

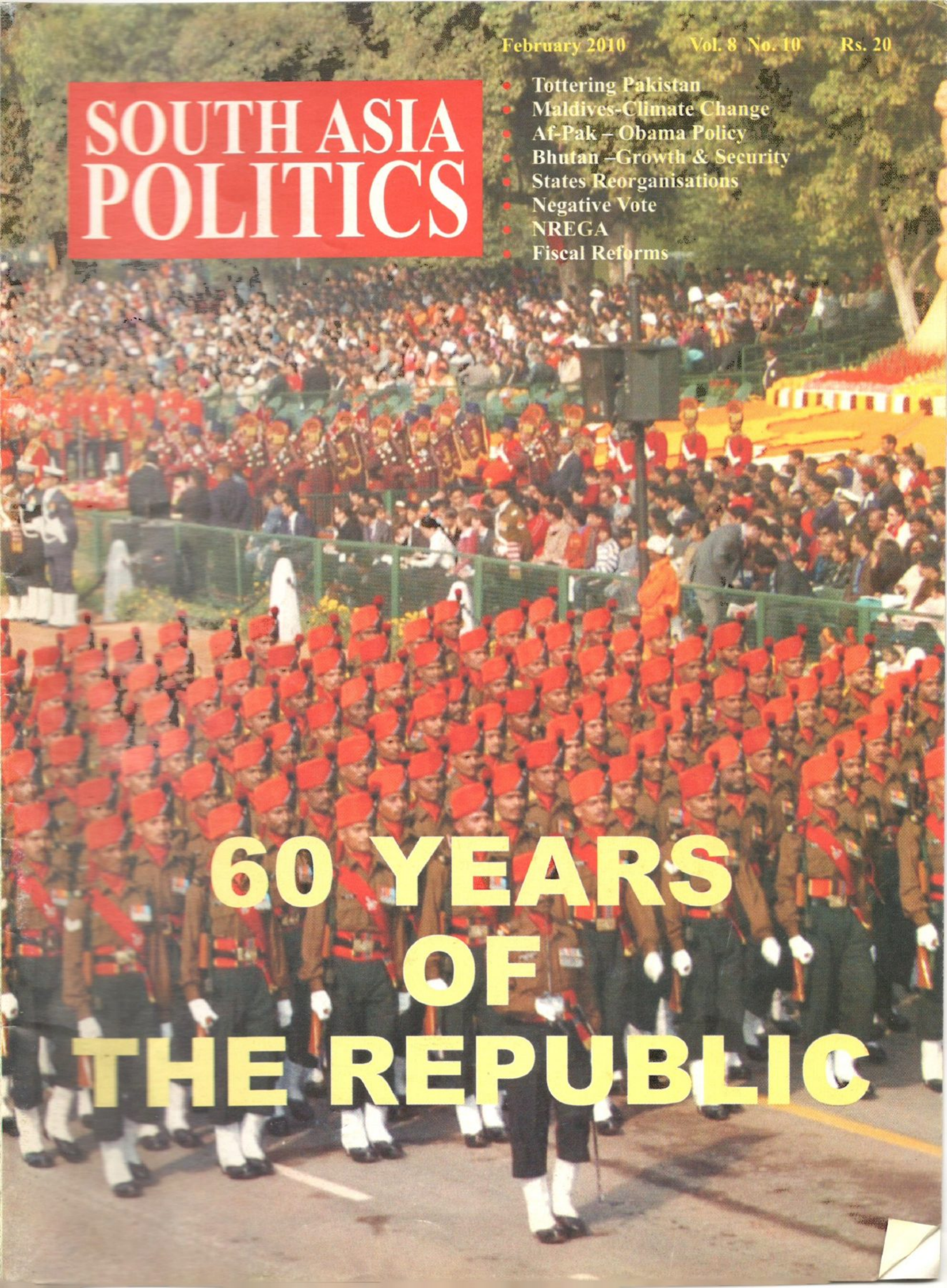
February 2010

Vol. 8 No. 10

Rs. 20

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**60 YEARS
OF
THE REPUBLIC**

None of the Above Voting

An Urgent Democratic Need

Rajindar Sachar



If a person does not approve of any candidate selected by the party cabal, he should not have to choose the least undesirable or sit at home sulking and cursing the law. In a vibrant democracy the voter should be able to hit effectively at all the political parties to show that all the candidates selected by them are undesirable.

THE recent legislation by Gujarat Government to make voting compulsory at Local Election Level has elicited mixed response. There is no doubt that there are weighty reasons against making voting compulsory, and the effective mechanism to supervise makes the task still more difficult. But it is somewhat surprising that almost no attention has been paid to the provision of Negative Voting or 'None of the above' right given to the voters by the same legislation – this right means that if a person does not approve of any candidate selected by the party cabal, he should not have to choose the least undesirable or sit at home sulking and cursing the law. In a vibrant democracy the voter should be able to hit effectively at all the political parties to show that all the candidates selected by them are undesirable.

The principle of 'None of the above' is that whereas the government should secure the consent of the governed, at the same time legitimate consent requires the ability to withhold consent. It is also recognized that the provision of Neta 'None of the above' in election law will enable and encourage voters to participate in greater number at election time, and thus indirectly assist in the same process as is sought to be effectuated by providing for compulsory voting.

In fact our Supreme Court in 1993 affirmed "voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue in question" and that "Right to vote means right to exercise the right in favour of or against motion or resolution. Such a right implies the right to remain neutral as well".

Thus it is incumbent on the central government to provide effective mechanism for negative voting. As a matter of fact such a provision exists under the Rules framed by Central Govt. since long – though hardly anyone including the presiding officers act on it.

Thus under Rule 49(o) of Conduct of Election Rules 1961 a voter has to inform the presiding officer of his intention not to vote – the presiding officer makes an entry in the remark column in Form 17 and the voter has to sign the form which is also to be countersigned by the Presiding Officer. This right was hardly exercised because it was then ballot voting – and in this process the secrecy of voting could not be maintained – polling agents, and other officers would know about it. Majority of voters do not wish openly to get into conflict with political parties and especially their goons and therefore per force they voted for what they thought was the least undesirable.

But when we switched on to

the present system of electronic voting machine, (EVM) it became easier to provide a mechanism in a manner that the secrecy of voting was not violated by just providing one more slot in the voting machine as 'None of the above'. Election Commission commendably has been writing to the Central Government (which alone can amend Rules and provide for this method) since 2001. But regrettably there has not only been deafening silence from governments by different political parties but now even the provocative, undemocratic stand of central government is that even if the present rule violates secrecy, it does not matter because secrecy though desirable is not inviolate and hence there is no reason to amend the rules. This stand of the Central Government flies in face of International Civil and Political Covenant rights and which is ratified by India that secrecy of voting at the election is part of Human Rights guaranteed to each citizen in a country which calls itself democratic.

Thus though the right to negative voting is provided in election law, it can not be effectuated unless the rules are amended by Central Government. Not doing so, in fact goes against

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the mandate of the Parliament's Act - a serious breach of constitutional obligation on the part of the Executive - hardly a commendable action.

It is not as if it is a radical untested suggestion. Negative voting is already prevalent in Ukraine, Russia which have only recently adopted democratic elections. It has been in existence in many of the states of U.S.A. since nineties. In some states of U.S.A it is provided that 'if none of above' receives the most votes, then no one is elected and a bye election with new candidates is to be held within 60 days. Imagine what pressure it will put on the parties to avoid nominating candidates with criminal background which in our current elections reaches the minimum of

25% and across all the political parties.

Such a pressure thereof on the political parties may compel them to democratize their method of selecting candidates as against the present one of cabal selecting their own progeny, nephew, nieces, and underlings in the present - even if disgusted voter is annoyed he or she cannot prevent one of them to be elected. But if negative voting was there it would give a choice to the voters to loudly say 'None of the above' resulting in a fresh ballot. This would be a step in the right direction of further democratizing the elections and give the "small man with a pencil (a phrase used by Winston Churchill and emphasized by Krishna Iyer J. in the time of ballot voting) - but now the little man with a small finger with the power to press the None of the Above" (NOTA) button on the

election machine and make democracy more participatory.

I hope this competitive politics generated at Local level election in Gujarat will provoke the Central Government (which alone is the competent authority to amend the rules) to provide for Nota (None of above), as requested by Election Commission. But the opposition cannot sit still and blame the central government. If BJP wants to take credit for negative voting provision in Gujarat, it should publically announce its support for amendment of rules to provide Negative Voting at States and Central level which will inevitably put pressure on the Central Government to do so.

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