
WHO OWNS THE MONEY: THE STATE OR THE PERSON

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ABSTRACT

This comprehensive research paper seeks to unravel the complex question of who truly owns money, with a specific emphasis on the Indian context. We explore the legal and philosophical aspects of money ownership, using ideas from prominent thinkers such as B.R. Ambedkar and John Locke. We clarify these ideas even further by looking at examples involving Indian property law. Furthermore, we investigate how the Indian demonetisation of 2016 represents the relationship between the state and the individual concerning monetary possession.

Introduction

The concept of money ownership is a cornerstone of modern economies, bearing profound philosophical and legal implications. This research paper delves into the philosophical and legal aspects of money ownership, anchored in the Indian context. It highlights Indian property law cases to illustrate the complex relationship between the state and the individual in the realm of monetary ownership. Additionally, we examine how the 2016 demonetisation in India showcased the dynamics of money ownership. The history of money demonstrates that the thing does not need to be made of valuable materials. Mere paper is enough to take the mythical power of money institutionally¹. It's interesting to note that no tangible substance is required for the object in rights in rem. Natural rights theorists established the legal notion of property as a right in rem, basing its reconstruction on Roman law (Graeber 201, 206). Property in the context of natural rights philosophy encompasses both immaterial and material characteristics. All the attributes of a person

¹ Kim, Jongchul. "Money Is Rights in Rem: A Note on the Nature of Money." *Journal of Economic Issues*, vol. 48, no. 4, 2014, pp. 1005–19. JSTOR, <http://www.jstor.org/stable/43905858>. Accessed 4 Nov. 2023.

– including labour, body, and liberty - are treated as res (thing) which the person can own and transfer to other persons.

Historical Perspective

Throughout history, there has been a substantial change in the idea of money. It began with the barter system, where goods and services were exchanged directly. Gold and shells were popular examples of commodity money, which was a more standardised form of payment. To facilitate commerce, metal coins were introduced, which eventually led to the usage of paper money backed by precious metals. Fiat money, which is unrelated to tangible goods and is based on the issuing authority's confidence, became more and more popular throughout time. Digital money was made possible by the introduction of cheques and electronic transactions brought about by the growth of banks. Cryptocurrencies like Bitcoin have grown in popularity recently, providing safe and decentralised online transactions. This development is a reflection of how human civilization and technology have advanced and changed with time.

Legal Perspective

The Indian Constitution initially recognized the right to property, considering it a fundamental right protected under Articles 19 and 31. However, disputes emerged over the strength and scope of this right, driven by land redistribution concerns. The ongoing disagreements between lawmakers and judges led to multiple amendments to these provisions during the 1950s and 60s.² Frustrated by these conflicts, the Janata Party-led Parliament removed property as a fundamental right in 1978, marking a unique event in constitutional history. Article 300A of the constitution declares that no person shall be “deprived” of his property except by the “authority of law”. Nevertheless, property rights persist as a constitutional right under Article 300A, although with lesser protection than fundamental rights. The current debate revolves around whether restrictions on cash withdrawals, which are recognized as property, constitute a valid limitation on the constitutional right to property, and whether such limitations are justified by law. Essentially, the argument is whether such restrictions amount to a deprivation of property and, if so, whether they

² A constitutional law expert explains why the Modi government can't stop Indians from accessing their money, <https://qz.com/india/850094/demonetisation-a-constitutional-law-expert-explains-why-the-narendra-modi-government-cant-stop-indians-from-accessing-their-money> .

are legally authorized. Cash is property. Strictly, though, cash hasn't been rationed: Anyone in lawful possession of legal tender is free to transact without limit. The restrictions are in accessing bank accounts. But these accounts, too, are property.³

The 2016 Demonetisation and Its Impact on Money Ownership

In contrast to previous instances of demonetization in 1946 and 1978, the current exercise has been executed through the issuance of notifications under subsection (2) of Section 26 of the Reserve Bank of India (RBI) Act, 1934. This section grants the central government the power, in consultation with the Reserve Bank of India (RBI), to declare any series of notes of any denomination to no longer be legal tender. However, a significant debate has arisen regarding the extent of this power. Some contend that the term "any" in this context should not be interpreted to mean "all" series of a given denomination. They point out that previous demonetization exercises were carried out through ordinances, which later became laws passed by the competent legislature, suggesting that the current exercise cannot be solely accomplished by the central government issuing notifications.

The central point of contention revolves around whether "any" can be interpreted to mean "all." This interpretational argument, which asserts that "any series" should be understood as "all series," finds support in Section 13 of the General Clauses Act, 1897. This section stipulates that, unless the context dictates otherwise, in a statute, the singular includes the plural. Contrary to the arguments of the petitioners, the Supreme Court has upheld that "any" indeed includes "all" in past cases (*L D A v M K Gupta* in 1994)⁴ and (*Sk Mohammed Omer v Collector of Customs* in 1970)⁵. This interpretation implies that "any series" in Section 26 of the RBI Act encompasses "all series" of a given denomination, without necessitating a more restricted meaning.

A constitutional argument has also arisen, questioning whether demonetization requires a law to be passed by the Indian Parliament. While the Janata Party government enacted the High Denomination Bank Notes (Demonetization) Act in 1978 after initially promulgating an ordinance,

³ Demonetisation: Can the state legally deprive people of their own money?, https://www.business-standard.com/article/economy-policy/demonetisation-can-the-state-legally-deprive-people-of-their-own-money-116120500571_1.html.

⁴ *L D A v M K Gupta* (1994): SCC, SC, 1, p 243.

⁵ *Sk Mohammed Omer v Collector of Customs* (1970): SCC, SC, 2, p 728.

the current demonetization exercise is not bound by a specific law. In the present exercise, there is no legal prohibition against accepting or tendering ₹500 and ₹1,000 notes. Rather, it implies that it is not against the law to refuse such notes. However, the situation has been complicated by "exemption" clauses in Notification No 3408, which do not clearly stipulate whether places where the note is expected to be accepted are legally obliged to do so or if they face any penalties for non-compliance. It is essential to recognize that not everything the government does necessarily requires legislative action by the Indian Parliament. Certain matters, such as fixing the salaries of Supreme Court and high court judges and making appropriations from the public exchequer, can only be accomplished through laws enacted by the legislature. However, this does not imply that every government action, including demonetization, automatically necessitates a separate law. Demonetization, as in the current case, can be executed through notifications and does not inherently require parliamentary legislation.⁶

Right to Property and Legitimate Expectation⁷

The current demonetization exercise in India has prompted legal questions, primarily revolving around the right to property protected under Article 300-A of the Constitution. This right, unlike its original form, now safeguards against property expropriation without the authority of law. Some argue that the restrictions on cash withdrawals and note exchanges imposed by Notification No 3407 contradict the provisions of Article 300-A. The contention is that by preventing people from withdrawing their cash and placing limits on note exchanges, the government has effectively curtailed the right to property and, in some cases, extinguished it entirely. The argument is not without merit, as the Supreme Court, in the case of *Bishamber Dayal Chandra Mohan v State of Uttar Pradesh* (1982)⁸, held that an Executive Order does not constitute "law" for the purposes of Article 300-A. This suggests that the government may be constitutionally barred from imposing cash withdrawal limits unless explicitly authorized by the legislature or a new law is passed. Two responses can be made to counter this argument. First, it can be based on the RBI Act itself. Under

⁶ Demonetisation and the Rule of Law, Updated on 8 November 2017, Alok Prasanna Kumar, https://www.epw.in/journal/2016/50/commentary/demonetisation-and-rule-law.html?0=ip_login_no_cache%3Df654900bb86c7757ef60429d5267e662.

⁷ Demonetisation and the Rule of Law, Updated on 8 November 2017, Alok Prasanna Kumar, https://www.epw.in/journal/2016/50/commentary/demonetisation-and-rule-law.html?0=ip_login_no_cache%3Df654900bb86c7757ef60429d5267e662.

⁸ *Bishamber Dayal Chandra Mohan v State of Uttar Pradesh* (1982): SCC, SC, 1, p 39.

Section 26(2) of the RBI Act, the government possesses ancillary powers to facilitate the smooth execution of demonetization. Such powers are necessary to make the required arrangements for currency replacement, particularly in a vast country like India. This doctrine of ancillary powers is well-established legally. With reference to Article 73 of the Constitution, which grants the union executive powers in subjects on which Parliament has the authority to enact laws. The only condition is that these powers must be exercised in accordance with law made by Parliament. Currently, there is no provision in any law that prohibits the central government from imposing cash withdrawal limits or restricting cash exchange. There is no law designating this power to another agency, such as the RBI. Consequently, there is no legal restriction on this power, and when the central government issued Notification No 3407, it was done partly under the executive power granted by Article 73. The question then arises: does this exercise infringe upon the right to property without the authority of law? Even if limiting cash withdrawals and exchanges is perceived as a violation of the right to property, it has been argued that this has been done by the executive, based on either a statutory or constitutional power, which implies it has been executed with the authority of law (*K T Plantation (P) Ltd v State of Karnataka*)⁹. The Supreme Court has clarified that norms, not specific directions to individuals, constitute "law" for the purposes of Article 300-A, (*Gulf Goans Hotel Company Private Limited v Union of India* 2014)¹⁰, and Notification Nos 1307 and 1308 establish norms applicable to all banks and account holders. However, one contentious aspect of the demonetization exercise concerns cash withdrawals. When the demonetization was announced in November 2016, it was initially stated that cash exchanges would be permitted until 30 December 2016, as indicated in Notification No 3407. This information was disseminated through various media outlets. However, the government abruptly halted all cash exchanges in banks from 25 November, with just four hours' notice provided on 24 November. This change followed earlier restrictions on cash exchanges from ₹4,500 to ₹2,000 for the entire period. Currently, exchanges are only allowed at RBI branches located in state capitals. Such a sudden reversal raises ethical and moral questions about the government's conduct. Can the government legally make a promise to citizens and then withdraw it in a matter of weeks?¹¹

⁹ *K T Plantation (P) Ltd v State of Karnataka* (2011): SCC, SC, 9, p 1.s.

¹⁰ *Gulf Goans Hotel Company Private Limited v Union of India* (2014): SCC, SC, 10, p 673.

¹¹ ¹¹ Demonetisation and the Rule of Law, Updated on 8 November 2017, Alok Prasanna Kumar, https://www.epw.in/journal/2016/50/commentary/demonetisation-and-rule-law.html?0=ip_login_no_cache%3Df654900bb86c7757ef60429d5267e662.

The doctrine of legitimate expectation, which has been applied in Indian courts, originally evolved by United Kingdom courts (*Schmidt v Secretary of State for Home Affairs* 1968)¹², it has been applied in Indian Courts (*Navjyoti Cooperative Group Housing Society v Union of India* 1992)¹³, may be invoked to challenge such actions. This doctrine essentially prevents the government from denying promised benefits to citizens when they have acted upon these promises. It does not apply to laws made by Parliament but specifically to executive acts. A person who has not exchanged their notes and lacks a bank account could potentially claim that the original timelines should be reinstated based on this doctrine. However, the government might argue that it is impossible to comply with the court's orders to restore cash exchanges due to a lack of sufficient cash to meet the demand. Such a situation would highlight the lack of preparation and foresight in the demonetization exercise.

Rule of Law

The demonetization itself may be legally valid, but the government's subsequent responses have been disorderly and misguided. The daily announcements with ever-changing rules and new prohibitions not only create chaos but also erode the country's adherence to the rule of law. The fundamental pillars of the rule of law, such as stability and certainty in regulations, are undermined by the daily influx of ill-conceived demonetization announcements. Considering the immense scale of this exercise, affecting every part of the country and nearly every sector of the economy, the disorganized manner in which it is being executed implies that the governing regime may lack the necessary competence for its proper implementation. Beyond the immediate consequences like deaths and job losses, the enduring impact of demonetization could extend to a loss of public trust, not only in the currency but also in the government's capacity to govern in accordance with the principles of the rule of law.

Eminent domain

Initially, it was reasonable to focus on the Reserve Bank of India's (RBI) authority, assuming that holders of old notes, especially those possessing them legally, would be able to exchange them for

¹² *Schmidt v Secretary of State for Home Affairs* (1968): EWCA Civ 1, [1969] 2 Ch 149 at 170–171, Court of Appeal (England and Wales).

¹³ *Navjyoti Cooperative Group Housing Society v Union of India* (1992): SCC, SC, 4, p 477.

new notes. However, given the discontinuation of the exchange facility, it is necessary to reevaluate the legality of the action. There is now a basis to argue that by halting the exchange option (or even the earlier imposed limits), the government is depriving citizens of money, a form of property beyond the scope of eminent domain. This cessation potentially violates Article 300A of the Constitution.

The term "eminent domain" describes the state's innate ability to forcibly take private property for public uses. But the Supreme Court decided in *State of Bihar v. Maharaja Sir Kameshwar Singh*¹⁴ in 1952 that the state could not use this authority to compel the acquisition of money or "chooses in action" (such debts or equivalent rights to claim money). Speaking for the majority, Mahajan J. said that obtaining funds or making choices would effectively be the same as taking out a forced loan. Aiyar J. offered a more nuanced viewpoint, arguing that the forced acquisition of funds or choices in action could not have a legitimate public aim. In 1968, the Supreme Court reaffirmed the ruling in the *State of Madhya Pradesh v. Ranojirao Shinde*¹⁵ that money cannot be compulsorily acquired. However, in 1978, the Supreme Court, with a bench of seven judges, re-evaluated and set aside the reasoning in *Ranojirao Shinde*, but this reconsideration was specifically focused on "reasoning qua chose in action." The general consensus in *Singh* and *Shinde* appears to hold true for the narrow question of whether money may be acquired by force. Notably, the Supreme Court did not consider whether money might be vulnerable to such forced purchase while evaluating the validity of the High Denomination Bank Notes (Demonetization) legislation, 1978 in *Jayantilal Ratanchand Shah v. Reserve Bank of India*¹⁶. This could be because the legislation indicated an elaborate procedure for exchange, which might not have amounted to citizen deprivation in the first place.

The state's power to police & The state's authority to acquire citizens' property¹⁷

The state typically takes money from its citizens for two primary purposes: taxation and policing, the latter being a penalty for unlawful activities. Policing powers differ from eminent domain, as

¹⁴ 1962 AIR 1166, 1962 SCR Supl. (3) 369.

¹⁵ 1968 AIR 1053, 1968 SCR (3) 489.

¹⁶ JT 1996 (7), 681 1996 SCALE (5)741.

¹⁷ Can the State Legally Deprive People of Their Own Money? , Krithika Ashok, <https://thewire.in/law/state-legally-deprive-people-money> .

they allow the state to regulate citizens' liberty and property for public interest without compensation, whereas eminent domain requires a public purpose and compensation for property acquisition. When it comes to money, it's generally assumed that the state can fund any public purpose through its policing powers, making the compulsory acquisition of money unnecessary.

However, the current demonetization appears more like a compulsory acquisition than straightforward regulation. If a valid law were enacted to penalize or tax black money hoarders, it would align with the state's regulatory interests. In this case, everyone holding old notes without a bank account loses their money, regardless of its legality or willingness to pay a penalty, indicating an exercise of eminent domain. Arguing that demonetization aims to achieve greater financial inclusion isn't valid, as there's no law obligating people to open bank accounts or authorizing the state to deprive property for inclusion.

The distinction between eminent domain and the state's power to police is often whether property rights are acquired or merely restricted. Demonetization extinguishes the state's liability to note holders, leading to an increase in the RBI's net worth and effectively aligning with the concept of 'acquisition.' While people still have the option to open bank accounts, practical barriers may prevent many from doing so before the deadline, reducing their money to mere paper. Hence, there's a strong argument that this amounts to compulsory acquisition.

Conclusion

“Since property is an enjoyment protected by law, it is as such the enjoyment of two goods: the good which is an object of law and the law itself which satisfies the need of legal certainty. This means that a person is not only the owner of money, but he has also the right to claim it. This is possible because money, even if it is a collective good, is a personal private property, being created by social convention, and it is attributed to the bearer, thanks to the induced value which is incorporated into the symbol.”¹⁸ Recently five-judge Constitution bench, led by Justice SA Nazeer, In a landmark verdict the Court stated that demonetisation, being an Executive's economic policy, cannot be reversed, emphasizing the reasonable connection between the government and RBI in

¹⁸ Ownership of money and the induction of value to money. Lack of uniform rules in statutory and constitutional systems, <https://www.gdrc.org/icm/owner-money.html#:~:text=Since%20property%20is%20an%20enjoyment,the%20right%20to%20claim%20it>.

implementing this measure. The court accepted the government's consultation with RBI, dismissing the notion of the decision being unreasonable. Despite a dissenting opinion from Justice Nagarathna, who argued for parliamentary discussion on demonetisation and criticized the lack of independent assessment by RBI, the majority decision affirmed the legality of the 2016 demonetisation move. It is evident that the state's decision to initially limit and subsequently disallow the exchange of old notes raises concerns regarding the violation of the right to property, particularly for those who lack access to bank accounts. This policy effectively imposes a compulsory acquisition of their money, a power that does not fall within the legitimate scope of state authority.

While some have justified these actions by invoking the concept of the 'greater good' to downplay the stark class disparities resulting from demonetisation, it becomes essential to recognize that the state's authority, particularly its power of eminent domain, does not extend to the acquisition of money held by individuals. Consequently, the question of whether this move serves a public purpose becomes entirely irrelevant when viewed in the context of this overreach of governmental power. This perspective emphasizes the importance of upholding individual property rights and ensuring that state actions align with established legal boundaries. It raises significant questions about the implications of such actions on the rights of individuals and the balance between state authority and individual freedoms.