

MARCH 2021. ISSUE 01
03-MAR-2021

TM

UNLOCK YOUR POWERS

WALLCLIFFS LAW FIRM

An ISO 9001 : 2008 Certified Firm
We Never Stop Protecting You

LEGAL ANGLE



ADDRESS

Coimbatore Office

#49, West Club Road, Near
Vilvam Apartments, Race Course,
Coimbatore - 641 018.

High Court Office

#103, I - Floor,
Armenian Street,
Parrys, Chennai - 600 001.

Tiruppur Office

544, Room No.2, I-Floor,
Opp. to TKT Motors, Palladam
Main Road, Tirupur - 641604

DOCTRINE OF PITH AND SUBSTANCE



+91 75400 75411



mail@wallcliffs.com



www.wallcliffslawfirm.com

Evolution:

The doctrine of pith and substance was traced back to Canada and introduced in the case *Cushing V. Dupuy*, 1880. But, in India, the doctrine was resolved in Article 246 and the Seventh Schedule of the Constitution of India for validating the enactments made by the framers and if the same is overlapping in the lists mentioned in the Seventh Schedule.

Meaning:

The literal term pith means the true essence and the substance means the essential part. The pith and substance means the important essence of something where the true essence lies. Therefore, the doctrine of pith and substance mean to find the true nature of the law. The vested power of the legislatures is to formulate the statute as per 3 lists mentioned in the Constitution of India, that may overlap. But, shall not become null and void on the ground of overlapping and the same shall be valid by invoking the doctrine of pith and substance.

The doctrine of pith and substance deals with Article 246 and the Seventh Schedule of the Constitution of India which consist of three lists. This Article shall be invoked when there is the question of competency of enactment made under the 3 lists of the Seventh Schedule of the Constitution of India. For the purpose of validating the enactment, the Court must look into the substance of the enactment and if it finds that the substance is competent to the framers then the statute shall be valid.

Object Of The Doctrine:

- To ensure against the malafide or fraudulent exercise of legislative power where the legislative pretends to do one thing but doing another thing.
- To ensure that the division of legislative power under the list is not too rigid.
- To ensure that the power exercised by the legislature for one purpose may incidentally or indirectly touch another purpose.



Features Of The Doctrine:

- If the subject matter of the one list is in conflict with the subject matter of another list.
- To avoid any limitation on the powers of legislatures by declaring every other enactment invalid when it encroaches upon another law.
- To determine the true nature and character and to decide which list it falls.
- It provides a degree of flexibility on the power of the State to make a law that involves the subject of Union List.

Purpose Of The Doctrine:

- To know the exact nature of the law.
- To know whether the exact impact was reflected on the statute framed.
- To know whether there are consequences on implementing the statute.

CASE LAW

Case 1

State of Bombay v. F.N. Balsara, 1951 SCR 682.

Held - The impugned Act is in pith and substance a law relating to possession and sale etc. of intoxicating liquors or whether it relates to import and export of intoxicating liquors. If the true nature and character of the legislation or its pith and substance is not import and export of intoxicating liquor but its sale and possession etc. then it is very difficult to declare the Act to be invalid. It is said that the prohibition of purchase, use, possession, transport and sale of liquor will affect its import. Even assuming that such a result may follow, the encroachment, if any, is only incidental and cannot affect the competence of the Provincial Legislature to enact the law in question.

Case 2

Vijay Kumar Sharma And Others v. State Of Karnataka And Others, 1990 AIR SC 2072.

Held - The doctrine of pith and substance or the predominant purpose, or true nature



and character of the law have 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 to 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 a 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.

Case 3

Vinodchandra Sakarlal Kapadia v. State Of Gujarat & Ors., 2020 SCC ONLINE SC 545.

Held - Once the doctrine of pith and substance is applied to the facts of the present case, it is more than clear, the State Act is aimed at planned development unlike the Central Act where the object is to acquire land and disburse compensation in accordance with law. Paramount purpose and object of the State Act being planned development and acquisition being incidental thereto, the question of repugnancy does not arise. The State, in terms of Entry 5 of List II of Schedule VII, is competent to enact such a law. It is a settled canon of law that courts normally would make every effort to save the legislation and resolve the conflict/repugnancy, if any, rather than invalidating the statute. It will be the purposive approach to permit both the enactments to operate in their own fields by applying them harmoniously.

Case 4

Pandurang Ganpati Chaugule v. Vishwasrao Patil, 2020 SCC ONLINE SC 431.

Held - The doctrine of pith and substance can be applied to examine the validity or otherwise of a legislation for want of legislative competence as well as where two legislations are embodied together for achieving the purpose of the principal Act. Keeping in view that we are construing a federal Constitution, distribution of legislative powers between the Centre and the State is of great significance. Serious attempt was made to convince the Court that the doctrine of pith and substance



has a very restricted application and it applies only to the cases where the court is called upon to examine the enactment to be ultra vires on account of legislative incompetence.

Case 5

Union Of India & Ors. v. Shah Goverdhan L Kabra Teachers' College, 2002 AIR SC 3675.

Held - The High Court committed gross error in construing the provisions of sub-section (4) of Section 17 of the Act to mean that it is a legislation dealing with recruitment and conditions of service of persons in the State service within the meaning of proviso to Article 309 of the Constitution. The High Court committed the aforesaid error by examining the provisions of sub-section (4) on its plain terms without trying to examine the true character of the enactment which has to be done by examining the enactment as a whole, its object and scope and effect of the provisions. Even the High Court does not appear to have applied the doctrine of "pith and substance" and, thus, committed an error in interpreting the provisions of sub-section (4) of Section 17 to mean to be a provision dealing with conditions of service of an employee under the State Government.

DISCLAIMER

This write up has been sent to you for information purposes only and is intended merely to highlight legal maxim. The information and/or observations contained in this issue do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. The views expressed in this issue do not necessarily constitute the final opinion of M/s.Wallcliffs Law Firm and should you have any queries in relation to any of the issues set out herein or on other areas of law, please feel free to contact us on mail@wallcliffs.com.



ADDRESS

Coimbatore Office

#49, West Club Road, Near
Vilvam Apartments, Race Course,
Coimbatore - 641 018.

High Court Office

#103, I - Floor,
Armenian Street,
Parrys, Chennai - 600 001.

Tiruppur Office

544, Room No.2, I-Floor,
Opp. to TKT Motors, Palladam
Main Road, Tiruppur - 641604



+91 75400 75411



mail@wallcliffs.com



www.wallcliffslawfirm.com