
THE DOUBLE-EDGED SWORD OF ARTICLE 142: JUSTICE BEYOND LAW OR JUDICIAL OVERREACH

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ABSTRACT

Article 142 of the Indian Constitution empowers the Supreme Court of India with sweeping powers to pass orders and decrees necessary to secure complete justice in any matter pending before the court. This potent tool is unique in its breadth and flexibility, allowing the court to transcend beyond the procedural and statutory provisions and fill the legal lacunae where the law is either silent or inadequate. Over the past years, the apex court has invoked these powers in many landmark decisions ranging from the Vishaka Guidelines and the age-old Ayodhya verdict to the Union Carbide Case and environmental jurisprudence.

This research article critically examines the constitutional scope, historical development, judicial interpretation and evolving utility of Article 142. It explores whether the Court's foraying into another institutional domain comprises legitimate judicial activism or crosses into judicial overreach. Through analysis, the article highlights how this provision has served as a tool to ensure complete justice in legally complex matters, especially for marginalised communities. However, it also sheds light upon the potential risk of unchecked use, including legal ambiguity, inconsistency in jurisprudence and erosion of institutional accountability.

This article also delves into the socio-legal implications of Article 142, recognising its role in reinforcing trust in the judiciary, but at the same time, it also burdens the court to fill the gap in governance. It concludes by advocating for the codification of transparent guidelines, a clear and objective definition of complete justice and institutional safeguards to ensure the judicious use of the uncatalogued and undefined powers of this provision. Ultimately, the article advocated for a balanced approach – one that preserves the judiciary's capacity to deliver justice while at the same time respecting constitutional boundaries.

Keywords: Complete Justice, Article 142 of the Indian Constitution, Judicial Activism, Judicial Overreach, Separation of Powers

INTRODUCTION

Article 142 of the Indian Constitution is a provision unique to the Indian Judicial System. It grants the Supreme Court of India the power to pass orders and decrees necessary to secure complete justice, transcending procedural and statutory provisions. Over the years, this provision allowed the apex court to uphold constitutional morality, resolve complex disputes and fill the lacunae created by the legislation. The vast interpretation of the term complete justice lends the apex court enormous power to ensure complete justice in matters before it. A conscious effort was made by the constituent assembly to balance judicial flexibility with judicial overreach. Thus, Article 142 came out as a safeguard for justice. Understanding that it gives enormous power to the apex court, it has to be used only for the interest of justice and not as a mechanism for judicial overreach, discarding the doctrine of separation of powers, which is the basic structure of the constitution.

CONSTITUTIONAL PROVISIONS

Article 142 (1)¹ provides the Supreme Court with the power to pass any order or decree required to secure complete justice in cases before it. Such orders are enforceable in India as per law made by Parliament, or in its absence, by Presidential Order.

Article 142 (2)² further allows the Supreme Court to secure the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

These sweeping powers make this provision one of the most potent tools of judicial discretion in any democratic system. What makes Article 142 distinct is that it oversteps the procedural and statutory limitations, allowing the Court to speak even in areas where the provisions of law are absent or silent. However, it must be interpreted in harmony with the Constitution's basic structure doctrine, especially the doctrine of separation of powers.

HISTORICAL CONTEXT

During the constituent assembly debates, Dr. B. R. Ambedkar emphasised that this provision

¹ The Constitution of India, 1950, art 142(1)

² The Constitution of India, 1950, art 142(2)

holds good importance for empowering the Supreme Court to secure complete justice in circumstances where the law might fall short, be silent or be absent. He emphasised that it is just a corrective tool to bridge the lacunae in the law, not a provision to grant arbitrary power to the apex Court. Shri Thakur Das Bhargav asserted his view and mentioned that natural justice must prevail over the statutory provisions.

However, some Constituent Assembly members, like K.T. Shah and T.T. Krishnamachari, expressed concerns over the sweeping powers lent by Article 142. They warned it could lead to judicial overreach. Despite these concerns, this provision of law was retained in order to ensure justice remains the judiciary's guiding principle in exceptional circumstances.

JUDICIAL INTERPRETATION AND LANDMARK CASES

The legal provision evolved through the following judgments.

In *Prem Chand Garg v. Excise Commissioner, U.P.*³, a constitutional bench faced the question of whether the apex court could frame a rule that would be inconsistent with one of the fundamental rights. Justice Gajendragadkar opined that this court can't make an order inconsistent with any of the constitutional provisions. Thus, giving it a restrictive interpretation.

In *Bhopal Gas Tragedy*⁴ case, the court clearly insisted that the limitations contained in ordinary laws cannot ipso facto act as a bar to exercise the powers conferred by Article 142. The apex court quashed all the civil and criminal proceedings against the Union Carbide pending in any court to ensure complete justice after the settlement.

In *Shilpa Shailesh v. Varun Sreenivasan*⁵, the court recently reiterated that the court can deviate or transcend the procedural or substantive law while exercising its power under Article 142 as long as the decision is based on the consideration of public policy.

The Court held that while exercising the powers under Article 142, the Court can depart from the procedure as well as the substantive laws as long as the decision is based on the considerations of public policy. The Court has the discretion to dissolve the marriage by

³ Prem Chand Garg v. Excise Commissioner, U.P., AIR 1963 SC 996

⁴ Union Carbide Corporation vs Union Of India, 1989 SCC (2) 540

⁵ Shilpa Shailesh v. Varun Sreenivasan, 2023 SCC Online SC 544

passing a decree of divorce by mutual consent, on the ground of its irretrievable breakdown, without being bound by the procedural requirements for the same. This power is only to be used to ensure complete justice where the court is satisfied that the marriage has completely failed and continuation of a formal legal relationship is unjustified.

In *High Court Bar Association, Allahabad v. State of U.P. & Ors.*⁶, the court laid down that the powers conferred to it by this provision are to do complete justice, and it cannot be exercised in order to nullify the benefits which are extracted by a large number of litigants based on judicial orders validly passed in their favour. This provision also doesn't allow the apex court to ignore the substantive rights of the litigants. The sweeping powers lent by Article 142 cannot be exercised to defeat the principles of natural justice, which are an integral part of the jurisprudence.

In *State of Tamil Nadu v. K. Balu & Anr.*⁷, the petition originally filed challenged the unrestricted grant and renewal of liquor licenses along the national and state highways, especially in Tamil Nadu, as easy availability causes drink and drive fatalities. The Apex court stepped in and banned the sale of liquor within 500 meters of the outer edge of national and state highways. The court also instructed not to renew the existing licenses for liquor shops along highways. The court weighed public safety over commercial interests. This marked a landmark use of Article 142 to protect public safety.

In *M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors.*⁸, the court invoked its power under this provision while passing the historic Ayodhya case, where it handed over the disputed land of 2.77 acres to the trust formed by the central government for construction purposes under *The Acquisition of Certain Area at Ayodhya Act, 1993*⁹. Another 5 acres were allotted for the construction of a mosque.

In the above-mentioned case, the Hon'ble Court described its power under Article 142 as – *“The phrase ‘is necessary for doing complete justice’ is of a wide amplitude and encompasses a power of equity which is employed when the strict application of the law is inadequate to produce a just outcome. The demands of justice require close attention not just to positive law*

⁶ High Court Bar Association, Allahabad v. State of U.P. & Ors., 2024 INSC 150

⁷ The State Of Tamil Nadu Rep. By Sec.&Ors; vs K. Balu & Anr, (2017) 2 SCC 281

⁸ M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors, AIRONLINE 2019 SC 1420

⁹ The Acquisition of Certain Area at Ayodhya Act, 1993

but also to the silences of positive law to find within its interstices a solution that is equitable and just. The legal enterprise is premised on the application of generally worded laws to the specifics of a case before courts.”

In the Coal Block Allocation¹⁰ case, the Indian government allocated coal blocks to public and private entities between 1993 and 2010 without opting for a transparent and competitive bidding process. Later, massive irregularities were reported by the Comptroller and Auditor General. In 2014, the court held that the allocation process was arbitrary and non-transparent. The Apex court, using its power under Article 142, quashed the allocation of 214 coal blocks to secure complete justice. It was one of the biggest corruption-related interventions by the Supreme Court. This landmark judgement enunciated the use of these sweeping powers to enforce accountability and rectify executive mismanagement, making a milestone in judicial activism against corruption in resource allocation.

The *Vishaka & Ors vs State of Rajasthan & Ors*¹¹ was filed after the brutal gangrape of a social worker in Rajasthan. There was no domestic law in India at that time of the case to deal specifically with sexual harassment in the workplace. The Apex Court used Article 142 in a landmark way to formulate the guidelines in order to address the thriving problem of sexual harassment in the workplace, in the absence of specific legislation. The Apex Court laid down binding guidelines, known as the Vishakha Guidelines, for all workplaces across the country and filled the legal vacuum until the legislature acts upon it. This was a historic use of this provision to protect women from gross injustice and protect their constitutional rights in the absence of specific legislation.

JUDICIAL ACTIVISM OR JUDICIAL OVERREACH

India's democracy is based on values demarcated by the constitution, which rest on the balance between the executive, legislative, and judiciary. Article 142 is no doubt a potent tool for ensuring complete justice to citizens where no legal remedy exists and there is an imminent threat of injustice.

The invocation of the sweeping powers under Article 142 by the Supreme Court has time and again ignited debates over the notion that whether such exercise of power reflects **judicial**

¹⁰ Manohar Lal Sharma vs. The Principal Secretary & Others, (2014) 9 SCC 516

¹¹ Vishaka & Ors vs State of Rajasthan & Ors, AIR 1997 SC 3011

activism – a legitimate and necessary step just to fill the legal lacunae and to avoid imminent threat of gross injustice – or crosses the thin line and step into the domain of **judicial overreach**, where it encroaches upon the functions and domain of the other two organs of the government. This fine distinction lies in the checkpoint of whether this step supplements or supplants the functioning of the executive and the legislative.

In the past years, there have been instances where the Supreme Court has been foraying into areas where it should, by the reason of the doctrine of separation of powers, which is in turn a part of the basic structure of the constitution. For example, in the Vishakha Case, the Apex court laid down the guidelines regarding sexual harassment in the workplace in the absence of a specific provision by the legislature. The guidelines were held valid until the Parliament passed the act. This case is widely celebrated as the Apex Court went the extra mile to ensure complete justice.

However, concerns regarding judicial overreach arise when the Apex Court starts issuing directions on the matter of policy and administration, areas constitutionally demarcated to the executive or legislative, respectively. One such example is the ban on liquor case, where the court invoked its power to impose a nationwide restriction on liquor shops within a range of 500 meters of national and state highways. Though no doubt the intent was noble to prevent casualties due to drunk driving, the judgment effectively made policy without legislative mandate, intruding into other organs' territory.

Similarly, in the Union Carbide Case, the Court approved a settlement using the sweeping powers enshrined under Article 142. At the same time, it ensured speedy compensation but was criticised for a lack of wider consultation and a legal basis behind it.

The powers under Article 142 are a repository of unenumerated power which had been left 'undefined and uncatalogued' to make it remain elastic enough to be moulded to suit the given situation. Thus, while in extraordinary circumstances of legal complexity, these powers protect fundamental rights and ensure complete justice, in cases of judicial overreach, it undermines the doctrine of separation of powers, which is a part of the basic structure of the Constitution. The challenge here lies in utilising these sweeping powers to uphold justice without unsettling democratic values.

SOCIO-LEGAL IMPLICATIONS OF ARTICLE 142

The undefined and uncatalogued powers have provided effective remedies in several cases, and their exercise brings far-reaching social and legal implications. These consequences affect not only the legal system but also the democratic structure and citizens' relationship with the state.

Article 142 has ensured that justice is not defeated by procedural hindrances. For example, in the Union Carbide Case, the court has invoked these powers to uphold fundamental rights of marginalised communities, ensuring timely relief. This proactive stance strengthens the common man's access and trust in the judiciary as the last resort, especially in cases of state apathy or legislative vacuum.

While these powers allow the court to ensure complete justice where the law is inadequate, frequent stepping into others' domain can disturb the constitutional balance between the judiciary, executive and legislative. When the court created policy guidelines, they forayed into the functions of the legislature. If this continues, it would erode democratic accountability and may lead to 'juristocracy'.

The orders that are passed under this provision are case-specific and specially crafted to ensure complete justice in those circumstances only. They are also of a non-binding nature. This creates inconsistency in legal reasoning and application. For example, in divorce cases, these powers have been used to waive off the six-month waiting period mandatory under Section 13B (2) of the Hindu Marriage Act¹². However, this order can't be cited as binding precedent in future matters of a similar nature, which leads to perceived arbitrariness and legal uncertainty in the legal domain.

The repeated use of Article 142 in matters of public interest has brought up the image of the judiciary as the saviour of public welfare. In environmental cases like the Taj Trapezium or the Ganga Pollution case, the court used its power to issue directives to protect the monuments and biological ecosystems. However, frequent interference in government matters can lead to unrealistic expectations from the court, placing a burden on the judiciary to ensure policy failures are corrected.

¹² Hindu Marriage Act, 1955

The Court's use of this potent tool reflects a moral angle of justice, to ensure complete justice even if statutory provisions bar it. This is no doubt important in a legally complex and evolving society, but it also undermines the rule of law and legal certainty, which are key elements of the legal system. If justice is viewed as an individual judicial discretion rather than objective law, it kills predictability in legal processes.

Article 142 is a double-edged sword. While it serves as a potent tool to uphold justice in legally complex circumstances, its unchecked use may undermine legal predictability, institutional boundaries, and dilute democratic accountability. Thus, a balanced and principled use of Article 142 is essential to balance complete justice with constitutional propriety.

NEED FOR SAFEGUARDS AND RESTRICTIONS

The undefined and uncatalogued nature of this sweeping power under Article 142 to ensure complete justice raises strong concerns regarding the safeguards and restrictions to ensure a balance between complete justice and constitutional propriety. Without adequate checks, this extraordinary power risks upsetting the constitutional balance of power among the legislature, executive and judiciary.

Firstly, the doctrine of separation of powers, which is a part of the basic structure of the constitution, mandates that each organ must perform its role without encroachment by the others. Frequent judicial overreach into areas of policy matters or administration, under the guise of complete justice, may weaken the executive and legislative authority, turning the judiciary into a super-legislature, which is neither elected nor directly accountable to the public.

Secondly, the lack of clear, objective and transparent criteria for invoking Article creates room for inconsistency and often leads to unpredictability in judgments. Orders passed by invoking Article 142 are case-specific and can't be held as a binding precedent, which creates legal uncertainty and ambiguity, and may lead to arbitrariness in future rulings.

Thirdly, excessive reliance on the powers of Article 142 may lead to executive complacency. If the court repeatedly interferes in the government's action, it reduces pressure on policymakers to enact necessary reforms, thereby diluting the democratic process. The Supreme Court needs to introspect on the use of Article 142 as an independent source of power, which should be regulated by certain objective guidelines.

Therefore, some safeguards or restrictions to the use of Article 142 must be considered, such as codified guidelines for the application of these powers. An objective and clear definition of complete justice shall be provided, which may lead to judicious use only. These safeguards would ensure that the judiciary continues to be a protector of rights without ignoring its mandate, thereby preserving both judicial integrity and constitutional harmony on both sides.

CONCLUSION

Article 142 of the Indian Constitution is one of the most extraordinary and versatile tools in the framework of Indian Constitutional Law. Its presence ensures that justice, in exceptionally complex circumstances, never gets hindered due to rigid procedural and statutory barriers. Over the past years, this provision has empowered the Supreme Court to deliver landmark verdicts that have beautifully shaped India's legal, social and administrative landscapes. From the Vishaka Guidelines to the Ayodhya dispute, and from environmental safeguards to the Union Carbide Case compensation, this provision has been of great significance in response to legal void and acts as a wall to imminent injustice.

However, this uncatalogued and undefined power acts as a double-edged sword. The unfettered powers of the Supreme Court pose a significant risk when invoked without sufficient restraint. The step of judicial activism becomes judicial restraint. While it enables the judiciary to act decisively when the law bars complete justice, at the same time, it could lead to judicial overreach – trespassing into the domains of the legislature and executive. Such an interdisciplinary act, though of noble intention, can dilute the democratic accountability of the elected institutions and might blur the thin line defined under the doctrine of separation of powers, which is a part of the basic structure of the constitution.

The socio-legal implication of this provision demarcates the enhanced access to complete justice and strengthening faith of the public in the judiciary; its inconsistent use can cause institutional imbalance and legal ambiguity. Therefore, the demand for the hour is codified in the guidelines on its application, and there is a clear understanding of the term complete justice and restrictive mechanisms to prevent its misuse.

Ultimately, this provision should remain a remedial tool, not a normative substitute for other institutions' action. It must be used sparingly, proportionately and with due regard to constitutional propriety. If these sweeping powers are exercised judiciously, they can be

displayed as a symbol of judicial compassion and corrective justice; when misused, they dilute the institutional balance. Maintaining delicate equilibrium is vital in order to preserve the integrity of India's constitutional democracy and uphold the rule of law.