



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## The Doctrine of Ultra vires in Company Law

Shriya Tukaram Nandedkar<sup>a</sup>

<sup>a</sup>Government Law College, Mumbai, India

Received 16 January 2023; Accepted 30 January 2023; Published 03 February 2023

---

*The core concept that has been discussed in this paper is 'The Doctrine of Ultra Vires as Regards Company Law'. The detailed analysis of the concept coupled with the discussion around the origin of this rule of law which includes a landmark case law provides a precise and conceptual understanding of the topic wherein various concepts such as Memorandum of Association, objects included therein, the directors' powers which inherently revolve around the central principle of the paper have been discussed for clear interpretation of the doctrine. The pertinent statutory provisions and statutes have been mentioned for the perusal of the reader. The prospects of consequences and the respective remedies available accord a holistic approach to the article. The exceptions to the article provided in the article curb the severable hindrances that may arise due to the application of the doctrine. The conclusion provided at the end puts an end mark on the meticulous discussion on the topic.*

**Keywords:** *ultra-vires, memorandum of association, powers of company, void-ab-initio.*

---

### INTRODUCTION

The Constitution of India<sup>1</sup> is the apex law of the country. All the other laws derive their power from this ground law. If a statute or a provision of a statute is not in conformity with The Constitution of India<sup>2</sup>, such a statute or provision has no effect in law at all. Therefore, all the

---

<sup>1</sup> Constitution of India 1950

<sup>2</sup> *Ibid*

statutes and provisions shall comply with the provisions of the Constitution. In short, constitutional law is the mother law of which all the other laws are children. The Constitution of India<sup>3</sup> is the longest in the world. One such Act which essentially is the child of the constitution and the backbone of the corporate sector, the thriving and emerging sector in India is The Companies Act, of 2013<sup>4</sup> (Before the Companies Act, 1956).<sup>5</sup> Section 4 of The Companies Act, 2013<sup>6</sup> deals with the provisions and contents as regards the Memorandum of Association.

What constitution is to the country, The Memorandum of Association is to the Company. The MOA is the charter document of a company providing for the objects for which the company is formed and the powers that can be exercised by the company. Clause (c) of subsection (2) of Section 4 of The Companies Act, 2013<sup>7</sup> states, "The Memorandum of a Company shall state the objects for which the company is proposed to be incorporated and any matter considered in furtherance thereof. The MOA is inherently a precious piece of paper that sets out the internal and external limitations and capabilities of a company. An act performed in contravention or more than what is provided in the memorandum is void-ab-initio and is declared ultra vires.

## ORIGIN OF THE DOCTRINE OF ULTRA-VIRES

The origin of the doctrine of ultra-vires could be traced back to the landmark case of the Ashbury Railway Carriage<sup>8</sup> in the year 1875 BC, decided by the House of Lords. In this case, Ashbury Railway Carriage and Iron company had entered into a contract with Riche and his brother, whereby the company had agreed to finance the construction of a railway line. Clause 3 of the Memorandum of the Company stated that the objects of the company were to make and sell or lend on hire, the railway carriages, wagons, and all kinds of railway plant, fittings, machinery, and rolling stock; to carry on the business of mechanical engineers and general contractors; to purchase and sell, as merchants, timber, coal, metals, or other metals; and to buy and sell any

---

<sup>3</sup> *Ibid*

<sup>4</sup> Companies act 2013

<sup>5</sup> Companies Act 1956

<sup>6</sup> Companies Act 2013, s 4

<sup>7</sup> *Ibid*, s 4(2)(c)

<sup>8</sup> *Ashbury Railway Carriage and Iron Co v Riche* (1875) LR 7 HL 653

such material on commission, or as agents".<sup>9</sup> Clause 4 of the memorandum further clarified that any act beyond the objects mentioned in clause 3 would require the passing of a special resolution. Clause 3 and Clause 4 of the memorandum made the objects and the limits of the company crystal clear by complimenting each other.

The company repudiated the contract on the ground of its being ultra vires the Memorandum of the company. Riche filed a suit against the company wherein he asked for the damages caused by the repudiation of the said contract. He contended that the company had committed a breach of contract by repudiating the contract to finance the railway line construction and hence is liable to pay the damages caused by the breach of the contract.

The directors of the company submitted that the company was solely engaged in the activities mentioned in the object clause of the memorandum of the company. There was no mention of an object to contract in connection with the proposed business of the company. Therefore, the entire contract was void ab initio making the act of contracting ultra-vires. Hence, the company was not bound by the contract and the repudiation of the contract did not lead to any liability against the company. The House of Lords in its judgement clarified that since the act of contracting did not fit into the object clause of the memorandum of the company, the creation of the contract was ultra-vires making it ineligible to be estopped or ratified even by the consent of all the shareholders. Riche was therefore not in a position to ask for damages on the ground of repudiation of the contract.

## CONCEPT OF ULTRA-VIRES

The term Ultra-Vires is a Latin phrase that comprises two different words, ultra, and vires. Ultra means beyond and vires mean power. The doctrine of ultra vires is one of the most important rules of the company law be it in the UK as we observed in the Ashbury Railway Carriage case<sup>10</sup> or in India. The rule says that the acts performed abusing the powers and infringing the

---

<sup>9</sup> All Answers Ltd, 'Ashbury Railway Carriage v Riche' (*Lawteacher.net*, January 2023) <<https://www.lawteacher.net/cases/ashbury-railway-carrage-and-iron-co-v-riche.php?vref=1>> accessed 13 January 2023

<sup>10</sup> *Ashbury Railway Carriage* (n 8)

memorandum of the company are ultra-vires. Hence, anything done beyond the legal powers conferred by the Memorandum of Association is void ab initio. Such acts the time they go in contravention of the objects of the company, cease to have effect in the eyes of law.

The borrowing power of a company is the most essential power that a company may have as borrowing is the most crucial component of the debt capital of a company. A company is given powers to borrow funds but is subject to certain specified limitations. If a company borrows funds over such powers, the act of borrowing becomes ultra-vires for the company. However, if the borrowing is intra-vires the company but ultra-vires the authority of the directors, the act of borrowing may be ratified by passing a resolution.

The doctrine of Ultra-Vires safeguards the interests of creditors and investors. The doctrine of ultra vires forbids the company from using creditors' or investors' funds for objects other than those mentioned in the Memorandum of Association. This works as a trust-building mechanism for the creditors and the investors of the company. If a company engages itself in any activity that is not mentioned in its memorandum which is inherently the constitution of a company, the company's activity will be concluded to be ultra-vires leaving no effect of law.

The act that is ultra vires the company is always ultra vires the authority of directors of the company. The directors are bound to ensure that the powers being exercised are within the ambit of the Memorandum of Association and The Companies Act, 2013<sup>11</sup>. If they fail to do so, they are held severally and individually liable for the consequences. There is a distinction between illegal acts and ultra-vire acts although both are null and void. An act may be completely legal but ultra vires the company. For example, borrowing is not an illegal act itself rather is the most crucial power that is granted to a company but, if the act of borrowing is exercised more than the power granted by the Memorandum of Association of the Company, which is essentially an invitation to the application of the doctrine of ultra-vires the act of borrowing becomes void-ab-initio.

---

<sup>11</sup> Companies Act 2013

An act that is ultra vires has no effect from the very beginning and remains invalid throughout. Therefore, an ultra-vires act is null and void without any legal effect. The objects of the company cannot be changed merely to give effect to an ultra-vires act. The ultra-vires acts cannot be rectified even by-passing resolutions by the majority of shareholders subject to certain exceptions. This is indeed a hindrance for the company to change the direction of its operations or upgrade itself for a more profitable business.

### **EFFECTS OF THE DOCTRINE**

**No Estoppel or Ratification:** An act that ultra-vires the company for being in contravention or excess of the memorandum of association, can never be stopped or ratified even if all the directors authorize such an act or all the shareholders ratify it by passing a resolution.

**Void-Ab-Initio:** An ultra-vires act is void-ab-initio i.e., invalid having no legal effect from the very beginning. The ultra-vires act creates no relationship between the company and its lenders. Hence, the relationship between a debtor and a creditor does not take place at all.

**Breach of Warranty:** The directors of the company are made accountable for ensuring the compliance of the acts with the Memorandum and taking relevant and necessary steps. The failure of the directors to perform this function of caution and care leads to the breach of the warrant by them. The directors are held liable for the ultra-vires acts in such cases. This prevents the directors from using the doctrine of ultra-vires for their benefit thus preventing the interests of creditors and investors of the company.

### **EXCEPTIONS TO THE DOCTRINE OF ULTRA-VIRES**

- There is a difference between an act being ultra-vires the company and an act being ultra-vires the authority of the directors. When the act is ultra-vires, the company is void -ab-initio as discussed above. However, an act that is intra-vires the company meaning well within the curriculum of the act but ultra-vires that is more than the directors' powers may be ratified by passing a resolution.

- Often there are untouched topics in the Memorandum of the company for the reason of their detailed provision in the Company law in the effect which in India is The Companies Act, 2013. When such an incidence takes place, the act of doing something cannot be considered to be ultra vires the company merely because of its exclusion in the memorandum if the act aptly fits into the provisions of The Companies Act<sup>12</sup>.
- An act that is otherwise intra vires the company but done irregularly can be ratified by the shareholders.
- We have learned that the power of borrowing if exercised ultra vires ceases to have legal effect. Nevertheless, if such borrowing is utilized to pay off the legal debts of the company, the company is bound to repay the borrowed amount to the creditors.
- It is now a well-established fact that the memorandum cannot be altered to the effect of converting the ultra vires act into the intra vires act. Nonetheless, the Articles of Association may be altered retrospectively unlike the MOA to ratify the acts ultra-vires the articles of the company.
- If a company acquires a property using investments that are ultra-vires the company, the company will still have right over such acquired property irrespective of the fact that the property was acquired utilizing the investment that was ultra-vires.

## REMEDIES AVAILABLE TO THE CREDITORS/INVESTORS

**Tracing of the funds:** The directors and investors of a company can trace the funds lent by them if they are found in the hands of the company in their original form, and the creditors can demand the repayment of the same if the funds were amassed ultra-vires. This prevents the creditors from suffering losses due to the irresponsible or evil behaviour of the company or its directors.

**Injunction:** If the creditors or the investors have a reason to believe that the funds borrowed by the company from them are ultra vires the power conferred on the company, the creditors or

---

<sup>12</sup> *Ibid*

investors may get an injunction from the respective court and prohibit the company from further using those funds.

**Subrogation:** Where the company utilizes funds borrowed ultra vires the company for paying off the lawful debts, the creditors or the investors as the case may trace the exact position of the funds and recover the amount lent. However, such creditors do not have the power to recover the funds at par with the original creditors.

## CONCLUSION

The Doctrine of Ultra-Vires is a boon in the arena of corporate law which has proved to be a safeguard for the investors and the creditors of the company against any loss that may occur to them due to the infringement of authority conferred on the company and its principal officers. This provides credibility to the companies and acts as a trust builder between the company and its lenders. The veil that corporates sometimes wear to abuse their powers to gain profits by acting beyond their powers can be penetrated using the doctrine of Ultra-Vires. The doctrine of ultra vires is one of the game-changing products of the corporate revolution. It could be termed as a vigil mechanism to keep a check on the acts of the companies and their directors. The principle also prevents the company from deviating from its originally framed objects thus providing the company with a clear direction to operate towards.

Along with all the advantages, the doctrine of ultra vires also has the disadvantage of making it difficult for the companies to widen their objectives in the future for the furtherance of the business. However, this limitation can be curved out by altering the Memorandum of Association before working toward the proposed objects although the process is quite tedious and complex.