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DOCTRINE OF ULTRA VIRES: FROM SHACKLES TO SHADOWS IN CORPORATE LAW

AUTHORED BY - SMITA MITTAL & AKSHITA

ABSTRACT

This piece explores the nuances of how the ultra vires doctrine has developed over time- from the unyielding exclusion of any act stepping outside of words prescribed in object clause in Memorandum of Association (MoA) as understood in *Jehangir Rastamji Modi v. Shamji Ladha*, 1867 to the relaxation granted by the subsequent judicial rulings that stated that any action incidental to the object of the company would not be declared void; the mere lack of authorization in the memorandum would not make it ultra-vires if that act evidently aims to enable the end goals. But the contemporary Company law avoids the narrowness of binding object clause and necessity of ratification by shareholders' through ushering in fold the new normal of extensively-drafted object clause covering all things the company can aim for in the future and limiting the extent for shareholders' ratification. Here, now this very evolution gives rise to the query- whether the doctrine of ultra vires has any significance in the present day as the protector in corporate world or is it past its peak?

INTRODUCTION-

It is empowering to envision being at the helm of the company, all the power rushing to the head and the surge of authority, evoking a mental picture of ordering people about and steering the company to a discretionary direction, no one to impede you. But that is not all that liberating as it appears to be. The people sitting at the head of the company, managing their day to day operations have to dance to the tune of the objects for what company was incorporated for as laid down in company's charter. Their control is not all-encompassing but is meant to work within the boundaries set by the promoter in its constitution. The Court explicitly iterated in the case of *A. Lakshmanaswami Mudaliar v. LIC*¹ that the powers endowed with the directors are merely a tool to attain the objectives of the company as laid down in Memorandum of Association (MoA). This principle is also deeply rooted in the doctrine of ultra vires², which

¹ Ishika Jaiswal, "AN ANALYSIS ON THE DOCTRINE OF ULTRA VIRES" (2025) 6 *ijlra*.

² Gilani SRS, "The 'Doctrine of Ultra Vires' and Its Subsequent Development in the Frame Work of Company Law" (*ssrn*, October 1, 2011) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1936728 accessed October 4, 2025

purports that any action taken on the account of the company cannot go beyond the objectives as laid down in the Memorandum. The objectives reflect the purpose for which the company was given life to and incorporation. So, in the most basic sense, any initiative taken cannot be in direct contradiction to which the company has been rendered to exist for. But the essence of the doctrine of ultra vires in the contemporary cut-throat world that the companies struggle to co-exist in isn't the one it was one envisioned to be. So, this paper is going to scrutinize how the doctrine of ultra vires has adapted over time and probe into the question of what is its standing in the modern world.

ADVENT OF THE ULTRA VIRES-

The doctrine first entered into the picture in the late 1800's through the case of *Jehangir Rastamji Modi v. Shamji Ladha*³, 1867 in India. The accusations were hurled at the directors as the tale unfolded, behind the closed doors of the Court, for over-stepping the constraints put in the object clause in the Memorandum of the Company. The defendants, acting as the directors of the company, engaged in the transaction involving the purchase of shares of some other companies and some in their own company almost amounting to a substantial figure of 1442 shares using company's funds. But the plaintiff, Jehangir Modi, a registered shareholder in the company claimed that it was a misuse of company's resources as the object clause in the MoA of the company didn't accommodate any such transactions and did not endow the directors of the company to deal in shares or purchase its own shares. The Court for the first time introduced the concept of 'doctrine of ultra vires' and observed that any action of the directors/managers of the company which contravenes the power conferred to them by the Memorandum and is outside the scope of the objects clause of the company will be null and void and cannot be subsequently ratified, even by the unanimous consent of shareholders. And, in the moment of expounding on this doctrine, it purported that the directors will be held severally and personally liable for the resources utilized in such actions and will have to restore the company to its former state.

This step was taken owing to the fact that the Companies Act of 1857 introduced the concept of limited liability and the shareholders were put in a precarious position as a consequence. As a ground rule, the directors are presumed to act in the best interest of the shareholder and thus, to ensure that and secure the interests of the investors⁴, the general principle emerged that all

³ *Jehangir Rastamji Modi v Shamji Ladha* (1867) BHCR 185

⁴ Nandedkar ST, "The Doctrine of Ultra Wires in Company Law" (2023) 3 JCLJ

the actions of the company should align with the purpose the company claim to act for. This ascertains that the investors aren't oblivious as to what they are entangling themselves in by ensuring that company doesn't embark on any spontaneous initiative with the investor's funds and risk plummeting the business to the ground.

This precedent setting doctrine was reiterated by House of Lords in the case of *The Ashbury Railway Carriage and Iron Co. Ltd v. Riche*⁵, 1875 where the Court unwaveringly held that the contract entered into by the company to finance the construction of railway line was not sketched out in its memorandum and thus ultra vires the memorandum and thus, void ab initio and even, the shareholders couldn't further ratify the contract even by an unanimous vote. These two cases firmly cemented the place of the doctrine of ultra vires in the jurisprudence of company law to safeguard the interest of shareholders who place their faith in the board of directors' and management's hands and take back seat in the daily workings of the company. But this doctrine didn't stand hold onto this rigid interpretation and started making room for any such transaction which furthered the company in their journey to the realization of their objectives and construed that the makers of the charter of the constitution are human and cannot envision every road that they might need to step onto along the way. This epiphany came about in the case of *Attorney General v. Great Eastern Railway Co.*, 1880⁶, where the company entered into an agreement to loan out its locomotive power and rolling stock to a neighbouring railway company. Shareholders aggrieved to the Court that it was outside the purview of objects of the company. The MoA explicitly allowed entering into agreement regarding the management and working of the extension railway. The Court reaffirmed the essence of the doctrine of ultra vires but prudently held that it should be applied reasonably. The Court didn't confine the companies to the explicit words jotted down in the object clause of the company and may be a willing spectator and participant in any such activities which are imperative to achieve the purpose of the company or naturally inferred by the actions empowered in MoA.

The established legal principle follows the trajectory that any action that is incidental or ancillary to the object of the company is not void provided that it is not unreasonable and evidently conducive to carry out the main objects of the company. For instance, a company's main object in its MoA is to manufacture and sell electronic goods. An act which could be classified as incidental to this would be entering into a contract with a supplier for purchasing

⁵ *Ashbury Railway Carriage and Iron Co v Riche* (1875) LR 7 HL 653

⁶ *Attorney General v Great Eastern Railway Co* (1880) LR 5 AC 373 (HL)

raw materials related to the manufacturing of electronic goods and it would not be held void. In the case of *Evans v. Brunner Mond & Co*⁷, 1921, the Court clarified that any such expenditure or actions that are imperative to the growth of the company and achieving its objectives would be considered incidental and therefore, valid. This flexible approach is reflected in the Companies Law of 2013. While the memorandum must include information essential to achieving the company's objective, it is also possible to take actions not specifically listed as long as they contribute to the company's goals in a fair and reasonable manner. Now, the conundrum that emerges before us is how to check whether the action taken beyond the constraints of the object clause was intended to promote the objectives of the company and is incidental to the main objectives or is it ultra vires? The transaction undertaken needs to pass the test⁸ laid down by the following parameters- 1- whether such a transaction reasonably related to the company's business or detached from activities approved in MoA, 2-whether there is any element of deception or fraud present or it was done in good faith, 3- whether the transaction done helps in prosperity of the company?

The legislation of The Companies Act of 2013 has deeply entrenched the essence of this doctrine by stipulating that MoA of the company includes within its scope any object for which the company is incorporated and any such matters necessary in the furtherance of those said objects under Section 4(1)(c)⁹. The company gets the authority to take any action from the objects laid down and furthermore, under Section 245(1)(a)¹⁰ bestows the right to approach NCLT upon the members of the company if they feel that the management of the company is partaking in any activity against the best interest of the members. With the primary goal of safeguarding the interests of creditors and shareholders¹¹, the doctrine of ultra vires has developed into a cornerstone of company law over time. It guarantees that the money contributed by shareholders is used only for the objectives outlined in the company's memorandum of association, which acts as the organization's charter. This doctrine states that a company can only engage in activities for which it was formally established and is strictly limited to the goals specified in its object clause. Any action that exceeds these permitted goals is considered ultra vires, which means it is not enforceable. This principle serves as a safeguard

⁷ Leigh LH, "Objects, Power and Ultra Vires" (1970) 33 The Modern Law Review 81

⁸ Raj S, "An Analysis Of The Scope And Flexibility Of The Object Clause Of MOA Of A Company And Its Implications On The Company" (*India*, March 18, 2025) <https://www.mondaq.com/india/corporate-governance/1598126/an-analysis-of-the-scope-and-flexibility-of-the-object-clause-of-moa-of-a-company-and-its-implications-on-the-company> accessed October 3, 2025

⁹ The Companies Act 2013, s 4(1)(c)

¹⁰ The Companies Act 2013, s 245(1)(a)

¹¹ Nandedkar ST, "The Doctrine of Ultra Wires in Company Law" (2023) 3 JCLJ

against directors abusing their authority by prohibiting them from using company funds for objectives beyond the purview of the business. By doing so, the doctrine fosters trust and accountability, ensuring that the company operates transparently within its defined mandate.

In essence, ultra vires not only reinforces the company's adherence to its constitutional framework but also protects stakeholders from potential abuse or mismanagement. But, in the contemporary world where the companies are striving to conquer the market and each day brings forth a new battle of survival, the companies don't want to be constrained to a single or specific object or industry- one that might falter in subsequent years. To dodge the proverbial bullet, the companies aspire to keep their options open, to keep the possibility of diversifying and adapting to ensure long-term growth and survival. For instance, Nokia might pen down making foldable phones with buttons as their company's objective but with the evolution of technology, they would not want to be bound to this. They would strive to compete with companies making latest and technologically advanced electronics. Now one might think, why cannot they just alter their object clause in MoA to include that possibility. But it isn't as simple as a person might reckon it to be. As per the section 13¹² of the Companies Act, 2013, firstly, the Board of Directors have to convene a meeting to approve the proposed changes by passing a resolution. Then, the Shareholders also must approve such a proposed change but by the virtue of a special resolution with 75% of the votes in hand. Lastly, the firm submits the amended Memorandum of Association (MOA) and Form MGT-14 to the Registrar of Companies (RoC) within 30 days in order to have the modification registered. The amendment takes effect and the new certificate of incorporation is issued after ROC is satisfied and registered.

The Companies have found a way around the suffocating restrictions of the doctrine of ultra vires to keep the possibility of broadening the scope of their business to leverage the opportunities as they come and keep their company prospering. While, section 13 provides a way out of this conundrum, the companies don't want to take their chances and have started widening the object clause to include within its ambit any possible business under the sun they think they might want to engage in. Taking for instance, one can refer to the object clause of Nykaa's MoA¹³ which encompasses a diverse range of businesses they are engaged in or would

¹² The Companies Act 2013, s 13

¹³ "MEMORANDUM OF ASSOCIATION OF #Nykaa E-Retail Limited" (*nykaa*) https://www.nykaa.com/media/wysiwyg/2024/IR/scheme-of-arrangement/Memorandum-and-Articles-of-Association_NYER.pdf accessed October 3, 2025

possibly want to engage in future from undertaking the business of providing transportation of goods to purchasing shares of any other company. Because of this all-encompassing trend which the companies today haven't escaped the temptation of, the doctrine of ultra vires have diluted to the extent that it is no longer a rigid limit to the activities of companies but rather an informal guideline. This weakening is due to companies authoring extremely broad and generic object clauses that cover nearly any conceivable business activity they may participate in in the future. Consequently, the rigidity of the doctrine has been reduced, giving corporations a significant amount of leeway to diversify and transform without the possibility of their conduct being held ultra vires. The flexibility, however, has caused some tension with the original protective function of the doctrine for shareholders and creditors, with accountability and transparent corporate governance progressively considered to be of greater importance.

CONCLUSION-

The ultra vires doctrine, as originally operative, was there to protect the shareholders and the creditors from managerial indifference, ensuring that companies did not transcend the objectives for which they were formed. It has witnessed the law's attempt to strike a balance between accountability and commercial adaptability, from the stringent enforcement in cases of *Jehangir Rastamji Modi* and *Ashbury Railway Carriage Co.* to its dilution in *Great Eastern Railway*. But modern corporate life under the Companies Act, 2013, is quite a different drama. The companies now come out with all-inclusive objects clause, which can stand for practically any kind of enterprise, thereby making the doctrine just an empty hollow symbolic representation.

Once deemed to be a harsh safeguard, the doctrine now is, in effect, a soft push; in times of accelerated corporate flexibility, such a development calls for an existential question: Has Ultra Vires become obsolete in an era where corporate resilience and existence demand flexibility, or does its decline undermine the defensive scaffolding of shareholder and creditor rights?

One should never abandon a doctrine; rather, it should be re-examined or reimagined. In the unpredictable business environment of today, ultra vires can no longer strictly function as a check but may well still serve as a moral compass, with the latent appeal for transparency, accountability, and ethical corporate management. If indeed we subscribe to this, the doctrine has not quite disappeared; rather, it has evolved. From fetters to shadows, ultra vires straddles company law discourse, ever reminding us that unbridled power must constrict somewhere.