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NOTA in Indian Elections: A Symbolic Gesture or A Tool for Real Change?

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NOTA is an option that enables a voter not to choose any of the existing candidates in the election. Elections are pivotal to democracy; they are the very essence of democracy. Conducting free and fair elections is essential for electing sound leaders, who can help in the development of the nation. In India, there exist both direct as well as indirect elections. The Election Commission of India was instituted, an independent body, to conduct free and fair elections. The State Election Commissions were also instituted which are independent of the Election Commission of India. From a non-electing era in the earlier times, it emerged as the pure and complete form as is seen today. In the earlier times, there were no elections and in the course of evolution, a time came when limited suffrage was there and thereafter gradually in this modern age India reached the stage of universal adult franchise and complete election. NOTA is as essential for conducting free and fair elections. The button serves as a vital role for voters in expressing dissatisfaction with candidates. Earlier the privacy of voters who did not wish to select any of the candidates was not maintained, with the introduction of NOTA this changed. The awareness of NOTA has widened since its inception but still, it is not satisfactory. NOTA as of today is merely symbolic, it does not have any impact on the result. Some states though implemented NOTA in the right spirit. Recently a Supreme Court Judgement issued a notice to the Election Commission in a petition asking for changes in the implementation of NOTA, if these changes are implemented the motive with which NOTA was introduced will be achieved.

Keywords: *election, nota, democracy.*

INTRODUCTION

The election is the backbone of a democracy. A democracy is a government in which the people, the citizens are the main participants. The election provides a platform for citizens to become a part of the governance. It facilitates citizens to choose a competent leader for themselves. India has both direct as well as indirect elections. The election process needs to be free and fair; it is only through free and fair elections that citizens can voice their true opinions. For this, the Election Commission of India was formed. It is an independent constitutional body to facilitate a free and fair election process at the central level. Likewise, state election commissions are also formed, they are not answerable to the Election Commission of India. Elections have been taking place in India since British Rule, during those times only a few were allowed to participate as voters in the election process. After the Independence of India in 1947, in the year 1951-52, an Election was conducted and in this election, every citizen above the age of 21 years could vote regardless of his social status, religion, caste etc.¹ The concept of universal adult suffrage was adopted as is visible today. Election in India is governed by the Representation of People Act, 1951. With the right to vote there also exists the right not to vote, this right was recognised by the Supreme Court in the case of *People's Union for Civil Liberties v Union of India*.² The Supreme Court held that a citizen must be given a right not to choose any of the existing candidates as their worthy leader if they do not seem fit to govern the country. It also laid down the importance of secrecy of voters who opt for NOTA. The secrecy of voters is of integral importance. With this judgement, NOTA was introduced in the election process. It came as a means for voters to have a platform to show their dissatisfaction with the candidates. But NOTA has been named 'toothless tiger' by some of the experts. This is because there is no impact of NOTA on the result. Even if NOTA gets the majority of votes the candidate who gets the second majority will be declared as winner. Few states like Maharashtra and Haryana have taken

¹ Nandini Singh, 'Remembering India's first general election: Challenges, triumphs, and more' *Business Standards* (New Delhi, 19 April 2024) <https://www.business-standard.com/elections/lok-sabha-election/remembering-india-s-first-general-election-challenges-triumphs-and-more-124041900252_1.html> accessed 05 May 2024

² *People's Union for Civil Liberties v Union of India* (2013) 10 SCC 1

remarkable steps to overcome the challenges presented by NOTA and thus have shown exemplary performance by implementing NOTA in its true spirit.

ELECTIONS

Elections are a key element of democracy and good quality elections strengthen the leadership's political legitimacy.³ Elections are the backbone of a democracy, and conducting free and fair elections is essential for the smooth functioning of the democracy. Electing means selecting a leader for yourself.

Abraham Lincoln defined democracy as '*Of the People, By the People, For the People*'⁴ where the government should be elected '*By the people*', for this, there are elections and this is how people elect their leaders and be a part of the whole governing system.

The election process in India is governed by *The Representation of The People Act, 1951*. This act in Section 2(1)(d) defines election as, '*An election to fill a seat or seats in either House of Parliament or the House or either House of the Legislature of a State.*'⁵

In India, both direct as well as indirect elections exist, where direct election means that each citizen of India casts his/her vote for a particular candidate of their choice and hence selects their leader and in an indirect election, the same group of individuals elect a group of candidates from a pool of candidates, this group is called the electoral board which in turn elects the leaders that govern the country. India has a parliamentary form of democracy, the election of Lok Sabha (House of People) which is also known as lower is conducted through direct elections and the president and vice-president are elected through indirect elections.⁶

Conduction of free and fair elections is the essence of having elections. If the polls are not conducted in a free and fair manner the very basic motive of having an election is not achieved. The purpose of conducting elections is to give citizens a platform by which they can become a part of governance by electing the leader of their own independent choice. Citizens do not just

³ Sylvia Bishop and Anke Hoeffler, 'Free and fair election: A new database' (2016) 53(4) *Journal of Peace Research* <<https://www.jstor.org/stable/43920613>> accessed 05 May 2024

⁴ Abraham Lincoln and G. S. Boritt, '*Of the People, By the People, For the People: and other quotations*' (1996)

⁵ Representation of the People Act 1951, s 2(1)

⁶ Mrs. R. Thangaramani, '*THE ROLE OF ELECTION COMMISSION IN MAINTAINING DEMOCRACY IN INDIA*' (DPhil thesis, University of Madras November 2017)

have a right but it is also their duty to participate in elections and elect a leader who is capable of governing their nation. The right of citizens is infringed when elections are conducted unjustly. Their participation in the election is not being valued. To check that there exist no biases and that the elections are free and fair, the Election Commission of India was established by Article 324 of the Constitution of India.⁷ The government enacted the Representation of the Peoples Act in 1951 to check that there were no malpractices or corrupt practices in the conduction of elections.

The election is conducted based on the population of India, the seats of Lok Sabha are divided among the States and Union Territories of India, and allocation of seats to each state is done by keeping in mind the population of each State. Two seats are reserved SC/ST category and only a person belonging to the SC/ST group can contest the election from those Seats but all the people are to vote for those seats as well. This is done for the benefit of the marginalised groups to grant them the representation needed for their upliftment.

ELECTION COMMISSION

The Election Commission of India is an independent and constitutional body established by statutory provisions for conducting free and fair elections. It comprises the chief election commissioner and two election commissioners. They are to be appointed by the president of India and they are not answerable to anyone. They have been given independence so that the election process does not become biased. The tenure of each member is 6 years or till the age of 65 years whichever is earlier, they enjoy the same status as a judge of the Supreme Court and they can be removed from office in the same manner as a judge of the Supreme Court. The election of Parliament which is the Rajya Sabha and the Lok Sabha, State Assembly (Vidhan Sabha), President and Vice-president is to be conducted by the commission.⁸

The state election commission is a different and independent authority from the Election Commission of India. It is an autonomous and constitutional body. It is not answerable to the Election Commission of India. It is responsible for conducting elections of various local authorities like panchayats, zila parishads, municipalities and gram panchayats. The state

⁷ Constitution of India 1950, art 324

⁸ *Ibid*

election commission is composed of a Chief Electoral Officer and as many members as required by the Acts of the respective states. It is different for every state and varies. They are appointed by the Governor of the respective state.

HISTORY OF ELECTION

During ancient times elections did not mean one person one vote as it means now. *'In the West, suffrage was first restricted to men with property, then workers, and eventually women.'*⁹ Gradually the concept of universal adult suffrage evolved and each and every person was given the *Right to Vote*. Today a vote of a penniless person is as valuable as a vote of a billionaire, there is no distinction between two votes based on social status, gender, religion, caste or creed etc.¹⁰

Elections have been conducted in India since the British period, the Legislative Assembly was established by the Charter of 1853 but the members were initially not elected but rather nominated, it was only through The Government of India Act, of 1892 that indirect elections were conducted, in 1909 direct elections were conducted. But the voting rights were not extended to all the citizens of India, it was limited to some. By the enactment of the Constitution of India in 1950 after the Independence of India the concept of Universal Adult Franchise was introduced in India. Now, each and every citizen who was above the age of 21 years of age could vote in the assembly elections. The notion of *'one person, one vote'* was established. Later, the age of voting was changed to 18 years from 21 years by the 61st Amendment Act.

India's first independent elections were conducted in 1951-52, where all the citizens above 21 years of age had the right to vote who were around 36 crore people but only 17 crore people voted. They voted for 489 seats of Lok Sabha. This election is a historic landmark in the history of elections. It was a big achievement for a newly-born nation to carry out such a mammoth task.¹¹

⁹ Suchita Karthikeyan and Diksha Munjal, 'Elections that shaped India | The first general election: a free country in full bloom' *The Hindu* (28 March 2024) <<https://www.thehindu.com/elections/lok-sabha/first-general-elections-of-india-the-free-country-in-full-bloom/article67702823.ece>> accessed 07 May 2024

¹⁰ Homersham Cox, *Antient [I.E. Ancient] Parliamentary Elections: A History Showing How Parliaments Were Constituted and Representatives of the People Elected in Antient Times*. (Gale Ecco, Making of Modern Law 2010)

¹¹ Singh (n 1)

To begin with this mammoth task parliament passed the Representation of People Act, 1950. This act laid down the qualification of voters and later on, it passed the Representation of People Act, 1951 which provided with the more intricate details of the election process.

Since the independence, there has been remarkable development in the process of elections, steps were taken to make the elections free and fair. This goal of having free and fair elections was complemented by the establishment of the Election Commission. It played a remarkable role in defining the state of election procedure in India.

It can be said that India has taken strides towards free and fair elections but still, there are various challenges and difficulties in the form of electoral malpractices, inciting religious hate among people to gain vote bank, and people using the power of their purse.

NOTA

'None of the Above', what does it really mean? It might seem like a simple answer to a multiple-choice question but it shows the real state of democracy and the choice of the people. It does not have an impact on the result but that does not mean that it is insignificant. This option gives a choice to the people, a choice to still vote and show their rejection of all the candidates standing, a choice to be a part of the system even when you are not satisfied with the candidates standing for the seats. Having a right to choose is an integral part of democracy, the citizens must have a right to show their disapproval of all the existing candidates and they also must have a right to not choose a leader which they do not trust. The Right to Reject is a part of the Right to freedom of speech and expression. When a voter feels a need to *express* his disapproval of all the existing candidates, he has a right to reject and express his opinion.¹²

NOTA is the last option on the Electronic Voting Machines which means '*None of the Above*', it means that when a person is going to vote and he/she does not want to choose any of the candidates standing in the election, he/she can opt for NOTA and show their disapproval for all the candidates. Before the introduction of NOTA, if a person did not want to opt for any of

¹² Virendra Kumar, 'CITIZEN'S RIGHT TO VOTE: ROLE OF THE SUPREME COURT IN EMPOWERING CITIZENRY TO BRING ABOUT 'A SYSTEMIC CHANGE' THROUGH NOTA FOR CLEANSING OUR BODY POLITIC (A JURISTIC CRITIQUE OF CONSTITUTIONAL DEVELOPMENTS)' (2014) 56(1) Journal of the Indian Law Institute <<https://www.jstor.org/stable/43953687>> accessed 06 May 2024

the candidates, he only had the option to refrain from voting altogether, to select a candidate despite his unwillingness or not to choose a candidate but the privacy of such voters was not maintained. It was a serious issue that there was no equality between the people who were voting for a candidate and the people who were not selecting a particular candidate in terms of privacy.

Secrecy of Voters: The Secrecy of voters is a grave concern, the framers of our constitution were well aware of the consequences if this is tampered with. If the secrecy of voters who are choosing a candidate is being maintained but the secrecy of voters who are not choosing a candidate from the existing pool is not maintained then it goes against the very idea of equality. Before NOTA the privacy of voters opting to not select any candidate was compromised, it infringed on their right to equality too. For carrying out free and fair elections, it is very essential to have voter privacy.¹³ The importance of secrecy of voters is also discussed by the Supreme Court in two cases namely, *PUCL v Union of India* and *Association for Democratic Reforms v Union of India*. The court pointed out that the elections cannot be free and fair unless the secrecy of voters can be maintained, it goes on to say that it is the only way by which malpractices like bribery, coercion and post-election reprisals can be prevented.¹⁴

Awareness: A lot of people are not aware of NOTA, they might have seen the option in the EVMs but they don't know what it means or what is its significance. India is a developing country with a literacy rate of **74.04 percent**¹⁵, some people do not even know how to write their names, and it is not reasonable to expect them to know what NOTA means without arranging proper awareness programmes. And even if people know how to read and write, it does not mean that they are aware of NOTA. There are various small villages in India where people lack awareness about NOTA and they are not able to exercise their right to not choose any of the mentioned candidates because of this lack of knowledge. These people are deprived of their right to not vote just because of a lack of awareness. A survey conducted in Karnataka during

¹³ Lincoln (n 4)

¹⁴ *Ibid*

¹⁵ 'Literacy' (*Know India*) <<https://knowindia.india.gov.in/profile/literacy.php>> accessed 04 May 2024

the 2018 State elections revealed that 50% of the voters are unaware of the NOTA option¹⁶. There might be some progress in awareness since its inception but still, there is a long way forward.

Use of NOTA: NOTA is not widely used in elections by the voters, this is because some are not aware of it and some know that the ultimate effect of opting for NOTA is nil and it is like a vote being wasted. But NOTA received significant votes in the 2017 Gujarat assembly election, gathering 5.5 lakh votes (1.8%), which is more than the votes for the two national parties (National Congress Party and Bahujan Samaj Party), and surpassed the winning margins in over a dozen constituencies.¹⁷ There is a continuous decline in the NOTA vote share, and this trend even continue till 2023. It has been more than 10 years since the introduction of NOTA and it seems to have faced unpopularity among the voters continuously.¹⁸

Introduction of NOTA: Earlier when a voter wished to not opt for any of the candidates, the privacy of such a person in not selecting any of the candidates was not maintained. So, for this, a petition was filed in the Supreme Court. The Apex Court held that *'Protection of elector's identity and affording secrecy is therefore integral to free and fair elections and an arbitrary distinction between the voter who casts his vote and the voter who does not cast his vote is violative of Article 14. Thus, secrecy is required to be maintained for both categories of persons.'*¹⁹ It was said that since the privacy of voters who are choosing the candidates is being maintained. It is not public who voted for whom. But the privacy of voters who are not choosing a particular candidate is not being maintained, so it is a discrimination between the two sets and therefore it is violative of Article 14 which is the Right to Equality. Both the sets are being treated unequally.²⁰

In this case itself, the Apex Court held that *"Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need for negative voting"*²¹. In this

¹⁶ Special Correspondent, '55% voters in State do not know about NOTA: Survey' *The Hindu* (Karnataka, 20 April 2018) <<https://www.thehindu.com/elections/karnataka-2018/55-voters-in-state-do-not-know-about-nota-survey/article23621310.ece>> accessed 07 May 2024

¹⁷ V R Vachana and Maya Roy, 'NOTA and the Indian Voter' *Economics & Political Weekly* (20 January 2024) <<https://www.epw.in/journal/2018/6/commentary/nota-and-indian-voter.html>> accessed 07 May 2024

¹⁸ Bharath Kancharla, 'Data: The Decline of NOTA Vote Share Continues Even in 2023' *Factly* (25 May 2023) <<https://factly.in/data-the-decline-of-nota-vote-share-continues-even-in-2023/>> accessed 09 May 2024

¹⁹ *People's Union for Civil Liberties v Union of India* (2013) 10 SCC 1

²⁰ *Ibid*

²¹ *Ibid*

case, the concept of NOTA was instituted in India. The 3 constitutional judge bench was of the view that fair means that all the people have a say in the governance and hence universal adult suffrage came into being. For the survival of democracy, the leaders need to be such that they are the best and have morals and ethics of high value. For this, it is critical for voters to have the option of NOTA which they exercise if they feel that candidates lack the leadership skills and the morals and ethics much needed.²²

NOTA: A TOOTHLESS TIGER

NOTA has been brought to the citizens as a notable change. But it has been termed as a ‘toothless tiger’ by many experts. *‘It merely provided a platform to express dissent or one’s anger for political parties to take note and nothing more,’* Maj. Gen. (Retd.) Anil Verma, Head of ADR, said.²³ In reality, it did not bring a drastic change. It was brought as a revolutionary change and to empower the voters. But it does not have any impact on the result of the elections. When a voter opts for the option NOTA, he might achieve the satisfaction that he has not given his vote to a candidate who did not seem deserving to him, however, his vote has no impact. It has the same effect as if he did not vote. The only purpose that the NOTA option fulfils is that it gives the voter mental peace that he has not been a part of the selection of the winner. Even if 90% of voters opted for NOTA, the candidate who got the highest number of votes would win the election. Additionally, the number of votes given to NOTA is not even shown in the results published. Simply the candidate who gets the second majority after NOTA is declared as the winner. The general public is not even aware of the number of negative votes being cast.

Another problem with NOTA is apolitical people. There are times when *apolitical people* choose NOTA without thinking of the pros and cons. Apolitical people are those people who say that they are not concerned with who wins the election and hence they do not bother to look through the candidates, they select NOTA in ignorance of the manifestos presented by the parties. The selection of Nota should be a calculated choice by weighing each and every candidate and their

²² *Ibid*

²³ ‘NOTA a ‘toothless tiger’ with no implications on results: ADR expert’ *The Hindu* (New Delhi, 9 March 2024) <<https://www.thehindu.com/news/national/nota-a-toothless-tiger-with-no-implications-on-results-adr-expert/article67931927.ece>> accessed 07 May 2024

promises. It should not be opted in haste or ignorant manner, it should not be opted because one is too lethargic to decide, it should not be opted because one is unable to decide. It should be a wise decision, even though it does not have any impact. The parliamentary election is conducted once every five years and it is a duty, as mentioned above not only a right but a duty as well, of the citizens to vote and to think about the development and betterment of the country which can only happen by selecting a good competent leader.

It is interesting to find out that NOTA is not the same for every state, states have different notions towards NOTA. States like Maharashtra and Haryana have shown the way to implement NOTA in the right spirit.²⁴

For example, Maharashtra has a policy of re-election when NOTA wins that is when NOTA receives a majority of votes. But this did not qualify with the vision of the Supreme Court that NOTA would compel the political parties to nominate sound candidates. The same candidates could be nominated again and the results would be the same. There it is treated as a 'fictional electoral candidate'. It was the same case for other states such as Haryana, Delhi and Puducherry. It was Haryana that surpassed Maharashtra in understanding the true spirit of NOTA. In Haryana, if NOTA received the majority of votes, then the election would not be considered and a re-election was to be conducted. Additionally, the candidates who received fewer votes than NOTA could not be nominated for re-election. However, it was said that NOTA should be treated uniformly across the country.²⁵

Recently SC in a judgement said that by not treating NOTA as a 'fictional electoral candidate', the whole purpose of NOTA is defeated. It was introduced to give the voters a chance to show their displeasure about the current candidates but by declaring the runners-up as the winner of the elections this purpose is not achieved.

²⁴ Jagdeep S. Chhokar, 'Implementing NOTA in the right spirit' *The Hindu* (25 December 2018) <<https://www.thehindu.com/opinion/op-ed/implementing-nota-in-the-right-spirit/article25822043.ece>> accessed 07 May 2024

²⁵ 'On the plea for fresh elections in places where NOTA emerges winner, SC seeks EC reply' *The Hindu* (New Delhi, 26 April 2024) <<https://www.thehindu.com/elections/lok-sabha/on-plea-for-fresh-elections-in-places-where-nota-emerges-winner-sc-seeks-ec-reply/article68109543.ece>> accessed 07 May 2024

In the case, SHIV KHERA v THE ELECTION COMMISSION OF INDIA, A bench comprising Chief Justice of India DY Chandrachud, Justice JB Pardiwala and Manoj Misra agreed to consider the issues raised by petitioner Shiv Khera.

The issues raised by the petitioner side were as follows:

- *Directing the Respondent to 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 a fresh election shall be conducted in the constituency.*
- *Directing the Respondent to frame rules stating that the candidates who poll fewer votes than NOTA shall stand debarred from contesting all elections for 5 years;*
- *Directing the Respondent to ensure proper and efficient reporting/publicity of NOTA as a 'Fictional Candidate.'*²⁶

It is only when some steps are taken in this direction that the real purpose of NOTA can be achieved otherwise, it will be a hollow structure as it is today, which has no impact on the results.

CONCLUSION

The democracy of a country is dependent on the conduction of free and fair elections in that Country. There have been many steps taken in India to ensure this. Elections have seen a drastic change since the British time, the granting of universal adult suffrage at the time of independence was a milestone in the history of elections in India. The election process in India is governed by the Representation of People act.1951 as of now. The Election Commission of India was established to look over the process of elections. The aim was to have free and fair elections. NOTA was another attempt to have a free and fair election process. It was although a failed attempt. It was not interpreted in the right spirit as given by the Supreme Court. The impact of NOTA was null at the result, at the time of results the votes cast to NOTA were not announced and even if NOTA got the maximum votes the candidate getting the second majority after NOTA would be selected as the winner. There were only some states which interpreted it in the right sense. Two of them were Maharashtra and Haryana. In Maharashtra, if the majority

²⁶ Shiv Khera v The Election Commission of India WP (C) No 252/2024

of votes were in favour of NOTA, re-election would be announced. But in Haryana apart from this, the candidates who got fewer votes than NOTA would not be allowed to be nominated again. NOTA only existed as a formality and did not have any impact otherwise. Recently, the Supreme Court in the judgement of SHIV KHERA v THE ELECTION COMMISSION OF INDIA gave clarity on NOTA and directed the Election Commission of India to introduce the given changes in NOTA. This changes the dynamics, now if NOTA gets the majority of votes, the candidate who is the second majority will not be declared as the winner and there will be re-election and the candidates who got fewer votes than NOTA will not be allowed to contest elections for the next 5 years. With the implementation of these changes, NOTA will become the true weapon of citizens as intended by the Supreme Court.