REPORTABLE

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

WRIT PETITION (C) NO. 906 OF 2016

VIVEK NARAYAN SHARMA ETC. ETC. ...PETITIONER

VERSUS

UNION OF INDIA ETC. ETC. ...RESPONDENT

WITH

CONNECTED MATTERS

NAGARATHNA, J.

I N D E X

J U D G M E N T

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

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

Hence, my separate judgment.

Preface:

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

In view of the interpretation given by me to sub-section (2) of Section 26 of the Act in the context of the powers of the Central Board of the Bank and the Central Government *vis-à-vis* demonetisation of bank notes, my answer is only with regard to question No.1 of the reference order. Incidentally, while considering the same, I would touch upon question No. 7 of the reference order.

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

> (i) "Whether the notification dated 8th November 2016 is ultra vires Section 26(2) and Sections 7,17,23,24,29 and 42 of the Reserve Bank of India Act, 1934;
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> (ii) Does the notification contravene the provisions of Article 300(A) of the Constitution;
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> (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;
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> (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;
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> (v) Whether the implementation of the impugned notification(s) suffers from procedural and/or substantive unreasonableness and thereby violates Articles 14 and 19 and, if so, to what effect?

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

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

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

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

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

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

Question, as reframed by His Lordship, B.R. Gavai, J.	**His Lordship's views**	**My views**
1. "Whether the power available to the	i) The power available to the Central Government	i) The **Central Government possesses**

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

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

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

Question, as reframed by His Lordship, B.R. Gavai, J.	**His Lordship's views**	**My views**
		behest of the Central Government and did not render an independent opinion to the Central Government. iv) Therefore, **the impugned Notification dated 8th November, 2016 issued under sub-section (2) of Section 26 of the Act is unlawful.** Further, the subsequent **Ordinance of 2016 and Act of 2017** incorporating the terms of the impugned Notification are also unlawful.
4. "Whether the impugned notification dated 8th November, 2016, is liable to be struck down applying the test of proportionality?"	"The impugned Notification dated 8th November 2016 satisfies the test of proportionality and, as such, cannot be struck down on the said ground."	This question need not be answered in view of the above answers.
5. "Whether the period provided for exchange of notes vide the impugned notification dated 8th November, 2016, can be said to be unreasonable?"	"The period provided for exchange of notes vide the impugned Notification dated 8th November 2016 cannot be said to unreasonable."	This question need not be answered in view of the above answers.
6. "Whether the RBI has an independent power under sub-section (2) of Section 24 of the 2017 Act in isolation of the	"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	This question need not be answered in view of the above answers.

Question, as reframed by His Lordship, B.R. Gavai, J.	**His Lordship's views**	**My views**
provisions of Section 3 and Section 4(1) thereof to accept the demonetised notes beyond the period specified in notifications issued under subsection (1) of Section 4 of the 2017 Act?"	to accept the demonetized notes beyond the period specified in notifications issued under subsection (1) of Section 4 of the 2017 Act."	

The reasons for the aforesaid conclusions shall now be discussed.

Controversy in these cases:

6. Practices such as hoarding "black" money, counterfeiting, etc., when coupled with corruption, are eating into the vitals of our society and economy. Any measure intended to strike at such practices, and thereby eliminate off shoots thereof, such as, terror funding, drug trafficking, emergence of a parallel economy, money laundering including *Havala* transactions, must be commended. Such measures are necessary to sanitize the economy and society, and enable it to recover from the plague caused by the evils listed hereinabove. Therefore, it cannot be denied that demonetisation in the instant case was a well-intentioned proposal. However, in my separate opinion I shall proceed to legalistically examine whether demonetisation, as well-intentioned as it may have been, was carried out in accordance with the procedure established under law.

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

Liabilities) Act, 2017" (hereinafter called "2017 Act" for the sake of brevity) and was notified on 1st March 2017, replacing the Ordinance. The issuance of the aforesaid Notification and the action of the Central Government of demonetisation of all series of Rs.500/- and Rs.1,000/- are assailed in these Writ Petitions.

The Reserve Bank of India Act, 1934: An overview

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

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

7.2 The Preamble of the Act states that it is essential to have a modern monetary policy framework to meet the challenge of an increasingly complex economy and the primary objective of the monetary policy is to maintain price stability while keeping in mind the objective of growth. The monetary policy framework in India shall be operated by the Reserve Bank of India.

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

"Section 2- Definitions: In this Act, unless there is anything repugnant in the subject or context, -

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[a(ii)] "the Bank" means the Reserve Bank of India constituted by this Act;

[a(iii)] "Bank for International Settlements" mean the body corporate established with the said name under the law of Switzerland in pursuance of an agreement dated the 20th January, 1930, signed at the Hague;]

[a(iv)] "bank note" means a bank note issued by the Bank, whether in physical or digital form, under section 22;]

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(b) "the Central Board" means the Central Board of Directors of the Bank;

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(cc) "International Monetary Fund" and "International Bank for Reconstruction and Development" means respectively the "International Fund" and the "International Bank", referred to in the International Monetary Fund and Bank Act, 1945;]

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(d) "rupee coin" means (***) rupees which are legal tender in India under the provisions of the Coinage Act, 2011 (11 of 2011)"

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

Section 30 pertains to the powers of the Central Government to supersede the Central Board of the Bank.

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

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

> "23. **Issue Department** - (1) The issue of Bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in Section 34.
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> (2) The Issue Department shall not issue Bank notes to the Banking Department or to any other person except in exchange for other Bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve."

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

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

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

"26. **Legal tender character of notes** - (1) Subject to the provisions of sub-section (2), every Bank note shall be legal tender at any place in [India] in payment or on account for the amount expressed therein, and shall be guaranteed by the [Central Government].

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

"[26A. **Certain Bank notes to cease to be legal tender**- Notwithstanding anything contained in section 26, no Bank note of the denominational value of five hundred rupees, one thousand rupees or ten

> thousand rupees issued before the 13th day of January, 1946, shall be legal tender in payment or on account for the amount expressed therein.]"
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> "27. **Re-issue of notes**- The Bank shall not re-issue Bank notes which are torn, defaced or excessively spoiled."
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> "34. **Liabilities of the Issue Department**- (1) The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and Bank notes for the time being in circulation."

7.6 Section 22 states that the Bank has the sole right to issue bank notes in India, and may, for a period which shall be fixed by the Central Government on the recommendation of the Central Board of the Bank, issue currency notes of the Government of India supplied to it by the Central Government. On and from the date on which Chapter III comes into force, the Central Government shall not issue any currency notes except the denomination of Rupee One.

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

of the amount of the currency notes of the Government of India and bank notes for the time being in circulation.

7.8 Sub-section (1) of Section 24 states that, subject to the provisions of sub-section (2) of Section 24, the bank notes shall be of the denominational values of two rupees, five rupees, ten rupees, twenty rupees, fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees, five thousand rupees and ten thousand rupees or of such other denominational values, not exceeding ten thousand rupees, as the Central Government may, on the recommendation of the Central Board of the Bank, specify in this behalf. However, this provision is subject to sub-section (2) of Section 24 which states that the Central Government may on the recommendation of the Central Board of the Bank, direct the non-issue or the discontinuance of issue of bank notes of such denominational values as it may specify in that behalf. The Central Government has to approve the design for all the bank notes after consideration of the recommendation made by the Central Board *vide* Section 25 of the Act.

7.9 Sub-section (1) of Section 26 of the Act states that every bank note shall be legal tender at any place in India in payment, or on account for the amount expressed therein and shall be guaranteed by the Central Government. This is, however, subject to sub-section (2) of Section 26 of the Act, which states that the

Central Government on the recommendation of the Central Board may, by issuance of a notification in the Gazette of India, declare that with effect from such date as may be specified in the notification, any series of Bank notes of any denomination shall cease to be legal tender, save at such office or agency of the Bank and to such extent as may be specified in the notification. Further discussion on this provision shall be made at a later stage as the said provision is the centre of the controversy in these cases.

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

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

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

Submissions:

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

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

8.2 Also, the Central Government can demonetise only a particular series of bank notes of a particular denomination on the recommendation of the Central Board of the Bank. In other words, the expression "any" series of bank notes of "any denomination" cannot be understood as "all" series of bank notes of "all" denominations. That the expression "any" occurring twice in the section must be given the intended meaning and not supposed meaning and interpretation.

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

"a particular denomination" of a bank note, and not "all" series of "all" denominations. He contended that in the instant case, the issuance of the Notification, demonetising the entire currency of Rs.500/- and Rs.1,000/- in circulation at the time, is unlawful and the exercise of power was erroneous and arbitrary and hence, the same ought to be declared so.

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

8.5 Further elaborating on his submission, learned senior counsel for the petitioners contended that the expression "any" ought not be interpreted as "all" as such an interpretation would be disastrous to the Indian economy and contrary to the true letter and spirit of the Act. He contended that the word "any" means "one of the many" and not "all". Therefore, according to him, any one series of bank notes of a denomination could be demonetised and not all series of notes of a particular denomination or all series of bank notes of all denominations, by issuance of an executive notification. He contended that if the Section is read down, then,

it would be saved from the vice of unconstitutionality; otherwise, the power of the Central Government to demonetise all series of bank notes of all denominations would be arbitrary and an excessive power, which is devoid of any guidance. That such power if vested with the Central Government, would be contrary to the provisions of the Act. He further contended that exercise of discretion by the Central Government could be only to the extent of demonetisation of particular series of bank notes of any particular denomination that too on the recommendation of the Central Board of the Bank. Such vast powers so as to recommend demonetisation of all series of bank notes of any or all denominations, cannot also be vested with the Bank.

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

8.7 Learned senior counsel submitted that in the absence of a specific duty with regard to mitigating the long-lasting effects of

demonetisation on the Indian economy, the decision of the Central Government to demonetise about 86.4% of the total currency in circulation is vitiated on account of manifest arbitrariness.

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

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

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

indicating the import of SBNs and the details and value of the same.

8.11 The learned senior counsel brought to the Court's notice an article titled "Using Fast Frequency Household Survey Data to Estimate the Impact of Demonetisation on Employment" authored by Mr. Mahesh Vyas, Centre for Monitoring Indian Economy (2018) to contend that owing to the demonetisation carried out, there was a substantial reduction in employment and employment rates were 12 million lower than it was two months' preceding demonetisation. Relying on the said article, he submitted that demonetisation resulted in a loss of millions of jobs.

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

9.1 In this regard, learned Attorney General emphasized that earlier demonetisations were carried out in the years 1946 and 1978 by issuance of Ordinances and thereafter, converting the said Ordinances into Acts of Parliament. But in the instant case, the demonetisation dated 8th November, 2016 was for all series of bank notes of Rs.500/- and of Rs.1,000/- denominations, by the issuance of a gazette notification, which is perfectly valid in the eyes of law and in accordance with sub-section (2) of Section 26 of the Act.

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

9.3 Shri R.Venkataramani, learned Attorney General, next submitted that the action taken by way of the impugned notification stands

ratified by the 2017 Act and as the executive action has been validated by the will of the Parliament, the challenge to the notification would not survive.

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

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

9.6 The learned Attorney General contended that the submission made by the petitioners that the powers under sub-section (2) of

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

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

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

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

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

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

9.10 Learned senior counsel for the Bank also submitted that the decision of the Central Board of the Bank to recommend the measure of demonetisation and the decision of the Central Government to accept the recommendation cannot be subject to judicial review. It was further contended that in the sphere of economic policy making, the *Wednesbury* principles are of no or little significance and that the proportionality principle can also not be applied for judicial review of economic policy. Learned senior counsel thus asserted that it is imperative that no restrictions are placed on economic policies formulated by the Bank or by the Central Government. Reliance was placed on ***Peerless General Finance and Investment Co. Ltd. vs. Reserve Bank of India (1992) 2 SCC 343*** and ***BALCO Employees' Union (Regd.) vs. Union of India (2002) 2 SCC 333***

to contend that courts cannot interfere with economic policy which is the function of experts.

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

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

submitted that everybody had sufficient opportunity either to deposit the notes in their banks or to exchange the same.

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

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

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

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

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

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

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

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

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

History and instances of Demonetisation:

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

10.1 In prosaic terms, demonetisation is the process by which a nation's economic unit of exchange loses its legally enforceable validity. Currencies that are terminated through the process of demonetisation are no more legally considered exchanges and have no financial value. Demonetisation is therefore, the process of eliminating the lawful acceptance status of a monetary unit, by withdrawal of certain kinds or denominations of existing currency from circulation. The currency withdrawn may be supplanted with new currency.

10.2 The French were the first to use the term "Demonetise" in the years between the years 1850-1855. In world history, one can see several instances of demonetisations as many countries have adopted the policy of demonetisation. Some instances of demonetisation globally, may be recorded as under:

a) **United States of America:** One of the oldest examples of demonetisation may be found in the United States, when the Coinage Act of 1873, ordered the elimination of silver as legal tender in favour of the gold standard. Again, in the year 1969, to combat the existence of black money in the country

and to restore the country's economy, President Richard Nixon declared all currencies over $100 to be null.

b) **Britain:** Before the year 1971, the currency of pound and penny used to be in circulation in Britain but to bring uniformity in currency, the government stopped circulation of old currency in 1971, and introduced coins of 5 and 10 pounds.

c) **Congo:** Mobutu Sese Seko made some changes with respect to the currency in circulation in Congo, for the smooth running of its economy during the Nineties.

d) **Ghana:** In the year 1982, Ghana demonetised notes of 50 Cedis denomination to tackle tax evasion and empty excess liquidity.

e) **Nigeria:** Demonetisation was carried out during the government of Muhammadu Buhari in the year 1984, when Nigeria introduced new currency and banned old notes.

f) **Myanmar:** In the year 1987, Myanmar's military invalidated around 80% of the value of money to curb black marketing.

g) **Russia (formerly U.S.S.R):** In the year 1991, in an attempt to combat the parallel economy, 50 and 100 Ruble notes were removed from circulation under the leadership of Mikhail Gorbachev.

h) **Venezuela:** In the year 2016, the Government of Venezuela demonetised 100 Bolívares notes on 11th December, 2016, to achieve economic, monetary and price stability.

i) **Zimbabwe:** In 2015, the Zimbabwean government chose to replace the Zimbabwe Dollar with the US Dollar in order to stabilize hyperinflation.

History of Demonetisation in India:

j) The first demonetisation was carried out on 12th January, 1946. To bring to realisation the first demonetisation that the country witnessed, an Ordinance was promulgated by the Government on 12th January, 1946. The Ordinance demonetised currency notes of Rs.500/-, Rs.1,000/- and Rs.10,000/- which were in circulation, primarily to check the unaccounted hoarding of money, with a directive that they could be exchanged for re-issued bank notes, within ten days. The period of exchange was extended a number of times by both, the Bank and the Central Government. By the end of 1947, out of a total of Rs.143.97 crores of high denomination notes, notes of the value of Rs.134.9 crores had been exchanged. Thus, notes worth Rs.9.07 crores went out of circulation or not exchanged.

It is said that this exercise turned out to be more like a currency conversion drive as the government couldn't

achieve much profit in the cash-strapped economy at that time.

k) The second demonetisation was carried out in the year 1978, in pursuance of the recommendation of the Wanchoo Committee, appointed by the Central Government, to recall the re-introduced Rs.1,000/-, Rs.5,000/- and Rs.10,000/- notes, entirely from the cash system. The stated objective of such measure was to nullify black money supposedly held in high denomination currency notes. The government resorted to demonetisation of bank notes of denominations Rs.1,000/-, Rs.5,000/-, and Rs.10,000/- notes on 16th January, 1978, under the High Denomination Bank Notes (Demonetisation) Ordinance, 1978 (No. 1 of 1978) and people were allowed three days' time to exchange their notes. During this demonetisation exercise, out of a value of Rs.146 Crores demonetised notes, currency notes of value of Rs.124.45 Crores were exchanged and a sum of Rs.21.55 Crores, or 14.76% of the demonetised currency notes, were extinguished.

11. It would be useful at this stage to discuss briefly the Acts of 1946 and 1978 and the impugned demonetisation having regard to sub-section (2) of Section 26 of the Act.

11.1 The Ordinance of 12th January, 1946 stated that on the expiry of the 12th Day of January, 1946, all high denomination bank notes shall, ***notwithstanding anything contained in Section 26 of the Act,*** cease to be legal tender in payment or on account at any place in British India. A provision was made for the exchange of the high denomination bank notes which had ceased to be legal tender, with bank notes of the denominational value of Rs.100/- which continued to be legal tender.

11.2 The High Denomination Bank Notes (Demonetisation) Act, 1978 was enacted in public interest and provided demonetisation of certain high denomination bank notes and for matters connected therewith or incidental thereto. The said Act, *inter-alia,* defined a high denomination bank note to be a bank note of the denominational value of Rs.1,000/-, Rs.5,000/- or Rs.10,000/-, issued by the Reserve Bank of India immediately before the commencement of the said Act. The said Act also stated in Section 3 that on the expiry of the 16th Day of January, 1978, all high denomination bank notes shall, ***notwithstanding anything contained in Section 26 of the Act***, cease to be legal tender.

11.3 As noted earlier, the previous demonetisations were not carried out on the strength of sub-section (2) of Section 26 of the Act inasmuch as both the legislations categorically stated that the

demonetisation was "***notwithstanding anything contained in Section 26 of the Act***". In fact, under the 1978 Act, one of the objects of the demonetisation of high denomination bank notes was that such notes facilitated illicit transfer of money for financial transactions which were harmful to the national economy or were used for illegal purposes and therefore, it was necessary in public interest to demonetise the high denomination bank notes. The use of the *non-obstante* clause clearly indicates that the Central Government was not demonetising the currency on the recommendation of the Central Board of the Bank under sub-section (2) of Section 26 of the Act. In fact, this position is demonstrated by the fact that in the year 1978, the then Central Government sought an opinion of the Central Board of the Bank regarding the demonetisation of high denomination bank notes. The proposal for demonetisation arose from or was initiated by the Central Government which sought the opinion of the Central Board of the Bank. Therefore, the proposal for demonetisation initiated by the Central Government was *de hors* sub-section (2) of Section 26 of the Act.

11.4 The fact that the *non-obstante* clause found a place in Section 3 of the Ordinance of 1946 as well as in Section 3 of the 1978 Act, would clearly indicate that the Central Government, in those cases, did not demonetise the high denomination bank notes on

the recommendation made by the Central Board of the Bank under sub-section (2) of Section 26 of the Act but on the other hand, the same was carried out *de hors* the said provision by plenary legislations. Hence, the Central Government which initiated the process chose the route through legislation for carrying out the demonetisation rather than by issuing an executive notification in the Gazette of India.

11.5 The above is in contrast with the issuance of the gazette notification dated 8th November, 2016, which was followed by the Ordinance of 2016 and then the Act of 2017 was enacted. The said Act, *inter alia*, provides that the specified bank notes would cease to be the liability of the Reserve Bank of India or the Central Government.

11.6 The demonetisation carried out in the year 2016, of all series of bank notes of denomination Rs.500/- and Rs.1,000/- which forms the subject matter of the controversy at hand was, on the other hand, carried out by the Central Government by issuance of a notification in the Gazette of India on 8th November, 2016. For ease of reference, the impugned notification dated 8th November, 2016 is extracted as under:

"**MINISTRY OF FINANCE**
(Department of Economic Affairs)
NOTIFICATION
New Delhi, the 8th November, 2016

S.O. 3407(E). — Whereas, the Central Board of Directors of the Reserve Bank of India (hereinafter referred to as the Board) has recommended that bank notes of denominations of the existing series of the value of five hundred rupees and one thousand rupees (hereinafter referred to as specified bank notes) shall be ceased to be legal tender;

And whereas, it has been found that fake currency notes of the specified bank notes have been largely in circulation and it has been found to be difficult to easily identify genuine bank notes from the fake ones and that the use of fake currency notes is causing adverse effect to the economy of the country;

And whereas, it has been found that high denomination bank notes are used for storage of unaccounted wealth as has been evident from the large cash recoveries made by law enforcement agencies;

And whereas, it has also been found that fake currency is being used for financing subversive activities such as drug trafficking and terrorism, causing damage to the economy and security of the country and the Central Government after due consideration has decided to implement the recommendations of the Board;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 26 of the Reserve Bank of India Act, 1934 (2 of 1934) (hereinafter referred to as the said Act), the Central Government hereby declares that the specified bank notes shall cease to be legal tender with effect from the 9th November, 2016 to the extent specified below, namely: -

1. (1) Every banking company defined under the Banking Regulation Act, 1949 (10 of 1949) and every Government Treasury shall complete and forward a return showing the details of specified bank notes held by it at the close of business as on the 8th November, 2016, not later than 13:00 hours on the

10th November, 2016 to the designated Regional Office of the Reserve Bank of India (hereinafter referred to as the Reserve Bank) in the format specified by it.

(2) Immediately after forwarding the return referred to in sub-paragraph (1), the specified bank notes shall be remitted to the linked or nearest currency chest, or the branch or office of the Reserve Bank, for credit to their accounts.

2. The specified bank notes held by a person other than a banking company referred to in sub-paragraph (1) of paragraph 1 or Government Treasury may be exchanged at any Issue Office of the Reserve Bank or any branch of public sector banks, private sector banks, foreign banks, Regional Rural Banks, Urban Cooperative Banks and State Cooperative Banks for a period up to and including the 30th December, 2016, subject to the following conditions, namely: —

(i) the specified bank notes of aggregate value of Rs.4,000/- or below may be exchanged for any denomination of bank notes having legal tender character, with a requisition slip in the format specified by the Reserve Bank and proof of identity;

(ii) the limit of Rs.4,000/- for exchanging specified bank notes shall be reviewed after fifteen days from the date of commencement of this notification and appropriate orders may be issued, where necessary;

(iii) there shall not be any limit on the quantity or value of the specified bank notes to be credited to the account maintained with the bank by a person, where the specified bank notes are tendered; however, where compliance with extant Know Your Customer (KYC) norms is not complete in an account, the maximum value of specified bank notes as may be deposited shall be Rs.50,000/-;

(iv) the equivalent value of specified bank notes tendered may be credited to an account maintained by the tenderer at any bank in

accordance with standard banking procedure and on production of valid proof of Identity;

(v) the equivalent value of specified bank notes tendered may be credited to a third-party account, provided specific authorisation therefor accorded by the third party is presented to the bank, following standard banking procedure and on production of valid proof of identity of the person actually tendering;

(vi) cash withdrawal from a bank account over the counter shall be restricted to Rs.10,000/- per day subject to an overall limit of Rs.20,000/- a week from the date of commencement of this notification until the end of business hours on 24th November, 2016, after which these limits shall be reviewed;

(vii) there shall be no restriction on the use of any non-cash method of operating the account of a person including cheques, demand drafts, credit or debit cards, mobile wallets and electronic fund transfer mechanisms or the like;

(viii) withdrawal from Automatic Teller Machines (hereinafter referred to as ATMs) shall be restricted to Rs.2,000/- per day per card up to 18th November, 2016 and the limit shall be raised to Rs.4,000/- per day per card from 19th November, 2016;

(ix) any person who is unable to exchange or deposit the specified bank notes in their bank accounts on or before the 30th December, 2016, shall be given an opportunity to do so at specified offices of the Reserve Bank or such other facility until a later date as may be specified by it.

3. (1) Every banking company and every Government Treasury referred to in sub-paragraph (1) of paragraph 1 shall be closed for the transaction of all business on 9th November, 2016, except the preparation for implementing this scheme and

remittance of the specified bank notes to nearby currency chests or the branches or offices of the Reserve Bank and receipt of bank notes having legal tender character.

(2) All ATMs, Cash Deposit Machines, Cash Recyclers and any other machine used for receipt and payment of cash shall be shut on 9th and 10th November, 2016.

(3) Every bank referred to in sub-paragraph (1) of paragraph 1 shall recall the specified bank notes from ATMs and replace them with bank notes having legal tender character prior to reactivation of the machines on 11th November, 2016.

(4) The sponsor banks of White Label ATMs shall be responsible to recall the specified bank notes from the White Label ATMs and replacing the same with bank notes having legal tender character prior to reactivation of the machines on 11th November, 2016.

(5) All banks referred to in sub-paragraph (1) of paragraph 1 shall ensure that their ATMs and White Label ATMs shall dispense bank notes of denomination of Rs.100/- or Rs.50/-, until further instructions from the Reserve Bank.

(6) The banking company referred to in sub-paragraph (1) of paragraph 1 and Government Treasuries shall resume their normal transactions from 10th November, 2016.

4. Every banking company referred to sub-paragraph (1) of paragraph 1, shall at the close of business of each day starting from 10th November, 2016, submit to the Reserve Bank, a statement showing the details of specified bank notes exchanged by it in such format as may be specified by the Reserve Bank.

[F.No.10/03/2016-Cy.I]
Dr. SAURABH GARG, Jt. Secy."

(underlining by me)

The said Notification was thereafter followed by an Ordinance issued by the President on 30th December, 2016 and subsequently an Act of Parliament namely, the 2017 Act.

The Actual Controversy:

12. The contention of the leaned senior counsel for the petitioners is two-fold: firstly, that sub-section (2) of Section 26 of the Act cannot be interpreted as having a very wide import as it would then be lacking in guidance and being unchanneled, would be arbitrary and in violation of Article 14, and hence, unconstitutional. It was further contended that if the provision has to be saved from being declared unconstitutional, then the same has to be "read down" which means that a restrictive interpretation must be given to the words of the provision. The second contention is with regard to the exercise of power by the Central Government by issuance of the Notification dated 8th November, 2016 and the manner in which such power was exercised and the procedure followed. The aforesaid two contentions shall be dealt with together as they are intertwined.

The Reserve Bank of India: Bulwark of the Indian Economy:

13. Before considering the aforesaid two contentions, it would be useful to discuss the unique position that the Reserve Bank of India holds in the Indian economy.

13.1 Shri Chidambaram cited a recent judgment of this Court in the case of ***Internet & Mobile Assn. of India vs. RBI (2020) 10 SCC 274 ("Internet and Mobile Assn. of India")*** wherein one of us, V. Ramasubramanian, J. while dealing with the regulation of crypto-currency and virtual currency (VC) highlighted the importance of the Reserve Bank of India in the Indian economy. The salient observations made in the said judgment may be culled out as under:

a) That the Bank, established for the objects spelt out under Section 3(1) of the Act, is vested with the duty to operate the monetary policy framework in India; take over the management of currency from the Central Government and carry on the business of banking, in accordance with the provisions of the Act.

b) That with a view to enable the Bank to perform the role spelt out above, the Act authorises it to carry on and transact businesses, as enlisted under Section 17 of the Act; confers under Section 22, sole and exclusive right on the Bank to issue bank notes in India, except in relation to notes of denomination, Rs.1; recognises under Section 26 (1) that every note issued by the Bank shall be a legal tender; vests with the Central Board of the Bank the power to recommend to the Central Government to declare any series of Bank

notes of any denomination, to cease to be legal tender, under Section 26 (2) of the Act; prohibits under Section 38 any money from being put into circulation by the Central Government, except through the Bank. In short, it was held that the operation/regulation of the credit/financial system of the country rests, almost entirely, on the Bank.

c) That the Bank is the sole repository of power for the management of currency in India. As regards the nature, amplitude and inalienability of the power that the Bank wields in the field of currency management, it was observed that what the Bank can do in this regard, the executive acting *de-hors* the aid of the Bank, is not adequately equipped to do. Recognising the importance of the role played by the Bank in matters pertaining to currency management, this Court declared that any observations/recommendations made by the Bank to the Central Government in this regard, have to be accorded due deference. The pertinent observations of the Court on this aspect have been usefully extracted hereinunder:

> "**192.** But as we have pointed out above, RBI is not just any other statutory authority. It is not like a stream which cannot be greater than the source. The RBI Act, 1934 is a pre-constitutional legislation, which survived the Constitution by virtue of Article 372(1) of the Constitution. *The difference between other statutory creatures and RBI is that what the statutory creatures can do, could as*

well be done by the executive. The power conferred upon the delegate in other statutes can be tinkered with, amended or even withdrawn. But the power conferred upon RBI under Section 3(1) of the RBI Act, 1934 to take over the management of the currency from the Central Government, cannot be taken away. The sole right to issue Bank notes in India, conferred by Section 22(1) cannot also be taken away and conferred upon any other Bank or authority. RBI by virtue of its authority, is a member of the Bank of International Settlements, which position cannot be taken over by the Central Government and conferred upon any other authority. Therefore, to say that it is just like any other statutory authority whose decisions cannot invite due deference, is to do violence to the scheme of the Act. In fact, all countries have Central Banks/authorities, which, technically have independence from the Government of the country. To ensure such independence, a fixed tenure is granted to the Board of Governors, so that they are not bogged down by political expediencies. In the United States of America, the Chairman of the Federal Reserve is the second most powerful person next only to the President. Though the President appoints the seven-member Board of Governors of the Federal Reserve, in consultation with the Senate, each of them is appointed for a fixed tenure of fourteen years. Only one among those seven is appointed as Chairman for a period of four years. As a result of the fixed tenure of 14 years, all the members of Board of Governors survive in office more than three Governments. Even the European Central Bank headquartered in Frankfurt has a President, Vice-President and four members, appointed for a period of eight years in consultation with the European Parliament. Worldwide, central authorities/Banks are ensured an independence, but unfortunately Section 8(4) of the RBI Act, 1934 gives a tenure not exceeding five years, as the Central Government may fix at the time of appointment. Though the shorter tenure and the choice given to the Central Government to fix the

> tenure, to some extent, undermines the ability of the incumbents of office to be absolutely independent, the statutory scheme nevertheless provides for independence to the institution as such. Therefore, we do not accept the argument that a policy decision taken by RBI does not warrant any deference."

d) This Court acknowledged the pivotal position of the Bank in the economy of the country. That the powers of the Bank, may be exercised by way of preventive as well as curative measures. That such powers may be exercised to take pre-emptive action. However, such measures must be proportional and must be prompted by some semblance of any damage suffered by its regulated entities. The relevant observations have been reproduced as under:

> "**224.** It is no doubt true that RBI has very wide powers not only in view of the statutory scheme of the three enactments indicated earlier, but also in view of the special place and role that it has in the economy of the country. These powers can be exercised both in the form of preventive as well as curative measures. But the availability of power is different from the manner and extent to which it can be exercised. While we have recognised elsewhere in this order, the power of RBI to take a pre-emptive action, we are testing in this part of the order the proportionality of such measure, for the determination of which RBI needs to show at least some semblance of any damage suffered by its regulated entities. But there is none. When the consistent stand of RBI is that they have not banned VCs and when the Government of India is unable to take a call despite several committees coming up with several proposals including two draft Bills, both of which advocated exactly opposite

positions, it is not possible for us to hold that the impugned measure is proportionate."

13.2 Shri Jaideep Gupta appearing for the Bank has brought to our notice the following decisions to emphasize on the importance of the Reserve Bank of India:

a) In ***Joseph Kuruvilla Vellukunnel vs. The Reserve Bank of India AIR 1962 SC 1371,*** this Court observed that the most important function of the Bank is to regulate the banking system. The Bank has been described as a Banker's Bank. Under the Act, the scheduled banks maintain certain balances and the Bank can lend assistance to those banks as a "lender of the last resort". The Bank has also been given certain advisory and regulatory functions, but in its position as a central bank, it acts as an agency for collecting financial information and statistics. The Bank is also entrusted with the role of advising the Government and other banks on financial and banking matters, and for this purpose, the Bank keeps itself informed of the activities and monetary position of scheduled and other banks and inspects the books and accounts of Scheduled banks and advises the Government after inspection of the said books and accounts as to whether a particular bank should be included in the Second Schedule or not. That the Bank has been created as

a central bank with powers of supervision, advice and inspection, over banks, particularly those desiring to be included in the Second Schedule or those already included in the Schedule. The Reserve Bank thus, safeguards the economy and the financial stability of the country. This Court in the said case also sounded a caveat in stating that it cannot be said that the Reserve Bank can never act mistakenly or even negligently.

b) Subsequently, in ***Peerless General Finance and Investment Co. Ltd. vs. Reserve Bank of India (1992) 2 SCC 343*** this Court once again recognized the status of the Reserve Bank in the Indian economy. In the said case it was observed that the Reserve Bank of India is a Banker's Bank and a creature of statute. That the Reserve Bank of India has a large contingent of expert advice relating to the matters affecting the economy of the entire country. It was further observed that the Reserve Bank has an important role in the economy and financial affairs of India and one of its many important functions is to regulate the banking system in the country.

The aforesaid discussion is relevant for the purpose of interpreting sub-section (2) of Section 26 of the Act. The said provision clearly states that it is only on the recommendation of the Central Board of the Bank, that any series of bank notes of

any denomination shall be declared to have ceased to be legal tender.

Economic/Fiscal Policies: Interference by Courts

13.3 Before proceeding to interpret the said provision, it would be necessary to consider another aspect of the matter which has been emphasized by the learned Attorney General, i.e., with regard to the Court's deference to the economic and monetary policies of the government and restraint that the Court must exercise in interfering with the said policies, unless the same are so irrational or unreasonable, so as to be declared to be unconstitutional.

The above submission was made in the context of the contention of the petitioners, that the decision-making process in the present case was deeply flawed as it was contrary to the scheme and procedure contained in sub-section (2) of Section 26 of the Act and hence, this Court may review the same and declare it to be in contravention, *inter-alia*, of statutory provisions of the Act. The aforesaid contention was vehemently opposed by learned Attorney General who submitted that courts cannot sit in judgment over economic policy matters of the Government. In this regard the following discussions could be made.

Judicial Review of Economic Policy:

The Indian judiciary has consistently exercised restraint with regard to judicial review of policy decisions. A few instances on which such restraint has been demonstrated, have been discussed as under:

(a) In this regard reliance was placed by the learned Attorney General on a judgment of this Court in ***State of Tamil Nadu vs. National South Indian River Interlinking Agriculturist Association 2021 SCC OnLine SC 1114***.

(b) In ***Rustom Cavasjee Cooper vs. Union of India AIR 1970 SC 565 ("Bank Nationalization Case")*** it was observed that this Court was not the forum where conflicting policy claims may be debated; it is only required to adjudicate the legality of a measure which has little to do with relative merits of different political and economic theories.

(c) This Court in the case of ***State of M.P. vs. Nandlal Jaiswal (1986) 4 SCC 566*** observed that the Government, as laid down in ***Permian Basin Area Rate Cases, 20 L Ed (2d) 312***, is entitled to make pragmatic adjustments which may be called for by particular circumstances. The court cannot strike down a policy decision taken by the Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. That

courts could interfere only if the policy decision is patently arbitrary, discriminatory or mala fide.

(d) In ***Peerless General Finance and Investment Co. Ltd. vs. RBI (1992) 2 SCC 343,*** this Court dithered to indulge itself with matters involving domains of the executive and the legislature concerning economic policy or directions given by Reserve Bank of India. This Court observed that it is unbecoming of judicial institutions to interfere with economic policy which is the prerogative of the Government, in consultation with experts in the field and that it is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies.

(e) The validity of the decision of the Government to grant licence under the Telegraph Act, 1885 to non-government companies for establishing, maintaining and working of telecommunication system of the country pursuant to government policy of privatisation of telecommunications was challenged in ***Delhi Science Forum vs. Union of India AIR 1996 SC 1356***. It was contended that telecommunications were a sensitive service which should always be within the exclusive domain and control of the Central Government and under no situation should be

parted with by way of grant of license to non-government companies and private bodies. While rejecting this contention, this Court observed that:

> "... The national policies in respect of economy, finance, communications, trade, telecommunications and others have to be decided by Parliament and the representatives of the people on the floor of Parliament can challenge and question any such policy adopted by the ruling Government...."

(f) The reluctance of the court to judicially examine the merits of economic policy was again emphasised in ***Bhavesh D. Parish vs. Union and India (2000) 5 SCC 471***. This Court opined that in the context of the changed economic scenario the expertise of people dealing with the subject should not be lightly interfered with. The consequences of such an interdiction can have large-scale ramifications and can put the clock back for a number of years. That in dealing with economic legislations, this Court, while not jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all.

(g) Buttressing the same aspect, in ***Balco Employees' Union (Regd) vs. Union of India AIR 2002 SC 350***, it was held that in a democracy, it is the prerogative of each elected

Government to follow its own policy. This Court observed that often a change in Government may result in the shift in focus or change in economic policies and any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or *malafide*, a decision bringing about change cannot per se be interfered with by the court.

(h) In ***Directorate of Film Festivals vs. Gaurav Ashwin Jain AIR 2007 SC 1640***, it was observed that the scope of judicial review of governmental policy is now well defined and the courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy. This Court was also of the view that Courts are not Advisors to the executive on matters of policy which the executive is entitled to formulate, thus, the scope of judicial review when examining a policy of the government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. It was thus held that the Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy,

and not the wisdom or soundness of the policy, is the subject of judicial review.

(i) In the case of ***DDA vs. Joint Action Committee, Allottee of SFS Flats AIR 2008 SC 1343***, the Supreme Court held as under:

> *"An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review."*
>
> *"Broadly, a policy decision is subject to judicial review on the following grounds:*
>
> *(a) if it is unconstitutional;*
>
> *(b) if it is dehors the provisions of the Act and the regulations;*
>
> *(c) if the delegate has acted beyond its power of delegation;*
>
> *(d) if the executive policy is contrary to the statutory or a larger policy."*

(j) In ***Small Scale Industrial Manufacturers Association (Regd.) vs. Union of India (2021) 8 SCC 511,*** a writ petition was preferred under Article 32 of the Constitution of India by the Small-Scale Industrial Manufactures Association, Haryana for an appropriate writ, direction or order directing the Union of India and others to take effective and remedial

measures to redress the financial strain faced by the industrial sector, particularly, MSMEs due to the COVID-19 pandemic. This Court while considering the submissions of the parties on the issue of whether economic and/or policy decisions taken by the Government in their executive capacity are amenable to the jurisdiction of courts, held that it was the legality of the policy, and not the wisdom or soundness of the policy, that can be the subject of judicial review. This Court observed that courts do not play an advisory role to Government and economic policy decisions should be left to experts. This Court observed that it is not normally within the domain of any Court to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning. It is only when a policy is arbitrary and violative of any Constitutional, statutory or any other provisions of law, that the Courts can interfere.

13.4 What emerges from an understanding of the decisions referred to above on the subject of judicial review of economic policy may be culled out as under:

i) That the court is not to sit in judgment over the merits of economic or financial policy;

ii) That the scope of interference by a court is limited to instances where the impugned scheme or legislation in the economic arena has been enacted in violation of any Constitutional or statutory provisions;

iii) That the court may not undertake a foray into the merits, demerits, sufficiency or lack thereof, success in realising the objectives etc., of an economic policy, as such an analysis is the prerogative of the Government in consultation with experts in the field.

13.5 Being mindful of the limited scope of judicial review permissible in matters concerning economic policy decisions, I shall limit my examination of the matter to such extent as is necessary for the purpose of determining whether the process concluding in the issuance of the impugned notification was correct or as being contrary to sub-section (2) of Section 26 of the Act and allied aspects of the case. It may be stated at this juncture that the said aspect of the matter is not one of ***form*** but ***of substance***. Therefore, examining this aspect of the matter would not amount to interfering with, or sitting in judgment over the merits of the policy of demonetisation, and is therefore well within the limits of the *Lakshmanrekha* that this Court has carefully drawn for itself.

14. Bearing in mind the important role played by the Bank in shaping the economy of the country, and also the principle that the Constitutional Courts should refrain from interfering in financial and economic policy decisions of the government unless such policies are so irrational as to warrant interference and also having regard to the provisions of the Constitution, the relevant statutes, and considerations of public interest, the two contentions raised by the petitioners shall now be considered in analysing and interpreting Section 26 (2) of the Act.

Section 26 of the Act: Interpretation:

15. With a view to lend perspective to the discussion to follow, a bird's eye view of my analysis and conclusions has been expressed in a tabular form as under:

Sl. No.	**Parameters for distinction**	**When the proposal for demonetisation originates by way of a recommendation by the Central Board of the Bank:**	**When the proposal for demonetisation originates from the Central Government:**
1	Role of the Central Government	The Central Government may on consideration of the Bank's recommendation, ***accept the same and act on such acceptance by issuing a notification in the Gazette of India*** declaring that "any" series of "any" denomination has ceased to be legal tender; ***or*** the Central Government is also free to decide in its	The Central Government ***initiates the proposal*** for demonetisation. It consults the Bank on the same and seeks the Bank's advice. On receiving the Bank's advice/opinion on the proposed measure, the Central Government shall consider the same.

Sl. No.	**Parameters for distinction**	**When the proposal for demonetisation originates by way of a recommendation by the Central Board of the Bank:**	**When the proposal for demonetisation originates from the Central Government:**
		wisdom that it is not expedient to accept the recommendation of the Bank to declare that "any" series of "any" denomination has ceased to be legal tender. In the event that the ***recommendation is not accepted, no further action is required to be taken by the Central Government***.	***Consultation with the Central Board of the Bank does not mean concurrence.*** The Central Government is free to give effect to its proposal for demonetisation, notwithstanding the opinion of the Bank.
2	Role of the Bank	The Central Board of the Bank makes a ***recommendation*** to the Central Government to declare that "any" series of "any" denomination has ceased to be legal tender.	The Central Government consults the Bank seeking advice on its proposal to carry out demonetisation. The Bank is bound to render its ***independent advice*** and ***opinion*** on the same.
3	Extent of demonetisation that may be proposed and carried out	Demonetisation of "any" series of "any" denomination, has been interpreted to mean ***"specified" series of "specified" denomination***. Otherwise, it would be a case of excessive vesting of powers with the Bank which would be arbitrary and unconstitutional.	***"All" series of "all" denominations*** may be declared at once, to have ceased to be legal tender having regard to the situation faced by the Central Government.
4	Considerations for proposed measure of demonetisation (Illustrative)	i) To promote general health of the Country's economy; ii) Fiscal policy considerations;	i) Sovereignty and Integrity of India; ii) Security of the State; iii) To promote general health of the Country's economy;

Sl. No.	Parameters for distinction	When the proposal for demonetisation originates by way of a recommendation by the Central Board of the Bank:	When the proposal for demonetisation originates from the Central Government:
		iii) Monetary policy considerations. Considerations which could guide the Bank's recommendation are ***limited or narrow*** in compass.	iv) Other aspects of governance. Considerations which could guide the Central Government's proposal to carry out demonetisation are ***broad or wide.***
5	Process/Route to be followed to carry out demonetisation	Issuance of a Notification in the Gazette of India, indicating therein that "any" specified series of "any" specified denomination has ceased to be legal tender, from such date as specified in the Notification.	Enactment of a Parliamentary Legislation, which may or may not be preceded by an Ordinance issued by the President of India.
6	Applicability of sub-section (2) of section 26 of the Reserve Bank of India Act, 1934	Notification issued by the Central Government, giving effect to the Bank's recommendation, shall be on the strength of sub-section (2) of section 26 of the Act.	Sub-section (2) of section 26 of the Act is not applicable. Hence, a notification in the Gazette of India is not the manner in which demonetisation is to be carried out, when the proposal for the same originates from the Central Government.

15.1 Section 26 of the Act deals with legal tender of notes. Sub-section (1) of Section 26 declares that every bank note shall be a legal tender at any place in India in payment or on account for the amount expressed therein, and shall be guaranteed by the

Central Government. There are two aspects to this provision: the first is, every bank note shall be a legal tender in any place in India and, secondly, that the Central Government shall guarantee the amount expressed on the bank note. The expression "bank note" is defined in Section 2 (aiv) of the Act to mean, a bank note issued by the Bank whether in physical or digital form, under Section 22 of the Act. Section 22 of the Act categorically states that the Bank has the sole right to issue bank notes in India, on the recommendations of the Central Board of the Bank. The provision further provides that the Bank has the sole right to issue currency notes of the Government of India. The provisions of the Act would be applicable in a like manner, to all currency notes of the Government of India, issued either by the Central Government or by the Bank, as if such currency notes were bank notes.

15.2 Further, it is only on the recommendation of the Central Board of the Bank that the Central Government may direct the non-issue or discontinuation of the issue of bank notes of such denominational value as it may specify in this behalf. Even the design, form and material of bank notes has to be approved by the Central Government, after considering the recommendations made by the Central Board of the Bank. Thus, the scheme of the Act envisages that the issuance of the bank notes, the various

denominations of the bank notes, the design and form of the bank notes, are all to be specified by the Central Government only on the recommendation of the Central Board of the Bank. Therefore, on perusal of Sections 24, 25 and 26 of the Act, it is observed that it is only on the recommendation of the Central Board of the Bank that the Central Government would act *qua* the aforestated matters, on the strength of the respective provisions. It need not be emphasised that the Bank, being the only institution, which carries out the function of currency management and formulates credit rules in the country, is recognised as having a say in the issuance of currency notes, and also in specifying the denominations of the notes, as well as the design and form of the bank notes.

15.3 Further, although, sub-section (1) of Section 26 states that every Bank note shall be legal tender at any place in India, it acquires legal sanctity because the Central Government has guaranteed the bank note which has legal tender. Thus, a bank note statutorily has dual characteristics when it is issued by the Bank, namely, being a legal tender coupled with the guarantee of the Central Government and the said qualities go hand in hand. This would mean that it is only when the Bank which has the sole right to issue a currency note in India, issues the note and the same has been guaranteed by the Central Government, that such

a note is legal tender. Therefore, the Issue Department of the Bank is not subject to any liabilities other than the liabilities under Section 34 of the Act. Section 34 of the Act states that an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation, would be the liability of the Issue Department. This would imply that as long as the bank notes issued by the Bank are in circulation, the liability of the Government of India would continue. The said liability is owing to the guarantee given by the Central Government in sub-section (1) of Section 26 which is in the nature of a statutory guarantee.

15.4 While considering sub-section (1) of Section 26 of the Act, the first question that would arise is, whether, a bank note which has ceased to be a legal tender on the issuance of a notification by the Central Government would also cease to have the guarantee of the Central Government. In other words, whether the guarantee by the Central Government, would continue despite the bank note ceasing to be a legal tender. The answer is in the affirmative, for, a bank note may cease to be a legal tender between citizens but cannot cease to have the guarantee of the Central Government, so long as the liability of the Issue Department continues. The liability of the Issue Department of the Bank is co-extensive with the time period within which a bank note which

has ceased to be a legal tender is exchanged at a notified bank. It is because of this reason that a bank note of any denomination which is demonetised or is declared to have ceased to be a legal tender, can be exchanged as indicated in the notification issued by the Central Government so that the bearer of the bank note receives an equivalent amount as that expressed in the note which has ceased to be a legal tender or demonetised. Therefore, even though such demonetised currency would cease to be legal tender, the same could be exchanged in a bank specified by the Reserve Bank owing to the guarantee of the Central Government. If the guarantee of the Central Government ceases on demonetisation, then the same cannot be exchanged by the bearer of such bank notes. This has also been the argument of learned senior counsel Shri Shyam Divan.

15.5 Sub-section (2) of Section 26 of the Act states that on the recommendation of the Central Board of the Bank, the Central Government may, by notification in the Gazette of India, declare that with effect from such date as specified in the notification, any series of bank notes of any denomination shall cease to be a legal tender, save at such office or agency of the Bank and to such extent as may be specified in the said notification. The Central Government derives the power to issue a notification in the Gazette only on the recommendation of the Central Board of the

Bank. The issuance of such a notification is an executive act which is backed by the recommendation of the Central Board of the Bank which has been accepted by the Central Government. The notification has to indicate the date from which any series of bank notes of any denomination shall cease to be a legal tender, save at such office and to such extent as may be specified in the notification.

15.6 The essential ingredients of sub-section (2) of Section 26 of the Act can be epitomised as under:

i) on the recommendation of the Central Board of the Bank;

ii) the Central Government by notification in the Gazette of India;

iii) may declare any series of bank notes of any denomination to cease to be legal tender;

iv) with effect from such date as may be specified in the notification;

v) to such extent as may be specified in the notification;

Therefore, under sub-section (2) of Section 26 of the Act, the Central Government would act only on the recommendation made by the Central Board of the Bank, which is the initiator of demonetisation of bank notes.

15.7 Learned Attorney General made a pertinent submission that it is not necessary that only on a recommendation of the Central Board of the Bank, the Central Government can demonetise any currency. That the Central Government has the power or jurisdiction to demonetise any bank note by the issuance of a gazette notification. He further contended that the powers of the Central Government cannot be denuded to such an extent that unless and until a recommendation of the Central Board of the Bank is made to the Central Government, the latter cannot demonetise any currency. According to learned Attorney General, if such a strict interpretation is given to sub-section (2) of Section 26, it would nullify the power of the Central Government to demonetise any bank note, having regard to the economic conditions of the country, the financial health of the economy and the monetary policy of the Government. It was submitted that the provision must be so interpreted so as to give a free play in the joints and empower the Central Government to issue a notification in the Gazette of India, in order to demonetise any bank note. He further contended that the requirement of recommendation of the Central Board of the Bank in order to enable the Central Government to issue a notification to demonetise any currency would imply that the initiation of demonetisation must only be from the Central Board of the Bank

and that the Central Government has no power to initiate such an action of demonetisation.

15.8 I find considerable force in the contention of the learned Attorney General inasmuch as the Central Government cannot be said to be without powers in initiating demonetisation of bank notes. This is on the strength of Entry 36 of List I of the Seventh Schedule of the Constitution. The Central Government is not just concerned with the financial health of the country as well as its economy, but it is also concerned with the sovereignty and integrity of India; the security of the State; the defence of the country; its friendly relations with foreign countries; internal and external security and various other aspects of governance. On the other hand, the Bank is only concerned with the regulation of currency notes, monetary policy framework, maintaining price stability and allied matters. Therefore, if the Central Government is of the considered opinion that in order to meet certain objectives such as the ones stated in the impugned notification, namely, to eradicate black money, fake currency, terror funding etc., it is necessary to demonetise the currency notes in circulation, then the Central Government may initiate a proposal for demonetisation.

15.9 The second prong of the Learned Attorney General's contention *qua* the interpretation of sub-section (2) of Section 26 of the Act

was that the Central Government has the power to demonetise not just any one series of currency of any one denomination but it has the power to demonetise all series of currencies of all denominations at a time. It was argued that the expression "any" in sub-section (2) of Section 26 of the Act must mean "all".

15.10 *Per contra,* it was the submission of the learned senior counsel for the petitioners that, as the said provision stands, in the absence of there being any guidance *vis-à-vis* the power of the Central Government to issue a notification to demonetise the currency notes in circulation and in order to save such measure from the vice of unconstitutionality, the expression "any series" and "any denomination" in sub-section (2) of Section 26 of the Act must be restricted to mean "one series" and "one denomination", respectively. Otherwise, it could result in arbitrary exercise of power. He further contended that if sub-section (2) of Section 26 of the Act is not read down in this context, it would confer unguided and arbitrary power on the executive Government and it would amount to impermissible delegation of legislative powers.

15.11 It was further contended by Shri Chidambaram that demonetisation is resorted to in rare and exceptional circumstances and there are two justifiable reasons for which demonetisation could be resorted to, namely,

1) to weed out denominations of currency that are in disuse or are practically unusable;

2) to get rid of currency which has become worthless in value because of hyperinflation.

According to learned senior counsel for the petitioners, if any demonetisation of currency has to take place, and if the power of the Central Government is not channelised or restricted by reading down sub-section (2) of Section 26 of the Act, it would result in arbitrariness and unconstitutionality. Therefore, to save it from the vice of arbitrariness and unconstitutionality, it is necessary to read down the provision in the following two respects:

a) the Central Government has no power to demonetise any currency note except on the recommendation of the Central Board of the Bank under sub-section (2) of Section 26 of the Act, and;

b) the expression “any” in sub-section (2) of Section 26 of the Act must be restricted to be “any one”, that is, “one series” or “one denomination” of bank notes. That the addition of the words “any series” before the words “of bank notes of any denomination” limits the power of the Government to declare only a specified series of notes as no longer being a legal

tender. Thus, "any series" means any specified series and not "all series" of notes of a given denomination.

15.12 Since I have accepted the contention of the learned Attorney General appearing for Union of India *vis-à-vis* the power of the Central Government for initiating the process of demonetisation, the next question would be, whether, the Central Government can, on initiating the process of demonetisation, proceed to issue a gazette notification to demonetise any or all series of any or all denomination of bank notes, on the strength of sub-section (2) of Section 26 of the Act. Consideration of this issue would also answer the contention of learned senior counsel for the petitioners regarding sub-section (2) of Section 26 of the Act being unguided and arbitrary in nature and hence, unconstitutional. To this end, the following aspects have to be examined:

(a) Whether demonetisation can be initiated and carried but by the Central Government by issuing a notification in the Gazette of India as per sub-section (2) of Section 26 of the Act?

(b) Extent of the Central Government's power to carry out demonetisation, i.e., whether "all series" of "all denominations" may be demonetised.

15.13 As held hereinabove, the proposal for demonetisation can emanate either from the Central Government or from the Central

Board of the Bank. It is however necessary to contrast the proposal for demonetisation initiated by the Central Government, with that initiated by the Central Board of the Bank. When the Central Board of the Bank recommends demonetisation, it is in my view, only for a particular series of bank notes of a particular denomination as specified in the recommendation made under sub-section (2) of Section 26 of the Act. The word "any" in sub-section (2) of Section 26 cannot be read to mean "all". If read as "specified" or "particular" as against all, in my view, it would not suffer from arbitrariness or suffer from unguided discretion being given to the Central Board of the Bank.

On the other hand, in my view, the Central Government has the power to demonetise all series of bank notes of all denominations, if the need for such a measure arises. It cannot be restricted in such powers in such manner as the Central Board of the Bank is, under the above provision. This is because such power is not exercised under sub-section (2) of Section 26 of the Act but is exercised notwithstanding the said provision by the Central Government. Therefore, demonetisation of bank notes at the behest of the Central Government is a far more serious issue having wider ramifications on the economy and on the citizens, as compared to demonetisation of bank notes of a given series of a given denomination on the recommendation of the Central

Board of the Bank by issuance of a gazette notification by the Central Government.

Therefore, in my considered view, the powers of the Central Government being vast, the same have to be exercised only through a plenary legislation or a legislative process rather than by an executive act by the issuance of a notification in the Gazette of India. It is necessary that the Parliament which consists of the representatives of the People of this country, discusses the matter and thereafter approves and supports the implementation of the scheme of demonetisation.

15.14 The Central Government, as already noted above, could have several compulsions for initiating demonetisation of the bank notes already in circulation in the economy, and it could do so even in the absence of a recommendation, as per sub-section (2) of Section 26 of the Act, of the Central Board of the Bank. On its proposal to demonetise the bank notes, the advice/opinion of the Central Board of the Bank which has to be consulted may not always be in support of the proposal of the Central Government as in the year 1978. The Central Board of the Bank may give a negative opinion or a concurring opinion. In either of the situations, the Central Government may proceed to demonetise the bank notes but only through a legislative process, either through an Ordinance followed by a legislation, if the Parliament

is not in session; or by a plenary legislation before the Parliament and depending upon the passage of the Bill as an Act, carry out its proposal of demonetisation. Of course, depending upon the urgency of the situation and possibly to maintain secrecy, the option of issuance of an Ordinance by the President of India and the subsequent enactment of a law is always available to the Central Government by convening the Parliament. Such demonetisation of currency notes at the instance of the Central Government cannot be by the issuance of an executive notification. The reasons for stating so are not far to see –

(i) Firstly, because the Central Government is not acting under sub-section (2) of Section 26 of the Act. When the Central Government initiates the process of demonetisation it is *de hors* sub-section (2) of Section 26 of the Act.

(ii) Secondly, the Central Government has the power to demonetise all series of bank notes of all denominations unlike the narrower powers vested with the Central Board of the Bank under the aforesaid provision, if the situation so arises.

(iii) Thirdly, the Parliament which is the fulcrum in our democratic system of governance, must be taken into confidence. This is because it is the representative of the people of the Country. It is the pivot of any democratic country and in it rest the interests of the citizens of the Country. The Parliament enables its citizens

to participate in the decision-making process of the government. A Parliament is often referred to as a ***"nation in miniature"***; it is the basis for democracy. A Parliament provides representation to the people of a country and makes their voices heard. Without a Parliament, a democracy cannot thrive; every democratic country needs a Parliament for the smooth conduct of its governance and to give meaning to democracy in the true sense. The Parliament which is at the centre of our democracy cannot be left aloof in a matter of such importance. Its views on the subject of demonetisation are critical and of utmost importance.

Dr. Subhash C. Kashyap in his book, "Parliamentary Procedure: Law, Privileges, Practice and Precedents", 3rd Ed., (2014), while discussing the functions of the Parliament has stated as follows:

> "Over the years, the functions of Parliament have no longer remained restricted merely to legislating. Parliament has, in fact emerged as a multi-functional institution encompassing in its ambit various roles viz. developmental, financial and administrative surveillance, grievance ventilation and redressal, national integrational, conflict resolution, leadership recruitment and training, educational and so on. The multifarious functions of Parliament make it the cornerstone on which the edifice of Indian polity stands and evokes admiration from many a quarter."

It is in the above context that it is observed that on a matter as critical as demonetisation, having a bearing on nearly 86% of the total currency in circulation, the same could not have been carried out by way of issuance of an executive notification. A meaningful discussion and debate in the Parliament on the proposed measure, would have lent legitimacy to the exercise.

When an Ordinance is issued or a Bill is introduced in the Parliament and enacted as a law, it would mean that it has been done by taking into confidence the Members of Parliament who are the representatives of the people of India, who would meaningfully discuss on the proposal for demonetisation made by the Central Government. In such an event, demonetisation would be by an Act of Parliament and not a measure carried out by the issuance of a gazette notification by the Central Government in exercise of its executive power.

Such demonetisation through an Ordinance or a legislation through the Parliament would be "notwithstanding what is contained in sub-section (2) of Section 26 of the Act". This is because in such a situation, the Central Government is not acting on the basis of a recommendation received from the Central Board of the Bank but it would be proposing the demonetisation. Precedent for the same may be found in the earlier demonetisations which were also through a legislative process

and not through the issuance of a gazette notification by the Executive/Central Government. When the process of demonetisation is carried out through a Parliamentary enactment and after being the subject of scrutiny by the Members of Parliament, any opinion sought by the Central Government from the Central Board of the Bank before initiating the promulgation of the Ordinance or placing the Bill before the Parliament may also be additional material which could be considered by the Parliament. When the Central Government initiates the proposal for demonetisation and thereafter consults the Bank on such proposal, then it could be said that the necessary safeguards were taken, as the Central Government would be fortified in its proposal for demonetisation having taken the advice of not only an expert body but the highest financial authority in the country, which handles not only the monetary policy but is also the sole authority vested with the power of issuance of bank notes or currency notes in India. When the Central Government proposes to demonetise the currency notes, not only the view of the Central Board of the Bank is relevant and important but also that of the representatives of the people in the Parliament. The Members of the Parliament hold the sovereign powers of “We, the People of India” in trust.

15.15 Of course, by contrast, there would be no difficulty if the proposal for demonetisation is initiated by the Central Board of the Bank by making a recommendation under sub-section (2) of Section 26 of the Act, which the Central Government in its wisdom may consider and either act upon the recommendation or for good reason, decline to act on the same. That is a matter left to the wisdom of the Central Government. However, as noted above such recommendation by the Bank cannot relate to "all" series of a denomination or "all" series of "all" denominations of bank notes. That is a prerogative of only the Central Government.

15.16 It is nobody's case that the impugned gazette notification dated 8th November, 2016, of the Central Government was published on the initiation of the proposal of demonetisation by the Central Board of the Bank. The proposal for demonetisation was initiated by the Central Government by a letter dated 7th November, 2016 addressed by the Finance Secretary to the Governor of the Bank. The Central Government, having "obtained" the advice of the Bank on its proposal, proceeded to issue the impugned gazette notification on the very next day, dated 8th November, 2016. The same was followed by an Ordinance and thereafter, an enactment was passed.

15.17 The contention of the petitioners could now be considered and answered. The words in sub-section (2) of Section 26 of the Act

would have to be interpreted/construed in their normal parlance. It is already observed that issuance of such a notification under sub-section (2) of Section 26 of the Act must be preceded by a recommendation of the Central Board of the Bank and such recommendation is a condition precedent. The Central Government in its wisdom may accept the recommendation of the Central Board of the Bank and issue a notification in the Gazette of India or it may decline to do so. This position is evident from the use of the word "may" in sub-section (2) to Section 26 of the Act. However, what is significant is that if demonetisation of any bank note is to take place under sub-section (2) of Section 26 of the Act, it is only by issuance of a notification in the Gazette of India and not by any other method or manner. In other words, the Central Board of the Bank must first initiate the process by recommending to the Central Government to declare that any series of bank notes of any denomination shall cease to be a legal tender by the issuance of a notification. If the Central Government accepts the recommendation of the Central Board of the Bank, it issues a notification in the Gazette of India carrying out the same, which is in the nature of an executive function and the publication of the notification in the Gazette of India is only a ministerial act.

15.18 Therefore, under sub-section (2) of Section 26 of the Act, the initiation of the process of demonetisation and the exercise of power ***originates*** from the Central Board of the Bank which has to recommend to the Central Government and the latter may accept the recommendation and in such event it would issue a gazette notification. In case the Central Government does not accept the recommendation, there will be no further action on the recommendation of the Central Board of the Bank. Thus, sub-section (2) of the Section 26 of the Act has inherently a very restricted operation, and is limited only to the initiation of demonetisation by the Central Board of the Bank and making a recommendation in that regard. Issuance of the notification, in the Gazette of India, would imply that the Central Government has accepted the recommendation of the Central Board of the Bank and therefore, has declared that the specified series of Bank notes of the specified denomination shall cease to be legal tender from the date to be specified in the notification. The operation of sub-section (2) of Section 26 of the Act is thus in a very narrow compass and it is reiterated that the said power is exercised by the Central Government on acceptance of the recommendation of the Central Board of the Bank.

15.19 The reason as to why a wide interpretation as contended by the Union of India cannot be given to sub-section (2) of Section 26 of

the Act is because a plain reading of the provision as well as a contextual understanding, would suggest that it is only when the ***initiation*** of a proposal for demonetisation is by the Central Board of the Bank by making a recommendation to the Central Government that the provision would apply.

15.20 This position, however, does not imply that the Central Government is bereft of any power or jurisdiction to declare any bank note of any denomination to have ceased to be a legal tender. As already observed while accepting the contention of learned Attorney General, the Central Government in its wisdom may also initiate the process of demonetisation as has been done in the instant case. But what is important and to be noted is that the said power cannot be exercised by the mere issuance of an executive notification in the Gazette of India. In other words, when the proposal to demonetise any currency note is initiated by the Central Government with or without the concurrence of the Central Board of the Bank, it is ***not*** an exercise of the executive power of the Central Government under sub-section (2) of Section 26 of the Act. In such a situation, as already held, the Central Government would have to resort to the legislative process by initiating a plenary legislation in the Parliament.

15.21 What is being emphasised is that the Central Government cannot act in isolation in such matters. The Central Government has to

firstly, take the opinion of the Central Board of the Bank for the proposed demonetisation. The Central Board of the Bank may not accept the proposal of the Central Government or may partially concur with the proposal on specific aspects. In fact, in 1978, when the then Governor of the Bank did not accept the proposal of the Central Government to demonetise Rs.5,000/- and Rs.10,000/- bank notes, the Central Government initiated the said process through the Parliament and this culminated in the passing of the Act of 1978. In drafting the said legislation, the expert assistance of two officers of the Bank was taken so as to fortify the legislation. The said legislation was also challenged before this Court in the case of ***Jayantilal Ratanchand Shah, Devkumar Gopaldas Aggarwal vs. Reserve Bank of India (1996) 9 SCC 650*** whereby the *vires* of the 1978 Act was ultimately, upheld by this Court *vide* judgement dated 9th August, 1996, after eighteen years of its enactment.

15.22 The reasons as to why the Central Government cannot unilaterally issue a gazette notification but has to resort to a legislation when it initiates the proposal for demonetisation have already been discussed. The Central Government may have very valid objectives to do so, as in the instant case, i.e., in order to eradicate black money, fake currency and prevent currency from being utilized for terror funding. But, those objects would not be

the objects with which the Central Board of the Bank may make a recommendation under sub-section (2) of Section 26 of the Act. The reason being, the Central Government would view the entire scheme of demonetisation in a larger perspective, having several objects in mind and in the interest of the sovereignty and integrity of the India, the security of the State, the financial health of the economy, etc. The Central Board of the Bank may not be in a position to visualize such objectives. Under such circumstances the Central Government must consult the Bank but need not mandatorily obtain the imprimatur of the Central Board of the Bank to its proposal. What if the Central Board of the Bank, when consulted by the Central Government, gives a negative opinion? Would it mean that the Central Government would then not resort to demonetisation in deference to the opinion of the Central Board of the Bank? It may do so if it finds that the opinion tendered by the Bank is just and proper, but the Central Government may have its own reasons for not accepting the opinion of the Central Board of the Bank and therefore, in such a situation the Central Government will have to resort to initiate the proposal for demonetisation through a plenary legislation, by way of introduction of a Bill in the Parliament resulting in an Act of Parliament.

15.23 Therefore, the sum and substance of the discussion is that when the Central Board of the Bank initiates or originates the proposal for demonetisation of any series of bank notes of any denomination, it has to make a recommendation to the Central Government as per sub-section (2) of Section 26 of the Act. The Central Government may act on such recommendation by issuing a gazette notification. On the other hand, when the Central Government is the originator of the proposal for demonetisation of any currency note as in the instant case, it has to seek the advice of the Central Board of the Bank, for, it cannot afford to proceed in isolation and without bringing the said proposal to the notice of the Central Board of the Bank having regard to the important position the Bank holds in the Indian economy. Irrespective of the opinion of the Central Board of the Bank to the Central Government's proposal, the legislative route would have to be taken by the Central Government for furthering its objective/s of demonetisation of bank notes. Thus, the same cannot be carried out by the issuance of a simple notification in the Gazette of India declaring that all bank notes or currency notes are demonetised. This is because when the Central Government is the originator of a proposal for demonetisation, it is acting *de hors* sub-section (2) of Section 26 of the Act.

15.24 Such an interpretation is necessary as it is the contention of the Union of India that the Central Government has the power to demonetise "all" series of bank notes of "all" denominations which would mean that every Rs.1/-, Rs.5/-, Rs.10/-, Rs.20/-, Rs.50/-, Rs.100/-, Rs.500/-, Rs.1,000/-, Rs.5,000/-, Rs.10,000/-, could be demonetised. Since the same is possible theoretically, in my view, such an extensive power cannot be exercised by issuance of a simple gazette notification in exercise of an executive power of the Central Government as if it is one under sub-section (2) of Section 26 of the Act. The same can only be through a plenary legislation, by way of an enactment following a meaningful debate in Parliament, on the proposal of the Central Government. This would also answer the other contention of the learned senior counsel for the petitioners that sub-section (2) of Section 26 of the Act cannot be interpreted to mean "all series" of bank notes of "all denominations" when the words used in the provision are "any series" of "any denomination".

Deciphering the plain meaning of sub-section (2) of Section 26:

15.25 The reason why power is vested only with the Central Board of the Bank under sub-section (2) of Section 26 of the Act to recommend to the Central Government to declare specified series of specific denomination of bank notes as having ceased to be

legal tender, becomes clear when the plain meaning of the words of the said provision is recognised. When interpreted as such, no power to demonetise currency notes at the behest of the Central Government is envisaged under the said provision. This is because the power of the Central Government to do so is vast and has a wider spectrum. Such a power is not traceable to sub-section (2) of Section 26 of the Act which operates in a narrower compass. Hence, to save sub-section (2) of Section 26 from the vice of unconstitutionality, it must be given an interpretation appropriate to the object for which the provision is intended. In this context, the following principles become relevant.

15.26 When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the court is bound to give effect to that meaning and admit only one meaning and no question of construction of a statute arises, for, the provision/Act would speak for itself. The judicial dicta relevant to the above principle of interpretation are as follows:

(i) In ***Kanailal Sur vs. Paramnidhi Sadhu Khan AIR 1957 SC 907 at Page 910*** this Court observed that if the words used are capable of only one "construction" then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the purported object

and policy of the Act. Reference was made to Section 162 of the Code of Criminal Procedure, 1898 and interpretation of the expression "any person" by Lord Atkin, speaking for the Privy Council who observed that the expression "any person" includes any person who may thereafter be an accused, and he observed that *"when the meaning of the words is plain, it is not the duty of Courts to busy themselves with supposed intentions" vide* ***Pakala Narayanaswami vs. Emperor AIR 1939 PC 47***.

(ii) Similarly, while construing Sections 223 and 226 of the Indian Succession Act, 1925 which contain a prohibition in relation to grant of Probate or Letters of Administration "to any association of individuals unless it is a company", this Court in ***Illachi Devi vs. Jain Society Protection of Orphans India (2003) 8 SCC 413***, applied the plain meaning rule and held that said expression would not include a society registered under the Societies Registration Act as a society even after registration does not become distinct from its members and does not become a separate legal person like a company.

(iii) For a proper application of the plain meaning rule to a given statute, it is necessary, to first determine, whether the language used is plain or ambiguous. "Any ambiguity"

means that a phrase is fairly and equally open to diverse meanings. A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It is only when a provision contains a word or phrase which in a particular context is capable of having more than one meaning that it would be ambiguous.

(iv) Hence, in order to ascertain whether certain words are clear and unambiguous, they must be studied in their context. Context in this connection is used in a wide sense as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in *pari materia* and the mischief which by those and other legitimate means can be discerned that the statute was intended to remedy.

[Source: Interpretation of Statutes by Justice G.P. Singh, 15th Edition]

15.27 Applying the above rule, if sub-section (2) of Section 26 of the Act is read as per the plain meaning of the words of the provision, then it does not lead to any ambiguity. The plain meaning rule is the golden rule of construction of statutes and it does not lead to any absurdity in the instant case. On a plain reading of the provision, it is observed that the Central Government can issue a notification in the Gazette of India to demonetise any series of

bank notes of any denomination but only on the recommendation of the Central Board of the Bank. In my view sub-section (2) of Section 26 is not vitiated by unconstitutionality. This is for two reasons: firstly, the plain meaning of the words “any” series of bank notes of “any denomination” would ***not*** imply “all series” of bank notes of “all denominations”. The word “any” means specified or particular and not “all” as contended by the respondents. If the contention of the Union of India is accepted and the word “any” is to be read as “all”, it would lead to disastrous consequences as the Central Board of the Bank cannot be vested with the power to recommend demonetisation of “all series of currency of all denominations”. The interpretation suggested by learned Attorney General would lead to vesting of unguided power in the Central Board of the Bank whereas giving a wider power to the Central Government to initiate such a demonetisation wherein all series of a denomination could be demonetised is appropriate as it is expected to consider all pros and cons from various angles and then to initiate demonetisation on a large scale through a legislative process. Such a power is vested only in the Central Government by virtue of Entry 36 of List I of the Seventh Schedule of the Constitution which of course has to be exercised by means of a plenary legislation and not by issuance of a gazette notification under sub-section (2) of Section 26 of the Act. Hence, the word “any” cannot be interpreted to

mean “all” having regard to the context in which it is used in the said provision.

15.28 Secondly, any recommendation of the Central Board of the Bank under sub-section (2) of Section 26 is not binding on the Central Government. If the Central Government does not accept the recommendation of the Bank then no notification would be published in the Gazette of India by it. In fact, the Central Government is not bound by the recommendation made by the Central Board of the Bank to demonetise any bank note, although, the Central Board of the Bank may comprise of experts in matters relating to finance, having knowledge and experience of economic affairs of the country and such knowledge may be reflected in the recommendation made to the Central Government. As already noted, the Central Government has the option to accept the said recommendation and accordingly issue a gazette notification or elect not to act on the same. However, the Central Government should consider the recommendation with all seriousness and in its wisdom take an appropriate decision in the matter.

16. In the instant case, on perusal of the records submitted by Union of India and the Bank, it is noted that the proposal for demonetisation had been initiated by the Central Government by writing a letter to the Bank on 7th November, 2016 and not by the Central Board of the Bank.

On the very next evening i.e., on 8th November, 2016 at 05:30 p.m., there was a meeting of the Central Board of the Bank at New Delhi and a Resolution was passed and a little while thereafter on the same evening, the notification was issued invoking sub-section (2) of Section 26 of the Act by the Central Government. Such a procedure is not contemplated under sub-section (2) of Section 26 of the Act when the proposal for demonetisation is initiated by the Central Government.

16.1 Hence, it is held that in the instant case the Central Government could not have exercised power under sub-section (2) of Section 26 of the Act in the issuance of the impugned gazette Notification dated 8th November, 2016. It is further held that in the present case, the object and the purpose of issuance of an Ordinance and thereafter, the enactment of the 2017 Act by the Parliament was, in my view, to give a semblance of legality to the exercise of power by issuance of the Notification on 8th November, 2016. In fact, Section 3 of the Ordinance as well as Section 3 of the Act makes this explicit. The same is extracted as under for immediate reference:

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

and shall cease to have the guarantee of the Central Government under sub-section (1) of section 26 of the said Act."

(Emphasis by me)

The said Section has an inherent contradiction inasmuch as the Section has a *non-obstante* clause *vis-à-vis* the Act or any other law for the time being in force but at the same time, the said provision refers to Sections 26 as well as Section 34 of the Act.

A *non-obstante* clause such as "notwithstanding anything contained in the Act or in any law for the time being in force", is sometimes appended to a section, with a view to give the enacting part of that section in case of conflict, an overriding effect over the provision or Act mentioned in the *non obstante* clause. The following are the judicial dicta on the point which bring out the use of a *non-obstante* clause:

a) In ***T.R. Thandur vs. Union of India (1996) 3 SCC 690***, this Court observed that a *non-obstante* clause may be used as a legislative device to modify the ambit of the provision or law mentioned in the *non-obstante* clause or to override it in specified circumstances. That while interpreting a *non-obstante* clause, the Court is required to find out the extent to which the legislature intended to give it an overriding effect.

b) In ***Central Bank of India vs. State of Kerala (2009) 4 SCC 94***, this Court held that while interpreting a *non-obstante* clause the court is required to find out the extent to which the legislature intended to give it an overriding effect.

c) Further, this Court in ***A.G. Varadarajulu and Anr. vs. State of Tamil Nadu (1998) 4 SCC 231***, observed that it is well-settled that while dealing with a *non-obstante* clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision.

The effect of insertion of a *non-obstante* clause into a provision in a legislation, is that the very consideration arising from the provisions sought to be excluded, shall be excluded, *vide* ***Madhav Rao Scindia vs. Union of India (1971) 1 SCC 85.***

Applying the aforesaid principles to interpret Section 3 of the 2017 Act, it is observed that the *non-obstante* clause contained in the said provision has the effect of overriding the provisions of the Act as they are not applicable to the provisions and processes under the 2016 Ordinance and the 2017 Act. It is significant to note that the said Section contains a *non-obstante* clause which reads, "***notwithstanding anything contained in the Act or any other law for the time being in force***". This is rightly so

as the demonetisation is not in exercise of the powers under sub-section (2) of Section 26 of the Act. However, Section 3 of the 2017 Act goes on to state that the ***specified bank notes which have ceased to be legal tender***, in view of the notification dated 8th November, 2016 issued under sub-section (2) of Section 26 of the Act, shall cease to impose liabilities on the Bank under Section 34 of the Act and shall cease to have the guarantee of the Central Government under sub-section (1) of Section 26 of the Act. Therefore, while the impugned gazette notification dated 8th November, 2016 has been admittedly issued exercising powers under sub-section (2) of Section 26 of the Act, Section 3 of the 2017 Act also states that it is notwithstanding anything contained in the Act. If it is so, then the impugned notification could not have been issued invoking sub-section (2) of Section 26 of the Act. The liability could have so ceased, if the power that had been exercised by the Central Government for the issuance of the notification dated 8th November, 2016 impugned herein, under sub-section (2) of Section 26 of the Act on the recommendation made by the Central Board of the Bank. That is, when the initiation of demonetisation or the proposal came from the Central Board of the Bank, leading to the issuance of the notification by the Central Government. Had the measure of demonetisation been carried out by way of enactment of a plenary legislation, then the *non-obstante* clause could have been

employed to exclude the applicability of the Act. However, having sought to rely on sub-section (2) of Section 26 of the Act to issue the Notification, not only is the *non-obstante* clause misplaced but it also gives rise to a contradiction as to on what basis the Notification dated 8th November, 2016 has been issued.

Affidavits and Record of the Case:

17. It has been observed in the preceding paragraphs that when the proposal to carry out demonetisation originates from the Central Government, irrespective of whether or not the Bank concurs with or endorses such proposal, the Central Government would have to take the legislative route through a plenary legislation and cannot proceed with demonetisation by simply issuing a notification.

17.1 Having observed so, it is necessary to examine the proposal to carry out demonetisation, in the present case, which originated from the Central Government. For this purpose, reference may be had to the recitals of the affidavits filed by the Union of India and the Bank, and to the extent permissible, to the records submitted by the Union of India and the Bank in a sealed cover.

17.2 I have perused the following photocopies of the original records submitted on behalf of the Union of India and the Reserve Bank of India:

i) Letter by the Secretary, Department of Economic Affairs, Ministry of Finance, dated 7th November, 2016, bearing F. No. 10.03/2016 Cy.I, addressed to the Governor of the Bank;

ii) Draft Memorandum of the Deputy Governor of the Bank, placed before the Central Board of the Bank at its 561st Meeting;

iii) Minutes of the 561st Meeting of the Central Board of the Bank, convened at New Delhi, on 8th November, 2016, at 05:30 p.m., and signed on 15th November, 2016;

iv) Letter addressed by the Deputy Governor of the Bank to the Central Government on 8th November, 2016.

17.3 On a reading of the records listed hereinabove, the following facts emerge:

1) A letter bearing F. No. 10.03/2016 Cy.I dated 7th November, 2016 was addressed by the Secretary, Ministry of Finance, Department of Economic Affairs, Government of India, to the Governor of the Bank, referring to certain facts and figures to indicate the following two major threats to the security and financial integrity of the country:

i) Fake Infusion of Currency Notes (FICN);

ii) Generation of black money in the Indian economy.

The desire of the Central Government to proceed with the measure of demonetisation was expressed in the said

letter and a request was made to the Bank to consider recommending the such measure, in terms of the relevant clauses of the Act.

2) Further, the Draft Memorandum of the Deputy Governor of the Bank, placed before the Central Board of the Bank, categorically states that the need for a meeting to deliberate on the proposed measure of demonetisation, had arisen pursuant to the letter addressed to the Bank from the Central Government dated 7th November, 2016. The Draft Memorandum further records that the ***Government had "recommended"*** that the withdrawal of the tender character of existing Rs.500/- and Rs.1,000/- notes, is apposite.

Further, the said document records that ***"as desired"*** by the Central Government, a draft scheme for implementation of the scheme of demonetisation had also been enclosed.

3) In view of the contents of the Draft Memorandum, the Central Board of the Bank in its 561st Meeting commended the Central Government's proposal for demonetisation and directed that the same be forwarded to the Central Government.

4) Accordingly, a letter was addressed by the Deputy Governor of the Bank to the Central Government on 8th November, 2016, stating therein that the proposal of the Central

Government pertaining to withdrawal of legal tender of bank notes of denominational values of Rs. 500/- and Rs. 1,000/- was placed before the Central Board of the Bank in its 561st meeting. It was also stated that necessary recommendation to proceed with the said proposal, had been ***"obtained"*** from the Central Board of the Bank.

17.4 On a comparative reading of the records submitted by the Union of India as well as the Reserve Bank of India, it becomes crystal clear that the process of demonetisation of all series of bank notes of denominational values of Rs. 500/- and Rs. 1,000/-, commenced/originated from the Central Government. The said fact is crystalised in the communication addressed by the Secretary, Department of Economic Affairs, Ministry of Finance, dated 7th November, 2016 to the Governor of the Bank.

The phrases and words emphasized hereinabove clearly indicate that the proposal for demonetisation was from the Central Government. In substance, the Central Government sought the opinion/advice of the Bank on such proposal.

The use of the words/phrases such as, ***"as desired"*** by the Central Government; ***Government had "recommended"*** the withdrawal of the legal tender of existing Rs.500/- and Rs.1,000/- notes; recommendation has been ***"obtained"***; etc., are self-explanatory. This demonstrates that there was no

independent application of mind by the Bank. Neither was there any time for the Bank to apply its mind to such a serious issue. This observation is being made having regard to the fact that the entire exercise of demonetisation of all series of bank notes of Rs.500/- and Rs.1,000/- was carried out in twenty four hours.

A situation where an independent authority such as the Bank, based on its own appreciation of the economic climate of the country, recommends a measure to the Central Government, must be contrasted with another situation where a measure which originates from the Central Government is simply placed before such independent authority for seeking its advice or opinion on such proposed measure. A proposal of the Central Government on a certain scheme having serious economic ramifications has to be placed before the Bank to seek its expert opinion as to the viability of such a scheme. The Bank as an expert body may render advice on such a proposal and on some occasions may even concur with the same. However, even such concurrence to a proposal originating from the Central Government is not akin to an original recommendation of the Central Board of the Bank, within the meaning of Section 26 (2) of the Act.

17.5 The following points emerge on perusal of the affidavits submitted on behalf of the Union of India:

1) That the Central Board of the Bank made a specific recommendation to the Central Government on 8th November, 2016, for the withdrawal of legal tender character of the ***existing series*** of Rs.500/- and Rs.1,000/- bank notes which could ***tackle black money, counterfeiting and illegal financing.*** That the Bank also proposed a draft scheme for the implementation of the recommendation.

2) That the consultations between the Central Government and the Bank began in February, 2016; however, the process of consolidation and decision making were kept confidential.

3) That the Bank and the Central Government were together engaged in the finalization of new designs, development of security inks and printing plates for the new designs, change in specifications of printing machines and other critical aspects.

17.6 The following points emerge upon perusal of the affidavits submitted on behalf of the Bank:

1) That a letter dated 7th November, 2016 was received by the Bank, from the Ministry of Finance, Government of India, which contained a proposal to withdraw the character of legal tender of ***existing*** Rs.500/- and Rs.1,000/- bank notes.

2) The said proposal was considered, together with a draft scheme for implementing the withdrawal of ***existing*** Rs.500/- and Rs.1,000/- bank notes, at the 561st meeting of the Central Board of Directors of the Bank, held on 8th November, 2016, at 05:30 p.m. at New Delhi.

3) That the Central Board of Directors was ***assured*** that the matter had been the subject of discussion between the Central Government and the Bank for six months. The said Board was also ***assured*** that the Central Government would take adequate mitigating measures to contain the use of cash.

4) That the Board, having observed that the proposed step presents a big opportunity to advance the ***objects of financial inclusion*** and ***incentivising use of electronic modes payment***, recommended the withdrawal of legal tender of ***old bank notes*** in the denomination of Rs.500/- and Rs.1,000/-.

17.7 On a conjoint reading of the affidavits submitted by the Union of India and the Bank, the following deductions may be drawn:

1) That the Central Government in its letter addressed to the Bank, dated 7th November, 2016 proposed to withdraw the character of legal tender of ***existing*** Rs.500/- and Rs.1,000/- bank notes.

2) The Central Board of the Bank, at its 561st meeting held on 8th November, 2016 resolved that the ***withdrawal of legal tender of old bank notes*** in the denomination of Rs.500/- and Rs.1,000/- be made.

3) The objects guiding the Board's opinion were two-fold: first, pertaining to ***financial inclusion***, and second, being to ***incentivise the use of electronic modes of payment***.

4) The object guiding the Government's proposal to withdraw currency of the specified denominations, was to tackle ***black money, counterfeiting and illegal financing.***

17.8 In my view, there is contradiction as to the subject of demonetisation, as well the object thereof, as stated by the Bank *vis-à-vis* the Central Government as discernible from the affidavits. The same may be expressed as follows:

	As stated in the affidavit of the Bank	***As stated in the affidavit of the Central Government***
Object of Demonetisation	i) Financial inclusion ii) incentivising use of electronic modes of payment	To tackle: i) black money, ii) counterfeiting, iii) illegal financing.

Subject of Demonetisation	***Old bank notes*** in the denomination of Rs.500/- and Rs.1,000/-	***Existing*** Rs.500/- and Rs.1,000/- bank notes

The object of the measure and the subject are of relevance, in assessing the resolution of the Bank dated 8th November, 2016 because, the said considerations would have a bearing on the question, whether, the Bank's opinion was in consonance with the object sought to be achieved through demonetisation by the Central Government's proposal.

17.9 On a close reading of the Notification dated 8th November, 2016, in juxtaposition with the records, the following aspects emerge:

i) One aspect of the matter which emerges with no ambiguity is that the proposal for demonetisation originated from the Central Government, by way of its letter addressed to the Bank, dated 7th November, 2016. This aspect forms the central plank of the controversy at hand. That the recommendation did not originate from the Bank under sub-section (2) of Section 26 of the Act, but was "obtained" from the Bank in the form of an opinion on the proposal for demonetisation submitted by the Central Government. Such an opinion, could not be considered to be a recommendation as required by the Central Government

in order to proceed under sub-section (2) of Section 26 of the Act.

ii) Even if it is to be assumed for the sake of argument that the said opinion, was in fact a "recommendation" under sub-section (2) of Section 26 of the Act, in light of the interpretation given by me hereinabove to the phrase "any" series or "any" denomination, to mean a specified series/specified denomination, the recommendation itself is void inasmuch as it pertained to demonetisation of "all" series of Bank notes of denominational values of Rs.500/- and Rs.1,000/-. As has already been observed, the term "any" as appearing in sub-section (2) of Section 26 of the Act could not be interpreted to mean "all" as such an interpretation would vest unguided and expansive discretion with the Central Board of the Bank.

iii) The Notification expressly states that it is issued under sub-section (2) of Section 26 of the Act. Therefore Section 3 of the Ordinance and Act could not, in the non-obstante clause, state that sub-section (2) of Section 26 is not applicable to the Act.

iv) Having observed that demonetisation could not have been carried out by issuing a Notification as contemplated under sub-section (2) of Section 26 of the Act and that the Parliament does indeed have the competence to carry out demonetisation, on the strength of Entry 36 of List I of the Seventh Schedule of

the Constitution, the Central Government could not have exercised the power by issuance of an executive notification.

Legal Principles applicable to the case:

18. There are certain legal principles which are applicable in this case: one is expressed in the maxim "to do a thing a particular way or not at all"; this principle has also been expressed in terms of the latin maxim "*expressio unius est exclusio alterius*", which means that when a manner is specified for doing a certain thing, then all other modes for carrying out such act are expressly excluded; and the other principle is, exercise of discretion which is a well known principle in Administrative Law. The same would be discussed at this stage.

18.1 The first principle which is of relevance to the controversy at hand is that, where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden *vide,* ***Taylor vs. Taylor (1875) 1 Ch D 426***. Hence, when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all and other methods of performance are necessarily forbidden, *vide* ***Nazir Ahmed vs. King Emperor (1936) L.R. 63 I.A. 372***.

18.2 This Court too, has applied this maxim in the following cases:

(i) ***Parbhani Transport Co-operative Society Ltd. vs. The Regional Transport Authority, Aurangabad (1960) (3) S.C.R. 177: AIR 1960 SC 801,*** wherein it was observed that the rule provides that an expressly laid down mode of doing something necessarily implies a prohibition of doing it in any other way.

(ii) In ***Dipak Babaria vs. State of Gujarat AIR 2014 SC 1972,*** this Court set aside the sale of agricultural land, on the ground that the sale was not in compliance with the statutory procedure prescribed in that regard under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. The matter was examined on the anvil of the aforestated maxim and it was held that alienation of agricultural land by adopting any alternate procedure to the one prescribed under the Act, was necessarily forbidden.

(iii) In ***Kameng Dolo vs. Atum Welly AIR 2017 SC 2859***, election of an unopposed candidate was declared as invalid on the ground that the nomination of his opponent was not withdrawn as per the procedure statutorily mandated. That the nomination of the opposite candidate ought to have been withdrawn in the manner provided for under the relevant statute and withdrawing the same in any other manner was necessarily forbidden. That withdrawal of the nomination,

not carried out in accordance with the procedure established under the relevant statute, enabled the successful candidate to win unopposed. Hence, his election was declared as void.

(iv) Similarly, in ***The Tahsildar, Taluk Office, Thanjore vs. G. Thambidurai AIR 2017 SC 2791***, assignment of land was cancelled on the ground that statutory requirements were not followed in assigning the land. It was held that when a statute prescribes that a certain Act is to be carried out in a given manner, the said Act could not be carried out through any mode other than the one statutorily prescribed.

(v) It may also be apposite to refer to the decision of this Court in ***Union of India vs. Charanjit S. Gill (2000) 5 SCC 742***, wherein this Court held that any provisions introduced by way of "Notes" appended to the Sections of the Army Act, 1950, could not be read as a part of the Act and therefore such notes could not take away any right vested under the said Act. It was observed that issuance of an administrative order or a "Note" pertaining to a special type of weapon to bring it within the ambit of the Army Act, which was hitherto not included therein, could not be said to have been included in the manner in which it was supposed to be included. That the Army Act empowers the Central Government to make rules and regulations for carrying into effect the provisions

of the Act; however, no power is conferred upon the Central Government of issuing "Notes" or "issuing orders" which could have the effect of the Rules made under the Act. That rules and Regulations or administrative instructions can neither be supplemented nor substituted by "Notes". That administrative instructions issued or the "Notes" attached to the Rules which are not referable to any statutory authority cannot be permitted to bring about a result, which is supposed to be achieved through enactment of Rules.

What emerges from the above discussion is that when a statute contemplates a specific procedure to be adhered to in order to arrive at a desired end, such procedure cannot be substituted by an alternative procedure which is not contemplated under the statute. Further, if an action is to be carried out by way of issuance of a particular statutory instrument on the basis of certain requirements, such action cannot be validly carried out by way of issuance of an instrument when the same is not contemplated under the Act. This is particularly so when the instrument enacted stands on a different footing than the one meant to be enacted.

Applying the said principle to the facts of the present case, it is observed that what ought to have been done through a Parliamentary enactment or plenary legislation, could not have

been carried out by simply issuing a notification under sub-section (2) of Section 26 of the Act by the Central Government. As noted hereinabove, the said provision does not apply to cases where the proposal for demonetisation originates from the Central Government and the same is not envisaged under the Act. Hence, issuance a notification to give effect to the Central Government's proposal for demonetisation, was clearly based on an incorrect understanding of sub-section (2) of Section 26 of the Act. The Central Government did not follow the procedure contemplated under law to give effect to its proposal for demonetisation. This is not a matter of form but one of substance as in law, the powers of the Central Board of the Bank and the Central Government are totally distinct in the matter of demonetisation of bank notes.

19. The other legal principle is concerning exercise of discretion in Administrative Law. Lords Halsbury in ***Sharp vs. Wakefield 1891 AC 173*** described the concept of discretion in the following words:

> "When it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion ...according to law and not humour. It is to be, not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself."

19.1 It is a well-established rule of administrative law that discretionary power is to be exercised and a decision has to be made, by the very authority to whom the discretion is entrusted by the statute in question. The situation of an authority not exercising its discretion arises when any authority does not itself consider a particular matter before it on merits but still takes a decision, as if it is directed to do so, by another authority, most often, by a higher authority. When an authority exercises the discretion vested in it by law at the behest of another authority in a specific matter, this would in law amount to non-exercise of its discretionary power by the authority itself, and consequently, such action or decision is invalid.

19.2 The petitioners have contended that it is implicit in sub-section (2) of Section 26 of the Act that adequate time and attention must be devoted by both the Central Board of the Bank and the Central Government before proceeding with a measure of such magnitude and consequences, as demonetisation. It was further submitted that the facts and records of the present case would show that the procedure with such implicit obligations was abandoned and the process contemplated was not as per the said provision. That the proposal emanated from the Central Government and was not initiated by the Bank. The Central Board of the Bank passed a resolution in a hurried manner. No adequate care and

consideration were bestowed on such a crucial matter by the Central Board of the Bank having regard to the severe ramifications that the proposed demonetisation would have on almost every citizen of the country. Possibly, the Central Board of the Bank acted on the "assurances" of the Central Government which is evident on a perusal of the records and not on an independent application of mind owing to lack of time.

As noted from the records submitted by the Central Government as well as the Reserve Bank of India in the instant case, the Central Government wrote to the Central Board of the Reserve Bank of India on 7th of November, 2016 about its proposal to demonetise all series of bank notes of denominations of Rs.500/- and Rs.1,000/-, which were in circulation, and on the very next day i.e., 8th November, 2016, a meeting of the Central Board of the Bank was held at New Delhi at 05:30 p.m. and shortly thereafter, the gazette notification was issued. Such a swift action would indicate that the Central Board of the Bank had hardly twenty-four hours to consider the proposal of the Central Government and hence, hardly any time to apply its mind independently to the proposal. It is clear from the records submitted that the Central Government ***"assured"*** the Central Board of the Bank that sufficient safeguards would be taken while embarking on the process of demonetisation and that it would

also result in reducing bank notes in the economy and a switch over to the digitalisation of the economy. The Central Board of the Bank, in resolving to opine on the measure of demonetisation to the Central Government, acted only on such "assurances".

19.3 Further, the Central Government cannot in the guise of seeking an opinion on its proposal to demonetise bank notes, "***obtain***" a "recommendation from the Central Board of the Bank" as if it is acting under sub-section (2) of Section 26 of the Act, and consequently, issue a gazette notification by which demonetisation of bank notes would be given effect to. Such a procedure, in my view, would be contrary to the import of sub-section (2) of Section 26 of the Act, inasmuch as the Central Government cannot act under the said provision by the issuance of a notification, as if a ***"recommendation"*** has been made by the Central Board of the Bank when in fact, what actually transpired in the instant case, was that the Central Government initiated the process of demonetisation by formulating a proposal in this regard and subsequently secured the imprimatur of the Bank on such proposal. In fact, the Central Board of the Bank has no jurisdiction to "***recommend***" demonetisation of bank notes of "all series" of "all denomination" to the Central Government, as already held above.

19.4 The powers of the Central Board of the Bank are restrictive in nature inasmuch as it can only recommend that a particular series of a particular denomination would cease to be legal tender. Hence, the Central Government cannot rely on the semblance of a "recommendation made to it by the Central Board of the Bank under sub-section (2) of Section 26 of the Act" when it initiates the process of demonetisation. The Central Government also cannot "obtain" any recommendation to that effect, and if it has done so, it would imply that the Central Board of the Bank is acting at the behest of the Central Government, only to concur with what the Central Government intends to do. Such an opinion would not be on the basis of any independent application of mind of the experts who form the Central Board of the Bank. Moreover, when the Central Government seeks the opinion of the Central Board of the Bank to its proposal for demonetisation, the latter would have to be given some time to consider the pros and cons and the impact that it would have on the citizens of India, as bank notes are a species of negotiable instruments and a medium through which goods and services are traded and therefore, they are the lifeline of the economy. The Central Government also failed to indicate that the demonetised currency had lost the guarantee provided *vide* sub-section (1) of Section 26 of the Act in the impugned notification. Hence, an Ordinance had to be issued on 30th December, 2016. Moreover,

it is not known whether the Bank had made arrangements for printing sufficient new notes for exchange of demonetised currency. It is also not known whether the Department of Legal Affairs was consulted in the matter as the procedure of demonetisation involves legal implications.

19.5 Hence, in my considered view, the action of demonetisation initiated by the Central Government by issuance of the impugned notification dated 8th November, 2016 was an exercise of power contrary to law and therefore unlawful. Consequently, the 2016 Ordinance and 2017 Act are also unlawful. But, having regard to the fact that the demonetisation process was given effect to from 8th November, 2016 onwards, the *status quo ante* cannot be restored at this point of time.

What relief may be awarded in the present case?

20. In view of the above conclusion, the question of moulding the relief shall now be considered. According to the petitioners, around 86 per cent of the volume of currency notes of the total currency in circulation in the Indian economy was demonetised. They also stated that the people of India were exposed to undue hardships owing to the lack of financial resources and had to undergo not only a severe financial crunch but were also exposed to other socio-economic and psychological hardships. The problems associated with the measure of demonetisation would make one wonder whether the Central Board of the Bank had

visualised the consequences that would follow. Whether the Central Board of the Bank had attempted to take note of the adverse effects of demonetisation of such a large volume of bank notes in circulation? The objective of the Central Government may have been sound, just and proper, but the manner in which the said objectives were achieved and the procedure followed for the same, in my view was not in accordance with law having regard to the interpretation given above.

It has also been brought on record that around 98% of the value of the demonetised currency have been exchanged for bank notes which continues to be legal tender. Also, a new series of bank notes of Rs.2,000/- was released by the Bank. This would suggest that the measure itself may not have proved to be as effective as it was hoped to be. However, this Court does not base its decision on the legality of a legislation, *qua* the effectiveness of such action in achieving the stated objectives. Therefore, it is clarified that any relief moulded in the present cases is *de hors* considerations of success of the measure.

20.1 I have borne in mind the submissions of learned Attorney General appearing on behalf of the Union of India to the effect that the objectives of the Central Government have been sound, just and proper, but in my view, the manner in which the said objectives were achieved and the procedure followed for the same was not in accordance with law having regard to the interpretation given above.

Learned Attorney General appearing on behalf of the Union of India also contended that the issues raised in these petitions have become infructuous and wholly academic as the action of demonetisation has been acted upon and therefore, the present cases are only of academic significance. It is necessary to examine the nature of relief that could be moulded by the Court in this matter.

20.2 There are several judgments which could be relied upon in this context:

(i) This Court acknowledged in ***S.R. Bommai vs. Union of India AIR 1994 SC 1918***, that although substantive relief may be granted only if the issue remains live in cases which are justiciable, this Court may prospectively declare a law, for posterity. Notwithstanding the fact that no substantive relief could be granted in the said case for the reason that following the Presidential proclamation, fresh elections had been held and new Houses had been constituted, this Court went on to declare the law, for posterity, as to the federal character of the Constitution, the nature of the power conferred on the President under Article 356 of the Constitution and the manner in which such power is to be exercised for imposing President's Rule in a State by dissolution of the Legislative Assembly.

(ii) In ***Golak Nath vs. State of Punjab (1967) 2 SCR 762***, this Court declared that it is open to the Court, to find and declare the law, but restrict the operation of such law to the future.

(iii) Further, the observations made by this Court in ***Orissa Cement Ltd. vs. State of Orissa 1991 Supp (1) SCC 430***, while determining what relief that could be granted following a declaration of a provision of an enactment as invalid, are also relevant. This Court held that declaration of invalidity of a provision, and determination of the relief to be granted as a consequence of such invalidity, are two distinct things. That in respect of the relief to be granted as a consequence of declaration of invalidity, the Court has discretion which could be exercised to grant, mould or restrict the relief.

20.3 In the instant case, the elementary question that requires determination is, whether the challenge to the validity of the Central Government's decision dated 8th November, 2016 to demonetise all Rs.500/- and Rs.1,000/- bank notes, having been adjudicated upon, at this juncture, i.e., after a lapse of over six years since the impugned action was carried out, the nature of relief that could be granted by this Court at this juncture is to be considered.

20.4 Stated very patently, the controversy in the present cases relates to the true meaning and interpretation of sub-section (2) of Section 26 of the Act. Therefore, the question that arises for consideration is, whether, this Court can declare the law as to the validity of an action, even after such action has been given effect to in toto. That is to say, once the action has been completely carried out, and there is no element of such action which is left to be carried out, can there still be a subsequent declaration by this Court as to the validity of such act, having regard to the interpretation accorded to the provisions of the relevant statute.

20.5 As discussed hereinabove, this Court has acknowledged on several occasions that it has the competence to declare the law on a subject for posterity, even though no substantive relief may be given under the circumstances of a given case, *vide* ***S.R. Bommai***. The effect of such declaration would apply prospectively. That is, in the present case if a declaration is made to the effect that the impugned action was unlawful, such declaration would only have the effect of deterring future measures from being carried out in a like manner, in order to save such measures, from the vice of unlawfulness. Such declarations as to validity or invalidity of a measure, may be made by this Court in exercise of its power under Article 141 of the

Constitution, and the effect of such declaration may be moulded or restricted by exercising the power vested with this Court under Article 142.

20.6 Reference may also be had to the decision of this Court in ***Jayantilal Ratanchand Shah, Devkumar Gopaldas Aggarwal vs. Reserve Bank of India AIR 1997 SC 370***. The said case pertains to the challenge to the Constitutional validity of the High Denomination Bank Notes (Demonetisation) Act, 1978. Although the enactment related to the year 1978 and its effects were immediate, as in the present case, the validity of the same was conclusively declared by this Court only in the year 1997. This Court, while upholding the validity of the legislation impugned therein, authoritatively clarified and declared the law on the Parliamentary power to enact such a legislation. A declaration of a similar nature, i.e., as to the validity or invalidity of the impugned actions and Notification, is what is sought for in the present petitions.

Conclusions:

21. In view of the aforesaid discussion, the following conclusions are arrived at:

(i) According to sub-section (1) of Section 26 of the Act, every bank note shall be legal tender at any place in India in payment or on account for the amount expressed therein and shall be guaranteed

by the Central Government. This provision is subject to sub-section (2) of Section 26 of the Act.

(ii) Sub-section (2) of Section 26 of the Act applies only when a proposal for demonetisation is **initiated** by the Central Board of the Bank by way of a **recommendation** being made to the Central Government. The said recommendation can be in respect of any series of bank notes of any denomination which is interpreted to mean **any specified series of bank notes of any specified denomination.**

(iii) The expression any series of bank notes of any denomination has been given its plain, grammatical meaning, having regard to the context of the provision and not a broad meaning. Thus, the word "any" will mean a specified series or a particular series of bank notes. Similarly, "any" denomination will mean any particular or specified denomination of bank notes.

(iv) If the word "any" is not given a plain grammatical meaning and interpreted to mean "all series of bank notes" of "all denominations", it would vest with the Central Board of the Bank unguided and unlimited powers which would be *ex-facie* arbitrary and suffer from the vice of unconstitutionality as this would amount to excessive vesting of powers with the Bank. In order to save the provision from being declared unconstitutional, the meaning of the provision is read down to the context of the Central Board of the Bank **initiating** a proposal for demonetisation by making a recommendation to the

Central Government under sub-section (2) of Section 26 of the Act of a particular series of bank note of any denomination.

(v) On receipt of the said recommendation made by the Central Board of the bank under sub-section (2) of Section 26 of the Act, the Central Government may accept the said recommendation or may not do so. If the Central Government accepts the recommendation, it may issue a notification in the Gazette of India specifying the date w.e.f. which any specified series of bank notes of any specified denomination shall cease to be legal tender and shall cease to have the guarantee of the Central Government.

(vi) The provisions of the Act do not bar the Central Government from proposing or initiating demonetisation. It could do so having regard to its plenary powers under Entry 36 of List I of the Seventh Schedule of the Constitution of India. However, it has to be done only by an Ordinance being issued by the President of India followed by an Act of Parliament or by plenary legislation through the Parliament. The Central Government **cannot** demonetise bank notes by issuance of a gazette notification as if it is exercising power under sub-section (2) of Section 26 of the Act. In such circumstances when the Central Government is initiating the process of demonetisation, it would **not be acting** under sub-section (2) of Section 26 of the Act but notwithstanding the said provision through a legislative process.

(vii) When such power is exercised by the Central Government by means of a legislation, it is by virtue of **Entry 36, List I of the Seventh Schedule of the Constitution of India** which deals with currency, coinage and legal tender; foreign exchange which is a field of legislation. Hence, the power of the Central Government to demonetise any currency is **notwithstanding anything contained in Section 26 of the Act.**

(viii) When the Central Government proposes demonetisation of any bank note, it **must** seek the opinion of the Central Board of the Bank having regard to the fact that the Bank is the sole authority to regulate circulation of bank notes and secure monetary stability and generally to operate the currency and credit system of the country and to maintain price stability.

(ix) The opinion of the Central Board of the Bank ought to be **an independent and frank opinion** after a meaningful discussion by the Central Board of the Bank which ought to be given its due weightage having regard to the ramifications it may have on the Indian economy and the citizens of India although it may not be binding on the Central Government. On receipt of a negative opinion from the Central Board of the Bank, the Central Government which has initiated the demonetisation process may still intend to go ahead with the said process after weighing the pros and cons only by means of an Ordinance and/or Parliamentary legislation but not by issuance of a gazette notification. In other

words, the Central Government in such circumstances **cannot** resort to exercise of power under sub-section (2) of Section 26 of the Act by issuing a notification in the Gazette of India as if it were exercising executive powers. Even if the Central Board of the Bank concurs with the proposal of the Central Government, the Central Government would have to undertake a legislative process and not carry out the measure by simply issuing a gazette notification.

(x) In view of the aforesaid conclusions, I am of the considered view that the impugned notification dated 8th November, 2016 issued under sub-section (2) of Section 26 of the Act is **unlawful**. In the circumstances, the action of demonetisation of all currency notes of Rs.500/- and Rs.1,000/- is **vitiated.**

(xi) Further, the subsequent Ordinance of 2016 and Act of 2017 incorporating the terms of the impugned notification are also **unlawful.**

(xii) However, having regard to the fact that the impugned notification dated 8th November, 2016 and the Act have been acted upon, the declaration of law made herein would apply **prospectively** and would not affect any action taken by the Central Government or the Bank pursuant to the issuance of the Notification dated 8th November, 2016. This direction is being issued having regard to **Article 142** of the Constitution of India. Hence, no relief is being granted in the individual matters.

(xiii) In view of the above conclusions, I do not think it is necessary to answer the other questions raised in the reference order.

22. Before parting, I wish to observe that demonetisation was an initiative of the Central Government, targeted to address disparate evils, plaguing the Nation's economy, including, practices of hoarding "black" money, counterfeiting, which in turn enable even greater evils, including terror funding, drug trafficking, emergence of a parallel economy, money laundering including *Havala* transactions. It is beyond the pale of doubt that the said measure, which was aimed at eliminating these depraved practices, was well-intentioned. The measure is reflective of concern for the economic health and security of the country and demonstrates foresight. At no point has any suggestion been made that the measure was motivated by anything but the best intentions and noble objects for the betterment of the Nation. The measure has been regarded as unlawful only on a purely legalistic analysis of the relevant provisions of the Act and not on the objects of demonetisation.

23. In view of the answer given by me to question no.1 of the reference order, I do not deem it necessary to answer all other questions of the reference order or even the questions reframed by His Lordship B.R. Gavai, J. during the course of the judgment except to the extent discussed above.

24. In the result, the writ petitions, special leave petitions and transfer petitions are directed to be posted before the appropriate Bench after seeking orders from Hon'ble the Chief Justice of India.

I would like to acknowledge and place on record my appreciation for the learned Attorney General for India, all learned senior counsel, learned instructing counsel as well as the learned counsel, for their assistance in the matter.

Parties to bear their respective costs.

.....J.
[B. V. NAGARATHNA]

NEW DELHI,
2 JANUARY, 2023.