



**BIRTH OF CURATIVE PETITION-  
CASE COMMENT ON RUPA A.  
HURRA v. ASHOK HURRA**

*By Vaishali Pooniwala  
From GD Goenka University, Haryana*

**I. IMPORTANCE OF SUBJECT IN  
TODAY'S LEGAL FIELD**

Rupa Ashok Hurra v. Ashok Hurra is the landmark judgement which introduced the concept of Curative petition in India's legal system. Curative petition is the final and last resort with regard to the due justice. Although being a new addition to the legal system, the curative petition provides an opportunity to the aggrieved party to present what has not been heard and is important for reaching the end of justice. The objective of curative petition is to undo the wrong done to the party by the act of the court, as explained by the Latin maxim "actus curiae neminem gravabit" which translates to that an act of court shall prejudice no one.

Curative Petition is an opportunity to ask the court to review its decision and revise it, even after a judgement on review petition is passed as it has been either dismissed or allowed. There is no time limit on curative petition as prescribed under Article 137 of the Constitution of India, although court prescribes that it should be filed within reasonable time. However, the Supreme Court is very cautious while allowing curative petitions, as such petitions are rare and it can only be filed when there is a gross violation of the principle of natural justice, and such has been proved by the contending party, for this purpose the guideline suggests that a Senior Advocate needs to certify and

put forward the substantial grounds which will be entertained in the petition. The Bench for Curative Petition will consist of three senior-most Judges, along with the Judge who passed the previous judgement. The Apex Court has also specified that at any stage of case, if the Court finds the petition displeasing, it could impose exemplary damages. The court clarified in Rupa Ashok Hurra v. Ashok Hurra, that the Court derives its curative powers from Article 142 of the Constitution of India, which grants the Court power to deliver justice.

The object behind the curative petition is to prevent abuse of procedure of law, and to find solutions to the lapses existing in the current judicial system. The jurisprudence behind the birth of curative petition is that even though Judges decide every case in a bona-fide and fair manner, but their actions are also subject to human limitations, in order to reconsider the decisions when situation requires, such exercise of power is highly important. Therefore, it is evident that Curative Petition is one form of Judicial Review.

Judicial Reviews are considered one of the most important and indispensable features of judiciary in the Country. Earlier the judicial review was only exercised on the Legislative and Executive section of the democracy, with reference to the constitutional validity of the policies and Laws made. As regard to the judicial decisions, the judicial review on appeals and review petition, however, Curative petition came as review of the review, which is highly necessary considering decisions of court itself, should not result in miscarriage of justice in complicated cases.

Supreme court in one such case set aside its own judgement, by allowing the Special Leave petition of National Commission for



women, under the judgement the court held that simply a woman kicking and threatening her daughter in law with divorce will not fall within the ambit of cruelty under section 498A of Indian Penal Code.

Recently, the provision of Curative Petitions came in spot light, in the landmark case of Nirbhaya, when one of the accused named Pawan Gupta, filed a curative petition with Supreme Court and the Apex Court rejected the same.

## **II. DETAILS OF THE CASE**

The case although concerns with the divorce petition of the parties but this case is landmark as it gave birth to the Curative Petition and clarified the power of Supreme Court to review its own judgement. Curative petition is the final and last resort available to any concerned party of the case. It can only be exercised by the Supreme Court in rarest of the rare cases, where Supreme Court is presented with strong reasons to look into the matter again and reconsider the order as given by the Supreme Court itself, which has become final on dismissal of the review petition. Therefore, the petitioner is only entitled to relief under Curative Petition, if the petitioner establishes the following;

- (i) Gross Violation of principles of Natural Justice, in case if he is not the party to the case, then in such case the judgement has adversely affected his interest.
- (ii) In case where the person was party to the matter, but was not served with the notice of the proceeding, and the matter proceeded as though he has the choice.
- (iii) Where the Learned Judge failed to disclose his connection with the Subject Matter,

- (iv) The parties having scope for an apprehension of bias, and that the judgement adversely affects the petitioner.

The case of Rupa Ashok Hurra v. Ashok hurra, enabled the Supreme Court to review the judgement given by them on the pretext that such Judgement is violative of natural justice and even Judges can err in certain cases and situation, in such case the aggrieved should not suffer any more.

### **II.i Citation:**

(1999) 2 SCC 103; (2002) 4 SCC 388

### **II.iii Case Title, Parties:**

Rupa Ashok Hurra v. Ashok Hurra

**Plaintiff:** Mrs. Rupa Ashok Hurra;  
**Defendant:** Ashok Hurra.

### **II.iv Question of Law involved in the case:**

Whether an aggrieved person is entitled to any relief against the Final order/Judgement of the Supreme Court after the dismissal of review petition, either under Article 32 of the Constitution of India or otherwise.

### **II.v Facts of the Case:**

The petitioner filed a writ under article 32 of the Constitution, to challenge or set aside the validity of the judgement of an appeal as given by the court, where under the appeal filed by the respondent was allowed, further a decree of Divorce was passed between respondent and the petitioner under Sec 13B of the Hindu Marriage Act, 1955. Furthermore, all the pending proceeding under Section 494 of IPC read with section 17 of the Hindu Marriage Act, 1955 was



terminated on the payment of the said amount as ordered by the Court in the judgement.

The Counsel for petitioner submitted that the Court has exceeded the jurisdiction vested under Article 142 of the Constitution, although the Counsel for respondent argued that the writ petition filed by the petitioner is invalid, as the review petition filed by the petitioner seeking review of the said judgement was dismissed by the Court, and that the party has already availed the remedy of filing the review petition, therefore remedy under Article 32 of the Constitution to challenge the judgement cannot be exercised.

Furthermore, it was also submitted by the learned Counsel of Respondent that allowing the petition in the circumstances of the case will be against the Justice to the respondent, as after the dismissal of the review petition, the respondent contracted another marriage and adopted a child. On which the Learned Counsel for petitioner submitted that the marriage had been contracted earlier in 1985 and not after dismissal of review petition, as being said by the respondent.

The question of law before the Apex Court was whether the petition file by aggrieved under Article 32 be allowed and is maintainable to question the validity of judgement, which was also challenged in the review petition and the review petition was dismissed. The matter was then forwarded to the Constitutional Bench of Supreme Court consisting 5 Hon'ble Judges namely; Chief Justice S.P. Bharucha, Syed Shah Mohammed Quadri JJ., Umesh C. Banerjee JJ., S.N. Variava JJ., and Shivraj V. Patil JJ.

### **II.vi Judgement**

The Supreme Court after much consideration of the situation clarified that there is a

provision with the Court to review its own judgement under Article 137 of the Constitution, although the rules of *stare decisis* is strictly followed by English courts, but the Courts of England were also allowed to depart from their judgement if the need be.

The duty of court to render justice in a cause is no less important than the principle of finality and certainty of the judgement. Though the Judges take utmost caution while deciding on a case, but in the rarest of the rare case, the need may arise to reconsider the judgement as previously declared, to set right the miscarriage of the justice. In such cases, it is not only legally obligatory but it is also morally obligatory to rectify the error. Although, the finality and certainty of a judgement is necessary but it should not defeat the means of justice in rarest of the rare cases.

Therefore, it was held by the Supreme Court that to prevent the abuse of process, and cure a gross miscarriage of justice, the Court may reconsider its judgement in exercise of its inherent power.

### **III. CRITICAL REASONING OF THE JUDGEMENT**

The Judgement is revolutionary in itself. Judicial review is an indispensable part of our system, usually the power of Judicial review is exercised on the Legislative and Executive to check the veracity of the Laws and order made by them with regard to the Constitution of India. It keeps in check the powers of the Legislative and that their actions are not ultra-vires to the powers and provisions of Fundamental Rights provided under Constitution of India.



The Court by this Judgement introduced the concept of curative petition, which came as a last resort for the parties in rarest of the rare cases. It provided the party, an option which helps them in not leaving any stone unturned in case of gross miscarriage of justice. The curative petition being the last resort is way stricter to apply for, therefore it also ensures that in cases where it is not required, it is not used to abuse the provision and waste the time of the court. The judgement not only lays down the provision but also the procedure of the curative petition, curtaining that it can only be availed by the parties who are in dire need of it. The judgement itself specifies that the petitioner is only entitled to relief under Curative Petition, if the petitioner establishes the following;

- (i) Gross Violation of principles of Natural Justice, in case if he is not the party to the case, then in such case the judgement has adversely affected his interest.
- (ii) In case where the person was party to the matter, but was not served with the notice of the proceeding, and the matter proceeded as though he has the notice.
- (iii) Where the Learned Judge failed to disclose his connection with the Subject Matter,
- (iv) The parties having scope for an apprehension of bias, and that the judgement adversely affects the petitioner.

Moreover, the petitioner is required to get a certificate from the Senior advocates, who will with certainty put forward the substantial grounds which will be entertained in the petition. The Bench for Curative Petition will consist of three senior-most Judges, along with the Judge who passed the previous

judgement. The Apex Court has also specified that at any stage of case, if the Court finds the petition displeasing, it could impose exemplary damages.

Therefore, balancing well the two principles of delivering the justice and principle of finality and certainty of the Judgement.

#### IV. LEGAL HISTORY OF THE CASE

Before the case, there was no provision of curative petition, and the final resort which the parties had were the provision of review petition. According to which the Binding Decision of Supreme Court or High Court can be reviewed, when the petition is filed by the aggrieved parties. This petition is time barred, as such petition has to be filed within 30 days of the pronouncement of such judgement or order.

The power to review the judgement is exception to the principle of stare decisis, and the power of the same is enshrined under Article 137 of the Constitution of India, and rules of Article 145. Review petition is not an inherent power of the Supreme Court but a protective measure against the fallibility of the institutions of judiciary to ensure delivery of justice. The court furthermore do not rehear the case in hand in case of a review petition, it is limited to remedying the apparent error causing grave injustice as a consequence of the decision of Supreme Court.

As explained by the Court in **Northern India Caterers (India) v. Lt. Governor of Delhi**<sup>1</sup>, a party is not entitled to seek review of the judgement delivered by the Court merely for the purpose of rehearing, as the judgement

<sup>1</sup> 2 SCR 650 (1980)



delivered by the court is final and the departure from the judgement is only allowed when the circumstances are substantial and necessary to do so.

The Review petition has been used in certain prominent cases, such as 2G Spectrum Case<sup>2</sup>, whereunder the Government of India filed a review petition in Supreme Court seeking partial review on the order by the court which quashed 122 licenses as issued during the tenure of Telecom Minister A Raja. Under the same petition, the government also questioned the authority of the Supreme Court on the overruling which came against the first come first serve policy. On the same day, majority shareholder of MTS, namely Sistema also filed a review petition in Supreme Court. However, the Apex Court accepted the review petition filed by government and rejected all the other petitions in the same case.

Recently, the review petition was also sought in the famous case of Sabrimala Temple<sup>3</sup>, which was allowed by the Court.

Although the provision of Review petition is still available with the parties, but in case, the review petition is dismissed, the parties can now avail the provision of curative petition under Article 32 of the Constitution.

## **V. CRITICAL ANALYSIS**

The creation of the concept of curative petition by the Supreme Court is reasoned to prevent the abuse of the process of law and to cure the lapses in the existing system of justice. It a provision which ensures that no stone is left unturned in case there exists a grave violative of the principle of natural

justice. The same has been time and again since its inception availed in the rarest of the rare cases. One such landmark and rarest of the rare case is Nirbhaya Case, where one of the accused named Pawan Gupta, filed a curative petition, on the judgement of the death penalty. The said curative petition was rejected by the Supreme Court and thus, the convicts of rape, murder exhausted the last of their judicial remedies.

However, it is a remedy or the last resort, and highly necessary for the people where there is a gross violation of the natural justice, in the above-mentioned case it was connotated that the remedy was just a delay mechanism adopted by the accused from the death penalty. It can although be considered, however strict the provision be, to apply for the curative petition. The parties though find loop-holes to abuse process of law under this provision. Regardless, this being one of such instances, the fact that curative petition is an addition to the reviewing power of the Supreme Court cannot be denied.

The general jurisprudence before this judgement was that the parties have appeals and review which allows the parties to present the case before the Apex Court and thus, once a decision is given by the Supreme Court of India, it is final and binding, the reason being “interest Reipublicae Ut Sit Finis Litium” which means the interest of society and public as whole, any litigation must come to an end considering the time take for each litigation to finally come to an outcome. However, this judgement successfully recognises the probability of fallibility of the Judges even after using the utmost caution while deciding a case,

<sup>2</sup> Common Cause v. Union of India, SCC OnLine SC 644 (2018)

<sup>3</sup> 11 SCC 1 (2019)



keeping in mind that no appeal lies against the order of the Supreme Court.

This Judgement also recognises the principle of “actus curiae neminem gravabit” which means that the act of court shall prejudice no one, the court also observed that the inherent power of the court gives the authority to the Court to approve all such cases on the base limited to the question of law and law only, and not on question of any facts or numbers. Therefore, the observations made by the five judges’ bench of the Court protects the substantive rights of the litigant.

However, the process prevents and protects against the bias of judicial system and judges, and provides a fair chance of representation to the parties, but it also adds to the length and bulk of the proceedings, as due to being an additional stage, in the matter of cases involving circumstances of nature of rarest of the rare, this additional step adds to the cumbersomeness of the case, as it adds onto the amount of time for the finality of the decision of the Judgement. Regardless, in search of truth and Justice, the provision of curative petition, comes as a saving light of the people.

*“There can be no peace without justice, no justice without law and no meaningful law without the Courts to decide what is just and lawful under any given circumstances.”*

-Benjamin B. Ferencz

## **VI. PRINCIPLE**

The basic principle behind the Curative petition is *actus curiae neminem gravabit*, i.e. The act of Court should prejudice no one.

Article 137 of the Constitution of India provides for the power of court to review its own judgement, the power of Curative petition can only be exercised and entertained when it related to gross injustice, and violation of natural justice, therefore making the petition highly rare and not regular, and essential as a last resort of judicial remedies. The court also observed that the court can exercise the same under its inherent powers.

## **VII. RELATED LAWS**

### **Article 32: Remedies for enforcement of rights conferred by this Part**

(1) The right to approach the Supreme Court for enforcement of rights conferred by the Constitution by appropriate proceedings.

(2) The Supreme Court may issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights.

### **Article 142: Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc**

( 1 ) The Supreme court can exercise its jurisdiction to pass such decrees or orders as necessary for doing a complete justice in any matter or cause pending before the Hon’ble court. Any decree or order so passed or made is enforceable in the territory of India in the manner as is prescribed by or under any law made by the Parliament, and until provision is so made in the manner as by order prescribed by the President.

(2) Supreme Court shall have all and every power to make order for the purpose of securing the attendance of a person, production or discovery of any document, or investigation and punishment of contempt of



itself, subject to the provision of any law made in this behalf by the parliament, as respects to the whole of territory of India.

### **Article 137: Review of judgments or orders by the Supreme Court**

Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

### **VIII. CASES**

#### **Naz Foundation Trust Vs. Suresh Kumar Koushal And Ors.<sup>4</sup>**

**Bench:** Hon'ble Justice(s) S.A Bobde and Ashok Bhushan

The judgement clarified that it is not necessary to research on the merits of the case presented, since the issues of the case are of considerable importance and of public interest, the Curative petition was placed before the Chief Justice of India, and listed before the suitable bench.

#### **Central Bureau of Investigation and Ors. Vs. Keshub Mahindra and Ors.<sup>5</sup>**

In the present case, the petitioner presented the Curative petition after 14 years of the Judgement, the Court held that even though Curative petitions are not governed by the provisions of the Limitation Act, but it is expedient to file the petition within reasonable time. In the present case, the Hon'ble Court found no satisfactory reason for the delay in filing such petition.

#### **Yakub Abdul Razak Memon v. State of Maharashtra and Another<sup>6</sup>**

The Court dismissed the Curative petition filed by the convict of 1993 Mumbai serial Blast case. The court held that the grounds of petition did not come under the ambit of the parameter mentioned in the Ashok Hurra case, and that his punishment will adhere to the principle of natural justice. The Court also observed that the petition does not have any factors which adversely affects the convict's right to fair and unbiased trial.

#### **Pawan Kumar Gupta v. State (NCT of Delhi)<sup>7</sup>**

The Court dismissed the Curative petition filed by the convict of Nirbhaya Rape case. The court held that the grounds of petition and the documents presented did not come under the ambit of the parameter mentioned in the Ashok Hurra case, further the court also rejected the prayers of oral hearing and stay on execution of death sentence.

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<sup>4</sup> 7 SCC 485 (2016)

<sup>5</sup> 6 SCC 216 (2011)

<sup>6</sup> 9 SCC 544 (2015)

<sup>7</sup> 4 SCC 54 (2020)