INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW
An International Open Access Double Blind Peer Reviewed, Referred Journal

Volume 4 | Issue 6 | 2025 Art. 08

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Recommended Citation
Apurba Behera and Kanak Agarwala, *Doctrine of Pith and Substance: Safeguarding the Distribution of Legislative Power*, 4 IJHRLR 109-129 (2025).
Available at www.humanrightlawreview.in/archives/.

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Manuscript Received	Manuscript Accepted	Manuscript Published
10 Nov. 2025	14 Nov. 2025	16 Nov. 2025

ABSTRACT

Doctrines which derived from various constitutions and inserted in the Indian Constitution play a very important role while interpreting the laws or cases in India. These doctrines which find a true essence or essential part of the law and one of those is doctrine of pith and substance. In the conflicts of distributing and interference with each other powers, this doctrine helped to provide flexibility so that to understand that whether the law is valid to be implemented in the country. To understand the features of doctrine and how this doctrine helped to solve the grudges, validity and confusion of law and most importantly how it helps to protect the legislative this research paper will give a detail understanding about it.

Literature Review

The doctrine of pith and substance is a foundational legal principle in constitutional law that safeguards the distribution of legislative power, especially within federal systems like India's. Originating in Canadian jurisprudence, particularly in Cushing v. Dupuy (1880), it was adopted in India under Article 246 of the Constitution and enshrined within the Seventh Schedule, which delineates subjects under Union, State, and Concurrent lists.

This doctrine enables courts to look beyond the literal text of legislation to determine its true essence or "pith and substance," focusing on the law's dominant

purpose rather than incidental encroachments on another legislature's jurisdiction. This flexibility allows laws with minor overlaps to be upheld, preventing excessive invalidations while maintaining constitutional order.

Significant Indian cases applying this doctrine include Profulla Kumar Mukherjee v. Bank of Khulna and State of Bombay v. F.N. Balsara, where courts upheld state legislations that incidentally encroached upon Union subjects but primarily concerned State matters. The doctrine also plays a crucial role in resolving conflicts under Article 254 concerning repugnancy between central and state laws.

The doctrine emphasizes legislative competence by discerning the authentic character of laws, balancing complex federal relationships and preventing jurisdictional conflicts. It complements related judicial doctrines like colourable legislation to uphold constitutional integrity. By safeguarding constitutional distribution of power, the doctrine ensures legal clarity and effective governance across overlapping legislative domains, thus preserving federal harmony

In sum, the doctrine of pith and substance is an essential interpretive tool that pragmatically allocates legislative authority, promoting cooperative governance and legal stability in India's quasi-federal constitutional framework.

Research Methodology

The research methodology used in this paper is descriptive and analytical methodology. This methodology is been used to provide a comprehensive and a deeper understanding of this doctrine. The descriptive method is been used to find the origin and history, meaning of the doctrine and on the other hand the analytical method is been used to examine the doctrine impact which act as a shield to protect the legislative powers and maintaining the federal balance. It helps to evaluate the practical applications of the doctrine used by Indian Courts helping them while interpreting the law. By combining both descriptive and analytical method it will lead the research into more informative and critical and it also supports the analysis on how the doctrine of Pith and Substance safeguarding the legislative powers..

KEYWORDS

Federalism, Legislation, Competence, Interpretation, Doctrine

1. INTRODUCTION

The doctrine of pith and substance is considered to be one of the oldest doctrines used in our Constitution. It is considered as foundational principle which has a primarily focus on federal system where the legislative powers has been divided into centre and regional governments.[1] This doctrine assures that the legislation is evaluated in accordance with the predominant objective, by doing this we are able to make sure that the original goal of the lawmakers is protected even as we work within the boundaries set by the constitution. This plays a key role in preventing laws from being thrown out for reasons like accidentally stepping into areas meant for other branches of lawmaking.[2] India utilizes this doctrine allowing a bit of maneuverability in the rigidity of the system. The phrase is also implemented in India with the aim of introducing some degree of flexibility within the existing framework.

The strict way in which powers are divided. This idea was put in place because if all were to have the same powers and responsibilities it would lead to chaos.

The legislation was deemed unfit to stand as it overstepped its boundaries and trespassed into areas not meant for it. The goal of the tool is to process text in a way that is intended to be easily understandable and relatable to humans. The rewritten sentences should be conversational and in everyday English rather than robotic or overly technical. The doctrine has various key principles; by using this doctrine the judiciary is able to find the true essence of the law rather than its unintentional intrusions. [3]Talking about utilising the doctrine in modern era where to handle the legislative is too complicated, this pith and substance plays an essential role in resolving the conflicts between centre and state laws. As both the parliaments are addressing the new areas such as digital governance, Insolvency and Bankruptcy code amendment, health and environment affairs, this doctrine created a belief that the laws which are valid should not get struck down due minor overlaps. Everyone is aware of the fact that majority legislative power lies within the government of Union, so

[1] (LawFoyer & LawFoyer, 2024)
[2] Dr. Syed Asima Refayi, *Constitutional Law I: Unit III — Pith and Substance* (Univ. of Kashmir, Dep't of Law, course material, n.d.)
[3] (Courses, 2024)

for now it is more essential to give the honour to the existing limited power state government and most crucial thing is to provide freedom to legislate on the subject-matter without direct encroachments. This is only achievable with the help of doctrine of pith and substance because any type of direct encroachment can lead to be termed as invalid by the court. This doctrine holding a crucial part in federal system like India where the power of talking about the list must be equally distributed so that it will resultant into the smooth governance and creation of respect for regional independence effectively. While analyzing the doctrine, there is a interesting fact that this doctrine has a similarity with the other legal doctrine named colourable doctrine. This doctrine observes whether legislation is merely merely a task or pretense for infringing on the powers of another level of government. Both the doctrines guarantee the constitutionality of laws these philosophies serve complimentary to each other.

2. HISTORICAL EVOLUTION

When it comes to the historical evolution,[4] this doctrine is basically derived from Canadian law and later been accepted by the Indian Constitutional law which become as an essential medium to solve the legislative disputes especially the conflicts of overlapping to rule on cases between the Union and the States[5]. The doctrine comes through government act 1935 in Indian constitutional law which played a key role in organized subjects into Federal, Provincial and Concurrent lists. In the year 1950 as India embraced its Constitution it extended the existing setup through Article 246 and the Seventh Schedule. The courts of India used this principle to make sense of where the lawmaking authority of the central government and the states overlaps.

2.1 *Canadian Roots: The British North America Act and Early Jurisprudence*

From its roots in the British North America Act of 1867, now called the Constitution Act, the idea behind the Doctrine of Pith and Substance came to be[6]. This act was a key step in forming what we now know as Canada bringing together what were once the independent colonies of Canada (now Ontario and Quebec), Nova Scotia, and New Brunswick into a united Dominion still under British rule. Creating a federal parliamentary system made it so Federal Parliamentary and Provincial Legislative powers were clearly set apart. In the Constitution Act 1867,[7] Section 91 laid

[4] Wallcliffs Law Firm, "Doctrine of Pith and Substance," *Legal Angle*, March 2021, Issue 01
[5] Kannav, V., Doctrine of Pith and Substance Research Paper, Scribd (n.d.)
[6] British North America Act, 1867, CANADIAN MUSEUM OF HISTORY
[7] Constitution Act, 1867, Wikipedia, The Free Encyclopedia

out the specific powers held exclusively by the Federal Parliament. These powers were focused on things that affected the entire country like defense trade and commerce the national currency and matters relating to Indigenous Peoples. In the legal document known as section 92 the specific focus is on granting provinces their own set of powers that are exclusive to them.

These powers can be exercised to make decisions on subjects relating to things like property ownership and civil rights as well as items of a local or personal nature. In order to keep each federal and provincial government as their own masters in their own areas a set of rules for what each can regulate was put in place this helped make the system where federalism works properly and runs smoothly The main goal of this legislative delineation was to create a balance of power between the federal and provincial governments by specifying the areas in which each has control ensuring that both levels can operate effectively without stepping on each other's toes. If we talk about the early challenges and formation of the doctrine even with a distinct line drawn between them the practical umbrella of diverse areas of legal authority would find ways to clash between the central authority of the Dominion and the individual Provinces. The task posed a dilemma of deciding whether the Dominion or the Provinces held the power when laws seemed to step into the territories designated for the other party.

The Privy Council's decision in Cushing v. Dupuy back in 1880 marked a turning point in legal history by establishing the foundation for what is now referred to as the Principle of Core and Substance. In this ruling the Privy Council emphasized the importance of looking at the true essence or core nature of a law rather than focusing on the side effects it may have. When the law was in force as major or leading purpose within the regulations governing body's control, it was considered legal. [8]Breaking into the other government's territory a little bit here and there didn't make the law invalid. Even though there were small unauthorized intrusions into the territory of another governing body, the law didn't lose its power. Recognizing how intertwined legislative powers can be within a federal system this practical approach made room for laws that overlapped incidentally without having to declare them unconstitutional.

2.2 *Indian Adaptation: From the Government of India Act, 1935 to the Constitution of 1950*

India took over the doctrine as a primary interpretative principle

[8] Oishika Banerji, Doctrine of Pith and Substance, IPLENDERS (Mar. 18, 2022)

of Article 246 and the Seventh Schedule of the Indian Constitution, which categorizes law-making powers into three lists: the Union List, State List, and Concurrent List. With the several states and the central government having separate but at times concurrent jurisdictions, the doctrine ensures flexibility through permitting the laws to be enforced when their central aim is in the legislative competency of the enacting power, even though they happen to incidentally impact areas outside their jurisdiction. From Government of India Act, 1935 to the Constitution of 1950.The Government of India Act, 1935 originally brought in a federal system with distinct lists of federal and provincial powers but without the flexibility of the doctrine of pith and substance. After independence, the Indian Constitution carried forward this distinction but accepted the doctrine to prevent absolute nullification of legislation in instances of accidental overlaps.

2.3 *Commonwealth Diffusion: Australia and South Africa*

The doctrine also influenced other Commonwealth federations, though with local variations.

1. Australia

The High Court of Australia initially took a narrow view of federalism, often invalidating state laws that touched on federal fields. However, the Engineers' Case (1920)[9] marked a doctrinal shift. The Court abandoned implied immunities and adopted a more literal approach to constitutional interpretation. While Australia did not formally adopt the phrase "pith and substance," its functional analysis of legislative purpose echoed the Canadian model. Later cases, such as Grannall v. Marrickville Margarine Pty Ltd (1955), reflected the same principle: [10]incidental encroachments did not automatically invalidate legislation.

2. South Africa

Post-apartheid South Africa's 1996 Constitution established a system of "cooperative governance" with national and provincial competences. The Constitutional Court developed doctrines analogous to pith and substance, emphasizing that laws should be assessed based on their dominant purpose. For instance, in Ex parte President of the Republic of South Africa (1995), the Court held that provincial autonomy must be

[9] Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd., Wikipedia, The Free Encyclopedia

[10] Tony Meacham, *100 Years of the Engineers Case – How Australia Carved a Constitutional Path Away from Britain*, 18 Canberra L. Rev. 81 (2021)

respected, but national legislation could stand if its core purpose addressed national concerns. This jurisprudence demonstrates the doctrine's adaptability to modern constitutional frameworks that stress cooperation rather than conflict.

2.4 *From Colonial Control to Federal Balancing*

It is important to situate the doctrine within its historical context. Initially, the[11] Privy Council's use of the doctrine in Canada and India was not entirely neutral. Scholars like A.V. Dicey noted that the imperial judiciary often favored central authority to maintain colonial cohesion. In Hodge v. The Queen, for example, the Privy Council was careful to limit provincial autonomy to prevent fragmentation of the empire. In India, too, the doctrine was sometimes applied in ways that reinforced central dominance under the 1935 Act.

Yet, as federations matured, the doctrine evolved from a mechanism of imperial control into a genuine federal balancing tool. In post-independence India, the Supreme Court reinterpreted it to protect state autonomy against Union encroachment. In Canada, it became a shield for provinces in disputes with the Dominion. And in South Africa, it underpinned the principle of cooperative governance. This transformation reflects the doctrine's flexibility and its capacity to adapt to changing constitutional priorities.

2.5 *Key Themes from the Evolution*

From this historical survey, three themes emerge:

1. **Pragmatism over Formalism**

   Courts across jurisdictions recognized that rigid formalism would paralyze governance. The doctrine provided a pragmatic method to uphold laws that were substantively valid even if incidentally intrusive[12].

2. **Judicial Discretion and its Risks**

   The doctrine relies heavily on judicial interpretation of "substance." While this flexibility is beneficial, it also opens the door to inconsistency and political influence[13].

[11] Doctrine of Pith and Substance, DrishtiJudiciary (May 31, 2024)
[12] Oishika Banerji, Doctrine of Pith and Substance, IPLENDERS (Mar. 18, 2022)
[13] The Doctrine of Pith and Substance Preserves and Protects the

3. **Shift from Colonialism to Federalism**

   Initially a tool of imperial control, the doctrine now functions as a mechanism of federal balance, protecting both central and regional autonomy depending on context[14].

3. DOCTRINAL ANALYSIS

The doctrine of pith and substance operates as a judicial tool for resolving conflicts of legislative competence in federal constitutions[15]. Unlike rules of strict interpretation, which rigidly compartmentalize subjects, the doctrine recognizes the practical reality that legislative fields inevitably overlap. By focusing on the *substance*—the "true nature and character"—of legislation rather than its incidental effects or formal description, courts have developed a flexible mechanism to uphold laws that serve legitimate purposes within a legislature's domain. However, the methodology is not without controversy. The very flexibility that ensures functional governance also renders the doctrine vulnerable to inconsistent application and excessive judicial discretion.

This section unpacks the doctrinal framework in four parts: (1) the principles underpinning the doctrine, (2) judicial methodologies used in its application, (3) key cases illustrating its use, and (4) scholarly and judicial criticisms.

3.1 Principles Underpinning the Doctrine

The doctrine of pith and substance rests on three foundational principles:

(a) Substance Over Form

The first and most essential principle is that the validity of a law depends not on its formal label or incidental impact but on its substantive objective. Courts ask: what is the law really about? If its dominant purpose lies within the legislature's competence, it is upheld.

This principle was established in *Citizens Insurance v. Parsons (1881)*[16] and reinforced in Indian cases such as *Prafulla Kumar* (1947). In *Balsara* (1951), the Supreme Court of India rejected the

Constitutional Properties of Parliament and Legislatures, AIR ONLINE

[14] Doctrine of Pith and Substance, DrishtiJudiciary (May 31, 2024)

[15] Doctrine of Pith and Substance, LawBhoomi (June 26, 2025)

[16] Oishika Banerji, Doctrine of Pith and Substance, IPLENDERS (Mar. 18, 2022)

argument that incidental effects on trade invalidated the Bombay Prohibition Act. Instead, it examined the Act's dominant objective—public health and morality—and upheld its constitutionality.

(b) *Incidental Encroachment*

The second principle is tolerance of incidental intrusion. Legislatures cannot legislate in watertight compartments. If the primary subject is within competence, incidental overlap does not vitiate the law.

This principle ensures federal balance by preventing minor overlaps from paralyzing governance. For example, in *G. Chawla* (1959), regulating loudspeakers touched upon Union control over communications, but the Court upheld the law because its essence was maintenance of public order.

(c) *True Nature and Character*

The third principle is the identification of a law's "true nature and character." This involves analyzing the dominant purpose of the legislation by considering its text, context, and practical effects. Courts avoid focusing on incidental or collateral consequences.

This principle is not merely descriptive but evaluative. It requires judges to assess both the intention and the effect of the law. Critics argue this opens the door to subjectivity, but proponents view it as necessary for reconciling federal tensions.

3.2 *Judicial Methodology*

The methodology of applying the doctrine can be broken down into a two-step analysis, though its contours vary across jurisdictions.

Step One: Identify the Dominant Purpose

Courts first determine what the legislation is really about. They examine:

- **Textual analysis**: the language of the statute.
- **Contextual analysis**: the preamble, legislative debates, and surrounding circumstances.
- **Purpose and effect**: the legislative intention and its actual operation.

This step ensures that courts avoid being misled by the law's title or incidental provisions.

Step Two: Assess Incidental Effects

The second step involves assessing whether any encroachment on another legislature's domain is merely incidental. If so, the law remains valid. However, if the encroachment is substantial or the true substance lies outside competence, the law is struck down.

For example, in *Union Colliery v. Bryden* (1899), the Privy Council struck down provincial legislation excluding Chinese workers because its pith and substance was immigration, a federal subject. In contrast, *Prafulla Kumar* upheld provincial legislation on moneylending despite incidental overlap with banking.

4. APPLICATION IN INDIAN CONTEXT

In India, courts often employ an additional test: does the law deal with a matter in the State List, Union List, or Concurrent List? If overlap exists,[17] Article 246 and the Seventh Schedule guide the analysis, supplemented by Article 254 on repugnancy. The pith and substance doctrine interacts with these constitutional provisions to determine validity.

4.1 *Landmark Applications in Indian Jurisprudence*

Several Indian cases illustrate the mechanics and significance of the doctrine:

1. **State of Bombay v. F.N. Balsara (1951)[18]**
    - Issue: Whether prohibition laws encroached on Union trade and commerce powers.
    - Holding: The pith and substance was public health/morality, a state subject.
    - Significance: Established the broad acceptance of incidental encroachment.
2. **State of Rajasthan v. G. Chawla (1959)[19]**
    - Issue: Regulation of loudspeakers and its impact on Union control over communications.
    - Holding: Pith and substance was public order, a state subject.

[17] Doctrine of Pith and Substance, DrishtiJudiciary (May 31, 2024)
[18] Oishika Banerji, Doctrine of Pith and Substance, IPLENDERS (Mar. 18, 2022)
[19] Doctrine of Pith and Substance, DrishtiJudiciary (May 31, 2024)

- Significance: Demonstrated functional application to modern governance issues.

3. Atia Bari Tea Co. v. State of Assam (1961)[20]

- Issue: Validity of a state tax on transport of goods in light of Article 301 (freedom of trade).
- Holding: Law struck down as it impeded free trade.
- Criticism: Seen as overly formalistic, leading to confusion.

4. Automobile Transport Ltd. v. State of Rajasthan (1962)

- Issue: Similar taxation issue.
- Holding: Court shifted back to substance analysis, upholding the law.
- Significance: Reinforced doctrine's flexibility.

5. K.C. Gajapati Narayan Deo v. State of Orissa (1953)

- Issue: Doctrine of colourable legislation.
- Holding: While linked to pith and substance, colorability targets disguised encroachments.
- Significance: Demonstrated interaction with related doctrines.

These cases highlight both the strengths and weaknesses of the doctrine. While it preserves state autonomy and prevents central overreach, its application often depends on judicial perspective, leading to unpredictability.

4.1 *Criticisms of the Doctrine*

Despite its centrality, the doctrine has faced sustained criticism from scholars and judges.

(a) Excessive Judicial Discretion[21]

The identification of "substance" requires interpretive judgment. Critics like H.M. Servia argue that this opens the door to subjectivity, enabling courts to tilt outcomes based on political or

[20] Atiabari Tea Co Ltd v. State of Assam & Ors, Case Analysis, DREAMLAW
[21] Unpacking the Aspects Doctrine in India, NALSAR Ctr. for Transnat'l Legal Stud.

ideological preferences.

(b) Inconsistent Application[22]

Case law demonstrates inconsistency. The contrast between *Atia Bari Tea* and *Automobile Transport* illustrates how different benches can reach opposite conclusions about similar legislation. Such unpredictability undermines rule-of-law values.

(c) Risk of Undermining Federalism[23]

By validating incidental encroachments, courts risk expanding one level's competence at the expense of another. For instance, broad readings of Union powers in India often subsume state domains, despite the doctrine's ostensible aim of balance.

(d) Political Misuse[24]

Legislatures sometimes exploit the doctrine through "colourable legislation"—laws that claim one purpose but effectively target another subject. While courts attempt to police such misuse, distinguishing genuine substance from disguised intent remains contentious.

(e) Doctrinal Overlap and Confusion

The doctrine often overlaps with related doctrines such as repugnancy (Article 254) and occupied field. This creates doctrinal confusion and complicates judicial reasoning.

4.2 *Scholarly Reflections*

Leading scholars have weighed in on the doctrine's utility and limits:

- **A.V. Dicey**: While not addressing pith and substance directly, his theory of parliamentary sovereignty underscored the tension between rigid legislative lists and judicial interpretation.
- **H.M. Servia**: Strongly defended the doctrine as indispensable but warned against its misuse by courts expanding central powers.

[22] K. Ankita Rao & Shelal Lodhi Rajput, Doctrine of Pith and Substance - 'The' Metaphor, 7 Int'l J. Research & Analytical Rev. 948 (Mar. 2020)
[23] Dr. Syed Asima Refayi, Constitutional Law I: Unit III, Constitutional Law I (undated lecture notes)
[24] Rahul Pandey, Tag: pith and substance, CONSTITUTIONAL LAW AND PHILOSOPHY (Oct. 2025)

- **P.P. Craig**: Emphasized that doctrines like pith and substance reflect deeper theories of constitutional balance, where courts mediate between flexibility and fidelity.

- **Indian Commentators (H.M. Jain, M.P. Jain)**: Have noted that the doctrine preserves federalism in practice but requires consistent application to avoid arbitrariness.

The doctrine of pith and substance represents a pragmatic judicial strategy to reconcile overlapping legislative powers in federations. Its principles—substance over form, incidental encroachment, and true nature analysis—provide a flexible method for upholding laws that serve legitimate objectives. Indian jurisprudence has showcased both the utility and the pitfalls of this doctrine: it safeguards federalism but risks inconsistency and judicial overreach. Scholarly critiques underscore the need for more structured application.

This doctrinal analysis sets the stage for a comparative inquiry in Part IV, where the doctrine's role in India and Canada will be contrasted with the U.S. supremacy clause, Germany's cooperative federalism, and the EU subsidiarity principle.

5. NORMATIVE ARGUMENT & REFORM

The doctrine of pith and substance has survived for over a century because it is not simply a mechanical rule but a judicial philosophy of federal balance[25]. Its endurance demonstrates its adaptability across jurisdictions and contexts. Yet, endurance does not mean perfection. If anything, the doctrine's survival has exposed its vulnerabilities: the risks of excessive judicial discretion, its potential to Favor central authorities over states, and its inability to anticipate complex governance challenges such as the digital economy or environmental regulation. The central normative question, therefore, is whether the doctrine should be reinterpreted, retained, or replaced in light of changing constitutional dynamics.

This section advances three normative claims. First, the doctrine remains indispensable in federal democracies, but it must be reinterpreted in line with modern constitutional values. Second, reforms are needed to harmonize judicial methodology, reduce discretion, and ensure genuine protection of state autonomy. Third, the doctrine should evolve into a framework of cooperative constitutionalism, embedding principles of subsidiarity,

[25] *Unveiling the Powerful Doctrine of Pith and Substance*, DOON LAW MENTOR (Sept. 13, 2024)

necessity, and proportionality.

5.1 *Why the Doctrine Remains Indispensable*

Federal constitutions cannot anticipate every possible field of regulation. Legislative lists, however detailed, are inevitably porous[26]. Social and technological change generates new subjects that defy neat classification. In this context, the doctrine of pith and substance remains indispensable because:

1. **It preserves functionality**: Without the doctrine, every incidental overlap could invalidate legislation, leading to paralysis.

2. **It respects federal balance**: By focusing on dominant purpose rather than incidental consequences, the doctrine prevents trivial encroachments from destabilizing the federal structure.

3. **It promotes judicial pragmatism**: Courts are given the flexibility to uphold laws serving legitimate public purposes even where legislative demarcations are imperfect.

In India, for example, regulation of intoxicating liquors (*F.N. Balsara*) or loudspeakers (*G. Chawla*) would have been impossible if incidental overlaps automatically invalidated state laws. In Canada, provincial insurance regulation (*Parsons*) could not have survived without this approach. The doctrine thus sustains both Union and State competence in practice.

5.2 *Critiques That Demand Reform*

Nevertheless, the doctrine is not immune from criticism. Scholarly and judicial concerns converge on three main points:

(a) Excessive Judicial Discretion

Determining the "true nature and character" of legislation often depends on judicial intuition rather than structured reasoning. Different courts have reached divergent conclusions in similar cases, as seen in India's treatment of taxation and commerce cases. H.M. Seervai warned that such subjectivity risks turning the doctrine into a tool of judicial policymaking rather than constitutional interpretation.

(b) Tilt Toward Centralization

In practice, Indian courts have frequently upheld Union laws by

[26] *Doctrine of Pith and Substance*, IPLEADERS (Mar. 18, 2022)

characterizing them broadly, while restricting State competence. The *GST framework* and Union dominance in telecommunications illustrate this tendency[27]. The doctrine, meant to balance, risks becoming a mechanism of centralization.

(c) Insufficient Adaptability to New Governance Fields

Digital regulation, environmental protection, and cross-border trade do not fit neatly within legislative lists drafted in the mid-20th century[28]. The doctrine has struggled to provide clear answers in such fields, often defaulting to Union competence.

5.3 *Reinterpreting the Doctrine: Toward Structured Methodologies*

To mitigate these criticisms, the doctrine must evolve into a more structured interpretive methodology. Three reforms are proposed:

(a) A Three-Step Judicial Test

Courts should adopt a transparent framework[29]:

1. **Identify the legislative objective**: What mischief is the law addressing?
2. **Classify within the lists**: Which entry does the dominant purpose fall under?
3. **Evaluate incidental encroachment**: Is the overlap necessary and proportionate to achieving the objective?

This structured reasoning would reduce unpredictability and make judicial decisions more accountable.

(b) Integrating Proportionality Review

Borrowing from German jurisprudence, courts should assess whether the degree of incidental encroachment is proportionate to the legislative aim. A minimal incidental overlap may be justified, but a sweeping intrusion should not[30].

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[27] Prakruthi Jain, *The Constitutional Validity of Deeming Fictions Under the GST Law*, INDIACORPLAW (Feb. 19, 2023)
[28] J*udicial Doctrines on Centre-State Relations in India: Pith and Substance, Colourable Legislation, and Territorial Nexus*, PWONLYIAS (Dec. 20, 2024)
[29] *Judicial Doctrines*, DRISHTI IAS (Aug. 29, 2021)
[30] Shivam Mani Tripathi, *Federalism in India: A Constitutional and Judicial Perspective on Centre-State Relations*, Int'l J. for Research Trends & Innovation, Vol. 10, Issue 4 (2025)

(c) Embedding Subsidiarity

From the EU model, courts can draw subsidiarity principles: if both Union and State could regulate, preference should be given to the level of government closer to the people, unless uniformity is essential[31]. This would recalibrate the doctrine away from its current centralizing bias.

5.4 *Enhancing Cooperative Federalism*

The doctrine should not merely mediate conflicts but actively facilitate cooperative federalism[32]. Modern governance increasingly requires collaboration rather than competition. This suggests two further reforms:

1. **Judicial Encouragement of Intergovernmental Agreements**: Courts should encourage legislative and executive cooperation, as seen in Canada's interprovincial trade agreements or India's GST Council.

2. **Doctrinal Deference to Cooperative Schemes**: Where Union and States have negotiated joint frameworks, courts should interpret competence disputes liberally to uphold cooperative arrangements.

5.5 *Institutional Reforms Beyond the Judiciary*[33]

While the doctrine is judicial in origin, reform cannot rely solely on courts. Institutional reforms are necessary:

- **Legislative Clarification**: Constitutional amendments or interpretive statutes could clarify overlapping fields (e.g., digital commerce, environment).

- **Federal Commissions**: Independent commissions could mediate competence disputes before litigation, reducing judicial overload.

- **Guidelines for Drafting**: Legislatures could be trained to draft laws mindful of pith and substance principles, minimizing conflicts.

[31] Analysis of Centre-State Relation with Constitutional Doctrines, J. L. Tech. Const. Prac. & Litig.
[32] NITI Aayog, Cooperative Federalism, https://www.niti.gov.in/cooperative-federalism (last visited Oct. 20, 2025)
[33] Cooperative Federalism, VAJIRAM & RAVI, https://vajiramandravi.com/upsc-exam/cooperative-federalism/ (last visited Oct. 20, 2025)

5.6 *A Normative Vision: Cooperative Constitutionalism*[34]

Ultimately, the doctrine must be reimagined not as a relic of colonial federalism but as part of a broader theory of cooperative constitutionalism. Under this vision:

- **Substance over form** remains the core principle, preventing hyper-technical invalidations.
- **Proportionality** ensures incidental encroachments remain minimal and justified.
- **Subsidiarity** gives priority to local governance unless uniformity is necessary.
- **Cooperation** transforms the doctrine from a defensive tool into a proactive facilitator of shared governance.

This vision aligns with contemporary constitutionalism, which values both autonomy and integration. It preserves the federal equilibrium while accommodating the functional demands of modern governance.

The doctrine of pith and substance cannot be discarded; its pragmatic flexibility is too valuable. But neither can it remain static. Without reform, it risks entrenching central dominance and undermining federalism. By integrating structured methodologies, proportionality review, and subsidiarity, and by situating itself within a cooperative federal framework, the doctrine can continue to serve as a cornerstone of constitutional governance. Reinterpreted in this way, it will not merely survive but thrive as a modern tool of federal balance.

6. CONCLUSION

Federal constitutions are inherently precarious structures. They seek to reconcile unity and diversity, efficiency and autonomy, central authority and regional self-government. This reconciliation is achieved not merely through political compromise but through constitutional architecture—especially the distribution of legislative competences. Yet, no constitutional text, however detailed, can anticipate the infinite variety of social, economic, and technological developments that demand regulation. It is within this constitutional indeterminacy that the *doctrine of pith and substance* has emerged as one of the most enduring judicial techniques for maintaining federal balance.

[34] Cooperative Federalism in India, TESTBOOK, https://testbook.com/ias-preparation/cooperative-federalism-in-india

This paper has traced the doctrine's historical evolution, doctrinal contours, comparative analogues, and contemporary relevance. The story of the doctrine is one of both continuity and change. Its continuity lies in its central principle: substance must prevail over form. A law is to be judged by its true nature and character, not by incidental consequences or superficial classification. Its change lies in its adaptation to diverse contexts: from Canadian insurance regulation in the 19th century, to Indian prohibition laws in the mid-20th century, to modern challenges such as digital commerce and environmental regulation. The doctrine's flexibility has allowed it to migrate across jurisdictions, survive political transitions, and respond to shifting governance demands.

6.1 *Restating the Core Findings*

Three key findings emerge from the preceding analysis.

First, the doctrine safeguards federal balance by preventing trivial or incidental overlaps from invalidating legislation. Without it, the rigidity of legislative lists would render governance unworkable. *Parsons*, *Balsara*, and *Chawla* demonstrate that laws serving legitimate purposes can survive despite collateral effects on another government's sphere.

Second, the doctrine's application is far from consistent. Courts have exercised significant discretion in characterizing a law's "substance," sometimes leading to unpredictable or centralizing outcomes. As Seervai and other commentators have observed, this risks undermining the very federalism the doctrine seeks to protect.

Third, comparative analysis reveals that while other federations resolve competence disputes differently—the U.S. through supremacy and pre-emption, Germany through cooperative federalism, the EU through subsidiarity—the underlying challenge is universal: how to balance overlapping competences without disabling governance. The doctrine of pith and substance is unique in its pragmatism, but it shares the global concern of reconciling unity and autonomy.

6.2 *The Doctrine's Limits*

The analysis also reveals the doctrine's limits. Its reliance on judicial discretion risks unpredictability; its frequent tilt toward Union laws in India threatens state autonomy; and its lack of clear criteria leaves it ill-equipped for modern governance fields that transcend traditional categories. Without reform, the doctrine risks becoming less a guardian of federalism and more a facilitator of centralization.

6.3 *The Way Forward: Reinterpretation and Reform*

The normative argument advanced here is that the doctrine must be reinterpreted, not abandoned. Its flexibility is its strength, but flexibility without structure risks arbitrariness. The following reforms are essential:

- **Structured Judicial Methodology**: Courts should adopt a three-step test (objective, classification, incidental effect) to ensure transparent reasoning.
- **Proportionality Review**: Borrowing from German jurisprudence, incidental encroachments must be proportionate to legislative aims.
- **Subsidiarity Principles**: Drawing from the EU, preference should be given to the level of government closer to the people unless uniformity is demonstrably necessary.
- **Encouragement of Cooperative Federalism**: Courts should interpret competence disputes in a manner that sustains collaborative schemes, such as India's GST framework or Canada's inter-provincial agreements.
- **Institutional Supports**: Beyond courts, legislatures and commissions should actively minimize conflicts through clearer drafting and pre-litigation mediation.

These reforms collectively reimagine the doctrine as part of a larger theory of cooperative constitutionalism: a constitutional ethos that balances federal fidelity with functional governance.

6.4 *A Forward-Looking Vision*

As federal democracies confront 21st-century challenges—digital economies that defy borders, climate crises that demand multi-level regulation, and globalization that blurs sovereignty—the need for interpretive doctrines that combine flexibility with fidelity becomes urgent. The doctrine of pith and substance, if reinterpreted along the lines proposed, can serve this role. It can preserve state autonomy while enabling national unity, accommodate international obligations while safeguarding domestic federalism, and uphold constitutionalism while ensuring effective governance.

In this sense, the doctrine is not merely a judicial tool for competence disputes but a constitutional philosophy of balance. It affirms that federalism is not about rigid boundaries but about functional harmony. It recognizes that incidental overlaps are

inevitable, but insists that what matters is the dominant purpose. And it demonstrates that constitutions endure not by freezing in time but by evolving through principles that adapt to new realities.

6.5 *Closing Normative Statement*

The conclusion, therefore, is not that the doctrine of pith and substance has outlived its utility, but that its future depends on reinterpretation. Courts must resist the temptation of unstructured discretion, legislatures must draft with federal sensitivity, and intergovernmental institutions must foster cooperation. If these reforms are pursued, the doctrine will continue to serve as a cornerstone of constitutional governance—one that balances federalism with flexibility, autonomy with unity, and constitutional fidelity with modern necessity.

In the final analysis, the doctrine of pith and substance embodies the constitutional imagination of federal democracies: that law must be judged not by form or appearance, but by substance and purpose. Preserving this imagination while reforming its methods is essential for the survival of federalism in the 21st century.