

None Of the Above (NOTA): A Voter's Right to Reject

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ABSTRACT

Elections considered to be the largest festivals of Democracy. Voter's right to choose their representative in the government through their own free will. the recent state elections really saw an increased turnout as compared to earlier general as well as assembly elections through serious efforts by Election Commission. The criminalisation of politics, widespread corruption in the system, and use of violence, voter intimidation, etc. may result in there being no desirable candidates within those contesting elections in a particular constituency. Currently there is no way for voters to express their dislike for all candidates. The concept to introduced negative voting to reject all the candidates if voters found them unsuitable. NOTA guarantees public participation in the electoral process the "strength of democracy." None of the Above" is listed on a ballot which enables voter to officially register a vote of rejection of all contesting candidates available in the election. This will also enhance the participation of urban, educated and rich people. The Election Commission (EC) has introduced a symbol for "None of the Above (NOTA)" option to facilitate voters in exercising their NOTA option in elections. The symbol will appear against the NOTA option in the last panel on all EVMs. This makes the Nota symbol easy to recognise and remember. Though increase in the turnout definitely is a good sign and points out towards the increase in confidence of the general public in governments. Veto power which people can utilize at the time when government becomes arbitrary and undemocratic in future. It is important to note that voters have used the democratic means.

Keyword: - Election, Right, Voter, Candidate, Government

INTRODUCTION-

The elections if legitimately construed are considered to be the largest festivals of democracy by the experts across the globe which lay down the edifice of democratic principles in governmental and administrative machinery. The D-Day gives the voters of the country most stellar right to choose their representative in the government through their own free will. But the fact of the matter is the conundrum which we Indians still have been unable to solve even after sixty-five years of established democracy on Indian soil: "Does my vote really holds any damn significance"??? The statement gets backing from the low voter-turnout ratio since many decades in both general as well as assembly elections. Though the recent state elections really saw an increased turnout as compared to earlier general as well as assembly elections through serious

efforts by Election Commission but still we are far behind the much needed as well as much possible mark of voter –turnout in our country.

The proposal to introduce negative voting to reject all the candidates if voters found them unsuitable was first discussed by the Law Commission in its 170th Report in 1999, as part of its “alternative method of election”.

Introducing NOTA guarantees the secrecy in casting a negative or neutral vote, increases public participation in the electoral process, which is fundamental to the “strength of democracy. NOTA is not the same as the right to reject. This is because the stated reason for ECI’s demanding the introduction of NOTA was apparently to ensure the secrecy to the votercasting a negative vote and to prevent a bogus vote in their place; the right to reject did not figure in their original demands. Good governance, which is purportedly the motivating factor behind the right to reject, can also be successfully achieved by implementing the already existing provisions on decriminalising politics and increasing political awareness; and introduce other provisions such as inner party transparency and election finance reform. The preference of other alternatives to improve the quality of elected representatives instead of favouring the right to reject can be seen from the above comparative practices, which show that Colombia is one of the only countries that has right to reject provision. Most countries with NOTA-like provisions only count and declare the number of such votes, instead of factoring it in the final election results.

When “None of the Above” is listed on a ballot, there is the possibility of NOTA receiving a majority or plurality of the vote, and so “winning” the election. In such a case, a variety of formal procedures may be invoked, including having the office remain vacant, having the office filled by appointment, re-opening nominations or holding another election (in a body operating under parliamentary procedure), or it may have no effect whatsoever, as in India and the US state of Nevada, where the next highest total wins regardless.

What is NOTA?

“None Of the Above”, or NOTA for short, also known as “against all” or a “scratch” vote, is a ballot option in some jurisdictions or organizations, designed to allow the voter to indicate disapproval of all of the candidates in a voting system.

VVPAT System-A VVPAT is intended as an independent verification system for voting machines designed to allow voters to verify that their vote was cast correctly, to detect possible election fraud or malfunction, and to provide a means to audit the stored electronic results. It contains name of the candidate.

In other words, NOTA option enables a voter to officially register a vote of rejection of all contesting candidates available in the election. The ECI has recommended that the NOTA option must be made available on the electronic voting machine (EVM) for the voter to officially reject all candidates.

Background of NOTA in India-

The Commission has received proposals from a very large number of individuals and organizations that there should be a provision enabling a voter to reject all the candidates in the constituency if he does not find them suitable. In the voting using the

conventional ballot paper and ballot boxes, an elector can drop the ballot paper without marking his vote against any of the candidates, if he chooses so. However, in the voting using the Electronic Voting Machines, such a facility is not available to the voter. Although, Rule 49 O of the Conduct of Election Rules, 1961 provides that an elector may refuse to vote after he has been identified and necessary entries made in the Register of Electors and the marked copy of the electoral roll, the secrecy of voting is not protected here inasmuch as the polling officials and the polling agents in the polling station get to know about the decision of such a voter.

The criminalisation of politics, widespread corruption in the system, and use of violence, voter intimidation, etc. may result in there being no desirable candidates within those contesting elections in a particular constituency. Currently there is no way for voters to express their dislike for all candidates. The lack of such a provision may further contribute to the decay in the system in such cases by encouraging only those voters who support such compromised candidates to vote, returning those same leaders to power again and again.

The Commission recommends that the law should be amended to specifically provide for negative / neutral voting. For this purpose, Rules 22 and 49B of the Conduct of Election Rules, 1961 may be suitably amended adding a proviso that in the ballot paper and the particulars on the ballot unit, in the column relating to names of candidates, after the entry relating to the last candidate, there shall be a column. None of the above., to enable a voter to reject all the candidates, if he chooses so. Such a proposal was earlier made by the Commission in 2001 (vide letter dated 10.12.2001)."

Though the provision is already in existence, the problem is regarding maintenance of secrecy while exercising "Right not to Vote". Moreover, desired implication of the rule is not clear. Before propagating right not to vote, one must remember that to make democracy work, we have to come together as a notion of participants, not simply observers. If we do not vote we have no right to complain as well. And remaining passive in elections will not help India. Even today most of the educated people do not turn up for voting without considerable excuse. Before reacting to any event, we should act.

The Election Commission of India told the Supreme Court in 2009 that it wished to offer the voter a "none of the above" option on ballots, which the government had generally opposed.² The People's Union for Civil Liberties, a non-governmental organisation, filed a public-interest litigation statement in support of this.³

On 27 September 2013, the Supreme Court of India ruled that the right to register a "none of the above" vote in elections should apply, and ordered the Election Commission to provide such a button in the electronic voting machines, noting that it would increase participation.⁴ NOTA was introduced in India following the 2013 Supreme Court directs in the PUCL v. Union of India Judgement. Thus, India became the 14th country to institute negative voting. However, NOTA in India does not provide for a "right to right". The candidate with the maximum votes wins the election irrespective of the number of NOTA votes polled.

The Election Commission also clarified that even though votes cast as NOTA are counted, they are considered as invalid votes so they will not change the outcome of the election process. They are not taken into account for calculating the total valid votes and will not be considered for determining the forfeiture of security deposit.⁵ The votes polled -against the NOTA option cannot be treated as valid votes. Under Section 158 of the Representation of the People Act, 1951, it is the

total number of valid votes polled by all the contesting candidates that is to be taken into account for calculating the one sixth of votes polled by individual candidates for return of security deposit. Thus, it is clarified that the votes polled against the NOTA option is not to be taken into account for calculating the total valid votes polled by the contesting candidates for the purpose of return of, security deposit.

In the 2014 general election, NOTA polled 1.1% of the votes,⁶ counting to over 6,000,000.⁷

The specific symbol for NOTA, a ballot paper with a black cross across it, was introduced on 18 September 2015. The symbol is designed by National Institute of Design, Ahmedabad.

Need of NOTA-

Before the introduction of EVMs, when voting was done through ballot papers, voters could put in the ballot paper without marking against any candidate thereby rejecting all candidates. Such a vote was counted as a rejection. However, this rejection option is not available to voters on the EVM.

Today in the scenario in which we are living where government has failed to satisfy the needs of the common man this negative voting will really act as a saviour. When voters feel disgusted at the nomination of undesirable candidates, they just could not able to convey their message of non-cooperation. On the other hand, giving people this choice of negative voting would give them a reason to go to the polls even though they don't like any of the candidates. It assures one, secrecy and encourages him to exercise his right, which will send a knockout message to the conceited politicians. This will also enhance the participation of urban, educated and rich people.

Rule 49-O of Conduct of Election Rules, 1961

According to Conduct of Elections Rules, 1961 rule 49-O says that "Elector deciding not to vote.- If an elector, after his electoral roll number has been duly entered in the register of voters in Form-17A and has put his signature or thumb impression thereon as required under sub-rule (1) of rule 49L, decided not to record his vote, a remark to this effect shall be made against the said entry in Form 17A by the presiding officer and the signature or thumb impression of the elector shall be obtained against such remark."

Supreme Court's role-

The Supreme Court (in Writ Petition (Civil) 161 of 2004) has said that a button should be provided on voting machines for a voter to reject all candidates contesting an election in his or her constituency.

PUCL had filed a PIL in the Supreme Court to bring an amendment in law to make available NOTA option on the EVM for negative voting in restore the provision of rule 49-O in this respect.

NGO PUCL (Peoples Union for Civil liberties) demanding separate slots in electronic voting machines (EVMs) to give a voter the option of "none of the above", if the voter does not want to vote for any of the candidates standing in an election. Thus, till date we can see that there is no such option in the Electronic Voting Machines were first used 1982 in the by-election to North Paravur Assembly Constituency of Kerala for a limited number of polling stations. According to the Peoples Union for Civil Liberties, rule 49(O) is violative of the Constitutional provisions guaranteed under Article 19 (1)(a) i.e. Freedom of Speech and Expression and Article 21 i.e. Right

to Liberty and even violates the secret ballot concept. Rule 94 of the Representation of the People Act, 1951, and rule 49-Mof conduct of Election Rules, 1961 requires the maintenance of secrecy in voting. Moreover, the Universal Declaration of Human Rights mandates that suffrage shall be held by secretvote or by equivalent free voting procedures.

Thus, point worth noting is that election rules state that secrecy of voting shall not be infringed. A person is bound, not to state for which he has voted at an election. So, in case of negative voting if a voter informs the presiding officer his disapproval to cast his vote, this clearly violates secret ballot concept and moreover he makes himself vulnerable to threats and intimidation from political parties. After the voter's electoral number has been entered in the register and he has been identified, his signature/thumb impression is against his name in the voters list. The voter then approaches the presiding officer and informs him of his decision not to vote in favour of any of the candidates. The officer makes an entry namely "Refused to Vote" against the name of this voter in the list. Both the officer and the voter have to provide a signature/thumb impression against this entry.

The numbers of such entries have to be mandatorily recorded in Form 17-

A. ECI has directed that the entries should be compiled and recorded (Item 3, Part-I of Form 17C) constituency wise and sent to the Commission. This information may also be obtained through RT.I. Such voters are deemed to have abstained from casting their vote. They are not included in the counting of votes and candidate securing the maximum number of votes in the constituency is declared winner irrespective of the winning margin.

In 2009, the SC found substance in the PIL and the same has been referred to a constitution bench. The Supreme Court gave a landmark judgment, holding that the voters have a right to reject all candidates contesting polls in a constituency by pressing NOTA, a button for negative vote. This verdict was passed so that the political parties would be prevailed upon to field sound and efficient candidates who are known for their integrity. Another Supreme Court directive mandating that all columns are to be filled in affidavits to be filed by the candidate, will be implemented in the upcoming polls.

In June 2011 PUCL has pushed the demand for the Negative voting. A PIL has urged the Bombay High Court to direct the Election Commission to introduce electoral reforms by making a provision for "negative vote" in the Electronic Voting Machines (EVM) during elections.

Judgment dated 27 September, 2013 passed by the Supreme Court in Writ Petition (C) No. 121 of 2008, which among other things makes it obligatory for the Returning Officer "to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper", the Commission has issued instructions that in the affidavit to be filed along with the nomination paper, candidates are required to fill up all columns.

A Supreme Court bench headed by former Chief Justice P Sathasivam refused to entertain a PIL filed by one Jaggan Nath, seeking direction to the Election Commission not to declare the results when the majority of electorate opts for the 'None of The Above' option, recently introduced on its direction to allow voters to reject all the candidates option in the electronic voting machine (EVM).

In a Civil Appeal preferred by Social Activist and Advocate Shri K R Koshti the Division Bench of the Gujarat High Court comprising acting Chief Justice Jayant Patel and Justice N V Anjaria directed the State Election Commission (SEC) to provide the option of NOTA (None of The Above) on the Electronic Voting Machines in the upcoming local body polls in the state. The petition was filed seeking inclusion of NOTA in the polls for Corporation, Municipalities and Panchayat.

Implementation of NOTA-

The Delhi University has decided to introduce the NOTA option in the student union polls scheduled on 09.09.2016. The decision to introduce the "None Of The Above" (NOTA) option in the EVMs for Delhi University Students Union (DUSU) polls was taken at a meeting of the election advisory committee. More than 17,000 voters in the Delhi

University Students' Union elections opted for the None of The Above (NOTA) option introduced for the first time this year.

Delhi University has also sent a special request to the political parties to adhere to the rules. "Kindly cooperate in directing the candidates not to use printed posters, deface public property and take out processions without explicit permission of the election officers," the letter sent to all political parties said.

The Assembly election 2016 also saw some active canvassing for NOTA, which allows voters to express their dissent against all the contestants. In Kerala a group of women activists hit the road urging people not to elect any candidate if no woman was present in the fray.

The Election Commission (EC) has introduced a symbol for "None of the Above (NOTA)" option to facilitate voters in exercising their NOTA option in elections. This symbol will now appear in the last panel on all EVMs and the other ballot papers against the NOTA option at all elections to be held from now onwards. The symbol designed by Prof Tarun Deep Girdher, National Institute of Design (NID) Ahmedabad, is a cross on a paper with a list of candidates, and has been approved by the Election Commission of India. Pressing the NOTA button registers the voter's decision not to vote for any candidate. The cross is a universal sign denoting disapproval. The symbol will appear against the NOTA option in the last panel on all EVMs. This makes the Nota symbol easy to recognise and remember.

Main advantage of NOTA is that it provides an option to the voter to reject all candidates. It also helps to keep a check on bogus voting as someone else will not be able to impersonate and vote in place of him in favour of any candidate. Drawback of NOTA is that the Secrecy of the ballot is violated as the voter has to inform the presiding officer and an entry is made against his name in the voters list. Such voters are in danger of being victimized by some candidates or political parties.

CONCLUSION AND SUGGESTION-

Over all, Indian voters seem to be using NOTA not just to show their disapproval of the candidates in the fray but to express their protest against many things they perceive wrong in the political system.

The early trends of NOTA need to be explored further with more elaborate statistical and ethnographic analysis. So far, a small number of Indian voters have come to see NOTA as an instrument of protest. This electoral option will become a meaning ful

means of negative voting only if it becomes a “right to reject” rather than being a symbolic instrument to express resentment as it is now.

NOTA would empower the people, thereby accelerating effective political participation, since people could abstain and register their discontent (with the low quality of candidates) without fear of reprisal; simultaneously, it would foster the purity of the election process by eventually compelling parties to field better candidates, thereby improving the current situation.

Though increase in the turnout definitely is a good sign and points out towards the increase in confidence of the general public in governments but these do dilute in any way the case for practically introducing this negative voting provision as firstly these are state –assembly elections and secondly prime aim of this provision is to give the voters the veto power which they can utilize at the anytime government becomes arbitrary and undemocratic in future. It is important to note that voters have used the democratic means of NOTA to express their resentment rather than boycotting the polls over right.

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ENDNOTES:

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- iii. "Election Commission of India: Supreme Court's judgement for "None of the Above" option on EVM –clarification"
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