

THE EFFICACY OF N.O.T.A BUTTON IN INDIAN ELECTION: AN ANALYSIS OF ITS IMPACT ON THE VOTER BEHAVIOR AND DEMOCRATIC REPRESENTATION

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"The ballot is stronger than the bullet.¹"

-Abraham Lincoln

ABSTRACT

This research paper investigates the effectiveness and broader impact of the none of the above option within the Indian electoral framework and focuses on its role in shaping voter choices and its implications for Democratic representation. Nota was established by Election Commission of India in 2013 after a landmark case of PUCL vs Union of India in which Supreme Court of India ordered Election Commission to do so With a view that this will strengthen the democracy of India and political party of India who will be more responsible in terms of giving tickets to any contestant for election. Nota was introduced as an option for voters to reject all candidates without opting out of the voting process. Despite this intent, there remains considerable debate on whether NOTA truly influences electoral outcomes or fosters political accountability. This research aims to understand voters' perspectives on the NOTA option, examine its influence on political parties and candidates and assess whether it serves as a meaningful channel for protests or not. By analysing a combination of election data, survey response, and a specific case study, this paper delves into the factors driving voter use of NOTA and considers whether it pressurizes political entities to respond to voters' dissatisfaction or not. Additionally, this paper addresses the regulatory limitations surrounding NOTA, noting that, unlike in some other countries, high NOTA votes in India do not lead to re-elections or candidates' disqualifications. As a result, NOTA may be seen more as a symbolic gesture of dissatisfaction than a Functional tool for electoral reform which raises questions about its effectiveness in promoting genuine political reform. The findings of this

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¹ Abraham Lincoln, 'Nearly all men can stand adversity, but if you want to test a man's character, give him power.' (Brainy Quote) https://www.brainyquote.com/quotes/abraham_lincoln_137183 accessed 18 October 2024

research reveal detailed insights into the demographics and behaviours of NOTA voters identifying specific trends and regional disparity that contribute to its use. Although not significantly altered election outcomes this research highlights its potential to drive conversations around the quality of political candidates and voter engagement The study argues that currently limited by its symbolic nature, how could N.O.T.A become a catalyst for political reforms that respond to voter dissatisfaction and emphasis candidates and political parties' accountability in Indian electoral framework. Additionally, this paper suggests some points through which NOTA can achieve the desirable outcome that the Hon'ble Supreme Court of India hoped for during pronouncing the judgment in the year 2013. In conclusion, this paper emphasises Nota's value as an expression of Democratic choice in India. While its current impact is hindered by a lack of concrete and solid electoral consequences NOTA serves as an indicator of public will or sentiment offering insight into areas of voter Dissatisfaction that could inspire future electoral reforms. By exploring the nuances of NOTA's function and its potential evolution This study aims to contribute to ongoing discussion on enhancing transparency, accountability and representation within India's Democratic election process.

Keywords: None of the above, N.O.T.A, Democratic Representation, Voter's Dissent, P.U.C.L, Negative Voting, Evm, Election Commission of India, Supreme Court, Political Parties.

INTRODUCTION

Have you ever imagined a situation where your opinion is the most important element in a decision and you are said to be free from any external influence while making your decision, in other words, you are Sovereign, but you have limited options to choose from while making your decision and you are not in support of any provided options because they are not deemed fit according to your choice? But your opinion is not entertained on the basis that you don't have any right to stay away from the decision-making or you cannot say that I don't like any of the options, so I will not choose anyone. Then, how can you say that you are sovereign or free to make decisions when "your real/desired opinion" doesn't have any value? This idea is the rationale behind the commencement of N.O.T.A (None of the Above) options in the elections.

N.O.T.A or the negative voting option was first introduced in the year 1976 in California to strengthen Democracy. From there it gained massive popularity among voters in Countries like Brazil, Spain, Ukraine, etc,

India is also among the group of nations that provided None of the above options in elections to its voters. The historical decision of the 'None of the Above' option in the EVM machine is taken in the case of **PUCL. Vs Union of India in the year 2013**. Supreme court, in this case, ordered the Election Commission of India to add another option, i.e. 'None Of the Above' in the Evm machines. We will study this in detail in fore coming section. From there this N.O.T.A option gained massive popularity among the Indian voters. This decision empowered electors to register their dissatisfaction against the participating candidates in the election.

The objective of the Research

1. Research Question:

What is the impact of NOTA on voter behaviour and democratic representation in India?

2. Significance of Study:

While NOTA has been hailed as a means of protest, its real efficacy in changing political processes, voter engagement, and candidate quality has not been thoroughly analysed.

3. Thesis Statement:

This paper posits that while NOTA has provided a symbolic outlet for voter dissatisfaction, it has yet to make a substantial impact on electoral outcomes or lead to improved democratic representation.

4. Difference between N.O.T.A and 49-0 rule:

This paper will analyse the key difference between the N.O.T.A and the 49-0 rule which was prevalent in India before the introduction of None of the above options.

EVOLUTION OF N.O.T.A

The history of N.O.T.A. can be traced back to the **year 1976**. The notion for a "None of the above" ballot option began **in 1976**, when the **Isla Vista Municipal Advisory Council** passed a motion to include this option on the official electoral ballot in the **County of Santa Barbara, California, USA**.

Walter Wilson and Matthew Landy Steen, then council ministers, presented a legal motion to amend the ballot system for the elections. The 'None of the Above' (NOTA) option was first placed on a ballot in 1978 by the State of Nevada. In California, \$ 987,000 was spent to promote this ballot option, which was defeated by a **margin of 64% to 36% in the March 2000 general election**. If voters had approved this new ballot option, it would have been designated a new voting system for all elective offices in the United States, both state and federal.²

After the introduction of the N.O.T.A. option in the ballot paper in the election of Santa Barbara, California, it gained massive popularity among various countries. Countries like **Brazil, Spain, Ukraine and even Pakistan** added None of the above options in their elections. India added this option in its election in the **year 2013**. The decision to add a new option in the EVM machines is taken in the landmark case of **PUCL vs Union of India**³.

HISTORY OF N.O.T.A IN INDIA

The incentive for electoral reforms started in India in the **year 2009** when the Election Commission of India asked the Hon'ble Supreme Court to offer the voter a 'None of the above' option at the ballot as it would give voters the freedom of not selecting any underserving candidate. The election commission believes that this step will strengthen democracy in India. But the then UPA government was not in favour of such an idea so the election commission **dropped the idea**.⁴

The main event occurred in the year 2013 when the Hon'ble Supreme Court passed a judgement in the case '**People's Union for Civil Liberties and Ors. Vs. Union of India (UOI) and Ors.**'⁵ If we talk about the PUCL, then PUCL stands for People's Union For Civil Liberties which is an NGO, they filed a writ petition in the year 2004 before the apex court **praying for declaring Rules 41(2) and (3) and 49-O of the Rules ultra vires** and unconstitutional and also prayed for a direction to the Election Commission of India, to provide necessary provision in the ballot papers as well as in the electronic voting machines for the protection of the right of not to vote

² 'None Of the Above' (election.in, 22 April 2020), <[None of the Above Option \(NOTA\) in India, Full form and meaning](#)>, accessed on 19 October 2024.

³ People's Union for Civil Liberties and Ors. Vs. Union of India (UOI) and Ors., [2013] SC, WP (civ.) no. 161 of 2004.

⁴ 'None Of the Above' (election.in, 22 April 2020), <[None of the Above Option \(NOTA\) in India, Full form and meaning](#)>, accessed on 19 October 2024.

⁵ *Ibid*

to keep the exercise of such right a secret under the existing RP Act/the Rules or Article 324 of the Constitution.

*"Democracy is not a state in which people act like sheep. Under democracy, individual liberty of opinion and action is jealously guarded."*⁶ ` Mahatma Gandhi

This quote by Mahatma Gandhi was deemed fit in this situation as this quote simply summarizes the rationale of the Supreme Court behind passing such an order.

LEGAL CONTENTION OF N.O.T.A

The Supreme observed that it is necessary to provide another option in the elections to secure the voting interest of the voters. The Supreme Court relied on the following provisions of different statutes.

79(d) --"electoral right"⁷ means the right of a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate, or to vote or refrain from voting at an election.

128-Maintenance of secrecy of voting⁸-(1) Every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorized by or under any law) communicate to any person any information calculated to violate such secrecy:

Provided that the provisions of this Sub-section shall not apply to such officer, clerk, agent or other person who performs any such duty at an election to fill a seat or seats in the Council of States.

(2) Any person who contravenes the provisions of Sub-section (1) shall be punishable with imprisonment for a term which may extend to three months or with a fine or with both.

39. Maintenance of secrecy of voting by electors within polling stations and voting procedure.⁹-(1) Every elector to whom a ballot paper has been issued under Rule 38 or under

⁶ Siby K. Joseph & Surendra Kumar, 'Reimagining India on Gandhian Lines' (*comprehensive website on life and work of Mahatma Gandhi*,) <[Reimagining India on Gandhian Lines | Relevance of Gandhi | Articles on and by Mahatma Gandhi](#)>, accessed on 18 October 2024.

⁷ Representation of People's Act, 1952, s.79(d)

⁸ Representation of People's Act, 1952, s.128

⁹ THE CONDUCT OF ELECTIONS RULES, 1961, s.39

any other provision of these rules, shall maintain the secrecy of voting within the polling station and for that purpose observe the voting procedure hereinafter laid down.

41. Spoiled and returned ballot papers¹⁰-(1) An elector who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on returning it to the presiding officer and on satisfying him of the inadvertence, be given another ballot paper, and the ballot paper so returned and the counterfoil of such ballot paper shall be marked "Spoilt/cancelled" by the presiding officer.

(2) If an elector after obtaining a ballot paper decides not to use it, he shall return it to the presiding officer, and the ballot paper so returned and the counterfoil of such ballot paper shall be marked as "Returned: cancelled" by the presiding officer.

(3) All ballot papers cancelled under Sub-rule (1) or Sub-rule (2) shall be kept in a separate packet.

49(M). Maintenance of secrecy of voting by electors within the polling station and voting procedures¹¹-(1) Every elector who has been permitted to vote under Rule 49L shall maintain the secrecy of voting within the polling station and for that purpose observe the voting procedure hereinafter laid down.

(2) Immediately on being permitted to vote the elector shall proceed to the presiding officer or the polling officer in charge of the control unit of the voting machine who shall, by pressing the appropriate button on the control unit, activate the balloting unit; for recording of elector's vote.

(3) **The elector shall after that forthwith--**

- (a) proceed to the voting compartment;
- (b) record his vote by pressing the button on the balloting unit against the name and symbol of the candidate for whom he intends to vote; and
- (c) come out of the voting compartment and leave the polling station.

¹⁰ THE CONDUCT OF ELECTIONS RULES, 1961, s.41

¹¹ THE CONDUCT OF ELECTIONS RULES, 1961, s.49

(4) Every elector shall vote without undue delay.

(5) No elector shall be allowed to enter the voting compartment when another elector is inside it.

(6) If an elector who has been permitted to vote under Rule 49L or Rule 49P refuses after warning given by the presiding officer to observe the procedure laid down in Sub-rule (3) of the said rules, the presiding officer or a polling officer under the direction of the presiding officer shall not allow such elector to vote.

(7) Where an elector is not allowed to vote under Sub-rule (6), a remark to the effect that voting procedure has been violated shall be made against the elector's name in the register of voters in Form 17A by the presiding officer under his signature.

Apart from these provisions, Rule 40-0 also played a massive role in preparing the background for this judgement. Before N.O.T.A, Rule 49-0 used to provide options to those voters who didn't want to vote but this rule didn't make any kind of secrecy over the choice of voter. The provisions of the 40-0 Rule are as follows;

Rule 49-O. Elector deciding not to vote.¹²-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 in Form 17A by the presiding officer and the signature or thumb impression of the elector shall be obtained against such remark.

Apart from the provisions of statutes of the Indian legislature, provisions of some international declarations and contentions are also relevant.

Article 21(3) of the UDHR¹³ states that the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

¹² THE CONDUCT OF ELECTIONS RULES, 1961, s.49(O)

¹³ Universal Declaration of human Rights, 1948, art. 21(3).

Article 25(b) of the International Covenant on Civil and Political Rights read under

25. Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions.¹⁴

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors."

Also, Article 19(1)(a) and 21 of the constitution of India is pertinent for this matter.

19-Protection of certain rights regarding freedom of speech, etc¹⁵-(1) All citizens shall have the right-

(a) to freedom of speech and expression;

21-Protection of life and personal liberty¹⁶-No person shall be deprived of his life or personal liberty except according to procedure established by law.

By reviewing all the provisions of national statutes or international covenants or declarations. We can say that all of the above-mentioned provisions advocate the right of voters in the election to vote choices while maintaining secrecy.

There is a popular quote by *Nelson Mandela* about elections, that is "*The cornerstone of democracy is the right of all people to vote in free and fair elections.*"

This quote implies that all people have the right to vote in an election and that too in a free and fair manner. The expression 'free and fair election' clarifies that no biases or external pressure will be present at that election. The voter should be sovereign to decide on whom to vote. And if you bound a voter about voting options that you have to choose one among the available options notwithstanding that you don't like any of them, then how can that election be free and fair? Then the only option with which a voter is left is not to vote in that election. Then by doing so, you are snatching the rights of voters.

The decision taken by a voter after verifying the credentials of the candidate either to vote or not is a form of expression under **Article 19(1)(a) of the constitution of India**. The

¹⁴ International covenant on civil and political right, 1966, art.25

¹⁵ Constitution of India, art. 19(1)(a).

¹⁶ Constitution of India, art.21.

fundamental right **under article 19(1)(a) R/W right under section 79(d) of the Representation of People's Act, 1951 is violated unreasonably if the right not to vote effectively is denied and secrecy is breached.**¹⁷ (PUCL vs. Union of India, 2013).

Rule 49-0

The rule 49-0 which is provided in Election Rules, 1961 states that 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 in Form 17A by the presiding officer and the signature or thumb impression of the elector shall be obtained against such remark.¹⁸

This rule facilitates voters to not vote in an election and this was prevalent before the introduction of N.O.T.A in Indian elections. But this provision doesn't have any kind of secrecy for the voters. And non-secrecy can lead to social tension in the candidate who is a 'Bahubali', then it can force the voter to vote for him.

Also, deciding not to vote in an election is different from deciding not to vote for anyone, which is known as Negative voting, rule 49-0 barred voters from voting which was in a real sense murder of democracy. The quote by John F. Kennedy says it all, "*The ignorance of one voter in a democracy impairs the security of all.*"¹⁹

From the above-mentioned provisions particularly, **section 128 of the Representation Act, 1951, Rules 39, 41, 49M and 49-0 of Election Rules, 1961**, it is clear that secrecy of casting vote is duly recognized and is necessary for strengthening democracy.

Ratio Decidendi:

*"Mechanism of casting vote shall be illegal and ultra vires if finds that it compromises on the secrecy of vote as an elector and not provide any privacy when the fact of neutral/negative voting goes into the record."*²⁰

¹⁷ Association for Democratic Reforms v Union of India (2002) 5 SCC 294 (SC), Civ. Writ. 490 of 2001.

¹⁸ THE CONDUCT OF ELECTIONS RULES, 1961, s.49(O)

¹⁹ John F. Kennedy, 'Ask not what your country can do for you—ask what you can do for your country.' (Brainy Quote) https://www.brainyquote.com/quotes/john_f_kennedy_124805 accessed 18 October 2024

²⁰ PUCL [24]

This statement in the judgement of the PUCL case clearly states that the apex court also prioritises the value of the secrecy of the vote based on which the Hon'ble Court ordered the Election Commission to add a new button in the EVM machines which can uphold the soul of democracy while maintaining the right to secrecy of the vote.

The Hon'ble Apex Court was also of the view that the N.O.T.A button would provide a way for voters to show their dissatisfaction among the candidates of that election which will make political parties more accountable in terms of choosing candidates while distributing their party ticket for contesting election.

The judgement of the Supreme Court was as follows, *“Giving right to a voter not to vote for any candidate while protecting his right of secrecy is extremely important in a democracy. Such an option gives the voter the right to express his disapproval of the kind of candidates that are being put up by the political parties. When the political parties realize that a large number of people are expressing their disapproval of the candidates being put up by them, gradually 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.”*²¹

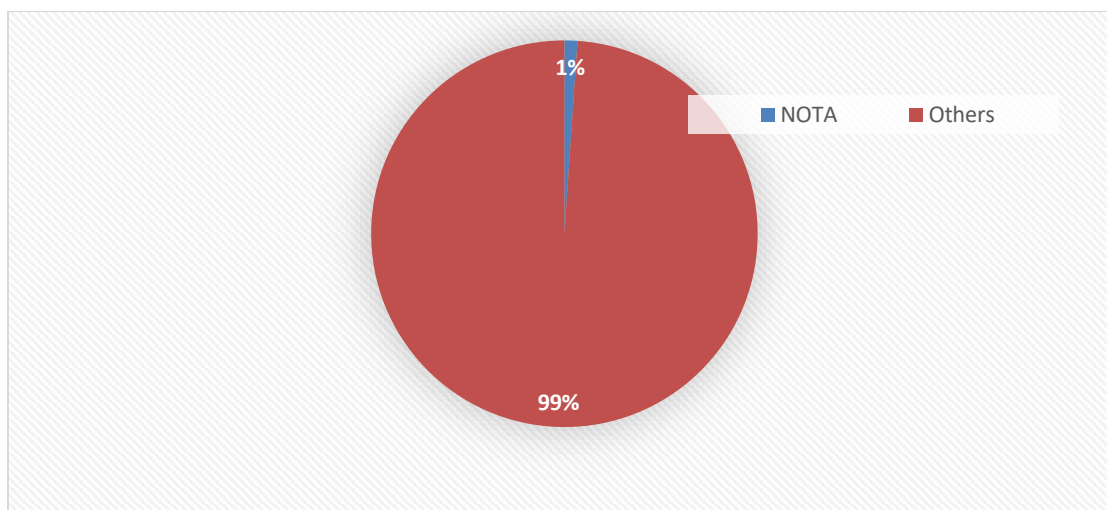
SCENARIO AFTER N.O.T.A

The introduction of negative voting or N.O.T.A in the Indian election gained massive popularity in the election from the elections. We will delve into stats that clearly show how Nota has gained massive popularity among Indian voters.

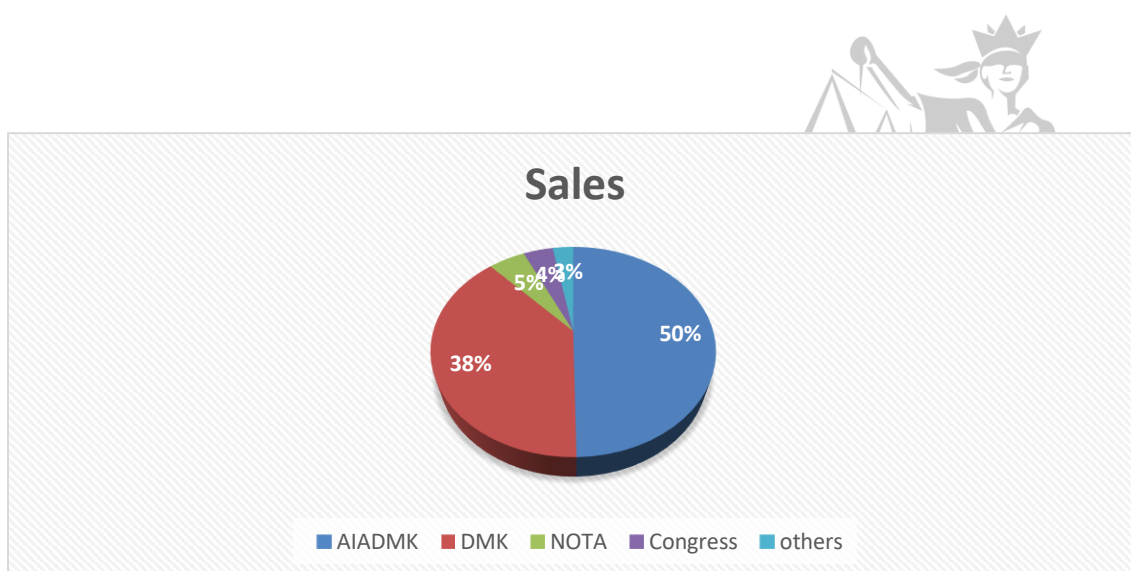
In 2014, when N.O.T.A was first introduced in Lok Sabha elections, it secured **60,02,942 (1.08%)** votes overall. The highest number of votes i.e., **46,559** was in the **Nilgiris constituency in Tamil Nadu**. The **Lowest** number of votes NOTA secured i.e.; **123** votes was in **Lakshadweep**²².

²¹ PUCL [55]

²² Association for Democratic Reforms, 'Analysis of NOTA Votes from 2013-2017' (Association for Democratic Reforms, 2017) <<https://adrindia.org/content/analysis-nota-votes-2013-2017-0>>accessed on 18 October 2024



(This chart shows the vote share of NOTA in the 2014 Lok Sabha elections.)

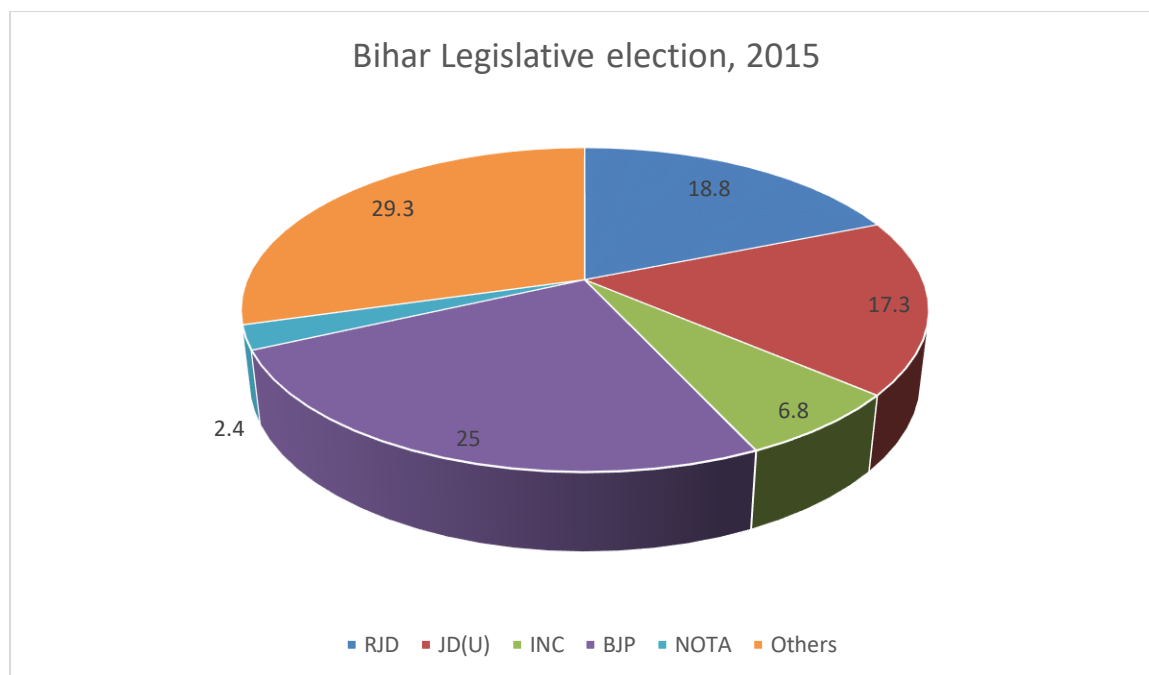


(This chart visually represents votes gained by NOTA in the Nilgiris constituency.)

This data shows that even though it was the first election of NOTA, the popularity of NOTA was no less than a national political party. Even Nota secured more votes than the Indian National Congress in the Nilgiris Constituency.

Since its implementation in 2013, N.O.T.A has secured the **highest number of votes in Bihar i.e., 9,47,279 votes (2.4%)** in a state legislative election, which clearly shows that even in the most illiterate and poor state, NOTA managed to make its popularity.²³

²³ India Votes, 'Bihar Vidhan Sabha Election 2015' (India Votes, 2015) <https://www.indiavotes.com/vidhan-sabha/2015/bihar-%5b2000-onwards%5d/245/58> accessed on 18 October 2024



(This pie chart shows the vote share in Bihar State Assembly Election, 2015)

NOTA secured **the highest percentage** of vote share i.e., **3.06% in the Chhattisgarh** state Assembly Elections, 2013²⁴

NOTA has secured **22,94,904 votes (22.94 lakhs) in the red alert constituencies in the state assembly elections since 2013.** [data till 2018]²⁵ Red Alert Constituencies are those that have 3 or more candidates with criminal cases contesting elections.

NOTA has secured the highest percentage of votes in red alert constituencies of Chhattisgarh. NOTA secured 39,896 votes (2.68%) in 10 red alert constituencies of Chhattisgarh.

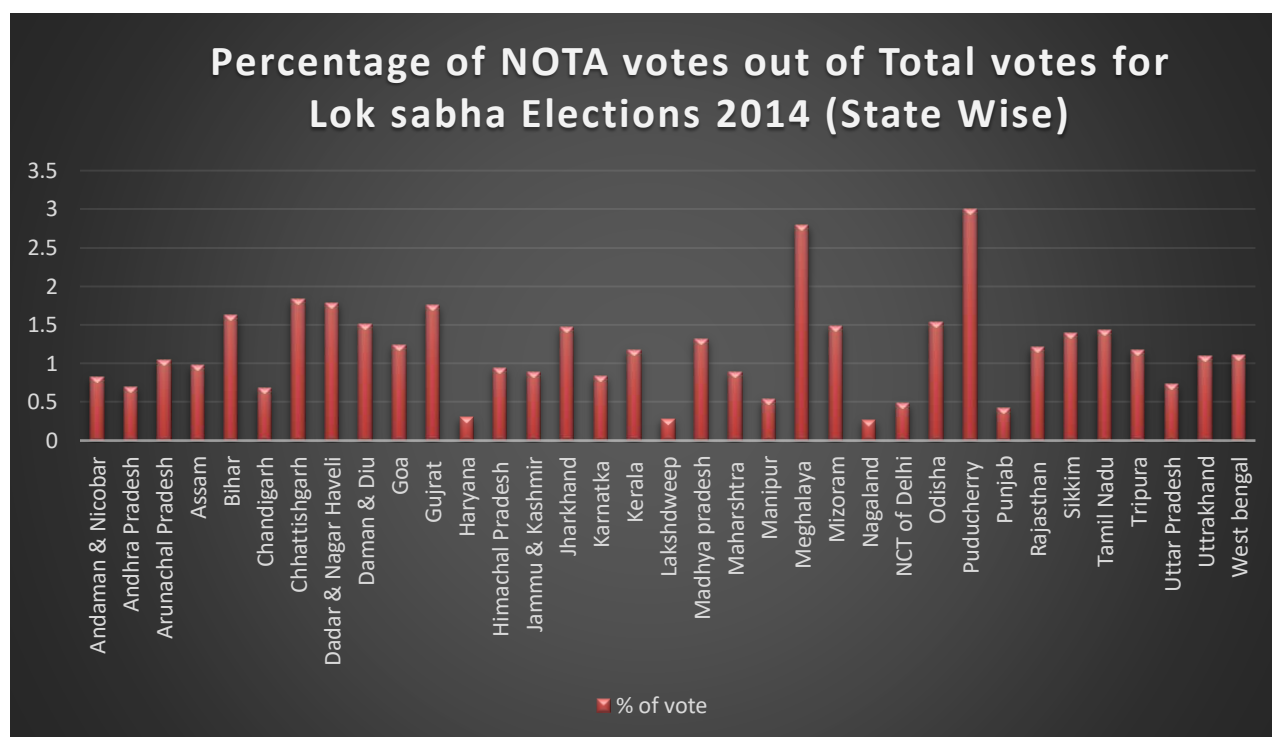
In the **Municipal Corporation elections of Maharashtra**, NOTA has secured the highest percentage of vote share i.e., **4.58% in Ulhasnagar.**

NOTA has secured **49,235 votes in Delhi Municipal Elections, 2017.** In the **Northern** region, NOTA secured the highest number of Votes, i.e., **19762 votes.**

In each of the **Municipal Corporations of Maharashtra**, NOTA secured **more than 1.5% of votes.**

²⁴ Association for Democratic Reforms, 'Analysis of NOTA Votes from 2013-2017' (Association for Democratic Reforms, 2017) <<https://adrindia.org/content/analysis-nota-votes-2013-2017-0>> accessed on 18 October 2024

²⁵ Ibid



[data published by the Election Commission of India]²⁶

In Madhya Pradesh, NOTA has created a new record in Indore in the Lok Sabha election results, 2024 when for the first time in the electoral history of the country, NOTA has received so many votes. NOTA has received **2,18,674 votes** and became the 2nd highest vote-getter in the Indore Lok Sabha Constituency.²⁷

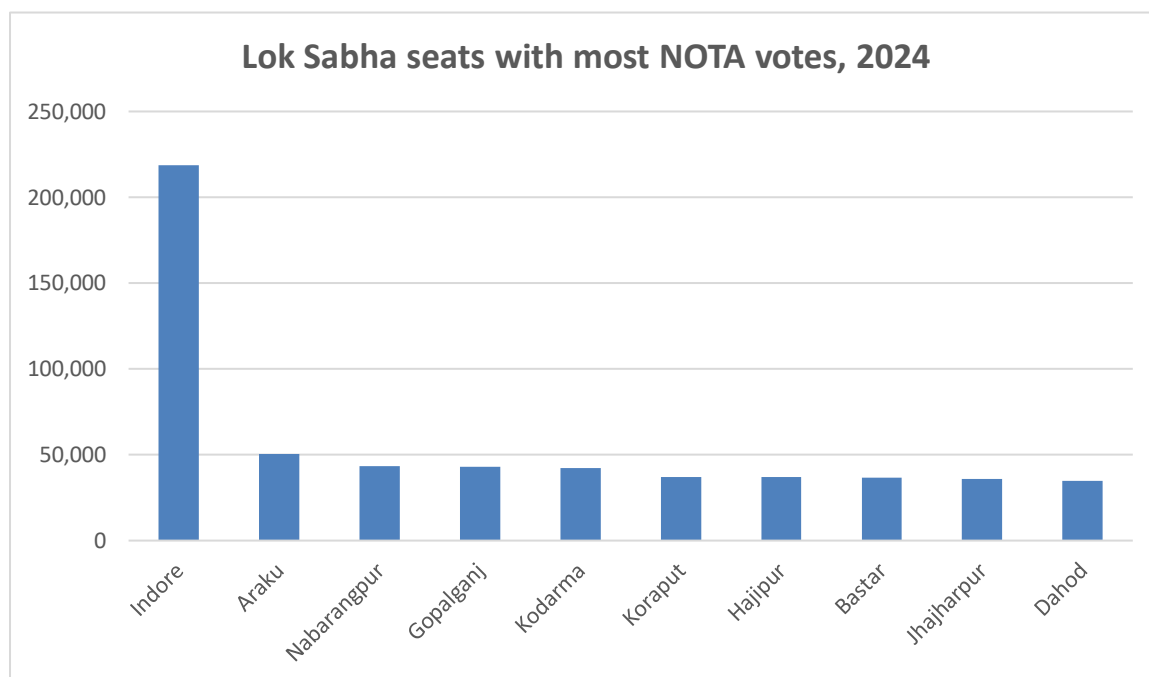
Before Indore, this record belonged to Gopalganj in Bihar, in the 2019 Lok Sabha elections, NOTA secured **51,660 votes**.²⁸

²⁶ Election Commission of India, 'Graph of NOTA Votes in Lok Sabha Elections 2014' (Election Commission of India) <https://hindi.eci.gov.in/files/file/5527-graph-nota-votes-lok-sabha-elections-2014/?do=download&r=13047&confirm=1&t=1&csrfKey=99f52b4bc03332d50cafb8cf637d958d> accessed 19 October 2024

²⁷ Tani Ghaffar, 'Explained: Why More than 2 Lakh Voters in Indore Chose NOTA' *The Indian Express* (India, 31 October 2023) <https://indianexpress.com/article/explained/more-than-2-lakh-votes-nota-indore-9372026/> accessed 18 October 2024

²⁸ Ibid

In recent, the Lok Sabha polls of 2024 registered as many as 63,47,509 votes in favour of Nota which is 0.07% less than the 1.06% recorded in the 2019 Lok Sabha polls.²⁹



(The above picture clearly shows the popularity of NOTA among the Indian Voters in the 2024 Lok Sabha elections.³⁰)

VOTER BEHAVIOUR ANALYSIS

The behaviour of voters has changed after the induction of NOTA in Indian elections. We have hardly seen that Someone has **invoked Rule 49-0 in Indian elections**, till when it was in effect. If a voter decided not to vote for any candidate in elections before N.O.T.A., he would either have to withdraw from the election or declare that he was not going to cast his vote.

The introduction of NOTA facilitated the voter to maintain their right to secrecy while voting. This is also evident in the voters' turnout percentage. Before NOTA the voter turnout was

²⁹ The Hindu, 'NOTA Votes Dip Nationally, Increase in Northeast' *The Hindu* (India, 25 May 2019) <https://www.thehindu.com/elections/lok-sabha/nota-votes-dip-nationally-increase-in-northeast/article68262550.ece> accessed 18 October 2024

³⁰ Deccan Herald, 'Analysis of NOTA Votes from 2013-2017' *Deccan Herald* (India, 21 May 2023) <https://www.deccanherald.com/elections/india/httpsadrindiaorgcontentanalysis-nota-votes-2013-2017-0-3049567> accessed 18 October 2024

58.2% in 2009³¹ and 58% in 2004³² has increased to 66.4% in 2014³³ And 69.5% in 2019.³⁴

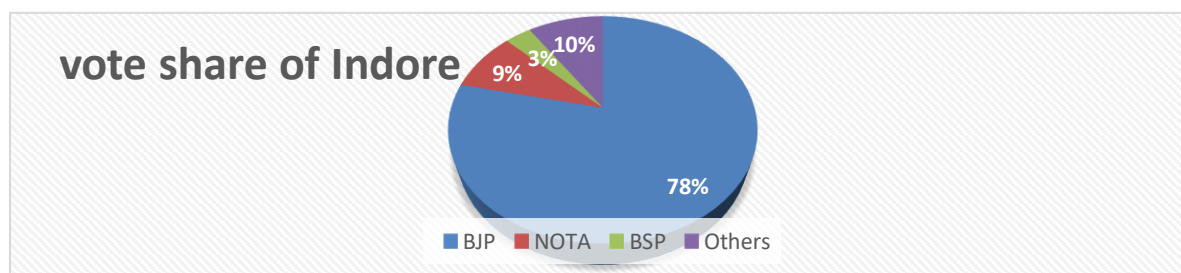
This data shows that due to the Introduction of NOTA, people are eager to vote and they are no longer bound by the *ultra vires* rules.

The popularity of NOTA can be understood by this data that from 2013 to 2018, NOTA has secured **1,33,09,577 (1.33 crores) votes in State Assemblies and Lok Sabha Election Combined.**³⁵

From 2013 to 2018, on Average NOTA has secured **2,70,616 votes (2.70 lakhs) in the State Assembly Elections.**³⁶

The graph shown on the above page also states how people welcomed NOTA and cast their votes sensibly without wasting their votes. This data also shows that the introduction of NOTA has acknowledged people about the power of their vote.

As we have seen in the Indore Lok Sabha seat, in 2024, NOTA was the second-highest option in the EVM machine to get the greatest number of votes in that constituency. The elected candidate secured **12,26,751 (78.5%) of valid votes while NOTA secured 2,18,674 (8.7%) votes in the constituency.** The candidate who received 2nd the greatest number of votes scored **51,659 (3.3%) votes in his favour.** This data clearly shows how people cast their votes to show their opinion and prudently use their right to vote without refraining from the election.



³¹ India Votes, 'Lok Sabha Election 2009' (India Votes, 2009) <https://www.indiavotes.com/lok-sabha/2009/0/18/0> accessed 19 October 2024

³² *ibid*

³³ *ibid*

³⁴ *ibid*

³⁵ Association for Democratic Reforms, 'Analysis of NOTA Votes from 2013-2017' (Association for Democratic Reforms, 2017) <<https://adrindia.org/content/analysis-nota-votes-2013-2017-0>> accessed on 18 October 2024

³⁶ *ibid*

IMPACT ON ELECTORAL OUTCOMES

Despite such popularity of NOTA in Indian elections in such a short period, NOTA doesn't have the potential to affect the outcomes of elections. If in a constituency NOTA received the highest number of votes in its favour, then it will not affect the result of the election and the candidate who received the highest number of votes in his/her favour will win that election.

Election Commission in a Notification released in the **year 2013**, clarified that, even if in an extreme case, the number of votes against NOTA is more than the number of votes secured by the candidates, the candidate who secures the largest number of votes among the contesting candidates shall be declared to be elected.³⁷ However, this notification was retrieved by the Election Commission of India in **the year 2017**.

The Hon'ble apex court **on May 16, 2021, issued notice to the Election Commission and Centre** over the question of what will happen if a constituency NOTA receives a higher number of votes. The election commission also then clarified that securing the highest number of votes by NOTA will not affect the result of that election and the candidate with the highest Positive vote will be elected.³⁸

Again, on April 26, 2024, The Supreme Court issued a notice to the election commission, over a public interest litigation, which was filed to pass an order from the Hon'ble Apex Court to declare the election of a constituency void, if NOTA receives the highest number of votes.³⁹ The final judgement over this P.I.L is yet to come.

SYMBOLIC VS. Substantive Impact

While NOTA provides an option for voters to show their dissatisfaction among the participating candidates in an election, its symbolic nature limits its effectiveness in promoting accountability among the political parties. Because NOTA does not invalidate an election, parties are not compelled to change candidate selection processes, even in constituencies where

³⁷ Election Commission of India, 'Press Note: Introduction of NOTA Option on EVM/Ballot Paper' (Election Commission of India, 28 October 2013) http://eci.nic.in/eci_main1/current/PN_28102013.pdf (Retrieved 2017-04-02) accessed 18 October 2024

³⁸ The Times of India, 'If NOTA Tops, Should All the Candidates Be Rejected? Supreme Court' *The Times of India* (India, 16 March 2021) <https://timesofindia.indiatimes.com/india/if-nota-tops-should-all-the-candidates-be-rejected-supreme-court/articleshow/81521609.cms> accessed 17 October 2024

³⁹ Live Law, 'Supreme Court Seeks ECI Response on Plea to Cancel Election if NOTA Gets Majority Votes' *Live Law* (India, 3 October 2023) <https://www.livelaw.in/top-stories/supreme-court-seeks-eci-response-on-plea-to-cancel-election-if-nota-gets-majority-votes-256194> accessed 17 October 2024

NOTA votes are high. While mandating the NOTA button in all EVM machines, the Hon'ble Supreme Court was of the view that it would increase accountability among the political parties regarding the selection of candidates while giving the tickets. But due to just a symbol like status, NOTA serves more as a formal record of dissatisfaction than a force for electoral reform.

Since NOTA votes do not affect the election outcome directly, political parties may not feel pressure to present candidates with a cleaner image or stronger qualifications. This raises concerns about whether NOTA genuinely advances the goal of enhanced democratic representation.

In the 2017 Gujrat State Assembly Polls, NOTA emerged as a major factor, with **over 5 Lakh** voters choosing the negative voting option. **In at least 30 constituencies**, NOTA votes exceeded the victory margins. The result of the polls was interpreted as a sign of widespread voter disillusionment with both major parties i.e., Bhartiya Janta Party (BJP) and the Indian National Congress (INC). However, the election results were not invalidated. This led to the criticisms that NOTA failed to deliver meaningful change despite clear voter dissatisfaction.

And how can one be supposed to bring change in the political process by giving a ticket to a person to contest an election when you don't give any power to NOTA? Whenever the government want to apply a rule in a society, it provides punishment with that too in the form of sanctions, penalty, imprisonment, stay or damages. So that people will be under pressure to follow that rule. So how can political parties be so accountable while giving tickets to candidates by the influence of NOTA when NOTA will not have any kind of action or power against the participating candidates?

This is evident from the data of the survey carried out by the Association of Democratic Reforms (ADR) that there has been an increase **of 55% in the number of Lok Sabha MPs with declared criminal** cases against them since **2009**. **In the 2024 Lok Sabha elections, 46% of winning candidates i.e., 251 (highest ever number) out of 543 have** criminal cases registered against them. **31% of the winning Lok Sabha members (170) in 2024** have serious criminal cases against them⁴⁰.

⁴⁰ ABP Live, 'Lok Sabha: 93 Crorepati MPs with Criminal Cases, Says ADR' *ABP Live* (India, 15 March 2024) <https://news.abplive.com/elections/lok-sabha-mps-with-criminal-cases-93-crorepati-mps-adr-1693753> accessed 18 October 2024

These kinds of data, even **10 years after the introduction of NOTA** in Indian elections, defy the notion that the Supreme Court hoped for in its judgement of **PUCL vs UOI. 2013**.

Justice Bhagwati stated in 1975 that *“the democratic process can work successfully and efficiently for the benefit of the general public and provide the advantages of self-government to the average person. Only if it results in a participatory democracy where all men, regardless of how lowly or modest they may be, should be allowed to engage on an equal basis⁴¹”*. This statement emphasizes the need for equal and active involvement in democracy, emphasizing how NOTA's current inefficiency undercuts this ideal by not giving voters who are dissatisfied with all candidates a meaningful choice, therefore not genuinely empowering every citizen.

THE POSITIVE ASPECT OF NOTA

Besides the negative aspect of NOTA, there are several positive aspects of N.O.T.A that cannot be ignored these are: –

The addition of an extra button, Negative voting (none of the above), Proves success in engaging voters in the election, In the above-mentioned data we have seen how **voter turnout increased by almost 10 per cent in the 2014,2019 Lok Sabha elections from 2009 Lok Sabha election.**

The NOTA button facilitates voters to vote with sovereignty in the election while maintaining the right to secrecy of the vote.

If NOTA is empowered with sanctions like invalidating the election of a constituency in which it receives the highest number of votes, it would fulfil the intended outcome of the Hon'ble Supreme Court that the whole political scenario of the country will change and improve from the present scenario.

THE NEGATIVE ASPECT OF NOTA

NOTA just became a symbol of showing the dissatisfaction of people toward the candidate. This symbolic power of NOTA resulted in its abolition from many countries that initially started them.

⁴¹ Kanwar Lal Gupta v Amar Nath Chawla and Others [1975] 3 SCR 259 (SC), civ. app. 1549 of 1972.

With merely a symbol-like structure, there is no scope for political reform in the society.

The state of Nevada, from where it all started, has a policy of no effect whatsoever and the highest total wins.

["The ignorance of one voter in a democracy impairs the security of all." ~ John F. Kennedy]

This quote critically Analyses the role of informed voting in maintaining the health and security of a democratic society and impliedly describes the negative aspect of NOTA.

CHANGING SCENARIO

Scenes regarding NOTA are changing constantly and efforts are being made to empower it. For instance, in the year **2018**, the **Maharashtra State Election Commission (MSEC)**, which is entrusted to supervise elections to panchayats and municipalities in Maharashtra, ruled that if NOTA gets the maximum votes in an election, **then re-election will be held in that concerned seat.**⁴²

This decision was taken on **7th May 2018** during the workshop conducted by the Maharashtra State Election Commission on the subject of **"Role of Political Parties towards Healthier Democracy"** when various political parties expressed the opinion that NOTA should be treated as a **'Fictional Electoral Candidate'** and re-election should be held whenever NOTA gets highest Votes as compared to other contesting Candidates.⁴³

Based on the conclusion of this Workshop and later order passed by the Maharashtra State Election Commission, the State Election Commission, NCT Delhi also passed a similar kind of order, **dated 24th of January, 2022**, for the Municipal election of Delhi,

Clause 10,11 and 12 of the said notification by the State Election, Commission clearly state that NOTA will be treated as a **"Fictional Electoral Candidate"** in the upcoming municipal election of the National Capital Territory of Delhi and the State Election Commission has the

⁴² Shankaria's Parliament, <www.shankariasparliament.com/> accessed 17 October 2024

⁴³ Delhi State Election Commission, 'Notification Regarding NOTA' (24 January 2022) <https://sec.delhi.gov.in/sites/default/files/SEC/circulars-orders/order-regarding-nota.pdf> accessed 17 October 2024

authority to do so. Fresh **elections** will be held in a constituency in which NOTA receives the highest number of votes.⁴⁴

This decision by the Two State Election Commission, one is responsible for conducting the election in the Nation's administrative capital and the other is responsible for conducting the election in the Nation's financial capital, shows that the treatment of NOTA as a "fictional electoral candidate" is the demand of the hour.

CONCLUSION

After such an extensive discussion on every aspect of NOTA, we can at last conclude that. The introduction of NOTA to the election world in the year **1976**, marked the beginning of a new era. Many countries adopted the concept of 'Negative voting' in their democratic elections by the same or other name. Some of these countries are: -

S. No	Name of the Country	Method of Voting	Form of Negative Vote
1	Franc	Electronic	NOTA
2	Belgium	Electronic	NOTA
3	Brazil	Ballot Paper	NOTA
4	Greece	Ballot Paper	NOTA
5	Ukraine	Ballot Paper	NOTA
6	Chile	Ballot Paper	NOTA
7	Bangladesh	Ballot Paper	NOTA
8	State of Nevada, USA	Ballot Paper	NOTA
9	Finland	Ballot Paper	Blank Vote and 'write in'

⁴⁴ *Ibid.* [10], [11], [12]

10	Sweden	Ballot Paper	Blank Vote and 'write in'
11	United States of America	Electronic/Ballot (depending on state)	Blank Vote and 'write in'
12	Colombia	Ballot Paper	Blank Vote
13	Spain	Ballot Paper	Blank Vote

This shows that the world has expressed a warm welcome to the NOTA but as we studied further there is no means of that until NOTA receives such potential from where it can influence the result of the elections.

In a democracy, every citizen is guaranteed that their vote matters but how can you just assure this to an individual when the vote cast by them in favour of none or against every candidate is not considered?

“Every citizen of this country should be guaranteed that their vote matters, that their vote is counted, and that in the voting booth, their vote has as much weight as that of any CEO, any member of Congress, or any President.”⁴⁵ - Barbara Boxer

This quote emphasizes the importance of every vote in a democratic system. However, every vote is not indeed counted. If every vote truly mattered, the option ‘None of the Above’ would have its own significance or electoral value.

For achieving the real soul of democracy and to provide the citizen with the true value of rights either constitutional i.e., right to freedom of speech and expression and right to life and personal liberty, or statutory right i.e., Voting right guaranteed by the **Representation of peoples Act, 1951**. It is important to make some reforms to the existing NOTA provisions.

REFORMS PROPOSED

To make NOTA more effective, several reforms have been proposed. These include:

⁴⁵ Barbara Boxer, 'Every citizen of this country should be...' (Brainy Quote)
https://www.brainyquote.com/quotes/barbara_boxer_167638 accessed 18 October 2024

Triggering re-elections: If NOTA receives a certain percentage of the vote, the election could be declared null and void, requiring a re-election with new candidates.

The Times of India in one of its articles, they have also suggested the same kind of reforms. They wrote: -

Times View.

If “NOTA” gets more votes than any of the candidates, it means the electorate believes none of the candidates are fit for the job. In such a case, there should be a re-election in which the rejected candidates cannot contest. That’s what would make NOTA potent and meaningful. Without such an option, it is a token gesture. If the proposal seems too radical, it could be first tried out in local body elections before proceeding further.

Harsher moves can also be implemented to completely reform the political environment, some of these moves can be: -

Disqualification of candidates: candidates who lose to NOTA could be barred from contesting the re-election, ensuring that new and potentially more credible candidates are fielded.

While these reforms could increase NOTA’s effectiveness, they also present challenges. Frequent re-elections could lead to political instability and disqualification.

Increased public awareness: Lack of public awareness about the purpose and importance of NOTA has limited its impact. Many voters, especially in rural areas, are unaware that even NOTA exists or misunderstands its function, leading to its underutilization. In the absence of widespread voter education campaigns, NOTA is unlikely to gain the traction needed to become a meaningful tool for democratic engagement. Educational campaigns about the purpose of NOTA and its potential to influence political reform could encourage greater voter participation.

NOTA is important for a healthy democracy and it should not be underutilized. Unlocking the full potential of Nota is important for securing Fundamental rights under Article 19(1)(a) and Article 21 to the citizens of this country. If not just become a symbol for use, it can be left behind in an election like a scraped car in the scrapyard.