

## THE DOCTRINE OF ULTRA VIRES

*Written by Aditya Sinha*

KIIT SCHOOL OF LAW

### **ABSTRACT**

The doctrine of ultra vires is the basic doctrine in administrative law. The doctrine envisages that an authority can exercise only so much power as is conferred on it by law. An action of the authority is intra vires when it falls within the limits of the power conferred on it but ultra vires if it goes outside this limit. The simple proposition that a public authority may not act outside its powers (ultra vires) might fitly be called the central principle of administrative law. ‘The juristic basis of judicial review is the doctrine of ultra vires.’ To a large extent, the courts have developed the subject by extending and refining this principle, which has many ramifications and which in some of its aspects attains a high degree of artificiality.

At the point when a force vested in a public authority is surpassed, acts done in the overabundance of the force are invalid as being ultra vires. The ultra vires regulation serves to control the individuals who surpass the forces, which an Act has given. Eg, where a nearby gathering whose ability to act and to control private exercises is gotten from resolution, acts outside the extent of that position. In numerous fields, parliament has given no privilege of allure against regulatory choices. Regardless of the courts practice an administrative purview on issues, for example, cut-off points of a position's forces, which influence the legitimacy of authentic choices. In practising this purview, the courts assess the standards of regulatory law that have been created from legal choice and the particular enactment that applies to the topic. At the point when a bit of assigned enactment is proclaimed to be ultra vires, it is void and gets unenforceable. It can't influence the rights and obligations of any individual. The legitimacy of a standard can be tested in a court either straightforwardly or correspondingly, or by the method of safeguard to a common case dependent on the denounced rule, or as a guard in an indictment for encroaching the standard. An individual can challenge the legitimacy of regulatory activity by testing the legitimacy of the significant principle. An individual whose intrigue is influenced unfavourably by a bit of designated enactment can straightforwardly difficulties its vires in a court.

## **INTRODUCTION**

The doctrine of ultra vires states that an authority can exercise only too much power as is conferred on it by law. An action of the authority is intra vires when it comes under the limits of the power conferred on it but ultra vires if it goes outside this limit. The constitution of India Empowers legislature to make laws for the country and it is the power of the executive to administer and execute the law made by the legislature. However, frequently enact legislation containing provisions which empower the executive government, or specify the bodies or officeholders, or the judiciary to make regulations or other forms of instruments which provided that they are properly made, have the effects of law this form of law is referred to as delegated legislation.

This arrangement has the appearance of a considerable violation of the doctrine of separation of powers. This doctrine of separation of powers has been largely preserved by a system for the parliamentary control of executive lawmaking. The legislature has to control the delegated legislation and If not, executives may exercise the delegated power to become a potential dictator or even becoming a parallel legislature. This legislative control over delegated legislation has become a living continuity as a constitutional necessity. The rule of the majority in a democratic system has virtually made legislative control ineffective, the need for judicial control would not have arisen or probably reduced the minimum this has not been so, hence judicial control has become an inevitable necessity to prevent executives acting as super legislatures or potential dictators.

At the point when a bit of appointed enactment is proclaimed to be ultra vires, it is void and gets unenforceable. It can't influence the rights and obligations of any individual. Until a standard is announced invalid by a court, it is attempted to be legitimate. If the legitimate and the invalid pieces of a standard can be cut off, at exactly that point the invalid bit of the standard is subdued and the substantial bit can keep on staying employable. In any case, on the off chance that the legitimate and the invalid parts are inseparably stirred up, at that point the whole standard needs to go. A void standard can't be the premise of any managerial activity.

Nobody can be arraigned under a void guideline. The legitimacy of a standard can be tested in a court either legitimately or correspondingly, or by the method of protection to a common

case dependent on the reviled rule, or as a safeguard in arraignment for encroaching the standard. An individual can challenge the legitimacy of managerial activity by testing the legitimacy of the important standard. An individual whose intrigue is influenced unfavourably by a bit of designated enactment can straightforwardly challenge its vires in a court. The court may concede a directive or affirmation or issue mandamus or grant harms to the influenced individual as might be appropriate. On the off chance that the subordinate or appointed enactment goes past the extent of power given on the representative or it is in strife with the parent or empowering act, it is called considerable ultra vires. The legitimacy of the subordinate or appointed enactment might be tested under the watchful eye of the Courts on this ground.

Thus the doctrine of ultra vires can be further divided into

#### **1- That the enabling Act is ultra vires the constitution**

IT means that if the enabling Act is ultra vires the constitution which prescribes the boundaries within which the legislature can act, the rules and regulations framed thereunder would also be void, the enabling Act may violate either the implied or express limits of the constitution.

#### **2- The Administrative Legislation is ultra vires the constitution**

It may happen that the enabling Act may not be ultra vires the constitution, yet the rules and regulation framed thereunder may violate any provision of the constitution<sup>1</sup>, it was held that even if the enabling act is intra vires, the constitutionality of delegated legislation can still be considered because the law cannot be presumed to authorities anything unconstitutional.

#### **3- That the Administrative Legislation is ultra vires the Enabling Act**

The challenge to the authorities to the constitutionality of Administrative rulemaking because is ultra vires the enabling Act can be sustained on the grounds of

- That it is more than the power conferred by the enabling act.
- That it is a conflict with the enabling act.
- That it conflicts with the prescribed procedure of the enabling act.
- That it is unreasonable, arbitrary and discriminatory.
- That it Is mala fide.

---

<sup>1</sup> AIR 1960 SC 430

- That it encroaches upon the rights of the private citizens derived from the common law in the absence of express authority in the enabling act.
- That it conflicts with the terms of some other statute.
- Waiver of the rule.

### **HISTORY AND CHANGES**

THERE is a growing literature concerning the role of the ultra vires doctrine and its place within administrative law. For some, the doctrine is the central principle of administrative law, without which judicial intervention would rest on uncertain foundations.<sup>1</sup> For others, it constitutes at best a harmless fiction, which is incapable of explaining all instances of judicial intervention, and at worst a device which allows the judiciary to conceal the real justifications for developments in judicial review.

Today the institution of delegated legislation has come to stay as a part of the modern administrative process. The question no longer arises whether delegated legislation is desirable or necessary or not, but what controls and safeguards can and ought to be introduced so that the rule-making power conferred on the administration is not misused or misapplied. Legislatures having delegated their powers, have to bear the responsibility to ensure that the delegate shall not over-step the legitimate domain and commit a violation by exceeding or abusing the powers delegated.

Thus, the legislatures have to control the delegated legislation and if not, executives may exercise the delegated power to become a potential dictator or even becoming a parallel legislature. This legislative control over delegated legislation has become a ‘living continuity as a constitutional necessity<sup>2</sup>’.

The rule of the majority in democratic systems has virtually made legislative controls ineffective. A more serious observation has been made by Mr Lloyd George to the effect that ‘legislatures have no control over the executive’. All these observations are pointers to the view that had the Parliamentary control over delegated legislation been effective, the need for judicial control would not have arisen or probably reduced to the minimum.

---

<sup>2</sup> Krishna Iyer J. in Avinder Singh vs. State of Punjab, AIR 1979 SC 321

This has not been so, hence, judicial control has become an inevitable necessity to prevent executives acting as super-legislatures or potential dictators<sup>3</sup>. Pre-constitutional control to post-constitutional judicial control found a big shift from the scrutiny of delegated legislation confined to the area of sub-delegation from British Parliament to Indian legislature<sup>4</sup> and laying down a fundamental principle of delegation in the post-constitutional era<sup>5</sup> which can be stated as follows: -“Legislatures cannot delegate their essential legislative powers.

Essential legislative powers relate to the determination of the policy of the legislature and of rendering that policy into a binding rule of conduct”.

In other words, the delegation of legislative power can be confined to ‘non-essentials’ or subsidiary matters. Delegation of legislative powers of essential nature would be invalid. This has come as a first principle laid down in the area of judicial control and subsequently expanded to several rules laid down by the judiciary. In *Indian Express Newspapers (Bom) (P) Ltd. v. Union of India*<sup>6</sup>, the grounds on which subordinate legislation can be questioned were outlined by the Supreme Court. E. S. VENKATARAMIAH, J. observed thus: “75.

A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. Besides, it may also be questioned on the ground that it does not conform to the statute under which it is made.

## BRILLOPEDIA

It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the judges would say ‘Parliament never intended authority to make such rules.

Substantive ultra vires - means that the delegated legislation goes beyond the scope of the power conferred by the parent statute, or it is in conflict with the delegated statute, and hence, it is invalid. The doctrine refers to the scope, extent and range of power conferred by the parent Act on the concerned authority to make rules.

---

<sup>3</sup> C.K. Takwani, “Lectures on Administrative Law”, 5th edn., 2012, Eastern Book Company, p.172.

<sup>4</sup> Empress vs. Burah (1877) 3 Cal 63; Jitendranath Gupta vs. Province of Bihar, AIR 1949 FC 175

<sup>5</sup> In Re Delhi Laws Act, AIR 1951 SC 332

<sup>6</sup> (1985) 1 SCC 641

A rule has to yield to the statutory provision. The rule must also come within the scope and purview of the rulemaking power of the authority framing the rule<sup>7</sup>. While applying the doctrine of substantive ultra vires to delegated legislation, the courts do not look merely at the express words of the enabling provision in the parent statute, but go beyond them and also imply certain restrictions therein.

The idea is that the courts do not want the executive to do certain things by using its general rule-making power without being specifically authorised by law to do so. This approach, to some extent, helps in the preservation of individual liberty, strengthening of judicial control over delegated legislation, and giving a somewhat broader dimension to the doctrine of ultra vires<sup>8</sup>.

Procedural ultra vires come into play when the Parent Act prescribes certain procedures which the delegate has to follow. It is the basic principle of law long settled that, in the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all<sup>9</sup>.

A question arises whether the rules made without following the prescribed procedure are to be regarded as valid or not. The answer to this question depends upon whether the specific procedural requirement is regarded as a directory or mandatory. A statute may lay down some procedural requirement for exercising discretionary power conferred by it. An exercise of discretionary power may be invalid because the concerned authority has failed to comply with the statutory procedural requirements as mandatory or directory. Non-compliance with a mandatory requirement makes the discretionary decision ultra vires. This is known as procedural ultra vires.

Nevertheless, the principles on which the constitutionality of a statute is judged and that of subordinate legislation are different. Subordinate legislation could not enjoy the same degree of immunity as a legislative act would. The validity of the rules can still be challenged even in the face of such phrases as shall not be called in question in any court in the enabling act<sup>10</sup>.

---

<sup>7</sup> Id 12, p. 56

<sup>8</sup> M. P. Jain & S. N. Jain, "Principles on Administrative Law", Vol. 1, 7th edn, 2013, Reprint 2016, LexisNexis, p.161

<sup>9</sup> Babu Verghese vs. Bar Council of Kerala, AIR 1999 SC 1281

<sup>10</sup> State of Kerala v. K.M.C. Abdulla & Co AIR 1965 SC 1585

In the same manner that an act providing that rules made thereafter on publication in the official Gazette would be as if enacted in the act cannot take away judicial review. Grounds of invalidity may arise on the following counts<sup>11</sup>.

## **ANALYSIS**

**That the enabling Act is ultra vires the constitution** – If the enabling Act is ultra vires the constitution which prescribes the rules and regulations framed thereunder would also be void the enabling act may violate either the implied or express limits of the constitution. Implied limits of the constitution are those laid down in the Delhi Laws Act, 1912, re<sup>12</sup>. The legislature cannot delegate its essential power to any other agency, and if it so delegated its essential power to any other agency, and if so delegates the enabling Act will be ultra vires the constitution. The court held that the 2nd part invalid because it authorised the administrative agency to repeal a law which, in the opinion of the court, is an essential legislative function.

In the same manner in Hamdard Dawakhana<sup>13</sup> the court held section 3(d) of the drugs and magic remedies as ultra vires the constitution because the legislature had not provided sufficient guidelines for the exercise of administrative discretion in matters of selecting a disease to be added in the schedule. whether particular legislation suffers from excessive delegation is a question to be decided by the court concerning certain factors provided which may include.

- Subject matter of law
- Scheme of the law
- Provisions of statute including the preamble
- Factual and circumstantial background in which the law is enacted

However, when a statue is challenged and on the grounds of being excessive delegation, there is a presumption in favour of its constitutionality and if two interpretations are possible one which makes the statue constitutional shall be adopted. The invalidity of the rules and regulations may also arise if enabling the act violates the express limits prescribed by the constitution no legislature has the competence to violate the scheme of distribution of power

---

<sup>11</sup> General Officer Subhash Chandra Yadav 1988 2 SCC 351

<sup>12</sup> AIR 1951 SC 332

<sup>13</sup> AIR 1960 SC 554

given in the constitution<sup>14</sup>. While deciding the constitutional validity of any parliamentary legislation on the ground of legislative competence, the courts adopt a liberal view while applying pith and substance to all ancillary and subsidiary matters which can fairly and reasonably be held to be included in it.

**The Administrative legislation is ultra vires the constitution** - It may happen that the enabling Act may not be ultra vires the constitution, yet the rules and regulation framed thereunder may violate any provision of the constitution, it was held that even if the enabling act is intra vires, the constitutionality of delegated legislation can still be considered because the law cannot be presumed to authorities anything unconstitutional.

In some cases, it is discovered that the Enabling or Parent Act isn't violative of the Constitution, however, the subordinate or appointed enactment made under It abuses the arrangements of the Constitution. Such subordinate or assigned enactment will be unlawful and void, however, the Enabling or Parent Act is legitimate. Hence, the subordinate or designated enactment, (e.g., rules, guidelines, by-laws, and so on.) made under the Enabling or Parent Act might be illegal while the Enabling or Parent Act is established.

Article 31-B of the Constitution of India is likewise outstanding here. The Acts and Regulations Included in the IXth Schedule of the Constitution are ensured under Article 31-B against the ground of infringement of any of the Fundamental Rights, however not against different grounds. The insurance of Article 31-B is accessible just to the Acts or Regulations put In the IXth Schedule of the Constitution. On the off chance that an Act Is put under the IXth Schedule, the security of Article 31-B will be accessible to such Act, yet this insurance won't be accessible to the appointed enactment made under It. Accordingly, the designated enactment might be tested on the ground that it abuses the Constitution, even though the Enabling or Parent Act under, which it has been made is ensured by Article 31-B. (Governing body in the ninth timetable isn't under legal examination) (zamindari abolishment Act).

However, in a case where the parent act cannot be challenged before the court because the protection if Article 31(b) of the constitution on account of its placement in (9th Schedule)<sup>15</sup> and got the protection of Article 31(b) of the constitution and, therefore, could not be challenged for any alleged inconsistency with any provision of the constitution. The supreme

---

<sup>14</sup> Art 246 Of The Indian Constitution

<sup>15</sup> I.R. Coelho v. State of T.N.2007 2 SCC 1

court held that Article 31 B saves only the act and not the administrative rulemaking under it however it can still be argued that if the act has been placed in the protective shield of the 9th schedule, the very purpose of the protection would be destroyed. The rule framed under the act could still be challenged on the ground of unconstitutionality<sup>16</sup>.

**That the administrative legislation is ultra vires the enabling Act** - The challenge to the authorities to the constitutionality of Administrative rulemaking because is ultra vires the enabling Act can be sustained on the grounds of

- That it is more than the power conferred by the enabling act.
- That it is a conflict with the enabling act.
- That it conflicts with the prescribed procedure of the enabling act.
- That it is unreasonable, arbitrary and discriminatory.
- That it is mala fide.
- That it encroaches upon the rights of the private citizens derived from the common law in the absence of express authority in the enabling act.
- That it conflicts with the terms of some other statute.
- Waiver of the rule.

The legitimacy of the subordinate or designated enactment can be tested on the ground that it is ultra vires the Enabling or Parent Act. On the off chance that the subordinate or designated enactment made by the representative is an overabundance of the force gave by the Enabling or Parent Act or is in strife with the arrangements of the Enabling or Parent Act or is made without following the system required by the Enabling or Parent Act to be trailed by the agent, the appointed or subordinate enactment will be invalid on the ground that it Is ultra vires the Enabling or Parent Act. The legitimacy of the activity of intensity is tried based on the Prussians as it stands right now and not based on that it was previously The subordinate or designated enactment is held to be ultra vires the Enabling or Parent Act when it is discovered to be in abundance of the force presented by the Enabling or Parent Act If the assigned enactment is past the force given on the appointed by the Enabling Act, it would be Invalid regardless of whether it has been laid before the Legislature.

Where a managerial authority Is engaged by the Enabling Act to make by-laws to control the market and the position makes by-law which forbids running of cow's market the by-law will

---

<sup>16</sup> Latafat Ali Khan v. State of U.P 1971 SC 1844

be ultra vires the Enabling Act. The Act engaged the Government to complete the reasons for the Act the Government made principle to fix the last date for recording the announcement structures by sellers for getting the advantage of concessional rates between State deals. This standard was held to be ultra vires the Enabling Act on the ground that the Act engaged the Government for making rules for recommending the specifics to be referenced in the structures and it was not offered capacity to endorse a period limit for filling the structure. When the delegated enactment is discovered irrational and subjective, it is proclaimed invalid. In India, now and again to High Courts express the view that the appointed enactment can't be tested on the grounds of preposterousness. Nonetheless, the perspective on the Courts is that the appointed enactment might be tested on the ground of preposterousness and assertion. In India tenet of nonsensicalness has been given the strong base of Article 14. The designated enactment which is outlandish and self-assertive can be tested on the ground that it is violative of Article 14.

In a guideline given that an air leader would resign from the administration accomplishing the age of 35 years or on marriage inside 4 years of administration or on first pregnancy, whichever happened prior. The guideline approved the Managing Director to stretch out the period of retirement to 45 years at his alternative if an air leader was discovered therapeutically fit. The Regulation didn't contain any rules or strategy as per which the watchfulness presented on the Managing Director was to be worked out. The guideline presented on the Managing Director was unguided and uncontrolled caution. The end of the administration of an air lady on pregnancy was irrational and self-assertive. The guideline was held to be violative of Article 14 as it was preposterous and self-assertive<sup>17</sup>.

Quickly expressed, the rule is that the agent can't make a standard which isn't approved by the parent rule. On the off chance that the subordinate authoritative position keeps inside the bounds of the force assigned, the appointed enactment is legitimate, notwithstanding, on the off chance that the authority surpasses the force designated, at that point, the courts will proclaim it to be ultra vires.

Meaningful ultra vires imply that the standard creation authority has no considerable force under the engaging demonstration to make rules being referred to. It alludes to the extension, degree and scope of intensity given by the parent rule to make appointed enactment. Quickly expressed, the guideline is that the representative can't make a standard which isn't approved

---

<sup>17</sup> Air India v. Nargesh Meerza

by the parent rule. On the off chance that the subordinate authoritative position keeps inside the degree and limits of the force assigned, the designated enactment is legitimate; yet on the off chance that it comes up short outside the extent of the force, the courts will announce it invalid. Assigned enactment to be legitimate must fall inside the four corners of the forces given by the resolution. Pronouncing a standard in the Karnataka Motor Vehicle Rules, 1963, ultra vires the Motor vehicles act, 1939, generally speaking, was conflicting with a segment in the demonstration, the Supreme Court announced in State of Karnataka v H. Ganesh Kamath that the standard creation power "can exclude inside its extension the ability to make a standard in opposition to the arrangements of the Act giving the standard creation power. Conferment of a standard creation power by an Act doesn't empower the standard – making position to make a standard which goes past the extent of the empowering Act or which is conflicting therewith or disgusting thereto." As the Supreme Court has stressed in "if the activity of intensity is in the idea of subordinate enactment, the activity must adjust to the arrangements of the rule<sup>18</sup>. All the states of the rule must be satisfied."

The precept alludes to the degree, extension and scope of intensity presented by the parent follow up on the concerned position to make rules. Conferment of rulemaking power by an Act on authority doesn't empower the standard creation position to make a standard which is past the extent of the empowering demonstration, or which is conflicting therewith or repulsive thereto. The efficacy of judicial control of delegated legislation is very much dependent on how broad is the statutory formula conferring the power of delegated legislation is very much dependent on how broad is the statutory formula conferring the power of delegated legislation on the delegate.

Usually, the application of the ultra vires rule becomes very difficult because of three reasons:

Powers are usually conferred in broad language.

Ordinarily, the Courts interpret the enabling provision rather broadly.

The courts adopt a deferential, rather than a critical, attitude towards delegated legislation.

In India, the test of reasonableness applies to delegated legislation, both on general principles of administrative law as well as under such fundamental rights as are guaranteed under the Constitution of India.

## **CONCLUSION**

---

<sup>18</sup> State of U.P v Renusagar Power Co.

The doctrine of ultra vires, therefore, envisages that an authority can exercise only so much power as is conferred on it by law. An action of the authority is intra vires when it falls within the limits of the power conferred on it but ultra vires if it goes outside this limit. The simple proposition that a public authority may not act outside its powers (ultra vires) might fitly be called the central principle of administrative law. The juristic basis of judicial review is the doctrine of ultra vires. To a large extent, the courts have developed the subject by extending and refining this principle, which has many ramifications.

On the question of reasonableness, we have seen that the Court cannot strike down an administrative rule on the ground of unreasonableness merely because the court thinks that it goes farther than is necessary or that it does not contain certain provisions which in the opinion of the Court would have been fair. Judges cannot substitute their wisdom with the wisdom of the administrative authorities. Unless a rule is manifestly unjust, capricious, inequitable or partial in operation it cannot be invalidated on the ground of unreasonableness. The test of reasonableness can come into play if other principles of review fail for judicial review purposes. In this sense, it is a doctrine of judicial restraint. The test becomes a real extension of the ultra vires doctrine in so far as unreasonableness is most inevitably concerned ultimately not just with vires, but also with the quality and merits of the decision given in the case and whether or not the ends of justice are met with.

Thus, to conclude it can be said that if the subordinate or delegated legislation goes beyond the scope of the authority concerned on the delegate or it is in conflict with the Parent or Enabling Act, it is called substantive ultra vires. The validity of the subordinate or delegated legislation may be challenged before the Courts on this ground. It is a mechanism to curb down the exploitation of power by the administrative authority as we all know that “power corrupts and absolute power corrupts absolutely”. However, in this field, there is lack of development and there is no substantial change in the concept all through the changing nature of the current legislative method has widened the horizon of the power of the authority by giving them the power to act according to the need of the time, even sometimes travelling beyond the restrictions