“NOTA (None Of The Above) is Positive Right But Negative Effects In India Elections”

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ABSTRACT

The present paper examines the role of NOTA (None of the above) in Indian elections. It analyses why NOTA (None of the above) is Indian elections and what can be done to make them Active roll in India’s democratic system.

Keywords: NOTA, Right to Negative Opinion, Right to Reject, Electoral Reforms

“Democracy is all about choices and voters will be empowered by this right of negative voting”.

Chief Justice P Sathasivam.

INTRODUCTION

The idea of a “None of the above” ballot option originated in 1976. 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. The ‘None of the above’ (NOTA) option is introduced for the first time, in 1978, in a ballot by the State of Nevada. This new ballot option is declared a new voting system for all elective offices of US State & Federal governments.[1]

The ECI (Election Commission of India), around 814 million people are eligible to cast their vote. The world’s largest democracy goes about exercising this fundamental right, a few will stand in line for hours, in the brutal Indian summer, to register their protest and to cast a no-vote. Indian general election, 2014, Lok Sabha elections use the option of ‘none of the above’ or NOTA is introduced on the EVMs following Supreme Court directions to ensure secrecy of voters is using this option. A voter does not support any of the candidates in the election, but that is no choice to select a candidate. The Election Commission of India told the Supreme Court of India, in 2009 that is wished to offer the voter a NOTA ("None of the above") option is the ballot, this is something that the government had generally opposed.[2][3]

The People’s Union for Civil Liberties, a non-governmental organization, filed a Public-interest litigation statement in support that is a citizen’s right to vote at an election in secrecy includes the right of negative voting qua all candidates.[4][5]

On 27 September 2013, the Supreme Court of India ruled that the right to register a "none of the above" vote in elections is apply, the voter to reject all candidates is not like any and all the candidates listed in the EVM (electronic voting machine). Before NOTA button was installed on EVMs, voters is fill up form 49 ‘O’ at the polling station is compromised the identity. The judges said that is "would lead to a systemic change in polls and political parties is forced to project clean candidates.[6][7]

Candidates are criminal or immoral backgrounds would have no option but to abstain from contesting elections. In Tamil Nadu, highest number of NOTA votes (46,559) cast in a single constituency. The political parties to be left with option other than is nominate clean candidates on the behalf in the elections.

OBJECTIVE OF THE STUDY

Right to vote also includes a right not to vote i.e. right to reject.

Right to free and fair election.


RESEARCH METHODOLOGY
The methodology involved is the collection of secondary data from the sources like leading newspapers, Election Commission of India’s website, law commission of India reports, ADR website, kanoon.com website, etc...

DATA ANALYSIS
The secondary data collected from leading newspapers, Election Commission of India’s website ADR website, kanoon.com etc in past few months was analyzed. The analysis of facts is enumerated below:
Supreme Court judgment, in PUCL vs. UOI. Ruled that the right to register a "none of the above" vote in elections is apply, the voter to reject all candidates is not like any and all the candidates listed in the EVM.
The Election Commission supported the idea of the NOTA button being introduced in the EVM. Directed the NOTA button to be included in the EVMs.
The right not to vote is found its place in the fundamental freedom of speech and expression.
Over 60 lakh none of the above (NOTA) votes were cast in the 16th Lok Sabha elections, the first time that this option was given, Election Commission data shows.

Supreme Court Judgment: PUCL VS. UOI [8]
None of the above, this option is introduced in the electronic voting machines in India after the landmark judgment delivered by the Supreme Court in PUCL vs. UOI.
judgment dated 27th September, 2013, in Writ Petition (C) No. 161 of 2004 (People’s Union for Civil Liberties &Anr.Vs Union of India & Anr), is directed that the Commission to make necessary provision in the ballot papers/ EVMs for “None of the Above (NOTA)” option so that the electors who do not wish to vote for any of the candidates can exercise their right not to vote for any candidate without violation of the secrecy of their decision. Rules 41 (2), 41(3) and 49-O of the Conduct of Elections Rules, 1961, The Court held that although Right to vote is a statutory right, the decision taken by the voter is a facet of Freedom of Expression under Art. 19(1)(a). Fundamental Right of freedom of speech and expression under 19(1) (a) and statutory right under S. 79 of Representation of People Act is violated if right not to vote is denied.
A bench headed by Chief Justice P Sathasivam said that negative voting would foster purity and vibrancy of elections and ensure wide participation as people who are not satisfied with the candidates in the fray would also turn up to express their opinion rejecting contestants. It said that the concept of negative voting is a systemic change in the election process as the political parties is forced to project clean candidates in polls.
The most important aspects of this particular judgment of the Supreme Court are that, first - secrecy of the voting procedure of free and fair elections and second – the right to vote includes the right not to vote.
Election Commissions of India View:
The Election Commission is said that the judgement will be implemented immediately. Although frequently termed a "right to reject" in India, a former head of the Election Commission has noted that it is not in fact such a thing.\[9\]\[10\]
The Election Commission also clarified that the NOTA votes are considered as invalid votes and will not be considered for determining the forfeiture of security deposit.\[11\]
The Election Commission on 10.12.2001 addressed a letter to the Secretary, Ministry of Law and Justice. The letter stated following view-points: \[12\]
To provide a panel in the EVMs so that an elector may indicate that he does not wish to vote for any of the aforementioned candidates.
The “electoral right” under Section 79(d) also includes a right not to cast vote.
Such number of votes expressing dissatisfaction with all the candidates may be recorded in a result sheet.
The Election Commission supported the NOTA button being introduced in the EVM. The Election Commission has always maintained that –
In the larger interest of promoting democracy, a provision for “None of the Above” or “NOTA” button should be made in the EVMs/ ballot papers.
It is also highlighted that ECI has time and again said that such an action, apart from promoting free and fair elections in a democracy, will provide an opportunity to the elector to express his dissent/disapproval against the contesting candidates and will have the benefit of reducing bogus voting.
Right To Reject:
The Election Commission was turned into reality only vide the 2013 judgment of the Supreme Court. It hoped that introduction of NOTA is induce a greater percentage of voters turnout. The right not to vote has found its place in the fundamental freedom of speech and expression (which has been a long cherished and much debated upon fundamental freedom as envisaged in the Constitution of India). The right to abstain from voting is legal recognition as a facet of freedom of speech and expression.
\[9\] Jain, Bharti (27 September 2013). "Will implement voters' right to reject candidates straight away: Election Commission", Times of India.
\[10\] “Voters have right to reject, poll panel must give them option, says Supreme Court", Hindustan Times. 27 September 2013.
\[11\] http://eci.nic.in/eci_main/ElectoralLaws/OrdersNotifications/NOTA_11102013.pdf
\[12\] FAQ- None of the above option in EVM (Right to Reject). www.adrindia.org, www.myneta.info
Every citizen is now endowed with the right to express his / her disapproval of the choice of candidates in a particular constituency. This disapproval may be expressed legally with the incorporation of NOTA in the voting machines. The view of the Court that introducing NOTA in the EVMs can strengthen democracy obviously rings true. Most people abstained from voting due to the undesirable choice of candidates.
The decision of the Supreme Court in PUCL vs. UOI, that introduction of NOTA in EVMs would compel
the political parties to project candidates with a so to speak “clean background” in the various
constituencies. NOTA are a powerful device in the hands of voters who, if dissatisfied with the quality of the
candidates may choose to use it. This consequently is 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. The
consequence of this entire procedure: a much cleaner political future for India. At least this is the entire idea
behind the Supreme Court passing a Judgment in favor of introduction of NOTA. The advantages of NOTA
are obviously numerous to state in the preceding section. But to scale down the benefits tone line – NOTA is
a step forward in achieving the ends of democracy.

According to S Y Quraishi (the former Chief Election Commissioner, June 2010 to July 2012), "Even if
there are 99 NOTA votes out of a total of 100, and candidate X gets just one vote, X is the winner, having
obtained the only valid vote. The rest will be treated as invalid or “no votes". According to him introduction
of NOTA would not affect the election results. [13]

The right to reject simply means that the citizens have a right not only to express their abstinence form
voting but also that if majority of the citizens have abstained from voting then fresh elections will be held.
The Supreme Court has expressly stated that the introduction does not involve a right to reject; it is simply a
“right to register a negative opinion”. Although the votes registered as NOTA are counted, they will not
change the outcome of the election process.[14][15]

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[13] PUCL vs. UOI, Writ petition (civil) no. 161 of 2004 (SC)
[15] Jain, Bharti (27 September 2013). "Will implement voters' right to reject candidates straight away:
Election Commission”. The Economic Times.

49-O. 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, decide 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.”

**Criminal And Corrupt Politics:**

The Vohra Committee Report on Criminalization of Politics was constituted to identify the extent of the politician-criminal nexus and recommend in which the menace to be combated. The report of the National Commission to Review the Working of the Constitution, cites the Vohra report as follows: “The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country” and that “some political leaders become the leaders of these gangs/armed senas and over the years get themselves elected to local bodies, State assemblies, and national parliament.” This point becomes self-evident, the number of elected representatives with pending criminal cases against them at all levels in our federal system.[16]

The many MPs is criminal charges pending, that not yet been convicted of any crime and are free on bail. According to a 2009 report of the Association for Democratic Reforms, 1158, or 15%, of all candidates contesting in the general election, had criminal charges pending against them. This included almost a third of all candidates in Bihar, as well as 27% of Congress candidates, 27% of BJP candidates, and 43% of ADMK candidates nationwide. During the election 162 MPs with criminal charges pending were elected (up from 128 in 2004), including 76 involved in “heinous offences such as rape, dacoity, and murder” (up from 58 in 2004). [17]

The ADR report states that in 2009, “Of the 608 candidates with the most serious criminal cases against them, only 76 won. The remaining 532 were rejected by the voters.” That is a win rate of only 12.5%. In ADR’s list of the top 20 candidates with criminal cases pending against them, all but two lost.

Supreme Court in Ankul Chandra Pradhan v. Union of India,[18] observed that “Criminalization of politics is the bane of society and negation of democracy. It is subversive of free and fair elections.”

In the case of Dinesh Trivedi, M.P v. Union of India, [19] Supreme Court dealt with N.N.Vohra Committee report, its implementation, which addressed the problem of the growing nexus among politicians, bureaucrats and criminals and its effect on the civil society. The court further held that an independent body should be formulated to look into the matter and it should also be given necessary powers to investigate into these matters and if feasible establish special courts to take cognizance of such matters with the consent of Union government.


[18] (1997) 6 SCC 1

In People's Union for Civil Liberties v. Union of India, [20] Supreme Court held that “the criminal antecedents of the candidates including their assets and liabilities should be available to the voters so that they can make a wise decision which serves their best interest.”

**NOTA (NONE OF THE ABOVE) EFFECT IN INDIAN ELECTIONS:**

NOTA in the Assembly elections held in 2013. According to data put up by the Election Commission, very few voters chose to press NOTA on the electronic voting machines in Chhattisgarh, Delhi, Madhya Pradesh and Rajasthan. In Delhi's Adarsh Nagar, there were 322 votes for NOTA in the 35,144 votes counted. In Chhattisgarh's Dharsiwa 356 voters opted for NOTA amongst 10,666 counted votes. The story is similar in Madhya Pradesh's Bhojpur with 364 for NOTA in 31,042 counted votes. In Rajasthan's Jodhpur there were 516 button-presses for NOTA among 35,165 counted votes.

Over 60 lakh none of the above (NOTA) votes were cast in the 16th Lok Sabha elections, the first time that this option was given. The NOTA button on the electronic voting machines, which equals to 1.1 per cent of the total votes polled during these elections across 543 seats. [21]

The states with comparatively maximum percentage of NOTA includes: Meghalaya with 2.8 per cent votes (30,145), Gujarat 1.8 per cent (4, 54,880) Chhattisgarh 1.8 per cent (2, 24,889), Dadra and Nagar Haveli 1.8 per cent (2,962). [22]

The other states with comparatively higher percentage of NOTA includes: Bihar - 1.6 per cent (5,81,011), Odisha - 1.5 per cent (3,32,780) Mizoram - 1.5 per cent (6,495), Jharkhand - 1.5 per cent (1,90,927), Daman and Diu - 1.5 per cent (1,316), Sikkim 1.4 - per cent (4,332), Tamil Nadu - 1.4 per cent (5,82,062) Madhya Pradesh - 1.3 per cent (3,91,837), Among others are Tripura - 1.2 per cent (23,783), Kerala - 1.2 per cent (2,10,561), Goa - 1.2 per cent (10,103), Rajasthan - 1.2 per cent (3,27,902), Uttarakhand - 1.1 per cent (48,043), West Bengal - 1.1 per cent (5,68,276), Arunachal Pradesh - 1.1 percent (6,321). [22]

The states and UTs with lower percentage of NOTA votes are: Lakshadweep - 0.3 per cent (123), Haryana - 0.3 per cent (34,225), Nagaland - 0.3 per cent (2,696) and Punjab - 0.4 per cent (58,754). [22]

[20] (2013) 10 SCC 1


**REFERENCES**


[10] "Voters have right to reject, poll panel must give them option, says Supreme Court". *Hindustan Times*, 27 September 2013. Retrieved 8 June 2014.