

OVERARCHING CURATIVE JURISDICTION OF THE SUPREME COURT OF INDIA

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ABSTRACT

This research paper provides an insightful exploration of curative jurisdiction, a rare and extraordinary judicial mechanism formulated by the Supreme Court of India aimed at rectifying gross miscarriages of justice. Rooted in the Supreme Court's decision in **Rupa Ashok Hurra v. Ashok Hurra & Anr.**⁹³⁸, the curative jurisdiction framework safeguards the principles of natural justice when conventional remedies fail. The analysis navigates through procedural requirements, foundational principles, and the application of curative powers in various landmark cases, with a particular focus on the recent decision of Supreme Court in **Delhi Metro Rail Corporation Ltd. vs. Delhi Airport Metro Express Pvt. Ltd.**⁹³⁹. This case illustrates a nuanced shift, as the Supreme Court addressed procedural lapses and misinterpretations in its earlier judgment, allowing the curative petition in a commercial dispute—a rare move that raises critical questions about the boundaries of judicial intervention, the finality of judgments, and the sanctity of arbitration awards. Through a balanced critique, this research paper reflects on the evolving dynamics of curative jurisdiction, emphasizing the need for judicial restraint and consistent standards to preserve its credibility and prevent misuse.

Keywords: Curative Jurisdiction, Supreme Court of India, Miscarriage of Justice, Finality of Judgments, Judicial Accountability, Judicial Intervention, Commercial Law.

GRASP - EDUCATE - EVOLVE

⁹³⁸ (2002) 4 SCC 388

⁹³⁹ (2024) 6 SCC 357

1. Introduction

By virtue of Article 124 of the Constitution of India, the Supreme Court of India was established. Ever since its establishment, the Supreme Court has continually evolved in the pursuit of meeting the demands of justice. Central to this evolution is the concept of Curative Jurisdiction, a unique power which the Supreme Court of India has itself formulated to rectify gross injustices in its own final decisions. While finality of judgments is a hallmark of judicial systems worldwide, the curative jurisdiction of the Supreme Court serves as an exceptional remedy to address judicial errors that violate principles of justice.

Several powers have been bestowed to the Supreme Court of India under Chapter IV – Part V of the Constitution of India, however, the Curative jurisdiction was formally introduced by a bench of five judges of Supreme Court in **Rupa Ashok Hurra** case (supra), providing a last resort to those who have exhausted all other judicial remedies. This paper seeks to explore the historical development, procedural requirements, key case laws, implications, and criticisms of the curative jurisdiction, emphasizing its critical role in ensuring justice within a dynamic legal framework.

2. Historical Background and Conceptual Foundation

The concept of curative jurisdiction arose from the Supreme Court's recognition of its own potential for error. In a legal system governed by the rule of law, the finality of judgments serves to maintain judicial stability and certainty. However, when this finality leads to gross miscarriage of justice, the need for a corrective mechanism becomes paramount.

2.1. Development of Curative Jurisdiction in India

The roots of curative jurisdiction can be traced back to instances where litigants were denied justice due to procedural lapses, bias, or other

extraordinary circumstances. Prior to the formal recognition of curative jurisdiction, litigants had no recourse once their review petitions under Article 137 of the Constitution of India were dismissed. This gap highlighted the need for a mechanism to address exceptional cases where justice was denied due to judicial error.

In *Rupa Ashok Hurra* case (supra), the Supreme Court articulated the need for curative jurisdiction, emphasizing that the court must not turn a blind eye to situations where its own decision lead to gross injustice. This landmark judgment laid down the procedural safeguards and conditions under which curative petitions could be entertained, marking a pivotal moment in the evolution of Indian jurisprudence.

The Supreme Court in *Rupa Ashok Hurra* case (supra), while formulating the concept of curative petition, addressed the principle of *ex debito justitiae* to prevent abuse of its process and to cure a gross miscarriage of justice, considered it fit to reconsider its judgments in exercise of its inherent power under Article 129 as a court of record and also adverted to the powers under Article 142 of the Constitution of India.

When the judgement in *Rupa Ashok Hurra* case was pronounced, Supreme Court Rules 1966 were in-force. However, at the time of implementation of Supreme Court Rules, 2013, a specific Order XLVIII relating to Curative Petition was first formally introduced.

3. Procedural Aspects of Filing a Curative Petition

The Supreme Court established a stringent procedural framework for curative petitions to prevent misuse and ensure that only cases of genuine injustice are addressed.

3.1. The procedural requirements as specified in *Rupa Ashok Hurra* case are:

- (i) The petitioner has to establish violation of principles of natural justice such as he was not a party to the lis but the

judgement adversely affected his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice.

- (ii) Where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner.
- (iii) The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the review petition and that it was dismissed by circulation.
- (iv) The curative petition shall contain a certification by a Senior Advocate with regard to the fulfilment of the above requirements.
- (v) As the matter relates to re-examination of a final judgment of Supreme Court, though on limited ground, the curative petition has to be first circulated to a Bench of the three senior-most Judges and the Judges who passed the judgment complained of, if available. It is only when a majority of the learned Judges on this Bench conclude that the matter needs hearing that it should be listed before the same Bench (as far as possible) which may pass appropriate orders.
- (vi) It shall be open to the Bench at any stage of consideration of the curative petition to ask a senior counsel to assist it as amicus curiae.
- (vii) In the event of the Bench holding at any stage that the petition is without any merit and vexatious, it may impose exemplary costs on the petitioner.

3.2. Under the guiding factors of Rupa Ashok Hurra case, the *pari materia* procedural framework detailed in the Supreme Court Rules, 2013 are:

- (i) Curative Petitions shall be governed by Judgment of the Court dated 10th April, 2002 delivered in the case of 'Rupa Ashok Hurra v. Ashok Hurra and Ors.' in Writ Petition (C) No. 509 of 1997.
- (ii)
 - (a) The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the Review Petition and that it was dismissed by circulation.
 - (b) A Curative Petition shall be accompanied by a certificate of the Senior Advocate that the petition meets the requirements delineated in the above case.
 - (c) A curative petition shall be accompanied by a certificate of the Advocate on Record to the effect that it is the first curative petition in the impugned matter.
- (iii) The Curative Petition shall be filed within reasonable time from the date of Judgment or Order passed in the Review Petition.
- (iv)
 - (a) The curative petition shall be first circulated to a Bench of the three senior-most judges and the judges who passed the judgment complained of, if available.
 - (b) Unless otherwise ordered by the Court, a curative petition shall be disposed of by circulation without any oral arguments but the petitioner may supplement his petition by additional written arguments.
 - (c) If the Bench before which a curative petition was circulated concludes by a majority that the matter needs hearing then it shall be listed before the same Bench, as far as possible.

(d) If the Court, at any stage, comes to the conclusion that the petition is without any merit and vexatious, it may impose exemplary costs on the petitioner.

3.3. Plausible Objectives of the Procedural Framework

The stringent conditions for filing curative petitions serve several reasonable objectives:

Preventing Abuse: By imposing strict criteria, the court seeks to prevent misuse of the curative process as a tool for delaying justice or re-litigating settled matters.

Ensuring Judicial Accountability: Curative jurisdiction reflects the judiciary's commitment to accountability by acknowledging its fallibility and providing a remedy to correct its mistakes.

Maintaining Judicial Stability: The exceptional nature of curative jurisdiction ensures that they do not undermine the finality of judgments or create uncertainty in the legal system.

4. Landmark Cases Shaping Curative Jurisdiction

Over the years, the Supreme Court has adjudicated several notable cases that have shaped the application and scope of curative jurisdiction. Below are the few key cases that highlights the approach of Supreme Court to this exceptional remedy.

4.1. Rupa Ashok Hurra v. Ashok Hurra & Anr.

In this landmark case, the Supreme Court formally recognized curative jurisdiction, establishing it as a remedy to address instances of gross miscarriage of justice. The court laid down stringent guidelines for admitting curative petitions, emphasizing that they would be entertained only in cases where there was a clear violation of natural justice. This case serves as the foundational precedent for curative petitions in India.

4.2. Supreme Court Bar Association v. Union of India⁹⁴⁰

While not directly related to curative jurisdiction, this case is significant in understanding the evolution of the Supreme Court's approach to self-correction. The court's willingness to revisit its own decisions to protect the integrity of the legal process underscores the importance of mechanisms like curative petitions.

4.3. National Commission for Women v. Bhaskar Lal Sharma & Ors.⁹⁴¹

Monica Sharma accused her husband and in-laws of cruelty, resulting in a summoning order against them. The accused challenged this order in the Supreme Court, which ultimately quashed the summons, ruling that Monica Sharma's allegations did not constitute "cruelty" under the legal framework. Thereafter, the National Commission for Women (NCW) filed a curative petition on her Monica Sharma. Subsequently, the Supreme Court revisited its judgment, acknowledging that it had prematurely evaluated the nature of the allegations instead of focusing on the appeal against the summoning order. The Supreme Court remarked, "It was too early a stage, in our view, to take a stand as to whether any of the allegations had been established or not." It then ordered a fresh hearing on the matter.

4.4. Nirbhaya Case⁹⁴²

The curative petitions filed by the convicts in the Nirbhaya gang-rape and murder case highlight the practical application of curative jurisdiction. The Supreme Court dismissed the petitions, finding no merit in the arguments presented by the convicts. This case illustrates the delicate balance the court must maintain between upholding justice and ensuring procedural fairness.

⁹⁴⁰ (1998) 4 SCC 409

⁹⁴¹ Curative Petition (Crl.) Nos.24-25 of 2010 in Review Petition (Crl.) Nos.384-385 of 2009 IN Criminal Appeal Nos.1325-1326 of 2009

⁹⁴² Arising out of Criminal Appeal Nos. 607-610 OF 2017

4.5. Union of India v Union Carbide⁹⁴³

In 2010, the Union Government filed a curative petition seeking enhanced compensation for the victims of the Bhopal Gas Tragedy. In 2023, a five-judge bench of the Supreme Court, dismissed the petition. The Bench emphasized the adequacy of the previously determined compensation and clarified the limited scope of curative jurisdiction. It held that such petitions could only be entertained in cases involving a “gross miscarriage of justice,” fraud, or suppression of material facts—none of which were substantiated by the Union Government in this case. The Bench cautioned against expanding the ambit of curative jurisdiction, stating, “We find it difficult to accept that this Court can devise a curative jurisdiction that is expansive in character,” and warned that allowing the petition could open a “Pandora’s box”.

5. Implications of Curative Jurisdiction

The curative jurisdiction of the Supreme Court has far-reaching implications for the Indian legal system. By providing a mechanism to correct judicial errors, it reinforces the judiciary’s role as the guardian of justice and the Constitution. Below are some of the key implications.

5.1. Upholding Judicial Accountability

Curative jurisdiction reflects the judiciary’s commitment to accountability by acknowledging its fallibility. By providing a mechanism to correct its own mistakes, the Supreme Court demonstrates its willingness to uphold the principles of justice, even at the cost of revisiting its own decisions.

5.2. Protecting the Principles of Natural Justice

The primary objective of curative jurisdiction is to protect the principles of natural justice. By allowing for the correction of decisions that violate these principles, the judiciary ensures

that no individual is denied a fair hearing or subjected to judicial bias.

5.3. Balancing Finality of Judgments with Justice

One of the key challenges of curative jurisdiction is balancing the need for finality in judicial decisions with the pursuit of justice. While finality is essential for maintaining judicial stability, it cannot come at the cost of perpetuating injustice. Curative jurisdiction strikes a delicate balance by allowing for limited and exceptional interventions.

5.4. Expanding Access to Justice

Curative jurisdiction has the potential to expand access to justice by addressing cases of gross miscarriage that would otherwise go unaddressed. However, its application must be guided by principles of equity and fairness to prevent discrimination or bias.

6. Criticisms

Had there been a court above the Supreme Court, many of the Supreme Court’s judgments could potentially be overturned. It may perhaps be argued that the judgements passed by the Supreme Court in its curative jurisdiction could possibly be overruled if there had been a mechanism for challenging such judgements. Despite its significance, curative jurisdiction has faced criticism and poses several challenges.

A recent example of such criticism can be drawn from judgement dated 10 April 2024 passed by the Supreme Court under its curative jurisdiction in the case of **Delhi Metro Rail Corporation Ltd.** case (supra). In this case, the key issue was whether the arbitral award, which favoured the Respondent, was patently illegal and perverse. The Supreme Court in its curative jurisdiction found that the award overlooked vital evidence, such as the CMRS certificate, and misinterpreted the termination clause of the contract. The Supreme Court concluded that the Division Bench of the High Court had correctly identified these issues and that the Supreme Court’s previous decision to restore

⁹⁴³ Curative Petition (Civil) Nos. 345-347 of 2010 in R.P. Nos. 229/1989, 623-624/1989 in Civil Appeal Nos. 3187-3188/1988 and SLP (C) No. 13080/1988

the award constituted a miscarriage of justice. Consequently, the curative petition was allowed, restoring the parties to the position prior to the Supreme Court's earlier judgment, and discontinuing execution proceedings for the arbitral award.

This decision of the Supreme Court has drawn criticism as by effectively overturning the arbitral award through a curative petition, the Supreme Court has deviated from the norm. The Supreme Court guided by the dictum in *Rupa Hurra* case has historically shown great reluctance in revisiting, let alone overturning its own judgments in exercise of the curative jurisdiction. However, in contrast to its own settled position, the Supreme Court in its curative jurisdiction overturned an arbitral award by terming it as miscarriage of justice.

The law as settled by the Supreme Court is that the arbitrator is the sole judge of the quality and the quantity of evidence. However, in this case, the Supreme Court not only evaluated the quality and quantity of evidence but has turned upside down the entire basis of the arbitral award in its curative jurisdiction.

As per the dictum in *Rupa Hurra* case (*supra*), the court is not supposed to sit over a judgment like a court of appeal. The scope of the review jurisdiction is narrow in itself and does not warrant rehearing and correction of a judgment. The curative proceedings cannot be treated as a second review. However, in utter teeth of the law laid down in *Rupa Hurra* case, the Supreme Court passed the judgement in *Delhi Metro Rail Corporation Ltd* case.

The Supreme Court has previously entertained curative petitions in the realm of commercial law, as seen in *M/s Bhaskar Raju and Bros. v. M/s Dharmaratnakara Rai Bahadur*⁹⁴⁴, where the judgment in *NN Global Mercantile Private Limited vs Indo Unique Flame Limited & Ors.*⁹⁴⁵ was referred to a larger bench. While the curative petition in *NN Global* case (*supra*)

addressed a fundamental legal issue regarding the validity and enforceability of unstamped arbitration agreements, the Supreme Court's decision in the *Delhi Metro Rail Corporation Ltd.* case marks the first instance where the merits of a commercial dispute were directly scrutinized within the ambit of a curative petition.

7. Challenges

Assuming, for the sake of discussion, that the Supreme Court's conclusion is flawless and beyond critique, a deeper question arises: Is it appropriate for the Supreme Court to "cure" a matter that has already undergone scrutiny at two earlier stages? Without clear standards guiding the exercise of such extraordinary powers, what prevents an endless succession of curative petitions from undermining the judicial process? In such a scenario, how can the doctrine of finality—the cornerstone of legal certainty—be preserved? Moreover, what specific types of cases warrant this exceptional intervention, and how can consistency in its application be ensured? Critics argue that its application undermines the principle of finality, creates uncertainty in judicial decisions, and opens the door for potential misuse.

7.1. Undermining Finality of Judgments

The principle of finality is a cornerstone of judicial stability. Once a case has been adjudicated and all remedies exhausted, it is essential for parties to have closure. However, the availability of curative petitions creates an exception to this principle, potentially undermining the finality of judgments.

7.2. Potential for Misuse

While the Supreme Court has emphasized the exceptional nature of curative petitions, there is a risk that parties may attempt to exploit this jurisdiction to delay the execution of judgments or gain another opportunity for appeal. This risk underscores the need for stringent scrutiny and adherence to procedural safeguards.

⁹⁴⁴ Curative Petition (C) No.44/2023 in R.P.(C) No.704/2021 in C.A. No.1599/2020

⁹⁴⁵ (2023) 7 SCC 1

7.3. Burden on the Judiciary

The increasing number of curative petitions places an additional burden on the judiciary, which is already grappling with a significant backlog of cases. While curative jurisdiction serves an important purpose, its use must be carefully regulated to prevent overburdening the court's resources.

7.4. Subjectivity and Inconsistency

The discretionary nature of curative jurisdiction raises concerns about subjectivity and inconsistency in its application. The court's decision to admit or dismiss a curative petition may vary based on the composition of the bench, leading to potential disparities in the treatment of similar cases.

9. Conclusion

The curative jurisdiction of the Supreme Court of India represents a bold and innovative approach to correcting judicial errors and ensuring justice. By providing a last resort for addressing gross miscarriages of justice, it underscores the judiciary's commitment to accountability, fairness, and the principles of natural justice. As this exceptional remedy continues to evolve, it must strike a delicate balance between upholding judicial finality and ensuring that justice is never denied. However, a decision in a case such as Delhi Metro Rail Corporation Ltd. (supra) might represent the tipping point, potentially undermining the stability of curative jurisdiction.

