

# NOTA: AS A GAME CHANGING DEVICE IN INDIAN ELECTIONS

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"None of the above", or NOTA for short, also known as "against all" or a "scratch" vote. It is a ballot option in some jurisdictions or organizations, designed to allow the voter to indicate disapproval of the candidates in a voting system. The NOTA option was first used in the 2013 assembly elections held in four states -- Chhattisgarh, Mizoram, Rajasthan and Madhya Pradesh and the Union Territory, Delhi. More than 15 lakh people exercised the option in the state polls. NOTA is for those people who are not satisfied with any candidate standing in the elections as it gives an opportunity to disapprove all of them by still turning up to the polls and expressing their opinion. Negative voting will lead to a systemic change in polls and political parties will be forced to project clean candidates. If the right to vote is a statutory right, then the right to reject a candidate is a fundamental right of speech and expression under the Constitution. The bench also pointed out that the system of negative voting existed in several other countries. Even in Parliament, the MPs have the option to abstain from vote. In January 2014, the Election Commission of India issued a circular stating that the provisions of NOTA should also be included in the Rajya Sabha elections as the provision was made available in the Electronic Voting Machine (EVM) in 2013.

In *People's Union For Civil Liberties v. Union Of India* (September 27, 2013), the Supreme Court had ruled that a None of the Above (NOTA) option "may be provided in EVMs" so that voters are able to exercise their "right not to vote while maintaining their right of secrecy". On October 29 that year, the Election Commission of India (ECI) said that if a situation arose where the number of NOTA votes exceeded the number of votes polled by any of the candidates, the candidate with the highest number of votes would be declared winner. This, it said, was in accordance with Rule 64 of the Conduct of Elections Rules, 1961. This provision made the NOTA option almost redundant. While it ensured confidentiality for a voter who did not want to choose any of the candidates and yet wished to exercise her franchise, the provision clarified that a NOTA vote would not have any impact on the election result, which is what interests candidates, political parties, and voters. Soon after that, candidates began campaigning against NOTA, telling voters that choosing the option meant wasting a vote.

The ECI seemed to have completely overlooked the spirit of the judgment, illustrated in the following excerpts: "For democracy to survive, it is essential that the best available men should be chosen as people's representatives... This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote. Thus, in a vibrant democracy, the voter must be given an opportunity to choose NOTA..., which will... compel the political parties to nominate a sound candidate (emphasis added).

"Democracy is all about choice. This choice can be better expressed by giving the voters an opportunity to verbalize themselves unreservedly and by imposing least restrictions on their ability to make such a choice. By providing NOTA button in the EVMs, it will accelerate the effective political participation in the present state of democratic system and the voters... will be empowered. We are of the... view that in bringing out this right to cast negative vote at a time when electioneering is in full swing, it will foster the purity of the electoral process and also fulfil one of its objectives, namely, wide participation of people. "When the political parties will realize that a large number of people are expressing their disapproval with the candidates... there will be a systemic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity "

## TWO STATE ELECTION COMMISSION'S JUDGEMENT REGARDING NOTA:

The State Election Commission (SEC) of Maharashtra was the first to understand the spirit of the judgment. It issued a reasoned order on June 13 saying,

✓ "If it is noticed while counting, that NOTA has received highest number of valid votes, then the said election for that particular seat shall be countermanded and fresh elections shall be held for such post."

This was commendable, but it stopped short of giving NOTA the teeth that the court wanted. It meant that the same candidates could contest the new election, which meant that the result could be the same as earlier.

The SEC of Haryana, in an order dated November 22, stated that

✓ if "all the contesting candidates individually receive lesser votes than NOTA, then none of the contesting candidates be declared as elected,"

✓ "all such contesting candidates who secured less votes than NOTA shall not be eligible to re-file the nomination/contest the re-election."

The two SECs are within the ambit of the Constitution and various Supreme Court judgments to issue these orders for various reasons: they have powers identical to the ECI for elections that take place in their jurisdictions; they have plenary powers to issue directions in areas related to the conduct of elections where there is no specific legislation, till such time as Parliament or the State Assembly enacts such legislation; and there is no specific legislation pertaining to NOTA.

## NOTA – IN THE PRESENT LOK SABHA ELECTION (2019-20) :

Ever since voters have been provided the none of the above (NOTA) option if they do not want to vote for any of the candidates in the fray, political parties now cite many voters having chosen NOTA as a reason for losing an election. This may be true in very close contest, when voters are in small numbers and the margin of victory and defeat is rather small. But overall, there has hardly been any election in india where NOTA has been instrumental in altering an electoral verdict.

In the recent round of elections to five state Assemblies (Telangana, Rajasthan, Madhya Pradesh, Mizoram and Chhattisgarh), Where the margin of votes between the main contenders, the Congress and the Bharatiya Janata Party (BJP) was narrow –for example only 0.1% in Madhya Pradesh and about 0.5% in Rajasthan –the BJP cited NOTA voting as among the main reason for its defeat. However, had the Congress been in the BJP's position, it too would have blamed NOTA. Thus NOTA is a convenient political scapegoat. Even voters have started to believe that NOTA has become a very important factor in Indian elections.

In the recent state assembly elections, the results indicate that a decline in NOTA votes in four states, Telangana being the only exception.

The decline was

- ✓ from 1.9% to 1.4% - Madhya Pradesh
- ✓ from 1.9% to 1.3% - Rajasthan
- ✓ from 3.0% to 1.9% - Chattisgarh
- ✓ from 0.6% to 0.4% - Mizoram

Note: Telangana had a marginal increase from 0.7% to 1.0 %

The data show no bigger attraction for NOTA in these five mentioned five states in last 5 years. It is the same in states other than these five which have gone to the polls in recent years.

### ➤ Previous election

In the 2014 Lok sabha elections, only 1.08% voters opted for NOTA nationally. There was hardly any significant NOTA vote except in puducherry, where 3% voters opted for it and 2.8% in Meghalaya. In a number of states, the NOTA votes were in the range of 1-1.5% of the total votes polled. When the average size of a Lok sabha constituency is about 27 lakhs voters, it is difficult to imagine that a small percentage of votes could alter electoral outcomes in a large number of constituencies. It is widely believed, and true to some extent, that NOTA could be a useful tool (such as in a local body election) if constituencies are smaller in size, with fewer voters. But this is still not seen as a viable option among voters even in a State Assembly election. The preference for NOTA in assembly constituencies reflects the trend of the 2014 Lok sabha election. An average assembly constituency in a state in the hindi heartland has about 4-5 lakh voters; a small number of voters opting for NOTA will hardly affect the overall electoral outcome. There may be instances of a significant number of constituencies where NOTA votes may be higher than the margin of victory, but normally, such seats are also divided between various political parties in proportion to their share of victories.

There was such a situation in these assembly elections. In Madhya Pradesh, there were 23 assembly constituencies where NOTA votes were more than the margin of victory. Of these, 10 were won by the BJP while 12 went to the congress. The Burhanpur assembly seat was won by an independent. In Rajasthan, in the close contest between the congress and the BJP in 16 Assembly seats, NOTA votes were higher than the victory margin, but these seats were evenly distributed between both parties. Of these 16 assembly seats, eight went to BJP and seven to congress. An independent candidate won the Marwar junction seat by 251 votes. In Chattisgarh, there were eight such assembly seats, with three going to BJP, two to the congress and three to the Janta Congress Chhattisgarh.

In the 2013 Assembly elections in Rajasthan, even when the BJP led the congress by 12% votes there were 11 Assembly seats where NOTA votes were more than the victory margin (six went to the BJP, three to the congress and two by National People's Party). It was not different in Madhya Pradesh in the same year when the BJP led the congress by 8% votes. Of the 26 Assembly seats where NOTA votes were higher than the victory margin, 14 went to the BJP, 10 to the congress, one to the Bahujan Samaj party while the sehere seat was won by an independent. Even in Chhattisgarh, that year, of the 15 assembly seats where NOTA votes were more than the victory margin, eight went to the BJP and seven to the congress. So we say that NOTA is more important in these elections than the past.

### NOTA - IN RAJYA SABHA :

The system of NOTA makes the system of proportional representation by means of single transferable vote difficult and cannot be made applicable in Rajya Sabha elections.

- NOTA defeats the fairness in indirect elections, it ignores the role of an elector in such an election and destroys democratic values and encourages malpractices like defection and corruption.
- In the Rajya Sabha, the nature of the representative is different as the candidate is the representative of the state. In contrast, a candidate who is elected by voters in a direct election represents a constituency.
- NOTA can destroy the concept of the value of a vote and representation and encourage defection that shall open the doors for corruption which is a malignant disorder.
- The maintenance of secrecy of voting through the system of the open ballot will be violated by the introduction of NOTA in Rajya Sabha polls.
- It will not only affect the discipline that has been prescribed under the Tenth Schedule to the Constitution but will also infringe upon the disqualification of a member on the ground of defection.

Hence, Supreme Court on August 21, 2018, ruled out that NOTA will not be allowed in Rajya Sabha elections.

### CONCLUSION:

NOTA is a powerful democratic device which remains inactive at present. NOTA must be given power like that of the above mentioned Maharashtra state election commission's orders. If a constituency receives majority of NOTA votes, then new election with new candidates can be held. Then, the political leaders can be the whole-hearted representatives of people and can reduce the criminalisation of politics to a large extent. With the study of survey of present and previous elections, it is clear that NOTA is a game-changing device. It only needs some reforms and proper implementation to do wonders in our present politics.

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