



AN ANALYSIS OF DEMONETIZATION BY THE MODI GOVERNMENT THROUGH THE LENS OF ARTICLE 300A OF THE CONSTITUTION OF INDIA*

INTRODUCTION

In an attempt to curb the growth of black money in the economy and deal with the issue of corruption and tackle the issue of counterfeit currency, the BJP Government took a drastic step. The Prime Minister Mr. Narendra Modi made an announcement in a live televised address to the citizens of India. It was stated in the announcement that post 12 AM, the notes of denominations Rs. 1000 and Rs. 500 of the Mahatma Gandhi series will cease to be legal tenders, effective immediately. It had certain exceptions like hospitals and petrol pumps which would still accept the old currency for a specific period of time to be decided by the government. The Banks were temporarily shut and ATMs were inoperable for the process of recalibration. The citizens were informed that new currency of Rs. 500 and Rs. 2000 would be rolled out with stronger security features. To deal with the cash crunch, the citizens were instructed that they would not be able to withdraw more than Rs. 2000 from their accounts per day. A window of 50 days was given to exchange the demonetized banknotes for new ones or deposit it in their bank accounts. This article discusses whether this process of demonetization amounts to violation of property rights guaranteed by Article 300A of the Constitution of India.

Article 300A states “No person shall be deprived of his property save by the authority of law”.¹ However state acquisition of private property is allowed provided the requirements of ‘public purpose’ and ‘compensation’ is satisfied.²

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¹ Constitution of India, 1950, Article 300A

² *Entertainments Network India Ltd. v. Super Cassettes Ltd.*, 2008 13 SCC 30

So the first question to be answered is whether money is property. There is not much disagreement regarding this. It is settled law that right to money is property³. In addition to this, in the case *Jayantilal Ratanchand v. RBI*⁴, when the 1978 demonetization was in dispute, the Supreme Court stated that insofar as the demonetization wiped out the RBI's debt to the bearer of notes declared illegal, it constituted compulsory acquisition of property. In *Madan Mohan Pathak v. Union of India*⁵, the Supreme Court held that 'public debts' are property and 'the extinguishment of such a debt owing from the state amounts to compulsory acquisition of that debt' and such compulsory acquisition must be for a public purpose and upon payment of compensation. Examining the status of currency notes in India, Section 26(1) of the Reserve Bank of India Act 1934 states as follows⁶:

'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. '

Focusing on the terms "guaranteed by the Central Government", Section 26(1) essentially states that the money one has in hand or deposited in the bank is a debt guaranteed by the Government to the people of India. Currency therefore can be regarded as a 'public debt' owed by the Government to the people of India. So one needs to discuss if the process of demonetization met the condition of public purpose and whether those who were deprived of their property were reasonably compensated.

The process of demonetization of notes might meet the prerequisite of 'public purpose' since it has been done to tackle the rise of counterfeit notes and black money. However, it can be contended that it did not meet the requirement of 'compensation'. In the whole process of demonetization, there is no mention of compensation for the property deprived, only the provisions for exchanging the notes. It must be kept in mind that even exchanging on notes had a limit of Rs. 2000 per person per day. Therefore, the compensation requirement is not

³ AIR 1994 SC 2550

⁴ 1997 AIR 370

⁵ AIR 1978 SC 803

⁶ Reserve Bank of India Act, 1934, Section 26(2)

satisfied. It may be argued by the Government that exchange of notes is a reasonable compensation. However, this process of exchange of notes could only be applicable to people who hold a bank account. The Government has proceeded on several unsubstantiated assumptions in this case. The first among these is that everyone has access to bank accounts or has the means of identification to get one. The question of compensation of the people who don't have bank accounts is left unanswered. Therefore, it can be argued demonetization flouts the Constitutional Right to Property under Article 300A by not making any arrangement for adequately compensating those whose property got acquired.

On the flip side, the Government can defend themselves by stating that there is no deprivation of property by demonetization process as accounted money of all the people will remain untouched. What may be deprived of the citizens is only their unaccounted money because it is unlawfully acquired.

Taking the argument to the highest, that there is deprivation of property, 'right to property is subjected to reasonable restrictions i.e. property can be acquired in public interest subject to payment of reasonable compensation.'⁷

Considering the degree of corruption and counterfeit currency demonetization attempted to fix, it can never be said that it is not implemented for a public purpose. And it is mentioned in the notification that the old bank notes may be deposited in the banks in exchange for new ones. It is not practical for the government to provide extra compensation for each and every citizen whose currency got demonetized and exchange facility provided is a reasonable one. Thus the Government can state that the compensation part is also satisfied by allowing the citizens to deposit the old notes and withdraw new ones.

Regarding the withdrawal limit of Rs. 2000 per day, it was held by the Supreme Court that 'control of property short of deprivation does not entail to payment of compensation.'⁸ The restriction on withdrawal limit is therefore just a control of property for a short duration of time and does not amount to deprivation of property and hence it is not eligible for any extra compensation.

⁷ *Entertainment Network (India) Ltd v. Super Cassette Industries Ltd.*, 2008 13 SCC 30

⁸ *Indian Handicrafts Emporium v. Union of India.*, 2003 7 SCC 589

An executive order depriving a person of his property, without it being backed by law, is not constitutionally valid.⁹ The demonetization process is well backed by law as it was made under Section 26 (2) of the RBI Act and all the procedural aspects required by law had been complied with by the Government. Hence the Government can reason that demonetization process cannot be termed as violation of property rights under 300A of the Constitution.

The Supreme Court bench is hearing the petitions against demonetization and the matter is yet to be decided. Looking at various Supreme Court decisions, it can be understood that the interference of the judiciary in the matters of economic policies is very limited. For instance, in *Balco Employees' Union v. Union of India*¹⁰, the Supreme Court observed that, “In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. 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 mala fide, a decision bringing about change cannot per se be interfered with by the court.” Demonetization is an economic policy of the Government. It is up to the Government to decide what course of action to undertake to improve the welfare of the citizens. In this case, the Government has arrived at the judgment that demonetization tends to the welfare of the people and State and it prima facie appears to be so. Therefore it is not the mandate of the Court to interfere in the economic policy decisions of the Government unless any illegality is committed in the execution of the policy or the same is contrary to law.

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⁹ *State of Mysore v. K.C Adiga*, AIR 1976 SC 853

¹⁰ 2002(2) SCC 333