

# Extraordinary Power of the Supreme Court: Curative Petition

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“Error is not a fault of our knowledge, but a mistake of our judgment giving assent to that which is not true”-

Locke

## **Abstract:**

Curative Petition is viewed as the ‘last remedy in the court of last resort’ and the concept has been evolved following the Doctrine of Ex Debitio Justitiae, i.e., the requirement of justice must be fulfilled and Actus Curiae Neminem Gravabit meaning the act of court cannot prejudice anyone. But there is a conflicting principle that restricts the application of curative petition like Interest Reipublicae Ut Sit Finis Litem that fosters the attainment of finality of judgment in order to settle the lis between the parties and manifest certainty of rights and liabilities.

## **INTRODUCTION:**

A "curative petition" is a legal remedy available in certain jurisdictions, including India that allows for the review of a final judgment or order passed by the Supreme Court, which is otherwise considered final and conclusive. It is considered as the last judicial remedy available to a petitioner after all other legal remedies have been exhausted.

## **MEANING OF CURATIVE PETITION:**

A Curative petition is petition which is way to request the court to review or to revise of its own judgment even after a review petition is dismissed or has been exhausted. This petition must have been filed within 30 days of the judgment or order<sup>1</sup>. Within its extraordinary power the court has entertained this petition.

There is a Latin Maxim used by the court “*Actus Curiae Neminem Gravabit*” which means that an act of the court will be prejudiced to no one. The court should pass an order that the interest of none of the parties is harmed. The maxim becomes applicable when the court is under an obligation to undo a wrong done to a party by the act of court itself.

## **OBJECTIVES OF CURATIVE PETITION:**

1. Avoid miscarriage of Justice: it means to avoid any injustice.
2. To prevent abuse of process: it means to intend to stop misuse of the process.

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<sup>1</sup> Article 137 of the Indian Constitution

### **EVOLUTION OF CURATIVE PETITION:**

There is a lot of deliberation before the Apex court regarding the question of finality of the judgment. Is the principle of finality of decisions rendered by the Supreme Court should prevail or not. Curative petition is the last constitutional remedy available to a person whose review petition has been dismissed by the Supreme Court. Though the Constitution explicitly speaks about the review power of the Supreme Court under Article 137, it is silent about 'curative power'. The curative petition was given shape and form in the Indian Jurisprudence in the case of *Rupa Ashok Hurra v. Ashok Hurra*<sup>2</sup>, the matrimonial dispute between Ashok Hurra and his wife. The wife filed a petition for divorce, which was granted by the court. Subsequently, Ashok Hurra filed a review petition challenging the divorce decree, which was dismissed by the Supreme Court. After the discharge of the review petition, a question arose as to whether an aggrieved party is entitled to give any relief against the concluding order of the Apex court. Further Supreme Court said that to prevent and cure a miscarriage of justice. It is necessary to reconsider its judgements in exercise of its inherent powers<sup>3</sup>.

### **CONSTITUTIONAL PROVISIONS BEHIND CURATIVE PETITION**

Curative Petition is also supported by Article 137 of the Indian Constitution. A curative petition is needed to provide a final recourse of correcting any errors in judgement where technical difficulties or other apprehensions over reopening a case prevents from reviewing judgements.

### **GROUND FOR FILING:**

- A curative petition can be filed on limited grounds, typically including:
- Violation of principles of natural justice.
- Discovery of new and important evidence that was not available during the original proceedings.
- Allegation of bias or malafide against a judge who participated in the decision.
- Precedent error that is grave and fundamental.

### **CONDITIONS FOR CURATIVE PETITION:**

The Supreme Court has established the following conditions to consider curative petitions:

- A curative petition may be filed after a review plea against the final conviction is dismissed.
- After a review plea against the final conviction is rejected, a curative petition may be submitted.
- If the petitioner can show that the rules of natural justice were broken and that the court failed to hear him before making a decision, the case may be considered.
- It must be unusual rather than common.
- A curative petition must first be distributed to a Bench of the three senior-most judges plus, if available, the judges who rendered the relevant ruling.
- The subject shouldn't be scheduled before the same Bench unless it requires a hearing in the opinion of the majority of the judges.
- The Bench may, at any time during its examination of the curative petition, request the services of a senior lawyer to serve as an amicus curiae. (Friend of the court).

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<sup>2</sup> AIR 2002 SCC 388

<sup>3</sup> Article 142: This article in the Constitution of India states that the Supreme Court of India will have the power to pass any decree or order to get complete justice and such order will be enforceable through the territory of India

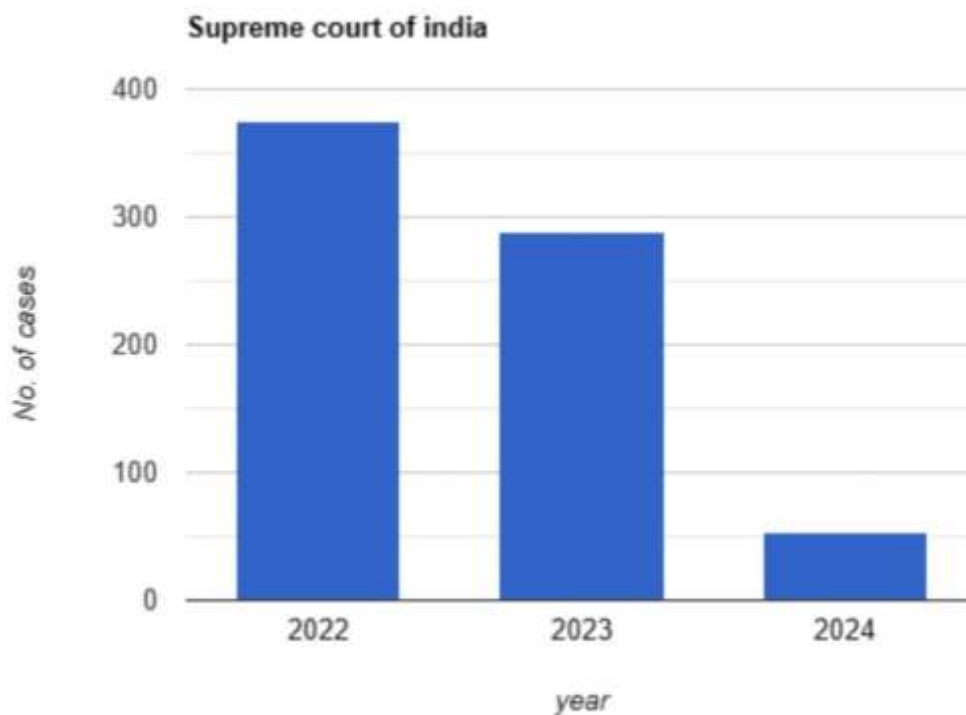
- A curative petition is usually decided by judges in the chamber unless a typical request for an open-court hearing is permitted.

**GROUND FOR REJECTION:**

The ground for rejection of the petition is that if the petition is without any merit, it may impose a penalty on the petitioner.

**CURATIVE PETITION BEFORE THE APEX COURT:** The following table depicted the number of cases handled by the Supreme Court of India.

S.No	High Court	2022	2023	2024
1	Supreme court of India	375	289	54



**JUDICIAL VERDICT ON CURATIVE PETITION:**

Rupa Ashok Hurra v. Ashok Hurra & Anr<sup>4</sup>: The case is relating to matrimonial discord between husband and wife who have been separated for a period of years. The case reached the Supreme Court because the women withdrew her consent which was given through divorce with mutual consent. The question of validity of decree of divorce was contested by the parties. In this case , substantial question of law arose and it was that if an aggrieved person is entitled to any relief against a final judgment or order of the Supreme Court, after dismissal of Review Petition, either under Article 32 or otherwise.

<sup>4</sup> SC2002

A 5-Judge Constitution Bench<sup>5</sup> recognised new dimension of justice delivery system in India such as ‘Curative Petitions’ as a final remedy to reconsider dismissed review petitions. In case of violation of principles of natural justice, or question of bias against the presiding judge or abuse of the court process the curative petition could be entertained by the court using its inherent power. An exhaustive list of grounds could not be enumerated due to the impossibility of foreseeing all possible circumstances. However, the court imposed several conditions that are to be followed while moving a curative petition.

Firstly, the grounds stated in the curative petition must have been mentioned in the review petition. Secondly, the petition must be certified by a senior advocate declaring that all requirements have been fulfilled. Thirdly, exemplary costs may be imposed on the petitioner by the court, if it is found that the case is vexatious and without merit. Lastly, the petition has to be circulated to a bench of three senior most judges and the judges who passed the judgment in question. If a majority of the judges conclude that the matter needs to be heard, it should be listed before the same bench as far as possible.

In the case of *Union of India v Union Carbide*<sup>6</sup>; in 2010, the Union Govt. had filed a curative petition seeking additional compensation for the victims of the Bhopal Gas Tragedy. In 2023, a 5-Judge Bench led by Justice S K Kaul decline to entertain the petition and bench narrowed the scope of the curative jurisdiction and emphasised that the previously decided compensation was adequate. The Bench held that a curative petition can be entertained when there is a ‘gross miscarriage of justice’, fraud or suppression of material facts. The Union did not justify the petition on either of these grounds. The Bench viewed that allowing this curative petition would open a ‘Pandora box’ ‘stating—”*We find it difficult to accept that this Court can devise a curative jurisdiction that is expansive in character*”.

*Akshay Kumar Singh V/S State(NCT of Delhi)*<sup>7</sup>: After a brief hearing on the review petition filed by Akshay Kumar Singh, one of the convicts in the brutal December 16, 2012, Nirbhaya gang-rape and murder case, seeking modification and leniency, the 3-judge bench of R Banumathi, Ashok Bhushan and AS Bopanna, JJ has rejected the review petition and said, “We do not find any error apparent on the face of the record in the appreciation of evidence or the findings of the judgment dated 05.05.2017. None of the grounds raised in the review petition call for review of the judgment hence it’s dismissed.

*Delhi Metro Rail Corporation Ltd. v Delhi Airport Metro Express Pvt. Ltd. (“DMRC”)*<sup>8</sup>: The supreme court of India has used its extraordinary powers to set aside its own judgment of 2021 and relieve the Delhi Metro Rail Corporation of an exorbitant burden of Rs7,687 core in a dispute with a former concessionaire. The verdict vindicates the existence of the court’s curative jurisdiction on the one hand and flags on the other a possible conflict between finality in litigation and the need for substantive justice. In this case, an arbitral tribunal had ruled in 2017 in favour of Delhi Airport Metro express private Ltd( DAMEPL), which got the contract to construct, maintain and operate the line from New Delhi railway station to Delhi airport. DAMEPL had invoked the termination clause in its agreement in October 2012, citing the DMRC’s alleged failure to cure some defects. While the DMRC invoked the arbitration clause. DAMEPL halted operations in June 2013 and handed over the line to the DMRC. Meanwhile based on a joint application, the commissioner of Metro Rail safety issued a certificate of

<sup>5</sup> Justice S.P. Bharucha, and his companion justices, Justice S.M. Qadri, Justice U.C. Banerjee, Justice S.N. Variava and Justice S.V. Patil.

<sup>6</sup> AIR 248, 1991 SCR SUPL. (1) 251

<sup>7</sup> 2019 SCC OnLine SC 1653, decided on 18.12.2019.

<sup>8</sup> 2024 SCC online SC 522.

safety that helped revive the metro's operations. On appeal, a single judge of the Delhi high court upheld the arbitration award against DMRC, but a Division bench set it aside, holding that the award suffered from perversity and patent illegality. In 2021, a two judge bench of the Supreme Court restored the award, reversing the High court bench's findings in favour of the DMRC. A review petition was also rejected.

A curative petition is an extraordinary remedy, as it is filed after the apex court refuses to review its judgment. There are only two main grounds for entertaining such a petition; to prevent abuse of process and to prevent gross miscarriage of justice, although it is not possible to enumerate all the circumstances that warrant it. It is founded on the principle that the court's concern for justice is no less important than the principle of finality. Under India's arbitration law, an award can be sent aside only on limited grounds. It is normally inexpedient for arbitration issues to have many levels of litigation. In this case there was a statutory appeal to the High court, and appeals to a bench, the apex court a review petition and a curative petition. In the ultimate analysis, the DMRC case appears to have been rightly decided as the earlier two judge bench was ruled to have erred in setting aside the Delhi High court Bench's view that the CMRS certificate was a vital piece of evidence. The outcome only underscores the importance of arbitrators and judges sitting on appeal over awards getting both fact and law right, lest commercial litigants be discouraged from arbitration due to the constant stretching of the idea of finality. Not all disputants can go up to the level of a curative petition.

## CONCLUSION

A curative petition is a new concept and judicial innovation in the Indian legal system. It is considered as the last and final resort. But if talking about the context of justice like in the Nirbhaya case it gives a drop back for the judges to give the judgment on time. There are so many loopholes in our legal system. It gives a way to escape a criminal from the punishment.

The hearing request is considered as uncommon instead of standard. It tends to be useful for those if the solicitor builds up that there was an infringement of standards of common equity and that he was not heard by the court prior to passing a request.