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Judicial Process: The Supreme Court's Perspective on Its Own Jurisdiction

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Abstract: ***Article 124 of the Constitution established the Supreme Court of India and outlined its powers and jurisdiction, as well as giving Parliament the authority to grant it further authority. Articles 32 and 131 of the Constitution grant the Supreme Court original jurisdiction; Articles 132, 133, and 134 confer appellate jurisdiction; Article 136 grants the Supreme Court discretionary jurisdiction to grant special leave to appeal; and Article 142 grants the Supreme Court a wide range of discretionary powers to pass decrees or make orders that are necessary to ensure complete justice in any case or matter that is before it. These powers shall be enforceable throughout the territory of India in the manner prescribed. powers like the power to withdraw any case pending in any High Court or and to review judgment pronounced or order made by it (Article 137). It is permissible for the Supreme Court to revisit its earlier rulings in appropriate cases. Nothing in our constitution prohibits the Supreme Court from deviating from a prior ruling if it is believed to be incorrect and to have a detrimental impact on the public's overall interests. [Bengal Immunity co.ltd. v. State of Bihar, (1955) 2SCR 603]. In this paper we will be discussing whether the Supreme court can question its own jurisdiction? Whether the decisions of the Supreme court shall be binding on the Sub - ordinate courts? Does the supreme court has the power to review or reverse its own decision? What is the basis under which it can question its own jurisdiction.***

Keywords: Curative petition, Judicial Precent, Judicial Process

1. The Basis for Supreme Court in Deciding Its Own Jurisdiction:

Under the following articles of the constitution of India the Supreme Court shall have the power to question its own jurisdiction.:

1.1 Article 32 and 136:

There had been a controversy regarding whether the SC can correct its earlier decisions by issuing writ to the subordinate courts under article 32 of the constitution or not? This question was raised for the first time in *Rupa Ashok hurra v. Ashok Hurra*[1]. In this case one of the main issue was that whether a writ can be maintained under articled 32 challenging the earlier decision of the S. C where apetition for review had been dismissed. The Supreme Court held negatively in this case about the possibility of issuing a writ of certiorari to the subordinate courts. It stated that, in general, subordinate courts are not eligible to receive writs of certiorari. Therefore, a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to another Bench of the same High Court. Moreover, a High Court's writ jurisdiction cannot be used to request that a writ of certiorari be issued to the Supreme Court. The High Courts are not designated as inferior courts under our constitutional framework, even though the Supreme Court may amend High Court judgements and orders under its appeal jurisdiction under Articles 132, 133, and 134 as well as Article 136.

Consequently, a High Court would not receive a writ under Article 32 from the Supreme Court. Furthermore, under Article 32 of the Constitution, neither a smaller nor a larger bench of the Supreme Court may issue a writ to another bench. As previously mentioned, Article 32 can only be used to enforce the fundamental rights granted in Part III. Additionally, it is a well - established legal position that no judicial order issued by a superior court during legal proceedings can be construed as violating any of the fundamental rights enshrined in Part III. Furthermore, under Article 12 of the Constitution, the superior courts of justice are not likewise subject to the jurisdiction of the State or other authorities. Thus, it was decided in this case that, after utilising the review procedure provided by Article 137 of the Constitution in conjunction with Order XL Rule 1 of the Supreme Court Rules 1966, the jurisdiction of this Court under Article 32 of the Constitution cannot be used to contest the legality of a final judgement or order issued by this Court. Despite this, a curative petition was developed for certain reasons.

It was also observed in *Naresh Shridhar Mirajkar & Ors. v. State of Maharashtra & Anr.* [2]by the learned judges observed that:

"*It was suggested that the High Courts might issue writs to this Court and to other High Courts andone Judge or Bench in the High Court and theSupreme Court might issue a writ to another Judgeor Bench in the same Court. This is an erroneousassumption. To begin with the High Courts cannotissue a writ to the Supreme Court because the writgoes down and not up. Similarly, a High Courtcannot issue a writ to another High Court. The writ does not go to a court placed on an equal footing in the matter of jurisdiction. "*

In *A. R. Antulay v. R. S. Nayak & Anr.*, a seven - judge panel of this court deliberated on the validity of the order that removed the cases against the appellant from the Court of Special Judge and transferred them to the High Court of Bombay, along with a request to the Chief Justice to assign

[1] (2002) 4SCC 388.

[2]1966 (3) SCR 744.

the cases to a sitting High Court judge for day - to - day trial. It is important to note that in that instance, a petition under Article 32 of the Constitution was not filed to appeal the aforementioned order. Rather, the appellant filed a review petition.

Mukharji, Oza, and Natarajan, JJ. expressed the opinion that the Supreme Court might reconsider its previous ruling using its inherent powers, even in the case of a petition filed under Article 136 or Article 32 of the Constitution. In a dissenting opinion, Ranganath Misra, J. stated that the appeal could not be regarded as a review petition. In addition, Venkatachaliah, J. (as he was then known) dissented, stating that the Court's inherent powers do not confer or constitute a source of jurisdiction and that they should only be used in support of an already - invested jurisdiction for the purpose of correcting a decision under Article 137 read with Order XL Rule 1 of the Supreme Court Rules; in order to do this, the case must, to the greatest extent possible, go before the same judges.

Mukharji and Natarajan, JJ. came to the conclusion that the powers of review could be exercised under either Article 136 or Article 32 if there had been a deprivation of fundamental rights when considering whether a writ of certiorari under Article 32 of the Constitution could be issued to correct an earlier order of this Court. According to then - Judge Ranganath Misra, J., there was no basis for a writ of certiorari because the Supreme Court's benches are independent of this Court's bigger benches. The opinions of Oza, Ray, Venkatachaliah, and Ranganathan, JJ are similar in this regard**.** Accordingly, a majority decision in that case (5: 2) found that an order of the Supreme Court could not be changed by issuing a writ of certiorari in accordance with Article 32 of the Constitution.

In Mohd. Aslam v. Union of India & Others, the Court took into account the previous rulings and determined that it was not permissible to file a writ petition under article 32 of the Constitution contesting the validity of a Supreme Court decision on its merits or requesting reconsideration. The Supreme Court of India ruled in *Khoday Distilleries Ltd. and Others v. Registrar General* that it was not possible to support a writ petition under article 32 of the Constitution asking for reconsideration of the Supreme Court's final decision after a review petition was denied. In *Gurbachan Singh & Others v. Union of India & Others*, the Court decided that Article 32 of the Constitution does not allow for judicial review of the judgement order this court issued under Article 136.

In Babu Singh Bains and Others v. Union of India and Others, a three - judge bench of this Court reached a similar conclusion, holding that it is not maintainable to file a writ petition under Article 32 of the Constitution challenging the ruling under Article 136 of the Constitution.

Another three - Judge bench of this Court in *P. Ashokan v. Union of India & Another*[3], relying upon the earlier cases held that the challenge to the correctness of a decision on merits after it has become final cannot be questioned by invoking Article 32 of the Constitution. In the instant case the petitioner wants to reopen the case by filing the interlocutory application.

Insite of the width of power conferred by Article 142, theConstitution Bench took the view that suspending the advocate from practice and suspending his licence was not within thesweep of the power under the said Article and overruled the judgment in Re V. C. Mishra's case.

In *Harbans Singh'sv. State Of U. P. & Others*[4]reviewed its decision in response to an application made in accordance with Article 32 of the Constitution following the denial of a special leave petition and review. Among other things, the petitioner and someone else in that case were found guilty under Section 302 of the I. P. C. and given the death penalty. One of the two convicted individuals still on the books had their death sentence commuted to life in prison by the Supreme Court. In his concurring opinion, A. N. Sen, J. noted the petitioner's special leave being revoked, reviewed petitions, and noted the President's clemency petition while halting the petitioner's death sentence:

"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. "

1.2 Article 137: Power To Review

Under Article 137 the Supreme Court has expressly been given the power to review its judgement. However, this is subject to law passed by the parliament. Supreme Court in ***S.*** *Nagaraj v. State of Karnataka*[5] stated: *"Review literally and even judicially means re - examination or re - consideration. Basicphilosophy inherent in it is the universal acceptance of human fallibility"*

The Supreme Court will evaluate the following:
1) The discovery of new, significant pieces of evidence
2) An error that appears on the face of the record; and
3) Any other valid explanation.

According to Article 137 of the Constitution, the Supreme Court of India is authorised to review any ruling it renders (or orders it makes), subject to the restrictions of any laws and rules established under Article 145. Order XL Rule 1, Supreme Court Rules, 1966 stipulates that a petition of this kind must be filed within 30 days after the date of the ruling. It is also advised that the petition be sent to the same panel of judges who gave the ruling (or order) that is being challenged, without the need for oral arguments.

[3] (1998) 3 SCC 56

[4] 1982 AIR 849

[5] 1993 supp. (4) SCC 595.

Order XLVII, Rule 1 (1) of the Code of Civil Procedure, 1808 permits the filing of civil review petitions; however, criminal review petitions may only be filed in response to an error that is clearly visible on the face of the record. But its power of review must be exercised with due care and caution and only for advancing the public well being in the light of the surrounding circumstances of each case brought to its notice but it is not right to confine its power within rigidly fixed limits.[6]

The question of reviewing its own decision was discussed in detail *In Sajjan Singh v. State Of Rajasthan*[7], where the court held:

"the constitution does not place any restriction on the power of the Supreme Court to review earlier decisions or even to depart from them in matters relating to the decisions constitutional points which have a significant impact on the fundamental rights of citizens, it would be prepared to review its earlier decisions in the interest of public good".

Taking into consideration the principle of *stare decisis*, courts generally do not unsettle a decision, without a strong case. This provision regarding review is an exemption to the legal principle of stare decisis. The principle of stare decisis may not precisely apply in this situation, and it is not appropriate to allow the concept to uphold incorrect rulings made by the Supreme Court at the expense of the general good. Nevertheless, the established rule that the Supreme Court's decisions are final cannot be disregarded, and the Court should hesitate to question the validity of its earlier rulings or to diverge from them unless extremely compelling circumstances demand it.

In another case, *Keshav Mills Co. Ltd. v. Commissioner Of Income Tax, Bombay North, Ahmedabad*[8]the court had further to discuss this point when it was urged that the court should review its own decision. The Supreme Court considered various cases and stated:

". . . In a proper case, this court has inherent jurisdiction to reconsider and revise its earlier decisions, and so, the abstract question as to whether such a power vests in this court or not need not detain us. In exercise of this inherent power, this court would naturally like to impose certain reasonable limits and would be reluctant to entertain pleas for the reconsideration and revision of its earlier decisions, unless it is satisfied there are compelling and substantial reasons to do so. In reviewing and revising its earlier decision, this court should ask itself whether in the interest of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this court decides question of law, its decisions under Article 141, binding on all courts within the territory of India and so it must be the consistent 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 of the power to review its earlier decision 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 constantly avoided. That is not to say that is on a subsequent occasion, the court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error. "

The Supreme Court ruled in *R. D. Sugar v. V. Nagary*[9]that a decision made by the highest court in the land is conclusive. A review of such a decision is an uncommon occurrence that is only allowed in cases when there is a clear and obvious mistake or other solid justification. Relying on the fundamental principles of jurisprudence that "justice is above all", the Supreme Court in *S. Nagaraj v. State of Karnataka*[10] stated:

"Review literally and even judicially means re - examination or re - consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law, the courts and even the statutes lean strongly in favour of finality of decisions legally and properly made. Exceptions, both statutorily and judicially have been carried out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provisions and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. "

Filling of review petitions in casual and irresponsible manner is an abuse of the process of the court. such practice is deprecated by the court. [11]

In *Lily Thomas v. Union Of India*[12], it has been held that the power of review can be exercised for correction of a mistake and not to substiture a view. It cannot be treated as an appeal in disguise.

2. Curative petition

In the Indian Context, Curative petition is the last resort of corrective measure which can be pleaded for in any judgment or decision passed by the Supreme Court. One must remember that it is an extremely high discretionary power which is exercised in rare case by the court. The concept of Curative petition was evolved by the Supreme Court of India in the matter of *Rupa Ashok Hurra vs. Ashok Hurra and Anr*.

In *Rupa Ashok Hurra v. Ashok Hurra*[13], it was pleaded in the 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 the court to seek relief in case of gross abuse of the process of the court or gross miscarriage of justice because against the order of this court the affected party

[6] Supra Note 1, p.283.
[7] (1954) SCR 674: AIR 1954 SC 119.
[8] AIR 1965 SC 16636.
[9] AIR 1976 SC 2183.
[10] 1993 supp. (4) SCC 595.
[11] *Zahira v. state of Gujarat*, 2004 (5) SCALE 397.
[12] AIR 2000 SC 1650.
[13] (2002) 4SCC 388.

could not have recourse to any other forum. In such circumstances the Supreme Court held:

"The role of judiciary to merely interpret and declare the law was the concept of a bygone age. it is no more open to debate that the court can 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." (para 41)
Even while the judges of the highest court try their best, given the limitations of human fallibility, there may be circumstances under the very rarest of circumstances that call for re - examining a final decision in order to correct a judicial miscarriage that has been reported. In such a situation, correcting the mistake would be morally and legally required in addition to being appropriate. In these extremely rare instances, the policy of certainty of judgement must yield to the obligation of justice. (paragraph 42)

Therefore, it is held by the bench of five judges of the Supreme Court, *to prevent abuse of its process and to prevent gross miscarriage of justice its final judgement which cannot be challenged again the court will "allow" curative petition by the victim of miscarriage of justice to seek a second review of the final order of the court.*

Grounds on which curative petition allowed:
The court in this case has laid down certain specific conditions for the court to entertain such a curative petition under its inherent power to prevent floodgates of unnecessary petitions seeking their second review.

It is standard procedure that the Court will not hear an application to reconsider an order of this Court that has become final upon the dismissal of a review petition, unless there are very compelling reasons to do so. Listing every reason that a petition of this kind could be granted is not feasible nor wise. [14]Nevertheless, a petitioner is entitled torelief ex debito justitiae if *he establishes* that natural justice principles were violated in two ways: (1) when the petitioner was not a party to the lawsuit but the judgement negatively affected his interests; or (2) when the petitioner was a party to the lawsuit but was not served with notice of the proceedings and the case moved forward as though he had notice; and (3) when the learned judge concealed his relationship to the parties or the topic of the case during the proceedings, raising the risk of bias and adversely impacting the petitioner's interests.

The petitioner, in the curative petition, shall averspecifically 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 regarding the fulfilment of the above requirements. [15]

However, it was also held that: Curative petitions ought to be treated as a rarity rather than regular and the appreciation ofthe Supreme Court shall have to be upon proper circumspection.

In various other cases curative petition was soughtbut it was rejected. In *Yakub Abdul Razak Menonv. State of Maharashtra and Ors.* [16]the curative petition was dismissed on the ground that Submissions made about the curative petition were irrelevant and there was no substance in them.

2.1 Article 141.

Article 141 of the Constitution of India lays down that the "law declared by the Supreme Court shall be binding on all courts throughout the territory of India."

2.1.1Doctrine of stare decisis:
Article 141 incorporates, what is known in English law, the doctrine envisages that the lower courts are bound by the decisions of the higher courts. Article 141 gives a constitutional status to the theory of precedents according to which the judicial decisions are considered to have binding force for the future.

The doctrine of *stare decisis* runs almost parallel to the doctrine of precedent and often overlaps it. The expression *stare decisis*, as defined by the Supreme Court, means "to stand by decided cases; to uphold precedents; to maintain former adjudication". [17] This is expressed in the maxim *stare decisis et non quieta movere*, which means to stand by decisions and not to disturb what is settled. Lord Coke aptly described this in his classic English version as "those things which have been so often adJudged ought to rest in peace"[18].

The underlying logic of the doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible.

The doctrine of stare decisis, the court said is not an inflexible rule of law and cannot be permitted to perpetuate errors of the Supreme Court to the detriment of the general welfare of the public. In *Bengal Immunity Co. Ltd. v. State of Bihart*[19]the court reconsidered its previous decision given in the case *of State of Bombay v. The United Motors (India) Ltd*[20].

The Court through Lahoti, C. J did speak about its flexibility in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*[21] *thus:*

. ... stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience. [22]

[14]*Rupa Ashok Hurra v. Ashok Hurra*,MANU/SC/0910/2002 (para 50).
[15]*Ibid at* para 52.
[16]MANU/SC/0825/2015.
[17]*State of Gujarat* v. *Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534, p. 589, para 111.
[18]*Ibid*., at p. 589, para 111.
[19]AIR 1953 SC 661.
[20] AIR 1967 SC 1643.
[21](2005) 8 SCC 534, p. 589, para 112.
[22]*Ibid.*

Article 141 of the Indian Constitution states that all courts across the country must abide by the law issued by the Supreme Court. Does the Supreme Court make sense under Article 141? The case of Bengal Immunity Co. Ltd. v. State of Bihar provided a negative response to this query. It was decided in this case that Article 141, which states that the Supreme Court's declaration of law will be binding on all courts within India's territory, clearly refers to courts other than the Supreme Court. This ruling has the consequence of granting a smaller Bench the authority to question the accuracy of a decision made by a bigger Bench. Once this point of view is accepted, the authority in question cannot be limited by maintaining that a two - judge bench may only refer cases to a three - judge bench.

Additionally, it was held that nothing in our Constitution prohibits us from deviating from a prior ruling if we are persuaded of its inaccuracy and its detrimental impact on the public's overall interests. Article 141, which states that all courts therein shall be bound by the legislation issued by this Court.

It is evident from the ruling in the Bengal Immunity Co. Ltd. Case that a two - judge bench is not constrained by a decision made by a bigger bench. If the case is before the Court under Article 136 (1) of the Constitution, this conclusion is reinforced even more. The non obstante phrase introduces Article 136 (1). It gives the Supreme Court the discretionary authority to issue special leave to appeal from any judgement, decree, determination, sentence, or order, regardless of what is stated in Chapter IV of Part V of the Constitution.

In this case the court *held that "there is nothing in the Indian constitution which prevents the Supreme Court departing from its earlier decisions if it is convinced of its error and its beneficial effect on the general interests of public".*

In *Golaknath v. State Of Punjab*[23]the Supreme Court reversed two of its previous decisions, i. e., *shankari Prasad case* and *sajjan singh* case. And again in *Fundamental Rights case*[24] the Supreme Court reconsidered its decision in Golaknaths case and overruled it. The majority held that the Golaknaths case was wrongly decided and the word 'law' in Article 13 did not include an amendment of the constitution passed under Article 368.

Again in *Bachan Singh v. State Of Punjab*[25]this court held that the rule of adherence to precedence is not a rigid and inflexible rule of law but it is a rule of practice adopted by courts for the purpose of ensuring uniformity and stability in the law. The object of the rule of stare decisis is to avoid chaos and confusion and to protect the rule of law. If the rule of stare decisis followed blindly and mechanically, it would dwarf and stultify the growth of the law and affect its capacity to adjust itself to the changing needs of the society.

Nothing in the constitution prohibits the Supreme Court from deviating from its own prior rulings if it determines that they were incorrect and would have a negative impact on the public interest as a whole. It is evident from this that India only partially adheres to the stare decisis theory. It should be mentioned that this is consistent with contemporary practice.

3. Conclusion

In light of human fallibility, we can conclude that while the justices of the highest court do their best, there are very rare instances in which a final judgement may need to be reconsidered in order to correct a judicial miscarriage that has been reported. In such a situation, correcting the mistake would be morally and legally required in addition to being appropriate. In these extremely rare instances, the policy of certainty of judgement must yield to the obligation of justice. Thus, the Supreme Court has the authority to correct and scrutinise its own jurisdiction in such circumstances. Nothing in the constitution prohibits the Supreme Court from deviating from its own prior rulings if it determines that they were incorrect and would have a negative impact on the public interest as a whole.

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