



## CURATIVE JURISDICTION - GS II MAINS

Q. Curative jurisdiction of the Indian judiciary serves the purpose of correcting grave injustices at the cost of judicial finality and stability, impacting the legal and business environment. Elucidate (10 marks, 150 words)

**News:** *Sounding the gavel on curative jurisdiction*

### What's in the news?

- The Supreme Court of India's curative jurisdiction, the power to revisit its own final judgments, presents a complex issue. While intended to address grave injustices, it can undermine the concept of judicial finality, impacting the legal and business environment.

### Key takeaways:

- The recent case of Delhi Metro Rail Corporation Ltd. ("DMRC") vs Delhi Airport Metro Express Pvt Ltd ("DAMEPL") demonstrates that curative jurisdiction raises concern about SC power.

### Impact on Judicial Finality and Stability:

#### 1. Erosion of Finality:

- Reopening final judgements creates uncertainty and weakens the concept of finality, a cornerstone of a robust legal system.

#### 2. Litigation Delays:

- The possibility of curative petitions can lead to prolonged litigation, hindering business activities that rely on swift legal resolution.

#### 3. Unpredictability:

- Businesses require a predictable legal environment to make informed decisions.
- Curative jurisdiction can introduce uncertainty into judicial outcomes.

#### 4. Strained Judicial Resources:

- Curative petitions add to the already overburdened Supreme Court, delaying other cases.

#### 5. Complexity in the Legal Environment:

- The process of filing and adjudicating curative petitions adds complexity to legal proceedings, potentially delaying the resolution of disputes and increasing litigation costs.
- The subjective nature of curative jurisdiction raises concerns about consistency and predictability in judicial decision-making, which can impact legal certainty.

#### 6. Uncertainty in Business Environment:

- In the business context, the uncertainty introduced by curative jurisdiction can have implications for investment decisions and commercial transactions.



- Businesses rely on the stability and predictability of legal frameworks to assess risks and make informed choices.
- The possibility of revisiting final judgments through curative petitions introduces a level of unpredictability that may deter investment and undermine confidence in the Indian legal system.
- The prolonged legal disputes resulting from curative petitions can disrupt business operations, leading to financial losses and reputational damage.

## 7. Impact on the Sanctity of Arbitral Awards:

- One of the primary concerns surrounding the exercise of curative jurisdiction is its potential impact on the sanctity of arbitral awards.
- By intervening in arbitral decisions, especially in cases where there is a perception of judicial overreach, the Court risks undermining the fundamental principles of arbitration, including party autonomy and expeditious resolution of disputes.

## 8. Public Perception and Trust in the Judiciary:

- The Court's credibility hinges on its ability to administer justice impartially and with integrity.
- Excessive or arbitrary exercise of curative powers may erode public confidence in the judiciary and diminish its authority as an arbiter of legal disputes.

## Way Forward:

### 1. Clear Guidelines and Principles:

- Implementing clear guidelines and principles for the exercise of curative jurisdiction to ensure consistency and fairness.

### 2. Judicial Training and Education:

- Encouraging judicial training and education on the nuances of curative jurisdiction to enhance its effective application.

### 3. Strengthening Accountability Mechanisms:

- Strengthening mechanisms for judicial accountability and oversight to prevent potential misuse of curative petitions.

### 4. Promoting Transparency:

- Promoting transparency in the curative process, including public access to information and reasoning behind decisions.

### 5. Regular Reviews and Evaluations:

- Conducting regular reviews and evaluations of curative jurisdiction practices to identify areas for improvement.

### 6. Collaboration and Stakeholder Engagement:



- Fostering collaboration between legal experts, policymakers, and stakeholders to address emerging challenges and refine curative procedures.

## 7. Emphasizing Balance:

- Emphasizing the importance of balancing the finality of judgments with the need for justice, considering the broader impact on legal certainty and judicial integrity.

Curative jurisdiction presents a dilemma for the Indian judicial system. While it serves the purpose of correcting grave injustices, it can come at the cost of judicial finality and stability, impacting the legal and business environment. Finding a balance through stricter criteria, time limits, and promoting alternative dispute resolution mechanisms is crucial for a robust and predictable legal system that fosters business activity.

## Go back to basics:

### Curative Petition:

- A curative petition, is the final and last option for the people to acquire justice as mentioned and promised by the Constitution of India.
- A curative petition may be filed after a review plea against the final conviction is dismissed.

### Objective:

- It is meant to ensure there is no miscarriage of justice, and to prevent abuse of process.

### Criteria for Admission:

- The court ruled that a curative petition can be entertained if the petitioner establishes there was a violation of the principles of natural justice, and that he was not heard by the court before passing an order.
- It will also be admitted where a judge failed to disclose facts that raise the apprehension of bias.
- The SC has held that curative petitions must be rare rather than regular, and be entertained with circumspection.
- A curative petition must be accompanied by certification by a senior advocate, pointing out substantial grounds for entertaining it.

### Hearing:

- A curative petition must be first circulated to a bench of the three senior-most judges, and the judges who passed the concerned judgment, if available.
- Only when a majority of the judges conclude that the matter needs hearing should it be listed — as far as possible, before the same Bench.
- A curative petition is usually decided by judges in chamber, unless a specific request for an open-court hearing is allowed.





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- 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.
- 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.



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