



Article 142: A Directive for Constitutional Justice

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Abstract

The Indian Constitution provides us with a certain number of Fundamental Rights, which under ordinary circumstances, cannot be vitiated or meddled with. It also prescribes various principles like that of separation of powers, which provides distinct authorities to consolidate the fact that all the three organs of the government, more or less, function separately to ensure complete justice to all the citizens of India. One such authority provided to the Union judiciary, i.e. The Supreme Court of India, is that of Article 142. This Article, therefore at its core, aims to provide the statutory meaning and importance to the apex court. It also sheds light on the situations where the Supreme Court can exercise its jurisdiction under this Article, and how Article 142 has undergone development over the course of time. Lastly, it aims to highlight the drawbacks in the implementation of Article 142 and answer its constitutional validity.

Keywords: Article 142, Supreme Court, union judiciary, constitutional, Fundamental Rights

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Introduction

“After all it is for the common man that the judicial system exists.”-Justice Sanjay Kishan Kaul
In the 21st century, as India continues to age along the lines of communal conjunction, slapstick humor, willful ignorance of the powerful, and suppression of the powerless, the role of protector of the Constitution and democracy is as arduous as it has ever been. The generation that grew consistent with the cries of ‘never again’ resounding from the history books, the atrocities of the present day pose as a reverse result to the legacies of the past.

Thus, under the disguise of administration and implementation of laws, the ones with commanding positions tend towards jargon making the existence of truth and justice unfeasible. In India, where the theory of separation of power can be implemented only in textbook format, as the Executive and Legislative allied through its members, the role of the judiciary in maintaining a balance and equity between the state, the individuals, and between individuals and the administration of justice is more notably pivotal. The Constitution of India is not only the fundamental law of the land but it also delineates the power and responsibilities of the various instrumentalities of the state to contrive a common national and constitutional identity for the people it shields.

History and Development

The federal court which was established under the Government of India Act of 1935 had no instrument for executing its decrees. The federal court in the exercise of its original jurisdiction could only adjudicate declaratory judgment. And opposed to the original jurisdiction, in the case of appellate jurisdiction, the federal court, in order to allow the appeal had to rescind the case to

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the court from which the appeal was put forward, accompanied by a declaration regarding the judgment, decree, or order which was supposed to fill in for the aforesaid appealed against.²

Subjected to the Constitution India 1950, the position of the Supreme Court has been reoriented. The Supreme Court is under no such obligation as the federal court to exercise its jurisdiction. It may pass such an order as it deems necessary for doing complete justice in the matters before its power is vested through Article 142 of the Constitution.

Statutory Meaning

Article 142 of the Indian Constitution places the Supreme Court on a unique and dynamic pedestal through which the court is empowered to exercise the specifically conferred powers to be just and equitable.

It states that the Supreme Court, in the exercise of its jurisdiction, is authorized to pass any decree or make such order as is necessary for the purpose of procuring complete justice in any case or matter pending before it, any decree or order passed by it shall be enforceable in the manner the Parliament prescribes, till absence of such provision as the executive may by order prescribe.³

Clause 2 of Article 142 further states that the Supreme Court throughout the territory of India has the complete entitlement to secure specific functions such as the discovery or proffering of any documents, appearance of any person, or the inquiry or punishment of any contempt in itself.

Importance and Compliance with other Constitutional Provisions

Article 32 of the Constitution which is a part of the Right to Constitutional Remedies, coupled with Article 142 accords the Supreme Court inexhaustible power to make orders, which have the effect of law under Article 141. All authorities are bound to act in abidance as the Supreme Court as mandated in Article 144 of the Constitution.

This power is vested in the Supreme Court so that in hours of need, the judiciary can fill the work vacuum till the legislative steps in to fill up or the executive discharges its role. Thus, Article 142 mandates the Supreme Court to step forward if the executive is inactive.⁴ Powers conferred under Article 142 are not against step substantive or statutory laws but are complementary in nature to the statutes.

Grounds for Exercising Jurisdiction under Article 142

The Supreme Court has held it judicious in its scope to leave the powers conferred under Article 142 as unrestricted, undefined, and unspecified for it to remain resilient enough to be moulded under necessary circumstances.

But these powers have not been left without parameters, in the case of *Naidhi Kaim v. State of MP* the framework for the exercise of jurisdiction under Article 142 was encapsulated as:

- Larger Interest in the administration of justice
- The prevention of manifest justice

² Mahendra Pal Singh, V.N.Shukla's CONSTITUTION OF INDIA 514 (14th ed. 2022)

³INDIA CONST. Art. 142, cl. 1.

⁴ 2ND EDITION, MAMTA RAO, CONSTITUTIONAL LAW, 608 (2020)

Under circumstances where the Supreme Court is conflicted regarding its position to exercise the jurisdiction under Article 142, the test is to settle on the side resorting to truth and legitimacy based on judicial consciousness.

Article 142 through Judicial Precedents

Given the magnitude of the Article, the Supreme Court's stance in the invocation of Article 142 has not been without vitiation. Its instrumentality in the administration of complete justice to the people of the country is immense.

A detailed analysis of the Supreme Court invocation of Article 142 shows the nature, latitude, and the lacuna that it fills in the process of administration of justice.

In one of the earliest instances of the invocation of Article 142, the SC upheld that in order to attain complete justice between parties, the order alongside being in harmony with the fundamental rights, shouldn't overrule or oppose the substantive provisions of the pertinent statutory laws made by the legislature.⁵

As the power of the Supreme Court under Article 142 is not confined and cataloged it is in entirety on a different caliber. Alongside the importance of this provision on public law which in itself is enormous, it has substantial constitutional validity in quashing criminal proceedings. Article 142 is not bound by Sections 320, 321, or 482 CrPC or with all of them compiled together.⁶ The powers bestowed on the Supreme Court by virtue of Article 142 are not subjected to prohibitions encompassed in ordinary laws of the land i.e. the limitations cannot ipso facto smear the constitutional competence of Article 142.

The purview of Article 142 is not constrained to any particular conventional norm, though it has parameters in its application and interpretation the ultimate object is to serve complete justice and have regard towards public policy and welfare.

Thus, the court can also grant equitable relief in order to annihilate unjustness. Thus, the Supreme Court through its rulings has upheld from time to time that there should be a question of law of general importance in order to invoke the constitutional provision.⁷

The approach of the Supreme Court in the invocation of Article 142 in the inquest of substantive and procedural law is different in nature and benevolence. When the law is procedural in nature or is proclaimed to be so it provides the judiciary with a far wide amplitude to reflect upon in a manner which directly compliments the object of Article 142, such that the aim of substantive justice is not hindered.⁸ One of the most significant reasons for the procedure law to be given such weightage is that it has both retrospective and prospective effects.

⁵ Prem Chand Garg vs Excise Commissioner, U.P., 1963 AIR 996, 1963 SCR Supl. (1) 885

⁶ Union Carbide Corp. Etc. vs Union of India, 1992 AIR 248, 1991 SCR Supl. (1) 251

⁷ Manish Goel vs Rohini Goel, (2004) 4 SCC 393

⁸ CA. Prakash Sinha. SC Ruling on Reassessment – A Beginning of another Controversy? (Nov. 19, 2023, 3:35 PM) https://database.taxsutra.com/articles/d498bf14300aedb12d8c48cc3c5523/expert_article

The apex court in this regard has further remarked that “*procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice.*”⁹

The Supreme Court in one of the recent landmark judgments broadens the ambit of Article 142 by marking a benchmark moment in the arena of taxation Jurisprudence. The issue raised in this concern had its origin in the Finance Bill of 2021 which created a conflict regarding the interest of the assessee and the rights of the revenue. The provisions were held to be public-spirited for the assessee as it was clear from the intention of the legislature. The provisions of the aforesaid Bill made it apparent that it was set out to foster and ease the process of carrying out business. Thus, the apex Court, in order to strike a balance, held that the right of the revenue is at par with the light of the SSC and it cannot be rendered irremediable.¹⁰

The interpretation and application of Article 142 of the Constitution has evolved with age, and in crucial circumstances before the Supreme Court, it is empowered inherently to invoke its innate power to be just and fair to the people. A glimpse of the SC’s power as outlined in Article 142 was seen in its order, where an appeal was filed challenging a Bombay High Court Judgement. The aforementioned appeal has its origin when the appellant who was appointed as half-time lecturer for a year, was promoted to the position of full-time lecturer but was denied his pecuniary rights without any reasonable grounds.¹¹ Thus, the Supreme Court invoked Article 142 to grant the appellant the status of permanent lecturer providing substantial justice along with reinforcing the rights of the respondents through a just and equitable judgement. The Supreme Court’s decision hinged on the fact that the merit of both the appellants and respondents should be respected and Article 142 should not be invoked to lay down an unreasonable precedent.

Supreme Court's Authority to directly dissolve Marriage under Article 142

Under Article 142, it is the apex court's discretionary powers that lay down the pillars of substantial justice. Under the Hindu Marriage Act 1955, when the parties seek mutual divorce under Sec 13 of the Act, the court of the required jurisdiction mandates a cooling period of 6 months for the parties to reflect and re-evaluate their decision, and the mutual consenting parties are also required to be present before the family court as given under Section 13(b) of the Act.

Thus in 2014, two parties moved to the Supreme Court seeking divorce under Article 142 of the Constitution which enables and empowers the apex court to pass any order that would be essential to provide complete justice in the circumstances before them.¹²

The apex court in 2015 granted the parties to the case, mutual divorce under Article 142 on the ground of irretrievable breakdown of marriage, also not specified as a ground in the Hindu Marriage Act, 1955.¹³ But this case precipitated a greater question before the apex court which was also one of the most significant outcomes, the invocation of Article 142 of the Constitution of

⁹ Noor Mohammed vs Jethanand & Aur, 2013 5 SCC 202

¹⁰ Union Of India vs Ashish Agarwal, TS-339-SC-2022

¹¹ Supreme Court invoked Article 142 to Reinstate English Lecturer in College, LAWINSIDER (Nov. 20, 2023, 4:52 PM) <https://www.lawinsider.in/news/supreme-court-invoked-article-142-to-reinstate-english-lecturer-in-college>

¹² Supreme Court’s Power to Directly Grant Divorce, Supreme Court Observer (Nov. 20, 2023, 12:42 PM) <https://www.scobserver.in/cases/supreme-courts-power-to-directly-grant-divorce>

¹³ 25 of 1955

India. The question that arose before the Court was whether the Supreme Court possesses the power to directly grant a divorce under Article 142 of the Constitution and what should be the rules concerned with this particular jurisdiction of the apex court.

Thus in 2016, this case was referred to the constitutional bench by a two-judge bench where Justice Sanjay Kishan Kaul made a crucial observation that Article 142 of the Constitution of India can be invoked even if one of the parties is not consenting to the divorce.

In the end, the constitutional bench in its judgement held that the Supreme Court could invoke Article 142 to directly grant a divorce in cases of irretrievable breakdown of marriage even when the parties to divorce directly approach the Supreme Court without appealing to the lower court.¹⁴

Restraints to Article 142

The unfettered nature of the powers conferred in Article 142 of the Constitution summoned its criticism both from the Government and asset of the people of the country. It is often argued that this Article has given rise to ambiguity and confusion over the functions of different organs of the government.¹⁵

But in the broad spectrum, it can be noticed that Article 142 does not venture into forbidden boundaries but rather steps in when there is a lacuna in the laws made and enacted by the other two organs that is the executive and the legislature. Thus, it has been held from time to time that Article 142 is not contradictory but complementary to the substantive laws made by the Parliament. Despite granting the court expansive and undefined powers, Article 142 of the Constitution of India cannot be invoked in specific matters even if the substantive laws have not been able to draw a remedy there yet. The reason is that it cannot be a whole new infrastructure where nothing existed before. In this regard, the apex court had held that Article 142 cannot be invoked subject to SARFAESI rules, regarding the purchaser's default.¹⁶

Conclusion

Article 142 undoubtedly finds its expression primarily through the Supreme Court rulings and orders more than the explanation of its provisions. It is not only a constitutional provision for validating justice and equity but also a feather in the cap of democracy. Since the enforcement of the Indian Constitution, it established the framework for the Supreme Court to do complete justice for the people and not succumb to the influence of the powerful in challenging circumstances. This Article irrefutably upholds the proclamation of justice in its entirety in all crucial circumstances where the legislature and executive are silent in the application or interpretation of laws made by the Parliament.

Thus, Article 142 of the Constitution provides the Supreme Court with an edge not to contradict or oppose the substantive law but to aid in the administration of justice, alongside which the court should also be concerned with not laying down any precedent peculiar to any particular case. This will pose a threat to the power conferred to the apex court through this Article.

¹⁴ Shilpa Sailesh v Varun Sreenivasan, on 1 May, 2023

¹⁵ Article 142 of the Constitution, NEXTIAS, (Nov. 20, 2023, 10:45 AM) <https://www.nextias.com/current-affairs/02-05-2023/article-142-of-the-constitution/>

¹⁶ Bank of India vs Rajat Infrastructure Pvt. Ltd., on 4th October, 2023

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