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