CONSTRUCTIVE NOTICE IN INDIAN COMPANY LAW: WHY DIGITAL ACCESS DOES NOT JUSTIFY IMPUTED KNOWLEDGE

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ABSTRACT

The doctrine of constructive notice presumes that every person dealing with a company has read and understood its registered constitutional documents. This essay argues that the doctrine's contemporary justification is weaker than commonly assumed, and that the digitisation of filings under the Ministry of Corporate Affairs (MCA) portal does not repair, and may in fact aggravate, that weakness. Section 399 of the Companies Act, 2013 creates a mechanism for inspecting and certifying documents kept by the Registrar; it does not itself declare that every counterparty has actually read, understood, and internalised those documents. Treating technological availability as legal comprehension is a distinct normative step that Indian courts have not squarely defended. Drawing on Kotla Venkataswamy, Anand Bihari Lal, Lakshmi Ratan Cotton Mills, and Mahony v. East Holyford Mining Co., alongside the United Kingdom's abolition of constructive notice under Section 40 of the Companies Act, 2006, this essay contends that Indian law should shift the operative question from technical availability to reasonable reliance. It proposes a narrow statutory safe harbour for good-faith counterparties, anchored to a "Verified Reliance Certificate" that supplies transaction-specific assurance in place of the diffuse, unfalsifiable presumption that currently does the doctrinal work.

I. Introduction

Every company incorporated under the Companies Act, 2013 is required to file its Memorandum and Articles of Association with the Registrar of Companies, and Section 399 permits any person to inspect those filings electronically and to obtain certified copies on payment of a fee.[1] From this modest evidentiary provision, Indian company law has long derived a much larger proposition, that any person dealing with a company is conclusively presumed to have read, understood, and acted upon knowledge of everything contained in its constitutional documents.[2] This is the doctrine of constructive notice, inherited from nineteenth-century English decisions such as *Oakbank Oil Co. v. Crum*[3] and transplanted into Indian jurisprudence largely through academic restatement rather than direct statutory command.

The argument advanced here is narrower than a general survey of constructive notice and indoor management would suggest, and deliberately so. It is that the inferential leap from "the document was inspectable" to "the counterparty is deemed to know its contents" is doing far more work than Section 399 can bear, and that this leap has become harder, not easier, to defend as filings have moved onto the MCA21 portal. Digitisation increases *access*; it does not increase *comprehension*, and it does nothing to address the volume, technicality, or opacity of what a diligent search would actually reveal. A counterparty who can retrieve a company's Articles of Association in ninety seconds is not thereby placed in a meaningfully better position to detect an internal borrowing limit, a director's authority ceiling, or a special resolution requirement buried in a decades-old amendment.

This essay proceeds in four stages. First, it separates the doctrinal territory of constructive notice, which concerns public, constitutional limitations on a company's or its officers' powers, from the doctrinal territory of indoor management, which concerns undisclosed compliance with internal procedure.[4] Second, it re-examines the leading Indian authorities to identify precisely what each one held, rejecting the tendency in student literature to cite them as general fairness slogans. Third, it uses the United Kingdom's Section 40 of the Companies Act, 2006 as a narrow comparator, not as a model to import wholesale, but as evidence that a mature

[1] The Companies Act, No. 18 of 2013, § 399, INDIA CODE (2013).
[2] See Rohan Aryan Srivastava, *The Doctrine of Constructive Notice and Indoor Management, A Critical Analysis*, 3 JUS CORPUS L.J. 856, 858 (2022).
[3] Oakbank Oil Co. v. Crum, (1882) 8 App. Cas. 65 (H.L.) (appeal taken from Scot).
[4] See Palmer's Company Law ¶ 3.017 (Geoffrey Morse ed., 25th ed. 1992).

common law jurisdiction has already concluded that constructive notice, in its constitutional-limitation form, is not worth preserving. Finally, it proposes a limited statutory safe harbour built around a transaction-specific verification mechanism, rather than the blanket abolition the UK adopted or the blanket presumption India currently retains.

II. The Doctrinal Boundary, Constitutional Limits and Undisclosed Procedure

The two doctrines are frequently discussed together, and are frequently confused as a result. Constructive notice operates at the level of a company's *external, filed* constitution, the Memorandum and Articles, and fixes an outsider with presumed knowledge of any limitation on corporate or director capacity that those documents disclose.[5] If the Articles require a special resolution before the company can borrow above a stated threshold, or specify that a deed is valid only if executed by particular named officers, the outsider is deemed to know that limitation because it is, in principle, public.

Indoor management addresses a different problem entirely, whether a particular internal step, a board resolution, a due appointment, a quorum, was actually taken.[6] The rule in *Royal British Bank v. Turquand*[7] holds that an outsider dealing in good faith need not verify that internal procedural steps, which the constitution empowers the company to take through ordinary internal process, were in fact regularly completed. The company's capacity to act is not in question; only the regularity of the internal act that exercises an existing power is in question.

The boundary matters because the two doctrines pull in opposite directions and cannot both be stretched to cover the same fact pattern without contradiction. If a transaction is void because the Articles never conferred the relevant power at all, indoor management cannot resurrect it, the rule "presumes the regularity of acts within the scope of an apparent authority" and does not "create an authority which does not exist."[8] This is precisely the distinction drawn in *Rama Corporation v. Proved Tin & General Investment Co.*, where the Turquand rule was held inapplicable because the individual purporting to bind the company had no authority of any kind to do so, there was nothing irregular for the rule to excuse, because there was no underlying power to begin with.[9] Constructive notice tells an outsider what a company or its

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[5] *Id.* ¶ 3.019
[6] Royal British Bank v. Turquand, (1856) 6 E. & B. 327, 119 Eng. Rep. 886 (Exch. Ch.).
[7] *Id.* at 332.
[8] Rama Corp. v. Proved Tin & Gen. Inv. Co., [1952] 2 Q.B. 147, 149–50 (Slade J.).
[9] *Id.*

officers can never do; indoor management tells an outsider that it need not chase down whether an available power was exercised through the correct internal channel on a given day.

III. The Indian Position and Its Limits

Indian courts have applied both doctrines with reasonable fidelity to this boundary, even where secondary literature blurs it. *Kotla Venkataswamy v. Chinta Ramamurthy*[10] is the clearest Indian illustration of constructive notice operating on its own proper terrain. The company's Articles required that instruments such as mortgage deeds be executed by the managing director, the working director, and the secretary jointly; the deed in question was executed by only two of the three required signatories. The Madras High Court held the deed invalid, reasoning that the Articles were a public document and the plaintiff was bound to know, and to verify, that the prescribed mode of execution had been followed.[11] The case does not turn on any assessment of the plaintiff's diligence in the abstract; it turns on the fact that the Articles disclosed an execution formality that went to the very existence of authority to execute the deed, not to an undisclosed internal step behind an otherwise valid authority.

Anand Bihari Lal v. Dinshaw & Co.[12] is commonly cited for the "suspicious circumstances" limitation on indoor management, an outsider dealing with a company's officer in circumstances that would put a reasonable person on inquiry cannot later claim the benefit of assumed regularity. Correctly read, the case does not add a new doctrine so much as confirm that the Turquand rule is a presumption of good faith reliance, not a shield for wilful blindness. It has no bearing on constructive notice as such, and should not be cited interchangeably with *Kotla Venkataswamy* as though the two decisions establish the same proposition.

Lakshmi Ratan Cotton Mills Co. Ltd. v. J.K. Jute Mills Co. Ltd.[13] is properly an indoor management case, not a constructive notice case, despite frequent conflation of the two in student writing. The company's Articles empowered its directors to borrow and to delegate that borrowing power to an individual director; no board resolution recording the actual delegation could be produced. The Allahabad High Court held that where a power exists under the Articles and could lawfully have been delegated, the creditor was entitled to assume that the delegation

[10] Kotla Venkataswamy v. Chinta Ramamurthy, A.I.R. 1934 Mad. 579.
[11] *Id.* at 581.
[12] Anand Behari Lal v. Dinshaw & Co., (1946) 48 Bom. L.R. 293 (P.C.); *see also* A.I.R. 1946 P.C. 24.
[13] Lakshmi Ratan Cotton Mills Co. v. J.K. Jute Mills Co., A.I.R. 1957 All. 311.

had, in fact, occurred, and was not required to demand production of the resolution itself.[14] The holding illustrates indoor management precisely, the power to borrow was never in doubt; only the internal act of delegating it was undisclosed, and the outsider was not expected to police that internal step.

Mahony v. East Holyford Mining Co.[15] extends the same logic to the appointment of officers. The company's Articles specified that cheques required signature by the secretary and two directors; the individuals who signed as directors had never been validly appointed. The House of Lords held the bank entitled to rely on the cheques because the Articles disclosed a procedure for appointing directors that the bank could not be expected to verify had been followed in every particular; the irregularity was internal, not constitutional.[16]

What unites these four cases is that none of them supports the proposition that Section 399's inspection mechanism, standing alone, converts technical availability into actual comprehension. Each decision turns on a specific, narrow finding about what the Articles disclosed and what remained internal, not on a generalised judicial endorsement of a "read and understood" fiction. The fiction survives in doctrine chiefly because it has rarely been tested against the practical realities of document volume and complexity that digitisation has made undeniable.

IV. The Digital Disclosure Critique

The strongest intuitive objection to the argument advanced here is that digitisation should strengthen, not weaken, the case for constructive notice, if a company's constitutional documents are one search away on the MCA21 portal, surely the presumption of knowledge is more justified than when a physical inspection at the Registrar's office in Kolkata or Mumbai was the only route to the same information. This objection mistakes access for comprehension.

Four distinct frictions survive digitisation and, in some respects, are worsened by it. First, information asymmetry persists because availability does not equalise the capacity to interpret what is found, a retail lender or small vendor can retrieve a company's Articles as easily as a bank's in-house counsel, but the two parties do not extract the same legal meaning from a

[14] *Id.* at 314.
[15] Mahony v. East Holyford Mining Co., (1875) L.R. 7 H.L. 869.
[16] *Id.* at 894 (Lord Hatherley).

clause restricting borrowing powers or delegating authority to a committee.[17] Second, document complexity has, if anything, increased with amendments, board resolutions filed as attachments, and cross-references across multiple e-forms (MGT-14, SH-7, and others), such that a "complete" reading of a company's constitutional position may require assembling and reconciling several distinct filings rather than reading one static document. Third, authority-risk is untouched by digitisation, knowing that the Articles permit delegation of a power says nothing about whether delegation to the individual actually negotiating a transaction occurred, and no volume of searchable filings resolves that question, because the delegating resolution is frequently not filed at all unless a specific event (such as a charge or an allotment) triggers a filing obligation. Fourth, fraud-risk and forgery-risk are, if anything, aggravated by an environment where counterparties are told that everything material is "available," because that expectation discourages the kind of face-to-face verification, inspecting an original board minute book, demanding a certified extract for the specific transaction, that historically supplemented public filing.

Section 399 itself supports this more modest reading. It grants a right to inspect "any documents kept by the Registrar" and a right to obtain certified copies, and it makes such certified copies admissible as evidence "of equal validity with the original document."[18] Nothing in the text creates a substantive rule that a counterparty who exercises that right, or who could have exercised it, is thereby fixed with actual legal comprehension of the document's operative effect on a given transaction. Section 399 is an evidentiary and access provision; the "read and understood" fiction of constructive notice is a separate, judicially generated overlay that predates the 2013 Act by over a century and has simply been re-anchored to it. Describing Section 399 as having "codified" constructive notice, as some literature does, overstates the provision; the more defensible description is that Section 399 supplies the statutory infrastructure of public inspection with which the older common law presumption has come to be associated.[19]

V. The Comparative Lesson, Section 40 of the UK Companies Act, 2006

The United Kingdom has already worked through this problem and reached a considered

[17] John Armour et al., *Principles of Financial Regulation* 112–15 (2016) (on the limits of disclosure-based regulation to cure information asymmetry).
[18] The Companies Act, No. 18 of 2013, § 399(3), INDIA CODE (2013).
[19] *Cf.* Companies Act, § 399 (providing an inspection-and-certification mechanism, not a substantive comprehension rule).

legislative answer that India has not. Section 40(1) of the Companies Act, 2006 provides that, in favour of a person dealing with a company in good faith, the power of the directors to bind the company, or to authorise others to do so, "is deemed to be free of any limitation under the company's constitution."[20] Section 40(2) goes further, such a person is not bound to enquire as to any limitation on directors' powers, is presumed to have acted in good faith unless the contrary is proved, and is not to be treated as acting in bad faith merely because he or she knew that an act was beyond the directors' constitutional powers.[21] This provision restates and consolidates what had earlier been Sections 35A and 35B of the Companies Act, 1985.[22]

The significance of Section 40 for this essay's argument is narrow and should not be overstated. It does not abolish constructive notice as a general evidentiary matter, and it does not license reliance on forged documents or transactions the counterparty actually knows to be unauthorised. What it does is legislatively displace the *constitutional-limitation* strand of constructive notice, the strand that concerns whether the directors had the power to bind the company at all, in favour of a good-faith presumption that operates unless actual bad faith is proved. The United Kingdom concluded, after decades of litigation over the outer edges of the pre-2006 doctrine, that requiring outsiders to investigate a company's constitution before every transaction imposed transaction costs disproportionate to the harm the doctrine was meant to prevent, and that the residual risk of genuinely unauthorised dealing was better managed through good-faith and knowledge-based exceptions than through a blanket presumption of comprehension.[23]

India's Section 399 has not made, and does not purport to make, the same legislative choice. It leaves the "read and understood" presumption to judicial elaboration, with the result that Indian law retains the harshest form of constructive notice, presumed comprehension of constitutional limitations, without the accompanying legislative safety valve that the United Kingdom built in. The comparative lesson is therefore not that India should adopt Section 40 wholesale, but that a legislature can and should decide explicitly where the risk of an undisclosed constitutional limitation ought to fall, rather than leaving that allocation to an inherited

[20] Companies Act 2006, c. 46, § 40(1) (UK).
[21] *Id.* § 40(2).
[22] Companies Act 2006, c. 46, Explanatory Notes ¶ 125 (UK) (noting that § 40 restates §§ 35A–35B of the Companies Act 1985).
[23] See Paul L. Davies & Sarah Worthington, Gower's Principles of Modern Company Law 143–47 (10th ed. 2016).

nineteenth-century fiction re-badged as a consequence of digital filing.

VI. A Narrow Reform, The Verified Reliance Certificate

Wholesale abolition, on the UK model, is not proposed here, because Indian corporate ownership structures, promoter-controlled boards, and a comparatively thinner enforcement architecture around director accountability counsel against removing constitutional-limitation protection altogether. Instead, this essay proposes a narrower, transaction-specific safe harbour built around a Verified Reliance Certificate ("VRC").

Issuer. The VRC should be issued not by the company itself, but by the company's Registrar, functioning through the existing MCA21 infrastructure, or by a category of professionals already subject to statutory liability for false certification, company secretaries in practice, in a manner analogous to their existing certification role under Section 92 annual return filings.[24] Self-certification by the company defeats the purpose, since the entire problem is that a counterparty cannot verify the company's own assurances about its internal authority.

What it verifies. Unlike a Section 399 certified copy, which merely confirms that a document was filed and matches the Registrar's record, the VRC would certify a specific, named transaction, that a particular officer or director held authority, as at the date of the certificate, to enter into a transaction of the kind and value described, by cross-referencing the current Articles, any registered charge or resolution filings, and the company's latest annual return. A certified copy under Section 399 answers "does this document exist and say this?", a VRC answers "as of today, does this specific person have authority to do this specific thing?", a materially different and more useful question for a counterparty about to lend money or accept a guarantee.

Evidentiary status. A VRC obtained and relied upon in good faith should carry a statutory presumption of due authority in favour of the relying party, rebuttable only on proof of forgery, actual knowledge of falsity, or collusion. This converts an inherently uncertain common law presumption (that the counterparty "read and understood" the constitution) into a certifiable, transaction-specific fact.

[24] The Companies Act, No. 18 of 2013, § 92, INDIA CODE (2013) (annual return certification by a company secretary in practice).

Confidentiality. Because a VRC would necessarily disclose more granular information than the Articles alone, potentially including specific delegation resolutions, the certifying body should be required to redact commercially sensitive details unrelated to the authority question and should not become a general audit mechanism into a company's internal affairs.

Liability for false certification. The certifying professional or Registrar official should be subject to the same order of civil and, in cases of deliberate misstatement, criminal liability that already attaches to false certification under Sections 448 and 449 of the Companies Act, 2013, ensuring the certificate's reliability is backed by a credible sanction rather than moral suasion alone.

Why Section 399 is insufficient on its own. A Section 399 certified copy is static and general, it proves a document's content at the time of certification but says nothing about whether the authority it describes has since been revoked, exercised, or superseded, and it certainly says nothing about whether a particular individual currently holds delegated authority for a particular transaction. The VRC closes precisely that gap, without displacing Section 399, which would continue to serve its more general evidentiary function.

VII. Conclusion

The appropriate modern question is not whether a company's constitutional documents were technically available to a counterparty through the MCA21 portal, but whether that counterparty reasonably relied on what appeared, at the time, to be an authorised corporate act. Section 399 of the Companies Act, 2013 answers a narrower question than Indian company law has often assumed, it tells us that documents can be inspected and certified, not that inspection equals comprehension, and not that comprehension equals verified authority for a specific transaction. The Indian judicial record, properly read through *Kotla Venkataswamy*, *Anand Bihari Lal*, *Lakshmi Ratan Cotton Mills*, and *Mahony*, supports a considerably narrower doctrine of constructive notice than the "read and understood" fiction commonly recited, one confined to disclosed constitutional limitations on capacity and kept carefully apart from indoor management's separate concern with undisclosed procedural regularity. Digitisation has not closed this gap; if anything, it has made the fiction harder to defend, because it removes the practical excuse of physical inconvenience while leaving every substantive friction, asymmetry, complexity, authority-risk, and fraud-risk, fully intact. A narrow, transaction-specific safe harbour, built around a Verified Reliance Certificate rather than a blanket presumption or a wholesale UK-style abolition, offers a more defensible answer than either extreme, it asks counterparties to demonstrate reasonable reliance on verified authority, rather than asking courts to keep pretending that access is the same thing as knowledge.