CHAPTER-4

DEFINITION MEANING & NATURE OF DOCTRINE,
ITS DISTINCTION FROM OTHERS & CORPORATE
SOCIAL RESPONSIBILITIES

1. DEFINITION AND MEANING

A. DEFINITION OF THE DOCTRINE

I. *Ultra vires* is a Latin term, meaning "beyond powers". The term is usually used to refer acts taken by a corporation or officers of a corporation that are taken outside of the powers or authority granted to them by law or under the corporate charter. Some states have enacted laws to prevent the use of the defense of *ultra vires* action to unfairly avoid obligations under otherwise valid contracts. The concept of acting "under color of law" means acts are done while a person acts or purports to act in the performance of official duties under any state, country, or municipal law, ordinance, or regulation. This is similar concept that refers to the apparently authorized status of the action, as distinguished from the unauthorized status of their actions, which *ultra vires* refers to.

The following is an example of a state statute dealing with the concept of *ultra vires*:

a. "Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

A corporation's power to act may be challenged:

I. In a proceeding by a shareholder against the corporation to enjoin the act;

II. In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or
b. In a proceeding by the Attorney General;

c. In a shareholder's proceeding, to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.”

II. EXCESS of authority or power exercised by an entity. Since the powers exercised by any officer of an organization are limited by the constituting or vesting instrument (such as a memorandum of association), any act outside those limitations is ultra vires and may be challenged in the courts. This rule is applicable to all powers, express or implied, created by a contract or statute. However, whereas an incorporated firm has no liability beyond its corporate powers, neither the firm nor a third party may use ultra vires as an excuse or defense to invalidate a contract. Stockholders (shareholders) may sue the directors of a firm for recovery of losses resulting from their ultra vires acts, and each director may be personally liable. In Latin for, beyond the powers. Its opposite is intra vires (within the powers).

B. MEANING OF THE DOCTRINE

I. Ultra vires is a Latin expression which lawyers and civil servants use to describe acts undertaken beyond (ultra) the vires of those who have purported to undertake them. In this sense its application extends over a far wider area than company law. For example, those advising a Minister on proposed subordinate legislation will have to ask themselves whether the enabling primary legislation confers vires to make the desired regulations.

II. LCB Gower picturesquely puts the same as- “An investor in gold mining company did not find himself holding shares in a fried-fish shop, and to give those, who allowed credit to a limited company,
some assurance that its assets would not be dissipated in unauthorized enterprises.\footnote{Gower L.C.B. - Principle of Company Law 3rd Ed. (1969) page 87}

III. The word \textit{ultra} means- going beyond what is usual or ordinary, excessive and the word \textit{vires} means- natural powers or forces or granted powers. The expression \textit{ultra} means beyond the legal power of authority of an entity. The doctrine typically applies to corporate bodies, such as limited companies, a government department or a local council, so that any act done by the body which is beyond its capacity to act will be considered invalid.\footnote{http://docs google.com visited on 6th august 2011}

IV. As per Dr A. Ajim Khan- Any action taken by a company beyond the powers conferred by its memorandum of association is known as \textit{ultra vires} transaction. The legality of transactions has been judged by the doctrine of \textit{ultra vires} which was developed in 1875 when during the course of judgment in \textit{Ashbury’s case}\footnote{www.indiakanoon.org visited on 6th august 2011}, it was stated by the learned judge that “When an act is performed or transaction is carried out which though legal in itself is not authorized by the object clause in the memorandum of association, is null and void”.

V. An article on doctrine of \textit{ultra vires} by V.S. Rao dated 6$^{th}$ December 2010 speaks as under. \textit{Ultra vires} means beyond powers i.e. any act done by company beyond its power and authority is an act \textit{ultra vires} the company. It has been observed that company has an independent legal existence and is a separate body corporate distinct from its members. The company can therefore perform acts on its own .The acts which the company performs are authorized by-

1. Objects specified in the memorandum of association of the company with which it is registered. Objects include incidental objects also.

2. The company’s Act. Any act done by the company which is neither authorized by its objects nor by Companies Act, that act is called the \textit{ultra vires} the power and authority of the company. An act which is \textit{ultra vires}
the company is void and can not bind the company. Since the act is void it can not be ratified by the shareholders either.\(^{418}\)

VI. The doctrine of *ultra vires* is a Latin version which means beyond the powers. The doctrine in the law of corporation that holds that if a corporation enters in to a contract that is beyond the scope of its corporate powers, the contract is illegal. This doctrine played an important role in the development of corporate powers. Though largely obsolete in modern private corporation law, the doctrine remains in full force for government entities. An *ultra vires* act is one beyond the purpose or powers of a corporation. The earliest legal view was that such acts were void. Under this approach a corporation was formed only for limited purposes and could do only what it was authorized to do in its corporate charter.\(^{419}\)

VII. The term “*ultra vires*” in its proper sense denotes some act or transaction on the part of a corporation which although not unlawful or contrary to the public policy, if done by an individual, is yet beyond the corporation’s legitimate powers as defined by the statute under which it is formed or the statute which are applicable to it or by its charter or memorandum of association, although in favor of third party dealing with the company in good faith, the doctrine no longer applies. The term is misused in applying it to any act or transaction which is beyond the lawful powers of directors which should not be undertaken by them without sanction of the members of the company, are frequently described as acts *ultra vires* the directors.\(^{420}\)

VIII. The crux of the *ultra vires* doctrine under common law was that any contract entered in to by a company which was not in line with the objects in its memorandum of incorporation (hereafter memorandum)
was beyond the company’s capacity and therefore void ab-initio as held in *Ashbury Railway Carriage & iron company V Riche*\(^{421}\). Under the common law the authority of a company to enter into a contract was relevant in an external and an internal context. Externally with a third party contracting with the company, if the authority of the company to enter into such contract was not included in the objects of the company, then the contract was *ultra vires* and void. Internally between the company and the director entering in to an *ultra vires* contract, the company either selects to restrain the act of the director or if the contract had already entered in to than the company may claim damages against the director who entered in to the contract out of the company’s capacity\(^{422}\) and therefore breaching his fiduciary duties. If the main object of the company in its memorandum was impossible to fulfill in the first place then the company would have to be wound up on the basis of “just and equitable “for failure of substratum.\(^{423}\)

**IX.** *Ultra vires*, Latin phase meaning “beyond power or authority” describing an act by a corporation that exceeds its legal power. For example, corporation does not have the authority to engage in the insurance business without a charter. A corporation offering insurance without authority would be acting *ultra vires*. Similarly, an insurance company chartered to engage in a single line of business would be operating *ultra vires* by offering some other line.\(^{424}\)

Literally (beyond powers) *Ultra vires* has two meanings

1. **Substantive** *ultra vires* where a decision has reached outside the power conferred on the decision taker and

2. **Procedural** *Ultra vires* where the prescribed procedures have not been complied with.

\(^{421}\) (1875) L.R. 7 HL 653
\(^{422}\) Eales V Turner (1928) WLD 173
\(^{423}\) An Article by DHARMARATNE K, University of the Witswatersrand, Johannesburg on Development of Ultra Vires Doctrine downloaded from www.law.tau.ac visited 24th Oct 2011
The doctrine of *ultra vires* gives court considerable powers of oversight over decision making. The range and variety of bodies amenable to the doctrine is large. Ministers, or any public body with statutory powers, may be included. The doctrine also applies to companies and corporations that are amenable to the remedies of declaration or injunction.\(^{425}\)

The doctrine of *ultra vires*, as applicable to USA- The *doctrine* in law of corporation that hold, that if a corporation enters in to a contract that is beyond the scope of its corporate powers, the contract is illegal.

**X. A CHANGING ATTITUDE OF COURTS TOWARDS ULTRA VIRES RULES**- an article by Kailash Rai expresses that *ultra vires* is used to indicate an act of the company which is beyond the objects clause of its memorandum. Such acts will be void and cannot be ratified even if all the members wish to ratify it. This is called the *ultra vires* rule. It was first introduced in relation to the statutory companies however it was not paid any attention up to 1855. The reason appears to be this that it was not felt necessary to protect the investors and creditors. The companies prior to 1855 were usually in the nature of an enlarged partnership and they were governed by the rules of partnership. Under the law of partnership, the fundamental changes in the business of the partnership can not be made without the consent of all the partners. These rules of partnership were considered sufficient to protect the investors. On account of the limited liability of the members, the creditors also felt themselves protected and did not require any other device for their protection. Besides during early days it had no philosophical support. It is based on the view that a company after incorporation is conferred on legal personality only for the purpose of the particular objects stated in the object clause of its memorandum and a transaction not authorized expressly or by necessary implication must be taken to have been forbidden, but this view was not followed during early days and contrary to it, the view that a company has all

the powers of a natural person unless it has been taken away expressly or by necessary implication was given a big support.\textsuperscript{426}

However in the year of 1855 some important development took place. One of them was introduction of the principle of limited liability. After the introduction of principle of limited liability, it was possible to make the liability of the members limited. Hence so long as the liability of the members was unlimited, the creditors of the company considered them- selves protected, but after the development of the doctrine of limited liability, they found themselves in a miserable state. This necessitated a device to protect the creditors. This molded the minds of the pioneers towards the doctrine of \textit{ultra vires}.\textsuperscript{427}

XI. An Article on \textbf{DOCTRINE OF ULTRA VIRES IN COMPANY LAW: AN OVERVIEW} by Dr. L.C. Dhingra Provides \textit{Ultra Vires} means “beyond the Power”. In company law, it means something beyond the objects clause of a memorandum of association of company. A company is an artificial or juristic person and, unlike a natural person, its powers are limited by the objects specified when it is created. Any thing attempted or done beyond the objects are \textit{ab- initio}, null and void. Any contract or other bargain in pursuance of an object outside the purview is not binding on the company, even if same is confirmed or ratified by unanimous consent of all the members of the company. The House Of Lords in \textit{Ashbury’s case} as early as in 1875 held that a company whose objects were “to make and sell, or lend on hire, railway carriages and wagons, and all kinds of railway plants, fitting machinery, and rolling stock and to carry on other business of mechanical engineers and general contractors” could not enter in to a contract with a person to finance him to construct a railway line in Belgium, even that contract was affirmed by unanimous consent of all shareholders of the company. The company was held not liable in damages when it did not perform such a contract as it was void and unenforceable from its inception. According to House of Lords, the terms

\begin{footnotes}
\footnote{Ibid}
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mechanical engineers and general contractors could not be interpreted ejusdem generis, which in effect meant the same, could not be used for the purpose of bringing in to their ambit “a financial contract” entirely different from the manufacture and selling and lending on hire of railway carriages and other similar equipments. This in essence is the doctrine of ultra vires in company law. 428

XII. An Article by M. MOSHIR ALAM lecturer faculty of law AMU ALIGARH expresses the meaning of doctrine of ultra vires as follows

The expression ultra vires means the doing of any act which is beyond the legal powers and authority of a person. Thus a company’s actions are controlled by the objects clause of the memorandum of association which lays down the objects for which the company is floated. Nothing can lawfully be done beyond the powers specified in the memorandum. Therefore, when the funds of the company are used for purposes which are not sanctioned by the memorandum, the act will be ultra vires. The law recognizes a distinction between

1. Acts ultra vires the directors and
2. Acts ultra vires the company

An act is ultra vires the directors, when the director do something beyond the powers delegated to them by the article of association. But ultra vires acts of the directors can be ratified by the company at general meetings. However, if an act is ultra vires the company itself, it being beyond the powers given in the memorandum, the act can not be ratified by a unanimous consent of shareholders. 429

This rule of constructive notice is the second rule which was established even before the strict ultra vires doctrine was held to apply, was that any one dealing with a registered company was deemed to have notice of content of its public documents. Precisely what that included was never wholly clear but it certainly included the memorandum of association and articles of association.

429 Alam M. Moshir in his Article “The Doctrine of Ultra Viros in Company Law” Published by Cochin University Law Review (1979) page 305-306
XIII. The expression *ultra vires* consist of two words: ‘*ultra*’ and ‘*vires*’. *Ultra* means beyond and *vires* means power. Thus the expression *ultra vires* means an act beyond the powers. Here the expression *ultra vires* is used to indicate an act of the company which is beyond the powers conferred on the company by the objects clause of the Memorandum. An *ultra* act is void and cannot be ratified even if all the directors of a company have exceeded the powers delegated to them. Where a company exceeds its power as conferred on it by the objects clause of its memorandum, it is not bound by it because it lacks legal capacity to incur responsibility for the action, but when the directors of a company have exceeded the powers delegated to them. This must be avoided, for it is apt to cause confusion between two entirely distinct legal principles.\(^{430}\)

C. OTHER MEANINGS OF THE DOCTRINE

I. PRIMARY MEANING

Several decisions have quoted to illustrate the primary meaning of *ultra vires*. We have also seen that sovereign can create, directly or indirectly, corporate bodies and give them definite powers for the attainment of definite objects. So long as they act within those powers for the attainment of objects for which they were incorporated, their acts are perfectly valid. When however they transcend those powers or engage in acts and transactions foreign to the object of their incorporation, then their acts and transactions foreign to the object of their corporation, are said to be *ultra vires*. It should be borne in mind that the said acts and transaction are not, strictly speaking, illegal (though as a matter of fact the either illegal is sometimes applied to them); they are *ultra vires* i.e. beyond authority.\(^{431}\) This is the primary meaning of the term.

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II. SECONDARY MEANING

The doctrine of *ultra vires* has been used in two difference senses. First of all, a secondary meaning was given in the year 1865 by Kindersley V.C. while deciding a case$^{432}$ and stating “when you speak of the doctrine of *ultra vires* of company, you mean one or other of two things, either that you cannot bind all the shareholders to submit to it or that is *ultra vires* in this respect, that the legislature for instance having authorized you to make a railway, you cannot go and make a harbor, but in the present case the later question does not arise. The question is whether it is *ultra vires* as being beyond the powers of the directors to bind all the shareholders”.

This passage of supposed meaning was further quoted with approval by Blackburn J. in *Taylor V Chichester & Midhurst Rly. Co.*$^{433}$ at a greater length.

These two uses of *ultra vires* and distinction between them are carefully pointed out by the supreme court of California in the judgment of$^{434}$, where the general question of *ultra vires* was fully considered. The court pronounced-

“The term *ultra vires* whether with strict propriety or not is used in different sense. An act is said to be *ultra vires* when it is not within the scope of the powers of the corporation to perform under any circumstances or for any purpose. An act is sometimes said to be *ultra vires* with reference to the rights of certain parties, when the corporation is not authorized to perform it without their consent or with reference to some specific purpose when it is not authorized to perform it for that purpose, although fully within the scope of the general powers of the corporation with the consent of the parties interested or for some other purpose.

When an act is *ultra vires* in the first sense mentioned, it generally if not always void in *toto* and the corporation may avail itself of the plea. But when it is *ultra vires* in the second sense, the right of the corporation to avail itself of the plea will depend upon the circumstances, the defense available to the corporation against all persons, because they are bound to know from the law that it has no power to perform the act but when the act is authorized for some purpose but not for the others,

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432 Earl of Shrewsbury V North Stafford Shire Rly Co. (1865) 35 LJ Ch. 156, 172
433 (1867) L. R. 2 Ex 356-378
434 Miner’s Ditch Co. V Zellerbach 37 Cali. 547, 579
the defense may or may not be available depending upon the question whether the party dealing with the corporation is aware of the intention to perform the act for an unauthorized purpose or under circumstances not justifying its performance and the test as between stranger having no knowledge of an unlawful purpose, and the corporation is to compare the terms of the contract with the provisions of the law from which the corporation derives its powers and if the court can see that the act to be performed is necessarily beyond the powers of the corporation for any purpose the contract cannot be enforced otherwise it can”.

Although the secondary meaning of the doctrine of ultra vires has been taken from and extracted out of the judgment of the courts, but in the modern age its tenability has been doubted and suspected. It is submitted that the two classes of the doctrine suggested by Blackburn J. in fact coalesce and both are absolutely void. It is also stated by Mr. H.A. Street that even existence of this secondary meaning was doubted by Mr. Brice Seward in his book.

Vice Chancellor Kindersley in *Earl of Shrewsbury V North Staffordshire Railway Co.*

, recognized the two senses when he says, “When you speak of ultra vires of the company, you mean one or other of two things, either that you can not bind all the shareholders to submit to it or that it is ultra vires in this respect that the legislature, for instance, having authorized you to make a railway, you cannot go and make a harbor.”

Blackburn J., in *Taylor V Chichester & Midhurst RY. Co.*

, after quoting this passage, develops the distinction indicated their-in and points out the legal effects of the same. His view seems to be that the corporation confers on its members certain rights and that it acts ultra vires when it override the same, even when its powers or has the consent of the majority of the shareholders to its acts. Thus he says: “The rights thus conferred on the shareholders as between them and the corporations are very analogous to those between partners inter se and depend upon the nature of the terms on which the partners entered on the joint speculation. Any shareholder has a

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435 Brice Seward on, Law of Corporations & Companies, A Treatise on Doctrine of Ultra Vires 3rd Ed. 1893 Page 47
436 35 L. J. (Ch.) P. 166 (172)
437 Supra Note 431 Page 22
438 L. R. 2 Ex. P. 356 (358)
right to object to any act being done which is in contravention of the rights thus given him. Though the majority of the shareholders, or even all but himself approve, yet he has a right to object to the making or enforcing of any contract to do any unauthorized act which would affect his interests."

III. DISTINCTION BETWEEN PRIMARY AND SECONDARY MEANING

From this it will appear that whereas ultra vires in the primary sense has regard to the rights or powers of the corporation, what is ultra vires in the secondary sense has regard to the rights or powers of the individual persons who happen to be its members for the time being. The corporation is, in the eye of law, an entity quite distinct from the corporators. The rights and interest of the corporation are not identical with the rights and interests of the corporators. Now it may happen that an act which is within the potential powers of a corporation is not within its actual powers; and that it can exercise its potential powers in no other way then by overriding the right of one or more of the corporators. Such an act is not ultra vires the corporation, for it has the potential power to do it; yet it is ultra vires inasmuch as it ought not to so exercise its powers as to prejudice the rights of any of its individual members without the consent of the latter.439

We come to this then, that in the case of an act which is ultra vires in the secondary sense, the corporation can do it with the consent of certain parties, but not in the absence of such consent; but that in the case of an act which is ultra vires in the primary sense, it can never do it. From this it would follow “that a shareholder may waive any right which is given to him for his own protection only, and if he has either expressly or tacitly done so, he can no longer object, and neither stranger nor the body corporate itself can raise such an objection to a contract made by the corporation.”440

Here-in lies the importance of the distinction between what is ultra vires in the primary sense and what is ultra vires in the secondary sense. In the former case, generally speaking, the defense of ultra vires can be set up by all parties under all circumstances; in the later, it can only be set up by the parties (for example by an

439 Supra note 431 Page 23
440 Supra Note 438 p.356
individual corporator whose rights are likely to be prejudiced by the intended act) under certain circumstances (if, for example, he has not waived his rights).\textsuperscript{441}

We have seen that the individual members of a corporation have certain rights which they may enforce against the corporation as also against third parties and that any act in contravention of these rights is \textit{ultra vires}. Now, it may be asked whether the recognition of \textit{ultra vires} in this sense is anything more than the fact that the court would, under certain circumstances, prevent the majority of corporators from coercing the minority. Now, though in fact, quite a number of cases of \textit{ultra vires} in the secondary sense are also cases of coercion of the minority by the majority, yet, strictly speaking, the two are quite distinct. There may be cases where there is no harsh or unfair treatment of the minority by the majority; and yet the court would interfere on the ground that the act or transaction in question is \textit{ultra vires} in the sense that the corporation ought not to undertake it, there being opposition from one or more of its members. It seems, therefore reasonable to recognize the secondary meaning of \textit{ultra vires} as a distinct legal fact distinct from cases of coercion of the minority by the majority, as also from other kinds of transactions which the court will not enforce on account of some informality attaching to them.\textsuperscript{442}

\textbf{IV. IMPROPER MEANING}

We shall now consider briefly the improper meaning of \textit{ultra vires}. The term, as has been already stated, has come to be used somewhat indiscriminately. In fact there has been a tendency lately to describe any act which goes beyond authority as \textit{ultra vires}.

i. As we shall presently see, the powers of those who act on behalf of corporations are defined and limited by the constating instruments. Acts which are excess of powers so given to them are called \textit{ultra vires}.

ii. There are certain acts or transactions which no corporation can do or undertake. These are sometimes called \textit{ultra vires}. For example, the issue of shares transferable by delivery before the English Companies

\textsuperscript{441} Supra Note 431 ibid page 23
\textsuperscript{442} Supra Note 431 page 24
Act of 1867 was not permitted. Such issue of shares by directors of companies is called *ultra vires*. Similarly, payment of dividend out of capital is *ultra vires*. 443

iii. The majority of corporations have, as a rule, the power to bind the minority. The courts however will restrain them if their conduct, on account of fraud or harshness or unfair treatment, is considered to be an abuse of power. Such abuse of power by the majority has been called *ultra vires*.

iv. The powers of subordinate legislatures are defined and limited by their constitution. Any enactment in excess of their powers is *ultra vires* in the sense of being unconstitutional. 444

v. Where the executive authority of a state acts in excess of powers given to it by the legislature, directly or indirectly, it is said to act *ultra vires*.

vi. And lastly, the acts of trade unions in excess of their powers have been in a recent case described as *ultra vires*; for example, payments out of union funds for purposes not authorized have been restrained as being *ultra vires*. 445

There are some other meaning not seldom given to the phrase *ultra vires* are grouped by Brice. 446 Which are as follows:-

(a) *Ultra vires* of a governing body
   In English cases, the phrase is applied both to the acts which simply exceed the powers conferred by the ‘deed of settlement’ upon the officer as the agents of the shareholders and acts which transcend the power conferred by law upon the entire corporation.

(b) What is not allowed by law:-
   Sometimes the term is used as denoting, what is outside the powers not of a particular corporation, but of every corporation. Bye-laws in restraint of trade are *ultra vires*, in this sense, capacities within which it is attempted to endow corporation which are contrary to the general principle and incidents

443 Towers V African Tug Company (1904) 1 p. 558
444 Dicey, “The Law of the Constitution” 7th Ed. 1908 P. 97 cited from Supra Note 431 page 24
445 Ibid
446 Supra Note 435 page 48
recognized by the common law or to the provision express or implied of some statute will be ultra vires.

(c) What is not allowable on the part of the majority:-
This includes the cases of fraud, hardship or breach of contract.

(d) What is outside the powers of an unincorporated company:-
This clearly is not true ultra vires at all, since if all the members agree, they can do whatever they are pleased to do.\(^{447}\)

V. MODERN MEANING

The meaning of the term is used and known in its primary sense with the conception of an ultra vires act as an absolute nullity and doubted on the secondary meaning saying that both are coalesce and not different form\(^{448}\), but, nevertheless, after the flow of litigations there arises difficulty and it becomes necessary to adopt the term ‘secondary’ for the use of the phrase ultra vires. There are certain classes of cases, those of torts against corporations or abuse of privileges and of breach of trust against officials which depends for their success on a finding of ultra vires in which the ultra vires act is the very cause of action and terms cannot be used in its primary sense as an absolute nullity.

VI. MEANING OF DOCTRINE BY INDIAN COURTS

In our country same concept of doctrine, which has been adopted by the British Authorities, is being followed. For example it was stated by Nawal Kishore, C.J. in\(^{449}\) that “ultra vires only means something has been done by person or by body of persons which was beyond his or their powers”.

In another case\(^{450}\) of Kerala it is said by learned judge “ The expression ultra vires which strictly spoken implies an absence of jurisdiction, is often used to imply an absence of competency, hence the use of expression such as void, nullity, null and void without jurisdiction”.

\(^{447}\) Ibid page 49
\(^{448}\) Street H.A. on A Treatise on the Doctrine of Ultra vires 1930 ( By Sweet & Maxwell London) Page 7
\(^{449}\) State v Nanga and Others AIR (1951) Raj page 25 Para 3
\(^{450}\) Madhvan Pillai V State of Kerala AIR (1966) Kerala 214
In the wordings of Satish Chandra J. who pronounced in the case.\textsuperscript{451} “The essence of the doctrine of \textit{ultra vires} is that the act is done in excess of powers possessed by the person in law. This doctrine proceeds on the basis that the person has limited powers. If a person exists for a limited purpose alone and that purpose is defined by law whether expressly and, or by implications, the doctrine of \textit{ultra vires} governs him and confines him to that purpose, the person can act within the four corners of its constating instrument. The doctrine prevents him from acting beyond the conferred powers”.

In a Karnataka matter\textsuperscript{452} the court commented that “The term \textit{ultra vires} simply means beyond the power or lack of power. An act is said to be \textit{ultra vires} when it is excess of power of the person or authority doing it”.

\textbf{2. SCOPE, NATURE AND CONCEPT OF THE DOCTRINE}

\textbf{A. SCOPE OF THE DOCTRINE}

In order to appreciate the doctrine of \textit{ultra vires} and understand its scope and application, it is necessary to examine the various decisions of various Courts, both English and the Indian courts in this regard.

\textbf{1.} The House of Lords for the first time demonstrated the application of this doctrine in \textit{Ashbury Railways Carriage and Iron Co. Ltd. V Riche}\textsuperscript{453}. The brief facts of the case were as follows.

The company was incorporated under the Act of 1862.

Clause 3 of the memorandum provided as follows. “The objects for which the company is established are –

To make and sell, or lend or hire, railway carriages and wagons, and all kinds of railways 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 materials, and to buy and sell any such materials on commission or as agents.

\textsuperscript{451} Anand Prakash & Others V Asst. Registrar AIR (1968) All 22
\textsuperscript{452} P. Janardhan V Union of India AIR (1970) Mysore Page 171
\textsuperscript{453} (1875) LR 7 HL 653
Clause 4 provided

An extension of the company’s business beyond or for other than the objects or purpose expressed or implied in the memorandum of association shall take place only in pursuance of special resolution.

The company entered in to a contract with Riche and his brother under which it was agreed to provide them finance for the construction of a railway in Belgium. It later repudiated the agreement. When sued for damages, the company pleaded that the said agreement was *ultra vires*, for the company could not enter in to such an agreement.

Delivering the judgment, Lord Cairns observed “that a contract of this kind was not within the words of the memorandum of association. In point of fact, it is not a contract in which as the memorandum of association implies, the limited company were to be employed. They purchased the concession of railways, an object not at all within the memorandum of association, and having purchased that, they employed or contracted to pay as persons employing, the plaintiff in the present action as the persons who were to construct it. That was revering entirely the whole hypothesis of the memorandum of association, and the making of the contract was not included within but foreign to the words of memorandum of association.

The rationale of this case was that a company incorporated under the companies Act had power only to do those things which were authorized by the memorandum of association. Anything which was not expressly or implicitly authorized was *ultra vires* the company and could not be ratified or been made effective even by the unanimous agreement of the members.

In this case, Lord Cairns observations were governed primarily by the strict rule of literal construction and observed that *ultra vires* act of the company cannot be made *intra vires* even by ratification by the unanimous agreement of the members. No doubt, this decision was prejudice to the plaintiff for the very fact that the company can always enter in to *ultra vires* contract and later breach the contract on the ground of such agreement being *ultra vires* and consequently the plaintiff has no remedy but for to suffer. The company can take the plea that it is the duty of the plaintiff to see memorandum of association and to satisfy themselves in knowing whether the
company can actually do so or not. In other words the company can always take the plea of doctrine of constructive notice.\footnote{454 Section 610 of Companies Act 1956}

The memorandum of association and the Articles of Association of every company are registered with the Registrar of Companies. The office of Registrar is a public office and consequently the Memorandum of Association and the Articles of Association are also public documents, they are open and accessible to all. (This right of inspection is expressly granted by section 610 of Indian companies Act). It is therefore, the duty of every person dealing with a company to inspect its public documents and make sure that his contract is in conformity with its provisions. But whether a person reads them or not, “he is to be in the same position as if he had read them”. He will be presumed to have read and know the contents of those documents. This kind of presumed notice is known as constructive notice.

2. A more recent English case which considered the application of the doctrine of ultra vires was \textit{Re Horsely & Weight Ltd}.\footnote{455 (1982) 3 All ER 1045}, the facts of the case were that a company which carried on the business of shoplifters had for one of its objects in the memorandum of association, clause 3(o) to grants pension to employees and ex-employees and directors an Ex-directors.

Clause 3 also contained a separate “object clause” which provided that all objects specified in clause 3 were to be read and construed as separate and distinct objects. There were five directors of the company. One director was the respondent but he was the director only in name and took no part in company’s financial affairs, his true position being that of the employee of the company. Two other directors were C and F, who were the sole shareholders of the company and the only authorized signatories on the company’s bank account. The remaining two directors were their wives, who took no part in company’s affairs.

In the year 1975 shortly before the respondent was going to retire, C told him that in recognition of his services, the company would grant him the retirement pension which would be secured by the company taking out a pension policy with an insurance company, the premium of which was 10,000 pounds. C and F without the
authority of the board of directors of the company in the general meeting affected the policy and signed cheques for the premium of the said amount. In affecting the policy C and F acted in good faith, after considering whether it was proper to tax out the policy in the light of the company’s financial state. The respondent retired from the company in the year 1976. In 1977, the company was compulsory wound up owing sums to the creditors. The liquidator applied to the court for declaration that the procurement of the pension policy by C and F was *ultra vires* the company.\(^456\)

Dismissing the appeal, the court observed that the purchase of the policy by the directors was *intra vires* the company. The following observations were made.

“In doing of an act which was expressed in the memorandum of association of a company rather than by mere power which was ancillary or incidental to an substantive object could not be *ultra vires* the company, because by definition it was something the company was formed to do. The power to grant a pension, set out in clause 3(o) of the company’s MOA was capable of existing as a substantive object of the company, and not merely as incidental power, and having regards to the separate objects clause, was therefore to be construed as being substantive objects of the company. Since the power to grant pension was a substantive object, it was irrelevant whether the grant of a pension pursuant to that power would promote the commercial prosperity of the company. It followed the procurement of pension policy by C and F had been *intra vires* the company”.\(^457\)

Here what the court basically observed was that any act which was ancillary or incidental to the main object or the substantive object could not be *ultra vires* the company because by definition it was something the company was formed to do. However in this case the court failed to consider what would be the consequences of an act done in good faith even though the act is neither incidental nor ancillary to the main object or the substantive objects.

The other famous English case in this regard is *Rolled Steel Product (holdings) Limited V British Steel Corporation and Others*\(^458\). Here the plaintiff was a company which carried on business as wholesalers of steel, mainly to motor vehicle

\(^456\) Ibid
\(^457\) Ibid
\(^458\) (1982) (3) All ER 1057
manufacturers. The two directors were S and his father F being the majority shareholders.

Clause 3 (k) of the memorandum of association of the company empowered it to lend and advance money or give credit to such persons, firms and companies and on such terms as may be seen expedient, and to give guarantees or become surety for any such persons, firms or companies. 459

Meanwhile S formed another company (SSS Ltd) in which he owed all the shares, and on behalf of that company entered in to an agreement with C Ltd, a steel producing company to act as distributor of coil and cut steel. S arranged for the plaintiff company to set up the steel service centre with some 4 Lac pounds borrowed from SSS Ltd. The plaintiff company purchased a site for the centre but did not develop and purchased another site where the erection of the steel service centre was commenced, while the former site was retained.

SSS Ltd. commenced purchasing coil and cut steel from C Ltd., which was later taken over by the British Steel Corporation. SSS Ltd. debt to the C Ltd. increased to a sum substantially in access of its only significant asset namely its loan to the plaintiff company, and C Ltd. began to press for its debts to be reduced. When SSS Ltd., failed to reduce the debt, British steel co. suggested that S execute a personal guarantee which was then entered in to by S. However, British Steel Corporation, later on suspecting the adequacy of SSS Ltd, and S capacity to cover the debt due to C LTD., accordingly decided to obtain further guarantee payment from the plaintiff company which had sufficient assets. The result of which was that C Ltd., agreed not to press SSS Ltd., for repayment of the debts and the plaintiff company brought an action against the British Steel Corporation, seeking a declaration that a guarantee and debenture were void and claiming repayment of the sum paid over to British Steel Corporation, by the receiver. The plaintiff company contended, it had no capacity to enter in to the scheme by which it guaranteed and, to the extent of the sum guaranteed, debentures were ultra vires the plaintiff company, because the scheme was not for the benefit or purpose of the plaintiff company. 460

459 Ibid
460 Ibid
The court in construing the objects clause of the memorandum of association held that the stated objects were not to be construed independently. Instead “Objects” properly so called, which stated the purpose which the company was authorized to pursue, were to be distinguished from objects which were merely power to be exercised in furtherance of those purposes and which either added to or possibly limited the powers which would otherwise be implied as being reasonably incidental to the substantive objects of the company further agreed to lend the plaintiff company the amount required to pay its debt to SSS LTD, (which SSS in turn to repay C Ltd.) in return for the plaintiff company agreeing to guarantee the debt from SSS Ltd, to C Ltd., and to sell the Rainhan site and use the proceed to repay the debt failing which the plaintiff company would issue a debenture over all its assets in favor of C Ltd. The above arrangement was approved and authorized by a board of meeting of the plaintiff to following which the debt owed to C Ltd, was passed from SSS Ltd., to the plaintiff company when the Rainhan site was not sold on the specified date, the plaintiff company executed a debenture in favor of C Ltd., and when a demand for repayment of the debt was not met, C Ltd. appointed a receiver under the debenture. The receiver eventually managed to sell the Rainhan site for sufficient sum to pay the British Steel Corp. However, after payment of other preferential developments, there was insufficient left to meet the unsecured liabilities of the plaintiff company. In those circumstances on the facts, clause 3(k) of the plaintiff company’s memorandum of association empowering the company to lend money and give guarantee was not an independent object, but merely power ancillary to the objects of the company to be exercised when expedient in furtherance of those objects.

The court in this context observed that a transaction which, although within the scope of the express or implied powers of the company was entered into in furtherance of a purpose which was not authorized by memorandum of association could be described as being *ultra vires* the company, since the members were not entitled to authorize the use of the company’s property for purposes other than those authorized by memorandum of association and therefore a transaction for an unauthorized purpose was incapable of being made binding on the company even by the assent of all the members. The plaintiff company was accordingly entitled to have the guarantee set aside and the sum paid under it repaid by British Steel Corporation
with interest. In other words, the rationale of the case was that the company cannot exercise beyond the scope of the objects mentioned expressly in the memorandum of association, even though such exercise has been done for the benefit and best interest of the company itself and in addition it has been approved by all the members.\textsuperscript{461}

The other illustrative case with regard to the doctrine of \textit{ultra vires} was \textit{Introduction Ltd. v National Provisional Bank}\textsuperscript{462}, the facts of the case were that the memorandum of association of a company including among the objects of the company “To borrow or raise money in such manner as the company shall think fit in particular by issue of debenture”. The objects clause ended with a declaration that “each of the proceeding sub-clause shall be construed independently of and shall be in no way limited by reference to any other sub-clause and that the object set in each sub-clause out are independent objects of the company”. At a time when the sole activity being carried on by the company was pig breeding which was \textit{ultra vires} the company, the company gave debentures to its bank as security for its overdraft. Before it took this security, the bank had been given a copy of the memorandum of association and articles of association of the company and knew that the company’s sole business was pig breeding. The court after examining the facts came to the conclusion that power and objects are two different component and held in this case that the borrowing power was a power of the company, and could not be an object, the power of the company could be exercised only for the purpose \textit{intra vires} the company, and so the company was not entitled, despite the clause and the declaration, to borrow money for pig breeding, accordingly as the bank knew that the borrowing was for an \textit{ultra vires} purpose, the debentures were void.

B. NATURE

I. DOCTRINE A JUDGE MADE LAW

The law of \textit{ultra vires}, like the law of natural justice, is not embodied law since Courts power cannot be circumscribed. It is a Judge made law arising from judicial decisions alone. Although the law has not been provided for by the legislature

\textsuperscript{461} Ibid
\textsuperscript{462} (1969) 1 ER 887
directly, it has assumed tremendous importance in the light of the development of constitutional law and enactment of numerous socio-economic laws in India.\(^{463}\)

Apart from our Indian situation, the remarks of foreigner about the doctrine can not be ignored, since there has been revolt against the doctrine in those countries.

1. Thompson of United States, who is also a great writer on corporations,\(^ {464}\) only two decades after its demonstrated application, had this to say about the doctrine:

   “Such was the doctrine our ancestral lawyers mouthed with owl-like wisdom, and which our ancestral judges rolled as a sweet morsel under their tongues.”\(^ {465}\)

2. In the wordings of L.H. Leigh, “The modern doctrine of *ultra vires* is now almost a century old. It is a reproach to parliament that it still exists in its present form. It is a reproach to the courts that it is even now obscure in its details and capricious in its incidence.”\(^ {466}\)

3. Similarly, Professor Aharan barak says\(^ {467}\) “It seems that today every one is agreed that there is no justification for this rule, and it should be discarded.

4. Equally strong words have been used by the Right Hon. Lord Wilberforce\(^ {468}\) “This (the doctrine of *ultra vires*) seems to be a vestigial survival from the days of chartered companies when the purpose for which the charter was granted had to be approved and was as it were consecrated by the charter. This seems to be no obvious reason a priori why this doctrine should be grafted upon the limited company which, as the courts themselves held, was based not on the conception of the grant of a status, but of a contract between entrepreneurs. In fact it was not until 1875 that the fetters were firmly placed upon it by the House of Lords in the *Ashbury* 

\(^{463}\) Sarma B.C. on *The Law of Ultra Vires* 2004 Ed. Page 11
\(^{464}\) Thompson on *Commentaries on the Law of Corporations* 3rd. Ed
\(^{465}\) Thompson on *The Doctrine of Ultra Vires in relation to Private Corporations* 1908, 28 American law Review, 376 at P 380
\(^{466}\) Leigh L.H.; *Objects, Powers and Ultra vires* (1970) 33 Mod L.R. 81
\(^{467}\) Professor of Commercial Law, Hebrew University of Jerusalem
\(^{468}\) Law of economics, (1966) JBL 301 Pages 302-03
Since then with the caustic ingenuity of the judges the web has been spun finer.”

Moreover, the legal position became still more confused because courts failed to draw a clear distinction between strict *ultra vires* (in the sense of the company’s lack of capacity) and illegality or lack of authority of the company’s officers or agents. Moreover, they held that an activity not bona-fide designed to enhance the financial prosperity of the company would necessarily be *ultra vires*: “charity”. It was said, “can-not sit at the boardroom table” and “there are to be no cakes and ale except for the benefit of the company”.

This did not necessarily ban charitable (or, indeed, political) donations or the grant of pensions to retired employees; while the company remained a going concern all that might well be good for business. But in *Parke V Daily News*, it was held that to use the proceeds of sale of the defunct News Chronicle and Star newspapers to compensate employees who lost their jobs was *ultra vires* since the company’s business had ended. This led to an outcry and belatedly to legislative action on this particular point. But the general confusion continued, until later decisions narrowed the formerly perceived scope of *ultra vires* and showed that many of the cases which had been decided on the assumption that they raised that issue should have been decided as involving only excess of the directors authority or breach of their duty to act bona-fide in the interest of the company.

A further complication was that although *ultra vires* transactions were said to be void, the question whether a third party was affected by the voidness depended in some circumstances on the state of his knowledge. This, though perhaps difficult to justify in principle, was eminently reasonable. If for example, a company had power to borrow or to buy office furniture (as almost every company has, expressly or by implication) a third party cannot be expected to check that the money of the furniture is to be used by the company for an *ultra vires* object. Since the decision of the court of Appeal in *Rolled Steel*, it may well be that these cases, as well, should be viewed

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469 (1875) LR 7 HL 653
470 Hutton v W Cork Rly (1883) 23 Ch. D. 654 at 673
471 (1962) Ch. 927
472 Supra Note 414 Pages 133-134
473 (1986) Ch. 246 CA
a turning on excess of authority rather than *ultra vires* in the strict sense. Slade L.J. said in that case that “the court will not ordinarily construe a statement in a memorandum that a particular power is exercisable ‘for the purpose of the company’ as a condition limiting the company’s corporate capacity to exercise the power; it will be regarded as simply imposing a limit on the authority of the directors." 474

II. DOCTRINE AN ILLUSORY PROTECTION

As we know that a company is an artificial person, its powers are defined by its Memorandum. It cannot act by itself. It acts through its board of directors who act both as agents as well as trustees of the company. They utilize the money of the shareholders and creditors of the company for achieving the objects of the company as laid-down in the memorandum of association of the company. The law has therefore a special duty towards the shareholders and the creditors of the company. It must protect their interests and the doctrine of *ultra vires* is a step in that direction. But the doctrine has not been very much effective in providing sufficient protection both to the shareholders as well to the creditors on account of following reasons. 475

1. The objects clause of the memorandum of association is so widely drafted that all activities whether present or future, existing or probable are covered in order to evade the doctrine of *ultra vires*. Once all the activities that a company wishes to take up are included in the memorandum, the company is free to do any act mentioned there and the rule of *ultra vires* is negated.

2. The words incidental to and consequential upon the main objects further give rise to ambiguity. Companies take up every act considering them as incidental to the main objects. It will be better, therefore, if the law defines the term “incidental and consequential objects” and also give suitable illustration in this connection.

3. Section 17 of the companies Act 1956 provides that a company can alter its memorandum so far as necessary for “carrying on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company.” This clause adds further to the dilemma faced

474 Ibid, at Page 295
by the shareholders and the creditors since they can never be sure at what stage what type of business can conveniently or advantageously be combined with the existing business. The courts have given liberal interpretation to the provisions of the section and have left much to the discretion of the persons engaged in the business. But it is unfortunate that courts in India have taken widely varying views on applications received by them from companies for enlarging the scope of their operations. For example:-

(a) In case of *Punjab Distillery Industries Ltd.* alteration in the memorandum so as to include cinema business was disallowed on the ground that even remotely it had nothing to do with the distillery business.\(^{476}\)

(b) But *New Asiatic Insurance Co. Ltd.* was allowed to alter its objects so as to include even “business in engineering works, cotton and importing and exporting.”\(^{477}\)

4. The directors consider all their activities to be *intra-vires* until challenged by someone in a court of law. It is very difficult for the shareholders to go to the court of law to challenge all *ultra vires* activities of the directors. Courts alone can decide as to which of the acts are *ultra vires* or *intra vires*.

From the above, it is clear that doctrine of *ultra vires* can neither effectively safeguard the interests of shareholders nor those of the creditors. We can also recollect the report of Cohen committee in the year 1945, which even recommended the abolition of the doctrine along with the reasons mentioned in the report. Thereafter in the year 1952 Bhabha committee on Indian Company Law reform also gave the similar view as given by the Cohen committee and called the doctrine of *ultra vires* as an illusory protection to the shareholders and pitfall for third parties dealing with the company. However the Jenkin committee Report 1962 did not favor abolition of the doctrine of *ultra vires*, and suggested protection of the third parties dealing with the company in good faith, against the unfair operation of the *ultra vires* rule. Hence the nature of the doctrine of *ultra vires* is just like an illusory protection.\(^{478}\)

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476 (1963) Comp Cases 811
477 (1965) 2 Comp. L.J. 24
478 Supra Note 475 Page 92-93
III. SIMPLE AND PROCEDURAL NATURE OF ULTRA VIRES

Further to understand the nature of the doctrine it is divided in to two parts namely (1) simple ultra vires and (2) procedural ultra vires.

Simple ultra vires- An act may be said to acquire the character of simple ultra vires when the person does the act in excess of the power conferred on him. As observed in A.G.V Fulham Corporation\textsuperscript{479}, the rule may be taken to be preserved in the proposition that the court will strike down a decision made by a public body which has no power to make it. However, an ancillary act which is reasonable but not authorized by the relevant law is not to be treated as ultra vires.\textsuperscript{480}

Procedural Ultra Vires- Procedural ultra vires may happen when there is a failure to comply with mandatory procedural requirements. All procedural requirements as laid down by statute should be complied with.\textsuperscript{481}

However, in R V Decorum Gaming Licensing Committee ex p. EMI Cinemas and Leisure Ltd\textsuperscript{482}, it was held that in all cases failure to follow mandatory requirements to the letter may not result in the exercise of power being ultra vires. Of course, words appearing to be mandatory may have the tone of directory in nature. Statute rarely makes express provision as to the consequences of non-compliance of the prescribed procedures. This is left to the courts and the courts have adopted a flexible attitude to this matter. Serious cases of failure to comply with obligation will be treated differently from less serious departures from the prescribed procedure. The seriousness of such a case depend upon a number of factors, the important ones being consequences of procedural failure, the extent of failure to comply with the requirement, and the nature and purpose of the procedure in question etc.\textsuperscript{483}

\textsuperscript{479} (1921) 1 Ch 440
\textsuperscript{480} A.G. V Great Eastern Railway co.(1880) 5 App Case 473
\textsuperscript{481} Supra note 463, page 12
\textsuperscript{482} (1971) 3 All ER 666
\textsuperscript{483} Ibid
C. CONCEPT OF DOCTRINE

The object clause of the memorandum of the company contains the object for which the company is formed. An act of company must not be beyond the objects clause, otherwise it will be ultra vires and, therefore, void and cannot be ratified even if all the member wish to ratify it. This is called the doctrine of ultra vires, which has been firmly established in the case of Ashbury. Thus the expression ultra vires means an act beyond the powers. Here the expression ultra vires is used to indicate an act of the company which is beyond the powers conferred on the company by the objects clause of its memorandum. An ultra act is void and can not be ratified even if all the directors wish to ratify it. Sometimes the expression ultra vires is used to describe the situation when the directors of a company have exceeded the power delegated to them. Where a company exceeds its power as conferred on it by the objects clause of its memorandum, it is not bound by it because it lacks legal capacity to incur responsibility for the action, but when the directors of the company have exceeded the power delegated to them. This use must be avoided for it is apt to cause confusion between two entirely distinct legal principles. Consequently, here we restrict the meaning of ultra vires object clause of the company’s memorandum. Basic principles included the following.

1. An ultra vires transaction cannot be ratified by all the shareholders even if they wish it to be ratified.
2. The doctrine of estoppels usually precluded reliance on the defense of ultra vires where the transaction was fully performed by one party.
3. A fortiori, a transaction which was fully performed by both parties could not be attacked.
4. If the contract was fully executor, the defense of ultra vires might be raised by either party.
5. If the contract was partially performed, and the performance was held to be insufficient to bring the doctrine of estoppels into play, a suit for quasi-contract for recovery of benefits conferred was available.

484 (1875) LR 7 HL 653
485 http://Doc-00-94-docs viewer visited on 5th August 2011
6. If an agent of the corporation committed a tort within the scope of his or her employment, the corporation could not defend on the ground that the act was *ultra vires*.

In the leading case on this point, it was held that the contract *ultra vires* the company was void and not even the subsequent assent of the whole body of shareholders could ratify it. *An ultra contract being void *ab initio* cannot become *intra vires* by reason of estoppels, lapse of time, ratification acquiescence or delay as held in *Ashbury’s case*.*

The concept of the doctrine of *ultra vires* is explained as having played an important role in the development of corporate powers. Though largely obsolete in modern private corporation law, the doctrine remains in full force for government entities. *An ultra vires act* is one beyond the purpose or powers of a corporation. The earliest legal view was that such acts were void. Under this approach a corporation was formed only for limited purpose and could do only what it was authorized to do in its corporate charter.

The early view proved unworkable and unfair. It permitted a corporation to accept the benefit of a contract and then refuse to perform its obligations on the ground that the contract was *ultra vires*. The doctrine also impaired the security of title to property in fully executed transactions in which a corporation participated. Therefore the courts adopted the view that such acts were voidable rather than void and that the facts should dictate whether a corporate act should have effect.

Over time a body of principles developed that prevented the application of the *ultra vires* doctrine. These principles included the ability of shareholders to ratify an *ultra vires* transaction; the application of the doctrine of estoppels, which prevented the defense of *ultra vires* when the transaction was fully performed by one party, and the prohibition against asserting *ultra vires* when both parties had fully performed the contract. The law also held that if an agent of a corporation committed a tort within the scope of the agent’s employment, the corporation could not defend on the ground that the act was *ultra vires*.*

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486 Supra Note 485 ibid
488 Ibid
Despite these principles the *ultra vires* doctrine was applied inconsistently and erratically. Accordingly, modern corporation law has sought to remove the possibility that *ultra vires* acts may occur. Most importantly, multiple purposes clauses and general clauses that permit corporation to engage in any lawful business are now included in the articles of association. In addition, purposes clauses can now be easily amended if the corporation seeks to do business in new areas. For example under traditional *ultra vires* doctrine, a corporation that had as its purpose the manufacturing of shoes could not, under its charter, manufacture motorcycles. Under modern corporate law, the purpose clause would either be so general as to allow the corporation to go in to the motorcycle business, or the corporation would amend its purposes clause to reflect the new venture.\(^{489}\)

State laws in almost every jurisdiction have also sharply reduced the importance of the *ultra vires* doctrine. For example, section 3.04(a) of the Revised Business Corporation Act, drafted in 1984, states that “The validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act”. There are three exceptions to this prohibition; It may be asserted by the corporation or its shareholders against the present or former officers or directors of the corporation for exceeding their authority, by the Attorney General of the state in a proceeding to dissolve the corporation or to enjoin it from the commission of an *ultra vires* act or the *ultra vires* transfer of real or personal property.\(^{490}\)

Government entities created by a state are public corporations governed by municipal charters and other statutorily imposed grants of power. These grants of authority are analogous to a private corporation’s article of incorporation. Historically the *ultra vires* CONCEPT has been used to construe the powers of a government entity narrowly. Failure to observe the statutory limits has been characterized as *ultra vires*. However in the case of a private business entity, the act of an employee who is not authorized to act on the entity’s behalf may, nevertheless, bind the entity contractually if such an employee would normally be expected to have that authority. With the government entity, however, to prevent a contract from being voided as *ultra vires*. It is normally necessary to prove that the employee actually had authority to act.


\(^{490}\) Ibid
Where a government employee exceeds his/her authority the government entity may seek to rescind the contract based on an *ultra vires* claim.\(^{491}\)

Another crucial concept\(^{492}\), and one intrinsically related to the concepts of Parliamentary supremacy and judicial review, is the doctrine of *ultra vires*. The doctrine of *ultra vires* refers to the ability of the courts to declare a particular action or decision (or ‘secondary’ legislation) as being beyond the scope of powers that had been delegated by the Parliament to the officer, or body in question. By reviewing the actions and decisions of the executive or subordinate bodies and declaring these to constitute “illegality” (Feldman 2000: 246) if they go beyond the scope intended by Parliament, this doctrine both upholds Parliamentary supremacy and provides a key basis for supervisory judicial review.

This doctrine has been described as “the central principle of administrative law” in Westminster systems and has been a crucial instrument by which “courts enforce the express or implied will of Parliament in respect of powers granted to subordinate decision-makers” (Wade and Forsyth 1994: 41; Feldman 2000: 246). Despite having come under criticism from academicians and British judges, primarily due to its presumed silence in regard to private power or relating to issues not addressed by Parliament,\(^{493}\) its historical importance is largely accepted and it is acknowledged as having been a key theoretical basis for supervisory review throughout the 19\(^{th}\) and early 20\(^{th}\) centuries (Forsyth 2000: 29). As we shall see in the review of the cases, the *ultra vires* doctrine played a key role in the development of supervisory review in the three countries, and was of critical importance (to differing degrees) in the emergence of statutory review.

Their broad similarities, especially during the periods of divergence (the somewhat extended period during which New Zealand and Canada became

\(^{491}\) Ibid
\(^{493}\) “One of the commonest criticisms of the *ultra vires* doctrine is that it can provide no explanation for the fact that non-statutory bodies exercising non-legal powers may be subject to judicial review” (Forsyth, 2000: p.30). It should be noted, however, that this criticism reflects an attempt to base judicial review on the common law.
independent, politically and culturally, from the United Kingdom limits the number of variables that might influence the course of development, and the common ideological, legal-political, and institutional heritage of these three countries makes them well-suited for cross-country comparisons. Furthermore, all three countries constructed strong welfare states in the post-WW II era (with New Zealand’s being the strongest and Canada’s being the weakest), all three countries have substantial ethnic and national minorities that are territorially based, all three countries became increasingly ethnically and culturally diverse as a result of immigration, most notably during the 1960s (with Canada having the longest and most profound experience of cultural diversity through immigration and New Zealand having the shortest and smallest experience), and all three states experienced a sharp roll-back of their capacities in providing welfare provisions in the 1980s.

3. DISTINCTION BETWEEN ULTRA VIRES AND ILLEGALITY

“Illegality”, in the largest sense of the word, no doubt includes what is ultra vires. What is beyond the power of a person is illegal in the sense that everything is illegal that is not warranted by law. But illegal and ultra vires are phrases to which distinct meanings have, and very properly have been attached. Illegal in the strictest application of the word refers to that quality which makes the act itself contrary to law. The term ultra vires has reference to the legal power of a person to do an act. An act may be legal and at the same time ultra vires. It is therefore, important that the words illegality and ultra vires should each be used with due regard to its proper signification.

494. This can, as shall be discussed in the case of New Zealand’s relation to the UK, also be considered as the growing independence of the UK vis-à-vis its former colonies and the Commonwealth as it integrated into the European Community.

495. The most relevant institutional legacies were the Westminster model, the doctrine of Parliamentary supremacy, and a shared legal heritage including the common law and the doctrine of ultra vires. As noted by Hirschl (2000: p.1062) because the development of statutory judicial review in each country was not accompanied by radical regime change and because they were all descended from a common legal tradition and yet each developed a unique form of statutory review, they are well suited for a comparative analysis in that “the significance of institutional factors can… be assessed while accounting for variations in legal activity and judicial interpretation of constitutional rights” among the polities.

496 Supra note 431, chapter 1, page 4
The distinction between the two, has been very lucidly expressed in the judgment of the New York Court in the case of Bissel v Michigan Southern railway Companies\(^4\), the word *ultra vires* and illegality represent totally different and distinct ideas. It is true that a contract may have both these defects, but it may also have one without the other. For example, a Bank has an authority to engage, and usually does not engage, in benevolent enterprises. A subscription made by authority of the Board of Directors, and under the corporate seal, for the building of a Church, or college, or an Alms-house, would be clearly *ultra vires*, but it would not be illegal. If every corporator should expressly assent to such an application of the funds, it would still be *ultra vires*, but no wrong would be committed and no public interest violated. So a manufacturing corporation may purchase ground for a school-house or a place of worship for the intellectual, religious and moral improvement of its operatives. It may buy tracts and books of instruction for distribution among them. Such dealings are outside of the Charter; but, so far from being illegal or wrong, they are in themselves benevolent and praiseworthy. So a Church Corporation may deal in exchange is, in itself, a lawful business, and there is no state policy in restraint of that business.

It is important to differ between *ultra vires* and illegal acts.

As per S.R. Das “illegal and *Ultra vires* are phrases to which distinct meaning have and very properly been attached.

Illegal in strict application is itself contrary to law but term *ultra vires* has reference to legal power of a person to do an act.

An act may be legal and at the same time *ultra vires*. It is therefore important that the word illegality and *ultra vires* should each be used with due regard to its proper significance. In strict sense all illegal act are not *ultra vires* and all *ultra vires* acts are not illegal.

In other words within the boundary of illegality, a public authority may commit an *ultra vires* act. In examining whether an act is *ultra vires* or not, it is not the legality that is looked in to but the competency and power to do the act and the manner in which it has been done by exercising such powers.

\(^4\) 22 N. Y. 258; quoted from Supra Note 435 Ed. P.44
An illegal act is prohibited by law; where as an *ultra vires* act may be done on the basis of a legal provision but offends the law or some legal principle because of, its infringement of the limits of power or of purpose of or procedure for the exercise of such power.

In other words, illegality arises basically from the nature of the act violating law, while, *ultra vires* in a restricted sense arises from exceeding the limits of legal powers to do the act.498

For example, if any executive magistrate passes a sentence of imprisonment on a person under some provision of the Indian Penal Code, the order is illegal since he does not have any jurisdiction to pass any such sentence after separation of the Judiciary from the executive and so, there is no legal provision for his act.

Under the Indian Contract Act 1872, a minor cannot enter into a contract and therefore, any person, who has not completed the 18th year of his age (as defined by Indian Majority Act 1875) does not have any legal power at all under the contract Act to enter into any contract which would be absolutely void.

On the other hand, if the collector of a District acquires private plots of land for a purpose defined in the notification under the Land Acquisition Act 1894 without hearing the affected parties, his action is *ultra vires*. In this case the collector is empowered to acquire land for lawful purpose in the manner prescribed in the Act; but since he did not hear the affected persons, his action violates the rule of natural justice. He has thus violated the procedure laid down under the act for acquisition of land which he is not empowered to do. Likewise, if a municipality enhances house tax on the house owners within its area of jurisdiction without any proper assessment or some reasonable basis, the act is *ultra vires*. In this case there is legal provision for the enhancement of house tax by the municipality but the power to enhance the tax has been exercised in a manner which has not been legally authorized and thus beyond its powers. Consequently the act is *ultra vires* and thus void but not illegal.499

498 Supra Note 463 page 6 & 7
499 Ibid
The observation of Lord Cairns in *Ashbury Railway Carriage Company case*\(^{500}\), while pointing out clear difference between true illegality and that which is merely *ultra vires* is as under:-

“I have used the expression “*extra vires*” and *ultra vires*. I prefer either expression very much to, one which occasionally has been used in the judgment in the present case; and has also been used in other cases, to the expression illegality. In a case such as that your Lordships have now to deal with, it is not a question whether the contract sued upon involves that which is *malumprohibitum or maluminse* or is a contract contrary to public policy or illegal in itself…. I assumed the contracy in itself to be perfectly legal to have nothing into obnoxious to the doctrine involved in the expression which I have used. The question is, not as to the legality of the contract but the question is as to the competency and powers of the company to make the contract”.

**EXAMPLE**

To make it much clear we will take the instance of acts done or purported to be done, say by a joint stock company. Now such acts may be void on several grounds which may be summarized as follows:-

1. Because they are contrary to public policy generally, as for instance, an agreement for compounding a felony.
2. Because they may be forbidden by statute, as for instance, the holdings of lotteries;
3. Because they are contrary to the policy of the companies act, as for instance, the reduction of the capital of the company not carried out in accordance with the provisions of that Act;
4. They may be beyond the powers of the company.

Of these the first three are illegal, and on that account void; but the last is void, not because illegal, but because, there being no power to do the act, the forms gone through which purported to perform it were inoperative, and the act, if done at all, was not done by the company, but the person whose hand actually did it,

\(^{500}\) (1875) LR 7 HL 653

183
and therefore neither brings the company under any liability nor gives it any right.\(^{501}\)

**A. APPLICATION/DECISIONS**

We thus see that the word illegality in its strictly legal sense is applicable only to those acts which are wrongful, without reference to the absence of legal power of the person doing them as distinguished from express prohibition. An act may be wrongful by reason of prohibition or it may be wrongful by reason of its being opposed to the public policy or because it is tainted with fraud or crime, or because it is vitiated by duress or undue influence. These qualities have no reference to the absence of the legal power of the doer to do the act. The phrase *ultra vires* is applicable only to acts done in excess of legal powers of the doer as distinct from the want of jurisdiction and illegality. This may be called the essence of the doctrine of *ultra vires*. It is action in excess of the powers possessed by a person (which includes a body corporate) within the above limitation.\(^{502}\)

In case of individual citizens, what is not forbidden is permitted, and in the cases of corporations whatever is not permitted is forbidden. This presupposes that the powers are in their nature limited. What is the nature of that limitation? In speaking of an ordinary citizen we do not speak of any action being *ultra vires*. To an ordinary citizen whatever is not expressly forbidden by law is permitted by the law. It is only when the law has called into existence a person for a particular purpose or has recognized its existence- such as the holder of an office, a body corporate and co.- that the power is limited to the authority delegated expressly or by implication and to the object for which it was created. In the case of such a creation the ordinary law applicable to an individual is somewhat reversed. Whatever is not permitted, expressly or by implication, by the constating instrument, is prohibited, not by any express prohibition of the legislature\(^{503}\), but by the doctrine of *ultra vires*.

In another case of *Colman V Eastern Counties Railway Co.*\(^{504}\), where Colman on behalf of himself and other share-holders of the Eastern Counties Railway

\(^{501}\) Supra Note 463 Pages, 5-6

\(^{502}\) Ibid

\(^{503}\) Attorney General V Great Eastern Rly Co. L.R. 5 App. Cases 473 H.L.

\(^{504}\) 10 Beav 1 (14)
company brought a suit against the company and the directors, (because they, the
directors, for the purpose of increasing the traffic, proposed to guarantee a 5 percent,
dividend to the shareholders of an intended steam-packet company, who were to act in
connection with the railway), to restrain the company from guaranteeing any such
dividend. Lord Langdale, M. R. in restraining the company from acting as they
proposed to do, said- I am clearly of opinion that the powers which are given by an
Act of Parliament, like that now in question, extend no further than is expressly stated
in the Act, or is necessarily and properly required for carrying into effect the
undertaking and works which the Act has expressly sanctioned. How far those powers
which are necessarily or properly to be exercised for the purpose intended by the Act,
extend, may vary often be a subject of great difficulty. We cannot always ascertain
what they are? Unless the acts done can be proved to be in conformity with the
powers given by the special Acts of Parliament, under which those acts are done they
furnish no authority whatsoever.”

Again: “Do the powers to construct, maintain, regulate the traffic, and do all
that is necessary for the purpose of carrying on and working the rail-road, imply that
the directors are to be at liberty to pledge the funds of the company for a complete
different transaction, in the hope that it may turn out a profitable one, and by being
itself profitable, add to the profits of the railway company? Surely there is nothing in
the powers given by the Act of the Parliament which can authorize that. I believe they
have the powers to do all such things as are necessary and proper for the purpose of
carrying out the intention of the Act of the Parliament, and they have no power of
doing anything beyond it.”505

In the case of Salomons V Laing506, where a railway company became
lawfully possessed of shares in another Railway Company and they wanted to
increase the number of their shares in order to control the working of the other
Railway company, it was held by Lord Langdale, M.R., that a corporation
incorporated by Act of Parliament was bound to apply all the monies and properties of
the company for the purposes directed and provided for by the Act, and for no other
purpose whatsoever.

505 Ibid
506 12 Beav 339 (352)
Similarly Byrne J. when dealing with the incorporation of six person as a company a clear illegality remarked:-

“It seems to me, there is difference between a case an act is ultra vires under any circumstances and a case where the act only ultra vires till something is done” 507

Thus the issue of illegality deals with whether the act is in conformity with the law while that about ultra vires act is concerned with the competence and power under the law to do the act. Competency means the right to exercise legal power by an authority in a case over which he has jurisdiction. 508

The difference between illegality and ultra vires character of an act in the strict sense may be generally brought out at a glance as below:-

1. Illegality relates to violation of law caused by an act without reference to legal power of the person, whereas ultra vires character relates to legal competence and power to do an act.
2. Illegality concerns an act done by any person, as regard ultra vires, it is concerned with an act done by a person or persons having legal powers express or implied, to do an act.
3. Illegality basically arises from the nature of the act which offends law because it is forbidden by statute or of wrongful, fraudulent or criminal character, ultra vires arises from the limitation of legal powers conferred on the person doing the act.
4. The term illegality applies to an act prohibited by the law whereas the doctrine of ultra vires applies to an act even though not prohibited by law, but not permitted by the statutory provisions/documents conferring power on the person.
5. Illegality applies to an act done by a private person also whereas ultra vires does not apply to an act done by a private person.
6. In illegality the question of jurisdiction is involved, The question of jurisdiction is no where is involved in the case of ultra vires, the main issue is whether the act has been done in excess of legal powers.

507 Rewalker Smith (1903) 88-LT, 792-794
508 Ibid
7. An illegal act is wholly unwarranted by law, where as an *ultra vires* act may be legal in the sense that no wrong is committed.

8. Illegality is a creature of statute, but *ultra vires* is not so, it is a judge made law and creation of courts.

9. An illegal act cannot be made legal, but an *ultra vires* act may be made *intra vires* by higher authorities if such power is conferred by law. A later act may ratify and validate an *ultra vires* act.\(^{509}\)

Prima facie illegality and *ultra vires* seems very near to each other, because what ever is outside the powers of a company is *ultra vires*, and as regard to illegality is concerned, it is illegal for an agent to misrepresent his powers, but these two terms express different legal facts and principles, as they though equally denoting that an act is forbidden, denotes that it is forbidden for very different reasons.

As observed by Seward Brice\(^ {510}\), it must be necessary that both should not confuse to each other and shall be used in its proper signification. For this illegality should be explained more widely as follows:-

(i) Illegality:-

The term illegality is used to denote matters widely different, its various signification may thus be summerized as under:-

1. Matters which are, or in a nature of torts including therein frauds and crimes.
2. Proceedings which are vitiated by reasons of duress, undue influence.
3. Arrangements which are not as being contrary to public policy.
4. Matters which are forbidden by statutes but are not otherwise, or except as so forbidden "objectionable".
5. Breach of contracts.
7. *Ultra vires* proceedings.

The term illegality in its strict legal sense is applicable only to the first four, but for want of some other words. It is seldom extended to 5 and 6 as well as to the last meaning 7 (*ultra vires* proceedings).\(^ {511}\)

\(^{509}\) Supra Note 463 pages 8-9
\(^{510}\) Brice Seward Book at Supra Note 435 Page 44
\(^{511}\) Supra Note 448 pages 4-5
The words *ultra vires* and illegality represent totally different and distinct ideas. It is true that a contract may have both these defects but it may also have one without the other for example:-

A Bank has no authority to engage in benevolent enterprise a subscription made by the authority of the Board of Directors and under the corporate seal for a building of a Church or College would be clearly *ultra vires*, but it would not be illegal. If every corporator expressly assented to such an application of the funds it would still be *ultra vires*, but no wrong would be committed and no public interest violated. So a manufacturing corporation may purchase ground for school or a place of worship for intellectuals, for religious and moral improvement of its operators, such dealings are outside of the charter but so far from illegal or wrong. Such a church or corporation may deal in exchange, in itself, a lawful business and there is no state policy in restraint of that business.512

On the other hand this distinction is not always closely observed, it has been suggested that an illegality may be *ultra vires*. As Cozen Hardy L.J. said513:-

“While the contracts are outside the limits of a corporate constitution than they were *ultra vires*, illegal and void”.

But the distinction between *ultra vires* and illegality has been accepted by jurist in our country also.

As stated by Satish Chandra, in *Anand Prakash & Others V Assist. Registrar*514, “The term *ultra vires* signifies a concept distinct from “illegality” in the loose or the widest sense every thing that is not warranted by the law is illegal, but in its proper or strict connotation illegal refers to that quality which makes the act itself contrary to the law. The term *ultra vires* points to the capacity or the power of the person to do act. It is not necessary that an act to be *ultra vires* must also be illegal. It may be, but it may as well as not be, an act may be illegal because like fraud, undue influence or because it may be opposed to public policy. These reasons are not occasioned by the obscene of any power in the person to do the act”.

512 Supra Note 435 page 44
513 Corbett V S.E.& C. Railway Co., (1906) 2 Ch. Page 12, Cited by Mr. H.A. Street in his Book, at Supra Note 511, on page 5
514 AIR (1968) All 22
4. ILLEGALITY AND WANT OF JURISDICTION

We have already dealt with *ultra vires* and illegality, and therefore it becomes pertinent to look at another topic which is “Want of Jurisdiction” resembling with these phrases. Hence it becomes necessary to define this term.

“Jurisdiction” has been defined to be a power conferred by the state on a Magistrate or Judge to take cognizance of and determine questions according to law, and to carry out his sentence into execution. From jurisdiction in general must be distinguished the competency of a tribunal. By that phrase is meant the right which a tribunal has to exercise in a particular case the jurisdiction which belongs to it. The importance of the distinction arises from the fact that a plea of incompetency can be waived by consent of parties, whereas such consent can never confer jurisdiction where none exists.515

From the above definition of the term jurisdiction, we see that although it is a power conferred by the state, it connotes three things:-

1. The power to take cognizance of a question.
2. The power to determine the question at issue, after taking cognizance.
3. The power to carry out that determination or decision, by executing the decree or sentence.

A. DEFINITION OF JURISDICTION

In the case of *Mahesh Chandra Dass V Jamiruddin Mollah*516, the High court of Bengal considered the meaning of the word “jurisdiction” with reference to section 578 (now section 99) of the civil procedure code, Banerjee J. said: “That word (meaning jurisdiction) is used in two different senses. It may either mean what is ordinarily understood by the term jurisdiction when used with reference to the local jurisdiction of a court, or its jurisdiction with reference to the subject matter of a suit, or it may mean the legal authority of a court to do certain things.”

515 Supra Note 431 Chapter 1 page 1
516 I.L.R. 28 Cal. 324 (329)
B. CONFUSION BETWEEN ULTRA VIRES AND WANT OF JURISDICTION

It is often in the sense of want of “legal authority of a court to do certain things,” that the term *ultra vires* is incorrectly used. But, we never find the phrase “want of jurisdiction” used to signify the exercise of a power, say, by a joint stock company which they do not possess. In fact the word jurisdiction is limited to the exercise of a power connected with litigation, and is exclusively confined to the powers of a court of law, be it civil, or be it criminal. We can thus draw a broad distinction between the term “without jurisdiction” and *ultra vires*.

All acts beyond the powers of a court of law, when adjudicating between litigants, are known as acts done without jurisdiction.

All acts done by persons (which include any company or association or body of individual whether incorporated or not) exercising statutory or other powers, beyond the powers possessed by them are known as *ultra vires*.

The words “when adjudicating between litigants” are a very necessary limitation to the definition of the phrase “without jurisdiction”. Our courts of law, specially the High Courts, have various powers delegated to them by the legislature, besides the power to adjudicate between litigants. For instance, under certain legislative enactments, the high courts are given the powers to make rules, consistent with such Acts, to carryout certain provisions of the Acts. In exercising those powers, the high courts do not act in their judicial capacity, and if they frame a rule which they are not empowered to frame, the rule will be one made *ultra vires*. The phrase without jurisdiction would be strictly speaking, inapplicable to such a case.

Thus, where under the powers given by the Indian Companies Act 1956, the high court of Bombay framed the following rule; “Any creditor, whose debts or claims so allowed does not carry interest, shall be entitled to interest at the rate of six percent per annum, from the date of the order to wind up the company, out of any assets which may remain after satisfying the costs of winding up, the debts and claims established, and the interest of such debts and claims as by law carry interest,” it was

517 General Clause Act 1897 Section 3(39)
518 Supra Note 431 ibid Page 2
519 Section 189 of the Act
held that under a power to make rules concerning the mode of proceeding in winding up, there is no authority given to make a rule which allows interest, not otherwise given by law, this being a matter of right, not a mode of proceedings.\textsuperscript{520} The rule was held to be \textit{ultra vires} of the High Court and consequently a nullity. Now section 189 of the Indian Companies Act, agrees substantially with section 170 of the English Companies Act 1862, and the judges of the Court of Chancery in England, framed an identical rule as regards interest. In fact the Bombay High Court rule was a verbatim reproduction of the Chancery rule, with the exception of the rate of interest.\textsuperscript{521}

5. SOCIAL RESPONSIBILITY OF CORPORATION AND THE DOCTRINE

In the development of corporate ethics, we have reached a stage where the question of social responsibility of business to the community can no longer be scoffed or taken lightly. Companies have very important place in the economy. Lot of public money is invested in the companies by nationalized banks/public financial institutions in the nature of term loans, direct subscription etc. There are crores of shareholders who have invested their hard earned money in the companies. Companies are producing products of mass consumption. Modern companies are touching everybody’s life in one way or the other way. Therefore the companies can no longer be accepted as a private domain, the working of which would be of some concern to society. On the contrary, the very impact of corporate sector in term of finance and employment shows that well being of the corporate sector is of considerable significance to the society.\textsuperscript{522}

In view of the fact that it has enormous power resources and affecting life of people, it must behave and function as a responsible member of the society. Profit is still a necessary part of the total picture, but it is not the primary purpose. It implies that the claims of the various interests are required to be balanced not on the narrow ground of what is best of the shareholders alone but from the point of view of what is

\textsuperscript{520} In Re Fleming Spinning & Weaving Co Ltd  ILR 3 Bom 439 (450)
\textsuperscript{521} Supra note 431 page 3
best of the community at large. The company must accept its obligations to be socially responsible and to work for the layer benefit of the community.\textsuperscript{523}

The corporate social responsible (CSR) is also called corporate conscience, corporate citizenship, social performance, or sustainable responsible business is a form of corporate self regulation integrated into a business model. CSR policy functions as built-in, self regulating mechanism, whereby business monitors ensure its active compliance with the spirit of law, ethical standard and international norms. The goal of CSR is to embrace responsibility for the company’s action and encourage a positive impact through its activities on the environment, consumers, employees, communities, stakeholders and all other members of the public sphere. Furthermore, CSR focused businesses would proactively promote the public interest by encouraging community growth and development, and voluntarily eliminating practices that harm the public sphere, regardless of legality. CSR is the deliberate inclusion of public interest into corporate decision making, that is the core business of the company or firm, and the honoring of a triple bottom line; people, planet, profit.\textsuperscript{524}

The term “corporate Social Responsibility” came in to common use in the late 1960 and early 1970, after many multinational corporation formed. The term stakeholder, meaning those on whom an organization’s activities have impact, was used to describe corporate owners beyond shareholders as a result of an influential book by R. Edward freeman, Strategic Management; a stakeholder approach in 1984. Prominent people argue that corporations make more long term profits by operating with a perspective, while critics argue that CSR distracts from the economic role of businesses. Others argue that CSR is merely window-dressing, or an attempt to pre-empt the role of Governments as a watchdog over powerful multinational corporations. CSR is titled to aid an organization’s mission as well as a guide to what the company stands for and will uphold to its consumers. Development business ethics is one of the forms of applied ethics that examines ethical principles.\textsuperscript{525}

The definition of Corporate social Responsibility (CSR) used within an organization can vary from the strict “stakeholder impacts” definition used by many

\textsuperscript{523} Report of the High Powered Expert Committee on Companies and MRTP Acts (1978) by Justice Sachar, 95
\textsuperscript{524} Corporate Social responsibility From Wikipedia, the free encyclopedia visited on 18th Oct 2011
\textsuperscript{525} Ibid
CSR advocates and will often include charitable efforts and volunteering. CSR may be based within the human resources, business development or public relations departments of an organization or may be given a separate unit reporting to the CEO or in some cases directly to the board. Some companies may implement CSR type value without a clearly defined team or Programme.

The CSR Programme can be an aid to recruitment and retention particularly within the competitive Graduates student market. Potential recruits often ask about a Firm’s CSR policy during an interview, and having a comprehensive policy can give an advantage. CSR can also help improve the perception of a company among its staff, particularly when staff can become involved through payroll giving, fundraising activities or community volunteering. CSR has been found to encourage customer orientation among front line employees.

Many companies use the strategy of benchmarking to compete within their respective industries in CSR policy implementation, and effectiveness. Benchmarking involves reviewing competitor CSR initiatives, as well as measuring and evaluating the impact that those policies have on society and the environment, and how customers perceive competitor CSR strategy. After a comprehensive study of competitor strategy and an internal policy review performed, a comparison can be drawn and a strategy developed for competition with CSR initiatives.

After scrutinizing the various aspect of corporate social responsibility (CSR), it is concluded that a company has responsibility to customers, workers, shareholders and the community at large. It must ensure fair return to shareholders, fair wages to workers and must ensure that customer gets a product at reasonable price. Further, it must ensure a pollution free environment so that the society is not affected. The concept of social responsibility is very near to the Gandhi’s concept of trusteeship.

In the United States, where the idea that a company has social responsibilities is most widely held and it is there that the legitimacy of the business corporation has been much debated.

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526 Corporate Social Responsibility and Ethical Careers, university of Edinburgh retrieved 2008-03-07 downloaded from Wikipedia the free encyclopedia visited 17th Oct 2011
527 Supra note 526 ibid
528 Ibid
529 Supra note 522, page 45
In our country High Powered Committee (Sachar Committee) examined the matter of social responsibilities of company and observed that some enlightened business houses were showing recognition of social responsibility owed by the corporate sector. Committee further observed that no enlightened management can normally remain aloof to the national problems like unemployment, overpopulation, control of pollution and provision for drinking water.\textsuperscript{530}

The question of social responsibility is no longer in dispute the only relevant consideration is that in what manner can the company discharge its undoubted social responsibility. So far as \textit{ultra vires} is considered, it comes in the way of discharging the social responsibility of company and therefore void, as already stated any activity which is not covered by object clause is \textit{ultra vires}. Therefore, if a company in pursuance of its social responsibility undertakes an activity which has not been specifically authorized, court may declare it as \textit{ultra vires} and company may be restrained from going ahead with the activities.

A. Sachar committee considered this point and accordingly observed:-

"It is possible that a company may be required to alter its memorandum of association with respect to the object of the company so as to carry out its activities as obligation to the concept of social responsibility. We do not envisage any difficulty in such a course, because we have no doubt that shareholders themselves are conscious of responsibility of the company to discharge its social obligation and it will be very co-operative to assist the management in permitting alteration to be made so that his obligation is discharged by the company without the risk of his action being declared to be \textit{ultra vires}, as being beyond the objects of the company".\textsuperscript{531}

It is not free from doubt that even if memorandum is amended, the court may take a different view on that ground that new activities are not the main objects of the company and is only power which can be exercised by achieving the main objects of

\textsuperscript{530} Ibid
\textsuperscript{531} Supra note 522 ibid
the company and may declare the activity as _ultra vires_ the objects. Therefore solution of the problem is reform of the _ultra vires_ doctrine. If the power of natural person is conferred on the companies, activity undertaken in pursuance of social responsibility cannot be _ultra vires_. Alternatively, the companies Act should be amended conferring general power on companies to undertake activities in pursuance of social responsibilities of the company.\footnote{532 Supra note 522,Page 46}