

DOCTRINE OF PRECEDENT AND ITS DEPARTING THROUGH CURATIVE JURISDICTION IN INDIA: AN ANALYSIS

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I. Introduction

To follow past decisions is a natural and indeed a necessary procedure in our everyday affairs. To take the same course as has been taken previously, or as has usually been adopted in the past, not only confers the advantage of accumulated experience of the past but also saves the effort of having to think out a problem anew each time it arises.

Precedent has always been the life-blood of legal systems. It is, of course, particularly prominent in the common law, but barely less so in the modern civil law. The special features of the present-day common law system of precedent, perhaps, be summarised as (i) a particular emphasis on judicial decisions as the core of the legal system; (ii) a very subordinate role conceded to juristic writings, as against decisions of the courts, in the exposition of law; (iii) the treatment of certain judicial decisions as binding on other judges; and (iv) the form of judicial judgments and the mode of reporting these.

The above observation of Dennis Lloyd³, about the strict observance of “doctrine of precedent” in a judicial process is a well established practice. In India, as a common law country (as super-imposed under British rule), precedent set by earlier judgment of Supreme Court is found in Article 141 of its Constitution. It very clearly states that “the law declared by Supreme Court shall be binding on all courts within the territory of India”. A decision (in this context Supreme Court) is not binding simply because of its conclusion but in regard to its *RATIO DECIDENDI* i.e. reason of the decision and the principles laid down therein⁴. The question remains to be answered: is the *RATIO DECIDENDI* of the Supreme Court, in the canvas of “doctrine of precedent” binding on the Supreme Court itself? The expression “all courts” obviously means Supreme Court including various High Courts, lower Courts and different tribunals in India, However, if there is an apparent conflict between decisions of Supreme Court, the opinion expressed by larger benches must be followed in preference to those of smaller benches unless the former can be distinguished by giving justified

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³ M. D. A Freeman, Lloyd’s Introduction to Jurisprudence 1380 (2001).

⁴ B Shama Rao vs. Union Territory of Pondicherry, AIR 1967 SC 1480.

reasons⁵. Similarly, a Constitution Bench of the five judges cannot decide the correctness or otherwise of the views expressed by an earlier Constitution Bench of five judges⁶. In spite of this, if the whole matter of “doctrine of precedent” is looked beyond Article 141, it would be found that the Supreme Court is not bound by its own decisions and may overrule its previous decisions⁷. The power of the Supreme Court (obviously by a larger Bench) to reverse its own decisions is premised on Article 137, which unequivocally states that: 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 or order made by it”. This provision has expressly conferred power to Supreme Court to review its judgments. The power is exercisable in accordance with, and subject to, the rules of the Court made under Article 145. The rules so made permit the review of the judgment by the Supreme Court on the grounds mentioned in Order 47, Rule 1 of the Civil Procedure Code. Hence a review will lie on the following three grounds, namely (i) discovery of new or important matters or evidence; (ii) mistake or error on the face of the record; (iii) any other sufficient reason. Therefore, the Supreme Court is not bound by its own decisions and may overrule its previous decisions⁸ to respond to new situations:

It is true that the Constitution does not place any restriction on our powers to review our earlier decisions or even depart from them and there can be no doubt that in matters relating to the decisions of constitutional points which have a significant impact on the fundamental rights of the citizens, we would be prepared to review our earlier decisions in the interest of public good. The doctrine of “stare decisis” may not strictly apply to this extent and no one can dispute the position that the said doctrine should not be permitted to perpetuate erroneous decisions pronounced by this Court to the detriment of general welfare.

Given this legal position, where Constitution of India expressly empowers Supreme Court to depart from the binding effect of “doctrine of precedent”, under REVIEW JURISDICTION (which was holding the legal premise for centuries in a limited way or a bit broader way), after the establishment of Supreme Court (before its establishment it was one of the common law principles as declared by House of Lords), the country has

⁵ Union of India vs. K S Subramaniam, 1976 (3) SCC 677.

⁶ Narendra Prasadji vs. State of Gujarat, 1975 (1) SCC 11.

⁷ State of West Bengal vs. Corporation of Calcutta, AIR 1967 SC 997.

⁸ Sajjan Singh vs. State of Rajasthan, AIR 1965 SC 845; See also T G Mudalier vs. State of Tamil Nadu, 1973 (1) SCC 336, Shambhu Nath Sarkar vs. State of West Bengal, 1973 (1) SCC 856.

found another justified reason to depart from strict observance of “doctrine of precedent”. This new discovered jurisdiction of Supreme Court, as has been declared in *Rupa Hurra vs. Ashok Hurra*⁹, where it can accept “CURATIVE PETITION “and revisit the whole case on some limited grounds, even after the “review petition” of Article 137, gets dismissed (after it was finally decided by highest Appellate Court), which to a great extent, challenges the established practice of giving sanctity to finality of the judgment or order of Supreme Court, a sine-qua-non of stability and certainty of any sound legal system. Here in this article, an attempt has been made to analyse this CURATIVE PETITION, because of which the Supreme Court can depart from its final decision or order for the second time, by mainly basing on *Rupa Hurra vs, Ashok Hurra* judgment and few other cases, without making it a comparative analysis by referring to laws of other countries.

II. Excerpts from the Judgment: Rupa Hurra vs. Ashok Hurra

II.I. Issue Before the Court

Whether an aggrieved person is entitled to any relief against a final judgment/order of this Court, after dismissal of review petition, either under Article 32 of the Constitution or otherwise.

II.II. Jurisdiction of Supreme Court of India

The Supreme Court of India, was the creation of Constitution of India unlikely to various High Courts, which was established by its Article 124. The Constitution has specified various powers, functions and jurisdictions of the apex Court which has divested off Judicial Committee of Privy Council or House of Lords which were placed over and above Federal Court. The constitution also enabled Parliament to confer further power and jurisdiction to the apex Court in case of necessity:

The Constitution conferred on the Supreme Court original jurisdiction¹⁰; appellate jurisdiction both civil and criminal¹¹; discretionary jurisdiction to grant special leave to appeal¹² and very wide discretionary powers, in the exercise of its jurisdiction, to pass decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, which shall be enforceable throughout the territory of India in the manner prescribed¹³; powers like the power to withdraw any case pending in any High Court or

⁹ *Rupa Hurra vs. Ashok Hurra*, 2002 (4) SCC 388.

¹⁰ Articles 32 and 131, Constitution of India.

¹¹ Articles 132, 133, 134, Constitution of India.

¹² Article 136, Constitution of India.

¹³ Article 142, Constitution of India.

High Courts to itself or to transfer any case from one High Court to another High Court¹⁴ and to review judgment pronounced or order made by it¹⁵. Conferment of further jurisdiction and powers is left to be provided by Parliament by law¹⁶. Parliament is also enabled to confer further powers on the Supreme Court¹⁷. Article 141 says that the law declared by the Supreme Court shall be binding on all courts within the territory of India and Article 144 directs that all authorities civil and judicial, in the territory of India, shall act in aid of the Supreme Court. It is a Court of record and has all the powers of such a Court including power to punish for contempt of itself¹⁸. Since the jurisdiction of this Court under Article 32 of the Constitution is invoked in these writ petitions, we shall advert to the provisions of Article 32 of the Constitution. It is included in Part III of the Constitution and is quoted hereunder: Remedies for enforcement of rights conferred by this Part. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have power to 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 conferred by this Part. (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

A perusal of the Article, quoted above, shows it contains four clauses. Clause (1) guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III i.e. fundamental rights. By clause (2) the Supreme Court is vested with the power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus,

¹⁴ Article 139, Constitution of India.

¹⁵ Article 137, Constitution of India.

¹⁶ Article 138, Constitution of India

¹⁷ Articles 134(2), 139, 140), Constitution of India.

¹⁸ Article 129, Constitution of India.

prohibition, quo warranto and certiorari whichever may be appropriate for the enforcement of any of the rights conferred by Part III. Without prejudice to the powers of the Supreme Court in the aforementioned clauses (1) and (2), the Parliament is enabled, by clause (3), to empower by law any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). The constitutional mandate embodied in clause (4) is that Article 32 shall not be suspended except as otherwise provided for by the Constitution.

II.III. Application of the Doctrine of Precedent

Many a time, the issue had been raised before Supreme Court whether its final decision or order can be challenged as violative of Part III of Constitution, either in the context of final nod of Supreme Court for capital punishment or justifying the prohibition on other fundamental rights as constitutional, by simply interfering with the finding of facts of lower courts or approving those. Given the issue of maintainability of such writ petition (under Article 32, Constitution of India) against a final decision or order of Supreme Court, the nine judge Bench of Supreme Court finally in *Naresh Shridhar Mirajkar vs. State of Maharashtra*¹⁹ has finally concluded by stating that:

So far as the jurisdiction of this Court to issue writ of certiorari is concerned, it is impossible to accept the argument of the petitioners that judicial orders passed by High Courts in or in relation to proceedings pending before them, are amenable to be corrected by exercise of the said jurisdiction. We have no doubt that it would be unreasonable to attempt to rationalise the assumption of jurisdiction by this Court under Article 32 to correct such judicial orders on the fanciful hypothesis that High Courts may pass extravagant orders in or in relation to matters pending before them and that a remedy by way of a writ of certiorari should, therefore, be sought for and be deemed to be included within the scope of Article 32. The words used in Article 32 are no doubt wide; but having regard to the considerations which we have set out in the course of this judgment, we are satisfied that the impugned order cannot be brought within the scope of this Court's jurisdiction to issue a writ of certiorari under Article 32; to hold otherwise would be repugnant to the well-recognised limitations

¹⁹ 1966 (3) SCR 744.

within which the jurisdiction to issue writ of certiorari can be exercised and inconsistent within the uniform trend of this Court's decisions in relation to the said point.

After referring to the above and other earlier judgments of the Supreme Court²⁰, which had already settled down the matter, the apex Court very categorically stated the non-amenability of the final judgment or order to correction by filing a WRIT PETITION for issuance of CERTIORARI under Article 32 of Constitution, due to the reason that JUDICIARY is not "state" under its Article 12 as far as its judicial functions are concerned. The Supreme Court reiterates this legal position and just applied the precedent set out by Constitution Bench of this Court in the following language:

On the analysis of the ratio laid down in the aforementioned cases, we reaffirm our considered view that a final judgment/order passed by this Court cannot be assailed in an application under Article 32 of the Constitution of India by an aggrieved person whether he was a party to the case or not.

II.IV. Ratio-Decidendi vis-a-vis "Doctrine of Precedent"

While applying the "doctrine of precedent" in a subsequent case, it is actually the RATIO-DECIDENDI of the previous case, (in the context of the Supreme Court under Article 141) becomes binding. What is the RATIO-DECIDENDI of a case then? How it is to be found out from a judgment? In *Krishna Kumar vs. Union of India*²¹, by clarifying that precedent consists only in 'enunciation of the reason or principle upon which a question before a Court has been decided' the Supreme Court observed: "The RATIO DECIDENDI is the underlying principle, namely the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision". Deliberating upon RATIO DECIDENDI which is binding and has a precedent value, noted author V N Shukla, in his famous book-*Constitution of India*²² opined:

According to the well-settled theory of precedents, every decision of the Court contains three basic ingredients-

²⁰ A.R.Antulay vs. R.S.Nayak, 1988 (2) SCC 602, Smt. Triveniben vs. State of Gujarat, 1989 (1) SCC 678. Krishna Swami vs. Union of India. 1992 (4) SCC 605, Mohd. Aslam vs. Union of India, 1996 (2) SCC 749, Khoday Distilleries Ltd. vs. Registrar General, Supreme Court of India, 1996 (3) SCC 114, Gurbachan Singh vs. Union of India, 1996 (3) SCC 117, Babu Singh Bains vs. Union of India, 1996 (6) SCC 565, and P.Ashokan vs. Union of India, 1998 (3) SCC 56.

²¹ 1990 (4) SCC 207.

²² V. N. Shukla, *Constitution of India* 457 (2004).

(i) finding of material facts, direct and inferential; (ii) statement of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of (i) and (ii) for the purposes of the parties and their privies ingredient (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject matter of the action. It is the judgment that estops the parties the parties from reopening the disputes. However, for the purposes of the “doctrine of precedent” ingredient (ii) is the vital element in the decision. That indeed is the *RATIO DECIDENDI*. The *RATIO DECIDENDI* may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two ingredients are not precedents.

II.V. Contentions of the Senior Lawyers for one more Revisit under Inherent Power of Supreme Court

As the judgment or final order of the Supreme Court cannot be reconsidered under Article 32 of Constitution, either before the consideration of or by dismissing REVIEW PETITION, all the senior lawyers, in Rupa Hurra vs. Ashok Hurra case, pleaded before Hon’ble Supreme Court that even after exhausting the remedy of review under Article 137 of the Constitution, an aggrieved person might be provided with an opportunity under inherent powers of this Court to seek relief in cases of gross abuse of the process of the Court or gross miscarriage of justice because against the order of this Court the affected party cannot have recourse to any other forum. They also referred to some previous judgments of the apex Court wherein those previous judgments had been corrected after the affected parties prayed (in an informal way).

II.V.I. Mr.Shanti Bhushan, by citing Antulay’s case²³, Supreme Court Bar Association’s case²⁴ and Ahlwat’s case²⁵ as instances in which this Court had corrected its earlier judgments, argued:

That the principle of finality of the order of this Court had to be given a go-by and the case re-examined where the orders were passed without jurisdiction or in violation of the principles of natural justice, violation of any fundamental rights or where there has been gross injustice. He invited our attention to Order XLVII, Rule 6 of the Supreme Court Rules, 1966 and submitted that this Court had inherent

²³ A.R.Antulay vs. R.S.Nayak, 1988 (2) SCC 602.

²⁴ Supreme Court Bar Association vs. Union of India, 1998 (4) SCC 409.

²⁵ M.S.Ahlwat vs. State of Haryana, 2000 (1) SCC 278.

jurisdiction and that cases falling in the aforementioned categories should be examined under the inherent jurisdiction of this Court. According to the learned counsel Article 129 would not be available to correct a judgment of this Court but he pleaded that as from the order of the Apex Court no appeal would lie, therefore, an application, by whatever name called, which should be certified by a senior counsel in regard to existence of permissible ground, has to be entertained on any of the aforementioned grounds to correct a judgment of this Court. He advocated: (i) for oral hearing on such an application and (ii) for hearing by a Bench of Judges other than those who passed the order on the ground that it would inspire confidence in the litigant public.

II.V.II. Mr.K.K.Venugopal, referred to Harbans Singh vs. State of Uttar Pradesh²⁶, to show that even after the dismissal of the Review Petition the Supreme Court reconsidered its own judgment:

The provisions of Order XLVII, Rule 6 of the Supreme Court Rules, is a mere restatement of the provisions of Article 137 of the Constitution and that the inherent jurisdiction of this Court might be exercised to remedy the injustice suffered by a person. He suggested that a Constitution Bench consisting of senior judges and the judges who passed the order under challenge, could be formed to consider the application seeking correction of final orders of this Court. He added that to ensure that floodgates are not opened by such a remedy, an application for invoking the inherent power of this Court might require that it should be certified by a senior advocate and in case of frivolous application the petitioner could be subjected to costs. He relied on the judgment of United States in United States of America Vs. Ohio Power Company [1 Lawyers' Ed. 2d 683] to show that in every jurisdiction the courts have corrected their own mistakes. he pleaded for laying down guidelines in regard to entertaining such an application.

II.V.III. Mr. Anil B.Divan referred to the judgment of the Federal Court in Raja Prithwi Chand Lall Choudhry vs. Rai Bahadur Sukhraj Rai²⁷, for reconsideration of the judgment under the inherent power of the Court:

²⁶ Harbans Singh vs. State of Uttar Pradesh, 1982 (2) SCC 101.

²⁷ Raja Prithwi Chand Lall Choudhry vs. Rai Bahadur Sukhraj Rai, 1940 (2) FCR 78.

Article 129 of the Constitution declared this Court to be a court of record so it would have inherent powers to pass appropriate orders to undo injustice to any party resulting from judgments of this Court. He relied on the judgment of this Court in Supreme Court Bar Association's case to show that such a power was exercised by this Court and pleaded to fashion appropriate procedure for entertaining application to reconsider earlier judgment of this Court at the instance of an aggrieved person to do justice to the parties. The learned Attorney-General argued that the remedy provided under Article 32 of the Constitution would not be available to a person aggrieved by the final order of this Court; he nonetheless supported the contentions urged by other learned counsel that in case of gross miscarriage of justice, this Court ought to exercise its inherent powers by entertaining an application to examine the final order of this Court, even when a review was rejected, in the rarest of the rare cases. According to him where the order was passed without jurisdiction or in violation of the principles of natural justice, the case would fall in the rarest of the rare cases. He, however, contended that an order of this Court could not be said to violate fundamental rights conferred under Part III of the Constitution and, therefore, on that ground no relief could be claimed. He submitted that under Article 137 read with Order XL Rule 1 of the Supreme Court Rules, 1966 review of an order of this Court is provided which will be considered by the same Bench unless the same Judges are not available by reason of demitting the office. He submitted that for correction of a final judgment of this Court on the ground of lack of jurisdiction or violation of principle of natural justice, a curative petition could be entertained which might be heard by an appropriate Bench composed of the senior Judges as well as Judges who passed the order.

II.V.IV. Dr. Rajiv Dhavan, referred to the decisions of this Court in Antulay's case²⁸, Supreme Court Bar Association's case²⁹, Ahlwat's case³⁰ and Triveniben's case³¹ and submitted:

²⁸ Id, at page 5.

²⁹ Id, at page 6.

³⁰ Id, at page 6.

³¹ Smt. Triveniben vs. State of Gujarat, 1989 (1) SCC 678.

The Supreme Court is the creature of the Constitution so the corrective power has to be derived from the provisions conferring jurisdiction on the Supreme Court like Articles 32 and 129-140; such a power does not arise from an abstract inherent jurisdiction. The corrective power must be exercised so as to correct an injustice in a case of patent lack of jurisdiction in a narrow sense, not in the Anisminic's broader sense, and gross violation of natural justice. Relying on the judgment of House of Lords in *R v Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2)*'s case³² he has submitted that this Court has inherent power to correct its own judgment where a party through no fault of his own has been subjected to an unfair procedure giving scope for bias. His further contention is that the corrective power is a species of the review power and Articles 129, 137, Order XL Rule 5 and Order XLVII Rules 1 and 6 indicate that this Court has inherent power to set right its own judgment.

II.V.V. Mr. Ranjit Kumar referred to seven judge Bench decision of *Keshav Mills Co. Ltd. vs. Commissioner of Income-Tax Bombay North*³³, seven judge Bench decision of *Maganlal Chhaganlal (P) Ltd. vs. Municipal Corporation of Greater Bombay*³⁴ and a five judge Bench decision of *Indian Aluminium Co. Ltd. vs. The Commissioner of Income-Tax, West Bengal*³⁵ and contended:

In case of manifest illegality and palpable injustice this Court under its inherent powers could reconsider final judgment/order passed by this Court. He submitted that the composition of the Bench might include senior-most Judges along with the Judges who passed the order, if available. It is also his submission that while considering such curative petitions on the ground of manifest illegality and palpable injustice, in the rarest of rare cases, factors like the doctrine of stare decisis and the finality and the certainty of the law declared by this Court are required to be kept in mind. He stressed that the power of re-consideration of an earlier decision had to be very restricted; when the power of review is very limited and circumscribed as is evident from the decision of the Constitution Bench in *Cauvery Water*

³² 1999 (1) All ER 577.

³³ 1965 (2) SCR 908.

³⁴ 1974 (2) SCC 402.

³⁵ 1972 (2) SCC 150.

Disputes Tribunal³⁶ and the Bench of three learned Judges in *S. Nagaraj vs. State of Karnataka*³⁷ and in *Ramdeo Chauhan vs. State of Assam*³⁸ by three learned Judges and in the case of *Lily Thomas vs. Union of India*³⁹ the exercise of inherent power for correcting the manifest illegality and palpable injustice after dismissal of the review petition has to be much narrower than the power of review.

III. Justification for Departing from Doctrine of Precedent

The Supreme Court finds merit in all the arguments of senior lawyers, which sought to remedy the gross injustice even after the matter was finally decided by highest Appellate Court (and REVIEW PETITION subsequently was dismissed by it). Supreme Court, for theorising this departure from enforcing the “doctrine of precedent” in the light of Constitutional jurisprudence, as a prelude” observed:

There is no gainsaying that the Supreme Court is the Court of last resort, the final Court on questions both of fact and of law including constitutional law. The law declared by this Court is the law of the land; it is precedent for itself and for all the courts/tribunals and authorities in India. In a judgment there will be declaration of law and its application to the facts of the case to render a decision on the dispute between the parties to the lis. It is necessary to bear in mind that the principles in regard to the highest Court departing from its binding precedent are different from the grounds on which a final judgment between the parties, can be reconsidered. Here, we are mainly concerned with the latter. However, when reconsideration of a judgment of this Court is sought the finality attached both to the law declared as well as to the decision made in the case, is normally brought under challenge.

Issue of Departing from Rigidity in “Doctrine of Precedent”

Any departing from the enforceability of “doctrine of precedent” is not allowed in the judicial process under Article 141, Constitution of India. Any departing from this principle will lead to uncertainty of law and destroy the finality of the judgment resulting in further confusion about the judicial process. This departing not only will shaken the people’s faith in the judiciary but also question the efficiency of the judges. However, society is

³⁶ 1993 Suppl. (1) SCC 96.

³⁷ 1993 Suppl. (4) SCC 595.

³⁸ 2001 (5) SCC 714.

³⁹ 2000 (6) SCC 224.

not static and situations are changing day by day. People's expectations from judiciary over the years have increased immensely. Sticking to a rigid process, which comes in the way of rendering justice, in the name of "doctrine of precedent" (in the context of Article 141, Constitution of India) is not a process at all. Ultimately JUSTICE should get paramount importance over other considerations. For the sake of technicality, if there is travesty of JUSTICE, what would remain with the system? In the language of the apex Court (after highlighting the matter) in Rupa hurra vs. Ashok Hurra judgment:

The provision of Order XL Rule 5 of the Supreme Court Rules bars, further application for review in the same matter. The concern of the Court now is whether any relief can be given to the petitioners who challenge the final judgment of this Court, though after disposal of review petitions, complaining of the gross abuse of the process of Court and irremedial injustice. In a State like India, governed by rule of law, certainty of law declared and the final decision rendered on merits in a lis between the parties by the highest court in the country is of paramount importance. The principle of finality is insisted upon not on the ground that a judgment given by the apex Court is impeccable but on the maxium "Interest reipublicae ut sit finis litium". At one time adherence to the principle of stare decisis was so rigidly followed in the courts governed by the English Jurisprudence that departing from an earlier precedent was considered heresy. With the declaration of the practice statement by the House of Lords, the highest court in England was enabled to depart from a previous decision when it appeared right to do so. The next step forward by the highest court to do justice was to review its judgment inter partie to correct injustice. So far as this Court is concerned, we have already pointed out above that it has been conferred the power to review its own judgments under Article 137 of the Constitution. The role of judiciary merely to interpret and declare the law was the concept of bygone age. It is no more open to debate as it is fairly settled that the courts can so mould and lay down the law formulating principles and guidelines as to adapt and adjust to the changing conditions of the society, the ultimate objective being to dispense justice.

The concern of this Court for rendering justice in a cause is not less important than the principle of finality of its judgment. We are faced with competing principles-ensuring certainty and finality of a judgment of the

Court of last resort and dispensing justice on reconsideration of a judgment on the ground that it is vitiated being in violation of the principle of natural justice or apprehension of bias due to a Judge who participated in decision making process not disclosing his links with a party to the case, or abuse of the process of the court. Such a judgment, far from ensuring finality, will always remain under the cloud of uncertainty. Almighty alone is the dispenser of absolute justice, a concept which is not disputed but by a few. We are of the view that though Judges of the highest Court do their best, subject of course to the limitation of human fallibility, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. In such case it would not only be proper but also obligatory both legally and morally to rectify the error. After giving our anxious consideration to the question we are persuaded to hold that the duty to do justice in these rarest of rare cases shall have to prevail over the policy of certainty of judgment as though it is essentially in public interest that a final judgment of the final court in the country should not be open to challenge yet there may be circumstances, as mentioned above, wherein declining to reconsider the judgment would be oppressive to judicial conscience and cause perpetuation of irremediable injustice.

This Court in Harbans Singh's case⁴⁰, on an application under Article 32 of the Constitution filed after the dismissal of special leave petition and the review, reconsidered its judgment. In that case, among others, the petitioner and another person were convicted under Section 302 of I.P.C. and sentenced to death. In the case of one of the remaining two convicts, the Supreme Court commuted the death sentence to life imprisonment. While staying the death sentence of the petitioner, A.N.Sen, J. in his concurring opinion, noticed the dismissal of the petitioner's special leave, review petitions and the petition for clemency by the President and observed: "Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution, I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice".

In *Antulay's case*⁴¹, the majority in the seven-Judge Bench of this Court set aside an earlier judgment of the Constitution Bench in a collateral proceeding on the view that the order was contrary to the provisions of the

⁴⁰ Harbans Singh vs. State of Uttar Pradesh, 1982 (2) SCC 101.

⁴¹ Id, at page 5.

Act of 1952; in the background of that Act without precedent and in violation of the principles of natural justice, which needed to be corrected *ex debito justitiae*.

In Supreme Court Bar Association's case⁴², on an application filed under Article 32 of the Constitution of India, the petitioner sought declaration that the Disciplinary Committees of the Bar Councils set up under the Advocates Act, 1961, alone had exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct and that the Supreme Court of India or any High Court in exercise of its inherent jurisdiction had no such jurisdiction, power or authority in that regard. A Constitution Bench of this Court considered the correctness of the judgment of this Court in *Re: Vinay Chandra Mishra*⁴³. The question which fell for consideration of this Court was: whether the punishment of debaring an advocate from practice and suspending his licence for a specified period could be passed in exercise of power of this Court under Article 129 read with Article 142 of the Constitution of India. There an errant advocate was found guilty of criminal contempt and was awarded the punishment of simple imprisonment for a period of six weeks and was also suspended from practice as an advocate for a period of three years from the date of the judgment of this Court for contempt of the High Court of Allahabad. As a result of that punishment all elective and nominated offices/posts then held by him in his capacity as an advocate had to be vacated by him. Elucidating the scope of the curative nature of power conferred on the Supreme Court under Article 142, it was observed: "The plenary powers of the Supreme Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which the Supreme Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. It is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Supreme Court to prevent "clogging or obstruction of the stream of

⁴² *Id.*, at page 6.

⁴³ 1995 (2) SCC 584.

justice”. In spite of the width of power conferred by Article 142, the Constitution Bench took the view that suspending the advocate from practice and suspending his licence was not within the sweep of the power under the said Article and overruled the judgment in *Re V.C.Mishra’s case*⁴⁴.

In *M.S.Ahlwat’s case*⁴⁵, the petitioner, who was found guilty of forging signatures and making false statements at different stages before this Court, was inflicted punishment under Section 193 IPC in *Afzal vs. State of Haryana*⁴⁶. He filed an application under Article 32 of the Constitution assailing the validity of that order. Taking note of the complaint of miscarriage of justice by the Supreme Court in ordering his incarceration which ruined his career, acting without jurisdiction or without following the due procedure, it was observed that to perpetuate an error was no virtue but to correct it was a compulsion of judicial conscience. The correctness of the judgment was examined and the error was rectified.

In the cases discussed above, this Court reconsidered its earlier judgments, inter alia, under Articles 129 and 142 which confer very wide powers on this Court to do complete justice between the parties. We have already indicated above that the scope of the power of this Court under Article 129 as a Court of Record and also adverted to the extent of power under Article 142 of the Constitution. The upshot of the discussion in our view is that this Court, to prevent abuse of its process and to cure a gross miscarriage of justice, may re-consider its judgments in exercise of its inherent power.

Ratio Decidendi of the Judgment

Keeping in view, the new discovered jurisdiction of Supreme Court, the apex Court had to specify the pre-requisites to consider “curative petition” so that floodgates are not opened for filing a second review petition in the guise of a “curative petition”. While doing so, it is quite justified in not entertaining a “curative petition” for reconsideration of its final judgment or order, unless there remain very strong reasons, after the dismissal of a review petition. The following grounds, though not last but the least have been formulated as *RATIO DECIDENDI* of the *Rupa Hurra vs. Ashok Hurra* judgment on the basis of inherent powers of Supreme Court, under Articles 129 and 142 of Constitution of India, which is not limited by any other provisions of Constitution or any other law:

A petitioner is entitled to relief *ex debito justitiae* if he establishes (1) violation of principles of natural justice in

⁴⁴ *Re: Vinay Chandra Mishra*, (1995) 2 SCC 584.

⁴⁵ *Id*, at page 6.

⁴⁶ 1996 (7) SCC 397.

that he was not a party to the lis but the judgement adversely affected his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice and (2) where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner.

Apart from that, according to Supreme Court's direction, given in this case, there are some procedures to be complied with:

The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the review petition and that it was dismissed by circulation. The curative petition shall contain a certification by a Senior Advocate with regard to the fulfilment of the above requirements. We are of the view that since the matter relates to re-examination of a final judgment of this Court, though on limited ground, the curative petition has to be first circulated to a Bench of the three senior-most Judges and the Judges who passed the judgment complained of, if available. It is only when a majority of the learned Judges on this Bench conclude that the matter needs hearing that it should be listed before the same Bench (as far as possible) which may pass appropriate orders. 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.

Instances of Curative Petitions in India

After *Rupa Hurra vs. Ashok Hurra* (through a Constitution Bench), which set the tone for recognition of CURATIVE PETITION in a structured way to reconsider the final decision or order of Supreme Court after the review petition under Article 137, Constitution of India is dismissed, many curative petitions were filed. But in most of the cases the Supreme Court did not find any merit and subsequently dismissed those. Followings are some of the instances wherein the apex Court in fact accepted the contentions of the petitioners and acted in a right direction. *Navneet Kaur vs. State of NCT of Delhi*⁴⁷, Navneet Kaur, filed a Curative Petition against the dismissal of Review Petition, wherein she prayed for setting aside the death sentence imposed upon her husband Devender Pal Singh Bhullar by commuting the same to imprisonment for life on the ground of supervening circumstance of delay of 8 years in disposal of mercy petition. While accepting the said

⁴⁷ Curative Petition (Criminal) No. 88 of 2013, Date of judgment 31st March, 2014.

petition referred to *Shatrughan Chauhan vs. Union of India*,⁴⁸ where the Supreme Court commuted the sentence of death imposed on the petitioners to imprisonment for life. In the aforesaid verdict, this Court held that unexplained/unreasonable/inordinate delay in disposal of mercy petition is one of the supervening circumstances for commutation of death sentence to life imprisonment and also held that insanity/mental illness/schizophrenia is also one of the supervening circumstances for commutation of death sentence to life imprisonment. Therefore, according to Supreme Court, by applying the principle enunciated in *Shatrughan Chauhan*, the accused cannot be executed with the said health condition: “In the light of the above discussion and also in view of the ratio laid down in *Shatrughan Chauhan*, we deem it fit to commute the death sentence imposed on *Devender Pal Singh Bhullar* into life imprisonment both on the ground of unexplained/inordinate delay of 8 years in disposal of mercy petition and on the ground of insanity”. In another case, *National Commission for Women v. Bhaskar Lal Sharma*⁴⁹, Supreme Court allowed a curative petition against a judgment delivered by it 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”. Her appeal was disposed of by Supreme Court upon holding that no case under Sections 498 (A) or 406 IPC had been made out against her husband, *Bhaskar Lal Sharma*, and, as far as her mother-in-law is concerned, she could be proceeded with only under section 406 IPC. Aggrieved by the said judgment and order, *Monica*, filed review petition, which was also dismissed by Supreme Court:

Appearing in support of the petitions, *Ms Indu Malhotra*, learned Senior Counsel, pointed out several paragraphs from the judgment itself, which in her submission, amounted to cruelty within the definition of Section 498-A IPC. It was also submitted by *Ms Malhotra* that the manner in which the appeals had been heard and disposed of, quashing the summoning order at the very initial stage, was also improper, since the trial was yet to be conducted and evidence was yet to be adduced in the matter.

We hold that these curative petitions are maintainable by the National Commission for Women, which has been constituted with certain definite objects in mind. In this regard, we may refer to Section 10 of the National Commission for Women Act, 1990, which provides for the functions of the Commission and, in particular, Sections 10(1)(e) and (f) thereof. Clause (e) of sub-section (1) indicates that the Commission would be entitled to take up the cases of violation of the provisions of the

⁴⁸ 2014 (1) SCALE 437.

⁴⁹ 2014 (4) SCC 252.

Constitution and other laws relating to women with the appropriate authorities and clause (f) provides that the Commission will look into complaints and take suo motu notice of matters relating to deprivation of women's rights, non-implementation of laws enacted to provide protection of women and also to achieve the objectives of equality and development. Accordingly, we allow the curative petitions filed by the National Commission for Women and recall the judgment and order delivered by this Court and restore the appeals for de novo hearing.

Review Jurisdiction-first Instance of Departing

While tracking the root of dilution of “doctrine of precedent”, no one should lose sight of Federal Court of India’s (a precursor to Supreme Court of India) judgment in *Raja Prithwi Chand Lall Choudhury vs. Rai Bahadur Sukhraj Rai*⁵⁰. The judgment should not be seen in any as a curative petition. The above judgment as an informal curative petition, was not considered by the Federal Court, after the review petition had been dismissed. It was simply the first judgment which showed the inherent power of Federal Court of India to review its own judgment. The above judgment, shows the existing legal position of United Kingdom and British India regarding the inherent power of Judicial Committee of Privy Council and House of Lords (including of Federal Court itself⁵¹) to review its own final judgment or decision. Hence, the rules which govern the practice of Judicial Committee or House of Lords, in no uncertain terms state that “doctrine of precedent” is not as sacrosanct as it is preached. For the sake of justice, which is supreme value, a decision of the Supreme Court or its final order can be altered. In the language of Federal Court in the above case :

The court will not sit as a court of appeal from its own decisions, nor will it entertain applications to review on the ground only that one of the parties in the case conceives himself to be aggrieved by the decision. It would in our opinion be intolerable and most prejudicial to the public interest if cases once decided by the court could be re-opened and re-heard: “There is statutory maxim which ought to be observed by all Courts of last resort-*Interest reipublicae ut sit finis litium*. Its strict observance may occasionally entail hardship upon individual litigants but the

⁵⁰ AIR 1941 FC 1.

⁵¹ Under the existing Constitution Act, there was no provision of review jurisdiction of Federal Court (to review its own judgments) unlikely to the limited REVIEW JURISDICTION of High Courts under section 114 and Order XLVII of First Schedule to Civil Procedure Code. 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.

mischief arising from that source must be small in comparison with the general mischief which would necessarily result from doubt being thrown upon the finality of the decisions of such a tribunal as this (Venkata Narasimha Appa Row vs. Court of Wards⁵²).

The practice in England is well settled and of long standing. In *Rajunder Narain Rae vs. Bijai Govind Singh*⁵³, Lord Broughmam delivering the judgment of Judicial Committee of Privy Council said: "It is unquestionably the strict rule and ought to be distinctly understood as such, that no cause in this Court can be re-heard, and that an order once made that is a report submitted to His Majesty and adopted, by being made an Order in Council is final and cannot be altered. Whatever, therefore, has been really determined in these Courts must stand, there being no power of re-hearing for the purpose of changing the judgment pronounced. Nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in. The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies. It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard."

If at the present moment it has power to review its own judgments that power should not in our opinion be regarded as more extensive than the power exercised for the same purpose by the Judicial Committee or the House of Lords and should be subject to similar restrictions and we conceive that the rules which govern the practice of Judicial Committee and the House of Lords in these matters may rightly be taken as a guide to the practice of this court also.

The general rule remains as it was enunciated a century ago. It is recognised by the Judicial Committee that in certain exceptional circumstances as application for re-hearing may be entertained, but the cases in which this will be done have not been substantially enlarged since they were explained by Lord Brougham.

⁵² 1886 Appeal Case 660.

⁵³ 1836 (1) Moo. P.C 117.

After the Constitution came into being, through Article 137, it conferred the review jurisdiction to 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. It is to be noted that the jurisdiction of Supreme Court’s to review its own judgment or order is exercised basically by the same judge Bench and for the same subject matter. Take for example, in *G.L.Gupta vs. D.H.Mehta*⁵⁴, the apex Court reviewed its judgment regarding the violation of Foreign Exchange Regulation Act wherein it was found that at the time of herring section 23-C(2) was not brought to the notice of the Court.

Overruling-second Instance of Departing

CURATIVE or REVIEW PETITION is not technically considered as the continuation of the original case of an aggrieved person. But these are the petitions where the Supreme Court can depart from “doctrine of precedent” if it falls under any of the constitutionally permitted grounds in the original case concerned. Apart from that, there is another instance where the Supreme Court even can depart from “doctrine of precedent” by overruling its previous decision, i.e. ratio-decidenti in a subsequent case; and the case is not in any way connected to the original case decided by it earlier. Take for example, the nature of RIGHT TO EDUCATION declared in *Mohini Jain vs. State of Karnataka*⁵⁵ (three judge Division Bench), as fundamental right under Article 21, Constitution of India was overruled in *Unni Krishnan vs. State of A.P*⁵⁶ (five judge Constitution Bench). In the same way, the nature of “procedure established by law” of Article 21, interpreted in *A.K.Gopalan vs. State of Madras*⁵⁷ (six judge Constitution Bench) was subsequently overruled in *Maneka Gandhi vs. Union of India*⁵⁸ (seven judge Constitution Bench) after three decades. Article 137 of Constitution of India empowers the Supreme Court to do it. The overruling is to be done by the Supreme Court through its larger Bench to overrule the decision of a lower Bench. However, this power of Supreme Court is subject to “doctrine of prospective overruling⁵⁹,” where the Court, which overrules the previous decision, expressly saves all the previous decisions based on overruled decision; while doing it makes the judgment operational only in future cases including that case wherein the previous decision is overruled.

⁵⁴ 1971(3) SCC 189, See also *Srinivasiah vs. Sree Balaji Krishna Harware Stores*, 1998 (8) SCC 312, *Ashok Kumar Pattanaik vs. State of Orissa*, 1998 (6) SCC 176, *Lily Thomas vs. Union of India*, AIR 2000 SC 1650.

⁵⁵ 1992 (3) SCC 666.

⁵⁶ 1993 (1) SCC 645.

⁵⁷ *A.K.Gopalan vs. State of Madras*, AIR 1950 SC 27.

⁵⁸ 1978 (1) SCC 248.

⁵⁹ *Golok Nath vs. State of Punjab*, AIR 1967 SC 1643.

After the question before a (seven judges) Constitution Bench in *Keshav Mills Co. Ltd vs. Commissioner of Income-Tax Bombay North*⁶⁰, arose as to what extent the principle of “stare decisis” could be pressed into service where the power of Supreme Court to overrule its earlier decisions was invoked, Supreme Court opined:

When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions.

Regarding the effect of an earlier decision or order of this Court, Sawant, J. speaking for the (five judges) Constitution Bench observed in *Re Cauvery Water Disputes Tribunal's case*⁶¹ observed:

The decision of this Court on a question of law is binding on all courts and authorities. Hence under the said clause the President can refer a question of law only when this court has not decided it. Secondly, a decision given by this Court can be reviewed only under Article 137 read with Rule 1 of Order XL of the Supreme Court Rules, 1966 and on the conditions mentioned therein. When, further, this Court overrules the view of law expressed by it in an earlier case, it does not do so sitting in appeal and exercising an appellate jurisdiction over the earlier decision. It does so in exercise of its inherent power and only in exceptional circumstances such as when the earlier decision is per

⁶⁰ 1965 (2) SCR 908.

⁶¹ 1993 Suppl. (1) SCC 96.

incuriam or is delivered in the absence of relevant or material facts or if it is manifestly wrong and productive of public mischief.

A Concluding Comment

Firstly, with the emergence of CURATIVE PETITION in India's constitutional jurisprudence, the "RATIO-DECIDEDI" of an earlier judgment of Supreme Court, is reconsidered on any or two of the grounds, developed by it in Rupa Hurra vs. Ashok Hurra judgment. It is seen that because of this, the rule regarding "doctrine of precedent" has been further diluted to a great extent. Previously, it was the REVIEW JURISDICTION under Article 137, Constitution of India, under which Supreme Court used to depart from the strict compliance of "doctrine of precedent" either reviewing it in the same subject matter or in a different subject matter. Whatever has been construed, is good for a responsible and viable judiciary. The recognition of "curative petition" is an attribute to a judicial process of a dynamic society like India. A legal system which is not static in nature, cannot tolerate a completely a rigid system of law, by making "doctrine of precedent" too much sacrosanct in the name of finality or certainty. Rightly pointed out by Denis Llyod⁶², about one major shortcoming of strict observance "doctrine of precedent":

The infinite variability of the facts in human situations comes to the assistance of mankind not only by rendering it impossible to apply past rulings purely mechanically, but by providing scope for the gradual moulding of the rules to meet fresh situations as they arise. There is a constant interaction between rules and the factual situations which they govern, for too rigid observance of the rules may stereotype the very structure and the activities of the society itself, whereas a freer approach will allow a richer interplay of social forces.

Secondly, the Hon'ble apex Court's interpretation of Articles 129 and 142 of Constitution to construe "curative petition" as a facet of its inherent power, has been widely hailed. Because of this new discovered jurisdiction, people (if aggrieved) have got at least another opportunity to reconsider the final judgment or order of Supreme Court of India only when there exist very strong reasons (basically on the above-mentioned two limited grounds). It is evident from the observation of Supreme Court itself: "except when very strong reasons exist, the Court should not entertain an application seeking reconsideration of an order of this Court which has become final on dismissal of a review petition". This "curative petition" is another important milestone in the development of Constitutional

⁶² M. D. A Freeman, Lloyd's Introduction to Jurisprudence 1380 (2001).

jurisprudence of India. As has been pointed in preceding paragraph, that the CURTIVE PETITION is a result of interpretation of Articles 129 and 142, by Supreme Court. This jurisdiction is not expressly mentioned in the above Articles. Therefore, it is urged before Parliament to incorporate CUTATIVE PETITION, in any related Article of Constitution of India, through an amendment, just to bring clarity and specificity.

Thirdly, though “curative petition” is a remarkable achievement in India in this century, but its trajectory is limited. Therefore, it is urged that the apex Court will constitute a larger Constitution Bench, to expand the horizon of “curative petition” as facet of Articles 129 and 142 under the Supreme Court’s inherent power. The further expansion of the grounds also has been envisaged in Ashok Hurra vs. Rupa Hurra, judgment, in its observation: “it is neither advisable nor possible to enumerate all the grounds on which such a petition may be entertained”. Otherwise, taking recourse to “curative petition” as last resort as means of correction to cure gross injustice would be meaningless or futile exercise. A “curative petition” regarding the constitutional validity of section 377, Indian Penal Code which criminalises same sex relationship between consenting adults by totally disregarding privacy, equality, liberty or dignity of the those people of different type of sexual orientation, is pending before Supreme Court. Society (including world societies) is craving for curing manifest injustice and waiting to see that by applying any or both of the stated two grounds enumerated in Rupa Hurra vs. Ashok Hurra judgment, how does the Supreme Court (five judge Constitution Bench) respond to cure the injustice by departing from its previous Suresh Kumar Kaushal v. Naz Foundation⁶³ judgment (which overruled Delhi High Court judgment in Naz Foundation vs. NCT, Delhi⁶⁴), which shocked the whole nation by declaring that if the numbers of the people are less, then the issue of violation of fundamental rights does not hold any legitimate legal or constitutional ground):

43. While reading down Section 377 IPC, the Division Bench of the High Court overlooked that a miniscule fraction of the country’s population constitute lesbians, gays, bisexuals or trans-genders and in last more than 150 years less than 200 persons have been prosecuted (as per the reported orders) for committing offence under Section 377 IPC and this cannot be made sound basis for declaring that section ultra vires the provisions of Articles 14, 15 and 21 of the Constitution.

⁶³ Suresh Kumar Kaushal v. Naz Foundation, Arising out of Civil Appeal No. 10972 of 2013, Date of decision: 11th December, 2013.

⁶⁴ Naz Foundation v. Government of NCT, Delhi, Arising out of WP(C) No.7455/2001, Date of decision: 2nd July, 2009.

Finally, the curtailment of the scope of issuance of writ of certiorari against the final decision or order of Supreme Court (Supreme Court in particular and other Courts in general) has been reiterated in Rupa Hurra vs. Ashok Hurra judgment. As has been decided in this judgment that an aggrieved person is not entitled to any relief against a final judgment/order of this Court, after dismissal of review petition, under Article 32 of the Constitution. The “writ of certiorari is issued to inferior courts (including lower Benches), tribunals and authorities to transmit to it the record of the proceeding pending with them for scrutiny and if necessary, for quashing the same”⁶⁵. Basically the writ of certiorari can be issued to a judicial or quasi judicial body on the following grounds- (i) want or excess of jurisdiction; (ii) violation of procedure or disregard of principles of natural justice; (iii) error apparent on the face of the record. Though the above-mentioned grounds exist in a proceeding, the Supreme Court will not be in a position to enable itself to issue the writ of certiorari against any of its lower Benches decision. The judgment brought it to the notice again that the writ of certiorari by Supreme Court under Article 32 (2) of Constitution of India⁶⁶, to a person where the final judgment or order of the same Court (definitely lower Benches) justifies the prohibition, restriction, deprivation or denial of his/her fundamental right as legal and constitutional, has lost its enforceability in practice, to a great extent. It would not be wrong to say the writ of certiorari has become infructuous to a great extent. Though no contention is raised here against the judgment of larger Constitution Bench of Naresh Shridhar Mirajkar vs. State of Maharashtra case, with regard to the non-enforceability of Article 32 (1) and (2) against the final decision or order of Supreme Court (or even any other Courts), due to the reason that judiciary should not be STATE under Article 12, Constitution of India, but the fact remains that there exists certain grounds which enables supreme Court to issue the writ of certiorari, which gets curtailed. Therefore, it is again urged before Parliament to amend Article 32 (2) to itself to incorporate this reality. However, in this context, the significance of “curative petition” is immense as to a great extent, it paves the way for reconsideration of the final judgment or order of the Supreme Court though on a much narrower grounds, where the door was shut leading through the corridors of Article 32, Constitution of India.

⁶⁵ Probodh Kumar vs. State of U.P, 1984 (4) SCC 251.

⁶⁶ The Supreme Court shall have power to issue directions or orders of writs, including the 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 conferred by this Part.