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# Article 142 - Is the Judiciary Overstepping its Limits to do "Complete Justice"?

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## ABSTRACT

*The duty of courts is to do justice to the aggrieved parties. The constitution of India empowers the courts in India with wide range of powers in order to deliver justice. Article 142 of the Indian constitution is one such provision which empowers the supreme court to pass any such order or decree for doing "complete justice". The supreme court of India on various circumstances has invoked article 142 in order to deliver complete justice. Such provisions become necessary in a democratic form of government which requires a system of checks and balance between the organs of the state. Article 142 also enables the supreme court to fulfil its role as a guardian of rights of the citizens against the arbitrary use of power by the government or any official. However, in recent times courts have been accused for invoking article 142 and overstepping their limits and violating the principles of the doctrine of separation of powers. There are many contentions raised that the judiciary needs to restrain itself from stepping and assuming the role of the legislature and other administrative bodies. Though the doctrine of separation of powers finds a place in the Indian Constitution, it is not applied in the strict sense. The Constitution of India through its provisions clearly separates the powers and functions of the organs of the state but it does to expressly mention about the strict implementation of the doctrine of separation of powers.*

## I. INTRODUCTION

It Article 142<sup>2</sup> of the Indian constitution empowers the honourable Supreme court of India with a very important role i.e., the duty to do "complete justice". As the authorities of the state are given wide public administration powers and by the virtue of the same there are chances of abuse of such powers conferred upon the state authorities, to avoid the same there needs to be a system of checks and balances, Article 142 is such a provisions which enables the supreme court to take up the role of an activist, by which the supreme court can also review the actions of the state authorities and pass order or decree in that respect in order to serve "complete

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<sup>2</sup> INDIA CONST. art. 142.

justice” to the parties. Article 142 empowers the apex court with powers of broad and wide nature, as it empowers the supreme court to pass orders or decree in any circumstance where there is injustice to the parties of the suit, in the case of *Mahmud Hasan v State of UP*<sup>3</sup> can only be exercised in different situations depending upon the facts and circumstances of the case. However, the powers conferred upon the court can be exercised only to do justice to the parties and no other reason, the court in the case of *Union of India v Danmai & Co*<sup>4</sup>, while discussing the what the court must consider while passing an order under article 142, observed that the court shall lay consideration upon equity, justice and good conscience. The supreme court in India under various circumstances invoked article 142 in order to do complete justice to the parties, it is necessary for the courts to play such an active role as the powers and actions of the state government have to be checked to make sure that no rights and interests of the public are being violated due to arbitrary exercise of powers by the state authorities. To understand the various aspects and the interpretation of article 142, it is necessary to understand the powers that the article confers upon the supreme court, moreover it is also necessary to understand the nature and scope of article 142. There have been various decisions which have from time to time interpreted article 142 by relying upon various theories of interpretation and passed numerous decisions with respect to 142, these decisions have to be analysed in order to understand the applicability of the article. Moreover, there has been various instances wherein the judiciary has been accused with overreach of powers while exercising the power of review, hence it has to be analysed whether there has been overreach on part of the judiciary, as if there has been overreach on the part of judiciary then the same has to be seen in light of judicial restraint as there shall not be encroachment of power of one organ of the state by another.

### **(A) Research Objectives**

The objectives of this research is as follows -

1. To analyse the powers conferred upon the apex court by article 142.
2. To understand the scope & nature of article 142 of the Constitution.
3. To interpret the phrase “Complete justice” as used in the article 142 of the constitution.
4. To analyse the development of the legal position of article 142 of the Constitution by relying upon judicial decisions pronounced by courts in India.

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<sup>3</sup> (1997) 3 SCC 138

<sup>4</sup> 1980 SCC 707

5. To list out and explain various instances wherein the court has invoked article 142 of the constitution.
6. To understand the concept of judicial restraint and the need for judicial restraint.

### **(B) Research question**

The researcher aims to answer all the following question through this research paper -

7. What are the powers conferred upon the courts by article 142 of the Indian Constitution?
8. What is the scope and nature of article 142 of the Constitution?
9. How have courts interpreted the phrase “complete justice” as used in article 142?
10. How has the legal position of article 142 developed over time?
11. What is judicial restraint?
12. what is the need for judicial restraint?
13. what are the various scenarios wherein the court have invoked article 142?

### **(C) Significance of Study**

In this paper the researcher aims to provide a critical study on article 142 by analysing the nature and scope of the article and also the powers conferred upon the supreme court by the article, this will help members of the legal profession and the judiciary to understand the various aspects with respect to the application of the article 142. The researcher also aims to provide an analysis of the definition, nature & scope of the phrase “Complete justice” as used in article 142 of the Constitution and the interpretation of the phraseology of the article by various courts, this will help readers, members of legal profession and judiciary in interpreting the article and also further it will facilitate the judiciary as to in what scenarios the courts can invoke the article 142 of the Constitution, the same will also help the state authorities to interpret as to what acts and scenarios may amount to “injustice”. Moreover, in this paper the researcher also aims to provide the analysis of various judicial decisions which will help the reader, members of judiciary and members of legal profession understand the development of legal position of the article and also various instances wherein the courts have invoked article 142 of the Constitution, further having an understanding of the same will also facilitate the members of executive and legislature as to what acts of theirs may result in the court invoking article 142 of the Constitution. Further, the research also aims to provide a critical analysis on various aspects on judicial restraint and the need for judicial restraint by providing various instances wherein the article 142 has been misused, this will help the members of judiciary to understand

the areas in which the article operates, so that there is no misuse of the article and the judiciary does not encroach upon the powers of the other organs of the state.

#### **(D) Literature Review**

There has been a lot of work done on the subject of article 142 of the Constitution. The work of Dr.R.Prakash with the title ‘Complete justice under article 142’ gives an overview on the meaning and interpretation of the phrase “complete justice” as used in the article 142 of the Constitution, the same is done by providing an explanation about the article and also by referring to various international and Indian case laws and moreover the published work also draws lines with other provisions of Indian Law. The article ‘ Judicial activism in India’ authored by Prof. Nishtha Jaiswal & Dr. Lakhwinder Sign gives a insight on the development of judicial activism in India by discussing the powers that the constitution of India have empowered upon the high courts and the supreme court and moreover this article also discussed whether the courts taking the role of an activist gives rise to judicial activism or judicial intervention, as at many instances the courts have been blamed due to overreach of constitutional powers. The researcher also referred to the work of Hari Shankar Gautam, with the title ‘ Role of Judiciary on Article 142 of the constitution: A pragmatic Appraisal’, in this article the author has discussed various aspects of article 142 of the constitution by relying upon judicial decisions wherein the courts have laid down the nature and scope of the article and various scenarios wherein the article has been invoked and has been interpreted. The paper “The legislative aspect of Judiciary: judicial activism and judicial restrain” Authored by Dr. Justice. B.S Chauhan focuses on the judicial activism and its evolution, in the paper the author has also discussed about various provisions of the constitution which have birth to judicial activism in India, towards the end the author related the present day trend of judicial atticism and the doctrine of separation in order to conclude on whether the judiciary is overstepping its limits, to which the author therein concluded that the courts have not violated any principles of the constitution.

## **II. ARTICLE 142**

### **(A) Powers conferred upon the Supreme Court**

Article 142 of the constitution confers wide range of powers upon the courts, this is because the purpose of this article is to do “complete justice” to the parties. As, the the phrase “complete justice” may have different meanings in different circumstances there is ambiguity with regard to the powers conferred upon the courts to achieve this purpose, this aspect was noted in S.

Nagaraj v. State of Karnataka<sup>5</sup>, wherein emphasis was laid on the term “complete justice” and opined that the courts have absolute and wide range power to achieve “complete justice” and further that further exercise of such power is left to the discretion of the courts. The extent of power conferred upon the courts was discussed in the case of Manohar Lal Sharma v. Principal Secy & ors<sup>6</sup>, wherein the supreme court was of the opinion that article 142 confers very wide inherent powers upon courts and courts may exercise such power in order to address any exceptional issue at hand, however, this power has to be exercised in public interest and to uphold democracy. The power conferred upon the courts is not rigid and court may exercise these powers by moulding them according to the circumstances<sup>7</sup>. As the powers are conferred upon the courts to achieve equity, these powers are given preference over law in certain circumstances to ensure that justice is served, the aspect of power of courts under article 142 was also discussed in the case of Sahid Balwa v. Union of India<sup>8</sup>, wherein the court opined that the courts have inherent power to pass any such order which is required to achieve complete justice.

#### **(B) Nature and Scope of the article.**

As the powers conferred upon the courts are wide and absolute, it is necessary for one to understand the nature and scope of such powers in order to make sure that such exercise of powers are not ultra vires to the constitution. The article has wide scope as the purpose it seeks to achieve is vague as what “complete justice” in each case depends in the circumstances and facts of the matter at hand, the wide scope of this article was discussed in the case of Vinay Chandra Mishra<sup>9</sup>, wherein it was stated that no ordinary law can fetter with the power of court under article 142, it was however stated that courts have to consider statutes relating to the case while passing any such order. This means that though the scope of the article is wide, it has to be exercised in compliance with law, a similar stand was taken in the case of M.S Ahalawat v. State of Haryana<sup>10</sup>, wherein it was held that though the powers under the article are wide in nature the same cannot be the reason for disregarding any law or procedure of law. As order under article 142 are wholly depended on the facts of the matter at hand it cannot be treated as a precedent for other cases, this was observed in the case of Manipur Regular Posts Vacancies

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<sup>5</sup> 1993 4 SCC 595

<sup>6</sup> (2014) 2 SCC 532

<sup>7</sup> Dr. Justice B.S Chauhan, ‘Courts and its endeavour to do complete justice’, Accessed on 2 October 2020 at 4:45 P.M). Retrieved from <http://www.nja.nic.in/17%20Complete%20Justice.pdf>

<sup>8</sup> (2014) 2 SCC 687

<sup>9</sup> AIR 1995 SC 2348

<sup>10</sup> AIR 200 SC 168

Substitute Teachers Association v. State of Manipur<sup>11</sup>. As article is applied differently depending upon the facts and circumstances of the matter at hand, it is flexible in nature i.e it can be moulded according to the needs of the situation, the importance of such flexibility has been discussed in the case of Delhi Development Authority v. Skipper Constructions<sup>12</sup>, wherein it was observed that it is wise to leave the scope of article 142 limitless so that courts can mould such power to meet the requirements to achieve complete justice in any situation. Though the article is wide in nature it is also supplementary, meaning this article cannot be sole basis for jurisdiction, this was reiterated in the case of Salil Sbhlok v. Union of India, it was held that powers under article 142 cannot be exercise by courts alone, it can only be excised while excising jurisdiction under other provisions of law.

### **III. INVOKING ARTICLE 142**

#### **(A) Interpretation of the phrase “complete justice” as used in “article 142 of the Constitution of India”.**

Courts in various circumstances have been criticised for encroaching upon the duties and powers of the legislative and the executive while excreting their powers under article 142, therefore, we need to understand the phrase ‘complete justice’ as used in article 142 to make sure that courts are not acting ultra vires and not violate the principles of doctrine of separation of powers. To find out the legal meaning of the phrase it is necessary for us to refer to the decisions of the court in that regard. There are two aspects relating to the phrase “complete justice” that need to be considered, firstly, we need to know the extent of the power of the court to do “complete justice”, this was discussed in the case of A. Jideranath v. Jubilee Hills Co-Op House Building Society<sup>13</sup>, wherein the court held that courts while exercising its power under article 142 in order to do “complete justice” shall make sure that no injustice is cause to any person who is not a party to the matter. A similar view was taken by the apex court in Secretary, State of Kerala v. Umadevi<sup>14</sup>, wherein the court opined that the phrase “complete justice” is to be understood as justice in conscience with law and does not mean justice at the cost of violating a statutory provision. This means that the power conferred upon the courts to do “complete justice” is not absolute but in fact courts have to exercise high diligence while exercising the conferred upon them by article 142.

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<sup>11</sup> (1991) 2 SCC 643

<sup>12</sup> 1996 AIR 2005

<sup>13</sup> (2006) 10 SCC 96

<sup>14</sup> (2006) AIR SC 1806

**(B) Theories of interpretation of Article 142 of constitution of India**

Courts over the time have applied and given different interpretations to article 142. There are three theories of interpretations that have been applied by the court while interpreting article 142 and they are as follows -

1. **Restricted Interpretation** - the restricted interpretation is of the view that courts cannot violate any statutory provision or the fundamental rights in order to do complete justice in any case. This view was initially adopted in *Prem Chand Garg v. Excise Commission*<sup>15</sup>, wherein while deciding whether the court can violate fundamental rights while exercising its power under article 142(1), held that courts while exercising its power under article 142 in order to provide complete justice cannot contravene any statutory provision. This view of the court was upheld by a nine bench court of the Supreme court of India in the case of *Naresh Sridhar Mirajkar v. state of Maharashtra*<sup>16</sup> and by a seven judge bench of the supreme court in the case of *A.R Antulay v. R.S Nayak*<sup>17</sup>. A similar view was adopted by the court in the case of *M.C Mehta v. Kamal Nath*<sup>18</sup>, wherein it was opined that courts cannot pass an order under article 142 if the same is violative of a specific provision of a statute. However, this view was criticised on various circumstances by arguing that this interpretation defeats the whole reason behind incorporating article 142 of the constitution and courts have also adopted different theories of interpretations.
2. **Broad Interpretation** - The broad interpretation of the article confers absolute power upon the courts, even to an extent where statutory laws are disregarded. Broad interpretation of article 142 was initially adopted in *K.M Nanavati v. State of Bombay*<sup>19</sup>, wherein the court was not dealing with article 142 wholly but the question before the court was whether article 161 imposes restriction upon article 142, the court opined that there is nothing under article 161 that imposes a restriction upon article 142 and the court further held that the phraseology used in article 142 does not affect the applicability of the article in any manner. The restricted interpretation laid down in *Prem Chand Garg's* case was rejected stating that the same is not consistent with the principles of the constitution and Article 142 was broadly interpreted by the supreme court in *Delhi judicial service association v. State of Gujarat*<sup>20</sup>, wherein the court recognising the importance of article 142 had held that article

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<sup>15</sup> AIR 1963 SC 996

<sup>16</sup> AIR 1967 SC 1

<sup>17</sup> (1988) 2 SCC 602

<sup>18</sup> (2000) 6 SCC 213

<sup>19</sup> AIR 1961 SC 112

<sup>20</sup> (1991) 4 SCC 406

142 is the part of the basic structure of the constitution and the court had also held that no law enacted by the legislative can take away the power conferred upon the courts by article 142 as an ordinary law cannot override a provision of the constitution. This was upheld in the case of *Union Carbide Corporation v. Union of India*<sup>21</sup>, wherein the held that any regular law cannot place restrictions upon the powers conferred by the constitution under article 142 and the court further held that while excising powers under article 142, courts have to firstly consider the limitations put by an statue and then courts have to exercise its power within the principles of public policy.

3. **Harmonious Interpretation** - The application of Article 142 took a new turn with the case of *Supreme court Bar Association v Union of India*<sup>22</sup>, wherein the matter before the court was whether the court can suspend an advocate, the court held that only the bar council has the power to suspend an advocate and the court has no such power article 142, the court further stated that courts while excreting its power under article 142 cannot permit something that is not allowed by the substantive law and furthermore article 142 does not permit courts to ignore the substantive law except in cases where equity is to be achieved. This judgement of the court indicates that the power conferred by article 142 cannot be restricted by any ordinary law and at the same time courts which excising its power under article 142 cannot disregard any substantive law.

#### **IV. RESTORATION OF ARTICLE 142 OF CONSTITUTION OF INDIA BY THE VIRTUE OF JUDICIAL DECISIONS**

The purpose of incorporating article 142 is very vague due to which there is no certainty about the cases wherein the article can be invoked. The court in the case of *Ashok Kumar Gupta v. State of U.P*<sup>23</sup>, observing the vagueness of the article had held that phrase ‘complete justice’ used in article 142 creates vagueness as there is no definite number of situations wherein this article can be invoked. There are two views which talk about the purpose of enacting article 142, one view indicates that article 142 has been incorporated to be invoked only in cases wherein the technicalities and procedure is causing hindrance to justice and the second view is that the article can be invoked only in cases where the court feels it is necessary to do so in order to pass an order or a decree. However, some are of the opinion that the article can be invoked only in cases where there is procedural hindrance, the same was opined in *Laxmi*

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<sup>21</sup> (1991) 4 SCC 584

<sup>22</sup> (1998) 4 SCC 409

<sup>23</sup> (1997) 5 SCC 201

Morarji v. Bherorse Darab Madan<sup>24</sup>. However, it has to be noted that article 142 has been incorporated only to facilitate article 32 and 136 and it does not confer any new power to the courts. This means that the powers conferred upon the courts by article 142 is to obtain equity in certain cases, this is because it not possible for the legislature to enact laws that can address all the disputes, therefore, in cases wherein there is no law to resolve a dispute then the court shall invoke article 142, in Vineet Narian v. U.O.I<sup>25</sup>, had invoked article 142 has there was no statutory law to address the dispute. However, though the powers conferred upon the courts is absolute in nature , the article has to be invoked without disregarding other laws passed by the legislature or the executive, in Indian Bank v. ABS Marine Products Pvt.Ltd<sup>26</sup>, it was held that the courts while invoking article 142 have to make sure that the same is not violative of any law and is consistent with laws.

## **V. JUDICIAL RESTRAIN & THE NEED FOR JUDICIAL RESTRAIN**

On various instances, courts have been criticised for encroaching upon the powers and duties of other organs of the state and also for the misuse of article 142. Therefore, it is necessary to analyse the same in order to know whether the judiciary is overstepping its limits and whether there is a need to restrain judiciary from doing the same. In Tamil Nadu v. K. Balu<sup>27</sup>, wherein the central government had released a notification for ban on sale of liquor on national highways, however the supreme court had invoked article 142 and extended this ban to stores on state highways as well, this had cause great loss to income and employment of workers. In this case the supreme court was highly criticised for the misuse of article 142 as there was no notification from the government regarding the same. The court had also been criticised for the decision of transfer of the case of M.Siddiq v. Mahant Suresh Das<sup>28</sup>, wherein the court had order for transfer of the case from court at Rai Bareli to Lucknow subsequent to order of a 3 bench court of supreme court, here, the order of supreme court was criticised as it failed to consider the decision of a bigger bench and also transfer of the case would also violate the principles of Res Judicata as the trail in Rai Bareli was at the closing stage but the transfer to the lucknow court would delay the same as courts have to hear the matter fresh further causing delay in delivery of justice. In the first case the court had stepped into the shoes of the government violating the principles of doctrine of separation and in the second one the court while invoking article 142 had violated principles of the civil procedure code. Courts while

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<sup>24</sup> (2009) 10 SCC 425

<sup>25</sup> (1998) 1 SCC 226

<sup>26</sup> (2006) 5 SCC 72

<sup>27</sup> (2016) Scc Online Sc 1487

<sup>28</sup> (2019) Scc Online 1440

invoking article 142 have to exercise such power with high scrutiny, the manner to exercise such power had been discussed in the case of *Aravali Golf Club v. Chander Hass*<sup>29</sup>, wherein the court opined that a judge has to act justifiably while invoking article 142 and should make sure that they don't exercise the powers and duties of the executive and the legislature, the court further held that judges should exercise judicial activism in exceptional cases wherein large public interest is involved. Though it is true that court on various instances have invoked article 142 in order to deliver justice but there are also instances wherein the court has acted ultra vires to the principles of the constitution, therefore, it has to be noted that article 142 is merely to supplement the law not to disregard law<sup>30</sup>. Therefore, courts have to exercise high caution while invoking article 142 to make sure that judiciary functions within its limits.

## **VI. CONCLUSION AND RECOMMENDATIONS**

Article 142 of the Indian constitution is of great importance, it seeks to achieve the purpose of "complete justice". Though the article had been interpreted in different ways with respect to the scope and application, the article has wide application and confers a wide range of powers upon the courts with the purpose to achieve "complete justice". However, judges have to carefully analyse and exercise high scrutiny while invoking this article as they have to function within their limits while assuming the role of administration. Though the article has been put to great use at various instances, the article has also been misused. Therefore, it is recommended that guidelines are to be formulated with respect to the areas in which judges can exercise the power conferred upon the, by article 142, to make sure that they do not overstep their limits and uphold the principles of democracy.

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<sup>29</sup> (2008) 1 SCC 683

<sup>30</sup> Ashish Srivastava, 'Article 142: A need for judicial Restrain', (Accessed on 14 October 2020 at 3:40 P.M). Retrieved from <http://lawjournals.stmjournals.in/index.php/Jolj/article/download/138/93/>

**VII. REFERENCES**

1. The Constitution of India, Art.142.
2. Bihar State Government School Teachers Association v. Ashok Kumar Sinha, 1992 AIR 407.
3. Union of India v Danmai & Co, 1980 SCC 707.
4. Mahmud Hasan v State of UP, (1997) 3 SCC 138.
5. Nagaraj v. State of Karnataka 1993 4 SCC 595
6. Manohar Lal Sharma v. Principal Secy & ors (2014) 2 SCC 532
7. Sahid Balwa v. Union of India (2014) 2 SCC 687
8. Vinay Chandra Mishra AIR 1995 SC 2348
9. M.S Ahalawat v. State of Haryana AIR 200 SC 168
10. Manipur Regular Posts Vacancies Substitute Teachers Association v. State of Manipur (1991) 2 SCC 643
11. Delhi Development Authority v. Skipper Constructions 1996 AIR 2005
12. Salil Sbhlok v. Union of India
13. A.Jideranath v. Jubilee Hills Co-Op House Building Society (2006) 10 SCC 96
14. State of Kerala v. Umadevi 2006) AIR SC 1806
15. Prem Chand Garg v. Excise Commission AIR 1963 SC 996
16. Sridhar Mirajkar v.state of Maharashtra AIR 1967 SC 1
17. A.R Antulay v. R.S Nayak (1988) 2 SCC 602
18. M.C Mehta v. Kamal Nath (2000) 6 SCC 213
19. K.M Nanavati v. State of Bombay AIR 1961 SC 112
20. Delhi judicial service association v. State of Gujarat (1991) 4 SCC 406
21. Union Carbide Corporation v. Union of India (1991) 4 SCC 584
22. Supreme Court Bar Association v. Union of India (1998) 4 SCC 409
23. Ahok Kumar Gupta v. State of U.P (1997) 5 SCC 201
24. Laxmi Morarji v. Bherorse Darab Madan (2009) 10 SCC 425
25. Vineet Narian v. Union of India (1998) 1 SCC 226

26. Indian Bank v. ABS Marine Products Pvt.Ltd (2006) 5 SCC 72
27. Indian Bank v. ABS Marine Products Pvt.Ltd
28. State of Tamil Nadu v. K. Balu (2016) Scc Online Sc 1487
29. M.Siddiq v. Mahant Suresh Das 2019) Scc Online 1440
30. Aravali Golf Club v. Chander Hass (2008) 1 SCC 683
31. Ashish Srivastava, 'Article 142: A need for judicial Restrain', (Accessed on 14 October 2020 at 3:40 P.M). Retrieved from <http://lawjournals.stmjournals.in/index.php/Jolj/article/download/138/93/>
32. Dr. Justice B.S Chauhan, 'Courts and its endeavour to do complete justice', Accessed on 2 October 2020 at 4:45 P.M), <http://www.nja.nic.in/17%20Complete%20Justice.pdf>

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