

RIGHT TO REJECT A TOOL IN THE HAND OF AWARE VOTER

Yogita*

INTRODUCTION

India is the largest democracy in the world. The essence of the democracy lies in "For the people, By the people, Of the people". It symbolizes that in a democratic country like India, Govt. Is elected by people of India directly through means of free and fair election. Moreover Govt. Elected must function according to the public spirit.

In India Constitution supreme law of land. It wholly empowers people of India to elect their representative for governing the country. It implies that reins of the Govt. Lies in the hands of people. Our Preamble to Constitution commences with "We the People of India having solemnly resolved to constitute India into a sovereign, socialistic, secular, democratic republic". It is a declaration made by People of India to give to themselves their resolve to secure all citizens liberty of thought and expression. This resolve is reflected in Article 19(1) (a) under Part III of the Constitution enumerating fundamental rights. This right is the backbone of democracy. It is a basic right. Even the "Universal Declaration of Human Rights (1948) proclaims that everyone has the right to freedom of speech and expression". This right includes freedom to hold and opinion without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers.

Article 19 guarantees all citizens right to speak criticised and disagree on a particular issue. It enunciates that people may have diverse views, ideas and ideology. It implies that key to strengthen the democracy is "Right to Vote". As said by Lyndon.B.Johnson" The vote is the most powerful instrument ever devised by men for breaking down injustice & destroying the terrible walls which imprison men because they are different from other men ".

Advocate & Chairperson CWC Jind

The term “Right to Vote” was described as right to exercise the right in favour of or against the motion or resolution. (Lily Thomas Vs Speaker of the Lok Sabha) Moreover rule 41 (2) & (3) & 49-O of conduct of Election Rules, section 128 of Representation of People Act 1951 & Article 19(1)(a) of Constitution includes the precious right to vote vested in the hand of citizen of India. The provisions are :-

A) Section 128- maintenance of secrecy of voting-

- (1) Every officer, clerk, agent or other person who performs any duty in connection with recording or counting of votes in an election shall maintain and aid in maintaining, the secrecy of the voting & shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy, provided that provision of that sub section shall not apply to such officer, clerk, agent or other person who perform such duty at an election to fill a seat or seats in council of States.
- (2) Any person who contravenes the provision of sub section (1) shall be punishable with imprisonment for a term which may extend to three months with fine or both.

Rule 39 states maintenance of secrecy of voting by elector with in polling station & voting procedure. It also includes that any elector to whom any ballot paper has been issued shall maintained secrecy of voting with in polling station and for that purpose observe voting procedure.

Rule 41 states the procedure of spoiled and returned ballot papers. It enunciates that if any elector inadvertently deals with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper, may be given another ballot paper by presiding officer, if he returns it & satisfies him of inadvertence. In such a case the returned/spoiled paper shall be marked as "spoiled, a cancelled".

In case any elector after receiving the ballot paper decided not to use it then he shall returned it to presiding officer. Counterfoil of such a paper shall be marked as "Returned, cancelled" by presiding officer.

All such ballot papers cancelled under sub rule 1 or sub rule 2 shall be kept into a separate packet.

Rule 49M- it states the maintence of secrecy of voting by elector within polling station and voting procedure. It includes that every elector who has been permitted to cast his vote under rule 49 L has to maintain secrecy and observe the procedure laid down the rule.

Rule 49 O- elector decided not to vote if any elector after his electoral roll no. has been duly entered in the registered of votes in form 17A & has put his signature or thumb impression thereon as required under sub rule (1) of rule 49 L decides not to record to his vote a remark to this effect shall be made against the said entry in form 17A by presiding officer and the signature or thumb impression of elector shall be obtained against such remarks.

A close reading of the Rule 49 O describes the procedure to be followed when a valid voter decides not to cast his vote and also records this fact. The purpose of this section is to prevent the election fraud or misuse of votes. At present, in election a candidate will be declared elected irrespective of the number of non-votes. However, a note of non-vote will be made with election officer and total number of non-voters will be available under right to information act.

Since the EVM/Ballot Papers does not prescribe the column of non-voting & only gives the list of candidates. In such a case, a voter cannot record his vote under Rule 49-O directly, but must inform the presiding officer at the election booth. Such information violates the secrecy of ballot. Maintenance of secrecy is must in election of Lok Sabha as well as State Legislature. It implies that in democracy like India, where people are directly involved in election, it is essential that voter is free to cast his vote without any fear of being victimized if his vote is disclosed. The Apex Court in S.Raghbir Singh Gill vs. S. Gurcharan Singh Tohra & Others 1980(Supp) SCC53, observed

“Secrecy of ballot can be appropriately styled as a postulate of Constitutional democracy. It enshrines a vital principal of parliamentary institution set up under the Constitution. It sub serves a very vital public interest in that and elector or a voter should be absolutely free in exercise of his franchise untrammelled by any constraint, which include constraint as to the discloser. A remote or distinct possibility that at some point a voter may under a compulsion of law be forced to disclose for whom he has voted would act as a positive constraint and check on his freedom to exercise his franchise in the manner he freely chooses to exercises. Therefore it can be said with confidence this postulates of Constitutional democracy rest on public policy”.

Resting on these observation and guidelines we can say that not allowing any person to cast his vote negatively defeats the very freedom of expression under Article 19(1) (a) and also right to liberty under Article 21 of the Constitution. As per rule 41(2) of Rules, an elector has a right not to vote but still secrecy of his having not voted is not maintained under rule 41(2)

and (3) thereof. Under Rule 49-O of Rule, although the right of elector not to vote has been accepted but still the secrecy of his having not voted is not maintained which is essential for fair election. In case an elector decides not to vote, a remark to this effect shall be made against the said entry in form 17-A by the Presiding Officer & signature/thumb impression of the elector shall be obtained against such remarks. Hence, if a voter decides not to vote, his record will be maintained by Presiding Officer, which will thereby disclosed that he has decided not to vote. The main substance of consideration is that even though the right not vote is recognised by Rule 41 & 49-O of Rules, and is also a part of freedom of expression of a voter if a voter chooses to exercises such rights, it has to be kept secret since secrecy is an essential feature of “free & fair election”.

This fact was considered by the then chief election commissioner of India TS Krishnamurthy in year 2004, & recommended that law should be amended to specifically provide for negative/neutral voting. For this purpose Rule 22 & 49B of Conduct of Election Rules 1961, may be suitably amended adding a provision that that in a ballot paper, there shall be a column of none of the above to, enable a voter to reject all the candidates, if he chooses so.

Now after nine years, the Apex Court has recognised this right in land marked judgement Peoples' Union for Civil Liberties & ANR Vs. Union of India (September 27, 2013) and directed the election commission to provide necessary provision in the ballot paper/EVM another button called “None of the Above”(NOTA) may be provided in EVMs so that voters who comes to polling booth & decides to use this button, are able to exercise it while to right to maintain their right to secrecy.

The provision was much criticised by critics on the ground that it is the duty of every citizen to educate himself/herself about the agenda of candidate and to vote conscientiously for the candidate they think it better. Since, very purpose of election is that representative should be chosen by the people. Encouraging people not to express their preferred candidate go against intended purpose. Also annulling & election amounts too much wastage of public fund spent on conducting on election. But one cannot overrule freedom to choose whether or not to exercise right to vote and as well maintaining secrecy of his decision. The decision of Apex body has helped in maintaining the true nature democracy which grows on principle of free & fair election & also fundamental right of freedom of speech and expression.

The putting of NOTA button in Indians will definitely help in ameliorating the scenario of our present political system, where people are compelled to choose worse amongst the worst & will help in choosing among best among amongst better.