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## “Legal Aspects of Demonetisation: A Fight against Black Money in India”

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### ABSTRACT

8<sup>th</sup> of Nov. 2016 was the day when Prime Minister address whole nation and announced that from the mid night the legal tender of high denomination notes that is Rs. 500 and 1000 will not in effect means these notes are turn into waste. The whole nation was in trauma but the intention of government was very clear means this was very first time when government take immediate and serious action in fight against black money. The action was very new for public but it was not first chance when this action performed by legislation, this was third before this it was also applied twice that was in 1946 and 1978 but very few people knows about it. But this time it effect on large scale that is 86% of Indian Economy sterilized after demonetisation of 2016. The most important issue arises by the people was the legality of this decision. From opposition to intellects everyone questioning on the legal aspects of demonetisation. Some of them called it unconstitutional and dictatorship policy of present government. Gross Domestic Product (GDP) was also fall down rapidly. But one thing which surprised whole nation and that was the support of large population of India, they appreciate and boosting the morale of Prime Minister. In this article researcher, dealing with the legitimacy of demonetisation and socio eco legal impact of demonetisation, also try to find out the capability of the existing law specially RBI Act, 1935, The High Denomination Bank Notes (Demonetisation) Ordinance, 1946 and other relevant laws that are they justify with the action of demonetisation?

**Keywords:** Demonetisation, Black Money, Bad loan, Legal Tender, Cashless economy, Money Control.

### Introduction

दानं भोगो नाशः तिस्तो गतयो भवन्ति वित्तस्य ।

यो न ददाति न भुङ्क्ते तस्य तृतीया गतिर्भवति ॥<sup>1</sup>

There are three state of money are described, according to this verse, “money can have only three states: charity, enjoyment or loss. One who neither donates nor enjoys with his money, his money ends up in the third state.”

This quotes completely set on the situation which is arises after the demonetisation in India. On the late evening of the November 8, 2016 all mode of communication start circulating news in which our Honorable Prime Minister Mr. Narendra Modi announced that the notes of higher denomination i.e. Rs. 500 and Rs. 1000 will lose its legal tender or status to the Indian economy. It was the huge step taken by our government to reform the economy of our country. The reason which was

explained by the government behind the decision taken for demonetisation was uncontrolled flow of black money which taken place in society. Because of the black money stashing and collection, anti socialist person used it to provide financial support to anti national forces, black marketer, counterfeiting of currency, terrorist in India, Naxality and tax evictors. Because, of malpractice of tax evasion, illegal money laundering corruption and organized crime, bad money become a parallel economy in India.

2016, November 8 was the day when all India was be stunned after the appearance of Prime Minister Modi's on TV and other sources of communication and made an announcement, in which he addressed citizen of India. Announcement related to the Indian currency, which had higher denomination at that time and hold status of 86% of Indian economy were demonetised with immediate effect. Overnight huge amount of money which was in circulation turned into the pile of junk. But with this traumatic shock Government also instruct that if any person who will pay the tax on his money which was unaccounted yet than Government will set them free and person who have old note can be able to change it to new note of Rs. 500 and Rs. 2000. It was huge and bold move taken by Bhartiye Janta Party Government. This was criticised by opposition as well as some responsible people of society. Even they incited public to impose pressure on Government to take back its decision. Next day whole banks and ATM was shut down no one was able to access banking services. From 10<sup>th</sup> of November, 2016 a long queue of people was stand before the opening time of bank and waiting for their term to exchange their old notes to new one. And suddenly a rush hour in the history of Indian economy was started. That was the time when lots and lots of rumor was heard by everyone and also pay attention on it like Reserve Bank of India is not capable to handle the crisis which is arises by demonetisation, Bank has not sufficient amount of money to pay their customer. Situation was very panic, it's like a stampede in public, everyone running either in the direction of Bank or for ATM.

### **Definition of Demonetisation**

Demonetisation is the step taken by government to seize the legal tender value of running currencies and new form of currencies will take the status in place of old one. Demonetisation is a radical monetary step in which the unit of currency's legal tender value turn into invalid. It is the boldest step taken by the BJP government.<sup>1</sup>

In other hand it is also define as, "the disuse of a particular metal for purposes of coinage. The withdrawal of value of a metal as money"<sup>2</sup>

Sections of Reserve Bank of India, 1934 describe the provision and process of demonetisation but exact word 'demonetisation' is not mentioned anywhere in the Act.<sup>3</sup>

There are several other medium which defined and described it in their way but the question arises that why this demonetisation was necessary for India? And what are the legal aspects of demonetisation in controlling of black money in India?

The motive behind the decision of demonetisation was curb the regular growth and constant regulation of black money in India.

After the decision of demonetisation taken by Prime Minister Narendra Modi with immediate action it's create a situation of financial emergency in India or you may say that it was like a financial surgical strike in India by BJP Government. Before this, the percentage of bad economy or black economy was amounted 75% of Gross Domestic Product (GDP).

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<sup>1</sup> What is demonetisation, what are different ways of demonetisation, and demonetisation in India by PM Modi explained, The Indian Express, Express Web Desk, New Delhi, Available at: <http://indianexpress.com/article/business/economy/what-is-demonetisation-what-are-different-ways-of-demonetisation-and-demonetisation-in-india-by-pm-modi-explained-4374115/> , (Last Visited On: 21 April, 2018)

<sup>2</sup> What is DEMONETIZATION?, The Law Dictionary, Available at: <https://thelawdictionary.org/demonetization/> , (Last Visited on: 20 April, 2018)

<sup>3</sup> Section 26, Section 26 A of the Reserve bank of India, 1934

According to Jayant Parikshit, "The currency or legal tender is issued by a nation's central bank or monetary authority. The national currency is usually the predominant currency used for most financial transactions in that country."<sup>4</sup>

The currency called demonetised when it lose its legal tender. As the announcement take place, the rampage arises between the black money stasher, counterfeiter, terrorist group and corrupt people. The stored and collected money turn into dust and useless overnight. That was day when rupees flying and floating openly and no one was running behind it.

After this, some intellects and political parties tried to pressurised government to take back its steps and re-monetise the old currencies. But government strictly stands with its decision. After one year of demonetisation, now situation is under control. Yes, it is not like as we think that demonetisation vanished corruption and black money problem from root to tip. But yes, it put deep impact on Indian economy either in right way or wrong way. When we talk about the result of this move taken by Government of India then it's realise that it is too early to reach on any particular point because the actual effect of this decision will arise in upcoming years. But it is true that before taking this decision government as well as the relevant authority should be ready. Amount which was demonetised by Government was the 86.4% of the circulating economy of India at that time. So, it is natural that the reaction of public should be harsh. But Government also provides exemption in several cases like hospitalization, women's savings, on jewelries, marriage ceremonies and other essential things.

"The evil of corruption has been spread by certain sections or classes of society for their selfish interest. They have ignored the poor and cornered benefits. Some people have misused their office for personal gain. On the other hand, honest people have fought against this evil. For years, this country felt that corruption, black money and terrorism are festering sores, holding us back in the race towards development. Terrorism is a frightening threat. Enemies from across the border run their operations using fake currencies notes. This has been going on for years. Many times, those using fake 500 and 1,000 notes have been caught and many such notes have been seized" stated by Prime Minister Modi on 8<sup>th</sup> of November, 2016 when he was addressing whole nation and announcing demonetisation. These lines explain the intention of government itself.<sup>5</sup> But if we glance on the past announcement of Prime Minister and the scheme like '**Pradhan Mantri Jan Dhan Yojana**' and other bank related schemes its make you realise that there were linked with each other and Prime Minister also accept it.

It was the bold step taken by Prime Minister and rest of the nation supported and welcomes his decision. Yes, it is true that without prior information and preparation it's become nightmare for money launder and black money stasher as well as somehow for commoners too but overall population of India supported him at that time. They stand in long queues for old money deposition and exchange it to new one. For this government provide 52 days period for cash shortage and also extent it to 30<sup>th</sup> of Dec. 2016.

This step broke the backbone of black money, counterfeits or fake note circulator's, terrorism and damage the continuity of their ill will.

When the high denomination notes were deposited in banks, government started promoting cashless economy. After that stated that demonetisation was the first nail in the coffin of the black economy and many more steps will follows in future.<sup>6</sup>

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<sup>4</sup> Jayant Parikshit, *journey towards cashless India*, Page 62 para 4

<sup>5</sup> Rs 500, Rs 1000 currency notes stand abolished from midnight: PM Modi, The Indian Express, 8 November 2016, at 8:02:53 PM, Available at: <http://indianexpress.com/article/india/india-news-india/narendra-modi-prime-minister-address-to-the-nation4364609/>, (Last Visited on: 21 April 2018)

<sup>6</sup> Arun Kumar, Demonetization 2016: Little impact on the Black Economy, Page 15 Para 2<sup>nd</sup>, HK Dua's Demonetization in the detail

One more thing, demonetisation was not new for Indian economy too. Indian Government already applied twice before 8<sup>th</sup> of Nov. 2016 so the questions which were raised by the people that whether the decision taken by PM Modi was unprecedented or uncontrolled dictatorship? Then the answer will be no because when we focus on the legal aspects of demonetisation we found there were so many rules and regulation which support this step and if we glance on our history especially after independent we found that there were two occasion mentioned when present currency of that era was demonetised that was 1946 and 1978, demonetisation had been implemented by present government of that time. But the impact of this demonetisation was not that much wider because generally common man did not aware about it because they did not use these high denominations of currency but the intention was same. The then Governor of RBI I.G. Patel in 1978 had believed that ban was applied to wreck the fund of opposition party. To curb black money circulation, Morarji Desai, Prime Minister of India in 1978 implemented a new act which is known as The High Denomination Bank Notes (Demonetisation) Act, 1978. That was the first effective step taken by any Government to prevent India from black money or unaccounted money turn as the parallel economy of white economy of country.<sup>7</sup>

Father of Indian Constitution was supported the currency change to prevent Indian economy from the agglomeration of unaccounted money which is better known as black money. According to his grandson Prakash Ambedkar that his grandfather's thesis is bring in the London School of Economics and very few people knows about this side of Dr. B.R. Ambedkar, that he recommended the change of currency in every 10 years.<sup>8</sup> So it was also predicted by our learned leader and symbol of knowledge Mr. B.R. Ambedkar that our economic will faced this problem that's why he already suggested the solution of currency change in every 10 year which is well known as demonetisation. Now, let see the legality of demonetisation.

#### **Statutory Provision**

The most asked question during demonetisation period was the action taken by Prime Minister Modi was legally or constitutional valid or not? Means under which law or provision he takes this decision? And so many intellects and learned persons said that there are no proper laws available to demonetise currency notes. So let's see some laws which is already in effect and proof the legitimacy of demonetisation in India as well as previous action related to cancellation or ban of currency notes.

The High Denomination Bank Notes (Demonetisation) Ordinance, 1946 was the first rule which was created in independent India. Its Section 4, 6, 7 and 9 impose some restriction and ban on the transaction of money. Section 3 of the ordinance said that all high denomination bank notes shall cease to be legal tender in payment or on account at any place in British India.<sup>9</sup>

According to Section 102 of the United State Coinage Act of 1965, "All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve Banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties and dues."<sup>10</sup>

If we are talking about Indian Legal Acts in that condition it is also mentioned and described under Section 26(2) of Reserve Bank of India Act, 1934, "The Central Government may, on the

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<sup>7</sup> Ananya Bhattachar, : A brief history of India pulling bank notes from circulation, Quartz India, Written on: 8 November 2016, Available at: <https://qz.com/831674/rupee-currency-demonetization-a-brief-history-of-india-pulling-bank-notes-from-circulation/> (Last Visited on: 22 April 2018)

<sup>8</sup> Shubhangi Khapre, B R Ambedkar said currency should be replaced every 10 years: Prakash, Mumbai, Published on 12 November 2016, Available on: <http://indianexpress.com/article/india/india-news-india/b-r-ambedkar-said-currency-should-be-replaced-every-10-years-prakash/> (Last Visited on 23 April 2018)

<sup>9</sup> Section 3 of The High Denomination Bank Notes (Demonetisation) Ordinance, 1946

<sup>10</sup> Section 102 of The United State Coinage Act of 1965

recommendation of the Central Board, direct the non-issue or the discontinuance of issue of bank notes of such denominational values as it may specify in this behalf.”<sup>11</sup>

Again Section 26(2) added that, “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.<sup>12</sup> Under this section, it is also mentioned under sub section A (3) that Certain Bank notes to cease to be legal tender. So, the action taken by the Government of India was not unconstitutional. It was taken under the existing law.<sup>13</sup>

Main motive is to know about the laws which are made by our law maker, enforceable by our parliament and time to time amended for the betterment and update it to make these laws more and more powerful than before. Here some other laws which constituted by parliament and our law make to control the illegal transaction of money or black money in and from India.

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, Foreign Exchange Management Authority and other money control Acts and regulations are already available but nevertheless black money turn into gigantic issue.

The Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016 was promulgated to complete the legal process of demonetisation. The Ordinance stated:

- There are three month time period provided under this ordinance to submit old note in the specified office of Reserve bank of India with declaration form.
- The ordinance makes holding, transferring or receiving these old notes as illegal, with provisions for penalty for contravention.
- This ordinance ends the Reserve Bank of India’s liability on extinguished notes and permanently ends the legal tender status of the old Rs. 1,000 and Rs. 500 notes.
- After the period of exchange is over the liabilities of the Reserve Bank and the guarantee of the Central Government towards the specified bank notes will stand extinguished.

Under this ordinance the penalty was Rs. 10,000 or five times of the face value of the SBN as fine on holding, transferring and receiving of old notes.<sup>14</sup>

The Specified Bank Notes (Cessation of Liabilities) Act, 2017 was enacted to provide in the public interest for the cessation of liabilities on the specified bank notes. In this act, it is mentioned that if any person found guilty of the violation of Section 4 which is related to the exchange of specified bank note then they will punished with the fine of Rupees Fifty Thousand. And in case of violation of Section 5, which is related to prohibition on holding transferring or receiving specified bank notes the provision of punishment is penalty which can extent to ten thousand rupees or five times the amount of the face value of the specified bank notes involved in the contravention.<sup>15</sup>

The Indian Coinage Act, 1906 is related to the law of coins and mint. Under section 13 of the Act the legal tender of the coins are mentioned. Section 20 mentioned the power to cut the counterfeit or fraudulently defaced coins and this kind of coin can be returned to the tenderer, who shell bear the loss of damaged coin but in case of silver coin, it will received and pay for that coin.<sup>16</sup>

The High Denomination Bank Notes (Demonetisation) Act, 1978 the preamble of the High Denomination Bank Notes (Demonetisation) Act, 1978 replace the ordinance of the same act. It stated, “availability of high denomination bank notes facilitates illicit transfer of money for financing transactions which are harmful to the national economy or which are for illegal purposes and it is

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<sup>11</sup> Section 24(2), Reserve Bank of India Act, 1934

<sup>12</sup> Section 26(2) of the Reserve Bank of India Act 1934

<sup>13</sup> Section 26A (3) of Reserve Bank of India Act, 1934

<sup>14</sup> The Specific Bank Notes (Cessation Of Liabilities) Ordinance, 2016

<sup>15</sup> Section 6 and 7 of The Specified Bank Notes (Cessation of Liabilities) Act, 2017

<sup>16</sup> Section 13 and 20 of The Indian coinage Act, 1906

therefore necessary in the public interest to demonetise high denomination bank notes.”<sup>17</sup> The blue print of this Act was prepared by the Prime Minister Morarji Desai, Finance Minister Hirubhai M. Patel and Reserve Bank of India Governor I G Patel and introduced by The President of India Neelam Sanjeeva Reddy. It is amended once in 1998.

Income Tax Act, 1961 Section 40 of the Act, express anti tax evasion measure which disallowed certain expenses if they are not in compliance with the guideline laid down by Income Tax Act, 1961.<sup>18</sup>

There are so many countries in this world who already embraced this financial experiment to prevent their economy from black money issue. For them it is not a nightmare like Indian means they regularly or already practicing it. These countries are Nigeria, Myanmar, Australia, United Kingdom, North Korea and many more.

### **Impact of Demonetisation**

Impact of the demonetisation was drastic in every area of country like social, political, economical and legal too. After the proclamation of demonetisation, Government allowed people of India to withdrawal only Rs. 2000 for next three month people facing great hassle. But with this bold step Government also provide some exemption in certain condition like marriage, hospitalization but that wasn't sufficient relief. Only Rs. 2, 50,000 issued by bank on marriage invitation, which wasn't adequate for whole ceremony. If talk about medical service or health care sector, they refused to provide service without legal tendered notes. The issue of Mr. Sidharamaiya, Union Minister faced the hassle during receiving the dead body of his brother. Now, just imagine the condition of Common man at that time. Now, the status of Indian economy during the demonetisation was most important because overall this step taken by government as the treatment of a serious disease called black money. Reserve Bank of India played the centric role to curb black money transaction in India. After taken this decision almost every bank either public or private they heartily welcome the action of demonetisation because it's also help them to recover not completely but few bad loans. According to Central Board of Direct tax (CBDT), Income tax department reported that before this action only 4% tax payer file their returns but after it increase into 25% with advance tax collection up by 41% which is remarkable change in economy too.<sup>19</sup> After all hassle the people of India appreciate and support the bold step of BJP Government and Prime Minister Modi and his socio- economic reform especially youth of India either they are rich or poor, Educated or uneducated young or old. Also, arises the requirement proper and strict legal provision related to money control.

### **Conclusion**

Everyone says that the decision of demonetisation was taken in hurry without proper preparation and result was irregularities and trouble which was faced by public but it is also a fact that the secrecy and sudden attack strikes some people specially money launder and black money stasher. Question related to legality of demonetisation is just an excuse because existing provisions are sufficient for this action. Yes, it also drags the attention of legislation and judiciary toward the constitution of separate and sufficient law regarding black money and demonetisation of currency. But overall it is too early to predict the consequences of this decision taken by government. It will be mile stone decision taken by the government of India in the history of Independent India. Now, it can be called as Swachh Bharat Abhiyan or Financial Surgical Strike.

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<sup>17</sup> Swati Deshpande, Legal challenge to govt's demonetization decision can't be sustained, say experts, Nov 11 2016 : The Times of India (Mumbai), Available at: <http://epaperbeta.timesofindia.com/Article.aspx?eid=31804&articlexml=Legal-challenge-to-govts-demonetization-decision-cant-be-11112016004026> (Last Visited on: 25 April 2018)

<sup>18</sup> Income tax Act, 1961

<sup>19</sup> Demonetisation effect: Income tax returns rise by 25%, collections up by 41%, Business Today, September 25, 2017, Available At: <http://www.businesstoday.in/current/economy-politics/demonetisation-effect-income-tax-return-rise-by-25-percent-collections-up-by-41-percent/story/257943.html> (Last Visited on 26 April)