there would be many potential abuses of this power. It can be misused by special

interest groups with money power and genuine politicians may become victims of this power; even the position of prime minister and other ministers may be threatened under the sword of recall. A possible recall election may pose a threat to the independence of elected members and can lead to an "excess of democracy" [Data Paper 2007]. The likely financial and administrative burden of holding recall vote also may be a matter of issue. Nevertheless, the recall process enables to re-engage citizens with politics and democracy.

MPS accountable to their constituents for their performance and for the integrity of their conduct act on behalf of the people. The legitimacy of their representation is recognised by the electorate. However, legitimacy cannot be taken for granted and the principle of accountability cannot be an abstraction. The accountability of elected representatives, must convey a functional reciprocity. They are accountable to their own electorates for their performance in office. There has to be an effective procedural and institutional

mechanism in place for the realisation of accountability through effective electoral sanction and frequent monitoring process, reporting procedures to inform constituents, standards and enforceable code of conduct, etc.

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 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 [Beetham 2006].

Restoring Public Confidence

The recall process we discussed above is an example of vertical accountability. But in India, effective monitoring and scrutiny

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mechanisms by the public is not adequately strengthened or not in place at all. There are two premises; one is the performance and conduct of the members inside the Parliament and the other is conduct outside the Parliament. There are many avenues that MPs can engage in the business of the Houses. They can raise local issues or issues of national importance, overseeing the government functioning and influence the policies of the government through various measures and deliberations. But an individual MP's performance is not subject to scrutiny officially or by civil society groups in India. This leaves MPs rather free from responsibilities and with the freedom to engage in their private interests. Parliament has to adopt certain mechanisms to assess the performance and conduct of its members regularly at an annual or sessional basis. MPs should be subject to monitoring by an independent official body or parliamentary commission, which has the power to examine the work and conduct of individual MPs and report to their respective parties, electorates, civil society groups, media, etc, or other bodies like election commission, etc. Based on these performance profile reports, the electorate can begin the process of recall.

These practices will enable the electorate to impose certain sanction on their elected representatives rather than to wait until the regular elections. Electoral sanction is long dated and often uncertain, and so other formal bodies or commissions have to be set up to which parliamentarians are more directly answerable for their performance and conduct [Ibid].

The recent cases of malpractices by some MPs resulted in their expulsion from the House.⁸ This has shown the explicit need for a set of norms and an inclusive nature of public code of conduct. There are certain horizontal mechanisms to address the issues of misconduct of parliamentarians that can be enforced through a set of standards of conduct. MPs are expected to observe a certain standard of conduct, both inside and outside the Houses. It is well perceived that MPs are elected to serve the public interest and enhance the public trust in the integrity of Parliament. The public's confidence in the legislature

has been showing a declining trend. Though it is related to internal order and decorum, development of the code of conduct can be seen partly as a response to this declining image of Parliament.

Need for an Outside Agency

Parliament has the power to punish or expel its members or even imprison⁹ them for their misconduct and contempt. Each House may establish the rules of its proceedings to punish its members for misbehaviour and contempt, whether committed within or outside. Suspension or expulsion of a MP is generally inherent in parliamentary institutions as a self disciplinary action required to protect the integrity of its proceedings and the dignity of the institution. It exercises its jurisdiction of scrutiny over its members for their conduct whether it takes place inside or outside the House. However, the extent and amplitude of the words "conduct of a member" have not been defined exhaustively, and it is within the powers of the House in each case to determine whether a member has acted in a manner unworthy of a member of the House. Thus, even though the facts of a particular case do not come within any of the particular heads of breach of privilege or contempt of the House, the conduct of the member may be considered as unbecoming and derogatory to the dignity of the House [Malhotra 2001]. Ad hoc committees of the House have been appointed from time to time to consider and investigate the conduct of the members and these committees have made recommendations to the House.¹⁰ Nevertheless, very often, the presiding officers fail to invoke these codes of conduct and sanctions on its erring members. Recently the need has been felt by many to address the issues of delinquency and misbehaviour of MPs through an independent extra parliamentary body rather than a body (in-house committees), which is composed of MPs itself.

As in the case of a judicial commission,¹¹ constitution of a parliamentary commission or ombudsman may be an appropriate body, which can independently scrutinise the elected representatives' performance and conduct both inside

and outside the House. This extra parliamentary body will ensure a transparency and efficacy in the adjudication process, lending no political colour to its findings and recommendations.

NOTES

- 1 53rd Commonwealth Parliamentary Conference of the Commonwealth Parliamentary Association was held during September 21-30, 2007 in New Delhi.
- 2 Opinion gathered from informal talk with several MPs by the author.
- 3 The bill would allow electors to recall an MP by circulating a petition containing the names and addresses of at least 50 per cent of the voters enumerated in that riding in the previous election, after which a by-election would be held. There, in general, a private member's bill is debated and voted upon only if that bill is chosen randomly from among others in a lottery.
- 4 Article 84 of the Constitution of the Republic of Uganda, 1995
- 5 On receipt of the petition, the electoral commission is to conduct a public inquiry into the matters alleged in the petition and submit the report to the speaker, and the speaker shall either declare the seat vacant if the report is satisfied or shall declare the petition dismissed if the report is found unsatisfactory. Subject to provisions, Parliament shall by law prescribe the procedure for the recall of MP.
- 6 The Constitution (Amendment) Bill 2007 referred to as Recall Legislation passed on August 9, 2007.
- 7 On receipt of a notice of recall, the speaker shall declare the seat of the member in the national assembly vacant, and that seat may be filled in the manner provided by law.
- 8 Eleven MPs were expelled from the House in the cash-for-query scam, and Babubhai Katara, MP from Gujarat was arrested on charges of human trafficking.
- 9 In the history of Parliament, there has been only one instance when Indira Gandhi was imprisoned by the House in 1978 on charges of breach of privilege and contempt of the House.
- 10 In the Lok Sabha for instance, a committee on the conduct of a member (the Mudgal case) was appointed in 1951, two committees on the conduct of certain members during president's address were appointed in 1963 and 1971, and inquiry committees were instituted in 2005 and 2006 on improper conduct of some members related cash-for-query scam, MPLAD Scheme, and misuse of parliamentary privileges. In Rajya Sabha, Committee on Ethics also looked into matters such as cash-for-query scam and MPLADS scam.
- 11 Proposed national judicial commission (NJC), an independent constitutional body with the power to examine charges against judges and take action against them.

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