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# THIRD CONCEPT

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**THIRD CONCEPT** aims at providing a platform where a meaningful exchange of ideas can take place among the people of the Third World. The attempt will be to communicate, debate and disseminate information, ideas and alternatives for the resolution of the common problems facing humankind. We welcome contributions from academics, journalists and even from those who may never have published anything before. The only requirement is a concern for and desire to understand and take the issue of our time. Contributions may be descriptive, analytical or theoretical. They may be in the form of original articles, reactions to previous contributions, or even a comment on a prevailing situation. All contributions, neatly typed in double space, may be addressed to:

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Designed by: Pt. Tejpal

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## The NOTA Option

Supreme Court's recent landmark order on installing an additional provision for voters to record a 'none-of-the-above' (NOTA) option to reject all candidates in the fray is acclaimed by some as a step towards ushering in a key electoral reform in India, which has seemingly found favour in the past with the Election Commission of India and even the Law Commission. The notion of vesting a negative vote with the same sanctity and secrecy as a vote in favour of a particular candidate is an essential input for strengthening the parliamentary democracy.

Proponents of electoral reforms in India have in past spurred the electorate to make optimum use of Rule 49-O, the provision by which one can record a 'no-vote' option by signing a form in the presence of election officials, in the hope that a large number of such negative votes would induce political parties to field candidates known for their integrity. However, in the opinion of the apex court, the rule is ultra vires of the election law and the voters' freedom of expression alike by denying voters who exercise that choice the required secrecy. Therefore, in the opinion of the apex court, the extra provision in the electronic voting machines would promote free and fair elections, ensure greater voter participation and reduce bogus voting.

However, the NOTA option has evoked mixed reactions among the media and the experts. Some observers regard apex court's order as a positive step towards recasting India's quest for an outcome truly representative of the voters' collective will. It is also argued by some that such a step could introduce new ways of gaming with the ballot and bring about surprising outcomes. While alluding to a ruling by the Supreme Court in the recent past that struck down a provision to prevent immediate disqualification of convicted legislators and, more controversially, barred those in custody from contesting elections, some experts hail the NOTA ruling as a step towards filling a significant lacuna in electoral law.

The NOTA option's sustenance entails the existence of a mechanism that can be instrumental in preventing the electorate from being captive to bad choices, which is, being forced to choose the least worst of candidates in the fray. This option also entails the potential of putting political parties on notice that they cannot take the voter for granted, and accordingly to look for wider and with more sincerity to put up candidates with "clean" image. In its complete form — and it is uncertain whether this would be adopted in India — the right to reject nullifies the election if enough voters turn down all the candidates in the fray.

According to some experts, the option order leaves some room for skepticism, especially in the event of a massive percentage of voters going in for the no-vote option. As per the practice in vogue currently, even a small turnout is regarded good enough to declare a valid result now, but a substantial turnout of voters can affect the legitimacy of the electoral process. However, the Election Commission can be expected to fix a limit beyond which the percentage of NOTA votes would entail re-polling. While arguing that the decision of the apex court needs more clarification; some observers have raised some questions as to what would happen if the majority of votes in a constituency could go in favour of NOTA and would there be a bye election or could anybody or organisation canvass votes in favour of NOTA or could the candidates rejected by a majority would be allowed to contest again from the same constituency. These have been termed as 'grey areas' that need clarification.

Making exercise of voting compulsory can strengthen the NOTA process. It is also suggested that if NOTA votes are more than the votes secured by the winning candidate, then that election shall be declared as null and void and all the contesting candidates shall be barred from contesting re-election. The Election Commission then should arrange for re-election in the same constituency within another one or two months, which would force political parties to choose only suitable candidates who have clean image and not corrupt.

In the wake of caste, religion and vote for money factors dominating elections in India, more electoral reforms are needed.

— BK