

Nota in India: An Electoral Renaissance?

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ABSTRACT: Introduction of NOTA in India has been hailed by many to be a spectacular step towards capturing the true spirit of democracy. However whether NOTA can be described as an electoral renaissance still remains uncertain as NOTA is simple a right to register a negative opinion and not a right to reject. Giving citizens the right to reject will ensure the two-fold purpose of candidates with a clean background as well as inducing citizens to cast their vote. The decision of the Supreme Court of India in *PUCV vs. UOI*, is no doubt a watershed judgment that changes the face of Indian electoral process. However, it falls short of achieving the democratic goals that the citizens of India are entitled to. This paper however outlines the extra step that India needs to take in order to ensure that it becomes a fully functional democracy sans corruption.

KEYWORDS: NOTA, Democracy, Right to Negative Opinion, Right to Reject, Electoral Reforms.

I. THE STARTING POINT - PUCV VS. UOI

None of the above. This option was introduced in the electronic voting machines in India after the landmark judgment delivered by the Supreme Court (the apex court in the Indian Judicial system) in *PUCV vs. UOI*. The right to vote in India is a statutory right. The converse of this, i.e. the right *not to vote*, while maintaining secrecy was claimed vide a petition to the Supreme Court by PUCV. Since the petition filed by PUCV (Peoples Union For Civil Liberties) was a Writ Petition under *Article 32*, the Court had to judge its maintainability, as it was contended that Right to Vote is considered a statutory right. 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. Thus the Court held that the Writ Petition is maintainable.

The Court held that Rule 49-O and Form 17-A, which if read together allow secrecy to be violated, is *ultra vires* Article 19 and Section 79(d) and 128 of the RPA. Additionally, accepting the EC's suggestion, the Court directed the NOTA button to be included in the EVMs. The court further went on to describe that the NOTA button sought for by the petitioners was similar to the 'ABSTAIN' button provided for in the voting machines in Parliament, the other two being 'AYES' and 'NOES'. For, by pressing the NOTA button, the voter would in effect say he was abstaining from voting since he did not find any of the candidates worthy of his vote. The Three Judge Bench, headed by CJ P Sathasivam unanimously stated, "Eventually, voters' participation explains the strength of democracy. Lesser voter participation is rejection of commitment to democracy slowly but definitely, whereas larger participation is better for democracy. But there is no yardstick to determine what the correct and right voter participation is. If introducing the NOTA button can increase participation of democracy then, in our cogent view, nothing should stop the same." Non-participation in the elections would cause frustration and disinterest, "which is not a healthy sign of a growing democracy like India."

The most important aspects of this particular judgment of the Supreme Court are that, first - secrecy of the voting procedure (secret ballot) is an integral part of free and fair elections and second – the right to vote includes the right *not to vote*. (While of course, maintaining the secrecy).

II. ELECTION COMMISSIONS VIEW:

The Election Commission supported the idea of 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 available in the EVMs/ ballot papers.
- 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.

The Election Commission took up the initiative way back in the year 2001. On 10.12.2001, the EC addressed a letter to the Secretary, Ministry of Law and Justice. The letter stated following viewpoints:

- The "electoral right" under Section 79(d) also includes a right not to cast vote

- 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.
- Such number of votes expressing dissatisfaction with all the candidates may be recorded in a result sheet.

III. EVOLUTION OF THE VOTING SYSTEM

Tracing the history of the voting procedure the evolution from ballot papers to electronic voting machines have only denied to citizens the right not to vote. When voting was through ballot papers citizens abstained from voting by putting in blank papers. This ensured both, the right of a citizen to not vote, as well as maintaining secrecy during such an episode. The EVM's however, gave no such scope to the voters due to the working mechanism of the EVM's. The present system of EVM comprises of two units, i.e. control and balloting units, which are interconnected by a cable. While the balloting unit is placed in a screened enclosure where an elector may cast his vote in secrecy, the control unit remains under the charge of the Presiding Officer and so placed that all polling agents and others present have an unhindered view of all the operations.

The balloting unit, placed inside the screened compartment at the polling station gets activated for recording votes only when the presiding officer/polling officer in charge presses the button marked "Ballot" on the control unit. Once the ballot button is pressed, the Control unit emanates red light while the ballot unit that has been activated to receive the vote emanates green light. Once an elector casts his vote by pressing balloting button against the candidate of his choice, he can see a red light glow against the name and symbol of that candidate and a high-pitched beep sound emanates from the machine. Upon such casting of vote, the balloting unit is blocked, green light emanates on the control unit, which is in public gaze, and the high-pitched beep sound is heard by one and all. Thereafter, the EVM has to re-activate for the next elector by pressing "ballot button". However, should an elector choose not to cast his vote in favor of any of the candidates labeled on the EVM, and consequently, not press any of the labeled button neither will the light on the control unit change from red to green nor will the beep sound emanate. Hence, all present in the poll booth at the relevant time will come to know that the elector has not cast a vote. With the introduction of EVMs, the said option of not voting for anybody without compromising the right of secrecy is not available to the voter since the voting machines did not have 'None of the above' (NOTA) button.

IV. RIGHT TO REJECT?

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. Citizens preferred not casting their vote rather than being forced to vote for one of listed candidates in a particular constituency. Placing abstinence from voting in juxtaposition with voting for an undesirable candidate, the former is obviously more favorable. Introduction of a right to not vote has been under the radar since 2001, when the initiative was taken by up the Election Commission. This epiphany of the Election Commission was turned into reality only vide the 2013 judgment of the Supreme Court. It was hoped that introduction of NOTA would 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 has now been given legal recognition as a facet of freedom of speech and expression. 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 now be expressed legally with the incorporation of NOTA in the voting machines.

The main advantage of the incorporation of 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 (which, unfortunately is the case more often than not). This is exactly what NOTA seeks to achieve. The driving force behind the decision of the Supreme Court in *PUCI vs. UOI* was the fact 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 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 consequently 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. The consequence of this entire procedure : a much cleaner political future for India. 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 as have been stated in the preceding section. But to scale down the benefits tone line – NOTA is a step forward in achieving the ends of democracy.

The indication of this however is that NOTA obviously includes the *right to reject*. The right to reject simply means that the citizens have a right not only to express their abstinence from voting but also that if majority of the citizens have abstained from voting then fresh elections will have to be held. This is the true spirit and purport of NOTA. The scenario in India however is grossly different from other States insofar as the right to reject is concerned. 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". This, it is personally opined, is the greatest misgiving of NOTA in India. The entire purpose and advantage of NOTA is taken away by the fact that irrespective of the number of citizens who have pressed NOTA in the EVMs the candidate with even a marginal majority will continue to win the elections. 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. It would only ensure the secrecy of the voter who did not want to vote for any of the voters in his constituency while also ensuring that nobody casts a bogus vote in his place. (As NOTA allows for legal expression of dissent a citizen does have to stay away from voting thus reducing the scope of impersonators casting a vote in his place.) Moreover, NOTA failed to show any effect 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.

This obviously does not come as a surprise, for citizens would rather refrain from voting rather than registering their disagreement, which will ultimately have no effect on the election, results whatsoever. Even if more than 50% of the voters choose to opt for negative voting, it will not affect the election result or prevent a particular candidate from winning. It is for this very reason that NOTA came into strong criticism and it is solely this reason that prevented citizens from using the option of registering a negative vote. Introducing NOTA in the electronic voting machines is no doubt a major step in introducing electoral reforms, bringing it closer to the end democracy seeks to achieve, however its true effect and purport can be realized only when it is allowed to be used in its complete and free sense i.e. not only the right to register a negative vote but also the *right to reject*.

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