

# News

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## Arvind Datar's Legal Notes: Article 32 and Ex debito justitiae



***The finality of decisions made by our highest court is gravely threatened by the risk of using Article 32 to correct mistakes in a previous ruling.***

Is it possible to challenge a Supreme Court ruling through a writ petition under Article 32 using the ex debito justitiae principle? This brings up the tension between the demand for justice in individual cases and the requirement for finality once more.

Ex debito justitiae is a Latin phrase that literally translates to "**a debt of justice.**" The Supreme Court has ruled that it has the inherent authority to act ex debito justitiae, which

means that it can prevent misuse of the Court's procedure or administer genuine and substantial justice. [State of Rajasthan v. Dinesh Dutt Joshi, 2001]

***The Supreme Court's previous order to move the former Chief Minister's trial to the Bombay High Court, where it would be heard by a sitting High Court judge, was nullified by the application of this principle in AR Antulay v. RS Nayak (1988). A writ case under Article 32 was first filed to contest this order, but it was denied. However, Antulay was given permission to file a suitable review petition with the court. This trial transfer order became final since Antulay did not submit a review petition. Despite this finality, the majority (5:2) ruled that the High Court judge's order to try this matter violated both the ex debito justitiae principles and Articles 14 and 21.***

HM Seervai has rightfully voiced harsh condemnation of this decision. The opposing opinions of Ranganathan J. and Venkatachaliah J. are crucial. In addition to several previous rulings from other benches, Venkatachaliah J. noted that overturning the High Court judge's order directing a trial would have the effect of overturning at least three rulings from five-judge Supreme Court benches. Additionally, it would nullify the three-year trial process in which 57 witnesses had already been questioned. It is argued that the Antulay ruling is incorrect and should be overturned in the upcoming years.

The ex debito justitiae premise was also thoroughly examined in Rupa Ashok Hurra v. Ashok Hurra (2002), which subsequently served as the foundation for the curative jurisdiction.

However, Antulay and Rupa Hurra both found that any individual who felt wronged, whether or not they were a party to the case, may not challenge a final judgment or order issued by the Supreme Court in a writ petition under Article 32.

***In the recent case of HDFC Bank Ltd. v. Union of India (2023), the application of the ex debito justitiae concept was examined. In this case, the Reserve Bank of India's (RBI) right to withhold information about bank defaulters and other reports on the grounds of confidentiality and fiduciary relationship clashed with the right to information under the Right to Information (RTI) Act, 2005.***

The Supreme Court ruled in RBI v. Jayantilal Mistry (2016) that the RTI Act's public interest will take precedence. The RBI ordered information to be disclosed in accordance with this ruling. In 2019, a number of private banks challenged this once more in a writ petition under Article 32. RBI also filed a plea to recall the previous ruling in Jayantilal Mistry. Both were

addressed simultaneously, but the bench ordered the writ petition to be de-tagged, leaving all of the issues stated in it unresolved. However, because the recall applications were effectively requests for review, they were rejected as unmaintainable. The Court noted that RBI and other banks could still pursue additional legal remedies despite this decision.

In the HDFC Bank case, an application was submitted challenging the writ petition's maintainability. It was contended that the writ petition under Article 32 effectively contested the Jayantilal Mistry ruling, which had become final.

The Supreme Court adopted the initial stance that the earlier ruling in Jayantilal Mistry did not take into account the aspect of balancing the right to information and the right to privacy after reviewing the prior case law and the *ex debito justitiae* concept. The writ petition contested the RBI's directives on the grounds that they violated Indian citizens' right to privacy as bank clients.

***The Supreme Court ruled that there is no way for a litigant to challenge a higher court's ruling. The sole viable remedy in this situation was to file a writ petition under Article 32 with the Supreme Court to preserve the basic rights of the bank's Indian citizens clients. The principle of ex debito justitiae cannot be disregarded, even while the idea of a judgment's finality must be maintained. The Court may always reexamine the previous ruling and send it to a larger bench if needed.***

It is argued that the Court erred in upholding the petition's maintainability under Article 32 and that these observations are wrong. Only a review petition under Article 137 could have tested the validity of the Jayantilal Mistry ruling. This decision cannot be questioned under Article 32 because it failed to strike a compromise between the right to information and the right to privacy. In fact, the RBI had issued directives in accordance with the Jayantilal Mistry ruling.

Following the ruling in Jayantilal Mistry in 2015, the right to privacy was acknowledged in the case of *KS Puttaswamy v. Union of India* (2017). Furthermore, based on the facts, Jayantilal Mistry weighed the rights to information and privacy and concluded that the public's right to know would take precedence over banks' right to keep information private. The RTI Act or the Banking Regulation Act must be changed so that the banks' right to confidentiality takes precedence over the RTI Act in order to overturn the Jayantilal Mistry verdict. Parliament must intervene and make the necessary changes to the pertinent laws.

***It is untrue to say that the banks' only option for contesting the ruling is to file a writ***

***petition under Article 32, particularly in cases where no review petition was submitted. A bench of two judges may, of course, question the validity of the previous decision and subsequently submit the case to a bigger bench. However, the ex debito justitiae premise of Article 32 cannot be used to get around this.***

Venkatachaliah J correctly pointed out the Judicial Committee's warning in Venkata Narasimha Appa Row v. Court of Wards (1886) in the Antulay case:

All courts of last resort should adhere to the beneficial maxim interest republicae ut sit finis litium. Individual litigants may occasionally suffer as a result of its rigorous obedience, but the evil resulting from that source must be insignificant compared to the tremendous mischief that would inevitably arise from casting doubt on the finality of the decision made by such a tribunal. (emphasis added).

***A polyvocal court's rulings will inevitably contain mistakes that could be discovered in a subsequent ruling. The process of review under Article 137 and, if maintainable, a curative petition are the remedies. A larger bench's decision or the removal of the decision's foundation by Parliament are two ways to overturn an improper ruling. It is argued that in order to preserve a judgment's finality, especially if it has withstood the test of time, references to larger benches should be avoided. The finality of decisions made by our highest court is gravely threatened by the risk of using Article 32 to correct mistakes in a previous ruling. This is a considerably worse outcome than injustice in a specific instance. The Supreme Court should refrain from acting as parliament should.***