

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

Constitutional Law

Basic features or structure of the Constitution

Elements of basic structure - Democracy and free and fair elections - Statutory right to vote and mechanism of negative voting serves a very fundamental and essential part of a vibrant democracy - Provision of a "None of the Above" (NOTA) button in the EVMs, held, will accelerate effective political participation, foster purity of the electoral process, wider participation and empowerment of voters - Voter must be given an opportunity to choose NOTA button, which will indeed compel political parties to nominate sound candidates of integrity - Various countries have provided for neutral/protest/negative voting in their electoral systems, (2013) 10 SCC 1-A

Constitution of India

Art. 19(1)(a) and Preamble - Freedom of speech and expression - Provision for negative voting while protecting such voter's secrecy - Gives voters right to express disapproval with the kind of candidates being put up by the political parties, forcing them to accept the will of the people bringing systemic change ultimately fielding candidates of integrity, (2013) 10 SCC 1-B

Constitution of India

Arts. 14, 19(1)(a), Preamble and Art. 368 - Protection of secrecy of voter in elections - Arbitrary distinction between affording secrecy to voter who casts his vote, and, the voter who does not cast his vote (negative vote), held, violative of Art. 14 - Secrecy is required to be maintained for both categories of persons - Free and fair election is a basic feature of the Constitution and necessarily includes within its ambit the right of an elector to cast his vote without fear of reprisal, duress or coercion, (2013) 10 SCC 1-C

Election

Right to Vote/Suffrage and Voter's Rights

Extent of freedom - Right not to vote in secrecy - Availability of - Right to reject all candidates and exercise option to vote for "None of the Above" (NOTA) in secrecy, affirmed - Directions issued to Election Commission of India to make the NOTA option a practically feasible and viable option for voters - Provisions of law obstructing the NOTA option, held, ultra vires the Constitution and S. 128 of RP Act, 1951, (2013) 10 SCC 1-D

Election

Conduct of Elections Rules, 1961

Rr. 41(2) & (3) & R. 49-O and Rr. 39 and 49-M - Challenge to validity of Rr. 4(2) & (3) & R. 49-O on grounds of violating secrecy of voter exercising right not to vote" or "None of the Above" (NOTA) option required to be maintained under S. 128 of RP Act, 1951 and Rr. 39, 49-M of 1961 Rules - Directions issued for necessary provision in ballot papers and electronic voting machines (EVMs) to enable NOTA option and to keep exercise of such right secret - Held, a positive right not to vote" is a part of expression of a voter in a parliamentary democracy and has to be recognised and given effect to in the same manner as right to vote" - One of the ways of such expression may be not to vote at all, which is not an ideal option for a conscientious and responsible citizen - Thus, the only way the right not to vote can be made effectual is by providing a button in EVMs to express that right - Hence, Rr. 41(2), (3) and 49-O declared ultra vires S. 128 of the RP Act and Art. 19(1)(a) of the Constitution to the extent they violate secrecy of voting - Union of India directed to provide necessary help to Election Commission for implementation of such directions - Further, Election Commission directed to undertake awareness programmes to educate the masses regarding the same, (2013) 10 SCC 1-E

Election

Conduct of Elections Rules, 1961

Rr. 39, 41, 49-M and 49-O r/w Form 17-A - Record of voter who decides not to vote exercises option to reject all candidates and exercise option to vote for None of the Above (NOTA), to be maintained by Returning Officer which will disclose he has decided not to vote - Requirement of maintenance of such record, held, violative of Arts. 19(1)(a) and 14 of Constitution - Part of Rule 49-O r/w Form 17-A, which treats a voter who decides not to cast his vote differently and allows the secrecy to be violated, is arbitrary, unreasonable and violative of Art. 19(1)(a) of Constitution and also ultra vires Ss. 79(d) and 128 of the RP Act - Right to vote as well as right not to vote have been statutorily recognised under the RP Act and Rules - Whether a voter decides to cast his vote or decides not to cast his vote, in both cases, secrecy has to be maintained, (2013) 10 SCC 1-F

Election

Conduct of Elections

Secrecy principle, essential feature of free and fair elections, to yield only in case of conflict between secrecy and higher principle of free elections - Disclosure of elector's vote/identity who decides not to cast his vote, under R. 49-O of 1961 Rules in elections to Central and State Legislatures, held violates requirement of free and fair elections - Hence, struck down to that extent, (2013) 10 SCC 1-G

Constitution of India

Arts. 19(1)(a) & (2), 14, Preamble and Art. 32 - Freedom of speech and expression - Elections, Right to vote and freedom of voting as a species of freedom of expression - Reiterated, right to vote is a statutory right - Assn. for Democratic Reforms, (2002) 5 SCC 294 and People's Union for Civil Liberties, (2003) 4 SCC 399 have not changed the legal position that right to vote is a statutory right - Both judgments have only added that the right to know the background of a candidate is part of the fundamental right of a voter under Art. 19(1)(a) so that he can take a rational decision of expressing himself while exercising the statutory right to vote - Kuldip Nayar, (2006) 7 SCC 1 does not at all overrule the abovereferred two decisions, rather only reaffirms what has already been said therein, (2013) 10 SCC 1-H

Constitution of India

Arts. 32 and 19(1)(a) - Writ petition challenging violation of right not to vote in secrecy by Rr. 41(2) & (3) and 49-O of Conduct of Elections Rules, 1961 - Held, such writ petition maintainable under Art. 32 as fundamental right under Art. 19(1)(a) read with the statutory right under S. 79(d) of the RP Act is violated unreasonably if right not to vote effectively is denied and secrecy principle is breached - Decision taken by a voter after verifying credentials of the candidate either to vote or not is a form of expression under Art. 19(1)(a) - Any violation of the said right gives the aggrieved person the right to approach the Supreme Court under Art. 32, (2013) 10 SCC 1-I

Constitution of India

Arts. 32, 13, 19(1)(a) and Pt. III - Concomitant right being part of the fundamental rights but main or central right not being a fundamental right, being only a statutory right - Breach of concomitant fundamental right, held, is a breach of fundamental rights and gives aggrieved person the right to approach the Supreme Court directly under Art. 32, (2013) 10 SCC 1-J

Constitution of India

Arts. 32 and 226 - Direct recourse to Supreme Court - When warranted - Breach of fundamental rights alleged - Relegation to writ before High Court - When not called for - Issue of fundamental importance to whole country - Writ petition under Art. 32 already pending before Supreme Court for long time, (2013) 10 SCC 1-K

Election

Conduct of Elections

Object of - Necessity in democratic systems of government where direct elections are involved - Maintenance of secrecy necessary so that a voter casts his vote without any fear of being victimised if his vote is disclosed - Secrecy of voting is duly recognised under Ss. 79(d) and 128 of the RP Act, 1951 and Conduct of Elections Rules, 1961 - Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, also recognise the right of secrecy, (2013) 10 SCC 1-L

Election

Right to Vote/Suffrage and Voter's Rights

Right not to vote i.e. to reject all candidates and exercise option to vote for None of the Above" (NOTA) - Concept of negative vote - Implementation and advantages of - Recommendations regarding, in 170th Report of Law Commission of India considered - Hence, in order to protect right not to vote" viz. the secrecy of a voter who decides not to cast his vote i.e. exercises NOTA option and to avoid any discrimination, Supreme Court directing Election Commission to provide NOTA button in the EVMs, (2013) 10 SCC 1-M

Constitution of India

Arts. 19(1)(a), 14 and Preamble - Freedom of speech and expression - Negative voting (NOTA) - Role in increasing voter participation in democratic process - Lesser voter participation is the rejection of commitment to democracy whereas larger participation is better for democracy - Voters' participation in an election is participation in democracy itself - Held, if introducing a NOTA button in EVMs can increase the participation in democracy then, nothing should stop it - Directed accordingly, (2013) 10 SCC 1-N

Election

Right to Vote/Suffrage and Voter's Rights

Right not to vote i.e. to reject all candidates and exercise option to vote for None of the Above" (NOTA) - Availability of - Contention that elections are only a means of choice between various candidates to fill a seat by positive voting and there is no concept of negative voting under the RP Act and as it has no legal consequence there is no motivation for voters to travel to the polling booth and reject all the candidates by exercising NOTA option, rejected - Held, essence of the electoral system should be to ensure freedom of voters to exercise their free choice - Art. 19 of the Constitution guarantees all individuals the right to speak, criticise, and disagree on a particular issue - Not allowing a person to cast their vote negatively defeats the freedom of expression and the right ensured in Art. 21 of the Constitution as well i.e. the right to liberty, (2013) 10 SCC 1-O

Election

Conduct of Elections

NOTA button on Electronic Voting Machines - Compared to option given to members of Parliament to press the abstain button in voting machines in Parliament, which have three buttons, for AYES, NOES and ABSTAIN, (2013) 10 SCC 1-P

Constitution of India

Arts. 324 and 326 - Election Commission - Implementation of NOTA button - Making provision for negative or neutral vote in existing EVMs - Mechanism of implementation of, explained - Election Commission submitting that provision for NOTA button in the existing electronic voting machines (EVMs) not requiring any additional cost or administrative effort or change in design or technology of the existing machines - Additional panel on the balloting unit after the last panel

containing the name and election symbol of the last contesting candidate can be utilised as the NOTA button - Hence, held, implementation of the NOTA button will not require much effort except for allotting the last panel in the EVM for the same, (2013) 10 SCC 1-Q