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SC Scraps NOTA for Rajya Sabha

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The Supreme Court has scrapped the use of 'None Of The Above' (NOTA) option in the coming Rajya Sabha elections.

Key Observations

- The court has held that the NOTA option is meant only for universal adult suffrage and direct elections and not for polls held by the system of proportional representation by means of the single transferable vote as done in the Rajya Sabha.
- The court held that making NOTA applicable in Rajya Sabha elections is contrary to Article 80(4) of the constitution and the Supreme Court's judgment in **PUCL v Union of India (2013)**.
Article 80(4) states that the representatives of each state in the council of states shall be elected by the elected members of the legislative assembly of the state in accordance with the system of proportional representation by means of the single transferable vote.
- NOTA defeats the fairness in indirect elections, it ignores the role of an elector in such an election and destroys democratic values and encourages malpractices like defection and corruption.
- In the Rajya Sabha, the nature of the representative is different as the candidate is the representative of the state. In contrast, a candidate who is elected by voters in a direct election represents a constituency.
- NOTA can destroy the concept of the value of a vote and representation and encourage defection that shall open the doors for corruption which is a malignant disorder.
- The maintenance of secrecy of voting through the system of the open ballot will be violated by the introduction of NOTA in Rajya Sabha polls.
- It will not only affect the discipline that has been prescribed under the Tenth Schedule to the Constitution but will also infringe upon the disqualification of a member on the ground of defection.

Anti-Defection Law

- The **52nd Amendment to the Constitution** added the Tenth Schedule which laid down the process by which legislators may be disqualified on grounds of defection.
- The **anti-defection law was passed by parliament in 1985** to enhance the credibility of the country's polity by addressing rampant party-hopping by elected representatives for personal and political considerations.
- A member of parliament or state legislature was deemed to have defected if he either voluntarily resigned from his party or disobeyed the directives of the party leadership on a vote.
 - **Independent members** would be disqualified if they joined a political party.
 - **Nominated members** who were not members of a party could choose to join a party within six months; after that period, they were treated as a party member or independent member.
 - **Exceptions:** Any person elected as speaker or chairman could resign from his party, and rejoin the party if he has resigned from that post.
- A party could be merged into another if **at least two-thirds of its party legislators** voted for the merger. The law initially permitted splitting of parties, but that has now been outlawed.
- The law states that the decision of the Presiding officer is final and not subject to judicial review. The Supreme Court struck down part of this condition. It held that there may not be any judicial intervention until the presiding officer gives his order. However, the final decision is subject to appeal in the High Courts and Supreme Court.

NOTA in Rajya Sabha

- The Supreme Court, in the PUCL case, directed the EC to introduce NOTA in direct elections in order to provide an opportunity to the elector to express his or her dissent or disapproval against the contesting candidates and to reduce bogus voting.
- A candidate has to get a required number of votes calculated through a formula to get elected to Rajya Sabha.
- The total number of votes (MLAs) are divided by the number of seats going to the polls from the State, adding one vote to the number.
- In Rajya Sabha polls, the MLAs have to show their ballot paper to an authorised party agent before putting it in the ballot box.
- If a member from a party exercises the NOTA option, then the total number of votes cast will go down.
- The impact of the decision of MLAs to exercise the NOTA option in elections to the Rajya Sabha can be the same as that of an abstention.

Background

The petition challenging the introduction of NOTA in Rajya Sabha elections had argued that the Election Commission cannot sanction the use of NOTA in Rajya Sabha elections by way of mere circulars, which have the effect of overriding the provisions of Article 80(4) – proportional representation by means of the single transferable vote, the provisions of Representation of People Act 1951 and the Conduct of Election Rules 1961.

Centre for Removal of NOTA from Rajya Sabha Poll