

**VIVEK NARAYAN SHARMA VS UNION OF INDIA
(VALIDITY OF DEMONETIZATION)**

Shyam Saxena*

ABSTRACT

The case notes overview the incident that took place on 08th November, 2016 i.e., Demonetization Case or Vivek Narayan Sharma vs Union of India. The case is important with regard to the validity of the decision and the hardships caused to the people due to the Stoppage of usage of Notes Rs 500 and Rs 1000.

In this case, we have analyzed the important issues along with the judgment. We have analyzed this case from the perspective of People of India and the Hon'ble Supreme Court Judgement. The analysis of the argument on the word "any" in Section 26(2) of RBI Act, 1934 has been analyzed with respect to the various judgments and interpretation of various acts and statutes. The argument presented by the Defendant has been an important discussion in this regard.

The motive of the decision is very important to be taken into account and the analyses of the court's decision on the judgment has been analyzed. Additionally, the Fundamental Rights are an important part of the discussion as people have faced severe hardships and therefore it is a much important matter to be discussed in this case note.

KEYWORDS: *Any ordinance, impugned decision, denomination, demonetization*

1. INTRODUCTION

The famous case is about the demonetization which has halted the economy of the country. The demonetization concept has been used in India by Hon'ble PM Indira Gandhi who demonetized the notes of Rs 1000, Rs 5000, Rs 10000.

The impugned Decision of Demonetization has been interesting to analyze from the point of citizen as the citizen face severe hardship and it has caused problem to them while standing in queues for a long period of time without water and food just to exchange the denomination of notes.

Taking into these Factors, the Petition has been filed before the Hon'ble Supreme Court with respect to validity of Demonetization under the argument and with respect to Section 26(2) of RBI Act, 1934 and the hardships caused to the citizens.

* KIIT School of Law, Bhubaneswar

2. OBJECTIVES

The main objective of this case note is to inform them about the judgment of Demonetization as the Demonetization has been valid. The case note is important as it contains the important factors of Fundamental Rights Article 14, 19, 21 and Article 300A of the Constitution of India. It has also taken into account the interpretation of the word “any” and how the legal jurists have interpreted it. It has been taken into factor the various important test and important precedents to answer the following question.

3. RESEARCH METHODOLOGY

The case of Vivek Narayan Sharma vs Union of India has been important to be discussed. The case highlighted the important aspects of the decision and the interpretation which is important in the legal history.

The following case note has been analyzed through various important legislation, the opinion of legal jurists and through various statutes and acts. The case has also been researched from the point of view of the citizens and the decisions of the apex court in this important regard. Besides the nexus between the delegation power of the government has also been taken into account along with the various important tests.

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4. FACTS

The Hon’ble PM of India on **8th November 2016** has announced that all the Notes of Rs 500 and Rs 1000 were no longer valid. This process is called Demonetization. On **9th November,2016**, **Advocate Vivek Narayan Sharma**, unwilling to accept this decision, filed a PIL before the Supreme Court of India and challenged the constitutionality and validity of this Decision. The Bench finally delivered the Judgement on 2nd January ,2023.

5. ISSUES

There are six issues which has been addressed by the Hon’ble court

- ❖ Whether the power in the hands of Central Government to demonetize the notes under Section 26 (2) of RBI Act can be restricted to “one” or “some” series or available to “all” series in view of the word “any”

appearing in the said sub-section, specifically so, when on earlier two occasions, the demonetization exercise was done through the plenary legislations?

- ❖ 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 under the said section to the Central has been construed as excessive and has to be struck down.
- ❖ Whether the impugned order dt. 08/11/2016 has been struck down assuming the decision-making power is flawed?
- ❖ As to whether the impugned notification dated 8th November 2016 is liable to be struck down applying the test of proportionality?
- ❖ Whether the period available for exchange is said to be reasonable?
- ❖ 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?

6. ARGUMENTS BY PETITIONER

The petitioner while arguing has mainly talked about section 26(2) RBI Act, 1934. He submitted that the word “**any**” used in Section 26(2) of RBI Act, 1934 has been interpreted as “particular” and not as “every”. He further argued that in order to cease the legal tender there must be a separate enactment of parliament. He argued that in case of not reading the Section 26(2) of RBI Act, 1934 in aforesaid manner, there must be uncanalised and arbitrary power in the hands of executive Government which would violate the Article 14,19,21 and 300A of Constitution of India.

7. ARGUMENT BY DEFENDANT

The defendant, Hon’ble Attorney General, had argued that the central government had “wide powers and amplitude”. It was further argued that the power of Demonetization has been exercised on the basis of notification in Gazette of India which has been done on the basis of recommendation of the RBI. It was further submitted that the Act of demonetization had been ratified by 2017 Act in Parliament and the word ‘any’ in Sec 26(2) of RBI Act construed the meaning all’.

8. ANALYSES OF THE ISSUES

On account of this decision by the Hon’ble Supreme Court of India, we have opined that Demonetization is valid and the cessation of the legal tender on the

night of 8th November, 2016 is legal¹. **The Section 26(2) of the RBI Act²**, “ *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* ” which clearly says that before taking any decision the Central government has to take recommendation from Central Board of RBI which has been constituted under Section 8 of the RBI Act, 1934.

The word “any ” means “all” or” particular” has been asked before the supreme court on which Hon’ble court has clearly addressed that “Any ” means “all ”. In the given section, “any” has not been succeeded by words like one or particular which can clearly state that “any” means “every” here while referring to the case **The Chief Inspector of Mines and another v. Lala Karam Chand Thapar³**. Subsequently in case of **in Sheikh Mohd v Collector of Customs⁴**, “*interpreted ‘any prohibition’ in Section 111(d) of the Customs Act to mean ‘every prohibition’*”. Similarly, in **Lucknow Development Authority v M K Gupta⁵**, the apex court interpreted “*‘service of any description’ in section 2(o) of the Consumer Protection Act 1986 to mean service of ‘every’ description.*” While interpreting the word “any ” the court has also looked into the purposive interpretation of this word which has been given by the legislature and its intent while adding this section. The legislature has an aim to formulate the plan of the government and to serve the manifestation of the purpose. The intention can be clearly inferred from the words, preamble, Section, Act, History of the Legislation. Subsequently reading the purposive interpretation, we have relied on the case of **Workmen of Dimakuchi Tea State vs Management of Dimakuchi Tea State⁶**, where the interpretation of phrase “any person” with respect to Industrial Dispute Act has been asked and based on the scheme purpose and words of the Act, “*the phrase “any person” must be interpreted as concerning such a person, who has a real dispute with the employers, so as to be capable of settlement or adjudication by one party to the dispute giving relief to the other party and such person, regarding whom the dispute is raised must be one*

¹ (2023, 02 Jan). Demonetization Not Invalid Merely Because Some Citizens Suffered Through Hardships: Supreme Court. Livelaw. <https://www.livelaw.in/top-stories/supreme-court-demonetisation-citizens-hardship-vivek-narayan-sharma-vs-union-of-india-2023-livelaw-sc-1-217898>.

² Reserve Bank of India (RBI) Act, 1934.

³ The Chief Inspector of Mines and Anr v. Lala Karam Chand Thappar, 1962 SCR (1) 9.

⁴ Sheikh Mohammad v. Collector of Customs, 1971 SCR (2) 35.

⁵ Lucknow Development Authority v. MK Gupta, 1994 SCC (1) 243.

⁶ Workmen of Dimakuchi Tea State v. Management of Dimakuchi Tea State, 1958 SCR 1156.

having a direct and substantial interest.” The purpose of the act and the clear interpretation of the word would clearly solve the mystery of the problem and would clearly hold that **the word “any” would mean “every” here.**

In opining for another question of excessive delegated legislation in this regard, we have to refer to **Section 22, 24 and 26 of RBI Act, 1934**. The delegated legislation is a part of administrative function which lessen the burden given on Legislature. In the case of *Indian oil Corporation v. Municipal corporation, Jullundhar*⁷ where the court decided that the delegated legislation should be in accordance with the parent act and it should not lose the purpose and in simple words, the delegate cannot hold power more than what is delegated. In another case *St. Johns Teachers Training Institute v. National Council for Teacher Education*⁸, any rule-making function which acts as a prejudice for any person without the authority or rule of law is to be declared invalid by its nature itself. Therefore, to maintain this stability, the Act has formulated some important institutions to carry out the functions in the most efficient manner in order to better run the country and one such is RBI. In case of **Peerless General Finance & Investment Co. Ltd vs RBI**⁹ and **IAMAI vs RBI**¹⁰, cited the important function of RBI is to regulate the banking system and it is the duty of the RBI to safeguard the economy of the country. In another case of **Harakchand Ratanchand Banthia vs UOI**¹¹, it was held that RBI has the large contingent of expert advice and played pivotal role in issuance and management of and all other matter relating to currency and evolving monetary policy of the country. Therefore, it is important to note that delegating the power to RBI has played an important role in forming policies regarding the monetary and economic matters considering all the relevant factors.

The excessive legislation which is one of the issues which has to be addressed here is about the acts of the Central Government which has delegated its power to important institutions like RBI and whether it has failed or lacks in performing its duties. The court has relied on **Policy and Guidelines Test** to answer this question. If we look into this, we have seen that the policy of Demonetization has been mainly put forth with the sole purpose of curbing Threat through Black Marketing, terrorism and the guidelines has been based on the recommendation

⁷ Indian Oil Corporation v. Municipal Corporation, Jullundhar, (1993) I SCC 333).

⁸ St. Johns Teachers Training Institute v. National Council for teacher Education, (2003) 3 SCC 321.

⁹ Peerless general Finance & Investment Co. Ltd v. RBI, 1992 SCR (1) 406.

¹⁰ IAMAI v. RBI, (2020) 10 SCC 274.

¹¹ Harakchand Ratanchand Banthia v. UOI, 1970 SCR (1) 479.

by the RBI which is though not binding on the central government. Though the people have faced hardships in this matter and people have lost their jobs, that does not mean RBI has not played the role in an effective manner as the RBI has maintained the time limit and helped the person to exchange notes as soon as possible. Besides the KYC account has also been opened where the person may deposit all his money which has to be exchanged. The decision of demonetization is not an excessive legislation as all the executive authorities and central government has worked in accordance with the act and with full compliance of the sections¹².

The most important question which has been asked before the Court is about the constitutionality of demonetization on the basis of impugned notification and without any ordinance unlike *High Denomination Bank Notes (Demonetization) Ordinance, 1946* and *High Denomination Bank Notes (Demonetization) Ordinance, 1978*. Discussing the validity has been mainly referred through the 1978 Demonetization case in which the ordinance was passed and on the same lines in 2016, the assent for the ordinance “**the Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016**” has been given by the president. Hence analyzing both the circumstances we easily interpret that the demonetization in 2016 is valid.

Besides, the Court has relied on **Four Proportionality test**: -

1) Designated for a proper purpose

The impugned notification has been announced to curb and tackle mainly three important purposes:

- (i) Fake Curb Notes
- (ii) Unaccounted wealth
- (iii) Drug trafficking and terrorism.

2) The measures should be connected to the fulfillment of the purpose

The Measure has undertaken mainly to curb or tackle fake note circulation.

3) Measures undertaken in that there are no alternative measures to achieve same the Central government and RBI are the best institutions for making monetary policies of the country.

4) Needs to be a proper relation

In this case, there is clearly a proper relation of proper purpose which is a social importance as curbing the fake notes currency hampers the economy which could be really important.

¹² Animesh Gupta. (2023, Jan 09). *THE DEMONETIZATION JUDGEMENT EXPLAINED.*. <https://thedailyguardian.com/the-demonetisation-judgment-explained/>.

The important part of this section and this case is about the hardship which Has been caused by the citizens. On account of this problem, the Court held that Demonetization is not invalid merely because some citizens has suffered through hardships¹³. In my opinion, I supported the court's contention in this matter as the decision has been taken for the interest of which are in circulation. The **rational nexus test** clearly implies that the Rationale idea of the policy should be nexus with the reasonableness of the policy or the idea should be reasonable or it is of such a nature that it is in the interest of the larger public. Another principle of **Wednesbury Principle or the principle of reasonableness** states that the actions of administrative authorities can be challenged based on reasonableness. Lord Green developed these principles in the famous case of **Associated Provincial Picture House v. Wednusbury Corporation (1948)**¹⁴. Therefore, on applying the reasonability in this impugned notification, the main aim is to curb Black marketing, Stop Terrorism, curbing drug trafficking and curbing fake currency notes of SBN.

Taking into factors regarding the **violation of Article 14,19 21 and 300A** of Constitution of India, it has not violated any of the Fundamental Rights. Though in case of **Jayantilal Shah vs RBI**, it was held that notes are property, but the property can be taken by the government in accordance with the law and with compensation which has been decided in case of **Bimladevi vs UOI**. Talking about the **Fundamental Rights 14, 19 and 21 of the Constitution**, the fundamental rights are generally made for the betterment and safeguard the rights of the human. The violation article 14, 19 and 21 in the impugned decision stand invalid. The Cessation of notes is for the betterment of the Humans, as the circulation of the Fake Notes and terrorism will lead to or help the offenders to buy the stuff which harms the society, will help the drug trafficking offender. Talking about **Article 300A, right to property**, the answer was Given in three landmark case of 1978 Demonetization. **The Gauhati High Court in Somi Horam Tongkhul Naga v. Union of India**¹⁵ held that adequate time has been given by the government to exchange the notes. Similarly, in **Bimladevi vs Union of India**¹⁶ The Delhi High Court has observed the power of Article 31 of

¹³ Prachi Bhardwaj. (2023, Jan 09). *Demonetization Verdict: Breakdown of the majority and minority opinions*. SCC Online.

<https://www.sconline.com/blog/post/2023/01/03/demonetization-note-ban-supreme-court-nagarathna-gavai-constitution-bench-reserve-bank-india-fake-currency-balck-money-terror-financing-proportionality-legal-research-updates-news-law-explainer/>.

¹⁴ Associated Provincial Picture House v. Wednusbury Corporation, [1948] 1 KB 223).

¹⁵ Somi Horam Tongkhul Naga v. UOI, AIR 1980 Gau. 40.

¹⁶ Bimla Devi vs UOI, 1983 (4) DRJ 236.

Indian Constitution stating that the compensation should be paid for an acquisition. **Finally, the Supreme Court in Jayantilal Ratanchand Shah v. RBI**¹⁷ upheld the decision stating that the demonetization in 1978 is valid as it is for the public purpose and to uncover the problem of unaccounted money. The decision to demonetize high-value currency notes was a controversial move and faced criticism from various quarters, including opposition parties and economists.

9. JUDGEMENT

The Court While hearing this matter has held that the impugned notification is valid. The bench further stated that the word “Any” would mean “every” in Section 26(2) of RBI Act, 1934. It further stated that There has no excessive legislation and the government has worked on the recommendation of the Central Board under Section 26(2) of RBI Act, 1934. There is no flawless decision and it satisfied the four proportional tests. The court further state that *"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."*¹⁸

10. CONCLUSION

The court has clearly interpreted that the decision of Demonetization is valid and legal though the people have suffered hardships but it is for larger public interest and it has also passed the various tests. The interpretation of the Section 26(2) RBI Act, 1934 and the word “Any” clearly inferred that it would mean “Every”. We have discussed the delegated legislation and how it is valid here and how the central government has clearly worked with the executive under the purview of the act. The court has also clearly stated that the impugned notification has been valid and also it clearly states that the necessity of the decision. The definition of the power of the courts and experts has been clearly discussed and clearly tells that the court has to interpret only the policies and not the consequence of the decision. It has been discussed that the decision or the policy should be in nexus with the reasonability of the notification and if it satisfies it or the object has been achieved, then it is legal and valid. Therefore, we have come to the conclusion that the following decision is valid.

¹⁷ Jayantilal Ratanchand Shah v. RBI, (1996) 9 SCC 650.

¹⁸ Vivek Narayan Sharma v. UOI, (2023) 3 SCC 1.