pISSN: 2454-7107, eISSN: 2455-4189

Indian Journal of Law and Human Behavior
Volume 3 Number 1, January - June 2017
DOI: http://dx.doi.org/10.21088/ijlhb.2454.7107.3117.6

Review Article

Constitutionality of the Process of Demonetisation: A Study

Diganta Biswas

Author Affiliation
Academic Coordinator, PG Department of Law, Raiganj University, Raiganj, Dist. Uttar Dinajpur, West Bengal.

Reprint Request
Diganta Biswas,
Assistant Professor,
Room No. 480, School of Law, Christ University, Hosur Road, Bengaluru, Karnataka- 560029
E-mail: d78biswa@gmail.com

Received on 03.05.2017
Accepted on 20.05.2017

Abstract

The French were the first to use the word Demonetize in the years between 1852. By demonetization former money is no longer legal tender, although in certain cases it may still be used as money of exchange, i.e., the actual metallic value may sometimes be accepted in discharge of indebtedness. The preamble of the Constitution guarantees economic justice to its people in the words to secure to all its citizens: Justice, social, economic and political. The concentration of wealth is the antithesis to the idea of economic justice. The issue of demonetisation may be examined in the context of the concentration of wealth as enshrined into the Part- IV of the Constitution of India. The Constitution of India states that the State shall, in particular, direct its policy towards securing the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Further, Art 39(b) states that the State shall, in particular, direct its policy towards securing the ownership and control of the material resources of the community are so distributed as best to subserve the common good. This Paper aims at examining the constitutionality of the process of demonetisation in India.

Keywords: Constitution; Demonetisation; Common Good; Economic Justice; Concentration of Wealth.

Introduction

The French were the first to use the word 'Demonetize' in the years between 1852 [1]. Since then many countries have used the word and the policy with immense restriction and discomfort, for it disrupts economics and population at large [2]. Demonetization, governmental withdrawal of the monetary quality from particular coinage or precious metal. By demonetization former money is no longer legal tender, although in certain cases it may still be used as money of exchange, i.e., the actual metallic value may sometimes be accepted in discharge of indebtedness.

Meaning and Conceptual Framework of Demonetisation

According to the Cambridge English Dictionary, Demonetization means to officially stop using particular notes or coins, or a particular currency [3]. Technically it is a liquidity shock; a sudden stop in terms of currency availability. It creates a situation where lack of currencies jams consumption, investment, production, employment etc. In this context, the exercise may produce following short term/long term/, consumption/investment, welfare/growth impacts on Indian economy. The

intensity of demonetization effects clearly depends upon the duration of the liquidity shocks [4]. The opposite of demonetization is remonetization, in which a form of payment is restored as legal tender [5]. However, demonetisation is not a new phenomenon. Countries in the past have tried to regulate their currencies and mostly failed. The intensity of demonetization effects clearly depends upon the duration of the liquidity shocks [6]. There are multiple reasons why nations demonetize their local units of currency:

- To combat inflation
- To combat corruption and crime (counterfeiting, tax evasion)
- To discourage a cash-dependent economy
- To facilitate trade

It is interesting to note that in a batch of cases on the recent demonetisation drive challenging the government's demonetization scheme, the Supreme Court has refused to grant interim relief and referred them to a constitution bench. The bench comprising chief justice of India T.S. Thakur and Justices D.Y. Chandrachud and A.M. Khanwilkar stated, "We hope that the government is responsive and sensitive to the problems encountered by the common man and we leave it to their best judgement." The CJI-led bench framed nine questions for the Constitution bench which will go into the legality of the demon 6etisation decision. These are [7]-

1. Whether the RBI notification of November 8, 2016 is ultra vires Section 26 (2) and other relevant provisions of the RBI Act, 1954?
2. Whether the notification is violative of Article 300A (right to property) of the Constitution?
3. Whether the notification is ultra vires Articles 14 and 19 of the Constitution?
4. Whether limited withdrawal of one's own money caused by demonetisation is a violation of Articles 14, 19, 20 and 21 of the Constitution?
5. Whether the implementation of the notification is in substantive and procedural violation of the law of the land?
6. Whether Section 26(2) of the RBI Act is itself a piece of excessive delegation of legislative powers?
7. What is the scope of judicial review into a fiscal and economic policy of the government?
8. Can political parties file writ petitions in the Supreme Court under Article 32 of the Constitution?
9. Were DCCBs subjected to discrimination when they were stopped from accepting deposits and allowing withdrawals?

Constitutionality of Demonetisation

The issue of demonetisation has been a subject of discussion in a number of cases before the judiciary in a number of occasions e.g. Jayantilal Ratanchand Shah v. Reserve Bank of India [8]; Devkumar Gopaldas Aggarwal v. Reserve Bank of India [9]; Asst. CIT v. Crescent Property Developers in ITA No. 2770/M/2012 dated 19-06-2014 and Shri Dilip M Shah v Asst. CIT in ITA No. 4413/Bom/98 dated 25.1.1999 etc..

Economic Justice Vis a Vis Demonetisation

The preamble of the Constituion guarantees economic justice to its people in the words ""…….to secure to all its citizens: Justice, social, economic and political." Concentration of wealth is the antithesis to the idea of economic justice. The issue of demonetisation may be examined in the contextof concentration of wealth as enshrined into the Part- IV of the Constitution of India. The Constitution of India states that the State shall, in particular, direct its policy towards securing… the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment [10]. Further, Art 39 (b) states that the State shall, in particular, direct its policy towards securing…the ownership and control of the material resources of the community are so distributed as best to subserve the common good [11]. In this connection, it may be observed that concentrated wealth may be of two types: *accounted* and *unaccounted*. The objectives with which the demonetisation drive, 2016 was carried on included-

(i) Large circulation of fake currency notes of the specified denominations,

(ii) Use of high denomination bank notes for storage of unaccounted wealth,

(iii) Use of fake currency for subversive activities like drug trafficking and terrorism.

Interestingly, if we look into the 2nd objective i.e. *use of high denomination bank notes for storage of unaccounted wealth*, it may be observed that demonetisation drive paved the way to surface out the extent of concentrated wealth remained unaccounted for a long time.

Demonetisation of 1946

The government announced demonetization of

denominations above Rs.1000 with effect from 12th January 1946 and gave little time for exchange too. As the notes were accounted only to 3% of the India's population, it didn't affect normal life to an extent. The crown princes were exempted from the same and only 40% of today's India-Pakistan-Bangladesh was in effect, of the demonetization (by area directly controlled by the British). The government through this drive collected Rs.134 crore of the total Rs.143 crore available in the market (according to RBI estimates), only Rs.9 crore was not exchanged therefore demonetized. The exchange was not permitted if the explanation of the source of income was not satisfactory. But this caused great difficulties to people. It did not also produce impressive results. At that time, total notes of the value of Rs 1,235.93 crore were in circulation of which hundred rupee currency notes of the value of Rs 143.97 crore were demonetised. In fact, only Rs 9 crore worth of hundred rupee currency notes were immobilised. This suggests that only 6.25 per cent of the currency was destroyed [12].

Demonetisation of 1978

On the night of January 16, 1978, Government withdrew from circulation currency notes of denomination of Rs 1,000 and above. Banks were asked immediately to prepare statements of all currency notes of Rs 1,000, Rs 5,000 and Rs 10,000 in their possession. Persons holding such notes could exchange them before January 19, 1978, at the designated branches of the Reserve Bank of India and other Public Sector banks provided they disclosed the source, the time and the manner of acquisition along with a proper attestation of identity. The value of these high denomination notes in circulation on January 17, 1978 was estimated at about Rs 180 crore. Of these, notes worth Rs 20 crore were immobilized. But, most holders of high denomination notes did not turn up at bank branches to exchange them. They sold them to others who could present them at the bank with less suspicion [13].

Demonetisation of 2016

The Income Tax department carried out over 1100 searches and surveys immediately after demonetisation and detected undisclosed income of over Rs5,400 crore. "Post-demonetisation, during the period November 9, 2016 to January 10, 2017, more than 1100 searches and surveys were conducted by the Income Tax Department, apart from issuing more than 5100 verification notices in the cases of suspicious high value cash deposits or related activities." These actions led to seizure of valuables of more than Rs 610 crore which includes cash of Rs 513 crore. Further, Seizure in cash in new currency was about Rs 110 crore. Law Enforcement Agencies (LEA) had made concerted efforts in the last three years."Till February 2017, while 23064 searches and surveys were conducted (IT 17525, Customs 2509, Central Excise 1913, Service Tax 1120), more than Rs 1.37 lakh crore of undisclosed income / tax evasion was detected (IT 69434, Customs 11405, Central Excise 13,952, Service Tax 42727). Simultaneously criminal proceedings were launched in 2814 cases (Income Tax 1966, Customs 526, Central Excise 293, Service Tax 29) and 3893 persons were placed under arrest (Customs 3782, Central Excise 47, Service Tax 64)" [14].

The Enforcement Directorate has registered 519 cases and conducting 396 searches. Arrests were made in 79 cases and properties worth Rs 14,933 crore were attached. More than 245 benami properties have already been identified. Provisional attachments of properties worth Rs 5.5 crore have already been made in 124 cases. the investigations into the information on 628 Indian persons allegedly holding accounts in HSBC Bank in Switzerland received from the Government of France under Double Taxation Avoidance Convention (DTAC) led to taxation of undisclosed income of about Rs 8400 crore in 409 cases (including protecting assessments in some cases). Besides, concealment penalty of Rs 1,287 crore has been levied in 161 cases and 190 criminal prosecutions were filed in 77 criminal cases. He said that investigations into information pertaining to Indian persons allegedly linked to offshore entities based in no tax or low tax jurisdictions put into public domain by the International Consortium of Investigative Journalists (ICIJ) have led to detection of more than Rs 8500 crore of credits in undisclosed foreign accounts, 66 prosecution complaints in 30 such cases have been filed before criminal courts [15]. 648 disclosures involving undislosed foreign assets worth Rs 4614 crore were made in the one time three months compliance window closed on September 30, 2015 under the Black money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. The amount collected by way of tax and penalty in such cases was about Rs 2,476 crore [16].

If we closely observe the questions framed by the Supreme Court mostly pertain to the constitutional validity of the November 8 notification, especially with regard to Articles 14, 19 and 300A of the Constitution, and also whether it is congruent with

the provisions of the Reserve Bank of India Act, 1934.

Demonetisation Vis a Vis Right to Property

The issue of demonetisation had been subjected to challenge for the first time inB Ram Lal v. State [17], constitutionality of sections 3 and 4 of the 1946 Ordinance was challenged before the Allahabad High Court for violating the fundamental right to acquire, hold and dispose property under Article 19(1)(f) of the Constitution as it stood then. The Court held that once these notes ceased to be legal tender, any restriction on their transfer to another person could not be said to be unreasonable. Moreover, the Ordinance provided for the exchange of the high denomination notes for notes of smaller denominations on certain conditions. Therefore, the restriction imposed by section 4 of the Ordinance was found to be a reasonable restriction. This settled the question of constitutionality.

Later, the constitutionality of the 1978 Act was challenged. It was argued that the Act resulted in compulsory acquisition of property in violation of Articles 19(1)(f) and 31 of the Constitution as it stood then. However, the Gauhati High Court in Somi Horam Tongkhul Naga v. Union of India (1980), was satisfied that the 1978 Act provided adequate procedure for exchange of notes to safeguard the fundamental right to property. Accordingly, the High Court refused to lay down guidelines on the RBI in this regard and refrained from issuing any directions to the RBI to exchange notes [18]. In similar lines, the Delhi High Court in Bimladevi v. Union of India (1982) observed that Article 31of the Constitution only requires that compensation be paid for an acquisition. It did not prohibit payment of compensation before acquisition – the exchange facility [19]. Finally, In Jayantilal Ratanchand Shah v. Reserve Bank of India [20] case, challenging Section 4 of the validity of the High Denomination Bank Notes (Demonetisation) Act, 1978, the petitioners contended that the Act violated their fundamental rights, including the now-deleted Article 31 (Right to Property), as it allowed the RBI and the government to escape their legal responsibility to honour these currency notes. They also argued that the move was illegal because the "acquisition" of old notes served no public purpose — under Article 31 no property could be compulsorily acquired except for public purposes. At this, the Bench comprising Justices M M Mukherjee, Kuldip Singh, M M Punchhi, S Saghir Ahmed and N P Singh underlined the preamble of the Demonetisation Act, which said the move was aimed at checking "illicit transfer of money" for financing transactions "harmful to the national economy". In order to find out whether such acquisition of property was for a public purpose since under Article 31(2) of the Constitution, no property could be compulsorily acquired except for a public purpose, the Supreme Court referred to the preamble of the said 1978 Demonetisation Act which read as:

"Whereas the availability of high denomination banknotes facilitates the illicit transfer of money for financing transactions which are harmful to the national economy or which are for illegal purposes and it is therefore necessary in the public interest to demonetise high denomination banknotes." The Bench also noted that the Act was "passed to avoid the grave menace of unaccounted money which had resulted not only in affecting seriously the economy of the country but had also deprived the State Exchanger of vast amounts of its revenue". On the issue of it, not serving a public purpose, the Bench said that in view of the "evil" the Act was aimed at fighting, it couldn't be said it was not enacted for a public purpose.

Hence, the Supreme Court in Jayantilal Ratanchand Shah v. RBI, upheld the constitutionality of the 1978 Act since the acquisition was for public purpose to resolve the problem of unaccounted money. The Court also held that a time limit for exchange was a reasonable restriction in view of the purpose of the law – to clamp down on the circulation of high denomination notes. If a person could at anytime in future go to RBI and ask for exchange value of such notes, the purpose of the Act would be frustrated. Therefore, the constitutionality of the 1978 Act was upheld.

Herein before in *Bishamber Dayal Chandra Mohan vs. State of UP* [21], Supreme Court observed that executive order is not law for the purpose of article 300-A, which means until and unless the legislature imposes limits under a specific provision or passes a new law, any such act will be unconstitutional. Here, in this context, the RBI Act itself provides ancillary powers to government to carry such acts smoothly because act of limitation is also act in furtherance of demonetization. In *K T Plantation Ltd. vs. State of Karnataka* [22], Supreme Court said that regulating the use of property is not an infringement on the right itself when it is done by executive with the authority of law. In the case of *Gulf Goans Hotel Company Pvt. Ltd. vs. UOI* [23], Supreme Court observed that a statutory order that has the force of law, that is, lays down norms, is "law" for the purposes of Article 300-A. Further, it may be observed that the policy of demonetisation is not at all violative to the right to property at all since the value of wealth properly acquired by a person doesn't get extinguished but

yes for the time being little trouble a person faces to get the cash exchanged.

Limitation on Withdrawal Vis a Vis Legitimate Expectation

The issue of demonetisation can be challenged as violation of 'doctrine of legitimate expectation'. The said doctrine evolved in UK Courts [24] and being followed by Indian Courts also. In determining a claim for an alleged breach of a legitimate expectation, a court will deliberate over three key considerations: (1) whether a legitimate expectation has arisen; (2) whether it would be unlawful for the authority to frustrate such an expectation; and (3) if it is found that the authority has done so, what remedies are available to the aggrieved person. In the case of *Navjyoti Cooperative Group Housing Society v Union of India [25]*. In Council of Civil Service Unions & Ors. Vs. Minister for the Civil Service [26], a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation. Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either- (a) by altering rights or obligations of that person which are enforceable by or against him in private law or; (b) by depriving him of some benefit or advantage which either: (i) he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon or (ii) he has received assurance from the decision-maker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn.

In Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries [27], a three-Judge Bench of this Court had observed thus: "The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny."

In Union of India & Ors. v. Hindustan Development Corporation & Ors [28] the Supreme Court observed, "If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."

Thus, the doctrine says that where a citizen has taken certain benefit on the basis of the government's promise, the government cannot later deny the benefit to the citizen whereas the said doctrine is not applicable to the laws made by parliament but only to executive acts. Therefore on the basis of the doctrine individuals who are still unable to exchange their notes and does not have bank accounts, can pray for restoration of original time limit. If we examine the policy of demonetisation, it may be observed that the same is not linked to the issue of legitimate expectation. The policy of demonetisation is aimed inter alia at cutting down the *black money*, *fake currency* etc. from the economy to stop the vehicle of parallel economy. Hence, it may be understood that for a time being if limitation on withdrawal doesn't violate the concept of legitimate expectation as interpreted as part of Art. 14 of the Constitution of India.

Insufficient Period for Exchange

In Jayantilal Ratanchand Shah v. Reserve Bank of India [29] case, it was contended that that window for exchange was "unreasonable and violative" of fundamental rights. In response to this issue, the Bench held "When (this is) considered in the context of the purpose the Demonetisation Act sought to achieve, namely, to stop circulation of high denomination bank notes as early as possible, the… contention of the petitioners cannot be accepted," [30]. It was also contended that the time prescribed for exchange of the high denomination banknotes under Sections 7 and 8 of the Demonetisation Act was unreasonable and violative of their fundamental rights. However, this contention was also rejected by

the Supreme Court by holding: "When the above provisions of the Act are considered in the context of the purpose the Demonetisation Act sought to achieve, namely, to stop circulation of high denomination banknotes as early as possible, the above contention of the petitioners cannot be accepted. Consequent upon the high denomination banknotes ceasing to be legal tender on the expiry of 16-1-1978 and in view of the prohibition in the transfer of possession of such notes from one person to another thereafter as envisaged under Section 4, it was absolutely necessary to ensure that no opportunity was available to the holders of high denomination banknotes to transfer the same to the possession of others. At the same time it was necessary to afford a reasonable opportunity to the holders of such notes to get the same exchanged. However, if the time for such exchange was not limited the high denomination banknotes could be circulated and transferred without the knowledge of the authorities concerned from one person to another and any such transferee could walk into the Bank on any day thereafter and demand exchange of his notes. In that case it would have been well-nigh impossible for the Bank to prove that such a person was not the owner or holder of the notes on 16-1-1978. Needless to say in such an eventuality the very object which the Demonetisation Act sought to achieve would have been defeated. Obviously, to strike a balance between these competing and disparate considerations Section 7(2) of the Demonetisation Act limited the time to exchange the notes till 19-1-1978. However, even thereafter, in view of Section 8, the high denomination banknotes could be exchanged from the Bank till 24-1-1978 provided the tenderer was able to explain the reasons for his failure to apply for such exchange within the time stipulated under Section 7(2) of the Demonetisation Act. Apart from the above provisions regarding exchange of high denomination banknotes by the Bank within the time stipulated therein, provision has been made in sub-section (7) of Section 7, permitting the Central Government, for reasons to be recorded in writing, to extend in any case or class of cases the period during which high denomination banknotes may be tendered for exchange. From a combined reading of Sections 7 and 8 it is evidently clear that on furnishing a declaration complete in all particulars in accordance with sub-section (2) of Section 7 by 19-1-1978, the holder was entitled to get the exchange value of his notes from the Bank without any let or hindrance; thereafter, till 24-1-1978, he was also entitled to such exchange from the Bank if he could satisfactorily explain the reasons for his inability to apply by 19-1-1978 and after that date the Central Government was empowered to extend the period of such exchange. Such being the scheme of the Act regarding exchange of high denomination banknotes it cannot be said that the time and the manner in which the high denomination banknotes could be exchanged were unreasonable, unjust and violative of the petitioners' fundamental rights.

Demonetisation, A Fiscal and Economic Policy of the Government Vis a Vis Judicial Review

Now, the question that automatically comes is "What is the scope of judicial review in matters of fiscal / economic policy?" In connection with the scope of judicial review into a fiscal and economic policy of the government, the Supreme Court in the BALCO case [31], held that the wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts. The court clearly stated "in the sphere of economic policy or reform the Court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non- compliance by the State with it's Constitutional or statutory duties."Herein before, Frankfurter, J. in Morey v. Dond [32], observed, 'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgement. The legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the expert and the number of times the judges have been overruled by events-self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.' The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or 'play in the joints' to the executive.

In Metropolis Theatre Co. v. State of Chicago [33], "The problem of government" as pointed out by the Supreme Court of the United States are practical ones

and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void.

The Government, as was said in Permian Basin Area Rate cases [34], 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 State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide.

Earlier, this Court in Rustom Cavasjee Cooper v. Union of India [35], while considering the validity of the Banking Companies (Acquisition and Transfer of Undertaking) Ordinance 1969, observed as- "It is again not for this Court to consider the relative merits of the different political theories or economic policies..... This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of the Parliament in enacting a law.....".

In Fertilizer Corporation Kamgar Union (Regd.) Sindri and Others v. Union of India and Others [36], while upholding the decision to sell, observed- ".....We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The Court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the court cannot as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration."

In R. K. Garg v. Union of India [37] We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature.

A policy decision of the Government whereby validity of contract entered into by Municipal Council with the private developer for construction of a commercial complex was impugned came up for consideration in G.B. Mahajan and Others v. Jalgaon Municipal Council and Others [38], as - "....The criticism of the project being 'unconventional' does not add to or advance the legal contention any further. The question is not whether it is unconventional by the standard of the extant practices, but whether there was something in the law rendering it impermissible. There is, no doubt, a degree of public accountability in all governmental enterprises. But, the present question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down, improved management methods, prevention of time and cost overruns in projects, balancing of costs against time scales, quality control, cost-benefit ratios etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with concomitant economic expediencies. These are essentially matters of economic policy which lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority....."

In Peerless General Finance and Investment Co. Ltd. and Another v. Reserve Bank of India [39], Kasliwal, J. observed- "The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgement over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."

In Premium Granites and Another v. State of T. N. and Others [40], while considering the Court's powers in interfering with the policy decision, it was observed - "It is not the domain of the Court to embark upon unchartered ocean of public policy in an exercise to consider as whether the particular public policy is wise or a better, public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. In M.P. Oil Extraction and Another v. State of M. P. and Others [41], the Court held as follows- "Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere *ipse dixit* of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not out step its limit and tinker with the policy decision of the executive functionary of the State."

Temporary Nature of Ordinance

The third problem with the 1946 Ordinance was whether it was a temporary measure or was it permanent in nature. An Ordinance is valid for six months. So the question was whether its effect would continue even after six months. In Sridhar Achari v. Emperor (1947), the petitioners had submitted documents for exchange of banknotes under the 1946 Ordinance. After six months, on March 4, 1947, a charge-sheet was issued against them under section 7 of the 1946 Ordinance alleging that they provided false information. The petitioners argued that the 1946 Ordinance was a temporary emergency measure and was no longer valid after six months. This argument was rejected by the Allahabad High Court which held that the intention was to give the Ordinance permanent character [42]. A similar argument was taken in the Supreme Court in Hansraj Moolji v. State of Bombay (1957). In 1953, the petitioner was charge-sheeted for transferring some high denomination banknotes in violation of the Ordinance. The petitioner argued that the 1946 Ordinance was not effective in 1953 and so he could not be prosecuted under that law. The Supreme Court rejected this argument and upheld the permanent nature of the 1946 Ordinance [43]. In Messrs Mehta Parikh & Co v. The Commissioner of Income Tax, Bombay [44]. It is interesting to note that all the ordinances pertaining to demonetisation has been regularised through the passage of Acts subsequently.

Demonetisation Directives Whether Unreasonable & Hasty? Arbitrary or *hasty* action on the part of *deciding* authority affects the life of the people since it is the antithesis of the principle of natural justice. We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call 'trial' and error method' and, therefore, its validity cannot be tested on any rigid 'a priori' considerations or on the application of any strait-jacket formula. As per the first announcement made by the PM on 8th November cash exchange was allowed till 30th December but suddenly a four hour notice was made on 2th November which stopped the exchange after 25th November. Actually, if we closely observe, this directive came eying to stop unnecessary exchange of notes at the point of shortage of newly printed currency notes. In this connection, Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [45] judgment seems relevant. Here, the Court observed that discretion must be exercised 'reasonably'. This brings in the expression, 'unreasonable'. The expression is frequently used as a general description of things that must not be done. A person who is exercising discretion must look into things that must be considered and not what is irrelevant. Further, in most of the situations people returned without withdrawing the desired amount according to the limits fixed by the RBI time to time. If we look into this, we may notice that the effort of the government reflected through the notifications time to time, the government directives are not hasty since there was no much problems, the mass faced and as reflected through the GDP. In Jitendra Kumar & Ors. v. State of Haryana & Anr [46], it has been reiterated that a legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public and the doctrine of legitimate expectation operates both in procedural and substantive matters.

Conclusion

Hence, it may be concluded that the process of demonetisation is not unconstitutional. Further, Justice MB Shah Committee supported this drive of 2016. It to a great extent has brought back the currency in the banking sector, unearthed unaccounted money to the taxing authorities. It also causes transitions in the economy as well. Returning of the huge amount of currency notes into the banking system, reduced the interest rate on investment. Keeping theses things in mind the Central Government had introduced

several schemes for the senior citizens [47].

According to the report presented by the Finance Minister Arun Jaitley at Rajya Sabha, on demonetisation of 2016, the Income Tax department carried out over 1100 searches and surveys immediately after demonetisation and detected undisclosed income of over Rs. 5,400 crore [48].

On the flip side of it, 105 people died and some of committed suicide during the process of demonetisation either for failing to get their notes exchanged or failure to withdraw money from ATMs [49].

Thus, demonetisation is not an unmixed blessings. It affected the normal life as 105 people died directly or indirectly because of this step. In fine, it may be concluded that though the process of demonetisation is constitutional, the government should be very sensible in execution of the same through meticulous planning and careful execution so that may not negatively affect the normal life of the people.

References

1. Available at http://www.etymonline.com/index.php?allowed_in_frame=0&search=demonetisation, accessed on 8th April, 2017 at 12.45.
2. Available at https://www.quora.com/What-is-the-history-of-demonetization-of-Indian-Currency, accessed on 10thMarch, 2017 at 12.45.
3. Available at http://dictionary.cambridge.org/dictionary/english/demonetize, accessed on 10th April, 2017 at 12.35.
4. Available at http://www.indianeconomy.net/splclassroom/309/what-are-the-impacts-of-demonetisation-on-indian-economy/#sthash.h7y0U1GP.dpuf, accessed on 10thApril, 2017 at 2.45.
5. Available athttp://www.investopedia.com/terms/d/demonetization.asp#ixzz4bYgLSNJQ, accessed on 10th April, 2017 at 10.45.
6. Available at http://www.indianeconomy.net/splclassroom/309/what-are-the-impacts-of-demonetisation-on-indian-economy/#sthash.h7y0U1GP.dpuf, accessed on 11th April, 2017 at 12.45.
7. Available at http://www.thehindu.com/news/national/Demonetisation-Nine-questions-for-the-Constitution-Bench/article16857836.ece1, accessed on 10th April, 2017 at 12.45.
8. AIR 1997 SC 370
9. AIR 1997, SC 370
10. Art 39(c), The Constitution of India, 1950.
11. Art 39(b), The Constitution of India, 1950.
12. Kishore C. Samal, Chasing black money in India, *Journal of Indian School of Political Economy*, April-June 1992
13. Available at http://indianexpress.com/article/india/india-news-india/flashback-1978-currency-ban-500-1000-invalid-the-transition-to-new-notes-was-less-painful-4375865/, accessed on 12th March, 2017 at 14.49.
14. Available at http://www.news18.com/news/india/rs-5400-cr-of-undisclosed-income-detected-post-demonetisation-jaitley-1371124.html
15. Available at http://www.news18.com/news/india/rs-5400-cr-of-undisclosed-income-detected-post-demonetisation-jaitley-1371124.html
16. Available at http://www.news18.com/news/india/rs-5400-cr-of-undisclosed-income-detected-post-demonetisation-jaitley-1371124.html
17. AIR 1954 All 758.
18. Civil Rule No. 104 of 1980.
19. 1985 58 CompCas 361 Delhi, 1983 (4) DRJ 236
20. AIR 1997 SC 370
21. (1982): SCC, SC, 1, p 39.
22. 2011): SCC, SC, 9, p 1.
23. (2014): SCC, SC, 10, p 673
24. The term *legitimate expectation* was first used in the case of *Schmidt v. Secretary of State for Home Affairs*, [1968] EWCA Civ 1, but was not applied on the facts. Subsequently, in *O'Reilly v. Mackman*, [1983] UKHL 1, the doctrine of legitimate expectation was recognized as part of judicial review in public law, allowing individuals to challenge the legality of decisions on the grounds that the decision-maker "had acted out with the powers conferred upon it"
25. (1992): SCC, SC, 4, p 477.
26. [1983] UKHL 6
27. (1993) 1 SCC 71
28. 1994 AIR 988, 1993 SCR (3) 128
29. AIR 1997 SC 370
30. Jayantilal Ratanchand Shah v. Reserve Bank of India, AIR 1997 SC 370
31. BALCO Employees Union vs Union of India and Ors., Transfer Case (civil) 8 of 2001
32. 354 U.S. 457 (1957)
33. 228 U.S. 61 (1913)
34. 388 U.S. 906 (1967), 390 U.S. 747 (1968),
35. (1970) 1 SCC 248 at page 294
36. (1981) 1 SCC 568 at page 584
37. (1981) 4 SCC 675
38. (1991)3 SCC 91 at page 104.
39. (1992) 2 SCC 343, at page 375, Para 31.
40. (1994) 2 SCC 691, at page 715, Para 54.
41. (1997) 7 SCC 592, at page 610. Para 41.
42. AIR1948All182
43. AIR 1957 SC 497: 1957 CrLJ 599: 1957 SCR 634: 59 Bom LR 910: 1957 All WR (HC) 506.
44. 1956 AIR 554, 1956 SCR 626
45. 4 [1947] 1 KB 223
46. Appeal (civil) 5803 of 2007

47 Available at http://economictimes. indiatimes.com/wealth/invest/all-you-need-to-know-about-senior-citizen-savings-scheme/articleshow/57251600.cms,

48 Available at http://www.news18.com/news/india/rs-5400-cr-of-undisclosed-income-detected post-demonetisation-jaitley-1371124.html.

49 Available at http://naradanews.com/2016/12/here-are-the-97-people-who-died-in-37-days-of-demonetisation/.

STATEMENT ABOUT OWNERSHIP AND OTHER PARTICULARS

"Indian Journal of Law and Human Behavior" (See Rule 8)

1. Place of Publication	:	Delhi
2. Periodicity of Publication	:	Quarterly
3. Printer's Name	:	**Asharfi Lal**
Nationality	:	Indian
Address	:	3/258-259, Trilok Puri, Delhi-91
4. Publisher's Name	:	**Asharfi Lal**
Nationality	:	Indian
Address	:	3/258-259, Trilok Puri, Delhi-91
5. Editor's Name	:	**Asharfi Lal**
Nationality	:	Indian
Address	:	3/258-259, Trilok Puri, Delhi-91
6. Name & Address of Individuals	:	**Asharfi Lal**
who own the newspaper and particulars of shareholders holding more than one per cent of the total capital	:	3/258-259, Trilok Puri, Delhi-91

I Asharfi Lal, hereby declare that the particulars given above are true to the best of my knowledge and belief.

Sd/-

(Asharfi Lal)