REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL/CRIMINAL APPELLATE/ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.906 OF 2016

VIVEK NARAYAN SHARMA ...PETITIONER (S)

VERSUS

UNION OF INDIA ...RESPONDENT (S)

WITH

T.P.(C) No. 1958-1967/2016, W.P.(C) No. 1011/2016, SLP(C) No. 36757/2016, W.P.(C) No. 40/2017, W.P.(C) No. 47/2017, W.P.(C) No. 41/2017, W.P.(C) No. 260/2017, T.P.(C) No. 607/2017, T.P.(C) No. 588/2017, T.P.(C) No. 626/2017, T.P.(C) No. 585/2017, T.P.(C) No. 582/2017, T.P.(C) No. 638/2017, W.P.(C) No. 568/2018, W.P.(C) No. 1018/2019, W.P.(C) No. 683/2020, T.C.(C) No. 9/2017, W.P.(C) No. 908/2016, W.P.(C) No. 913/2016, W.P.(C) No. 916/2016, W.P.(C) No. 1026/2016, W.P.(C) No. 943/2016, W.P.(Crl.) No. 162/2016, W.P.(C) No. 951/2016, W.P.(C) No. 929/2016, W.P.(C) No. 930/2016, W.P.(C) No. 944/2016, T.P.(C) No. 1982-1996/2016, W.P.(C) No. 952/2016, W.P.(C) No. 953/2016, W.P.(C) No. 958/2016, W.P.(C) No. 957/2016, SLP(C) No. 35356/2016, T.P.(C) No. 2030-2038/2016, W.P.(C) No. 978/2016, W.P.(C) No. 1025/2016, SLP(C) No. 35805/2016, W.P.(C) No. 997/2016, W.P.(C) No. 1008/2016, W.P.(C) No. 1010/2016, W.P.(C) No. 1009/2016, W.P.(C) No. 996/2016, W.P.(C) No. 1006/2016, T.P.(C) No. 47-67/2017, T.P.(C) No. 659/2017, W.P.(C) No. 223/2017, SLP(C) No. 14272/2017, SLP(C) No. 14131/2017, SLP(C) No. 14216/2017, W.P.(C) No. 341/2018, W.P.(C) No. 193/2018, W.P.(C) No. 316/2018, MA 1552/2018 in W.P.(C) No. 626/2017, W.P.(C) No. 971/2016, T.P.(C) No. 2018-2022/2016, W.P.(C) No. 972/2016, W.P.(C) No. 389/2018.

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J U D G M E N T

B.R. GAVAI, J.

I. INTRODUCTION

1. This reference to the larger bench of Five-Judges arises out of the writ petitions filed challenging the Notification No. 3407(E) dated 8th November 2016 (hereinafter referred to as "the impugned Notification"), issued by the Central Government in exercise of the powers conferred by sub-section (2) of Section 26 of the Reserve Bank of India Act, 1934 (hereinafter referred to as "the RBI Act"), vide which the Central Government declared that the bank notes of denominations of the existing series of the value of five hundred rupees and one thousand rupees shall cease to be legal tender with effect from 9th November 2016, to the extent specified in the impugned Notification. This is popularly known as an act/policy of 'demonetization'.

2. Immediately after the impugned Notification was issued, several writ petitions challenging the policy of demonetization came to be filed before this Court as also before various High Courts. Transfer Petitions were filed by the Union, seeking transfer of all such matters pending before the High Courts to this Court.

3. A bench of learned three Judges of this Court passed an order dated 16th December 2016 in Writ Petition (Civil) No.906 of 2016 and other connected petitions, observing therein that, in their opinion, following important questions fall for consideration:

> "(i) Whether the notification dated 8th November 2016 is ultra vires Section 26(2) and Sections 7, 17, 23, 24, 29 and 42 of the Reserve Bank of India Act, 1934;
>
> (ii) Does the notification contravene the provisions of Article 300A of the Constitution;
>
> (iii) Assuming that the notification has been validly issued under the Reserve Bank of India Act, 1934 whether it is ultra

vires Articles 14 and 19 of the Constitution;

(iv) Whether the limit on withdrawal of cash from the funds deposited in bank accounts has no basis in law and violates Articles 14, 19 and 21;

(v) Whether the implementation of the impugned notification(s) suffers from procedural and/or substantive unreasonableness and thereby violates Articles 14 and 19 and, if so, to what effect?

(vi) In the event that Section 26(2) is held to permit demonetization, does it suffer from excessive delegation of legislative power thereby rendering it ultra vires the Constitution;

(vii) What is the scope of judicial review in matters relating to fiscal and economic policy of the Government;

(viii) Whether a petition by a political party on the issues raised is maintainable under Article 32; and

(ix) Whether District Co-operative Banks have been discriminated against by excluding them from accepting deposits and exchanging demonetized notes."

4. Vide the said order dated 16th December 2016, this Court also directed that, if any other writ petitions/proceedings were pending in any High Court, further hearing of those matters should also remain stayed. This Court further directed that no other Court should entertain, hear or decide any writ petition/proceeding on the issue of or in relation to or arising from the decision of the Government of India to demonetize the notes of Rs.500/- and Rs.1,000/-, since the entire issue in relation thereto was pending consideration before this Court.

II. BACKGROUND

5. Before we consider the matter, it will be necessary to refer to certain facts.

6. On 8th November 2016, vide the impugned notification, the Central Government, in exercise of the powers conferred by sub-section (2) of Section 26 of the RBI Act, notified that the specified bank notes (hereinafter referred to as "SBNs") shall cease to be legal tender with effect from 9th November 2016.

The SBNs were bank notes of denominations of the existing series of the value of Rs.500/- and Rs.1000/-. Under clause 1 of the said notification, every banking company and every Government Treasury was required to complete and forward a return along with the details of SBNs held by it at the close of business as on the 8th November 2016, not later than 13:00 hours on the 10th November 2016 to the designated Regional Office of the Reserve Bank of India (hereinafter referred to as "RBI"). Insofar as the individual persons were concerned, under clause 2 of the impugned notification, they were entitled to exchange SBNs in various banks specified therein upto 30th December 2016 subject to certain conditions. Initially it provided a limit of Rs.4,000/- for such exchange. It also provided that the limit of Rs.4,000/- for exchanging SBNs shall be reviewed after 15 days from the date of commencement of the impugned notification. It further provided that, insofar as Know Your Customer (KYC) compliant bank account maintained by a person with a bank was concerned, there was

no limit on the quantity or value of the SBNs that could be credited to such an account. However, insofar as non-KYC compliant bank accounts were concerned, an outer limit was fixed at Rs.50,000/-. There were certain other provisions made under the impugned notification.

7. Vide another notification of the even date, various other relaxations were granted whereunder SBNs could be used for making payment in Government hospitals, pharmacies, Railway booking centers, for purchases at consumer cooperative stores, milk booths, purchase of petrol, etc. The said relaxations were to be valid till 11th November 2016. Thereafter, various notifications came to be issued from time to time granting further relaxations.

8. On 30th December 2016, the Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016 (hereinafter referred to as "the 2016 Ordinance") was promulgated by the Hon'ble President of India. Subsequently, the Parliament enacted the

Specified Bank Notes (Cessation of Liabilities) Act, 2017 (hereinafter referred to as "the 2017 Act"), which received the assent of the then Hon'ble President of India on 27th February 2017.

9. Section 3 of the 2017 Act provides that, on and from the appointed day, notwithstanding anything contained in the RBI Act or any other law for the time being in force, the SBNs which had ceased to be legal tender in view of the impugned Notification of the Government of India, shall cease to be liabilities of the RBI under Section 34 of the RBI Act and shall cease to have the guarantee of the Central Government under sub-section (1) of Section 26 of the RBI Act.

10. Section 4 of the 2017 Act provides for a grace period in case of certain classes of persons holding such SBNs on or before the 8th day of November, 2016 for tendering, with such declarations or statements, at such offices of the RBI or in such other manner as may be specified by it. One of the classes of

persons who was provided a grace period by clause (i) of sub-section (1) of Section 4 of the 2017 Act was a citizen of India who makes a declaration that he was outside India between 9th November 2016 and 30th December 2016. Clause (ii) of sub-section (1) of Section 4 of the 2017 Act also provided a grace period for such class of persons and for such reasons as may be specified by Notification, by the Central Government.

11. Sub-section (2) of Section 4 of the 2017 Act provides that the RBI may, if satisfied, after making such verification as it may consider necessary that the reasons for failure to deposit the notes within the period specified in the notification referred to in Section 3, are genuine, credit the value of the notes in his 'KYC compliant bank account' in such manner as may be specified by it. Sub-section (3) of Section 4 of the 2017 Act makes a provision for enabling any person, aggrieved by the refusal of the RBI to credit the value of the notes under sub-section (2), to make a representation to the Central Board of the

RBI (hereinafter referred to as "the Central Board") within fourteen days of the communication of such refusal to him.

12. On the very same day of the promulgation of the 2016 Ordinance i.e. 30th December 2016, the Central Government issued Notification No. 4251(E), in exercise of the powers conferred by clause (b) of sub-section (1) of Section 2, read with clause (i) of sub-section (1) of Section 4 of the 2016 Ordinance. It provided a grace period till 31st day of March 2017 to citizens who were residents in India. Insofar as the citizens who were not resident in India are concerned, the period was upto 30th day of June 2017. The proviso thereto limited the amount of SBNs tendered to not exceed the amount specified under regulation 3 or regulation 8 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 [Notification No. FEMA 6 (R)/RB-2015, dated the 29th December, 2015] made under the provisions of the Foreign Exchange Management Act, 1999 (42 of 1999) and the conditions specified therein are complied with.

13. Some of the writ petitions were listed before this Court on 21st March 2017, when this Court passed the following order:

> "1. Issue notice.
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> 2. On our asking, Mr. R. Balasubramanyam, learned counsel, accepts notice on behalf of the Union of India and Mr. H.S. Parihar, learned counsel, accepts notice on behalf of the Reserve Bank of India.
>
> 3. Having heard submissions, which remained inconclusive, and before proceeding further with the matter, it was felt, that this Court should ascertain from the Union of India (a) whether the Central Government intends to exercise the power conferred by clause (4)(1)(ii) of Ordinance 10 of 2016; and (b) if the answer to (a) is in the negative, the reason why the Central Government chose not to exercise its jurisdiction. An affidavit may accordingly be filed by the Central Government, explaining its position to this Court.
>
> 4. Needful be done within two weeks from today.
>
> 5. Post for hearing on 11th April, 2017."

14. In pursuance of the directions issued by this Court, a short affidavit came be to be filed on behalf of the Union of India on 7th April, 2017. It was stated in the said affidavit thus:

> "26. In view of the above and those to be urged at the time of hearing, it is most humbly submitted that the Central Government took a conscious decision that no necessity or any justifiable reason exists either in law or on facts to invoke its power under Section 4(1)(ii) of the Ordinance to entitle any person to tender within the grace period the specified bank notes."

15. The matter came up for hearing before this Bench initially on 12th October, 2022 and, thereafter, on various dates. We have heard Shri P. Chidambaram and Shri Shyam Divan, learned Senior Counsel, Shri Prashant Bhushan, learned counsel, Shri Viplav Sharma, petitioner-in-person in support of the petitions and Shri R. Venkataramani, learned Attorney General appearing for the Union of India and Shri Jaideep Gupta, learned Senior Counsel appearing for the RBI. We have

also heard the learned counsels appearing in the connected petitions.

III. SUBMISSIONS OF PETITIONERS

16. Shri P. Chidambaram, learned Senior Counsel led the arguments on behalf of the petitioners.

17. Shri P. Chidambaram submitted that, upon its correct interpretation, sub-section (2) of Section 26 of the RBI Act will have to be read down in a manner that sub-section (2) of Section 26 of the RBI Act does not permit the power to be exercised in respect of "all series" of notes of a specified denomination. He submits that the word "any" will denote that the power can be exercised only when a particular series of any denomination is sought to be demonetized.

18. Shri Chidambaram submits that, on earlier occasions i.e. by the High Denomination Bank Notes (Demonetization) Ordinance, 1946 (hereinafter referred to as "the 1946 Ordinance") and the High Denomination Bank Notes

(Demonetization) Act, 1978 (hereinafter referred to as "the 1978 Act"), "all series" of high denomination bank notes were demonetized. He submits that, by the 1946 Ordinance, high denomination bank notes were meant to be "all series" of bank notes of the denominational value of Rs.500/- Rs.1,000/- and Rs.10,000/-. Similarly, by the 1978 Act, the high denomination bank notes were meant to be "all series" of the bank notes of the denominational value of Rs.1,000/-, Rs.5,000/- and Rs,10,000/-. It is thus submitted that, whenever it was found necessary to demonetize "all series" of a particular denomination, it was considered necessary to do so by way of a separate enactment of Parliament.

19. Shri Chidambaram submits that, since the bank notes are issued in different series, the words "any series" before the words "of bank notes of any denomination" appearing in sub-section (2) of Section 26 of the RBI Act, will have to be construed as limiting the power of the Government to declare only a specified series of notes to be no longer legal tender. He

submits that it will have to be held that the words "any series" mean "any specified series" and not "all series" of bank notes.

20. Shri Chidambaram submits that, if it is held that the Central Government is conferred with the power under sub-section (2) of Section 26 of the RBI Act to demonetize currency notes of "all series", then a situation may arise wherein the bank notes issued on the previous day can be demonetized on the very next day. He submits that, as a result of the demonetization done on 8th November 2016, even the currency notes issued on the previous day of the denominational value of Rs.500/- and Rs.1,000/- had become illegal tender.

21. Shri Chidambaram submits that if sub-section (2) of Section 26 of the RBI Act is not read down in the aforesaid manner, then the said Section would be vulnerable to be challenged on the ground that it confers an unguided, uncanalised and arbitrary power upon the Executive Government. He submits that, in such a situation, the said

provision is liable to be struck down on the ground that it violates Articles 14, 19, 21 and 300A of the Constitution of India. He submits that the fact that the demonetization of "all series" of high denominational currency notes in the years 1946 and 1978 was done through separate enactments of Parliament would support the said proposition.

22. Shri Chidambaram submits that, upon a plain reading of sub-section (2) of Section 26 of the RBI Act, it is obvious that there is neither any policy nor any guidelines in the said provision. What factors are required to be taken into consideration and what factors are to be eschewed from consideration, are not specified in sub-section (2) of Section 26 of the RBI Act. It is submitted that if a drastic power of demonetizing currency notes of "all series" in certain denominations is to be entrusted to the Executive Government, then Parliament ought to have laid down the guidelines for exercising such power. He submits that, in the absence of anything of that nature, it will have to be held that the

delegation to the Executive Government is excessive, arbitrary and as such, violative of Articles 14, 19, 21 and 300A of the Constitution of India. Learned Senior Counsel relied on the Constitution Bench Judgments of this Court in the cases of ***Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and another v. Union of India and others***[1] and ***Harakchand Ratanchand Banthia and others v. Union of India and others***[2] in support of his submissions.

23. Shri Chidambaram submits that, in any case, the decision-making process in the present case was deeply flawed and, therefore, is liable to the scrutiny of judicial review by this Court.

24. The learned Senior Counsel submits that a plain reading of sub-section (2) of Section 26 of the RBI Act would reveal that the Central Government can exercise the power only on the recommendation of the Central Board. It is, therefore,

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[1] **(1960) 2 SCR 671**
[2] **(1969) 2 SCC 166 = (1970) 1 SCR 479**

submitted that it is implicit in the said sub-section that the proposal for demonetization must emanate from the RBI. It is submitted that, from the scheme of the RBI Act, it is clear that the Central Board, consisting of Members specified in Section 8 of the RBI Act, would consider all relevant material, weigh the pros and cons, consider the impact of the proposed measure on the people of the country and the consequences on the economy before making a recommendation. It is submitted that, on a plain reading of sub-section (2) of Section 26 of the RBI Act, it is clear that the Central Government is not bound to accept the recommendation of the Central Board. The word 'may' used therein, postulates exercise of discretion and, therefore, the discretion so exercised by the Central Government must be exercised after considering the matter carefully, as to whether the recommendation of the RBI is required to be accepted or not.

25. Learned Senior Counsel, therefore, submits that it is implicit in sub-section (2) of Section 26 of the RBI Act that the

Central Board constituted under Section 8 of the RBI Act must devote sufficient time to apply their mind while making a recommendation, particularly when a major step like demonetization is to be taken.

26. Learned Senior Counsel submits that, however, in the present case, the decision-making process is deeply flawed. He submits that, under Section 8 of the RBI Act, the only channel for non-government Directors to come on the Central Board of the RBI is through clause (c) of sub-section (1) of Section 8 of the RBI Act. He submits that, usually, experts in trade and commerce, economists, industrialists, etc. are nominated in the said category. However, on the date on which the decision for demonetization was taken by the Central Board i.e. 8th November, 2016, there were only 3 independent Directors under clause (c) of sub-section (1) of Section 8 of the RBI Act. He submits that, it is thus clear that, at the relevant time, the Central Board consisted of a majority of the Directors who were representatives of the Central Government inasmuch as there

were 7 vacancies of Directors in category under clause (c) of sub-section (1) of Section 8 of the RBI Act.

27. Learned Senior Counsel further submits that, in the present case, a reverse mechanism was adopted. He submits that it was the Central Government which initiated the proposal for demonetization and sought opinion of the Central Board vide its communication dated 7th November 2016. The meeting of the Central Board was held immediately on the next day i.e. 8th November 2016 at 5.00 p.m. Within hours, a recommendation of the Central Board was sent to the Central Government and, on the same date itself, i.e. 8th November 2016, the Hon'ble Prime Minister announced the decision of the Cabinet with regard to demonetization on National Television at 8.00 p.m.

28. Learned Senior Counsel submits that, unless the following documents are produced by the respondents, it cannot be verified as to whether the Central Board while recommending

demonetization or as to whether the Central Government while deciding to notify demonetization had taken into consideration the relevant factors or eschewed irrelevant factors:

a) The letter of the Central Government dated 7th November 2016;

b) The Agenda Note dated 8th November 2016, if any, placed before the Central Board of RBI and the relevant research papers, background notes, information, data, report, etc.;

c) The recommendation of the Central Board dated 8th November 2016 to the Central Government;

d) The Note for Cabinet, if any, that was placed before the Cabinet on 8th November 2016;

e) The actual decision of the Cabinet as recorded in the Minutes of the Cabinet of its meeting dated 8th November 2016.

29. It is submitted that it is only on the perusal of the minutes of the meeting dated 8th November 2016, of the Central Board,

it could be seen as to whether the requisite quorum was there or not and as to whether one director from the category under Section 8(1)(c) of the RBI Act as required under the Reserve Bank of India (General) Regulations, 1949 (hereinafter referred to as "the 1949 Regulations") was present in the meeting or not.

30. Shri Chidambaram submits that there is no record available to show that there was application of mind to the relevant factors by the Central Board, so also by the Central Government. He submits that it is also not clear as to whether there was any Cabinet note based on the recommendation of the Central Board, which was placed before the Cabinet for consideration. He submits that the Hon'ble Prime Minister went on National Television at 8.00 p.m. on 8th November 2016, in a slot that had already been booked by the Government since all channels telecasted the speech at 8.00 p.m., and announced the decision on demonetization. He submits that the decision-making process was pre-meditated and rushed, which depicted a non-application of mind and was deeply and fatally flawed. It

is thus submitted that the procedure adopted was in total violation of the procedure contemplated under sub-section (2) of Section 26 of the RBI Act.

31. Shri Chidambaram further submits that neither the RBI nor the Central Government took into consideration the relevant factors and eschewed irrelevant factors before making such a far-reaching recommendation and decision respectively, that would have serious consequences. He submits that, as a result of demonetization, 86.4% of the currency (by value) was declared no longer to be legal tender and was eventually withdrawn. He submits that, in terms of absolute value, it amounted to Rs.15,44,000 crore. It is submitted that 2,300 crore distinct notes had become illegal overnight. It is submitted that, at the relevant time, the notes in the denomination of Rs.500/- and Rs.1,000/- were commonly used and, since they were demonetized overnight, millions of people were left with no valid bank notes to buy essential goods, such as, food, milk or even medicines, etc. Thousands of families

went without a meal. In fact, various voluntary organizations distributed free food to thousands of families during the relevant period.

32. Shri Chidambaram submits that the result of demonetization was disastrous. It resulted in steep unemployment within a short period. Wages were not paid for several weeks. Millions of farmers were unable to withdraw or deposit money. They did not have money to buy seeds or fertilizers or to hire labour. It is submitted that the price of agricultural products dropped to a huge extent, thereby causing loss to the farmers.

33. Shri Chidambaram submits that the Government also did not take into consideration the fact that over 2 lakh ATMs were required to be recalibrated to dispense the newly issued notes. It is submitted that the Government, as also the RBI, also did not take into consideration that, out of 1,38,626 bank branches in India, over two-thirds were located in metropolitan, urban

and semi-urban areas, while only one-third were located in rural areas, and that 90% of all ATMs were located merely in 16 States. He submits that the seven States in North-East India had only 5199 ATMs, of which 3645 were in Assam alone. As a result thereof, the individuals residing in rural areas and those in the Northeast region were disproportionately and adversely impacted. They had to travel long distances and stand in queues to exchange notes, forsaking their livelihood at considerable expense.

34. Learned Senior Counsel submits that, without taking into consideration all these factors, the Central Board made the recommendation and the Central Government took the decision of demonetization. It is submitted that the consequence thereof is that demonetization cost the economy about 1-2% of the GDP, i.e. about Rs.1,50,000 crore.

35. Shri Chidambaram further submits that the objectives stated in the impugned Notification were false and illusory

which could not have been achieved and which, in fact, were not achieved. He submits that one of the objectives was to weed out fake currency notes that were causing adverse effect on the economy. Another objective was to stop the use of high denomination bank notes for the storage of unaccounted wealth. Learned Senior Counsel submits that, when a fake currency note is detected by a Bank Officer, he is obliged to impound it, report it and give the same to the RBI. The RBI is required to destroy the note, thus taking the fake currency note out of possible circulation. It is submitted that the Annual Report of the RBI for the year 2016-2017 reported that only fake currency of the value of Rs.43.3 crore was detected in the nearly Rs.15.31 lakh crore of currency exchanged through the banking system. It is submitted that this represented 0.0028% of the total currency notes that were returned/exchanged through the banking system/RBI.

36. Learned Senior Counsel submitted that, in fact, the Indian Express quoted a senior Directorate of Revenue Intelligence

(DRI) official who said that, while fake currency seized before demonetization was of low quality and easily identifiable by the naked eye, the quality of fake notes considerably improved post-demonetization, making it harder to identify. It is submitted that, as such, it is clearly seen that the said objective was false and, in any case, demonetization hopelessly failed to achieve the said objectives.

37. Learned Senior Counsel further submitted that the third objective was to arrest the use of fake currency for financing subversive activities such as drug trafficking and terrorism, which cause damage to the economy and the security of the country. In this respect, learned Senior Counsel submits that new notes of denominational value of Rs.2,000/- were found on the bodies of two terrorists killed in an encounter in Bandipora on 22nd November 2016. Learned Senior Counsel submits that nearly 99.3% of the demonetized notes were returned, whether they represented storage of accounted or unaccounted wealth. It is submitted that to facilitate the exchange of money, several

brokers sprung up, who offered to exchange 'demonetized' notes for a price. As such, even honest people turned dishonest to make some money.

38. Learned Senior Counsel submits that, shortly after demonetization, the Income Tax Department and the DRI conducted searches and raids and seized alleged unaccounted wealth in the form of Rs.2,000 notes. It is, therefore, submitted that all the stated objectives have utterly failed.

39. Shri P. Chidambaram further submitted that the impugned Notification is liable to be set aside on another ground also. He submits that the doctrine of proportionality has now been recognised in Indian jurisprudence. Applying the test of proportionality to the impugned act of demonetization, he submits that there was absolutely no justification to demonetize 86.4% of the currency in circulation representing a value of Rs.15,44,000 crore that caused enormous damage to the economy and placed an intolerable and horrendous burden

upon the people of the country, especially the poor. It is submitted that, before resorting to such a drastic step, the Central Board as well as the Central Government ought to have taken into consideration as to whether an alternative method could have been resorted to achieve the purpose for which the exercise of demonetization was done. In this respect, learned Senior Counsel relied on the judgment of this Court in the case of ***K.S. Puttaswamy (Retired) and another (Aadhaar) v. Union of India and another***[3] and ***Internet and Mobile Association of India v. Reserve Bank of India***[4].

40. Learned Senior Counsel submitted that though, while exercising the power of judicial review, it may not be permissible for this Court to examine the correctness of the decision, however, this Court can very well exercise its powers to examine the correctness of the decision-making process. He submits that the decision-making process in the present case is totally flawed. He submits that neither the Central Board while

[3] **(2019) 1 SCC 1**
[4] **(2020) 10 SCC 274**

making the recommendation nor the Central Government while taking the decision have followed the procedure as prescribed in sub-section (2) of Section 26 of the RBI Act. He submits that, in any case, they have failed to take into consideration the relevant factors which were required to be taken into consideration and have taken into consideration those factors which were false from the very inception and have subsequently been proved to be so. He, therefore, submits that this Court is entitled to exercise its powers of judicial review and hold that the decision-making process was not sustainable in law. In this respect, learned Senior Counsel relied on the judgments of this Court in the cases of ***Tata Cellular v. Union of India***[5], ***Uttamrao Shivdas Jankar v. Ranjitsinh Vijaysinh Mohite Patil***[6], ***Centre for Public Interest litigation and others v. Union of India and others***[7], ***Lt. General Manomoy Ganguly***

[5] **(1994) 6 SCC 651**
[6] **(2009) 13 SCC 131**
[7] **(2012) 3 SCC 1**

Vsm v. Union of India and others[8] ***and K.S. Puttaswamy (Retired) and another (Aadhaar)*** (supra).

41. Learned Senior Counsel further submitted that, despite the passage of time, this Court has the power to grant declaratory relief including the relief of declaring as to what is the true meaning and interpretation of various provisions of the RBI Act and also to mould the relief accordingly. Learned Senior Counsel relied on the judgment of this Court in the case of ***Somaiya Organics (India) Ltd. and another v. State of U.P. and another***[9], ***Orissa Cement Ltd. v. State of Orissa and others***[10], and ***I.C. Golak Nath & Others v. State of Punjab & Another***[11] in support of the said submissions.

42. Learned Senior Counsel further submitted that the impugned Notification is also violative of Article 19(1)(g) of the Constitution of India. He submits that, if it is the contention of the State that the restriction imposed is reasonable and in the

[8] **(2018) 18 SCC 83**
[9] **(2001) 5 SCC 519**
[10] **1991 Supp (1) SCC 430**
[11] **(1967) 2 SCR 762**

interest of the general public, then the burden is on the respondents to establish the same. However, in the present case, the respondents have failed to do so. He further submits that this Court in the case of ***Jayantilal Ratanchand Shah v. Reserve Bank of India and others***[12] has held the currency notes to be property. He, therefore, submits that depriving a person of his property by demonetization would be violative of Article 300A of the Constitution of India.

43. Shri Shyam Divan, learned Senior Counsel appearing on behalf of the applicant-Malvinder Singh, submitted that, apart from the guarantee given by the Central Government with regard to exchange of every bank note as legal tender at any place in India, they are also the liabilities of the Issue Department under Section 34 of the RBI Act to an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation.

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[12] **(1996) 9 SCC 650**

44. Learned Senior Counsel submitted that the Hon'ble Prime Minister, in his speech on 8th November 2016, gave a categorical assurance that the rights and interests of honest, hard-working people would be fully protected. A specific assurance was also given that if there may be some who, for some reason, are not able to deposit their old five hundred or one thousand rupee notes by 30th December 2016, they could go to specified offices of the RBI upto 31st March 2017 and deposit the notes after submitting a declaration form. He submits that a person of a stature no less than the Hon'ble Prime Minister of India has given an assurance that such persons would be able to go to specified offices of the RBI upto 31st March 2017 and deposit the notes after submitting a declaration form. It is further submitted that in the Press Note published on the same day, i.e. 8th November 2016, an assurance was given to the following effect:

> "(x) For those who are unable to exchange their Old High Denomination Bank Notes or deposit the same in their

> bank accounts on or before December 30, 2016, an opportunity will be given to them to do so at specified offices of the RBI on later dates along with necessary documentation as may be specified by the Reserve Bank of India."

45. Learned Senior Counsel submits that the said assurance was also reiterated in the RBI Notice dated 8th November 2016. Learned Senior Counsel, therefore, submits that applicant's/petitioner's case (petitioner in Writ Petition (Civil) No.149 of 2017) stands on peculiar facts. Shri Divan submits that the applicant/petitioner withdrew an amount of Rs.1,20,000/- from his bank account operating in Central Cooperative Bank, Sangrur, Punjab (Branch-Ghelan) on 3rd December 2015 and kept the same with his previous savings of Rs.42,000/- in cash, which totals to Rs.1,62,000/- (i.e. 60 notes of Rs. 500 denomination and 132 notes of Rs.1000/- denomination). On 11th April, 2016, he went to visit his son residing in the USA, leaving his above mentioned saving of Rs.1,62,000/- at home in India for his future knee operation.

The applicant travelled with his wife. During their absence, their home was locked and the money could not have been deposited. Learned Senior Counsel submits that, after returning to India on 3rd February, 2017, and relying on the assurance given by the Hon'ble Prime Minister of India, he made a representation to the RBI for exchange of the currency notes in his possession. However, the same was not considered, thus constraining him to file a writ petition (i.e. Writ Petition (Civil) No.149 of 2017). This Court, vide order dated 3rd November 2017 disposed of the said writ petition giving him the liberty to file an application for intervention/impleadment in Writ Petition (Civil) No.906 of 2016 (Vivek Narayan Sharma vs. Union of India), which was accordingly filed him vide I.A. No.26757 of 2018 in Writ Petition (Civil) No.906 of 2016.

46. Shri Divan submits that the proviso to the Notification dated 30th December 2016 issued by the Ministry of Finance, Department of Economic Affairs, Government of India, totally excludes persons like the applicant. He submits that, only on

account of the number of days residing abroad, the applicant was categorized as non-resident Indian and as such, he was only entitled to exchange currency notes to the extent as provided in the proviso to the Notification dated 30th December 2016. Learned Senior Counsel submits that, however, the applicant had not carried the cash while travelling abroad and as such, there was no question of making a declaration under clause (i) of sub-section (1) of Section 4 of the 2016 Notification.

47. Learned Senior Counsel further submitted that, in view of clause (ii) of sub-section (1) of Section 4 of the 2017 Act, the Central Government is empowered to provide a grace period to such class of persons and for such reasons as may be specified, by notification. He submits that the said power is coupled with a duty. It is, therefore, submitted that when there are genuine cases, the Central Government is bound to exercise the power under clause (ii) of sub-section (1) of Section 4 of the 2017 Act and provide grace period to the applicant and persons like him.

48. Shri Divan further submits that the Circular of the RBI dated 31st December 2016 is also discriminatory, inasmuch as in the case of Resident Indians, there is no monetary limit for tender of SBNs. However, insofar as the Non-Resident Indians (NRIs) are concerned, the tender is restricted to a maximum of Rs.25,000/- per individual depending on when the notes were taken out of India as per relevant FEMA Rules. Learned counsel submits that an additional liability is imposed upon the NRIs to produce a certificate issued by the Indian Customs on arrival through Red Channel after 30th December 2016, indicating the import of SBNs, with details and value thereof.

49. Shri Divan relied on the article titled "Using Fast Frequency Household Survey Data to Estimate the Impact of Demonetization on Employment" by Mr. Mahesh Vyas, Centre for Monitoring Indian Economy (2018) in support of his submission that on account of demonetization, there was substantial reduction in employment, which was about 12 million lower than it was during the 2 months preceding

demonetization. And, over a 4-month period when the entire sample was surveyed, the impact of demonetization reduced to a loss of about 3 million jobs. He submits that an article in the Indian Express dated 17th January 2017 based on a study conducted by the All India Manufacturers' Organisation (AIMO), indicated that the manufacturing sector suffered from considerable job loss post-demonetization.

50. Learned Senior Counsel also submits that in the absence of a specific study with regard to the effect of demonetization on the Indian economy, the decision of the Central Government for demonetizing about 86.4% of the total currency in circulation will have to be held to be vitiated on account of manifest arbitrariness. It is submitted that the impugned notification is also liable to be set aside applying the test of proportionality. Applying the classical equality test, he submits that it will have to be held that the decision of demonetization had no nexus to the objectives to be achieved. Learned Senior Counsel relies on the judgment of the Constitution Bench of this Court in the

case of ***K.S. Puttaswamy (Retired) and another (Aadhaar)*** (supra) in this regard.

51. Shri Divan lastly submits that the right to life also includes the right to live with dignity. Relying on the Constitution Bench judgment of this Court in the case of ***Maneka Gandhi v. Union of India***[13], he submits that the right to live with dignity also includes the right to travel abroad, especially to visit the son of the petitioner/applicant in the USA. He, therefore, submits that when the applicant/petitioner had gone to the USA to visit his son during the period wherein the currency notes could have been exchanged, he will be deprived of his right under Article 21 of the Constitution of India if he is not granted an opportunity now to exchange the demonetized notes with the new notes.

IV. SUBMISSIONS OF UNION OF INDIA

52. Shri R. Venkataramani, learned Attorney General ("A.G." for short), at the outset, submits that the action taken vide the

[13] **(1978) 2 SCR 621**

impugned notification stands ratified by the 2017 Act. It is, therefore, submitted that with the executive action being validated by the will of Parliament, the challenge to the same would not survive.

53. The learned A.G. submits that the word "any" appearing before the words "series of bank notes" in sub-section (2) of Section 26 of the RBI Act should be construed as "all". Learned A.G. relies on the following judgments of this Court in support of his submission that the word "any" will have to be construed to be "all".

(i) ***The Chief Inspector of Mines and another v. Lala Karam Chand Thapar etc.***[14]

(ii) ***Banwarilal Agarawalla v. The State of Bihar and others***[15]

(iii) ***Tej Kiran Jain and others v. N. Sanjiva Reddy and others***[16]

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[14] **(1962) 1 SCR 9**
[15] **(1962) 1 SCR 33**
[16] **(1970) 2 SCC 272**

(iv) ***Lucknow Development Authority v. M.K. Gupta***[17]

(v) ***K.P. Mohammed Salim v. Commissioner of Income Tax, Cochin***[18]

(vi) ***Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another***[19]

54. The learned A.G. submits that the action under sub-section (2) of Section 26 of the RBI Act cannot be construed in a narrow compass. It is submitted that various factors, aspects and challenging confrontations affecting the economic system of the country and its stability will have to be given due weightage while considering the validity of the action taken under sub-section (2) of Section 26 of the RBI Act.

55. The learned A.G. submits that the comparison of the action taken under sub-section (2) of Section 26 of the RBI Act with the 1946 and the 1978 legislations is totally misconceived. It is submitted that, in any case, the 2017 Act not only

[17] **(1994) 1 SCC 243**
[18] **(2008) 11 SCC 573**
[19] **(2010) 4 SCC 772**

addresses the issues relating to cessation of legal tender under sub-section (2) of Section 26 of the RBI Act, but also provides for exchange of bank notes in order that Article 300A of the Constitution of India is complied with, and also extinguishes the liabilities of the Issue Department of the RBI under Section 34 of the RBI Act.

56. The learned A.G. submits that if the construction as advanced by the petitioners is accepted, then the very purpose for which the provision is made shall stand frustrated. The learned A.G., relying on the judgment of this Court in the case of ***C.I.T. v. S. Teja Singh***[20], submits that it is a settled principle of law that the Courts will strongly lean against a construction of a provision which will render it futile. It is submitted that the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result, is required to be accepted.

[20] **AIR 1959 SC 352**

57. The learned A.G. submits that the argument that the word "any" would not mean "all" is fallacious in nature. If the same is accepted, the Government would technically be permitted to issue separate notifications for each series but would be prohibited from issuing a common notification for all series. It is submitted that if such process is held to be permitted, it would lead to chaos and uncertainty.

58. The learned A.G. further submits that the word "any" has been used at two places in sub-section (2) of Section 26 of the RBI Act. It is submitted that the word "any" preceding the words "series of bank notes" has to be construed to mean "all", whereas the word "any" preceding the word "denomination" may be construed to be singular or otherwise. He submits that the same word used in the same provision twice could be permitted to have a different meaning. He relies on the

judgment of this Court in the case of ***Maharaj Singh v. State of Uttar Pradesh and others***[21] in support of his submission.

59. The learned A.G. submits that the alternative submission that if the word "any" is not given any restricted meaning then sub-section (2) of Section 26 of the RBI Act will have to be held to be invalid on the ground of vesting of excessive delegation, is also without substance. The learned A.G. submits that the RBI is not just like any other statutory body created by an Act of legislature. It is submitted that it is a creature created with a mandate to get liberated even from its creator. It is submitted that the guiding factors for exercise of power under sub-section (2) of Section 26 of the RBI Act have to be found from Section 3 of the RBI Act as well as from its preamble. It is submitted that the RBI Act was enacted for the purposes of taking over the management and regulation of the currency from the Central Government as per Section 3 of the RBI Act. The preamble of the RBI Act also states that the RBI has been constituted to

[21] **(1977) 1 SCC 155**

"regulate the issue of bank notes". It is submitted that the words "taking over the management of the currency" in Section 3 of the RBI Act and "regulate" in the Preamble have to be given the widest possible import. It is submitted that a narrower construction would defeat the very purpose of the RBI Act. It is submitted that the word "regulate" would also include "prohibit".

60. The learned A.G., relying on the judgment of this Court in the case of ***Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and another***[22] submits that, in order to find out as to whether the legislature has given guidance for exercise of delegated powers, the Court will have to consider the provisions of the particular Act with which the Court has to deal with, including its preamble. It is submitted that the preamble of the RBI Act read with Section 3 thereof provides sufficient guidance to the delegatee Central Government for exercising its powers. It is further submitted

[22] **AIR 1968 SC 1232 : (1968) 3 SCR 251**

that, while considering the question as to whether the delegation is excessive or not, the nature of the body to which delegation is made is also a factor to be taken into consideration. It is submitted that in the present case, the delegation is to the Central Government and not to any subordinate office or department.

61. The learned A.G. submitted that the judgment of this Court in the case of ***Harakchand Ratanchand Banthia and others*** (supra) would not be applicable to the facts of the present case inasmuch as in the said case, the delegation was to an Administrator and this Court found that the delegation to the Administrator was too wide and, thus, suffered from the vice of excessive delegation. It is submitted that, similarly, the judgment of this Court in the case of ***Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and another*** (supra) also would not be applicable to the facts of the present case.

62. The learned A.G., in addition to the reliance placed on the judgment of this Court in the case of ***Birla Cotton, Spinning and Weaving Mills Delhi*** (supra) also relies on the judgments of this Court in the following cases:

(i) ***Delhi Laws Act, In Re***[23]

(ii) ***M.P. High Court Bar Association v. Union of India and others***[24]

(iii) ***Kerala State Electricity Board v. The Indian Aluminium Co. Ltd.***[25]

(iv) ***Ajoy Kumar Banerjee and others v. Union of India and others***[26]

(v) ***Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. The Asstt. Commissioner of Sales Tax and others***[27]

(vi) ***Ramesh Birch and others v. Union of India and others***[28]

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[23] **AIR 1951 SC 332: 1951 SCC 568**
[24] **(2004) 11 SCC 766**
[25] **(1976) 1 SCC 466**
[26] **(1984) 3 SCC 127**
[27] **(1974) 4 SCC 98**
[28] **1989 Supp. (1) SCC 430**

(vii) ***M/s Gammon India Limited Etc. v. Union of India & Others***[29]

(viii) ***Prabhudas Swami and Another v. State of Rajasthan and Others***[30]

(ix) ***Rojer Mathew v. South Indian Bank Ltd. represented by its Chief Manager and Ors.***[31]

(x) ***The Registrar of Co-operative Societies, Trivandrum and another vs. K. Kunjabmu and others***[32]

(xi) ***Darshan Lal Mehra and others v. Union of India and others***[33]

63. The learned A.G. also relies on the judgments of the U.S. Supreme Court in the cases of ***Yakus v. U.S.***[34] and ***Federal Energy Administration v. Algonquin SNG. Inc.***[35] in support of his submission.

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[29] **(1974) 1 SCC 596**
[30] **AIR 2003 RAJ 190**
[31] **(2020) 6 SCC 1**
[32] **(1980) 1 SCC 340**
[33] **(1992) 4 SCC 28**
[34] **321 U.S. 414 (1944)**
[35] **426 U.S. 548 (1976)**

64. Insofar as the contention of the petitioners with regard to the impugned action being susceptible to challenge on the ground of proportionality is concerned, the learned A.G. submits that the reliance placed on the judgment of this Court in the case of ***Internet and Mobile Association of India*** (supra) is wholly misconceived. Relying on various paragraphs from the said judgment, the learned A.G. submits that the observations made in paragraph 224 of the said judgment have to be read in context with the issue that fell for consideration before this Court in the said case. It is submitted that in the said case, this Court was considering the action of the RBI in restricting the banks and financial institutions regulated by it from providing access to banking services to those engaged in transactions in crypto assets. It is submitted that, though this Court held that, in view of the provisions contained in the RBI Act, the Banking Regulation Act, 1949 and the Payment and Settlement Systems Act, 2007, and also in view of the special place and role that the RBI has in the economy of the country,

the RBI had very wide and ample powers to take preventive and curable measures. However, this Court found that applying the test of proportionality, in the absence of the RBI pointing out some semblance of any damage suffered by its regulatory entities, the action was not sustainable. The learned A.G. submitted that the action in the present case was taken after considering the relevant factors and to address serious concerns such as terror financing, black money and fake currency. It is, therefore, submitted that the judgment of this Court in the case of ***Internet and Mobile Association of India*** (supra) would not be applicable to the facts of the present case.

65. The learned A.G., relying on the judgment of this Court in the case of ***State of Tamil Nadu and another v. National South Indian River Interlinking Agriculturist Association***[36], submitted that in a case of non-classificatory arbitrariness, the test of proportionality would be applicable. However, in a case of classificatory arbitrariness, the only test

[36] **(2021) SCC OnLine SC 1114**

that will have to be satisfied is the rational nexus test, i.e. whether the action taken has a reasonable nexus with the object to be achieved. In such a case, the proportionality test would not be applicable. It is submitted that the present case would fall in the latter category and not in the former category.

66. Countering the argument made on behalf of the petitioners that the power exercised under sub-section (2) of Section 26 of the RBI Act has not been exercised in the manner as provided therein and further that the decision-making process is flawed on account of patent arbitrariness, the learned A.G. submitted that in view of the settled legal position, the said contention is also not tenable. It is submitted that what is postulated under sub-section (2) of Section 26 of the RBI Act is that the Central Government may take a decision on the recommendation of the Central Board. It is submitted that in the present case, there was, in fact, a recommendation by the Central Board recommending demonetization. The decision by the Central Government has been taken after considering

the said recommendation. It is, therefore, submitted that the procedure as provided in sub-section (2) of Section 26 of the RBI Act stands duly complied with. The learned A.G. submitted that the RBI is not only an expert body but a very special institution charged with a duty of conceiving and implementing various facets of economic and monetary policy. It is submitted that there cannot be a straitjacket formula in the discharge of its duty. Learned A.G. submits that in any case, it is a settled law that this Court should not interfere with the opinion of experts and leave it to experts who are more familiar with the problems they face. Reliance in this respect is placed on the judgment of this Court in the case of ***Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University, Sirsa and another***[37] and ***Secretary and Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity and others***[38].

[37] **(2008) 9 SCC 284**
[38] **(2010) 3 SCC 732**

67. Relying on the judgment of this Court in the case of ***Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Limited and another***[39], the learned A.G. submits that economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters.

68. The learned A.G. submitted that the recommendation of the RBI and the decision of the Central Government was taken after taking into consideration that fake currency notes of the SBNs have largely been in circulation and it was difficult to identify genuine bank notes from the fake ones and to also address three serious problems viz., fake currency notes, storage of unaccounted wealth and terror financing. It is submitted that the material with regard to such factors cannot be considered overnight. It is submitted that the 2012 White Paper on Black Money throws light on the complexity of the problem. The information and data gathered from various

[39] **(2011) 1 SCC 640**

agencies of the Government of India are required to be taken into consideration. It is submitted that both the RBI and the Central Government act in coordination with each other. The learned A.G. submits that the discussions over the issue have taken place over a long period of time and, after considering all the aspects, the RBI recommended demonetization and the Central Government took the decision to demonetize.

69. The learned A.G. further submitted that the contention of the petitioners that demonetization has utterly failed to achieve its objectives as stated in the impugned Notification is also without substance. The learned A.G. submits that the repercussion of an action like the one under consideration can be best understood by considering the legal tender cessation measure not in isolation but by looking at the overall benefits flowing from such a measure. The learned A.G. submits that the benefits and advantages of such an action are direct as well as indirect. The learned A.G. submits that, as a result of the impugned action, there are direct benefits, like:

(i) significant reduction in fake currency;

(ii) significant increase in the number of tax payers;

(iii) 25% growth in filing income-tax returns;

(iv) significant increase in returns filed by corporate tax payers;

(v) substantial growth in new PAN numbers.

70. The learned A.G. submits that, whereas self-assessment tax in the year 2015-16 was Rs.55,000 crore and Rs.68,000 crore in the year 2016-2017, it has jumped to Rs.1,00,000 crore in the year 2017-18. The learned A.G. further submitted that, as a direct benefit of demonetization, the volume of Unified Payments Interface (UPI) transactions shot up from 1.06 crore in 2016-2017 to 90.5 crore in 2017-18 and further to about 5000 crore in 2021-22. The value of the UPI transactions also grew 1210 times in 2021-22 as compared to 2016-17. It is submitted that the real GDP growth in the year

2017-18 was higher than the average annual growth of 6.6% in the decade (2010-11 to 2019-20).

71. The learned A.G. further submitted that there have also been various indirect benefits. Action against domestic black money resulted in undisclosed income of Rs.82,168 crores. Surveys conducted in 63,691 cases led to undisclosed income of Rs.84,396 crores getting deducted. The employees provident fund organization (EPFO) enrolment data saw an increase of 1.1 crore new enrolments. It also saw 55% increase in Employees' State Insurance Corporation (ESIC) registrations. It is, therefore, submitted that if the effect of impugned action is considered in a larger perspective, it will clearly show that there have been several direct as well as indirect benefits on account of the demonetization.

72. The learned A.G. further submitted that, merely because in 1946 and 1978 the demonetization was effected by enactments of Parliament, cannot be a ground to hold that the

Central Government does not have a power under sub-section (2) of Section 26 of the RBI Act. It is submitted that, in any case, the said argument does not hold water inasmuch as what has been provided under the impugned notification is wholly ratified by the 2017 Act. It is submitted that once the executive action is ratified by Parliament by way of legislation, the argument that since Parliament had chosen to do so in 1946 and 1978, the Central Government could not have done it under the impugned notification itself is contradictory.

73. The learned A.G. submits that the perusal of the Parliamentary debates while enacting the 1978 Act would clearly show that, though by the said Act only high denomination bank notes of the denominational value of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- were demonetized, the Members of Parliament advocated for demonetization of even the bank notes of the denominational value of Rs.100.

74. The learned A.G. submits that the provisions of the 1978 Act have been found to be constitutional by the Constitution

Bench Judgment of this Court in the case of ***Jayantilal Ratanchand Shah*** (supra). It is submitted that, for the reasoning adopted by the Constitution Bench in the said case, the impugned notification, which now stands ratified by the 2017 Act, also deserves to be upheld.

75. In respect of the submission made on behalf of the petitioners, that in order to address concern of the genuine difficulties of various persons who could not deposit the demonetized bank notes within the limited period, a window should be opened for a limited period; the learned A.G. submitted that if such is permitted, it would amount to devising a norm which will alter the essential character of the enactment. It is submitted that, firstly, it is difficult to ascertain genuineness of the money. Such a request will have to be based on certain declarations being made by the party whose veracity cannot be verified. It is submitted that this would also provide a loophole for non-genuine bank note holders to channelize their unaccounted money through the

window. It is submitted that, incidentally, the law enforcing agencies are still recovering significant amount of SBNs from the individuals.

76. The learned A.G. further submitted that, as of now, Rs.10,719 crore of SBNs are still in circulation. It is submitted that in any case, in view of the provisions of clause (i) of sub-section (1) of Section 4 of the 2017 Act, 77,748 applications involving an amount of Rs.284.25 crore were received from resident and non-resident Indians by the five designated Regional Offices of the RBI during the grace period. Out of this, a total of 57,405 cases (74% of the total applications received) amounting to Rs.221.95 crore (78% of the total amount under these applications) have been accepted and the amounts have been credited to their KYC compliant bank accounts. It is submitted that out of the total cases, 20,343 cases were rejected due to various reasons. The learned A.G. submits that it will not be permissible for the Court to devise a norm which would result in altering the essential character of the

enactment. In support of this submission, he relies on the judgment of United States Supreme Court in the case of ***Metropolis Theater Company et al v. City of Chicago and Ernest J. Magerstadt***[40].

77. The learned A.G. lastly submits that the Court must not proceed for a formal judgment when it cannot grant any effectual relief. In this respect, he relies on the judgments of United States Supreme Court in the cases of ***North Carolina v. Wayne Claude RICE***[41] and ***Mills v. Green***[42] and the judgment of the Court of Appeal of New York in the case of ***People ex rel. Kingsland v. Clark***[43].

78. Taking the line further, the learned A.G. submits that it is also a settled proposition of law that the Court should not decide academic questions. In this respect, he relies on the judgment of this Court in the cases of ***Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly and***

[40] **228 US 61 (1913)**
[41] **404 U.S. 244 (1971)**
[42] **159 U.S. 651 (1895)**
[43] **25 Sickels 518 (1877)(Court of Appeals of New York)**

others[44], ***Central Areca Nut & Cocoa Marketing & Processing Cooperative Ltd. v. State of Karnataka and others***[45] and ***R.S. Nayak v. A.R. Antulay***[46].

V. SUBMISSIONS OF THE RBI

79. Shri Jaideep Gupta, learned Senior Counsel appearing on behalf of the RBI, would submit that the contention of the petitioners that the power under sub-section (2) of Section 26 of the RBI Act is uncanalised, unguided and arbitrary is without any basis. He submits that sub-section (2) of Section 26 of the RBI Act itself provides that the power by the Central Government has to be exercised on the recommendation of the Central Board. It is, therefore, submitted that there is an inbuilt safeguard in the provision itself.

80. Relying on the judgment of this Court in the case of ***Peerless General Finance and Investment Co. Limited and***

[44] **(2020) 2 SCC 595**
[45] **(1997) 8 SCC 31**
[46] **(1984) 2 SCC 183**

another v. Reserve Bank of India[47], it is submitted that the RBI, which is a bankers' bank, has a large contingent of experts to render advice relating to matters affecting the economy of the entire country. It is submitted that the RBI plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country. It is submitted that the recommendation of the Central Board is based upon the advice of the experts that the RBI has in its contingent. Shri Gupta also relies on the judgment of the Constitution Bench of this Court in the case of ***Joseph Kuruvilla Velukunnel v. Reserve Bank of India and others***[48] in support of this submission.

81. Shri Gupta further submitted that the contention that the decision-making process is faulty on account of not following the procedure under sub-section (2) of Section 26 of the RBI Act is also without substance. The learned Senior Counsel submits that the procedure under sub-section (2) of Section 26

[47] **(1992) 2 SCC 343**
[48] **1962 Supp (3) SCR 632**

of the RBI Act contemplates two things i.e. recommendation of the Central Board and the decision by the Central Government. It is submitted that both these requirements stand fully satisfied in the present case. He submits that though it is the contention of the petitioners that the procedure is flawed, however, the petition itself is bereft of such averments. Shri Gupta submits that the Constitution Bench of this Court in the case of ***Ram Kishore Sen and others v. Union of India and others***[49] has held that the burden of proof primarily lies on a person who complains that the procedure prescribed has not been followed. In any case, he submits that in both the affidavits filed on behalf of the RBI i.e. the counter affidavit dated 19th December 2018 filed by Haokholal, Assistant General Manager and the additional affidavit dated 15th November 2022 of Shri Kuntal Kaim, Deputy General Manager, it has been specifically averred that the procedure as prescribed under sub-section (2) of Section 26 of the RBI Act read with

[49] **(1966) 1 SCR 430**

Regulation 8 of the 1949 Regulations was duly followed. He submits that the quorum as prescribed under the 1949 Regulations was very much available when the meeting of the Central Board was held on 8th November 2016. In any case, it is submitted that in view of sub-section (5) of Section 8 of the RBI Act, a decision of the Board cannot be questioned merely on the ground of existence of any vacancy or any defect in the constitution of the Board. The learned Senior Counsel has placed on record an additional affidavit dated 6th December, 2022 reiterating the statements made in the aforesaid two affidavits dated 19th December 2018 and 15th November 2022.

82. Relying on the judgment of this Court in the case of ***Internet and Mobile Association of India*** (supra), Shri Gupta submits that to consider the question of proportionality, a four-pronged test, as set out in the judgment of this Court in the case of ***Modern Dental College and Research Centre and***

Others v. State of Madhya Pradesh and Others[50] is required to be applied. It is submitted that since the measure is designated for the purpose of dealing with fake currency, black money and terror funding, the first test stands satisfied. The measure, i.e. demonetization, has a reasonable nexus for the fulfillment of the purpose of aforesaid three objectives and, as such, the second test is also fulfilled. Insofar as the third test is concerned, it is submitted that it is a matter of economic policy as to what measure is found to be appropriate for achieving the objective of dealing with the menace of aforesaid three evils. It is submitted that it is for the experts in the economic and monetary fields to take a decision in that regard and, as such, the third test, as to whether there was no alternative less invasive measure, would not be applicable to a decision pertaining to economic policy. Insofar as the fourth test is concerned, it is submitted that, as a matter of fact, there has been no infringement of the rights of the citizens. As a

[50] **(2016) 7 SCC 353**

matter of fact, no currency is being taken away. Full value of the legitimate currency has been exchanged. It is submitted that non-cash transactions such as credit card, debit card, on-line transaction, etc. were permitted even during the period between 8th November 2016 and 31st December 2016. In any case, it is submitted that immediately after the demonetization was notified, in spite of enormity of operations, immediate steps were taken for the betterment of the public and to ensure adequate cash supply. It is submitted that various measures were taken in order to alleviate the genuine grievances of the citizens, which have been enumerated in paragraphs 11 to 17 of the affidavit dated 19th December 2018 filed on behalf of the RBI. It is, therefore, submitted that the proportionality test would not be applicable in the present case.

83. Shri Gupta relying on the judgment of this Court in the case of ***Small Scale Industrial Manufactures Association***

(Registered) v. Union of India and others[51] submits that normally, it is not within the domain of any court to weigh the pros and cons of the policy or to scrutinize it except only when it is found to be arbitrary and violative of any constitutional or any statutory provisions of law.

84. Shri Gupta further submits that a similar provision providing for a specified time for exchange of notes has already been found to be valid by the Constitution Bench of this Court in the case of ***Jayantilal Ratanchand Shah*** (supra). He submits that the time provided in the present case is almost similar to the time provided under the 1978 Act. The said period has been found to be reasonable having regard to the purpose sought to be achieved by the said Act. It is, therefore, submitted that the challenge that the period provided was not sufficient is without any substance. It is submitted that everybody had sufficient opportunity either to deposit the notes in their banks or to exchange the same. He further submits

[51] **(2021) 8 SCC 511**

that it was not necessary even for the individuals to go to Banks to exchange notes and on the prescribed procedure being followed, an authorized representative could also exchange the notes on their behalf.

85. Shri Gupta further submitted that the provisions of sub-section (2) of Section 4 of the 2017 Act cannot be read in isolation. He submits that if it is read in isolation, it will lead to an anomalous situation where the RBI has an independent power to act in violation of the provisions of Section 3 and sub-section (1) of Section 4 of the 2017 Act. He submits that Section 3 and sub-sections (1) and (2) of Section 4 of the 2017 Act will have to be read together to hold that the power available to the RBI under sub-section (2) of Section 4 of the 2017 Act is with regard to the grace period as provided under sub-section (1) of Section 4 of the 2017 Act. It is submitted that the power vested in the Central Government under clause (ii) of sub-section (1) of Section 4 of the 2017 Act is to provide grace period to such class of persons and for such reasons as

may be specified by notification. However, such power has not been exercised by the Central Government and, therefore, it cannot be construed that the RBI will have an independent power in this regard.

86. Shri Gupta reiterated the submission made by the learned A.G. that since the relief sought in the petitions cannot be granted, no declaration as sought should be granted by this Court. In this respect, he relies on the judgment of this Court in the case of ***Bholanath Mukherjee and others v. Ramakrishna Mission Vivekananda Centenary College and others***[52].

VI. SUBMISSIONS IN REJOINDER

87. Shri P. Chidambaram, learned Senior Counsel, in rejoinder, almost reiterated his earlier submissions. He submitted that there are two methods of demonetization of currency, one is by legislative method and the other under sub-section (2) of Section 26 of the RBI Act. He reiterated that the

[52] **(2011) 5 SCC 464**

word “any” will always have to be read in the context of the provisions and if read in that manner, the only meaning that can be given to the word “any” in sub-section (2) of Section 26 of the RBI is “some”. In this respect, he relies on the judgment of this Court in the case of ***Union of India v. A.B. Shah and others***[53].

88. Shri Chidambaram further submitted that from the perusal of the affidavit filed on behalf of the Central Government as well as the RBI, it is clear that the procedure emanated from the Central Government, which was through the advice given by the Government to the RBI in its communication dated 7th November 2016. The affidavit would clearly show that the RBI acted on the advice of the Central Government and gave its recommendation in a mechanical manner. He reiterated that, as per sub-section (2) of Section 26 of the RBI Act, the proposal has to emanate from the RBI and not from the Central Government. It is reiterated that the

[53] **(1996) 8 SCC 540**

procedure is in total breach of sub-section (2) of Section 26 of the RBI Act.

89. Shri Chidambaram submits that unless the documents, to which he had already referred in his arguments while opening the case, are placed for perusal of this Court, the Court cannot come to a satisfaction about the correctness of the decision-making process. Relying on the judgment of this Court in the case of ***R.K. Jain v. Union of India***[54], he submits that unless the respondents plead privilege and the issue is decided, the respondent cannot withhold the said documents, at least from this Court.

90. Relying on an excerpt from "Forks in the Road: My Days at RBI and Beyond", a book by former RBI Governor C. Rangarajan, Shri Chidambaram submits that demonetization has nothing to do with monetary policy. Emphasizing on the judgment of this Court in the case of ***Internet and Mobile Association of India*** (supra), the learned Senior Counsel

[54] **(1993) 4 SCC 119**

submits that the proportionality test will have to be satisfied in the present case. It is submitted that the 2017 Act does not validate the action taken under the impugned Notification. It only extinguishes the liabilities of the Issue Department of the RBI. The learned Senior Counsel, therefore, submits that this is a fit case wherein this Court should decide the scope of sub-section (2) of Section 26 of the RBI Act and declare that the exercise of power by the Central Government under sub-section (2) of Section 26 of the RBI Act was not valid in law. In this respect, he relies on the judgment of this Court in the case of ***S.R. Bommai and others v. Union of India and others***[55].

91. Shri Shyam Divan, learned Senior Counsel, in rejoinder, submits that the perusal of sub-section (1) of Section 26 of the RBI Act would reveal that, though the tendering of any series of bank notes of any denomination ceases to be a legal one under sub-section (2) of Section 26 of the RBI Act, the guarantee of the Central Government continues to exist. It is submitted that

[55] **(1994) 3 SCC 1**

it would be clear from the provisions contained in the 2016 Ordinance, which became the 2017 Act, that Section 3 of the 2017 Act which provides that the SBNs which have ceased to be legal tender in view of the impugned notification, shall cease to be liabilities of the RBI under Section 34 of the RBI Act and shall cease to have the guarantee of the Central Government under sub-section (1) of Section 26 of the said Act. It is submitted that this is also clear from the affidavit dated 16th November 2022 filed on behalf of the Union of India.

92. Shri Divan further submitted that the 2017 Act can neither be construed to validate the impugned notification nor can it be held that it is a piece of incorporation by reference. It is submitted that the argument with regard to the impugned notification having merged in the 2017 Act is also without substance. The learned Senior Counsel submits that it is simply a plenary parliamentary declaration.

93. Taking further his argument, Shri Divan submits that clause (i) of sub-section (1) of Section 4 of the 2017 gives a power to the Central Government which is coupled with a duty. It is submitted that genuine cases like that of the applicants/petitioners viz., Malvinder Singh and Sarla Shrivastav, who is the applicant/petitioner in I.A. No. 152009 of 2022, should be given some window to exchange the SBNs. It is submitted that there is a large section of NRIs who, during the period between 8th November 2016 and 30th December 2016, were not in India. It is submitted that they could have also not travelled to India since either the tickets were not available or the rates were prohibitively expensive.

94. Shri Divan, in the alternative, submitted that the proviso to the Notification dated 30th December, 2016 has to be read in a manner that it is silent on NRIs who have kept their money in India. It is submitted that exclusion of NRIs who have left their money in India would be manifestly arbitrary and in order to save the proviso, it will have to be read in the manner making it

inapplicable to such NRIs who had kept their money in India while residing abroad during that period.

VII. REFRAMED QUESTIONS

95. Though nine important questions have been framed by the Bench of learned three Judges vide order dated 16th December 2016 in Writ Petition (Civil) No.906 of 2016, upon hearing the submissions advanced before us on behalf of the petitioners as well as the respondents, we find that only the following questions of law arise for consideration. As such, the questions are reframed as under:

(i) Whether the power available to the Central Government under sub-section (2) of Section 26 of the RBI Act can be restricted to mean that it can be exercised only for "one" or "some" series of bank notes and not "all" series in view of the word "any" appearing before the word "series" in the said sub-section, specifically so, when on earlier two

occasions, the demonetization exercise was done through the plenary legislations?

(ii) In the event it is held that the power under sub-section (2) of Section 26 of the RBI Act is construed to mean that it can be exercised in respect of "all" series of bank notes, whether the power vested with the Central Government under the said sub-section would amount to conferring excessive delegation and as such, liable to be struck down?

(iii) As to whether the impugned Notification dated 8th November 2016 is liable to be struck down on the ground that the decision making process is flawed in law?

(iv) As to whether the impugned notification dated 8th November 2016 is liable to be struck down applying the test of proportionality?

(v) As to whether the period provided for exchange of notes vide the impugned notification dated 8th November 2016 can be said to be unreasonable?

(vi) As to whether the RBI has an independent power under sub-section (2) of Section 4 of the 2017 Act in isolation of provisions of Section 3 and Section 4(1) thereof to accept the demonetized notes beyond the period specified in notifications issued under sub-section (1) of Section 4?

VIII. STATUTORY SCHEME

96. Before we proceed to consider the various issues reframed by us, we find it appropriate to refer to the scheme of the RBI Act.

97. The preamble of the RBI Act would itself reveal that the RBI Act was enacted since it was found expedient to constitute a Reserve Bank of India to regulate the issue of Bank notes and for the keeping of reserves with a view to securing monetary

stability in India and generally to operate the currency and credit system of the country to its advantage. The preamble of the RBI Act would also show that it was amended in the year 2016 with effect from 27th June 2016 by Act No. 28 of 2016. Post amendment, it was stated in the preamble that, whereas it was essential to have a modern monetary policy framework to meet the challenge of an increasingly complex economy, and whereas the primary objective of the monetary policy is to maintain price stability while keeping in mind the objective of growth and whereas the monetary policy framework in India shall be operated by the RBI, the RBI Act was enacted.

98. Section 3 of the RBI Act would reveal that the RBI was constituted for the purposes of taking over the management of the currency from the Central Government and of carrying on the business of banking in accordance with the provisions of the RBI Act.

99. Section 8 of the RBI Act deals with composition of the Central Board and term of office of the Directors. It will be relevant to refer to sub-sections (1) and (5) of Section 8 of the RBI, which read thus:

> "**8. Composition of the Central Board, and term of office of Directors**.-- (1) The Central Board shall consist of the following Directors, namely:-
>
> (a) a Governor and not more than four Deputy Governors to be appointed by the Central Government;
>
> (b) four Directors to be nominated by the Central Government, one from each of the four Local Boards as constituted by section 9;
>
> (c) ten Directors to be nominated by the Central Government; and
>
> (d) two Government officials to be nominated by the Central Government.
>
> xxx xxx xxx
>
> xxx xxx xxx
>
> (5) No act or proceeding of the Board shall be questioned on the ground merely

of the existence of any vacancy in, or any defect in the constitution of, the Board."

100. Section 17 of the RBI Act would reveal that the RBI has been authorised to carry on and transact several kinds of business specified therein.

101. Section 22 of the RBI Act would reveal that the RBI shall have the sole right to issue bank notes in India and may, for a period which shall be fixed by the Central Government on the recommendation of the Central Board, issue currency notes of the Government of India supplied to it by the Central Government. It further provides that the provisions of the RBI Act applicable to bank notes shall, unless a contrary intention appears, apply to all currency notes of the Government of India issued either by the Central Government or by the RBI in like manner as if such currency notes were bank notes. Sub-section (2) of Section 22 of the RBI Act specifically provides that on and from the date on which Chapter III of the RBI Act comes

into force, the Central Government shall not issue any currency notes.

102. Section 23 of the RBI Act would reveal that the issue of bank notes shall be conducted by the RBI through an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as defined in Section 34. Sub-section (2) of Section 23 provides that the Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin, bullion or securities as are permitted by the RBI Act to form part of the Reserve.

103. Sub-section (1) of Section 24 of the RBI Act provides that, subject to the provisions of sub-section (2), bank notes shall be of the denominational values to two rupees, five rupees, ten rupees, twenty rupees, fifty rupees, one hundred rupees, five

hundred rupees, one thousand rupees, five thousand rupees and ten thousand rupees or of such other denominational values, not exceeding ten thousand rupees as the Central Government may, on the recommendation of the Central Board, specify in this behalf. Sub-section (2) of Section 24 of the RBI Act provides that the Central Government may, on the recommendation of the Central Board, direct the non-issue or the discontinuance of issue of bank notes of such denominational values as it may specify in this behalf.

104. Section 25 of the RBI Act provides that the design, form and the material of bank notes shall be such as may be approved by the Central Government after consideration of the recommendations made by the Central Board.

105. Section 26 of the RBI is the provision which directly falls for consideration. The same reads thus:

> "**26. Legal tender character of notes**.- (1) Subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in India in payment,

> or on account for the amount expressed therein, and shall be guaranteed by the Central Government.
>
> (2) On recommendation of the Central Board the Central Government may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at such office or agency of the Bank and to such extent as may be specified in the notification."

106. It can thus be seen that sub-section (1) of Section 26 of the RBI Act provides that, subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in India in payment, or on account for the amount expressed therein, and shall be guaranteed by the Central Government. Sub-section (2) of Section 26 of the RBI Act provides that on recommendation of the Central Board, the Central Government may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be

legal tender save at such office or agency of the Bank and to such extent as may be specified in the notification.

107. Section 34 of the RBI Act provides that the liabilities of the Issue Department of the RBI shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation.

108. Perusal of the aforesaid provisions of the RBI Act would reveal that insofar as monetary policy and specifically with regard to the matters of management and regulation of currency are concerned, the RBI plays a pivotal role. As a matter of fact, both the sides are *ad idem* on the said issue.

109. The importance of the role assigned to the RBI in such matters would be amplified from the various judgments of this Court, which we will refer to in the paragraphs to follow. In this background, we will consider the issues that fall for our consideration.

ISSUE NO. (i) : WHETHER THE POWER AVAILABLE TO THE CENTRAL GOVERNMENT UNDER SUB-SECTION (2) OF SECTION 26 OF THE RBI ACT CAN BE RESTRICTED TO MEAN THAT IT CAN BE EXERCISED ONLY FOR "ONE" OR "SOME" SERIES OF BANK NOTES AND NOT "ALL" SERIES IN VIEW OF THE WORD "ANY" APPEARING BEFORE THE WORD "SERIES" IN THE SAID SUB-SECTION, SPECIFICALLY SO, WHEN ON EARLIER TWO OCCASIONS, THE DEMONETIZATION EXERCISE WAS DONE THROUGH THE PLENARY LEGISLATIONS?

110. It is strenuously urged by the learned Senior Counsel appearing on behalf of the petitioners that the word "any" used in sub-section (2) of Section 26 of the RBI Act will have to be given a restricted meaning to mean "some". It is submitted that if sub-section (2) of Section 26 of the RBI Act is not read in such manner, the very power available under the said sub-section will have to be held to be invalid on the ground of excessive delegation. It is submitted that it cannot be

construed that the legislature intended to bestow uncanalised, unguided and arbitrary power to the Central Government to demonetize the entire currency. It is, therefore, the submission of the petitioners that in order to save the said Section from being declared void, the word "any" requires to be interpreted in a restricted manner to mean "some".

111. Per contra, it is submitted on behalf of the respondents that the word "any" under sub-section (2) of Section 26 of the RBI Act, cannot be interpreted in a narrow manner and it will have to be construed to include "all".

Precedents construing the word "any"

112. A Constitution Bench of this Court in the case of ***The Chief Inspector of Mines and another v. Lala Karam Chand Thapar etc.*** (supra) was considering the question as to whether the phrase "any one of the directors" as found in Section 76 of the Mines Act, 1952 could mean "only one of the directors" or could it be construed to mean "every one of the directors". In the said case, all the directors of the Company

were prosecuted for the offences punishable under Sections 73 and 74 of the Mines Act, 1952. The High Court had held that any 'one' of the directors of the Company could only be prosecuted. The Constitution Bench of this Court observed thus:

> "It is quite clear and indeed not disputed that in some contexts, "any one" means "one only it matters not which one" the phrase "any of the directors" is therefore quite capable of meaning "only one of the directors, it does not matter which one". Is the phrase however capable of no other meaning? If it is not, the courts cannot look further, and must interpret these words in that meaning only, irrespective of what the intention of the legislature might be believed to have been. If however the phrase is capable of another meaning, as suggested, viz., "every one of the directors" it will be necessary to decide which of the two meanings was intended by the legislature.
>
> ***If one examines the use of the words "any one" in common conversation or literature, there can be no doubt that they are not infrequently used to mean "every one"***

— not one, but all. Thus we say of any one can see that this is wrong, to mean "everyone can see that this is wrong". "Any one may enter" does not mean that "only one person may enter", but that all may enter. It is permissible and indeed profitable to turn in this connection to the Oxford English Dictionary, at p. 378, of which, we find the meaning of "any" given thus: "In affirmative sentences, it asserts, concerning a being or thing of the sort named, without limitation as to which, and thus collectively of every one of them". One of the illustrations given is — "I challenge anyone to contradict my assertions". Certainly, this does not mean that one only is challenged; but that all are challenged. It is abundantly clear therefore that "any one" is not infrequently used to mean "every one".

But, argues Mr Pathak, granting that this is so, it must be held that when the phrase "any one" is used with the preposition "of", followed by a word denoting a number of persons, it never means "every one". The extract from the *Oxford Dictionary*, it is interesting to notice, speaks of an assertion "concerning a being or thing of the sort

named"; it is not unreasonable to say that, the word "of" followed by a word denoting a number of persons or things is just such "naming of a sort" as mentioned there. Suppose, the illustration "I challenge any one to contradict my assertions" was changed to "I challenge any one of my opponents to contradict my assertion". "Any one of my opponents" here would mean "all my opponents" — not one only of the opponents.

While the phrase "any one of them" or any similar phrase consisting of "any one", followed by "of" which is followed in its turn by words denoting a number of persons or things, does not appear to have fallen for judicial construction, in our courts or in England — the phrase "any of the present directors" had to be interpreted in an old English case, *Isle of Wight Railway Co.* v. *Tahourdin* [25 Chancery Division 320] . *A* number of shareholders required the directors to call a meeting of the company for two objects. One of the objects was mentioned as "To remove, if deemed necessary or expedient any of the present directors, and to elect directors to fill any vacancy on the Board". The directors issued a notice to convene a meeting for the other object

and held the meeting. Then the shareholders, under the Companies Clauses Act, 1845, issued a notice of their own convening a meeting for both the objects in the original requisition. In an action by the directors to restrain the requisitionists, from holding the meeting, the Court of Appeal held that a notice to remove "any of the present directors" would justify a resolution for removing all who are directors at the present time. "Any", Lord Cotton, L.J. pointed out, would involve "all".

It is true that the language there was "any of the present directors" and not "any one of the present directors" and it is urged that the word "one", in the latter phrase makes all the difference. We think it will be wrong to put too much emphasis on the word "one" here. It may be pointed out in this connection that the Permanent Edition of *Words and Phrases*, mentions an American case *Front & Hintingdon Building & Loan Association* v. *Berzinski* where the words "any of them" were held to be the equivalent of "any one of them".

After giving the matter full and anxious consideration, we have come to the conclusion that the words "any

> ***one of the directors" is ambiguous; in some contexts, it means "only one of the directors, does not matter which one", but in other contexts, it is capable of meaning "every one of the directors". Which of these two meanings was intended by the legislature in any particular statutory phrase has to be decided by the courts on a consideration of the context in which the words appear, and in particular, the scheme and object of the legislation."***
>
> *[emphasis supplied]*

113. The Constitution Bench found that the words "any one" has been commonly used to mean "every one" i.e. not one, but all. It found that the word "any", in affirmative sentences, asserts, concerning a being or thing of the sort named, without limitation. It held that it is abundantly clear that the word "any one" is not infrequently used to mean "every one".

114. It could be seen that the Constitution Bench, after giving the matter full and anxious consideration, came to the conclusion that the words "any one of the directors" was an

ambiguous one. It held that in some contexts, it means "only one of the directors, does not matter which one", but in other contexts, it is capable of meaning "every one of the directors". It held that which of these two meanings was intended by the legislature in any particular statutory phrase has to be decided by the courts on consideration of the context in which the words appear, and in particular, the scheme and object of the legislation.

115. After examining the scheme of the Mines Act, 1952, the Constitution Bench of this Court further observed thus:

> "But, argues Mr Pathak, one must not forget the special rule of interpretation for "penal statute" that if the language is ambiguous, the interpretation in favour of the accused should ordinarily be adopted. If you interpret "any one" in the sense suggested by him, the legislation he suggests is void and so the accused escapes. One of the two possible constructions, thus being in favour of the accused, should therefore be adopted. In our opinion, there is no substance in this contention. ***The rule of strict***

interpretation of penal statutes in favour of the accused is not of universal application, and must be considered along with other well-established rules of interpretation. We have already seen that the scheme and object of the statute makes it reasonable to think that the legislature intended to subject all the directors of a company owning coal mines to prosecution and penalties, and not one only of the directors. In the face of these considerations there is no scope here of the application of the rule for strict interpretation of penal statutes in favour of the accused.

The High Court appears to have been greatly impressed by the fact that in other statutes where the legislature wanted to make every one out of a group or a class of persons liable it used clear language expressing the intention; and that the phrase "any one" has not been used in any other statute in this country to express "every one". ***It will be unreasonable, in our opinion, to attach too much weight to this circumstance; and as for the reasons mentioned above, we think the phrase "any one of the directors" is capable of meaning "every one of the***

directors", the fact that in other statutes, different words were used to express a similar meaning is not of any significance.

We have, on all these considerations come to the conclusion that the words "any one of the directors" has been used in Section 76 to mean "every one of the directors", and that the contrary interpretation given by the High Court is not correct."

[emphasis supplied]

116. It could thus be seen that though it was sought to be argued before the Court that since the rule of strict interpretation of penal statutes in favour of the accused has to be adopted and that the word "any" was suffixed by the word "one", it has to be given restricted meaning; the Court came to the conclusion that the words "any one of the directors" used in Section 76 of the Mines Act, 1952 would mean "every one of the directors". It is further to be noted that the word "any" in the said case was suffixed by the word "one", still the Court held that the words "any one" would mean "all" and not "one". It is

to be noted that in the present case, the legislature has not employed the word "one" after the word "any". It is settled law that it has to be construed that every single word employed or not employed by the legislature has a purpose behind it.

117. On the very date on which the judgment in the case of ***The Chief Inspector of Mines and another v. Lala Karam Chand Thapar etc.*** (supra) was pronounced, the same Constitution Bench also pronounced the judgment in the case of ***Banwarilal Agarawalla*** (supra), wherein the Constitution Bench observed thus:

> "The first contention is based on an assumption that the word "any one" in Section 76 means only "one of the directors, and only one of the shareholders". This question as regards the interpretation of the word "any one" in Section 76 was raised in Criminal Appeals Nos. 98 to 106 of 1959 (Chief Inspector of Mines, etc.) and it has been decided there that the word "any one" should be interpreted there as "every one". ***Thus under Section 76 every one of the shareholders of a private company owning the mine, and every***

> ***one of the directors of a public company owning the mine is liable to prosecution. No question of violation of Article 14 therefore arises.***"
>
> *[emphasis supplied]*

118. Another Constitution Bench of this Court in the case of ***Tej Kiran Jain and others*** (supra) was considering the provisions of Article 105 of the Constitution of India and, particularly, the immunity as available to the Member of Parliament "in respect of anything said…….. in Parliament". The Constitution Bench observed thus:

> "**8.** In our judgment it is not possible to read the provisions of the article in the way suggested. The article means what it says in language which could not be plainer. The article confers immunity inter alia in respect of "anything said ... in Parliament". ***The word "anything" is of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of Parliament and in the course of the business of Parliament.*** We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business

> was being transacted, anything said during the course of that business was immune from proceedings in any Court this immunity is not only complete but is as it should be. It is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none."
>
> *[emphasis supplied]*

119. This Court held that the word "anything" is of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of Parliament and in the course of the business of Parliament. It held that, once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court.

120. This Court, in the case of ***Lucknow Development Authority*** (supra), was considering clause (o) of Section (2) of the Consumer Protection Act, 1986 which defines "service", wherein the word "any" again fell for consideration. This Court observed thus:

> "**4.** ..... The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionarily means 'one or some or all'. In *Black's Law Dictionary* it is explained thus, "word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute". The use of the word 'any' in the context it has been used in clause (*o*) indicates that it has been used in wider sense extending from one to all....."

121. This Court held that the word "any" is of wide amplitude. It means "one or some or all". Referring to Black's Law Dictionary, the Court observed that the word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one". However, the meaning which

is to be given to it would depend upon the context and the subject-matter of the statute.

122. In the case of ***K.P. Mohammed Salim*** (supra), this Court was considering the power of the Director General or Chief Commissioner or Commissioner to transfer any case from one or more assessing officers subordinate to him to any other assessing officer or assessing officers. This Court observed thus:

> "**17.** The word "any" must be read in the context of the statute and for the said purpose, it may in a situation of this nature, means all. The principles of purposive construction for the said purpose may be resorted to. (See *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia* [(2008) 3 SCC 279 : (2007) 13 SCR 598]) ***Thus, in the context of a statute, the word "any" may be read as all in the context of the Income Tax Act for which the power of transfer has been conferred upon the authorities specified under Section 127***."
>
> *[emphasis supplied]*

123. The Court again reiterated that the word "any" must be read in the context of the statute. The Court also applied the

principles of purposive construction to the term "any" to mean "all".

124. In the case of ***Raj Kumar Shivhare*** (supra), an argument was sought to be advanced that since Section 35 of the Foreign Exchange Management Act, 1999 uses the words "any decision or order", only appeals from final order could be filed. Rejecting the said contention, this Court observed thus:

> "**19.** The word "any" in this context would mean "all". We are of this opinion in view of the fact that this section confers a right of appeal on any person aggrieved. A right of appeal, it is well settled, is a creature of statute. It is never an inherent right, like that of filing a suit. A right of filing a suit, unless it is barred by statute, as it is barred here under Section 34 of FEMA, is an inherent right (see Section 9 of the Civil Procedure Code) but a right of appeal is always conferred by a statute. While conferring such right a statute may impose restrictions, like limitation or pre-deposit of penalty or it may limit the area of appeal to questions of law or sometime to substantial questions of law. Whenever such limitations are imposed, they are to be strictly followed. But in a case where

there is no limitation on the nature of order or decision to be appealed against, as in this case, the right of appeal cannot be further curtailed by this Court on the basis of an interpretative exercise.

20. Under Section 35 of FEMA, the legislature has conferred a right of appeal to a person aggrieved from "any" "order" or "decision" of the Appellate Tribunal. Of course such appeal will have to be on a question of law. In this context the word "any" would mean "all".

xxx xxx xxx

26. ***In the instant case also when a right is conferred on a person aggrieved to file appeal from "any" order or decision of the Tribunal, there is no reason, in the absence of a contrary statutory intent, to give it a restricted meaning. Therefore, in our judgment in Section 35 of FEMA, any "order" or "decision" of the Appellate Tribunal would mean all decisions or orders of the Appellate Tribunal and all such decisions or orders are, subject to limitation, appealable to the High Court on a question of law."***

[emphasis supplied]

125. While holding that the word "any" in the context would mean "all", this Court observed that a right of appeal is always conferred by a statute. It has been held that, while conferring such right, a statute may impose restrictions, like limitation or pre-deposit of penalty or it may limit the area of appeal to questions of law or sometime to substantial questions of law. It has been held that whenever such limitations are imposed, they are to be strictly followed. It has been held that in a case where there is no limitation, the right of appeal cannot be curtailed by this Court on the basis of an interpretative exercise.

126. Shri P. Chidambaram, learned Senior Counsel relied on the judgment of this Court in the case of ***Union of India v. A.B. Shah and others*** (supra). In the said case, the High Court was considering an appeal preferred by the Union of India wherein it had challenged the acquittal of the accused by the learned trial court, which was confirmed in appeal by the High Court. The learned trial court and the High Court had

held that the complaint filed was beyond limitation. This Court reversed the judgments of the learned trial court and the High Court. This Court while interpreting the expression "at any time" observed thus:

> "**12.** If we look into Conditions 3 and 6 with the object and purpose of the Act in mind, it has to be held that these conditions are not only relatable to what was required at the commencement of depillaring process, but the unstowing for the required length must exist always. ***The expression "at any time" finding place in Condition 6 has to mean, in the context in which it has been used, "at any point of time", the effect of which is that the required length must be maintained all the time.*** The accomplishment of object of the Act, one of which is safety in the mines, requires taking of such a view, especially in the backdrop of repeated mine disasters which have been taking, off and on, heavy toll of lives of the miners. **It may be pointed out that the word 'any' has a diversity of meaning and in *Black's Law Dictionary* it has been stated that this word may be employed to indicate 'all' or 'every', and its meaning will depend "upon the context and subject-matter of the statute".** A reference to what has been stated in *Stroud's Judicial*

> *Dictionary* Vol. I, is revealing inasmuch as the import of the word 'any' has been explained from pp. 145 to 153 of the 4th Edn., a perusal of which shows it has different connotations depending primarily on the subject-matter of the statute and the context of its use. A Bench of this Court in *Lucknow Development Authority* v. *M.K. Gupta* [(1994) 1 SCC 243] , gave a very wide meaning to this word finding place in Section 2(*o*) of the Consumer Protection Act, 1986 defining 'service'. (*See* para 4)"
>
> *[emphasis supplied]*

127. Shri Chidambaram rightly argued that the word "any" will have to be construed in its context, taking into consideration the scheme and the purpose of the enactment. There can be no quarrel with regard to the said proposition. Right from the judgment of the Constitution Bench of this Court in the case of ***The Chief Inspector of Mines and another v. Lala Karam Chand Thapar etc.*** (supra), the position is clear. What is the meaning which the legislature intended to give to a particular statutory provision has to be decided by the Court on a

consideration of the context in which the word(s) appear(s) and in particular, the scheme and object of the legislation.

Purposive interpretation

128. We find that for deciding the present issue, it will also be necessary to refer an important principle of interpretation of statutes i.e. of purposive interpretation.

129. "Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external *manifestations of purpose* [*Some Reflections on the Reading of Statutes*, 47 Columbia LR 527, at p. 538 (1947)]."

130. This is how Justice Frankfurter succinctly propounds the principle of purposive interpretation. It is thus necessary to cull out the legislative policy from various factors like the words in the statute, the preamble of the Act, the statement of objects

and reasons, and in a given case, even the attendant circumstances. After the legislative policy is found, then the words used in the statute must be so interpreted such that it advances the purpose of the statute and does not defeat it.

131. Francis Bennion in his treatise *Statutory Interpretation*, at page 810 described purposive construction in an equally eloquent manner as under:

> "A purposive construction of an enactment is one which gives effect to the legislative purpose by—
>
> (*a*) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or
>
> (*b*) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

132. A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a

construction which would fulfil the object and purport of the legislative intent.

133. Aharon Barak, the former President of the Supreme Court of Israel, whose exposition of "doctrine of proportionality" has found approval by the Constitution Bench of this Court in the case of ***Modern Dental College and Research Centre and Others*** (supra), to which we will refer to in the forthcoming paragraphs, in his commentary on "Purposive Interpretation in Law", has summarized 'the goal of interpretation in law' as under:

> "At some point, we need to find an Archimedean foothold, external to the text, from which to answer that question. My answer is this: The goal of interpretation in law is to achieve the objective – in other words, the purpose – of law.[56] The role of a system of interpretation in law is to choose, from among the semantic options for a given text, the meaning that best achieves the purpose of the text. Each legal text – will, contract, statute, and constitution – was chosen to achieve a social objective.

[56] **D. Brink, "Legal Theory, Legal Interpretation, and Judicial Review," 17 *Phil. And Pub. Aff.* 105, 125 (1988).**

> Achieving this objective, achieving this purpose, is the goal of interpretation. The system of interpretation is the device and the means. It is a tool through which law achieves self-realization. In interpreting a given text, which is, after all, what interpretation in law does, a system of interpretation must guarantee that the purpose of the norm trapped in the – in our terminology, the purpose of the text – will be achieved in the best way. Hence the requirement that the system of interpretation be a rational activity. A coin toss will not do. This is also the rationale – which is at the core of my own views – for the belief that purposive interpretation is the most proper system of interpretation. This system is proper because it guarantees the achievement of the purpose of law. There is social, jurisprudential, hermeneutical, and constitutional support for my claim that the proper criterion for interpretation is the search for law's purpose, and that purposive interpretation best fulfills that criterion. A comparative look at the law supports it, as well. I will discuss each element of that support below."

134. The learned Judge emphasized that purposive interpretation is the most proper system of interpretation. He observed that this system is proper because it guarantees the

achievement of the purpose of law. The proper criterion for interpretation is the search for law's purpose, and that purposive interpretation best fulfills that criterion.

135. The principle of purposive interpretation has also been expounded through a catena of judgments of this Court. A Constitution Bench of this Court in the case of ***M. Pentiah and others v. Muddala Veeramallappa and others***[57] was considering a question, as to whether the term prescribed in Section 34 would apply to a member of a "deemed" committee under the provisions of the Hyderabad District Municipalities Act, 1956. An argument was put forth that, upon a correct interpretation of the provisions of Section 16, the same would be permissible. Rejecting the said argument, K. Subba Rao, J, observed thus:

> "Before we consider this argument in some detail, it will be convenient at this stage to notice some of the well established rules of Construction which would help us to steer clear of the

[57] **(1961) 2 SCR 295**

complications created by the Act. *Maxwell on the Interpretation of Statutes*, 10th Edn., says at p. 7 thus:

> "… if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result".

It is said in *Craies on Statute Law*, 5th Edn., at p. 82—

> "Manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly to be avoided."

Lord Davey in *Canada Sugar Refining Co.* v. *R.* [(1898) AC 735] provides another useful guide of correct perspective to such a problem in the following words:

> "Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of

statutes relating to the subject-matter.""

136. A.K. Sarkar, J. in his concurring opinion observed thus:

"There is no doubt that the Act raises some difficulty. It was certainly not intended that the members elected to the Committee under the repealed Act should be given a permanent tenure of office nor that there would be no elections under the new Act. Yet such a result would appear to follow if the language used in the new Act is strictly and literally interpreted. ***It is however well established that "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or in justice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence....Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.*** Nevertheless, the courts

are very reluctant to substitute words in a Statute, or to add words to it, and it has been said that they will only do so where there is a repugnancy to good Sense.": see *Maxwell on Statutes* (10th Edn.) p. 229. In *Seaford Court Estates Ltd.* v. *Asher* [(1949) 2 AER 155, 164] , Denning, L.J. said:

> "when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament … and then he must supplement the written word so as to give "force and life" to the intention of the legislature …. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.""

[emphasis supplied]

137. Another Constitution Bench Judgment of this Court in the case of ***Chief Justice of Andhra Pradesh and others v.***

L.V.A. Dixitulu and others[58] reiterated the position in the following words:

> "**67.** Where two alternative constructions are possible, the court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. ....."

138. In the case of ***M/s Girdhari Lal and Sons v. Balbir Nath Mathur and others***[59], O. Chinnappa Reddy, J. explained the position as under:

> "**9.** So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the

[58] **(1979) 2 SCC 34**
[59] **(1986) 2 SCC 237**

court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary."

139. After referring to various earlier judgments of other jurisdictions, His Lordship observed thus:

"**16.** ***Our own court has generally taken the view that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities,*** vide *K.P. Varghese* v. *ITO* [(1981) 4 SCC 173 : 1981 SCC (Tax) 293] , *State Bank of Travancore* v. *Mohd. M. Khan* [(1981) 4 SCC 82] , *Som Prakash Rekhi* v. *Union of*

> *India* [(1981) 1 SCC 449 : 1981 SCC (L&S) 200] , *Ravula Subba Rao* v. *CIT* [AIR 1956 SC 604 : 1956 SCR 577] , *Govindlal* v. *Agricultural Produce Market Committee* [(1975) 2 SCC 482 : AIR 1976 SC 263 : (1976) 1 SCR 451] and *Babaji Kondaji* v. *Nasik Merchants Coop. Bank Ltd.* [(1984) 2 SCC 50]"
>
> *[emphasis supplied]*

140. M.N. Venkatachaliah, J. speaking for the Constitution Bench of this Court in the case of ***Tinsukhia Electric Supply Co. Ltd. v. State of Assam and others***[60] observed thus:

> "**118.** The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle "*ut res magis valeat quam pereat*". It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in

[60] **(1989) 3 SCC 709**

order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.* [(1904) 2 Ch 352 : 16 TLR 429 : 83 LT 274] Farwell J. said: (pp. 360-61)

> "Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty."

119. In *Fawcett Properties Ltd.* v. *Buckingham County Council* [(1960) 3 All ER 503] Lord Denning approving the dictum of Farwell, J., said:(All ER p. 516)

> "But when a Statute has some meaning, even though it is obscure, or several meanings, even though there is little to choose between them, the courts have to say what meaning the statute to bear rather than reject it as a nullity."

120. It is, therefore, the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and the nothing short of impossibility should allow a

court to declare a statute unworkable. In *Whitney* v. *IRC* [1926 AC 37] Lord Dunedin said: (AC p. 52)

> "A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.""

141. In the case of ***State of Gujarat and another v. Justice R.A. Mehta (Retired) and others***[61], this Court held as under:

> "**98.** The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. ***The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context of the statute. Construction given by the court must promote the object of the***

[61] **(2013) 13 SCC 1**

statute and serve the purpose for which it has been enacted and not efface its very purpose. "The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative." ***The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out.*** A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter and the obvious intention of the legislature does not stand defeated unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and "to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*". The court must give effect to the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide *M. Pentiah* v. *Muddala Veeramallappa* [AIR

1961 SC 1107] , *S.P. Jain* v. *Krishna Mohan Gupta* [(1987) 1 SCC 191 : AIR 1987 SC 222] , *RBI* v. *Peerless General Finance and Investment Co. Ltd.* [(1987) 1 SCC 424 : AIR 1987 SC 1023] , *Tinsukhia Electric Supply Co. Ltd.* v. *State of Assam* [(1989) 3 SCC 709 : AIR 1990 SC 123] , SCC p. 754, para 118, *UCO Bank* v. *Rajinder Lal Capoor* [(2008) 5 SCC 257 : (2008) 2 SCC (L&S) 263] and *Grid Corpn. of Orissa Ltd.* v. *Eastern Metals and Ferro Alloys* [(2011) 11 SCC 334].)"

[emphasis supplied]

142. The principle of purposive construction has been enunciated in various subsequent judgments of this Court. However, we would not like to burden this judgment with a plethora of citations. Suffice it to say, the law on the issue is very well crystalized.

143. It is thus clear that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or

confusion, or friction, or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed. The primary and foremost task of the Court in interpreting a statute is to gather the intention of the legislature, actual or imputed. Having ascertained the intention, it is the duty of the Court to strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. Ascertainment of legislative intent is the basic rule of statutory construction.

Construction of sub-section (2) of Section 26 of the RBI Act.

144. Applying the aforesaid pronouncements on the construction of the term "any" and the principle of purposive construction, we will now consider the scope of the term "any" used in sub-section (2) of Section 26 of the RBI Act.

145. Sub-section (2) of Section 26 of the RBI Act empowers the Central Government to issue a notification in the Gazette of India thereby declaring that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender. It further provides that such an action has to be taken by the Central Government on the recommendation of the Central Board.

146. As already discussed herein above, the RBI Act is a special Act, vesting all the powers and functions with regard to monetary policy and all matters pertaining to management and regulation of currency with the RBI. The Central Government

is required to take its decision on the basis of the recommendation of the Central Board.

147. It could thus be seen that power is vested with the Central Government and that power has to be exercised on the recommendation of the RBI. Both sides agree that RBI plays a unique role in the matter of monetary policy and issuance of currency. The Central Government is empowered under sub-section (2) of Section 26 of the RBI Act to notify any series of bank notes of any denomination to cease to be a legal tender. The effect of such a notification would be that the liabilities as provided under Section 34 of the RBI Act and the guarantee as provided under sub-section (1) of Section 26 of the RBI Act shall cease to have effect on such notification being issued thereby demonetizing the bank notes.

148. As already discussed herein above, the RBI Act has been enacted to regulate the issue of bank notes and generally to operate the currency and credit system of the country. Section

3 of the RBI Act provides that the RBI has been constituted for the purposes of taking over the management of the currency from the Central Government and carrying on the business of banking in accordance with the provisions of the RBI Act. Sub-section (1) of Section 22 of the RBI Act provides that the RBI shall have the sole right to issue bank notes in India. However, for a period which is to be fixed by the Central Government on the recommendation of the Central Board, it can issue currency notes of the Government of India supplied to it by the Central Government. Further, sub-section (2) of Section 22 of the RBI Act specifically prohibits the Central Government from issuing any currency notes on and from the date on which Chapter III of the RBI Act comes into effect.

149. It can thus clearly be seen that a primary and very important role is assigned to the RBI in the matter of issuance of bank notes. As held by this Court in the case ***Peerless General Finance and Investment Co. Limited and another*** (supra), the RBI has a large contingent of expert advice

available to it. The Central Government would exercise its power on the recommendation of the Central Board. When the legislature itself has provided that the Central Government would take a decision after considering the recommendation of the Central Board of the RBI, which has been assigned a primary role in matters with regard to monetary policy and management and regulation of currency, we are of the view that the legislature could not have intended to give a restricted power under sub-section (2) of Section 26 of the RBI Act. In any case, if the argument that the provisions of sub-section (2) of Section 26 of the RBI Act have to be interpreted in a restricted manner, is to be accepted, it may, at times, lead to an anomalous situation.

150. For example, if there are 20 series of a particular denomination, and if the argument of the petitioners is to be accepted, the Central Government would be empowered to demonetize 19 series of a particular denomination, leaving one

series of the said denomination to continue to be a legal tender, which would lead to a chaotic situation.

151. As discussed hereinabove, the policy underlining the provisions of Section 26 of the RBI Act is to enable the Central Government on the recommendation of the Central Board, to effect demonetization. The same can be done in respect of any series of bank notes of any denomination. The legislative policy is with regard to management and regulation of currency. Demonetization of notes would certainly be a part of management and regulation of currency. The legislature has empowered the Central Government to exercise such a power. The Central Government may take recourse to such a power when it finds necessary to do so taking into consideration myriad factors. No doubt that such factors must have reasonable nexus with the object sought to be achieved. If the Central Government finds that fake notes of a particular denomination are widely in circulation or that they are being used to promote terrorism, can it be said, for instance, that out

of 20 series of bank notes of a particular denomination, it can demonetize only 19 series of bank notes but not all 20 series? In our view, this will result in nothing else but absurdity and the very purpose for which the power is vested shall stand frustrated. An interpretation which, in effect, nullifies the purpose for which a power is to be exercised, in our view, would be opposed to the principle of purposive interpretation. Such an interpretation, in our view, rather than advancing the object of the enactment, would defeat the same.

152. Another line of argument that is sought to be advanced with regard to the submission that the power under sub-section (2) of Section 26 of the RBI Act has to be construed to restricting it to "one" or "some" series of bank notes, is that the Parliament also meant the same inasmuch as on earlier two occasions i.e. in 1946 and 1978 the demonetization exercise in respect of "all" series was done by resorting to plenary legislations. Shri Chidambaram has taken us through various volumes of the history of the RBI. Perusal of Volume I thereof

would reveal that, in 1946, it is not known when the Government Authorities started thinking on the demonetization measure, but the final consultation could take place with the Governor and Deputy Governor. It appears that the RBI authorities were not enthusiastic about the scheme. It appears that in spite of the opposition by the then Governor of the RBI, Shri C.D. Deshmukh, the Government went ahead with the scheme and issued an ordinance on 12th January 1946.

153. Further, perusal of Volume III would reveal that the then Governor I.G. Patel was not in favour of the demonetization scheme of 1978. However, in spite of the opposition of the Governor of the RBI, the Government went ahead with the demonetization scheme and issued an ordinance in the early hours of 16th January 1978 and the news was announced on All India Radio's news bulletin at 9 am on the same day.

154. It could thus be seen that on earlier two occasions, since the RBI was not in favour of the demonetization, the Government resorted to promulgating ordinances for the said purpose.

155. It is to be noted that after the ordinance of 1946 was promulgated, the RBI Act was amended vide Act No.62 of 1956 and Section 26A was added, thereby specifically providing that no bank note of the denominational value of Rs.500/-, Rs. 1,000/- and Rs.10,000/- issued before the 13th day of January 1946 shall be legal tender in payment or on account for the amount expressed therein.

156. After the ordinance was issued on 16th January 1978, the same transformed into an Act of Parliament upon the President of India giving his assent to the Act on 30th March 1978.

157. Merely because on earlier two occasions the Government decided to take recourse to plenary power of legislation, this, by itself, cannot be a ground to give a restricted meaning to the

word “any” in sub-section (2) of Section 26 of the RBI Act. As already discussed herein above, in our considered view, the legislative intent could not have been to give a restricted meaning to the word “any” in sub-section (2) of Section 26 of the RBI Act.

158. We are, therefore, unable to accept the contention that the word “any” has to be given a restricted meaning taking into consideration the overall scheme, purpose and the object of the RBI Act and also the context in which the power is to be exercised. We find that the word “any” would mean “all” under sub-section (2) of Section 26 of the RBI Act.

ISSUE NO. (ii): IN THE EVENT IT IS HELD THAT THE POWER UNDER SUB-SECTION (2) OF SECTION 26 OF THE RBI ACT IS CONSTRUED TO MEAN THAT IT CAN BE EXERCISED IN RESPECT OF “ALL” SERIES OF BANK NOTES, WHETHER THE POWER VESTED WITH THE CENTRAL GOVERNMENT UNDER THE SAID SUB-SECTION

WOULD AMOUNT TO CONFERRING EXCESSIVE DELEGATION AND AS SUCH, LIABLE TO BE STRUCK DOWN?

159. The second limb of argument on behalf of the petitioners is that, if the word "any" used in sub-section (2) of Section 26 of the RBI Act is not given a restricted meaning, then sub-section (2) of Section 26 of the RBI Act will have to be held invalid on the ground that it confers excessive delegation upon the Central Government.

160. It is submitted that sub-section (2) of Section 26 of the RBI Act vests uncanalised, unguided and arbitrary powers in the Central Government and as such, on this ground alone, the said provision is liable to be struck down.

161. Shri P. Chidambaram, learned Senior Counsel has relied on the Constitution Bench judgment of this Court in the case of ***Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and another*** (supra) to buttress his submissions.

Precedents considering delegated legislation

162. In the case of ***Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and another*** (supra), the Constitution Bench of this Court while considering the validity of clause (d) of Section 3 of the Drug and Magic Remedies (Objectionable Advertisement) Act, (21 of 1954) observed thus:

> "**33.** The interdiction under the Act is applicable to conditions and diseases set out in the various clauses of Section 3 and to those that may under the last part of clause (*d*) be specified in the Rules made under Section 16. The first sub-section of Section 16 authorises the making of rules to carry out the purposes of the Act and clause (*a*) of sub-section (2) of that section specifically authorises the specification of diseases or conditions to which the provisions of Section 3 shall apply. It is the first sub-section of Section 16 which confers the general rule-making power i.e. it delegates to the administrative authority the power to frame rules and regulations to subserve the object and purpose of the Act. Clause (*a*) of the second sub-section is merely illustrative of the power given under the first sub-section; *King-Emperor* v. *Sibnath*

Banerji [(1945) LR 72 IA 241] . Therefore, sub-section 2(*a*) also has the same object as sub-section (1) i.e. to carry out the purposes of the Act. Consequently, when the rule-making authority specifies conditions and diseases in the Schedule it exercises the same delegated authority as it does when it exercises powers under sub-section (1) and makes other rules and therefore it is delegated legislation. ***The question for decision then is, is the delegation constitutional in that the administrative authority has been supplied with proper guidance. In our view the words impugned are vague. Parliament has established no criteria, no standards and has not prescribed any principle on which a particular disease or condition is to be specified in the Schedule.*** It is not stated what facts or circumstances are to be taken into consideration to include a particular condition or disease. The power of specifying diseases and conditions as given in Section 3(*d*) must therefore be held to be going beyond permissible boundaries of valid delegation. As a consequence the Schedule in the rules must be struck down. But that would not affect such conditions and diseases which properly fall within the four clauses of Section 3

> excluding the portion of clause (*d*) which has been declared to be unconstitutional. In the view we have taken it is unnecessary to consider the applicability of *Baxter* v. *Ah Way* [(1957) SCR 604]."

163. In the said case, this Court found that sub-section (1) of Section 16 conferred a power on the Central Government to make rules for carrying out the purposes of the Act. The Court further found that, it is the first sub-section of Section 16 which confers the general rule-making power i.e. it delegates to the administrative authority the power to frame rules and regulations to subserve the object and purpose of the Act. The Court found that the question, therefore, was, as to whether the delegation to the administrative authority without supplying proper guidance was constitutional or not. The Court held that the words impugned were vague and Parliament had established no criteria, no standards and had not prescribed any principle on which a particular disease or condition was to be specified in the Schedule. The Court,

therefore, held clause (d) of Section 3 to be amounting to excessive delegation and as such unconstitutional.

164. In the case of ***Harakchand Ratanchand Banthia and others*** (supra), the Constitution Bench of this Court was considering the power given to the Administrator under the Gold (Control) Act, 1968. Section 5 of the Gold (Control) Act, 1968, which confers power on the Administrator to issue directions and orders, fell for consideration, which read thus:

> "5. Power of Administrator issue directions and orders.-- (1) The Administrator may, if he thinks fit, make orders, not inconsistent with the provisions of this Act, for carrying out the provisions of this Act.
>
> (2) The Administrator may, so far as it appears to him to be necessary or expedient for carrying out the provisions of this Act, by order—
>
> (*a*) regulate, ***after consultation with the Reserve Bank of India***, the price at which any gold may be bought or sold, and
>
> (*b*) regulate by licences, permits or otherwise, the manufacture, distribution, transport, acquisition, possession,

transfer, disposal, use or consumption of gold."

[emphasis supplied]

165. It can be seen that under clause (b) sub-section (2) of Section 5 of the Gold (Control) Act, 1968, the Administrator was conferred with the power to regulate by licences, permits or otherwise, the manufacture, distribution, transport, acquisition, possession, transfer, disposal, use or consumption of gold. In this premise, this Court observed thus:

> "**20.** It is manifest upon a review of all these provisions that ***the power conferred upon the Administrator under Section 5(2)(b) is legislative in character and extremely wide. A parallel power of subordinate legislation is conferred to the Central Government under Section 114(1) and (2) of the Act. But Section 114(3) however makes it incumbent upon the Central Government to place the Rules before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions.*** It is clear that the substantive provisions of the Act namely Sections 8, 11, 21, 31(3), 34(3) confer powers on the

> Administrator similar to those contemplated by Section 5(2)(*b*) of the Act. ***In these circumstances we are of opinion that the power of regulation granted to the Administrator under Section 5(2)(b) of the Act suffers from excessive delegation of legislative power and must be held to be constitutionally invalid.***"
>
> *[emphasis supplied]*

166. This Court in the case of ***Harakchand Ratanchand Banthia and others*** (supra), therefore, was considering the delegation of power to the Administrator under clause (b) of sub-section (2) of Section 5 of the Gold (Control) Act, 1968. The Court found that a parallel power of subordinate legislation was conferred to the Central Government under Section 114(1) and (2) of the said Act. However, under sub-section (3) of Section 114 of the said Act it is incumbent upon the Central Government to place the Rules before each House of Parliament. This Court further held that the substantive provisions of the Act namely Sections 8, 11, 21, 31(3) and 34(3) of the said Act also confer powers on the Administrator which

was similar to the one contemplated by Section 5(2)(b) of the said Act. In these circumstances, the Court held that the power of regulation granted to the Administrator under Section 5(2)(b) of the said Act suffers from excessive delegation and as such unconstitutional.

167. It could thus be seen that clause (b) of sub-section (2) of Section 5 of the Gold (Control) Act, 1968 conferred a power on the Administrator which was legislative in nature, to regulate the transactions with regard to use and consumption of gold.

168. It is to be noted that clause (a) of sub-section (2) of Section 5 of the Gold (Control) Act, 1968 also empowered the Administrator to regulate, ***after consultation with the RBI***, the price at which any gold may be bought or sold. It was also argued before the Court that the said provision is also invalid amounting to excessive delegation inasmuch as the power conferred was unguided. This Court specifically rejected the

said contention. It will be apposite to refer to the following observations of this Court:

> ".....As the power to fix the price may also be exercised not only in respect of primary gold but also in respect of articles and ornaments the business of the petitioners and similarly other persons will be adversely affected. ***But the section provides the safeguard that the regulation of the price should be made by the Administrator after consultation with the Reserve Bank of India.*** It was argued that the phrase "so far as it appears to him to be necessary or expedient for carrying out the provisions of this Act" was a subjective formula and action of the Administrator in making the orders under Section 5 (2)(*a*) may be arbitrary and unreasonable. But in our opinion the formula is not subjective and does not constitute the Administrator the sole judge as to what is in fact necessary or expedient for the purposes of the Act. On the contrary we hold that in the context of the scheme and object of the legislation as a whole the expression cannot be construed in a subjective sense and the opinion of the Administrator as to the necessity or expediency of making the order must be reached objectively after having regard to the relevant considerations and must be

> reasonably tenable in a court of law. It must be assumed that the Administrator will generally address himself to the circumstances of the situation before him and not try to promote purposes alien to the object of the Act…."
>
> *[emphasis supplied]*

169. It is thus clear that though the Court found the power under Section 5(2)(b) of the Gold (Control) Act, 1968 suffered from excessive delegation and, therefore, constitutionally invalid; it, however, categorically rejected the contention insofar as Section 5(2)(a) of the Gold (Control) Act, 1968 is concerned, inasmuch as it provided a safeguard that the regulation of the price should be made by the Administrator after consultation with the RBI.

170. This Court rejected the argument that the phrase "so far as it appears to him to be necessary or expedient for carrying out the provisions of this Act" was a subjective formula and as such, the action of the Administrator under Section 5(2)(*a*) was arbitrary and unreasonable. Rejecting the said contention, the

Court held that in the context of the scheme and object of the legislation as a whole, the expression cannot be construed in a subjective sense and the opinion of the Administrator as to the necessity or expediency of making the order must be reached objectively after having regard to the relevant considerations and must be reasonably tenable in a court of law.

171. It could thus be seen that though the Court found the power under Section 5(2)(b) of the Gold (Control) Act, 1968 to be invalid on the ground of excessive delegation, yet it found the power under Section 5(2)(a) of the Gold (Control) Act, 1968 to be valid since it provides an inbuilt safeguard that the Administrator has to act after consultation with the RBI.

172. A Seven-Judge Bench of this Court in the case of ***Birla Cotton, Spinning and Weaving Mills Delhi*** (supra) was considering the validity of Section 150 of the Delhi Municipal Corporation Act, 1957, which reads thus:

"**150. Imposition of other taxes.**

(1) The Corporation may, at a meeting, pass a resolution for the levy of any of the taxes specified in sub-section (2) of Section 113, defining the maximum rate of the tax to be levied, the class or classes of persons or the description or descriptions of articles and properties to be taxed, the system of assessment to be adopted and the exemptions, if any, to be granted.

(2) Any resolution passed under sub-section (1) shall be submitted to the Central Government for its sanction, and if sanctioned by that Government, shall come into force on and from such date as may be specified in the order of sanction.

(3) After a resolution has come into force under sub-section (2), the Corporation may, subject to the maximum rate, pass a second resolution determining the actual rates at which the tax shall be leviable; and the tax shall come into force on the first day of the quarter of the year next following the date on which such second resolution is passed.

(4) After a tax has been levied in accordance with the foregoing provisions of this section, the provisions of sub-

> section (2) of Section 109, shall apply in relation to such tax as they apply in relation to any tax imposed under sub-section (1) of Section 113."

173. It was sought to be argued that Section 150(1) delegates completely unguided power to the Corporation in the matter of optional taxes and suffers from the vice of excessive delegation and, therefore, is unconstitutional.

174. This Court after considering various earlier cases including ***Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and another*** (supra) observed thus:

> "A review of these authorities therefore leads to the conclusion that so far as this Court is concerned the principle is well established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The legislature must retain in its own hands the essential legislative

functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. ***What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation.***

What form the guidance should take is again a matter which cannot be stated in general terms. It will depend upon the circumstances of each statute under consideration; in some cases guidance in broad general terms may be enough; in other cases more detailed guidance may be necessary."

[emphasis supplied]

175. K.N. Wanchoo, CJ, speaking for himself and J.M. Shelat, J. held that where the legislative policy is enunciated with sufficient clarity or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal, including its preamble. They further held that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation. The Court further held that what form the guidance should take is again a matter which cannot be stated in general terms. It will depend upon the circumstances of each statute under consideration. It further held that in some cases guidance in broad general terms may be enough, in other cases more detailed guidance may be necessary.

176. The Court further observed thus:

> "***The first circumstance which must be taken into account in this connection is that the delegation has been made to an elected body responsible to the people including those who pay taxes. The councillors have to go for election every four years. This means that if they have behaved unreasonably and the inhabitants of the area so consider it they can be thrown out at the ensuing elections. This is in our opinion a great check on the elected councillors acting unreasonably and fixing unreasonable rates of taxation. This is a democratic method of bringing to book the elected representatives who act unreasonably in such matters....***"
>
> *[emphasis supplied]*

177. It was thus found that the delegation was made to an elected body responsible to the people including those who pay taxes. It has been observed that if the councillors behave unreasonably and the inhabitants of the area so consider it, they can be thrown out at the ensuing elections. As such, there is a great check on the elected councillors acting unreasonably and fixing unreasonable rates of taxation. This is a democratic

method of bringing to book the elected representatives who act unreasonably in such matters.

178. The Court further found that another guide or control on the limit of taxation is to be found in the purposes of the Act. After careful consideration of the various provisions of the Delhi Municipal Corporation Act, 1957, the Court held that the power conferred by Section 150 thereof on the Corporation is not unguided and cannot be said to be amounting to excessive delegation.

179. It will also be apposite to refer to the concurring judgment of S.M. Sikri, J., wherein he observed thus:

> "But assuming I am bound by authorities of this Court to rest the validity of Section 113(2)(*d*) and Section 150 of the Act by ascertaining whether a guide or policy exists in the Act, ***I find adequate guide or policy in the expression "purposes of the Act" in Section 113. The Act has pointed out the objectives or the results to be achieved and taxation can be levied only for the purpose of achieving the objectives or the results.*** This, in my

> view, is sufficient guidance especially to a self-governing body like the Delhi Municipal Corporation. It is not necessary to rely on the safeguards mentioned by the learned Chief Justice to sustain the delegation."
>
> *[emphasis supplied]*

180. S.M. Sikri, J. in his concurring judgment also held that he found adequate guide or policy in the expression "purposes of the Act" in Section 113. He observed that the Act has pointed out the objectives or the results to be achieved and taxation can be levied only for the purpose of achieving the objectives or the results. In the view of His Lordship, this was sufficient guidance especially to a self-governing body like the Delhi Municipal Corporation.

181. It will also be apposite to refer to the following observations of M. Hidayatullah, J., in his concurring judgment:

> ".....The question always is whether the legislative will has been exercised or not. ***Once it is established that the legislature itself has willed that a***

> ***particular thing be done and has merely left the execution of it to a chosen instrumentality (provided that it has not parted with its control) there can be no question of excessive delegation. If the delegate acts contrary to the wishes of the legislature the legislature can undo what the delegate has done.*** Even the courts, as we shall show presently, may be asked to intervene when the delegate exceeds its powers and functions….."
>
> "To insist that the legislature should provide for every matter connected with municipal taxation would make municipalities mere tax collecting departments of the Government and not self-governing bodies which they are intended to be. The Government might as well collect the taxes and make them available to the municipalities. That is not a correct reading of the history of Municipal Corporations and other self-governing institutions in our country."
>
> *[emphasis supplied]*

182. Observing thus, M. Hidayatullah, J. also rejected the contention that provisions of Section 150 suffer from excessive delegation. His Lordship has observed that once it is established that the legislature itself has willed that a

particular thing be done and has merely left the execution of it to a chosen instrumentality, there can be no question of excessive delegation. This is, however, subject to the proviso that the legislature has not parted with its control. It is observed that if the delegatee acts contrary to the wishes of the legislature the legislature can undo what the delegate has done.

183. Another Constitution Bench of this Court in the case of ***Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.*** (supra) was considering the validity of Section 8(2)(b) of the Central Sales Tax Act, 1956 on the ground that it suffered from the vice of excessive delegation. In the said case, H.R. Khanna, J., speaking for the majority, after surveying the earlier judgments of this Court including that in the case of ***Birla Cotton, Spinning and Weaving Mills Delhi*** (supra), observed thus:

> "**13.** It may be stated at the outset that the growth of the legislative powers of the Executive is a significant development of the twentieth century. The theory of *laissezfaire* has been given a go-by and large and comprehensive powers are being assumed by the State

with a view to improve social and economic well-being of the people. ***Most of the modern socio-economic legislations passed by the Legislature lay down the guiding principles and the legislative policy. The Legislatures because of limitation imposed upon by the time factor hardly go into matters of detail. Provision is, therefore, made for delegated legislation to obtain flexibility, elasticity, expedition and opportunity for experimentation.*** The practice of empowering the Executive to make subordinate legislation within a prescribed sphere has evolved out of practical necessity and pragmatic needs of a modern welfare State. ***At the same time it has to be borne in mind that our Constitution-makers have entrusted the power of legislation to the representatives of the people, so that the said power may be exercised not only in the name of the people but also by the people speaking through their representatives.*** The role against excessive delegation of legislative authority flows from and is a necessary postulate of the sovereignty of the people. The rule contemplates that it is not permissible to substitute in the matter of legislative policy the views of individual officers or other authorities, however competent they may be, for that

of the popular will as expressed by the representatives of the people."

[emphasis supplied]

184. The Court observed that the growth of the legislative powers of the Executive is a significant development of the twentieth century. The theory of *laissez faire* has been given a go-by and large and comprehensive powers are being assumed by the State with a view to improve social and economic well-being of the people. It has been held that most of the modern socio-economic legislations passed by the Legislature lay down the guiding principles and the legislative policy. It is not possible for the Legislatures to go into matters of detail. Therefore, a provision has been made for delegated legislation to obtain flexibility, elasticity, expedition and opportunity for experimentation. It has been held that the practice of empowering the Executive to make subordinate legislation within a prescribed sphere has evolved out of practical necessity and pragmatic needs of a modern welfare State. It has been observed that the role against excessive delegation of

legislative authority flows from and is a necessary postulate of the sovereignty of the people. It has been held that the rule contemplates that it is not permissible to substitute in the matter of legislative policy the views of individual officers or other authorities, however competent they may be, for that of the popular will as expressed by the representatives of the people.

185. It has further been observed thus:

> "**15.** The Constitution, as observed by this Court in the case of *Devi Das Gopal Krishnan* v. *State of Punjab* [AIR 1967 SC 1895 : (1967) 3 SCJ 557 : (1967) 20 STC 430] confers a power and imposes a duty on the Legislature to make laws. ***The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the Executive or any other agency.*** But

there is danger inherent in such a process of delegation. An over-burdened Legislature or one controlled by a powerful Executive may unduly overstep the limits of delegation. ***It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the Executive; it may confer an arbitrary power on the Executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation.*** This self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. ***It is for a court to hold on a fair, generous and liberal construction of an impugned statute whether the Legislature exceeded such limits.***"

[emphasis supplied]

186. It has been held that the essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. The Legislature cannot abdicate its functions in favour of another. However, in view of the multifarious activities of a welfare State, it cannot presumably work out all

the details to suit the varying aspects of a complex situation. It must, therefore, necessarily delegate the working out of details to the Executive or any other agency. The Court also cautions about the danger inherent in the process of delegation. It observed that an over-burdened Legislature or one controlled by a powerful Executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the Executive; it may confer an arbitrary power on the Executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. It has been held that it is for the Court to hold on a fair, generous and liberal construction of an impugned statute to examine whether the Legislature exceeded such limits.

187. We may gainfully refer to the following observations in the concurring judgment of K.K. Mathew, J.:

"**57.** Delegation of "law-making" power, it has been said, is the dynamo of modern Government. Delegation by the Legislature is necessary in order that the exertion of legislative power does not become a futility. ***Today, while theory still affirms legislative supremacy, we see power flowing back increasingly to the Executive. Departure from the traditional rationalization of the status quo arouses distrust.*** The Legislature comprises a broader cross-section of interests than any one administrative organ; it is less likely to be captured by particular interests. ***We must not, therefore, lightly say that there can be a transfer of legislative power under the guise of delegation which would tantamount to abdication. At the same time, we must be aware of the practical reality, and that is, that Parliament cannot go into the details of all legislative matters.*** The doctrine of abdication expresses a fundamental democratic concept but at the same time we should not insist that law-making as such is the exclusive province of the Legislature. The aim of Government is to gain acceptance for objectives demonstrated as desirable and to realise them as fully as possible. The making of law is only a means to achieve a purpose. It is not an end in itself. That end can be attained by the Legislature

making the law. ***But many topics or subjects of legislation are such that they require expertise, technical knowledge and a degree of adaptability to changing situations which Parliament might not possess and, therefore, this end is better secured by extensive delegation of legislative power. The legislative process would frequently bog down if a Legislature were required to appraise beforehand the myriad situations to which it wishes a particular policy to be applied and to formulate specific rules for each situation.*** The presence of Henry VIII clause in many of the statutes is a pointer to the necessity of extensive delegation. ***The hunt by Court for legislative policy or guidance in the crevices of a statute or the nook and cranny of its preamble is not an edifying spectacle.*** It is not clear what difference does it make in principle by saying that since the delegation is to a representative body, that would be a guarantee that the delegate will not exercise the power unreasonably, for, if ex hypothesi the Legislature must perform the essential legislative function, it is certainly no consolation that the body to which the function has been delegated has a representative character. ***In other words, if, no guidance is provided or policy laid down, the fact***

that the delegate has a representative character could make no difference in principle."

[emphasis supplied]

188. Though the learned Judge cautions against abdication under the guise of delegation, he also emphasizes a necessity to be aware about the practical reality, i.e. Parliament cannot go into the details of all legislative matters. The learned Judge observed that the aim of Government is to gain acceptance for objectives demonstrated as desirable and to realise them as fully as possible. The learned Judge observed that there are many topics or subjects of legislation which are such that they may require expertise, technical knowledge and a degree of adaptability to changing situations which Parliament might not possess and, therefore, this end is better secured by extensive delegation of legislative power. It has been held that the legislative process would frequently bog down if a Legislature were required to appraise beforehand the myriad situations to which it wishes a particular policy to be applied and to

formulate specific rules for each situation. The Court further emphasized for a guidance for the delegate to exercise the delegated power.

189. This Court, in the case of ***The Registrar of Co-operative Societies, Trivandrum and another v. K. Kunjabmu and others*** (supra), while reversing the judgment of the Kerala High Court, which had held Section 60 of the Madras Co-operative Societies Act, 1932 to be unconstitutional on the ground of vice of excessive delegation, observed thus:

> "**3.** ....***Executive activity in the field of delegated or subordinate legislation has increased in direct, geometric progression. It has to be and it is as it should be. Parliament and the State Legislatures are not bodies of experts or specialists***. They are skilled in the art of discovering the aspirations, the expectations and the needs, the limits to the patience and the acquiescence and the articulation of the views of the people whom they represent. ***They function best when they concern themselves with general principles, broad objectives and fundamental issues instead of technical and***

situational intricacies which are better left to better equipped full time expert executive bodies and specialist public servants. Parliament and the State Legislatures have neither the time nor the expertise to be involved in detail and circumstance. ***Nor can Parliament and the State Legislatures visualise and provide for new, strange, unforeseen and unpredictable situations arising from the complexity of modern life and the ingenuity of modern man.*** That is the raison d'etre for delegated legislation. That is what makes delegated legislation inevitable and indispensable. The Indian Parliament and the State Legislatures are endowed with plenary power to legislate upon any of the subjects entrusted to them by the Constitution, subject to the limitations imposed by the Constitution itself. The power to legislate carries with it the power to delegate. But excessive delegation may amount to abdication. Delegation unlimited may invite despotism uninhibited. So the theory has been evolved that the legislature cannot delegate its essential legislative function. ***Legislate it must by laying down policy and principle and delegate it may to fill in detail and carry out policy. The legislature may guide the delegate by speaking through the express provision empowering delegation or the other***

> ***provisions of the statute, the preamble, the scheme or even the very subject-matter of the statute. If guidance there is, wherever it may be found, the delegation is valid.*** A good deal of latitude has been held to be permissible in the case of taxing statutes and on the same principle a generous degree of latitude must be permissible in the case of welfare legislation, particularly those statutes which are designed to further the Directive Principles of State Policy."
>
> *[emphasis supplied]*

190. This Court has observed that the executive activity in the field of delegated or subordinate legislation has increased in direct, geometric progression. The Court observed that Parliament and the State Legislatures are not bodies of experts or specialists. It is observed that the legislative bodies function best when they concern themselves with general principles, broad objectives and fundamental issues instead of technical and situational intricacies which are better left to better equipped full time expert executive bodies and specialist public servants. It has been held that Parliament and the State

Legislatures cannot visualize and provide for new, strange, unforeseen and unpredictable situations arising from the complexity of modern life and the ingenuity of modern man. It has been further reiterated that guidance could be found from various factors and once it is found, the delegation is valid. It has been held that a good deal of latitude has to be held to be permissible in the case of taxing statutes and welfare legislations.

191. This Court in the case of ***Ramesh Birch and others*** (supra) again, after referring to the earlier judgments and after considering the views expressed by various learned Judges on the aspect of delegated legislation, observed thus:

> "**23.** But, these niceties apart, we think that Section 87 is quite valid even on the "policy and guideline" theory if one has proper regard to the context of the Act and the object and purpose sought to be achieved by Section 87 of the Act. The judicial decisions referred to above make it clear that it is not necessary that the legislature should "dot all the *i*'s and cross all the *t*'s" of its policy. It is sufficient if it gives the broadest

> indication of a general policy of the legislature……"

192. Recently, the Constitution Bench of this Court in the case of ***Rojer Mathew*** (supra) considered the question, as to whether Section 184 of the Finance Act, 2017, which does not prescribe qualifications, appointment, term and conditions of service, salary and allowances, etc. suffers from the vice of excessive delegation. Rejecting the contention, this Court observed thus:

> "**145.** Cautioning against the potential misuse of Section 184 by the executive, it was vehemently argued by the learned counsel for the petitioner(s) that any desecration by the executive of such powers threatens and poses a risk to the independence of the tribunals. A mere possibility or eventuality of abuse of delegated powers in the absence of any evidence supporting such claim, cannot be a ground for striking down the provisions of the Finance Act, 2017. It is always open to a constitutional court on challenge made to the delegated legislation framed by the executive to examine whether it conforms to the parent legislation and other laws, and

> apply the "policy and guideline" test and if found contrary, can be struck down without affecting the constitutionality of the rule-making power conferred under Section 186 of the Finance Act, 2017."

193. It can thus be seen that this Court has held that a mere possibility or eventuality of abuse of delegated powers in the absence of any evidence supporting such claim, cannot be a ground for striking down such a provision. It has been held that if a challenge is made to the delegated legislation framed by the executive, the same can be examined by the constitutional court. It has been held that applying the "policy and guideline" test, if it is found that the delegated legislation does not satisfy the said test, the legislation can be struck down without affecting the constitutionality of the rule-making power conferred under Section 186 of the Finance Act, 2017.

Status of the RBI

194. Having adverted to the various judgments on the issue of delegated legislation, we find it necessary to refer to certain judgments of this Court outlining the status of the RBI.

195. The Constitution Bench of this Court in the case of ***Joseph Kuruvilla Velukunnel*** (supra) was considering a challenge to Section 38(1) and (3)(b)(iii) of the Banking Companies Act, 1949 being violative of Articles 14, 19 and 301 of the Constitution of India, and was, therefore, ultra vires the Constitution of India. Though this Court held that Section 38 is an unreasonable restriction on the right of the Palai Bank to carry on its business and, therefore, unconstitutional, it will be relevant to refer to paragraph 46 of the said judgment, which is as follows:

> "**46.** In the present case, in view of the history of the establishment of the Reserve Bank as a central bank for India, its position as a Bankers' Bank, its control over banking companies and banking in India, its position as the

> issuing bank, its power to license banking companies and cancel their licences and the numerous other powers, it is unanswerable that between the court and the Reserve Bank, the momentous decision to wind up a tottering or unsafe banking company in the interests of the depositors, may reasonably be left to the Reserve Bank. No doubt, the court can also, given the time, perform this task. But the decision has to be taken without delay, and the Reserve Bank already knows intimately the affairs of banking companies and has had access to their books and accounts. If the court were called upon to take immediate action, it would almost always be guided by the opinion of the Reserve Bank. ***It would be impossible for the court to reach a conclusion unguided by the Reserve Bank if immediate action was demanded. But the law which gives the same position to the opinion of the Reserve Bank is challenged as unreasonable. In our opinion, such a challenge has no force.....***"
>
> *[emphasis supplied]*

196. The Court has referred to the pivotal role that the RBI plays as a Central Bank, as a bankers' bank and numerous

other powers that it exercises. The Court held that the law which gives an important position to the opinion of the Reserve Bank was challenged unreasonably and such challenge had no force.

197. It may also be relevant to refer to the following observations of this Court in the case of ***Peerless General Finance and Investment Co. Limited and another*** (supra):

> "**30.** Before examining the scope and effect of the impugned paragraphs (6) and (12) of the directions of 1987, it is also important to note that Reserve Bank of India which is bankers' bank is a creature of statute. ***It has large contingent of expert advice relating to matters affecting the economy of the entire country and nobody can doubt the bona fides of the Reserve Bank in issuing the impugned directions of 1987. The Reserve Bank plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country. It is the duty of the Reserve Bank to safeguard the economy and financial stability of the country....***"

[emphasis supplied]

198. It can thus be seen that this Court has noted that the RBI, which is a bankers' bank, is a creature of statute. It has large contingent of expert advice relating to matters affecting the economy of the entire country. It has been held that the RBI plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country. It has been held that it is the duty of the RBI to safeguard the economy and financial stability of the country.

199. It will also further be relevant to refer to the following observations of this Court in the case of ***Peerless General Finance and Investment Co. Limited and another*** (supra):

> "***The function of the Court is not to advise in matters relating to financial and economic policies for which bodies like Reserve Bank are fully competent. The Court can only strike down some or entire directions issued by the Reserve Bank in case the Court is satisfied that the directions were wholly unreasonable***

> ***or violative of any provisions of the Constitution or any statute. It would be hazardous and risky for the courts to tread an unknown path and should leave such task to the expert bodies. This Court has repeatedly said that matters of economic policy ought to be left to the government***."
>
> *[emphasis supplied]*

200. The Court has held that it is not permissible for a Court to advise in matters relating to financial and economic policies for which bodies like Reserve Bank are fully competent. It has been held that it would be risky and hazardous for the courts to tread an unknown path and should leave such task to the expert bodies.

201. Recently a three-Judge Bench of this Court, speaking through one of us (V. Ramasubramanian, J.), in the case of ***Internet and Mobile Association of India*** (supra) observed thus:

> "**141.** But as pointed out elsewhere, ***RBI is the sole repository of power for the management of the currency, under Section 3 of the RBI Act. RBI is also***

> ***vested with the sole right to issue bank notes under Section 22(1) and to issue currency notes supplied to it by the Government of India and has an important role to play in evolving the monetary policy of the country, by participation in the Monetary Policy Committee which is empowered to determine the policy rate required to achieve the inflation target, in terms of the consumer price index.*** *Therefore, anything that may pose a threat to or have an impact on the financial system of the country, can be regulated or prohibited by RBI, despite the said activity not forming part of the credit system or payment system.* The expression "management of the currency" appearing in Section 3(1) need not necessarily be confined to the management of what is recognised in law to be currency but would also include what is capable of faking or playing the role of a currency."
>
> *[emphasis supplied]*

202. It can thus be seen that this Court has held that the RBI is the sole repository of power for the management of currency. It is also vested with the sole right to issue bank notes and to issue currency notes supplied to it by the Government of India.

It has been held that the RBI has an important role to play in evolving the monetary policy of the country.

Application of the aforesaid principles to the present case

203. It is thus clear that this Court has consistently recognised the role assigned to the RBI in management and issuance of currency notes, so also in evolving monetary policy of the country. We have referred to the aforesaid judgments with regard to the primary status of RBI in dealing with the management and regulation of currency and in evolving the monetary policy of the country. Insofar as the decision to be taken by the Central Government under sub-section (2) of Section 26 of the RBI Act is concerned, it is to be taken on the recommendation of the Central Board. We, therefore, find that there is an inbuilt safeguard in sub-section (2) of Section 26 of the RBI Act inasmuch as the Central Government is required to take a decision on the recommendation of the RBI.

204. As already discussed hereinabove, the RBI has large contingent of expert advice available to it. It has a pivotal role in issuance and management of and all other matters relating to currency and also in evolving monetary policy of the country. We may gainfully refer to the Constitution Bench Judgment of this Court in the case of ***Harakchand Ratanchand Banthia and others*** (supra) wherein, though the Constitution Bench found clause (b) sub-section (2) of Section 5 of the Gold (Control) Act, 1968 to be unconstitutional on the ground of vice of excessive delegation, it upheld the provisions of clause (a) sub-section (2) of Section 5 of the Gold (Control) Act, 1968, finding that there was an inbuilt safeguard inasmuch as the Administrator was required to take a decision after consultation with the RBI.

205. For considering the question as to whether the RBI Act provides guidance to the delegatee or not, the entire scheme, object and the purpose of the Act has to be taken into consideration. The guidance could be sought from the express

provision empowering delegation or the other provisions of the statute, the preamble, the scheme or even the very subject-matter of the statute. If the guidance could be found in whatever part of the Act, the delegation has to be held to be valid. A great amount of latitude has to be given in such matters. It has been consistently held that Parliament and the State Legislatures are not bodies of expert or specialists. They are skilled in the art of discovering the aspirations, the expectations and the needs of the people whom they represent. It has been held that they function best when they concern themselves with general principles, broad objectives and fundamental issues instead of technical and situational intricacies which are better left to better equipped full time expert executive bodies and specialist public servants.

206. As already discussed herein above, the RBI has been constituted to regulate the issue of bank notes. The RBI is an expert body entrusted with various functions with regard to monetary and economic policies. Perusal of the scheme of the

RBI Act would reveal that it has a primary role in the matters pertaining to the management and regulation of currency. We, therefore, find that there is sufficient guidance to the delegatee when it exercises its powers under sub-section (2) of Section 26 of the RBI Act, from the subject matter of the statute, and the other provisions of the Act. In any case, as already discussed herein above, Parliament has provided an inbuilt safeguard i.e. recommendation of the RBI. It is equally settled that insofar as the economic, monetary and fiscal policies are concerned, the same are best left to the experts possessing requisite knowledge. The RBI as well as the Central Government are bodies having contingent of experts in the field. It will, therefore, not be proper for the Court to enter into an area which should be best left to the experts.

207. We are of the considered view that there is sufficient guidance in the preamble as well as the scheme and the object of the RBI Act. As already discussed herein above, there cannot be a straitjacket formula, and the question whether excessive

delegation has been conferred or not has to be decided on the basis of the scheme, the object and the purpose of the statute under consideration.

208. One another aspect that needs to be taken into consideration is the nature of the body to which the delegation is to be made. In the present case, the delegation is made to the Central Government and not to any ordinary body.

209. In the case of ***Birla Cotton, Spinning and Weaving Mills Delhi*** (supra), the seven-Judge Bench of this Court held that the delegation was made to an elected body, responsible to the people including those who pay taxes. It observed that the councillors have to go for election every four years. It was also observed that if the councillors behave unreasonably, and the inhabitants of the area so consider it, they can be thrown out at the ensuing elections. This Court found that this was a great check on the elected councillors acting unreasonably and fixing unreasonable rates of taxation. It has been held that this was a

democratic method of bringing to book the elected representatives who act unreasonably in such matters.

210. In the present case also, the delegation is to the Central Government, i.e. the highest executive body of the country. We have a Parliamentary system in which the Government is responsible to the Parliament. In case the Executive does not act reasonably while exercising its power of delegated legislation, it is responsible to Parliament who are elected representatives of the citizens for whom there exists a democratic method of bringing to book the elected representatives who act unreasonably in such matters.

211. Taking into consideration all these factors, we are of the considered view that sub-section (2) of Section 26 of the RBI Act does not suffer from the vice of excessive delegation.

ISSUE NO. (iii) : AS TO WHETHER THE IMPUGNED NOTIFICATION DATED 8TH NOVEMBER 2016 IS LIABLE TO

BE STRUCK DOWN ON THE GROUND THAT THE DECISION-MAKING PROCESS IS FLAWED IN LAW?

212. It is sought to be urged on behalf of the petitioners that the decision-making process both at the stage of making recommendations by the Central Board and at the stage of taking decision by the Central Government is flawed inasmuch as the same had been done without considering the relevant factors and eschewing the irrelevant ones. It is also sought to be urged that, as per the scheme of sub-section (2) of Section 26 of the RBI Act, it is incumbent that the procedure should emanate from the Central Board and not from the Central Government. According to the petitioners, in the present case, the procedure has emanated from the Central Government vide its letter dated 7th November 2016 advising the Board to convene a meeting and make a recommendation, which was hurriedly convened on the next day, i.e., 8th November 2016, in which the Board decided to recommend demonetization and,

within hours, the decision was announced by the Hon'ble Prime Minister.

213. It is submitted that, taking into consideration the hasty manner in which the recommendation was sought by the Central Government, and was then made by the Central Board and the decision was taken thereupon by the Cabinet, there was no scope for the Central Board or the Cabinet to take into consideration the relevant factors and eschew the irrelevant factors. It is, therefore, submitted that the decision was taken in a patently arbitrary manner and as such, the impugned Notification is liable to be set aside on the ground of patent arbitrariness. It is also the contention of the petitioners that, in the meeting of the Central Board, there was no quorum as required in the 1949 Regulations.

214. On the contrary, it is the submission of the respondents that there are twin requirements in sub-section (2) of Section 26 of the RBI Act, viz., (i) recommendation of the Central Board;

and (ii) the decision of the Central Government. It is submitted that both these requirements are satisfied in the present case. It is submitted that, in an action like the present one, confidentiality and speed are of utmost importance.

Scope of Judicial Review

215. The law with regard to scope of judicial review has been very well crystalized in the case of ***Tata Cellular*** (supra). In the said case, it has been held by this Court that the duty of the court is to confine itself to the question of legality. Its concern should be whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal would have reached or abused its powers. The Court held that it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken.

216. After referring to various pronouncements on the scope of judicial review, the Court has summed-up thus:

> "**94.** The principles deducible from the above are:
>
> (1) The modern trend points to judicial restraint in administrative action.
>
> (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
>
> (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
>
> (4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

217. Though various authorities are cited at the Bar with regard to scope of judicial review, we do not find it necessary to refer to various judgments. We may gainfully refer to the judgment of this Court in the case of ***Rashmi Metaliks Limited and Another v. Kolkata Metropolitan Development***

Authority and Others[62], wherein this Court has deprecated the practice of citing several decisions when the law on the issue is still covered by what has been held in the case of ***Tata Cellular*** (supra).

218. Our enquiry, therefore, will have to be restricted to examining the decision-making process on the limited grounds as have been laid down in the case of ***Tata Cellular*** (supra).

Scope of Judicial Interference in matters pertaining to economic policy

219. Since the issue involved is also related to monetary and economic policy of the country, we would also be guided by certain other pronouncements of this Court.

220. We may gainfully refer to the following observations of the Seven-Judge Bench in the case of ***M/s. Prag Ice & Oil Mills and Another v. Union of India***[63]:

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[62] **(2013) 10 SCC 95**
[63] **(1978) 3 SCC 459**

> "**24.** We have listened to long arguments directed at showing us that producers and sellers of oil in various parts of the country will suffer so that they would give up producing or dealing in mustard oil. It was urged that this would, quite naturally, have its repercussions on consumers for whom mustard oil will become even more scarce than ever ultimately. ***We do not think that it is the function of this Court or of any Court to sit in judgment over such matters of economic policy as must necessarily be left to the Government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts.***"
>
> *[emphasis supplied]*

221. In the case of ***R.K. Garg v. Union of India and Others***[64], another Constitution Bench of this Court observed thus:

> "**8.** Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than

[64] **(1981) 4 SCC 675**

> Holmes, J., ***that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature.*** The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. ……."
>
> *[emphasis supplied]*

222. Again, the Constitution Bench of this Court in the case of ***Shri Sitaram Sugar Company Limited and Another v. Union of India and Others***[65], observed thus:

> "**57.** ***Judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The court does not supplant the "feel of the expert" by its own views.*** When the legislature acts

[65] **(1990) 3 SCC 223**

within the sphere of its authority and delegates power to an agent, ***it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness.*** In all such cases, judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such findings are consistent with the laws of the land. As stated by Jagannatha Shetty, J. in *Gupta Sugar Works* [1987 Supp SCC 476, 481] : (SCC p. 479, para 4)

> "... the court does not act like a chartered accountant nor acts like an income tax officer. The court is not concerned with any individual case or any particular problem. The court only examines whether the price determined was with due regard to considerations provided by the statute. And whether extraneous matters have been excluded from determination.""
>
> *[emphasis supplied]*

223. Recently, this Court in the case of ***Small Scale Industrial Manufactures Association (Registered) v. Union of India***

and Others[66] had an occasion to consider the issue with regard to scope of judicial review of economic and fiscal regulatory measures. This Court observed thus:

> "**69.** What is best in the national economy and in what manner and to what extent the financial reliefs/packages be formulated, offered and implemented is ultimately to be decided by the Government and RBI on the aid and advice of the experts. The same is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review. Merely because some class/sector may not be agreeable and/or satisfied with such packages/policy decisions, the courts, in exercise of the power of judicial review, do not ordinarily interfere with the policy decisions, unless such policy could be faulted on the ground of mala fides, arbitrariness, unfairness, etc.
>
> **70.** There are matters regarding which the Judges and the lawyers of the courts can hardly be expected to have much knowledge by reasons of their training and expertise. Economic and fiscal

[66] **(2021) 8 SCC 511**

regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters.

71. The correctness of the reasons which prompted the Government in decision taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering of the points from different angles. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the Government.

72. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The scope of judicial review of the governmental policy is now well defined. The courts do not and cannot act as an appellate authority examining the correctness, stability and appropriateness of a policy, nor are the courts advisers to the executives on matters of policy which the executives are entitled to formulate."

224. This Court observed that the Court would not interfere with any opinion formed by the government if it is based on the relevant facts and circumstances or based on expert's advice. The Court would be entitled to interfere only when it is found that the action of the executive is arbitrary and violative of any constitutional, statutory or other provisions of law. It has been held that when the government forms its policy, it is based on a number of circumstances and it is also based on expert's opinion, which must not be interfered with, except on the ground of palpable arbitrariness. It is more than settled that the Court gives a large leeway to the executive and the legislature in matters of economic policy. A reference in this respect could be made to the judgments of this Court in the cases of ***P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India and others***[67] and ***Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Limited and another*** (supra).

[67] **(1996) 5 SCC 268**

225. It is not the function of this Court or of any other Court to sit in judgment over such matters of economic policy and they must necessarily be left to the Government of the day to decide since in such matters with regard to the prediction of ultimate results, even the experts can seriously err and doubtlessly differ. The Courts can certainly not be expected to decide them without even the aid of experts.

Application of the aforesaid principles to the present case

226. Therefore, while exercising the power of judicial review in a matter like the present one, the scope of interference would be still narrower. Applying the principles laid down in the aforesaid judgments, we will have to examine as to whether the decision-making process in the present case is flawed or not. Our inquiry has to be limited only to find out as to whether there is an illegality in the decision-making process, i.e. whether the decision makers have understood the law correctly which regulates the decision-making power and as to whether

the decision-making process is vitiated by irrationality, i.e. the Wednesbury principles. The test that would have to be applied is that the decision is such that no authority properly conducting itself on the relevant law and acting reasonably could have reached thereat, and as to whether there has been a procedural impropriety.

227. The learned Senior Counsel for the petitioners vehemently submitted that unless the letter dated 7th November 2016, Minutes of the Meeting of the Central Board dated 8th November 2016 and the Note for the Cabinet Meeting dated 8th November 2016 are perused by this Court, it will not be possible for the Court to satisfy itself as to whether the Central Board while deciding to recommend demonetization and the Central Government while deciding to take the decision in favour of demonetization have taken into consideration the relevant factors and eschewed the irrelevant factors. While closing the matters for judgment/order, we had directed the Union of India

and the RBI to produce the relevant records for our perusal. Accordingly, the records were produced by the respondents.

228. We have scrutinized the entire record, i.e., the communication dated 7th November 2016 addressed by the Secretary, Department of Economic Affairs, Ministry of Finance to the Governor, RBI, the Minutes of the Meeting of the Central Board dated 8th November 2016, the recommendations by the RBI dated 8th November 2016 and the Note for the Cabinet Meeting held on 8th November 2016.

229. A perusal of the communication dated 7th November 2016 addressed by the Secretary, Department of Economic Affairs, Ministry of Finance, Government of India to the Governor, RBI would reveal that the Government of India has shared its concern with regard to infusion of Fake Indian Currency Notes (FICN) and generation of black money. It has been pointed out that FICN infusion is concentrated in the two highest denominations of Indian banknotes of Rs.500/- and Rs.1000/-.

It has also been pointed out that the impact on the economy in the high denomination notes is very adverse. The said communication mentions the White Paper on Black Money by the Department of Revenue in the year 2012, wherein it is mentioned that cash has always been a facilitator of black money since transactions made in cash do not leave any audit trail. The White Paper also refers to the growth in the size of the shadow economy of the country, and that a parallel shadow economy corrodes and eats into the vitals of the country's economy.

230. The said communication thereafter refers to the constitution of a Special Investigation Team (SIT) headed by two former Judges of this Court, which has made strong observations against the cash economy. It further refers to the steps taken by the Government to reduce black money in the economy. After pointing out the aforesaid factors, the communication advises the Central Board to take note of the above and consider making necessary recommendations. It

also requests the RBI to prepare a draft scheme to implement the above in a non-disruptive manner with as little inconvenience to the public and business entities as possible.

231. We have also perused the Minutes of the Five Hundred and Sixty First (561st) Meeting of the Central Board of Directors of the RBI held on 8th November 2016. The said Minutes would show that the communication dated 7th November 2016 was placed before the Central Board by the Deputy Governor. There was an elaborate discussion on the said proposal. The Central Board has considered the pros and cons of the measure. The Central Board has also considered that the proposed step presents a big opportunity to take the process of financial inclusion further by incentivizing the use of electronic modes of payment, so that people see the benefits of bank accounts and electronic means of payment over use of cash. The Central Board has taken into consideration that the matter had been under discussion between the Central Government and the RBI

for the last six months during which most of the issues raised in the meeting were considered.

232. After detailed deliberations, the Central Board resolved to recommend withdrawal of legal tender of bank notes in the denomination of Rs.500/- and Rs.1000/- of existing and any older series in circulation. Thereafter, the Deputy Governor, vide communication dated 8th November 2016, informed the Secretary, Department of Economic Affairs, Ministry of Finance, Government of India about the above recommendations of the Central Board. Not only that, but a draft scheme for implementation of the same was also enclosed along with the said recommendations.

233. We have also perused the Note for the Cabinet for consideration of the Cabinet Meeting dated 8th November 2016. The Note for the Cabinet contains details about the relevant data available as per Economic Survey for 2014-15 and 2015-16 and the report of the Intelligence Bureau with regard to

infusion of FICN and generation of black money. It also contains the details with regard to the 2012 White Paper on Black Money. It contains the details with regard to the report of the SIT headed by two former Judges of this Court and their recommendations. It considers the recommendation of the RBI.

234. Upon perusal of the material on record, we are of the considered view that the Central Board had taken into consideration the relevant factors while recommending withdrawal of legal tender of bank notes in the denomination of Rs.500/- and Rs.1000/- of existing and any older series in circulation. Similarly, all the relevant factors were placed for consideration before the Cabinet when it took the decision to demonetize. It is to be noted that a draft scheme to implement the proposal for demonetization in a non-disruptive manner with as little inconvenience to the public and business entities as possible was also prepared by the RBI along with the recommendation for demonetization. The same was also taken into consideration by the Cabinet. As such, we are of the

considered view that the contention that the decision-making process suffers from non-consideration of relevant factors and eschewing of the irrelevant factors, is without substance.

235. Insofar as the contention of the petitioners that there was no quorum as required under the 1949 Regulations is concerned, in both the affidavits of the RBI dated 15th November 2022 and 19th December 2018, a categorical statement has been made that the requisite procedure as laid down under sub-section (2) of Section 26 of the RBI Act read with Regulations 8 and 10 of the 1949 Regulations was duly followed.

236. A perusal of the Minutes of the Meeting of the Central Board would also show that eight Directors were present in the Meeting whereas the quorum for the meeting is four Directors of whom not less than three shall be Directors nominated under Section 8(1)(b) or Section 8(1)(c) or Section 12 (4) of the

RBI Act. In the affidavit filed before this Court on 6th December 2022, it is specifically averred as under:

> "6. That the 561st meeting of the Central Board of the answering respondent was held on 08.11.2016 at New Delhi and business was transacted therein with the requisite quorum. During the said meeting, apart from the then Governor and two Deputy Governors, one director nominated under Section 8(1)(b) of RBI Act, two directors nominated under section 8(1)(c) of RBI Act and two directors nominated under section 8(1)(d) of RBI Act were present. Thus, the requisite quorum of four directors of whom not less than three directors nominated under Section 8(1)(b) or 8(1)(c) were present for the meeting."

237. In that view of the matter, the contention that the Meeting of the Central Board dated 8th November 2016 is not validly held for want of quorum is concerned, is without substance.

Recommendation of the RBI

238. The next submission in this regard is that the procedure prescribed under sub-section (2) of Section 26 of the RBI Act is

breached inasmuch as the proposal has emanated from the Central Government whereas the requirement under sub-section (2) of Section 26 of the RBI Act is that the proposal should emanate from the Central Board. The contention is that, since the Central Government is required to act on the recommendation of the Central Board, the proposal should emanate from the Central Board.

239. As already discussed hereinabove, the RBI has a pivotal role insofar as monetary and economic policies are concerned and, particularly, in all the matters pertaining to management and regulation of currency. Moreover, perusal of Sections 22, 24 and 26 of the RBI Act would reveal that in various matters pertaining to currency, the course of action is to be taken by the Central Government on the recommendation of the Central Board. It cannot be disputed that the final say with regard to economic and monetary policies of the country will be with the Central Government. However, in such matters, it has to rely on the expert advice of the RBI. In a matter like the present

one, it cannot be expected that the RBI and the Central Government will act in two isolated boxes. An element of interaction/consultation in such important matters pertaining to economic and monetary policies cannot be denied to the RBI and the Central Government.

240. As already discussed hereinabove, the record would reveal that the matter was under active consideration for a period of six months between the RBI and the Central Government. As such, merely because the Central Government has advised the Central Board to consider recommending demonetization and that the Central Board, on the advice of the Central Government, has considered the proposal for demonetization and recommended it and, thereafter, the Central Government has taken a decision, in our view, cannot be a ground to hold that the procedure prescribed under Section 26 of the RBI Act was breached. The two requirements of sub-section (2) of Section 26 of the RBI Act are (i) recommendation by the Central Board; and (ii) the decision by the Central Government. As

already discussed hereinabove, both the Central Board while making recommendation and the Central Government while taking the decision, have taken into consideration all the relevant factors.

241. The dictionary meaning of the word "recommend" is "to advise as to a course of action", or "to praise or commend". In *P. Ramanatha Aiyar's Law Lexicon*, the meaning of the word "recommendation" is "a statement expressing commendation or a message of this nature". The word "recommendation", therefore, will have to be construed in the context in which it is used. Reference in this respect would be made to the judgments of this Court in the cases of ***V.M. Kurian v. State of Kerala and others***[68] and ***Manohar s/o Manikrao Anchule v. State of Maharashtra and another***[69].

242. The power to be exercised by the Central Government under sub-section (2) of Section 26 of the RBI Act is for

[68] **(2001) 4 SCC 215**
[69] **(2012) 13 SCC 14**

effecting demonetization. The said power has to be exercised on the recommendation of the Central Board. As already discussed hereinabove, the RBI has a pivotal role in the matters of monetary policy and issuance of currency. The scheme mandates that before the Central Government takes a decision with regard to demonetization, it would be required to consider the recommendation of the Central Board. We find that, in the context in which it is used, the word "recommendation" would mean a consultative process between the Central Board and the Central Government.

243. In our view, therefore, the enquiry would be limited as to whether there was an effective consultation between the Central Government and the Central Board before the decision was taken. Reference in this respect would be made to the following observations of this Court in the case of ***State of Gujarat and another v. Justice R.A. Mehta (Retired) and others*** (supra):

> "**25.** In *State of Gujarat* v. *Gujarat Revenue Tribunal Bar Assn.* [(2012) 10

SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Cri) 35 : (2013) 1 SCC (L&S) 56 : JT (2012) 10 SC 422] (SCC p. 372, para 34), this Court held that the object of consultation is to render its process meaningful so that it may serve its intended purpose. Consultation requires the meeting of minds between the parties that are involved in the consultative process on the basis of material facts and points in order to arrive at a correct or at least a satisfactory solution. If a certain power can be exercised only after consultation such consultation must be conscious, effective, meaningful and purposeful. To ensure this, each party must disclose to the other all relevant facts for due deliberation. The consultee must express his opinion only after complete consideration of the matter on the basis of all the relevant facts and quintessence. Consultation may have different meanings in different situations depending upon the nature and purpose of the statute. (See also *Union of India* v. *Sankalchand Himatlal Sheth* [(1977) 4 SCC 193 : 1977 SCC (L&S) 435 : AIR 1977 SC 2328] , *State of Kerala* v. *A. Lakshmikutty* [(1986) 4 SCC 632 : (1986) 1 ATC 735 : AIR 1987 SC 331] , *High Court of Judicature of*

Rajasthan v. *P.P. Singh* [(2003) 4 SCC 239 : 2003 SCC (L&S) 424 : AIR 2003 SC 1029] , *Union of India* v. *Kali Dass Batish* [(2006) 1 SCC 779 : 2006 SCC (L&S) 225 : AIR 2006 SC 789] , *Andhra Bank* v. *Andhra Bank Officers* [(2008) 7 SCC 203 : (2008) 2 SCC (L&S) 403 : AIR 2008 SC 2936] and *Union of India* v. *Madras Bar Assn.* [(2010) 11 SCC 1]

26. In *Chandramouleshwar Prasad* v. *Patna High Court* [(1969) 3 SCC 56 : AIR 1970 SC 370] (SCC p. 63, para 7), this Court held that consultation or deliberation can neither be complete nor effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other, who has a counter-proposal in mind which is not communicated to the proposer, a direction issued to give effect to the counter-proposal without any further discussion with respect to such counter-proposal with the proposer cannot be said to have been issued after consultation."

244. As such, the enquiry would be limited to find out whether both the Central Board and the Central Government had made their respective points of view known to each other and discussed and examined the relative merits of their views. It will have to be considered whether each of the party had disclosed to the other all relevant facts and factors for due deliberation, or not. The limited enquiry would be whether the recommendation by the Central Board was made after complete consideration of the matter on the basis of all the relevant facts and material before it, or not.

245. As already discussed herein above, the record itself reveals that the RBI and the Central Government were in consultation with each other for a period of six months before the impugned notification was issued. The record would also reveal that all the relevant information was shared by both the Central Board as well as the Central Government with each other. As such, it cannot be said that there was no conscious, effective, meaningful and purposeful consultation.

Relevancy of attainment of objectives

246. Another submission that is being made is that the objective with which the impugned Notification was issued, i.e., to combat fake currency, black money and parallel financing are concerned, the same has utterly failed. It is submitted that immediately after demonetization was effected, currency notes of new series have been seized. It is also submitted that the fake currency is also in vogue. New series of notes have been seized from terrorists. Per contra, it is submitted that the long-term benefits of demonetization have been enormous, direct and indirect. The learned Attorney General has placed on record an elaborate list of the same to which we have already referred to in earlier paragraphs.

247. However, we do not wish to go into the question as to whether the object with which demonetization was effected is served or not or as to whether it has resulted in huge direct and indirect benefits or not. We do not possess the expertise to go

into that question and it is best that it should remain in the domain of the experts.

248. The question is succinctly answered by the Supreme Court of United States in the case of ***Metropolis Theater Company et al., Plffs. In Err., v. City of Chicago and Ernest J. Magerstadt.*** (supra), which reads thus:

> "**2.** The attack of complainants (we so call plaintiffs in error) is upon the classification of the ordinance. It is contended that the purpose of the ordinance is to raise revenue, and that its classification has no relation to such purpose, and therefore is arbitrarily discriminatory, and thereby offends the 14th Amendment of the Constitution of the United States. The character ascribed to the ordinance by the supreme court of the state is not without uncertainty. But we may assume, as complainants assert, that the court considered the ordinance as a revenue measure only. The court said: 'The ordinance may be sustainable under the taxing power alone, without reference to its reasonableness as a regulatory measure.' And, regarding it as a revenue measure, complainants attack it as unreasonable in basing its classification upon the price of admission of a

particular theater, and not upon the revenue derived therefrom; and to exhibit the discrimination which is asserted to result, a comparison is made between the seating capacity of complainants' theaters and the number of their performances within given periods, and the theaters of others in the same respects, and the resulting revenues. But these are accidental circumstances and dependent, as the supreme court of the state said, upon the advantages of the particular theater or choice of its owner, and not determined by the ordinance, It will immediately occur upon the most casual reflection that the distinction the theater itself makes is not artificial, and must have some relation to the success and ultimate profit of its business. In other words, there is natural relation between the price of admission and revenue, some advantage, certainly, that determines the choice. The distinction obtains in every large city of the country. The reason for it must therefore be substantial; and if it be so universal in the practice of the business, it would seem not unreasonable if it be adopted as the basis of governmental action. ***If the action of government have such a basis it cannot be declared to be so palpably arbitrary as to be repugnant to the 14th Amendment. This is the test of its validity, as we have so many times said.*** We need not cite the

> cases. It is enough to say that we have tried, so far as that Amendment is concerned, to declare in words, and the cases illustrate by examples, the wide range which legislation has in classifying its objects. ***To be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations,—illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void under the 14 Amendment;*** and such judgment cannot be pronounced of the ordinance in controversy. Quong Wing v. Kirkendall, 223 U. S. 59, 56 L. ed. 350, 32 Sup. Ct. Rep. 192."
>
> *[emphasis supplied]*

249. It has been held that if the action of the government has a basis with the objectives to be achieved, it cannot be declared as palpably arbitrary. It has been held that, to be able to find

fault with a law is not to demonstrate its invalidity. It has been held that the result of the act may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. It has been held that what is best is not always discernible, and the wisdom of any choice may be disputed or condemned. It has been held that mere errors of government are not subject to judicial review. It is only the palpably arbitrary exercises which can be declared void.

250. We may gainfully refer to the following observations of this Court in the case of ***R.K. Garg*** (supra), wherein this Court observed that it should constantly remind itself of what the Supreme Court of the United States said in the case of ***Metropolis Theater Company*** (supra):

> "**19.** ……***The Court would not have the necessary competence and expertise to adjudicate upon such an economic***

> ***issue. The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not.*** There are so many imponderables that would enter into the determination that it would be wise for the Court not to hazard an opinion where even economists may differ. ***The Court must while examining the constitutional validity of a legislation of this kind, "be resilient, not rigid, forward looking, not static, liberal, not verbal***" and the Court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in *Munn* v. *Illinois* [94 US 13], namely, "that courts do not substitute their social and economic beliefs for the judgment of legislative bodies". ***The Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary***……"
>
> *[emphasis supplied]*

251. The Constitution Bench holds that the Court would not have the necessary competence and expertise to adjudicate

upon such an economic issue. The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. It has been held that it would be wise for the Court not to hazard an opinion where even economists may differ. It has been held that while examining the constitutional validity of such a legislation, the Court must "be resilient, not rigid, forward looking, not static, liberal, not verbal".

252. We are, therefore, of the considered view that the Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere unless the exercise of executive power appears to be palpably arbitrary. The Court does not have necessary competence and expertise to adjudicate upon such economic issues. It is also not possible for the Court to assess or evaluate what would be the impact of a particular action and it is best left to the wisdom of the experts. In such matters, it will not be possible for the Court to assess or evaluate what would be the impact of the impugned

action of demonetization. The Court does not possess the expertise to do so. As already discussed hereinabove, on one hand, the petitioners urged that there has been an adverse effect upon the economy and on the other hand, the learned Attorney General had given a long list of direct and indirect advantages of demonetization. In any case, mere errors of judgment by the government seen in retrospect is not subject to judicial review. In such matters, legislative and quasi-legislative authorities are entitled to a free play, and unless the action suffers from patent illegality, manifest or palpable arbitrariness, the Court should be slow in interfering with the same.

253. Another contention in this regard is that, on account of a hasty decision by the Central Government, citizens had to suffer at large, that many people were required to stand in the queues for hours, that many citizens were deprived of their meals, and that many citizens lost their jobs.

254. As already discussed hereinabove, the Central Government had advised the Central Board to draft a scheme to implement demonetization in a non-disruptive manner with as little inconvenience to the public and business entities as possible. Accordingly, a draft scheme was also submitted by the Central Board along with its recommendations for demonetization. It is stated in the affidavit that the RBI has subsequently issued relaxations from time to time taking into consideration the difficulties of the people and availability of the new notes. No doubt that on account of demonetization, the citizens were faced with various hardships. However, we may again gainfully refer to the following observations of this Court in the case of ***R.K. Garg*** (supra):

> "**8.** ……***The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions.*** If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable

> amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues."
>
> *[emphasis supplied]*

255. Therefore, while adjudging the illegality of the impugned Notification, we would have to examine on the basis as to whether the objectives for which it was enacted has nexus with the decision taken or not. If the impugned Notification had a nexus with the objectives to be achieved, then, merely because some citizens have suffered through hardships would not be a ground to hold the impugned Notification to be bad in law.

256. In this respect, we may gainfully refer to the following observations of this Court in the case of ***Km. Sonia Bhatia v. State of U.P. and Others***[70]:

> "**29.** Lastly, it was urged by Mr Kacker that this is an extremely hard case where the grandfather of the donee wanted to make a beneficial provision for his granddaughter after having lost his two sons in the prime of their life due to

[70] **(1981) 2 SCC 585**

air crash accidents while serving in the Air Force. It is true that the District Judge has come to a clear finding that the gift in question is bona fide and has been executed in good faith but as the gift does not fulfil the other ingredients of the section, namely, that it is not for adequate consideration, we are afraid, however laudable the object of the donor may have been, the gift has to fail because the genuine attempt of the donor to benefit his granddaughter seems to have been thwarted by the intervention of sub-section (6) of Section 5 of the Act. ***This is undoubtedly a serious hardship but it cannot be helped. We must remember that the Act is a valuable piece of social legislation with the avowed object of ensuring equitable distribution of the land by taking away land from large tenure-holders and distributing the same among landless tenants or using the same for public utility schemes which is in the larger interest of the community at large. The Act seems to implement one of the most important constitutional directives contained in Part IV of the Constitution of India. If in this process a few individuals suffer severe hardship that cannot be helped, for individual interests must yield to the larger interests of the***

community or the country as indeed every noble cause claims its martyr."

[emphasis supplied]

257. Though, the Court found that the Act caused a serious hardship, it held that the Act is a valuable piece of social legislation. It held that the Act was enacted to implement one of the most important constitutional directives contained in Part IV of the Constitution of India. It further observed that, if in this process, a few individuals suffer severe hardship, that cannot be helped. It further held that individual interests must yield to the larger interests of the community or the country as indeed every noble cause claims its martyr.

258. In any case now, the action which was taken by the Central Government by the impugned Notification, has been validated by the 2016 Ordinance and which has fructified in the 2017 Act. The Central Government is answerable to the Parliament and the Parliament, in turn, represents the will of the citizens of the country. The Parliament has therefore put its

imprimatur on the executive action. This is apart from the fact that we have not found any flaw in the decision-making process as required under sub-section (2) of Section 26 of the RBI Act.

259. The decision-making process is also sought to be attacked on the ground that the decision was taken in a hasty manner. We find that the 'hasty' argument would be destructive of the very purpose of demonetization. Such measures undisputedly are required to be taken with utmost confidentiality and speed. If the news of such a measure is leaked out, it is difficult to imagine how disastrous the consequences would be.

260. It will be interesting to note again from Volume III of the "History of the Reserve Bank of India" that, on 14th January 1978, one R. Janakiraman, a senior official in the RBI was asked by some officers of the Government of India to come immediately to Delhi for some urgent work. When he asked for what purpose he was called, he was told that the matters relating to exchange control need to be discussed. He, however,

took along with him one M. Subramaniam, a senior official of the Exchange Control Department. On reaching Delhi, he was informed that the Government had decided to demonetize the high denomination notes and was required to draft the necessary Ordinance within twenty-four hours. During the said period, no communication was allowed with anyone including the Bank's central office at Bombay. R. Janakiraman and M. Subramaniam made a request for the 1946 Ordinance on demonetization to get an idea how it was to be drafted, which request was acceded to by the Finance Ministry. The draft Ordinance was completed on schedule. It was finalized and sent for signature of the President of India in the early hours of 16th January 1978 and on the same day, the announcement to that effect was made on All India Radio's news bulletin at 09.00 a.m.

261. It can thus be seen that confidentiality and secrecy in such sort of measures is of paramount importance. When demonetization was being done in the year 1978, R.

Janakiraman, who had drafted the Ordinance, was not permitted to communicate with anyone including the Bank's central office at Bombay. It would thus show as to what great degree of confidentiality was maintained. In any case, the material placed on record would show that the RBI and the Central Government were in consultation with each other for at least a period of six months preceding the action.

262. We, therefore, find that the impugned notification dated 8th November 2016 does not suffer from any flaws in the decision-making process.

ISSUE NO. (iv): AS TO WHETHER THE IMPUGNED NOTIFICATION DATED 8TH NOVEMBER 2016 IS LIABLE TO BE STRUCK DOWN APPLYING THE TEST OF PROPORTIONALITY?

263. It is sought to be urged on behalf of the petitioners that before taking such a drastic measure, which caused enormous hardship to a number of citizens, the government ought to have

found out as to whether there was an alternate course of action which could have resulted in lesser hardship to the citizens. In this respect, reliance is placed on the judgment of this Court in the case of ***Internet and Mobile Association of India*** (supra) and ***K.S. Puttaswamy (Retired) and another (Aadhaar)*** (supra).

264. In the case of ***Internet and Mobile Association of India*** (supra), the RBI had issued a directive to the entities regulated by RBI (*i*) not to deal with or provide services to any individual or business entities dealing with or settling virtual currencies and (*ii*) to exit the relationship, if they already have one, with such individuals/business entities, dealing with or settling virtual currencies.

265. The said action came to be challenged by writ petition filed under Article 32 of the Constitution of India. The challenge was on several grounds, including the ground of proportionality. Though the Court did not find favour with the other grounds

raised on behalf of the petitioners therein, it held that the concern of the RBI is and ought to be about the entities regulated by it. It found that, till date, RBI had not come out with a stand that any of the entities regulated by it, namely, the nationalized banks/scheduled commercial banks/cooperative banks/NBFCs had suffered any loss or adverse effect directly or indirectly, on account of the interface that the virtual currency exchanges had with any of them. The Court held that there must have been at least some empirical data about the degree of harm suffered by the regulated entities. The Court, therefore, while upholding the power of the RBI to take pre-emptive action, upon testing the proportionality of the measure, found that in the absence of RBI pointing out at least some semblance of any damage suffered by its regulated entities, the impugned measure was disproportionate.

Four-pronged test of proportionality

266. The Constitution Bench of this Court in the case of ***Modern Dental College and Research Centre*** (supra), while considering a balance between the right under Article 19(1)(g) and the reasonable restrictions under clause (6) of Article 19 of the Constitution of India, observed thus:

> "**60.** ……Thus, while examining as to whether the impugned provisions of the statute and rules amount to reasonable restrictions and are brought out in the interest of the general public, the exercise that is required to be undertaken is the balancing of fundamental right to carry on occupation on the one hand and the restrictions imposed on the other hand. This is what is known as "*doctrine of proportionality*". Jurisprudentially, "*proportionality*" can be defined as the set of rules determining the necessary and sufficient conditions for limitation of a constitutionally protected right by a law to be constitutionally permissible. According to Aharon Barak (former Chief Justice, Supreme Court of Israel), there are four sub-components of proportionality which need to be satisfied [Aharon Barak, *Proportionality: Constitutional Rights and Their Limitation* (Cambridge University Press 2012).], a limitation of a constitutional

right will be constitutionally permissible if:

> (*i*) it is designated for a proper purpose;
>
> (*ii*) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose;
>
> (*iii*) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally
>
> (*iv*) there needs to be a proper relation ("*proportionality stricto sensu*" or "*balancing*") between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right."

267. The Constitution Bench held that while examining as to whether the impugned provisions of the statute and rules amount to reasonable restrictions and are brought out in the interest of the general public, the exercise that is required to be undertaken is balancing of the fundamental right to carry on occupation on the one hand and the restrictions imposed on the

other hand. The Court refers to four tests of proportionality which need to be satisfied. The first one is that it should be designated for a proper purpose. The second one is that the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose. The third one is that the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation. Finally, the fourth one is that there needs to be a proper relation between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right. The Court held that there has to be a balance between a constitutional right and public interest. It held that a constitutional licence to limit those rights is granted where such a limitation will be justified to protect public interest or the rights of others. It will also be relevant to refer to the following observations of the Constitution Bench:

"**65.** .....At the same time, reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations (see *Mohd. Hanif Quareshi* v. *State of Bihar* [*Mohd. Hanif Quareshi* v. *State of Bihar*, AIR 1958 SC 731 : 1959 SCR 629]). In *M.R.F. Ltd.* v. *State of Kerala* [*M.R.F. Ltd.* v. *State of Kerala*, (1998) 8 SCC 227 : 1999 SCC (L&S) 1] , this Court held that in examining the reasonableness of a statutory provision one has to keep in mind the following factors:

> (1) The directive principles of State policy.
>
> (2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.
>
> (3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human

life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

(4) A just balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6).

(5) Prevailing social values as also social needs which are intended to be satisfied by the restrictions.

(6) There must be a direct and proximate nexus or reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise."

268. It is pertinent to note that in the case of ***Modern Dental College and Research Centre*** (supra), the Court was considering the validity of the Act and the Rules which regulated primarily the admission of the students in post-graduate courses in private educational institutions and the

provisions made thereunder. Applying the test of proportionality, the Court held that the larger public interest warrants such a measure. It held that, having regard to the malpractices which are noticed in the Common Entrance Test (CET) conducted by such private institutions themselves, it is, undoubtedly, in the larger interest and welfare of the student community to promote merit and excellence and to curb malpractices. The Court held that the impugned provisions which may amount to "*restrictions*" on the right of the appellants therein to carry on their "*occupation*", are clearly "*reasonable*" and satisfy the test of proportionality.

269. The proportionality doctrine is sought to be placed in service on the ground that in the case of ***Jayantilal Ratanchand Shah*** (supra), the Court held the bank notes to be property and as such, impugned Notification imposed unreasonable restrictions, violative of Article 300-A of the Constitution of India.

270. Let us test the four-pronged test culled out by Aharon Barak, former Chief Justice, Supreme Court of Israel which have been reproduced in the case of ***Modern Dental College and Research Centre*** (supra).

271. The impugned Notification has been issued with an objective to meet the following three concerns:

(i) Fake currency notes of the SBNs have been largely in circulation and it has been found to be difficult to easily identify genuine bank notes from the fake ones;

(ii) It has been found that high denomination bank notes were used for storage of unaccounted wealth which was evident from the large cash recoveries made by law enforcement agencies; and

(iii) It has also been found that fake currency is being used for financing subversive activities such as drug trafficking and terrorism, causing damage to the economy and security of the country.

272. For the purpose of achieving these objectives, the Central Government, on the recommendations of the Central Board, took a decision to demonetize the bank notes of denominational value of Rs.500/- and Rs.1000/-. Assuming that holding bank notes is a right under Article 300-A of the Constitution of India, the limitation that is imposed is designated for a proper purpose. By no stretch of imagination could it be said that the aforesaid three purposes, i.e., elimination of fake currency, black money and terror financing are not proper purposes. As such, the first test is satisfied.

273. The second test is as to whether the measure undertaken to effectuate such a limitation is rationally connected to the fulfilment of that purpose - that would be the nexus test. The question, therefore, is, as to whether the measures taken in the present case have a reasonable nexus with the purpose to be achieved? As already discussed hereinabove, the purpose of demonetization was to eliminate the fake currency notes, black money, drug trafficking & terror financing. Can it be said that

demonetizing high denomination bank notes of Rs.500/- and Rs.1000/- does not have a reasonable nexus with the three purposes sought to be achieved? We find that there is a reasonable nexus between the measure of demonetization with the aforesaid purposes of addressing issues of fake currency bank notes, black money, drug trafficking & terror financing. As such, the second test stands satisfied.

274. Insofar as the third test is concerned, it is required to be examined as to whether the measure undertaken is necessary in that there are no alternative measures that may similarly achieve the same purpose with the lesser degree of limitation. As held in the case of ***M.R.F. Ltd. v. Inspector Kerala Govt. and Others***[71], to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case. As to what measure is required to meet the aforesaid objectives is exclusively within the domain of the

[71] **(1998) 8 SCC 227**

experts. The RBI, as already held, plays a material role in economic and monetary policy and issues relating to management and regulation of currency. The Central Government is the best judge since it has all the inputs with regard to fake currency, black money, terror financing & drug trafficking. As such, what measure is required to be taken to curb the menace of fake currency, black money and terror financing would be best left to the discretion of the Central Government, in consultation with the RBI. Unless the said discretion has been exercised in a palpably arbitrary and unreasonable manner, it will not be possible for the Court to interfere with the same.

275. In any case, what alternate measure could have been undertaken with a lesser degree of limitation is very difficult to define. Whether the Courts possess an expertise to decide as to whether demonetization of only Rs.500/- denomination notes ought to have been done or the denomination of only the notes of Rs.1000/- ought to have been done or as to whether

particular series of the bank notes ought to have been demonetized. These are all the areas which are purely within the domain of the experts and beyond the arena of judicial review.

276. Insofar as the fourth test, that is the proper relation between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right is concerned, can it really be said that there is no proper relation between the importance of curbing the menace of fake currency, black money, drug trafficking & terror financing on one hand and demonetizing the Rs.500/- and Rs.1000/- notes, thereby imposing restriction on the use of demonetized currency?

277. In any case, by demonetization, the right vested in the notes was not taken away. The only restrictions were with regard to exchange of old notes with the new notes, which were also gradually relaxed from time to time. Insofar as deposit of

the demonetized notes in banks is concerned, there was no limitation. If a citizen had a 'Know Your Customer (KYC) compliant bank account', he could deposit any amount and get to his credit the full value of legitimate currency. As such, the right to property in bank notes was not taken away. A full value of legitimate currency was entitled to be deposited in the bank account, however, up to a particular date. In any case, there was no restriction on non-cash transactions like debit card, credit card, net banking, online transactions etc.

278. We find that the argument that the right to property was sought to be taken away is without substance. In any case, even if there were reasonable restrictions on the said right, the said restrictions were in the public interest of curbing evils of fake currency, black money, drug trafficking & terror financing. As such, we find that applying the four-pronged test, the doctrine of proportionality is fully satisfied.

279. Insofar as reliance on the judgment of the Constitution Bench of this Court in the case of ***K.S. Puttaswamy (Retired) and another (Aadhaar)*** (supra) is concerned, in the facts of the said case, the Constitution Bench found that, on account of various measures taken by the Government to give a boost to digital economy, millions of persons, who are otherwise poor, had opened their bank accounts. They were also becoming habitual to the good practice of entering into transactions through their banks and even by using digital modes for operation of their bank accounts. The Court, in this background, found that making the requirement of Aadhaar compulsory for all such and other persons in the name of checking money laundering or black money was grossly disproportionate. The observations made therein were in the context of the factual background that fell for consideration in the said case. In our view, the said observations would not be applicable to the facts of the present case. We have already considered in detail as to how, upon application of the four-

pronged test of proportionality, the impugned notification cannot be struck down.

280. In any case, in our view, there is a direct and proximate nexus between the restrictions imposed and the objectives sought to be achieved. As held by this Court in the case of ***M.R.F. Ltd.*** (supra), if there is a direct nexus between the restrictions and the object of the action, then a strong presumption in favour of the constitutionality of the action naturally arises.

281. We, therefore, hold that the impugned notification dated 8th November 2016 does not violate the principle of proportionality and as such, is not liable to be struck down on the said ground.

ISSUE NO. (v): AS TO WHETHER THE PERIOD PROVIDED FOR EXCHANGE OF NOTES VIDE THE IMPUGNED NOTIFICATION DATED 8TH NOVEMBER 2016 CAN BE SAID TO BE UNREASONABLE?

282. It is sought to be urged that the period provided for exchange of old notes with the new notes under the impugned Notification is unreasonable.

283. Under the 1978 Act, the Ordinance was notified on 16th January 1978, which transformed into the Act on 30th March 1978. Under Section 3 of the 1978 Act, all high denomination bank notes, notwithstanding anything contained in Section 26 of the RBI Act, ceased to be legal tender in payment or on account at any place. Under Section 7 of the 1978 Act, every person desiring to tender for exchange demonetized notes was required to submit a declaration giving the particulars not later than 19th January 1978.

284. Under Section 8 of the 1978 Act, a person who failed to apply for exchange of any demonetized notes within the time provided under Section 7 thereof, was entitled to tender the notes together with a declaration required under Section 7 thereof along with the statement explaining the reasons for his

or her failure to apply within the specified time limit. Under sub-section (2) of Section 8 of the 1978 Act, if the RBI was satisfied with the reasons for the failure to submit the notes prior to 19th January 1978 being genuine, it could pay the value of the notes in the manner specified in sub-section (4) of Section 7 thereof. Under sub-section (3) of Section 8 thereof, an appeal was provided before the Central Government against the refusal of the RBI to pay the value of the notes.

285. It could thus be seen that under the 1978 Act, three days' period was provided for exchanging the demonetized notes. If a person could not avail of the said period, five days' grace period was made available during which period the money could be exchanged subject to the RBI being satisfied with the genuineness of the reasons for not submitting the same within three days. As such, the period available to everyone was three days which could be further extended by five days. A challenge was raised on the ground that the period was unreasonable and violative of the fundamental rights. Rejecting the said

contention, the Constitution Bench in the case of ***Jayantilal Ratanchand Shah*** (supra) observed thus:

> "**10.** It was, however, contended on behalf of the petitioners that even if it was assumed that Article 31 had not been violated, the time prescribed for exchange of the high denomination banknotes under Sections 7 and 8 of the Demonetisation Act was unreasonable and violative of their fundamental rights. ***When the above provisions of the Act are considered in the context of the purpose the Demonetisation Act sought to achieve, namely, to stop circulation of high denomination banknotes as early as possible, the above contention of the petitioners cannot be accepted. Consequent upon the high denomination banknotes ceasing to be legal tender on the expiry of 16-1-1978 and in view of the prohibition in the transfer of possession of such notes from one person to another thereafter as envisaged under Section 4, it was absolutely necessary to ensure that no opportunity was available to the holders of high denomination banknotes to transfer the same to the possession of others. At the same time it was necessary to afford a reasonable opportunity to the holders of such notes to get the same***

exchanged. However, if the time for such exchange was not limited the high denomination banknotes could be circulated and transferred without the knowledge of the authorities concerned from one person to another and any such transferee could walk into the Bank on any day thereafter and demand exchange of his notes. In that case it would have been wellnigh impossible for the Bank to prove that such a person was not the owner or holder of the notes on 16-1-1978. ***Needless to say in such an eventuality the very object which the Demonetisation Act sought to achieve would have been defeated. Obviously, to strike a balance between these competing and disparate considerations Section 7(2) of the Demonetisation Act limited the time to exchange the notes till 19-1-1978. However, even thereafter, in view of Section 8, the high denomination banknotes could be exchanged from the Bank till 24-1-1978 provided the tenderer was able to explain the reasons for his failure to apply for such exchange within the time stipulated under Section 7(2) of the Demonetisation Act. Apart from the above provisions regarding exchange of high denomination banknotes by the Bank within the time stipulated therein, provision has been made in***

sub-section (7) of Section 7, permitting the Central Government, for reasons to be recorded in writing, to extend in any case or class of cases the period during which high denomination banknotes may be tendered for exchange. From a combined reading of Sections 7 and 8 it is evidently clear that on furnishing a declaration complete in all particulars in accordance with sub-section (2) of Section 7 by 19-1-1978, the holder was entitled to get the exchange value of his notes from the Bank without any let or hindrance; thereafter, till 24-1-1978, he was also entitled to such exchange from the Bank if he could satisfactorily explain the reasons for his inability to apply by 19-1-1978 and after that date the Central Government was empowered to extend the period of such exchange. ***Such being the scheme of the Act regarding exchange of high denomination banknotes it cannot be said that the time and the manner in which the high denomination banknotes could be exchanged were unreasonable, unjust and violative of the petitioners' fundamental rights.***"

[emphasis supplied]

286. The Constitution Bench found that if the time for such exchange was not limited, the high denomination bank notes

could be circulated and transferred without the knowledge of the authorities concerned, from one person to another and any such transferee could walk into the Bank on any day thereafter and demand exchange of his notes. It was held that, in such an eventuality, the very object which the Demonetization Act sought to achieve would have been defeated. The Court found that between 16th January 1978 and 19th January 1978, the holder was entitled to get the exchange value of his notes from the Bank without any limit or hindrance. The challenge that the period of three days was unreasonable, unjust and violative of the petitioners' fundamental rights, stood specifically rejected.

287. In the present case, the period for exchanging any amount of SBNs and depositing the same in the KYC compliant bank account without any limit or hindrance was 52 days, whereas the said period in the case of ***Jayantilal Ratanchand Shah*** (supra) was only three days, which is much less as compared to the one provided by the impugned Notification. In the light of

what has been held by the Constitution Bench in the case of ***Jayantilal Ratanchand Shah*** (supra), we fail to understand as to how the said period of 52 days could be construed to be unreasonable, unjust and violative of the petitioners' fundamental rights.

288. We, therefore, hold that the period provided for exchange of notes vide the impugned Notification dated 8th November 2016 cannot be said to be unreasonable.

ISSUE NO. (vi): AS TO WHETHER THE RBI HAS AN INDEPENDENT POWER UNDER SUB-SECTION (2) OF SECTION 4 OF THE 2017 ACT IN ISOLATION OF THE PROVISIONS OF SECTION 3 AND SECTION 4(1) THEREOF TO ACCEPT THE DEMONETIZED NOTES BEYOND THE PERIOD SPECIFIED IN NOTIFICATIONS ISSUED UNDER SUB-SECTION (1) OF SECTION 4 OF THE 2017 ACT?

289. It is sought to be urged by Shri Divan that the RBI has independent power under sub-section (2) of Section 4 of the 2017 Act.

Contextual and harmonious construction of the provisions of the 2017 Act.

290. For appreciating the said contention, it will be appropriate to refer to Sections 3 and 4 of the 2017 Act, which read thus:

> "**3. Specified bank notes to cease to be liability of Reserve Bank or Central Government**.— On and from the appointed day, notwithstanding anything contained in the Reserve Bank of India Act, 1934 (2 of 1934) or any other law for the time being in force, the specified bank notes which have ceased to be legal tender, in view of the notification of the Government of India in the Ministry of Finance, number S.O. 3407(*E*), dated the 8th November, 2016, issued under sub-section (*2*) of section 26 of the Reserve Bank of India Act, 1934, shall cease to be liabilities of the Reserve Bank under section 34 and shall cease to have the guarantee of the Central Government under sub-section (*1*) of section 26 of the said Act.
>
> **4. Exchange of specified bank notes**.— (*1*) Notwithstanding anything contained

in section 3, the following persons holding specified bank notes on or before the 8th day of November, 2016 shall be entitled to tender within the grace period with such declarations or statements, at such offices of the Reserve Bank or in such other manner as may be specified by it, namely:—

(*i*) a citizen of India who makes a declaration that he was outside India between the 9th November, 2016 to 30th December, 2016, subject to such conditions as may be specified, by notification, by the Central Government; or

(*ii*) such class of persons and for such reasons as may be specified by notification, by the Central Government.

(*2*) The Reserve Bank may, if satisfied, after making such verifications as it may consider necessary that the reasons for failure to deposit the notes within the period specified in the notification referred to in section 3, are genuine, credit the value of the notes in his Know Your Customer compliant bank account in such manner as may be specified by it.

(*3*) Any person, aggrieved by the refusal of the Reserve Bank to credit the value of the notes under sub-section (*2*), may make a representation to the Central Board of the Reserve Bank within

> fourteen days of the communication of such refusal to him.
>
> *Explanation*.— For the purposes of this section, the expression "Know Your Customer compliant bank account" means the account which complies with the conditions specified in the regulations made by the Reserve Bank under the Banking Regulation Act, 1949 (10 of 1949)."

291. The effect of Section 3 of the 2017 Act is that the SBNs, which have ceased to be legal tender, in view of the impugned Notification, shall cease to be liabilities of the RBI under Section 34 of the RBI Act and shall cease to have the guarantee of the Central Government under sub-section (1) of Section 26 of the RBI Act. The legislative intent under Section 3 of the 2017 Act is to provide clarity and finality to the liabilities of the RBI and the Central Government arising from such bank notes which have ceased to be legal tender with effect from 9th November 2016.

292. Sub-section (1) of Section 4 of the 2017 Act provides that notwithstanding anything contained in Section 3 of the 2017

Act, a class of persons would be entitled to tender within the grace period with such declarations or statements, at such offices of the RBI or in such other manner as may be specified by it. Clause (i) of sub-section (1) of Section 4 of the 2017 Act deals with a citizen of India who makes a declaration that he was outside India between 9th November 2016 and 30th December, 2016, however, subject to such conditions as may be specified, in the notification, by the Central Government. Clause (ii) of sub-section (1) of Section 4 of the 2017 Act empowers the Central Government to issue a notification with regard to persons holding SBNs who would be entitled to tender within the grace period for such reasons as may be specified in the said notification.

293. It is thus clear that, though in view of the impugned Notification and in view of Section 3 of the 2017 Act, demonetized notes have ceased to be a legal tender and have ceased to be the liabilities of the RBI under Section 34 of the RBI Act and the guarantee of the Central Government under

sub-section (1) of Section 26 of the RBI Act, a window is provided by Section 4 of the 2017 Act. Clause (i) of sub-section (1) of Section 4 of the 2017 Act deals with a citizen of India who makes a declaration that he was outside India between 9th November 2016 and 30th December, 2016, subject to such conditions as may be specified, by notification, by the Central Government. Accordingly, a notification is issued by the Central Government on 30th December 2016. In view of clause (ii) of sub-section (1) of Section 4 of the 2017 Act, the Central Government is empowered to provide a window for tendering the SBNs which have otherwise ceased to be a legal tender to such class of persons and for the reasons as may be specified in the notification. Sub-section (2) of Section 4 of the 2017 Act provides that the RBI, if satisfied with the reasons for failure to deposit the notes within the period specified in the impugned Notification, i.e., prior to 30th December 2016, are genuine, credit the value of the notes in his KYC compliant bank account in such manner as may be specified by it. However, prior to

doing so, the RBI is required to make such verifications as it may consider necessary for finding out the genuineness of the reasons for failure to deposit the notes prior to 30th December 2016. The provisions of sub-section (2) of Section 4 of the 2017 Act are somewhat analogous to the provisions in sub-sections (1) and (2) of Section 8 of the 1973 Act. Sub-section (3) of Section 4 of the 2017 Act provides that any person, aggrieved by the refusal of the RBI to credit the value of the notes under sub-section (*2*), can make a representation to the Central Board of the RBI within fourteen days of the communication of such refusal to him. This provision is somewhat analogous with sub-section (3) of Section 8 of the 1973 Act.

294. It is thus clear that Section 4 of the 2017 Act provides an integrated scheme. Sub-section (1) of Section 4 of the 2017 Act empowers the Central Government to provide a window to the persons holding SBNs on or before 8th November 2016 to tender the same within the grace period with such declarations or statements. Clause (i) thereof is applicable to the citizens who

were outside India between 9th November 2016 and 30th December 2016. Clause (ii) thereof enables the Central Government to provide a window to such class of persons and for such reasons as may be specified in the notification by the Central Government. Sub-section (2) of Section 4 of the 2017 Act provides for consideration of the cases covered by sub-section (1) thereof. It provides that the RBI, upon its satisfaction, after making such verifications as it may consider necessary that the reasons for failure to deposit the notes prior to 30th December 2016, are genuine, will credit the value of the notes in KYC compliant bank account of such a person. If any person is aggrieved by the refusal of the RBI under sub-section (2), an appellate opportunity is provided to such a person, under sub-section (3).

295. The Constitution Bench of this Court in the case of ***Popatlal Shah v. The State of Madras***[72], observed thus:

[72] **[1953] 4 SCR 677**

> "It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself."

296. We may gainfully refer to the following observations of this Court in the case of ***Peerless General Finance and Investment Company Limited*** (supra):

> "**33.** Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look

> at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. ...."

297. The interpretation which makes the textual interpretation match the contextual has to be preferred. A statute is best interpreted when the reason and purpose for its enactment is ascertained. The statute must be read first as a whole, and then section by section, clause by clause, phrase by phrase and word by word. It has been held that if the statute is looked at in the context of its enactment with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word means and what it is designed to

say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation.

298. If we look at the purpose of the 2017 Act, it is for extinguishing the liabilities of the SBNs which have ceased to be legal tender with effect from 9th November 2016 so as to give clarity and finality to the liabilities of the RBI and the Central Government arising from such bank notes which have ceased to be legal tender. However, in order to provide a grace period to genuine cases, Section 4 of the 2017 Act has been incorporated. Section 5 of the 2017 Act provides for prohibition on holding, transferring or receiving SBNs. Sections 6 and 7 of the 2017 Act are penal sections which provide for penalty for contravention of Sections 4 and 5 of the 2017 Act, respectively.

299. It is thus clear that Section 4 of the 2017 Act provides for an integrated scheme. It is a complete code in itself. Under sub-section (1) of Section 4 of the 2017 Act, the Central Government is entitled to provide grace period. Under sub-

section (2) thereof, the RBI is required to satisfy as to whether a person seeking to take benefit of grace period under sub-section (1) is entitled thereto after satisfying that the reasons for not depositing the SBNs prior to 30th December 2016, are genuine, and thereafter, credit the value of the said notes in his 'KYC compliant bank account'. Sub-section (3) thereof provides for an appeal. We are therefore of the considered view that sub-section (2) of Section 4 of the 2017 Act cannot be read independently to provide power to the RBI in isolation of sub-sections (3) and (4) thereof. It is to be read as a part of the scheme of Section 4 of the 2017 Act.

300. Shri Divan and various other learned counsel contended that there were various genuine cases wherein the persons could not deposit the demonetized notes within the specified period. The impugned Notification was sought to be challenged on the ground that it has caused hardship to number of persons. It was therefore urged that this Court should either hold the impugned Notification to be arbitrary or direct the

Central Government to exercise the powers under Section 4(1)(ii) of the 2017 Act or by exercising the powers under Article 142 of the Constitution of India to provide a window so as to enable genuine persons to exchange their demonetized notes. We have already referred to the judgment of this Court in the case of ***Km. Sonia Bhatia*** (supra) hereinbefore.

301. As such, the contention that the impugned notification is liable to be set aside on the ground that it caused hardship to individual/citizens will hold no water. The individual interests must yield to the larger public interest sought to be achieved by impugned Notification.

302. Insofar as the suggestion to frame a scheme and provide a window for a limited period so as to enable citizens having genuine reasons to exchange the notes is concerned, we do not find that it will be appropriate for us in the absence of any expertise in economic, monetary and fiscal matters to frame such a scheme. In our view, it will be encroaching upon the

areas reserved for the experts. If the Central Government finds that there exists any such class of persons and there are any reasons for extending the benefit under Section 4 of the 2017 Act, it is within its discretion to do so. In our view, it cannot be done by a judicial mandate.

303. We therefore hold that the RBI does not have independent power under sub-section (2) of Section 4 of the 2017 Act in isolation of the provisions of Sections 3 and 4(1) thereof to accept the demonetized notes beyond the period specified in notifications issued under sub-section (1) of Section 4 of the 2017 Act.

IX. ANSWERS TO THE QUESTIONS

304. We accordingly answer the Reference as under:

(i) The power available to the Central Government under sub-section (2) of Section 26 of the RBI Act cannot be restricted to mean that it can be exercised only for 'one' or 'some' series of bank notes and not for 'all' series of

bank notes. The power can be exercised for all series of bank notes. Merely because on two earlier occasions, the demonetization exercise was by plenary legislation, it cannot be held that such a power would not be available to the Central Government under sub-section (2) of Section 26 of the RBI Act;

(ii) Sub-section (2) of Section 26 of the RBI Act does not provide for excessive delegation inasmuch as there is an inbuilt safeguard that such a power has to be exercised on the recommendation of the Central Board. As such, sub-section (2) of Section 26 of the RBI Act is not liable to be struck down on the said ground;

(iii) The impugned Notification dated 8th November 2016 does not suffer from any flaws in the decision-making process;

(iv) The impugned Notification dated 8th November 2016 satisfies the test of proportionality and, as such, cannot be struck down on the said ground;

(v) The period provided for exchange of notes vide the impugned Notification dated 8th November 2016 cannot be said to unreasonable; and

(vi) The RBI does not possess independent power under sub-section (2) of Section 4 of the 2017 Act in isolation of the provisions of Sections 3 and 4(1) thereof to accept the demonetized notes beyond the period specified in notifications issued under sub-section (1) of Section 4 of the 2017 Act.

305. Having answered the Reference, we direct the Registry of this Court to place the matter before Hon'ble the Chief Justice of India for placing it before the appropriate Bench(es). Needless to state that all other contentions are kept open to be considered by the Bench(es) before which the matters would be placed.

306. Before parting with the judgment, we place on record our deep appreciation for the valuable assistance rendered by Shri R. Venkataramani, learned Attorney General, Shri P.

Chidambaram, Shri Shyam Divan and Shri Jaideep Gupta, learned Senior Counsel and all other counsel appearing for the parties.

.....J.
[S. ABDUL NAZEER]

.....J.
[B.R. GAVAI]

.....J.
[A.S. BOPANNA]

.....J.
[V. RAMASUBRAMANIAN]

NEW DELHI;
JANUARY 02, 2023

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL APPELLATE/ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 906 OF 2016

VIVEK NARAYAN SHARMA ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

WITH

CONNECTED MATTERS

NAGARATHNA, J.

I N D E X

J U D G M E N T

I have had the benefit of reading the judgment proposed by His Lordship, B.R. Gavai, J.

2. However, I wish to differ on the reasoning and conclusions arrived at in his judgement with regard to exercise of power by the Central Government under sub-section (2) of Section 26 of the Reserve Bank of India Act, 1934 (hereinafter referred to as "the Act" for the sake of brevity) by issuance of the impugned notification dated 8th November, 2016.

Hence, my separate judgment.

Preface:

3. By way of a preface, I state that the judgment proposed by His Lordship, Gavai, J. does not recognise the essential fact that the Act does not envisage initiation of demonetisation of bank notes by the Central Government. Sub-section (2) of Section 26 of the Act, contemplates demonetisation of bank notes at the instance of the Central Board of the Reserve Bank of India (hereinafter referred to as "the Bank"). Hence, if demonetisation is to be initiated by the Central Government, such power is derived from Entry 36 of List I of the Seventh Schedule to the Constitution which speaks of currency, coinage and legal tender; foreign exchange.

In view of the interpretation given by me to sub-section (2) of Section 26 of the Act in the context of the powers of the Central Board

of the Bank and the Central Government *vis-à-vis* demonetisation of bank notes, my answer is only with regard to question No.1 of the reference order. Incidentally, while considering the same, I would touch upon question No. 7 of the reference order.

4. The questions for consideration of this Constitution Bench framed by the Predecessor Bench on 16th December, 2016 are extracted as under:

> (i) "Whether the notification dated 8th November 2016 is ultra vires Section 26(2) and Sections 7,17,23,24,29 and 42 of the Reserve Bank of India Act, 1934;
>
> (ii) Does the notification contravene the provisions of Article 300(A) of the Constitution;
>
> (iii) Assuming that the notification has been validly issued under the Reserve Bank of India Act, 1934 whether it is ultra vires Articles 14 and 19 of the Constitution;
>
> (iv) Whether the limit on withdrawal of cash from the funds deposited in bank accounts has no basis in law and violates Articles 14,19 and 21;
>
> (v) Whether the implementation of the impugned notification(s) suffers from procedural and/or substantive unreasonableness and thereby violates Articles 14 and 19 and, if so, to what effect?
>
> (vi) In the event that Section 26(2) is held to permit demonetization, does it suffer from excessive delegation of legislative power thereby rendering it ultra vires the Constitution;

(vii) What is the scope of judicial review in matters relating to fiscal and economic policy of the Government;

(viii) Whether a petition by a political party on the issues raised is maintainable under Article 32; and

(ix) Whether District Co-operative Banks have been discriminated against by excluding them from accepting deposits and exchanging demonetized notes."

Keeping in view the general public importance and the far-reaching implications which the answers to the questions may have, we consider it proper to direct that the matters be placed before the larger Bench of five Judges for an authoritative pronouncement. The Registry shall accordingly place the papers before Hon'ble the Chief Justice for constituting an appropriate Bench."

5. His Lordship, Gavai, J. has reframed the questions referred to this Constitution Bench and culled out six questions, which have been answered in the erudite judgment proposed by him. My views on each of such questions, as contrasted with those of His Lordship's have been expressed in a tabular form hereinunder, for easy reference.

Question, as reframed by His Lordship, B.R. Gavai, J.	**His Lordship's views**	**My views**
1. "Whether the power available to the Central Government under sub-section (2) of Section 26 of the RBI Act can be restricted to mean that it can be	i) The power available to the Central Government under sub-section (2) of Section 26 of the RBI Act cannot be restricted to mean that it can be exercised only for one or	**i)** The **Central Government possesses the power to initiate and carry out the process of demonetisation of all**

Question, as reframed by His Lordship, B.R. Gavai, J.	**His Lordship's views**	**My views**
exercised only for "one" or "some" series of bank notes and not "all" series in view of the word "any" appearing before the word "series" in the sub-section, specifically so, when on earlier two occasions, the demonetisation exercise was done by the plenary legislations?"	some series of bank notes and not to all series of bank notes. ii) The power can be exercised for ***all series of bank notes***. iii) Merely because on two earlier occasions, the demonetization exercise had done by plenary legislation, ***it cannot be held that such a power could not be available under sub-section (2) of Section 26 of the RBI Act***."	**series of bank notes, of all denominations**. However, **all series of bank notes, of all denominations could not be recommended to be demonetised, by the Central Board of the Bank under Section 26 (2) of the Act.** **ii) Sub-section (2) of Section 26 of the Act applies** only when a proposal for demonetisation is **initiated by the Central Board of the Bank** by way of a recommendation being made to the Central Government. **iii) On receipt of a recommendation from the Central Board of the Bank** for demonetisation under Section 26 (2) of the Act**,** the **Central Government may accept the said recommendation or may not do so**. **If the Central Government accepts the recommendation, it may issue a notification** in the

Question, as reframed by His Lordship, B.R. Gavai, J.	**His Lordship's views**	**My views**
		Gazette in this regard. **iv)** The **Central Government may also initiate and carry out demonetisation, even in the absence of a recommendation by the Central Board of the Bank**. However, this must be carried out **only by enacting a plenary legislation or law** in this regard, and **not through issuance of a Notification under sub-section (2) of Section 26 of the Act** as this provision is **not applicable** in cases where the proposal for demonetisation **is initiated by the Central Government.**
2. "In the event it is held that the power under sub-section (2) of Section 26 of the RBI Act is construed to mean "all" series, whether the power vested with the Central Government under the said sub-section would amount to conferring excessive delegation and as such, liable to	"The power vested with the Central Government under sub-section (2) of Section 26 of the RBI Act cannot be struck down on the ground of conferring excessive delegation."	i) This question does not arise for consideration as it has been held that the power under sub-section (2) of Section 26 of the Act cannot be construed to mean "all" series or "all" denominations. ii) In my view, if the Central Board of the Bank is vested with the power to recommend

Question, as reframed by His Lordship, B.R. Gavai, J.	**His Lordship's views**	**My views**
be struck down?"		demonetisation of "all" series or "all" denominations of bank notes, the same would amount to a case of excessive vesting of powers with the Bank.
3. "Whether the impugned notification dated 8th November, 2016 is liable to be struck down on the ground that the decision-making process is flawed in Law?"	"The impugned Notification dated 8th November, 2016, does not suffer from any flaws in the decision-making process."	i) That the measure of demonetisation ought to have been carried out by the Central Government **by way of enacting an Act or plenary legislation.** ii) The **proposal for demonetisation arose from the Central Government and therefore, could not be given effect to by way of issuance of a Notification as contemplated under sub-section (2) of Section 26 of the Act**, as, such provision would not apply in cases where the proposal for demonetisation **has originated from the Central Government, such as the instant case.** iii) That the decision-making process was also tainted with elements of "non-exercise of

Question, as reframed by His Lordship, B.R. Gavai, J.	**His Lordship's views**	**My views**
		discretion" by the Central Board of the Bank in rendering its advise on the impugned measure. That the Bank acted at the behest of the Central Government and did not render an independent opinion to the Central Government. iv) Therefore, **the impugned Notification dated 8th November, 2016 issued under sub-section (2) of Section 26 of the Act is unlawful.** Further, the subsequent **Ordinance of 2016 and Act of 2017** incorporating the terms of the impugned Notification are also unlawful.
4. "Whether the impugned notification dated 8th November, 2016, is liable to be struck down applying the test of proportionality?"	"The impugned Notification dated 8th November 2016 satisfies the test of proportionality and, as such, cannot be struck down on the said ground."	This question need not be answered in view of the above answers.
5. "Whether the period provided for exchange of notes vide the impugned notification dated 8th November, 2016, can be said to be unreasonable?"	"The period provided for exchange of notes vide the impugned Notification dated 8th November 2016 cannot be said to unreasonable."	This question need not be answered in view of the above answers.

Question, as reframed by His Lordship, B.R. Gavai, J.	**His Lordship's views**	**My views**
6. "Whether the RBI has an independent power under sub-section (2) of Section 24 of the 2017 Act in isolation of the provisions of Section 3 and Section 4(1) thereof to accept the demonetised notes beyond the period specified in notifications issued under subsection (1) of Section 4 of the 2017 Act?"	"The RBI does not possess independent power under sub-section (2) of Section 4 of the 2017 Act in isolation of the provisions of Sections 3 and 4(1) thereof to accept the demonetized notes beyond the period specified in notifications issued under subsection (1) of Section 4 of the 2017 Act."	This question need not be answered in view of the above answers.

The reasons for the aforesaid conclusions shall now be discussed.

Controversy in these cases:

6. Practices such as hoarding "black" money, counterfeiting, etc., when coupled with corruption, are eating into the vitals of our society and economy. Any measure intended to strike at such practices, and thereby eliminate off shoots thereof, such as, terror funding, drug trafficking, emergence of a parallel economy, money laundering including *Havala* transactions, must be commended. Such measures are necessary to sanitize the economy and society, and enable it to recover from the plague caused by the evils listed hereinabove. Therefore, it cannot be denied that demonetisation in the instant case

was a well-intentioned proposal. However, in my separate opinion I shall proceed to legalistically examine whether demonetisation, as well-intentioned as it may have been, was carried out in accordance with the procedure established under law.

6.1 The controversy in these cases revolves around the exercise of power by the Central Government under sub-section (2) of Section 26 of the Reserve Bank of India Act, 1934. Sub-section (1) of Section 26 of the Act provides that every bank note shall be a legal tender as per the amount expressed therein and shall be guaranteed by the Central Government. However, as per sub-section (2) of Section 26 of the Act, bank notes can cease to be legal tender when the Central Government issues a notification in the Gazette of India declaring that with effect from such date as may be specified in the said notification any series of bank notes of any denomination shall cease to be legal tender. Such a notification may be issued on the recommendation of the Central Board of the Bank. There is a challenge to the *vires* of the said provision and also the validity of the Notification dated 8th November, 2016 issued by the Central Government. As a result of the said Notification, all series of Rs.500/- and Rs.1,000/- denomination notes were demonetised or ceased to be legal tender by issuance of a notification on the said date. At this stage itself, it may be mentioned that subsequent to the

notification there was an Ordinance called "The Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016" (hereinafter referred to as "the 2016 Ordinance" for the sake of brevity) promulgated by the Hon'ble President of India, which was later made an Act of the Parliament, namely, "The Specified Bank Notes (Cessation of Liabilities) Act, 2017" (hereinafter called "2017 Act" for the sake of brevity) and was notified on 1st March 2017, replacing the Ordinance. The issuance of the aforesaid Notification and the action of the Central Government of demonetisation of all series of Rs.500/- and Rs.1,000/- are assailed in these Writ Petitions.

The Reserve Bank of India Act, 1934: An overview

7. Before proceeding further, it would be useful to refer to the provisions of the Act for the sake of convenience.

7.1 The object and purpose of the Act is to constitute a Reserve Bank of India to regulate the issue of bank notes and for keeping reserves with a view to secure monetary stability in India, and to generally operate the currency and credit system of the country to its advantage.

7.2 The Preamble of the Act states that it is essential to have a modern monetary policy framework to meet the challenge of an increasingly complex economy and the primary objective of the

monetary policy is to maintain price stability while keeping in mind the objective of growth. The monetary policy framework in India shall be operated by the Reserve Bank of India.

7.3 The following provisions of the Act are relevant for the purposes of this case and are extracted as under:

> "Section 2- Definitions: In this Act, unless there is anything repugnant in the subject or context, -
>
> xxxx
>
> [a(ii)] "the Bank" means the Reserve Bank of India constituted by this Act;
>
> [a(iii)] "Bank for International Settlements" mean the body corporate established with the said name under the law of Switzerland in pursuance of an agreement dated the 20th January, 1930, signed at the Hague;]
>
> [a(iv)] "bank note" means a bank note issued by the Bank, whether in physical or digital form, under section 22;]
>
> xxxxx
>
> (b) "the Central Board" means the Central Board of Directors of the Bank;
>
> xxxx
>
> (cc) "International Monetary Fund" and "International Bank for Reconstruction and Development" means respectively the "International Fund" and the "International Bank", referred to in the International Monetary Fund and Bank Act, 1945;]
>
> xxxx
>
> (d) "rupee coin" means (***) rupees which are legal tender in India under the provisions of the Coinage Act, 2011 (11 of 2011)"

7.4 Chapter II of the Act deals with Incorporation, Capital, Management and Business. Section 3 speaks of establishment and incorporation of the Reserve Bank while Section 7 deals with Management of the Bank. Section 8 prescribes the composition of the Central Board, and term of office of Directors of the Bank. Section 30 pertains to the powers of the Central Government to supersede the Central Board of the Bank.

7.5 Chapter III of the Act which is relevant for the purpose of these cases deals with Central Banking Function. For the purposes of these cases, Sections 22, 23, 24, 25, 26, 26A, 27, 28 and 34 are relevant and the same read as under:

> "22. **Right to issue Bank notes.** -(1) The Bank shall have the sole right to issue Bank notes in 1[India], and may, for a period which shall be fixed by the [Central Government] on the recommendation of the Central Board, issue currency notes of the Government of India supplied to it by the [Central Government], and the provisions of this Act applicable to Bank notes shall, unless a contrary intention appears, apply to all currency notes of the Government of India issued either by the [Central Government] or by the Bank in like manner as if such currency notes were Bank notes, and references in this Act to Bank notes shall be construed accordingly.
>
> (2) On and from the date on which this Chapter comes into force the 5[Central Government] shall not issue any currency notes."

"23. **Issue Department** - (1) The issue of Bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in Section 34.

(2) The Issue Department shall not issue Bank notes to the Banking Department or to any other person except in exchange for other Bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve."

"[24. **Denominations of notes** - (1) Subject to the provisions of sub-section (2), Bank notes shall be of the denominational values of two rupees, five rupees, ten rupees, twenty rupees, fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees, five thousand rupees and ten thousand rupees or of such other denominational values, not exceeding ten thousand rupees, as the Central Government may, on the recommendation of the Central Board, specify in this behalf.

(2) The Central Government may, on the recommendation of the Central Board, direct the non-issue or the discontinuance of issue of Bank notes of such denominational values as it may specify in this behalf.]"

"25. **Form of Bank notes** - The design, form and material of Bank notes shall be such as may be approved by the [Central Government] after consideration of the recommendations made by Central Board."

"26. **Legal tender character of notes** - (1) Subject to the provisions of sub-section (2), every Bank note shall be legal tender at any place in [India] in

payment or on account for the amount expressed therein, and shall be guaranteed by the [Central Government].

(2) On recommendation of the Central Board the [Central Government] may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of Bank notes of any denomination shall cease to be legal tender [save at such office or agency of the Bank and to such extent as may be specified in the notification]."

"[26A. **Certain Bank notes to cease to be legal tender**- Notwithstanding anything contained in section 26, no Bank note of the denominational value of five hundred rupees, one thousand rupees or ten thousand rupees issued before the 13th day of January, 1946, shall be legal tender in payment or on account for the amount expressed therein.]"

"27. **Re-issue of notes**- The Bank shall not re-issue Bank notes which are torn, defaced or excessively spoiled."

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"34. **Liabilities of the Issue Department**- (1) The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and Bank notes for the time being in circulation."

7.6 Section 22 states that the Bank has the sole right to issue bank notes in India, and may, for a period which shall be fixed by the Central Government on the recommendation of the Central Board of the Bank, issue currency notes of the Government of India supplied to it by the Central Government. On and from the

date on which Chapter III comes into force, the Central Government shall not issue any currency notes except the denomination of Rupee One.

7.7 The issue of bank notes shall be by the Issue Department of the Bank which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liability of the Issue Department as defined under Section 34 of the Act, *vide* Section 23 of the Act. The liabilities of the Issue Department under Section 34 of the Act shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation.

7.8 Sub-section (1) of Section 24 states that, subject to the provisions of sub-section (2) of Section 24, the bank notes shall be of the denominational values of two rupees, five rupees, ten rupees, twenty rupees, fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees, five thousand rupees and ten thousand rupees or of such other denominational values, not exceeding ten thousand rupees, as the Central Government may, on the recommendation of the Central Board of the Bank, specify in this behalf. However, this provision is

subject to sub-section (2) of Section 24 which states that the Central Government may on the recommendation of the Central Board of the Bank, direct the non-issue or the discontinuance of issue of bank notes of such denominational values as it may specify in that behalf. The Central Government has to approve the design for all the bank notes after consideration of the recommendation made by the Central Board *vide* Section 25 of the Act.

7.9 Sub-section (1) of Section 26 of the Act states that every bank note shall be legal tender at any place in India in payment, or on account for the amount expressed therein and shall be guaranteed by the Central Government. This is, however, subject to sub-section (2) of Section 26 of the Act, which states that the Central Government on the recommendation of the Central Board may, by issuance of a notification in the Gazette of India, declare that with effect from such date as may be specified in the notification, any series of Bank notes of any denomination shall cease to be legal tender, save at such office or agency of the Bank and to such extent as may be specified in the notification. Further discussion on this provision shall be made at a later stage as the said provision is the centre of the controversy in these cases.

7.10 Pursuant to the demonetisation which was carried out in the year 1946, bank notes of denominational value of Rs.500/-, Rs.1,000/- and Rs.10,000/-, issued before 13th January, 1946, ceased to be legal tender. Section 26A was inserted into the Act pursuant to the demonetisation which took place in the year 1946, which was initially by an Ordinance and subsequently by an Act of Parliament. Section 26A was inserted into the Act by Act 62 of 1956, with effect from 01.11.1956.

7.11 Section 27 provides that if a note is torn, defaced or excessively spoiled, the Bank shall not re-issue such a note. Similarly, Section 28 provides that if a currency note of the Government of India or bank note is lost, stolen, mutilated or imperfect, the value of same cannot be recovered from the Central Government or the Bank by any person.

7.12 Section 28A speaks of issue of special bank notes and special one-rupee notes in certain cases. The said provision was inserted by Act 14 of 1959 with effect from 01.05.1959.

Submissions:

8. We have heard learned senior counsel as well as counsel for the petitioners, and the learned Attorney General for India and learned senior counsel for the respondent-Bank, all assisted by learned counsel.

8.1 According to the learned senior counsel, Shri P. Chidambaram, appearing for some of the petitioners, the Central Government has the power to issue a notification in the Gazette of India declaring any series of bank notes of any denomination as having ceased to be legal tender and demonetise such currency notes, subject to compliance of certain procedural conditions prescribed under sub-section (2) of Section 26 of the Act. According to him, first, there has to be a recommendation of the Central Board of the Bank to the Central Government before the latter can issue a notification in the Gazette of India, demonetising any series of bank note of any denomination. That the Central Government cannot, by a simple notification in the Gazette of India, *suo moto* and in the absence of any recommendation of the Central Board of the Bank, demonetise any currency note in circulation by issuance of a gazette notification under the said provision.

8.2 Also, the Central Government can demonetise only a particular series of bank notes of a particular denomination on the recommendation of the Central Board of the Bank. In other words, the expression “any” series of bank notes of “any denomination” cannot be understood as “all” series of bank notes of “all” denominations. That the expression “any”

occurring twice in the section must be given the intended meaning and not supposed meaning and interpretation.

8.3 Shri Chidambaram submitted that in the instant case, the Central Government without complying with the procedure envisaged under sub-section (2) of Section 26 of the Act, simply issued a notification in the Gazette of India on 8th November, 2016 demonetising all series of bank notes of the denominations of Rs.500/- and Rs.1,000/-. Consequently, approximately 86 per cent of all notes in circulation were demonetised. The serious effects of demonetisation are well-known and judicial notice of the same may be taken. Even otherwise, carrying out the demonetisation by simply issuing a notification, in the absence of a recommendation made by the Central Board of the Bank, which is a condition precedent, is unlawful. Further, all series of bank notes of Rs.500/- and Rs.1,000/- could not have been demonetised by a stroke of a pen. The expression "any" in sub-section (2) of Section 26 of the Act means, "a particular" series of "a particular denomination" of a bank note, and not "all" series of "all" denominations. He contended that in the instant case, the issuance of the Notification, demonetising the entire currency of Rs.500/- and Rs.1,000/- in circulation at the time, is unlawful and the exercise of power was erroneous and arbitrary and hence, the same ought to be declared so.

8.4 Learned senior counsel emphasized that sub-section (2) of Section 26 of the Act must be given an interpretation which is legally workable and practicable and this Court ought not give a blanket power to the Central Government to demonetise all currency of a particular denomination, as such action would be contrary to the object envisaged under sub-section (2) of Section 26 of the Act.

8.5 Further elaborating on his submission, learned senior counsel for the petitioners contended that the expression "any" ought not be interpreted as "all" as such an interpretation would be disastrous to the Indian economy and contrary to the true letter and spirit of the Act. He contended that the word "any" means "one of the many" and not "all". Therefore, according to him, any one series of bank notes of a denomination could be demonetised and not all series of notes of a particular denomination or all series of bank notes of all denominations, by issuance of an executive notification. He contended that if the Section is read down, then, it would be saved from the vice of unconstitutionality; otherwise, the power of the Central Government to demonetise all series of bank notes of all denominations would be arbitrary and an excessive power, which is devoid of any guidance. That such power if vested with the Central Government, would be contrary to the provisions of

the Act. He further contended that exercise of discretion by the Central Government could be only to the extent of demonetisation of particular series of bank notes of any particular denomination that too on the recommendation of the Central Board of the Bank. Such vast powers so as to recommend demonetisation of all series of bank notes of any or all denominations, cannot also be vested with the Bank.

8.6 Learned senior counsel, Shri Shyam Diwan appearing for the petitioner, namely, Malvinder Singh in Writ Petition (Civil) No.149 of 2017, submitted that apart from the guarantee given by the Central Government with regard to every bank note as a legal tender at any place in India, such notes are also the liabilities of the Issue Department of the Bank under Section 34 of the Act to the extent of an amount equal to the total of the value of the currency notes of the Government of India and bank notes for the time being in circulation.

8.7 Learned senior counsel submitted that in the absence of a specific duty with regard to mitigating the long-lasting effects of demonetisation on the Indian economy, the decision of the Central Government to demonetise about 86.4% of the total currency in circulation is vitiated on account of manifest arbitrariness.

8.8 The learned senior counsel further contended that by applying the test of proportionality, the impugned notification dated 8th November, 2016, is liable to be set aside.

8.9 Reliance was placed on ***K.S. Puttaswamy (Retired) (Aadhaar) vs. Union of India (2019) 1 SCC 1*** to contend that the classical equality test can be applied to the present case to come to the conclusion that the decision of demonetisation had no nexus to the objective sought to be achieved.

8.10 It was further contended that the circular dated 31st December, 2016, is discriminatory, insofar as it prescribed no upper monetary limit applicable to Resident Indians for submission and exchange of Specified Bank Notes, which were declared to have ceased to be legal tender; however, the monetary limit of Rs. 25,000/- per individual was fixed for Non-Resident Indians (NRIs), depending on when the notes were taken out of India in accordance with the FEMA Rules. That an additional liability was imposed on NRIs as they had to produce a certificate issued by the Indian Customs upon arrival after 30th December, 2016, indicating the import of SBNs and the details and value of the same.

8.11 The learned senior counsel brought to the Court's notice an article titled "Using Fast Frequency Household Survey Data to

Estimate the Impact of Demonetisation on Employment" authored by Mr. Mahesh Vyas, Centre for Monitoring Indian Economy (2018) to contend that owing to the demonetisation carried out, there was a substantial reduction in employment and employment rates were 12 million lower than it was two months' preceding demonetisation. Relying on the said article, he submitted that demonetisation resulted in a loss of millions of jobs.

9. *Per contra,* learned Attorney General for India, Shri R.Venkataramani, vehemently countered the arguments of Shri P.Chidambaram, learned senior counsel, by contending that the power vested with the Central Government under sub-section (2) of Section 26 of the Act is not arbitrary or without guidance. That the power to demonetise any currency note or legal tender is vested with the Central Government and such power is of a wide import and amplitude and this Court may not give an interpretation, restricting the said power. He contended that the power vested with the Central Government is exercised by the issuance of a notification in the Gazette of India which is on the basis of a recommendation of the Central Board of the Bank.

9.1 In this regard, learned Attorney General emphasized that earlier demonetisations were carried out in the years 1946 and 1978 by issuance of Ordinances and thereafter, converting the said

Ordinances into Acts of Parliament. But in the instant case, the demonetisation dated 8th November, 2016 was for all series of bank notes of Rs.500/- and of Rs.1,000/- denominations, by the issuance of a gazette notification, which is perfectly valid in the eyes of law and in accordance with sub-section (2) of Section 26 of the Act.

9.2 Learned Attorney General contended that the impugned gazette notification was issued having regard to the salient objectives that had to be achieved by the demonetisation of Rs.500/- and Rs.1,000/- currency notes which are set out clearly in the notification dated 8th November, 2016. The salient objectives of demonetisation in the year 2016 were to eradicate black money, to eliminate fake currency from the Indian economy and to prevent terror funding. He therefore, contended that there is no merit in the submissions made by the learned senior counsel appearing for the petitioners as the impugned notification dated 8th November, 2016 is in accordance with sub-section (2) of Section 26 of the Act and therefore, is valid.

9.3 Shri R.Venkataramani, learned Attorney General, next submitted that the action taken by way of the impugned notification stands ratified by the 2017 Act and as the executive action has been validated by the will of the Parliament, the challenge to the notification would not survive.

9.4 The learned Attorney General contended that the word "any" appearing before the words "series of bank notes" in sub-section (2) of Section 26 of the Act should be construed to mean "all". He submitted that the argument of the petitioners that the word "any" would not mean "all" is flawed and if the same is accepted, it would permit the Government to issue separate notifications for each series, however, the Government would be prohibited from issuing a common notification for all series.

9.5 The learned Attorney General submitted that the word "any" has been used in two places in sub-section 2 of Section 26 of the Act and the word "any" preceding the word "series of bank notes" has to be construed to mean "all" whereas the word "any" preceding the word "denomination" may be construed to be a singular or otherwise. The learned Attorney General placed reliance on ***Maharaj Singh vs. State of Uttar Pradesh (1977) 1 SCC 155*** to contend that the same word used in the same provision twice could be permitted to have a different meaning in each of such usages.

9.6 The learned Attorney General contended that the submission made by the petitioners that the powers under sub-section (2) of Section 26 of the Act have not been exercised in the manner provided therein and that the decision-making process was

flawed on account of patent arbitrariness, is not tenable. He submitted that sub-section (2) of Section 26 of the Act postulates that the Central Government may take a decision to carry out demonetisation pursuant to the recommendation of the Central Board of the Bank and in the present case, there was a recommendation made by the Central Board to the Central Government, recommending demonetisation. Thus, after considering the proposal of the Central Board, the Central Government took the decision to carry out demonetisation. Thus, the procedure as envisaged in sub-section (2) of Section 26 of the Act was duly complied with.

9.7 The learned Attorney General placed reliance on ***Bajaj Hindustan Limited vs. Sir Lal Enterprises Limited (2011) 1 SCC 640*** wherein it was observed that economic and fiscal regulatory measures are fields on which Judges should encroach upon very warily as Judges are not experts in these matters. The learned Attorney General submitted that the Bank is an expert body charged with the duty of conceiving and implementing various facets of economic and monetary policy and that there cannot be a straitjacket formula guiding the discharge of its duties. That therefore, it must be allowed to carry out its functions as it deems fit. The learned Attorney

General further placed reliance on ***Rajbir Singh Dalal (Dr.) vs. Chaudhari Devi Lal University, Sirsa (2008) 9 SCC 284*** and ***Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity (2010) 3 SCC 640*** to contend that it is settled law that the courts should not interfere with the opinion of experts.

9.8 Shri Jaideep Gupta, learned senior counsel for the Bank contended that the withdrawal of all series of bank notes of the two denominations of Rs.500/- and Rs.1,000/- was well within the jurisdiction and power conferred upon the Bank and the Central Government under sub-section (2) of Section 26 of the Act and it is incorrect to say that the process under sub-section (2) of Section 26 of the Act had not been followed. Thus, the process cannot be criticized on the ground of procedural lapse on part of the Bank or the Central Government.

9.9 Learned senior counsel for the Bank further contended that the submission of the petitioners that unless the phrase “any” in sub-section (2) of Section 26 of the Act is read as “some” or “one”, the power conferred upon the Bank and the Central Government under the said section would be unguided and arbitrary, is without any basis. It was submitted that the expression “any” when construed literally refers to one, several

or all of a total number. Thus, the expression "any" used in sub-section (2) of Section 26 of the Act is broad enough to include "all", and consequently, the power of the Government under sub-section (2) of Section 26 of the Act is not limited merely to a specific set or "series" alone. It was thus contended that sub-section (2) of Section 26 of the Act is an enabling provision conferring authority on the Central Government to declare that any series of bank notes of any denomination shall cease to be legal tender on the recommendation of the Central Board.

9.10 Learned senior counsel for the Bank also submitted that the decision of the Central Board of the Bank to recommend the measure of demonetisation and the decision of the Central Government to accept the recommendation cannot be subject to judicial review. It was further contended that in the sphere of economic policy making, the *Wednesbury* principles are of no or little significance and that the proportionality principle can also not be applied for judicial review of economic policy. Learned senior counsel thus asserted that it is imperative that no restrictions are placed on economic policies formulated by the Bank or by the Central Government. Reliance was placed on ***Peerless General Finance and Investment Co. Ltd. vs. Reserve Bank of India (1992) 2 SCC 343*** and ***BALCO***

Employees' Union (Regd.) vs. Union of India (2002) 2 SCC 333 to contend that courts cannot interfere with economic policy which is the function of experts.

9.11 Learned senior counsel for the Bank further submitted that the contention of the petitioners that the decision-making process was faulty on account of not following the procedure under sub-section (2) of Section 26 of the Act, is without substance. Shri Jaideep Gupta, submitted that the procedure under sub-section (2) of Section 26 contemplates two things i.e., recommendation of the Central Board, and the decision by the Central Government and that in the present case, both the requirements have been duly followed, thus, the argument advanced on behalf of the petitioners does not hold any water.

9.12 Learned senior counsel for the Bank placed reliance on ***Jayantilal Ratanchand Shah vs. Reserve Bank of India (1996) 9 SCC 650*** to contend that a similar provision providing for a specified time for exchange of notes was found to be valid by a Constitution Bench of this Court, while adjudicating on the legality of the 1978 demonetisation. He submitted that the time provided in the present case is similar to the time provided under the 1978 Act and the time period provided in the said act was found to be reasonable, having regard to the purpose

sought to be achieved by the said Act. The learned senior counsel further submitted that everybody had sufficient opportunity either to deposit the notes in their banks or to exchange the same.

9.13 Learned senior counsel for the Bank submitted that demonetisation was carried out in furtherance of national economic interest and the same ought to be given deference. That the inconvenience caused to the public cannot be a ground to challenge the validity of such actions, particularly when prompt and adequate measures were taken by the Bank to mitigate the temporary hardships expected to be caused.

9.14 Learned senior counsel for the Bank submitted that the Specified Bank Notes (Cessation of Liabilities) Act, 2017, has given relief to certain categories of persons subject to verification. It was thus contended that individual cases of hardship that have not been provided for in the Specified Bank Notes (Cessation of Liabilities) Act, 2017, cannot be gone into.

9.15 It was further submitted that Section 8 of the RBI Act, 1934, provides for the composition of the Central Board and sub-section 1 of Section 4 stipulates that the Central Board shall consist of the following Directors, namely:

i) A Governor and not more than four Deputy Governors to be appointed by the Central Government;

ii) Four Directors to be nominated by the Central Government, one from each of the four Local Boards as constituted under Section 9;

iii) Ten Directors to be nominated by the Central Government; and

iv) Two Government officials to be nominated by the Central Government.

It was submitted that the 561st meeting of the Central Board of the Bank was held on 08.11.2016 at New Delhi and business was transacted therein with the requisite quorum. That during the said meeting, apart from the then Governor and two Deputy Governors, one Director nominated under Section 8(1)(b) of the Act, two Directors nominated under Section 8(1)(c) of the Act and two Directors nominated under Section 8(1)(d) of the Act were present. Thus, the requisite quorum of four directors of whom not less than three directors nominated under Section 8(1)(b) or 8(1)(c) were present for the meeting. Thus, the requisite procedure was duly followed by the Bank in the conduct of the 561st meeting of the Central Board.

Other learned senior counsel as well as learned counsel and parties-in-person have also addressed the Court.

History and instances of Demonetisation:

10. Before proceeding to consider the rival contentions, it would be useful to delineate on the concept of demonetisation and how it has been carried out, the world over as well as in India.

10.1 In prosaic terms, demonetisation is the process by which a nation's economic unit of exchange loses its legally enforceable validity. Currencies that are terminated through the process of demonetisation are no more legally considered exchanges and have no financial value. Demonetisation is therefore, the process of eliminating the lawful acceptance status of a monetary unit, by withdrawal of certain kinds or denominations of existing currency from circulation. The currency withdrawn may be supplanted with new currency.

10.2 The French were the first to use the term "Demonetise" in the years between the years 1850-1855. In world history, one can see several instances of demonetisations as many countries have adopted the policy of demonetisation. Some instances of demonetisation globally, may be recorded as under:

a) **United States of America:** One of the oldest examples of demonetisation may be found in the United States, when the Coinage Act of 1873, ordered the elimination of silver as legal tender in favour of the gold standard. Again, in the year 1969, to combat the existence of black money in the country and to restore the country's economy, President Richard Nixon declared all currencies over $100 to be null.

b) **Britain:** Before the year 1971, the currency of pound and penny used to be in circulation in Britain but to bring uniformity in currency, the government stopped circulation of old currency in 1971, and introduced coins of 5 and 10 pounds.

c) **Congo:** Mobutu Sese Seko made some changes with respect to the currency in circulation in Congo, for the smooth running of its economy during the Nineties.

d) **Ghana:** In the year 1982, Ghana demonetised notes of 50 Cedis denomination to tackle tax evasion and empty excess liquidity.

e) **Nigeria:** Demonetisation was carried out during the government of Muhammadu Buhari in the year 1984, when Nigeria introduced new currency and banned old notes.

f) **Myanmar:** In the year 1987, Myanmar's military invalidated around 80% of the value of money to curb black marketing.

g) **Russia (formerly U.S.S.R):** In the year 1991, in an attempt to combat the parallel economy, 50 and 100 Ruble notes were removed from circulation under the leadership of Mikhail Gorbachev.

h) **Venezuela:** In the year 2016, the Government of Venezuela demonetised 100 Bolívares notes on 11th December, 2016, to achieve economic, monetary and price stability.

i) **Zimbabwe:** In 2015, the Zimbabwean government chose to replace the Zimbabwe Dollar with the US Dollar in order to stabilize hyperinflation.

History of Demonetisation in India:

j) The first demonetisation was carried out on 12th January, 1946. To bring to realisation the first demonetisation that the country witnessed, an Ordinance was promulgated by the Government on 12th January, 1946. The Ordinance demonetised currency notes of Rs.500/-, Rs.1,000/- and Rs.10,000/- which were in circulation, primarily to check the unaccounted hoarding of money, with a directive that they could be exchanged for re-issued bank notes, within

ten days. The period of exchange was extended a number of times by both, the Bank and the Central Government. By the end of 1947, out of a total of Rs.143.97 crores of high denomination notes, notes of the value of Rs.134.9 crores had been exchanged. Thus, notes worth Rs.9.07 crores went out of circulation or not exchanged.

It is said that this exercise turned out to be more like a currency conversion drive as the government couldn't achieve much profit in the cash-strapped economy at that time.

k) The second demonetisation was carried out in the year 1978, in pursuance of the recommendation of the Wanchoo Committee, appointed by the Central Government, to recall the re-introduced Rs.1,000/-, Rs.5,000/- and Rs.10,000/- notes, entirely from the cash system. The stated objective of such measure was to nullify black money supposedly held in high denomination currency notes. The government resorted to demonetisation of bank notes of denominations Rs.1,000/-, Rs.5,000/-, and Rs.10,000/- notes on 16th January, 1978, under the High Denomination Bank Notes (Demonetisation) Ordinance, 1978 (No. 1 of 1978) and people were allowed three days' time to exchange their notes. During this demonetisation exercise, out of a value

of Rs.146 Crores demonetised notes, currency notes of value of Rs.124.45 Crores were exchanged and a sum of Rs.21.55 Crores, or 14.76% of the demonetised currency notes, were extinguished.

11. It would be useful at this stage to discuss briefly the Acts of 1946 and 1978 and the impugned demonetisation having regard to sub-section (2) of Section 26 of the Act.

11.1 The Ordinance of 12th January, 1946 stated that on the expiry of the 12th Day of January, 1946, all high denomination bank notes shall, ***notwithstanding anything contained in Section 26 of the Act,*** cease to be legal tender in payment or on account at any place in British India. A provision was made for the exchange of the high denomination bank notes which had ceased to be legal tender, with bank notes of the denominational value of Rs.100/- which continued to be legal tender.

11.2 The High Denomination Bank Notes (Demonetisation) Act, 1978 was enacted in public interest and provided demonetisation of certain high denomination bank notes and for matters connected therewith or incidental thereto. The said Act, *inter-alia,* defined a high denomination bank note to be a bank note of the denominational value of Rs.1,000/-, Rs.5,000/- or

Rs.10,000/-, issued by the Reserve Bank of India immediately before the commencement of the said Act. The said Act also stated in Section 3 that on the expiry of the 16th Day of January, 1978, all high denomination bank notes shall, ***notwithstanding anything contained in Section 26 of the Act***, cease to be legal tender.

11.3 As noted earlier, the previous demonetisations were not carried out on the strength of sub-section (2) of Section 26 of the Act inasmuch as both the legislations categorically stated that the demonetisation was "***notwithstanding anything contained in Section 26 of the Act***". In fact, under the 1978 Act, one of the objects of the demonetisation of high denomination bank notes was that such notes facilitated illicit transfer of money for financial transactions which were harmful to the national economy or were used for illegal purposes and therefore, it was necessary in public interest to demonetise the high denomination bank notes. The use of the *non-obstante* clause clearly indicates that the Central Government was not demonetising the currency on the recommendation of the Central Board of the Bank under sub-section (2) of Section 26 of the Act. In fact, this position is demonstrated by the fact that in the year 1978, the then Central Government sought an

opinion of the Central Board of the Bank regarding the demonetisation of high denomination bank notes. The proposal for demonetisation arose from or was initiated by the Central Government which sought the opinion of the Central Board of the Bank. Therefore, the proposal for demonetisation initiated by the Central Government was *de hors* sub-section (2) of Section 26 of the Act.

11.4 The fact that the *non-obstante* clause found a place in Section 3 of the Ordinance of 1946 as well as in Section 3 of the 1978 Act, would clearly indicate that the Central Government, in those cases, did not demonetise the high denomination bank notes on the recommendation made by the Central Board of the Bank under sub-section (2) of Section 26 of the Act but on the other hand, the same was carried out *de hors* the said provision by plenary legislations. Hence, the Central Government which initiated the process chose the route through legislation for carrying out the demonetisation rather than by issuing an executive notification in the Gazette of India.

11.5 The above is in contrast with the issuance of the gazette notification dated 8th November, 2016, which was followed by the Ordinance of 2016 and then the Act of 2017 was enacted. The said Act, *inter alia*, provides that the specified bank notes

would cease to be the liability of the Reserve Bank of India or the Central Government.

11.6 The demonetisation carried out in the year 2016, of all series of bank notes of denomination Rs.500/- and Rs.1,000/- which forms the subject matter of the controversy at hand was, on the other hand, carried out by the Central Government by issuance of a notification in the Gazette of India on 8th November, 2016. For ease of reference, the impugned notification dated 8th November, 2016 is extracted as under:

"**MINISTRY OF FINANCE**
(Department of Economic Affairs)
NOTIFICATION
New Delhi, the 8th November, 2016

S.O. 3407(E). — Whereas, the Central Board of Directors of the Reserve Bank of India (hereinafter referred to as the Board) has recommended that bank notes of denominations of the existing series of the value of five hundred rupees and one thousand rupees (hereinafter referred to as specified bank notes) shall be ceased to be legal tender;

And whereas, it has been found that fake currency notes of the specified bank notes have been largely in circulation and it has been found to be difficult to easily identify genuine bank notes from the fake ones and that the use of fake currency notes is causing adverse effect to the economy of the country;

And whereas, it has been found that high denomination bank notes are used for storage of unaccounted wealth as has been evident from the large cash recoveries made by law enforcement agencies;

And whereas, it has also been found that fake currency is being used for financing subversive activities such as drug trafficking and terrorism, causing damage to the economy and security of the country and the Central Government after due consideration has decided to implement the recommendations of the Board;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 26 of the Reserve Bank of India Act, 1934 (2 of 1934) (hereinafter referred to as the said Act), the Central Government hereby declares that the specified bank notes shall cease to be legal tender with effect from the 9th November, 2016 to the extent specified below, namely: -

1. (1) Every banking company defined under the Banking Regulation Act, 1949 (10 of 1949) and every Government Treasury shall complete and forward a return showing the details of specified bank notes held by it at the close of business as on the 8th November, 2016, not later than 13:00 hours on the 10th November, 2016 to the designated Regional Office of the Reserve Bank of India (hereinafter referred to as the Reserve Bank) in the format specified by it.

(2) Immediately after forwarding the return referred to in sub-paragraph (1), the specified bank notes shall be remitted to the linked or nearest currency chest, or the branch or office of the Reserve Bank, for credit to their accounts.

2. The specified bank notes held by a person other than a banking company referred to in sub-paragraph (1) of paragraph 1 or Government Treasury may be exchanged at any Issue Office of the Reserve Bank or any branch of public sector banks, private sector banks, foreign banks, Regional Rural Banks, Urban Cooperative Banks and State Cooperative Banks for

a period up to and including the 30th December, 2016, subject to the following conditions, namely: —

(i) the specified bank notes of aggregate value of Rs.4,000/- or below may be exchanged for any denomination of bank notes having legal tender character, with a requisition slip in the format specified by the Reserve Bank and proof of identity;

(ii) the limit of Rs.4,000/- for exchanging specified bank notes shall be reviewed after fifteen days from the date of commencement of this notification and appropriate orders may be issued, where necessary;

(iii) there shall not be any limit on the quantity or value of the specified bank notes to be credited to the account maintained with the bank by a person, where the specified bank notes are tendered; however, where compliance with extant Know Your Customer (KYC) norms is not complete in an account, the maximum value of specified bank notes as may be deposited shall be Rs.50,000/-;

(iv) the equivalent value of specified bank notes tendered may be credited to an account maintained by the tenderer at any bank in accordance with standard banking procedure and on production of valid proof of Identity;

(v) the equivalent value of specified bank notes tendered may be credited to a third-party account, provided specific authorisation therefor accorded by the third party is presented to the bank, following standard banking procedure and on production of valid proof of identity of the person actually tendering;

(vi) cash withdrawal from a bank account over the counter shall be restricted to Rs.10,000/- per day subject to an overall limit of Rs.20,000/- a week from the date of commencement of this notification until the

end of business hours on 24th November, 2016, after which these limits shall be reviewed;

(vii) there shall be no restriction on the use of any non-cash method of operating the account of a person including cheques, demand drafts, credit or debit cards, mobile wallets and electronic fund transfer mechanisms or the like;

(viii) withdrawal from Automatic Teller Machines (hereinafter referred to as ATMs) shall be restricted to Rs.2,000/- per day per card up to 18th November, 2016 and the limit shall be raised to Rs.4,000/- per day per card from 19th November, 2016;

(ix) any person who is unable to exchange or deposit the specified bank notes in their bank accounts on or before the 30th December, 2016, shall be given an opportunity to do so at specified offices of the Reserve Bank or such other facility until a later date as may be specified by it.

3. (1) Every banking company and every Government Treasury referred to in sub-paragraph (1) of paragraph 1 shall be closed for the transaction of all business on 9th November, 2016, except the preparation for implementing this scheme and remittance of the specified bank notes to nearby currency chests or the branches or offices of the Reserve Bank and receipt of bank notes having legal tender character.

(2) All ATMs, Cash Deposit Machines, Cash Recyclers and any other machine used for receipt and payment of cash shall be shut on 9th and 10th November, 2016.

(3) Every bank referred to in sub-paragraph (1) of paragraph 1 shall recall the specified bank notes from ATMs and replace them with bank notes having legal tender character prior to reactivation of the machines on 11th November, 2016.

(4) The sponsor banks of White Label ATMs shall be responsible to recall the specified bank notes from the White Label ATMs and replacing the same with bank notes having legal tender character prior to reactivation of the machines on 11th November, 2016.

(5) All banks referred to in sub-paragraph (1) of paragraph 1 shall ensure that their ATMs and White Label ATMs shall dispense bank notes of denomination of Rs.100/- or Rs.50/-, until further instructions from the Reserve Bank.

(6) The banking company referred to in sub-paragraph (1) of paragraph 1 and Government Treasuries shall resume their normal transactions from 10th November, 2016.

4. Every banking company referred to sub-paragraph (1) of paragraph 1, shall at the close of business of each day starting from 10th November, 2016, submit to the Reserve Bank, a statement showing the details of specified bank notes exchanged by it in such format as may be specified by the Reserve Bank.

[F.No.10/03/2016-Cy.I]
Dr. SAURABH GARG, Jt. Secy."

(underlining by me)

The said Notification was thereafter followed by an Ordinance issued by the President on 30th December, 2016 and subsequently an Act of Parliament namely, the 2017 Act.

The Actual Controversy:

12. The contention of the leaned senior counsel for the petitioners is two-fold: firstly, that sub-section (2) of Section 26 of the Act cannot be interpreted as having a very wide import as it would then be lacking in

guidance and being unchanneled, would be arbitrary and in violation of Article 14, and hence, unconstitutional. It was further contended that if the provision has to be saved from being declared unconstitutional, then the same has to be "read down" which means that a restrictive interpretation must be given to the words of the provision. The second contention is with regard to the exercise of power by the Central Government by issuance of the Notification dated 8th November, 2016 and the manner in which such power was exercised and the procedure followed. The aforesaid two contentions shall be dealt with together as they are intertwined.

The Reserve Bank of India: Bulwark of the Indian Economy:

13. Before considering the aforesaid two contentions, it would be useful to discuss the unique position that the Reserve Bank of India holds in the Indian economy.

13.1 Shri Chidambaram cited a recent judgment of this Court in the case of ***Internet & Mobile Assn. of India vs. RBI (2020) 10 SCC 274 ("Internet and Mobile Assn. of India")*** wherein one of us, V. Ramasubramanian, J. while dealing with the regulation of crypto-currency and virtual currency (VC) highlighted the importance of the Reserve Bank of India in the Indian economy. The salient observations made in the said judgment may be culled out as under:

a) That the Bank, established for the objects spelt out under Section 3(1) of the Act, is vested with the duty to operate the monetary policy framework in India; take over the management of currency from the Central Government and carry on the business of banking, in accordance with the provisions of the Act.

b) That with a view to enable the Bank to perform the role spelt out above, the Act authorises it to carry on and transact businesses, as enlisted under Section 17 of the Act; confers under Section 22, sole and exclusive right on the Bank to issue bank notes in India, except in relation to notes of denomination, Rs.1; recognises under Section 26 (1) that every note issued by the Bank shall be a legal tender; vests with the Central Board of the Bank the power to recommend to the Central Government to declare any series of Bank notes of any denomination, to cease to be legal tender, under Section 26 (2) of the Act; prohibits under Section 38 any money from being put into circulation by the Central Government, except through the Bank. In short, it was held that the operation/regulation of the credit/financial system of the country rests, almost entirely, on the Bank.

c) That the Bank is the sole repository of power for the management of currency in India. As regards the nature, amplitude and inalienability of the power that the Bank wields in the field of currency management, it was observed that what the Bank can do in this regard, the executive acting *de-hors* the aid of the Bank, is not adequately equipped to do. Recognising the importance of the role played by the Bank in matters pertaining to currency management, this Court declared that any observations/recommendations made by the Bank to the Central Government in this regard, have to be accorded due deference. The pertinent observations of the Court on this aspect have been usefully extracted hereinunder:

> "**192.** But as we have pointed out above, RBI is not just any other statutory authority. It is not like a stream which cannot be greater than the source. The RBI Act, 1934 is a pre-constitutional legislation, which survived the Constitution by virtue of Article 372(1) of the Constitution. *The difference between other statutory creatures and RBI is that what the statutory creatures can do, could as well be done by the executive. The power conferred upon the delegate in other statutes can be tinkered with, amended or even withdrawn. But the power conferred upon RBI under Section 3(1) of the RBI Act, 1934 to take over the management of the currency from the Central Government, cannot be taken away*. The sole right to issue Bank notes in India, conferred by Section 22(1) cannot also be taken away and conferred upon any other Bank or authority. RBI by virtue of its authority, is a

member of the Bank of International Settlements, which position cannot be taken over by the Central Government and conferred upon any other authority. Therefore, to say that it is just like any other statutory authority whose decisions cannot invite due deference, is to do violence to the scheme of the Act. In fact, all countries have Central Banks/authorities, which, technically have independence from the Government of the country. To ensure such independence, a fixed tenure is granted to the Board of Governors, so that they are not bogged down by political expediencies. In the United States of America, the Chairman of the Federal Reserve is the second most powerful person next only to the President. Though the President appoints the seven-member Board of Governors of the Federal Reserve, in consultation with the Senate, each of them is appointed for a fixed tenure of fourteen years. Only one among those seven is appointed as Chairman for a period of four years. As a result of the fixed tenure of 14 years, all the members of Board of Governors survive in office more than three Governments. Even the European Central Bank headquartered in Frankfurt has a President, Vice-President and four members, appointed for a period of eight years in consultation with the European Parliament. Worldwide, central authorities/Banks are ensured an independence, but unfortunately Section 8(4) of the RBI Act, 1934 gives a tenure not exceeding five years, as the Central Government may fix at the time of appointment. Though the shorter tenure and the choice given to the Central Government to fix the tenure, to some extent, undermines the ability of the incumbents of office to be absolutely independent, the statutory scheme nevertheless provides for independence to the institution as such. Therefore, we do not accept the argument that a policy decision taken by RBI does not warrant any deference."

d) This Court acknowledged the pivotal position of the Bank in the economy of the country. That the powers of the Bank, may be exercised by way of preventive as well as curative measures. That such powers may be exercised to take pre-emptive action. However, such measures must be proportional and must be prompted by some semblance of any damage suffered by its regulated entities. The relevant observations have been reproduced as under:

> "**224.** It is no doubt true that RBI has very wide powers not only in view of the statutory scheme of the three enactments indicated earlier, but also in view of the special place and role that it has in the economy of the country. These powers can be exercised both in the form of preventive as well as curative measures. But the availability of power is different from the manner and extent to which it can be exercised. While we have recognised elsewhere in this order, the power of RBI to take a pre-emptive action, we are testing in this part of the order the proportionality of such measure, for the determination of which RBI needs to show at least some semblance of any damage suffered by its regulated entities. But there is none. When the consistent stand of RBI is that they have not banned VCs and when the Government of India is unable to take a call despite several committees coming up with several proposals including two draft Bills, both of which advocated exactly opposite positions, it is not possible for us to hold that the impugned measure is proportionate."

13.2 Shri Jaideep Gupta appearing for the Bank has brought to our notice the following decisions to emphasize on the importance of the Reserve Bank of India:

a) In ***Joseph Kuruvilla Vellukunnel vs. The Reserve Bank of India AIR 1962 SC 1371,*** this Court observed that the most important function of the Bank is to regulate the banking system. The Bank has been described as a Banker's Bank. Under the Act, the scheduled banks maintain certain balances and the Bank can lend assistance to those banks as a "lender of the last resort". The Bank has also been given certain advisory and regulatory functions, but in its position as a central bank, it acts as an agency for collecting financial information and statistics. The Bank is also entrusted with the role of advising the Government and other banks on financial and banking matters, and for this purpose, the Bank keeps itself informed of the activities and monetary position of scheduled and other banks and inspects the books and accounts of Scheduled banks and advises the Government after inspection of the said books and accounts as to whether a particular bank should be included in the Second Schedule or not. That the Bank has been created as a central bank with powers of supervision, advice and

inspection, over banks, particularly those desiring to be included in the Second Schedule or those already included in the Schedule. The Reserve Bank thus, safeguards the economy and the financial stability of the country. This Court in the said case also sounded a caveat in stating that it cannot be said that the Reserve Bank can never act mistakenly or even negligently.

b) Subsequently, in ***Peerless General Finance and Investment Co. Ltd. vs. Reserve Bank of India (1992) 2 SCC 343*** this Court once again recognized the status of the Reserve Bank in the Indian economy. In the said case it was observed that the Reserve Bank of India is a Banker's Bank and a creature of statute. That the Reserve Bank of India has a large contingent of expert advice relating to the matters affecting the economy of the entire country. It was further observed that the Reserve Bank has an important role in the economy and financial affairs of India and one of its many important functions is to regulate the banking system in the country.

The aforesaid discussion is relevant for the purpose of interpreting sub-section (2) of Section 26 of the Act. The said provision clearly states that it is only on the recommendation of

the Central Board of the Bank, that any series of bank notes of any denomination shall be declared to have ceased to be legal tender.

Economic/Fiscal Policies: Interference by Courts

13.3 Before proceeding to interpret the said provision, it would be necessary to consider another aspect of the matter which has been emphasized by the learned Attorney General, i.e., with regard to the Court's deference to the economic and monetary policies of the government and restraint that the Court must exercise in interfering with the said policies, unless the same are so irrational or unreasonable, so as to be declared to be unconstitutional.

The above submission was made in the context of the contention of the petitioners, that the decision-making process in the present case was deeply flawed as it was contrary to the scheme and procedure contained in sub-section (2) of Section 26 of the Act and hence, this Court may review the same and declare it to be in contravention, *inter-alia*, of statutory provisions of the Act. The aforesaid contention was vehemently opposed by learned Attorney General who submitted that courts cannot sit in judgment over economic policy matters of the

Government. In this regard the following discussions could be made.

Judicial Review of Economic Policy:

The Indian judiciary has consistently exercised restraint with regard to judicial review of policy decisions. A few instances on which such restraint has been demonstrated, have been discussed as under:

(a) In this regard reliance was placed by the learned Attorney General on a judgment of this Court in ***State of Tamil Nadu vs. National South Indian River Interlinking Agriculturist Association 2021 SCC OnLine SC 1114***.

(b) In ***Rustom Cavasjee Cooper vs. Union of India AIR 1970 SC 565 ("Bank Nationalization Case")*** it was observed that this Court was not the forum where conflicting policy claims may be debated; it is only required to adjudicate the legality of a measure which has little to do with relative merits of different political and economic theories.

(c) This Court in the case of ***State of M.P. vs. Nandlal Jaiswal (1986) 4 SCC 566*** observed that the Government, as laid down in ***Permian Basin Area Rate Cases, 20 L Ed***

(2d) 312, is entitled to make pragmatic adjustments which may be called for by particular circumstances. The court cannot strike down a policy decision taken by the Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. That courts could interfere only if the policy decision is patently arbitrary, discriminatory or mala fide.

(d) In ***Peerless General Finance and Investment Co. Ltd. vs. RBI (1992) 2 SCC 343,*** this Court dithered to indulge itself with matters involving domains of the executive and the legislature concerning economic policy or directions given by Reserve Bank of India. This Court observed that it is unbecoming of judicial institutions to interfere with economic policy which is the prerogative of the Government, in consultation with experts in the field and that it is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies.

(e) The validity of the decision of the Government to grant licence under the Telegraph Act, 1885 to non-government companies for establishing, maintaining and working of telecommunication system of the country pursuant to

government policy of privatisation of telecommunications was challenged in ***Delhi Science Forum vs. Union of India AIR 1996 SC 1356***. It was contended that telecommunications were a sensitive service which should always be within the exclusive domain and control of the Central Government and under no situation should be parted with by way of grant of license to non-government companies and private bodies. While rejecting this contention, this Court observed that:

> "... The national policies in respect of economy, finance, communications, trade, telecommunications and others have to be decided by Parliament and the representatives of the people on the floor of Parliament can challenge and question any such policy adopted by the ruling Government...."

(f) The reluctance of the court to judicially examine the merits of economic policy was again emphasised in ***Bhavesh D. Parish vs. Union and India (2000) 5 SCC 471***. This Court opined that in the context of the changed economic scenario the expertise of people dealing with the subject should not be lightly interfered with. The consequences of such an interdiction can have large-scale ramifications and can put the clock back for a number of years. That in dealing with economic legislations, this Court, while not

jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all.

(g) Buttressing the same aspect, in ***Balco Employees' Union (Regd) vs. Union of India AIR 2002 SC 350***, it was held that in a democracy, it is the prerogative of each elected Government to follow its own policy. This Court observed that often a change in Government may result in the shift in focus or change in economic policies and any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or *malafide*, a decision bringing about change cannot per se be interfered with by the court.

(h) In ***Directorate of Film Festivals vs. Gaurav Ashwin Jain AIR 2007 SC 1640***, it was observed that the scope of judicial review of governmental policy is now well defined and the courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy. This Court was also of the view that Courts are not Advisors to the executive on matters of

policy which the executive is entitled to formulate, thus, the scope of judicial review when examining a policy of the government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. It was thus held that the Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

(i) In the case of ***DDA vs. Joint Action Committee, Allottee of SFS Flats AIR 2008 SC 1343***, the Supreme Court held as under:

> *"An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review."*
>
> > *"Broadly, a policy decision is subject to judicial review on the following grounds:*
> >
> > *(a) if it is unconstitutional;*

(b) if it is dehors the provisions of the Act and the regulations;

(c) if the delegate has acted beyond its power of delegation;

(d) if the executive policy is contrary to the statutory or a larger policy."

(j) In ***Small Scale Industrial Manufacturers Association (Regd.) vs. Union of India (2021) 8 SCC 511,*** a writ petition was preferred under Article 32 of the Constitution of India by the Small-Scale Industrial Manufactures Association, Haryana for an appropriate writ, direction or order directing the Union of India and others to take effective and remedial measures to redress the financial strain faced by the industrial sector, particularly, MSMEs due to the COVID-19 pandemic. This Court while considering the submissions of the parties on the issue of whether economic and/or policy decisions taken by the Government in their executive capacity are amenable to the jurisdiction of courts, held that it was the legality of the policy, and not the wisdom or soundness of the policy, that can be the subject of judicial review. This Court observed that courts do not play an advisory role to Government and economic policy decisions should be left to experts. This Court observed that it is not normally within the domain of

any Court to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning. It is only when a policy is arbitrary and violative of any Constitutional, statutory or any other provisions of law, that the Courts can interfere.

13.4 What emerges from an understanding of the decisions referred to above on the subject of judicial review of economic policy may be culled out as under:

i) That the court is not to sit in judgment over the merits of economic or financial policy;

ii) That the scope of interference by a court is limited to instances where the impugned scheme or legislation in the economic arena has been enacted in violation of any Constitutional or statutory provisions;

iii) That the court may not undertake a foray into the merits, demerits, sufficiency or lack thereof, success in realising the objectives etc., of an economic policy, as such an analysis is the prerogative of the Government in consultation with experts in the field.

13.5 Being mindful of the limited scope of judicial review permissible in matters concerning economic policy decisions, I shall limit my examination of the matter to such extent as is necessary for the purpose of determining whether the process concluding in the issuance of the impugned notification was correct or as being contrary to sub-section (2) of Section 26 of the Act and allied aspects of the case. It may be stated at this juncture that the said aspect of the matter is not one of ***form*** but ***of substance***. Therefore, examining this aspect of the matter would not amount to interfering with, or sitting in judgment over the merits of the policy of demonetisation, and is therefore well within the limits of the *Lakshmanrekha* that this Court has carefully drawn for itself.

14. Bearing in mind the important role played by the Bank in shaping the economy of the country, and also the principle that the Constitutional Courts should refrain from interfering in financial and economic policy decisions of the government unless such policies are so irrational as to warrant interference and also having regard to the provisions of the Constitution, the relevant statutes, and considerations of public interest, the two contentions raised by the petitioners shall now be considered in analysing and interpreting Section 26 (2) of the Act.

Section 26 of the Act: Interpretation:

15. With a view to lend perspective to the discussion to follow, a bird's eye view of my analysis and conclusions has been expressed in a tabular form as under:

Sl. No.	**Parameters for distinction**	**When the proposal for demonetisation originates by way of a recommendation by the Central Board of the Bank:**	**When the proposal for demonetisation originates from the Central Government:**
1.	Role of the Central Government	The Central Government may on consideration of the Bank's recommendation, ***accept the same and act on such acceptance by issuing a notification in the Gazette of India*** declaring that "any" series of "any" denomination has ceased to be legal tender; ***or*** the Central Government is also free to decide in its wisdom that it is not expedient to accept the recommendation of the Bank to declare that "any" series of "any" denomination has ceased to be legal tender. In the event that the ***recommendation is not accepted, no further action is required to be taken by the Central Government***.	The Central Government ***initiates the proposal*** for demonetisation. It consults the Bank on the same and seeks the Bank's advice. On receiving the Bank's advice/opinion on the proposed measure, the Central Government shall consider the same. ***Consultation with the Central Board of the Bank does not mean concurrence.*** The Central Government is free to give effect to its proposal for demonetisation, notwithstanding the opinion of the Bank.

Sl. No.	Parameters for distinction	When the proposal for demonetisation originates by way of a recommendation by the Central Board of the Bank:	When the proposal for demonetisation originates from the Central Government:
2.	Role of the Bank	The Central Board of the Bank makes a ***recommendation*** to the Central Government to declare that "any" series of "any" denomination has ceased to be legal tender.	The Central Government consults the Bank seeking advice on its proposal to carry out demonetisation. The Bank is bound to render its ***independent advice*** and ***opinion*** on the same.
3.	Extent of demonetisation that may be proposed and carried out	Demonetisation of "any" series of "any" denomination, has been interpreted to mean ***"specified" series of "specified" denomination***. Otherwise, it would be a case of excessive vesting of powers with the Bank which would be arbitrary and unconstitutional.	***"All" series of "all" denominations*** may be declared at once, to have ceased to be legal tender having regard to the situation faced by the Central Government.
4.	Considerations for proposed measure of demonetisation (Illustrative)	i) To promote general health of the Country's economy; ii) Fiscal policy considerations; iii) Monetary policy considerations. Considerations which could guide the Bank's recommendation are ***limited or narrow*** in compass.	i) Sovereignty and Integrity of India; ii) Security of the State; iii) To promote general health of the Country's economy; iv) Other aspects of governance. Considerations which could guide the Central Government's proposal to carry out demonetisation are ***broad or wide.***
5.	Process/Route to be followed	Issuance of a Notification in the Gazette of India,	Enactment of a Parliamentary

Sl. No.	Parameters for distinction	When the proposal for demonetisation originates by way of a recommendation by the Central Board of the Bank:	When the proposal for demonetisation originates from the Central Government:
	to carry out demonetisation	indicating therein that "any" specified series of "any" specified denomination has ceased to be legal tender, from such date as specified in the Notification.	Legislation, which may or may not be preceded by an Ordinance issued by the President of India.
6.	Applicability of sub-section (2) of section 26 of the Reserve Bank of India Act, 1934	Notification issued by the Central Government, giving effect to the Bank's recommendation, shall be on the strength of sub-section (2) of section 26 of the Act.	Sub-section (2) of section 26 of the Act is not applicable. Hence, a notification in the Gazette of India is not the manner in which demonetisation is to be carried out, when the proposal for the same originates from the Central Government.

15.1 Section 26 of the Act deals with legal tender of notes. Sub-section (1) of Section 26 declares that every bank note shall be a legal tender at any place in India in payment or on account for the amount expressed therein, and shall be guaranteed by the Central Government. There are two aspects to this provision: the first is, every bank note shall be a legal tender in any place in India and, secondly, that the Central Government shall guarantee the amount expressed on the bank note. The expression "bank note" is defined in Section 2 (aiv) of the Act to

mean, a bank note issued by the Bank whether in physical or digital form, under Section 22 of the Act. Section 22 of the Act categorically states that the Bank has the sole right to issue bank notes in India, on the recommendations of the Central Board of the Bank. The provision further provides that the Bank has the sole right to issue currency notes of the Government of India. The provisions of the Act would be applicable in a like manner, to all currency notes of the Government of India, issued either by the Central Government or by the Bank, as if such currency notes were bank notes.

15.2 Further, it is only on the recommendation of the Central Board of the Bank that the Central Government may direct the non-issue or discontinuation of the issue of bank notes of such denominational value as it may specify in this behalf. Even the design, form and material of bank notes has to be approved by the Central Government, after considering the recommendations made by the Central Board of the Bank. Thus, the scheme of the Act envisages that the issuance of the bank notes, the various denominations of the bank notes, the design and form of the bank notes, are all to be specified by the Central Government only on the recommendation of the Central Board of the Bank. Therefore, on perusal of Sections 24, 25 and 26 of the Act, it is observed that it is only on the recommendation of the Central

Board of the Bank that the Central Government would act *qua* the aforestated matters, on the strength of the respective provisions. It need not be emphasised that the Bank, being the only institution, which carries out the function of currency management and formulates credit rules in the country, is recognised as having a say in the issuance of currency notes, and also in specifying the denominations of the notes, as well as the design and form of the bank notes.

15.3 Further, although, sub-section (1) of Section 26 states that every Bank note shall be legal tender at any place in India, it acquires legal sanctity because the Central Government has guaranteed the bank note which has legal tender. Thus, a bank note statutorily has dual characteristics when it is issued by the Bank, namely, being a legal tender coupled with the guarantee of the Central Government and the said qualities go hand in hand. This would mean that it is only when the Bank which has the sole right to issue a currency note in India, issues the note and the same has been guaranteed by the Central Government, that such a note is legal tender. Therefore, the Issue Department of the Bank is not subject to any liabilities other than the liabilities under Section 34 of the Act. Section 34 of the Act states that an amount equal to the total of the amount of the currency notes of the Government of India and bank notes

for the time being in circulation, would be the liability of the Issue Department. This would imply that as long as the bank notes issued by the Bank are in circulation, the liability of the Government of India would continue. The said liability is owing to the guarantee given by the Central Government in sub-section (1) of Section 26 which is in the nature of a statutory guarantee.

15.4 While considering sub-section (1) of Section 26 of the Act, the first question that would arise is, whether, a bank note which has ceased to be a legal tender on the issuance of a notification by the Central Government would also cease to have the guarantee of the Central Government. In other words, whether the guarantee by the Central Government, would continue despite the bank note ceasing to be a legal tender. The answer is in the affirmative, for, a bank note may cease to be a legal tender between citizens but cannot cease to have the guarantee of the Central Government, so long as the liability of the Issue Department continues. The liability of the Issue Department of the Bank is co-extensive with the time period within which a bank note which has ceased to be a legal tender is exchanged at a notified bank. It is because of this reason that a bank note of any denomination which is demonetised or is declared to have ceased to be a legal tender, can be exchanged as indicated in

the notification issued by the Central Government so that the bearer of the bank note receives an equivalent amount as that expressed in the note which has ceased to be a legal tender or demonetised. Therefore, even though such demonetised currency would cease to be legal tender, the same could be exchanged in a bank specified by the Reserve Bank owing to the guarantee of the Central Government. If the guarantee of the Central Government ceases on demonetisation, then the same cannot be exchanged by the bearer of such bank notes. This has also been the argument of learned senior counsel Shri Shyam Divan.

15.5 Sub-section (2) of Section 26 of the Act states that on the recommendation of the Central Board of the Bank, the Central Government may, by notification in the Gazette of India, declare that with effect from such date as specified in the notification, any series of bank notes of any denomination shall cease to be a legal tender, save at such office or agency of the Bank and to such extent as may be specified in the said notification. The Central Government derives the power to issue a notification in the Gazette only on the recommendation of the Central Board of the Bank. The issuance of such a notification is an executive act which is backed by the recommendation of the Central Board of the Bank which has been accepted by the Central Government.

The notification has to indicate the date from which any series of bank notes of any denomination shall cease to be a legal tender, save at such office and to such extent as may be specified in the notification.

15.6 The essential ingredients of sub-section (2) of Section 26 of the Act can be epitomised as under:

i) on the recommendation of the Central Board of the Bank;

ii) the Central Government by notification in the Gazette of India;

iii) may declare any series of bank notes of any denomination to cease to be legal tender;

iv) with effect from such date as may be specified in the notification;

v) to such extent as may be specified in the notification;

Therefore, under sub-section (2) of Section 26 of the Act, the Central Government would act only on the recommendation made by the Central Board of the Bank, which is the initiator of demonetisation of bank notes.

15.7 Learned Attorney General made a pertinent submission that it is not necessary that only on a recommendation of the Central

Board of the Bank, the Central Government can demonetise any currency. That the Central Government has the power or jurisdiction to demonetise any bank note by the issuance of a gazette notification. He further contended that the powers of the Central Government cannot be denuded to such an extent that unless and until a recommendation of the Central Board of the Bank is made to the Central Government, the latter cannot demonetise any currency. According to learned Attorney General, if such a strict interpretation is given to sub-section (2) of Section 26, it would nullify the power of the Central Government to demonetise any bank note, having regard to the economic conditions of the country, the financial health of the economy and the monetary policy of the Government. It was submitted that the provision must be so interpreted so as to give a free play in the joints and empower the Central Government to issue a notification in the Gazette of India, in order to demonetise any bank note. He further contended that the requirement of recommendation of the Central Board of the Bank in order to enable the Central Government to issue a notification to demonetise any currency would imply that the initiation of demonetisation must only be from the Central Board of the Bank and that the Central Government has no power to initiate such an action of demonetisation.

15.8 I find considerable force in the contention of the learned Attorney General inasmuch as the Central Government cannot be said to be without powers in initiating demonetisation of bank notes. This is on the strength of Entry 36 of List I of the Seventh Schedule of the Constitution. The Central Government is not just concerned with the financial health of the country as well as its economy, but it is also concerned with the sovereignty and integrity of India; the security of the State; the defence of the country; its friendly relations with foreign countries; internal and external security and various other aspects of governance. On the other hand, the Bank is only concerned with the regulation of currency notes, monetary policy framework, maintaining price stability and allied matters. Therefore, if the Central Government is of the considered opinion that in order to meet certain objectives such as the ones stated in the impugned notification, namely, to eradicate black money, fake currency, terror funding etc., it is necessary to demonetise the currency notes in circulation, then the Central Government may initiate a proposal for demonetisation.

15.9 The second prong of the Learned Attorney General's contention *qua* the interpretation of sub-section (2) of Section 26 of the Act was that the Central Government has the power to demonetise not just any one series of currency of any one denomination but

it has the power to demonetise all series of currencies of all denominations at a time. It was argued that the expression "any" in sub-section (2) of Section 26 of the Act must mean "all".

15.10 *Per contra,* it was the submission of the learned senior counsel for the petitioners that, as the said provision stands, in the absence of there being any guidance *vis-à-vis* the power of the Central Government to issue a notification to demonetise the currency notes in circulation and in order to save such measure from the vice of unconstitutionality, the expression "any series" and "any denomination" in sub-section (2) of Section 26 of the Act must be restricted to mean "one series" and "one denomination", respectively. Otherwise, it could result in arbitrary exercise of power. He further contended that if sub-section (2) of Section 26 of the Act is not read down in this context, it would confer unguided and arbitrary power on the executive Government and it would amount to impermissible delegation of legislative powers.

15.11 It was further contended by Shri Chidambaram that demonetisation is resorted to in rare and exceptional circumstances and there are two justifiable reasons for which demonetisation could be resorted to, namely,

1) to weed out denominations of currency that are in disuse or are practically unusable;

2) to get rid of currency which has become worthless in value because of hyperinflation.

According to learned senior counsel for the petitioners, if any demonetisation of currency has to take place, and if the power of the Central Government is not channelised or restricted by reading down sub-section (2) of Section 26 of the Act, it would result in arbitrariness and unconstitutionality. Therefore, to save it from the vice of arbitrariness and unconstitutionality, it is necessary to read down the provision in the following two respects:

a) the Central Government has no power to demonetise any currency note except on the recommendation of the Central Board of the Bank under sub-section (2) of Section 26 of the Act, and;

b) the expression “any” in sub-section (2) of Section 26 of the Act must be restricted to be “any one”, that is, “one series” or “one denomination” of bank notes. That the addition of the words “any series” before the words “of bank notes of any denomination” limits the power of the Government to declare only a specified series of notes as no longer being a

legal tender. Thus, "any series" means any specified series and not "all series" of notes of a given denomination.

15.12 Since I have accepted the contention of the learned Attorney General appearing for Union of India *vis-à-vis* the power of the Central Government for initiating the process of demonetisation, the next question would be, whether, the Central Government can, on initiating the process of demonetisation, proceed to issue a gazette notification to demonetise any or all series of any or all denomination of bank notes, on the strength of sub-section (2) of Section 26 of the Act. Consideration of this issue would also answer the contention of learned senior counsel for the petitioners regarding sub-section (2) of Section 26 of the Act being unguided and arbitrary in nature and hence, unconstitutional. To this end, the following aspects have to be examined:

(a) Whether demonetisation can be initiated and carried but by the Central Government by issuing a notification in the Gazette of India as per sub-section (2) of Section 26 of the Act?

(b) Extent of the Central Government's power to carry out demonetisation, i.e., whether "all series" of "all denominations" may be demonetised.

15.13 As held hereinabove, the proposal for demonetisation can emanate either from the Central Government or from the Central Board of the Bank. It is however necessary to contrast the proposal for demonetisation initiated by the Central Government, with that initiated by the Central Board of the Bank. When the Central Board of the Bank recommends demonetisation, it is in my view, only for a particular series of bank notes of a particular denomination as specified in the recommendation made under sub-section (2) of Section 26 of the Act. The word “any” in sub-section (2) of Section 26 cannot be read to mean “all”. If read as “specified” or “particular” as against all, in my view, it would not suffer from arbitrariness or suffer from unguided discretion being given to the Central Board of the Bank.

On the other hand, in my view, the Central Government has the power to demonetise all series of bank notes of all denominations, if the need for such a measure arises. It cannot be restricted in such powers in such manner as the Central Board of the Bank is, under the above provision. This is because such power is not exercised under sub-section (2) of Section 26 of the Act but is exercised notwithstanding the said provision by the Central Government. Therefore, demonetisation of bank notes at the behest of the Central Government is a far more

serious issue having wider ramifications on the economy and on the citizens, as compared to demonetisation of bank notes of a given series of a given denomination on the recommendation of the Central Board of the Bank by issuance of a gazette notification by the Central Government.

Therefore, in my considered view, the powers of the Central Government being vast, the same have to be exercised only through a plenary legislation or a legislative process rather than by an executive act by the issuance of a notification in the Gazette of India. It is necessary that the Parliament which consists of the representatives of the People of this country, discusses the matter and thereafter approves and supports the implementation of the scheme of demonetisation.

15.14 The Central Government, as already noted above, could have several compulsions for initiating demonetisation of the bank notes already in circulation in the economy, and it could do so even in the absence of a recommendation, as per sub-section (2) of Section 26 of the Act, of the Central Board of the Bank. On its proposal to demonetise the bank notes, the advice/opinion of the Central Board of the Bank which has to be consulted may not always be in support of the proposal of the Central Government as in the year 1978. The Central Board of the Bank may give a negative opinion or a concurring opinion. In either of

the situations, the Central Government may proceed to demonetise the bank notes but only through a legislative process, either through an Ordinance followed by a legislation, if the Parliament is not in session; or by a plenary legislation before the Parliament and depending upon the passage of the Bill as an Act, carry out its proposal of demonetisation. Of course, depending upon the urgency of the situation and possibly to maintain secrecy, the option of issuance of an Ordinance by the President of India and the subsequent enactment of a law is always available to the Central Government by convening the Parliament. Such demonetisation of currency notes at the instance of the Central Government cannot be by the issuance of an executive notification. The reasons for stating so are not far to see –

(i) Firstly, because the Central Government is not acting under sub-section (2) of Section 26 of the Act. When the Central Government initiates the process of demonetisation it is *de hors* sub-section (2) of Section 26 of the Act.

(ii) Secondly, the Central Government has the power to demonetise all series of bank notes of all denominations unlike the narrower powers vested with the Central Board of the Bank under the aforesaid provision, if the situation so arises.

(iii) Thirdly, the Parliament which is the fulcrum in our democratic system of governance, must be taken into confidence. This is because it is the representative of the people of the Country. It is the pivot of any democratic country and in it rest the interests of the citizens of the Country. The Parliament enables its citizens to participate in the decision-making process of the government. A Parliament is often referred to as a ***"nation in miniature"***; it is the basis for democracy. A Parliament provides representation to the people of a country and makes their voices heard. Without a Parliament, a democracy cannot thrive; every democratic country needs a Parliament for the smooth conduct of its governance and to give meaning to democracy in the true sense. The Parliament which is at the centre of our democracy cannot be left aloof in a matter of such importance. Its views on the subject of demonetisation are critical and of utmost importance.

Dr. Subhash C. Kashyap in his book, "Parliamentary Procedure: Law, Privileges, Practice and Precedents", 3rd Ed., (2014), while discussing the functions of the Parliament has stated as follows:

> "Over the years, the functions of Parliament have no longer remained restricted merely to legislating. Parliament has, in fact emerged as a multi-functional institution encompassing in

> its ambit various roles viz. developmental, financial and administrative surveillance, grievance ventilation and redressal, national integrational, conflict resolution, leadership recruitment and training, educational and so on. The multifarious functions of Parliament make it the cornerstone on which the edifice of Indian polity stands and evokes admiration from many a quarter."

It is in the above context that it is observed that on a matter as critical as demonetisation, having a bearing on nearly 86% of the total currency in circulation, the same could not have been carried out by way of issuance of an executive notification. A meaningful discussion and debate in the Parliament on the proposed measure, would have lent legitimacy to the exercise.

When an Ordinance is issued or a Bill is introduced in the Parliament and enacted as a law, it would mean that it has been done by taking into confidence the Members of Parliament who are the representatives of the people of India, who would meaningfully discuss on the proposal for demonetisation made by the Central Government. In such an event, demonetisation would be by an Act of Parliament and not a measure carried out by the issuance of a gazette notification by the Central Government in exercise of its executive power.

Such demonetisation through an Ordinance or a legislation through the Parliament would be "notwithstanding what is

contained in sub-section (2) of Section 26 of the Act". This is because in such a situation, the Central Government is not acting on the basis of a recommendation received from the Central Board of the Bank but it would be proposing the demonetisation. Precedent for the same may be found in the earlier demonetisations which were also through a legislative process and not through the issuance of a gazette notification by the Executive/Central Government. When the process of demonetisation is carried out through a Parliamentary enactment and after being the subject of scrutiny by the Members of Parliament, any opinion sought by the Central Government from the Central Board of the Bank before initiating the promulgation of the Ordinance or placing the Bill before the Parliament may also be additional material which could be considered by the Parliament. When the Central Government initiates the proposal for demonetisation and thereafter consults the Bank on such proposal, then it could be said that the necessary safeguards were taken, as the Central Government would be fortified in its proposal for demonetisation having taken the advice of not only an expert body but the highest financial authority in the country, which handles not only the monetary policy but is also the sole authority vested with the power of issuance of bank notes or currency notes in

India. When the Central Government proposes to demonetise the currency notes, not only the view of the Central Board of the Bank is relevant and important but also that of the representatives of the people in the Parliament. The Members of the Parliament hold the sovereign powers of "We, the People of India" in trust.

15.15 Of course, by contrast, there would be no difficulty if the proposal for demonetisation is initiated by the Central Board of the Bank by making a recommendation under sub-section (2) of Section 26 of the Act, which the Central Government in its wisdom may consider and either act upon the recommendation or for good reason, decline to act on the same. That is a matter left to the wisdom of the Central Government. However, as noted above such recommendation by the Bank cannot relate to "all" series of a denomination or "all" series of "all" denominations of bank notes. That is a prerogative of only the Central Government.

15.16 It is nobody's case that the impugned gazette notification dated 8th November, 2016, of the Central Government was published on the initiation of the proposal of demonetisation by the Central Board of the Bank. The proposal for demonetisation was initiated by the Central Government by a letter dated 7th November, 2016 addressed by the Finance Secretary to the

Governor of the Bank. The Central Government, having "obtained" the advice of the Bank on its proposal, proceeded to issue the impugned gazette notification on the very next day, dated 8th November, 2016. The same was followed by an Ordinance and thereafter, an enactment was passed.

15.17 The contention of the petitioners could now be considered and answered. The words in sub-section (2) of Section 26 of the Act would have to be interpreted/construed in their normal parlance. It is already observed that issuance of such a notification under sub-section (2) of Section 26 of the Act must be preceded by a recommendation of the Central Board of the Bank and such recommendation is a condition precedent. The Central Government in its wisdom may accept the recommendation of the Central Board of the Bank and issue a notification in the Gazette of India or it may decline to do so. This position is evident from the use of the word "may" in sub-section (2) to Section 26 of the Act. However, what is significant is that if demonetisation of any bank note is to take place under sub-section (2) of Section 26 of the Act, it is only by issuance of a notification in the Gazette of India and not by any other method or manner. In other words, the Central Board of the Bank must first initiate the process by recommending to the Central Government to declare that any series of bank notes of

any denomination shall cease to be a legal tender by the issuance of a notification. If the Central Government accepts the recommendation of the Central Board of the Bank, it issues a notification in the Gazette of India carrying out the same, which is in the nature of an executive function and the publication of the notification in the Gazette of India is only a ministerial act.

15.18 Therefore, under sub-section (2) of Section 26 of the Act, the initiation of the process of demonetisation and the exercise of power ***originates*** from the Central Board of the Bank which has to recommend to the Central Government and the latter may accept the recommendation and in such event it would issue a gazette notification. In case the Central Government does not accept the recommendation, there will be no further action on the recommendation of the Central Board of the Bank. Thus, sub-section (2) of the Section 26 of the Act has inherently a very restricted operation, and is limited only to the initiation of demonetisation by the Central Board of the Bank and making a recommendation in that regard. Issuance of the notification, in the Gazette of India, would imply that the Central Government has accepted the recommendation of the Central Board of the Bank and therefore, has declared that the specified series of Bank notes of the specified denomination shall cease to be legal tender from the date to be specified in the notification. The

operation of sub-section (2) of Section 26 of the Act is thus in a very narrow compass and it is reiterated that the said power is exercised by the Central Government on acceptance of the recommendation of the Central Board of the Bank.

15.19 The reason as to why a wide interpretation as contended by the Union of India cannot be given to sub-section (2) of Section 26 of the Act is because a plain reading of the provision as well as a contextual understanding, would suggest that it is only when the ***initiation*** of a proposal for demonetisation is by the Central Board of the Bank by making a recommendation to the Central Government that the provision would apply.

15.20 This position, however, does not imply that the Central Government is bereft of any power or jurisdiction to declare any bank note of any denomination to have ceased to be a legal tender. As already observed while accepting the contention of learned Attorney General, the Central Government in its wisdom may also initiate the process of demonetisation as has been done in the instant case. But what is important and to be noted is that the said power cannot be exercised by the mere issuance of an executive notification in the Gazette of India. In other words, when the proposal to demonetise any currency note is initiated by the Central Government with or without the

concurrence of the Central Board of the Bank, it is ***not*** an exercise of the executive power of the Central Government under sub-section (2) of Section 26 of the Act. In such a situation, as already held, the Central Government would have to resort to the legislative process by initiating a plenary legislation in the Parliament.

15.21 What is being emphasised is that the Central Government cannot act in isolation in such matters. The Central Government has to firstly, take the opinion of the Central Board of the Bank for the proposed demonetisation. The Central Board of the Bank may not accept the proposal of the Central Government or may partially concur with the proposal on specific aspects. In fact, in 1978, when the then Governor of the Bank did not accept the proposal of the Central Government to demonetise Rs.5,000/- and Rs.10,000/- bank notes, the Central Government initiated the said process through the Parliament and this culminated in the passing of the Act of 1978. In drafting the said legislation, the expert assistance of two officers of the Bank was taken so as to fortify the legislation. The said legislation was also challenged before this Court in the case of ***Jayantilal Ratanchand Shah, Devkumar Gopaldas Aggarwal vs. Reserve Bank of India (1996) 9 SCC 650***

whereby the *vires* of the 1978 Act was ultimately, upheld by this Court *vide* judgement dated 9th August, 1996, after eighteen years of its enactment.

15.22 The reasons as to why the Central Government cannot unilaterally issue a gazette notification but has to resort to a legislation when it initiates the proposal for demonetisation have already been discussed. The Central Government may have very valid objectives to do so, as in the instant case, i.e., in order to eradicate black money, fake currency and prevent currency from being utilized for terror funding. But, those objects would not be the objects with which the Central Board of the Bank may make a recommendation under sub-section (2) of Section 26 of the Act. The reason being, the Central Government would view the entire scheme of demonetisation in a larger perspective, having several objects in mind and in the interest of the sovereignty and integrity of the India, the security of the State, the financial health of the economy, etc. The Central Board of the Bank may not be in a position to visualize such objectives. Under such circumstances the Central Government must consult the Bank but need not mandatorily obtain the imprimatur of the Central Board of the Bank to its proposal. What if the Central Board of the Bank, when consulted by the Central Government, gives a negative

opinion? Would it mean that the Central Government would then not resort to demonetisation in deference to the opinion of the Central Board of the Bank? It may do so if it finds that the opinion tendered by the Bank is just and proper, but the Central Government may have its own reasons for not accepting the opinion of the Central Board of the Bank and therefore, in such a situation the Central Government will have to resort to initiate the proposal for demonetisation through a plenary legislation, by way of introduction of a Bill in the Parliament resulting in an Act of Parliament.

15.23 Therefore, the sum and substance of the discussion is that when the Central Board of the Bank initiates or originates the proposal for demonetisation of any series of bank notes of any denomination, it has to make a recommendation to the Central Government as per sub-section (2) of Section 26 of the Act. The Central Government may act on such recommendation by issuing a gazette notification. On the other hand, when the Central Government is the originator of the proposal for demonetisation of any currency note as in the instant case, it has to seek the advice of the Central Board of the Bank, for, it cannot afford to proceed in isolation and without bringing the said proposal to the notice of the Central Board of the Bank having regard to the important position the Bank holds in the

Indian economy. Irrespective of the opinion of the Central Board of the Bank to the Central Government's proposal, the legislative route would have to be taken by the Central Government for furthering its objective/s of demonetisation of bank notes. Thus, the same cannot be carried out by the issuance of a simple notification in the Gazette of India declaring that all bank notes or currency notes are demonetised. This is because when the Central Government is the originator of a proposal for demonetisation, it is acting *de hors* sub-section (2) of Section 26 of the Act.

15.24 Such an interpretation is necessary as it is the contention of the Union of India that the Central Government has the power to demonetise "all" series of bank notes of "all" denominations which would mean that every Rs.1/-, Rs.5/-, Rs.10/-, Rs.20/-, Rs.50/-, Rs.100/-, Rs.500/-, Rs.1,000/-, Rs.5,000/-, Rs.10,000/-, could be demonetised. Since the same is possible theoretically, in my view, such an extensive power cannot be exercised by issuance of a simple gazette notification in exercise of an executive power of the Central Government as if it is one under sub-section (2) of Section 26 of the Act. The same can only be through a plenary legislation, by way of an enactment following a meaningful debate in Parliament, on the proposal of the Central Government. This would also answer the other

contention of the learned senior counsel for the petitioners that sub-section (2) of Section 26 of the Act cannot be interpreted to mean “all series” of bank notes of “all denominations” when the words used in the provision are “any series” of “any denomination”.

Deciphering the plain meaning of sub-section (2) of Section 26:

15.25 The reason why power is vested only with the Central Board of the Bank under sub-section (2) of Section 26 of the Act to recommend to the Central Government to declare specified series of specific denomination of bank notes as having ceased to be legal tender, becomes clear when the plain meaning of the words of the said provision is recognised. When interpreted as such, no power to demonetise currency notes at the behest of the Central Government is envisaged under the said provision. This is because the power of the Central Government to do so is vast and has a wider spectrum. Such a power is not traceable to sub-section (2) of Section 26 of the Act which operates in a narrower compass. Hence, to save sub-section (2) of Section 26 from the vice of unconstitutionality, it must be given an interpretation appropriate to the object for which the provision is intended. In this context, the following principles become relevant.

15.26 When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the court is bound to give effect to that meaning and admit only one meaning and no question of construction of a statute arises, for, the provision/Act would speak for itself. The judicial dicta relevant to the above principle of interpretation are as follows:

(i) In ***Kanailal Sur vs. Paramnidhi Sadhu Khan AIR 1957 SC 907 at Page 910*** this Court observed that if the words used are capable of only one "construction" then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the purported object and policy of the Act. Reference was made to Section 162 of the Code of Criminal Procedure, 1898 and interpretation of the expression "any person" by Lord Atkin, speaking for the Privy Council who observed that the expression "any person" includes any person who may thereafter be an accused, and he observed that *"when the meaning of the words is plain, it is not the duty of Courts to busy themselves with supposed intentions" vide* ***Pakala Narayanaswami vs. Emperor AIR 1939 PC 47***.

(ii) Similarly, while construing Sections 223 and 226 of the Indian Succession Act, 1925 which contain a prohibition in relation to grant of Probate or Letters of Administration "to any association of individuals unless it is a company", this Court in ***Illachi Devi vs. Jain Society Protection of Orphans India (2003) 8 SCC 413***, applied the plain meaning rule and held that said expression would not include a society registered under the Societies Registration Act as a society even after registration does not become distinct from its members and does not become a separate legal person like a company.

(iii) For a proper application of the plain meaning rule to a given statute, it is necessary, to first determine, whether the language used is plain or ambiguous. "Any ambiguity" means that a phrase is fairly and equally open to diverse meanings. A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It is only when a provision contains a word or phrase which in a particular context is capable of having more than one meaning that it would be ambiguous.

(iv) Hence, in order to ascertain whether certain words are clear and unambiguous, they must be studied in their context.

Context in this connection is used in a wide sense as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in *pari materia* and the mischief which by those and other legitimate means can be discerned that the statute was intended to remedy.

[Source: Interpretation of Statutes by Justice G.P. Singh, 15th Edition]

15.27 Applying the above rule, if sub-section (2) of Section 26 of the Act is read as per the plain meaning of the words of the provision, then it does not lead to any ambiguity. The plain meaning rule is the golden rule of construction of statutes and it does not lead to any absurdity in the instant case. On a plain reading of the provision, it is observed that the Central Government can issue a notification in the Gazette of India to demonetise any series of bank notes of any denomination but only on the recommendation of the Central Board of the Bank. In my view sub-section (2) of Section 26 is not vitiated by unconstitutionality. This is for two reasons: firstly, the plain meaning of the words "any" series of bank notes of "any denomination" would ***not*** imply "all series" of bank notes of "all denominations". The word "any" means specified or particular

and not “all” as contended by the respondents. If the contention of the Union of India is accepted and the word “any” is to be read as “all”, it would lead to disastrous consequences as the Central Board of the Bank cannot be vested with the power to recommend demonetisation of “all series of currency of all denominations”. The interpretation suggested by learned Attorney General would lead to vesting of unguided power in the Central Board of the Bank whereas giving a wider power to the Central Government to initiate such a demonetisation wherein all series of a denomination could be demonetised is appropriate as it is expected to consider all pros and cons from various angles and then to initiate demonetisation on a large scale through a legislative process. Such a power is vested only in the Central Government by virtue of Entry 36 of List I of the Seventh Schedule of the Constitution which of course has to be exercised by means of a plenary legislation and not by issuance of a gazette notification under sub-section (2) of Section 26 of the Act. Hence, the word “any” cannot be interpreted to mean “all” having regard to the context in which it is used in the said provision.

15.28 Secondly, any recommendation of the Central Board of the Bank under sub-section (2) of Section 26 is not binding on the Central Government. If the Central Government does not accept

the recommendation of the Bank then no notification would be published in the Gazette of India by it. In fact, the Central Government is not bound by the recommendation made by the Central Board of the Bank to demonetise any bank note, although, the Central Board of the Bank may comprise of experts in matters relating to finance, having knowledge and experience of economic affairs of the country and such knowledge may be reflected in the recommendation made to the Central Government. As already noted, the Central Government has the option to accept the said recommendation and accordingly issue a gazette notification or elect not to act on the same. However, the Central Government should consider the recommendation with all seriousness and in its wisdom take an appropriate decision in the matter.

16. In the instant case, on perusal of the records submitted by Union of India and the Bank, it is noted that the proposal for demonetisation had been initiated by the Central Government by writing a letter to the Bank on 7th November, 2016 and not by the Central Board of the Bank. On the very next evening i.e., on 8th November, 2016 at 05:30 p.m., there was a meeting of the Central Board of the Bank at New Delhi and a Resolution was passed and a little while thereafter on the same evening, the notification was issued invoking sub-section (2) of Section 26 of the Act by the Central

Government. Such a procedure is not contemplated under sub-section (2) of Section 26 of the Act when the proposal for demonetisation is initiated by the Central Government.

16.1 Hence, it is held that in the instant case the Central Government could not have exercised power under sub-section (2) of Section 26 of the Act in the issuance of the impugned gazette Notification dated 8th November, 2016. It is further held that in the present case, the object and the purpose of issuance of an Ordinance and thereafter, the enactment of the 2017 Act by the Parliament was, in my view, to give a semblance of legality to the exercise of power by issuance of the Notification on 8th November, 2016. In fact, Section 3 of the Ordinance as well as Section 3 of the Act makes this explicit. The same is extracted as under for immediate reference:

> "3. On and from the appointed day, **notwithstanding anything contained in the Reserve Bank of India Act, 1934 or any other law for the time being in force,** the specified bank notes which have ceased to be legal tender, in view of the notification of the Government of India in the Ministry of Finance, number S.O. 3407(E), dated the 8th November, 2016, **issued under sub-section (2) of section 26 of the Reserve Bank of India Act, 1934, shall cease to be liabilities of the Reserve Bank under section 34 and shall cease to have the guarantee of the Central Government under sub-section (1) of section 26 of the said Act."**
>
> **(Emphasis by me)**

The said Section has an inherent contradiction inasmuch as the Section has a *non-obstante* clause *vis-à-vis* the Act or any other law for the time being in force but at the same time, the said provision refers to Sections 26 as well as Section 34 of the Act.

A *non-obstante* clause such as "notwithstanding anything contained in the Act or in any law for the time being in force", is sometimes appended to a section, with a view to give the enacting part of that section in case of conflict, an overriding effect over the provision or Act mentioned in the *non obstante* clause. The following are the judicial dicta on the point which bring out the use of a *non-obstante* clause:

a) In ***T.R. Thandur vs. Union of India (1996) 3 SCC 690***, this Court observed that a *non-obstante* clause may be used as a legislative device to modify the ambit of the provision or law mentioned in the *non-obstante* clause or to override it in specified circumstances. That while interpreting a *non-obstante* clause, the Court is required to find out the extent to which the legislature intended to give it an overriding effect.

b) In ***Central Bank of India vs. State of Kerala (2009) 4 SCC 94***, this Court held that while interpreting a *non-*

obstante clause the court is required to find out the extent to which the legislature intended to give it an overriding effect.

c) Further, this Court in ***A.G. Varadarajulu and Anr. vs. State of Tamil Nadu (1998) 4 SCC 231***, observed that it is well-settled that while dealing with a *non-obstante* clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision.

The effect of insertion of a *non-obstante* clause into a provision in a legislation, is that the very consideration arising from the provisions sought to be excluded, shall be excluded, *vide* ***Madhav Rao Scindia vs. Union of India (1971) 1 SCC 85.***

Applying the aforesaid principles to interpret Section 3 of the 2017 Act, it is observed that the *non-obstante* clause contained in the said provision has the effect of overriding the provisions of the Act as they are not applicable to the provisions and processes under the 2016 Ordinance and the 2017 Act. It is significant to note that the said Section contains a *non-obstante* clause which reads, "***notwithstanding anything***

contained in the Act or any other law for the time being in force". This is rightly so as the demonetisation is not in exercise of the powers under sub-section (2) of Section 26 of the Act. However, Section 3 of the 2017 Act goes on to state that the ***specified bank notes which have ceased to be legal tender***, in view of the notification dated 8th November, 2016 issued under sub-section (2) of Section 26 of the Act, shall cease to impose liabilities on the Bank under Section 34 of the Act and shall cease to have the guarantee of the Central Government under sub-section (1) of Section 26 of the Act. Therefore, while the impugned gazette notification dated 8th November, 2016 has been admittedly issued exercising powers under sub-section (2) of Section 26 of the Act, Section 3 of the 2017 Act also states that it is notwithstanding anything contained in the Act. If it is so, then the impugned notification could not have been issued invoking sub-section (2) of Section 26 of the Act. The liability could have so ceased, if the power that had been exercised by the Central Government for the issuance of the notification dated 8th November, 2016 impugned herein, under sub-section (2) of Section 26 of the Act on the recommendation made by the Central Board of the Bank. That is, when the initiation of demonetisation or the proposal came from the Central Board of the Bank, leading to the issuance of

the notification by the Central Government. Had the measure of demonetisation been carried out by way of enactment of a plenary legislation, then the *non-obstante* clause could have been employed to exclude the applicability of the Act. However, having sought to rely on sub-section (2) of Section 26 of the Act to issue the Notification, not only is the *non-obstante* clause misplaced but it also gives rise to a contradiction as to on what basis the Notification dated 8th November, 2016 has been issued.

Affidavits and Record of the Case:

17. It has been observed in the preceding paragraphs that when the proposal to carry out demonetisation originates from the Central Government, irrespective of whether or not the Bank concurs with or endorses such proposal, the Central Government would have to take the legislative route through a plenary legislation and cannot proceed with demonetisation by simply issuing a notification.

17.1 Having observed so, it is necessary to examine the proposal to carry out demonetisation, in the present case, which originated from the Central Government. For this purpose, reference may be had to the recitals of the affidavits filed by the Union of India and the Bank, and to the extent permissible, to the records submitted by the Union of India and the Bank in a sealed cover.

17.2 I have perused the following photocopies of the original records submitted on behalf of the Union of India and the Reserve Bank of India:

i) Letter by the Secretary, Department of Economic Affairs, Ministry of Finance, dated 7th November, 2016, bearing F. No. 10.03/2016 Cy.I, addressed to the Governor of the Bank;

ii) Draft Memorandum of the Deputy Governor of the Bank, placed before the Central Board of the Bank at its 561st Meeting;

iii) Minutes of the 561st Meeting of the Central Board of the Bank, convened at New Delhi, on 8th November, 2016, at 05:30 p.m., and signed on 15th November, 2016;

iv) Letter addressed by the Deputy Governor of the Bank to the Central Government on 8th November, 2016.

17.3 On a reading of the records listed hereinabove, the following facts emerge:

1) A letter bearing F. No. 10.03/2016 Cy.I dated 7th November, 2016 was addressed by the Secretary, Ministry of Finance, Department of Economic Affairs, Government of India, to the Governor of the Bank, referring to certain facts and figures to indicate the following two major threats to the security and financial integrity of the country:

i) Fake Infusion of Currency Notes (FICN);

ii) Generation of black money in the Indian economy.

The desire of the Central Government to proceed with the measure of demonetisation was expressed in the said letter and a request was made to the Bank to consider recommending the such measure, in terms of the relevant clauses of the Act.

2) Further, the Draft Memorandum of the Deputy Governor of the Bank, placed before the Central Board of the Bank, categorically states that the need for a meeting to deliberate on the proposed measure of demonetisation, had arisen pursuant to the letter addressed to the Bank from the Central Government dated 7th November, 2016. The Draft Memorandum further records that the ***Government had "recommended"*** that the withdrawal of the tender character of existing Rs.500/- and Rs.1,000/- notes, is apposite.

Further, the said document records that ***"as desired"*** by the Central Government, a draft scheme for implementation of the scheme of demonetisation had also been enclosed.

3) In view of the contents of the Draft Memorandum, the Central Board of the Bank in its 561st Meeting commended the Central Government's proposal for demonetisation and directed that the same be forwarded to the Central Government.

4) Accordingly, a letter was addressed by the Deputy Governor of the Bank to the Central Government on 8th November, 2016, stating therein that the proposal of the Central Government pertaining to withdrawal of legal tender of bank notes of denominational values of Rs. 500/- and Rs. 1,000/- was placed before the Central Board of the Bank in its 561st meeting. It was also stated that necessary recommendation to proceed with the said proposal, had been ***"obtained"*** from the Central Board of the Bank.

17.4 On a comparative reading of the records submitted by the Union of India as well as the Reserve Bank of India, it becomes crystal clear that the process of demonetisation of all series of bank notes of denominational values of Rs. 500/- and Rs. 1,000/-, commenced/originated from the Central Government. The said fact is crystalised in the communication addressed by the Secretary, Department of Economic Affairs, Ministry of Finance, dated 7th November, 2016 to the Governor of the Bank.

The phrases and words emphasized hereinabove clearly indicate that the proposal for demonetisation was from the Central Government. In substance, the Central Government sought the opinion/advice of the Bank on such proposal.

The use of the words/phrases such as, ***"as desired"*** by the Central Government; ***Government had "recommended"*** the withdrawal of the legal tender of existing Rs.500/- and Rs.1,000/- notes; recommendation has been ***"obtained"***; etc., are self-explanatory. This demonstrates that there was no independent application of mind by the Bank. Neither was there any time for the Bank to apply its mind to such a serious issue. This observation is being made having regard to the fact that the entire exercise of demonetisation of all series of bank notes of Rs.500/- and Rs.1,000/- was carried out in twenty four hours.

A situation where an independent authority such as the Bank, based on its own appreciation of the economic climate of the country, recommends a measure to the Central Government, must be contrasted with another situation where a measure which originates from the Central Government is simply placed before such independent authority for seeking its advice or opinion on such proposed measure. A proposal of the

Central Government on a certain scheme having serious economic ramifications has to be placed before the Bank to seek its expert opinion as to the viability of such a scheme. The Bank as an expert body may render advice on such a proposal and on some occasions may even concur with the same. However, even such concurrence to a proposal originating from the Central Government is not akin to an original recommendation of the Central Board of the Bank, within the meaning of Section 26 (2) of the Act.

17.5 The following points emerge on perusal of the affidavits submitted on behalf of the Union of India:

1) That the Central Board of the Bank made a specific recommendation to the Central Government on 8th November, 2016, for the withdrawal of legal tender character of the ***existing series*** of Rs.500/- and Rs.1,000/- bank notes which could ***tackle black money, counterfeiting and illegal financing.*** That the Bank also proposed a draft scheme for the implementation of the recommendation.

2) That the consultations between the Central Government and the Bank began in February, 2016; however, the

process of consolidation and decision making were kept confidential.

3) That the Bank and the Central Government were together engaged in the finalization of new designs, development of security inks and printing plates for the new designs, change in specifications of printing machines and other critical aspects.

17.6 The following points emerge upon perusal of the affidavits submitted on behalf of the Bank:

1) That a letter dated 7th November, 2016 was received by the Bank, from the Ministry of Finance, Government of India, which contained a proposal to withdraw the character of legal tender of ***existing*** Rs.500/- and Rs.1,000/- bank notes.

2) The said proposal was considered, together with a draft scheme for implementing the withdrawal of ***existing*** Rs.500/- and Rs.1,000/- bank notes, at the 561st meeting of the Central Board of Directors of the Bank, held on 8th November, 2016, at 05:30 p.m. at New Delhi.

3) That the Central Board of Directors was ***assured*** that the matter had been the subject of discussion between the Central Government and the Bank for six months. The said

Board was also ***assured*** that the Central Government would take adequate mitigating measures to contain the use of cash.

4) That the Board, having observed that the proposed step presents a big opportunity to advance the ***objects of financial inclusion*** and ***incentivising use of electronic modes payment***, recommended the withdrawal of legal tender of ***old bank notes*** in the denomination of Rs.500/- and Rs.1,000/-.

17.7 On a conjoint reading of the affidavits submitted by the Union of India and the Bank, the following deductions may be drawn:

1) That the Central Government in its letter addressed to the Bank, dated 7th November, 2016 proposed to withdraw the character of legal tender of ***existing*** Rs.500/- and Rs.1,000/- bank notes.

2) The Central Board of the Bank, at its 561st meeting held on 8th November, 2016 resolved that the ***withdrawal of legal tender of old bank notes*** in the denomination of Rs.500/- and Rs.1,000/- be made.

3) The objects guiding the Board's opinion were two-fold: first, pertaining to ***financial inclusion***, and second, being to ***incentivise the use of electronic modes of payment***.

4) The object guiding the Government's proposal to withdraw currency of the specified denominations, was to tackle ***black money, counterfeiting and illegal financing.***

17.8 In my view, there is contradiction as to the subject of demonetisation, as well the object thereof, as stated by the Bank *vis-à-vis* the Central Government as discernible from the affidavits. The same may be expressed as follows:

	As stated in the affidavit of the Bank	***As stated in the affidavit of the Central Government***
Object of Demonetisation	i) Financial inclusion ii) incentivising use of electronic modes of payment	To tackle: i) black money, ii) counterfeiting, iii) illegal financing.
Subject of Demonetisation	***Old bank notes*** in the denomination of Rs.500/- and Rs.1,000/-	***Existing*** Rs.500/- and Rs.1,000/- bank notes

The object of the measure and the subject are of relevance, in assessing the resolution of the Bank dated 8th November, 2016 because, the said considerations would have a bearing on

the question, whether, the Bank's opinion was in consonance with the object sought to be achieved through demonetisation by the Central Government's proposal.

17.9 On a close reading of the Notification dated 8th November, 2016, in juxtaposition with the records, the following aspects emerge:

i) One aspect of the matter which emerges with no ambiguity is that the proposal for demonetisation originated from the Central Government, by way of its letter addressed to the Bank, dated 7th November, 2016. This aspect forms the central plank of the controversy at hand. That the recommendation did not originate from the Bank under sub-section (2) of Section 26 of the Act, but was "obtained" from the Bank in the form of an opinion on the proposal for demonetisation submitted by the Central Government. Such an opinion, could not be considered to be a recommendation as required by the Central Government in order to proceed under sub-section (2) of Section 26 of the Act.

ii) Even if it is to be assumed for the sake of argument that the said opinion, was in fact a "recommendation" under sub-section (2) of Section 26 of the Act, in light of the interpretation given by me hereinabove to the phrase "any" series or "any" denomination, to mean a specified series/specified denomination, the recommendation itself is

void inasmuch as it pertained to demonetisation of “all” series of Bank notes of denominational values of Rs.500/- and Rs.1,000/-. As has already been observed, the term “any” as appearing in sub-section (2) of Section 26 of the Act could not be interpreted to mean “all” as such an interpretation would vest unguided and expansive discretion with the Central Board of the Bank.

iii) The Notification expressly states that it is issued under sub-section (2) of Section 26 of the Act. Therefore Section 3 of the Ordinance and Act could not, in the non-obstante clause, state that sub-section (2) of Section 26 is not applicable to the Act.

iv) Having observed that demonetisation could not have been carried out by issuing a Notification as contemplated under sub-section (2) of Section 26 of the Act and that the Parliament does indeed have the competence to carry out demonetisation, on the strength of Entry 36 of List I of the Seventh Schedule of the Constitution, the Central Government could not have exercised the power by issuance of an executive notification.

Legal Principles applicable to the case:

18. There are certain legal principles which are applicable in this case: one is expressed in the maxim "to do a thing a particular way or not at all"; this principle has also been expressed in terms of the latin maxim "*expressio unius est exclusio alterius*", which means that when a manner is specified for doing a certain thing, then all other modes for carrying out such act are expressly excluded; and the other principle is, exercise of discretion which is a well known principle in Administrative Law. The same would be discussed at this stage.

18.1 The first principle which is of relevance to the controversy at hand is that, where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden *vide,* ***Taylor vs. Taylor (1875) 1 Ch D 426***. Hence, when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all and other methods of performance are necessarily forbidden, *vide* ***Nazir Ahmed vs. King Emperor (1936) L.R. 63 I.A. 372***.

18.2 This Court too, has applied this maxim in the following cases:

(i) ***Parbhani Transport Co-operative Society Ltd. vs. The Regional Transport Authority, Aurangabad (1960) (3) S.C.R. 177: AIR 1960 SC 801,*** wherein it was observed that the rule provides that an expressly laid down mode of

doing something necessarily implies a prohibition of doing it in any other way.

(ii) In ***Dipak Babaria vs. State of Gujarat AIR 2014 SC 1972,*** this Court set aside the sale of agricultural land, on the ground that the sale was not in compliance with the statutory procedure prescribed in that regard under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. The matter was examined on the anvil of the aforestated maxim and it was held that alienation of agricultural land by adopting any alternate procedure to the one prescribed under the Act, was necessarily forbidden.

(iii) In ***Kameng Dolo vs. Atum Welly AIR 2017 SC 2859***, election of an unopposed candidate was declared as invalid on the ground that the nomination of his opponent was not withdrawn as per the procedure statutorily mandated. That the nomination of the opposite candidate ought to have been withdrawn in the manner provided for under the relevant statute and withdrawing the same in any other manner was necessarily forbidden. That withdrawal of the nomination, not carried out in accordance with the procedure established under the relevant statute, enabled

the successful candidate to win unopposed. Hence, his election was declared as void.

(iv) Similarly, in ***The Tahsildar, Taluk Office, Thanjore vs. G. Thambidurai AIR 2017 SC 2791***, assignment of land was cancelled on the ground that statutory requirements were not followed in assigning the land. It was held that when a statute prescribes that a certain Act is to be carried out in a given manner, the said Act could not be carried out through any mode other than the one statutorily prescribed.

(v) It may also be apposite to refer to the decision of this Court in ***Union of India vs. Charanjit S. Gill (2000) 5 SCC 742***, wherein this Court held that any provisions introduced by way of "Notes" appended to the Sections of the Army Act, 1950, could not be read as a part of the Act and therefore such notes could not take away any right vested under the said Act. It was observed that issuance of an administrative order or a "Note" pertaining to a special type of weapon to bring it within the ambit of the Army Act, which was hitherto not included therein, could not be said to have been included in the manner in which it was supposed to be included. That the Army Act empowers the

Central Government to make rules and regulations for carrying into effect the provisions of the Act; however, no power is conferred upon the Central Government of issuing "Notes" or "issuing orders" which could have the effect of the Rules made under the Act. That rules and Regulations or administrative instructions can neither be supplemented nor substituted by "Notes". That administrative instructions issued or the "Notes" attached to the Rules which are not referable to any statutory authority cannot be permitted to bring about a result, which is supposed to be achieved through enactment of Rules.

What emerges from the above discussion is that when a statute contemplates a specific procedure to be adhered to in order to arrive at a desired end, such procedure cannot be substituted by an alternative procedure which is not contemplated under the statute. Further, if an action is to be carried out by way of issuance of a particular statutory instrument on the basis of certain requirements, such action cannot be validly carried out by way of issuance of an instrument when the same is not contemplated under the Act. This is particularly so when the instrument enacted stands on a different footing than the one meant to be enacted.

Applying the said principle to the facts of the present case, it is observed that what ought to have been done through a Parliamentary enactment or plenary legislation, could not have been carried out by simply issuing a notification under sub-section (2) of Section 26 of the Act by the Central Government. As noted hereinabove, the said provision does not apply to cases where the proposal for demonetisation originates from the Central Government and the same is not envisaged under the Act. Hence, issuance a notification to give effect to the Central Government's proposal for demonetisation, was clearly based on an incorrect understanding of sub-section (2) of Section 26 of the Act. The Central Government did not follow the procedure contemplated under law to give effect to its proposal for demonetisation. This is not a matter of form but one of substance as in law, the powers of the Central Board of the Bank and the Central Government are totally distinct in the matter of demonetisation of bank notes.

19. The other legal principle is concerning exercise of discretion in Administrative Law. Lords Halsbury in ***Sharp vs. Wakefield 1891 AC 173*** described the concept of discretion in the following words:

> "When it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice,

> not according to private opinion ...according to law and not humour. It is to be, not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself."

19.1 It is a well-established rule of administrative law that discretionary power is to be exercised and a decision has to be made, by the very authority to whom the discretion is entrusted by the statute in question. The situation of an authority not exercising its discretion arises when any authority does not itself consider a particular matter before it on merits but still takes a decision, as if it is directed to do so, by another authority, most often, by a higher authority. When an authority exercises the discretion vested in it by law at the behest of another authority in a specific matter, this would in law amount to non-exercise of its discretionary power by the authority itself, and consequently, such action or decision is invalid.

19.2 The petitioners have contended that it is implicit in sub-section (2) of Section 26 of the Act that adequate time and attention must be devoted by both the Central Board of the Bank and the Central Government before proceeding with a measure of such magnitude and consequences, as demonetisation. It was further submitted that the facts and records of the present case would show that the procedure with such implicit obligations

was abandoned and the process contemplated was not as per the said provision. That the proposal emanated from the Central Government and was not initiated by the Bank. The Central Board of the Bank passed a resolution in a hurried manner. No adequate care and consideration were bestowed on such a crucial matter by the Central Board of the Bank having regard to the severe ramifications that the proposed demonetisation would have on almost every citizen of the country. Possibly, the Central Board of the Bank acted on the "assurances" of the Central Government which is evident on a perusal of the records and not on an independent application of mind owing to lack of time.

As noted from the records submitted by the Central Government as well as the Reserve Bank of India in the instant case, the Central Government wrote to the Central Board of the Reserve Bank of India on 7th of November, 2016 about its proposal to demonetise all series of bank notes of denominations of Rs.500/- and Rs.1,000/-, which were in circulation, and on the very next day i.e., 8th November, 2016, a meeting of the Central Board of the Bank was held at New Delhi at 05:30 p.m. and shortly thereafter, the gazette notification was issued. Such a swift action would indicate that the Central Board of the Bank had hardly twenty-four hours to consider the

proposal of the Central Government and hence, hardly any time to apply its mind independently to the proposal. It is clear from the records submitted that the Central Government ***"assured"*** the Central Board of the Bank that sufficient safeguards would be taken while embarking on the process of demonetisation and that it would also result in reducing bank notes in the economy and a switch over to the digitalisation of the economy. The Central Board of the Bank, in resolving to opine on the measure of demonetisation to the Central Government, acted only on such "assurances".

19.3 Further, the Central Government cannot in the guise of seeking an opinion on its proposal to demonetise bank notes, "***obtain***" a "recommendation from the Central Board of the Bank" as if it is acting under sub-section (2) of Section 26 of the Act, and consequently, issue a gazette notification by which demonetisation of bank notes would be given effect to. Such a procedure, in my view, would be contrary to the import of sub-section (2) of Section 26 of the Act, inasmuch as the Central Government cannot act under the said provision by the issuance of a notification, as if a ***"recommendation"*** has been made by the Central Board of the Bank when in fact, what actually transpired in the instant case, was that the Central

Government initiated the process of demonetisation by formulating a proposal in this regard and subsequently secured the imprimatur of the Bank on such proposal. In fact, the Central Board of the Bank has no jurisdiction to "***recommend***" demonetisation of bank notes of "all series" of "all denomination" to the Central Government, as already held above.

19.4 The powers of the Central Board of the Bank are restrictive in nature inasmuch as it can only recommend that a particular series of a particular denomination would cease to be legal tender. Hence, the Central Government cannot rely on the semblance of a "recommendation made to it by the Central Board of the Bank under sub-section (2) of Section 26 of the Act" when it initiates the process of demonetisation. The Central Government also cannot "obtain" any recommendation to that effect, and if it has done so, it would imply that the Central Board of the Bank is acting at the behest of the Central Government, only to concur with what the Central Government intends to do. Such an opinion would not be on the basis of any independent application of mind of the experts who form the Central Board of the Bank. Moreover, when the Central Government seeks the opinion of the Central Board of the Bank to its proposal for demonetisation, the latter would have to be

given some time to consider the pros and cons and the impact that it would have on the citizens of India, as bank notes are a species of negotiable instruments and a medium through which goods and services are traded and therefore, they are the lifeline of the economy. The Central Government also failed to indicate that the demonetised currency had lost the guarantee provided *vide* sub-section (1) of Section 26 of the Act in the impugned notification. Hence, an Ordinance had to be issued on 30th December, 2016. Moreover, it is not known whether the Bank had made arrangements for printing sufficient new notes for exchange of demonetised currency. It is also not known whether the Department of Legal Affairs was consulted in the matter as the procedure of demonetisation involves legal implications.

19.5 Hence, in my considered view, the action of demonetisation initiated by the Central Government by issuance of the impugned notification dated 8th November, 2016 was an exercise of power contrary to law and therefore unlawful. Consequently, the 2016 Ordinance and 2017 Act are also unlawful. But, having regard to the fact that the demonetisation process was given effect to from 8th November, 2016 onwards, the *status quo ante* cannot be restored at this point of time.

What relief may be awarded in the present case?

20. In view of the above conclusion, the question of moulding the relief shall now be considered. According to the petitioners, around 86 per cent of the volume of currency notes of the total currency in circulation in the Indian economy was demonetised. They also stated that the people of India were exposed to undue hardships owing to the lack of financial resources and had to undergo not only a severe financial crunch but were also exposed to other socio-economic and psychological hardships. The problems associated with the measure of demonetisation would make one wonder whether the Central Board of the Bank had visualised the consequences that would follow. Whether the Central Board of the Bank had attempted to take note of the adverse effects of demonetisation of such a large volume of bank notes in circulation? The objective of the Central Government may have been sound, just and proper, but the manner in which the said objectives were achieved and the procedure followed for the same, in my view was not in accordance with law having regard to the interpretation given above.

It has also been brought on record that around 98% of the value of the demonetised currency have been exchanged for bank notes which continues to be legal tender. Also, a new series of bank notes of Rs.2,000/- was released by the Bank. This would suggest that the measure itself may not have proved to be as effective as it was hoped to be. However, this Court does not base its decision on the legality of

a legislation, *qua* the effectiveness of such action in achieving the stated objectives. Therefore, it is clarified that any relief moulded in the present cases is *de hors* considerations of success of the measure.

20.1 I have borne in mind the submissions of learned Attorney General appearing on behalf of the Union of India to the effect that the objectives of the Central Government have been sound, just and proper, but in my view, the manner in which the said objectives were achieved and the procedure followed for the same was not in accordance with law having regard to the interpretation given above.

Learned Attorney General appearing on behalf of the Union of India also contended that the issues raised in these petitions have become infructuous and wholly academic as the action of demonetisation has been acted upon and therefore, the present cases are only of academic significance. It is necessary to examine the nature of relief that could be moulded by the Court in this matter.

20.2 There are several judgments which could be relied upon in this context:

(i) This Court acknowledged in ***S.R. Bommai vs. Union of India AIR 1994 SC 1918***, that although substantive relief may be granted only if the issue remains live in cases which

are justiciable, this Court may prospectively declare a law, for posterity. Notwithstanding the fact that no substantive relief could be granted in the said case for the reason that following the Presidential proclamation, fresh elections had been held and new Houses had been constituted, this Court went on to declare the law, for posterity, as to the federal character of the Constitution, the nature of the power conferred on the President under Article 356 of the Constitution and the manner in which such power is to be exercised for imposing President's Rule in a State by dissolution of the Legislative Assembly.

(ii) In ***Golak Nath vs. State of Punjab (1967) 2 SCR 762***, this Court declared that it is open to the Court, to find and declare the law, but restrict the operation of such law to the future.

(iii) Further, the observations made by this Court in ***Orissa Cement Ltd. vs. State of Orissa 1991 Supp (1) SCC 430***, while determining what relief that could be granted following a declaration of a provision of an enactment as invalid, are also relevant. This Court held that declaration of invalidity of a provision, and determination of the relief to be granted as a consequence of such invalidity, are two

distinct things. That in respect of the relief to be granted as a consequence of declaration of invalidity, the Court has discretion which could be exercised to grant, mould or restrict the relief.

20.3 In the instant case, the elementary question that requires determination is, whether the challenge to the validity of the Central Government's decision dated 8th November, 2016 to demonetise all Rs.500/- and Rs.1,000/- bank notes, having been adjudicated upon, at this juncture, i.e., after a lapse of over six years since the impugned action was carried out, the nature of relief that could be granted by this Court at this juncture is to be considered.

20.4 Stated very patently, the controversy in the present cases relates to the true meaning and interpretation of sub-section (2) of Section 26 of the Act. Therefore, the question that arises for consideration is, whether, this Court can declare the law as to the validity of an action, even after such action has been given effect to in toto. That is to say, once the action has been completely carried out, and there is no element of such action which is left to be carried out, can there still be a subsequent declaration by this Court as to the validity of such act, having regard to the interpretation accorded to the provisions of the relevant statute.

20.5 As discussed hereinabove, this Court has acknowledged on several occasions that it has the competence to declare the law on a subject for posterity, even though no substantive relief may be given under the circumstances of a given case, *vide* ***S.R. Bommai***. The effect of such declaration would apply prospectively. That is, in the present case if a declaration is made to the effect that the impugned action was unlawful, such declaration would only have the effect of deterring future measures from being carried out in a like manner, in order to save such measures, from the vice of unlawfulness. Such declarations as to validity or invalidity of a measure, may be made by this Court in exercise of its power under Article 141 of the Constitution, and the effect of such declaration may be moulded or restricted by exercising the power vested with this Court under Article 142.

20.6 Reference may also be had to the decision of this Court in ***Jayantilal Ratanchand Shah, Devkumar Gopaldas Aggarwal vs. Reserve Bank of India AIR 1997 SC 370***. The said case pertains to the challenge to the Constitutional validity of the High Denomination Bank Notes (Demonetisation) Act, 1978. Although the enactment related to the year 1978 and its effects were immediate, as in the present case, the validity of the

same was conclusively declared by this Court only in the year 1997. This Court, while upholding the validity of the legislation impugned therein, authoritatively clarified and declared the law on the Parliamentary power to enact such a legislation. A declaration of a similar nature, i.e., as to the validity or invalidity of the impugned actions and Notification, is what is sought for in the present petitions.

Conclusions:

21. In view of the aforesaid discussion, the following conclusions are arrived at:

(i) According to sub-section (1) of Section 26 of the Act, every bank note shall be legal tender at any place in India in payment or on account for the amount expressed therein and shall be guaranteed by the Central Government. This provision is subject to sub-section (2) of Section 26 of the Act.

(ii) Sub-section (2) of Section 26 of the Act applies only when a proposal for demonetisation is **initiated** by the Central Board of the Bank by way of a **recommendation** being made to the Central Government. The said recommendation can be in respect of any series of bank notes of any denomination which is interpreted to mean **any specified series of bank notes of any specified denomination.**

(iii) The expression any series of bank notes of any denomination has been given its plain, grammatical meaning, having regard to the context of the provision and not a broad meaning. Thus, the word "any" will mean a specified series or a particular series of bank notes. Similarly, "any" denomination will mean any particular or specified denomination of bank notes.

(iv) If the word "any" is not given a plain grammatical meaning and interpreted to mean "all series of bank notes" of "all denominations", it would vest with the Central Board of the Bank unguided and unlimited powers which would be *ex-facie* arbitrary and suffer from the vice of unconstitutionality as this would amount to excessive vesting of powers with the Bank. In order to save the provision from being declared unconstitutional, the meaning of the provision is read down to the context of the Central Board of the Bank **initiating** a proposal for demonetisation by making a recommendation to the Central Government under sub-section (2) of Section 26 of the Act of a particular series of bank note of any denomination.

(v) On receipt of the said recommendation made by the Central Board of the bank under sub-section (2) of Section 26 of the Act, the Central Government may accept the said recommendation or may not do so. If the Central Government accepts the recommendation, it may issue a notification in the Gazette of India specifying the date w.e.f. which any specified series of bank notes

of any specified denomination shall cease to be legal tender and shall cease to have the guarantee of the Central Government.

(vi) The provisions of the Act do not bar the Central Government from proposing or initiating demonetisation. It could do so having regard to its plenary powers under Entry 36 of List I of the Seventh Schedule of the Constitution of India. However, it has to be done only by an Ordinance being issued by the President of India followed by an Act of Parliament or by plenary legislation through the Parliament. The Central Government **cannot** demonetise bank notes by issuance of a gazette notification as if it is exercising power under sub-section (2) of Section 26 of the Act. In such circumstances when the Central Government is initiating the process of demonetisation, it would **not be acting** under sub-section (2) of Section 26 of the Act but notwithstanding the said provision through a legislative process.

(vii) When such power is exercised by the Central Government by means of a legislation, it is by virtue of **Entry 36, List I of the Seventh Schedule of the Constitution of India** which deals with currency, coinage and legal tender; foreign exchange which is a field of legislation. Hence, the power of the Central Government to demonetise any currency is **notwithstanding anything contained in Section 26 of the Act.**

(viii) When the Central Government proposes demonetisation of any bank note, it **must** seek the opinion of the Central Board of the Bank having regard to the fact that the Bank is the sole authority to regulate circulation of bank notes and secure monetary stability and generally to operate the currency and credit system of the country and to maintain price stability.

(ix) The opinion of the Central Board of the Bank ought to be **an independent and frank opinion** after a meaningful discussion by the Central Board of the Bank which ought to be given its due weightage having regard to the ramifications it may have on the Indian economy and the citizens of India although it may not be binding on the Central Government. On receipt of a negative opinion from the Central Board of the Bank, the Central Government which has initiated the demonetisation process may still intend to go ahead with the said process after weighing the pros and cons only by means of an Ordinance and/or Parliamentary legislation but not by issuance of a gazette notification. In other words, the Central Government in such circumstances **cannot** resort to exercise of power under sub-section (2) of Section 26 of the Act by issuing a notification in the Gazette of India as if it were exercising executive powers. Even if the Central Board of the Bank concurs with the proposal of the Central Government, the Central Government would have to

undertake a legislative process and not carry out the measure by simply issuing a gazette notification.

(x) In view of the aforesaid conclusions, I am of the considered view that the impugned notification dated 8th November, 2016 issued under sub-section (2) of Section 26 of the Act is **unlawful**. In the circumstances, the action of demonetisation of all currency notes of Rs.500/- and Rs.1,000/- is **vitiated.**

(xi) Further, the subsequent Ordinance of 2016 and Act of 2017 incorporating the terms of the impugned notification are also **unlawful.**

(xii) However, having regard to the fact that the impugned notification dated 8th November, 2016 and the Act have been acted upon, the declaration of law made herein would apply **prospectively** and would not affect any action taken by the Central Government or the Bank pursuant to the issuance of the Notification dated 8th November, 2016. This direction is being issued having regard to **Article 142** of the Constitution of India. Hence, no relief is being granted in the individual matters.

(xiii) In view of the above conclusions, I do not think it is necessary to answer the other questions raised in the reference order.

22. Before parting, I wish to observe that demonetisation was an initiative of the Central Government, targeted to address disparate

evils, plaguing the Nation's economy, including, practices of hoarding "black" money, counterfeiting, which in turn enable even greater evils, including terror funding, drug trafficking, emergence of a parallel economy, money laundering including *Havala* transactions. It is beyond the pale of doubt that the said measure, which was aimed at eliminating these depraved practices, was well-intentioned. The measure is reflective of concern for the economic health and security of the country and demonstrates foresight. At no point has any suggestion been made that the measure was motivated by anything but the best intentions and noble objects for the betterment of the Nation. The measure has been regarded as unlawful only on a purely legalistic analysis of the relevant provisions of the Act and not on the objects of demonetisation.

23. In view of the answer given by me to question no.1 of the reference order, I do not deem it necessary to answer all other questions of the reference order or even the questions reframed by His Lordship B.R. Gavai, J. during the course of the judgment except to the extent discussed above.

24. In the result, the writ petitions, special leave petitions and transfer petitions are directed to be posted before the appropriate Bench after seeking orders from Hon'ble the Chief Justice of India.

I would like to acknowledge and place on record my appreciation for the learned Attorney General for India, all learned senior counsel, learned instructing counsel as well as the learned counsel, for their assistance in the matter.

Parties to bear their respective costs.

.....J.
[B. V. NAGARATHNA]

NEW DELHI,
2 JANUARY, 2023.