DEMONETIZATION IN INDIA: IDEALISM VERSUS PRAGMATISM

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Abstract: Indian economy has been witness to neo liberalism and ease of doing business making it an attractive investment destination, whereas on the other hand, the dominance of the informal economy has implications for laws relating to currency management and also shows the raison d' etre for India's cash based economy. In the backdrop of lack of financial literacy and requisite infrastructure coupled with proliferation of a parallel economy by unaccounted money and counterfeit currency notes, the government displayed an instance of its decisionism by bringing about the demonetization decision.

The objective became not only a surgical strike on such parallel economy and creating a cashless economic model, but also restoring the balance in GDP numbers after a dramatic phase of economic disequilibrium. While some sections of the media have highlighted debates and surveys about the timing of the government's move along with the consequent discomfort to ordinary citizens, less emphasis has been given to linkages of demonetization with other long term trends such as inconsistencies of GDP calculation, legal issues around demonetization and reliability of data from the Bretton Woods institutions. Hence, the motivation behind the present paper is analyzing this gap in literature along with issues such as data protection and financial literacy.

A holistic analysis of the aforesaid trends reveals the necessity for more uniformity in GDP calculation with respect to impact of demonetization and the limitations in relying on econometric analysis by the Bretton Woods institutions coupled with lack of financial literacy and uncertainty around some legal aspects of demonetization. To fulfill the aforesaid objectives, the researcher follows the doctrinal mode of research by relying on statutes and cases as primary sources and books, journals, newspapers, magazines and websites as secondary sources.

Keywords: Neo Liberalism, Economic Disequilibrium, Parallel Economy, Currency Management.

Introduction: In any economy commercial transactions are effected through money, more so for emerging economies. All such transactions are in the nature of commercial contracts, implying that, starting from big ticket investments made possible by financial investors like Private Equity (PE) or Venture Capitalists (VCs) to the simplest of transactions like booking a cab to reach a certain destination, monetary value imparted through flow of currency in an economy becomes an indispensable element. Further, such instances also show that dealings in currency belonging to a particular denomination over a consistent period of time, show the faith reposed by the stakeholders in that currency. Also, apart from currency, there has never been an alternative that can offer the security of traditional money with the convenience of financial institutions that permit worldwide commerce [1]. This also helps to sustain a balance and stability in an economy with regard to currency dealings. Economic globalization through its many facets reveals to us that the money or finance sector has come to command in the global economy [2]. Currency regulation and well being of the economy are the prerogative of the central government. It is a key determinant of a government's power to exercise economic sovereignty. The fact that more than eighty percent of transactions in Indian economy are through liquid cash is testimony to the fact that any rule or policy crafted by the central government to regulate currency exchanges must be based on certain benchmarks. One such criterion must be evaluation of the said rule or regulation on public policy standards. Besides being indispensable for general well being, currency has important implications for econometric analysis in relation to concepts such as inflation, GDP and national income.

In the context of India, especially after the 1991 economic reforms, the role of currency in analyzing economic trends in the economy has been on the rise having implications for inflation, GDP and national income for India. For instance, money supply and inflation bear a proportionate relationship for the Indian economy. Similarly, supply of money in the Indian economy at a healthy rate shows that the rate of creation of value of goods and services in a particular year will be relatively higher as opposed to those phases when such supply of money is inconsistent. GDP creation has direct proportionality with supply of money. Further, it has been widely documented that expansion in the supply of money in a period of increasing desire to hold money, keeps rate of interest under check and thereby induces investment activity resulting in primary increase in income [3].

It is also pertinent to mention that adequate currency circulation in an economy has important consequences for the money market in that economy. Therefore, adequate flow of money in the Indian economy is also an indicator of sustenance of the Indian money market mechanism wherein borrowers obtain short term funds whereas creditors are able to recover the money lent. A natural extension of this logic is that enough money supply in the Indian economy is sine qua non to facilitate new models of business or entrepreneurship. Therefore, stability in growth of business and job creation is also dependent upon adequate circulation of money.

Demonetization: Objective and Benchmarks: In recent past, significant changes on the economic front have taken place both globally as well as nationally which reflect lax regulatory standards on the economic front. Therefore, before understanding the purpose of demonetization, it becomes imperative to place demonetization within the framework of landmark economic events such as the Euro zone debt crisis or the 2008 financial crisis. Though, at first the aforesaid instances seem unrelated to currency regulation, there lies a common thread of similarity with regards to all of these events. Firstly, each of the aforesaid events was an outcome of loopholes existing in the prevalent economic system owing to lax regulatory framework. Secondly, the crisis perpetrated by these instances had lasting impact on the respective economies.

The Black's Law Dictionary defines demonetization as withdrawal of a particular value of money [4]. The government's recent demonetization move was framed to pursue the noble agenda of combating black money, counterfeit currency and terrorist funding which existed way before certain currency denominations ceased to become legal tender. Though there can be no doubt about the noble objectives sought to be achieved, it remains a contentious issue whether the government possesses the requisite infrastructure to implement the note ban measure and ensure demonetization does not remain a mere rhetoric. Thus, the aforesaid first requirement of lax regulatory framework stands fulfilled in the Indian context. Also, when suddenly high value currency notes were stripped of their legal status, it dented the economy's prospects towards a high rate of economic growth, thereby necessitating reports by multilateral institutions such as World Bank along with reports by government agencies as recent as 2017, showing the lasting impact on a country which is on its way to become the world's fourth largest economy and overtake Germany in 2022 [5]. Because demonetization is a landmark economic event in the history of modern India which has long term societal implications too, an analysis of its goals becomes imperative in the light of established facts in the discipline of economics and public administration. These facts act as the benchmarks against which the phenomenon of demonetization must be judged.

Firstly, economics is about people and their access to resources, therefore in the long run any sound policy for India as a whole would need to acknowledge diversity of groups and their access to resources [6]. The initiative to strip high value currency notes of their legal tender status affected the rich and the poor with regards to availability of liquid cash for them to pursue their daily economic transactions. This becomes significant in light of the fact that India still suffers from lack of financial inclusion and literacy [7]. It is pertinent to note that when demonetization took place in 1978, the economic impact was comparatively lesser because the value of currency was also less which becomes evident in an analysis that a thousand rupee note then would be worth fifty thousand rupees now [8].

Hence, the risk that demonetization could increase probabilities of a large segment of people being deprived of liquid cash increases manifold. The second benchmark is the fact that greater financial activity would contribute to market efficiency by making markets more liquid and complete [9]. But, it is also true that inconsistency in previously held beliefs about market value leads to a cautious approach on the part of the government authorities. A case in point is the stricter banking regulations introduced in the US in the aftermath of the 2008 subprime crisis, the genesis of which was the 'too big to fail' approach adopted by many financial institutions at the time. Similarly, in the Indian context, the Satyam scandal and the Sahara fiasco was enough to initiate the reforms to India's corporate law framework in the form of the Companies Act, 2013.

In all of these instances, the inconsistencies were the occurrence of the financial crisis in US, and the corporate scandals in India, which laid the groundwork for future reforms. Though such reforms are debatable till today, the process of change was initiated because of such events. Similarly, in the Indian context, the inability to deal with black money, counterfeit currency and terror funding effectively, necessitated a change in status quo, and brought about the note ban development, though the utility of such an initiative has been subject to intense debate. This brings us to a very important assumption in the context of the neo-liberal economic reforms. The neo-liberal relational field is, in fact, far too complicated for her to ever be in full possession of the relevant facts when making a decision [10]. In the present context, this simply means that though the government knew the immediate consequences of the demonetization move, it was not hesitant to undertake such a bold move as the trajectory since the 1991 reforms till date has lead many commentators to term India's economy as a neo-liberal one.

Apart from economic benchmarks, the government's decision to strip high value currency notes of their legal status also is testimony to a political idea, decisionism, which has its roots in German history, when the Nazis were praised due to their ability to take bold decisions. Thus, decisionism implies a particular stance taken, which is perceived to be justified at the time in accordance with the response to a particular crisis. Decisionism is an outcome of a deep craving for firm decisions by the political authority in a situation where things are perceived to be adrift [11]. It must also be noted that under this concept, it is immaterial whether the actions by the said political authority are backed by a realistic assessment of the situation. According to the author, the government's demonetization move is one which no doubt is a bold decision; however, debates exist till date with regards to the timing and preparedness of the government before the decision. Thus, the wave of decisionism is reflected in the government's latest move for regulation of currency exchanges, even though there is lack of unanimity about the consequences from such decisionism. In the author's view, the demonetization move must be judged in light of the aforesaid benchmarks, not because it will help one to arrive at a straight jacket affirmation or negation of the government's decision, but because it provides us with benchmarks in the midst of which the demonetization exercise must be placed.

Regulatory Framework: *Judicial Trends:* A critical analysis of the government's move requires a thorough introspection into the legality of the government's move. Therefore, the objective of this part shall be to acknowledge the government's move in light of the relevant case laws and the fact that many businesses were shut down leading many to claim violation of fundamental right to trade and commerce. In *Bishambhar Dayal Chandra Mohan v State of U.P,* it was laid down that law is an Act of Parliament or of a state legislature, a rule, or a statutory order, having the force of law [12]. Hence, the notification regarding the demonetization drive is accommodated within this broad definition. Further, the constitutionality of demonetization has been subject to scrutiny on the basis that it violated the right to trade and commerce and right to property without adequate compensation [13].

A reading of some judgments of the Supreme Court shows the adherence to upholding fundamental and constitutional rights and liberal interpretation favoring social welfare. For instance, *Namit Sharma v Union of India* emphasized assessing the impact on fundamental rights when a constitutional provision is challenged [14]. Similarly, *DDA v Joint Action Committee, Allottee of SFS Flats* laid down non interference of court in policy matters unless the policy is unconstitutional, or contrary to statutory or larger policy, or the relevant authority acted ultra vires its powers. In *State of Gujarat v Mirzapur Moti Qureshi Kassab Jamet,* it was held a restriction on fundamental right to freedom of trade and commerce is not unconstitutional unless the restriction is not absolute prohibition [15]. In *State of Bihar v*

Maharajadhiraja Sir Kameshwar, it was held acquisition of money by the state serves no public interest [16].

With regard to economic policy matters however, the apex court has often adopted a hands off approach. In *Jayantilal Ratanchand Shah v Reserve Bank of India*, where the constitutionality of the demonetization exercise in 1978 was challenged, such a decision was upheld as it was taken in public interest to curb down on black money [17]. Similarly, in *SIEL Ltd v Union of India,* the apex court held reasonableness of an economic legislation must be determined in favor of the state as opposed to a legislation violating fundamental rights [18]. In *N.D Jayal v Union of India,* it was held that in relation to economic policy matters, the courts cannot be the proper forum, unless there is explicit violation of constitutional or statutory provisions [19]. The same reasoning was also followed in Balco *Employees' Union (Regd) v Union of India and Ors,* where the court held that economic policies are not amenable to judicial review unless they are contrary to statutory provisions or the constitution [20]. With regard to the recent demonetization move, the recent trend by different high courts has also been in line with the view endorsed by the above decisions. For instance, the Madras, Karnataka and the Bombay High Courts have dismissed PILs on grounds of the note ban being done in public interest which has raised questions about the hands off approach of the judiciary in economic matters [21]. Such verdicts have led commentators like Prof (Dr.) R.N. Madhava Menon to endorse the view that such a trend reflects a 'grey area' of economic policy cases [22].

Legislative Framework: **RBI Act, 1934:** A close observation of the preamble to the Act shows that among the key goals, one is regulation of issuance of bank notes and the other being framing of a modern monetary policy framework. Section 26(2) states that the Union government is vested with the power to strip the legality of any currency note issued by the RBI which must recommend so to be done to the central government. Section 7 explicitly mentions that the central government may from time to time give directions to the bank after consultations with the governor to deal with matters of public interest.

Payments and Settlement Systems Act, 2007: Online payment transactions can occur through a number of methods like electronic banking, credit and debit card payments, electronic and mobile wallets, and even most recently Aadhar based payment systems. The legal regulation for such payment modes is through the Payments and Settlement Systems Act, 2007. These methods qualify as payment systems as they facilitate payments between payers and beneficiaries through a payment or a clearing service. Thus, services of PayTM, MobiKwik and other such payment modes qualify as payment systems.

Akin to requirement of license from RBI for commencement of banking operations, under this statute, any entity which operates a payment system must apply for authorization. Examples of entities which have obtained permission from RBI are American Express Banking Corporation and Airtel M Commerce Services Ltd with respect to their mobile wallets. The RBI has issued Issuance and Operation of Prepaid Payment Instruments in India (Reserve Bank) Directions, 2009, which classify payment instruments into broadly two kinds; those requiring RBI authorization and those which do not require so. Thus, a payment instrument which can be used at any point of sale (PoS) which accepts cards requires mandatory RBI approval. Post the demonetization drive, the RBI has constantly issued a series of guidelines and directions to clarify the position on regulation of such instruments. For instance, recently, it has been clarified that customer liability shall be limited in case of unauthorized electronic transactions in their bank accounts. Further, the customer shall have no liability if the bank's security system breach is reported within three days of receiving notice of the breach by the bank. The above is part of a circular issued by the RBI which also deals with customer grievance redress and no liability in cases where contributory negligence exists on the part of the bank irrespective of reporting by the customer. Further, banks are required to credit the amount in the unauthorized transaction within ten days of reporting by the customer. Also, banks must provide customers with wide communication channels such as website, phone banking, email, and toll free helpline [23]. The RBI has issued revised master directions with regard to usage of Prepaid Payment Instruments (PPIs) and has strengthened norms regarding the Know Your Customer (KYC) rules for electronic wallets mandating them to comply with KYC within a year of opening customer accounts. Also, PPIs have been directed to mandatorily maintain log of all transactions for the last ten years and report any suspicious transactions to the Financial Intelligence Unit India (FIU-IN), which looks into money laundering cases [24].

Black Money and Imposition of Tax (Undisclosed Foreign Income and Assets) Act, 2015: This Act applies to both natural and legal persons. For juristic persons, the test for applying the legislation is the place of effective management (POEM). A one time compliance window is to be provided to persons who disclose income from illegitimate sources within the stipulated time. Different types of penalties and punishment are incorporated based on the seriousness of the offence. The Central Board of Direct Taxes (CBDT) is the nodal agency along with other income tax authorities.

Specified Bank Notes (Cessation of Liabilities) Act, 2017: This piece of legislation was introduced by way of an ordinance initially with the goal of halting use of erstwhile specified bank notes in public interest after expiry of the stipulated time granted by the government. This remains also the primary objective of the Act as well. Some key provisions are discussed hereinafter. The language is strict so far as it prohibits any person from knowingly or voluntarily being engaged in holding, transferring or receiving any specified note after the grace period [25]. Few exceptions have also been carved out like holding of notes under the directions of court with respect to any pending case, or for the purposes of study, research or numismatics [26]. Further, contravention of section 5 would result in fine of ten thousand rupees or five times the face value of the specified notes, whichever is higher. The Act also clarifies that any declaration or statement which is false, or an omission to make a material statement is punishable with a higher fine of fifty thousand rupees, or five times the face value of the specified notes, whichever is higher. Fines can be imposed by the court of magistrate of first class or court of a metropolitan magistrate.

The analysis above shows that legislature and judiciary showing inclinations in one direction which does not augur well for the common man because, for justice to thrive in its truest sense, it is imperative that it be ensured with the institutions in place, both legislative and judicial [27]. However, before jumping to conclusions, a holistic assessment of the government's note ban move can only be complete after a thorough analysis of the positive and negative trends that have emerged since. Therefore, the analysis must no longer be confined to the letter of the law, but through evidence, must also extend to the implementation of the spirit of the law.

Prevalent Trends: In the immediate aftermath of demonetization, newspapers and magazines carried news items which related to both positive and negative impacts of the government's move. Some of the positive trends observed were, seizing of significant amount of demonetized cash in places like Bengaluru, Punjab and Kolkata [28]. The Economic Survey 2016-17 also predicted that the government's demonetization drive would bring long term benefits to the economy [29]. There was also a large scale proliferation of point of sale (PoS) machines, digital payment gateways and use of financial technology, coupled with the launch of the Income Tax department's 'Operation Clean Money' wherein unaccounted income worth Rs 9334 crore was detected in pursuance of the objective of detection of flow of unaccounted money to banks post demonetization [30].

Some of the negative trends were repeated fluctuations in RBI's withdrawal limit from ATMs, deaths caused in queues outside ATMs, cash crunch for daily economic transactions, which gave the impression that the government was ill prepared for this note ban exercise. However, beyond these issues lie deeper issues which require delving into empirical evidence and scholarly works. These issues are latent in nature, but which have the potential to prevent one from understanding the true intent behind demonetization.

Proliferation of Financial Intermediaries: One of the principal objectives with which demonetization were introduced was to reduce dependency on cash transactions. To pursue the goal of a cashless economy, the government advocated use of payment apps, e-wallets and other such financial technologies, which in turn has lead to proliferation of alternate payment methods and instruments, broadly categorized within the term 'fintech industry', an abbreviated term for financial technologies.

When high value currency notes ceased to have legal effect, hapless citizens had to resort to use of alternate payment methods such as PayTm, MobiKwik and also e-wallets and surveys are testimony to this [31]. This sudden rise in alternate payment methods has often been attributed as one of the merits of demonetization [32].
However, the author respectfully disagrees with the aforesaid conclusion for three reasons. Firstly, it must not be forgotten that India being a cash-based economy where more than eighty percent of transactions are in cash, the transition to digital transactions in a matter of few days is not because of realization of benefits of cashless transactions, but because of sheer desperation to continue with daily economic activities in absence of Rs 500 and Rs 1000 notes. It will take significant time for the country to come to terms with the situation in developed countries where ten percent of the transactions are in cash. This, despite the fact that today people are increasingly using information and communication technologies leading to rise of technological innovations, such as internet and mobile payments [33]. Secondly, even if a sudden spurt in use of apps, mobile wallets and e-wallets can be accepted as benefit from demonetization, it remains a harsh reality that till date financial intermediation accounts for 20 percent of the economy [34]. This is despite the fact that studies show adoption of alternative methods for money transfer is beneficial to all [35].

Though this figure is higher than most developing countries, that statistic may not be enough for the current scenario. A 2013 study classified countries into four categories based on prevalence of non cash transactions [36]. India was placed in the 'inception' category, implying only 2% of consumer payment transactions are done using non cash methods [37]. Lastly, with the advent of new payment methods, the risk of customer data being comprised increases manifold. It is common knowledge that secrecy in digital transactions is a myth, and it has been widely documented that many of the payment apps and e-wallets which have sprung up suddenly, collect a lot of sensitive customer data such as internet history, Wi-Fi network information, call logs, and credit and debit card details without the customer's authorization.

In other words, data protection becomes a key issue, and the problem is compounded further due to a lack of coherent data protection law, despite the presence of the Information Technology Act, 2000 and the amendment Act of 2008. This view has also been endorsed by Pawan Duggal, Supreme Court advocate and India's leading expert on cyber security laws [38].

A recent instance of this has been compromise of customer money and data due to glitches in MobiKwik's payment system. It must also not be forgotten that even the technologically savvy fall for different hacking methods and data theft [39].

Finally, it must be remembered that the RBI has been slow in framing a consumer's charter for general banking transactions, let alone similar document with regards to digital transactions. This coupled with the ambiguity over the appropriate regulatory framework over different financial intermediaries has made matters worse for the pursuit of a cashless economy. In addition to the above, attitudinal factors, infrastructure and data connectivity are issues requiring resolution [40]. However, these issues are debated till date, let alone at the time of demonetization. Though it can be said that movement from cash based transactions to a technology driven payment network is revolutionary, yet pragmatic thinking convinces us to resolve the critical issues highlighted above [41]. This would require concerted efforts from all stakeholders, including the lawmakers who need to provide a legal framework that covers such services.

Lack of Financial Literacy: Financial literacy is a broad term which encompasses awareness and putting to use concepts such as inflation, compound growth rate, fiscal deficit, along with awareness of different financial products and instruments. Financial inclusion also includes accessibility to banking services for all and availability of credit facilities in affordable manner. The problem with the demonetization exercise is that people were compelled to resort to alternate payment methods without getting the opportunity to understand the efficacy behind the move. Further, to make matters worse, the looming problem of lack of financial literacy can become a major roadblock towards implementing

the note ban exercise as justified through different surveys. Thus for instance, a recently concluded Global Financial Literacy Survey by Standard & Poor (S&P) shows that Indians' understanding about money is below the global average [42]. Similar surveys bear testimony to this fact and bring out clear statistics that cashless transactions constitute a minuscule proportion of the Indian economy where the share of unorganized sector in the economy dependent on cash is more than eighty percent.
Some prominent surveys which buttress the aforesaid point are the World Bank Global Findex data, according to which among the poorest households, less than two percent have access to bank accounts [43]. Similarly, the Financial Inclusion Insights Survey highlights that only ten percent of adults are aware of digital transactions [44]. Also the Aviva Plan India Plan survey finds out that Indians lack the financial discipline to secure their future sustenance [45]. On the other hand, statistics point to some silver lining as well. For instance, post the demonetization drive, the southern states showed more stability due to more banking penetration, as compared to other parts of India [46]. Also RBI data points to the fact that rise in use of mobile wallets have been significant [47]. Overwhelmingly, there is extant literature to suggest that studies on financial literacy are more inclined towards supply of financial services by institutions rather than demand for the same by the consumers. This is a serious limitation because merely giving access to financial services does not always result in use of such services [48]. The problem is compounded due to lack of proper econometric analysis [49].

Even though it is positive to note that the government has engaged in opening of Jan Dhan Accounts, or encouraged use of payment apps like BHIM, the reality is that, an exercise of convincing people about the supposed benefits of a cashless economy at the cost of hardships being endured by the informal sector, may end up affecting the sector in the long run, especially since the switch to cashless transactions will incur significant costs for the people in general and the government. Therefore, ideally the sudden focus on digital transactions should have been much before demonetization for people to get started to being accustomed with this new dominant economic thinking. Further, the fact that the idea of a cashless economy was mooted as an afterthought and not initially signals the hasty approach adopted. In the run up to transitioning India into a new kind of economy, the social accountability quotient of the government to its citizens is also at risk because the premise of social accountability is to enable an environment in which citizens can exercise their voice which is not possible when cashless economy is pursued by the government in a compelling manner [50].

GDP Calculation Flaws: GDP is an important indicator of the health of the economy and also an important tool for calculation of national income of an economy [51]. The value of goods and services in a particular year is dependent upon the functioning of the economy through the functioning of the different sectors in that economy, which includes not just the bigger sectors such as telecom, aviation, software, pharmaceuticals, but also the small industries such as handicrafts and daily wage workers who work in sectors like construction. When demonetization led to ceasing of legal tender of high value currency notes, the impact on such small sectors and workers was perceived to be significant. In fact, it led commentators to comment that a critical appraisal of the recent demonetization move would involve an assessment of its impact on various dimensions such as GDP growth [52]. Other commentators have also emphasized on linkages between GDP and currency [53]. Further, there has been substantial literature pointing towards the necessity of calculation of cash to GDP ratio in assessing demonetization's impact [54].

However, extant literature points to us that in India, calculation of GDP still remains flawed due to use of contentious tools for calculation. The net result is that too often differing opinions about accurate GDP predictions and real growth abound in the discussion about GDP rates for the Indian economy. Also, what is problematic in this context is that, the extent of impact on GDP because of demonetization and because of the impact it had on businesses is debatable to this day, though it is settled that there was negative impact on GDP substantially. Thus, for instance, it has been argued that GDP calculation is flawed as it does not take into account factors like improvement in product quality, happiness despite them being important aspects of development [55].

It has also been documented that there has been a tendency to inflate estimations and the methodology adopted give rise to a wide range of disparate conclusions [56]. Also, there is lack of clarity with respect to growth rates due to change in modes of GDP calculation [57]. Literature also points to inconsistencies in GDP estimates put forward by the Central Statistics Office (CSO) [58]. This problem is compounded by weak data collection systems in India [59]. The above have led commentators to observe that there are existing limits on the output of a nation as measured by GDP [60]. Hence, with so many inconsistencies in GDP calculation coupled with the impact on businesses in the informal sector, the actual loss suffered becomes difficult to calculate with accuracy [61]. The net result would be that damage control measures post demonetization which target businesses which suffered losses would also be inadequate. Further, econometric analysis would also suffer because of faulty statistics generated with regards to the cash to GDP ratio.

In the end, such illustrations confirm what has been established by empirical evidence that economic policy uncertainty and GDP growth are inversely proportional [62]. Ultimately, the common man running a small handicrafts store, or a kirana store, or being a daily wage worker, is bothered about cash in his hands and least about errors in GDP calculation. But, the policy makers and economists need to reduce the aforesaid inconsistencies so that adequate measures which are taken to put the businesses and the common man on track can yield results. Further, the government runs a risk of making the people falsely believe in merits of demonetization if it itself proceeds on the basis of faulty assumptions and actions. This can lead to a situation where dominant economic ideas impact societal views of social change [63].

Reliability of IMF and WB Data: The Breton Woods institutions have led and influenced the dominant economic thinking of free market reforms advocated by the Washington Consensus both among developed and developing countries. These institutions use sophisticated econometric tools and indices to present a realistic assessment of any prevailing economic situation at a certain time. When the government removed the legal status from the high value currency notes, extensive surveys given by these institutions were relied to justify the move. Demonetization was portrayed as a short term pain for a long term gain. However, it must not be forgotten that India, a neo liberal economy has to be placed in the domain of a trade related market friendly paradigm which advocates the neo liberal agenda [64]. This has necessitated India's excessive dependence on their data. Also, recent literature has scope for raising eyebrows over reliability of the data generated.

For instance, it has been documented that many tools used by such multilateral institutions remain subject to inconsistencies on account of practical issues of measurement [65]. Similarly, IMF economists themselves have been at the forefront in criticizing IMF policies as they have increased inequality, instead of growth [66]. Yet other literature points to the policies being subject to criticism [67]. Literature also points to the criticism of World Bank's data on grounds of limited data and simplistic methods which cover both developed and developing countries [68]. The author argues that in view of the above, though empirical analysis by such institutions of India's demonetization may not necessarily be faulty, it is enough to raise eyebrows with regards to blind reliance on the same, especially when short to medium term negative impact has been predicted but estimates suggest that it could take much longer to remonitize the economy [69].

Legal Uncertainties: Overwhelming econometric evidence suggests the government's demonetization was an ill prepared move. However, some commentators have questioned the government's move with regard to violation of statutory provisions, namely the RBI Act, 1934. For instance, section 26 of the Act provides for RBI's liability to pay equivalent value of banknotes [70]. In this regard, the sudden withdrawal of the said notes without making adequate arrangement for alternate notes becomes legally questionable. Another issue of concern has been that despite the creation of a Special Investigation Team (SIT) to address issues of black money stashed in foreign banks, the reports have not been made available in public domain, thereby depriving citizens and regulators the opportunity to work towards a policy framework post demonetization [71]. The Supreme Court has also been critical of the note ban because of lack of clarity on returning of new notes after acceptance of old notes in deposits [72].

The demonetization drive has also led some commentators to analyse the move on the touchstone of principles of judicial review based on the challenge to the constitutionality of the demonetization move, violation of right to freedom of trade and commerce under Artcle 19(1)(g) of the Indian Constitution, and whether the RBI has acted ultra vires its powers in accordance with the principle of excessive legislation [73]. With regard to delegated legislation, it is trite law that delegation is permissible as long as essential functions are not delegated. A cursory glance of section 26 of the RBI Act, 1934 shows that the government has power to remove the legal tender status of currency notes only on recommendation of the central board of the RBI. Hence, no question of excess delegation arises. Theoretically, it is permissible to challenge demonetization under Article 19(1)(g) because note ban affected India's cash based informal economy the hardest. But, 'reasonable restrictions' under Article 19(6) and case law gives wide latitude to the state so far as economic legislation is concerned [74]. The apex court has also in *Bishambhar Dayal Chandra Mohan v State of U.P* held that reasonable restriction must take into account interest of the public [75]. In the present context, such interest would mean not disturbing the stability in the informal sector without adequate preparation such as laws and necessary infrastructure. Further, the constitutionality of the demonetization move can also be challenged on the basis of the decision in *State of Gujarat v Mirzapur Moti Qureshi Kassab Jamet*, which held that where the restriction is not a total prohibition but partial restraint, it can be valid [76]. In the present case, entire businesses in the informal sector were shut down, which conveys the fact that the note ban move was more than partial restraint. However, at the time of writing, the apex court has not yet decided on the constitutionality of the demonetization move, which contributes to legal inconsistencies.

Apart from the aforesaid issues, there are practical issues concerning operation of the Jan Dhan Accounts, usage of Aadhar for electronic payment transactions, issues of data theft, and reported increase in digital black economy. For instance, it has now been reported that there is surge in usage of digital currency, despite RBI's caution and hence increasing risks for digital black money [77]. Also, electronic wallets can become the next tax havens with which people illegally avoid their tax obligations [78]. There exists also callousness of the Ministry of Corporate Affairs (MCA) to track the shell companies which generate black money [79]. Further, issues relating to lack of adequate data, and loopholes in existing RBI circulars compound the problem. With regard to usage of Jan Dhan Accounts and usage of Aadhar for payments, it has been reported that these accounts are being used for laundering demonetization linked deposits in the absence of strict RBI directives, in addition to the fact that the proliferation of counterfeit Aadhar entries in the database shows that the database is poorly verified and there is lack of regulatory oversight [80].

Concerns have also been expressed regarding usage of outdated accounting methods and lack of clarity and data on key issues such as estimates of demonetized notes [81]. Further, there have been instances of announcements by RBI regarding notes of new denomination, but no clarity has been in existence since [82]. Despite the benefits justified of demonetization by the government, important questions relating to a contingency plan prior to withdrawal of circulation of currency notes and new security features have been evaded [83]. Lastly, even though the RBI has issued circulars and guidelines regarding regulation of alternate payment systems, some flaws have also been identified. For instance, there have been examples where many electronic wallet companies have not been diligent enough leading to delay in pursuance of grievances of the customers accompanied by lack of minimum standard of reasonableness to be observed by the payment wallet companies in relation to data breach [84].

Demonetization: Practicality or Wishful Thinking?

The broad goals of demonetization have been to affect substantially the generation of black money, fake currency and terrorist funding. Creation of a cashless economy was presumed to be a fringe benefit, the utility of which has been struck down by overwhelming evidence against such presumption in the analysis above. Hence, this part shall evaluate the remaining three objectives in light of relevant literature, both doctrinal and empirical. Firstly, with regards to black money, one of the issues is the risk of slow legal system which can allow people with unaccounted money to take their chances [85]. Secondly, statistics show that a substantial portion of such wealth has been hoarded by way of benami

properties, gold and foreign tax havens [86]. Also there is literature providing evidence that cash component of the black money is only 5% [87]. Thirdly, alternate channels of generating unaccounted wealth still exist in the form of under or over invoicing in overseas transactions to, usage of black money in politics to, routing black money through tax havens as foreign investments [88].
Lastly, there is lack of data on serial numbers of notes, which were deposited, thereby making it impossible to trace the legitimacy of the money [89]. With regards to terror funding and fake currency, literature has emphasized that demonetization may not be enough for a complete crackdown on such methods because fake currency can again be generated by counterfeiters [90]. Secondly, a significant amount of fake currency also makes its way through many porous borders that India shares with countries like Bangladesh, which demonetization has not addressed. A study by the Indian Statistical Institute, Kolkata points out that the proportion of fake currency demonetized is less than one percent of the currency demonetized [91].

Conclusion: An analysis of the relevant literature shows that though the legality and the intent behind demonetization cannot be questioned, such a major exercise which has widespread impact on the Indian economy must have been implemented with some sensibility at the start. The author says so for two reasons. Firstly, when demonetization occurred in 1978, the circulation of high value currency notes was comparatively very less as opposed to today, and therefore the impact on the common man was relatively less. Secondly, lack of preparedness on account of adequate financial literacy, regulation of financial intermediaries and practical issues related to alternate sources of black money and corruption, because of absence of infrastructure and the relevant regulatory framework is a hurdle if the goal is to turn India into a cashless economy akin to developed countries. The financial inclusion spurred by the demonetization apart, India has a long way to go before the benefits of demonetization really trickle down to the common man.

Moreover, the analysis of long term trends reveals two important findings. Firstly, few long term trends such as financial literacy and financial intermediaries hold significance for the ordinary citizens, whereas issues such as GDP calculation flaws, realistic assessment of demonetization objectives and reliance on data from multilateral institutions hold more significance for the executive with respect to policy making and econometric analysis. Addressing these issues along with those mentioned above will lead to implementation of the demonetization exercise not only in accordance with the letter of the law, but also the spirit of the law, which can help address questions raised over the legitimacy of the demonetization exercise. In light of the following suggestions may be made:

- Enactment of a strong data protection law which could have provisions for cyber risk insurance in case of compromise of data. Such provisions must also be incorporated into the draft Prepaid Payment Instrument regulations, 2017 issued recently by the Ministry of Electronics and Information Technology.
- Separate focus must be made on preparation of better economic indicators regarding India's informal economy and GDP estimates.
- Apart from proliferation of payment applications and digital transactions, the government can incentivize citizens in the form of tax benefits as emphasized by the Ratan Watal Committee recommendations. This can be through amendment of the existing legislations.
- Information sharing among all financial regulators like Securities and Exchange Board of India (SEBI), RBI and the Insurance Regulatory Development Authority of India (IRDA) must ensure creation of a national database which would monitor the beneficiaries based on their inclusion in informal and the organized sector.
- More Bandhan banks can be opened in rural areas to facilitate financial inclusion and entrepreneurship.
- There is increasing evidence of startups increasing post the 'Startup India plan' which can be integrated to facilitate financial inclusion within deadlines. Such startups can also be granted tax benefits as an incentive.

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