

## The Supreme Court upholds Demonetization. What lessons does it teach us?

The morning of January 2nd, 2023 (Monday) began on an unusual note wherein the Supreme Court upheld the government's 2016 note ban on a 4:1 majority. The Court ruled that it was "unimportant" whether the overnight ban's goal was met. Only one judge disagreed, labelling the entire action as "unlawful". For reference, the demonetization of the 500- and 1000-rupee notes was announced by Prime Minister Narendra Modi on November 8, 2016. For public use, the government released new 500- and 2000-rupee notes. The Modi Government's decision was not being examined by the Supreme Court; instead, it was being decided whether the government or the RBI proposed the policy.

The ruling is legitimate and passes the "test of proportionality," according to a constitution bench. It stated that merely because the procedure was started by the Centre, it could not be criticized. **Justice B.V. Nagarathna** stated in her dissenting opinion that the note prohibitions were "illegal," but that the status quo could not be changed at this time. She claimed that an Act of Parliament could have facilitated the action. The Supreme Court issued its decision on a batch of 58 petitions challenging the Centre's announcement of demonetization on November 8, 2016.

### à Background & Final Judgments to the Case

Given the significance and wide-ranging ramifications of the case, a three-judge bench of the supreme court referred the matter to a bigger constitutional bench in December 2016. The three-judge panel developed a list of issues for both sides of the debate.

The inquiries consisted of: -

- (a) Is the Reserve Bank of India Act, 1934, violated by the demonetization notification?
- (b) Does the notification infringe on the fundamental rights envisioned in Articles 14 and 19 of the Indian Constitution?
- (c) Did the Union implement the notification by the correct process?
- (d) What is the extent of judicial review in cases involving the government's budgetary and economic policy?

It investigated the matter after taking up the batch of 58 petitions contesting various aspects of the government's note ban decision. The petitioners argued that the procedure outlined in Section 26(2) of the RBI Act, 1934 was not followed. Any series of bank notes of any denomination shall cease to be legal tender with effect from such date, except at such offices or agencies of the Bank and to such extent as may be specified in the notification, according to Section 26(2) of the Act, which states that "on the recommendation of the [RBI] Central Board, the Central Government may, by notification in the Gazette of India, declare that such date.

In 2022, the Supreme Court's five-judge Constitution Bench, led by Justice SA Nazeer, ruled that the Centre's decision-making process could not have been defective because there was communication between the Reserve Bank of India and the central government. The court, which also included justices, BR Gavai, AS Bopanna, V Ramasubramanian, and BV Nagarathna, declared that the notification dated November 8, 2016, was legitimate and passed the proportionality test. The RBI board's consent came after the central government's decision, demonstrating an internal check on the exercise of its power. One cannot claim that the Centre, which is accountable to Parliament, has received an undue amount of power under the RBI Act.

The court also observed that the 52 days for the exchange of notes cannot be called unreasonable. The Court's interpretation of the RBI Act is 'pragmatic' and not pedantic. Justice Gavai stated that all series of bank notes are subject to the authority granted to the Centre under Section 2(26) of the RBI Act. According to records, the central government and the RBI consulted (for 6 months). Since the suggestion came from the central government, the decision-making procedure cannot be contested. Furthermore, there are no problems with the notification, and it is not ridiculous.

Why did Justice Nagarathna's dissenting judgment stand out?

In her dissenting opinion, she stated that Justice Gavai's decision did not recognize that only the RBI's Board can approve demonetization. A legislative method must be used to exercise the central government's demonetization powers, she continued. "A nation in microcosm is sometimes used to describe parliament. On a matter this important, it cannot be left alone". Nagarathna remarked. She continued by saying that due to the vastness of the central government's capabilities, they should be used for the collective good. Demonetization must be discussed, and demonetization must be implemented through ordinance or legislation.

She expanded her criticisms in certain aspects: -

**(a) No independent thought was applied by RBI**

She remarked that while proposing the cancellation of Rs 500 and Rs 1000 notes as proposed by the Centre, the terms, and phrases "as desired by the Central Govt," "Govt has recommended the withdrawal of legal tender of 500 and 1000 notes," and "recommendation has been acquired" are self-explanatory. This demonstrates that the RBI did not apply its independent judgment. Additionally, the Bank had little time to think critically about such a severe matter. This statement is being made because the full demonetization procedure for all series of Rs. 500 and Rs. 1000 banknotes were completed in 24 hours.

**(b) Explanation of RBI Act Section 26(2)**

A closer look on November 7 revealed that the advice did not come from the bank as required by Section 26(2) of the RBI Act. There is no comparison between a proposal coming from the central government and one coming from the bank's governing board.

**(c) Curious as to whether RBI thought about the ramifications**

Close to 98% in terms of the value of the demonetized currency notes has been swapped for bank notes, which remain legal tender, and the bank has created a fresh series of Rs 2000 notes. This would imply that the measure itself may not have been as effective as anticipated.

**(d) Unlawful based on formal analysis, not concerning the objects**

Justice Nagarathna noted that the demonetization of all ₹500 and ₹1000 currency notes is void and that "the subsequent Ordinance of 2016 and the Act of 2017 incorporating the terms of the disputed notification, are unlawful," but he also noted that the measure was well-intentioned and aimed to combat economic evils like black money, funding for terrorism, and counterfeit currency. Without a shadow of a doubt, demonetization was well-intended. There is no debate about having the best intentions or noble goals. According to her, the action has only been deemed illegal based on a legalistic study and not in relation to the goals of demonetization.