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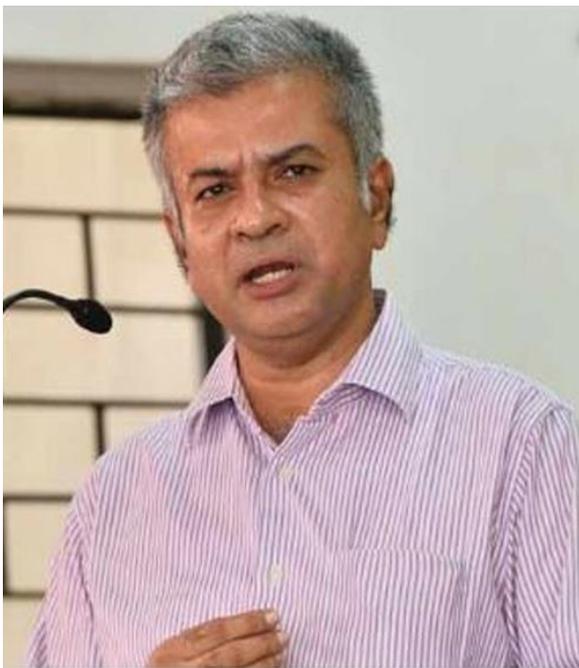
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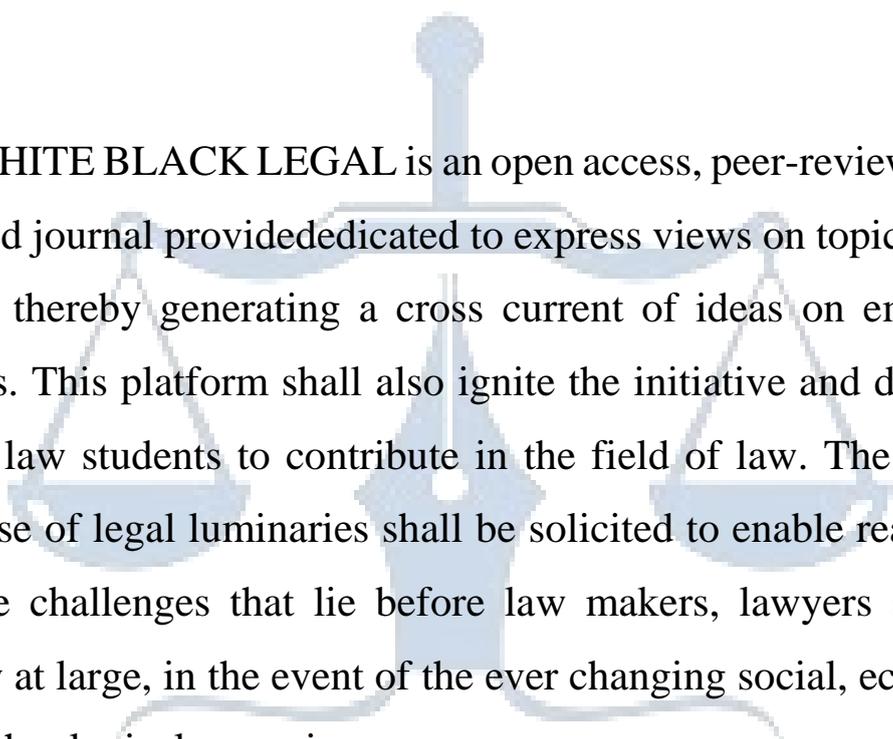


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With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

EXPLORING THE IMPACT OF DOCTRINE OF PITH AND SUBSTANCE ON DISTRIBUTION OF THE LEGISLATIVE POWERS BETWEEN INDIAN FEDERATION AND STATE GOVERNMENTS

AUTHORED BY - VAIBHAV YADAV

Abstract

This paper examines the intricate relationship between the doctrine of pith and substance and the distribution of legislative powers within the Indian federal framework. With a focus on constitutional law, it delves into how the doctrine has influenced the delineation of authority between the central government and the state governments in India. Through an analysis of landmark judicial decisions and scholarly perspectives, it elucidates the evolution of the doctrine and its application in resolving conflicts regarding legislative competence. Research explores the tensions inherent in federalism, such as the balance of power, the scope of concurrent jurisdiction, and the principles of cooperative federalism. Furthermore, it considers the implications of pith and substance analysis upon governance, intergovernmental relations, and the protection of federalism as a foundational principle of the Indian Constitution. By examining case studies and legal principles, this paper contributes to a deeper understanding of how the doctrine of pith and substance shapes the distribution of legislative powers and the dynamics of federalism in India.

Keywords: *Pith and Substance Doctrine, Legislative Powers Distribution, Indian Federal System, Constitutional Law, Intergovernmental Relations, Cooperative Federalism*

I. INTRODUCTION

Every Federal Constitution necessarily contains provisions regulating centre-state relations.¹ These provisions must provide for adjustments in cases of conflict between the two co-existing authorities. There are generally four areas of potential conflict - the legislative, the administrative, the judicial and the financial. However, the Constitution of India provides for a single integrated judicial system and has thus eliminated the chances of friction between the centre and the states in the judicial sphere. The purpose of this study is to examine the constitutional provisions and the working of the constitutional process with respect to potential conflict areas in centre-state relations during the post-Constitution era.

The history of federalism and Centre-State relations in India is marked by political mobilisation and intermittent struggle to fashion a more federal set up. Even though such efforts have not yet resulted in any major Constitutional changes towards a more federal orientation, the struggle has not been entirely fruitless. The creation of a new structure of Constitutional Government for independent India deserves to be seen in historical context, particularly by taking into account the objective political situation existing then. In fact, political imperatives emerging out of independence movement historically as well as the immediate imperatives of partition of India influenced the design of Government incorporated in the Constitution of India. It will be useful to trace the tortuous course of the movement for federalism.

“No amount of care in phrasing the division of power in a federal Scheme will prevent difficulty when the division comes to be applied to the variety and complexity of social relationship. The different aspects of life in a society are not insulated from one another in such a way it is not possible to make possible a mechanical application of the division of powers. There is nothing in human affairs, which corresponds to the neat logical division found in the Constitution.”² It is not possible to make clean a cut between the powers of various legislatures; they are bound to overlap from time to time.³ The court cannot issue any writ or process against the legislature to prevent it from passing an unconstitutional law, nor can the legislature, in India, decide while passing a law, whether it is constitutional or otherwise. Even in the Federal constitution of different countries, the courts have formulated certain principles in the interpretation of the legislative powers assigned both to the Centre and the State. The principles are determined by

¹ For a comparative study of federal provisions, refer to Peaslee, *Constitutions of Nations* (2nd ed. 1956).

² Laskin, *Canadian Constitutional Law*, 1951, p.4

³ *Prafulla Kumar v. Bank of Commerce*, AIR 1947 PC 28

the number of factors such as the nature of the constitution, the prevailing political climate in the country, the social and economic problems to be tackled by the country and finally the social and political background and outlook of the judge who are called upon to interpret the constitution.

The constitution of India has classified the legislative, executive and financial powers between the centre and the states, which gives the constitution a civic character whereas the judiciary is incorporated in a categorised structure. Centre-state relations are distributed into three parts, such as (A) Legislative Relations (B) Administrative Relations (C) Financial Relations.⁴ Article 245 to 255 of the constitution elucidates legislative relations between them. While, Article 256 to 263 describe administrative relations and Article 268 to 293 explained about financial relations between centre and state government. In the framework of centre-state relations, an assessment of the federal structure of government in the Constitution is very essential. In fact, a centralized structure is a design of government in which there is separation of power on a regional basis between the centre and states.

The legal principle commonly referred to as the doctrine of “pith and substance” alternatively recognized as the doctrine of “predominant purpose” or “true nature and character of law” posits that the essence and primary intent of a statute or legal provision should be discerned and upheld, notwithstanding incidental or ancillary aspects. The doctrine finds its origin from the principle that it is necessary to examine the true nature and character of legislation to know whether it falls in a forbidden sphere.⁵

The doctrine is sometimes expressed in terms of ascertaining the ‘nature and the true character of Legislation’, and it is also emphasized, that the name given by the Legislature in short title, is immaterial. Again, for applying the pith and substance’ doctrine, regard is to be had (i) to the enactment as a whole; (ii) to its main objects; and (iii) the scope and effects of its provisions. If the substance of the enactment falls within the union list, then the incidental encroachment on the state list would not make it invalid.⁶

Doctrine of ‘pith and substance’ is an age-old rule used in constitutional matters in India. The

⁴ Constitution of India, 1950

⁵ K. Ramaswamy, J., P.N. Krishna Lal and others v. Govt. of Kerala, 1994 (5) Suppl. SCR 526

⁶ Bharat hydro power corporation ltd. V. state of Assam (2004) 2 SCC 553

literal meaning of pith is the true nature or the essence of something and that of substance is an essential part or something. Thus, pith and substance together can be understood as an essential part of something in which its true essence lies. The doctrine of 'pith and substance' says that where the question is about determining the power of legislature to make a particular law under the three lists, what the court must look into is the substance of the same. Thus, the doctrine is used when the competence of the legislature is to be determined in relation to a particular enactment and what has to be looked into is the substance of the enactment. If it is found that the legislation is in substance on the matter assigned to the legislature then the enactment must be held to be valid completely. It may so happen that the enactment incidentally encroaches upon the matter beyond the competence of a particular legislature, but such encroachments do not render the whole enactment to be a nullity. The legislative matters that are given under different lists are bound to overlap at some point but that does not make the whole enactment null and void. Thus, it can be concluded that incidental encroachments are permissible while determining the competence of the legislatures as far as the subject matters in the three lists are concerned.

One of the proven methods of examining the legislative competence of an enactment is by the application of the doctrine of pith and substance. This doctrine is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in various lists. If there is a challenge to a legislative competence the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the State under the Constitutional scheme. If the objects stated in the enactment were to be the sole criterion for judging the true nature of the enactments, then judging by its preamble the impugned enactment satisfies the State's legislative competence. the court will have to examine not only the object of the Act as stated in the statute but also its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the State. The object to construe the impugned legislation should not be based on subjective intention of legislation but it should be given an objective meaning. The meaning is declared by the courts after the application of relevant interpretative principles so as to construe the constitutionality of a statute having

regard to the object the Constitution makers sought to achieve.⁷

The principle of “pith and substance” had come to be established by the privy Council, when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the states in those countries. In India, the Doctrine of Pith and Substance came to be adopted in the pre-independence period, under the Government of India Act, 1935.⁸ This doctrine is applied to check whether the Parliament or State legislature have the competency to legislate a particular law, if either one encroaches the area of other leads to invalidity of the law. Parliament or a State Legislature should keep within the domain assigned to it, and not trespass into the domain reserved to the other. A law made by one which trespass or encroaches upon the field assigned to the other is invalid. If a subject falls exclusively in List II, and in no other List, then the power to legislate exclusively vests in the State legislature. But if it also falls in List I as well, then the power belongs to the Centre. Similarly, if it falls within List III also, then it is deemed to be excluded from list II. The dominant position of the parliament in the list I is thus established.

II. ORIGIN AND EVOLUTION OF DOCTRINE OF PITH AND SUBSTANCE

The origin of this doctrine lies in Canada through the case named *Cushing Vs. Dupuy*⁹ In this case the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was *intra vires*, regard must be had to its pith and substance. It was evolved by the Privy Council to ascertain the constitutionality of Canadian and Australian statute regarding the violation of the rules of the distribution of powers. The doctrine was adopted by the Federal Court of India and also by the Privy Council in determining the constitutionality under the Government of India Act, 1935.¹⁰

To disintegrate the doctrine to its molecular meanings, Pith denotes “true nature” or “essence of something” and Substance means “the most important or essential part of something”. The definition of this doctrine states, within their respective spheres the state and the union legislatures are made supreme, they should not encroach upon the sphere demarcated for the

⁷ E. V. Chinnaiah v. State of A.P. (2005)1 SCC 394.

⁸ Government of India Act, 1935.

⁹ [1880] UPKC 22

¹⁰ Durga Das Basu [n 8]

other. Doctrine of Pith and Substance is applied when legislation made by of the legislatures is challenged or trespassed by other legislatures. This doctrine says that when there is a question of determining whether a particular law relates to a particular subject the court looks to the substance of the matter. If the substance of the matter lies within one of the 3 lists, then the incidental encroachment by law on another lists, does not make it invalid because they are said to be *intra vires*.

This doctrine was first applied in India by Justice Porter, in *Prafulla Kumar Mukherjea v. Bank of Commerce Ltd., Khulna*.¹¹ It was held that the State law, dealing with money lending, is not invalid, merely because it incidentally affects promissory notes. Sir Maurice Gwyer, C.J. in *Central Provinces and Berar Act No. XIV of 1938*,¹² observed that the doctrine of pith and substance is sometimes invoked to find out the nature and content of the legislation. However, when there is an irreconcilable conflict between the two legislations, the Central legislation shall prevail. However, every attempt would be made to reconcile the conflict. The doctrine of 'pith and substance' evolved by the Privy Council has been followed by this Court throughout. Thus, in *State of Bombay v. F. N. Balsara*¹³ Fazl Ali, J., representing the Constitution Bench followed the decision of the Judicial Committee, reiterated that if the Act, when so viewed, substantially falls within the powers expressly conferred upon the Legislature which enacted it, then it cannot be held to be invalid, merely because it incidentally encroaches on matters which have been assigned to another Legislature. It was held that the validity of an Act is not affected if it incidentally trenches on matters outside the authorised field, and therefore it is necessary to inquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially falls within the powers expressly conferred upon the Legislature which enacted it, then it cannot be held to be invalid, merely because it incidentally encroaches on matters which have been assigned to another legislature.

¹¹ AIR 1947 PC 60

¹² In re Central Provinces and Berar Act No. XIV of 1938 (1939) FCR 18

¹³ AIR 1951 SC 318 It was noted that the terms "possession and sale" as stated in entry 31 of List II must be construed without any qualification. It is within the purview of the Provincial Legislature to completely prohibit the possession, utilization, and trade of intoxicating liquor without contravening the interpretation of said entry. The Court expressed the view that there exists no substantive conflict between entry 31 of List II and entry 19 of List I. Consequently, the Court found it challenging to assert that the Bombay Prohibition Act, in its capacity to regulate possession, utilization, and trade of foreign liquor, constitutes an infringement upon the domain designated to the Federal Legislature under entry 19 of List I.

1. Features of Doctrine

- 1) This doctrine comes into application when subject matter between 2 lists seems to be conflicting.
- 2) The powers of legislature will be strictly limited if every law is termed invalid on the grounds that it is encroaching upon other laws.
- 3) The doctrine pulls out the true nature and character of the matter to bifurcate it into its appropriate list.

2. Canadian Perspective on the Doctrine of Pith And Substance

The Canadian Constitution inspired the doctrine of pith and substance. The country of Canada is divided into two parts, namely, the Dominion and the Provinces. In order to divide the powers of the Dominions and Provinces, the framers of the Canadian Constitution inserted two separate lists to the Constitution. Section 69 of the Canadian Constitution, which was first established in 1857 as the British North America Act, separated the powers delegated to the Dominion from those delegated to the Provinces. Furthermore, Sections 91 and 92 of the Constitution Act of 1867 define the Dominions' and Provinces' exclusive rights.¹⁴

The origin of this doctrine can be traced back to the case of "Cushing vs. Dupuy"¹⁴ in Canada, and it has since spread to India, where it is firmly supported by Article 246 of the Indian Constitution and the Seventh Schedule, through which the Constitution of India divides the scope of legislative powers between the Centre and states. The Union, State, and Concurrent Lists of the Indian Constitution make up this schedule.

In *Russel v. The Queen*,¹⁵ the Privy Council held that the statute must be analysed to find the true nature and character of the legislation, this view was taken up by Lord Watson, while testifying for the Privy Council in the matter of *Union Colliery Company of British Columbia v. Bryden* in 1889, caught the notion of "real essence and character" of law and treated it as a metaphor "whole pith and substance" of an enactment. Many scholars of Canadian constitutional law have considered the Incidental Effects Rule, the Double Aspect Doctrine and Ancillary Powers Rule under the head of the 'Pith and Substance' doctrine. They have considered these doctrines to be part of the 'Pith and Substance' doctrine. I will also submit

¹⁴ [1880] UPKC 22

¹⁵ *Russel v. The Queen*, (1882) 7 App Case 829

my analysis on their line and consider these doctrines under the head of the ‘Pith and Substance’ doctrine.

The doctrine of ‘pith and substance’ is the rule of ultra vires and the difference between the operation of that rule and the effect of the doctrine of “occupied field” was brought out in the opinion of the Judicial Committee in *Attorney General for Alberta v Attorney General for Canada*.¹⁶ After noticing that in respect of the subjects specifically enumerated in S. 91 of the British North America Act, the Dominion Legislature alone had exclusive legislative authority, it was observed by court thus: - “It follows had the legislation coming in ‘pith and substance’ within one of the classes specifically enumerated in S.91 is beyond the legislative competence of provincial legislature under S.92. In such case, it is immaterial whether the Dominion has or not dealt with the subject of legislation or to use other well-known words, whether that legislative field has or has not been occupied by the legislation of the Dominion Parliament”

II. APPLICATION OF DOCTRINE OF PITH AND SUBSTANCE IN INDIA

India is characterized by a stringent constitutional framework, which has established three distinct lists delineating the subjects upon which the central legislature may enact laws. This delineation was initially established in the Government of India Act, 1935, and subsequently enshrined in the Constitution of India in 1949. Initially under section 100 of the Government of India Act, 1935, and later under Article 246 of the Constitution of India, the three lists were structured in a rigid manner. The powers conferred under the federal list are exclusive and supersede any provisions in the other two lists, while those under the concurrent list can be exercised by either the union or the states, albeit subject to the powers outlined in the federal list. Conversely, the powers granted in the state list are subordinate to those outlined in the federal list.

While such an arrangement virtually eliminates the possibility of one legislature encroaching upon the powers of the other, in a setup like that of India, incidental encroachment is inevitable in certain instances when laws are enacted under specific lists. When such encroachment occurs, the principle of pith and substance becomes relevant, with courts tasked to determine whether the enactment is within the legal authority or beyond it. If the enactment is within the

¹⁶ *Attorney General for Alberta v Attorney General for Canada*, AIR 1943 PC 76

legal scope, it is deemed valid; however, if it exceeds the authority, it is deemed invalid. Under the Government of India Act, 1935, despite arguments asserting that the delineation of powers under Section 100 of the Act is so strict that overlap between lists is impossible, and thus the doctrine of pith and substance is unnecessary as the provincial list prevails, this argument was rejected by Lord Porter on behalf of the Privy Council.

This principle found its initial application in India through the ruling of Justice Porter in the case *Prafulla Kumar Mukherjea v. Bank of Commerce Ltd., Khulna*.¹⁷ The judgment established that a state law concerning money lending isn't deemed invalid solely because it indirectly impacts promissory notes. Chief Justice Sir Maurice Gwyer, in his observation on Central Provinces and Berar Act No. XIV of 1938,¹⁸ stated that "the doctrine of pith and substance" is occasionally invoked to discern the essence and subject of legislation. In cases of irreconcilable conflict between two laws, the Central legislation holds precedence, although efforts are made to resolve the conflict. The doctrine of 'pith and substance', originating from the Privy Council, has consistently been upheld by the Indian judiciary. For instance, in the case *State of Bombay v. F. N. Balsara*,¹⁹

Justice Fazl Ali, "representing the Constitution Bench, reaffirmed the principle laid down by the Judicial Committee". It was reiterated that if an Act, when viewed in its entirety, primarily falls within the powers expressly granted to the Legislature that enacted it, it cannot be deemed invalid merely because it incidentally touches upon matters falling under the jurisdiction of another Legislature. Hence, the validity of an Act isn't compromised if it indirectly touches upon subjects beyond its authorized domain. Thus, in each case, it is imperative to ascertain the true essence and substance of the impugned Act to determine its validity within the constitutional framework.

1. Determination Of The True Nature And Character Of A Legislation

In the case of *Subramanyam Chettiar v. Muthuswamy Goundan*,²⁰ Sir Maurice Gwyer, the Chief Justice, noted the prospect that legislative measures ostensibly directed at one enumerated subject may encroach upon matters delineated in another enumeration is

¹⁷ AIR 1947 PC 60

¹⁸ In re Central Provinces and Berar Act No. XIV of 1938 (1939) FCR 18

¹⁹ AIR 1951 SC 318

²⁰ [1940] F.C.R. 188, 201

acknowledged. It is noted that strict adherence to a strictly literal interpretation could result in the nullification of numerous statutes due to the intimate interconnection of their provisions. Consequently, the Judicial Committee has formulated a principle whereby the contested statute undergoes scrutiny to discern its 'pith and substance' or its inherent 'true nature and character', with the aim of determining its alignment with subjects specified in distinct enumerations.

Similarly, in the case *Atiabari Tea Co. Ltd. v. State of Assam*,²¹ Justice Gajendragadkar, speaking for the majority, explained that the test of 'pith and substance' is typically applied when there is a dispute regarding the legislative competence of a legislature. This arises when there is a conflict between entries in the legislative list, and legislation under one entry would be permissible while not under another. In such instances, the doctrine of pith and substance is invoked to determine the genuine essence and character of the legislation in question.

Dr. Mukundakam Sharma, J., in *Rajiv Sarin v. State of Uttarakhand*,²² it is established in legal precedent that when a dispute arises regarding the authority of legislation, the judiciary will endeavour to determine the core essence and fundamental nature of said enactment through a thorough examination of the legislation in question. In undertaking this analysis, it is imperative for the courts to assess the genuine essence and essence of the enactment, its purpose, its extent, and its impact, in order to ascertain whether the legislation in question legitimately falls within the domain of legislative authority allocated to the respective legislature under the constitutional framework.

2. Doctrine Originates From Article 246(1)²³

The case of *All India Federation of Tax Practitioners v. Union of India*,²⁴ delves into the constitutional implications surrounding the imposition of service tax and Parliament's authority to enact such taxation under Article 246(1) in conjunction with Entry 97 of List I of the Seventh Schedule to the Constitution. Justice S. H. Kapadia emphasized the doctrine of pith and substance, derived from the language of Article 246(1), which underscores the importance of evaluating legislation holistically. According to this doctrine, if a legislation substantially pertains to an item listed in List I, it may be deemed as legislation on that particular topic.²⁵

²¹ [1961] 1 SCR 809

²² (2011) 8 SCC 708

²³ constitution of India, 1950

²⁴ AIR 2007 SC 2990

²⁵ *All India Federation of Tax Practitioners v. Union of India* AIR 1970 SC 2990.

The Dipak Debbarma²⁶ Court, represented by Justice Ranjan Gogoi, stressed the significance of considering the constitutional framework, which envisions a federal structure granting autonomy to both the Union Parliament and State legislatures within their designated spheres of legislation. However, complexities arise when legislations overlap into areas beyond their assigned domains. In such instances, the Constitutional Court must strive to resolve conflicts by recognizing the coexistence of both legislations. If reconciliation proves impossible, Article 246(1) dictates that Parliamentary legislation prevails over State legislation, notwithstanding the latter's adherence to List II. This principle, known as federal supremacy, as enshrined in Article 246, applies provided that the Parliamentary legislation holds dominance and the State legislation, despite its adherence to its assigned field, encroaches upon a vital aspect of the subject or entry governed by the dominant legislation. This principle aligns with the precedent set by the Constitution Bench in the case of *State of West Bengal and Ors. v. Committee for Protection of Democratic Rights, West Bengal and Ors.*²⁷

A. Resolves conflict of jurisdiction

In the case of *Ujagar Prints Etc v. Union of India*,²⁸ Justice M Venkatachalliah remarked that the doctrine is utilized to address jurisdictional conflicts. If an Act primarily falls within one list but incidentally touches upon another, it should not be considered invalid in the latter list. Its validity should be assessed accordingly. The pith and substance principle resolves issues arising from overlapping entries in different lists by scrutinizing the overall "true nature and character" of the legislation. It seeks to determine whether the impugned law predominantly falls within the jurisdiction of the enacting Legislature, even if it indirectly encroaches upon the legislative domain of another Legislature.

B. Validation of Laws

In the case *Vijay Kumar Sharma v. State of Karnataka*,²⁹ Justice Rangnath Misra articulated that when a law is challenged on the basis of exceeding the powers of the legislature that enacted it, the essential nature of the legislation must be determined. This entails examining the enactment comprehensively, including its objectives and the scope and impact of its provisions. If upon such scrutiny, it is

²⁶ *Uco Bank & Anr vs Dipak Debbarma* 2016 SCC OnLine SC 1391

²⁷ AIR 2010 SC 1476

²⁸ AIR 1989 SC 516

²⁹ AIR 1990 SC 2072

evident that the legislation primarily concerns a subject within the jurisdiction of the legislature, it must be deemed valid in its entirety, even if it incidentally touches upon matters outside its purview. The doctrine of pith and substance plays a crucial role in validating legislation that would otherwise be deemed invalid due to lack of legislative competence when legislative encroachment is under consideration. In cases of conflict between two legislations, the issue at hand is whether the provision of the State law, while constitutionally valid in itself, loses its validity due to conflicting legislation enacted by the Parliament on ostensibly the same subject matter.

C. Co-existence in concurrent fields

In *Tika Ramji & Ors. etc. v. State of U.P. & Ors.*,³⁰ the identical issue necessitated adjudication. It was determined that the doctrine of pith and substance is pertinent solely when both the Central and State Legislatures are concurrently engaged in a particular domain. There was no contention of encroachment upon the exclusive authority vested in the Central Government under Entry 52 of List I.

D. State competency upon legislations

In *The Kerala State Electricity Board v. Indian Aluminium Co.*,³¹ case presided over by Justice A. Alagiriswami, representing the Constitution Bench of the Supreme Court of India, a meticulous examination was conducted regarding the principle of pith and substance. The Kerala State Electricity Board imposed an additional fee on large-scale consumers of electricity, categorizing electricity as a 'vital commodity' according to Section 2(a) of the Kerala Essential Articles Control (Temporary Powers) Act, 1961. This additional fee, as outlined in the Kerala State Electricity (Supply and Licensees Areas) Surcharge Order of 1968, was contested by large-scale consumers in the High Court, contending its incongruity with the Electricity Act of 1910 and the Electricity (Supply) Act of 1948, both of which are statutes of national jurisdiction. The High Court invalidated the order, prompting an appeal to the Supreme Court by the Electricity Board. The Supreme Court deliberated on the criteria for invoking the doctrine of pith and substance, stating that if a legislation primarily falls within one list but incidentally touches upon another list, it remains valid. Upon examination, the Court determined that the Kerala Act primarily

³⁰ [1956] SCR 393

³¹ AIR 1976 SC 1031

pertained to entries 26 and 27 of List II of Schedule VII of the Indian Constitution. Consequently, it concluded that the State Act did not encroach upon the domain governed by the 1948 Act, which pertains partly to Entry 43 of List I and partly to Entry 38 of List III.

E. Examining incidental encroachments

Justice Ruma Pal, in *ITC Ltd. v. Agricultural Produce Market Committee*,³² noted that within the framework of the constitutional arrangement, the federal structure has the capacity to render ineffective any inadvertent infringement by Parliamentary legislation upon a matter governed by state legislation, particularly when the predominant legislation is that of the State.

In the case of *Vijay Kumar Sharma v. State of Karnataka* Justice Rangnath Misra was adjudicating on the legality of the denial of permits to contract carriage operators in Karnataka. The statutory provisions outlined in Sections 14 and 20 of the Karnataka Contract Carriages (Acquisition) Act, 1976, establish a proscription against the issuance of new permits or the renewal of existing permits as of the vesting date. Conversely, Sections 74 and 80(2) of the Motor Vehicles Act, 1988 [a central Act], stipulate a general principle of refraining from refusing to grant applications for permits of any nature. Consequently, the petitioners argued a conflict between these two legislative enactments. The Supreme Court, upon deliberation, made the following observation:

“When the legislative encroachment is under consideration the doctrine of pith and substance comes to the aid to validate a legislation which would otherwise be invalid for the very want of legislative competence.The doctrine of Pith and Substance has no application when the matter in question is covered by an entry or entries in the Concurrent List and has occupied the same field both in the Union and the State Law. It matters little as in which entry or entries in the Concurrent List the subject-matter falls or in exercise whereof the Act/provision or provisions therein was made. The Parliament and Legislature of the State have exclusive power to legislate upon any subject or subjects in the Concurrent List. The question of incidental or ancillary encroachment or to trench into forbidden field does not arise. The determination of it’s true nature and character also is immaterial.”

It was determined that the Karnataka Act was promulgated by the State Legislature

³² (2002) 9 SCC 232

pursuant to its authority conferred by Entry 42 of the Concurrent List in conjunction with Article 31 of the Constitution, aiming at the procurement of contract carriages to enforce the mandates outlined in Articles 39(b) and (c) thereof. Conversely, the Motor Vehicles Act, 1988 was enacted by the Parliament exercising its jurisdiction under Entry 35 of the Concurrent List, primarily to govern the operation of motor vehicles. As such, these legislative measures pertain to distinct domains. Consequently, it was adjudicated that the doctrine of pith and substance is inapplicable in this instance.

The doctrine of pith and substance has no application when the matter in question is covered by an entry or entries in the Concurrent List and has occupied the same field both in the Union and the State Law.³³ It matters little as in which entry or entries in the Concurrent List the subject matter falls or in exercise whereof the Act/provision or provisions therein was made. The Parliament and Legislature of the State have exclusive power to legislate upon any subject or subjects in the Concurrent List. The question of incidental or ancillary encroachment or to trench into forbidden field does not arise. The determination of its 'true nature and character also is immaterial.

All India Federation of Tax Practitioners & others v Union of India & others,³⁴ an appeal has been lodged by the all India Federation of Tax Practitioners against the ruling of the Division Bench of the Bombay High Court, which affirmed the legislative authority of Parliament to impose service tax as per the Finance Act of 1994 and the Finance Act of 1998. The crux of this appeal pertains to the Parliament's competence in levying service tax on practicing chartered accountants and architects, with consideration to Entry 60 of List II of the Seventh Schedule to the Constitution and Article 276 thereof. The central issue in this civil appeal revolves around the constitutional validity of the imposition of service tax and Parliament's legislative authority to enforce such tax under Article 246(1) in conjunction with Entry 97 of List I of the Seventh Schedule to the Constitution.

As per the contested ruling, service tax falls within the purview of Entry 97, List I of the Seventh Schedule to the Constitution, and the legislation has been deemed valid. Although the doctrine of pith and substance was deemed unnecessary in this

³³ AIR 1990 SC 2072

³⁴ Civil Appeal No. 7128 of 2001, All India Federation of Tax Practitioners and Ors. vs. Union of India (UOI) and Ors. (21.08.2007 - SC)

instance, given Parliament's residual authority to enact legislation not expressly enumerated under any List.

Special Reference Case 1 of 2001³⁵ the legislative body of the Gujarat State enacted a statute titled Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001, which became effective on December 19, 2000. The purpose of this enactment is to regulate the transmission, supply, and distribution of gas for the benefit of the general public and to foster the gas industry within the State. Consequently, the Act establishes the Gujarat Gas Regulatory Authority and addresses related matters. This legislative action falls under Entry No. 53 of List I of the Seventh Schedule, which pertains to petroleum and petroleum products.

An issue arose regarding the authority of the State Government of Gujarat to enact laws concerning gas, including natural gas in all its forms, under Entry 25 of List II of the Seventh Schedule. The Federal Legislature had previously passed the Petroleum Act, 1934, and other related legislation such as The Oil Fields (Regulation and Development) Act, 1948, and The Oil Industry (Development) Act, 1974, under Entry 53 of List I. These laws were enacted by the Union of India to regulate matters related to petroleum and its derivatives.

Following an increase in the price of natural gas supplied by the Oil and Natural Gas Commission, the Association of Natural Gas Consuming Industries of Gujarat and others filed a Civil Writ Petition challenging the Union's legislative competence to enact laws concerning "gas and gas works." This led to a legal inquiry into whether "Natural Gas" falls under the jurisdiction of the Union or the State, and whether the State of Gujarat and other states possess the legislative authority to enact laws regarding the subject of "Natural Gas."

The Supreme Court has ruled that "Natural Gas," which encompasses Liquefied Natural Gas (LNG), falls under the purview of Union jurisdiction as outlined in Entry 53 of List I. Accordingly, the Union possesses exclusive legislative authority to formulate laws pertaining to natural gas. States lack the legislative authority to enact laws concerning natural gas and liquefied natural gas, as outlined in Entry 25 of List II of the Seventh Schedule to the Constitution. Consequently, the Gujarat Gas (Regulation of Transmission, Supply & Distribution) Act, 2001, insofar as its provisions regarding natural gas or liquefied natural gas (LNG) are concerned, lacks

³⁵ (2001): 2004 (4) SCC 489

legislative competence and is therefore unconstitutional to the extent of such provisions.

F. Preference to social welfare laws

In the case of *Vishal N Kalsaria v. Bank of India & Ors.*,³⁶ respondents 4 and 5 procured a loan from the Bank of India, backed by an equitable mortgage encompassing various properties, one of which is allegedly occupied by the appellant as a lessee. However, the respondents defaulted on the loan repayment within the stipulated 60-day timeframe. Consequently, an application was lodged with the Chief Metropolitan Magistrate, Mumbai, pursuant to Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, prompting the Magistrate to direct the Assistant Registrar at the Borivali Centre of Courts to seize the mortgaged assets. Subsequent to this action, the appellant sought recourse under the Maharashtra Rent Control Act, 1999, culminating in the escalation of the case to the Supreme Court.

Justice Gopala Gowda noted that the, Rent Control Act being a social welfare legislation must be construed as such. It was categorically maintained that a landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Control Act, more so when the two legislations, that is the SARFAESI Act and the Rent Control Act operate in completely different fields. The SARFAESI Act primarily addresses the management of non-performing Assets within banking institutions, while the Rent Control Act regulates the legal interactions between landlords and tenants, delineating their respective rights and obligations, including procedures for tenant eviction. The highest judicial authority clarified that once a tenancy arrangement is established, eviction of a tenant must adhere to the legal procedures outlined in the

Rent Control Act. The court emphasized that arbitrary eviction via the mechanisms of the SARFAESI Act would constitute a violation of the tenant's statutory protections. Consequently, the court decreed that the SARFAESI Act cannot supersede the provisions established in the Rent Control Act.

G. Relatable Subject matter

In the case of *State Bank of India vs Santosh Gupta*,³⁷ Judge R.F. Nariman explained

³⁶ AIR 2016 SUPREME COURT 530
³⁷ (2017) 2 SCC 538

that when applying the doctrine of pith and substance to the SARFAESI Act, it becomes evident that the entire Act is related to List I, Entry 45 and Entry 95. The main purpose of the Act is to aid in the recovery of debt owed to banks and financial institutions through facilitating the securitization and reconstruction of their financial assets. The Act establishes a process to enforce its provisions. Despite involving the transfer of property in some cases, the Act primarily deals with recovering the debts owed to banks and financial institutions and enables them to take measures outside of the court process to enforce the recovery of these debts. Under Section 13(4) of the Act, banks can take various actions such as taking possession of secured assets, appointing a manager to manage these assets, and demanding payment of debt from any party who owes money to the borrower. The Judge noted that the transfer of property is just one of the several measures used to recover secured debts. Due to this, SARFAESI cannot be classified as a law solely related to the transfer of property subject matter. It is also pointed out that the SARFAESI Act in the State of Jammu and Kashmir stipulates the substitution of District Judge and High Court for the Debts Recovery Tribunal and Appellate Tribunal, respectively in Sections 17A and Section 18B.

III. CONCLUSION

The legal precept commonly referred to as the doctrine of 'pith and substance' is a longstanding principle employed within constitutional adjudication in India. Its essence encapsulates the true nature and fundamental quality of a legislative enactment. Primarily invoked when adjudicating the scope of legislative competence, particularly in discerning whether a legislative body possessed the authority to enact laws concerning a specific subject matter, the doctrine assumes significance given the delineation of legislative jurisdictions across the three enumerated lists in the Indian Constitution. It's imperative to recognize that the items listed within these enumerated lists do not confer inherent powers upon the respective legislative bodies, but rather serve as delineations upon which legislative action may be undertaken. The authority vested in legislative bodies emanates from Article 246 of the Indian Constitution.

Originating in Canada, the doctrine gained application in India due to the historical context wherein the Privy Council served as the apex appellate authority for both jurisdictions. Its applicability extends to other federations sharing similar structures, such as Canada and

Australia, albeit with nuanced distinctions. While Australia possesses a single list, Canada comprises two, and India, three. Consequently, variations exist in its application among these jurisdictions. In Australia, the doctrine reinforces the rigidity of a constitution known for its flexibility, whereas in India and Canada, it imbues flexibility into their comparatively rigid constitutional frameworks.

Commonly invoked in cases of legislative conflict, wherein one legislative body encroaches upon the jurisdiction of another, the doctrine guides the assessment of the degree of encroachment.

Substantial encroachments render an enactment invalid, while incidental encroachments do not. This principle, termed the rule of incidental encroachment, underscores the necessity of preserving enactments that incidentally intrude upon jurisdictional boundaries, given the inevitability of such occurrences within a federal system like India's. Voiding such enactments wholesale would result in a proliferation of invalid legislative measures.

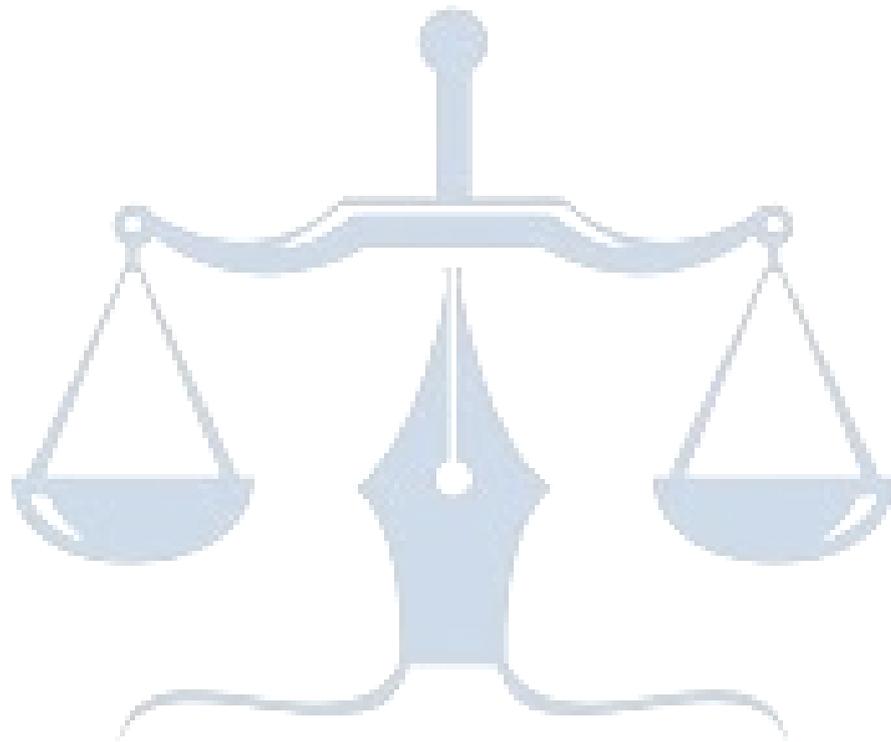
Thus, the guiding principles are:

1. Rendering a definitive demarcation between the authorities conferred upon state and union legislatures proves impracticable, inevitably resulting in intermingling. Thus, paramount consideration must be accorded to the essence and substance, namely the true essence of a legislative enactment.
2. The ascertainment of the essence and substance of a legislative enactment necessitates an assessment of the extent to which one legislature encroaches upon the prerogatives of the other.
3. In instances where a conflict arises among the three enumerated lists, List I shall invariably supersede the other two, and List III shall take precedence over List II. Should laws promulgated by both legislatures under List III clash, the legislation enacted by the Union legislature shall prevail.

The doctrine of "pith and substance" also has close associational links with the doctrine of 'form and substance' and the doctrine of 'colourable legislation'.

The doctrine of 'pith and substance' though is majorly helpful in dealing with the cases of constitutional repugnancy, in my opinion the doctrine must be used in collaboration with the

doctrine of ‘form and substance as the latter provides for not only the language of the legislation but also the practical application of the enactment. Both the doctrines must more often be used together by the courts rather than applying the two differently. This would help the courts to understand the very intent of the legislature behind the enactment of a particular law and would also provide for the problems when the enactment is practically applied to the country.



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