

# FROM FINANCIAL REFORM TO JUDICIAL RESTRAINT: THE AFTERMATH OF DEMONETISATION JUDGEMENT AND ITS IMPACT ON DELEGATED LEGISLATION

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## ABSTRACT

This paper examines the judgment of the Supreme Court on the demonetisation of 2016, where it was declared that the decision to withdraw high-value currency notes can be taken by the Government under Section 26(2) of the Reserve Bank of India Act, 1934. The decision is considered a validation of executive power in economic policy-making, but it puts up a lot of legal issues and constitutional questions as to how much authority can be delegated, and under what circumstances an executive can take over functions. The paper argues that demonetization has affected the economy, especially small businesses and people who rely on cash. Finally, the paper reflects on the ruling in terms of its ramifications for future economic policies and calls for balanced solutions that maintain democratic accountability and individual rights. This study, in the end, attempts to recommend a careful approach to delegated legislation and urges that a clearer distinction be drawn not only between primary and secondary legislation but also between delegated legislation and executive fiats.

**Keywords:** *Demonetization, Executive Power, Delegated Legislation, Economic Policy, Accountability, Judicial Restraint.*

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## I. Introduction

*“The judiciary should not interfere with the economic policies of the government unless they are patently arbitrary or violate fundamental rights... Judicial restraint is essential to prevent judicial overreach.”*

- Justice R.C. Lahoti<sup>1</sup>

THE DEMONETISATION of 2016 was one of the most drastic financial reforms in Indian history that completely changed India's economic and legal structure. The government banned 86% of the currency effectively overnight, declaring the ₹500 and ₹1000<sup>2</sup> notes

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<sup>2</sup> Sai Manish, “86% of currency by value in India are of Rs 500 & Rs 1,000 denominations” @bsindia (Business Standard, 2016), available at: [https://www.business-standard.com/article/economy-policy/86-of-currency-by-value-in-india-are-of-rs-500-rs-1-000-denominations-116110801416\\_1.html](https://www.business-standard.com/article/economy-policy/86-of-currency-by-value-in-india-are-of-rs-500-rs-1-000-denominations-116110801416_1.html) (last visited on March 26, 2025).

illegal because scrapping these high denomination notes will help combat black money, curb counterfeit currency and disrupt terrorist financing.<sup>3</sup> While the adverse economic impact of demonetization is overstated in media, it also raised some very important legal and constitutional questions as how the executive used delegated legislation to facilitate the demonetisation during the process of implementation, or how the judiciary acted as watchdogs in this massive overreach.

Indeed, the centrepiece of this metamorphosis is when the Supreme Court issued a powerful opinion upholding demonetisation and thereby established a new frontier in how much judicial restraint there ought to be when scrutinising economic policy.<sup>4</sup> The ruling marked an important point in Indian legal discourse by upholding the power of the executive to take radical economic steps. In addition, it also initiated a debate on what limits could be imposed. The case highlighted deference to the executive by the judiciary in complex, economic matters but at the same time flagged concerns over possible executive encroachments without a corollary robust legislative or judicial check. The opinion not only upheld the demonetization under Section 26 (2) of the Reserve Bank of India Act, 1934 but also recognised that demonetization raises further questions about delegated legislation through which executive arms have and seek to retain significant power to make rules and regulations without direct legislative approval.

This paper focuses on the implications of demonetisation judgment in general and its significance on the functioning and effectiveness of delegated legislation in India. By focusing on critical areas such as digital payments, the GST, and cryptocurrencies, the paper raises the question that where should the courts draw the line between financial reform and judicial restraint. The prevalence of delegation across economic areas is indicative of a broader move towards executive-centric policy-making, which in turn raises serious questions about democratic accountability and respect for human rights.

This is an important discussion, particularly relevant in the post-demonetization scenario when there have been frequent charges of executive overreach on some delegated legislative matters; loosening of checks that determine mechanisms for exercising oversight with potential consequences of possible undermining of democratic controls. Delegated legislation provides the executive with the flexibility to react quickly to emergent economic challenges,

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<sup>3</sup> Ashok K. Lahiri, “NIPFP | Demonetization, the Cash Shortage and Black Money” *National Institute of Public Finance and Policy*, 2017, available at: <https://www.nipfp.org.in/publications/policy-briefs/demonetization-cash-shortage-and-black-money/> (last visited on March 26, 2025).

<sup>4</sup> *Vivek Narayan Sharma v. Union of India*, Writ Petition (Civil) No. 940 of 2016.

but it is also a power that can be subject to abuse. The pivotal role of the judiciary thus enters to ensure that arbitrary executive actions do not cross constitutional restrictions and affect individual liberty.

The article advances a holistic examination of how the demonetization judgment utters over judicial restraint and trivializes its contours with executive overreach and thereby, has added a new perspective to delegated legislation in India. The analysis of such cases alongside judicial readings provides lessons for the changing power configuration among three organs and more specifically its applicability in economic policy governance. Finally, the paper contends that though a policy of judicial restraint in economic issues is reasonable, it should be accompanied by an active referential regime to check against gross executive overreach at all times and to protect the essential facets governing Indian democracy and its constitutional design.

## II. Background of the Demonetisation Judgment

An overview of the prominent petition challenging demonetization, *Vivek Narayan Sharma v. Union of India*<sup>5</sup>. For this paper, two issues are discussed throughout. The background of both issues, along with comments, is as follows:

### Issue no. (i)

Centripetal to this issue is the interpretation of the word “any” in Section 26(2) of the RBI Act which states that, on the recommendation of the Central Board of the RBI, the Central Government may declare that “any” series of banknotes of any denomination will cease to be legal tender. The question which came for consideration before the Court was whether the term “any” appearing in Section 26(2) should be interpreted to mean “all” series of notes in a particular denomination (as was the case in the 2016 demonetization) or whether it should be restricted to just “some” or “one” series within that denomination.

### Interpretation of text of Section 26(2)

The petitioners contended for a narrow interpretation of the term “any,” submitting that it could not include all series of notes in each denomination. According to the petitioners, a wide interpretation of “any” could give the Central Government excessive authority to demonetize all currency notes, which could be unconstitutional. The petitioners in their support cited the “High Denomination Bank Notes (Demonetization) Ordinance, 1946” and

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<sup>5</sup> Writ Petition (Civil) No. 906 of 2016.

the “High Denomination Bank Notes (Demonetization) Act, 1978”— and argued that the government should have passed legislation to demonetize high-value currency notes and not merely by executive action under Section 26(2).

The Hon’ble apex court, however, interpreted “any” to encompass all” series of banknotes, which aligns with previous legal interpretations of the word “any” in other statutory contexts. The Court emphasized that the word “any” is broad and is context-dependent, implying that it can be interpreted as either “one,” “some,” or “all” depending on the specific statutory scheme. In this case, the Court held that interpreting “any” to include “all series” of banknotes is consistent with the “legislative intent” of the RBI Act, which was aimed to give the Central Government, in consultation with the RBI, the power to regulate the currency.

### **Pragmatic Considerations/Practical Necessity**

The primary reason behind the court’s inclination to such a broad interpretation of “any” is the practical necessity for the government to respond swiftly and decisively to economic challenges. Currency is considered a central instrument of national security and economic stability. By demonetizing simultaneously all series of notes in a particular denomination, the government has played an effective role in dealing with widespread issues such as counterfeiting, black money, and terror financing. Thus, the executive was able to curb illicit activities involving the hoarding or the use of such high-value banknotes for illegal purposes.

A piecemeal approach in this direction, where only certain series could be demonetized, would allow black money holders to retain non-demonetized notes, which will adversely affect the effectiveness of such a measure which will further defeat the purpose of the policy.

### **Historical Context**

Petitioner contended that previously demonetization was done through specific legislation in the years 1946 and 1978. These historical instances were indeed done only after the approval of parliament but the court brought forth the fact that Section 26(2) of the RBI Act provides a legal framework that allows for executive action in consultation with the RBI which serves as a check against arbitrary use of this power. The Court held that this process is procedurally valid aligns with the Constitution and ensures that the government can safeguard the economy without unnecessary constraints. The fact that Parliament subsequently ratified the 2016 demonetization through the Specified Bank Notes (Cessation of Liabilities) Act, 2017, further strengthened the legal standing of the government’s action.

**Issue no. (ii)**

The second issue under consideration is whether the authority of the Central Government under Section 26(2) amounts to excessive legislation of the legislative authority. This question is rooted in the fundamental constitutional principle that parliament cannot delegate its primary legislative powers to the executive without providing, precise and specific guidelines to guarantee that the power is being utilized within a controlled framework.

**Doctrine of non-delegation**

The doctrine of non-delegation upholds the basic principle that the legislature cannot escape its primary duty to enact laws by granting excessive power of delegation to the executive. The petitioners contended that if the government in the absence of additional legislative oversight or specific guidelines demonetizes all series of banknotes under Section 26(2) then it will amount to excessive delegation as it would bestow the executive unfettered power in the matter of immense economic significance.

However, the Hon'ble apex court rejected the contention and held that Section 26(2) does not come under the purview of excessive delegation. The court further observed that the RBI Act contains sufficient safeguards for the prevention of the exercise of arbitrary power. The provision mandates the demonetization by the Central Government only after taking the recommendation of the RBI Central Board. And, hence, this provision ensures that it is not the sole decision of the Central Government rather the decision is grounded in expert assessment which acts as a measure of checks and balances.

**Guiding Principles and Safeguards**

The Court's analysis centred on the fact that the RBI Act provides a sufficient guiding framework for the exercise of the government's power under Section 26(2). The recommendation of RBI is a mandatory prerequisite and because of this, it can be said that the government cannot act unilaterally. This legislative arrangement ensures that the power to demonetize is not absolute but instead, this power is based on based on technical expertise and a thorough understanding of the monetary system.

The court also held that the 2016 demonetization was ratified by the 2017 Act which further removed any apprehension about executive overreach. The act of Parliament subsequently enacting legislation which validated the demonetization establishes the fact that

the action of the executive was within its legislative competence, and the legislature had the opportunity to deliberate upon and endorse the policy.

### **Precedent on Delegation of Powers**

The Court's decision is consistent with the previous judgements on the delegation of powers in economic affairs. Precedents in India have long acknowledged that formulation of economic policy requires a degree of flexibility and it is difficult for the legislature to anticipate the same. The Delhi Laws Act case<sup>6</sup> and the Municipal Corporation of Delhi v. Birla Cotton<sup>7</sup> case established the principle that the delegation of power is permissible if there are adequate safeguards and guiding principles regarding the exercise of such power.

Concerning monetary and fiscal policy the economic conditions fluctuate continuously and hence; it is the need of the hour to delegate certain powers to the executive. The Court observed that safeguards embedded in the RBI Act, including the requirement of the RBI's recommendation, guarantee that the delegation of power is reasonable and is within the realm of law. In addition to this, the nature of this institution i.e. RBI is an independent and autonomous body which further reinforces the assertion that the executive is not exercising arbitrary power.

### **Checks and Accountability**

In this judgment, the court once again reiterated the significance of checks and balances for preventing the abuse of delegated powers. The demonetization which was implemented through an executive notification, was later ratified by the parliament via the 2017 Act. This ratification is a step to ensure that the crucial mechanism of accountability is maintained which further makes it clear that the power under Section 26(2) does not operate in a legal vacuum but is subject to legislative review. This ratification through parliamentary legislation shows that the decision was subject to democratic oversight.

## **III. Critical Analysis**

### **Counterarguments to the Demonetization Policy**

Though the Supreme Court upheld the constitutional dimension of this demonetization policy, it is quite important to take into account with huge counterarguments that are being represented by the public now. The critics argue that the sudden withdrawal of high

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<sup>6</sup> [1951] S.C.R. 747.

<sup>7</sup> AIR 1968 SC 1232.

denomination currency notes caused severe economic dislocations, especially hitting small businesses and daily wage workers mainly dependent on cash transactions. Since the implementation was sudden, it led to a liquidity crisis wherein most businesses were shut down temporarily or permanently, leading one to doubt the effectiveness of such a draconian step in its expressed intention of taming black money and counterfeit currency.

Besides, the argument that digital transactions will skyrocket significantly in the days following demonetization has also been questioned. After the first shock faded away, users went back to cash transactions from digital transactions. There is a question over whether growth in digital payments will be sustained and whether the government is indeed ready with the infrastructural and educational requisite for having a cashless economy. The legality of the demonetization process sanctioned under Section 26(2) of the Reserve Bank of India Act, 1934, has been held to be flawed on the ground that such a statutory provision lacked proper protection of rights against arbitrary exercise of governmental authority. The broad delegation of power to the executive, without adequate checks, may allow its misuse and compromise democratic accountability and the rule of law.

### **General Implications of the Judgment**

The influence of this ruling runs deep into the future in terms of economic policy and the judiciary's role in matters of the economy. First, this ruling becomes a precedent regarding the extent of executive power in pursuing far-reaching economic reforms. It is an indication that the courts may be inclined to abdicate their roles in deference to the executive on economic issues, which would embolden future administrations to disregard these legislative bounds in pursuit of similar drastic measures.

This raises significant questions about the balance of power within each branch of government. If the judiciary continues to treat the discretionary authority in the economy as sacrosanct, it may inadvertently be part of a process eroding the power of Congress and its capacity for this, in turn, sets a slippery slope that undermines democratic norms further. Similar treatment in future cases may involve the economic policy and thus build a pattern of judicial deference toward the executive branch that no one will check.

Moreover, the judgment emphasizes a more clarified system of delegated legislation. As the government uses executive orders and notifications much more frequently for initiating economic policies, a clear guideline to define the paramount limits of the exercise of the executive order is called for. This could be establishing stricter criteria as to when and how

delegated legislation can be used, exercising such powers more transparently and holding responsibility.

Thus, while it gives legitimacy to the executive authority in being able to undertake drastic economic decisions, it also provides a clarion call for an ongoing debate relating to the consequences of such an exercise on democratic governance and individual liberties. As India grapples through the intricate gamut of economic reform, there needs to be a perfect synergy between effective governance and the protection of the consumer.

#### **IV. Expansion Of Delegated Legislation Post-Demonetization**

Making waves like many other decisions, the aftermath of India's 2016 demonetization changed the Indian economic landscape redefining its legal framework, more so in financial and economic policies. One of the major outcomes during this period was an extension of delegated legislation, with the executive assuming a wider range of legislative power by making rules and issuing notifications under existing laws. This has translated well in areas like digital payments, and GST reforms, and also tells us something about how likely India is going to regulate cryptocurrencies. This expansion has provoked legal challenges, judicial responses and changes in governance, not to speak of the proliferation of commentary on these matters — all this we can see when looking at three important economic transformations in modern India.

##### **Regulation of Digital Payments Post-Demonetization**

India overhauled digital payments regulation in the wake of the country's 2016 demonetization. With the increase in digital transactions the Reserve Bank of India (RBI) which is authorized by its delegation powers under the RBI Act, of 1934 formed myriad regulations. These regulations are intended to boost digital transactions and enhance the security mechanisms against fraud and money laundering.

The regulatory framework of RBI was set toward advancing digital transactions and protection of security and consumer trust. Off everything, directives on transaction limits (via banks for merchants), enhanced KYC norms and guidelines for payment service providers to not let fraud take place have been key measures. Already, RBI has been enacting cautions on all the banking systems to prevent financial irregularities.

As is normal in any democracy, several legal challenges were raised about the extent of delegation that had been handed out to the RBI for making rules. In one such important case,

Internet and Mobile Association of India v Reserve Bank of India<sup>8</sup>, the Supreme Court had set aside a 2018 circular issued by RBI for banning banks from dealing with virtual currencies. The Court found that the circular disproportionately impacted the fundamental rights of businesses involved in cryptocurrency, indicating that the RBI had overstepped its authority in this particular regulation.

Additionally, digital payments rose to fame and this caused a lot of privacy and data security conversations. While the regulations helped increase trust with consumers, concerns were raised over vast amounts of personal data being collected and stored without comprehensive data protection laws in place at the time. The entire episode shows the benefits as well as challenges of post-demonetization regulations and highlights a thin line drawn between enabling innovation in digital transactions with ensuring consumer safety.

### **GST Reforms and Delegated Powers**

We would next consider the GST reform, which is one of India's most transformational tax reforms with a paradigm shift. The GST model law was prepared in the context of enabling laws under the Central and State GST Acts to provide for supplementary, incidental and transitional provisions.<sup>9</sup> Notification and circulars were issued by the GST Council, a constitutional body headed by the Chairmanship of the Union Finance Minister, for the transition from the existing tax regime to the new tax regime together with rate changes and procedure of compliance. However, the GST was challenged in *Jindal Stainless Ltd. v. State of Haryana*<sup>10</sup> on the ground that it violates the federal principles under the Constitution although by and large, it has been fairly well-accepted to date. The Supreme Court did not uphold these challenges respecting judicial restraint and executive power in complicated economic issues. This was evidence of an evolved judicial attitude towards trust in governance but balancing at the same time that the delegation cannot become a licence for unbridled power, underlined by precedents like *Minerva Mills v. Union of India*. The GST was initially lauded by the media and legal experts for making taxes easy to pay, but it was blamed eventually for being too complex for businesses.<sup>11</sup>

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<sup>8</sup> AIR 2021 SC 2720.

<sup>9</sup> "Revised Draft Model GST Law 2016," *PRS Legislative Research*, 2024, available at: <https://prsindia.org/billtrack/revised-draft-model-gst-law-2016> (last visited on March 26, 2025).

<sup>10</sup> 2017 (12) SCC 1.

<sup>11</sup> "The Challenges of the Goods and Service Tax (GST) Implementation in India", available at <https://documents1.worldbank.org/curated/ru/846611542608567754/pdf/The-Challenges-of-the-Goods-and-Service-Tax-GST-implementation-in-India.pdf> (last visited on March 26, 2025).

### **Cryptocurrency Regulation: Delegated Authority and Judicial Oversight**

The final study on cryptocurrency regulation provides a closer look into the sector which saw a huge uptick in regulatory attention after demonetization. The RBI and other regulatory bodies used delegated legislation under the Prevention of Money Laundering Act (PMLA), 2002, to regulate crypto transactions.<sup>12</sup> In *Internet and Mobile Association of India v. Reserve Bank of India*<sup>13</sup>, the Supreme Court also addressed issues concerning the RBI's authority to issue the 2018 circular banning cryptocurrency transactions, particularly in the context of delegated legislation. The petitioners challenged the legality of the circular because the RBI, acting under its powers of delegated legislation, overstepped its authority by issuing a ban that was not backed by adequate legislative support or a statutory basis.

The Court evaluated the delegated legislative powers of the RBI under the Banking Regulation Act, 1949 and the RBI Act, 1934. It found that while the RBI does have broad powers to regulate and supervise financial institutions, the ban on cryptocurrency transactions was not proportionate to the risks involved, and there was no legislative enactment directly prohibiting cryptocurrencies. The Court ultimately held that the circular was arbitrary and that the RBI had exceeded the scope of its delegated authority.

### **Implications on Individual Rights**

A large part of delegated legislation through digital payments, GST reforms and now cryptocurrency regulation has significant individual rights implications. The ever-crucial issues of privacy, economic freedom and commerce have come to the fore particularly as these new regulations put increasing control in the hands of the few executives. This connects to highlighted concerns, particularly in digital payments and cryptocurrency transactions, for privacy, and how delegation of legislative powers can take over individual liberties without appropriate procedural safeguards.<sup>14</sup> The executive has been given the power to address economic issues quickly with delegated powers, but this should be done in line with constitutional principles. Judicial oversight to ensure that regulations do not unduly restrict the fundamental rights of citizens, including their right to privacy or to trade, is an important dimension in the new economic architecture of India.

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<sup>12</sup> Prevention of Money Laundering Act, 2002, No. 15, Acts of Parliament, 2003 (India).

<sup>13</sup> (2020) 10 SCC 274.

<sup>14</sup> Alaa Mahdi Sahi *et al.*, "The Research Trend of Security and Privacy in Digital Payment," 9 *Informatics* 32 (2022).

Together, these cases and the decisions by the Supreme Court paint a picture of an increasingly influential role for delegated legislation in post-demonetization India, one that often shifts the balance between bureaucracy and the executive within economic policymaking. While this leads to faster responses to unfolding crises, it also calls into question the weakening of legislative scrutiny and democratic principles as a whole. The said replies of the judiciary, show a very fine line between judicial intervention and the protection of constitutional rights. This trend potentially further cements the case for rigorous supervision, lest economic regulation becomes more efficiently provided at the expense of constitutional protection. India's ongoing economic reforms will make the relationship between the executive's legislative power and judicial review a key question for legal and political analysis, determinative of how India is governed as well as where her future economic policy will lead.

#### V. Judicial Restraint and Government Economic Policy

The principle of judicial restraint in economic policymaking is an important part of Indian constitutional law. This doctrine is premised on the view that courts should respect economic policy decisions made by the executive because the executive is supposed to have expertise in such things. The importance of judicial restraint is particularly important when one pools in decisions around critical constitutional reforms like demonetization.

A great illustration of this settled law can be found in *Minerva Mills v. Union of India*, strong for its articulation on the subjects of judicial restraint and reconciliation between fundamental rights and directive principles of state policy. It also asserted that while directive principles of state policy are significant, they cannot be allowed to encroach upon fundamental rights. Nevertheless, the Court held that while adjudicating in matters pertaining to economic and social policies the judiciary should exercise deference as these arguably are best left to be answered by the executive. This case established a cornerstone of the courts having to weigh the competing constitutional imperatives.

The Supreme Court in *R.K. Garg v. Union of India*,<sup>15</sup> followed the doctrine of judicial restraint. This case pertained to changes made in tax laws by The Taxation Law (Amendment) Act 1975 and the same was contended as unconstitutional. The Supreme Court decided that the amendments were valid, noting that economic policy issues are in the proper realm of governmental function and not the judicial domain. The Court had also stated that

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<sup>15</sup> (1981) 4 SCC 675.

this was an expert and technical matter which involves a complex area of legislation, and thus this was not to be decided by the judicial system. There should be judicial intervention only in case of violation of constitutional mandates.

In *Kesavananda Bharati* case<sup>16</sup> (1973), the Supreme Court recognized as aforesaid that "the executive has a very wide discretion to select the ways and means for making effective economic policy and since such policies may have to be frequently changed to suit changing conditions selected functional elements spoken of by different notified orders, would fall into this Class, but only subject of course as always emphasize by constitutional limitations. This case has a very important position in legislative and judicial history as it was instrumental in incorporating the basic structure of the doctrine, that no law or executive action shall be allowed to cross the limit provided by a constitution.

The demonetization judgment is a perfect example of this doctrine. By judicial restraint, the SC also in such matters, following the principle of judicial restraint, did not interfere and gave deference to the government for economic policy as courts cannot be seen forever indulging this kind of economics; however complex issues may be known to them. Demonetisation was upheld by the Court as constitutionally valid, thereby reinforcing the doctrine of *Executive Wisdom*.<sup>17</sup>

By bringing down the gavel in the *Demonetization judgment*, fortifying the edifice of separation of powers, it performed an act that upheld a policy while keeping it within constitutional boundaries. The Court laid down the principle of:

### **Deference to the Executive**

Drawing inspiration from *Kesavananda Bharati* and *Indira Nehru Gandhi*, the Bench acknowledged the responsibility of economic policymaking on behalf of the executive and exercised restraint in refraining from second-guessing the government's economic decisions.<sup>18</sup>

### **Constitutional Scrutiny**

The Court exercised its mandate of constitutional scrutiny to subject itself to the executive expertise, & simultaneously ensured compliance with constitutional mandates

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<sup>16</sup> AIR 1973 SC 1461.

<sup>17</sup> Robert W Kolodinsky & Paul E Bierly, "Understanding the Elements and Outcomes of Executive wisdom: a Strategic Approach," 19 *Journal of Management & Organization* 1–24 (2013).

<sup>18</sup> *Indira Nehru Gandhi v. Raj Narain*, (1975) 2 SCC 159; *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

while deferring uprightness with vigilance. This is in alignment with the R.C. Cooper and Vivek Narayan Sharma judgement that judicial review is allowed to a policy only when it transgresses the basic rights.<sup>19</sup>

### **A Balancing Act**

The Supreme Court decision reiterated the fine balance between the authority of executives in their area of the domain and ensuring that constitutional safeguards were not deployed at whims and fancies — thus underscoring not only the separation of power doctrine but also a necessity for judicial restraint.

The doctrine of judicial restraint is the most important aspect since it has significant implications for democratic accountability. The risk of not scrutinizing important policies may imperil democratic principles and individual liberties. The judiciary has to walk a fine line between exercising judicial restraint and being adjudicated protector of constitutional rights to make sure that economic policies do not violate fundamental rights.<sup>20</sup> The Doctrine of Separation of Powers underlines the protection of these values by holding that democratic governments and human rights are not served unless each power acts within its constitutionally allocated field.<sup>21</sup>

The principle of judicial self-restraint is crucial for both democratic accountability and constitutional rights. Needless to say, if judicial activism fails, this could result in significant policy changes which, while interfering with fundamental rights, are not properly scrutinized. This would jeopardize the judiciary as a defender of constitutional freedoms and enable an unfettered executive branch. We need judicial restraint to honour the discretion of the executive in economic policy-making, however, we must also never lose sight of safeguarding fundamental rights and enforcing judicial review. The Court must balance the benefit of deferring to economic experts with its responsibility for ensuring judicial accountability in cases of constitutional violations.<sup>22</sup>

Judicial review of economic policies is mandatory to ensure the elevation of democratic norms and that policies remain pro-people in democracy. The conventional concern of the

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<sup>19</sup> *R.C. Cooper v. Union of India*, (1970) 1 SCC 248.; *Vivek Narayan Sharma v. Union of India*, Writ Petition (Civil) No. 906 of 2016.

<sup>20</sup> Mahabir Prashad Jain, *M.P. Jain Indian Constitutional Law* (LexisNexis Butterworths Wadhwa, 2003).

<sup>21</sup> Eli M. Salzberger, “A Positive Analysis of the Doctrine of Separation of powers, or: Why Do We Have an Independent judiciary?,” 13 *International Review of Law and Economics* 349–79 (1993).

<sup>22</sup> Nick Robinson, “Expanding Judiciaries: India and the Rise of the Good Governance Court,” 8 *Washington University Global Studies Law Review* 1–69 (2009).

cautious approach to judicial review is that it may result in a constitutional system where judges are unwilling to fulfil their duties and prevent abuses of governmental authority. In conclusion, the framework for court scrutiny of economic decisions such as demonetisation heavily relies on the idea of judicial restraint. Therefore, the Courts must continue to exercise caution in cases that affect the country's economic security, but they must also stand guard over our constitutional framework, ensuring that laws are implemented with democracy and fundamental freedoms as their top priorities.

## **VI. Delegated Legislation: Legal Definition and Evolution Post-Demonetization**

Delegated legislation, also known as secondary or subordinate legislation is an important aspect of the Indian legislative framework. It consists of the transfer of authority by the main legislative body — Parliament or state legislatures— to the executive branch or administrative authorities to lay down detailed rules, regulations, and orders under an existing statute. This is intrinsic to handling the complex, and ever-changing landscape of governance enabling flexibility and technical accuracy in law creation. The Indian Constitution provides for a detailed procedure of delegated legislation allowing the executive to carry out changes in the law swiftly but also providing some guard against potential abuse of power.

### **Constitutional Provisions and their Implications**

The constitutional basis of delegated legislation in India is read mainly under Articles 123, 240 and thereupon Article 252. Article 123 gives the President the power to promulgate ordinances, allowing the executive to swiftly make laws when neither house of Parliament is in session and there is an urgent need for legislation. Moreover, under Article 240, the President is provided legislative powers in relation to Union Territories, ensuring fast decision-making where there is no proper legislative representation. Article 252 further permits Parliament to delegate the authority to legislate to the executive in respect of financial institutions requiring elaborative regulations without needing primary legislation.

Although these safeguards have been intended to streamline governance processes, they also carry with them fears of diminishing democratic accountability and increasing executive encroachment.<sup>23</sup> Extensive executive discretion can also encourage the concentration of decision-making authority, particularly in fast-moving and technically complex domains like financial regulation and economic policy. The realignment between efficiency and

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<sup>23</sup> Ashish Srivastava, "The Notion of Delegated Legislation in India- a Critical Analysis," 02 *Scholars International Journal of Law, Crime and Justice* 348–51 (2019).

accountability further gains momentum in the post-demonetisation age, where delegated methods of rule-making are on the rise.<sup>24</sup>

One of the biggest examples in India where Delegated legislation was widely used is the demonetization policy back in 2016 as it made 500- and 1000-rupee invalid. Demonetization was one of the best examples of how delegated legislative powers could have been used to achieve radical economic reforms hastily by way of executive action, without effective intervention from the Legislature. The legal authority for demonetization was Section 26(2) of the Reserve Bank of India Act, 1934 which conferred power upon the government to notify any series of notes as legal tender. This provision gave the government the power to implement demonetisation overnight without immediate legislative intervention and circumvented traditional parliamentary processes that give ample scope for debate and scrutiny on a wide array of issues.

In *Vivek Narayan Sharma v. Union of India*, the Supreme Court had indeed upheld the demonetisation policy on account of judicial deference to executive discretion vested in them, especially in matters relating to the economy. The judgment is an additional step in the favour of executive action with timely responses in specialized fields and therefore paves the way for a wider scope of delegated legislation. By taking such a view of legality, as the Court has done so in this case and other decisions like these, we have created an environment where the executive now feels confident about using delegated powers more deeply and even bypassing both parliamentary and judicial oversight.

In *I.R. Coelho's* case, it has been held by the Supreme Court that laws included in the Ninth Schedule of the Constitution are open to judicial review, and can be struck down if found to violate basic structure. The impact of this judgment on the delegated legislature is no less, as secondary legislation nonetheless would have to agree with constitutional ethos. On the other hand, in the case of *C. B. Gautam vs. Union of India*,<sup>25</sup> the court even showed a vigilant approach to restrict delegated powers under which executive actions were scrutinized by the Supreme Court in case of delegated legislation preventing it from overreach and at call with legislative intent.

Notable jurists have expressed their concerns against the unbridled growth of delegated legislation. Dr. B.R. Ambedkar, the president of the drafting committee of the Indian Constitution stated his idea that he maintained the distance between legislative intent and

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<sup>24</sup> *Ibid.*

<sup>25</sup> 1993 (1) SCC 78.

executive action for a supposed freedom to have democratic space and prevent authoritarianism.<sup>26</sup> Justice P.N. Bhagwati took the critique view, highlighting vast executive discretion and supporting parliamentary oversight on delegation to check that powers being delegated are exercised within constitutional limits.<sup>27</sup> Constitutional expert Prof. Granville Austin feels that abuse of the statutory power to make rules can upset the balance between the executive and legislature which is a case of executive overreach leading to a democratic deficit in governance. The delegated legislation must be exercised with caution and there needs to be clear legislative intent and stringent oversight mechanisms to prevent abuse.

However, since demonetization, several instances of delegated legislation have come up more explicitly suggesting the move toward executive dominance. The GST rules made through delegated legislation have been frequently amended, to conform with economic challenges that crop up in the process. The changes being made are entirely warranted but the manner, scale and frequency of these amendments generate apprehensions of weakening parliamentary scrutiny. Even institutions designed to act independently have experienced major changes through delegated legislation by the executive as can be seen during the frequent fluctuations in GST rates and compliance requirements made at the request of the empowered regulatory body with little legislative introspection.<sup>28</sup>

On the regulatory front, detailed regulations are being formulated for bodies like the Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI). The significant changes to banking regulations made by these bodies, in the aftermath of demonetisation and often without full legislative debate, have also left Parliament at arm's length from much of India's financial decision-making. Delegated legislation allows for faster regulatory reaction and adjustments, as seen in the changes made to the Liquidity Adjustment Facility (LAF) rates by RBI<sup>29</sup> or in SEBI's amendment of insider trading regulations<sup>30</sup>; however, this rapidity might come at the cost of having detailed legislative scrutiny.

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<sup>26</sup> Granville Austin, *Working a Democratic Constitution* (Oxford University Press, USA, 2003).

<sup>27</sup> Rehan Abeyratne, "PN Bhagwati and the Transformation of India's Judiciary", *Cambridge University Press eBooks* 195–214 (2021).

<sup>28</sup> Ganeshan Kalyani, "GST Law is Amended Nine Hundred Times" *Tax Management India*, 2022, available at: [https://www.taxmanagementindia.com/visitor/detail\\_article.asp?ArticleID=10796](https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=10796) (last visited March 26, 2025).

<sup>29</sup> "Liquidity Adjustment Facility- Change in Rates," *Reserve Bank of India*, 2022, available at: <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12419&Mode=0> (last visited March 26, 2025).

<sup>30</sup> Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (as amended on June 26, 2024; 2015), available at: [https://www.sebi.gov.in/legal/regulations/jun-2024/securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-as-amended-on-june-26-2024-\\_84494.html](https://www.sebi.gov.in/legal/regulations/jun-2024/securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-as-amended-on-june-26-2024-_84494.html) (last visited March 26, 2025).

Many have criticized the enhanced Anti-Money Laundering (AML) regulations, which are brought about through executive orders for providing too broad powers of surveillance without proper checks, and thus allegedly violating individual privacy rights.<sup>31</sup> The provisions of the Prevention of Money Laundering Act (PMLA) amendments post-demonetization in December 2017 is a case-in-point example where delegated legislation increased the powers of executive oversight and regulation without adequate legislative scrutiny or public debate, causing alarm bells to ring that there was a dilution ineffective governance and sacrifice on individual rights.<sup>32</sup>

Using delegated legislation hints at a move towards greater executive dominance of the policy-making and execution process. All of this ensures that this trend has layered implications, between efficiency and accountability.<sup>33</sup> On the one hand, delegated legislation enables quick responses to economic challenges, a necessity for highly variable areas such as finance. Conversely, the speed and complexity of delegated legislation frequently circumvent full legislative scrutiny, reducing democratic accountability. And by the time massive reforms like demonetization are affected with very little parliamentary scrutiny, it creates a dangerous norm for all future executive actions, small or large, to further bypass the legislature and concentrate more power in the hands of exact.<sup>34</sup>

Further, the showcase of judicial responsibility in favour of executive oversight as indicated in *Vivek Narayan Sharma v. Union of India* toned down the institutional check on executive power. This judicial deference could also give the executive a free hand to stretch its remit through delegated legislation without any legal ramifications. The jurisprudence developed in cases such as *Union of India vs. Tulsiram Patel*<sup>35</sup> is another illustration of this trend where the executive has often been granted a freehand with respect to matters touching upon national security and economic policy, leading to judicial abdication of responsibility in containing possibilities overreach on the part of government organs.

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<sup>31</sup> FATF, “Opportunities and Challenges of New Technologies for AML/CFT”, (2021), available at: <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Opportunities-Challenges-of-New-Technologies-for-AML-CFT.pdf.coredownload.pdf> ((last visited March 26, 2025)).

<sup>32</sup> “After demonetisation, ED probing over 3,700 money laundering, FEMA cases,” *Hindustan Times* (2017), available at: <https://www.hindustantimes.com/business-news/after-demonetisation-ed-probing-over-3-700-money-laundering-fema-cases/story-vFdO7gL8dSsI44pV46hz4K.html> ((last visited March 26, 2025)).

<sup>33</sup> RUTH FOX & JOEL BLACKWELL, *The Devil is in the Detail: Parliament and Delegated Legislation*, (2014), [https://assets.ctfassets.net/n4ncz0i02v4l/7LdPGXYZKwXOaV9zUyfbpT/d53a181fe4bff23c5bad1a48ff71fe99/Devil\\_is\\_in\\_the\\_Detail.pdf](https://assets.ctfassets.net/n4ncz0i02v4l/7LdPGXYZKwXOaV9zUyfbpT/d53a181fe4bff23c5bad1a48ff71fe99/Devil_is_in_the_Detail.pdf) ((last visited March 26, 2025)).

<sup>34</sup> Kenny Chng, “Re-examining Judicial Review of Delegated Legislation,” 44 *Legal Studies* 1–18 (2023).

<sup>35</sup> AIR 1958 SC 694.

### **Executive Dominance and Financial deregulation**

Post demonetisation greater control has been vested in the regulatory bodies often through delegated legislation to bring about financial policies. This move is a reflection of global trends where policy regulators are better positioned to handle the complexities of an economic framework. But centralising this power within unelected bodies leaves a question over transparency and public accountability. This absence of both public scrutiny and accountability is inherent in law-making by statute, particularly where subordinate legislation is created. For instance, the discretionary powers of SEBI to oversee stock market practices or the given authority of RBI under the FR Act to determine monetary policy highlights how delegated legislation could detach important decision-making from democratic control.<sup>36</sup>

However, simultaneous and frequent amendments also have a different impact on policy as they often result in executive-led regulatory changes with lower levels of legitimacy than legislation, leading to policy instability and consequent effects on investor confidence and economic planning.<sup>37</sup> As we are aware, markets are constantly evolving, and this necessitates a continuous process of regulatory adaptation, often achieved through the use of governmental decrees. Further constitutional problems arise from the governance which is executive-centric, as the very doctrine of separation of powers underscored in clearer and warned terms in cases like *Minerva Mills Ltd. vs. Union of India* which demands that there should be oversight by legislature and the judiciary over such decisions, both before and after they have been implemented. But with the institution of parliamentary checks seeming increasingly emaciated in the post-demonetisation era, an exuberant executive bureaucracy which has only ever been in a position to legislate unfettered seems poised to violate constitutional norms.

The proliferation of the type of delegated legislation in India, including but not limited to this, is one of the biggest threats to democracy and democratic accountability under the existing governance framework mostly stands on a piecemeal foundation. A few safeguards, therefore, are necessary to protect against the dangers which have arisen from the overuse of delegated legislation. These should be linked to strengthening perhaps also parliamentary

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<sup>36</sup> Bharat Vasani & Varun Kannan, "The Rise & Rise of Delegated Legislation – Do We Need More Safeguards?" *India Corporate Law*, 2022, available at: <https://corporate.cyrilamarchandblogs.com/2022/01/the-rise-rise-of-delegated-legislation-do-we-need-more-safeguards/> (last visited on March 26, 2025).

<sup>37</sup> *Ibid.*

oversight, where we enhance the role of parliamentary committees able to scrutinise much delegated legislation to guarantee that executive actions are subject to intensive debate and investigation. Establishing specialized committees that monitor financial regulations is one way to improve the focus and effectiveness of oversight and accountability.

The need for judicial vigilance must be recognised as well, promoting a proactive judiciary that can weigh appropriate deference with accountability, especially when the exercise of executive power infringes upon basic rights or departs from legislative intent. Even the judiciary should be encouraged to consider through a prism of judicial restraint can be good for economic issues and allow better oversight. There is a dire need for more transparent mechanisms at the time of framing and amending delegated legislation, which should also preferably have public consultations with extensive disclosure of changes in regulations.<sup>38</sup> Constitutional and statutory limitations<sup>38</sup> on the content of delegated control may also ensure that the executive is not acting more than its authority. It would also make it difficult for the executive to shape delegated legislation to its narrow interests rather than those of society at large. Such as holding parliamentary hearings on major regulatory changes can improve transparency and accountability.<sup>39</sup>

The post-demonetization period in India has also elevated to a substantial extent, the dependence on delegated legislation, more so in financial regulation. But while this strategy maximizes operational efficiency and subject matter expertise, it does so at enormous cost to democratic accountability, legislative oversight, and the separation of powers. As the cautious scrutiny of case laws and jurists' opinions the need for stringent safeguards is essential to prevent excessive executive overstep. In India where it has become more difficult to negotiate the terms between economic necessity and bona fide public interest, delegated legislation remains an important feature but it must walk hand-in-hand with Constitutional mandates. Otherwise, the unfolding terrain of delegated legislation has the potential to erode basic principles of representative democracy and separation of powers in turn posing a dire threat to people and the economy.

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<sup>38</sup> Daniella Lock, Fiona de Londras, *et.al.*, "Delegated Legislation in the pandemic: Further Limits of a Constitutional Bargain Revealed," 43 *Legal Studies* 1–39 (2023).

<sup>39</sup> "Parliamentary Control of Delegated Legislation in India," *De Facto Law*, 2024, available at: <https://www.defactolaw.in/post/parliamentary-control-of-delegated-legislation-in-india> (last visited on March 26, 2025).

## Constitutional Debate on Judicial Restraint vs. Executive Overreach

### *Judicial Restraint in Economic Policy*

Judicial restraint in economic policymaking is one of the essential components of the Indian Constitution. This doctrine also reinforces the idea that decisions on economic policy matters should be left to the executive, considering an executive is more competent to decide with the advantage of in-depth expertise on the economy.<sup>40</sup> However, the judiciary has a role to ensure that the executive's functioning is constitutional and not to interfere unnecessarily in economic policies. The state needs autonomy over complicated decision-making processes without any interference and that autonomy also includes delegation of power to executives.

The demonetization verdict is a perfect example of judicial restraint in operation. The Supreme Court upheld the constitutionality of demonetization, taking note of the fact that economic policies of this scale are better directed by the executive because it is more capable of handling complexities. The Court has refrained from looking into the content of the policy itself and said that its duty was merely limited in examining whether the decision was in contravention of any constitutional provision. This judgment reiterated the principle that the judiciary should not interfere in the executive's decision in matters of economic policy unless there is a direct and clear violation of a constitutional mandate.

This doctrine has been affirmed by the Supreme Court in such cases as *R.K. Garg v. Union of India*. The Court acknowledged that many economic policies are complex and often require expertise, with the executive having more information and a swifter response to address problems. The restraint of the judiciary in these matters is used to preserve the separation of powers by making sure that each branch of government operates within its proper sphere.

The Supreme Court then articulated the basic structure doctrine in *Kesavananda Bharati v. State of Kerala* and made it clear that while the executive is free to act as it pleases when it comes to matters economic, such freedom must not come at the cost of undermining fundamental rights. This doctrine emphasises that no law or executive action can disturb the basic structure of a constitution, not even in the name of economic reform. By observing this principle, the judiciary has tried to strike a fine balance between judicial restraint and the

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<sup>40</sup> Cheselden George V. Carmona, "Judicial Review of Economic Policies: Implications on Policy Formulation and Implementation", available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2032587](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2032587) (last visited on March 26, 2025).

preservation of constitutional values.<sup>41</sup> This judicial philosophy came to resound all the more clearly in its judgement on demonetisation, stating that Govt has sufficient discretion in economic policy making and it would not interfere with sides of wisdom. The ruling underlined the part of *executive wisdom* that carries out intricate economic reforms and provided notice against too much judicial intrusion so long as constitutional cushions are in place.

The doctrine of judicial restraint in economic policymaking holds important lessons for India. In this way, the judiciary provides a ‘hands-off’ approach to the executive and lets them go about their business of economic reforms such as demonetization and GST. But judicial deference comes with costs. The costs in the form of wide-ranging questions that accompany a claim to the domain regarding when judges must refrain from interfering in executive action.

### **Risks of Executive Overreach in Delegated Legislation**

Judicial restraint is essential for the executive to deliver on its economic policies, but also comes with risks especially so when it gets into delegated legislation. Delegated legislation allows the executive to make rules and regulations under the ambit of existing laws, usually without direct parliamentary scrutiny. While this offers flexibility and helps respond rapidly to economic issues it raises the risk of executive dominance, which might imperil democratic accountability as well as individual rights.

The most notable case of the executive overstepping in delegated legislation is the one discussed above about digital payments post-demonetization. The Reserve Bank of India (RBI), under the powers granted to it by the RBI Act 1934, brought in certain rules aimed at encouraging digital transactions and curbing illegal financial activities.<sup>42</sup> Although these regulations aimed to offer higher standards of financial protection, there were worries on the other side about the Executive having greater command over financial systems and data privacy. Due to its judicial restraint, the judiciary upheld most of these regulations, often stressing that the executive is better suited than the courts to regulate money. Nevertheless,

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<sup>41</sup> T. C. A. Anant & Jaivir Singh, “An Economic Analysis of Judicial Activism,” 37 *Economic and Political Weekly* 4433–9 (2002).

<sup>42</sup> Sangeeta Ojha, “RBI Has Taken These Eight Steps to Keep Your Digital Payments Safe” *Mint* (Mint, 2024), available at: <https://www.livemint.com/money/personal-finance/rbi-has-taken-these-eight-steps-to-keep-your-digital-payments-safe-11708657249554.html> (last visited on March 26, 2025).

the absence of a robust legislative review in these instances demonstrated the danger of being excessively dependent on delegated legislation.

The other area in which delegated legislation has been used widely is Goods and Services Tax (GST). The constitutional body having executive authority under it, the GST Council has issued dozens of notifications and circulars to smoothen the migration process into the unified tax regime.<sup>43</sup> While this helped ensure the enactment of GST passed smoothly, it also restricted Parliament from taking a closer look at what the details and ramifications of these policies can be. The fact that such an extensive reform is to be implemented almost entirely by delegated legislation highlights how the real danger of executive overreach; decisions of economic significance being made with little or no legislative scrutiny which can manifest in the absence of implementation strategy.

More than anything else, executive overreach in delegated legislation is evident from the way it has been regulated through cryptocurrencies. The RBI imposed an absolute ban on all cryptocurrency transactions invoking delegated legislation under The Prevention of Money Laundering Act, 2002 raising reasons concerning financial security as well also concerns over money laundering. But in *Internet and Mobile Association of India v. Reserve Bank of India*, the Supreme Court declared that the circular issued by RBI was arbitrary and not supported by law, and set aside onto out-of-way ban. The Court held the prohibition violative of Article 19(1)(g), that is, right to carry on trade, a fundamental right under the Constitution This case simply illustrates some of the problems that can snowball out of the misuse of executive power in the realm of delegated legislation and how crucial a role judicial scrutiny plays in preventing overreach.

Delegated Legislation has been increasing post-demonetization, especially in areas where Digital payments, Taxation and sometimes Cryptocurrency Regulation are to be enacted. Although such measures have enabled the executive to react fast in tackling economic challenges, the trend also carries implications for democratic backsliding. When delegated legislation is used to avoid full legislative scrutiny, it can put more decisions in the hands of the executive, diminishing Parliament's role in shaping vital economic policies.

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<sup>43</sup> Shraddha Hariharan, "16 GST Circulars issued by CBIC-53rd GST Council meeting decisions" *TaxGuru*, 2024, available at: <https://taxguru.in/goods-and-service-tax/16-gst-circulars-issued-cbic-53rd-gst-council-meeting-decisions.html> (last visited on March 26, 2025).

Furthermore, the increasing use of delegated legislation has major implications for individual rights. There are fears about the erosion of privacy, ownership of data and the right to trade, as executive authority has expanded into new areas such as financial regulation. Delegated legislation may be an encroachment upon the basic rights when there is no competent legislative or judicial oversight of such a delegation as has been shown by the Apex Court lately in its judgment in the case of *Internet and Mobile Association of India v. Reserve Bank of India*.

That is, resisting the temptation to strike down laws as having gone further than necessary to allow the government to respond harmoniously to the intricate challenges of the economy provides flexibility for the executive exercise of power but can lend itself easily to hearkening abuse unless subject to constant up-to-the-minute alert judicial oversight. In delegated legislation, there are real risks of executive overreach, which in the ultimate analysis poses a threat to the very foundation of democratic and constitutional polity in India. The role of the judiciary irrespective of its checks and balances is very well defined to make sure that the actions of the executive never trespass their constitutional amounts and rather than this delegated legislation stays wide open to be accountable when it comes to common people.

### **Balancing Judicial Restraint and Executive Overreach: Safeguarding Democratic Accountability**

Structural checks and procedural clarity can represent a middle ground for addressing judicial restraint and executive overreach. While the doctrine of judicial restraint is a requisite to provide executive autonomy especially when it comes to complex economic decisions, the problem arises when these decisions are taken without parliamentary scrutiny, as happened in the post-demonetization rise in delegated legislation and with the creation of GST. Democratic accountability can be saved, however, by reinforcing institutions such as parliamentary committees dealing with economic policy. These can oversee the continuous implementation of reforms, thereby assuring that executive actions are in tune with constitutionally accepted values and public interests.

At the same time, the judiciary also has to play the role of protector of Constitutional rights, without thwarting economic reforms. A fair judiciary can step in when a clear departure from the Rule of Law occurs such as through the judgment of *Internet and Mobile Association of India v. Reserve Bank of India* where the Supreme Court struck down RBI's

blanket ban on cryptocurrencies. Judges can apply a test of proportionality to assess if the policies of the executive are going beyond their limits, by that they have taken action proportional to the goals without exceeding in violation.

In parallel with this, there should be well-demarcated parameters for delegated legislation so that executive authority can be properly restricted. Delegation of such huge economic powers to the executive on bills related to digital payments or GST needs consequent rigorous legislative oversight. Public consultation is important because it enables the process of business formulation to be more transparent and participatory, thus ensuring that decisions are not made behind closed doors.

Fundamental rights should also be a priority when it comes to any economic reform because an economic policy might sound good in theory but it has a myriad of privacy implications, property implications and encroachments on our right to trade. The demonetization judgment, for example, while legitimizing the authority of the executive also flagged how policy can undercut individual liberties. Executive efficiency, although paramount, should not cloud the constitutional bedrock of fundamental principles with which the economic policies shall ultimately be reconciled and harmonized by the judiciary. Strengthening judicial oversight, delineating more precise restraints on the delegation of powers and preventing legislatures from abdicating control can help India negotiate the maze that the coming together of economic reform and democratic accountability is.

## **VII. Conclusion**

The demonetisation judgment reaffirmed judicial restraint in economic policymaking while expanding the scope of executive discretion through delegated legislation. The aftermath of demonetisation witnessed a surge in executive-led policymaking, particularly in financial regulation, digital payments, and tax reforms. While judicial deference is necessary for economic governance, unchecked executive power risks undermining democratic accountability. Future regulatory frameworks must strike a balance between flexibility and legislative oversight to uphold constitutional principles.