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## Right to Recall in India: An Analysis

Senior Vice President  
Shri. **K. Neelima**<sup>1</sup>

The vote of the citizen, cast freely, fairly, and after due consideration, defines a democracy. The citizen casts his/her vote based on the promises of the candidates or the performance of the incumbents in power and a perception generated through information provided by the media, including social media.<sup>2</sup> The electorate, who returned a candidate in elections for a fixed tenure in government, may find midway that their faith in the candidate was misplaced. In such a case, the electorates have no choice but to wait till the next elections for an opportunity to oust the incumbent from office. To address this inadequacy, remedies have been provided in some of the democracies in the form of the Right to Recall (henceforth, Recall) and the No Confidence Motion (henceforth, NCM), by a re-election or replacement of one elected representative with other for the same position in the House.

Although not the same, both measures aim to bring more accountability to the elected governments for promises made to the voters. Recall confers the right upon the electorate of an elected representative to withdraw their mandate before the expiry of the usual tenure of the representative. In other words, it (Recall) provides the power to the voters to 'de-elect' their representatives from the legislature through a

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2 Philipose, Pamela (2015), 'Can An Election Be Retweeted to Victory?' in *Economic and Political Weekly*, Vol. 50, No. 7, Feb 14 available at <http://www.epw.in/journal/2015/7/web-exclusives/can-election-be-tweeted-victory.html>; accessed on Dec 5, 2016

direct vote.<sup>3</sup> On the other hand, No-Confidence Motion, in a parliamentary democracy, demonstrates to the head of the State that the elected parliament no longer has confidence partly (in one or a few members of) or the entire appointed government.

The present article seeks to examine the provisions of Recall and NCM in India and explore whether such measures can make the vote more democratic for the citizens of the country.

### Recall in India

Recall has been operational only as NCM at the national and state levels in India and as Recall at municipal level in some of the states.<sup>4</sup> Both these differ a great deal from Recall as a direct democracy measure provided in the US. Recall as a direct democracy measure entails the governments to be accountable to the voter seven after being elected for a particular tenure. The right in the US, for instance, allows the voters to demand Recall of an elected representative at the city and state levels for certain reasons, which included dissatisfaction with their functioning.<sup>5</sup> A decision on Recall is made at a special election where the voters of a constituency decide whether an elected representative should continue in office. In case the elected representative loses this Recall election, the position is deemed vacant for which fresh elections

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3 'Right to recall', along with the 'right to party platform', finds its justification in the 'basic structure' of universal democracy. When a person is voted to power by the people based on his 'party platform', the said platform assumes the status of a contract and the elected person is under an obligation to honour the same. In a universal democracy, a default on the part of the elected representative vests in the electorate an 'inalienable and non-negotiable' right to recall such a representative. Therefore, the right to recall is a democratic tool which ensures 'greater accountability' in the political system as the electorate retains control over those legislators who are underperforming or are misusing their office for their selfish gains. For details, refer Bajpeyee, Sonika, 'Right to Recall Elected Representatives: Whether Viable in the Indian Scenario?' in *India Law Journal*, available at [http://www.indialawjournal.org/archives/volume6/issue\\_1/article8.html](http://www.indialawjournal.org/archives/volume6/issue_1/article8.html); accessed on Dec 5, 2016

4 It applied to the states of Madhya Pradesh, Rajasthan, Chhattisgarh and Bihar whereas it has been practiced in Punjab as NCM.

5 National Conference of State Legislatures (2016) on 'Recall of State Officials' available at <http://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx>; accessed on Nov 29, 2016

are held. The most significant aspect of Recall in the US is that it is initiated by the people through signature campaigns, and that Recall is against the individual and not the entire elected House. Although checked with safeguards, for instance, like limitation on frequency, practiced as part of direct democracy in the US, Recall provides a direct choice to the people which neither Recall nor NCM does in India. In India, on the other hand, NCM as well as Recall, where available, does not provide the power directly to the electorate, this power is instead vested in the elected House itself.

The debate over Recall of elected representatives has a long history in the Indian democracy; the matter was even discussed in the Constituent Assembly.<sup>6</sup> The debate over Article 8A(3) was centered on the belief that the Right to Recall must accompany the Right to Elect and that the voters must be provided with a remedy 'if things go wrong'.<sup>7</sup> However, Dr. B.R. Ambedkar did not accept this amendment. While some members believed that Recall would help in political education of the people and would encourage voters to think,<sup>8</sup> others argued that it would be improper to provide a Recall provision at the infancy of the Indian democracy.<sup>9</sup> It was felt that Recall would render the constituencies a battleground between candidates and unnecessarily make them victims of political rivalry.<sup>10</sup> The concerns for maintaining accountability and responsibility of the elected representatives towards

6 "If there are any stray instances or some black sheep who having lost the confidence of their constituency still want to continue to represent that constituency in the House, for some such bad instances we should not disfigure our Constitution. We should leave it as it is, to the good sense of the members concerned." Sardar Vallabhbhai Patel on 18th July, 1947 while discussing proposed amendment on power to recall in *Constituent Assembly Debates: Official Report*, 2009, Volume IV, New Delhi: Lok Sabha Secretariat

7 Loknath Misra on Nov 29, 1948 while proposing amendment in Article 8A(3) in *Constituent Assembly Debates: Official Report*, 2009, Volume VII, New Delhi: Lok Sabha Secretariat

8 Debate on July 18, 1947 in *Constituent Assembly Debates: Official Report*, 2009, Volume IV, New Delhi: Lok Sabha Secretariat

9 *Ibid* (Debate on July 18, 1947)

10 *Ibid*

voters<sup>11</sup> were addressed through collective responsibility<sup>12</sup> of the elected House, failing which there would be a no confidence vote against the incumbent.<sup>13</sup>

The Constituent Assembly was apprehensive that NCM might not work against chairmen of the district municipalities.<sup>14</sup> At the same time, however, some members feared that village or municipal level bodies could become autocratic in absence of NCM or Recall.<sup>15</sup> This led to caution, therefore, and the NCM in India was initiated with a degree of skepticism that had translated into the provisions at various levels of government that were as safeguards against its misuse.

Since its implementation, the NCM provision has been available at the national, state and municipal levels, and had led to national governments and state governments being recalled leading to fresh elections.<sup>16</sup> The NCM provided at the municipal level had been amended in some states such as in Madhya Pradesh, Rajasthan, Chhattisgarh and Bihar, to include the Recall of the head of the elected bodies at the city, town or village level.

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- 11 N.V. Gadgil's speech on July 17, 1947 in *Constituent Assembly Debates: Official Report*, 2009, Volume IV, New Delhi: Lok Sabha Secretariat
  - 12 Saini, Mahander Kumar (1971), 'A Study of No Confidence Motions in the Indian Parliament (1952-70)' in *The Indian Journal of Political Science*, Vol. 32, No. 3 available at <http://www.jstor/stable/41854451>; accessed on Nov 29, 2016
  - 13 According to Article 75(3) of the Constitution, the Council of Ministers shall be collectively responsible to the House of the People, See: *The Constitution of India as amended by The Constitution (Ninety-eighth Amendment) Act*, 2013, New Delhi: Universal Law Publishing Co. Pvt. Ltd.
  - 14 Mohammad Tahir's Speech on Dec 28, 1948 in *Constituent Assembly Debates: Official*, 2009, Volume VII, New Delhi: Lok Sabha Secretariat, p. 1068
  - 15 *Ibid* (Begum AizazRasul's Speech on Nov 8, 1948, p. 305)
  - 16 For example, the NCM had resulted in ouster of three prime ministers Charan Singh (1979), V.P. Singh (1990) and H.D. DeveGowda (1997). See: Pramod Kumar, 'No-confidence Motions Against Various Governments', *The Sunday Indian*, Sept 19, 2012 available at <http://www.thesundayindian.com/en/story/no-confidence-motions-against-various-govts/14/40768/>; accessed on Dec 1, 2016

### NCM in Parliament and State Assemblies

Indian Parliament allows NCM in Lok Sabha with several restrictions.<sup>17</sup> First, the notice for the motion should be given by the member of the House to the Secretary-General at a prescribed time to be considered for that day, and when delayed, would be considered a notice given on the day next when the House convened. The Speaker would then place the notice before the House and if supported by 50 members, allot a time of not more than 10 days from the day of the notice for discussion of the motion. The Speaker will not allow the notice if it does not have the support of 50 members. However, this ensured that the government will have 10 days to prepare against the NCM,<sup>18</sup> and organize support by issuing whips or using other parliamentary practices. Apart from this, the three-line whip<sup>19</sup> and quorum<sup>20</sup> are essential procedures in the broader realm of trust vote and joint sittings.

In the initial years of Indian democracy; NCM was used very sparingly; the first ever NCM was moved in August 1963 after the Indo-China War against the Nehru government.<sup>21</sup> At the national level till 1970, the opposition had moved NCM 10 times, none of which, however, succeeded.<sup>22</sup> Out of these, six NCMs were taken up in the Third Lok Sabha (1962-67) and four in the Fourth Lok Sabha (1967-70).<sup>23</sup> The

17 Chapter XVII, Article 198 of Rules of Procedure and Conduct of Business in Lok Sabha, *Parliament of India*, available at <http://parliamentofindia.nic.in/lr/rules/rule17.html>; accessed on Dec 5, 2016

18 *Ibid* (Motion of no-confidence in council of ministers and statement by minister who had resigned)

19 Important events like voting or bill readings in the House that were underlined thrice - a 'three-line whip'. When issued the members from each party will have to obey the whip or risk losing their seat in Parliament. PRS Legislative Research, available at: <http://www.prsindia.org/media/articles-by-prs-team/the-whip-hand-1044/>

20 The quorum was 'presence of one-tenth of the total number of members in the House'. See: Parliament of India, Appendix I of 'Rules of Procedure and Conduct of Business in Lok Sabha' available at <http://parliamentofindia.nic.in/lr/rules/ruleappend.html>; accessed on Nov 30, 2016

21 '1963: Shaken, Stirred' in *India Today* (July 2, 2007) available at <http://indiatoday.intoday.in/story/1963-india-defeated-by-china/1/155552.html>; accessed on Nov 29, 2016

22 Saini, Mahander Kumar (1971), *op. cit.*

23 *Ibid*

government headed by Prime Minister P.V. Narasimha Rao faced three NCMs.<sup>24</sup> Prime Minister A.B. Vajpayee faced NCM twice in 1999 and 2003: the government lost NCM on the first occasion whereas it survived the motion on the second time.<sup>25</sup> The government headed by Prime Minister Manmohan Singh survived the NCM on the civil nuclear deal issue in 2008.<sup>26</sup> NCM resulted in the ouster of three prime ministers from power at the national level: Charan Singh in 1979, V.P. Singh in 1990 and H.D. Deve Gowda in 1997.<sup>27</sup>

As provided under Article 208(1) of the Constitution,<sup>28</sup> the state legislatures have made their own rules of procedure and conduct of business, including for NCM. In case of Maharashtra, when a member of the 288-member Assembly gives notice for NCM, the Speaker has two days to call the member to make the motion before the House. When the motion is placed before the House, not less than 29 members should support it. The Speaker would then allot time for its discussion being not earlier than three days and later than seven days from the day on which leave was asked.<sup>29</sup> In the case of Kerala, NCM has to be considered within 3 days while the Speaker could take not more than 10 days to call for discussion on the motion if supported by at least 20

24 'LS to Witness 26th No-confidence Motion in its History', *The Times of India*, Aug 17, 2003, <http://timesofindia.indiatimes.com/india/LS-to-witness-26th-no-confidence-motion-in-its-history/articleshow/134440.cms>; accessed on Nov 29, 2016

25 'BJP's One-vote Defeat in 1999 Was Narrowest in History', *The Times of India*, July 22, 2008, available at <http://timesofindia.indiatimes.com/india/BJPs-one-vote-defeat-in-1999-was-narrowest-in-history/articleshow/3261721.cms> and 'Vajpayee Government Defeats No-confidence Motion in Lower House', *English People's Daily*, Aug 20, 2003, [http://en.people.cn/200308/20/eng20030820\\_122686.shtml](http://en.people.cn/200308/20/eng20030820_122686.shtml); both documents accessed on Nov 29, 2016

26 Sengupta, Somini (2008), 'Indian Government Survives Confidence Vote', *New York Times*, July 23, 2008, available at <http://www.nytimes.com/2008/07/23/world/asia/23india.html>; accessed on Dec 2, 2016

27 Kumar, Pramod (2012), 'No-confidence motions against various govts', *The Sunday Indian*, Sept 19, 2012, available at <http://www.thesundayindian.com/en/story/no-confidence-motions-against-various-govts/14/40768/>; accessed on Dec 2, 2016

28 A State Assembly may make its own rules for procedure and the conduct of its business. For details, refer Article 208, *Constitution of India*

29 'Maharashtra Legislative Assembly Rules (Eight Edition)', available at [http://mla.prsindia.org/sites/default/files/state/state\\_rop/maharashtra-rop.pdf](http://mla.prsindia.org/sites/default/files/state/state_rop/maharashtra-rop.pdf); accessed Nov 29, 2016

of the 140 members.<sup>30</sup> In Chhattisgarh, the time duration is same as in the case of Kerala and at least one-tenth of the members of the House should support the notice.<sup>31</sup> Apart from the 10-days' period, NCM notice in Rajasthan requires approval of at least one-fifth of its members out of the total 200.<sup>32</sup> Similarly, in Odisha, which too has the 10-day provision, 14 members out of total 147 MLAs must support the notice for NCM.<sup>33</sup>

In Telangana, one-tenth of the House out of 119 seats must support the notice and it should be discussed within 10 days.<sup>34</sup> In Punjab, the NCM has to be taken within ten days with prior approval of one-fifth of its 117 members.<sup>35</sup> In Bihar, 23 members out of 243 in the House must support the NCM notice and it must be taken up for discussion within 10 days.<sup>36</sup> Himachal Pradesh requires support of one-third of the total 68 members in the Assembly, which then must be taken up for discussion within 10 days.<sup>37</sup>

30 'Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly, Rule 63 (1) to (5) Chap. XII, Motion of no-confidence in council of ministers and statement by a minister who has resigned

31 Chhattisgarh, Rules of Procedure and Conduct of Business, Chapter XVII motion of no-confidence in council of ministers and statement by a minister who had resigned Rule 143 (1) to (5). See: Chhattisgarh Legislative Assembly (2005), 'Rules of Procedure and Conduct of Business', [http://cgvidhansabha.gov.in/PDF%20Folder/english\\_main1.pdf](http://cgvidhansabha.gov.in/PDF%20Folder/english_main1.pdf); accessed on Nov 30, 2016

32 See Rule 132, Chapter XVI of Rajasthan Legislative Assembly, 'Rules of Procedure and Conduct of Business', [http://www.rajassembly.nic.in/rules\\_of\\_procedure.htm](http://www.rajassembly.nic.in/rules_of_procedure.htm); accessed on Nov 30, 2016

33 Odisha Legislative Assembly (1955), 'Rules of Procedure and Conduct of Business', <http://odishaassembly.nic.in/Rules.aspx>; accessed on Nov 30, 2016

34 Telangana Legislature (2015), 'Rules of Procedure and Conduct of Business in The Telangana Legislative Assembly', [http://www.telanganalegislature.org.in/documents/11831/26995/telangana+assembly+\\_english.pdf/2ceb38a0-b58e-43d0-8d40-2d0e1e0590f8](http://www.telanganalegislature.org.in/documents/11831/26995/telangana+assembly+_english.pdf/2ceb38a0-b58e-43d0-8d40-2d0e1e0590f8); accessed on Nov 30, 2016

35 PRS Legislative Research (2005), 'Rules of Procedure and Conduct of Business in The Punjab Legislative Assembly', [http://mla.prsindia.org/sites/default/files/state/state\\_rop/punjab-rop.pdf](http://mla.prsindia.org/sites/default/files/state/state_rop/punjab-rop.pdf); accessed on Nov 30, 2016

36 Bihar Vidhan Sabha (2012), 'Rules of Procedure and Conduct of Business in The Bihar Vidhan Sabha', [http://vidhansabha.bih.nic.in/pdf/RULE\\_PROCEDURE/Bihar\\_Rules-2012\\_Eng\\_final.pdf](http://vidhansabha.bih.nic.in/pdf/RULE_PROCEDURE/Bihar_Rules-2012_Eng_final.pdf); accessed on Nov 30, 2016

37 PRS Legislative Research (2007), 'Rules of Procedure and Conduct of Business in The Himachal Pradesh Legislative Assembly', <http://mla.prsindia.org/>

In Uttar Pradesh, one-fifth of the House must support the notice for NCM and the Speaker has 10 days to call for the discussion of the motion.<sup>38</sup> In Karnataka, 23 members of the House out of 224 must support the notice, which would then be taken up for discussion not later than 3 days.<sup>39</sup> In the cases of Andhra Pradesh and Arunachal Pradesh where Legislative Assemblies have 175 and 60 members, respectively,<sup>40</sup> at least one-tenth members of the House must support the NCM, which would be taken up for discussion within 10 days.<sup>41</sup>

In Gujarat, the notice requires the support of 17 out of the total 182 members and the time for taking up the discussion is seven days.<sup>42</sup> In West Bengal, approval of 30 out of the total 294 members is required for initiation of NCM<sup>43</sup> while in Assam, the motion must be supported by one-tenth of the total 126 members of the House within 24 hours and must be taken up for discussion within 10 days.<sup>44</sup>

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sites/default/files/state/state\_rop/himachal-pradesh-rop.pdf; accessed on Nov 30, 2016

- 38 PRS Legislative Research (2012), 'The Rules of Procedure and Conduct of Business Of The Uttar Pradesh Legislative Assembly', [http://mla.prsindia.org/sites/default/files/state/state\\_rop/uttar-pradesh-rop.pdf](http://mla.prsindia.org/sites/default/files/state/state_rop/uttar-pradesh-rop.pdf); accessed on Nov 30, 2016
- 39 Karnataka Legislative Assembly(2011), 'Rules of Procedure and Conduct of Business in The Karnataka Legislative Assembly', [http://kla.kar.nic.in/assembly/rop\\_e.pdf](http://kla.kar.nic.in/assembly/rop_e.pdf); accessed on Nov 30, 2016
- 40 From Election Commission of India, available at: [http://eci.nic.in/eci\\_main1/terms\\_of\\_houses.aspx](http://eci.nic.in/eci_main1/terms_of_houses.aspx)
- 41 PRS Legislative Research (2008), 'Rules of Procedure and Conduct of Business in Arunachal Pradesh Legislative Assembly', [http://mla.prsindia.org/sites/default/files/state/state\\_rop/arunachal-pradesh-rop.pdf](http://mla.prsindia.org/sites/default/files/state/state_rop/arunachal-pradesh-rop.pdf); accessed on Nov 30, 2016
- 42 PRS Legislative Research (2008), 'Rules of Procedure and Conduct of Business in Gujarat Legislative Assembly', [http://mla.prsindia.org/sites/default/files/state/state\\_rop/gujarat-rop.pdf](http://mla.prsindia.org/sites/default/files/state/state_rop/gujarat-rop.pdf)
- 43 PRS Legislative Research (2010), 'Rules of Procedure and Conduct of Business in the West Bengal Legislative Assembly', [http://mla.prsindia.org/sites/default/files/state/state\\_rop/west-bengal-rop.pdf](http://mla.prsindia.org/sites/default/files/state/state_rop/west-bengal-rop.pdf); accessed on Nov 30, 2016
- 44 Assam Legislative Assembly(2011), 'Rules of Procedure and Conduct of Business in Assam Legislative Assembly', <http://www.assamassembly.gov.in/cob-contents.pdf>; accessed on Nov 30, 2016

In Manipur, Mizoram, Meghalaya and Nagaland, which have 60 members,<sup>45</sup> 40 members,<sup>46</sup> 60 members,<sup>47</sup> and 60 members<sup>48</sup> in their respective Legislative Assemblies, the NCM notice must be supported by 10 members of the House and it would be taken up for discussion within 10 days. In Tripura, NCM motion has to be approved by not less than one-fifth of the 60 members and would be discussed in 10 days,<sup>49</sup> while in Sikkim, not less than six members out of 32 must support the motion, which would then be initiated in five days.<sup>50</sup>

Thus there are certain restrictions on the exercise of NCM both in the Parliament as also in the state legislatures. These safeguards appear to have been designed to restrict its misuse and to enable the government to prepare for the motion. However, such rules also worked in favour of the elected House and the NCM has often been used by those in power to show their strength and by governments to demonstrate their majority in the House.<sup>51</sup>

### Recall in Municipalities and Panchayats

Recall has been implemented at the municipal level in Madhya Pradesh and Chhattisgarh, and as a form of no-confidence provision in Bihar and Punjab. Recall provision in these states is based on the principle of NCM that allows the House to replace elected representatives. The Bihar Panchayat Raj Act and Rajasthan Municipal Bill, 2011 explicitly mentions no-confidence practice where the elected members initiate

45 From Election Commission of India, available at: [http://eci.nic.in/eci\\_main1/terms\\_of\\_houses.aspx](http://eci.nic.in/eci_main1/terms_of_houses.aspx)

46 *Ibid*

47 *Ibid*

48 *Ibid*

49 Tripura Legislative Assembly (2013), 'Rules of Procedure and Conduct of Business in Tripura Legislative Assembly', <http://www.tripuraassembly.nic.in/Rules%20of%20Procedure%20TLA.pdf>; accessed on Nov 30, 2016

50 PRS Legislative Research (2009), 'Rules of Procedure and Conduct of Business in Sikkim Legislative Assembly', [http://mla.prsindia.org/sites/default/files/state/state\\_rop/sikkim-rop.pdf](http://mla.prsindia.org/sites/default/files/state/state_rop/sikkim-rop.pdf); accessed on Nov 30, 2016

51 Madhavan, M.R., 'Rules of Confidence', *The Indian Express*, July 12, 2008, <http://archive.indianexpress.com/news/rules-of-confidence/334634/>; accessed on Nov 30, 2016

the process of Recall. Also, in all the four states at panchayat and municipal levels, the legislative provisions require the elected members to practice Recall by initiating NCM. The support requirement of elected representatives for Recall process varies from simple majority, one-thirds, two-thirds to three-fourths at the panchayat and municipal levels.<sup>52</sup>

Section 24 and Section 47 of the Madhya Pradesh Municipal Corporation Act, 1956 and the Madhya Pradesh Municipality Act, 1961, respectively, were amended in 2000 to introduce the provision for Recall. Section 24 and Section 47 applied to recalling of Mayor of a Municipal Corporation and President of a Municipal Council, respectively.<sup>53</sup> This direct 'election' was initiated through a proposal for Recall supported by three-fourths of the elected council. Recall under Section 47 came with various safeguards, for instance, the proposal for Recall would be verified by the District Magistrate<sup>54</sup> and that such a proposal would be initiated only after two years of the mayoral election. Following verification of the signatures on the Recall proposal, the Collector would send the proposal to the state government, which would refer it to the State

52 The Madhya Pradesh Panchayati Raj Evam Gram Swaraj Adhiniyam (1993) requires the process to be initiated by one-third of the incumbent members whereas the Bihar Panchayat Raj Act (2006) requires it to be initiated by simple majority of elected members.

For details, refer Ministry of Panchayati Raj, 'The Bihar Panchayati Raj Act, 2006' available at [http://www.panchayat.gov.in/documents/10198/350801/BiharPRAct\\_2006\\_English.pdf](http://www.panchayat.gov.in/documents/10198/350801/BiharPRAct_2006_English.pdf); accessed on Nov 30, 2016. The Madhya Pradesh Municipalities Act, 1961 (Section 47), Rajasthan Municipalities (Amendment) Bill 2011 called for two-thirds of the councilors to pass the decision and it was the same under the Chhattisgarh Municipalities Act, 1961. For details, refer 'The Madhya Pradesh Municipality Act, 1961' available at <http://www.mpurban.gov.in/pdf/MunicipalCorporationACT1961.pdf>; accessed on Nov 30, 2016

53 The Madhya Pradesh Municipal Corporation Act, 1956 and The Madhya Pradesh Municipality Act, 1961 requires not less than three-fourths of the total number for initiation of Mayor Recall elections. For details, refer 'Madhya Pradesh Municipal Corporation Act, 1956' available at <http://www.janaagraha.org/asics/report/Madhya-Pradesh-Municipal-Corporation-Act-1956.pdf>; accessed on Nov 30, 2016

54 The Madhya Pradesh Municipalities Act, 1961

Election Commission to begin the process of election on the Recall question.<sup>55</sup> The process is similar in Chhattisgarh.<sup>56</sup>

Unlike these two states, Bihar allows no-confidence provision against sarpanch (the elected head of the village representatives) at the panchayat<sup>57</sup> and municipal levels.<sup>58</sup> Section 17 of the Bihar Municipal Act, 2007 applies to Recall of councilors through secret ballot by a majority of the total number of voters in the area and Section 18 of Bihar Panchayat Act, 2006 applies to Recall of sarpanch through a NCM passed by simple majority of voters of the gram panchayat (the elected body of representatives at the village level) at a special meeting. Such a meeting is called only when one-fifth of the voters of the gram panchayat supported the proposal and submitted it to the District Panchayat Raj Officer (henceforth, DPRO). The DPRO, within seven days of receiving the proposal, calls a special meeting that had to be held within 15 days.

In the case of Bihar also, several safeguards are provided, including that the NCM would not be invoked within the first two years of the sarpanch's (the elected head of village representative body) tenure and once such a motion was rejected, it could not be brought again within one year. Similarly, at the municipal level, the chief councilor and the deputy chief councilor could be removed from their posts when a majority of the elected councilors support the NCM at a special meeting. Such a motion cannot be brought within two years of the election of the chief councilor and the deputy chief councilor, as the case may be, or within one year of the first motion.

Section 17 of the Act<sup>59</sup> also provides for Recall of councilors by a majority of the voters of his or her municipal ward. Such a Recall provision

55 *Ibid*

56 The Chhattisgarh Municipal Corporation Act, 1956 (Chhattisgarh) and The Chhattisgarh Municipality Act, 1961 (Chhattisgarh)

57 Panchayat is the village body of elected representatives of village. See: Panchayati Raj Department, Government of Bihar (2006), 'The Bihar Panchayati Raj Act, 2006', [http://biharprd.bih.nic.in/StateActRules/ACT\\_Bihar%20Panchayat%20Raj%20Act%202006%20-%20English.pdf](http://biharprd.bih.nic.in/StateActRules/ACT_Bihar%20Panchayat%20Raj%20Act%202006%20-%20English.pdf); accessed on Dec 1, 2016

58 Urban Development And Housing Department, Government of Bihar (2007), 'The Bihar Municipal Bill 2007' available at <http://urban.bih.nic.in/Acts/AR-01-29-03-2007.pdf>; accessed on Dec 1, 2016

59 *Ibid*

would go to polls only after a proposal is supported by two-thirds of the elected council and verified by the District Magistrate. This process was once again supported with safeguards, including that it would be initiated only after two years of the election of the representatives and only once during their tenure in office. A proposed amendment to the Bihar Municipal Act could vest the power of Recall directly with the voters of municipal bodies with the help of a petition signed by two-thirds of the voters.<sup>60</sup>

According to the Punjab Panchayat Raj Act, 1994,<sup>61</sup> two-thirds majority of the *panchayat* should support a notice for NCM, which is intimated to the Block Development and Panchayat Officer (hereafter, BDPO). However, such a move cannot be made within two years of election of the sarpanch, or two years since the last such move. Like in other states, the sarpanch would be recalled if a majority of the village members voted in support of the recall move and a fresh election would be held. In 2011, Punjab Legislative Assembly, through an amendment to the Act, repealed the provision for NCM (with retrospective effect) of the Punjab Panchayat Act, 1994. This amendment was challenged in the Punjab and Haryana High Court. The High Court, in its verdict, nullified the Amendment which had abolished the provision with retrospective effect for Recall of sarpanch through NCM.<sup>62</sup> The Punjab government appealed against the High Court's verdict in the Supreme Court of India. The state government had appealed that "over 110 sarpanches faced the prospect of ouster under this provision due to factionalism within Panchayats" that hampered development work.<sup>63</sup> The Supreme Court

60 Sardesai, Shreyas (2014), 'Issues of Electoral Reforms' in Kumar, Sanjay (ed.), *Indian Youth and Electoral Politics*, New Delhi: Sage Publications India Pvt. Ltd, pp. 78-113

61 Punjab Revenue Department (1994), 'The Punjab Panchayati Raj Act 1994' available at [http://punjabrevenue.nic.in/panchayat\\_act2.htm#s19](http://punjabrevenue.nic.in/panchayat_act2.htm#s19); accessed Dec 1, 2016; Department of Rural Development and Panchayats, Punjab (2008), 'The Punjab Panchayati Raj (Amendment) 2008 Act' available at [http://www.pbrdp.gov.in/documents/6205745/11340289/The%20Punjab%20Panchayati%20Raj%20\(Amendment\)%20Act,%202008.pdf](http://www.pbrdp.gov.in/documents/6205745/11340289/The%20Punjab%20Panchayati%20Raj%20(Amendment)%20Act,%202008.pdf); accessed on Dec 1, 2016

62 Nirbhai Singh vs State Of Punjab And Others available at <https://indiankanon.org/doc/106885038/> accessed on Oct 6, 2017

63 Dhananjay Mahapatra (2011), 'Can't Take Away Right To Recall, SC Tells Punjab' in *The Times of India* <http://timesofindia.indiatimes.com/india/Cant->

upheld the decision of Punjab and Haryana High Court and stated that the Constitution does not "provide for a dictator to rule for five years" and that "it is integral in the process of democracy to have the power of recall by a no-confidence motion."<sup>64</sup>

In Rajasthan, the Municipal Act, 1959 was amended in 2011 to provide for Recall of and NCM against chairperson and vice-chairperson of municipal bodies.<sup>65</sup> The proposal for Recall has to be supported by three-fourths of the council and through elections in which more than half of voters of the municipality voted in support of the motion for Recall. The safeguards are similar to other states.<sup>66</sup> Before the amendment of 2011, the municipal elections were held indirectly, while after the amendment, the elections are held directly along with the provision of Recall. After 2014, however, the municipal elections are again conducted indirectly by modifying the rule and resulted into automatically nullifying Recall.<sup>67</sup>

### Conclusion

An analysis of the provisions of NCM and Recall of elected representative shows that a national or state government has, on an average, at least 10 days to prepare against a NCM, and in some cases, the Speaker of the House might take up to even three days to admit the motion. The NCM has to be supported by anywhere between one-tenth to one-third of the elected members and, if the NCM is defeated, it cannot be brought again within the specified period of time.

At the local level, a decision on the notice for NCM is taken by the administrative head of the district, who also announces Recall elections in case the NCM succeeds.

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take-away-right-to-recall-SC-tells-Punjab/articleshow/8612568.cm; accessed on March 23, 2017;

64 Dhananjay Mahapatra (2011), *op.cit.*

65 Rajasthan Legislative Assembly (2011), 'The Rajasthan Municipalities (Amendment) Bill' available at <http://rajassembly.nic.in/BillsPdf/Bill16-2011.pdf>; accessed on Dec 1, 2016

66 For example, the Madhya Pradesh Municipalities Act, 1961

67 State Election Commission, Rajasthan

