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Staying withing bounds:

How the doctrine of ultra vires keeps board actions in check.

Can a cricket captain add five extra overs to his innings just because his team is chasing a score? Regardless of how experienced they are or how good their intentions, the answer is a big fat no. The rules are there to preserve fairness and order, not to hinder any given leader.

Corporate governance functions in a similar manner. Directors may be in charge of a company, but that does not mean they can do whatever they please. The law, company documents and shareholders have set limits. When these are crossed, the doctrine of ultra vires comes to the fore. The doctrine of Ultra vires means "beyond the powers". The doctrine is the constitutional safeguard for companies, prevents the company or Board of Directors from exercising powers not granted by the law.

The term 'ultra vires' is far from a mere legal principle that we inherited from English common law. It's corporate governance's constitutional conscience that ensures directors don't equate given power with absolute authority. A subtle reminder of the fact that every power has a purpose, every authority a source and every action a boundary.

"The strength of a river lies not in overflowing its banks, but in flowing purposefully within them."

A company is essentially an artificial legal persona. Unlike a human, it cannot think and acts through its directors and officials. If the managing body is permitted to operate beyond its mandates, shareholders run the risk of their investment going into unwarranted transactions. The doctrine of ultra vires thus ensures that: Directors are accountable. Shareholders' rights are protected and Creditors can be sure that company assets are being utilized for the right purposes.

Ashbury Railway Carriage and Iron Co.

Ltd. V. Riche (1875) LR 7 HL 653 Historically, ultra vires doctrine emerged in company law in an era where companies were incorporated to achieve extremely narrow commercial objectives. In a landmark case that led to the formation of the doctrine, a company with the object to manufacture railway carriages entered into an agreement to fund the building of a railway in Belgium.

Despite appearing profitable, the transaction was outside the company's stated objectives, and the House of Lords found that it was void due to the company's lack of legal capacity to undertake the activity. Notably, even a unanimous shareholder agreement would not have validated this transaction. The decision looks pretty straightforward when interpreted through the Memorandum of Association alone.

The uniqueness of the judgment lies in the interpretation of legal personality by the court. It differentiates the power of the Directors with the legal personality of the Company and finds the latter to be paramount. Directors can exceed their authority, and shareholders may ratify the acts, but if the Company does not have the legal authority to do something then even the unanimously approved resolution of shareholders cannot help it. This case sets the memorandum of association as the Constitution for the legal existence of a company. But, the rigidity of Ashbury Railway invited criticism. By rendering all ultra vires transactions absolutely null and void, the doctrine, at times, frustrated Bonafide commercial transactions. Innocent third-party dealing with the company in good faith were left without remedies.

Philosophy of Ultra Vires did not exactly originate from Victorian England. Ancient India understood this Principle long before corporate law. Mahabharata has multiple times highlighted the consequences of crossing authorized limits. Duryodhana felt, that sheer power entitled him to rule. Yudhishthira argued, power is always subordinate to dharma. Many failures of corporate organisations had not been the consequence of lack of profits, but of the notion of the corporate leadership that success earned them the right to violate governance standards. The doctrine of ultra vires provides an invaluable lesson to every director, which is that corporate ambitions can never excuse an exercise of authority outside the legal limits.

One of the foremost messages of Bhagavad Gita says:

"It is better to do one's own duty, though poorly performed, than to do another's duty well."

This principle refers to 'svadharma' - to perform one's duty to the best of one's ability within one's own scope. A person ought to perform the duty prescribed to him and should not try to emulate another's role. It is the most faithful principle of Company Law where Board must operate only within the scope of its powers, which are determined by the law, the Articles of the company and mandate from shareholders. A director cannot assume those powers which have been given to the shareholders, or the company or any other authority for proper order of the functioning of the corporate entity.

Long before company law talked about fiduciary duty of directors, Kautilya had, in Arthashastra, laid down a principle as clear as any modern principle of governance: power can be delegated, but power can never be personally owned. According to Kautilya's vision of the State, the treasury was not the king's private property nor the minister's to deal with, but each of the officials entrusted with handling public money was required to observe strict discipline and account for every bit of wealth. Arthashastra contains ample advice on supervision, recording, audits, punishment of officials for any mismanagement and other checks and balances to protect public funds and prevent wrongful administration.

Indian company law adopted this doctrine from English law. However, companies under the Companies Act, 2013 are allowed to have a wider scope of objects compared to those under earlier law. Section 179 of the Companies Act, 2013 allows the Board to exercise all powers that the company is authorized to exercise in accordance with the provisions of the Act, Memorandum, Articles and shareholder resolutions where required. It is important to understand that although the Board can exercise all powers, the authority it possesses is never unrestricted.

A. Lakshmanaswami Mudaliar v. Life Insurance Corporation of India (AIR 1963 SC 1185)

The directors of a company passed a resolution to contribute a considerable amount to a charitable trust for the purpose of promoting scientific, educational and philanthropic activities. However, this purpose was not listed in the company's Memorandum, nor could it be reasonably interpreted as incidental to its business.

The Supreme Court held that the donation made by the directors was ultra vires the company's objects and therefore void. The Court's ruling underlined that the assets of a company cannot be used for purposes beyond those for which the company was incorporated. What is noteworthy is that the Court did not consider the financial desirability or the social worth of the contribution in question to be sufficient grounds to legitimize it. This decision is noteworthy in that it reflects a prevailing corporate governance principle: good intentions are no substitute for legal authority. Time and again, directors attempt to justify their decisions as beneficial to the company in terms of reputation and long-term viability. This decision made it explicit that business judgment alone is not enough to expand a company's powers.

Is the doctrine of ultra vires obsolete?

In the contemporary Indian company law discourse, there is an ongoing debate on whether the doctrine of ultra vires still has any relevance following the enactment of the Companies Act, 2013. There are many valid arguments. Today's companies are often established with broadly drafted object clauses permitting a wide array of business operations. If practically every business activity is covered in a company's Memorandum of Association (MOA), is there still a role for the doctrine? Yes, but it's a role that has significantly evolved. The doctrine no longer functions primarily as a restraint on the company's capacity; it's now a mechanism to control how corporate power is exercised.

This evolution can be clearly understood when we read Sections 4, 10, 179 and 180 of the Companies Act, 2013 together as an integrated system of corporate governance. Section 4 of the Companies Act, 2013 specifies the requirements for the MOA of a company, including its objects. On a surface level, this section may appear to be a mere formality. However, its underlying significance runs much deeper. A MOA is more than a piece of paper that is submitted to the Registrar; it's the constitution that governs the company's existence and defines its legal identity and limits.

Just as Section 4 laid out the constitutional framework of the company, so Section 10 provides that the company is bound by its Memorandum and Articles, and its members, as if they had each agreed to be so bound, upon registration. In this way the internal documents are given an enforceability that they might not otherwise be thought to possess. Section 10 needs to be distinguished from an all-too-common misunderstanding about the role of the two constitutive documents.

The Memorandum demarcates the legal existence of the company; the Articles detail the manner in which power is exercised within the Company's legal existence. Many might see Section 179 as supporting the thesis that the doctrine of ultra vires has become irrelevant, on the grounds that "all such powers as the company is authorised to exercise may be exercised by the Board of Directors". Any such analysis is misleading as the section itself is clearly qualified "in so far as the Memorandum or the Articles may not restrict them and subject to the provisions of the Act or of any other law and any regulations made thereunder". The words "subject to" provide the clue to the modern doctrine; it suggests that there is nothing original or inherent about the power of the directors; it is rather derivative. As explained above, they derived their power from the company and were subject to limitations both in the Company's articles of association and in the Act itself.

Directors do not have the power to make a decision, but they have a duty. As fiduciaries, they will have to make decisions in the company's interests. A modern technology company's memorandum, for instance, might state that its objects include the investment in digital technologies; the directors would be able to invest in AI or cyber security but not beyond the provisions of the Act, the Memorandum, or the Articles, unless it received shareholder approval by special resolution under section 180. Commercial viability might affect a particular decision taken by directors, but legal authority is about a certain course of conduct being permissible to the directors.

While section 179 establishes the extent of the power that directors exercise, Section 180 provides for a restriction on that power; a number of specified "major" transactions, including the disposition of the entire or a substantially entire undertaking of the company, borrowing beyond certain levels and remission of debts owed to directors, are required to be subject to a resolution of the company in general meeting by special resolution. As it will be argued later in connection with director's duties, Section 180 illustrates the principle that not all of the power which a company may possess should necessarily reside with the directors: ultimately, the company is owned by its members and there are decisions which are of such significance to its fundamental structure or operation that it would be an improper encroachment on the ownership rights of its shareholders to allow the Board to make them on its own. Section 180 reinforces the fact that the directors act as fiduciaries; they are entrusted with the exercise of power for the benefit of the company and not for personal gain; hence they are not allowed to transfer company funds to purchase their private villas or to acquire another company with funds it could better invest elsewhere, simply because the price will rise or it will improve share performance; this will be addressed in the discussion of director's duties below.

When is a Board action ultra vires?

Acting Beyond the Memorandum Suppose a company incorporated to manufacture electric vehicles suddenly decides to establish a chain of luxury hotels without amending its objects or obtaining the required approvals. Acting Beyond the Articles The Articles often prescribe procedural safeguards. If the Articles require approval of two-thirds of directors for a significant borrowing, but the Board ignores that requirement, the decision may be challenged as exceeding internal authority. Acting Beyond the Companies Act The Board cannot approve transactions prohibited by statute.

For instance, directors cannot disregard restrictions relating to related party transactions, loans to directors, or corporate social responsibility merely because they believe doing so would benefit the company. Law always prevails over convenience.

In cricket, the boundary rope is fascinating. It rarely affects play, most balls never reach it, yet everyone knows exactly where it is. The rope silently defines what counts as four runs, six runs, or dismissal. Corporate governance operates similarly. The doctrine of ultra vires spends most of its existence unnoticed. But when directors approach the boundary, it suddenly becomes decisive. Without boundaries, governance becomes guesswork.

When Success Becomes Dangerous

History teaches an uncomfortable lesson. Failure rarely encourages abuse of power. Success does. The collapse of Satyam Computer Services in 2009 is a striking case of acting beyond power. For years, the company was celebrated as a symbol of corporate success, rapid growth, and global ambition. Yet behind that image, governance failures were quietly accumulating. Financial statements were manipulated, fictitious cash balances were shown, and the Board failed to detect or prevent the deception in time. What began as a story of achievement ended as one of the biggest corporate scandals in India. This is how governance breakdowns usually begin. Rules are ignored because business appears profitable.

Procedures are bypassed because they seem inconvenient. Authority slowly expands beyond accountability. By the time regulators intervene, the damage has already occurred. The doctrine of ultra vires is far more than an old Latin expression preserved in legal textbooks. It is the constitutional conscience of corporate governance.

A river creates civilisation because it flows within its banks. The moment it abandons those banks, it becomes a flood. The doctrine of ultra vires ensures that Boards remain rivers that nurture enterprise not floods that overwhelm it.

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