

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi – 110001.

No.ECI/PN/57/2012

Dated : 10th July, 2012

Press Note

Subject:- Presidential Election, 2012 – Right to vote or not to vote – Clarification regarding.

Certain doubts have arisen in the minds of some of the electors at the current Presidential Election, 2012 to the effect whether a member of a political party voting in defiance of the political party's decision would attract the disqualification on the ground of defection under the Tenth Schedule to the Constitution of India or the political party taking such decision would be liable to any penalty for asking their members to vote in a particular manner or not to vote at all. During the past also similar points were raised during the currency of Presidential Election. The Commission had issued clarification through Press Notes in the past as well. The contents of the Press Notes issued in this regard is reproduced below for general information.

“The Commission would like to clarify in this context that the voting at election to the Office of President of India is not compulsory, like the voting at elections to the House of the People and State Legislatures where also there is no compulsion to vote. The ‘electoral right’ of a voter is defined in section 171A(b) of the Indian Penal Code to ‘mean the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at election’. Thus, every elector at the Presidential election has the freedom of making a choice to vote for any of the candidates or not to vote at the election, as per his free will and choice. This will equally apply to the political parties and they are free to canvas or seek votes of electors for any candidate or requesting or appealing to them to refrain from voting. However, the political parties cannot issue any direction or whip to their members to vote in a particular manner or not to vote at the election leaving them with no choice, as that would tantamount to the offence of undue influence within the meaning of section 171C of the IPC.

The Commission may also like to further clarify that voting at election to the office of President is different from voting by a member of Parliament or State Legislature inside the House and that, as held by the Hon'ble Supreme Court, the

provisions of the Tenth Schedule to the Constitution of India may not apply to the voting at the Presidential election. A question arose before the Hon'ble Supreme Court in *Kuldip Nayar v Union of India* (AIR 2006 SC 3127) whether the provisions of Tenth Schedule to the Constitution would be attracted in the case of the election to the Rajya Sabha if a member of a State Legislative Assembly votes for a candidate in defiance of the party's directions, where the votes are now given by the system of open voting. The Hon'ble Supreme Court held that an elector would not attract the penal provisions of the Tenth Schedule for having so voted at the Rajya Sabha election. Attention may be invited to the following observations of the Hon'ble Supreme Court in that case:-

“(183) IT is the contention of the petitioners that the fact that election to fill the seats in the Council of States by the legislative assembly of the State involves 'voting', the principles of Tenth Schedule are attracted. They argue that the application of the Tenth Schedule itself shows that open ballot system tends to frustrate the entire election process, as also its sanctity, besides the provisions of the Constitution and the RP Act. They submit that the open ballot system, coupled with the looming threat of disqualification under the Tenth Schedule reduces the election to a political party issuing a whip and the candidate being elected by a show of strength..... in view of the law laid down in *Kihoto Hollohan v. Zachillhu* (supra), it is not correct to contend that the open ballot system tends to expose the members of the Legislative Assembly to disqualification under the Tenth Schedule since that part of the Constitution is meant for different purposes.”

Earlier also, the Hon'ble Supreme Court has observed in *Pashupati Nath Sukul v Nem Chandra Jain* (AIR 1984 SC 399) that elections to the Rajya Sabha by members of the State Legislative Assemblies are a non-legislative activity and not a proceeding within the State Legislature. The election to the Office of the President is also held by an electoral college which consists of elected members of both House of Parliament and elected members of the State Legislative Assemblies (Article 54 of the Constitution). The electors of this electoral college vote at the Presidential election as members of the said electoral college and the voting at such election is outside the House concerned and not a part of the proceeding of the House.

Therefore, the above quoted observations of the Hon'ble Supreme Court in the case of *Kuldip Nayar* (Supra) and *Pashupati Nath Sukul* (Supra), will apply with equal force at the Presidential election as well. Accordingly, in the Commission's opinion, the voting or not voting as per his/her own free will at the Presidential election will not

come within the ambit of disqualification under the Tenth Schedule to the Constitution of India and the electors are at liberty to vote or not to vote at the Presidential election as per their own free will and choice.”

(K. N. BHAR)
SECRETARY