



Scope and Ambit of the Power under Article 142 of the Supreme Court of India: A Review

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Abstract :- The Indian Judiciary and the Constitution of India believe that every citizen of India must get 'complete justice. The Constitution of India under Article 142 grants the power to the Supreme Court for passing any decree to do complete justice. The Constitution of India has given exclusive powers to the Supreme Court to take any decision pertaining to any matter pending before it to provide complete justice. Thus an analysis of the judicial cases over the past 60 years pertaining to Article 142 has been done to identify the trends in invoking Article 142. There is no equivalent power on the part of the High Court or the Tribunal. But Supreme Court cannot use this as a tool an interfere in the domain of law making to achieve their end. Although it is an extraordinary power which is being given it cannot be used to expressly be in conflict with the law already existing. This research paper is concerned with the ambit and scope of Article 142 of the Constitution of India and the purpose for which the article was enacted by the founding fathers. Article 142 can be split into three parts. The first part is the first half of Article 142 (1) the second part is the latter half of Article 142 (1) and the third part is Article 142 (2). The first part empowers the Supreme Court to do complete justice. The second part guarantees enforcement of Supreme Court decrees and orders. The third part deals with three different powers of the Supreme Court, namely, securing the attendance of persons before it, discovery or production of documents and the investigation and punishment of contempt of itself.

Keywords:- Extraordinary Power, Complete Justice, Indian Judiciary, Statutory Provisions, Appropriate Situations etc.

Introduction:- As regard the scope and ambit of power under Article 142, it was ruled that this provision contained no limitation regarding the causes or the circumstances in which the power could be exercised not did it lay down any condition to be satisfied before such power was exercised. There cannot be any defined parameters, within the framework whereof, this court would exercise jurisdiction under Article 142. The complexity of administration, and of human affairs, would give room for the exercise of the power vested in this court under Article 142, in a situation, where clear injustice appears to have been caused, to any party to a lis. The court is vested with extraordinary jurisdiction to do complete justice in any cause or matter. The

court is not required to have recourse to any provision of a code of civil Procedure or any principle deducible therefrom. However, a direction issued under Article 142 is not a Precedent. What would be the need of complete justice in a cause or matter, and whether the extra-ordinary jurisdiction under Article 142 shall be exercised or not, would depend upon the facts and circumstances of each case. The court must consider all relevant aspects of the matter including the decisions of the Apex court. The court has invoked the power vested under article 142 in different types of cases involving different fact situations, for doing complete justice. Article 142 of the Constitution of India, which by its phraseology is a seemingly benign procedural adjunct to the Supreme Court's powers, has emerged as the most potent devices employed by the court in judicial activism and judicial innovation. It has in fact become a new source of substantive power. This paper traces its origins, evolution, and then recounts the debate surrounding its use in derogation of express statutory provisions. This power has been exercised in varied situations but, broadly speaking, in two manners: the first being to grant relief to do "complete justice" in a given case dehors the applicable statutory provisions and second, to issue directions to fill, what the court perceives as legislative gaps which directions operate as the law of the land until such time that the legislature or the executive steps .The focus of this article is on the former of the two exercises. While tracing such exercise in the context of equity jurisdiction to particular equity and justifying such exercise, this article only takes exception to the Court's practice of expressly adding that the relief it has granted in a specific case is not to be treated as a precedent. While it is elementary that a judgment is a precedent only to the extent of its ratio decidendi (and not every direction or observation), the final court of the country, that declares law under Article 141 of the Constitution, ought to be obligated to supply a rational justification for its directions aimed at doing "complete justice".

Definition of Article 142 of the Constitution of India

142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc. (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Need to Incorporate Article 142

The necessity for incorporating such an article into the Constitution was spelt out in the Constituent Assembly. The framers of the Constitution felt that this provision is of utmost significance to those people who have to suffer due to the delay in getting their necessary reliefs due to the disadvantage position of the judicial system. According to Shri Thakur Das Bhargva natural justice is above law, and the Supreme Court

will also be above law, in the sense that, it shall have full right to pass any order that it consider just. This gives almost unlimited powers and will not be deterred from doing justice by the provision of any rule or law, executive practice or executive circular or regulation etc.

Important cases when Article 142 was invoked

Union Carbide Carbide v. Union of India AIR 1991 4 SCC 584, In this case by escape of poisoned fumes from 4000 person were killed om a factory in Bhopal approximately and many more were physically affected. The Central Government passed an Act whereby it took upon itself the right to claim damages on behalf of all victims against Union Carbide the owner of the factory. Numerous civil and criminal actions were filed against the Union Carbide mostly in India and some in the U.S.A. Criminal cases were pending before the CJM at Bhopal. An interim order was passed by the District Judge in the civil cases awarding interim relief of 350 crores. This order was challenged g before the Supreme Court in appeal. The appeal was heard for about four months. Suddenly the Court announced a settlement in which it stated that Union Carbide would pay 470 million U.S. dollar claims of all victims. Rsettlement of all it was stated by the Supreme Court that all civil proceeding wherever pending were concluded in terms of settlement and criminal proceedings arising out of the disaster will stand quashed. The Court supported its blanket verdict on Article 142 which confers on it the power to make any order to do justice between the parties. This Article was unnoticed till the Supreme Court gave its this case. There was much criticism and mud- slinging decision against the Court, Because of this decision, thousands could get proper medical care and compensation. Otherwise finalization of compensation would have easily taken 15 to 20 years and every victim could afford the expense and agony of the legal proceedings.

Delhi Judicial Services Association v. State of Gujrat 1991 4 SCC 406, In this case proceedings for Contempt of Court was started against some police officials of Gujrat for assaulting, hand-cuffing prosecuting a Chief Judicial ng and maliciously Magistrate. It was contended by the respondents criminal that the Supreme Court had no power to quash the criminal proceeding against the CJM But the Court held that its inherent . power under Article 142 coupled with the plenary and residuary power under Art. 32 and 136 give it power to Quash proceedings pending before any Court to do complete justice in the matter before Supreme Court.

Ankush v. Hanmanta AIR 2017 SC 3431 and Jitendra Khimshankar Trivedi v. Kasam Daud Kumbhar 2015 4 SCC 237 The Supreme Court awarded enhanced compensation to the claimant in exercise of its jurisdiction under Article 142 when the claimant had suffered 60% disability due to loss of right hand in accident due to fault of the driver of the truck.

State of U.P. v. Dinesh Chandra Chauhan AIR 2016 SC 3840, The Supreme Court by invoking its jurisdiction under Article 142 dissolved Hindu marriage by granting a decree of divorce by mutual consent by w go back to arriving the statutory period of waiting as the husband had his work in U.S.A. and the wife was to think of her future.

In R. Srinivas Kumar v. R. Shametha AIR 2019 SC 4914, The Supreme Court allowed the divorced application of the husband while directing him to pay a lump sum permanent alimony quantified at Rs. 20 lakhs because he and his wife had been living separately for more than 22 years it would not be possible for the parties to live.

Durga Parsad Tripathi v. Arundhati Tripathi, AIR 2005 SC 3297, The Court held that Constitution of India Court has inherent a power under Article 142 of the for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead beyond salvage and has broken down irretrievably, even if the case do not provide a ground in law on which the divorce can be granted.

In Re. V.C. Mishra 1995 2 SCC 584, In this case the Court convicted Mishra for contempt of court and at the same time ordered that his license to practice would be withdrawn. In this case also the order was founded on Article 142.

Article 142 enables Superseding the Executive and the Legislative

From Article 142, the Supreme Court derives overarching powers to perform the functions of Executive and legislative in order to bring about complete justice. In this pursuit, Article 142 is supplemented by the Articles 32 (Right to constitutional remedies), Article 141 (The law declared by the Supreme Court shall be binding on all courts within the territory of India) and Article 136 (Special Leave petition). This is often termed as judicial activism. To do “complete justice” it has often overridden the laws made by Parliament such as in the following cases.

Coal Block Allocation Case: In 2014, the Supreme Court used the said provision of the constitution to cancel the allocation of coal blocks granted from 1993 onwards who were guilty of wrongdoing and imposed a penalty on coal mined illegally.

Ban on liquor sale on highways case: In 2016. under Article 142 the apex court banned the sale of alcohol within a stipulated distance of 500 meters from the outer edge of the highway. Such a decision was taken to avoid accidents due to drink and drive.

However, in the **Supreme Court Bar Association v. Union of India**, the Supreme Court stated that Article 142 could not be used to supplant the existing law, but only to supplement the law.

Recently, the Supreme Court has invoked its extraordinary powers to do complete justice under Article 142 of the Constitution and ordered the release of **A.G. Perarivalan in former Prime Minister Rajiv Gandhi assassination case**. The Court protected federalism by holding that States had the power to aid and advice the Governor in case of pleas of pardon under Article 161 made by convicts in murder cases. Article 161 provides that the Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

Merits of Article 142

1. Supreme is not merely under Article 142 of the dispute resolving institution. It has given a larger mandate to give complete justice.
2. It also sets out of a system of check and balance and control to the other branches of the government. For example: In Vishakha v. State of Rajasthan Case Supreme Court laid down the guidelines to protect a women from sexual harassment at its workplace.
3. Article 142 gives sweeping power to the Supreme Court for the end of ensuring Complete Justice.
4. From Article 142, Supreme Court derived power to perform the function of Executive and Legislative in under to bring about complete justice.
5. Article 142 has been used generally in cases that involve environmental protection.
6. When the legislature and executive failed to uphold the rights citizens, judiciary took lead under the article to do the same.
7. The Doctrine of Check and Balance is exercised by the judiciary.
8. To prevent the misuse of the provisions of law.

Demerits of Art. 142

1. **Complete Justice:-** As put forth in Art. 142 and is subjective to each case depending upon the facts and circumstances in each case. This kind of arbitrariness in wordings of the provision itself gives room for discretion and no clear cut balance is sort which can easily be misused. There have been instances where the Supreme Court 's idea of ' complete justice ' came at loggerheads with the law already existing especially the fundamental rights and becomes a matter of judicial overreach wherein it interferes with the other organs of the government violating the principle of separation of powers.
2. **Unaccountability:-** Unlike the executive and legislature, Supreme Court cannot be held accountable for its decision. for example in one of the apex court banned e- rickshaws in certain parts of Delhi without making provisions for alternative employment. However, it cannot be held accountable for violating the fundamental right to carry on any occupation or trade.
3. **Executive Intervention:-** By the Court can shake the trust of the people in democratically elected government.
4. **Judicial Overreach:-**The problem of judicial under-reach arises where courts shirk its responsibility, despite having the jurisdiction, resulting in injustice. Repeated interventions of courts can diminish the faith of the people, and efficiency of the government.

Conclusion:- The Supreme Court needs to introspect on whether the use of Article 142 as an independent source of power should be regulated by strict guidelines. Another option is that all cases invoking Article 142 should be referred to a Constitution Bench of at least five judges so that this exercise of discretion may be the outcome of five independent judicial minds operating on matters having such far-reaching impact on the lives of people. In all cases where the court invokes Article 142, the government should bring out a white paper to

study the beneficial as well as the negative effects of the judgment after a period of six months or so from its date.

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