

Doctrine of Pith and Substance

Amit Verma

Department Of Law

Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India

ABSTRACT: *There is a mutually exclusive division of constitutional rights between the Union and the Provinces. It states that, under the Constitution, the Parliament and State Legislature shall remain within the area assigned to them and they should not enter the field assigned to others. Article 246 of the Scheme is such that it grants primacy to Union law in the event of a dispute or overlap between Union law and State law, but the Court applies 'the doctrine of Pith and Substance' until a law dealing with one subject in one list and even affecting a subject in another list is considered to be evil. In other words, the law's pith and content, i.e. the true purpose of the law or statute, applies to a matter with the authority of the legislature that passed it, it should be called *intra vires*, even though it may incidentally trench on matters not under the jurisdiction of the legislature.*

KEYWORDS: *Constitution of India; Pith and Substance.*

INTRODUCTION

Article 246 of the Constitution splits the various issues into three sections, including the Union, State and Concurrent Lists. These lists describe the various topics on which the union, state and each have the respective right to legislate. The Union and State governments should both reside within the jurisdiction given to them and should not infringe on the domain reserved for others.

When the legislature formed by one of the legislators invades or trespasses on the area given to another, the Doctrine of Pith and Substance is enforced. In reference to the entries in the separate legislative list, the Concept of Pith and Substance is applicable to the legislative authority of a body with respect to a single enactment is questioned when a law dealing with a subject in one list intrudes or infringes on the subject of another list.

The doctrine of Pith and Substance states that the court looks at the substance of the matter whenever the issue arises to decide if a particular law applies to a specific subject. Therefore, if the material comes within one list, then the incidental invasion of another list by the statute does not render it invalid[1].

In such a dispute between legislatures, it must be determined that the real essence and nature of the statute is the pith and substance of the enactment. Pith means 'real nature' or 'something's essence' and Substance means 'something's most important or integral component'[1].

If it is discovered after reviewing the statutes that law is pith and substance, depending on the matter entrusted to the legislative, then such an act must be deemed legitimate in its entirety. While the legislature may incidentally trench on the matter outside its jurisdiction, it is still considered legitimate as the laws are relevant to the subject of the act or rule in pith and substance[2].

In the case of *Rajasthan State v. G. The state of Rajasthan, Chawla*, has enacted a law banning the use of sound amplifiers. The respondent broke the statute and the judicial magistrate challenged the act[2].

On further appeal to the Supreme Court, the State argued that under entry 6 of List II, the legislation fell under the statutory authority of the state legislature, i.e. the power to legislate in relation to public health includes the power to legislate in relation to public health, which includes the power to control the use of the amplifier because it creates loud noise, while the opposition argued the amplifier[2].

The court ruled that the amplifier did not come under entry 31 of List I even though the amplifier was a broadcasting and communication apparatus, the law in its pith and substance was on state relations and was not found invalid even though the topic of broadcasting and communication was inadvertently infringed[3].

The legality of the Bengal Money Lenders Act, 1946 was questioned in the case of *Profulla Kumar Mukherjee v. Bank of Khulna*, which restricted the volume and rate of interest repayable on any loan by a moneylender. Promissory notes is argued to be a core subject and not a subject of the state. The Privy Council held that the act was a state subject in pith and substance law as regards 'money lenders and money lenders' and was legitimate even though it was incidentally trespassed on 'Promissory notice' i.e. a central subject[3].

In the case of *Mumbai State vs. F. The Bombay Prohibition Act*, which banned the selling and storage of liquor in the state, was challenged by N. Balsara on the basis that the manufacture and export of liquors across borders, which was a key issue, was accidentally infringed. The court held that the act was legitimate because it was perceived that the act was in its pith and that the drug came under the State List even though such an act may have an effect on the importation of liquor.

The doctrine of pith and substances comes into effect, concluding the introductory section, if there is a disagreement between different subject matters from different lists. It is quite clear that some topics enrolled in one of the three lists seem to overlap with the topics enrolled in other lists. The implementation of the doctrine gives a degree of versatility by accepting, to an extent, ancillary or accidental intrusions when deciding legislative authority to deal with a certain subject matter contained in the lists of the Legislature, Union and Concurrent.

DISCUSSION

The paper reflects primarily on the 'pith and material' doctrine as applied in India. The study of the implementation of the doctrine as opposed to other countries with a federal system similar to that of India and a detailed analysis of the application and development of the doctrine in India are the key areas of research in the report. The paper addresses not only the relevance of the doctrine to the Indian context, but also the loopholes in the applicability of the doctrine. The paper analyses the primary case laws used in the doctrine[4].

It also offers a connection between the 'pith and substance' doctrine and certain other doctrines, such as the doctrine of colourful rule and the doctrine of accidental invasion. It includes the author's suggestions that propose better ways of implementing the doctrine in the current

scenario. The article concludes with three analyses of literature that the author has used for the purpose of research[4].

The 'pith and material' theory is an age-old rule in India used in constitutional matters. The literal sense of pith is the real existence or essence of something and an important element of something is that of material. Accordingly, together, pith and material can be seen as an integral aspect of everything in which the true essence resides. The 'pith and substance' doctrine argues that where the problem is about deciding the authority of the government to create a certain law under the three lists, what the court would delve at is the substance of the same matter[5].

The doctrine is thus used where the competence of the legislature has to be assessed in regard to a specific enactment and the content of the enactment is what needs to be investigated. If the statute is considered to be substantial in the matter referred to the legislature, so the enactment must be considered to be entirely legitimate. It may happen that the enactment incidentally invades the matter outside the ability of a given legislature, but such invasions do not make the whole enactment null and void[6].

At any point, the statutory matters that are given under various lists are expected to overlap, but that does not render the whole enactment null and void. It may also be inferred that accidental intrusions are appropriate in deciding the authority of the legislatures with respect to the subject matter of the three lists[6].

In the country's Constitution, India is a country with a very strict text. From the very beginning, India has had three lists with a very simple demarcation of the subjects on which the central legislature will make laws. In the Government of India Act of 1835, and then in the Constitution of India of 1949, demarcation was first created. Earlier, the three lists were structured in a very strict way under section 100 of the Government of India Act, 1835 and then under Article 246 of the Constitution of India[7].

In the other two lists, the powers conferred under the federal list are solely and notwithstanding anything, while the powers conferred under the concurrent list may be exercised wither by the union or states, nor are subject to the powers conferred under the federal list. In the other hand, the powers set out in the state list are subject to the powers set out in the federal list. While such an arrangement left virtually no space for one of the legislators to violate the powers of the other, in an arrangement such as India, accidental invasion is bound to occur where the laws are made under one of the lists in such instances[7].

If such an infringement takes place, the pith and substance doctrine comes into play and the courts must determine if intra vires or ultra vires in fact is the enactment. The enactment is to be declared legitimate if the enactment happens to be intra vires, but if the enactment happens to be ultra vires, it is bound to be declared invalid[8].

In India, the doctrine's implementation has more in common with Canada than with Australia. There are two lists in Canada and so the infringement of forces has to be discussed according to the topics given in both lists, while there is only one list in Australia and what needs to be seen is whether an enactment comes within the categories mentioned in that list. It is in these circumstances in these two nations where the doctrine is used. In the case of Australia, there is no question of invading the powers of the other level of the legislature[8].

CONCLUSION & IMPLICATION

The 'pith and material' doctrine is an ancient doctrine used in India's constitutional matters. The doctrine's literal sense is the real existence and substance of everything. In cases where the court has to determine whether the legislature has the power to make laws on a particular subject matter, the doctrine is mostly used as the subjects on which the parliament and state legislatures can make laws are clearly demarcated under the three lists in the Constitution of India.

What is worth noting here is that the topics given under the three lists are not to be viewed as legislative rights, but rather entries on which they could legislate. Article 246 of the Constitution of India grants authority to the legislature.

Part of the doctrine is applicable to cases of repugnance in which the state or central legislature invades the other's authority to render legislation on a certain subject matter. What needs to be checked at in such a situation is the degree of interference. If the encroachment is important, the enactment must be deemed invalid, however the enactment must not be declared invalid if the encroachment is incidental. This rule is referred to as the incidental encroachment rule.

It is assumed that in cases of accidental infringements, the statute must not be made void because such infringements are required to exist in a structure such as that of India and if any such enactments are rendered void, a significant number of invalid enactments will occur.

While the doctrine of 'pith and substance' is primarily useful in dealing with cases of constitutional repugnance, in my view the doctrine must be used in accordance with the 'form and substance' doctrine since the latter not only accounts for the terminology of the law but also for the substantive implementation of the enactment. Instead of using the two individually, the courts would most frequently use the two doctrines together. It would allow the courts to consider the very meaning behind the implementation of a new law by the legislature and would also account for the concerns as the enactment is practically extended to the population.

REFERENCES

- [1] J. de Beer, "Constitutional Jurisdiction Over Paracopyright Laws," in *In the Public Interest: The Future of Copyright Law Canada*, 2005.
- [2] P. Eleftheriadis, "Parliamentary Sovereignty and the Constitution," *Canadian Journal of Law & Jurisprudence*, 2009, doi: 10.1017/s0841820900004690.
- [3] UK Ministry of Defence (MOD), "Army Doctrine Publication: Operations," *Defence Doctrine Centre, Shrivenham*, 2010.
- [4] S. J. Shapiro, "What Is the Rule of Recognition (And Does It Exist)?," in *The Rule of Recognition and the U.S. Constitution*, 2009.
- [5] M. E. Whittemore, "The Problem of Enforcing Nature's Rights under Ecuador's Constitution: Why the 2008 Environmental Amendments Have No Bite," *Washington International Law Journal*, 2011.
- [6] F. A. Hayek and R. Hamowy, *The constitution of liberty: The definitive edition*. 2013.
- [7] J. Reid, "The doctrine of discovery and canadian law," *Canadian Journal of Native Studies*, 2010.
- [8] Y. Shany, "Toward a general margin of appreciation doctrine in International Law?," *European Journal of International Law*, 2005, doi: 10.1093/ejil/chi149.