

# How NOTA is reforming the electoral system in India?

*“If democracy becomes ecstasy NOTA will be public policy”*

-Gnan Ramesh

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**ABSTRACT:** *NOTA is an instrument introduced in the year 2013 in India’s electoral system to achieve the objectives of democracy in our country. It is a step towards empowering the voters to cast negative vote by exercising the right to secrecy. This option on EVM’s will lead to a systematic change in the poll, directing the parties to project best candidate in election. Further, it will encourage transparency in our electoral system which is one of the federal feature of our political system.*

*However, it is a question to be answered that how NOTA can result into rejuvenation of our electoral system as it only have two-fold objective i.e. Right to Reject and Right to Secrecy and also one of the most controversial election reform. This paper hereby outlines about how far NOTA have resulted in electoral renaissance in India and analysis of conditions in India as well as different countries too. The paper concludes with recommendation and conclusion.*

**KEYWORDS:** *Right to Secrecy, Right to Reject, Electoral System, Indian Polity, NOTA, EVM.*

## **INTRODUCTION:**

India is a democratic country since 1950. From there evolved the concept of Universal Adult Suffrage, which made possible for millions of individual voters to elect their own representative and to be the part of polity of the nation. However, for the democracy to survive, it is important that the most capable candidate should be elected for better administration. It can be attained through men of high esteem and must be law-abiding, who can work for the people rather than for themselves. Perhaps, in these days most of the candidates are not up to the expectation of the voters, so the concept of negative vote i.e. NOTA was being recommended by the election commission.

Substantially, NOTA signifies “none of the above”, also known as “against all” or “scratch” vote, it is a voting option on EVM through which voter have right to show their disapproval against the candidates of that constituency. It can also referred as casting of negative vote by the people which shows *Qui non approbat* which literally means ‘Right to show Dissapproval’. Recently, it was also conferred that “Voting is a formal expression of will or opinion in an electoral process. Right to reject implies that a voter while voting has every right not to opt for any of the candidates during an election. Such a right implies a choice to remain neutral. This may happen when a voter feels that none of the candidates in a candidacy deserves to be elected. It happens by way of his choice, belief, thinking and expression. Right to reject has its genus in freedom of speech and expression.”<sup>1</sup>

This option of casting a negative vote is also based on the theory “*consent requires the ability to withhold consent in an election*”. Hence, NOTA may be seen as a legal route to bring change in the electoral system of India.

India is a democratic nation which works for the people however; certain instances proved that there is a need to do political cleansing. The election commission having the same view recommended to have NOTA, so to guarantee the people the right to reject and to show their dissatisfaction about the candidates.

<sup>1</sup>Association of democratic reforms (non-profit organisation)

The **Law Commission of India** contended through its analysis and report no.-255<sup>2</sup> on “electoral reforms”. The report comprehensively deals with various issues which shall be considered to bring reform. Further the Apex Court in the landmark case “*Public Interest Foundation & Others V. Union of India*”<sup>3</sup> advised the Law Commission to analyse important issues i.e. “(i) curbing criminalization of politics and needed law reforms and (ii) impact and consequences of candidates filing false affidavits and need of electoral reforms to check such practice.”

Perhaps, with modernity reforms are necessary. Hence, NOTA can be a way to bring reform in electoral system. It gives voters the right to cast negative vote and to choose their representative. It also brings fear in the mind of political parties to have a fair conduct. Eventually, if this idea of ‘none of the above’ is implemented in its true sense, the Indian polity will radically change from the current scenario.

### **Origin of “NOTA” – How it came into existence?**

The concept of “none of the above” ballot option emerged in 1976, when municipal advisory council recommended the choice to cast negative vote in the official electoral ballot in California, USA. Further in the year 1978, The then cabinet ministers Walter Wilson and Mathew Landy Steen brought the idea (NOTA) for the first time in the state of Nevada. Thereafter, this new ballot option have been declared as a new voting system in many other countries which also resulted in development of those countries.

In India, in 2009, the election commission proposed the idea of NOTA before the Hon’ble Supreme Court so that to wider the purview of “right to freedom of speech and expression.” However, court rejected the recommendation. Finally on 27<sup>th</sup> September 2013, the concept of right to register a ‘none of the above’ was applied when “The People’s Union for Civil Liberties” filed a Public Interest Litigation for evolution of NOTA.

- “People’s Union for Civil Liberties V. Union of India”<sup>4</sup>

The option of casting a negative vote with right to secrecy was introduced after the landmark judgement pronounced by the Apex Court in the case *PUCL V. UOI*. Right to vote is a fundamental right in India. The reverse of this i.e. right to cast negative vote with right to secrecy was claimed by filing writ petition under Article 32. It was also contested that right to vote and right not to vote are the two faces of one coin and hence both shall be given the equal importance, denial of which can result in violation of Article 19(1)(a)<sup>5</sup> of Constitutional law of India and Section 79 of Representation of People Act.

The court declared that rule 49-O<sup>6</sup> and Form 17-A<sup>7</sup> if interpreted together, is ultra vires to Article 19 and section 79(d)<sup>8</sup> and section 128<sup>9</sup> of Representation of People Act. Eventually Supreme Court had given the weight to the prior recommendation of election commission and directed NOTA button to be included as the option on EVM considering the most important aspects i.e., right to secrecy is a significant part of free and fair election and secondly, “right to vote includes right not to vote”.

### **NOTA: Renaissance of Electoral system in India**

*In the words of Mohammad Khatami, “... elections are the greatest symbol of participation and political reform...”*. The election system of India have gone through various changes which helped in evolution of voting system from ballot paper to electronic voting system. Prior to context, when voting was through ballot paper, voters practised right not to vote by putting in blank chits. The system ensures both rights not to vote and right to privacy of the voter during the episode. But with the evolution of EVMs such right get devastated, as there was no such ballot option to cast negative vote. Substantially, rule 49-O entails that the voter casting negative vote have to fill a Form 17-A and give signature and thumb impression which can be used as records, this instance proved to be violation of Article 14, Article 19(1)(a) and right to privacy. Hence, having the same

<sup>2</sup>Submitted by Mr.A.P. Shah (Chairman Of Law Commission of India ) on 1 feb 2014.

<sup>3</sup>Writ petition (civil) no. – 536 of 2011

<sup>4</sup> Writ petition (civil) no. – 536 of 2011

<sup>5</sup> Right to freedom of speech and expression

<sup>6</sup> Voter deciding not to vote

<sup>7</sup> Service voter

<sup>8</sup>Electoral right

<sup>9</sup> Maintenance of secrecy of voting

view Election Commission recommended to add a new ballot option ‘None of The Above’ through which voter can show their dissatisfaction towards the candidacy. This was a move to bring reform in electoral system of India.

- *“NOTA, The legal route to change”*

The two basic components of NOTA is firstly, right to secrecy and secondly right to reject. These rights are the weapons in the hand of voters if implemented properly. Recently, The Three Judges Bench<sup>10</sup>, headed by *CJ P Sathasivam* given a view that with modernity changes are necessary and *NOTA should be brought as it recognizes statutory right i.e. ‘right not to vote’*. Thus, it is important to understand that what are the needs of the population.

“Eventually, electorates’ 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.”<sup>11</sup>

#### Political and constitutional report committee:

The committee submitted its report on to “voter engagement in election” in which it was recommended that “none of the above” option on the ballot would serve as a wakeup call to the parties that they have to earn the faith of voters. And this will eventually result in increase in the percentage of poll.

Further, with introduction of NOTA many positive aspects taken its way i.e.:

- NOTA option will force the political parties to select best and honest candidate i.e. with no criminal records
- It will ensure the” right to freedom of speech and expression” to all the voters
- NOTA will help in overcome the disadvantages of Rule 49-O by providing right to secrecy while voting.
- Eventually, this will help in increase in poll percentage.
- This will help in achieving electoral principle of a free and fair election: verifiability, transparency, and privacy.

Significantly, NOTA brought two reforms in electoral system of India by recognizing two basic expressions i.e. also the pillars of it.

#### PILLARS OF NOTA



#### ➤ **RIGHT TO REJECT**

In the words of Abraham Lincoln “*The ballot is stronger than the bullet*”. The right to reject have surely widened the ring of democracy in India. Previously, most people abstained from voting due to disappointment from candidacy. Voters preferred not to vote rather than voting for any unwanted choice. This was a great flaw of our electoral system. However Election Commission in 2001 have taken initiative to waive this flaw by introducing “none of the above” option in the ballot which recognizes right to not vote, and this turned into reality with the judgement of “*Public Union Civil Liberties V. Union of India*” in 2013.

<sup>10</sup>PUCLV. UOI

<sup>11</sup>ibid

In a renowned judgment<sup>12</sup> it has been stated that, "An absolute right not to vote is a part of right to freedom of expression of a voter in a federal structure of our democracy and it has to be accomplished in the same manner as right to vote has been established. A elector may strain from voting at an election on various grounds such as, if he does not observe any of the candidates compatible and worthy of his vote. One of the ways to use such expression may be to deny from voting, however the option is not an ideal one for a diligent and responsible citizen. Thus, the only way through which it can be made possible is by providing a ballot option named NOTA in the EVMs to express the right to deny. This is the basic feature of a welfare state like India, if the lasting values in a healthy polity have to be preserved, which the Election Commission has not only acknowledged but has also propounded."

Recently, in Rajasthan Assembly Election around 15 constituencies polled more NOTA votes than the victory margin of the winning party.<sup>13</sup> The instance proved that voters too want to use their right not to vote. Thus, the benefits behind implementation of NOTA is the procurement of right not to vote which also finds its place in right to "freedom of speech and expression". This consequently will result in constant pressure on political parties to ensure clean background. Hence, to scale down the benefits of option "none of the above" in brief, will surely achieve the aims of democracy.

### ➤ RIGHT TO SECRECY

The ideal spirit of welfare state like India lies in securing the rights of the people and to choose their own representative<sup>14</sup>. Simultaneously, the citizens should not be induced to choose best from the worst. Right to secrecy is a fundamental right of the voter to cast vote without any coercion as per the Article 21 of Constitution of India.<sup>15</sup> Therefore, protection of elector's identification and securing secrecy is an essential part of free and fair election as it disallows the difference between the voters who cast positive votes and the voters who cast negative votes.

The Supreme court with the motive to secure the basic rights of the citizen under article 14, 19(1) (a) and 21 struck down Rule 49-O and Form no.-17-A of the Conduct of Election Rules, 1961. The flaw of Rule 49-O was if voter wants to cast a negative vote his electoral number should be duly entered in form no.17-A and the thumb impression and signature should be recorded which is a violation of Right to Secrecy.

In a Writ Petition, Supreme Court of India has opined that "it is a right provided to a voter not to vote for any candidate while protecting his right to privacy is extremely important in a democracy. Such an ballot option gives the voter the right to express his discontentment with the candidates who is being put up by the political parties. When the political parties will realise that a large number of people are expressing their objection with the candidates being put up by them, gradually there will be a revolutionary change in the poll and the political parties will be bound to fulfill the will of the people and direct candidates who are known for their integrity and wiseness."<sup>16</sup>The right to secrecy is therefore a right which should be guaranteed to all the voters so to eliminate the drawbacks of election rules of India.

<sup>12</sup>Lily Thomas v. Speaker, Lok Sabha and others (1993) 4 SCC 234 13

<sup>13</sup> 12 December, 2018

<sup>14</sup>Kharak Singh v. State of U.P., AIR 1963 SC 1295

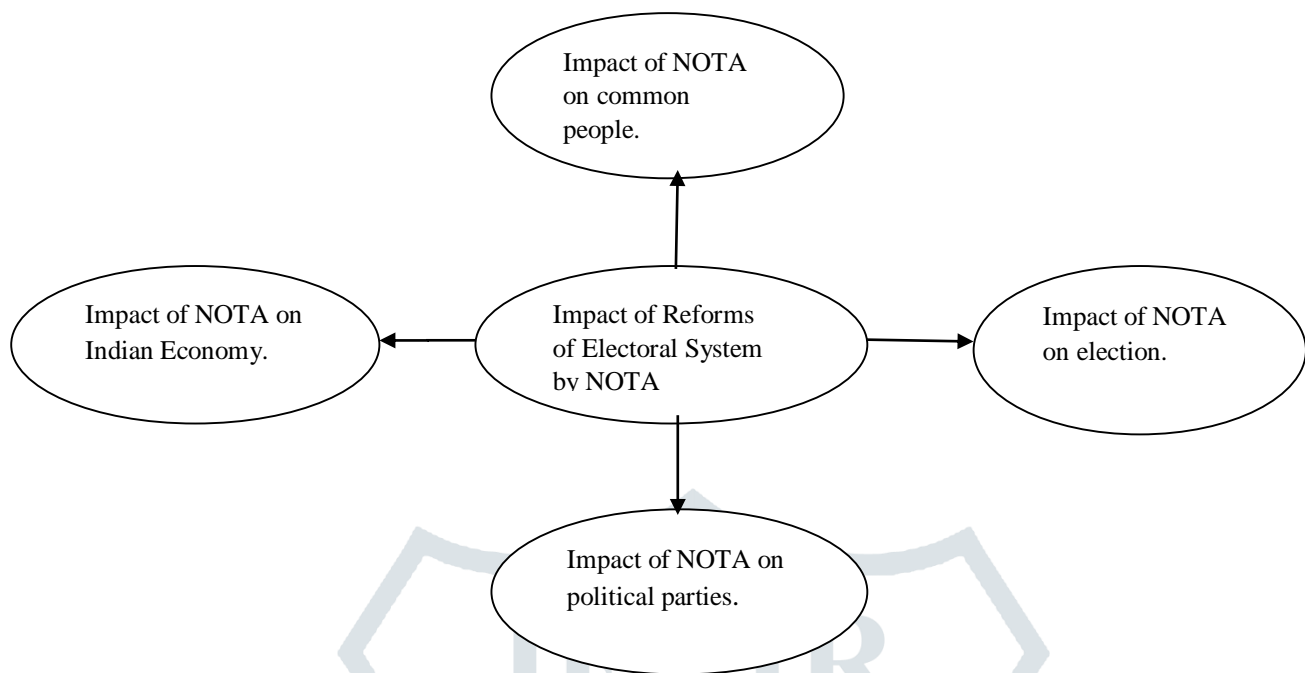
<sup>15</sup>Gobind v. State of M.P. 1975 2 SCC 148

<sup>16</sup>Shailesh Manubhai Parmar v/s Election Commission of India through the Chief Election Commissioner & Ors. WRIT PETITION (CIVIL) NO.631 OF 201



**Impact of NOTA on various aspects**

NOTA have brought reforms in our electoral system which impact in various aspects as mentioned below.

***Impact of NOTA on common people:***

India, a democratic nation need constant reforms to determine the demands of the citizens. In today's era the political parties and candidates need to acquire greater mobility, accountability and respect for the people as voters have "right to reject" by choosing the "none of the above option". This advancement is a wake up call for the parties to have a clean background. For this development if the electoral system need reforms, it must be because this is the time for evolution.

NOTA for voters is their own personal form of protest. It is an instrument for conscientious electors to be a participant even if they are turned off by the respective candidates standing in election<sup>17</sup>. Henceforth, common man serves the main role in the polity of India so, there is a need to secure their right under Articles 14, 19(1) (a) and 21.<sup>18</sup>

Instances in which common people showed their superiority-

The Congress Party in Kaparada, defeated BJP by 170 votes however NOTA votes in the box was 3,968. The BJP defeated in Mansa constituency by just 525 votes however, 3,100 voters made NOTA as their choice. In Jetpur, the BJP was defeated by 3,056 votes but NOTA earned double of it — 6,255. The other instance is episode of 2012 and 2013, people have protested and done anti-corruption movements, which acclaim that country men are aware of the deeds of the political parties. This is a gradual awakening call for new tools, laws and movements<sup>19</sup>.

***Impact of NOTA on election:***

NOTA option in electoral ballot is a milestone move in securing democracy. It is a way out for the people to show their anger and dissatisfaction with the dirty politics through ballot. Election is also a barometer to gauge down the views of electors about candidacy.

*"In my opinion, NOTA is very good; we should say if NOTA crosses certain percentage of votes; for example if the difference between the winner and the loser is less than the NOTA votes, you can say we should have second round of elections,"*

<sup>17</sup>Standing committee report, 12 March 2015

<sup>18</sup>R.Rajagopal v. State of Tamil Nadu 1994 6 SCC 632 26

<sup>19</sup><https://indianexpress.com>

-T.S.Krishnamurthy

Going by this analysis of NOTA vote trends, a few patterns begin to emerge:

1. Electorate reserved for schedule caste and schedule tribe observed large figure of NOTA votes.
2. The NOTA gained more votes in places effected by left-wing extremism.
3. NOTA votes were relatively high in electorate where there was great competition between parties— Congress and the BJP.

The introduction of “none of the above” may seem as small development but it is not. It took 12 long years in its implementation and there must be something potent about which all political parties were reluctant and resisted thereof. Further NOTA is one of the series of effort to restore the rights of the voter.

#### ***Impact of NOTA on economy:***

NOTA is a positive move but it have serious concerns because it doesn't have any teeth. In reality if NOTA wins there would be re-election, resulting in vast expenditure. This will surely affect the economy of the county as this resource may have been used for any fruitful purpose. Further, the other effect is that in due course of time between the two elections there would be policy paralysis.

The PUCL an NGO stated that “The Election Commission should frame rules to the effect that if NOTA gets a majority, the election held in the particular constituency shall be declared null and void and fresh election shall be conducted to the constituency. In these circumstances, the Election Commission may also frame rules stating that the candidates who fought in the earlier fray should not be allowed to contest or they should be debarred from contesting for at least some time period, as can be decided by the Election Commission,”<sup>20</sup> It is a limitation to the NOTA that there is a absence of formal rules in case it wins which can otherwise effect the economy of the country.

In case of formation of coalition government –

If in any constituency NOTA wins, it can result into formation of Coalition government in that electoral. This will again result in policy paralysis because of absence of any absolute government and eventually the economy will suffer. Therefore coalition is not good, as it results in policy blockade and steady growth. Absolute government is desired for effective economic growth. China is the best example for permanent government and there development policies are mostly acclaimed<sup>21</sup>.

#### ***Impact of NOTA on political parties:***

India has a multi-democratic party system. However, the loophole of this system is that in parliament, every third person has criminal charges upon them. In Uttar Pradesh nearly 48% of Member of Legislative assembly have criminal charges and in Bihar it is 59%<sup>22</sup>. This study shows that electoral system of India needs reforms and this has been done through introducing NOTA a weapon in the hand of voters to cast negative vote.

<sup>20</sup>Stated in Public interest litigation

<sup>21</sup><https://www.worldbank.org>

<sup>22</sup><https://www.hindustantimes.com>

## Partywise Vote Share

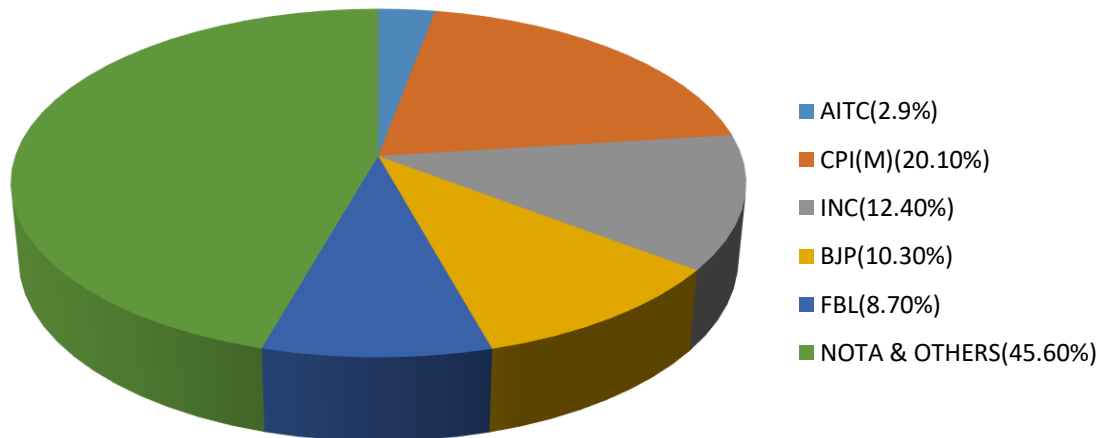


Fig1: The pie chart shows the Partywise voting share in MP elections<sup>23</sup> .

The analysis shows that NOTA has affected the other parties in winning with majority in that constituency. It tests that voters are now aware of their right not to choose.

- Dinesh Goswamy commission report, 1990

The report showed that “The role of money and muscle power at elections ... rapid criminalisation of politics, increasing menace of participation of non- serious candidates; form the core of our electoral problems.”

“When the political parties realize that a large number of people are expressing their disapproval with the candidates being put up by them, there will gradually 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,”<sup>24</sup>

Eventually, casting negative vote will result into formal advancement in elections and the leaders of political party will be pressurised to represent candidates without any criminal charges.

### Practice of NOTA in India:

India is the 14<sup>th</sup> Nation to adopt the policy of NOTA to secure the rights of the voter. The trend of NOTA increased as in last 5 years, it secured 1.33 crore votes in both State Assembly and Lok Sabha election.

-Recent trends:

- Madhya Pradesh election - the election commission data showed that in Madhya Pradesh NOTA has outperformed by getting more votes than the margin of victory in 22 constituencies. In Jabalpur Minister Sharad Jain lost by 578 votes however NOTA won by 1209 votes. In Gwalior minister Narayan Singh Kushwaha lost by 121 votes while NOTA won by 1550 votes.
- Chhattisgarh Election – In this the trend showed that NOTA earned 2.1% of the counted vote in the state.
- Telangana assembly election- this poll showed NOTA as a winning party. NOTA gained 1.1% votes whereas NCP got 0.1% of votes .While CPI (M) got 0.4% of votes.
- Mizoram assembly Poll- NOTA gained 0.5% of votes however PRISM lost with 0.2% of votes.

-Analysis of 2013 and 2018 election :

<sup>23</sup> Indiavotes.com

<sup>24</sup>ADR (Association of democratic reform) report

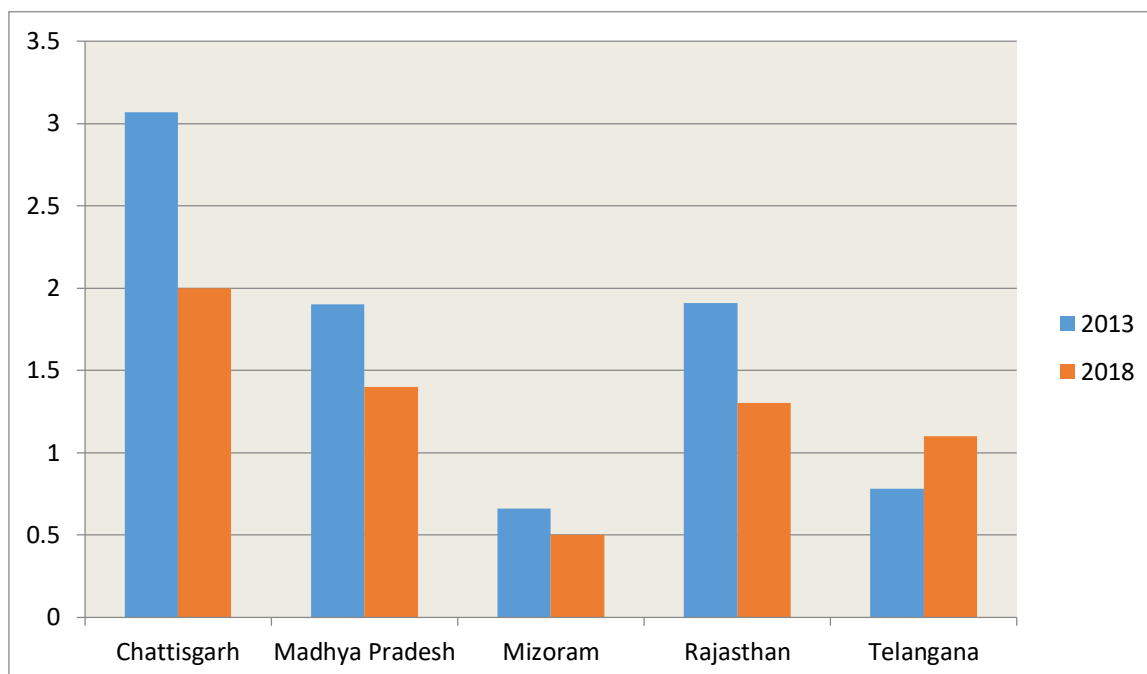


Fig2: X-axis showing number of votes percentage acquired by NOTA in different elections and Y-axis showing the comparison between different states in the 2013 and 2018.

Therefore, the above instances shows that NOTA is a policy which is appreciated by the voters in elections and through this they can illuminate that they are living in a democratic nation. However, nearly 70% of the population<sup>25</sup> of the country is still living in the rural area which is a matter to be concerned. This population must be acknowledged and educated about the system, to make electoral system of India more effective.

### **NOTA and international law**

The pillars of NOTA is also recognized in the international law. There are various provisions which entrust that how *right not to vote* and *right to secrecy* plays an important role.

#### i. Universal Declaration of Human Rights, 1948

Article 21(3) signifies that people should be the basis of the democracy for free and fair election which should be conducted on the basis of Adult suffrage and this should be conducted by casting secret votes.

#### ii. International Covenant on Civil and Political Rights, 1976

Article 25(b) of the covenant entails that general periodic election should be conducted which should be held with secret ballot guaranteeing the voters “right to freedom of speech and expression.”

Therefore, NOTA is a policy which does not only secures the right of the voters but also helps in conducting free and fair election which is a root of democracy.

### **NOTA in different countries**

“None of the above” the ballot option has been introduced in many other countries to promote democracy and to meet the ends of it. Entities which have this standard ballot system are United States of America, Canada, Ukraine, Spain, and Columbia, Indonesia and India.

<sup>25</sup> Press trust of india, 20 january, 2013



S.No.	Name of the country	Method of casting vote	Negative Vote
I.	France	Electronic machine	NOTA
II.	Belgium	Electronic machine	NOTA
III.	United States	Electronic machine/ Ballot Paper(Depends uponState to state)	NOTA/Blank Vote
IV.	U.S.A. (State of Nevada)	Ballot Paper	NOTA
V.	Chile	Ballot Paper	NOTA
VI.	Spain	Ballot Paper	Blank Vote

Table 1 - showing list of the countries practicing policy of NOTA .

#### Practice of NOTA in Indonesia:

The electoral system of Indonesia is governed by Indonesian law. Accordingly, the parties contest election against NOTA, and if they able to secure majority they are declared as winner. Otherwise if NOTA gains majority the election get postponed till the next occurrence, and the state appoints an acting office holder till the next election.

Further, the study shows that in the year 2018 in the election for mayor in Makassar, NOTA gained 300,000 votes which resulted in re-election in 2018.

#### Practice of NOTA in Canada:

In Canada there is no formally ballot option for “none of the above”. However in some electoral jurisdiction, it is possible to exercise this right by simply attending the polling election and declining to vote for any other candidate.

None of the above party of Ontario – it is registered political party appear at the bottom of the ballot which serves to the legislature as independent body.it is a way there to simplify the election system and to eliminate procedure for re-election.

#### Practice of NOTA in UK:

The policy of NOTA in UK was formally introduced in the year 2010. Further the political and constitutional reform committee was been set up to make NOTA more effective in case it wins.

In 2017 UK general election the committee recommended Green Party to reward policy of NOTA instead of RON (Re Open Nomination), so that more explanatory way can be put up in elections.

## **Conclusion and Recommendation:**

In the words of Felix Frankfurter *“No office in this land is more important than that of being a citizen.”* The scenario of electoral system has changed in India since introduction of NOTA. It definitely has various advantages which can help in building up fair electoral system. It leads to decriminalization under the political system and helps in securing the rights of the voters.

In State Assembly Election(2013-2017),after the introduction of NOTA in 2013, this ballot option have gained higher votes in Bihar (948,279 votes) and secured lowest number in Mizoram (3,810 votes). It then secured lowest vote percentage i.e. 0.5% in Delhi election,2015. The study evaluates that in last 5 years NOTA has secured an average number of 271,616 votes in state assembly election ,which was an average performance of this ballot option *“none of the above”*. In Red Alert electorate in State Assembly Election, an area which have 3 or more representatives having criminal charges contesting in election.NOTA has shown very good response . It secured highest number of votes in Chattisgarh and gained 39,986 votes in total from 10 constituencies.The analysis shows that NOTA is exercised by the electors and proved as a quantitative action of the voters to exercise their *“right to freedom of speech and expression.”*

Since there is no codified rules which results in no effect on election even if NOTA wins, it thereby discourages the voters to vote for NOTA as they think that ultimately the second winning party either any of the party will come into power. *“IfNOTA votes are more than the votes polled for any candidate, there should be a second round of elections with fresh candidates. Without legislative sanctions, it teaches political parties the need to nominate candidates on merit and not caste, creed or language. One isn’t sure if political parties will follow through on this particular recommendation, but framing such rules would definitely offer better incentives for voters to exercise their NOTA vote”*<sup>26</sup>

Implementation of NOTA in ballot option is a great move to attain the ends of democracy but it’s true effect can only be realized when its loopholes will get diluted. Henceforth, after examining all the aspects, there is need to bring certain reforms to encourage voters and to have free and fair election.

- *“Voter awareness forum”* should be set up in all districts rather than only in states, which can work to educate voters about the electoral system.
- Electorate literacy programme should be brought up in all the districts as aimed by election commission.
- *“Chunav pathshala”* must be established at every booth so to aware the voters about their value of vote and to acknowledge about the formal voting system.
- The youth should be encouraged and educated about the voting system. There should be specific chapters in classes of 9-12 to aware the youngsters of their rights.
- Significantly, more than half of the India’s population comes from rural background; hence it is important to educate that part of population about their rights.
- NOTA will be effective if it gets it teeth since there is no rule or formal laws, if NOTA win. Hence it is important that election commission must form rules to encourage the voters.

Eventually, NOTA is a corner stone of democracy in India. Citizens have the right to enjoy their freedom by choosing any representative or to withhold their choice which is being used since independence. However, it is an effective step shaping the Indian policies with many limitations which must be re- considered in the light of establishing a true democracy.

<sup>26</sup>T.S.Krishnamurthy(former election commissioner)