

IMPLEMENTING NOTA IN THE RIGHT SPIRIT

Relevant for: Indian Polity & Constitution | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

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 this, 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* (emphasis added).

"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* (emphasis added)."

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.

NOTA: More than just an option

It was not long before the final correction came forth. The SEC of Haryana, in an order dated November 22, stated that if "all the contesting candidates individually receive lesser votes than...

NOTA,” then not only would “none of the contesting candidates be declared as elected,” but “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.

With two SECs showing the way, the remaining SECs and the ECI should follow suit so that political parties are compelled to nominate sound candidates, and are forced to accept the will of the people, as desired by the highest court in the land.

Jagdeep S. Chhokar is a former Professor, Dean, and Director in-charge of the Indian Institute of Management, Ahmedabad. Views are personal

The Transgender Persons Bill will do more damage than good if passed without revision

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