

**A CRITICAL ANALYSIS OF THE GUJARAT
LOCAL AUTHORITIES LAWS (AMENDMENT)
ACT, 2009 – W.R.T. COMPULSORY VOTING**

*Yamini Kumar**

Abstract

The introduction of the controversial Gujarat Local Authorities Laws (Amendment) Act, 2009 advocated compulsory voting for the first time in India. It has encountered vehement opposition from various civil society constituencies in society. This article seeks to critically analyse the socio-legal effects of the Act. It argues that such legislation is unconstitutional and in violation of our fundamental right to freedom of expression. Low voter turnout is a result of voter-apathy and an inherently flawed political system. This authoritarian law fails to effectively identify and address these issues. After evaluating the Act within a comparative framework of countries having similar laws of compulsory voting, this article entails an analytical study of the reasons as to why the Act has been considered unreasonable and can potentially trigger a dangerous precedent. It is pertinent to note that the Gujarat state government lacks the necessary resources and

*Yamini Kumar is a third-year student at West Bengal National University of Juridical Sciences, Kolkata. The author may be reached at yaminikumar@nujs.edu.

infrastructure to implement such a law. Further, the landmark judgment of the Supreme Court that introduced the 'None of the Above' option has been discussed, in light of its nexus with the contemporary issue of compulsory voting. Lastly, certain alternative measures have been suggested which are in sync with our Constitutional framework and would lead to an increase in voter turnouts through democratic modalities.

I. INTRODUCTION

The Gujarat Local Authorities Laws (Amendment) Act, 2009 (*hereinafter* Act) makes voting compulsory for registered voters in all local body elections in Gujarat. It was passed by O P. Kohli, the Governor of Gujarat on the 7th of November, 2014.¹ This law has not been enforced till date, because the rules and penalty for not voting are yet to be framed and notified.² This paper argues that a law enforcing compulsory voting is a legal absurdity in the world's largest democracy. This has been substantiated by a threefold argument; first, that such a legislation is anti-democratic in nature and in violation of

¹Prerna Katiyar & Vishal Dutta, *Gujarat's compulsory voting: Is it a pilot project with an eye on countrywide implementation?* The Economic Times (Nov. 16, 2014), http://articles.economicstimes.indiatimes.com/2014-11-16/news/56137188_1_compulsory-voting-gujarat-local-authorities-laws-gujarat-assembly [hereinafter Prerna Katiyar & Vishal Dutta].

²Manish Chhibberr, *Gujarat compulsory voting: Will you jail 8 crore voters who don't? asks EC Brahma*, The Indian Express (Nov. 11, 2014), <http://indianexpress.com/article/india/india-others/gujarat-compulsory-vote-law-ec-brahma-asks-will-you-jail-all-those-who-dont/> [hereinafter Manish Chhibberr].

our Fundamental Rights. Second, that there are several challenges anticipated in implementing the Act. Third, this paper seeks to identify the reasons for low voter turnout in local state elections at the grass root level and assert that the proposed Act targets the wrong symptoms. Lastly, this study critically analyses the effects of the landmark Supreme Court Judgment on the ‘None of the Above’ option (*hereinafter* NOTA) and discusses why it fails to act as an antidote to the curtailment of individual rights resulting from compulsory voting. In response, ways in which the problem of low voter turnout can be combatted have been suggested.

II. COMPULSORY VOTING: AN ANATHEMA TO DEMOCRACY AND FUNDAMENTAL RIGHTS

Compulsory voting imposes an obligation on each citizen to necessarily cast his vote. This opposes the basic tenet of democracy. Such a compromise on individual autonomy has been widely criticised in the public domain. S.Y. Quraishi, the former Chief Election Commissioner (CEC) of India said, “There can scarcely be a more dastardly onslaught on the Fundamental Right to Freedom of Speech and Expression and Right to Life and Liberty guaranteed by the Constitution, than this piece of legislation.”³

Democracy and compulsion are diametrically opposed ideas. Keeping this in mind, Kamla Beniwal, the previous Governor of Gujarat withheld her consent to the Gujarat Local Authorities Laws (Amendment) Bill, 2009 on two occasions.⁴ She pointed out that by

³Express News Service, *Gujarat Governor O P Kohli gives nod to controversial voting Bill*, The Indian Express (Nov. 10, 2014), <http://indianexpress.com/article/india/gujarat/gujarat-governor-signs-controversial-bill-on-compulsory-voting-in-local-body-elections/>.

⁴G. Sampath, *Compulsory voting: Will India follow the Gujarat example?* Live Mint (Nov. 14, 2015),

introducing compulsory voting, the Government is effectively coercing voters to act against their conscience. Such a step would compromise on voters' free will to exercise their right to franchise. This is antithetical to the principles of individual liberty as envisaged in Article 21 of the Constitution of India. Further, she argues that such a dictatorial law infringes on the Right to Freedom of Expression as per Article 19 (1) (a) of the Constitution. Article 19(1) (a) which gives citizens the Right to Freedom of Speech and Expression also consists of the freedom not to express one's views. This implies that if a registered voter chooses not to vote, he is exercising his fundamental right as part of Freedom of Expression because he is entitled to refrain from expressing himself by remaining neutral. It is a voter's choice whether he wishes to exercise his freedom to expression or not; he cannot be forced to express his opinion with regard to candidates at a polling booth, by being compelled to vote.⁵

The basic characteristic of our electoral system is the free and fair nature of elections. The 'electoral right' of a voter is defined in Section 171 A (b) of the Indian Penal Code⁶ and in Section 79(d) of the Representation of the People Act, 1951 as, "the right of a person to vote or refrain from voting at an election."⁷ Thus, constitutional and statutory provisions enable an individual to either choose to cast

<http://www.livemint.com/Opinion/5T1a5p49gjUzHhxsACSONJ/Compulsory-voting-Will-India-follow-the-Gujarat-example.html> [hereinafter G. Sampath].

⁵BS Reporter, *Why ex-Gujarat Guv Kamla Beniwal vehemently opposed compulsory voting?* Business Standard (Nov. 10, 2014), http://www.business-standard.com/article/politics/why-ex-gujarat-guv-kamla-beniwal-vehemently-opposed-compulsory-voting-114111000972_1.html [hereinafter BS Reporter].

⁶G. Sampath, *supra* note 4.

⁷*Needed, A wider debate*, The Hindu (Nov. 13, 2014), <http://www.thehindu.com/opinion/editorial/editorial-on-compulsory-voting-in-gujarat/article6591701.ece>.

his vote or refrain from expressing himself by withholding the exercise of the right to vote.

According to Mohan Parasaran, the former Solicitor General of India, the authoritarian aspect of the Act i.e., compulsory voting does not stand the test of constitutional scrutiny.⁸ Evidently, the law under study blatantly violates Fundamental Rights and treads on our cherished ideals of liberty, freedom of expression, democracy and socio-political justice that are aptly protected by the Preamble and the Constitution of India.

III. GUJARAT LOCAL AUTHORITIES LAWS (AMENDMENT) ACT, 2009: CHALLENGES DURING ITS IMPLEMENTATION

The 2009 Act empowers the state government to take punitive action against those who do not vote in the local body elections.⁹ The power to frame rules that determine penalties for violations of the Act is delegated to the executive. However, these rules are yet to be specified.¹⁰ In this Section, I seek to throw light on the challenges that can be anticipated during the implementation process of such a law in India vis-à-vis the practice of compulsory voting in other countries. Further, the study points out that the aspect of compulsory voting imposes a strenuous duty on citizens to cast their votes but is silent on the Government's responsibility to support voters and assist them in overcoming hurdles that lead to low voter turn-outs.

⁸Manish Chhibberr, *supra* note 2.

⁹Prerna Katiyar & Vishal Dutta, *supra* note 1.

¹⁰Suhrith Pathasarthy, *Narendra Modi's Dangerously Flawed Ideas On Compulsory Voting*, The Caravan: A Journal of Politics and Culture (Nov. 21, 2014), <http://www.caravanmagazine.in/vantage/narendra-modi-dangerously-flawed-ideas-compulsory-voting>.

A. Compulsory Voting in India vis-à-vis its Practice in Other Countries

Twenty-two countries worldwide have adopted a law mandating compulsory voting,¹¹ out of which only eleven have enforced such a law. Countries such as Venezuela, Chile, Austria, Fiji, Italy, Netherlands and Spain previously practiced compulsory voting but subsequently abolished it. Predictably, most democracies such as the United States of America, United Kingdom and France practice voluntary voting.

Examples of penalties for violating laws of compulsory voting across the world include a range of punitive measures that include; nominal fines such as in Australia and Austria, imprisonment in Greece, blockage or withdrawal of salary from the bank for three months in Bolivia, barring a defaulter from applying for a passport until the situation is settled before an electoral court or he has voted in the two most recent elections in Brazil,¹² prevention of promotion at work in Belgium, low preference to non-voters by employers in Belgium, denial of public services and goods in Peru and disenfranchisement in Singapore.¹³ Additionally, penalties may also include restrictions on obtaining a driver's licence, deletion of names from electoral rolls to block future voting rights for a fixed period of time, barring defaulters from applying for employment as a civil servant or running for any public office, withholding of entitlements, loss of the right to avail of

¹¹G. Sampath, *supra* note 4.

¹²Compulsory Voting, http://en.wikipedia.org/wiki/Compulsory_voting.

¹³Soumya Garg, *To Vote or Not to Vote- Compulsory Voting! My Parliament*, <http://modelyouthparliament.com/blog/to-vote-or-not-to-vote-compulsory-voting-2/> [hereinafter Soumya Garg].

certain social welfare schemes initiated by the government, a court hearing and other measures.¹⁴

The 2009 Act carves out certain exceptions which are considered justified grounds for failure to vote. These include illness, absence from Gujarat or India on the day of elections and any other reason laid down in the rules. Voters have thirty days to explain their absence and provide supporting documents like a medical certificate or a copy of passport, to avoid punishment. As per the Act, punishment for the defaulter would be decided by the government. An aggrieved voter can appeal to an Officer designated by the State Election Commission, whose order will be final.¹⁵

The punishment, it is proposed, must be severe enough to have a deterrent effect on non-voters. There have been numerous suggestions ranging from withholding driving licence or PAN card to the withdrawing of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) card, Below Poverty Line (BPL) card and ration card - steps that can definitely adversely impact day to day lives. Disconnection of water and electricity were also suggested by a Public Interest Litigation (PIL) in 2009, which was condemned by the Supreme Court as 'inhuman.' The retrograde thought of withdrawing these basic facilities which are yet to trickle down to many villages in India, amounts to undoing the work of previous governments in order to facilitate the proposed arbitrary law. Such punitive measures disregard the 'Socialist' principle embodied in our Preamble.

B. Limitations of Resources and Infrastructure for Punitive Measures

¹⁴While this would negatively impact the poor and uneducated sections in society, the wealthy and middle class would hardly be inconvenienced by such a punishment.

¹⁵Soumya Garg, *supra* note 13.

H.S. Brahma, the Chief Election Commissioner reacted to the Gujarat legislation by asking, “What if we have a similar law at the Centre, and out of 83 crore-plus voters, 10% choose not to vote? Will you put 8 billion voters in jail or impose fines on them? Do we have jails to accommodate 80 million voters?”¹⁶ It is crucial to raise questions about the logistical hurdles which will be faced if this law were to be implemented in Gujarat. How will the state manage to convey the new legal obligation of compulsory voting to every registered voter in Gujarat? Will a body which is inadequate to accurately administer electoral rolls and a voter registration process have the infrastructure, capability, resources and fiduciary strength that is essential to carry out punitive measures for every defaulter? These are pertinent and relevant questions which must be answered before carrying forward a law which can have such a drastic impact on the State’s spending. These obstacles have been duly acknowledged by S.Y. Quraishi, the former Chief Election Commissioner of India who queried, “Do we have the level of strength, the infrastructure and the workforce to prosecute people in lakhs if not crores?”¹⁷ Not only is the implementation of this legislation an expensive prospect, but it can also lead to an increase in instances of extortion and corruption during the process of fine collection. Thus, the former Chief Minister of Gujarat- Mr. Narendra Modi’s claims that compulsory voting will reduce the cost of elections and minimize black money in elections is highly contested and debatable.¹⁸

The most viable and globally practiced punishment for violating laws of compulsory voting appears to be the imposition of a nominal fine on defaulters. However, even this mandates that the due process of

¹⁶G. Sampath, *supra* note 4.

¹⁷Perna Katiyar & Vishal Dutta, *supra* note 1.

¹⁸G. Sampath, *supra* note 4.

law be followed. This in turn entails *inter alia*, the preparation of an error-free list of non-voters, tracking down their updated contact details, issuing notices, giving them an adequate opportunity to explain themselves, analysing the merit of the supporting documents provided by them, giving them a hearing and writing speaking orders. We can expect crores of cases after every election (considering there are at least three elections every five years) and an immense backlog of cases on our already overburdened judicial system. The government can choose to take on the onerous task of creating an additional body to judge the legitimacy and proof of the reasons offered for absence by defaulters to prevent adding to the backlog of cases in courts. However, bearing in mind the fact that India is the second most populous country in the world, the newly established judicial body too will inevitably suffer from an overwhelming number of cases filed and subsequently, a major backlog of unresolved cases will further add to the number of pending cases.¹⁹ It is glaringly evident that such a legislation is not feasible as India does not have the requisite resources or facilities to carry through a stringent law, such as the proposed Act under review.

C. Absence of a Voter-Friendly Environment

The Act is silent on the government's duty to create an enabling environment to increase voter turn-outs through positive initiatives such as; creating awareness about the candidates, updating electoral rolls, timely distribution of voter ID cards, ensuring free transport facilities or easy access to polling stations, declaring the day for elections a holiday for industries and providing special facilities for the differently abled.²⁰

¹⁹*Id.*

²⁰Prianka Rao, *Compulsory Voting in India*, The PRS Blog (Nov. 17, 2014), <http://www.prsindia.org/theprsblog/?p=3370>.

It is important to note that millions of daily wage earners cannot afford to forego their wages. A large number of people are driven out of their homes due to natural disasters or riots.²¹ It is unjust to term such people as ‘anti-State’ or ‘anti-democracy’ and force them to vote or impose on them the added burden of providing supporting documents to provide a justification for their failure to exercise their electoral right. According to Kamla Beniwal, the law could potentially be a coercive instrument in the hands of the State that could be used by government officials to harass vulnerable citizens.²²

In the aforesaid circumstances, it is necessary to contemplate the counterproductive effect that this law may have on the socially disadvantaged and marginalised sections of society. In a desperate attempt to escape penal action, it is likely that the adversely impacted populace might deregister themselves as voters.²³ Thus, a law for compulsory voting in Gujarat may have a detrimental social effect on democracy and the voting process, by reducing the total number of registered voters.

IV. THE RATIONALE UNDERLYING LOW VOTER TURNOUTS

The argument in support of compulsory voting can be broadly classified into two narratives. First, that the selected candidate will aptly reflect the choice of the masses and the question of

²¹G. Sampath, *supra* note 4.

²²BS Reporter, *supra* note 5.

²³*Compulsory Voting goes against Democratic Principles*, Gangothri.org (Nov. 15, 2014), <http://www.gangothri.org/node/91>.

‘representativeness’²⁴ of the selected candidate is less likely to come up if voter turn-outs can be increased. Second, that voting is construed as an act of democratic participation and is understood as a civic duty.²⁵ In this segment, I attempt to delve into the definitive reasons that underscore low voter turn-outs and affirm that compulsory voting is not the solution to enhance voter turnout.

An analysis of recent electoral data in local elections is indicative of the fact that rural local bodies across most states have had higher turnouts than their urban counterparts. It is also a fact that turnouts in the urban local body elections are lower than the elections to national, state and rural local bodies. A predominant reason for this is the inconsistencies and high error rates in the electoral rolls of the State Election Commissions (SECs). The main cause for this discrepancy is the mobile, fragmented and diverse character of the urban electorate that then lends itself into an electoral role replete with the above stated inconsistencies. Further, financially starved and functionally ineffective SECs are burdened with the immense responsibility of preparing and updating electoral rolls in the same manner as the Election Commission of India. There are bound to be inconsistencies in the SECs until their functioning mechanisms are revamped radically.²⁶

With regard to the second rationale, it is crucial to note the steadily increasing ‘voter apathy’ amongst the middle class in urban areas toward local body elections. The poor functioning of the local governments results in their non-recognition as an institution for policy intervention or grievance redressal in the electorates’ mind set. State governments exercise control over civic issues while parastatal bodies handle municipal responsibilities. Most local governments are

²⁴Bhanu Joshi, *Bill for Compulsory Voting in Gujarat*, 49(52) ECONOMIC AND POLITICAL WEEKLY (2014) [hereinafter Bhanu Joshi].

²⁵G. Sampath, *supra* note 4.

²⁶Bhanu Joshi, *supra* note 24.

not financially self-sustaining and cannot undertake projects without State approval, thereby resulting in a scenario wherein minimal work is taken on by local governments.²⁷

People who do not support compulsory voting argue that voting is a right and a privilege of a citizen as opposed to a duty. Whether an individual chooses to exercise this privilege or not, is his or her decision. The Fundamental Right to Freedom of Speech and Expression is a right guaranteed by Article 19(1)(a) of the Constitution. However, it is not considered each citizen's duty to publicly share their views and opinions on matters of national importance. Those who choose to keep silent or not express themselves in any manner are not liable to be forced to fulfil their "duty" of free speech. It is therefore absurd to argue that rights are "also duties" in themselves.²⁸

The reason for low voter turnout lies in the problematic political system. Those in favour of compulsory voting are unwilling to look into these problems and choose to opt for coercion and authoritarianism to make voting compulsory instead. However, this is an untenable solution in the long run. There is no guarantee that compulsory voting will have an educational effect and reduce political apathy over the years. Although dictatorial legislations such as the Act will add to the voter turnout, it will fail to enhance voters' 'participation' in the democratic processes²⁹ as forcing people to vote is likely to result in arbitrary, uninformed voting and skewed decisions on the part of the voter. The reasons for low voter turnouts are complex and varied and need to be addressed at a fundamental

²⁷Bhanu Joshi, *supra* note 24.

²⁸G. Sampath, *supra* note 4.

²⁹*Id.*

level. Compulsory voting side-steps this critical issue rather than resolving it.

V. THE LANDMARK ‘NOTA’ JUDGMENT: IT’S IMPACT

In the landmark Supreme Court judgment of *People’s Union for Civil Liberties v. Union of India*,³⁰ the bench headed by Chief Justice P. Sathasivam introduced the option for voters in India to cast a negative vote for the first time, by voting ‘None of the Above’ (‘NOTA’) on electronic voting machines (‘EVM’) and ballot papers.³¹ The Apex court held that the right to vote for a candidate and the right to say NOTA are both in exercise of the Fundamental Right to Freedom of Expression under Article 19(1)(a) of the Constitution.³² The Court opined that every citizen in a democracy has the right to express his opinion even by refraining from expressing any opinion at all i.e., by voting NOTA.³³ The bench reasoned that the introduction of NOTA will give an option to “dissatisfied voters” who contribute to low voter turn-outs and thereby “foster purity of electoral process” and “signal to political parties and candidates what the voter thinks about them.”³⁴ However, the Election Commission issued a controversial clarification stating that even if NOTA were to receive most votes, the candidate with the highest votes would win the election.

³⁰*People’s Union for Civil Liberties (PUCL) v. Union of India*, A.I.R. 2003 S.C. 2363 (India).

³¹Clarification, Election Commission of India, Supreme Court’s judgement for “None of the Above” option on EVM, No. ECI/PN/48/2013, (Oct. 28, 2013), http://eci.nic.in/eci_main1/current/PN_28102013.pdf.

³²Monalisa & Elizabeth Roche, *Voters Have A New Option: Reject All Candidates*, Live Mint (Sept. 27, 2013), <http://www.livemint.com/Politics/fgPFQzMzwp4yY0kYDJUWKL/Voters-have-a-new-optionreject-all-candidates.html> [hereinafter Monalisa & Elizabeth Roche].

³³Manish Chhibberr, *supra* note 2.

³⁴Monalisa & Elizabeth Roche, *supra* note 32.

In light of the above, I will argue on two aspects; first that the option to vote NOTA gives citizens the right to cast a ‘neutral vote’ or the ‘right to abstain’ from voting, as opposed to the Supreme Court’s opinion that NOTA counts as a ‘negative vote’ and consists of the ‘right to reject.’ Second, I analyse the effect of the NOTA judgment on compulsory voting by pointing out that there is a marked difference between voting for NOTA and having the right to be able to choose not to vote at all. Thus, the introduction of the NOTA option fails to remedy the infringement of democratic rights resulting from legislating compulsory voting.

S.Y. Quraishi argues that this Judgment does not give a citizen the ‘right to reject’ all candidates if he chooses to do so, or the right to cast a ‘negative vote’ as has been stated in the Judgment. Instead, it gives citizens the right to abstention or cast a neutral vote where they can choose to exercise the NOTA alternative.³⁵ Explaining the implication of the Judgment, Justice Quraishi states, “Even if there are 99 NOTA votes out of a total of 100, and candidate X gets just one vote, X is the winner, having obtained the only valid vote. The rest will be treated as invalid or ‘no votes.’”³⁶ The candidate with the highest number of votes is the winner even if such a candidate has secured less votes than the NOTA option itself i.e., this Judgment will not alter the electoral outcome in a constituency; the winning candidate will still be the one with the highest tally of votes.³⁷ He differentiates the present situation from one wherein citizens have the

³⁵N. Gopalaswami, *NOTA small matter, this*, The Hindu (Oct. 9, 2013), <http://www.thehindu.com/opinion/lead/nota-small-matter-this/article5214816.ece>.

³⁶*Nota option does not mean right to reject and won't affect election results, says former election commissioner*, India Today (Oct. 3, 2013), <http://indiatoday.intoday.in/story/nota-does-not-mean-right-to-reject-voter-election-evm/1/312960.html>.

³⁷Monalisa & Elizabeth Roche, *supra* note 32.

right to cast a negative vote or a right to reject. Such a right implies that there will be a re-election if the rejection option receives more than 50% of the votes or, if no candidate receives more votes than the number of votes accumulated by the rejection option. For example, Colombian elections have the NOTA option (*'en blanco'*) and if the *'en blanco'* option receives most votes, re-elections are held with a fresh set of candidates.³⁸ The Election Commission's clarification essentially renders the NOTA option in India ineffective and reduces its position to a mere record of voter disapproval for candidates in the electoral fray.

Subhash Kashyap, the former Secretary-General of the Lok Sabha also acknowledged the distinction between NOTA and the right to reject. He raised a valid point; "Would you stand in the sun for three hours in front of a polling booth just to declare that you would not vote for anyone?"³⁹ Amidst voter apathy, it is unrealistic to expect that previously disinterested voters will take the effort to visit a polling booth to exercise the NOTA option, when such a vote has no effect on the selection of a candidate.⁴⁰ It is unlikely that the exercise of the NOTA option will result in a substantial decrease in the criminalisation of politics or improve the representative credentials of members. Thus, the apex court's rationale that those who are not satisfied with the list of candidates standing for elections will turn up

³⁸Vasujith Ram, *NOTA Judgment and the Right to Reject: Is it a Goal too Far?* Journal of Indian Law and Society (Oct. 6, 2013), <https://jilsblognujs.wordpress.com/2013/10/06/nota-judgment-and-the-right-to-reject-is-it-a-goal-too-far/>.

³⁹Sagnik Dutta, *NOTA will not serve democracy*, Frontline (Nov. 1, 2013), <http://www.frontline.in/cover-story/nota-will-not-serve-democracy/article5228773.ece>.

⁴⁰Kanu Sarada, *Supreme Court includes 'none of the above' option to electronic voting machines*, DNA, (Sept. 28, 2013), <http://www.dnaindia.com/india/report-supreme-court-includes-none-of-the-above-option-to-electronic-voting-machines-1894920>.

to register their protest through the NOTA option⁴¹ and this in-turn will increase voter turn-outs and compel political parties to select more agreeable candidates, is highly debatable.

The prospect of a larger vote base as a result of compulsory voting, understandably, is an attractive prospect for politicians and governments. Narendra Modi, the former chief minister of Gujarat claimed that this law is a step towards “strengthening democracy.”⁴² But, should citizens accept the Gujarat governments unsubstantiated assertions that compulsory voting will result in further democracy at the cost of compromising Fundamental Rights and individual liberties?

Ironically, our political setup gives members of Parliament the right not to vote for any bill in two ways; either by abstention or by being present and choosing not to vote. A logical corollary of these steps is that either citizens should be entitled to the same rights⁴³ or, the government should perhaps make voting compulsory for the lawmakers themselves, before imposing it on the masses.

The crucial point to be noted here is that there is an obvious discrepancy between exercising one’s right to refuse to participate in the polling process, and being forced to participate in the electoral process when one has the option to choose the NOTA option. If one were to argue that those who do not wish to vote for any candidate

⁴¹Dhananjay Mahapatra, *Supreme Court gives voters right to reject all candidates*, The Times of India (Sept. 27, 2013), <http://timesofindia.indiatimes.com/india/Supreme-Court-gives-voters-right-to-reject-all-candidates/articleshow/23144039.cms?>

⁴²*Voting Mandatory in Local Gujarat Polls*, Deccan Herald (Mar. 10, 2015), <http://www.deccanherald.com/content/42164/voting-mandatory-gujarat-local-polls.html>.

⁴³Prerna Katiyar & Vishal Dutta, *supra* note 1.

can always use the NOTA option, he would be glossing over this palpable distinction.⁴⁴ The right to refrain from voting provides the weaker sections of society with an anonymous and safe platform to protest against political candidates without the need for any resources or coordination.⁴⁵ This cannot be compared to the option of compulsorily visiting a polling booth and pressing the ‘NOTA’ button on EVMs. The right to choose not to vote is rudimentary to a political scheme which aims to protect people’s equality and freedom, as envisaged in the Constitution.

VI. CONCLUSION: NEED FOR ALTERNATIVES TO COMPULSORY VOTING

It needs to be noted at the outset that the media has reported the introduction of the *Gujarat Local Authorities Laws (Amendment) Act, 2009* in Gujarat as India’s “first state” to make voting compulsory. Does this imply that other states are likely to pass similar laws? It is evident that the Act was priority legislation for the Narendra Modi government in Gujarat. Given Prime Minister Narendra Modi’s strong views in favour of compulsory voting, should we expect that all other BJP-ruled states will follow Gujarat’s lead? There is a noticeable trend in countries with limited budgets wherein the enforcement of compulsory voting laws are not a high priority but governments hope that the existence of the law will encourage citizens to participate in elections.⁴⁶ Keeping in mind the lack of infrastructure to implement the Act, it could be that the Gujarat legislation will not be enforced at all.

⁴⁴G. Sampath, *supra* note 4.

⁴⁵Annabelle Lever, *Compulsory Voting: A Critical Perspective*, 40(4) British Journal of Political Science 897- 915 (2010), <http://www.jstor.org/stable/40930591>.

⁴⁶Maria Gratschew, *Compulsory Voting in Western Europe*, http://www.idea.int/publications/voter_turnout_weurope/upload/chapter%203.pdf.

Compulsory Voting Bill (legislating compulsory voting for elections at the Centre) had been introduced as a Private Member's Bill twice before in the Lok Sabha but failed to receive the consent of the House.⁴⁷ Should we prepare ourselves for the fact that the National Democratic Alliance (NDA) government led by Narendra Modi at the Centre may have a similar law in mind for national-level elections as well? ⁴⁸ One can only hope that such an authoritarian law that exhibits a despicable disregard for democratic and constitutional principles is not implemented at a national level.

Instead of implementing a law which is unconstitutional, totalitarian and ridden with procedural difficulties, it is desirable that the State pursue alternative means on the lines of affirmative actions to achieve the objective of enhancing voter turn-outs. These may include measures such as *inter-alia*, awareness campaigns, error-free electoral rolls and functional local State governments. Instead of punishing non-voters, the government could perhaps incentivise those who do exercise their right to vote. These positive rewards could be in the nature of minor tax breaks or financial incentives. Compulsory voting is only practical with more accessibility to pooling booths and provisions for postal, proxy and internet voting mechanisms.

Systematic voter education, motivation and facilitation rather than compulsion are the best ways of addressing the issue of poor voter turn-outs. This has been amply demonstrated by the Election Commission of India in the elections in twenty-nine states during 2010 to 2014. In 2010, the Election Commission of India introduced the Systematic Voters' Education and Electoral Participation (SVEEP) campaign in a bid to increase voting percentage. The Electoral

⁴⁷Soumya Garg, *supra* note 13.

⁴⁸G. Sampath, *supra* note 4.

Commission also launched other voting awareness drives and voter education campaigns.⁴⁹ In the 2014 Lok Sabha elections, a 66.4% voter turnout beat all previous records as a result of the awareness initiatives. Several states such as Nagaland, Lakshadweep, West Bengal, Tripura and Assam even reached a record threshold of an 80% turnout.⁵⁰ Communicative awareness programmes by the Election Commission in Gujarat in addition to the distribution of the photo electoral roll among the voters has resulted in an impressive voter turn-out of over 70% in the 2012 Gujarat legislative assembly elections and district elections.⁵¹ These impressive statistics are self-explanatory and offer strong evidence against the need for mechanisms such as the Act to facilitate voter turnout in the Gujarat local elections.

The judgment about NOTA is disconnected from ground realities and not practicable, unless it is accompanied by several other electoral and political party reforms. There is an immediate necessity for the Election Commission to reconsider its decision w.r.t. this judgment. In the event that the NOTA option was to garner the highest votes, it should incorporate a provision for holding re-elections. This may incentivise people to opt for NOTA and record their displeasure with the criminal track record and poor credentials of the candidates who are standing for elections. Such an option can then raise the benchmark in terms of the quality of candidates who contest elections and also lead to an increase in the voter turn outs. The flipside of holding re-elections with a fresh set of candidates is that it may result in a negative impact on the rights of contestants.⁵² The right to contest vis-a-vis the electorate's right to vote and freedom of expression must

⁴⁹Perna Katiyar & Vishal Dutta, *supra* note 1.

⁵⁰G. Sampath, *supra* note 4.

⁵¹Gujarat Legislative Assembly Election, 2012, http://en.wikipedia.org/wiki/Gujarat_Legislative_Assembly_election, 2012.

⁵²L.K. Advani, *Supreme Court proposes Negative Voting*, L.K. Advani's Blog (Oct. 6, 2013), <http://blog.lkadvani.in/blog-in-english/supreme-court-proposes-negative-vote>.

be balanced. Compromise on the former can be prevented by stipulating a minimum percentage of votes in the first round of elections which enable the candidate to re-contest.

Finally, there is an urgent need for a political reforms agenda with comprehensive restructuring at various levels in the functioning of political parties and increasing inner-party democracy. Further, the decriminalisation of politics and enhanced accountability from elected representatives at all levels has been long overdue. Proactive mechanisms such as enhanced transparency and ensuring the availability of audited accounts of political parties would help establish the credibility of the parties themselves as well as the candidates they field for elections. A healthy and clean electoral process to begin with will potentially attract voters and thus resolve the critical issue of countering low voter turnout. Such positive steps have a greater potential for enhancing voter turnout and democratic participation as compared to the proposed imposition of a draconian law such as the Act, which negates the quintessence of any democracy.