

AN ANALYSIS OF THE ROYAL CHARTER OF 1600 (MEMORANDUM OF ASSOCIATION OF THE EAST INDIA COMPANY) VIS. A VIS. WILLIAM DALRYMPLE'S ANARCHY: A CRITICAL ANALYSIS

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ABSTRACT

“This article critically examines the Royal Charter of 1600, which established the East India Company and traces its evolution from a trading entity to a colonial power. Initially founded for the purposes of trade and commerce, the EIC’s activities increasingly expanded into political and military domains, often violating the original limitations set out in the Memorandum of Association. Drawing on William Dalrymple’s The Anarchy, the article explores how the Company’s ambitions for territorial conquest transformed its legal, economic and political influence in India. The article concludes by highlighting the risks of corporate overreach, emphasizing the need for accountability and scrutiny in corporate activities that extend beyond their original legal mandate.”

Keywords: East India Company, Royal Charter, MoA, Dalrymple

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INTRODUCTION

In the words of Marshal LJ, “Body Corporations are not novelties. They are institutions of a very ancient date.” In the 17-18th Centuries, a company was formed either by a Royal Charter or a Special Act of the Parliament.²

In 1600, the Royal Charter was granted by Queen Elizabeth to the East India Company (EIC). It formed one of the earliest specimens of a Memorandum of Association, clearly limiting the objects and powers within which the company was to operate. However, subsequently multiple other charters and letter patents were granted to the Company³, which widened the scope of its operations in the country and paved the way for the complete conquest of India by a mere joint stock Company.

William Dalrymple, in his book- *The Anarchy*- gives a detailed description of the various activities undertaken by the Company and traces its gradual evolution into a ruling dispensation. This Article is an attempt to discover the instances where it disregarded the limitations set out by its own charter – something that would have serious legal consequences in today’s time.⁴

CHARTER OF 1600 AS THE MEMORANDUM OF ASSOCIATION

The Royal Charter of 1600 was the Memorandum of Association (MoA) for the East India Company, closely resembling the various details that are to be now compulsorily mentioned in the MoA as per the Companies Act, 2013.⁵

The name of the company was named as *The Governor and Company of Merchants of London, Trading into the East-Indies*,⁶ objects outlined as primarily related to trade⁷, and the governor was given the power to hold court in any place as convenient.⁸ The charter was the result of the petition made to Queen Elizabeth by a merchant Sir Thomas Smythe, who raised 30, 133 pounds from the subscriptions made by an assorted group of merchants.⁹

² Avtar Singh, *Company Law* 3 (2016).

³ John Shaw, *Charters Relating to the East India Company from 1600 to 1761* ix (1887).

⁴ Tax Guru, Violation of Main Object Clause of MOA—MCA Imposes 3 Lakh Penalty, https://taxguru.in/company-law/violation-main-object-clause-moa-mca-imposes-3-lakh-penalty.html#google_vignette (last visited Nov. 22, 2024).

⁵ *The Companies Act*, 2013, § 4 (India).

⁶ Shaw, *supra* note 3, at 2.

⁷ *Id.*

⁸ Shaw, *supra* note 3, at 7.

⁹ William Dalrymple, *The Anarchy* 2 (2019).

Section 9¹⁰ of Companies Act that covers the effects of registration of a company state that from the date specified in the certificate of incorporation, the subscribers to the memorandum, along with any future members who join the company, form a corporate entity. This entity operates under the name stated in the memorandum and possesses all powers granted to an incorporated company under this Act. It has perpetual existence and the authority to acquire, hold, and transfer property, enter into contracts, and engage in legal proceedings under its official name.

Quite similar to this section is the clause in the EIC charter¹¹ that recognized it as a legal entity and a corporate body having the legal ability to purchase, receive, possess, enjoy, and retain lands, rents, privileges, liberties, jurisdictions, franchises, and hereditaments of any kind or nature, and to pass these on to their successors. Additionally, they had the power to grant, transfer, lease, sell, and dispose of lands and properties, as well as to carry out other necessary actions under their corporate name. They and their successors had the right to sue and be sued, answer and be answered, defend and be defended, in any court or before any judge, officer, or authority.

TRANSGRESSIONS OF THE MEMORANDUM OF ASSOCIATION

The object of the Company in the Charter of 1600 was as follows:

“That the Company at their own adventures, costs, and charges, For the Honour of England, Increase in Navigation, Advancement of Trade of Merchandize, might set forth on one or more voyages, with convenient number of ships and pinnaces, by way of Traffic and Merchandise into the East-Indies, in the countries and parts of Asia and Africa, and to as many of the islands, ports and cities, towns and places, thereabouts, as where trade and traffic may be by all likelihood be discovered, established or had.”

It is an acknowledged principle that the company cannot undertake activities beyond the scope of the objectives outlined in the memorandum.¹² However, the scope of activities carried out by the company soon extended beyond the conventional trade practices, to widen into a conquest for political control in India.

In 1626, the EIC established its first fortified base at Armagon on Central Coromandel Coast. In 1632, it was abandoned but yet another attempt was made two years later, to build an EIC fort at

¹⁰ *The Companies Act, 2013*, § 9 (India).

¹¹ Shaw, *supra* note 3, at 3.

¹² *Ashbury Ry. Carriage & Iron Co. v. Riche*, [1875] L.R. 7 H.L. 653 (U.K.).

Madrasapatam.¹³ These fortifications were only authorized via the charter of 1661¹⁴ and prior to that the EIC had no authority to erect them. Moreover, the license to erect fortifications, when granted, was to be ‘*within the limits and bounds of trade*’.¹⁵ This instance marks another violation of the well settled rule in Corporate Law, where the activities taken ultra vires the Memorandum of Association cannot be subsequently ratified by altering the MoA, when the act originally was not in the scope of activities allowed by the MoA.

Further, the Company was bestowed with the power to create and enforce reasonable laws, regulations, and orders that they deem necessary for the proper management of the company and its employees, such as factors, captains, and sailors. The company was also authorized to impose penalties for any violations of their rules, including fines, imprisonment, or other forms of punishment. These decisions are made by the Governor, or his deputy, together with the majority of members present at the meetings.¹⁶ The laws and penalties must be reasonable and not conflict with the existing laws or customs of the realm. The company is not required to report or account for these actions to the crown or its successors, and all regulations must be observed and enforced as stipulated; while ensuring they comply with the broader laws of the land.¹⁷ This remained unchanged even in the subsequent charters that were granted.

However, in his accounts, William Bolts describes¹⁸ how the company officials would imprison Indians and extort money from them. Weavers used to cut off their fingers so that they would not be forced into prison-like camps to weave. Justice was elusive and was rarely enforced against the EIC officials, let alone the natives. There was no one hold the officials accountable. Following the revolt of 1857, the Company was ruthless in its hunting and execution of all those involved in the attack, marking unprecedented bloodshed and horror in the history of its rule.¹⁹ The company repeatedly breached the treaties that it made with the native rulers and they faced no consequences for these violations, despite the charter explicitly mentioning that the actions of the company must be in line with the broader laws of the land. For instance, Hastings refused to pay his share of tribute to Shah Alam under the treaty of Allahabad.²⁰

¹³ Dalrymple, supra note 9, at 21.

¹⁴ Shaw, supra note 3, at 45.

¹⁵ Id.

¹⁶ Shaw, supra note 3, at 7–8.

¹⁷ A.B. Keith, *A Constitutional History of India 1600–1935* 5 (2011).

¹⁸ Dalrymple, supra note 9, at 226–27.

¹⁹ Id. at 391.

²⁰ Id. at 378.

These rules and regulations and punishments for their violations thereof, were supposed to be binding only upon the company²¹. Nowhere did the charter give any right to the company to impose their self-made laws on the indigenous people of the land, to the extent that the natives were executed at the charge of being witches.²² It was only by the Charter of 1661 that the laws made by the Company could be enforced on the people living within the territory where the company exercised its control.²³

In 1641 and 1642, the company exercised its judicial authority at the insistence of a local naik.²⁴ Where a British soldier was murdered by a Portuguese, the company exercised its jurisdiction over a non-English national and shot him dead as punishment. In 1648, two Company men were appointed as judges to preside over the local Choultry Courts that had jurisdiction over both- English nationals as well as natives.

The Company was granted six ships and six pinnaces to be sent to the East Indies- well stocked with ammunition- not to wage wars, but for defence- along with five hundred men.²⁵ However, between 1601 to 1640, the Company set out about 168 ships- out of which only 104 returned back.²⁶

Following this charter, a subsequent charter of 1609 was granted by King James I,²⁷ that more or less reiterated the contents of the previous Charter, with some minor alterations. The next major charter was granted after a long span of about 40 years in 1661, during the reign of King Charles II. In between, the Company undertook various adventures, not all of them conforming to the powers that they were originally granted.

SUBSEQUENT CHARTERS, AMENDMENTS AND LETTER PATENTS

In 1681, the directorship of the Company was handed over to Sir Josiah Child, whose provocative and aggressive disposition led to the first direct confrontation with the Mughal rulers of India.²⁸ The factors employed in the Company had begun to complain about the british behaviour of the English and the then Nawab of Bengal, Shaista Khan couldn't agree more. He wrote a letter to the Emperor Aurangzeb complaining about the same.

²¹ V.D. Kulshrestha, *Landmarks in Indian Legal and Constitutional History* 39 (2016).

²² Dalrymple, supra note 9, at 23.

²³ Ashbury Ry. Carriage, supra note 12.

²⁴ Kulshrestha, supra note 21, at 46.

²⁵ Shaw, supra note 3, at 11.

²⁶ Dalrymple, supra note 9, at 20.

²⁷ Shaw, supra note 3, at 16.

²⁸ Dalrymple, supra note 9, at 23–24.

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Incensed by these dissenting voices, Sir Josiah took the decision of confronting the Mughal authority with '19 warships, 200 canons and 600 soldiers. They stood no chance against the Mughal Army that was in its prime, after the conquest of two Sultans in the Deccan and had to suffer a humiliating and excruciating defeat at their hands.

This attempt to wage war with the Mughals was another glaring violation of the charters that were granted to the EIC. It was only in 1683 that the Company was given the right to engage in war or make peace with nations.²⁹

Prior to these, the Charters had only granted the Company to maintain forces at their disposal for the purpose of defending themselves from invaders and other hostilities. The initiation of active hostilities by the Company marked a grave violation of the powers that were outlined and nearly equated the authority of the Company with that of the Sovereign. This was enough grounds to have the charter rescinded. However, that did not happen. The company by the late 17 Century had become an indispensable source of trade for England. Instead, the Royal Charter of 1683 gave the Company the authority it did not have in 1681, while waging the first armed conflict against the Mughals. An interesting point to note is that the Charter of 1677³⁰ pardoned the Company for all offences committed prior to 16th September, 1676. A strong case could have been made against the company for violation of its authority after the date of the pardon period, had the Crown been invested in monitoring its activities.

The Charters granted required that each and every profit made and presents received during the course of its business in India, must be included in the general account of country, thereby warning against accumulation of private profits.³¹ But following the Battle of Plassey in 1757 in Bengal, and even before that when the region was under the control of the EIC, Governor General Robert Clive and many officials of the Company, filled their pockets with whatever they could loot from the state.³²

The East India Company (EIC) officials in Bengal, particularly Robert Clive and his associates, disregarded the cautious directives from London,³³ which emphasized only defending British trading interests against the French. Instead, they saw an opportunity to expand both British influence and their personal wealth by meddling in local politics.

²⁹ Shaw, *supra* note 3, at 71.

³⁰ *Id.* at 66.

³¹ Keith, *supra* note 17.

³² Dalrymple, *supra* note 9, at xxviii.

³³ *Id.* at 120–21.

Siraj-ud-Daula's opposition to the British—stemming from their misuse of trading privileges and unauthorized fortifications in Calcutta—became a convenient justification for their intervention. A secret committee of senior EIC officials devised a plan to overthrow him, forging alliances with dissatisfied local elites, most notably Mir Jafar, who was promised the throne in return for his cooperation.

To gain approval from their superiors, the conspirators framed their actions as necessary to eliminate French influence in Bengal. However, their true motives were economic political expansion apart from personal enrichment. The British victory at Plassey in 1757 not only installed Mir Jafar as a puppet ruler but also marked the beginning of direct British control in India, paving the way for colonial rule.

Edmund Burke, writing in *The Annual Register*, speculated that the general could amass a fortune of approximately £1,200,000, while his wife possessed a casket of jewels valued at around £200,000, equivalent to £126 million and £21 million respectively in today's times.³⁴

FROM TRADE TO CONQUEST

As stated above, the charter of 1600 established the company and outlined the ambit within which it was to function, i.e., the objectives of the company clearly stated that the activities of the company were to be limited for the purpose of trade and not for acquisition of territories.

³⁵Ilbert stated it as the 'germ out of which the Anglo-Indian Codes were ultimately developed'.

The subsequent charters that were issued, first and foremost, reiterated the previous charters.

Despite the subsequent charters granting a wide array of powers to the company, the fact remains that the primary object of the company was always commerce and that was never changed or altered by the subsequent charters. But, in the present case, as Dalrymple succinctly puts it, "A trading corporation had become both colonial proprietor and corporate state, legally free to do everything that governments do- control law, administer justice, assess taxes, mint coins, provide protection and impose punishments, make peace or wage war".

While the activities undertaken by the Company may be well defended by the argument that they did indeed augment the profits and revenue of the company, and in turn of the British Government. But the intention behind the activities of the company, after a certain point, was diverted to the territorial conquest of India. This conquest was not solely for trade, but to gain

³⁴ Id. at 140.

³⁵ Kulshrestha, supra note 21.

actual 'sovereign 'control over the territories annexed. Trade had become incidental and governance occupied that foremost place in the list of priorities.

THE REGULATING ACT

The first attempt at regulating the Company and holding it accountable for its actions was attempted through the Regulating Act of 1773. The act tried to bring the company under the lens of the parliament. The catalyst for this was the financial crisis of 1772, when several banking houses went bankrupt and stopped paying depositors and creditors. These banks had made large investments in the company stock and their closure led to loss of credit for the company, causing need for an immediate bailout. However, the prior transgressions of the company were left unpunished and unaccounted for.³⁶

CONCLUSION

The East India Company is a classic example of how a commercial organization, constituted with the aim of advancing trade of the realm, gradually turned into a government, surpassing the original intent for which it was established. The provisions of the Charters were disregarded when it suited the EIC and there was no enforcement mechanism to ensure that they could be held accountable for their actions. Dalrymple's work provides a comprehensive outline of the events that ultimately established the Company as a sovereign power. Although the early charters clearly outlined limitations, the East India Company's expanding ambitions faced minimal opposition from the Crown, largely due to the substantial profits it brought to England. As the Company became involved in military conflicts and political manoeuvring, it metamorphosed into a quasi-governmental entity within India, having its own legal framework, armed forces, and the power to levy taxes and govern.

The rise of the East India Company marks a significant and irreversible shift in corporate governance, illustrating the complex relationship between business, law, and colonial power. Its transformation from a trade organization into an imperial power underscore the risks of unchecked corporate influence, serving as a warning about the consequences when a company's activities extend beyond its original scope and the authorities refrain from demanding accountability. In today's legal environment, the Company's actions would undoubtedly face

³⁶ Dalrymple, supra note 9, at 230–33.

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intense scrutiny and legal repercussions, emphasizing the evolution of corporate law and the increased accountability now required of business entities.

