

MCQ Question · mcqquestion.com

Pith and Substance, Colourable Legislation

Free · Share

Pith and Substance, Colourable Legislation

Practice: 6 MCQs
One question decides whether a law stands: what is this law really about? Two court-made doctrines answer it.

This lesson covers **pith and substance**, **colourable legislation**, the **Prafulla**, **Balsara** and **Gajapati** cases, and what exams ask.

- **Pith and substance:** look at the law's true subject, not its side effects.
- **Colourable legislation:** a disguised crossing of legislative power.
- **Test:** competence, never motive.
- **Cases:** Prafulla 1947, Balsara 1951, Gajapati 1953.
- **Trap:** Gajapati defined the doctrine, yet the law survived.

Contents

1. Two doctrines, one question
2. How pith and substance works
3. Colourable legislation
4. Three cases to know
5. Side-by-side table
6. Why both matter
7. How exams test this
8. 4 understanding checks
9. Related Articles
0. 6 practice MCQs

1. Two doctrines, one question

One legal idea can save a law. A close cousin can strike one down. Both begin with the same question: what is this law really about?

India splits law-making power between Parliament and the State legislatures. **Article 246** does this through the **Seventh Schedule**. It has three lists:

- **Union List:** subjects only Parliament can legislate on.
- **State List:** subjects the State legislatures handle.
- **Concurrent List:** subjects both can legislate on.

A real law rarely stays inside one tidy list. A State law on money-lending may also touch promissory notes. Courts needed a fair way to judge such overlaps.

Early cases used the lists of the Government of India Act, 1935. The same idea carries into the Constitution's lists.

1.1 What do the two doctrines do?

Pith and substance is the forgiving answer. It lets a law stand even if it touches a subject outside its own list. The law's true main subject must still belong on that legislature's list.

Colourable legislation is the strict answer. It strikes down a law that only pretends to stay in its lane. Its real job is something the legislature cannot do.

Key terms to remember:

- **Pith and substance:** the true subject of a law, seen past its side effects.
- **Colourable legislation:** a law that does indirectly what the legislature cannot do directly.

- **Legislative competence:** the power to make a law on a given subject.

Sources:

- Prafulla Kumar Mukherjee v. Bank of Commerce (1947, Indian Kanoon)
- K.C. Gajapati Narayan Deo v. State of Orissa (1953, Indian Kanoon)

2. How does pith and substance work?

Courts follow three steps:

- **Step 1: find the real subject.** What is the law about, under everything it touches?
- **Step 2: check the list.** Does that real subject sit on this legislature's list?
- **Step 3: ignore the small stuff.** If yes, a small overlap with another list does not matter.

The old Privy Council rule was to examine the law's **pith and substance**, or its **true nature and character**. The Board said this rule applies to Indian as well as to Dominion laws.

2.1 What is a worked example?

Take the Bengal Money-lenders Act, 1940. It limited the amount a money-lender could recover on a loan. Lenders argued it touched promissory notes, a Federal subject.

The question was simple. Was the Act really about money-lending, with promissory notes caught up along the way? The Board held that the Act dealt in pith and substance with money-lenders and money-lending.

So the Act was not void because it incidentally touched matters outside the field.

What counts as an **incidental** touch? It is a side effect that does not change the law's main job. The money-lenders law still regulated lenders. Its effect on promissory notes was a by-product.

2.2 Why was the Indian scheme harder than the Canadian one?

The lawyers for the lenders pointed out that Canada and Australia have no Concurrent List. Their courts accept some overlap of powers as natural.

The Indian Act had a strict order of power instead. The Federal List prevailed over the Concurrent List. The Concurrent List prevailed over the Provincial List.

So the lenders argued that any touch on a Federal subject was forbidden. The Board still applied the pith and substance rule. It said the rule fits the Indian lists too.

Sources:

- Prafulla Kumar Mukherjee v. Bank of Commerce (1947, Indian Kanoon) (section 2)

True or false: Pith and substance can save a law that slightly touches another list.

3. What is colourable legislation, and why is it about competence, not motive?

Many learners think "colourable" means the legislature lied. It does not. It means the law's real job lies outside the legislature's power, whatever the stated purpose says.

The Supreme Court put it clearly in **K.C. Gajapati Narayan Deo v. State of Orissa**. The question does not depend on the **motive** or good faith of the legislature. It depends on its **competence** to pass that law.

The Court asked whether the legislature had really crossed its powers, with the crossing **veiled by a pretence**. The whole doctrine rests on one maxim: you cannot do indirectly what you cannot do directly.

3.1 Does a bad motive make a law void?

No. A law can survive even if lawmakers had a hidden aim. It survives if the law itself stays within their power.

A law can also fall without any bad intent. If its real subject is outside the legislature's power, it fails. The test looks at substance, not form or label.

Here is a quick way to spot the doctrine in a question:

- **Clue 1:** the law is passed by one legislature but seems to touch a subject of the other.
- **Clue 2:** the question asks whether the law is valid.
- **Clue 3:** the answer depends on its true subject, not on the lawmakers' reasons.

If all three clues fit, you are likely dealing with one of these two doctrines.

Sources:

- K.C. Gajapati Narayan Deo v. State of Orissa (1953, Indian Kanoon) (section 3)

True or false: A colourable law means the legislature acted in bad faith. **Think it through: why is motive not the test for colourable legislation?**

The doctrine asks whether the legislature had the power. A law inside that power stays valid whatever the aim. A law outside it fails whatever the motive.

4. Which three cases should you know?

Three cases carry most exam questions. Learn them as a short timeline:

- **1947:** Prafulla Kumar Mukherjee, the money-lenders case.
- **1951:** State of Bombay v. F.N. Balsara, the liquor case.
- **1953:** K.C. Gajapati Narayan Deo, the colourable legislation case.

Each one answers the same question in a new setting.

4.1 What did Prafulla Kumar Mukherjee (1947) decide?

The Privy Council upheld the Bengal Money-lenders Act, 1940. The Act limited the principal and interest a lender could recover. It also banned payment of larger sums.

The Board agreed that Indian courts rightly saw the Act as a law on money-lenders and money-lending. Its touch on negotiable instruments was only incidental.

This was the case that brought the doctrine into Indian law in a clear form.

4.2 What did State of Bombay v. Balsara (1951) decide?

The Supreme Court decided it on **25 May 1951**. The Bombay Prohibition Act, 1949 restricted possession and sale of liquor, including foreign liquor. A liquor dealer, F.N. Balsara, said this invaded the Dominion's power over import and export.

The Court held the Act was in pith and substance a law on intoxicating liquors, a Provincial subject. Any encroachment on import and export was only incidental. It did not affect the Act's validity.

The Court also set aside a foreign idea. The American "original package" rule said import was not over while goods stayed in their original pack. The Court said this rule has no place in India. The Indian lists use clear and precise words.

4.3 Did the Court strike anything down in Balsara?

Yes, but for a different reason. That part has nothing to do with pith and substance.

Some sections were invalid because they broke fundamental rights:

- Rules on **medicinal and toilet preparations** with alcohol were unreasonable restrictions on the right to property.
- Sections on **commending** an intoxicant clashed with freedom of speech and expression.

The rest of the Act stayed, because the bad parts could be separated.

4.4 What did K.C. Gajapati Narayan Deo (1953) decide?

The Supreme Court decided it on **29 May 1953**. Orissa was preparing its Estates Abolition law. A bill said unpaid agricultural income-tax would be deducted from an estate's income, which lowered the compensation payable.

Then Orissa raised its top agricultural income-tax rate sharply, from 3 annas to 12 annas 6 pies in the rupee. It also cut the top slab from Rs 30,000 to Rs 15,000.

Landholders said the tax was a fraud on the Constitution. It was a disguise to cut their compensation.

4.5 What was the result in Gajapati?

The Court **upheld** the tax law. In substance and form it was a law on taxing agricultural income, a State List subject. The State legislature was competent to pass it.

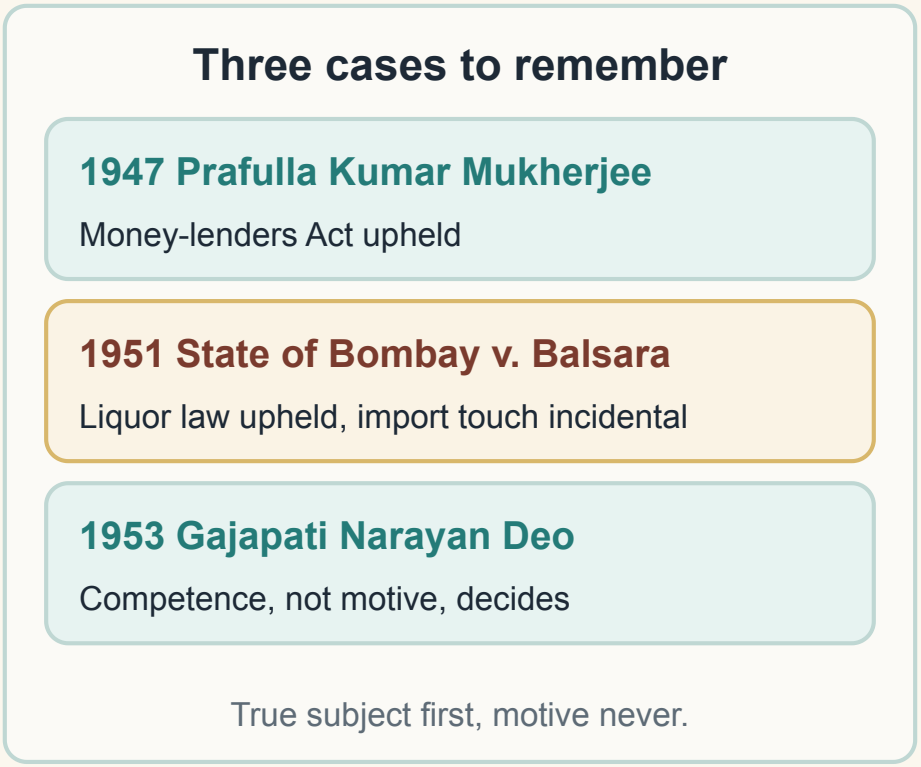
The Court said the aim of reducing compensation could not make the law colourable. That aim was not beyond the legislature's competence either.

Note the trap. The case **defined** colourable legislation, yet the law in it **survived**.

Now line up the three cases. Each adds one lesson:

- **Prafulla (1947):** a small overlap with another list does not make a law void.
- **Balsara (1951):** the overlap can be real, yet the law still stands if it is only incidental.
- **Gajapati (1953):** the test is competence, not motive, and a disguised aim does not make a valid law colourable.

Read together, the cases move from a simple overlap to a sharper question about disguise.



Key cases of the two doctrines. Original explanatory diagram.

Sources:

- Prafulla Kumar Mukherjee v. Bank of Commerce (1947, Indian Kanoon) (section 4)
- State of Bombay v. F.N. Balsara (1951, Indian Kanoon)
- K.C. Gajapati Narayan Deo v. State of Orissa (1953, Indian Kanoon) (section 4)

True or false: In Balsara (1951) the Prohibition Act was upheld as a law on intoxicating liquors.

5. How do the two doctrines compare?

This table covers most exam questions. Read it row by row.

Point	Pith and substance	Colourable legislation
Question asked	What is the law's true subject?	Is the true subject beyond power?
Effect	Saves the law	Strikes the law down
Overlap	Small and incidental	Used as a disguise
Motive	Not the test	Not the test
Key case	Prafulla Kumar Mukherjee (1947)	K.C. Gajapati Narayan Deo (1953)

5.1 Why does one doctrine save and the other strike?

Both look at the true subject. They sit on opposite sides of one answer.

If the true subject is **within** the legislature's power, pith and substance saves the law. If the true subject is **outside** its power, dressed up to look allowed, the law is colourable and falls.

5.2 What should you remember in two minutes?

Keep this short recap ready:

- **Pith and substance** looks past a side effect to the true subject.
- **Colourable legislation** looks past a label to the true subject.
- **Motive** never decides either doctrine.
- **Incidental overlap** is tolerated; a disguise is not.
- **Competence** is the one real test.

Sources:

- Prafulla Kumar Mukherjee v. Bank of Commerce (1947, Indian Kanoon) (section 5)
- K.C. Gajapati Narayan Deo v. State of Orissa (1953, Indian Kanoon) (section 5)

True or false: In Gajapati (1953) the Orissa tax law was struck down as colourable.

6. Why do both doctrines matter?

Both guard the line between Union and State power. Without them, almost any law could be attacked the moment it brushed a second subject.

Pith and substance keeps governance workable by tolerating small, honest overlaps. Colourable legislation stops a legislature from using that tolerance as a loophole.

The Constitution also changed some of the old text. The Balsara Court read the Government of India Act lists and the new Constitution's lists as one scheme.

Think of the doctrines as a pair of safety valves. One stops courts from striking laws too quickly. The other stops legislatures from slipping past their limits.

Students often learn only the first valve. The second one is what makes the answer complete in a long-form question.

Sources:

- State of Bombay v. F.N. Balsara (1951, Indian Kanoon) (section 6)

Think it through: why does colourable legislation not forbid every hidden aim?

In Gajapati the aim of cutting compensation was not beyond the legislature's competence. So the law survived. The doctrine strikes only disguised crossings of power.

7. How do exams test this?

Examiners set tempting overstatements. Watch for three traps:

- **“A law is void the moment it touches another list.”** Wrong. Incidental overlap is allowed.
- **“Colourable means the legislature acted in bad faith.”** Wrong. The test is competence, not motive.
- **“Gajapati struck down the Orissa tax law.”** Wrong. The Court upheld it.

Use this quick method on any statement:

- **Step 1:** find the law’s true subject.
- **Step 2:** check whether it is within the legislature’s power.
- **Step 3:** ignore motive and label.

Know the dates: 1947 (Prafulla), 25 May 1951 (Balsara), 29 May 1953 (Gajapati).

7.1 What do the PYQs keep testing?

Expect questions on which doctrine saves a law, whether motive matters, and which case defined colourable legislation.

Now practise the ideas below.

Sources:

- K.C. Gajapati Narayan Deo v. State of Orissa (1953, Indian Kanoon) (section 7)
- State of Bombay v. F.N. Balsara (1951, Indian Kanoon) (section 7)

Your understanding checks

Your 4 quick checks Answered 0 of 4 · Correct 0

This score resets when the page reloads.

Practice: 6 MCQs

Practice MCQs

1. What does the doctrine of pith and substance look at?

A. The motive of the legislature

B. The true subject of the law, past its side effects

C. The number of votes it received

D. The popularity of the law

See answer ↓

2. The Bengal Money-lenders Act, 1940 was upheld in which case?

A. Kesavananda Bharati v. State of Kerala

B. Prafulla Kumar Mukherjee v. Bank of Commerce

C. State of Bombay v. F.N. Balsara

D. K.C. Gajapati Narayan Deo v. State of Orissa

See answer ↓

3. In State of Bombay v. F.N. Balsara, the Prohibition Act was upheld as a law on which subject?

A. Taxation of agricultural income

B. Public health under the Concurrent List

C. Intoxicating liquors, a Provincial subject

D. Import and export, a Union subject

See answer ↓

4. Which case defined colourable legislation by the test of competence, not motive?

A. Prafulla Kumar Mukherjee v. Bank of Commerce

B. State of Bombay v. F.N. Balsara

C. Kihoto Hollohan v. Zachillhu

D. K.C. Gajapati Narayan Deo v. State of Orissa

See answer ↓

5. What was the result of the challenge to Orissa's 1950 agricultural income-tax amendment?

A. The law was sent to Parliament

B. The law was upheld only in part

C. The law was struck down as colourable

D. The law was upheld

See answer ↓

6. Which statement about colourable legislation is correct?

A. It requires proof of bad motive

B. It rests on the maxim that you cannot do indirectly what you cannot do directly

C. It means the legislature acted dishonestly

D. It applies only to the Concurrent List

See answer ↓

Answer Key

1. **B.** The answer is **the true subject of the law, past its side effects**. If that subject is on the legislature's list, a small touch on another list does not matter. Why the others fail: Motive and votes are not the test. Memory hook: pith and substance means true nature and character. ↑ Q1
2. **B.** The answer is **Prafulla Kumar Mukherjee v. Bank of Commerce**. The Act was in pith and substance a law on money-lenders and money-lending. Its touch on promissory notes was incidental. Why the others fail: Balsara was about liquor and Gajapati was about a tax. Kesavananda is about the basic structure. Memory hook: 1947 money-lenders. ↑ Q2
3. **C.** The answer is **intoxicating liquors, a Provincial subject**. Any touch on import and export was only incidental, so the Act's validity was unaffected. Why the others fail: Import and export was the argument against the Act. Agricultural tax was the Gajapati case. Memory hook: Balsara means liquor. ↑ Q3
4. **D.** The answer is **K.C. Gajapati Narayan Deo v. State of Orissa**, decided on 29 May 1953. The Court said the question depends on competence, not on motive or good faith. Why the others fail: Prafulla and Balsara are pith and substance cases. Kihoto Hollohan is about the Tenth Schedule. Memory hook: Gajapati means competence. ↑ Q4
5. **D.** The answer is **the law was upheld**. In substance it was a law on taxing agricultural income, which the State could make. The aim of lowering compensation did not make it colourable. Why the others fail: The Court found no transgression of the State's powers. Memory hook: the case defined the doctrine, yet the law survived. ↑ Q5
6. **B.** The answer is **it rests on the maxim that you cannot do indirectly what you cannot do directly**. The test is whether the legislature had the power, whatever its motive. Why the others fail: Dishonesty and bad motive are not required. The doctrine is not limited to one list. Memory hook: competence, not motive. ↑ Q6

Curated by Arsalan Zuberi · mcqquestion.com

Scan to read online

https://mcqquestion.com/articles/polity0303-pith-and-substance-and-colourable-legislation/