

AN ANALYSIS OF THE DOCTRINE OF ULTRA VIRES FROM THE INDIAN PERSPECTIVE

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ABSTRACT

The doctrine of Ultra Vires is a very important innovation of the judiciary, which has played and still continues to play a very important role in the Indian Scenario. The present paper attempts to delve into the intricacies of the Doctrine of Ultra Vires in India, and then it presents a comparative analysis of the same with the United Kingdom. The paper explains the need and scope of the Doctrine, and it also highlights the judicial viewpoint of the same. It also shows the journey of the Doctrine in India, starting from its introduction to its downfall in the country, and the various actions taken by the businessmen to evade or escape from the Doctrine of Ultra Vires. It also depicts the consequences and effects of the same, and also brings light on the various issues that the business enterprises face in carrying out its social obligations. The doctrine of Ultra Vires is also subject to a lot of exceptions, which are also discussed in this piece. The paper ends with a comparative analysis with the United Kingdom and finally points out to the current status of the Doctrine of Ultra Vires in India.

INTRODUCTION

In today's world, it is very important that every human act is censured irrespective of whether it is an individual or a group act. The reason behind the same is that censoring helps to resolve the problem of lack of control that people tend to show in exercising self-restraint towards plenty of temptations that are present in our society. Censuring has become a necessity even in a Company, which is nothing but an artificial person, with no physical manifestation after incorporation. So, in order to regulate the scope of the business, there is a need for some kind of an official document, otherwise, the business activities of the companies might end up into

an unregulated market and chaos. To achieve this purpose, the companies prepare the Memorandum of Association which contains an object clause highlighting the objects for which the company is formed. This object clause implies that the company cannot do any sort of activities which are beyond its objects, and if they do so, then it will be rendered as an ultra vires act. The Doctrine of Ultra Vires plays a pivotal role in determining whether a company has acted in a manner which is outside the scope of its authority. Through this paper, I will analyse the concept of the “Doctrine of Ultra Vires” and its applicability in India. This paper is also an attempt to highlight the evolution of the doctrine and deal with various aspects of it. The paper not only portrays the journey of the doctrine in India, but it also talks about its applicability across countries such as the United States of America & United Kingdom.

The word “Ultra vires” is a Latin term which means "beyond the powers of" and is commonly used to refer to the acts undertaken by a corporation or its officers, which are outside the powers granted to them under law or corporate charter. The historical existence of the Doctrine of Ultra Vires can be traced back to the period of 1855 when the concept of limited liability was made applicable. The concept of Limited Liability made the liability of the shareholders limited. So, before this concept, the creditors were protected as the shareholders were liable to an unlimited extent but after this concept, the creditors found themselves to be in an unsecured state. So, in order to protect them, the doctrine of Ultra Vires was formulated. This doctrine can be applied not only in cases of companies and corporations but also in other areas, such as matters of legislation. It is also applicable to LLP's keeping in mind the similar characteristics that they possess to that of a corporation. Though the doctrine was never codified, it sets out the main criteria for deciding the legitimacy of an act. In 1875, the case of *Ashbury Railway Carriage and Iron Company (Ltd.) v. Hector Riche* for the first time mentioned the Doctrine of Ultra Vires.¹ In the present case, *Ashbury Railway Carriage and Iron Company* were involved in the business of maintaining, selling and lending of Railway Carriages. It was found out that the company acted beyond its scope as they extended the loan to Riche for the purpose of Building railway in Belgium. Later, the company refused to perform their part in the contract by saying that their act was beyond the object clause in their Memorandum of Association. Riche sued the company for the same and the company took the defence of Doctrine of Ultra Vires. Riche argued in favor of the enforceability of the contract on the grounds of approval of the contract

¹ 1874-75) L.R. 7 H.L. 653

by the board of directors of the company. The court, in this case, held that even though the board of directors of the company had ratified the contract, the same will remain void and will be unenforceable. This was further upheld in the case of Attorney General V. Great Eastern Company.² The court, in this case, held that of Ashbury case was correct about the doctrine but the same needs to be reasonable and fair.

The Doctrine announced its presence for the first time in India in the case of Jahangir R. Modi V Shamji Ladha,³ which further got approval by the Landmark case of Laxman Swami Mudaliar v LIC of India.⁴ The court said that the act continues to be Ultra Vires even if it was approved by the Shareholders. This led to the companies formulating strategies to evade the Doctrine of Ultra Vires. The companies were trying to formulate an object clause which would include every business possible. This was an attempt to avoid the application of the doctrine. The object clause had quite a wide and vague meaning and they were formulated in a manner where the ancillary objects were not dependent on the main object.

NEED AND SCOPE OF THE DOCTRINE

Even though the United Kingdom recognized the very existence of the concept of Ultra Vires long back in the year 1612, however, it was only in the year 1855 when it was for the first time acknowledged as an important principle of law.⁵ In 1866, the doctrine of Ultra Vires got judicial recognition in India by the virtue of a Bombay High court judgment.⁶ Earlier, the doctrine of Ultra Vires was not needed because it was sole proprietorships and partnerships that were the most common type of businesses that existed and operated during that period. Both, sole proprietorships and partnerships, have one feature in common, that is, of unlimited liability where no distinction is made between the owner of the business and the business itself and in case the business goes into crisis, then the creditors have the option of juicing the owners down to their last penny to recover the loans.⁷ In such cases, the creditors are always protected and

² (1880) 5 AC 473

³ (1866-67) 4 Bom HCR 185

⁴ 1963 AIR 1185

⁵ Chandok S, "CRITICAL ANALYSIS OF THE DOCTRINE OF ULTRA VIRES"

<<http://jcil.lsyndicate.com/wp-content/uploads/2016/09/Publication-Submission-Simran-Chandak.pdf>> accessed September 15, 2018

⁶ *Ibid.*

⁷ *Ibid.*

they always have an assurance of recovering back their money, even if it would mean that the owner has to attach his personal assets to indemnify the debt of the firm.

However, in 1855, the parliament of the United Kingdom established the concept of Limited Liability Partnerships by introducing the Limited Liability Act by the virtue of which the partners will have limited liability in their business beyond which they won't be liable to indemnify the debt of the company.⁸ This Act separated the company from its partners and they were no longer be exposed to the unlimited liability for the debts of the company. They will only be held liable to the extent of their capital contribution in the business or according to their profit sharing ratio, as the case may be. After the introduction of the Limited Liability Act, 1855, the creditors started having concerns regarding their ability to get back their money given to LLPs as loans. In order to provide some relief to the creditors and ensure that the partners did not misuse the concept of limited liability, the doctrine of ultra vires was formulated which renders any transaction beyond the capacity of the company as void.

The said doctrine applies to all the incorporated companies which have a separate existence in the eyes of law and those companies which have not been registered, such as partnerships and sole proprietorships will not fall under the ambit of the doctrine of ultra vires. However, not every illegal transaction or abuse of power falls within the meaning of the Doctrine of Ultra Vires, but it includes only those transactions that go beyond what a company is authorized to do. The object, goal or purpose of the company is highlighted by the object clause of the Memorandum of Association of the company and if the company exceeds the authority provided to it by its object clause of the of the Memorandum of Association, then it will fall under the scope of the Doctrine of Ultra Vires.

EVASION OF DOCTRINE

After the introduction of the Doctrine of Ultra Vires, businessmen have been seen making attempts to evade the same. They have tried to evade the Ultra Vires rule by widening the scope of their object clause. They have included all kinds of objects in their object clause of the Memorandum of Association, which a company may want to adopt in the ordinary course of their business. This, however, results in making the object clause incapable of indicating what

⁸ *Ibid.*

their main object is as both main objects and general powers are stated in the objects clause of the memorandum. However, in such cases, the general powers will be taken as ancillary to the main objects and if the company is unable to carry out the main object for which it was incorporated, then it may be ordered to be wound upon the petition of the shareholder thereof. The same can also be explained through the case of *In Re, German Date Coffee Co.*⁹ In this case, a company incorporated to acquire and use a German patent for making coffee from dates and can also acquire other patents and inventions by purchase or otherwise in order to improve the patent or to make extensions of the patent. The majority shareholders on realizing that the German Patent could not be obtained allowed the company to continue but a petition was filed by two shareholders contending that the company should wound up on the grounds that the main object for which the company was formed had become impossible to achieve. The question before the court was whether the doctrine of *Ultra Vires* is applicable in this case or not? The court while answering this question held that the main object of the company was to acquire the German patent and all the other things mentioned in the object clause of the memorandum were just ancillary to that object and since the main object cannot be fulfilled, it was correct to say that the company should be wound up.¹⁰

However, the use of the main object rule has been prevented by including a statement in the object clause of the Memorandum of Association, that is, “all the objects are independent and in no way ancillary or subordinate to one another.” This statement is called the independent object clause. By including this clause, then it is asserted that all the objects mentioned in the object clause are independent and not subordinate to another and the failure to fulfil one of them cannot be the basis for ordering the winding up of the company. The use of Independent object clause was criticized by the House of Lords but the device was allowed and held to be sufficient to avoid the main objects rule. In the case of *Cotman v. Brogham*, there was a rubber company, which underwrote shares in an oil company.¹¹ Their object clause contained many objects and one of them was to subscribe for shares of other companies and also in addition to

⁹ (1882) 20 Ch. D. 169

¹⁰ *Ibid.*

¹¹ (1918) A.C. 514

this there was another clause which states that each of the objects must be considered independently and on this ground, the court declared that the underwriting was not ultra vires.¹² In *Re Introductions Ltd*, the court held that an “independent objects clause” cannot convert power into an object and explained the distinction between power and an object.¹³ The former is required to be mentioned in the object clause of the memorandum and not the latter but if the powers are also mentioned then the same must be exercised to give effect to the objects stated therein.¹⁴

JUDICIAL VIEW OF THE DOCTRINE

The doctrine of Ultra Vires like the law of natural justice is not a codified law and has arisen from the various judicial pronouncements. Although the doctrine is not a direct enactment made by the legislatures, the same has a lot of importance in the contemporary period, keeping in mind the various developments happening in constitutional law and enactment of various socio-economic laws in India.

One can also observe a change that took place gradually in the attitude of the judiciary towards the doctrine over a period of time. Initially, the doctrine was not given any attention by the Judiciary. The most common type of businesses prior to 1855 was in the nature of sole proprietorship and partnerships. The reason for not having the doctrine was the fact that the court thought that the rules regarding the abovementioned businesses were sufficient in protecting the interests of the investors and creditors. However, it was only after 1855 when the doctrine got the much-deserved prominence. It was introduced in relation to the statutory companies in the background of the important developments that were taking place at that time. The most important of them was the introduction of the concept of one of them was of limited liability which made it possible for the members to have a limited liability only to the extent of their capital contribution. So, initially when the members were exposed to unlimited liability, the creditors and the investors considered themselves protected and secured but once this concept was introduced, they found themselves in a miserable condition. Hence, in order to

¹² *Ibid.*

¹³ [1969] 1 ALL E.R. 887

¹⁴ *Ibid.*

protect the interest of the creditors, there was a need of a device that could achieve the same and thus this drew the attention of the pioneers towards the Doctrine of Ultra Vires.

The Judicial trend regarding the Doctrine of Ultra Vires is quite similar to that of the British Authorities. Nawal Kishore, C.J. in his judgment stated that the word “ultra vires only means something has been done by a person or by a body of persons which was beyond his or their powers”.¹⁵ In another case, it was stated that “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”.¹⁶ Satish Chandra J. in the case of *Anand Prakash & Others v. Asst. Registrar* held that “The essence of the doctrine of 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 ultra vires governs him and confines him to that purpose, the person can act within the four corners of its contesting instrument. The doctrine prevents him from acting beyond the conferred powers”.¹⁷ In *P. Janardhan v. Union of India* the court said that “The term ultra vires simply means beyond the power or lack of power. An act is said to be ultra vires when it is excess of the power of the person or authority doing it”.¹⁸

CONSEQUENCES AND EFFECTS OF THE DOCTRINE

In the case of *S. Sivashanmugham And Others v. Butterfly Marketing Private Ltd*, the court held that a contract outside the purview of the objects clause of the memorandum of association of the company is an ultra vires contract and therefore, cannot be enforced by or against the company.¹⁹ For e.g. A borrowing undertaken by the company will be an ultra vires borrowing

¹⁵ State v Nanga and Others AIR (1951) Raj page 25 Para 3

¹⁶ Madhvan Pillai V State of Kerala AIR (1966) Kerala 214

¹⁷ AIR (1968) All 22

¹⁸ AIR (1970) Mysore Page 171

¹⁹ (2001) 105 Comp. Cas Mad 763

if the said is done to carry out acts which overhaul the object clause of the Memorandum of Association of the company. However, steps have been taken by the Judiciary to protect the interest of such lenders, who under the assumption that the company is acting within its authority and not beyond it, has provided them with the funds. It has been held that "An ultra vires act is not necessarily void for all purposes and the law would strive to protect innocent third parties who had relied upon the apparent validity of such an act."²⁰ Therefore, in case of an Ultra Vires borrowing, the lender can resort to any of the following measures/Reliefs:

- Injunctions — this will apply only if the money given to the company has not been spent and an injunction will be provided to prevent the company from using the borrowed money.
- Tracing— the lender can also recover the said money as long as the company possesses the same in its original form, as it was lent.
- Subrogation— if the borrowed money is spent in indemnifying the debts of the borrowing company, then the lender can subrogate and subsequently, will step into the shoes of the creditor who has been indemnified by the company with his money and can sue them to the extent of the money forwarded by him.

Some more effects:

- Personal liability of Directors- It is the responsibility of the directors to ensure that the funds of the company are being utilized only for lawful businesses of the company within the frame of their authority, as provided in the Memorandum of Association, and if the funds of the company are used for a purpose outside the purview of the memorandum, then the directors themselves will be personally liable for that.
- Ultra vires property - An ultra vires act of the company of purchasing some property will represent the company's corporate capital, and the company will continue to have right over that property even though it was acquired in a wrongful way.
- Ultra vires contracts – Such contracts are "Void Ab Initio", and cannot become intra vires by ratification, lapse of time, estoppel etc.

²⁰ White and another v South Derbyshire District Council [2013] P.T.S.R. 536 90

EXCEPTIONS TO THE DOCTRINE OF ULTRA VIRES

The Doctrine of Ultra Vires also has certain exceptions where the same is not applicable. These are:

- An act which is within the powers of the company but is beyond the authority of the directors specifically may be ratified by its shareholders in an appropriate format.
- An act which is within the powers of the company but is committed irregularly can be validated by the consent of its shareholders.
- If the company through an ultra vires act, acquires any property in the form of an investment, will continue to possess such right over that property.
- While applying the said doctrine, the consequences which are incidental to the concerned act will not be invalid unless the same is expressly prohibited by the Companies Act.
- There are some acts under the Company law, which are not explicitly mentioned in the memorandum of Association, but are impliedly within the power of the company and subsequently cannot be said to be ultra vires.
- An act of the company which is ultra vires of its Articles of Association can be validated by altering the Articles of Association.

CSR AND THE DOCTRINE

In the light of the recent developments that have taken place in the field of corporate ethics, one can say that the question of the social obligation of the businesses to serve the community cannot be taken for granted. Nowadays, Companies also have a crucial role in an individual's life in one way or the other way, and thus, companies should not be viewed as a private domain but instead, it must be viewed as a responsible member of the society that has certain obligations with respect to the society. Profit is quite essential for the smooth functioning of any company but the same cannot be made the primary purpose of the company. A company has an obligation to serve the community at large. In India, it was the Sachar Committee that investigated the matter of social responsibilities of companies and observed that it is not possible for any business house to live in isolation from the national problems like unemployment, overpopulation, the problem of pollution etc.

Now, when we look at both the Doctrine of Ultra Vires and CSR together, it has been seen that the doctrine comes in the way of discharging the social obligations of the company and therefore renders such activities as void due to the fact that the same is not mentioned in the object clause of the Memorandum of Association. Therefore, if the company does an act in furtherance of its social responsibility which has not been explicitly stated in the objects clause, the same can be declared as Ultra Vires by the court and the company may not be able to continue with such activities.

The Sachar Committee while dealing with this problem stated that “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 an 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 the 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 ultra vires, as being beyond the objects of the company”.²¹

However, even when the memorandum is amended, the court may take a different stand due to the fact that the new activities are not a part of the main objective of the company and is only power which can be exercised by achieving the main objects of the company and may declare the activity as ultra vires the objects.

The best way to deal with this problem is to have reforms in the doctrine. The main reason behind this is that if a company is considered to be as good as a natural person then any activity undertaken in order to fulfil its social obligation cannot become ultra vires.

This issue was also dealt with in the case of *Dr. Lakshamanaswami Mudaliar vs. Life Insurance Corporation & Ors*,²² in which there was a company which got the authority from its Memorandum of Association to carry out any charitable or benevolent object or for any general public, general or useful object. Accordingly, in pursuance of the shareholder’s resolution, the directors made a payment of two lakh rupees in favor of trust. But the court, in this case,

²¹ Yadav and Ram H, “Doctrine of Ultra Vires under Companies Act 1956” (January 1, 1970)

<<http://hdl.handle.net/10603/9793>> accessed September 17, 2018

²² 1963 SCR Supl. (2) 887

declared the same to be void stating that the transaction was an ultra vires act as the company was authorized to carry out charitable objects only if it is useful in attaining the company's own objects.²³ It was observed that the benefit arising out of the fund utilized was incidental and thus ultra vires.

However, it seems that the court has missed the point or purpose of doing charity. Charity is something which is done without any personal motives and for the benefit of the community. So, thus the court needs to widen the scope of the doctrine in order to include all the charitable activities which the business houses may carry out irrespective of whether it is useful or not in attainment of one's own object.

FALL OF THE DOCTRINE

The Doctrine of Ultra Vires has proved to be quite a controversial concept and has done more damage than any due to the fact that after its implementation, the companies which were found guilty under this doctrine have now started to manipulate the objects clause of the Memorandum of Association. Companies have tried to widen the scope of the Objects clause, which makes it quite vague and ambiguous, to include all the kind of business activities that the company might carry out in their normal course of operations. They end up making all the ancillary objects independent of the main objects. The aim of having ancillary objects is to provide support to the main objects. But by allowing companies to have wide object clauses, they have been given a free license to enter into all kinds of businesses thereby escaping any liability that they would be subject to under the doctrine. Due to these practices, the companies are making the markets irregular and chaotic. The main aim of the doctrine was to prevent the companies from committing any act which is beyond its authority as provided by the objects clause of its memorandum but the companies by manipulating the objects clause have included all sorts of activities so that they won't be liable under the said doctrine.

The institution of the Cohen Committee in 1945 was the first step towards the abolition of the Doctrine of Ultra Vires. The main reason behind this step was that the said act was seen as deceptive insurance for the shareholders and a trap for the third parties engaging in business

²³ *Ibid.*

with the company. The committee didn't find anything positive about the doctrine. The opinion of the Bhabha Committee, appointed by the Government of India, was also on the same lines.

A report was submitted by the committee on the basis of which the old Companies Act, 1913 was revoked and the new Act of 1956 was brought into effect. The committee also considered the said doctrine to be illusory protection for the shareholders and a trap for the third party dealing with the company.

Presently, under Section 245(1)(a) of the Companies Act, 2013, the doctrine of ultra vires gives the members and depositors of the company the right to present an application in the Tribunal to restrain the company from acting in a manner which is ultra vires of the memorandum of association of the company.

CURRENT STATUS OF THE DOCTRINE

India is a developing country and a growing economy. In such a country, companies hold a lot of importance as they are required to give a boost to the GDP of the country. In the light of this fact, we can say that there is a need for a doctrine which would prevent companies from acting outside the authority as provided under the object of the Memorandum of Association. Hence, the existence of such a doctrine is quite important for the growth of the corporate sector of the country. At the initial stages, every business requires funds and for this, they are dependent upon the various banks and lending institutions. The doctrine of ultra vires protects the interest of the lenders by giving them assurance that their money would be returned if the company acts outside the authority given by their object clause.

The doctrine of ultra vires has a pivotal role in India till date. In the case of *Radhabari Tea Company Private Limited vs. Mridul Kumar Bhattacharjee and Other*, the court held that any action taken by the board of directors of a company or the company itself which is beyond the powers which are conferred on the company and/or its directors by the objects clause of the Memorandum of Association will be said to be an ultra vires act. Section 245 (1) (a) of the new Companies Act, 2013, envisages the Doctrine of Ultra Vires and states that if a company acts outside the authority given to them by the objects clause of their memorandum of association, then they will become liable under the Doctrine of Ultra Vires.

Thus, from the above discussions, we can conclude that the said doctrine will continue to play both an important and dominant role in India. The doctrine is quite an important protection for the investors and it will gain prominence as a doctrine in the time to come.

COMPARATIVE ANALYSIS OF THE DOCTRINE BETWEEN INDIA AND UK

From the previous discussions, we got a fair idea about how the Doctrine of Ultra Vires operates in the Indian scenario. But in order to delve into the intricacies of the Doctrine, it is very important that we look it from multiple perspectives. In this section, we are going to look at the working of the aforesaid doctrine in the foreign context and try to compare it with the Indian setting.

As previously discussed, the origin of the doctrine can be traced back to England, where the same got recognition for the first time in 1612.²⁴ But the same gained prominence only after the introduction of the Limited Liability Partnership Act, 1855.²⁵ The doctrine was first applied in the case of *Simpson v. West Minister Palace Hotel* in 1860 and then was discussed in the landmark case of *Ashbury Railway carriage & Iron Co. v. Riche* in 1875, where the court further elucidated the doctrine of Ultra Vires.²⁶ The court said that the objects clause of the memorandum of association states how a company is supposed to act and the same is one of the most important documents of a company and its effect cannot be overruled by mere ratification of the shareholders.²⁷ This case has a huge contribution to the evolution of the concept in England.

However, even though the concept initially got wide recognition by the judiciary in England but over a period of time, one can see that the significance and scope of the same have been reduced or narrowed down in England by both the judicial pronouncements and statues. There can be a possibility that a transaction or an action might not be mentioned in the objects clause of the memorandum of association but might be important and necessary for the betterment

²⁴ Chandok S, "CRITICAL ANALYSIS OF THE DOCTRINE OF ULTRA VIRES"
<<http://jceil.lsyndicate.com/wp-content/uploads/2016/09/Publication-Submission-Simran-Chandak.pdf>> accessed September 25, 2018

²⁵ *Ibid.*

²⁶ (1875) LR 7 HL 653

²⁷ *Ibid.*

and survival of the business. In that case, the doctrine appears to be more of an obstacle than protection to shareholders and creditors.

This was first observed in the case of Attorney General V. Great Eastern Railway Co. where the courts held that if a particular activity is beneficial for the business, then that act won't become Ultra Vires merely due to its absence from the objects clause of the Memorandum of association.²⁸ This decision ended up reducing the significance of the aforesaid doctrine.

The court further narrowed down the scope of the doctrine in the case of Bell House Ltd. V City Wall Properties Ltd by stating that if the directors of a company are satisfied that performance of a particular activity is necessary for achieving the objective of the business even though it is ancillary, then such activity won't be considered as Ultra Vires.²⁹ This decision thus was considered to be an end of the doctrine in England. Also, the introduction of S. 110 of the Companies Act, 1989, and S. 31 and S.39 of the Companies Act, 2006 had the same effect on the concept of ultra vires in the country where the former states that even if the objective is not mentioned in the object clause, it will not become ultra vires and can be ratified by the shareholders.³⁰ Whereas the latter section provided that the ultimate decision as to which activities are within or outside the scope of the business will be taken by Courts after considering the facts and circumstances of the case.³¹

From the above discussion, we get to know how the doctrine saw its downfall. However, the doctrine has not been eradicated completely from England but definitely, its scope has been reduced to a great extent. Now if we look the application of the doctrine from the Indian perspective, it can be said that the doctrine of ultra vires is still playing quite a significant role in the country and will continue to retain this significance in many years to come.

CONCLUSION

²⁸ (1880) 5 App Cas 473 HL

²⁹ (1966) 36 Comm Cases

³⁰ *Ibid.*

³¹ *Ibid.*

From the above discussion, we can see that there has been a shift in the attitude towards the doctrine of ultra vires, which is quite trivial when one has a superficial look at the doctrine, but the same play a very big role in the functioning of any company or corporation. It has been observed that all actions/transactions that are undertaken by a company can come under the doctrine of ultra vires. The prominence of the doctrine of ultra vires cannot be taken away just because it has not been codified. This paper has clearly shown how the concept of the doctrine of ultra vires has risen to prominence India. Also, it presents an analysis of the applicability of the doctrine in India. The author would also like to recommend that certain changes must be made in the Companies Act, 2013 in order to include the doctrine of ultra vires to further enhance the value of the said doctrine. It can be said that doctrine is very essential to safeguard the interest of the investors against the ultra vires actions of the companies and that doctrine will be there in time to come.

In the case of Rolled Steel Products Ltd v. British Steel Corporation, the court held that the multiple usages of the word “Ultra Vires” has created a lot of confusion and the same should be strictly confined to transactions that are beyond power, authority or capacity of a company as provided by the objects clause of the Memorandum of Association and it should not include those transactions that merely reflect abuse of power by the company.³² The paper shows how impossible it is to avoid the fuss and the confusion that the doctrine creates but at that same time reflects the importance that the doctrine possess under company law. We can say that striking down the doctrine will further increase the problem of confusion and will create a haywire situation. Therefore, it is important that we continue with this doctrine to allow the courts to be more specific while considering what can be said as ultra and intra vires. There is an increasing need to have a precise doctrine which tells what company can or cannot do. To put it on better terms , "Where before the emphasis in case law was upon the decision of the non-illegality of an ultra vires act, so that a defence to the act might not be sustained, the express abolishment of the ultra vires defence raises a new problem making the old distinction necessary, but from a new point of view".³³ There is an absence of a specific statutory provision

³² [1985] 3 All E.R. 52.

³³ Kennedy JE, “Corporations: Powers -- Ultra Vires -- Problems Remaining after Legislative and Judicial Modification of the Doctrine” <<http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=3517&context=ndlr>> accessed September 15, 2018

which protects the interest of innocent third party entering into contract with company. On strict application of the abovementioned doctrine, contract by a third party with a company if found ultra vires will be held void and cannot be ratified or enforced against the third party nor the third party can enforce it.

