

**In accordance to the Constitution of India, the Supreme Court is the protector of the Constitution and the highest court of appeal.** The Supreme Court is considered as the the 'guardian angel of fundamental rights[1] consisting of four cardinal parts being- original, appellate, advisory and review jurisdiction.

**The jurisdiction of the Supreme Court is defined under Article 124 to 147 of The Indian Constitution,** wherein it elaborates on the fact that the Supreme Court of India being the apex court entertains the appeals against the orders passed by the High Court. Additionally it takes writ petitions in instances of genuine human rights infringement or if a case includes a significant issue that requires an expeditious verdict.

**Article 137 of the Constitution of India, 1950,** subjects to provisions of the guidelines made under Article 145, by which it is clear that the Supreme Court has the ability to review any judgment declared by it. **This petition needs to be filed within thirty days from the date of the impugned ordee.**

The petition or appeal goes before the same bench who had delivered the initial judgment. Although, questioning a judgment or an order which has accomplished conclusiveness by a writ on the premise of infringement of fundamental rights is quite dubious. A mere perusal of the Constitutional Assembly Debates with respect to Article 12 shows that there is a lot of misgiving with respect to the expression of "power/ authority" which is a part of Draft Article 7.

It was felt that ".....a magistrate or even a petty officer in authority (could) rightly claim under this article to have the authority to abridge a citizens (fundamental) rights. "[2]There had been a judgment in the matter of Naresh Shridhar Mirajkar & Ors .vs. State of Maharashtra & Anr [3] which had concluded with the help of a majority that an order can't be said to repudiate or infringe anyone's fundamental rights. Although in the matter of Mukharji, Oza and Natarajan, JJ. It had been clearly stated that the earlier order of Supreme

Court dispossessed the appellant of his constitutional rights which is in contravention to the principles of natural justice and the foundation of the said Act was without precedent and the legal wrong should be redressed ex debito justitiae[4].

**There are only a few resources available to those seeking relief from an Order of the Supreme Court, namely:**

- Review Petition
- Curative Petition

## **Review Petition**

**“Review” in legitimate speech means a legal reconsideration of the case, ‘review’ is “re-examination.** Along these lines, keeping in mind the end goal which is to rectify a miscue and obstruct a miscarriage of justice an arrangement for review is comprised under Section 114 of the Code of Civil Procedure Act, which gives a concrete right to review an Order, the Order XLVII of the Code of Civil Procedure Act specifically furnishes the procedure of review. “Articles 124 to 147 of the Constitution of India set out the purview of the Supreme Court of India wherein under Article 145(e), the Supreme Court is authorized to make rules subject to which the court may review any judgement or order. In exercise of this power, Order XL has been framed”[5].

**Article 137 of the Constitution of India, 1950, states that subject to arrangements of any law and principles made under Article 145, the Supreme Court has the ability to review** any order pronounced. Any party distressed by an order may file for reviewing the said order before to the same court. There is no scope of an appeal.

**Review petition is a petition in which one implores before the same court of law to review its order/judgment which has been effectively**

**professed.** In accordance to the rules set under the Supreme Court Rules, 1966 the petition must be filed within thirty days from the date of the order and must be presented in front of the same bench of judges who had initially delivered the order.

**A review petition is produced before the judges in their chambers and doesn't come before an open court,** which curtails the prospect of arguing out the matter by the respective counsels. Also the plausibility of a review petition to be successful in the Supreme Court is extremely meager unless a judge of the Supreme Court resigns, as the review petition is always produced before the same bench which has already heard the matter/ case.

It is only in the instances when there is something consequential that is produced before the judges that the judges decide to hear the petition in the open court, which sanctions an oral argument by the counsels, although needless to say this too is an extremely rare possibility. "Review is a serious matter; it doesn't entail hearing the appeal all over again. **A judgement once delivered is final.** "A departure from that principle can be justified only when circumstances of a substantial and compelling character make it necessary to do so".[\[6\]](#)

The apex court has elucidated that a review is in no way a form or camouflage of an appeal. The court has advocated review of its own judgment with the accompanying comments:

*"Review literally and even judicially means re examination or re consideration. Basic Philosophy inherent in it is the universal acceptance of human fallibility...Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality."*[\[7\]](#)

In accordance to the rules set out in the Supreme Court, a review petition is not entertained in civil proceedings unless it is in accordance to the grounds mentioned in Order XLVII, Rule I of the Civil Procedure Code which consists of:

1. Some slip-up or blunder obvious on the record.
2. The revelation of new and essential matter or evidence which, after the practice of due diligence, was not within the know how or couldn't be delivered by the personal when the decree or order was passed.
3. Whatever other adequate reason.

**A review petition is neither entertained in any criminal proceeding**, but only on the occasion when there is a conspicuous error seen which has surfaced on the records. Ergo it is befitting to mention that a review petition is viable only on restricted grounds.

Further it is of human predilection to not acknowledge with the review petition even at the likelihood of an error transgressed by the judge. Despite the inconsequential possibility people are still optimistic therefore they file review petitions in a standard way. There are abounding occasions when a review petition is not allowed, on such occasions the grieving parties tend to file a curative petition before the Supreme Court.

## **Curative Petition**

After the review plea is dismissed a curative petition may be filed. It is the last legal resort and a fairly new concept accessible for prevention of any abuse of the procedure and to be sure that there is no miscarriage of justice. **It is usually decided by Judges in-chamber.** It is barely ever that these petitions are given an open-court hearing.

The Supreme Court had first decided the concept of curative petition on the basis of what was laid down in the matter of **Rupa Ashok Hurra vs Ashok Hurra & Anr**<sup>[8]</sup>. It is appropriate to say that the arrangement of curative petition begun after the choice of the Supreme Court on account of this matter. After a woman withdrew her consent regarding mutual separation in her divorce, Supreme Court got an intimation regarding the validity of a decree of

divorce. If the petitioner can establish that the natural justice is violated then curative petition can be entertained.

Curative petition is not a regular phenomenon and can be used in circumspection. An enervating process has been systematized for filing a curative petition. A senior advocate must certify the petition in cognizance to the implementation of the requirements for filing the curative petition. Three senior most judges who have passed the concerned judgment must get the petition first. The petition is only listed after more than half of the number of judges arrives at a common conclusion that the matter needs to be heard again before the same Bench.

**Curative Petitions are filed under Article 137, 141 and 142 of the Constitution of India and the same can be filed under the following grounds:**

1. The petitioner will have to certify and confirm that there was a genuine infringement of principles of [natural justice](#) and that there had been a bias of the judge and judgment that affected him.
2. The petition shall state expressly that the grounds mentioned under [Review Petition](#) were dismissed by circulation.
3. The Curative Petition must come with the certification of a senior advocate for fulfilling the above requirements.
4. The petition is to be sent to the three senior most judges and judges of the bench who passed the judgment, if available.
5. If the majority of the judges on the above bench agree that the matter needs hearing, then it would be sent to the same bench.
6. The court could impose “exemplary costs” to the petitioner if his plea lacks merit”.[\[9\]](#)

The curative petition system had begun in the year of 2002 since which only a total of two curative petitions have thrived from all the numerous curative

petitions that are filed every year, which makes it evident that the chances of a curative petition to succeed is quite diminutive.

In March 2013, Supreme Court allowed a curative petition against a judgment delivered in 2009 which stated “that if a woman kicked her Daughter-in-law or permitted her with divorce, it would not amount to cruelty under Sec 498-A of the Indian Penal Code.[\[10\]](#)” In April 2010, the court further amended an error on its part by delivering an order which led to the wrongful confinement of four indicted in a twenty one year old case without any hearing.[\[11\]](#) The Supreme Court in the case of Union of India v. Azadi Bachao Andolan[\[12\]](#) upheld the legitimacy of circular issued by the Central Board of Direct Taxes in regards The Indo-Mauritius Tax Treaty, with respect to the testament of residence issued by Mauritius Regulatory Authority, which would permit them to gain tax exemptions. A curative petition was recorded in light of the fact that the decision authorizes the idea of “treaty shopping” and that it has conflicted with the constitution since delegated powers of the government had been allowed benefits over statutes.

A five -judge bench had been set up to deem whether it ought to be conceded, and was subsequently dismissed. “Since April 2002 when the Supreme Court propounded the nature of curative petitions, five hundred and sixty curative petitions have been filed before the Supreme Court”[\[13\]](#). This suggests that the parties won't stop till they have depleted all cures accessible including filing of curative petitions. The nature of a curative petition in Rupa Ashok Hurra included the conjuring of Article 137 of the Constitution. Before Rupa Ashok Hurra, Review Petitions denoted the certainty of a Supreme Court judgment past which no further challenge of the judgment was permitted.

## **Study Of Curative Petitions And Review Petitions**

- Primarily, in both the cases the petitions are circulated to the Supreme Court: for review petitions, the course taken is it is submitted before the judges who passed the decision whereas in the case of curative petitions, the petition is given to the three

senior most judges in the Supreme Court and the judges who had passed the impugned judgment if available.

- Secondly in both the petitions a certificate from a senior counsel is fundamental and on the account of curative petition the court can ordain an exemplary cost for those petitions that are unjustifiable, although this isn't the case in review petitions.
- Lastly the curative petition is founded purely on the grounds of natural justice principles which isn't the case in respect of review petition which is a wider scope and not just restricted to the laws of natural justice

Even though there is very little difference between a curative petition and a review petition, the Supreme Court has laid down different grounds for filing both these petitions; this brings to light such factors which make it evident that they are different in totality.

**Curative petition can be considered under Article 32 of The Constitution Of India as it constitutes under constitutional remedies**, albeit the chances of allowing a curative petition remains bare minimum.