

## RIGHT TO VOTE CONTAINS RIGHT NOT TO VOTE

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Universal adult suffrage is considered as a turning stone in modern democracy but in U.K the universal adult suffrage for parliamentary elections is less than a century old. The principle of one person one vote was even much younger as because the plural voting was only finally abolished in 1948. The people of representation Act 1948 was the one who explicitly states for the first time one person should have one vote in the parliamentary elections. *“Democracy is all about choices and people will be empowered by the choice of negative voting.”*<sup>1</sup> Right to vote includes in it a right not to vote i.e. a right to reject. The right to reject was 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). Furthermore there is the difference between a voting right and a act of voting as mentioned in the supreme court judgment PUC Vs UNION OF INDIA AND OTHERS 2013 right to vote is a statutory right under section 79(d) of people of representation Act while the act of voting is a derived right from article 19(a) as it is the form of expression of one individual.

After the landmark judgment given by the Supreme Court PUCL Vs UOI dated 27 September 2013 writ petition no.(C) 161 of 2004 NONE OF THE ABOVE(NOTA) option was introduce in the electronic voting Machine so that the candidates who do not wish to vote for any of the candidates can exercise their right not to vote without violating their secrecy of decision. Rules 41 (2) , 41 (3) and 49-O of Code of conduct of elections 1961 The court held that although the right to vote is a statutory right and the decision taken by the voter is facet of freedom of expression under section 19(1) (a) of the Indian constitution. The fundamental right of right to freedom of speech and expression under section 19(1) (a) and section 79 of people of Representation act is Violated if right not to vote is denied.

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<sup>1</sup> Chief justice P Sathasivam

The prime prayer in this landmark judgment was to include the secrecy in the right not to vote as well. Hence the petition was held to satisfy the violation of fundamental which the right to vote has come up. The bench in this case also said that the section 49-O and rule 17 of conduct of election which gives voter a right not to vote is violation of section 19(1) and 128 of people of representation act because it does not give the right to secrecy.

Under the existing provisions of section 49(O) of the representation of people act, a voter who after coming to a polling booth does not want to cast his vote, has to inform the presiding officer of his intention of non- voting, who in turn would make an entry in the relevant rule book after taking the signature of the said elector in this way it violates the concept of secret voting.

The difference between NOTA and section 49-O is that 49-O does not provide the secrecy but having said that the best option was right to reject.

(RTR) is the condition when rejection /negative votes was in majority i.e. they win the majority therefore it results in re – election.

Voter abstention and ultimately exercising the right not to vote present a viable option for voters who cannot in good faith support any candidate and feel the need of dissatisfaction. In *People's Union for Civil Liberties v. Union of India*, Supreme Court held that “the criminal antecedents of the candidates including their assets and liabilities should be available to the voters so that they can make a wise decision which serves their best interest.”

49-O. Elector deciding not to vote.--If an elector, after his electoral roll number has been duly entered in the register of voters in Form 17A and has put his signature or thumb impression thereon as required under sub rule (1) of rule 49L, decide not to record his vote, a remark to this effect shall be made against the said entry Page 2736 in Form 17A by the presiding officer and the signature or thumb impression of the elector shall be obtained against such remark.”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 be held. 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". Although the votes registered as NOTA are counted, they will not change the outcome of the election process.

### **NOTA AND ITS EFFECT IN DIFFERENT STATES OF INDIA**

NOTA 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. Over 60 lakh none of the above (NOTA) votes were cast in the 16th Lok Sabha elections, the first time that this option was given. The NOTA button on the electronic voting machines, which equals to 1.1 per cent of the total votes polled during these elections across 543 seats. The states with comparatively maximum percentage of NOTA includes: Meghalaya with 2.8 per cent votes (30,145), Gujarat 1.8 per cent (4, 54,880) Chhattisgarh 1.8 per cent (2, 24,889), Dadra and Nagar Haveli 1.8 per cent (2,962). The other states with comparatively higher percentage of NOTA includes: Bihar - 1.6 per cent (5,81,011), Odisha - 1.5 per cent (3,32,780) Mizoram - 1.5 per cent (6,495), Jharkhand - 1.5 per cent (1,90,927), Daman and Diu - 1.5 per cent (1,316), Sikkim 1.4 - per cent (4,332), Tamil Nadu - 1.4 per cent (5,82,062) Madhya Pradesh - 1.3 per cent (3,91,837), Among others are Tripura - 1.2 per cent (23,783), Kerala - 1.2 per cent (2,10,561), Goa - 1.2 per cent (10,103), Rajasthan - 1.2 per cent (3,27,902), Uttarakhand - 1.1 per cent (48,043), West Bengal - 1.1 per cent (5,68,276), Arunachal Pradesh - 1.1 percent(6,321).[22] The states and UTs with lower percentage of NOTA votes are: Lakshadweep - 0.3 per cent (123), Haryana - 0.3 per cent (34,225), Nagaland - 0.3 per cent (2,696) and Punjab - 0.4 per cent (58,754)