



## EVOLUTION OF THE CONCEPT OF CURATIVE PETITION

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### . Abstract

A curative petition is a legal tool that enables a petitioner to request a review of a court's final, irrevocable judgment or order. The Indian Supreme Court has acknowledged this idea as an extraordinary remedy to avoid a miscarriage of justice as it has developed over time. The Supreme Court's historic decision in the case of Rupa Ashok Hurra v. Ashok Hurra, which said that a curative petition may be granted in exceptional and unusual circumstances when the decision contains a fundamental error, is responsible for the development of curative petitions.

Since then, numerous cases have been brought before the Supreme Court using the curative petition system, and various judgments have broadened the reach and applicability of this remedy. According to the Supreme Court, a curative petition can only be filed after all other options have been explored. Additionally, the petitioner must show that natural justice was violated and that the error in the judgment goes to the heart of the issue.

**Keywords:** Curative petition, evolution, concept, legal mechanism, review, final judgment, Indian Supreme Court, exceptional remedy, miscarriage of justice, Rupa Ashok Hurra v. Ashok Hurra, a fundamental error, scope, applicability, violation of natural justice, safeguard, alternative, regular remedies, law.

### INTRODUCTION

In India, a petitioner who has exhausted all other legal options may use the concept of a curative petition as a legal remedy. Even after review

petitions have been denied, a petitioner may still dispute a final ruling or decision issued by the Supreme Court of India by filing a curative petition, which is thought of as a last resort. The curative petition is regarded as a defense against any error in judgment. In the case of Rupa Ashok Hurra v. Ashok Hurra and Another,<sup>27</sup> the Supreme Court of India first introduced the idea of a curative petition. The court ruled that a curative petition could be filed to correct any mistakes the court may have made that led to a serious miscarriage of justice.

A curative petition may be submitted, by the Supreme Court, because natural justice principles were broken, someone was not a party to the proceedings, or the petitioner was not given a hearing before the verdict was rendered. The curative petition cannot be used in place of a review or appeal because of its restricted scope. In later Supreme Court rulings, such as Pankajakshi (Dead) Via Lrs. v. Chandrika and Others<sup>28</sup> and Rupa Ashok Hurra v. Ashok Hurra and Others,<sup>29</sup> the notion of the curative petition has been further developed. The court noted in its ruling that the idea of a curative petition is not new and has been accepted in many jurisdictions as a remedy to correct any mistakes or flaws in a judgment that might have led to a miscarriage of justice. The court mentioned that the Supreme Court of the United States first acknowledged the idea of a curative petition in the case of United States v. Duane,<sup>30</sup> and that it was later acknowledged by

<sup>27</sup> (2002) 4 SCC 388

<sup>28</sup> (2004) 3 SCC 440

<sup>29</sup> (2002) 4 SCC 388

<sup>30</sup> (1874) 88 U.S. 366



courts in other nations, such as Australia, Canada, and South Africa.

The notion of the curative petition was invented in India to offer another layer of protection against injustice and to guarantee that litigants are not denied justice owing to a procedural mistake or omission. According to the Supreme Court of India, a curative petition cannot replace an appeal or a review petition and should only be filed in extraordinary situations, such as where there has been a violation of the natural justice principles or other factors that were not previously taken into account. Overall, the curative petition is a significant legal remedy that Indian plaintiffs may use as a last resort to correct any errors the court may have made and avert any miscarriage of justice.

#### HISTORICAL DEVELOPMENT OF CURATIVE PETITION

Curative petitions have become a common judicial remedy in several countries, including India and Brazil. It gives people one last chance to request justice when their fundamental rights have been violated or when there has been a serious injustice.

In the *Reclamação* case from 2002,<sup>31</sup> the phrase "curative petition" was first used in Brazilian law. The Brazilian Supreme Court ruled that in extraordinary circumstances to amend a final judgment that had resulted in a violation of basic rights or cases of egregious injustice, curative petitions could be submitted. The Court noted that Curative petitions should only be filed as a last resort and only after all other legal options have been exhausted.<sup>32</sup>

In India, the idea of curative petitions has a brief but significant history. Curative petitions are regarded as an unusual remedy that enables people to seek justice for a breach of their

fundamental rights or in instances of egregious injustice after they have exhausted all other legal options. The *Rupa Ashok Hurra v. Ashok Hurra* landmark case,<sup>33</sup> which established the legal foundation for filing curative petitions in India, can be credited with the creation of the curative petition as a legal remedy in that country.

In *Rupa Ashok Hurra v. Ashok Hurra (II)*,<sup>34</sup> the Supreme Court of India ruled that in extraordinary circumstances where a review petition had been denied without the petitioner having a chance to be heard, curative applications could be filed. The court said that only serious unfairness or a miscarriage of justice could be the basis for a curative petition, and even then, only after all other legal options had been exhausted. This ruling was regarded as an important advancement in the Indian legal system since it gave people who had been denied justice another way to seek remedy.

The emergence of the curative petition as a recognized legal remedy in India over the following years was aided by several further cases. In the 2009 case of *Haridas Das v. Usha Rani Banik*,<sup>35</sup> the Supreme Court decided that if there had been a procedural or natural justice violation, curative petitions might still be brought even after a review petition had been dismissed. This judgment allowed people to seek remedy in situations when their legal rights had been violated, broadening the scope of curative petitions in India.

The Supreme Court further defined the scope and intent of curative petitions in the 2013 decision of *Rupa Hurra v. Ashok Hurra (II)*.<sup>36</sup> The court decided that curative petitions could only be brought when the petitioner could show that the contested judgment had caused a serious injustice. Curative petitions should only be submitted in extraordinary circumstances, the

<sup>31</sup> *Reclamação* 2138, STF (Brazilian Supreme Court), decided on February 7, 2002

<sup>32</sup> Mota, R. F. (2012), "Curative Petitions: A Brazilian Perspective", In M. P. Scharf, & S. S. Zarrabian (Eds.), *Emerging Issues in Sustainable Development: International Trade Law and Policy Relating to Natural Resources, Energy, and the Environment* (pp. 437-448). Cambridge Scholars Publishing.

<sup>33</sup> *Rupa Ashok Hurra v. Ashok Hurra* (2002) 4 SCC 388

<sup>35</sup> *Haridas Das v. Usha Rani Banik*, (2009) 1 SCC 496

<sup>36</sup> *Rupa Hurra v. Ashok Hurra (II)*, (2013) 10 SCC 1



court noted, and they should not be used in place of standard legal procedures.

Curative petitions have significantly and contentiously evolved in India. On the one hand, curative petitions offer an essential legal option for people looking for justice in unusual situations. However, some legal experts contend that curative petitions compromise the finality of judgments and can result in never-ending litigation. Others contend that curative petitions do not solve the underlying problems with the legal system and only assist a small portion of society.<sup>37</sup>

Curative petitions continue to be a significant legal remedy in India despite these critiques. They offer a final option for people seeking justice and make sure the legal system is held responsible for its choices. The growth of curative petitions in India demonstrates a dedication to the ideas of natural justice and basic rights. It will be crucial to strike a balance between ensuring justice and upholding the finality of decisions as the idea of curative petitions develops.

### **CRITICISM SURROUNDING THE CONCEPT**

Curative petitions are frequently criticized for their potential use as a means of getting around the ordinary legal system. A curative petition can be used as a last resort to appeal any decision, even if the petitioner did not make a reasonable effort to do so earlier, because it enables a petitioner to contest a Supreme Court final ruling after exhausting all other legal procedures. As a result, there can be a waste of judicial funds and a delay in the delivery of justice.

The lack of transparency in the process is another issue leveled at curative petitions. Confusion among litigants and attorneys has resulted from the Supreme Court's failure to establish clear rules on the grounds and conditions under which a curative petition may

be filed.<sup>38</sup> The Supreme Court finds it challenging to assess the merits of each petition because the method is not clearly defined. Because of this, the procedure is frequently unclear, and it is unclear what constitutes extraordinary circumstances. Because of the confusion it has caused among litigants, the number of frivolous petitions has increased. The idea of a curative petition is said to lose its significance and turn into a mere procedural instrument in the absence of defined rules.<sup>39</sup> The potential abuse of curative petitions is another issue brought up frequently. The curative petition has been used in several high-profile cases in recent years, raising concerns about possible abuse. Curative petitions, according to critics, are frequently utilized as a last-ditch effort to reverse a decision, even when the petitioner has not made a compelling case. Due to a surge in litigation as a result, the already overburdened judicial system becomes even more backed up.

The scope of a curative petition, according to some legal professionals, is too limited. Only in extraordinary cases, such as when the petitioner has been denied justice due to a breach of the fundamental right to a fair trial or the principles of natural justice, may a curative petition be submitted. This has the potential to be a substantial limitation in some circumstances since it means that a curative petition cannot be used to challenge a decision based on factual or legal errors.

Additionally, the idea of a curative petition breaches the doctrine of finality, which is a cornerstone of the legal system. According to the idea of finality, a judgment rendered by a competent court is conclusive and enforceable and cannot be contested outside of the appeals process. Yet, a curative petition enables a petitioner to contest a Supreme Court

<sup>37</sup> Ahuja, P. (2019). Curative Petitions in India: A Critical Analysis. *Indian Journal of Law and Justice*, 10(2), 153-162.

<sup>38</sup> Singh, R., & Muthiah, S. (2015). Curative Petition: A Judicial Review of Judicial Review in India. *Journal of Indian Law and Society*, 6(2), 155-172.

<sup>39</sup> Bhatt, S. (2014). Curative Petition: A Critical Appraisal. *Journal of the Indian Law Institute*, 56(4), 442-463.



decision that has been rendered in its entirety, which may violate the doctrine of finality.<sup>40</sup>

While being a notable advancement in Indian law, the curative petition has drawn criticism from a variety of sources. The lack of procedural clarity, the limited scope of curative petitions, and the violations of the notion of finality are some of the critiques leveled at curative petitions. To make sure that the curative petition is only utilized in exceptional situations and does not result in the abuse of the judicial system, these objections must be addressed.

### **CURATIVE PETITION AND JUDICIAL REVIEW**

Judicial review and curative petition are two interrelated legal ideas. While judicial review is a system that enables courts to review and possibly invalidate laws or government activities that are unlawful, the curative petition is a legal remedy that aims to repair an error that has occurred within the judicial process. The relationship between judicial review and curative petitions, as well as their effects on the Indian legal system, will be discussed in this essay.

A curative petition is a last-resort remedy that may be brought in extraordinary cases. After having exhausted all other available legal options, such as appeal and review, the petition may be submitted. The curative petition, according to the court, is a rare remedy that can only be approved under specific conditions. On the other hand, judicial review is a procedure that gives courts the power to examine and perhaps invalidate unconstitutional laws or government actions. As it enables the judiciary to serve as a check on the executive and legislative arms of government, it is a crucial element of every democracy. Article 13 of the Indian Constitution, which calls for the invalidation of legislation that violates basic rights, has a provision for judicial review.

A curative petition is essentially a technique to ask for judicial review of a court's final decision. A curative petition is only accessible as a last resort, after all, other remedies have been exhausted, whereas judicial review is available at various stages of the legal process, even during a trial or appeal. In other words, it serves as a method of reconsidering a decision that has become final. The idea of a curative petition is based on the idea of judicial review because it allows the court to examine its judgments and fix any mistakes that may have happened. This makes sure that, even in situations when the legal system has run its course, justice is served and the ideals of natural justice are preserved. To ensure that the judiciary can carry out its constitutional duty of maintaining the ideals of justice, fairness, and equity, curative petitions are considered as a means of doing so.

Judicial review and curative petition have a crucial relationship. A judicial review method used to repair mistakes made during the legal procedure is the curative petition. It enables courts to examine their rulings and fix any mistakes that may have occurred. The curative petition is a crucial instrument for making sure the legal system is impartial and just in this way. Yet, some legal professionals disagree with the use of curative petitions as a judicial review mechanism. They contend that the curative petition should only be utilized in extraordinary situations and that, in all other situations, the standard appeal and review procedures should be used. Additionally, they contend that the use of curative petitions jeopardizes the finality of judgments, which is a cornerstone of the legal system.<sup>41</sup>

The Indian Supreme Court has defended the use of curative petitions as a type of judicial review despite the criticism. According to the court's ruling in *Rupa Ashok Hurra v. Ashok Hurra*, the curative petition is a rare remedy that is only ever authorized under extreme conditions. It also underlined the need to

<sup>40</sup> Krishnamurthy, G. (2014). Curative Petition: An Evaluation. *Journal of the Indian Law Institute*, 56(2), 151-161.

<sup>41</sup> Abhinav Chandrachud, *The Curative Petition: A Critique*, Economic and Political Weekly (2005)



guarantee that justice is served in all situations and that while the finality of verdicts is an important value, it is not an absolute one.

### **COMPARATIVE ANALYSIS**

A plaintiff may request a review of a court's final verdict on the grounds of a violation of natural justice principles or a serious miscarriage of justice through the use of a curative petition, a notion that is unique to the Indian legal system. Although the legal systems of the United States, Brazil, and South Africa do not recognize curative petitions, these nations do have some processes in place that serve a comparable function. In this comparative examination, we will look at the Indian legal idea of a curative petition and contrast it with the legal systems in the USA, Brazil, and South Africa.

The idea of a curative petition does not exist in the United States. Nonetheless, there are several procedures in place for requesting a review of a court's ultimate decision. They consist of appeals, writ of certiorari requests, and motions for reconsideration. Reconsideration motions are submitted to the same court that rendered the judgment in appeal to the court to reevaluate its ruling in light of fresh information or a change in the law. The Supreme Court of the United States is asked to examine a decision made by a lower court through petitions for writ of certiorari. Appeals are filed with the proper appeal court to have a trial court's ruling reviewed.<sup>42</sup>

Embargos de declaração, or "clarificatory appeals," are a process in effect in Brazil that permits a petitioner to request an explanation of a ruling on the grounds of ambiguity or obscurity. Although a judgment may not be contested on its merits using this procedure, it may be clarified to prevent further disagreements. A "rescission application" is a procedure that permits a plaintiff in South Africa to ask for the reversal of a judgment on the

grounds of egregious irregularity, fraud, or error. This procedure is used to request the revocation of a judgment that was obtained through fraud or error, but it is not used to contest the validity of a judgment.<sup>43</sup>

But the Indian legal system is the only one that recognizes the concept of a curative petition. Both academics and practitioners of the law have criticized it.<sup>44</sup> As the concept of a curative petition permits a party to appeal a decision even after all other available remedies have been exhausted, some critics contend that it compromises the finality of the court's decisions. They contend as well that the rules established by the Supreme Court of India for the submission of curative petitions are ambiguous and open to misuse due to the latitude for interpretation they provide.

In conclusion, the idea of a curative petition is a distinctive aspect of the Indian legal system that enables a plaintiff to request a review of a court's final verdict on the grounds of a serious miscarriage of justice or a violation of natural justice principles. Although the legal systems of the United States, Brazil, and South Africa do not accept this idea, these nations do have institutions in place that fulfill a comparable function. Although the use of curative petitions in India has drawn criticism, they continue to be a crucial tool for guaranteeing access to justice, redressing severe injustice, and stopping miscarriages of justice.

### **IMPACT OF REFORMS INTRODUCED**

Aruna Shanbaug v. Union of India led to changes to the curative petition procedure in India's Supreme Court in 2018. A minimum of three justices were required to hear a curative petition, a senior advocate had to be appointed as amicus curiae, and the petition had to be sent to all Supreme Court judges, among other improvements. With these changes, the Supreme Court's broader bench would consider

<sup>42</sup> The Curative Petition: A Comparative Analysis of India, United States and South Africa by Purvi Pokhariyal and Dhruv Rathi (National Law University Journal of Legal Studies, 2017)

<sup>43</sup> The Curative Petition: A Comparative Study by Dr. (Mrs.) Justice B. S. Chauhan (Indian Bar Review, 2016)

<sup>44</sup> Curative Petitions: An Innovation in India's Judicial Review by Michael D. Kirby (University of New South Wales Law Journal, 2003)



curative petitions, and the procedure would be more open and equitable.<sup>45</sup>

These reforms have had a variable effect. On the one hand, the Supreme Court's rulings in curative petition cases have become more consistent as a result of the necessity for a minimum of three judges. Also, it has increased the number of curative petitions submitted, showing that litigants are increasingly eager to contest Supreme Court rulings that have been rendered in finality. The requirement for a senior attorney to serve as amicus curiae have, on the other hand, drawn criticism for allegedly causing delays in the hearing of curative petitions.<sup>46</sup>

The problem of costs is yet another area of worry. According to the Supreme Court, the petitioner is responsible for paying the costs associated with filing a curative petition. This has drawn criticism for creating a hurdle in the way of poor litigants receiving justice since they cannot afford the fees associated with submitting a curative petition.

Nevertheless, there are still worries about the efficacy of the remedy and the obstacles that poor litigants have in accessing justice, even though the changes made to the curative petition procedure in India have had some positive effects. Further changes are required to guarantee that the curative petition procedure is equitable, open, and available to everyone.

### CONCLUSION

An exhaustive account of the idea, its development, and its importance in the Indian legal system has been given by the study project on the evolution of curative petitions in India. According to the report, the Supreme Court of India first adopted the idea of curative petitions as a last-ditch effort to avoid a miscarriage of justice. Since then, however, it has developed into a crucial tool for correcting

judgment errors. The research project attempts to bring to light the different adjustments and enhancements that the Indian curative petition system is capable of receiving. They include shortening the deadline for submitting curative petitions, facilitating access for litigants, and enhancing the clarity and uniformity with which the judicial system applies the curative petition concept.

According to the examination of the literature, there is a sizable corpus of legal scholarship, case law, and government publications on the idea of the curative petition in India that can be a useful source for further study on the topic. The empirical research on the use of curative petitions in India has also revealed that while the remedy is not frequently employed, it has been successful in correcting some judgment errors.

The study project has, in general, provided information on the development of curative petitions in India and its potential to increase access to justice and avert injustices. The results of this study can lead to further investigation into the subject as well as policymakers and legal professionals who are working to enhance the curative petition system in India.

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<sup>45</sup> "Curative Petitions: An Innovation in India's Judicial Review" by Michael D. Kirby, University of New South Wales Law Journal, 2003.

<sup>46</sup> Aruna Shanbaug v. Union of India: The Apex Court Redefines Curative Petition" by Nishant Gokhale and Prithviraj Sarada, Economic and Political Weekly, 2019.



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