



Introduction of “NOTA” in Indian Elections

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ABSTRACT

Since democracy is a fundamental component of our constitutional system, only free and fair elections can ensure the development of a strong democracy in the nation. The Indian Constitution granted its people universal adult suffrage, enabling millions of individual voters to cast ballots and participate in the government of their nation. The best men available must be picked to serve as the people's representatives in order for democracy to exist. This can be done by electing men with high moral and ethical standards who receive a majority of the popular vote. But nowadays, the majority of candidates running in elections fall short of the public's expectations. Therefore, in a recent Writ Petition, the Supreme Court ordered that the Electronic Voting Machine (EVM) and ballot papers include a "None of the Above" (NOTA) option, or the right to refuse, so that voters who do not want to support any of the candidates can exercise their option in confidence. People can express their opposition and dissatisfaction to these candidates by voting in protest, and doing so may even pressure the political parties to propose a qualified candidate. Since the NOTA option was added to the Indian electoral system eight years ago, two Lok Sabha election and six rounds of Assembly elections have taken place. In this article, an effort is made to analyze the positive and bad effects of the NOTA option's addition to the Indian electoral system. It is necessary to conduct more in-depth statistical and ethnographic studies on the early patterns of NOTA. Only until this electoral option transforms from a symbolic way to express discontent to a "right to reject" will it be a useful way to cast a negative vote.

Keywords: Democracy and Elections in India.

INTRODUCTION

Our constitutional system being based on democracy, only free and fair elections can ensure the development of a strong democracy in the nation. The Constitution granted all Indian citizens the right to vote in adult elections, enabling millions of eligible voters to cast their ballots and take part in the nation's government. The best men available must be picked to serve as the people's representatives in order for democracy to exist. This can be done by electing men with high moral and ethical standards who receive a majority of the popular vote. But nowadays, the majority of candidates running in elections fall short of the public's expectations. Therefore, the Supreme Court has ordered that the Electronic Voting Machine (EVM) and ballot papers include a "None of the Above" (NOTA) option, or the ability to refuse, so that voters who do not want to support any of the candidates can exercise their option in confidence. People can express their opposition and dissatisfaction to these candidates by voting in protest, and doing so may even pressure the political parties to propose a qualified candidate. Since the NOTA option was added to the Indian electoral system three years ago, one Lok Sabha election and four rounds of Assembly elections have taken place. In this article, an effort is made to analyze the positive and bad effects of the NOTA option's addition to the Indian electoral system.

Background of NOTA Actually, the ballot option was first proposed for inclusion on the official electoral ballot in the County of Santa Barbara, California, in 1976 by the Isla Vista Municipal Advisory Council. Then-council ministers Walter Wilson and Matthew Landy Steen presented a legal motion to reform the election balloting process. In 1978, the State of Nevada included the NOTA option on a ballot for the first time. A total of \$ 987,000 was spent in California to promote this ballot measure, but it was defeated by a vote of 64% to 36% in the general election held in March 2000. If voters had approved this new ballot option, it would have been implemented as a new voting method for all political posts in the US State and Federal governments. The right of citizens not to vote has been eliminated by the progression of election methods from paper ballots to EVMs. Citizens who chose not to cast a ballot when using ballot papers did so by filling in blank ones, which protected both their right to do so and the election's confidentiality. However, because of how they operate, the EVMs did not provide the voters this option. The Election Commission of India petitioned the Supreme Court in 2009 to allow voters to select "NOTA," but the Government opposed the notion. After that, People's Union for Civil Liberties¹ filed a writ suit under Article 32 of the Indian Constitution questioning the constitutionality of Rules 41(2) and (3) and 49-0 of the Conduct of Election Rules, 1961 to the extent that these provisions breached the secret of voting. According to Section 128 of the Representation of the People Act, maintaining vote confidentiality is vital for "free and fair elections." The petitioners claimed that even though rules 41(2), (3), and 49-0 acknowledge a voter's right to abstain from voting, this right is not exercised in a secret manner, and as a result, these rules not only violate the right to secrecy but also articles 19(1)(a) and 21 of the Constitution. If a voter chooses not to record his vote, a notation to that effect is made against the relevant entry in form 17-A, infringing upon his right to confidentiality. However, the respondents claimed that the writ petition cannot be maintained because they believe that the right to vote is merely a statutory right and

not a fundamental or constitutional one. Second, the respondents argued that the right to confidentiality could never be extended to people who had not cast a single ballot, as it only applies to voters who had actually exercised their right to do so. Regarding the issue of voting rights, the Court considered its ruling in the case of *Kuldip Nayar and Ors v. Union of India*, and determined that the right to vote is solely a statutory right and neither a fundamental nor a constitutional right. Sections 79(d) and 128 of the RP Act as well as a portion of Rule 49-O read with form 17A were deemed ultra vires by the court and to be arbitrary and in violation of Article 19. Due to the need for free and fair elections being a fundamental requirement of democracy and the need for a mechanism to ensure their maintenance being in place, the Court ordered the ECI to add a "NOTA" option on EVMs and ballot papers. The provision of a "NOTA" in EVMs for cases where the voter does not want to cast a positive vote for any of the candidates running for office was thus introduced by the Honourable Supreme Court through the current case.

Role of the Law Commission of India (LCI)

The Law Commission of India first raised the idea in its 170th Report in 1999 as part of its "alternative method of election" in which candidates would only be declared elected if they received 50%+1 of all valid votes cast. This idea was to introduce negative voting to allow voters to reject all candidates if they found them unsuitable. Despite supporting the 50%+1 proposal, which was the foundation for negative voting, the Commission chose not to make any definitive recommendations on the subject due to practical considerations. When T. S. Krishnamurthy took over as CEC from James Lyngdoh in 2004, the ECI advocated the implementation of a similar negative vote in its proposed election reforms report. The ECI was worried that the adoption of EVMs and the application of Election Rule 49O had made it impossible to safeguard the confidentiality of voting for individuals who wished to abstain. In order to add "NOTA" as a choice, they consequently sought a legislative amendment to Rules 22 and 49B of the Election Rules. The introduction of negative voting was supported in the Background Paper on Electoral Reforms that the Legislative Department of the Law Ministry produced in 2010. The ECI clarified that no re-elections would be called based on a cumulative reading of sections 53(2) and 65 of the RPA and Rule 64(a) of the Election Rules. This is due to the fact that the introduction of NOTA was demanded by ECI for the claimed purpose of ensuring the confidentiality of the voter casting a negative vote and preventing a fake vote in their place; the power to reject was not included in their initial requests. This is clear from the Court's ruling, which places a strong focus on confidentiality as indicated above and leaves out any discussion of the right to reject, which PUCL did not request. The Court instead concentrated on how it thought that NOTA would ultimately compel parties to select reliable candidates. With the exception of Columbia, very few nations recognize the right to reject principle, according to LCI's comparative research of how NOTA is applied in different nations. For instance, despite recognizing a NOTA-like option, Nevada in the US and Manitoba, Ontario, Alberta, Nova Scotia, and Yukon in Canada do not allow it to affect the election results by counting the votes separately or treating them as spoiled ballots. The situation is the same throughout Europe. As a result, voters may legally submit envelopes without a completed ballot; they are counted and referred to as "blank votes" under Spanish law. Even a majority of blank ballots are not enough to force reelections in Spain's proportional representation system, despite the fact that they are regarded as valid in the distribution of seats. Although there is no designated place on the ballot, a blank vote is recorded separately from a void vote in France and Italy. In Sweden, voters can covertly voice their dissent by using blank ballots. The votes are counted and reported separately from other types of spoiled or invalid votes, despite the fact that they are deemed illegitimate. Therefore, the idea of a right to reject does not exist. Brazil is the only country in South America that recognizes both void or null ballots that are invalid and votes that are intentionally left blank or white. However, neither is taken into account or counted when determining election outcomes. According to Brazilian Constitutional Article 77(2), candidates will only be chosen if they receive a majority of valid votes, excluding blank and invalid ballots. The exception to the rule is Columbia, where if a blank vote receives a majority (50%+1), the election must be rerun (just one more), and the previous candidates in the invalidated election are ineligible to run again. Instead of complicating the introduction of the right to reject, LCI advised in its report that efforts should be made to implement the already existing provisions on decriminalizing politics, raising political awareness, increasing party transparency, and election finance reform in order to successfully achieve good governance, which is allegedly the driving force behind the right to reject. The majority of nations who have NOTAlite rules often merely count and declare the total number of such votes, rather than including them in the results of the election. All of these factors caused the LCI to reject the NOTA principle's expansion, which would have given voters the opportunity to reject a candidate and declare an election illegal in those circumstances where a majority of votes were cast in favor of it.

Study of application of NOTA in the Lok Sabha Election 2014

Lakshadweep had the fewest votes in favor of NOTA, with only 123 voters exercising the option, according to a statistical analysis of the implementation of NOTA in the Lok Sabha elections of 2014. Punjab, Haryana, and Delhi voters did not approve of NOTA either. In these Lok Sabhapolls, NOTA actually received 1.1% of the national vote, which is more than the vote share controlled by organizations like the CPI and Janata Dal (United). On the EVM designated for NOTA, more over 59.7 lakh voters from all 543 constituencies hit the last button. While Puducherry won the top spot in the rankings in percentage terms, with 3% of its electorate rejecting all the candidates, Uttar Pradesh took the top spot in the NOTA results in absolute terms. Even though UP received the maximum number of votes (5.92 lakh), only 0.7% of the vote was cast in favor of NOTA. The NOTA has also been demonstrated to be a game-changer in several constituencies. In Kerala's Kannur constituency, where the Lok Sabha elections were held in 2014, more NOTA votes were cast than were cast for the CPI(M)'s second-place candidate. The NOTA vote total exceeded the winning margin in many constituencies during the 2015 Bihar State Assembly election. With each succeeding election, it has been noted that the NOTA option was exercised more frequently. Based on the aforementioned investigation, it can be concluded that while NOTA was created with a sincere desire to do good, it nevertheless has several flaws and practical problems. Voters have limited access to detailed information on candidate profiles and the NOTA option due to low literacy rates. Even

urban voters do not have sufficient knowledge of this option's use and potential repercussions. In addition to this, addressing the diminishing rate of voter participation⁸ is a challenge associated with the proper implementation of the NOTA option.

CONCLUSION

The adoption of NOTA has given the right to not vote a position in the fundamental freedom of speech and expression under Article 19(1)(a) of the Indian Constitution. As a component of freedom of speech and expression, the right to refrain from casting a ballot has recently received legal protection. Every citizen now has the ability and the right to voice their displeasure of the candidates chosen for a particular district. The NOTA's benefit is that it upholds and acknowledges the citizens' right to abstain from voting while ensuring privacy during that absence. The right of the populace to periodically select their representatives represents the genuine essence of democracy. Obviously, only when a majority of citizens use this privilege will democracy's goals be achieved. However, it must also be made sure that the populace is not forced to pick the best option out of the bad. The NOTA is a potent tool in the hands of the electorate, who may decide to use it if they are unhappy with the caliber of the candidates. As a result, political parties are under constant pressure to make sure that only qualified and eligible candidates stand in for them during elections. At least, this was the main motivation behind the Supreme Court's decision to support the establishment of NOTA. The NOTA clearly has many benefits and represents progress toward democratization's goals. The freedom to refrain from making a decision is frequently absent in democratic countries because voting is an assertion of one's freedom and equality. Citizens have the freedom to vote for any candidate running for office, but few democracies explicitly grant voters the right to reject all of the candidates if they don't think any of them are qualified. In other words, citizens have the freedom to choose, but not the freedom to express dissatisfaction with the candidate by casting a ballot. However, every voter has the right to cast a "negative vote" against every candidate running for office in a given constituency. However, NOTA is only a halfstep in that direction, and from this decision it can be observed that if India's politicians do not take electoral reforms seriously, the judges may be under some pressure to take matters into their own hands through judicial activism. The right to reject is a condition when Rejection/Negative Votes win majority and it results in the election being declared invalid. The inability of the NOTA option to invalidate the results of the elections is one of its main drawbacks. Tranquebar Dorai Vasu, a city-based attorney, filed a petition in the Madras High Court in April 2016 asking the court to consider a re-election in the constituencies where the NOTA count exceeds the votes received by any other candidate and the necessity of barring candidates from future elections for a predetermined period of time. In response to his appeal, the High Court bench noted that the NOTA was implemented after the Supreme Court directed the ECI to do so and that its primary goal was to alter the way the electoral process was currently being conducted. Even if NOTA votes are in the majority, the candidate with the most votes will still be considered the winner, maintaining the status quo that existed prior to the introduction of NOTA as of this writing, and ECI has been further directed to design the rules accordingly¹⁰. In conclusion, it can be concluded that NOTA ensures the confidentiality of casting a negative or neutral vote and encourages public engagement in the election process, both of which are essential to the "strength of democracy". Since people could abstain and express their displeasure (with the poor quality of candidates) without fear of retaliation, NOTA would empower the populace and speed up effective political participation. At the same time, it would promote the integrity of the election process by eventually forcing parties to field better candidates, thereby resolving the current issue. Additionally, it has been found that the NOTA's introduction will be more advantageous if re-election is declared in a situation where the number of NOTA votes outnumber the votes cast for any candidate. This will set a good example for other citizens of an active democracy and have an effect on the caliber of candidates and their credibility. Since NOTA is a step toward addressing a systemic problem in the voting system and is a rational, ethical, and legal requirement for a successful democracy, NOTA in updated form will prove to be not only a crucial but also a simple to execute change.

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