**THE DOCTRINE OF PITH AND SUBSTANCE**

**INTRODUCTION**

Article 246 of the Constitution divides the different matters in three groups i.e. union, state and concurrent list. These lists explain the different matters on which the union sate and both have the power to legislate on respectively. **Both Union and State legislature should keep within the domain assigned to it and not trespass into the domain reserved for other.**

The Doctrine of Pith and Substance is applied when the legislation made by one of the legislatures encroaches or trespasses upon the field assigned to another. The Doctrine of Pith and Substance is applied to determine the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in different legislative list because a law dealing with a subject in one list encroaches or trespasses upon the subject in another list. Doctrine of Pith and Substance says that where the question arises of determining whether a particular law relates to a particular subject the court looks to the **substance of the matter**. Thus, if the substance falls within one list, then the incidental encroachment by the law on another list does not make it invalid.

In such a conflict between legislatures, it needs to be ascertained that if the pith and substance of the enactment is the true character and nature of the legislation. Pith means ‘true nature’ or ‘essence of something’ and Substance means ‘the most important or essential part of something’. If after assessing the statues it is found that legislation is in pith and substance, based on the matter assigned to the legislative then such an act must be held valid in its entirety. Even though the legislature may incidentally trench upon the matter beyond its competence still it is held to be valid as the statutes are in pith and substance related to the subject of the act or law.

**EVOLUTION OF THE DOCTRINE:**

The evolution of the doctrine of Pith and Substance dates back to Canada. The inception of this doctrine was marked by the Canadian case of ***Cushing v. Dupuy[[1]](#footnote-2)***. Subsequently, the doctrine made its way to India and is now a celebrated doctrine in the Indian context and there have been various landmark judgments with regard to the doctrine of Pith and Substance.

There are also various articles of the Indian Constitution which hold good with regard to the concept of Pith and Substance. For example, Article 246 and the Seventh Schedule have a major role to play in terms of upholding the Doctrine of Pith and Substance. The case of Cushing v. Dupuy which was seen as the first instance in terms of unfolding the doctrine of pith and Substance has been discussed below.

***Cushing v. Dupuy, [1880] UKPC 22: Discussed***

Brief Facts– On 19th of July 1877, three of the brewing companies namely, Mc Leod, Mc Naughten and Leveille became insolvent. Dupuy was its official assignee with regard to the writ of attachment in insolvency. On the other hand, Cushing, who was the notary, produced the contract of sale which was executed on March 12th 1877, by way of which the firm had agreed to sell the assets to him. On the same day another deed was executed by the way of which Cushing had agreed to lease back the assets to the principals of the firm for a period of three years.

Further, in the petition, Cushing asserted about having the possession of the assets. But in reality no removal had taken place and the assets were still in the possession of the firm. When this matter was taken up in the court, the main question pondered upon was whether the transaction was a valid sale within the meaning of Section 1027 and 1472 of the Civil Code of Lower Canada.

*Crux of the judgment*– The significant aspects which this judgment took into consideration were:

* The working and the nature of insolvency law in Canada.
* When can the appeals as of right to the privy council be excluded by the local legislature, and
* In which possible way can the royal prerogative be ousted by the state?

*JUDGMENT*:

After thorough analysis of the case at hand, the court held that the sale under section 1027 of the Civil Code of Canada was not a genuine one. Though this judgment has been overtaken by subsequent judgments in Canada, the case of Cushing v. Dupuy remains to be one of the noteworthy cases as it laid the foundation stone for the doctrine of Ancillary or Incidental encroachment, discussed in the latter part of this article.

**SALIENT FEATURES OF THE DOCTRINE**:

Situations in which the doctrine is applied– It is applied in the circumstances where subject matter of list seem to be conflicting with the subject matter of list two.

* *Reason behind adopting the doctrine*– The powers of the legislature would be sternly limited if every law is declared invalid on the ground that it encroaches upon another law.
* *True nature and character*– The doctrine is known to examine the true nature and character of the subject in order to ascertain as to in which list it fits.
* *Provision for a degree of flexibility*– It takes under consideration the fact as to whether the state has the power to make a law which involves a subject mentioned in the Union list of the constitution.
* *First judgment which upheld the doctrine*– It was in the case of State of Bombay v. F. N Balsara that the doctrine was first applied in the case and the same was upheld.

**LANDMARK INDIAN JUDGMENTS:**

* In the case of State of ***State of Bombay v. F. N. Balsara[[2]](#footnote-3)***, the Bombay Prohibition Act was challenged, which prohibited sale and possession of liquor in the state, was challenged on the ground that it incidentally encroached upon import and export of liquors across borders, which was a central subject. The act was held valid by the court as it was felt that the act was in its pith and substance fell under the State List even though such an act may impact in the import of liquor.
* In the case of ***State of Rajasthan v. G. Chawla[[3]](#footnote-4)***, the state of Rajasthan made a law restricting the use of sound amplifiers. This law was violated by the respondent and the act was impugned by the judicial magistrate. On further appeal to the Supreme Court, the state argued that the law was within the legislative competence of the state legislature under the entry 6 of list II, i.e. the power to legislate in relation to public health includes the power to legislate in relation to public health includes power to regulate use of amplifier as it produces loud noise whereas the opposition argued that amplifiers came under entry 31 list I i.e. post and telegraphs; telephones; wireless; broadcasting and other like forms of communication. The court decided that amplifier did not fall under entry 31 of list I even though the amplifier is an apparatus for broadcasting and communication the legislation in its pith and substance was on state matter and it was not held invalid even if it incidentally encroached upon the subject of broadcasting and communication.
* In the case of ***Profulla Kumar Mukherjee v. Bank of Khulna[[4]](#footnote-5)***, the validity of Bengal Money Lenders Act, 1946 was challenged which limited the amount and the rate of interest recoverable by a money lender on any loan. It was argued that promissory notes was a Central subject and not a state subject. It was held by the Privy Council that the act was in pith and substance a law in respect of ‘money lending and money lenders’ was a state subject and was valid even if it incidentally trenched upon ‘Promissory note’ i.e. a central subject.

**CRITICAL ANALYSIS OF THE DOCTRINE**:

Recognized by various High courts and Supreme Court in India, this doctrine is an established principle of law. Whenever a law is seen to be encroaching or trespassing upon a field, the legislation of which has been assigned to another, the Doctrine of pith and Substance comes into play. The crux of the doctrine is that whenever a question arises regarding the determination of whether a particular law relates to a particular subject (which will be mentioned in one of the lists) the court while dealing with such issues looks into the substance of such matter.

Hence, from the above mentioned points it can be stated that Doctrine of pith and Substance states- “Whenever a question arises as to determination of whether a particular law relates to a particular subject (which might be mentioned either in one list or another) the courts mainly looks at the substance of the matter. Thus, for instance, if the substance falls in the union list then the incidental encroachment by the law on the State list does not make it invalid”.

**NEED FOR PITH AND SUBSTANCE IN INDIA:**

One of the main reasons behind the acceptance and applicability of the doctrine in India was to provide flexibility to an otherwise existing rigid scheme concerned with the distribution of power in a federal structure. Another important point to be interpreted here is “if it was so that every legislation was to be declared invalid on the ground that it has been encroaching on the subject of another legislature, then these powers assigned to the legislature would be enormously restrictive and this would not serve the purpose of the power being granted to the legislature”.

**DOCTRINE OF ANCILLARY OR INCIDENTAL ENCROACHMENT**

The doctrine of Ancillary and Incidental encroachment is actually an addition to the doctrine of Pith and Substance. The prime ideology existing behind this doctrine is that the power to legislate on a subject will automatically include the power to legislate even on the subordinate (ancillary) matters which happen to be reasonably connected to the subject of the matter.

For Instance- A power entrusted in order to impose tax would also impliedly include the power of search and seizure which should be taken up in order to prevent the evasion of tax. But at the same time, a power entrusted in relation to banking cannot be extended to that of non-banking entities.

**CONCLUSION**

Thus, unfolding the meaning of the doctrine, it can be stated that Pith and Substance denotes the true nature of law. The doctrine places emphasis on the fact that it is the real subject matter which is to be challenged and not its incidental effects on another field. Pith denotes the ‘essence of something’ or the ‘true nature’, while substance states ‘the most significant or essential part of something’. Hence, it can be stated that the very doctrine of pith and substance relates to finding out the true nature of a statute.

1. (1880) UKPC 22 [↑](#footnote-ref-2)
2. 1951 AIR 318 [↑](#footnote-ref-3)
3. 1959 AIR 544 [↑](#footnote-ref-4)
4. (1947) 49 BOMLR 568 [↑](#footnote-ref-5)