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**CASE COMMENT ON VIVEK NARAYAN SHARMA v. UNION OF INDIA**- Yagya Agarwal<sup>1</sup>**ABSTRACT**

The Specified Bank Notes (SBNs) will cease to be legal tender on November 9, 2016. The SBNs include currencies (notes) of a series of denominations Rs. 500 and Rs.1000. The petitioner argued that Section 26(2) of the RBI Act empowers the government to demonetise only a certain series of bank notes rather than "all series" of banknotes, and the authority to exercise demonetisation by the central government should be exercised in consultation with and at the suggestion of the Central Board whereas Respondent's contentions were that if section 26(2) of RBI act is read as "any specific series" of bank notes and not "all series," it will be erroneous and it is also submitted that the proportionality test is also found to be satisfied in the case of an impugned notification dated November 8, 2016. The ban on a series of banknotes with denominations of Rs. 1000 and Rs. 500 has been upheld as valid by the Supreme Court. As a result of demonetisation, the Indian economy has become more formalized. Demonetisation has also increased transparency and led to a sharp rise in tax compliance, collection, and filing rates. However, the Reserve Bank of India (RBI) has failed to perform its duties in an independent manner. Hence, Such decisions should always be taken after doing a cost-benefit analysis; if not, it will lead to a lot of unintended ramifications.

**HISTORY**

Demonetisation refers to an act of the state through which it makes a currency of a country no longer a legal tender. It can be said that Demonetisation is an act through which the legal status of a monetary unit i.e., the currency is taken away, and the same will be withdrawn from circulation because it will not have any exchange value or storage value<sup>2</sup>.

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<sup>2</sup> "What Is Demonetisation?" *The Economic Times*, Available at <https://economictimes.indiatimes.com/definition/demonetization> (Last visited on 26 January, 2023).

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The term “demonetise” was primarily used by the French in the year 1850- 1855. If we study world history then we will find many instances of demonetization some examples such as in the USA (1969), Britain (1971), and Russia (1991), etc.<sup>3</sup>

## INDIA

In India, the first act of demonetisation was executed on 12th January, 1946, through a Presidential ordinance. The ordinance made the monetary units, i.e., currencies of value Rs.10,000, Rs.1,000, and Rs.500, legally invalid. The demonetisation was carried out with the goal of preventing illegal money hoarding, for which a 10-day period was initially set; however, the central government and RBI extended it several times. By the end of 1947, the currency worth Rs.134.9 crores out of Rs.143.97 crores had been exchanged<sup>4</sup>.

The second act of demonetisation was executed on 16<sup>th</sup> January, 1978, on the recommendation of the committee named Wanchoo. The demonetisation rendered monetary units, namely currencies with denominations of Rs.10,000, Rs.5,000, and Rs.1,000, legally invalid. The demonetisation was carried out with the goal of preventing the circulation of black money, for which a 3-day period was set. By the end of 1978, currency worth Rs.124.45 crores had been exchanged out of Rs.146 crores<sup>5</sup>.

## FACTS<sup>6</sup>

1. The specified bank notes (hereinafter referred to as "SBNs") shall cease to be legal tender with effect from November 9, 2016, according to the impugned notification issued by the Central Government on November 8, 2016, in accordance with the authority granted by sub-section (2) of Section 26 of the RBI Act.
2. The SBNs include currencies (notes) of a series of denominations Rs.500 and Rs.1000. As per clause 1 of the Notification issued on 8<sup>th</sup> November, 2016, every government treasury and banking institute is required to submit a return along with SBNs they owned as of the

<sup>3</sup> Anurag Miglani, "Demonetization – Less Cash to Cash Less", Volume 5 – Issue 11, International Journal Of Engineering Research & Technology, 2 (2017)

<sup>4</sup> Prakash, Swaty, "When Indira Gandhi Chose 'Votes' Over 'Demonetisation'", *One India*, 3 January, 2023, Available at [www.oneindia.com/india/when-Indira-gandhi-chose-votes-over-demonetisation-3507005.html](http://www.oneindia.com/india/when-Indira-gandhi-chose-votes-over-demonetisation-3507005.html) (Last visited 24 January, 2023)

<sup>5</sup> Damini Nath, "When Demonetisation Did Not Whip up a Storm." *The Hindu*, 13 November, 2016, Available at [www.thehindu.com/news/cities/Delhi/When-demonetisation-did-not-whip-up-a-storm/article16379814.ece](http://www.thehindu.com/news/cities/Delhi/When-demonetisation-did-not-whip-up-a-storm/article16379814.ece) (last visited on 24 January, 2023)

<sup>6</sup> Vivek Narayan Sharma v. Union Of India, WP (C) 906/2016

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close of business on November 8, 2016, to the Reserve Bank of India (RBI) assign regional office.

3. In the case of the Individual, according to clause 2 of the notification dated 8<sup>th</sup> November, 2016, they can exchange bank notes (SBNs) through various banks till the date of 30<sup>th</sup> December, 2016 however, this exchange is subject to conditions notified by the central government. The government had placed a limit of Rs. 4000 for the exchange of Bank Notes, however, they have also stated that they will review the limit of the exchange of Rs. 4000 after 15 days from the date of issue of the notice.
4. The impugned notice also stated that bank accounts with KYC will have no limit on the amount or value of deposits they can make. However, in the case of bank accounts that do not have KYC will have a maximum deposit limit of Rs. 50,000, which they can deposit into their account.
5. The central government subsequently announced a number of further reliefs, including the ability to pay for goods and services at consumer cooperative stores, purchase gasoline, book trains, utilise government hospitals, and pay for services at pharmacies by using SBNs. These exceptions, nevertheless, were only granted up until November 11<sup>th</sup>, 2016.
6. The president of India on 30<sup>th</sup> December, 2016, promulgated an ordinance named 'The Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016'. Later, Parliament enacted an act named 'The Specified Bank Notes (Cessation of Liabilities) Act, 2017' to replace an ordinance issued by the President.

## ISSUES

1. Whether the word "any" preceding the word "series" in section 26(2) of the RBI Act of 1934 indicates merely "one" or "some" series of notes rather than "all" series of notes?
2. Whether the central government has power under section 26(2) of RBI act, 1934 to exercise it in context of "all" series of notes?
3. Whether the 8<sup>th</sup> November, 2016 notice should be dismissed on the basis that there is flaw in decision making as per law?
4. Whether the 8<sup>th</sup> November, 2016 notice should be dismissed on the basis of test of proportionality?
5. Whether the timeframe stipulated in the order of November 8<sup>th</sup>, 2016 be deemed unreasonable?

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6. Whether in isolation from the provisions of sections 3 and 4(1) of the 2017 act, Reserve Bank of India has the independent power to accept demonetised notes beyond the time frame provided in notifications made according to section 4(1) of the 2017 Act?

## ARGUMENTS<sup>7</sup>

### PETITIONER

Shri P. Chidambaram, learned Senior Counsel,

1. It is submitted that the word "any" in section 26(2) of the RBI Act empowers the government to demonetise only a certain series of bank notes rather than "all series" of bank notes. The word "any series" in section 26(2) should be read as "any specific series" of bank notes not "all series" of bank notes.
2. It is contented by the petitioner that whenever "all series" of banknotes have been demonetised by this state, it has been done by way of a statute rather than an executive order.
3. It is further submitted that by a bare reading of section 26(2) of the RBI act, it can be inferred that it doesn't lay down any guidelines for exercising the power of demonetisation by the central government, in such cases, if an extreme power of demonetising "all series" of notes is to be entrusted to the central government then, Parliament should lay down guidelines and rules in regards to it. However, in the present case, there are no such guidelines by parliament, in such a scenario demonetise order of the central government is arbitrary and in violation of articles 14, 19, 21, and 300A of the Indian Constitution.
4. It is submitted that when we do a cursory reading of Section 26 (2) of the RBI Act, it reveals that the authority to exercise demonetisation by the central government should be exercised in consultation with and at the suggestion of the Central Board. However, in the present case, a proposal for demonetisation was initiated by the central government, and a meeting of the Central Board was held on November 8th, 2016, and the recommendation of the same was conveyed to the central government within a few hours.
5. It is further submitted that the director of the Central Board consists of members from various backgrounds, i.e., economists, CAs, industrial members, and experts of various kinds of trade. However, when a decision on demonetisation was taken by the Central Board on that day, only three independent directors were present.

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<sup>7</sup> Vivek Narayan Sharma v. Union Of India, WP (C) 906/2016.

6. It is claimed that the act of demonetisation declared Rs. 15,44,000 crores of currency, or 86.4% of total currency, no longer legal tender. The currency that was demonetised was in denominations of Rs. 500 and Rs. 1000, which were used by millions of poor people for their basic necessities such as food, clothes, medicines, etc. However, due to demonetisation, they were left with bank notes that are of no use.
7. It is submitted that the objective that was stated in the order dated November 8, 2016 not accomplished because one of the objectives was to drain out the counterfeit money from the economic system, but it is found that 99.3% of currency notes are back in circulation.
8. It is submitted that the central government is required under clause 2 of section 4(1) of the 2017 Act to grant an extension of time—a grace period—to such class of people for the precise reasons indicated in the notification. However, no such grace period has been granted to such a group of people.

## RESPONDENTS

### UNION OF INDIA

Shri R. Venkataramani learned Attorney General,

1. It is submitted that the demonetisation act via the impugned notification dated November 8, 2016, was corroborated by the parliament by passing the statute in 2017. In this way, the action of the executive gets validity by the legislature.
2. It is submitted that the word “any series” in section 26(2) should be read as “all series” of bank notes not “any specific series” of bank notes.
3. It is submitted that the contention made by the petitioner that the word "any series" in Section 26(2) should be read as "any specific series" of bank notes and not "all series" of banknotes is erroneous in nature because if it assents, then the central government has to issue distinct notifications for each series of bank notes rather than a common notification for all series of bank notes.
4. It is further submitted that the word "any" has appeared two times in Section 26(2) of the RBI Act. Hence, the word "any" coming before the word "series of bank notes" should be read as "all." On the other hand, the word "any" coming before the word "denomination" may be read as either way.
5. It is submitted that the RBI has been established to "control the issuing of bank notes," according to the RBI Act's preamble. It is argued that the Preamble's word "regulate" and

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Section 3 of the RBI Act's phrase "taking over the administration of the currency" need the broadest interpretations conceivable. A narrower interpretation, it is argued, would undermine the RBI Act's fundamental goals. According to one argument, the term "regulate" also includes the word "prohibit."

6. It is submitted that the demonetisation decision was taken to tackle serious issues such as unaccounted wealth, terror funding, and the circulation of forged currency.

## **RBI**

Shri Jaideep Gupta, learned Senior Counsel

1. It is submitted that section 26(2) Of the RBI act provided that the central government has to exercise the power on the recommendation of the Central Bank. As a consequence, this section itself provides an inherent safeguard from an act of arbitrary in nature.
2. It is submitted that Section 26(2) of the RBI Act envisages two things, i.e., central bank recommendations and central government decisions. In the present case, both conditions have been well fulfilled.
3. It is submitted that the Constitution Bench of this Court already determined that the time for the exchange of notes was valid in the matter of the Jayantilal Ratanchand Shah case. According to him, the time allowed in this situation is roughly identical to the period allowed under the 1978 Act.
4. It is submitted that the question of proportionality, is to be answered through a four-pronged test which was given by this court in *Modern Dental College and Research Centre and Others v. State of Madhya Pradesh and Others*,
  - a. The first test is satisfied because the act of demonetisation deals with the circulation of forged currency, unaccounted wealth, and funding of terrorism.
  - b. The second test is satisfied because demonetisation act has a rational nexus with the objectives it sought to achieve.
  - c. As far as the third test is concerned, it is a matter of economic policy that will effectively able to tackle the aforementioned three evils hence, it is within the domain of the experts and scholars to choose which policy will suit the best to tackle the three evils.
  - d. The fourth test is satisfied because there is no infringement of the rights of citizen.

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5. It is submitted that no court has the authority to analyze the advantages and disadvantages of the policy or to examine it in-depth unless and until it is discovered to be capricious and inconsistent with any constitutional or statutory requirements of law.

## JUDGMENT<sup>8</sup>

1. It is not permissible to limit the authority granted to the Central Government under subsection (2) of Section 26 of the RBI Act such that it can only be used to affect "one" or "some" series of bank notes, rather than "all" series of bank notes. The authority granted to the government under this section can be exercised for an 'all' series of notes. It cannot be said that the Central Government lacks the authority to wield such a function under subsection (2) of Section 26 of the RBI Act just because the demonetisation process was implemented on two prior occasions by plenary legislation.
2. The RBI Act's subsection (2) of Section 26 does not allow for inappropriate delegation since it contains a built-in safeguard requiring that such power only be used in accordance with the Central Board's suggestion. As a result, the RBI Act's sub-section (2) of Section 26 is not susceptible to being invalidated on the aforementioned premise.
3. The Central Government's action, which was announced in the contested Notification, was approved by the 2016 Ordinance and culminated in the 2017 Act. The Parliament reflects the will of the country's population, and the central government is responsible to the parliament. Therefore, the executive action has received the seal of approval from the Parliament. This is in addition to the fact that, as required by Section 26 of the RBI Act's sub-section (2), we have not discovered any flaws in the decision-making process.
4. It is unconvincing to claim that the right to property was being violated because even if reasonable restrictions were imposed on the right to a property, then these restrictions were in the public interest i.e., restricting the circulation of counterfeit currency, unaccounted money, drug smuggling, and funding of terrorism. As a result, the proportionality test is found to be satisfied in the case of an impugned notification dated 8th November, 2016.
5. The time limit for exchanging any quantity of SBNs in the current case was 52 days, but the time limit in the case of the 1978 demonetisation legislation was just three days, which is much less than the time limit in the current case. Therefore, 52 days for exchanging the Bank

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<sup>8</sup> Vivek Narayan Sharma v. Union Of India, WP (C) 906/2016.

Notes was not irrational, unfair, or showed any kind of violation of the petitioners' basic rights.

6. In isolation from the requirements of sections 3 and 4(1) of the 2017 Act, the Reserve Bank of India doesn't have the autonomous authority to accept demonetised notes beyond the time limit specified in notifications issued under section 4(1) of the 2017 Act.

## CASE ANALYSIS

The central government announced the ban on a series of banknotes with denominations of Rs.1000 and Rs.500 on November 8, 2016. The same has been upheld valid by the Supreme Court with a majority of 4:1. The government may have won its case on the legal front, but on the economic and political fronts, a debate is still open.

The ban led to an eruption of debate about whether the step taken by the government was "radical" or "bold." The decision of the central government has led to division among experts as to whether it is a "radical" or "bold" decision<sup>9</sup>.

The manner in which the decision was carried out will, no doubt, not surprise you because such actions of national interest are always kept secret until they are announced so that no undue benefit can accrue to insiders or outsiders as a result of this secret information<sup>10</sup>.

The Indian economy has become more formalized as a result of the advent of demonetisation. The economy now generates more money as a result of the growth of the tax base. With the money it has received, the Indian government has improved social services, rural infrastructure, and public works. Demonetisation has also increased transparency and led to a sharp rise in tax compliance, collection, and filing rates<sup>11</sup>.

The supply of openly accessible hawala money, or back-channel transactions, to terrorist networks has finally run out. In Srinagar, stone pelting took place on a weekly basis. Due to demonetisation, their sources of funding on the other side of the Line of Control have been severely damaged, so you do not hear of them anymore. Several lakh shell companies' names

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<sup>9</sup> Radhika Iyengar, "Both Sides of the Coin: What Top Economists Think About Demonetisation" *The Indian Express*, 28 November, 2016, Available at <https://indianexpress.com/article/india/india-news-india/both-sides-of-the-coin-what-top-economists-think-about-demonetisation/> (Last visited at 21 January, 2023)

<sup>10</sup> "Top Economists Are Divided on Demonetisation: Who Said What?" *Business Today*, 30 November, 2016, Available at [www.businesstoday.in/latest/economy-politics/story/top-economists-are-divided-on-demonetisation-who-said-what-66022-2016-11-30](http://www.businesstoday.in/latest/economy-politics/story/top-economists-are-divided-on-demonetisation-who-said-what-66022-2016-11-30) (Last Visited at 20 January, 2023)

<sup>11</sup> Syed Zafar "Demonetisation Verdict: PM Modi's Visionary Move Has Been Vindicated by Supreme Court", *The Indian Express*, 2 January, 2023, Available at <https://indianexpress.com/article/opinion/columns/demonetisation-verdict-pm-modis-visionary-vindicated-supreme-court-8357173/> (Last Visited at 20 January,2023)

have been discovered and removed<sup>12</sup>.

However, this does not mean that the government's decision is without fault because the demonetisation decision is of national interest and should be made on the recommendation of the Central Bank after proper consultation with experts in different domains, but in the current case, where the RBI should show its independence and act as a check and balance on government action, it has failed to perform its duties in an independent manner. The same has been reflected in the dissenting opinion of Justice B. V. Nagarathna, who stated that the Reserve Bank did not use its own independent judgment. Additionally, the bank had little time to think critically about such a serious matter. This statement is being made in light of the fact that the full demonetisation procedure for all series of Rs. 500 and Rs. 1000 bank notes were completed in 24 hours<sup>13</sup>.

In a democracy, there is a long line of accountability, from judges to officials to legislators to citizens, and independence is never found in following the content of the law; rather, it is found in the character and behaviour of those in those positions<sup>14</sup>. However, in the current case, the RBI fails to demonstrate its independence and accountability through its character and behaviour.

In the end, it can be stated that demonetisation has stirred the Indian economy in a broader context by lowering borrowing costs, lowering inflation, increasing CASA, creating more affordable real estate prices, and creating a cashless economy. However, it should be kept in mind that such policy decisions should always be taken after doing a cost-benefit analysis; if not, it will lead to a lot of unintended ramifications.

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<sup>12</sup> Ibid.

<sup>13</sup> Explained Desk, "5 Things Justice B V Nagarathna Said in Her Dissent on SC Demonetisation Verdict" *The Indian Express*, 2 January, 2023, Available at <https://indianexpress.com/article/explained/explained-law/justice-b-v-nagarathna-dissent-sc-demonetisation-verdict-8356577/> (Last visited at 19 January, 2023)

<sup>14</sup> Pratap Bhanu Mehta, "Pratap Bhanu Mehta Writes | Demonetisation Verdict: Six Years Later, Farce After Tragedy" *The Indian Express*, 2 January, 2023, Available at <https://indianexpress.com/article/opinion/columns/pratap-bhanu-mehta-demonetisation-verdict-farce-tragedy-8356806/> (Last visited at 20 January, 2023)

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