CHAPTER-1
INTRODUCTION

1. FUNDAMENTALS OF RESEARCH

A. MEANING AND DEFINITION OF RESEARCH

Research means to search or find out and examine again. This is the very essence of the process of acquiring new knowledge. John W. Best commenting on the “progress” has observed-

“The secret of our cultural development has been research, pushing back the areas of ignorance by discovering new truth, which in turn, leads to better ways of doing things and better products.”

Research means scientific and systematic re-examination of existing facts or Knowledge to ascertain whether the existing conclusion can be varied or not. The Dictionary meaning of research is “a careful investigation or inquiry especially through search for new facts in any branch of knowledge.”

In the opinion of Redman and Mory, “It is a systematized effort to gain new Knowledge.”

The Encyclopedia of social sciences defines research “As the manipulation of things, concepts or symbols for the purpose of generalizing, to extend or verify knowledge whether that knowledge aids in construction of theory or in practice of an art.”

As per Grinnell, “The word research is composed of two syllables, re and search. The dictionary defines the former as a prefix meaning again, a new or over again and the latter as a verb meaning to examine closely and carefully, to test and try, or to probe. Together they form a noun describing a careful, systematic, patient study and investigation in some field of knowledge, undertaken to establish facts or principles.” He further adds: Research is a structured inquiry that utilizes acceptable
scientific methodology to solve problems and create new knowledge that is generally acceptable.

As per Lundberg ‘scientific methods consist of systematic observation, classification and interpretation of data. Now obviously, this process is one in which nearly all people engage in the course of their daily lives. The main difference between our day-to-day generalizations and the conclusions usually recognized as scientific method lies in the degree of formality, rigorousness, verifiability and general validity of the latter’. Hence Lundberg draws a parallel between the social research process, which is considered scientific, and the process that we use in our daily lives.

According to Kerlinger- Scientific research is a systematic controlled empirical and critical investigation of propositions, about the presumed relationships about various phenomena.

According to Bulmer- Nevertheless sociological research, as research, is primarily committed to establishing systematic, reliable and valid knowledge about the social world.

The Encyclopedia Britannica\(^5\) defines research to mean “The act of searching in to a matter closely and carefully, inquiry directed to the discovery of truth and in particular, the trained scientific investigation of the principles and facts of any subject, based on original sources of knowledge, may be styled research and it may be said that without ‘research’ no authoritative work have been written, no scientific inventions or discoveries made, no theories of any value propounded.

Research is an enquiry for the verification of a fresh theory or supplementing prevailing theories by new knowledge.\(^6\) Since every kind of knowledge is the extension of an existing knowledge, no research can be said to be absolutely new. A researcher while undertaking a project for his work possesses much of information about it and while conducting research, he proceeds onward to acquire more information about it and formulates certain hypothesis on that basis. Thus it is continuous process of acquiring knowledge through enquiry in to existing laws.

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\(^5\) 1911 Ed
\(^6\) Agrawala Raj Kumar; Indian Legal research; An evolutionary and Perspective Analysis 1982 Volume 24 Nos. 2,3 and 4 Page 470
These definitions point out to the fact that research is original and fundamental contribution to the knowledge on any subject or discipline leading for its advancement, this is voyage towards truth.

Research is perhaps as old as mankind. If necessity was the mother of invention, it was also the mother of discovery. The primitive man’s need must have sent him in search not only of food, but also of knowledge. The process was basically the acquisition of knowledge, the quest for truth, the exploration of the unexplored. Since the area unexplored was at that time vast, every discovery must have been a grand thrill.7

Hence Research is one of the ways to find out answers to your questions.

B. OBJECTIVE OF RESEARCH

The history of research is as old as the history of mankind and amongst all creations of the nature the human being is the most intelligent being. He is affected a great deal by his surroundings especially the social factors and is obliged, either knowingly or unknowingly, to take decisions only after scrutinizing the factors affecting him. But every human being is not possessed of qualities to collect and analyze the factors properly. But anyone serious in understanding and knowing as to how social forces or factors act or behave is supposed to give serious thought to it. A researcher may be an academician, a person occupying an administrative position or a businessman. If a person is equipped with ability to analyze the facts, he is in a better position to take an appropriate decision in the area or field he is engaged in, by interpreting and weighing appropriate documents and factors. Every research has its own specific purpose. However here we are concerned with the legal research.8

2. ABOUT LEGAL RESEARCH

Legal research means research in that branch of knowledge which deals with the principles of law and legal institution. There are three main sources of law, viz. legislation, precedent and custom. Juristic writings are another important though secondary source of law and their importance is dependent on the fact whether it is

7 Legal Research; Some thoughts 78 AIR 1991; J 130 Cited from Book at Supra Note 11 page 1
8 Dr. Tewari H.N. Legal Research Methodology 1st Ed.Reprint1999 Page 2
given due recognition by the courts or the legislature or jurists in solving problems or not. The contents of these sources of law change with the changing requirement of the society and if these changes are not taken in to account in interpreting the law, the existing law is bound to be doomed. The aim of law is, therefore, to regulate the human behavior in the present day society and hence, legal research must be directed to the study of the relationship between the world of the law and the world that the law purports to govern.9

Legal research is indispensable for systematic investigation of problems of law or any matter connected with the law. Research, therefore, is to be pursued to obtain a better knowledge of law and understanding of any problem that may be integral to better and more effective legislation connected with the area which may be for example having sociological or economical import.10

Legal research is “the process of identifying and retrieving information necessary to support legal decision making. In its broadest sense, legal research includes each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation.”11

A. OBJECTIVE OF LEGAL RESEARCH

Law may be termed as a behavioral science as it regulates human behavior. It is expressed in words which are used in a particular context. Whatever be the source of law, it cannot provide remedy for all the situations and for all the time to come. Changes in society demand that law should move with the time, if it has to remain alive and active and it can remain alive, active and useful, if it is aware of its lacunae and takes steps to overcome it with the passage of time. The object of legal research therefore, is to find out lacunae or deficiencies in the existing laws and to suggest suitable measures to eliminate them. If there is an area for which there is no law at all the objective of legal research would be to suggest suitable legislation for that area;

9 George D. Braden; Legal Research JILI 1982, Vol. 24 page 190
10 Mishra Yogesh on Relevance of Legal Research in the Development of Legal Service Guj LH (2003) 2
11 J. Myron Jacobstein and Roy M. Mersky, Fundamental of legal Research, 8th Ed. (Foundation Press, 2002) P.1 Cited from Legal Education & Research by National Law university Delhi 2010 Ed. page 1
but if there is a law for that area, but due to one reason or the other, it did not work, its aim would be to suggest reform in the existing law so as to make it workable. Thus the significance of legal research lies in the submission of proposal for reform in the existing law, be it enacted, customary or judicial. However, this would not be the end or the sole objective of the legal research. When research is undertaken as a part of process of law reform, it is undertaken for making suggestions for improvements in the law on concrete and easily identifiable matters and the formulation of those proposals in precise terms.\textsuperscript{12} This is very significant and governing factor in the area of legal research.

The following may be taken as objectives of legal research:

1. To discover new facts.
2. To test and verify old facts.
3. To analyze the facts in new theoretical framework.
4. To examine the consequences of new facts or new principles of law; or judicial decisions.
5. To develop new legal research tools or apply tools of other disciplines in the area of law.
6. To propound new legal concept.
7. To analyze law and legal institutions from the point of view of history.
8. To examine the nature and scope of new law or legal institution.
9. To ascertain the merits and demerits of old law or institution and to give suggestions for a new law or institution in place of old one.
10. To ascertain the relationship between legislature and judiciary and to give suggestions as to how one can assist the other in the discharge of one’s duties and responsibilities and
11. To develop the principles of interpretation for critical examination of statues.

\textsuperscript{12} Bakshi P.M., Legal Research and Law Reform JILI 1982 vol. 24 page 391
B. SIGNIFICANCE OF LEGAL RESEARCH

In modern time, law has assumed much significance. It provides for and
dominate almost all activities of human beings, it has been accepted that law is
perhaps most important instrument of social change. When an individual deals with
his property or he enters into employment or he causes injury to some one, he fails to
pay his dues or he deals with his spouse and children or the government affects his
property or personal rights, he comes in contact with law and either he or his
opponent obtains remedy in accordance with existing law and where there is no law,
according to the discretion of the court. The significance of research may be based on
justice, equity and good conscience, thus this may be summed up as follows.13

1. It helps the government in formulating suitable laws to pursue its economic
   and social policies.

2. It helps in solving various operational and planning problems pertaining to
   business, industry and tax.

3. It helps the courts in solving the problems without much delay and in such a
   way that the problem may not re-cure at all or at least in near future.

4. It helps the legal practitioner in taking a decision as to how he should tackle
   the problem in hand.

C. SOCIAL VALUE AND LEGAL RESEARCH

Every society or country has its own traditions, culture and values. With the
passage of time, changes do take place in the existing traditions, culture and values.
But they rarely degenerate completely, and new set of values, traditions and culture
come in to existence. In such a situation, it becomes very significant to know, whether
the scope of legal research should be confined to the traditions and values of the
country or should it go beyond that limit and pave the way for a new set of values and
culture? Ordinarily no researcher can or ought to go beyond that limit because he
cannot be insensitive to these traditions, values or laws. He can rarely dare to break
the boundaries of tradition, value or culture simply by taking in to consideration the
value, culture and tradition of other country. Thus it would not be wrong to say that

13 Supra Note 8 pages 7 - 8
research. However due to great deal of globalization, the effect of culture, value or traditions prevailing in other countries or societies cannot be ignored. They are not always harmful in character. Many a time they are of great help and on that basis, new values may be accepted, e.g. before the Hindu Marriage Act, 1955, dissolution of a Hindu marriage was a rare phenomenon. But after it, it has been accepted by the Hindu society even though a good number of persons still abhor it, because they find dissolution of marriage somewhat alien to their perception of marriage. It is, therefore, necessary that the researcher must formulate such rules and principles which are easily acceptable to society. In the world of Paton, “If the law lags behind popular standards, it fails into disrepute, if the legal standards are too high there are great difficulties of enforcement.”14

For a researcher, the caution given by Prof. Julius Stone is equally significant: “Attention came to be increasingly directed to the law’s effects on the complex of attitudes, behavior, organization, environment, skills and powers involved in the maintenance of particular society or kind of society and conversely on the effects of these upon the particular legal order. In so far as a particular legal order is itself part of the social order in which it arises, the inter-relation involved include the influences of extra-legal elements of the social order on the information, operation, change and disruption of the legal order, as well as the influence of the legal order for particular posts, kind and state of the legal (order) on the extra-legal elements.”15

D. LEGAL RESEARCH AND LOGIC

Legal research consists of analysis of rules, concepts, institution of laws as well as the legal system itself. This analysis can help in deriving appropriate conclusion only if it is supported by logic. The relation between law and logic has assumed significant dimensions. Since the last 200 years to be precise, from the time of Blackstone (1723-80), it is believed that the law contains legal rules, principles,

14 Paton; A Text Book of Jurisprudence 1951 2nd Ed. page 54 cited from Supra Note 8 page 8
15 Stone Julius, Social Dimensions of Law and Justice, Ch. 1 (1966) page 6 Cited from Supra Note 8 page 9
standards, maxim by the application of which one could deductively arrive at the appropriate decision in a given case.\textsuperscript{16}

The statutes, customs or precedents may not in all circumstances be applied as it is a new problem. A relationship between a provision of law and the problem has to be established and this relationship can be established only by comparing the two with the help of logic. So it would not be wrong to say that it is the logic that enables a judge to glean a particular result. As we know that in most of the cases judges apply the existing rules and this can be done only on the basis of rational deduction. Similar is the position where there is no any existing rule, the judge has to either find out or enact a law appropriate to resolve that problem. Here again, he takes the help of logic to substantiate his viewpoint. Thus the language of judicial decisions is merely the language of logic.\textsuperscript{17}

However, the principle of logic in law has not been welcomed by all. Perhaps the most ardent critic is Justice Holmes. He is of the view that “The life of law is not logic, it has been experience.” The felt necessity of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judge share with their fellow men, have had good deal more to do than the syllogism in determining the rules by which men should be governed.\textsuperscript{18}

In his opinion:

“The whole outline of the law is the resultant of a conflict at every point between logic and good sense- the one striving to work fiction out to consistent results, the other restraining and at least overcoming that effort when the results become too manifestly unjust.”\textsuperscript{19}

Prof. Cardozo also supports the view of J. Holmes that logic is not relevant for legal reasoning.

Prof. Bomin says:

“Life of law is not logic, but experience as structured by logic

\begin{footnotesize}
\begin{enumerate}
\item Boomin L.G.; Concerning the Relation of Logic to Law JILI 1982, Vol. II, III & IV, Page 234 Cited from Supra Note 8 page 9
\item Ibid page 236
\item Holmes O.W; The Common Law, 1 (1881) Cited from Supra Note 8 page 10
\item Holmes O.W; Agency in collected Legal Papers, 50 (1920) Cited from Supra Note 8 page 10
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E. KIND OF LEGAL RESEARCH

Legal research work may be mainly divided in two kinds:

1. Doctrinal or the Traditional research or
2. Non-doctrinal or Empirical research

The topic of this research work is “Doctrine of ultra vires under Companies Act 1956” which can be undertaken under the first category of legal research namely Doctrinal Research.

3. INTRODUCTION OF THE RESEARCH TOPIC

A. DOCTRINE OF ULTRA VIRES UNDER COMPANIES ACT 1956

The term ultra vires basically means “beyond the power” and it is basically used to indicate the acts of the companies which are beyond the objects mentioned in the objects clause of the memorandum of association of the company. This doctrine puts restrictions on the directors of the companies, so as to protect the investors and creditors who have put their hard earned money in the company, not to invest the corporate capital in those ventures which fall outside the scope of the objects clause of memorandum of association.

The doctrine of ultra vires has been developed to protect the interests of investors and creditors of the company. This doctrine prevents a company to employ the money of the investors for a purpose other than those stated in the objects clause of its memorandum.\(^20\) Thus, the company may be assured by this rule that their investment will not be employed for the objects or activities which they did not have in contemplation at the time of investing their money in the company.\(^21\)

It enables the investors to know the objects in which their money is to be employed. This doctrine protects the creditors of the company by ensuring them that the funds of the company to which they must look for payment are not dissipated in unauthorized activities. The wrongful application of the company’s assets may result in the insolvency of the company, a situation when the creditors of the company


\(^{21}\) Ibid
cannot be paid. This doctrine prevents the wrongful application of the company assets likely to result in the insolvency of the company and thereby protects creditors. Besides this, the doctrine of ultra vires prevents directors from departing from the objects for which the company has been formed and thus, puts a check over the activities of the directors. It enables the directors to know what lines of business they are authorized to act.\textsuperscript{22}

This doctrine was first introduced in relation to the statutory companies and not given much importance up to the year 1855, because till that time it was not felt necessary to protect the investors and creditors because the liabilities of the members were unlimited. At that point of time companies used to be in the form of enlarged partnership and they were governed by rules of partnership, and under the law of partnership, fundamental changes in the business of partnership could not be made without the consent of all the partners, and in case any act of partner fell outside the scope of partnership, it could be ratified by other partners and therefore the investors and creditors felt themselves safe.

However in the year of 1855 some important developments took place and one of them was introduction of the principle of limited liability and thereby throwing the investors and creditors out of the protection which they enjoined till now. Hence the only device which the minds of the pioneers gave due attention was the doctrine of ultra vires, so that investors and creditors interest could be protected. This doctrine 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 objects clause of its memorandum and 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{23}

It is pertinent to mention here that it is only after this occurrence, that the importance of the objects clause was realized and all these created a favorable

\textsuperscript{22}Ballentine on corporation (1947) page 115, Cited from Rai Kailash Company law 10th Ed. 2006 Page 84
\textsuperscript{23}Supra Note 20, Page 80
environment for the applicability of the doctrine of *ultra vires*. It was held in the historical case of *Ashbury Railway Carriage & Iron Co. Ltd. v Riche*²⁴, that an *ultra vires* contract beyond the object clause is *void-ab-initio* and is of no legal effect and could not be ratified even by unanimous consent of all the members. The brief facts of this celebrated case are as under:-

The objects of the company, as stated in the objects clause of its memorandum, were to-

“Make and sell, or lend on hire railway carriages and wagons, and all kinds of railway plants, fittings, machinery and rolling stocks, to carry on the business of mechanical engineers and general contractors, to purchase and sell as merchant timber, coal, metals or other materials; and to buy and sell any such materials on commissions or as agents”.

The directors of the company entered into a contract with Riche for financing the construction of a railway line in Belgium. The contract was ratified by all the members of the company, but later on it was repudiated by the company. Riche sued the company for breach of contract. The question arose whether the contract was valid and if not, whether it could be ratified by the members of the company?

The House of Lords held unanimously that:-

(a) The contract was beyond the objects as defined in the objects clause of its memorandum and therefore, it was void, and

(b) The company had no capacity to ratify the contract.

The House of Lords further held that an *ultra vires* act or contract is void in its inception and it is void because the company has no capacity to make it and since the company lacks capacity to make such contract, how it can have capacity to ratify it. If the shareholders are permitted to ratify an *ultra vires* act or contract, it will be nothing but permitting them to do the very thing which, by the Act of Parliament, they are prohibited from doing.

The House of Lords has expressed the view that a company incorporated under the companies act has the power to do only those things which are authorized by the objects clause of its memorandum and anything not so

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²⁴ (1875) L.R. 7 H.L. 653
authorized (expressly or implicitly) is *ultra vires* the company and cannot be ratified or made effective even by the unanimous agreement of the members.\(^{25}\)

Soon after the *Ashbury*’s case this doctrine created hardship both for the management and the outsiders dealing with the company. A contract made by an outsider with the company in respect of anything which is outside the scope of object clause was void and the outsider supplier could not recover the amount, for the goods supplied to the company, which has been held in the famous English case of *Jon Beauforte (London) Ltd., Re.*\(^{26}\), the brief facts are as under:-

A company was authorized by its memorandum to carry on business of costumiers, gown-makers, tailors and other activities of allied nature. Later on the company decided to carry on a different business of manufacturing veneered panels which was not mentioned in the objects clause of the memorandum, was admittedly *ultra vires* and for this purpose a factory was erected. A firm of builders, who constructed the factory, brought an action to recover 2078 pounds from the company. Another firm which supplied veneers to the company had a claim of 1011 pounds and a third firm claimed 107 pounds for the supply of fuel to the factory. None of these suppliers had actual knowledge that the business of veneered panel was *ultra vires* the objects of the company. Hence the claims applications of these three were dismissed, the reason being that any one dealing with a company is supposed to know its powers and objects.

These were the English cases, however much before these cases a reference may be made to an Indian case on the similar point in the year 1871. In *Port Canning & Investment Co. Re.*\(^{27}\), a company purchased and operated a rice mill which was beyond its powers. The rice was consigned to certain persons who had paid the price. The consignee had to sell the rice, owing to its inferior quality, at considerable loss. The company gave them drafts promising to pay for the loss. The company went into liquidation and the question about the enforceability of the drafts arose. The court held that trading in rice was a transaction *ultra vires* the company; the directors, therefore, could not bind the company, and the consignees could not recover.

\(^{25}\) *Ibid*
\(^{26}\) (1953) 1 All E.R. 634
\(^{27}\) (1871) 7 Bengal LR 583
Even much before the above English case of 1953, businessmen have made sufficient efforts to evade this doctrine and one of the tendency was to make the objects clause too wide as held in *Cotman V Brougham*\(^\text{28}\) The House of Lords had to consider a memorandum which contained an objects clause with thirty sub-clauses, enabling the company to carry on almost every conceivable kind of business which a company could adopt, thereby defeating the very purpose of objects clause. In a bid to control this tendency the courts adopted the “main objects rule” of construction. The rule owes its origin to the decision in the *Ashbury’s case*\(^\text{29}\) where it was held that the words “general contractors” must be applied in connection with the company’s main business.

A more liberal view was adopted in another English case in the third quarter of the 20\(^\text{th}\) century in case of *Bell House Ltd. v City Wall Properties Ltd.*\(^\text{30}\) the decision of court of appeal has stamped its approval upon another technique of evasion. It was held in this case, that the company could carry on another trade or business, which in the opinion of the Board of director could more advantageously be carried on along with the existing business. The court held the clause to be valid and an act done in bona-fide exercise of it to be *intra vires*. But a clause of this kind does not state any objects at all. Rather, it leaves the objects to be determined by the director’s bona-fides.\(^\text{31}\)

However, in India the *ultra vires* rule was applied for the first time in *Jahangir R. Modi V Shamji Ladha*\(^\text{32}\) when the Bombay High Court applied it to a joint stock company and held on the facts of the case before it that “the purchase by the directors of a company, on behalf of the company, of shares in any other joint stock companies, unless expressly authorized in memorandum is *ultra vires*.

The Supreme court of India affirmed this doctrine in its decision in *A. Lakshmanaswami Mudaliar V LIC*\(^\text{33}\), the directors of a company were authorized “to make payments towards any charitable and other benevolent objects, or for any

\(^{28}\) (1918), AC 514  
\(^{29}\) Supra Note 24 ibid  
\(^{30}\) (1966) 2 WLR 1323  
\(^{31}\) Ultra Vires or the Director’s Bona-fides, (1967) 30 Mod L.R. 566 Cited from Singh Avtar Company law 15\(^\text{th}\) Ed. 2007 page 68  
\(^{32}\) (1867-68) 4 Bom HCR 185  
\(^{33}\) AIR 1963 SC 1185
general public, general or useful objects”. In accordance with a shareholders resolution the directors paid two Lac to a trust formed for the purpose of promoting technical and business knowledge. The payment was held to be ultra vires. The court held that the directors could not spend the company’s money on any charitable or general object which they might choose.

It is pertinent to mention here that the word “ultra” is different from an illegal act, although both are void. An act of company which is beyond its objects clause is ultra vires and therefore void, even if it is legal. Similarly, an illegal act will be void even if it falls within the objects clause. Unfortunately, the doctrine of ultra vires has often been used in connection with illegal and forbidden act. This use should also be prevented.

B. ABOLITION OF THE DOCTRINE AND AMENDMENTS

(a) Meanwhile, the English Company Law Revision/Reformation Committee (known as Cohen Committee), recommended its abolition on the following grounds:

1. The doctrine imposes restrictions on the scope of activities of a company, because a company can not divert its funds for an object which is neither essential nor incidental for the fulfillment of its objects, howsoever beneficial that might be.

2. A creditor cannot file suit against the company for ultra vires contract.

3. Courts have taken the stand that the doctrine ought to be reasonably applied.

4. Hence, the committee made striking proposals for the abolition of this doctrine.

(b) In the year 1952 Bhabha Committee on this doctrine expressed similar view as of Cohen Committee, commenting that the doctrine is merely an illusory protection for the shareholders and pitfall for third party dealing with the company. This Committee recommended the overhauling of the company’s legislation in the country and on the basis of which a bill was laid down before parliament in 1953 which after few modifications, made by Joint Select Committee enacted as “The Companies Act 1956” repealing the 1913 Act.

(c) There-after the Vivian Bose Commission which was appointed to investigate into the affairs of the Dalmia Jain Concern, in which huge amount of
funds were diverted for floating a different company namely The Dalmia Jain Airways Ltd., recommended amendments in the objects clause. In the year 1957 The Daphtary-Shastri Committee after reviewing the report of Vivian Bose Commission stated in its report that, generally real objects often get buried beneath the mass of words, when objects clause packed with objects and powers without discrimination and shareholders could not acknowledge in what enterprise their money is going to be spent. Hence the Committee accepted the division of objects clause as recommended by Vivian Bose Commission and concluded its report recommending necessary amendments in Companies Act 1956, which is known as Companies Amendment Act 1965.

As per the recommendations of Daphtary-Shastri Committee sections 13 and 149 were accordingly amended.

The Committee recommended that clause (c) of section 13 of the Act as it stood before amendment should continue to apply to companies in existence immediately before the commencement of this amendment act of 1965 and the provisions of new clauses requiring the division of the objects into (i) main objects and objects ancillary thereto and (ii) other objects should apply to the new companies. Thus by this amendment, 3 new clauses, namely (c), (d) and (e) were substituted and accordingly in section 149 provisions for compliance of new business were added.

The purpose of this amendment was to enable shareholders and other interested parties to have a clear idea of the main objects clause and the other objects. Therefore this amendment made it difficult for the managements of the companies to pursue any object outside of the main objects clause without the knowledge and approval of shareholders as provided.

(d) In England the doctrine of ultra vires was restricted by section 9 (1) in favor of a person dealing with the company, any transaction decided by the directors of the company should be deemed to be within the capacity of the company to enter into validity and the other party to the transaction was not required to enquire about the capacity of the company and thus, such transaction might be enforced by the other party acting in good faith against the company and the

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34 Of Companies Act 1956
35 Of the European Community Act 1972
company could not plead that the transaction was *ultra vires*, but it could not be enforced by the company against the other party, for the other party, still could plead that the act was *ultra vires*. Hence the European Communities merely restricted the application of the doctrine of *ultra vires* but it did not abolish it. The company could still plead against the third party that the act was *ultra vires* if it was proved that the third party had not acted in good faith. It could be pleaded by the company if the transaction or the act had not been approved by the directors.

Section 9 (1) of the European communities Act 1972, later re-enacted as section 35\(^{36}\) which attempted to dispose of all the problems posed in two short subsections, the first of which provided that, in favor of a person dealing with the company in good faith, any transaction decided on by the directors should be deemed to be within the capacity of the company, and the second of which relieved the other party of any obligation to enquire about those matters.

The few reported cases on the section show that the courts did their best to construe it sensibly and consonantly with the directive, but it was recognized that more needed to be done. Hence anticipating further company legislation in 1989, the Department of trade and Industry, commissioned Professor Dan Prentice to undertake a review of the position and to make recommendations. He delivered his report in 1986 and his recommendations were enacted in the companies Act 1989, which brought a number of changes in the Companies act 1985.

Consequent to the insertion of new sections of 35, 35A, 35B, 711A and 322A by the English Act 1989, the scope of the doctrine of *ultra vires* and its corollary of constructive notice evolved by the courts in U.K. is very much narrowed down.

Even after these far reaching law reform in the U.K. Company Law, neither the need to state the objects in the memorandum ( section 2(1) ( C ) of the 1989 Act requires the objects clause to be stated in memorandum generally) nor the abolition of the *ultra vires* doctrine has been fully achieved, as non-general-commercial companies are still required to state the objects in their memoranda and the doctrine is still left to operate within the company as between the board of directors and the

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\(^{36}\) Of English Companies Act 1985
general body, but it stands abolished in regard to its being a trap to external third parties

Further section 39 and 40\(^{37}\) further modifies the above discussed provisions.

4. STATEMENT OF PROBLEMS

1. First of all the problem is faced by the directors of the companies since they are supposed to be the business masters, but even then they are not at liberty to spend the corporate capital for any profitable and beneficial purposes and adventures, which they can better consider necessary for the growth of their companies, since the doctrine of *ultra vires* does not give them freehand to invest the capital as per their own wish and will, as a result of which they feel themselves as handicapped in this regard,

2. On the other hand the problems faced by the shareholders while the corporate capital is misused by the directors of the companies by travelling beyond the memorandum of association’s object clause.

3. Further the problems faced by the creditors and third parties in case of *ultra vires* borrowings, and the famous English case of *Jon Beauforte (London) Re*\(^{38}\) reveals the same problem where-in the suppliers could not recover their due amount of the material supplied by them to the factories which were doing certain activities beyond the authorized business as provided in the object clause.

4. The *ultra vires* borrowings as stated above cannot be ratified by the companies, where as *ultra vires* acquired property becomes company’s property, since the corporate capital is involved in its purchasing. This is favorable in case of companies but totally against the interest of other parties dealing with the company.

5. The doctrine of constructive notice is nothing but a presumed notice, and it is presumed by virtue of this notice, that any one who deals with the company must have gone through the memorandum and articles of associations and other documents, which are registered in the office of registrar of companies and are thoroughly known to the contents of these papers. But our country is not so small

\(^{37}\) Of English Companies Act 2006  
\(^{38}\) 1953 1 All ER 634
like any other Western countries, so as to enable any one dealing with the company, to go through these documents, which are available at hand to the public in those countries. Contrary to this, we have a large population of shareholders living in distant villages, suffering from illiteracy are not even aware of their own fundamental rights, provided under the constitution of our country, hence how they can be expected to be acquainted with the realities related to the corporate world? Therefore the doctrine of constructive notice or knowledge only benefits the companies and not the public at large.

6. The problem of putting each and everything available underneath the sun, in the objects clause of memorandum of association has fooled this doctrine and has made its applicability ineffective.

Hence the doctrine of ultra vires looking at above statement of problems need to be studied, inquired into and further investigated by means of pursuing, the doctrinal Research.

5. OBJECTIVES OF THE STUDY

1. To make systematic and detailed study pertaining to the doctrine of ultra vires in companies to ensure as if this doctrine has become outdated or like a dead horse as has been commented in few countries.

2. How the objects clause be defined, so that every thing under the sun is not covered under it?

3. Should memorandum of association be done away with or may be clubbed with articles of association? How to differ between power and objects.

4. Protection of third Party dealing in good faith with the company, remedial method in case of loss to either party

5. To see as to how the doctrine can be reasonably applied to each case depending upon facts and circumstances of the case.

6. To examine thoroughly as to which party remains more beneficial by invoking the doctrine of ultra vires.

7. To also analyze main object Rule of construction.

8. Special protection to shareholders and creditors, in the era of big financial institutions like IDBI, IFCI, ICICI etc, by invoking the doctrine.
9. Which objects of the company should be treated as incidental and ancillary so that these are not treated *ultra vires*?

10. Modern companies should behave like a responsible citizen, therefore what about their corporate social responsibilities?

11. Should the combination of different business made under section 17(1) (d) of the Companies Act be left to the directors only without involvement of shareholders, since the term combination of new business conveniently and advantageously is a business proposition only, and the directors being business masters can take better decisions?

6. METHODOLOGY

This study will be based on the Doctrinal Research in which primary and secondary sources will be used to reach at a definite conclusion by suggesting various measures. The present work of study is organized around legal propositions which could be traced and found using following sources of information:-

A. PRIMARY SOURCES

I. JUDGEMENTS

a. Judgments and decisions of different courts of various countries.

II. REPORTS OF COMMITTEES/COMMISSIONS

1. Cohen Committee Report 1945
2. Bhabha Committee Report 1952
3. Vivian Bose Commission Report Published in 1962
4. Daphtry-Shastri Committee Report 1957
5. Jenkin Committee Report 1962
7. 101st Law Commission Report
8. U.K. Legal Risk Review Committee Report 1992

III. INDIAN/FOREIGN COURT CASES/ REPORTS
1. All India Reports
2. Supreme courts Reports
3. Scale
4. Supreme Courts Cases
5. Bombay High Court Reports
6. Various Other High Courts Reports
7. All England Law Reports
8. Chancery Division Reports
9. Queen Bench Division Reports
10. Chancery Reports
11. U.S. Courts Cases
12. California Supreme Court Case
13. Irish Supreme Court Cases
14. Irish High Court Cases

B. ACADEMIC JOURNALS
1. Cambridge Law Journal
2. Yale Law Journal
3. Supreme Court Journal
4. Company Law Journal
6. Corporate Law advisor
7. Company Cases
8. Journal of Business Law by Thomson (Sweet & Maxwell)
9. Journal of Indian Law Institute
10. K. U Law Journal
11 M. D. U. Law Journal
12 Gauhati law Times
C. SECONDARY SOURCES

1. Text books of Indian and foreign writers
2. Act, Statutes, Rules, Regulations
3. Research Articles from various journals
4. Websites around the world
5. Halsbury’s Laws of England
6. Legal dictionary
7. Business Dictionary
8. Black’s legal dictionary and other dictionaries available at websites
9. Britannica Encyclopedia
10. The Advance learner’s Dictionary Oxford
11. Index to Legal Periodicals and Books
12. Magazine (Delhi)

7. STRUCTURE OF THE STUDY/CHAPERISATION

CHAPTER 1- TITLED AS “INTRODUCTION”

This chapter contains fundamentals of research, meanings and definitions of research, objectives of research, about legal research, its objectives and significance, social value and logic of legal research, kind of legal research, introduction of the research topic “Doctrine of Ultra Vires” under companies act 1956, its abolition/amendments, statement of problems, objective of study, its methodology using primary, academic and secondary sources and lastly structure of study/chapterization.

CHAPTER 2- TITLED AS “HISTORICAL BACKGROUND OF THE DOCTRINE AND ITS APPLICABILITY”

This chapter contains historical background of the doctrine in England before and after 1855, under headings of corporation of ancient times, incorporation of the royal charter, enactment and repeal of the Bubble Act 1720. The period from 1825-1844,
two acts of 1844, the period of crackers, Glade-stone Act 1845, limited liability Act 1855, English companies Act 1862, historical background in Sri-Lanka, the Rediff-Maud committee report on the doctrine. The historic background of the doctrine based upon decided case laws.

Applicability of the doctrine:- to limited liability partnerships, its applicability to legislations, substantive and procedural *ultra vires* and applicability to certain countries such as England, Sri-Lanka, United States, Australia, India and Ireland. Comparison between the position of India and United Kingdom

CHAPTER 3- TITLED AS “CORPORATE PERSONALITY AND THE DOCTRINE”

This chapter contains the concept of corporate personality by defining the legal person, purpose of incorporation, kind of corporation (aggregate and sole) Crown as a corporation sole and position in India. Corporation, whether a citizen, various theories of corporate personality, lifting the corporate veil, the doctrine of constructive notice subject to( indoor management and holding out provisions), main objects rule of construction, the preliminary contracts and its position at common law and at India.

This chapter further contains evolution of the companies under ancient Rome, under Common Law including the joint stock companies, Indian companies, definition of companies, its constitution, incorporation, formation and registration of company, and management of corporation, Articles and memorandum of Association and their legal status and when necessary, their contents, articles in relation to memorandum and legal status of memorandum and relationship between the two and binding force of memorandum and articles, objects clause of memorandum of association, the omnibus and other alternatives, its alteration along with few cases in relation to alteration of objects clause, procedure and registration of alteration of objects clause.

CHAPTER 4- TITLED AS “DEFINITION, MEANING, SCOPE, CONCEPT AND NATURE OF THW DOCTRINE, ITS DISTINCTION FROM
ILLEGALITY AND WANT OF JURISDICTION ALONG WITH SOCIAL RESPONSIBILITIES OF THE CORPORATION

This chapter contains definition and meaning of doctrine by different authorities, other meaning of doctrine such as primary and secondary meanings (under the heading other meanings) and distinction between primary and secondary meanings, improper and modern meaning and meaning of the doctrine by Indian courts with supporting case laws, scope concept, and nature of doctrine, distinction between ultra vires and illegality, definition of want of jurisdiction and its distinction from illegality, confusion between ultra vires and want of jurisdiction along with social responsibilities of corporations and the doctrine.

CHAPTER 5- TITLED AS “CONSEQUENCIES OF ULTRA VIRES TRANSACTIONS AND ACTIONS”

This chapter contains information about Board of directors along with certain exceptions, the position of director as Trustees, Agents and Organs, the director in India as well in U.K. and special reference to liability of director under English law. This chapter further contains consequences of ultra vires transactions like injunction, personal liability of directors, breach of warranty and authority, consequences of ultra vires borrowings, such as no loan, injunction, subrogation, identification and tracing, consequences of ultra vires acquired property and ultra vires contracts and ultra vires torts with limited liability and vicarious liability with special reference to ultra vires torts and crimes along with doctrine of sufficient close connection and recommendation of company law review, and doctrine of identification/rule of attribution along with manslaughter and corporate killings, liability of directors toward company and third party, few examples of ultra vires and intra vires transactions with relevant case laws and Lastly consequences of ultra vires actions.

CHAPTER 6- TITLED AS “EVASION, REFORMATION, ABOLITION/EXCEPTION OF THE DOCTRINE, ALONG WITH RECOMMENDATIONS OF VARIOUS COMMITTEES/COMMISSIONS”
This chapter contains fundamentals of evasion, evasion by business and principles developed by courts to prevent evasion, independent object clause and, new technique of evasion and subsequent evasion of doctrine.

Reformation of the doctrine, reformation of the year 1972 and 1985 in England, reformation of the year 1989, reformation and the charitable companies, reformation proposed by the company law review in England, status of constructive notice in the light of decided cases

Abolition and exceptions to the doctrine


2. Under Indian law:- Report of committee/commission leading to the enactment of companies act 1956/ amendment effecting the doctrine of ultra vires such as Bhabha Committee 1952, Vivian Bose Commission published in 1962 and Daphtary-Shashtri Committee 1957

A brief account of committees/commissions

This chapter further mention a brief account of the various committees/commission appointed by Foreign and Indian government to restructure and overhaul the then company’s legislation which also made their various recommendations regarding this doctrine. Following is the brief account of these committees and commission

1. The Cohen committee was appointed soon after the Second World War to make various recommendations in the then existing company laws. This committee submitted its report in the year 1945, and this committee made striking proposals for the abolition of the doctrine of ultra vires.

2. The Jenkin committee report 1962 made its recommendations that the doctrine of ultra vires should not be repealed, but protection should be afforded to third parties dealing with the companies in good faith.

3. The Bhabha committee report 1952 made various suggestions for overhauling of the then existing companies Act 1913. The recommendations of this committee took the shape of the new Companies Act 1956 after repealing the old Act of 1913. On the doctrine of ultra vires the committee made the similar view as of
Cohen committee that the doctrine is merely an illusory protection for shareholders and pitfall for third parties.

4. Vivian Bose Commission was appointed to investigate into the Dalmia Jain Airways Ltd.’s affairs under the chairmanship of Justice Vivian Bose. The recommendations of this commission were later on taken in to consideration by Daphatry Shastri committee which was presided by Shri A.V. Viswanath Shastri an Advocate of Supreme Court along with Shri C.K. Daphatry the then Attorney General.

5. The Daphatry Shastri committee gave its recommendations for carrying out necessary amendments in to the companies act and accordingly, the amendment Act of 1965 made amendments to section 13 and 149 of the Act.

CHAPTER 7- TITLED AS “JUDICIAL RESPONSE/CONTROL OF THE DOCTRINE AND ITS STATUS IN OTHER COUNTRIES”

This chapter contains doctrine in general and as a means of judicial control, pleading of the doctrine, burden of proof in question of *ultra vires*, latest trend in burden of proof, recommendation of the review group and status of the doctrine in other countries like United Kingdom, Australia, New-Zealand, Canada, Belgium, France, Italy, Netherlands, Sweden, Singapore and Malaysia, Ireland and United States, along-with a case law of U.S. on *ultra vires* claim as exception to government immunity in United States.

CHAPTER 8- TITLED AS “CONCLUSIONS AND SUGGESTIONS”

This chapter contains a brief conclusion in general of the above study, the focal points of conclusion have been mentioned under doctrine of constructive notice along-with few famous cases on the doctrine and the evasion of doctrine. The position of the doctrine in England and India along-with recent legislative developments affecting the doctrine, conclusion on the consequences of *ultra vires* transactions, conclusion with special emphasis on the lack of corporate social responsibilities, final conclusion . There-after, the various suggestions along with necessary amendments to be carried out in the existing Companies Act 1956.