

## A COMPARATIVE STUDY BETWEEN THE APPLICATION OF THE DOCTRINE OF ULTRA VIRES IN ADMINISTRATIVE LAW, COMPANY LAW, AND CONSTITUTIONAL LAW

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### ABSTRACT:

The doctrine of ultra vires plays an important role across various branches of law, ensuring that actions taken by authorities, entities, or individuals do not exceed beyond the powers that are legally granted to them. This article examines the application of the doctrine of ultra vires across three major branches of law. It analyses the development of the doctrine and its presence in administrative law, company law and constitutional law and compares its application between them. In administrative law, the article examines how ultra vires prevent the government and the public authorities from overstepping their statutory powers. In company law, it explores the restriction of the company and directors to act beyond the objectives stated in its articles. In constitutional law, it examines how the supreme law of the land confers limitations on other ordinary laws.

Through a detailed comparison of how the same doctrine is applied in different fields of law and their distinct interpretations and uses, this article highlights the safeguards and legal accountability provided by this doctrine, contributing to the restriction on legal overreach and promoting lawful governance.

### I. DOCTRINE OF ULTRA VIRES:

The doctrine of Ultra vires is an important legal principle that is derived from the Latin word “Ultra Vires” which means “beyond the power”. It ensures that the legal entities and authorities operate within the scope of powers that are granted to them by law or statute. If a legal entity or authority engages in actions that exceed or it is beyond the powers conferred on them by the legislation, then those actions would be considered ultra vires and are void. The opposite of this doctrine is “Intra Vires” which means “within the powers”. For an act to be valid, it has to be intra vires of the legislation or the law. The origin of this doctrine was not definite but was vaguely present in the United Kingdom in the 16<sup>th</sup> century.<sup>137</sup> In **Sutton’s hospital case**<sup>138</sup>, the doctrine of ultra vires was

introduced but however, the doctrine was not applied even if the company had a separate existence in the eyes of the law. It was only in the middle of the 19<sup>th</sup> century that it was laid down in clear and unequivocal language. In the landmark case of **Ashbury Railway Carriage and Iron Co. Ltd v Riche**,<sup>139</sup> the doctrine of ultra vires was clearly defined and crystallised. The House of Lords held that a company’s actions are void if they go beyond the scope of its memorandum of association. Though the judgment centred on company law, the doctrine of Ultra Vires was largely based on this judgment in future cases. Also, in **Attorney-General & Ephraim Hutchings (Relator) v. The Directors of the Great Eastern Railway Company**,<sup>140</sup> the doctrine of ultra vires was given a scope where the court held that

<sup>137</sup> Kiggundu, J., The never ending story of ultra vires, 24(1), The Comparative and International Law Journal of Southern Africa, 1, 1-5 (1991).

<sup>138</sup> Sutton’s hospital case, 1612 10 Co. Rep. 23a.

<sup>139</sup> Ashbury Railway Carriage & Iron Co. Ltd v. Riche (1875) LR 7 HL 653.

<sup>140</sup> Attorney-General & Ephraim Hutchings (Relator) v. The Directors of the Great Eastern Railway Company, (1880) UK HL 2.

“whatever may fairly be regarded as incidental to, or consequential upon, those things which the Legislature has authorized, ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires.”

The doctrine of ultra vires in constitutional law, according to Article 13<sup>141</sup>, any law that is inconsistent with the constitution would be void up to the extent of such inconsistency. since the Constitution is the supreme law of the land any law that is not conforming to the principles and provisions of the constitution would be void and invalid.<sup>142</sup> In administrative law, is applied to ensure that government agencies and authorities do not act beyond the powers delegated to them by the parent Act or statute<sup>143</sup>. In company law, it is applied to prevent the company or the directors from acting beyond the objectives defined under the Memorandum of Association (MOA) and the Articles of Association (AOA) to protect the interests of the investors and shareholders.

## II. ULTRA VIRES IN CONSTITUTIONAL LAW:

The constitution of India, 1950 is the sovereign law of the land, therefore any Act passed by the Parliament or state legislature is required to be in conformity with the constitutional principles and if the law made by the legislature violates the constitutional provisions, the court declares it as unconstitutional and void. The scope of the constitutional provisions may be expressed or implied.

The doctrine of ultra vires can be expressly seen in Article 13<sup>144</sup>, 245<sup>145</sup> and 246<sup>146</sup>. There are various judicial pronouncements by which the doctrine of ultra vires evolved. Let us see how this doctrine is implemented in the above Articles.

### A. ARTICLE 13:

Article 13(1) states that all the laws that are in force before the commencement of the Constitution shall be void so far as they are

inconsistent with the fundamental rights under Part III. However, this does not mean that the laws are void ab initio, a declaration by the court is necessary to make it void.<sup>147</sup> Article 13(2) provides that the State shall not make any laws that infringe the fundamental rights under Part III, if made, to the extent of such contravention be void and the entire Act cannot be made void.<sup>148</sup> This is subject to one exception i.e. if the valid and invalid portion cannot be separated then the entire Act can be voided.<sup>149</sup> Article 13(3) provides a wider scope for the word “law” which includes ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law. Article 13(4) inserted by the Constitution (24<sup>th</sup> Amendment) Act, 1971 provides that any constitutional amendment made by the parliament under Article 368<sup>150</sup> would not be subject to judicial review. However, it was held that it would be held void if it affects the basic structure of the constitution.<sup>151</sup>

### B. ARTICLE 245:

Article 245 states that the legislative powers of the parliament and the state legislatures are subject to the provisions of the constitution. Parliament may make laws for the whole or part of the territory of India and the state legislature can make laws for the whole or part of the state. No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation. But the law made by the state legislature may be challenged on the grounds of extra territorial operation. If the Parent Act is declared unconstitutional, then the delegated legislation under the Act would also be declared unconstitutional and void. For instance, the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 was declared unconstitutional on the ground that it had extra territorial operation as it involved the State of Tamil Nadu and Puducherry.

### C. ARTICLE 246:

<sup>141</sup> INDIA CONST. art. 13.

<sup>142</sup> General Motor Traders v. State of A.P., (1984) 1 SCC 222.

<sup>143</sup> State of Karnataka and Anr. v. H. Ganesh Kamath, 1983 AIR 550.

<sup>144</sup> INDIA CONST. art. 13.

<sup>145</sup> INDIA CONST. art. 245.

<sup>146</sup> INDIA CONST. art. 246.

<sup>147</sup> Keshavan Madhavan Menon v. State of Bombay, AIR 1988 SC 1531.

<sup>148</sup> State of Bombay v. Balsara, AIR 1951 SC 318.

<sup>149</sup> Romesh Thappar v. State of Madras, AIR 1950 SC 124.

<sup>150</sup> INDIA CONST. art. 368.

<sup>151</sup> Kesavanand Bharati v. State of Kerala, AIR 1973 SC 1461.

Article 246 deals with the distribution of powers between the parliament and the State legislature. According to Article 246 and the Seventh Schedule of the Constitution the subjects on which the legislative body can make laws are divided into three viz. Union list, State list and Concurrent list. The Parliament has exclusive power to make laws on the Union list, while State legislatures have power over the State list. Both the parliament and the state legislatures have the power over the State list. If there's a conflict between the law made by the parliament and the state legislature, then according to Article 254<sup>152</sup>, the parliament law shall prevail over the state law and to the extent of that repugnancy, be void.<sup>153</sup>

### III. DOCTRINE OF ULTRA VIRES IN COMPANY LAW

In company law, doctrine of ultra vires is applicable in the context of the memorandum of association of the company. The memorandum of association is looked at as the constitution of the company. It is what consists of all the major details of the company and especially has its objects clause as well. The objects clause outlines the company and its primary goals and the actions it is permitted to conduct. It describes the extent of the business's activities and guarantees that it does so in compliance with all applicable laws and regulations.

As per **Section 2(56)<sup>154</sup> of the Companies Act, 2013**, memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act. This is where it is defined in law, as to what a memorandum of association is. This gives rise to the company and its functioning itself and therefore cannot be violated. This means actions taken by a company cannot be in contradiction to the memorandum itself. If the memorandum designates certain rules, the

future actions of the company are bound by the same and cannot act in contravention of the same. It would be 'Ultra Vires' to act not in accordance with the memorandum.

A famous case that gave way for this doctrine to be applied in company law was the case of **Ashbury Railway Carriage and Iron Co. Ltd. v. Riche**,<sup>155</sup> In this instance, the company and M/s. Riche signed a contract under which the company committed to providing funding for the construction of a railway. Afterwards, the contract was renounced by the directors due to its extreme violation of the company agreement. Riche sued the business and demanded damages. Riche claimed that any type of contract was meant to be understood when the company's objects section mentioned "general contracts." According to Riche, the business therefore possessed all the necessary authorisation to enter into and carry out these kinds of agreements. The deal was later confirmed by the company's majority of shareholders. Nevertheless, the company's directors continued to refuse to carry out the agreement since, in their opinion, the action was extremely immoral. When the case reached the House of Lords, it was decided that the contract was void since it went against the company's memorandum in its entirety. The term "general contracts" was construed in relation to the terms "mechanical engineers" that came before it. It was decided that this term only applied to contracts that were related to mechanical engineers and did not encompass all types of contracts. Additionally, they said that since this act went against the company's agreement, it would have been void even if all of the shareholders had approved it. The company's memorandum cannot be changed in the past, and any ultra-vires act cannot be approved.

This essentially lays down 2 particular things. One is that, the corporation cannot, in its decision making violate its own memorandum

<sup>152</sup> INDIA CONST. art. 254.

<sup>153</sup> Deep Chand v. State of U.P., AIR 1959 SC 648.

<sup>154</sup> The Companies Act, 2013 § 2(56), No. 18, Acts of Parliament, 2013 (India).

<sup>155</sup> Ashbury Railway Carriage and Iron Co. Ltd. v. Riche, (1878) L.R. 7 H.L. 653.

and people outside the organisation, may stand to have void contracts with the company, even if all shareholders consent but memorandum bars it. Therefore, this establishes the supremacy of the memorandum as compared to the members of the organisation.

This case most clearly explains the extent of application of Doctrine of Ultra Vires in company law.

#### IV. DOCTRINE OF ULTRA VIRES IN ADMINISTRATIVE LAW

In Administrative law, Doctrine of Ultra Vires is applicable in the concept of delegated legislations.

Delegated legislations, also known as subordinate legislations, are those legislations made by those authorised by the legislature to make regulations on behalf of the legislature. A delegated legislation only derives authority from the act that enabled the delegate to make the legislation in the first place. It exists because the parent act gave life to it. Here the parent act is the statute that delegated authority to the delegate to frame legislation on its behalf. There are 2 types of Ultra Vires in regards to delegated legislations.

- A. Procedural Ultra Vires
- B. Substantive Ultra Vires

A. **Procedural Ultra Vires:** Statutory requirements may be imposed on the authority to adhere to specific procedures throughout the creation of delegated legislation, such as pre-publication, consultation, publication, laying, etc. Only when a specific procedure is required can rules be declared invalid for failure to follow it. The directory provisions remain valid even if they are not followed. When the rule-making authority disregards procedural norms, the courts will not invalidate delegated legislation.

B. **Substantive Ultra Vires:** When a delegated legislation goes beyond the authority granted by the enabling Act or

clashes with the delegating statute, this is known as substantive ultra vires. This primarily has to do with stuff like, to what extent the laws made are in line with the parent act and to what extent are the powers granted and if so, is it a correct application.

#### 1. Cases on procedural ultra vires

##### Sukhalal Munda v. State Of Odisha And Others<sup>156</sup>

The petitioner contests the Odisha Zilla Parishad Election (Amendment) Rules, 2017, on behalf of a BJP member who was elected to the Sundargarh Zilla Parishad. The amendment permits political parties to designate agents to verify ballots prior to them being placed in the voting box. It was proposed by the Odisha government on March 8, 2017, during the Zilla Parishad election process. This regulation is applicable to the Zilla Parishad's presidential and vice-presidential elections. The petitioner argues that the fairness of the process was impacted by this modification, which was made just before the elections on March 12 and 24, 2017. The issue is whether the Odisha Zilla Parishad Election (Amendment) Rules, 2017, which allows political party agents to verify whom an elector has voted for before inserting the ballot into the ballot box, violates the fairness and confidentiality of the election process. The court stressed that the State Election Commission has complete control over the election process once it has begun, and that neither the administration nor the legislature should make any amendments during this time. The challenged notification, which changed the election regulations during the polling process and was issued on March 8, 2017, was found to be outside the State Government's purview and to have breached Section 51(1) of the Odisha Zilla Parishad Act, 1991. By declaring the notification to be ultra vires, or outside the bounds of law, the court invalidated it and upheld the State's inability to change election regulations in the middle of the process.

<sup>156</sup> Sukhalal Munda v. State of Odisha And Ors., W.P.(C) NO. 4398 OF 2017.

This case is a perfect example as procedurally, certain actions could only be taken by certain bodies around the election time. Thereby the procedure to change the campaigning laws was not fully adhered to, making it ultra vires to the procedure laid down.

## 2. Cases for substantial ultra vires

### **Dwarka Nath v Municipal Corp.**<sup>157</sup>

The appellants, who operated a ghee company, faced prosecution for violating Rule 32(b) and (e) of the Prevention of Food Adulteration Act, 1954<sup>158</sup> regarding labelling requirements. Due to the incomplete address and batch code on their ghee tins, they were found guilty and fined a meagre Re. 1. The manufacturer's name and address must be included on labels according to Rule 32(b), and batch or code numbers must be included according to Rule 32(e). The High Court concentrated on the Rule 32(e) infraction. Packages under 60 grams are excluded from these restrictions under Rule 32's first proviso. The court determined that Rule 32(e), which required batch numbers, was unlawful because it went beyond the Act's Section 23(1) rule-making authority. For breaking it, the appellants could not be found guilty. Nonetheless, it was decided that Rule 32(b), which demands the manufacturer's name and address, is still in effect. The appellants were acquitted despite being found in technical violation for failing to provide complete address details, as the lower courts' decision was affected by their conviction under Rule 32(e).

This showed how the courts viewed the scope of the parent Act as the primary key to determining whether a delegated legislation is valid or not.

### V. CONCLUSION:

The doctrine of ultra vires plays an important and crucial role in maintaining legal boundaries across constitutional, company and administrative law, by ensuring that no entity, whether legislative, corporate or administrative,

acts beyond the powers conferred on them. In constitutional law, it safeguards the supremacy of the constitution by declaring the ordinary laws that are contradictory as void, as seen in Article 13, 245 and 246. In company law, the doctrine prevents the companies from acting outside the Memorandum and Articles of Association to protect the interests of the shareholders and investors. In administrative law, ultra vires doctrine limits the administrative bodies and authorities to act within the delegated legislation granted by the parent Act. The doctrine serves as a check on the government and legal entities, ensuring that the power granted to them are exercised within the boundaries set by the constitution and statutes, thereby upholding legal accountability and preventing misuse of power.

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<sup>157</sup> Dwarka Nath v. Municipal Corp., AIR 1971 SC 1844.

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