
APPLICATION OF DOCTRINE OF PITH AND SUBSTANCE IN USA AND INDIA: A COMPARATIVE ANALYSIS

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ABSTRACT

The doctrine of Pith and Substance is a critical legal tool to analyse the purpose of legislation. It originated from Canada, and has been adopted in various jurisdictions, like India and the United States, to address jurisdictional conflicts and maintain the principle of federalism. This article compares the application of the doctrine in India and USA countries, analyses distribution of legislative power between levels of government, examines the judiciary's function in interpreting and applying the doctrine, and considers contemporary challenges it faces in the context of evolving governance.

Keywords: Federalism, Pith and Substance, cooperative federalism, judicial interpretation

Introduction:

The doctrine of Pith and Substance analyses the main aim of a legislation. It helps in maintaining the principle of separation of power by determining which level of government holds power to legislate on a certain matter. It resolves legislative disputes, ensuring smooth running of all levels of governments. The doctrine originates from Canada in the privy council verdict of **Cushing v. Dupuy in 1880**¹.

A. The distribution of legislative power between levels of government

India:

Our Indian constitution being the supreme law of the land has elaborately demarcated power distribution between state and central governments. Part XI, between Article 245 to 255, of constitution lays down relationship between the central and state government. 7th schedule under article 246 allocates specific power under 3 lists: Union, state and concurrent list.

¹ Cushing v. Dupuy 1880 UKPC 22

The union list contains 97 matters on which the legislature can legislate. The state list consists of 66 matters on which all 28 states' legislative assemblies can legislate. The concurrent list consists of 47 matters on which both state and central governments can legislate.

Matters which do not fall under any of the 3 lists, can be legislated by the parliament. This is the residuary powers of legislation enumerated under article 248 of the constitution.

United States of America:

USA has federal system of government and has an intricate model of distribution of power between states and the national government, as per its constitution. Similar to India's residuary article, US has "supremacy clause" under article VI of its constitution which gives national laws supremacy over state laws. Similar to India's 3 list under schedule 7, US legislating power is divided into: **Delegated Powers, Denied Powers and Reserved Powers.**

Delegated powers are outlined under article 1, section 8 of the US constitution and bestows upon US Congress power to tax, regulate commerce, coin money, and raise and support the military. Denied powers are the categories under which Congress has no power. They are listed under Article 1, section 9 and 10 of US constitution and it includes suspending the writ of habeas corpus and granting titles of nobility. Under certain categories, State governments powers are also prohibited. They include entering into treaties, coining money, and imposing certain taxes without the consent of Congress. "Reserved power" is a foundational to state's capacity to develop law within mandate of US Constitution. The 10th Amendment reserves all powers which are not delegated to the federal government or prohibited to the states to the states or the people. Later amendments, such as the 13th, 14th, and 15th Amendments, have placed additional constraints on state powers, especially in the area of civil rights.

Article IV elaborates on the relations among all the 50 US States and emphasises each state to grant "full faith and credit" to the records of other states. It also requires the federal government to guarantee a "republican form of government".

B. Application of Doctrine of Pith and Substance:

India:

Being born in Canadian courts, the doctrine is being used in many countries, one of which is India. Its purpose is to solve jurisdictional issue and focus on true purpose of legislation. The areas where it is applied includes examining legislative purpose, resolving jurisdictional

disputes, promoting cooperative federalism and maintain constitutional dignity.

The doctrine ensures whether all levels of government operate within the constitutional mandate, also grants flexibility and prevents rigid demarcation. It maintains a balance in legislative powers between the Union and the States, upholding the federal structure and allowing incidental overlaps without allowing the laws to become invalid.

United States of America:

In the US application of this doctrine is not prevalent and U.S. legal system relies more on other principles like federalism and legislative competence. The doctrine is impliedly applied under principles such as federalism, enumerated powers, and doctrine of pre-emption.

Federalism as detailed in the 1st part of the article, is a system where a territory is controlled by two or more levels of government each with its own demarcated powers. This prevents overreach of power by any level of government, maintaining balance in the country.

The US federal and state governments have enumerated powers, clearly demarcated in the constitution. This approach is similar to the doctrine as it analysed aim or object of the legislation to arrive at the validity of the government's jurisdiction over the matter.

Doctrine of pre-emption states federal legislations are superior and take precedent over state laws. Article IV, supremacy clause in US constitution invalidates state laws if it contradicts or interferes with federal laws.

Through the above-mentioned principles, US courts analyse intention behind a legislation, similar to doctrine of pith and substance.

C. Judiciary's role in applying the doctrine:

India

Indian courts play major role in interpreting the constitutional provisions and uphold principle of quasi-federalism, solving disputes between state and central governments.

In *State of West Bengal v. Union of India*², the Supreme court of India emphasised on the quasi-federal principle by affirming parliament's supremacy over state legislative assemblies. Here the court upheld Parliament's authority under **Entry 42 of List III (Concurrent List)** under Seventh Schedule, allowing acquisition of property from not just individuals but also the States.

² State of West Bengal v. Union of India, 1963 AIR 1241

Federalism has been established as part of basic structure of Indian constitution in **Kesavananda Bharati vs. State of Kerala**³. To prevent misuse of power and to uphold the principle of separation of power, Judicial review has been imposed on federalism in the landmark case of **S.R. Bommai vs. Union of India**⁴.

Indian judiciary solves jurisdictional conflicts through the doctrine, some of the examples are elaborated below through landmark cases.

In **State of Bombay v. F.N. Balsara**⁵, the court upheld the Bombay Prohibition Act though incidentally it encroached interstate trade. The court reasoned it by stating its core object was within the state's jurisdiction.

In **Prafulla Kumar Mukherjee v. Bank of Khulna**⁶ court upheld state's power over framing laws on money lending by validating the Bengal Money Lenders Act though it encroached on the central subject, promissory notes

In **State of Rajasthan v. G. Chawla**⁷ validated the state legislation, Ajmer (Sound Amplifiers Control) Act, 1952 which restricted use of sound amplifiers though it incidentally encroached on a central subject of broadcasting.

In **Association of Natural Gas v. Union of India**⁸ the Supreme Court emphasised on practical application of legislative power, using the doctrine to resolve jurisdictional matters on the issue of natural gas.

In Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Sitaram Rao⁹ court upheld state law on examination protocols under the subject of education as it falls under concurrent list in the 7th schedule of the Constitution. Thereby, allowing both the central and state governments to legislate in the matter.

United States:

USA's judiciary similar to India's judiciary supervises state and national government's legislative activities and ensures their exercise of power within constitutional mandate.

³ Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225 (India)

⁴ S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1 (India)

⁵ State of Bombay v. F.N. Balsara, A.I.R. 1951 S.C. 318 (India)

⁶ Prafulla Kumar Mukherjee v. Bank of Khulna, A.I.R. 1947 P.C. 60 (India)

⁷ State of Rajasthan v. G. Chawla, A.I.R. 1959 S.C. 544 (India)

⁸ Association of Natural Gas v. Union of India, (2004) 7 S.C.C. 284

⁹ Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Sitaram Rao, (2021) 10 S.C.C.

In **McCulloch v. Maryland (1819)**, ¹⁰ court established federal supremacy over state by holding that state does not have power to tax federal institutions. In **Printz v. United States (1997)**¹¹, state's autonomy against federal government was established as the some interim provisions of Brady Handgun Violence Prevention Act, was ruled unconstitutional.

D. Contemporary challenges to the doctrine:

India:

Courts try to promote cooperative federalism and uphold validity of cases though at times it incidentally overlaps with other lists under schedule 7. With developments, new challenges sprung up, one such issue is with GST regime

The Goods and Services Tax (GST), which was implemented in the year 2017, replaced all the central and state laws on tax. Though the recent GST is harmonized, there exist some challenges in terms of distribution of fiscal powers between the central and the States government. States argue that the GST regime diminishes financial autonomy of states.

Another recent challenge to the doctrine can be under the newly recognised right to privacy. The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, was challenged on numerous grounds such as right to privacy and legislative powers in **Justice K.S. Puttaswamy (Retd.) v. Union of India**¹². It was argued that the Act was encroaching on powers of states as matters on personal data and privacy not explicitly listed Lists under schedule 7 but it is a fundamental right. The case raised issues on central government's power.

USA:

As established before the doctrine does not explicitly operate in US but operates implicitly using various principles. In US there have been recent legal issues on state and federal authority.

In **National Federation of Independent Business (NFIB) v. Department of Labor, Occupational Safety and Health Administration**¹³, US supreme court invalidated the mandatory rule to impose a nationwide COVID-19 vaccination-or-testing mandate on large employers through

¹⁰ McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819)

¹¹ Printz v. United States, 521 U.S. 898 (1997)

¹² Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1

¹³ National Federation of Independent Business (NFIB) v. Department of Labor, Occupational Safety and Health Administration 595 U.S, 2022

the Occupational Safety and Health Administration (OSHA) as the act did not have the authority to impose such broad regulations outside its specific jurisdiction which is workplace safety. Here, the implicit feature of pith and substance doctrine, federalism was used to prevent federal government from overreaching its authority.

Conclusion:

The doctrine of Pith and Substance has stood the challenge of time and proved to be a remains a vital aspect of legislative interpretation, in both India and the United States. By focusing on the underlying object of legislation, it ensures whether legislative authority is exercised within constitutional bounds. The judiciary in both the nation are upholding this doctrine, and ensuring balance in the legislative power of all levels of government. But both nations need to adapt an add new norms for the continued evolution of the doctrine.

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