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THE INSTANCES AND THE IMPACT OF THE DOCTRINE OF ULTRA VIRES ON ACTS AND ORDERS OF A COMPANY

AUTHORED BY - NAKUL SINGH

Introduction

The author in the following paper has not only dealt with the impact of the ultra vires doctrine on the ultra vires dealings and transactions of the company but has also dealt with the doctrines of constructive notice and indoor management which happen to be adjuncts of the ultra vires doctrine. Such a transgression was deemed necessary by the author because any query or inquiry apropos what the ultra vires doctrine is and what are its impacts can be answered by simply googling the same on one's preferred device and is therefore no Herculean task. But what such a simple search may not answer is that in addition to what the ultra vires doctrine is, what are its shortcomings, what are the doctrines of constructive notice and indoor management, what are the shortcomings they suffer from and what can be the possible solutions to such problems.

Hypothesis

The assumption with which the author starts the paper is that company law being a private law subject matter is highly specific with very little room being left for interpretation or judicial creativity. The author also believes that it is due to such specificity and preciseness that any room for error in the application of the ultra vires doctrine, the indoor management and the constructive notice doctrines is absolutely negligible. In the due course of the paper, it is this very assumption that will be put to the test.

Research questions

1. What is the doctrine of ultra vires? Are there any limitations to this doctrine? If yes, what can be the possible reforms?
2. What is the doctrine of constructive notice? Are there any limitations to this doctrine? If yes, what can be the possible reforms?
3. What is the doctrine of indoor management? Are there any limitations to this doctrine? If yes, what can be the possible reforms?

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Research Methodology

The author in order to answer the questions posed will confine himself to the A Priori method. Existing literature in law journals, cases, commentaries, statutes, and law commission reports will be relied upon and critically analysed in order to advance explanations of various concepts, identifying their shortcomings and also prescribing suitable remedies.

Scope

The following paper strictly limits itself to advancing explanations or to be precise, explaining the concepts that have been named in the research questions and by the aid of journals covering or describing the application of the named concepts across jurisdictions, the author aims only to identify the problems that exist in the application of the ultra vires, indoor management and constructive notice doctrines and after having done so, will endeavour to advance suggestions so that problems which exist in the current scheme of the application of the concepts are potentially remedied.

The Ultra Vires doctrine (definition, limitations & suggested reforms)

The Memorandum of a company encapsulating its objects, ambitions and goals has rightfully been called the charter or the constitution of the company. It is therefore pragmatic to conclude that with the aid of all the prerogatives prescribed by section 9[1], the company is entitled to pursue all its objects and ambitions embodied in the memorandum and matters incidental thereto but subject to the pursuance of those matters which, according to the Apex Court of the United States, are not reasonably incidental or have been expressly excluded in the memorandum or charter of the company.[2]

Acting through natural persons when a company acting in its artificial legal capacity, commits an act or endeavours to pursue an object or goal that does not feature itself in the objects clause of the memorandum and is also not fairly incidental[3] to the former, such an act or endeavour is

[1] The Companies Act, 2013
[2] Brady and Joseph Donald, *The Doctrine of Ultra Vires, Its Nature, Elements & Mordern Application,* American Law Review, Vol.54 Issue.4 (1920).
[3] Attorney General v. G.E. Rly. Co., (1880) 5 A.C. 473.

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deemed ultra vires.[4] Delving into the nuts and bolts of the subject, the proposition that should be taken cognizance of is that the ultra vires doctrine is based on the 'special capacity theory', a terse exposition of which was advanced by Justice *Gray* in the renowned *Pullman* Case.[5]

The special capacity theory articulates that a corporation should be proscribed from transgressing the boundaries which have been prescribed by the statute or have been sanctioned by the statute.[6] And if at all a corporation does transgress these boundaries then the ramification which finds its mention in the locus classicus of the land, *Dr. Lakshmanaswami Mudaliar A.* v. *LIC* [7] is that such an act or transaction is ultra vires or beyond the *Lakshman Rekha* of the company and is declared *void ab initio* and consequentially a nullity.[8]

The doctrine of Ultra Vires finds its genesis in the judgement delivered by the House of Lords in the renowned *Ashbury* case[9] and was formulated on the very basis of sections 6,8,11 and 12 of the English Companies Act, 1862. However, it is pertinent to note that the doctrine in its true essence and character was applied by the 'Bombay High Court' approximately a decade prior to its formulation in the year 1875. The Bombay High Court speaking through Justice *Sargant* applied the doctrine in the case of *Jahangir Rastamji Modi v. Shamji Ladha*[10] and concluded that, "it is the memorandum that we should turn to check if at all a particular transaction is authorised or not and if at all it finds its mention or existence within the scope of objects for which the company has been established". It is also pertinent to note that the application of the essence of the doctrine in the cases of *Jahangir Rastamji Modi v. Shamji Ladha*[11] and *re:Port Canning co.*[12], prior to its formulation would have been unthinkable had not the sections 6,8,11 and 12 in the Indian Companies Act, 1866 been the spitting image of the sections 6,8,11 and 12 in the English Companies Act, 1862.[13]

On the very specific point of the consequences or effects of an ultra vires transaction, in pure terms

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[4] A. RAMAIYA, GUIDE TO THE COMPANIES ACT (19th ed. Vol.1, 2020), section. 4(1)(c).
[5] Central Transport Co. v. Pullman's Palace Car Co., 139 U.S. 24, II Sup. Ct. 489
[6] Kefauver and Estetes, *The Doctrine of Ultra Vires,* Tennessee Law Review, Vol.6 Issue.1 (1927-1928).
[7] AIR 1963 SC 1185
[8] A. RAMAIYA, GUIDE TO THE COMPANIES ACT (19th ed. Vol.1, 2020), section. 4(1)(c).
[9] Ashbury Railway Carriage & Iron Co. Ltd. v. Riche, (1875) L.R. 7 H.L. 653
[10] (1867) Bom.H.C.R.185.
[11] (1867) Bom.H.C.R.185.
[12] (1871) 7 Bengal Law Reports (O.C.) 583.
[13] P.S. Sangal, *Ultra Vires & Companies: The Indian Experience,* The International and Comparative Law Quarterly, Vol.12 Issue.3 (1963).

of the dry black letter of the doctrine, any transaction or contract that is ultra vires the company's memorandum is declared a nullity and *void ab initio.* On being declared so, a contract being executory or executed is declared *non-est* and therefore, no suit or cause of action can arise either against an innocent third party or against the company on the shoulders of an instrument that never existed between the parties.

This hard line stand is justified on the grounds of the furtherance of public policy and in the pursuit of negating occurrences which render section 4(1)(c)[14] superfluous. The public policy argument is bolstered by the interests of the potential investors and creditors.[15] The interests of the creditors come into the question because when a company engages in an ultra vires transaction, the securities held by the creditor can be potentially endangered. Apropos the interests of the shareholders or stockholders is where the significant bit of the public policy consideration comes into play. The same is about to be articulated with the aid of an example.

One Mr. 'X' is an investor and a Shia bound Muslim who only invests in ventures or corporations, the objects, or ambitions of which are not deemed 'Haraam' under the 'Ja'fari' or 'Imami' school of jurisprudence. Let's assume that 'X' invests in a company by finding out from the memorandum of the company, that the objects are as such that they further his interests of indulging in 'Zakat' or charitable works in addition to an incentive of receiving affluent dividends. The business interests and preferences of Mr. 'X' will be gravely threatened and damaged if, say tomorrow, the company starts dealing in pork and pork related products which is considered 'Haram' in Islam. And it is to be noted that all of this happens without a special resolution being passed vis-à-vis the amendment of the memorandum and Mr. 'X' being given an exit option.

The above example shows us that every investor has a business interest and it is only in pursuance of the same that an investor chooses to invest in the capital of a particular company. It is highly immoral and against public conscience and interest[16] if the company decides to utilize this capital in the pursuance of objects to which the investor never consented to in the first place.

[14] The Companies Act, 2013.
[15] Thompson and Seymour, *The Doctrine of Ultra Vires in relation to Private Corporations,* American Law Review, Vol.28 Issue.3 (1894)
[16] Thompson and Seymour, *The Doctrine of Ultra Vires in relation to Private Corporations,* American Law Review, Vol.28 Issue.3 (1894)

Although the existence of the ultra vires doctrine can be justified on public policy considerations, the doctrine as scholars point out, has its own set of problems which have adverse effects on the business fabric surrounding the society.

Renowned academician *G.M. Sen* in his piece for the *Journal of Indian Law Institute*[17] has unequivocally stated that the doctrine has become highly 'unpopular' in the business fraternity and has significantly abridged the ease and freedom of doing business. The doctrine has also brought the business community at loggerheads with the judiciary as the former have, from time immemorial, considered the doctrine as a 'nuisance' whereas the latter has emphasized on its due application.[18] On the very specific point of the abridgment of business freedom, the author deems it apt to elucidate this shortcoming with the aid of an example.

Mr. 'Y', Mr. 'Z' and Mr. 'K' hold key managerial and supervisory positions and are in the board of directors of a particular company. One fine morning this company, limited by shares, acting through natural persons, decides to change its line of business from making firecrackers to manufacturing steel canisters used in asthma pumps or inhalers. The hindrance that finds it genesis here is that even if all the shareholders assent to such a novel and noble object, the company cannot commence its business in this new line of business unless the tedious procedure of the amendment of the MOA (objects clause) has been undertaken under as per section 13[19] and has been filed with the registrar as per section 13(6) of the Act.[20] The problems that may subsequently arise are that even though the mandate of section 13 may have been complied with, as was witnessed in the case of re: New Asarwa Mfg. Co. Ltd[21], the registrar may oppose the amendment of a company if its new line of business is materially different and "quite unconnected with the existing line of business." The rough terrain does not end here as well. Even if all the shareholders consent to the adoption of the new line of business and in pursuance to the same if the company has transacted, even in such a case, post such a transaction, the transaction cannot be ratified even if all the shareholders are in favour of it[22], provided that the MOA has 'not' been amended accordingly.

[17] G.M. Sen, *Rule of Ultra Vires in company law, has it outlived its purpose,* Journal of the Indian Law Institute, Vol.27 Issue.2 (1985)
[18] G.M. Sen, *Rule of Ultra Vires in company law, has it outlived its purpose,* Journal of the Indian Law Institute, Vol.27 Issue.2 (1985)
[19] The Companies Act, 2013
[20] The Companies Act, 2013
[21] 45 Com. Cas. 151 (1975)
[22] Dr. Lakshmanaswami Mudaliar A. v. LIC (1963) Comp LJ 248

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Additionally, Gower in *The Principles of Modern Company Law*[23] has opined that the ultra vires doctrine has "long outlived its purpose and should be completely abolished". The Committee on Company Law amendment in England or the *Cohen committee* has articulated that doctrine in the status quo is 'devoid' of 'virtue' and has a high potential for 'vice' as it can enable a party to avoid with impunity any obligation which ought to be fulfilled in 'good conscience' that it may have entered into or contracted vis-à-vis another party. This potential trap for an innocent party has no justification for its existence.[24]

On the other hand, in India, not only did the *Sachar* committee[25] turn a blind eye towards the ultra vires doctrine, the *Bhabha* committee or the company law committee in India, also did not take the interests of the innocent third parties into account and stated that there was no 'immediate' need to do away with the doctrine of ultra vires.[26]

It is this conundrum vis-à-vis the desirability of the ultra vires doctrine on the basis of which the author would endeavour to advance his suggestions.

It is most humbly submitted that in a country such as India, where a transition from the laissez-faire state to a welfare state and the formulation of the second and third generation rights is in the offing, it unambiguously is a *faux pass* to state that the alterations in the domestic affairs of the company do not have pervasive consequences and public interest implications.[27]

The dry black letter of the law embodied in section 135 of the act[28] embodying the concept of 'CSR' epitomises the fact that in the status quo, the company is not merely a profit-making entity but is also majorly a 'socio-economic institution.' A company should not only be at the liberty to operate for profit but should also pay homage to the domains of 'public interest' and 'human values' *It* is also mostly humbly submitted that apart from the interests of the creditors and shareholders, the interest of the public at large should also be taken into account. To elucidate why this is necessary, let's pay heed to another example.

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[23] GOWER, THE PRINCIPLES OF MODERN COMPANY LAW 97 (3rd ed., 1969)
[24] Report of the Cohen Committee on Company Law Amendment, 1945, ¶.12
[25] Report of the High-Powered Expert Committee on Companies and M.R.T.P. Acts, 180(1978).
[26] Report of The Company Law Committee, 1952, ¶.33
[27] G.M. Sen, *Rule of Ultra Vires in company law, has it outlived its purpose,* Journal of the Indian Law Institute, Vol.27 Issue.2 (1985)
[28] The Companies Act, 2013.

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One Mr. 'Adar Madrasiwalla' is in the business of manufacturing lifesaving drugs. Let's assume that if in a given year 'X' an epidemic breaks out and in the same year 'X', Mr. 'Adar Madrasiwalla' changes his line of business from manufacturing lifesaving drugs to a novel one in which he solely deals with the selling of his cars from his car collection just because he finds it more profitable, it would be no rocket science to unequivocally conclude how disastrous would such a decision be for the public at large.

In conclusion therefore it is submitted that in order to protect the interests of the creditors, the shareholders and the public at large, the stay or the existence of the ultra vires doctrine is necessary. However, in addition to vouching for the doctrine's prevalence, the author suggests that in terms of its application, the ultra vires doctrine ought to be materially different from its theoretical formulation.

In practice, a shareholder can restrain a company by seeking an injunction from the court if the company is about to indulge in an act that is ultra vires or alien to the company's charter.[29] Secondly, as directors are duty bound to ensure that the company acts in consonance with the memorandum of the company, if an ultra vires transaction has been entered into and finances from the common stock have been expended, in such a case the directors themselves can be personally made liable by the shareholders.[30]

Additionally, apart from these pre-existing practices, the Indian courts, in order to make the application of the ultra vires doctrine more equitable, the author suggests, should adopt the following practices from the West apropos the due application of this doctrine. In the courts of law in the United States, provided that a contract purporting to a subject matter that is ultra vires to the company's charter, if the contract is merely 'executory', such a contract is not enforced[31] even if all the shareholders or stockholders and the creditors assent to it. The guiding force in this scenario is explicitly the "interest of the public in controlling and limiting corporate action."
However, if the contract is not executory but has been executed or has been performed, on the grounds of the equitable doctrine of estoppel, either party is estopped[32] from denying the validity

[29] A. RAMAIYA, GUIDE TO THE COMPANIES ACT (19th ed. Vol.1, 2020), section. 4(1)(c).
[30] A. RAMAIYA, GUIDE TO THE COMPANIES ACT (19th ed. Vol.1, 2020), section. 4(1)(c).
[31] The Harvard Law Review Association, *Effects of Ultra Vires Transactions,* Harvard Law Review, Vol.18 Issue.6 (1905).
[32] Charles E. Carpenter, *Should the doctrine of Ultra vires be discarded,* Yale Law Journal, Vol.33 (1923-1924).

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of the contract on the basis of the ultra vires doctrine. Where benefits have been conferred on any of the parties or any party has suffered a detriment and the contract has been duly performed and executed, such a transaction is 'not' declared a nullity.[33]

Lastly, it is also suggested that the application of the doctrine be modelled on the very textual content of the *First Directive* of the *European Economic Council*[34] according to which, an innocent third party or outsider who has bonafide entered into a contract with the company and provided the contract is for value, the company will be denied the opportunity of unilaterally repudiating the contract on the grounds of it being ultra vires.

The constructive notice doctrine (definition, limitations, and suggested reforms)

Apropos the application of the doctrine in India, section 399 of the act[35] forms the very bedrock or serves as a justification for the application of the doctrine. As per section 399, any person prior to dealing with the company is entitled to go through and inspect the documents of the company that are available with the Registrar of Companies. The very measure of making the MOA of a company public or known, furthers or is employed as the very means of protecting shareholders[36] from "unscrupulous or incautious incorporators".

The House of Lords in the case of *Ernest v. Nicholls*[37] explained the doctrine of constructive notice by stating that by way of the company's documents being in the public domain, an outsider before contracting or dealing with the company is not only presumed to have known the contents and objects but also to have equally 'understood' them. This presumption serves as a bastion for the company and operates in its favour. If the company contends that the subject matter vis-à-vis a contract with an outsider is alien to the MOA of the company and therefore void *vide* the ultra vires doctrine, as per the presumption advanced by the doctrine of 'constructive notice' the outsider will be deemed to have knowledge of the fact that the subject matter in question was not within the charter of the company and is consequently denied from restraining the company to go

[33] Kefauver and Estetes, *The Doctrine of Ultra Vires,* Tennessee Law Review, Vol.6 Issue.1 (1927-1928).
[34] 9 March 1968: 68/151 EEC.
[35] The Companies Act, 2013
[36] Andrew R. Thompson, *Company Law doctrines and the authority to contract,* University of Toronto Law Journal, Vol. 11 (1955-1956).
[37] 28(1875) L.R. 7 H.L. 869, 893.

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back on its promise.[38]

It is pertinent to note that the aim of the paper is not to merely be a hackneyed descriptive exposition of the theory of what the doctrine of constructive notice is. It is deemed desirable by the author that apropos the doctrine of constructive notice, the nitty gritty of its drawbacks and limitations be delved into coupled with the scouting of potential reforms.

A terse explanation of the perplexities caused by the doctrine of constructive notice is that there is a wide difference of opinion vis-à-vis the applicability of the doctrine among the commonwealth nations[39]. While English courts have been staunch supporters of the doctrine, Australian courts lately have desisted from applying the doctrine.[40]

It is also to be noted that the doctrine was formed when charters were granted by statutes very sparingly to corporations. It dates back to a time when such grants were more in the nature of 'privileges' but not a 'right'. In keeping with the fact that such a privilege ought not be misused, stringent provisions[41] such as ultra vires doctrine and the constructive notice doctrines saw their formulation on the basis of necessity and by the aid of judicial creativity.

However, in the status quo when incorporation is no longer a special privilege but a matter a right, which axiomatically has led to the rapid burgeoning of various and diverse companies in the commercial and economic fabric of the society, the application of the doctrine of constructive notice which has failed to keep pace with the changing times, is undoubtedly anachronistic, inequitable and a potent source of confusion in the courts of law.[42]

The Jenkins committee report[43] which raised the concern of the delegated authority and powers to directors being amended from time to time and not being precisely known by innocent bona-fide

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[38] McLenan, *The Ultra Vires doctrine & the Turquand rule in Company Law, A suggested Solution,* South African Law Journal, Vol.96 Issue.2 (1979)
[39] The Harvard Law Review Association, *Constructive Notice of the Charter of a corporation,* Harvard Law Review, Vol.26 Issue.6 (1913).
[40] The Harvard Law Review Association, *Constructive Notice of the Charter of a corporation,* Harvard Law Review, Vol.26 Issue.6 (1913).
[41] The Harvard Law Review Association, *Constructive Notice of the Charter of a corporation,* Harvard Law Review, Vol.26 Issue.6 (1913).
[42] The Harvard Law Review Association, *Constructive Notice of the Charter of a corporation,* Harvard Law Review, Vol.26 Issue.6 (1913).
[43] Report of The Company Law Committee, 1962, P.42.

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third parties, has called the doctrine unjust, inequitable and has recommended its abolition.

With respect to the suggestions that are to be advanced on the viability of the constructive notice, the author prefers adopting a more nuanced approach which entails the retention of the doctrine with modifications instead of retaining it in its pristine form or obliterating it altogether.

It is most humbly stated that courts of law should only utilise the doctrine only when compelled by considerations of public interest, public policy and to protect the state's interests. For example, when transactions vis-à-vis financial or banking institutions are in question.[44]

Secondly, various cases such as *Ernest v. Nicholls* and *Fountaine v. Carmarthen Ry. Co*[45] espouse or deliberate on common law principles of agency which cover aspects purporting to the delimitation of the scope of agency. It is deemed desirable that where the authority of an agent is in question, the courts should not indulge in the blind and blatant application of the doctrine but instead should first apply the common law principles dealing with the limitation on the authority of the agent. If the same is done, the application and the results out of the constructive notice will not only be 'just' but will also not be 'devoid of logic'[46]

The Indoor Management doctrine (definition, limitations, and suggested reforms)

The indoor management doctrine or the *Turquand rule* finds its genesis in the case of *Royal British Bank v. Turquand.*[47] The rule is more in the nature of an exception to the rule of constructive notice and as the Jenkin's committee puts it, is useful in mitigating the effects of the constructive notice doctrine.[48]

As per *Palmer*[49], "This rule is based on the principle of convenience, for business could not be carried on if a person dealing with the apparent agents of a company was compelled to call for

[44] The Harvard Law Review Association, *Constructive Notice of the Charter of a corporation,* Harvard Law Review, Vol.26 Issue.6 (1913).
[45] (1875) L.R. 7 H.L. 869, 893; L.R. 5 Eq. 316, 322.
[46] The Harvard Law Review Association, *Constructive Notice of the Charter of a corporation,* Harvard Law Review, Vol.26 Issue.6 (1913).
[47] 5 E. & B. 248, (1856) 6 E. & B. 327
[48] Report of The Company Law Committee, 1962, P.42.
[49] PALMER, PALMER'S COMPANY LAW 33 (19th ed.,1949).

evidence that all internal regulations had been duly observed."[50] The development of the indoor management rule has paralleled the development of the rule of constructive notice. While the latter protects the company from the outsiders, the former protects the outsiders or innocent third parties from the companies."[51]

A succinct articulation of the rule of indoor management was also advanced by *Lord Hatherley* in the case of *Mahoney v. The East Holyford Mining Co*[52], it was opined that, "when there are persons conducting the affairs of the company in a manner which appears to be perfectly consonant with the articles of association, then those so dealing with them, externally, are not to be affected by any irregularities which may take place in the internal management of the company. They are entitled to presume that that of which only they can have knowledge, namely, the external acts, are rightly done, when those external acts purport to be performed in the mode in which they ought to be performed".[53] In a nutshell, as per the doctrine of indoor management, it is the apparent authority that binds the company which the constructive notice or knowledge of the company's memorandums or articles cannot refute or repudiate.[54]

However, the protection accorded by this doctrine to the outsiders, or the third parties is not in the nature of a *carte blanche* or absolute. Firstly, if the outsider had notice or knowledge, actual or implied, of the lack of the authority of a person purporting to act on behalf of the company, in such a case, the outsider cannot seek the protection of the doctrine.[55] Secondly, the defence cannot be availed of by a person who absolutely has negligible knowledge of the memorandum and articles of association of any given company.[56] Thirdly, the defence cannot be invoked on the strength of transactions that have either been forged or are otherwise illegal or void *ab-initio.*[57] Fourthly, an outsider who has not been reasonably diligent to enquire about the scope of powers of a person purporting to act on behalf of the company and has further also been 'negligent' in not making the proper, reasonable and relevant enquiries, will be restrained from the usage of the

[50] PALMER, PALMER'S COMPANY LAW 33 (19th ed.,1949).
[51] Andrew R. Thompson, *Company Law doctrines and the authority to contract,* University of Toronto Law Journal, Vol. 11 (1955-1956).
[52] (1875) L.R. 7 H.L 869, 894.
[53] (1875) L.R. 7 H.L 869, 894.
[54] Andrew R. Thompson, *Company Law doctrines and the authority to contract,* University of Toronto Law Journal, Vol. 11 (1955-1956).
[55] Howard v. Patent Ivory Co. (38 Ch. D 156)
[56] Rama Corporation v. Proved Tin & General Investment Co. (1952) 1 All. ER 554
[57] Rouben v. Great Fingal Consolidated, (1906) AC 439; Kreditbank Cassel v. Schenkers Ltd. (1927) 1 KB 826

doctrine.[58] Fifthly, a distinction that should be borne in mind is that the doctrine in question can only be invoked when the 'scope' of the agency is in question. The doctrine is of no avail and cannot be invoked if the question is vis-à-vis not the scope but purports to the 'existence' of the agency itself.[59] Lastly, the doctrine has no application where the transaction or contract in question is either illegal[60] or beyond the charter of the company or ultra vires to the company.[61]

Lastly, on the very specific points of the limitations of the *Turquand* rule and suggested solutions, the author advances that, just because someone purports to act on behalf of the company, that in itself should not be sufficient to fasten the company with liability as the person so purporting to act may be a complete imposter.[62] It was due to this very proposition that there were a wide array of caps and limitations that were placed on the rule of indoor management. But with the expansion and establishment of multiple companies across the globe, in order to keep the competitive fabric intact, it was also imperative to protect the interests of the creditors and innocent third parties due to which the doctrine was again liberalised or given its old shape.[63]

The author submits that it is due to these modifications that a plethora of irreconcilable decisions purporting to the indoor management rule have come into the picture and due to this conundrum, the use of this doctrine as a valid defence is not only tedious and arbitrary but is seldom permitted.[64]

To remedy this issue, it is submitted that the judgement of Justice *Diplock* in *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd*[65] be paid heed to. Justice Diplock in addition to putting the traditional *turquand* rule in perspective and reconciling conflicting decisions, has formulated all the conclusions in the form of a four-prong test that should be complied with in order to hold the company liable and restraining it from going back on its promise. Taking from the judgement

[58] Anand Behari Lal v. Dinshaw & Co. (Bankers) Ltd., AIR 1942 Oudh 417
[59] Varkey Souriar v. Keraleeya Banking Co. Ltd., (1957) 27 Com Cases 591 (Ker.)
[60] A. RAMAIYA, GUIDE TO THE COMPANIES ACT (19th ed. Vol.1, 2020), section. 4(1)(c).
[61] Pacific Coast Coal Mines v. Arbuthnot, (1917) AC 607.
[62] McLenan, *The Ultra Vires doctrine & the Turquand rule in Company Law, A suggested Solution,* South African Law Journal, Vol.96 Issue.2 (1979)
[63] McLenan, *The Ultra Vires doctrine & the Turquand rule in Company Law, A suggested Solution,* South African Law Journal, Vol.96 Issue.2 (1979)
[64] McLenan, *The Ultra Vires doctrine & the Turquand rule in Company Law, A suggested Solution,* South African Law Journal, Vol.96 Issue.2 (1979)
[65] [1964] 2 QB 480 (CA), [1964] 1 All ER, 630

verbatim, the four conditions that should be complied with are,[66] "**(1)** that a representation that the agent had authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor; **(2)** that such representation was made by a person or persons who had "actual" authority to manage the business of the company either generally or in respect of those matters to which the contract relates; **(3)** that he (the contractor) was induced by such representation to enter into the contract, that is, that he in fact relied upon it **(4)** that under its memorandum or articles of association the company was not deprived of the capacity *either to enter into a contract of the kind sought to be enforced or* to delegate authority to enter into a contract of that kind to the agent".[67]

In a nutshell, the course of action that should be adopted that draws its parallel from the 4-prong test is that, since the *turquand* rule in sheer theory, is a rule of law with a negative operation, to avoid any aorta of confusion or arbitrariness it is deemed apposite that the rules or basic requirements of estoppel be first complied with and only then should the rule of indoor management be made applicable.[68]

Conclusion

The author started authoring this paper on the basis of the very assumption that beacuse company law is a private law subject with specific application, the application of the parts or components of the subject will also be highly precise and specific with absolutely no room for error and negligible pitfalls or shortcomings. However, after the perusal of various journal articles, cases, statutes, committee reports and commentaries, such a presumption has been refuted. After analysing and trying to answer the research questions posed on the grounds of the materials cited, it has been seen that doctrines of ultra vires, constrictive notice and indoor management which happen to be key areas or concepts under company law are not free from shortcomings and limitations. However, throughout the course of the paper, author did not let the repudiation of his presumption act as a hindrance. This is evinced by the fact that that paper has not only entailed the repudiation of the authors presumption but has also embodied the various suggestions and measures which are necessary to remedy the problems and defects that the doctrines suffer from.

[66] [1964] 2 QB 480 (CA), [1964] 1 All ER, 630
[67] [1964] 2 QB 480 (CA), [1964] 1 All ER, 630
[68] McLenan, *The Ultra Vires doctrine & the Turquand rule in Company Law, A suggested Solution,* South African Law Journal, Vol.96 Issue.2 (1979)

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