Supreme Court Judgment on Demonetisation

Why in news?

Recently, the Supreme Court upheld the government's decision to demonetise currency notes of Rs 500 and Rs 1,000 by a 4:1 majority.

What is the case of demonetisation in India?

> *Demonetisation is the act of making a currency invalid by stripping off its legal status. To effectuate demonetisation, the existing currency is replaced with new currency.*

- The move of demonetisation was announced in an unscheduled, national, live telecast on **November 8, 2016,** making high-value notes invalid, starting midnight.
- The move resulted in **86% of the existing currency** of the time becoming invalid overnight.
- The public had the option to surrender the invalid notes within the next **50 days** or visit any bank branch in the country and exchange the illegal tenders for valid currency notes of similar value.
- In a country with the world's second largest population, the move resulted in extremely long queues, chaos, panic and several deaths.
- Following demonetisation, **99%** of the banned currency was returned to the Reserve Bank of India.

What is the case about?

> *The Preamble of the Reserve Bank of India Act, 1934, says that the right to regulate the issue of banknotes is entirely with RBI. The RBI generally operates the currency and the credit system.*

- **Petitions** - The petitioners argued that the recommendation should have emanated from the RBI, but in this case, the government had advised the central bank, following which it made the recommendation.
- When earlier governments had demonetised currency in 1946 and 1978, they had done so by way of a law made by Parliament.
- They accused the government of withholding documents related to decision-making process from the court and raised doubts about whether the quorum required for the RBI Central Board meeting was met.

- **Centre's stand** – The Centre argued that the decision was taken to curb the evils of fake currency, black money and terror funding.
- The scope of judicial review in economic policy decisions is extremely narrow.
- It argued that even if it is assumed that demonetisation has not produced the intended results, that cannot be a reason to invalidate the decision, as it has been taken in good faith after following due process.

What is the Supreme Court's verdict on demonetisation?

- The Supreme Court has **upheld** the government's power to demonetise notes and accepted the claim that there was adequate consultation between the Union government, and the RBI.
- The majority held that Centre's 2016 notification is valid and satisfies the **test of proportionality** as demonetisation had a reasonable nexus with the objectives.
- It added that the decision-making process cannot be faulted merely because the proposal emanated from the Central government.
- The bench further held that Section 26(2) RBI Act, which empowers Centre to demonetise any series of bank notes of any denomination, can be used to demonetise the whole series of currency.

What concerns were raised with the court observation?

- The Court does not properly address the question on whether the adverse consequences could have been limited.
- The Court had not even criticised the government's failure to anticipate the effect of the move on the economy and the immense miseries it heaped on the population.

References

1. The Hindu | On Supreme Court judgment on demonetisation
2. The Indian Express | Supreme Court upholds demonetisation
3. Live Law | Demonetisation Decision Making Process Lawful

Quick Facts

Test of Proportionality

- The test of proportionality is a commonly employed legal method used by courts to decide cases where **two or more legitimate rights clash**.
- To determine whether something can be said to pass the test of proportionality, courts in India typically take a four-pronged approach
- The court examines the **legitimacy, suitability, necessity,** in addition to a **balancing test** to check whether said decision or law encroaches on rights to an excessive or abitrary degree.



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