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ANALYSIS OF THE INTRODUCTION OF NOTA IN THE LEGISLATIVE ELECTIONS IN INDIA

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ABSTRACT

Democracy being the basic feature of our constitutional set up, only free and fair elections guarantees the growth of a healthy democracy in the country. Universal adult suffrage conferred on the citizens of India by the Constitution which made it possible for the millions of individual voters to go to the polls and thus participate in the governance of our country. For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country and the same can be achieved through men of high moral and ethical values, who win the elections on a positive vote. But these days almost all candidates standing in elections are not up to the expectations of people. Hence; the Supreme Court in a recent Writ Petition directed to provide a 'None of the Above' (NOTA) option i.e. right to reject on the Electronic Voting Machine (EVM) and ballot papers so that the electors who do not want to vote for any of the candidates can exercise their option in secrecy. Thus by casting this protest vote people can show their dissent and disapproval to these candidates and indeed compel the political parties to nominate a sound candidate. Three years, one Lok Sabha election and four rounds of Assembly elections have passed since the introduction of NOTA option in the Indian electoral system, in this paper an effort has been made to analyse positive and negative impacts of introduction of NOTA on the Indian Electoral system. The early trends of NOTA need to be investigated further with more elaborate, statistical and ethnographic analysis. This electoral option will become a meaningful 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.

KEYWORDS

NOTA, Democracy and Elections in India.

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INTRODUCTION

Democracy being the basic feature of our constitutional set up, only free and fair elections guarantees the growth of a healthy democracy in the country. Universal adult suffrage conferred on the citizens of India by the Constitution which made it possible for the millions of individual voters to go to

the polls and thus participate in the governance of our country. For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country and the same can be achieved through men of high moral and ethical values, who win the elections on a positive vote. But these days almost all candidates standing in elections are not up to the expectations of people. Hence; the Supreme Court in a recent case directed to provide a 'None of the Above' (NOTA) option i.e. right to reject on the Electronic Voting Machine (EVM) and ballot papers so that the electors who do not want to vote for any of the candidates can exercise their option in secrecy. Thus by casting this protest vote people can show their dissent and disapproval to these candidates and indeed compel the political parties to nominate a sound candidate. Three years, one Lok Sabha election and four rounds of Assembly elections have passed since the introduction of NOTA option in the Indian electoral system, in this paper an effort has been made to analyse positive and negative impacts of introduction of NOTA on the Indian Electoral system.

History of NOTA

Actually the ballot option originated in 1976 when the Isla Vista Municipal Advisory Council passed a resolution to put forward this choice in the official electoral ballot, in County of Santa Barbara, California, in the USA. Walter Wilson and Matthew Landy Steen, then council ministers, presented a legal resolution to make some changes in the ballot procedure for the elections. The NOTA option was introduced for the first time, in 1978, in a ballot bythe State of Nevada. In California, a total of $ 987,000 was spent in promoting this ballot option but it was defeated by a margin of 64% to 36% in the March 2000 general election. This new ballot option would have been declared as a new voting system for all elective offices of US State and Federal governments, if voters would have passed it.

The evolution of election method from ballot papers to EVM have denied to citizens the right not to vote. When voting was through ballot papers citizens abstained from voting by putting in blank papers which ensured both, the right of a citizen to not vote, and also maintaining secrecy during such an election. The EVMs however, gave no such scope to the voters due to the working mechanism of the EVMs. During 2009, the Election Commission of India asked the Supreme Court that to offer the voter a 'NOTA' option but the Government was not in favor of such an idea. Later People's Union for Civil Liberties[1], filed a writ petition under article 32 of the Constitution of India challenging the constitutional validity of Rules 41(2) and (3) and 49-0 of the Conduct of Election Rules, 1961 to the extent that these provisions violated the secrecy of voting. The feature of 'secrecy of voting' is fundamental for "free and fair elections" and has to be essentially maintained as per Section 128 of the Representation of the People Act, 1951 and Rules 39 and 49-M of the Rules. The petitioners stated that though the rules 41(2) and (3) and 49-0 recognize the right of a voter not to vote but exercise of such a right is not kept secret and thus these rules are not only violative of the right to secrecy but also violative of articles 19(1) (a) and article 21 of the Constitution. In case an elector decides not to record his vote, a remark to this effect is made against the said entry in form 17-A thereby violating his right to secrecy. On the other hand, the respondents were of the view that the right to vote is neither a fundamental right nor a constitutional right but is a simple statutory right, thereby asserting that the writ petition is not maintainable. Secondly, the respondents contended that the right to secrecy applies to only those voters who have actually exercised their right to vote and it can under no circumstances extend to those who have not voted at all. With regard to the question of voting rights, the Court analysed its decision given in the case of Kuldip Nayar and Ors v. Union of India[2] and held that right to vote is neither a fundamental right nor a Constitutional right but purely a statutory right. The Court declared part of Rule 49-O read with form 17A arbitrary and violative of Article 19 and ultra vires sections 79(d) and 128 of the RP Act. The Court consequently directed the ECI to include "NOTA" option on EVMs and ballot papers with a remark that Democracy being the basic structure of the Constitution has, as its very foundational necessity the need for free and fair elections and for

that needs a mechanism as to the maintenance of secrecy of voters at all times. The Honourable Supreme Court through the instant case thus propounded the provision of a "NOTA" in EVMs for a situation where in the voter does not want to cast a positive vote for any of the candidates standing for elections.

Role of the Law Commission of India (LCI)

The proposal to introduce negative voting to reject all the candidates if voters found them unsuitable was first discussed by the Law Commission of India in its 170th Report in 1999, as part of its "alternative method of election" where candidates would only be declared elected if they obtained 50%+1 of all the valid votes cast. Although agreeable with the 50%+1 idea, on which negative voting was predicated, the Commission citing practical difficulties did not issue any final recommendations on the topic of negative voting[3]. The ECI supported the similar introduction of a negative vote, first in 2001, under James Lyngdoh as the CEC, and then in 2004 under T. S. Krishnamurthy, in its proposed electoral reforms report. The ECI was concerned that the introduction of EVMs and the implementation of Rule 49Oof the Election Rules had made it impossible to protect the secrecy of voting for those who wanted to abstain. Consequently, they proposed a legislative amendment to Rules 22 and 49B of the Election Rules to introduce "NOTA" as an option. The Background Paper on Electoral Reforms prepared by the Legislative Department of the Law Ministry in 2010 also favoured the introduction of negative voting,

The ECI issued a clarification that no re-elections will be called based on a cumulative reading of Rule 64(a) of the Election Rules and sections 53(2) and 65, RPA. This is because the stated reason for ECI's demanding the introduction of NOTA was apparently to ensure the secrecy to the voter casting a negative vote and to prevent a bogus vote in their place; the right to reject did not figure in their original demands. This is evident in the Court's judgment - in terms of its emphasis on secrecy described above and the lack of any discussion on the right to reject, which was not prayed for by PUCL. Instead, the Court focused on how it hoped that NOTA would ultimately force parties to choose sound candidates.

LCI in its comparative study as to application of NOTA in the various countries observed that with the exception of Columbia, very few countries accept the right to reject principle. For instance, Nevada in the US and Manitoba, Ontario, Alberta, Nova Scotia and Yukon in Canada although recognising a NOTA-like option, do not let it influence the election results by counting the votes separately or treating them as spoilt ballots. In Europe, the position is not different. Thus, Spanish law permits voters to validly submit envelopes without ballot papers, which are counted and declared as "blank votes". Although they are considered valid in the allocation of seats in Spain's proportional representation system, even a majority of blank votes do not necessitate reelections. Similarly, in France and Italy, a blank vote is recorded separately from a void vote, although there is no official space on the ballot. In Sweden, blank ballot papers permit voters to register their protest secretly. Although the votes are considered invalid, they are counted and reported separately from other forms of spoilt or invalid votes. Thus, there is no concept of right to reject. In South America, Brazil with its compulsory voting provisions recognises both, blank or white votes that are conscious sign of protest, and void or null votes that are spoilt. However, neither is considered valid or counted for election results' purposes. Article 77(2) of the Brazilian Constitution stipulates that only candidates winning a majority of *valid* votes, excluding blank and invalid votes, will be elected. Columbia is an exception to the above trend, wherein if the blank vote gets a majority (50%+1), the election needs to be repeated (only once more) and the earlier candidates in the invalidated election cannot stand again[4].

LCI in its report recommended that good governance, which is purportedly the motivating factor behind the right to reject, can be successfully achieved without causing the complications introducing the right to reject, instead efforts should be made to implement the already existing provisions on decriminalizing politics and increasing

political awareness, inner party transparency and election finance reform. Most countries with NOTA-like provisions only count and declare the number of such votes, instead of factoring it in the final election results. For all these reasons, the LCI currently rejected the extension of the NOTA principle to introduce a right to reject the candidate and invalidate the election in cases where a majority of the votes have been polled in favour of the NOTA option[5].

Study of application of NOTA in the Lok Sabha Election 2014

The statistical study as to the introduction of NOTA in the Lok Sabha elections of 2014 shown that the constituency with the least number of votes in favor of NOTA was Lakshadweep, where only 123 people exercised the option. NOTA was not accepted by the voters in Punjab, Haryana and Delhi either. In fact, NOTA got a country wide vote share of 1.1% in these Lok Sabhapolls, which is more than the vote share managed by parties like the CPI and Janata Dal (United). Over 59.7 lakh voters across all 543 constituencies pressed the lastbutton on the EVM earmarked for NOTA. While Uttar Pradesh led the NOTA tally in absolute terms, Puducherry emerged at the top of the table in percentage terms, with3% of its electorate choosing to reject all the candidates. Though UP polled the highest 5.92 lakh votes in favour of NOTA, this translated into just 0.7% vote share[6]. NOTA is also proved as a game changer in some of the constituencies. In the Lok Sabha elections of 2014, Kannur constituency in Kerala saw a NOTA vote count higher than the votes received by the runner up CPI(M) candidate. In the 2015 State Assembly election in Bihar, the NOTA vote count was higher than the victory margin in many constituencies. It has been observed that exercise of the NOTA option increased with every subsequent election[7].

Based on above study, it can be said that though NOTA introduced with a bona fide noble intent is not free from practical difficulties and loopholes. Because of low literacy rate among voters, they do not possess detail information about the profiles of candidates and the use of the NOTA option. Even voters in urban areas are not adequately aware about the use of this option and its possible consequences. Apart from this, another challenge attached to the effective implementation of the NOTA option is fighting the declining rate of voter participation[8].

CONCLUSION

The right not to vote has found its place in the fundamental freedom of speech and expression under Article 19(1) (a) of the Indian Constitution by the introduction of NOTA. The right to abstain from voting has now been given legal recognition as a facet of freedom of speech and expression. Every citizen is now capable with the right to express his/her disapproval of the choice of candidates in a particular constituency. The advantage of the NOTA is upholding and recognition of the right of the citizens to not cast a vote while maintaining secrecy during such abstinence. The true spirit of democracy lies in the right of the citizens to be able to choose their representatives periodically. Obviously the ends of democracy can be met only when majority of the citizens exercise this right. However, at the same time it must be ensured that the citizens are not compelled to choose the best from the worst. NOTA is a powerful device in the hands of the voters who, if dissatisfied with the quality of the candidates may choose to use it. This accordingly has the effect of a constant pressure on the political parties to ensure that only qualified and suitable candidates represent their political party in the elections. At least this was the entire idea behind the Supreme Court passing a Judgment in favor of introduction of NOTA. The advantages of NOTA are obviously numerous and is a step forward in achieving the ends of democracy[9].

When it comes to democratic societies, where voting is an affirmation of one's freedom and equality, the freedom to abstain from making a choice is often missing. Citizens are given the freedom to vote for any candidate standing for elections, but few democracies give voters the explicit right to reject all the candidates, if they find no one suitable i.e. citizens are given the freedom to choose but not to declare discontent with the candidature by way of voting gives every voter the right to register his or her "negative vote" against all candidates standing for election in a particular constituency. NOTA is

not the same as "right-to-reject" system, whereby, if the majority of voters opt for NOTA option, no candidate will be declared the winner and a fresh election will be called. Under the system introduced in India, even if the NOTA wins more votes than the candidates running for office, the contestant with the greatest number of votes will still be counted as the winner. In this way, this provision is a disappointment to many as it will not have a substantial impact on "cleaning up" political outcomes. Some activists say they hope the Supreme Court decision is a first step toward establishing a broader "right-to-reject". But NOTA is only a half-step 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 by way of judicial activism. The right to reject is a condition when Rejection/Negative Votes win majority and it results in re-election. 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 decriminalizing politics and increasing political awareness; and introduce other provisions such as inner party transparency and election finance reform.

One major short coming of the option of NOTA is its inability to invalidate the elections conducted. However, in this regard, a petition was filed by Tranquebar Dorai Vasu, a city-based advocate in the Madras High Court, in April, 2016 requesting the High Court to consider a re-election in the constituencies that record a NOTA count higher than the votes received by any other candidate and the need to de-bar candidates from subsequent elections for a given period of time. In response to his petition, the High Court bench observed that NOTA was introduced subsequent to a direction to the ECI by the Supreme Court and its very purpose was to make a change in the existing scenario of election process. Even if NOTA votes get majority, the candidate who gets the highest votes would be declared as elected and it does not change the position which was in existence before introduction of NOTA as of now and further directed ECI to frame the rules in this direction[10].

In conclusion it can be said that 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 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 promote the purity of the election process by eventually compelling parties to field better candidates, thereby improving the current situation. It is also observed that introduction of NOTA will prove more beneficial if re-election to be declared at an instance when the number of NOTA votes exceeds the votes polled for any candidate and the same will set up an example both for the citizens of an active democracy and impact quality of candidates and their credibility. NOTA in upgraded form will prove not just an essential but easily implementable reform since it is a step towards correcting a systemic flaw in the electoral system, and is a reasonable, ethical, and a legal obligation for an effective democracy.

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CONFLICT OF INTEREST

We declare that we have no conflict of interest.

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