

**(LAW AND PUBLIC POLICY)**

**INTERNATIONAL JOURNAL  
FOR LEGAL RESEARCH &  
ANALYSIS**

**(ISBN 978-81-948082-1-3)**

VOLUME I ISSUE II  
(MARCH 2021)

---

Email - [editor@ijlra.com](mailto:editor@ijlra.com)

Website - [www.ijlra.com](http://www.ijlra.com)



**IJLRA**

INTERNATIONAL JOURNAL  
FOR LEGAL RESEARCH & ANALYSIS

## DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume I Issue II is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA  
INTERNATIONAL JOURNAL  
FOR LEGAL RESEARCH & ANALYSIS

## EDITORIAL TEAM

### EDITORS

*Ms. Ezhiloviya S.P.*

Nalsar Passout

*Ms. Priya Singh*

West Bengal National University of Juridical Science

*Mr. Ritesh Kumar*

Nalsar Passout

*Mrs. Pooja Kothari*

Practicing Advocate

*Dr. Shweta Dhand*

Assistant Professor

INTERNATIONAL JOURNAL  
FOR LEGAL RESEARCH & ANALYSIS

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISBN 978-81-948082-1-3. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISBN 978-81-948082-0-6 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

INTERNATIONAL JOURNAL  
FOR LEGAL RESEARCH & ANALYSIS

## Understanding Memorandum of Association & Doctrine of Ultra Vires Through the Landmark Ashbury Railway Case

**By- Shubham Prakash Mishra**

### Abstract

*The Memorandum of Association is the primary instrument that is looked upon when deciding the intentions of the company in judicial cases. This is originally a British concept which was later adopted in various common law jurisdiction due to the structural success of it. As the MoA describes the scope and which tends to be very wide in nature, it often draws a lot of controversies regarding the wide scope of power that it confers. This is where the Ashbury Railway case comes in as the first landmark case of this arena. It set out a landmark precedent on basis of which a lot of jurisdiction codified their laws of MoA on. Therefore it is pertinent to look at the critical development of the subject matter with the this case in reference. This paper critically examines the topic on various parameters and gives the comprehensive understanding of the MoA which is regarded as the basic tenet of company law.*

### I. Introduction.

The object clause in the memorandum of association of any company aims at laying down the objectives and the powers the directors and the company in an unambiguous manner. The objective behind incorporating such a clause in the memorandum of association is to declare clearly and plainly the functions of the company in order to ensure that any person who is investing in the said company knows the kind of activities his or her money would be used in. It is important to note what the doctrine of Ultra Vires says if the memorandum of association is violated. The term 'ultra vires' means 'beyond powers' or 'lack of power'.<sup>1</sup> The term 'ultra virus' signifies a concept distinct from illegality. It was for the first time in the case of *Ashbury Railway Carriage and Iron Company Ltd. v. Riche*<sup>2</sup> (hereinafter referred to as the Ashbury case), that the House of Lords laid down the doctrine of ultra vires. The doctrine holds that any activity which is outside the scope of MOA shall be ultra vires the company. The relation between MOA and the directors is analogous to that of the Constitution and the Parliament. Any activity of the Parliament which is not in conformity

---

<sup>1</sup> Black's Law Dictionary, 7th Edn.

<sup>2</sup> (1875) LR 7 HL 653.

with the Constitution is ultra vires. The term Ultra Vires means beyond the power, i.e. if a director acts in contravention to the object clause of MOA, he is acting beyond the powers ascribed to him. The present article aims at critically analysing the rule laid down in the Ashbury case and discussing the precedents that upheld and further clarified the position laid down in the present case. This case note also aims at studying whether the rule laid down in the Ashbury case still holds, or any appendages have been added to the doctrine to clarify further and widen the ambit of the doctrine.

## **II. The Factual Matrix of the Case.**

The object clause of the memorandum of association read as follows:

"The objects for which the company is established are to make and sell, or lend on hire, railway carriages and wagons and all kinds of railway plants, etc..... to carry on the business of mechanical engineers and general contractors...."

The company entered into a contract with the respondent, a firm of railway contractors for financing the construction of a railway line in Belgium. The appellant, however, repudiated the contract on the ground that such activity did not fall under the ambit of the object clause of the MOA. The respondent sued the appellant company for breach of contract, contending that the term "general contractors" mentioned in the object clause, covered the objectives of the contract entered into between the parties. The respondent also contended that the said contract was ratified by the majority of shareholders and therefore, was binding on the company. The issue before the court was to resolve whether such contract fell under the ambit of the object clause and if not, then whether it was binding on the company or was ultra vires the MOA.

## **III. Decision of the Court.**

The House of Lords after critically analyzing the objectives and functions of the company as laid down under the object clause of the MOA held that the terms of the contract were ultra vires the company. The court observed that the object clause enumerates both affirmatively and negatively the objectives and functions of a company and any activity that does not fall under the said object clause is ultra vires and hence cannot be enforced. The contention of the respondent that the contract fell under the term "general contractors" was dismissed as the court observed that the objective of the company as clearly stated in the object clause was to make, sell or lend on hire railway carriages and wagons and all kinds of railway plants, etc. to the general contractors, and

not to finance the general contractors to lay down a railway line.

The Courts also dismissed the other contention of the respondent that the contract was binding as the majority of shareholders ratified it by holding that a contract which is ultra vires the MOA is void ab-initio and its validness is not affected by the ratification of any number of shareholders. In fact, Lord Cairns LC went to the extent of stating, "That if every shareholder of the company had been in the room, and had said that this is a contract which we desire to make, which we authorise the directors to make, the case would not have stood in any different position from that in which it stands now".

The objectives of the doctrine of Ultra Vires are twofold: one, to ensure that the shareholders who have invested in a company know the objects of the company and the areas and activities in which their money shall be invested and utilized, and second to ensure the rights of the creditors so as to employing their money in only the activities that are authorized under the MOA.

#### **IV. Analysis.**

The law laid down in the Ashbury case still followed not only in the state of UK but also in India. The court, however, took a rigorous view of the doctrine, which was then relaxed in the further precedents. In the case of *Attorney General v. Great Eastern Railway Company*<sup>3</sup>, the House of Lords observed that though the doctrine of ultra vires should be followed as prescribed in the Ashbury case; however, application of the doctrine should not be strict but liberal in the application. The doctrine should be understood reasonably and not unreasonably, and the activities which are not expressly mentioned in the object clause but are incidental or ancillary to the objects authorized, should also fall under the ambit of authorized activities. Applying the said rule on the facts of the Ashbury case, the activities as specified in the contract were very much incidental to the objects of the company. The House of Lords in the Ashbury case took an extremely strict view of the doctrine of ultra vires. It refused to count any activities that were not expressly mentioned in the memorandum of association as the authorised ones. The House of Lords also observed in the *Eastern Railway* case that an activity which is incidental to the objects of the company should only be considered ultra vires if such activity is expressly prohibited under the MOA. This principle laid down in the Eastern Railway case is also known as the principle of reasonable

---

<sup>3</sup> (1880) SAPP Cas 473.

construction.

Some of the following cases that applied the principle of reasonable construction were *Forest v. Manchester Railway Co*<sup>4</sup>, and *Forest v. London Chatham and Dover Railway co*<sup>5</sup>. In the Manchester Railway case, the railway company which was authorized to keep steel vessels for the purpose of the ferry was allowed to use such ships for excursion trips when they were not in use for the direct object. Similarly, in the Dover railway company case whose main object, where was to carry overarches, was allowed to convert the said arches in two shops. In another case, a company which manufactured chemicals was allowed to donate a significant sum of money to a university that performed research in the field of chemicals. It was observed that such donation was in furtherance of the object of the company as research and study on the chemicals would ultimately benefit the company in producing and manufacturing good quality chemicals.<sup>6</sup>

The first time the rule laid down in the Ashbury case was an exercise in India was in the case of *Jahangir R. Modi v. Shamji Lodha*<sup>7</sup>. The Bombay High court in the year 1866 applied the doctrine of *Ultra Vires* to a joint-stock company. The said law was affirmed and again applied by the Supreme Court of India for the first time in the case of *Lakshmanaswami Mudaliar v. LIC*<sup>8</sup>. The court observed in the case that the memorandum should only contain the objects of the company and not the powers. Even if the powers are stated, such powers must be exercised in furtherance of the objects and these powers cannot be unlimited and unfettered. The court also observed that in case memorandum grants power to the directors to make payments towards charity, such charity or donation must be in furtherance of the objects of the company as stated in the memorandum, and not arbitrary. Similarly, the power to borrow is not an object. Such borrowing must be in furtherance of an object that has been stated in the memorandum.<sup>9</sup>

The rule laid down in the Ashbury case was a landmark in the history of corporate and company law. The doctrine has not been dismissed or reversed in any of the future precedents, either of India or the State of UK. Although the author does not approve of the way such doctrine was applied to the facts of the case, however, the doctrine of *Ultra Vires* laid down in the case still holds true and holds great significance in the application and interpretation of the company law. While all the

---

<sup>4</sup> 54 ER 803 (1861).

<sup>5</sup> (1895) 1 QB 711.

<sup>6</sup> *Evans v. Bruner Mond & Co.*, (1921) 1 Ch 359.

<sup>7</sup> (1866- 67) 4 Bom HCR 185.

<sup>8</sup> AIR 1963 SC 1185.

<sup>9</sup> *Charter Bridge Corporation Ltd. v. Lloyds Bank Ltd.* 1970 Ch 62.

future cases have affirmed the doctrine, the scope of the doctrine has been widened and amplified several folds in the last few years.

### **V. Comparison of Jurisdictions: UK and India**

As previously discussed the Court in Ashbury Case took a strict approach, and same was criticised by many academicians and jurists alike. However, as the jurisprudence on a memorandum of association grew, and these cases came up before Indian Courts, the narrative has changed. Although the Ashbury case is still followed in both the jurisdictions, courts in both countries take up a more liberal interpretation of the Doctrine of Ultra Vires and Memorandum of Association lately.

#### **A. The UK**

Due to the strict approach of the court in the Ashbury case, any act which was not mentioned in the memorandum of association was held ultra vires and void. As a result, companies for an extended period had long and wide objects included in the memorandum of association to evade the axe of ultra vires.<sup>10</sup> As discussed above, the Court, in the case of *Evans vs Burnner* took a more generous approach towards the doctrine of ultra vires. This position was mainly changed by the Companies Act, 1985<sup>11</sup> and later by The Companies Act, 2006<sup>12</sup>. The section 31 & 39 of the Act now govern the scope of the doctrine of ultra vires and have primarily reduced the scope of the doctrine. The current stand of the court in the matter is that even though the companies are bound by the objects clause of the memorandum of the company but still it has the defense of Reasonable construction. This shows how the Ashbury was not the best interpretation of the doctrine of ultra vires by the courts in the UK, which has now been ratified by case laws and other legislations. On a contrast, countries like The US have primarily done away with the strict interpretation of the doctrine of the ultra vires as it is a hub for multinational companies and the doctrine restrains the companies in many ways.

#### **B. India**

Section 4 of the Companies Act, 2013 defines the Memorandum of association in detail. The section. The Memorandum of Association is a legal document that defines various clauses as per Schedule I of the Companies Act, 2013. Generally speaking, it outlines the scope of the company's

---

<sup>10</sup> Rolled Steel Products (Holdings) Ltd v British Steel Corp [1986] Ch 246

<sup>11</sup> The Companies Act, 1985 (UK)

<sup>12</sup> The Companies Act, 2006 (UK)

business activities and defines the perimeters for the same. The MOA must be in forms specified in Tables A, B, C, D, and E in Schedule-I as applicable to the company. The section is further divided into six major parts, namely, Name clause, Location of registered office class, object clause, liability clause, capital clause and subscription clause. The Indian Companies Act also provides for altering the MOA according to section 13 of the Act. The MOA can be altered through special resolution and the procedures mentioned in the Act.

Indian courts also have evolved the concept of MOA, as discussed in the previous paragraphs. The landmark case in the Indian context was of *Lakshmanaswami Mudaliar*. The case not only stressed at the importance of fulfilment of objects as stated in the MOA but also unprecedentedly held that MOA and AOA should be read together if the terms are ambiguous or silent. The case also defines the object clause under section 4 of the Act. This object clause helps in detailing the 'objectives' of the company. Further, the objectives are divided into two sub-categories: Main Object and Ancillary Objects. The Indian courts, although upheld the principles laid down in the Ashbury case, took a more liberal interpretation of the doctrine of ultra vires. This is why, in *Lakshmanaswami* case, the court taking a liberal stance, said that incidental objects proposed to be necessary for the attainment of the main objectives should have a proximate connection with the main object. That being said, the doctrine is very essential to safeguard the interest of the investors against the ultra vires actions of the companies and should not be abolished or watered down. The Section 245 (1) (a) of the 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.<sup>13</sup> However, the section is ambiguous and does not clearly defines the ambit of ultra vires. India needs more definitive laws on the matter.

### **VI. A critical conclusion.**

In the Ashbury case, the Appellant Company entered into a contract with the Respondent contractor to finance the building of a railway line in Belgium. Such financing was in contravention to the object clause of the Memorandum of Association of the company. The House of Lords observed that such a contract was void ab-initio as it was ultra vires the object clause. It was observed that any activity which is not in the direct furtherance of the object of the company is

---

<sup>13</sup> Adarsh Dubey *An Analysis Of The Doctrine Of Ultra Vires From The Indian Perspective* IJLDAI 2 (2019)

ultra vires the MOA, and hence void. It was also observed that irrespective of ratification by majority shareholders of the company, the contract was void and could not be enforced or performed. The objective behind laying down such a doctrine was to protect the rights of the shareholders and the creditors to ensure that their money is not employed in an unauthorised activity. The scope of the doctrine of Ultra Vires laid down in the Ashbury case was then corroborated with the Principle of Reasonable Construction laid down in the case of *Attorney General v. Great Eastern Railway Company*. The principle enlarged the ambit of the doctrine of ultra vires by authorising the activities that were incidental or ancillary to the objects of the company. It was observed that the doctrine should not be applied unreasonably, but must be applied reasonably to include activities which were incidental to objects of the company. The principle of reasonable construction was, however, not applied in the case of Ashbury as per the analysis of the author of the present case note.

Thereafter, several cases affirmed and applied the rule laid down in the abovementioned two cases by corroborating the doctrine of Ultra Vires with the principle of Reasonable Construction. The High Court of Bombay applied the doctrine for the first time in the year 1866. The Supreme Court of India, then affirmed the rule laid down in the case of Bombay HC and went a step ahead to define the object clause of MOA. It was observed that the Object clause must only contain the objects of the company and not the powers of the directors. Even if such powers are enumerated, use of such powers cannot be arbitrary and can only in furtherance of achieving the object of the company. Several cases have been referred above where the court upheld ancillary activities performed by the company in order to achieve its objectives.

The article is therefore concluded by saying that for a company, its MOA holds the same authority as the Constitution does for the Parliament. Any activity that is in contravention to the object clause shall be ultra vires and would not be authorized or enforced. Any contract whose objective is not in furtherance of the objects of the company is void ab-initio and is not enforceable. The case of Ashbury provided a very strict interpretation of the doctrine; however, it is essential to note that this doctrine cannot be simply done away with. This is to prevent the innocent third party investor for any potential fraud from the company responsible.