AILET

The Concept of Curative Petition: Origin and Application

Adtiya Aryan · 28 Oct 2025

Introduction: The Finality of Judgment and the Quest for Justice

In any legal system, there must be a point where litigation comes to an end. This principle, encapsulated in the legal maxim *Interest reipublicae ut sit finis litium* (it is in the public interest that there be an end to litigation), is a cornerstone of judicial efficiency and the rule of law. In India, the final arbiter of law is the Supreme Court. Once the Supreme Court delivers a judgment, it is binding on all courts within the territory of India (Article 141).

But what happens when the final judgment itself is the product of a gross miscarriage of justice? What remedy exists if the very process that delivered the "final" word was tainted by bias, or if a party was condemned without ever being heard?

The Constitution itself provides a limited power to the Supreme Court under **Article 137** to review its own judgments. This "review petition" is narrow and is generally entertained only upon the discovery of a new and important matter or an error "apparent on the face of the record." For decades, the dismissal of a review petition was the absolute end of the road. However, the Supreme Court, in its role as the ultimate guardian of justice, recognized that this finality could not be used to perpetuate a manifest injustice. This recognition led to the judicial innovation of the **Curative Petition**—a remedy of the last resort, created by the court, for the court, to cure its own errors.

The Origin: Rupa Ashok Hurra vs. Ashok Hurra (2002)

The concept of a curative petition was born from the landmark Supreme Court judgment in ***Rupa Ashok Hurra vs. Ashok Hurra & Anr. (2002) 5 SCC 388***. This case presented a profound constitutional dilemma: how to balance the essential principle of judicial finality with the equally essential demand for justice.

The Court acknowledged that after a review petition is dismissed, the court becomes *functus officio* (its official function in the case is over). However, it grappled with situations where a litigant was left with a sense of "irrevocable injustice" due to a fundamental flaw in the proceedings. The Court had to find a way to correct its own errors *after* the final review, without opening the floodgates to endless litigation.

To solve this, the Supreme Court fashioned a new and extraordinary remedy. It held that in the rarest of rare cases, it must be allowed to correct its own mistakes to prevent an abuse of its process and to cure a gross miscarriage of justice. This new mechanism was named the "curative petition." The Court drew its authority to create this remedy from its inherent powers under **Article 142** of the Constitution, which grants it the power to pass any decree or order necessary for "doing complete justice" in any cause or matter pending before it.

What is a Curative Petition? (And What It Is Not)

It is crucial for a law student to understand the distinct hierarchy of remedies in the Supreme Court:

1. Appeal (e.g., Special Leave Petition – Art. 136): This is the standard procedure to challenge a High Court's judgment on its merits (i.e., on questions of fact or law).
2. Review Petition (Art. 137): This is not an appeal in disguise. It is a request for the Court to re-examine its own judgment, but only on very limited grounds, such as an "error apparent on the face of the record." The case is not re-argued.
3. Curative Petition: This is the final and most extraordinary remedy, available only after a review petition has been dismissed. Its purpose is not to re-argue the merits of the case at all. Its purpose is to challenge the integrity of the judicial process that led to the final judgment. It is a petition that claims the judgment is void because it violates fundamental principles of justice.

The Grounds: When Can a Curative Petition be Filed?

The Supreme Court in *Rupa Ashok Hurra* was deeply conscious of preventing this new remedy from becoming "a second review" or "a third appeal." It therefore established exceptionally stringent criteria for a curative petition to be entertained.

A petitioner must specifically state the grounds and certify that:

1. Violation of the Principles of Natural Justice (PNJ): This is the most critical ground. The primary principle of PNJ is audi alteram partem (hear the other side). If a party was not served notice and the case was decided against them without their knowledge, this would be a classic ground. Another PNJ is Nemo judex in causa sua (no one should be a judge in their own cause).
2. Allegations of Bias: If the petitioner can establish that a judge who participated in the decision had a bias (e.g., a pecuniary or personal interest) in the matter, a curative petition may lie. This strikes at the very root of impartial justice.
3. Abuse of the Process of Court: This is a broader category, but it essentially means the judicial process was used in a way that is manifestly unfair or oppressive, leading to a travesty of justice.

The petition must *conclusively* demonstrate that a grave injustice has occurred, and that the judgment has "shocked the conscience" of the Court. It is not enough to simply claim that the judgment is legally incorrect.

The Procedure: A Filter Against Frivolity

To enforce these strict grounds, the Court also mandated a unique and difficult procedure for filing:

1. Prerequisite: A review petition must have been filed and dismissed by the Supreme Court. A curative petition cannot be filed directly against the original judgment.
2. Certification by a Senior Advocate: The petition must be accompanied by a certificate from a Senior Advocate of the Supreme Court. This advocate must personally vet the petition and certify that it meets the rigorous criteria laid down in the Rupa Ashok Hurra judgment. This acts as the first major filter.
3. In-Chamber Circulation: The petition is not listed for an open-court hearing. It is first circulated in-chamber (in the judges' private offices) to a special bench.
4. The Curative Bench: This bench consists of the three senior-most judges of the Supreme Court and, if available, the judge or judges who delivered the original judgment being challenged.
5. Decision on Admission: This bench first decides whether the petition has any merit to be heard. If a majority of the judges find that the petition is frivolous or does not meet the criteria, it is dismissed in-chamber without a hearing.

6. Hearing (If Admitted): Only if the bench finds prima facie merit in the petition will it be set down for an open-court hearing.
7. Exemplary Costs: The Court warned that if a petition is found to be “vexatious” or “without any merit,” it will impose “exemplary costs” on the petitioner to deter abuse of this extraordinary remedy.

Conclusion

The curative petition is a testament to the judiciary’s capacity for self-correction. It represents a fundamental acknowledgment that judges, while final, are not infallible. It institutionalizes the principle that the finality of law must ultimately yield to the demands of justice in the most exceptional of circumstances.

For a law student, the curative petition is a powerful example of judicial craftsmanship. It is a “shield” against grave injustice, not a “sword” for re-litigation. Its existence, though rarely invoked and even more rarely successful, reinforces the Supreme Court’s role as the ultimate guarantor of constitutional rights, ensuring that the “curtain of finality” can be lifted to cure a wound to justice itself.