

NOTA: Right of Voters

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ABSTRACT: *Many see the Supreme Court's directive to the Election Commission of India to add a "none of the above" option on the voting ballot as a precursor to a revolution that would place voters at the heart of democracy. The voters now have the right to reject candidates, but they still don't have a responsibility to do so, making it obsolete and reducing it to a tool for expressing displeasure with no reformatory repercussions that would modify or better the state of Indian politics. Furthermore, one of the main justifications cited by the court for adopting NOTA was to increase openness and flexibility, allowing for rejection without abstaining from voting. Many concerns and suspicions have been raised as a result of the decision. This article attempts to revisit the Apex Court's ruling on the issue of voting decision secrecy, going a step further by including cleansing of criminalization and increased voter participation, thereby attempting to bring a positive restraint and the spirit of the Constitution under the Right to Expression in India's election system. We'll try to figure out how the NOTA option works in other nations and determine if it's legitimate or invalid. Understanding the ground realities and common misconceptions regarding NOTA will be aided by a detailed explanation of the decision and its true consequences in the modern election system. The legal, moral, and social ambiguities surrounding NOTA suggest that it has a gloomy future in the country, and the essay seeks to propose some feasible reforms that are consistent with its current relevance.*

KEYWORDS: *Supreme Court, Election Commission of India, Election, Judgment, NOTA.*

1. INTRODUCTION

During the year 2013, the Supreme Court issued a number of decisions that served to shape the framework of Indian democracy and the legislation that governs it, despite protests and democratic discontent. Political parties are now covered under the Right to Information Act of 2005, and convicted members of parliament and legislative bodies may no longer appeal to the courts while remaining in office. These choices sparked political debates, and on top of that, a court ruling with far-reaching implications directed the Election Commission of India to include a "none of the above" option in electronic voting machines during elections (EVM).

In *People's Union for Civil Liberties v. Union of India*, the Supreme Court decided that voters should be given the option of none of the above (NOTA) so that they can exercise their right to vote while protecting their right to privacy. As a result, voters in Indian elections can now choose NOTA if they are unhappy with the candidates running for election in their seat. Negative voting is a notion that aims to improve democracy by preventing dubious people from being elected to legislative bodies. This button is located towards the bottom of the EVMs and displays the voters' disapproval of all candidates [1].

NOTA allows voters to reject all of the candidates running in a certain constituency, forcing parties to field candidates with higher ethics and values, as well as those renowned for their high morals and integrity. The purpose of NOTA is to encourage criticism of unsuitable applicants and to eliminate those with questionable qualifications and a bad reputation. The administration did not warmly welcome NOTA, which was attempting to shake up the functioning of legislative institutions. The National Organization for Transparency in Elections (NOTA) brings significant attention to the country's election procedures. India became the 14th country to allow voters to select between no options. France, Belgium,

Brazil, Greece, Ukraine, Chile, Bangladesh, Finland, Colombia, Spain, Sweden, and the United States of America's state of Nevada are among the others.

It was tried in the United States to urge people to vote, but it did not have the expected effects. Prior to 2013, NOTA was tried in India as an experiment in 2009, and it was after this attempt that the Election Commission went to court to pursue the matter, and the court ruled that the right to reject a candidate is protected under the Indian Constitution's fundamental right of speech and expression.

NOTA votes are regarded blank votes and can be seen as illegitimate votes cast in protest of something, and therefore have no bearing on the election outcome for anybody in some nations. However, some nations regard them as genuine votes, and if they meet a specified quota or percentage determined by the government, they may have a certain outcome. Bangladesh modified its rules in 2008, allowing voters to cast "no votes" if they believe there are no candidates worthy of their ballots, and requiring re-election if "no votes" exceed a quota of 50%. This might result in a vacancy in the office and the need for re-election. NOTA helps to reduce non-voting to some extent and removes proxy voting while retaining secrecy, which was previously impossible in India if a person did not wish to vote [2].

In many nations, NOTA has the potential to create or break governments. One such election was in Indonesia, when voters had the choice of voting for either a single candidate or NOTA. NOTA earned more votes than the candidate, resulting in the candidate's loss and re-election. Because of the candidates' dislike, the party is forced to fire them and replace them with better candidates.

NOTA's popularity has also waned in nations like Russia, where it was once highly popular in the 1990s when it resulted in a significant number of re-elections and the defeat of over 100 members. It was repealed in 2006 owing to a high number of re-elections, which resulted in higher political expenditures, casting doubt on NOTA's cost-effectiveness. This demonstrates that every tool in a political system has a pro and con, and that every instrument may be abused. The only thing that can lead to the adoption of a concept is the degree of support and resistance to it. NOTA had a huge impact on the 1989 Polish election, where it was widely utilized, resulting in the Communist party's electoral loss [3].

NOTA is a strong tool that can force an existing officeholder to resign. It also has the ability to help another hopeless candidate win the election. This would force the self-centered incumbents to reconsider their conduct and infuse much-needed humility. Its stance is sometimes questioned because there are a variety of alternative methods to express displeasure, such as boycotting elections or refusing to cooperate. In Spain, where this is considered as a form of protest by anarchists, a blank vote on the ballot paper may also be viewed as a symbol of disapproval. The voter's view of a candidate should be recognized as the most important factor in such an election. Despite its promotion as a tool to promote voting, NOTA has failed to achieve any significant political cleaning after years of introduction and use in various nations. It may still be regarded an electoral poll boycott.

2. DISCUSSION

Example of a Pre-Judgment Scenario

The case of *People's Union for Civil Liberties v. Union of India*⁷ is a typical example of the government failing to do the right thing at the right moment. Before going to court, the Election Commission of India approached the Law Ministry in 2001 to request that the laws be amended and that a button be added to electronic voting machines to safeguard the

identities of voters who do not wish to vote. This might be compared to a blank ballot paper. The ministry did not respond to my request. Then, in 2004, the then-Election Commissioner reintroduced the idea and renamed the button "none of the above," allowing voters to reject all candidates. However, the case has already been filed at the Supreme Court. The NOTA button will simply cause the voter to vote against all of the registered candidates, according to the court, and so will be no different from illegitimate ballots.

Nothing but a Judgment: An Examination

The Indian constitution's main element is democracy, which is guided by the idea of free and fair elections throughout the country. Article 3268 of the Indian Constitution provides for universal adult suffrage, which allows citizens to elect the greatest leader for the country. The principle of fair and free elections was revisited and challenged in 2013, when the Supreme Court, in *People's Union for Civil Liberties v. Union of India*, recognized that the right to vote includes the right not to vote or the right to reject in the form of a NOTA option in the election rolls, as well as the right to secrecy at the polls [4].

The parties involved and the issue at hand

The People's Union for Civil Liberties (hereafter referred to as PUCL) filed the writ petition against the Union of India and the Election Commission of India as respondents. The Center for Consumer Education and the Association for Democratic Reforms have both joined the petition as Pleaders. The writ petition was filed under Article 32 of the Indian constitution, challenging the constitutional validity of Sections 41(2) and (3) and 49-O of the Conduct of Election Rules, 1961 (hereinafter referred to as Rules) to the extent that they violate the "right to secrecy" enshrined in Section 128 of the Representation of People Act, 1951 (hereinafter referred to as Act) which is fundamental to free and fair elections.

It is not the foundation for intelligible differentia to provide secret to voters who want to vote for any candidate in the election but not giving secrecy to voters who do not want to vote for any of the candidates, and so it violates Article 14, 19(1), and 21 of the Indian Constitution. As a result, it is argued before the Honorable Supreme Court that the current writ is maintainable, and that the rules 41(2) and (3), as well as 49-O, be struck down to the extent that they violate the right to secrecy, and that necessary changes to the ballot papers and Electronic Voting Machines (hereinafter referred to as EVM) be made to protect that right.

Proposed arguments

- *Petitioners*

The petitioner argued that a voter has the right under Rule 41(2) to not vote for any of the candidates, but that this right is not protected under Rule 41(2) & (3). Furthermore, Rule 49-O says that if a voter decides not to vote for any of the candidates, he or she must object to the entry in Form 17-A by signing or putting his thumbprint in front of the constituency's presiding officer. As a result, Rule 41(2) & (3) and 49-O do not safeguard the right to secrecy, thereby nullifying Section 128, Rule 39, and 49-M's idea of a free and fair election. Another argument advanced by the petitioner is that the key choice of whether or not to vote is a basic right that falls within the umbrella of Freedom of Speech and Expression rather than a legislative right. Furthermore, Petitioner contended that the right to confidentiality creates a distinction between those who vote and those who do not vote, therefore violating Article 14, 19(1), and 21 of the Constitution.

- *Respondents*

Respondents contended that the right to vote is neither a statutory right nor a fundamental right in the writ petition filed by People's Union of Civil Liberties on the issue of whether it is a statutory right or a fundamental right, relying on the judgments of Union of India v. Association for Democratic Reforms and Others and People's Union for Civil Liberties v. Union of India. Kuldip Nayar & Ors. v. Union of India & Ors., decided in 2006, did not overturn the prior two cases' rulings[5].

Respondents further argued that the right to privacy should be limited to individuals who have exercised their right to vote, because the term "election" as established by the statute implies "to fill a seat," which cannot be interpreted to include "not filling a seat." They also argued that the norm of confidentiality should be applied to candidates or representatives rather than the presiding officer.

- *Pleaders*

The pleaders agreed with the petitioners' arguments and advocated for the inclusion of the NOTA option on the ballot paper and on the EVMs to ensure the right to not vote while protecting the right to privacy.

The Supreme Court's decision

- *Maintainability*

The current case is maintainable in court under Article 32 of the Constitution since the Court found that voting falls inside the purview of Article 19(1)(a) of the Constitution, i.e. Freedom of Speech and Expression, as well as Section 79 (d) of the Act. As a result, the respondent's contention that the right to vote is only a statutory right is erroneous, and the court declared that the "Right not to vote" and "Right to Secrecy" are not only constitutional but also basic rights[6].

The Right to Vote has been considered a statutory right in previous judgments by PUCL, ADR, and Kuldip Nayar, but in the current case, a distinction has been made between "Right to Vote" and "Freedom of Voting," where the former is indeed a statutory right, but the latter falls under the broad umbrella of freedom of expression, which is a fundamental right.

- *Secrets aren't kept: it's arbitrary and illogical.*

The Supreme Court ruled that under Section 79(d) of the Act and 41(2) & (3), 49-O of the Rules, the right to vote, as well as the right not to vote, is a component. Furthermore, whether a voter chooses to vote or not, confidentiality must be preserved in both cases. Rule 49-O, when combined with Form 17-A, treats a voter who does not intend to vote differently, infringing on both the right to equality and the right to privacy. The Court also used the provisions of various international covenants, such as the UDHR and the ICCPR, as well as the judgment of Kuldip Nayar and S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra & Ors., to distinguish between "proportional representation" and "constituency-based representation," with the former relying on the higher principle of "secrecy" for a free and fair election.

The Court also cited the Supreme Court's decision in Lily Thomas v. Speaker, Lok Sabha, in which the court stated that "voting is a formal expression of will or opinion by the person entitled to exercise the right on the subject or issue in question, and that right to vote means right to exercise the right to vote in favor of or against the motion or resolution." This right also includes the right to stay impartial.

The court recognized the relevance of NOTA among voters, noting that it will motivate voters by putting pressure on political parties to select candidates with good morals and integrity. The Court also declared Rules 41(2) and (3) and 49-O to be in violation of the Constitution and Section 128 of the Act, and ordered the Election Commission and the Central Government to make necessary changes to the ballot papers/EVMs to implement the above-mentioned directions, as well as to educate the public about the necessary changes and their benefits[7].

- *The Post-Judgment Period*

The Supreme Court stated in its decision that the NOTA button and the new right would help to remove political criminals from power and will serve as a wake-up call to the public about why people are unhappy with the politicians they have chosen. As a result, political parties will face increased moral pressure and will be forced to reconsider their actions. The idea of the freedom to reject was established following this ruling, with the goal of bringing a noisy qualitative change to Indian elections. This was initially adopted in the 2014 elections, and it was then expanded to include assembly elections.

This seemingly innocuous directive to add a NOTA button to the EVM may appear innocuous, but the well-written ruling has validated the distinction between the statutory right to vote and the right to secrecy with the right to freedom of speech and expression. The court ruled that denying a person the ability to vote adversely violates their freedom of speech and expression and their right to liberty under Article 21. The decision is a huge step forward for voting rights. However, following this stage, the button's status should be elevated to include some repercussions, such as candidate rejection, rather than the status of a simple no vote. As a result, political parties will be compelled to select a strong candidate[8].

The decree elicited a variety of views, with some seeing it as a small move pointing to a lack of effort in implementing election changes. Others applauded the move, hoping that it would raise voting turnout, prompting the parties to become more accountable and select stronger candidates. The NOTA directive raises major concerns about how elections in this nation are handled.

3. CONCLUSION

While NOTA may appear to be a decent choice for individuals who are dissatisfied with all of the candidates, the provision is primarily symbolic and has little potential to influence election outcomes. It's simpler to claim that NOTA will have a significant influence on the political landscape only in 100 years in its existing form. In the same way that we need the freedom to pick our candidates, we also need the right to reject all candidates. However, it should not be confined to those in charge of the elections. NOTA is insufficient in and of itself to bring about remarkable electoral improvements. Comprehensive electoral reforms, such as regulating party finance, democracy in party working, including party elections, the fulfillment of manifestos and pledges, and so on, must also be addressed, and major adjustments are required. Today's India's top goal should be to combat political corruption, which is corroding the country's institutions. NOTA can be regarded the start of changes, although it is far from the finish. As a result, its fame is out of proportion to its value.

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