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Analysing Demonetisation in India: Delegated Legislation in Action

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ABSTRACT :

On 8 November 2016 the Central Government declared that ₹500 and ₹1,000 banknotes, about 86 per cent of the currency in circulation by value, would cease to be legal tender. It did so by a notification under Section 26(2) of the Reserve Bank of India Act, 1934, and not by a fresh enactment of Parliament. That choice raised a question of constitutional principle: can a measure of such magnitude rest on delegated power? In *Vivek Narayan Sharma v Union of India* (2023), a Constitution Bench answered yes, by a majority of four to one. This article examines the decision through the doctrine of delegated legislation. It asks what Parliament intended by empowering the Central Government to demonetise “any series” of banknotes, whether the power amounts to excessive delegation under the policy-and-guidelines and proportionality tests, whether the procedure in Section 26(2) was followed, and whether the measure infringed Articles 14, 19(1)(g), 21 and 300A. It argues that the majority’s purposive reading is defensible, but that it moves the safeguard against arbitrariness from the text of the statute to the institutional role of the Reserve Bank, a shift that the dissent of Nagarathna J shows to be constitutionally uncomfortable. A section on recent developments follows the judgment’s aftermath, the 2023 withdrawal of ₹2,000 notes, the Court’s later approach to executive economic measures, and the latest Reserve Bank currency data. The article closes with proposals to strengthen parliamentary oversight of delegated power over currency.

Keywords: *Demonetisation; delegated legislation; excessive delegation; Section 26(2) RBI Act; proportionality; judicial review of economic policy*

I. INTRODUCTION

The separation of powers divides governmental authority among the legislature, the executive and the judiciary so that no single institution accumulates unchecked power. In India the legislature makes the law, the executive carries it out and the judiciary interprets it. The division has never been rigid. Parliament cannot foresee every detail that the administration of a complex statute will demand, and it therefore confers on the executive a power to fill in those details through rules, regulations, orders and notifications. This transfer of law-making authority from the primary legislature to a subordinate body is known as delegated legislation. Its justification is practical: it permits quicker and more flexible responses to changing circumstances than the parliamentary process can offer.

Delegation, however, carries risks. Excessive delegation weakens checks and balances, because a concentration of authority invites abuse. It blurs accountability, since it becomes harder to say who is answerable for a decision. It reduces transparency and public participation, the very values that parliamentary debate is meant to protect. And it can produce hasty decisions that damage the rights of citizens. The law’s task is to strike a balance between administrative efficiency and legislative control, and the courts have built a body of doctrine to police that balance.

Few executive acts of recent times test this balance as sharply as the demonetisation of 2016. On 8 November 2016 the Government of India announced that all ₹500 and ₹1,000 notes would cease to be legal tender. These notes represented roughly 86 per cent of the currency in circulation by value, and over the following months they were replaced with new ₹500 and ₹2,000 notes.¹ The stated aims were to curb black money, corruption and counterfeit currency. The immediate consequences were long queues outside banks and ATMs, severe disruption for businesses that depended on cash, and acute hardship for daily wage workers, farmers and others on the economic margins. All of this followed from a notification issued by the Central Government under a statutory power, and not from an Act of Parliament.

This article asks whether that executive action can be sustained as a valid exercise of delegated legislative power. The inquiry turns on a settled principle: delegation is valid only when the legislature has laid down the policy and guidelines and the delegate is confined to carrying that policy into effect.² The question is therefore whether the Central Government acted within the policy and guidelines that Section 26(2) of the Reserve Bank of India Act, 1934 (RBI Act) provides. It acquired fresh significance when a Constitution Bench of the Supreme Court decided *Vivek Narayan Sharma v Union of India* on

¹V S Krishna, ‘Demonetisation – Challenges in Cashless Economy’ (2018) 2 *International Journal of Trend in Scientific Research and Development* 762, 763.

²*Kishan Prakash Sharma v Union of India* (2001) 5 SCC 212.

2 January 2023.³ By a majority of four to one, the Court upheld the notification, reasoning among other things that the power was conferred on the Central Government, which is itself accountable to Parliament.⁴

The article proceeds in six parts. Part II sets out the concept of delegated legislation, its judicial evolution and the history of demonetisation in India. Part III frames the issues for decision. Part IV analyses legislative intent, excessive delegation, procedural compliance and the impact on fundamental rights. Part V, on recent developments, follows the story beyond the judgment. Part VI concludes and offers suggestions for reform.

II. UNDERSTANDING THE CONCEPTS

A. Delegated Legislation and Its Limits

Delegated legislation refers to law-making that takes place outside the legislature and is expressed as rules, regulations, bye-laws, orders, schemes or notifications.⁵ It lets government deal with specific problems without a fresh statute, much as a set of guidelines lets a person decide well in a particular situation. The concern is the extent of the power conferred and the transparency with which it is exercised, since both determine whether the delegate stays faithful to the legislature's intent.⁶

Demonetisation in 2016 was carried out by the Ministry of Finance together with the Reserve Bank of India (RBI). The Ministry is responsible for fiscal and monetary management, taxation, economic policy and financial regulation, and it exercises rule-making authority under many statutes. The power to demonetise is conferred by Section 26(2) of the RBI Act on the Central Government, and the Ministry exercised it by notification. That is delegated legislation in the ordinary sense, and, like all delegated legislation, it operates within limits that the courts have drawn over time.

B. The Judicial Evolution of the Doctrine

The constitutional treatment of delegated legislation in India can be traced through three landmark decisions. In *R v Burah* the Privy Council upheld a provision that allowed the Lieutenant-Governor to decide whether and when an enactment would be extended to a district. It held that the Indian Legislature was not an agent or delegate of the British Parliament and could engage in conditional legislation.⁷ The decision supported two readings. One was that the Indian Legislature, as a plenary body, could delegate without restriction. The other was that delegation was permissible only to the extent of conditional legislation.

Jatindranath Gupta v Province of Bihar clarified that the power to extend the life of an enactment was an essential legislative function and could not be delegated.⁸ Ambiguity nonetheless persisted, and the President sought the Supreme Court's advisory opinion on the validity of Section 7 of the Delhi Laws Act 1912, Section 2 of the Ajmer-Merwara (Extension of Laws) Act 1947 and Section 2 of the Part C States (Laws) Act 1950. The reference, *In re Delhi Laws Act*, pitted two arguments against each other.⁹ The first held that legislative power inherently includes the power to delegate. The second rested on the separation of powers and the maxim *delegatus non potest delegare*, and held that delegation was impermissible.

The seven-judge bench delivered separate opinions, but the prevailing position was that the legislature may delegate ancillary functions, provided it lays down the policy and does not abandon its essential legislative function or create a parallel legislature. The maxim was not accepted as an absolute bar. Delegation must be assessed case by case, and it must never be unguided. That framework remains the foundation for the analysis in this article.

C. Demonetisation in India: A Short History

Before 2016 India was predominantly a cash economy, with cash accounting for about 98 per cent of transactions by volume and 65 per cent by value.¹⁰ The country has demonetised its currency three times: on 12 January 1946, 16 January 1978 and 8 November 2016. The 1946 exercise withdrew ₹500, ₹1,000 and ₹10,000 notes. It was described as a "death blow" to black marketers, but it achieved little, partly because it followed so closely on the end of the Second World War and it was difficult to tell unaccounted money from accounted money. The 1978 exercise, undertaken after the Emergency, withdrew ₹1,000, ₹5,000 and ₹10,000 notes. It also fell short, because hoarders were said to have shifted their wealth into lower denominations after rumours of the move. Both earlier exercises were carried out through legislation, an ordinance in 1946 and an ordinance followed by an Act of Parliament

³*Vivek Narayan Sharma v Union of India* (2023) 3 SCC 1; Writ Petition (Civil) No 906 of 2016.

⁴Hera Rizwan, 'Explained: What Is Delegated Legislation? How Is It Associated With The SC Demonetisation Verdict?' *Indiatimes* (15 October 2023).

⁵*Halsbury's Laws of England*, vol 44 (4th edn, LexisNexis 1979) paras 981–84.

⁶Soujanya Pattanayak, 'Analysis of Delegated Legislation in the Era of COVID-19 Pandemic' (2021) 4 *International Journal of Law, Management and Humanities* 2333, 2335–39.

⁷*R v Burah* (1878) LR 3 AC 889 (PC); ILR 1879 4 Cal 172.

⁸*Jatindranath Gupta v Province of Bihar* AIR 1949 FC 175.

⁹*In re Delhi Laws Act* [1951] SCR 747; AIR 1951 SC 332.

¹⁰Krishna (n 1) 763.

in 1978, and not through a notification under Section 26(2). That difference became important in the litigation and is taken up in Part IV.

D. The Objectives of the 2016 Notification

The notification itself does not explain its purpose. The nearest official statement is the RBI's set of frequently asked questions issued on 8 November 2016. It said that fake high-denomination notes had increased in circulation, that they were used for antinational and illegal activities, that high-denomination notes had been misused by terrorists and for hoarding black money, and that the scheme was introduced to contain both fake notes and black money.¹¹ The Prime Minister's address and statements at the time add three goals: eradicating black money, combating corruption and disrupting cross-border terrorism by eliminating counterfeit currency.¹²

Whether these goals were achieved is contested. Invalidating high-denomination notes seemed a promising way to flush out black money, but reports indicate that a significant portion of illicit funds found other routes into the banking system through loopholes.¹³ Corruption is a deeply ingrained problem that demonetisation alone was unlikely to solve. Sustainable results would have required legal reform, better enforcement and institutional strengthening, and a focus on currency notes overlooks the wider spectrum of corruption, including high-level white-collar offences.¹⁴ Reports of a fall in counterfeit currency are difficult to separate from the effect of enhanced security measures.¹⁵ The costs were immediate: small and medium businesses and the informal sector suffered most, and the push toward digital transactions raised concerns about financial inclusion and the reach of digital infrastructure in rural areas.

The aims were legitimate, but the legal question is a different one. It is not whether demonetisation achieved its objectives, a point the Court itself treated as not determinative of validity, but whether the power used to pursue them was lawfully conferred and lawfully exercised. The remainder of this article addresses that question.

III. RELEVANT ISSUES

The questions that arise are examined in the light of the Supreme Court's decision in *Vivek Narayan Sharma v Union of India*.¹⁶ They are four.

- (1) *Legislative intent*. What did Parliament intend when it delegated to the Central Government the power to demonetise under Section 26(2) of the RBI Act? The answer shows whether the delegation fits the broader purposes of the Act or confers a power that Parliament never meant to give.
- (2) *Excessive delegation and proportionality*. Does the notification of 8 November 2016 stay within the reasonable exercise of the authority conferred by Section 26(2), or does it cross into excessive delegation, so that it is open to invalidation on the test of proportionality?
- (3) *Procedural defect*. Was the procedure prescribed by Section 26(2) followed? If it was not, the notification would be *ultra vires* on that ground alone.
- (4) *Fundamental rights*. Did the decision infringe the rights of citizens, in particular the right to equality, freedom of trade, the right to life and personal liberty, and the right to property?

These questions show how the legal framework of delegated legislation, the constitutional guarantees and the historical record interact in one case.

IV. ANALYSIS USING LEADING AND LANDMARK CASES

A. Legislative Intent

Section 26 of the RBI Act deals with the legal tender character of notes. Sub-section (1) makes every bank note legal tender throughout India for the amount it expresses, guaranteed by the Central Government, subject to sub-section (2). Sub-section (2) provides:

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.¹⁷

¹¹Reserve Bank of India, Notification DCM (Plg) No 1226/10.27.00/2016-17 (8 November 2016).

¹²Jammi N Rao, 'Demonetisation at 6: The idea, the objectives, and the post-event justifications' *Newsland* (8 November 2022).

¹³G Ganesan and B Gajendranayagam, 'Impact of Demonetization on Indian Economy' (2017) 3(9) *International Journal of Applied Research* 433, 434.

¹⁴K Veerakumar, 'A Study on People Impact on Demonetization' (2017) 2 *International Journal of Interdisciplinary Research in Arts and Humanities* 9, 10.

¹⁵*ibid.*

¹⁶*Vivek Narayan Sharma* (n 3).

¹⁷Reserve Bank of India Act 1934, s 26(2).

The provision turns on the word “any” in the phrase “any series of bank notes”. Before deciding whether the section gives the executive unconstrained power, one must ask what Parliament meant by that word and what it intended when it permitted demonetisation by delegated legislation.

The Supreme Court has repeatedly held that an expression such as “any” has no fixed meaning and takes its sense from context. In *Chief Inspector of Mines v Lala Karam Chand Thapar*, the Constitution Bench considered whether “any one of the directors” in the Mines Act 1952 meant only one director or every director. It held that the phrase was ambiguous and that which meaning Parliament intended must be decided from the context, the scheme and the object of the legislation.¹⁸ In *K P Mohammed Salim v Commissioner of Income Tax*, the Court observed that “any” must be read in the context of the statute and may, in a suitable case, mean “all”, with purposive construction available for the purpose.¹⁹

The purposive approach is well settled. In *M Pentiah v Muddala Veeramallappa*, Sarkar J stated that where the plain grammatical meaning of a statute produces a result plainly at odds with the evident purpose of the law, or leads to inconvenience, absurdity, hardship or injustice that the legislature cannot have intended, the court may adopt a different construction, even if that requires modifying the words or the structure of the sentence.²⁰ A long line of later decisions confirms that discovering legislative intent is the first principle of interpretation and that a literal reading should give way when it leads to absurdity or unfairness.²¹

Applying these principles, the majority in *Vivek Narayan Sharma* construed Section 26(2). It stressed that the RBI Act gives the RBI central responsibility for monetary policy and currency management, including the exclusive right to issue banknotes, and that the Central Government must act on the recommendation of the Central Board. Reading “any series” to cover only some series of a denomination would produce absurd results. It would be illogical, the Court reasoned, to permit the government to demonetise nineteen of twenty series of a denomination but not all twenty, because that would defeat the purpose for which the power was conferred. The Court also declined to treat the demonetisations of 1946 and 1978 as limiting the power: that those exercises proceeded through legislation did not show that Parliament meant to confine Section 26(2). It concluded that “any” in the section means “all”.²²

This construction creates a difficulty. If “any series” can include every series of every denomination, the section arguably confers an uncanalised and unguided power on the Central Government to demonetise the entire currency. The principle in *In re Delhi Laws Act* is that delegation must not be unconstrained, and a power of this breadth, resting on no express policy, is vulnerable to challenge under Articles 14, 19, 21 and 300A.²³ Justice B V Nagarathna took this view in her dissent. She held that Section 26 refers to a particular series and not to all series, and that the demonetisation of an entire denomination requires plenary legislation, since currency and legal tender fall within Entry 36 of the Union List.²⁴

There is, however, a respectable answer to the objection. The RBI Act is not silent on policy. Its preamble speaks of securing monetary stability and operating the currency and credit system to the country’s advantage, and Section 26(2) is exercisable only on the recommendation of the Central Board, a specialised expert body. The majority’s reading is therefore purposive and defensible. Even so, it relocates the safeguard against arbitrariness from the text of the section to the institutional role of the RBI. Whether that relocation is sufficient is the question that the next issue tests.

B. Excessive Delegation

Two decisions illustrate how courts treat the absence or presence of guidance. In *Hamdard Dawakhana (Wakf) Lal Kuan v Union of India*, a provision allowed the Central Government to extend a statutory list of diseases and conditions without specifying the particulars or circumstances in which it might do so. The Court found the provision vague, held that Parliament had set no criteria, and struck it down as excessive delegation.²⁵ In *Harakchand Ratanchand Banthia v Union of India*, the Court examined the Administrator’s powers under the Gold (Control) Act 1968. It treated the requirement of consultation with the RBI as an inbuilt safeguard, and it read the words “so far as it appears to him to be necessary” as requiring an opinion formed objectively and after reasonable consideration, not a purely subjective one.²⁶

Section 26(2) resembles the second provision more than the first. It does not leave the executive free to act on its own motion: the power arises only on

¹⁸*Chief Inspector of Mines v Lala Karam Chand Thapar* AIR 1961 SC 838.

¹⁹*K P Mohammed Salim v Commissioner of Income Tax* Civil Appeal Nos 2946–2956 of 2008 (SC).

²⁰*M Pentiah v Muddala Veeramallappa* [1961] 2 SCR 295.

²¹*K P Varghese v ITO* (1981) 4 SCC 173; *State Bank of Travancore v Mohd M Khan* (1981) 4 SCC 82; *Som Prakash Rekhi v Union of India* (1981) 1 SCC 449; *Ravula Subba Rao v CIT* AIR 1956 SC 604; *Govindlal v Agricultural Produce Market Committee* (1975) 2 SCC 482; *Babaji Kondaji v Nasik Merchants Co-op Bank Ltd* (1984) 2 SCC 50.

²²*Vivek Narayan Sharma* (n 3).

²³*In re Delhi Laws Act* (n 9); *Kishan Prakash Sharma* (n 2).

²⁴*Vivek Narayan Sharma* (n 3) (Nagarathna J, dissenting).

²⁵*Hamdard Dawakhana (Wakf) Lal Kuan v Union of India* [1960] 2 SCR 671.

²⁶*Harakchand Ratanchand Banthia v Union of India* AIR 1970 SC 1453.

the recommendation of the Central Board, and that body is the statutory authority charged with currency management. A provision with that safeguard is neither vague nor unchecked in the way the provision in *Hamdard Dawakhana* was.

1. The policy and guideline test

The Court applied the policy and guideline test, which has been built over many decisions. Its elements are as follows:

- The delegation must be to an elected body that is responsible to the people, including those who pay taxes.
- The purposes of the Act supply a further guide, because they state the objectives or results that the delegated power must serve.
- It must be shown that the legislature itself willed that a particular thing be done and gave the executive only the power to implement it.
- The legislature may not delegate uncanalised or uncontrolled power and must set limits to the delegation.

The majority held that the test was met. The delegate is the Central Government, which answers to Parliament. The purposes of the RBI Act, monetary stability and the management of the currency, guide the power. And the power is hedged by the requirement of a recommendation from an expert body.

2. The test of proportionality

The Court also tested the notification for proportionality, using the four-part formulation adopted in *Modern Dental College and Research Centre v State of Madhya Pradesh*.²⁷ A measure that limits a constitutionally protected right is permissible only if it serves a proper purpose, if the means adopted are rationally connected to that purpose, if the means are necessary in the sense that no alternative would achieve the same purpose with a lesser limitation, and if there is a proper balance between the importance of the purpose and the social importance of preventing the limitation. The reasonableness of a restriction is judged objectively and from the standpoint of the public interest.

On the first limb, the notification addressed three concerns: counterfeit notes that were widely circulating and hard to distinguish from genuine ones, the storage of unaccounted wealth in high-denomination notes, and the use of fake currency to finance drug trafficking and terrorism. These are proper purposes. On the second limb, a rational connection exists between withdrawing ₹500 and ₹1,000 notes and the goals of curbing counterfeit currency and black money, since withdrawal at least gives the State a chance to take control of the notes in circulation.

The third limb is the most difficult. In *MRF Ltd v Inspector, Kerala Government* the Court had held that no abstract or general pattern can be laid down for judging the reasonableness of restrictions.²⁸ The majority reasoned that the RBI regulates and manages the currency, that the Central Government acts in consultation with it, and that a court lacks the expertise to define a less restrictive alternative. The choice of denominations, in the Court's view, lay in the domain of experts and beyond judicial review. On the fourth limb, the Court found that the objectives are important to social welfare and that the restriction was not total: it affected only the exchange of old notes for new, within a window of 52 days that compared favourably with the three days allowed in 1978, and the full face value of the notes was returned. On that basis the notification satisfied proportionality.

It is fair to observe that the third limb was resolved by deference rather than by examination. Necessity asks whether a less restrictive measure was available, and that is an inquiry about alternatives. By declining to consider alternatives because the field belongs to experts, the Court converted a test of necessity into something closer to a test of rationality. That may be defensible in matters of economic policy, where the Court has long acknowledged a narrower scope of review, but it does reduce the work that proportionality does in a case of this kind.

The dissent took a different path. It held that empowering the Central Government to demonetise all denominations is excessive delegation, and that treating the Central Board's recommendation as a formality enlarges the delegation and gives the Central Government an unreasonable degree of power.²⁹

C. Procedural Defect

The Court has held in many decisions that, if the procedure prescribed for delegated legislation is not followed, the legislation is *ultra vires* and may be struck down on that ground alone.³⁰ Section 26(2), on its text, imposes two conditions: a recommendation of the Central Board, and a notification in the Gazette of India by the Central Government. Consultation between the Central Government and the RBI is not an express statutory condition, but it formed part of the factual record and the Court treated it as relevant.

The petitioners argued that the decision-making process was flawed. The RBI Act contemplates that the process emanates from the Central Board, whereas here it emanated from the Central Government. The Board met in haste, and the Prime Minister announced the decision the next day. In the petitioners' submission, this left the Board no time to weigh relevant factors and set aside irrelevant ones, and the process was therefore arbitrary. The respondents

²⁷*Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

²⁸*MRF Ltd v Inspector, Kerala Government* (1998) 8 SCC 227.

²⁹*Vivek Narayan Sharma* (n 3) (Nagarathna J, dissenting).

³⁰*Banwarilal Agarwalla v State of Bihar* AIR 1961 SC 849.

answered that the Board's recommendation had been sought, and that confidentiality and speed were essential to the purpose of the measure.

1. The recommendation of the Central Board

The Court's approach was shaped by the settled principle that judicial review does not extend to the wisdom of economic policy. In *Shri Sitaram Sugar Co Ltd v Union of India* the Court observed that it is not concerned with matters of economic policy and may rely on expert agencies to make findings of fact.³¹ In *Small Scale Industrial Manufacturers Association v Union of India* the Court reaffirmed that what is best for the national economy, and how financial measures should be formulated and implemented, is ultimately for the Government and the RBI to decide on expert advice, and such matters do not ordinarily attract judicial review.³² The correctness of the reasons that led the Government to choose one course over another is not for the court to decide.

The Court examined the records placed before it in a sealed cover. It noted that the Central Board had made its recommendation and that the RBI and the Central Government had been in discussion for about six months before the notification. The minutes of the meeting verified the sequence. It also noted that the problem of a cash economy and black money had been recognised earlier, including by the Special Investigation Team on black money headed by two former judges of the Court. On this record the Court held that the decision-making process was not flawed.

2. Notification and consultation

The notification was published in the Gazette of India by the Central Government on 8 November 2016, so the second statutory condition was met. As to consultation, the Court explained in *State of Gujarat v Gujarat Revenue Tribunal Bar Association* that its object is to make a process meaningful, and that it requires a meeting of minds between the parties, on the basis of material facts, so as to arrive at a correct or at least a satisfactory solution.³³ The minutes of the meetings showed that the Central Government and the RBI had been in consultation and that relevant information had passed between the Central Board and the Central Government. On that basis the majority found the procedural requirements of Section 26 satisfied.

The dissent saw the matter differently. Justice Nagarathna held that the proposal originated with the Central Government, and that a process completed within about a day did not amount to the independent recommendation that Section 26(2) contemplates. A recommendation solicited by the Government, in a meeting held a day before the announcement, raises the question whether the Board's role was substantive or ceremonial. The majority's answer depends on the long prior consultation between the RBI and the Government, and the difference between the two opinions lies chiefly in how much weight that history can bear.

D. Violation of Fundamental Rights

The last issue concerns the constitutional consequences of the decision to demonetise: whether this substantial economic measure infringed the rights of citizens, in particular the right to property, freedom of trade and the guarantees of equality and personal liberty.

During demonetisation, limits were placed on withdrawals of cash from bank accounts. The measure was presented as a necessary step in managing the transition, but it raised questions of legality. It was argued that these limits had no explicit basis in the RBI Act, the Banking Regulation Act 1949 or any other law, and that in a society governed by the rule of law executive action must rest on a clear legal foundation.

The limits also bore on specific rights. Article 14 permits a law to be struck down if it is arbitrary or confers unguided power. If Section 26(2) is read widely, to cover all notes, it lacks guidance and is unchannelled, and would be arbitrary and unreasonable in violation of Article 14. The restrictions affected the freedom to carry on trade and business under Article 19(1)(g), because businesses reliant on cash faced severe disruption. It was for the government to show that the restrictions were reasonable and in the public interest, and the petitioners contended that it had not done so.

Article 21 was also invoked. *Maneka Gandhi v Union of India* established that any procedure affecting personal liberty must be fair, just and reasonable, and that Article 21 must be read with Articles 14 and 19.³⁴ On that footing, the petitioners argued that sudden limits on access to one's own money affected the ability of individuals to meet daily needs such as food, healthcare and education, and that anyone denied a fair chance to exchange old notes for new was deprived of a right protected by Article 21.

The most interesting argument concerned property. Counsel for the petitioner relied on *Jayantilal Ratanchand Shah v Reserve Bank of India*, which treated currency notes as property, and submitted that depriving a person of that property by demonetisation violated Article 300A.³⁵ The Court rejected

³¹*Shri Sitaram Sugar Co Ltd v Union of India* AIR 1990 SC 1277.

³²*Small Scale Industrial Manufacturers Association v Union of India* (2021) 8 SCC 511.

³³*State of Gujarat v Gujarat Revenue Tribunal Bar Association* (2012) 10 SCC 353.

³⁴*Maneka Gandhi v Union of India* [1978] 2 SCR 621.

³⁵*Jayantilal Ratanchand Shah v Reserve Bank of India* (1996) 9 SCC 650.

the argument, holding that the rights vested in the notes had not been taken away and that only conditions had been placed on the exchange of old notes for new. The majority found no violation of fundamental rights, holding that a reasonable nexus existed between the measure and its objectives and that the exchange window was not unreasonable.

The petitioners' argument nonetheless retains force as a matter of principle. During the exchange period the value of the old currency was reduced to nothing outside the window, and limits applied to withdrawal of new currency. A person who could not exchange old notes in time lost the value of that property. The Court's answer, that the State had afforded a reasonable opportunity, shifts the question from whether a deprivation occurred to whether the opportunity was adequate, and the adequacy of 52 days will always be a matter of degree for those in remote areas or in hardship.

V. RECENT DEVELOPMENTS

The decision in *Vivek Narayan Sharma* did not end the legal and policy debate. Four developments since January 2023 bear on the analysis above.

A. The Aftermath of the Judgment

A review petition against the judgment was filed in February 2023 by one of the original petitioners, who argued that his written submissions had not been considered.³⁶ In March 2023, a two-judge bench declined to grant individual relief to petitioners who complained of hardship. It observed that genuine hardship, by itself, is not a ground for the Court to interfere, but gave the petitioners liberty to make representations to the Union within twelve weeks and, if dissatisfied, to approach the High Courts.³⁷ The Constitution Bench decision therefore stands as the governing authority on Section 26(2), and the authors have not come across any legislative amendment prompted by it.

B. The Withdrawal of ₹2,000 Notes

On 19 May 2023 the RBI announced that it was withdrawing ₹2,000 notes from circulation under its clean note policy. The notes remained legal tender. Holders were initially asked to deposit or exchange them by 30 September 2023, a deadline later extended to 7 October 2023, after which exchange and deposit continued at the RBI's issue offices and through India Post. The value of ₹2,000 notes in circulation fell from ₹3.56 lakh crore on 19 May 2023 to ₹5,451 crore on 30 April 2026, meaning that 98.47 per cent had been returned.³⁸

The withdrawal drew litigation. The Delhi High Court dismissed a public interest litigation challenging the RBI and State Bank of India notifications that allowed exchange without a requisition slip or identity proof, observing that the decision was a policy matter and that courts should not sit as an appellate authority over it. The Supreme Court dismissed the special leave petition on 10 July 2023.³⁹ A second challenge argued that only the Central Government, and not the RBI, could stop the issue of a denomination under Section 24(2) of the RBI Act. The Delhi High Court rejected it, holding that a direction to banks to stop issuing ₹2,000 notes was not demonetisation.

The episode clarifies what Section 26(2) does. The 2023 withdrawal did not invoke it: no series was declared to have ceased to be legal tender, and holders retained their notes' status and value. The contrast shows why the power under Section 26(2) is the more drastic one and why the question of its limits, which the Constitution Bench considered, matters. Withdrawal from circulation is an administrative exercise of currency management. Withdrawal of legal tender status is a legislative-type act with direct consequences for property.

C. Proportionality and Executive Economic Measures

On 15 February 2024 a Constitution Bench unanimously struck down the Electoral Bond Scheme and the statutory amendments that supported it, in *Association for Democratic Reforms v Union of India*.⁴⁰ The Scheme had been notified by the Central Government in 2018 under statutory amendments, so the case also concerned executive implementation of a financial measure. The Court applied proportionality, held that the scheme infringed the voter's right to information under Article 19(1)(a), found that less restrictive means were available, and held that removing the cap on corporate political contributions was manifestly arbitrary. The decision is relevant here for two reasons. It shows that the Court will examine an executive-designed financial scheme closely when the right at stake is a core democratic one. And it applied the necessity limb with a rigour that was absent in *Vivek Narayan Sharma*, where the Court regarded alternatives as beyond its competence. The two decisions can be reconciled on the ground that the rights involved and the evidence of available alternatives differed, but together they suggest that deference in economic policy is not unlimited.

³⁶Plea seeking review of verdict on demonetisation filed in Supreme Court' *The Tribune* (5 February 2023).

³⁷Order of 21 March 2023 (Gavai and Vikram Nath JJ), reported as 'Demonetisation Grievances: Supreme Court Declines Relief to Petitioners' *The Quint* (21 March 2023).

³⁸Reserve Bank of India, statement on the withdrawal of ₹2000 banknotes (1 May 2026), reported in '98.47 per cent of ₹2,000 notes returned' *News Arena* (1 May 2026).

³⁹*Ashwini Kumar Upadhyay v Union of India* SLP (C) No 12034 of 2023 (SC, 10 July 2023); the Delhi High Court decision was rendered on 29 May 2023.

⁴⁰*Association for Democratic Reforms v Union of India* WP (C) No 880 of 2017 (SC, 15 February 2024).

D. Currency Data and the Cash Question

Recent RBI data bear on the assumptions behind the 2016 measure. In 2025-26, the value of banknotes in circulation rose by 11.9 per cent and their volume by 10.5 per cent.⁴¹ In the week ended 26 December 2025, ₹500 notes accounted for ₹33.37 lakh crore of the ₹38.88 lakh crore of banknotes in circulation, about 86 per cent by value, which is close to the share that the demonetised notes held in 2016.⁴² Counterfeiting has not disappeared: detections of fake ₹500 notes in the banking system rose by 20.5 per cent in 2025-26, to 141,907 pieces, although detections of fake ₹2,000 notes fell.⁴³ The value of the RBI's digital rupee in circulation stood at ₹771.7 crore on 31 March 2026, lower than the ₹1,016.5 crore a year earlier, so the shift to digital currency remains modest.⁴⁴

These figures do not decide the legal question, since the majority held that the achievement of objectives is not relevant to validity. But they matter for policy and for the balancing limb of proportionality. Cash remains central to the economy, counterfeit notes persist, and high-denomination notes again make up most of the currency by value. A court assessing a future exercise might reasonably ask what the earlier one achieved before accepting that a similar measure is proportionate.

E. Implications for Delegated Legislation

Taken together, these developments point in one direction. The Constitution Bench has confirmed that Section 26(2) is a wide power, and later litigation shows courts reluctant to second-guess currency management as a matter of policy. At the same time, the electoral bonds decision signals that the Court is prepared to insist on proportionality, including the necessity limb, where core rights are engaged. For delegated legislation, the lesson is that breadth of power does not by itself invalidate a delegation when a recommendation from an expert body is a precondition, but the safeguards must be real and open to scrutiny. This is why the reform proposals in Part VI focus on strengthening the Board's role and on parliamentary oversight, since neither depends on the courts revisiting the decision.

VI. CONCLUSION AND SUGGESTIONS

A. Conclusion

This article set out to test whether demonetisation under Section 26(2) of the RBI Act can be sustained as a valid exercise of delegated legislative power. On the law as it now stands, it can, though conditionally. The Supreme Court in *Vivek Narayan Sharma v Union of India* (2023) upheld it by a majority. The majority held that the legislative intent extended to "all" series, that the RBI's recommendation and the consultation between the RBI and the Central Government supplied adequate guidance, that the procedure under Section 26 was complied with, and that fundamental rights were not violated because a reasonable nexus existed between demonetisation and its objectives.

The dissent of Justice Nagarathna cautioned that sweeping measures of this kind should proceed by plenary legislation, and the analysis above suggests that her concern is real. The majority's reading rests on purposive interpretation and on the institutional role of the RBI, not on explicit statutory guidelines, and it resolves the necessity limb of proportionality by deference. Developments since the judgment, notably the 2023 withdrawal of ₹2,000 notes and the Court's later electoral bonds decision, show both how far the Section 26(2) power reaches and that judicial deference in economic matters has limits. Demonetisation demonstrates how delegated legislation works in practice, and it shows the delicate balance between administrative efficiency and constitutional accountability.

B. Suggestions

- (1) *Parliamentary involvement.* Major economic measures such as demonetisation should be accompanied by express parliamentary debate, or at least be laid before Parliament promptly after notification, to strengthen democratic legitimacy.
- (2) *Statutory guidelines.* The RBI Act should be amended to state clearly the policy that governs Section 26(2), including whether the power extends to an entire denomination, and the limits on its use in matters of currency regulation.
- (3) *Independent recommendation.* The Act should require a reasoned, recorded recommendation by the Central Board, formed after a minimum period of deliberation, so that the Board's role is substantive and not influenced by executive pressure.
- (4) *Review mechanisms.* Periodic judicial and parliamentary review should be instituted to oversee the use of delegated powers in financial and economic policy, including a post-implementation assessment of whether the stated objectives were met.

⁴¹Reserve Bank of India, *Annual Report 2025-26*, ch VIII (Currency Management).

⁴²Reserve Bank of India, 'Currency in Circulation – December 26, 2025'.

⁴³'Fake Rs 500 Notes Rise Over 20 Per Cent In FY26, Says RBI Annual Report' *Outlook Money* (2026).

⁴⁴Reserve Bank of India (n 41).