

Namaskar,

Dear students of law,

Mr. President, Rotary Club, Meerut,

Shri V. S. Bhargav, Chairman Programme Committee,

Shri Ajay Kumar Advocate, Convener of the Debate,

Most Reverend Former Justices B.P. Singh, G.K. Mathur,

N.S. Gupta and Nasimuddinji,

My esteemed sister Justice Mithlesh Chaudhary,

Ladies & Gentlemen.

I feel honoured to be present before this august gathering for two reasons; First, the debate is in my home town Meerut; secondly, it is dedicated to late Harish Chandra Mathur, a stalwart of the Meerut Bar.

My father late Justice N.N.Mithal had great admiration and respect for him. He regarded him as his 'Guru' in the profession. I had the privilege to see him a few times in my childhood. I have a vivid recollection of him. He had addressed the elite gathering of the Meerut Bar Association organized to felicitate the elevation of my father to the Bench. I was present in the function. I heard him speak. He spoke from his heart. He was emotionality sur-charged and out of affection for my father his eyes were in tears of joy. His throat was choking. He could not speak for long and abruptly ended by saying "नरेन्द्र तुम जियो हजारों साल, साल में दिन हो पचास हजार।" These were his good wishes for my father. I am told he loved and wished every member of the Bar with the same warmth and affection.

Memories are wonderful. They however fade away with times but programmes of this nature keep alive some of them.

I am proud of the Rotary Club of Meerut to have honoured him by dedicating this Law debate to him. His personality has been revived in the minds of all making him immortal.

"Constitutionality of Right to Recall" is the topic of today's

law debate. It is a burning issue as the makers of law are loosing confidence of the people.

The aspiring lawmakers or the future custodians of law have spoken well on the subject. I regard their opinions to be valuable as the responsibility to run the country is ultimately upon them. They are the potential law makers.

My view on the subject may not be in pace with times and may not find favour with the generation next. I will therefore speak a little like a common man without the aid of constitutional provisions and that too within the constrains of the office I hold.

After independence, we adopted democracy as the form of government and placed the country into the hands of the elected representatives.

India, though a largest functional democracy in the world is a flawed democracy. It is suffering from serious threats from within and requires basic reforms especially when the world is heading towards global democracy.

In our country, in the name of elections votes are purchased, liquor flows like water, muscle power is used to intimidate the people, black money is used freely, caste and communal cards are played and polling booths are captured. One time criminals were used to scare people, but now criminals themselves have entered the political arena and have criminalized politics.

“We, THE PEOPLE of India, having solemnly resolved to constitute India into a SOVERIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC .....” are the key words in the preamble to the Constitution of India adopted by us on 26<sup>th</sup> November, 1949.

'Democratic Republic' is the basic feature of our Constitution.

Electoral college, in our country elect representatives to run the democratic government. The right to elect or to be elected though fundamental to democracy is not a fundamental right but a pure and simple statutory right only. So no one in the country has a fundamental right to contest election or to elect a

representative. Nonetheless elections are the backbone of the elected government in a democracy. Therefore, every member of an electoral college is duty bound to elect a representative not to govern only but to serve us. If the elected representative is not able to serve us or is not able to look after the socio-economic or political interest of the people or to protect the interest of the country, the people who have elected him definitely have a right to recall him.

It is the citizens prerogative to elect their representatives and at the same time to decide whether a non-performing elected representative should continue in office for a full term or not.

An elected representative, who is not performing upto the expectation can only be removed by democratic means. Therefore, along with right to elect comes the right to recall also.

The 'right to recall' a representative/legislator is a democratic method of removing an elected representative on the ground of non-performance or even misuse of position.

In exercise of the above Right to Recall, three Presidents of the Urban Local Bodies were removed sometime in the year 2007-08 for their under performance.

In India, right to recall does not exist except in the State of Chhattisgarh and Madhya Pradesh. The Chhattisgarh Nagar Palika Act, 1961 provides for holding of elections to recall elected Presidents for non-performance. The process for recall of elected President commences when 3/4<sup>th</sup> of the total numbers of elected representatives within the Nagar Palika demands recall of the President by writing to the Collector. The Collector on verification submits report to the State Government and the State Government on its satisfaction recommends the State Election Commission to hold an election to recall the President.

The 'right to recall' is otherwise not specifically contained in the Constitution or any other statute but to my mind it is an inherent part of the statutory right to elect. The very fact that the Constitution or the statutes provides for a fixed term for an elected representative, generally 5 years, it means on the expiry

of the aforesaid term, he automatically ceases to represent the people unless re-elected for another term. The people electing the representative automatically gets a right either to re-elect him or to elect a new representative in place of the earlier one depending upon his performance. This is equivalent to right to recall an elected representative.

Some people want that the right to recall may be permitted to be exercised earlier that is to say before the expiry of full term for which the representative has been elected. In other words, if the performance of the elected representative is not good, the people may get the right to recall him immediately irrespective of his term.

It is a good idea but Vinod Bhanu of the Center for Legislative Research and Advocacy, New Delhi has termed it to be a romantic experiment but why to permit a non-performing person to continue? After all, his continuation is at the cost of public exchequer. Good, but one has to realize the practical problems involved in the implementation of 'right to recall.'

The right to recall has to be exercised by direct voting. The elected representative therefore, has to face another contest may be within three months, six months or a year or so as the case may be on the expiry of the moratorium period, if any, in Chattisgarh there is a two year moratorium on the use of right to recall for getting himself de-elected or recalled but with no one in opposition. This will lead to a situation where Election Commission would be involved continuously in conducting polls either for elections or for de-election or for recalling a representative. It will create a situation of perpetual polling in the country in one constituency or the other. People will soon be complaining of election fatigue.

The framers of the Constitution were conscious of this practical difficulty and provided for a fixed term of 5 years for an elected representative either through a provision in the Constitution or under the relevant statute. The only thing which can be said is that the period of 5 years is a long period. It should

be curtailed but then it is altogether a different aspect. You can elect a representative for three years or four years or for any shorter term as may be found suitable depending upon the economy of the country and host of other factors.

In a way, the object of exercising right to recall can be achieved by reducing the term of elected representatives but the best course is to eliminate the unwanted at the outset.

Our Constitution, one of the best in the World, fails to provide an option to the citizens/voters not to elect any of the candidates contesting if they are not suitable. If in a constituency only two candidates are contesting elections, the citizens/voters have a limited choice either to elect candidate A or candidate B irrespective of the fact that both are largely not considered to be fit and suitable. The citizens/voters in such a situation are under compulsion to elect one of them the lesser evil. Thus, an unsuitable person gets elected even though majority do not want him to represent them.

Probably, in this regard one minor reform is needed in election laws i.e. to give voters the 'Right to Reject' the contesting candidates. It is hoped that this minor reform may bring about a major change in strengthening the democracy of the country and turning it into a more vibrant one.

The right to reject vis-a-vis right to recall can be exercised in a very simple way.

Today, voting is through electronic voting machine (E.V.Ms.). In a voting machine there are 16 buttons. If one of the buttons is differently coloured say red and is made to denote "None Of The Above", it would be a negative vote in the form of rejection of all the contesting candidates. On counting, if such 'None Of The Above' votes are higher in number than the votes polled by any candidate, the result would obviously be that the majority does not want any of the contesting candidates to be elected. In such a situation, the election would stand countermanded necessitating a fresh election with new candidates. This will check the election of unwanted representatives at the threshold and may minimize

or even eliminate the need for right to recall.

The right to reject would thus be in addition to right to elect which inherently includes right to recall and would be a more potent weapon in the hands of the voters.

The idea of empowerment of the voters with the right to reject the contesting candidates was first suggested and mooted by the former Election Commissioner Sri T.S. Krishnamurti in 2004. The amendment to this effect is drawing the attention of the Supreme Court.

Neveda in U.S.A. introduced 'None Of The Above Option' in the voting machines after the Water Gate Scandal in the year 1976 but the system has not proved to be workable and efforts are to get rid of it. There are however several instances of successful recalls in U.S.A.

So, I would conclude that any reform concerning elections has to adopted with utmost care after thinking twice and having discussion word by word on every aspect/amendment.

In the end, I have a small suggestion for the students of law. I presume each one of you is a believer in God and must be keeping your Holy Book at home may be Geeta, Quran or Bible. Likewise as a student of law always keep this (Constitution of India) in your pocket. This is a book for building a strong and developed nation.

*Jai Hind*