



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Critical Analysis on the Jurisdiction of Supreme Court under Article 142: A Power not A Right

Ranita Jana^a

^aXIM University, Bhubaneswar, India

Received 16 February 2022; *Accepted* 02 March 2022; *Published* 05 March 2022

The intertwine between power and justice is seldom manifested in reality because the path to obtain it is often laid with uncertainties and myriad resistances. It is easier to avoid the amalgamation of both than to bring them together to meet one's ends. However, such laxity cannot be imbibed in one of the world's strongest and most powerful judiciary especially when they have to cater to a large fraction of 17.7% population of the world directly and influence billions beyond. At times the arc of justice does not converge with that of law and therefore, to deal with such diversions, the only enforceable mechanism is through law per se. Such extra-ordinary schism between law and justice needs extra-ordinary authority empowered by law which has been elucidated in the subsequent sections of this paper. Adapting a doctrinal research methodology, the paper traverses through the analytical understanding of the jurisdiction authorized under article 142 by its letter and relevant judicial precedents in section II and section III respectively. It has been endeavored in section IV to highlight the implication of this jurisdiction to establish that it embodies justice in its spirit. Furthermore, the paper concludes how through the dynamic development of precedential interpretations such jurisdictional authority has time and again survived as a power and not as abuse to administer justice nonetheless.

Keywords: *article 142, jurisdiction, power, justice, constitution, Supreme Court.*

INTRODUCTION

“Justice and power must be brought together so that whatever is just may be powerful, and whatever is powerful may be just.”

- Blaise Pascal

Evolution is inevitable in mankind and so is reflected *ipso facto* in the trajectory of a nation where sovereignty lies with the people¹. India in a deliberative approach has been conferred with a constitutional democracy², where the fundamental ethos is circumscribed within the periphery of a coded document that embodies supremacy in all aspects. Article 142 under the Indian Constitution has been increasingly resorted to by the Supreme Court of India for addressing the legislative vacuum or inadequacy in matters that demand judicial activism for culminating “complete justice”. To substantiate it further, jurisdiction under article 142 has been invoked increasingly in the late eighties and nineties as compared to the number of times it has been reported to from its inception to the early eighties.³ Further, jurisdiction under the said article has been invoked in the contemporary cases of the Supreme Court that demands extra-ordinary power to ascertain justice as has been enumerated below. The Apex Court exercising its power under article 142, extended the limitation period for all proceedings subjected to a period of limitation to provide relief to the litigants in light of the COVID-19 pandemic.⁴ Further, in the controversial case of the Maratha reservation, the Supreme Court issued directions under article 142 that the SEBC list prepared by the State would continue to exist until the President expeditiously publishes a comprehensive list under article 342A(1)⁵. Furthermore, in the prolonged proceeding of the *Ramjanmabhoomi-Babri Masjid land dispute case*⁶, the Apex Court directed that the land be transferred to the trust formed by the

¹ DD Basu, *Introduction To The Constitution Of India* 21(24th edn, LexisNexis 2020)

² *Justice K S Puttaswamy Retd and Anr. v Union of India and Ors.* AIR 2017, SC 4161

³ Harish B. N. & Protima Pandey, ‘Supreme Court, Complete Justice and Article 142: Scope for Unlimited Judicial Action’ (1995) 7 Student Advoc.

<<https://heinonline.org/HOL/LandingPage?handle=hein.journals/nlsind7&div=19&id=&page=>> accessed 16 February 2022

⁴ *S. Kasi v State* (2020) SCC OnLine 529

⁵ *Jaishri Laxmanrao Patil v State of Maharashtra* (2021) 8 SCC 1

⁶ *Mohammad Siddiq v Mahant Suresh Das* (2019) SCC OnLine 1482

Central Government for the construction of the temple.⁷ This trend extends to several of the recent and upcoming cases in light of which deliberations vis-à-vis the said article offer significance, particularly clause (1) of art. 142. In establishing a functional democracy to meet the ends of justice, the framers of the Constitution have meticulously curated the longest written Constitution of the world nevertheless, they can only envision limited possible contingencies and conflicts beyond the contemporary time of drafting and provide for them necessary codifications in the Constitution. Therefore, to retain the dynamicity of law as well as the functional competency of an organic Constitution through the complexities of human affairs and their ingenuity, it is inherently pertinent to render the Guardian and Interpreter of the Constitution “undefined and uncatalogued” power to effectuate its role independently and in consonance with the objectives laid down in the Preamble to the Constitution. Art. 142(1) traces this need of continuity of dynamic law, as was observed in the case of *Ashoke Kumar Gupta v the State of U.P.*⁸ that “The phrase “complete justice” engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity”

Art. 142, therefore, empowers the Apex Court to advance this constitutional vision and prevent the law, which is the rule of the land, from embodying tyranny via procedural technicalities, in adherence to the legal maxim, *ex debito justitiae*⁹ i.e., to do the real and substantial justice for the administration of which alone law exists. The paper has attempted to circumscribe the interpretation of the jurisdiction under article 142 as understood from the constitutional provision as well as from the judicial precedents. The power under the same is critically analysed in consonance with the doctrine of separation of power, the doctrine of precedent, and its implication in exercising the said power in contemporary developments. In light of this analysis, the paper claims to submit that art. 142 authorises a significant power to

⁷ Apoorva Mandhani, ‘SC invoked Article 142 to order formation of trust for Ram Mandir. Here what it means’ (*The Print*, 9 November 2019) <<https://theprint.in/judiciary/sc-invoked-article-142-to-order-formation-of-trust-for-ram-mandir-what-it-means/318294/>> accessed 12 February 2022

⁸ *Ashok Kumar Gupta v State of U.P.* (1997) 5 SCC 201

⁹ S.A. Kader J., ‘Article 142 of the Constitution of India -its Scope and Amplitude’ (2010) 2 MLJ <<https://advance.lexis.com/document?crd=10bee0c3-f525-4bd2-aaa7-69798b3b7f45&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials-in%2Furn%3AcontentItem%3A5TFY-C221-F4GK-M0T3-0000000&pdsourcingroupingtype=&pdcontentcomponentid=346576&pdmfid=1523890&pdisurlapi=true>> accessed 12 February 2022

the exclusivity of the Supreme Court which even though is subject to abuse, nevertheless through the manifolds of time, it has rendered complete justice as has been envisioned for the nation. Therefore, jurisdiction under art. 142 has emerged as a power for forwarding the democracy and not as a right for the pleasure of the Supreme Court.

NAVIGATING THE JURISDICTIONAL POWER OF ART. 142 UNDER THE CONSTITUTION

Instinctively, Art. 142 has materialised as a source of substantive power¹⁰ for the Apex Court to exercise the same even though its language of construction, precisely the marginal note, can construe it as a procedural adjunct. The procedural aspect is further endorsed by the availability of no debates or discussions on the said article in the Constituent Assembly Debate¹¹, however, sincere scrutiny provides that in the deliberation of complete justice referring art. 136¹² in the Constituent Assembly, Shri AlladiKrishnaswami Ayyar contended *“there is nothing preventing the Supreme Court from developing its own jurisprudence in such a way that it could do complete justice in every kind of cause or matter.”*¹³ which indubitably brought within its scope art. 142 as read from its phraseology:

“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 on 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

¹⁰ Ninad Laud, ‘Rationalising “Complete justice” under article 142’ (2020) 1 SCC

<<http://www.sconline.com/DocumentLink/v7on48w0>> accessed 13 February 2022

¹¹ R. Prakash, ‘Complete Justice Under Article 142’ (2001) 7 SCC

<<http://www.sconline.com/DocumentLink/5xU6C6Dm>> accessed 13 February 2022

¹² Constitution of India 1950, art. 136

¹³ Constituent Assembly Debates, Vol. VIII, p. 639

any documents, or the investigation or punishment of any contempt of itself.”¹⁴ The author submits that art. 142(1) intrinsically embodies a discretionary power in inclusion to the extraordinary power construed from the usage of ‘may’ in its language as well as the scope of interpreting a case as “necessary for doing complete justice...” renders a broad interpretation to the article and a greater window to the Court for judicial activism and judicial innovation.¹⁵ However, it is interesting to note, as the author submits, that such unfettered power is not encroaching the feature of separation of powers rather expressly incorporate check and balance by subjecting its manner of enforceability to the laws made by the Parliament in this regard. Therefore, the author, in elucidating further, is of the view that this power is not limitless even if it is undefined or vaguely constructed to adopt flexibility as it is qualified “in the exercise of its jurisdiction” and “any cause or matter pending before it” as opposed to what was held in the case of *Delhi Judicial Service Assn., Delhi v State of Gujarat*¹⁶ declaring the provision under article 142 as part of the basic structure¹⁷, provided “This power to do complete justice is entire of different level and of a different quality which cannot be limited or restricted by provisions contained in statutory law.”

Further refining the same, the Apex Court held in the case of *Union Carbide Corp. v Union of India*¹⁸ that the statutes: “...could operate as limitations if based on some underlying fundamental and general issues of public policy, as opposed to merely being incidental to a particular statutory scheme or pattern”.¹⁹ Therefore, the powers under article 142(1) “embody both the notion of justice, equity and good conscience as well as a supplementary power to the Court to effect complete justice”²⁰ in adherence to the existing jurisdictions of the Supreme Court. Therefore, it ideally should be invoked with the concretely established jurisdictions of the Apex Court in matters pending before it as was evident from the case of *Justice Ripusudan Dayal (Retd.) & Ors. v the State of M.P. & Ors.*,²¹ where a complaint was filed against the Secretary and Deputy Secretary of

¹⁴ Constitution of India 1950, art. 142

¹⁵ *Penu Balakrishna Iyer v Ariya M. RamaswamiIyer* (1965) AIR 195

¹⁶ *Delhi Judicial Service Association v State of Gujarat* (1991) AIR 2176

¹⁷ Harish B.N. & Protima Pandey (n 3)

¹⁸ *Union Carbide Corporation v Union of India* (1991) 4 SCC 584

¹⁹ *Ibid*

²⁰ *M. Siddiq (Ramjanmabhumi Temple - 5 J) v Suresh Das*[2020]1 SCC 1

²¹ *Lokayukta, Justice Ripusudan Dayal v State of M.P.*(2014) 4 SCC 473

Vidhan Sabha with other officers under them in a case of irregularities about the Prevention of Corruption Act, 1988²². In this case, the writ petition was held maintainable under art. 32²³ read with art.142. This is also apparent from the positioning of the said article after art. 32 and art. 136 to enforce the letter of law under the former jurisdictions in spirit as well where necessary.²⁴

UNDERSTANDING THE SCOPE OF JURISDICTIONAL POWER UNDER ART. 142 FROM JUDICIAL PRECEDENTS

From the language of the art. 142(1), it can be inferred that it confers the constitutional power upon the Supreme Court to exercise this extra-ordinary jurisdiction broadly in two situations (i) in situations which demand the extra-ordinary intervention of judiciary to dispose of “complete justice” especially when a given ‘case dehors the applicable jurisdiction’ and (ii) in situations where the Court perceives the presence of ‘legislative gaps’ and therefore evokes the onerous obligation under this power to provide a direction to compensate the void until the legislature or executive enacts upon it.²⁵ The wide amplitude of art.142(1) is shaped through its myriad invocations in cases that demanded justice in entirety or completeness which when read with the assurance provided by the Preamble to the Constitution, in the opinion of the author, must incorporate social, economic and political justice to render completeness in pursuance of the “Welfare-State”, and to further a social and economic democracy on the foundation of which the political democracy will guide the life in the Indian Polity.²⁶ To enunciate this further, the Apex Court had developed the scope of art.142 in the following cases discussed and analysed critically hereunder. A significant interpretation of art. 142 was conferred in the case of *Prem Chand Garg v Excise Commissioner*²⁷, where it was held that “Though the powers conferred on this Court under Article 142(1) are very wide, and the same can be exercised for doing complete justice in any case, this court cannot even under Article 142(1) make an

²² Prevention of Corruption Act, 1988

²³ Constitution of India 1950, art. 32

²⁴ Rajat Pradhan, ‘Ironing out the Creases: Re-examining the Contours of Invoking Article 142(1) of the Constitution’ (2011) 6 NSLR <<http://www.sconline.com/DocumentLink/niUa89V3>> accessed 13 February 2022

²⁵ Ninad Laud (n 10)

²⁶ *Samantha v State of A.P.* (1997) 8 SCC 191

²⁷ *Prem Chand Garg v Excise Commissioner* (1963) AIR 996

order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any Constitutional provision” while addressing the issue whether the Apex Court under the said article can issue an order or rule inconsistent with the Fundamental Rights. It was further affirmed²⁸ by a nine-judge Bench in *Naresh Shridhar Mirajkar v State of Maharashtra*²⁹ and was reiterated by a seven-Judge Bench in *A.R. Antulay v R.S. Nayak*³⁰. The author holds a deviating view in the scope that the precedent in the aforementioned case is outdated and cannot effectively serve the foreboding development of socio-legal precepts in the nation primarily because the 1963 judgement is redundant in the wider restraining scope of the doctrine of basic structure. Pertinently so, because any law, order, decree, etc. issued by the Court inconsistent with the fundamental rights will be rendered void under article 13 of Part III³¹. However, it is interesting to note that the Judiciary is not a ‘State’ under article 12 nevertheless the administrative actions of the Judiciary and not the judicial functions can incite the restriction under article 13 as was held in *Riju Prasad Sarma, etc. v State of Assam and Others*³² which pertinently restricted the abuse of this article and thus, prominently stands as a power in doing complete justice in any cause or matter pending before the Apex Court. The rudimentary principles laid down in the case of *A. R. Antulay*³³ previously provided that any judicial action will be considered as State action for the purposes of Part III. Therefore, judicial review is also applicable upon actions of the Judiciary precisely so when they are administrative actions.

Whether art. 142 is abuse or power is a subjective territory to tread, however, what can be objectively inferred is if there are adequate mechanisms in the provision and in the general parlance of the established law to curb the abuse of the power if any, which essentially put the need of check and balance into consideration. It is pertinent to enquire if, unlike a right, the power conferred by the Constitution under article 142 is plenary or absolute to determine the scope of plausible abuse besides the power enacted to effectuate complete justice. A more

²⁸ Rajat Pradhan (n 24) 3

²⁹ *Naresh Shridhar Mirajkar v State of Maharashtra* (1967) AIR 14

³⁰ *A.R. Antulay v R. S. Nayak* (1988) 2 SCC 602

³¹ Constitution of India, 1950, art. 13, cl. 3(a)

³² *Riju Prasad Sarma etc. v State of Assam and Others* (2015) 5 MLJ 727

³³ *A.R. Antulay* (n 30)

comprehensive understanding of the nature of this extraordinary power was provided in the case of *Supreme Court Bar Association v U.O.I.*³⁴ which held, “The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers are of very wide amplitude and are in the nature of supplementary powers.” The author takes the liberty of critically dissecting the judgment into an amalgamation of contradictory notions. The power is termed as absolute or plenary, however, those powers as held were rendered by Statutes and therefore are subjected to their provisions and the exercise of the powers cannot be plenary if it subsequently supplements other established powers and cannot in any form act as a supplant per se.³⁵ Substantiating it, the Court in the same case further held, “Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly.”³⁶

This is also decipherable from the usage of the word ‘discovery’ in the marginal note of the article³⁷, *prima facie* construed to provide scope and meaning to an article, which essentially denotes that the Apex Court is empowered to ‘declare’ the law what already exists and not ‘invent’ a completely new spectrum especially when prominent statutory provisions are in force for the case at hand³⁸ and thus, the exercise of powers under article 142 cannot be inconsistent, repugnant or violative of any statutes³⁹. Further, the Apex Court in the *Kesavananda Bharti*⁴⁰ case empowered the Courts to “formulate legal doctrines” to seek the ends of justice and the “only limitation thereon is the reason, restraint, and injustice”⁴¹.

³⁴ *Supreme Court Bar Association v U.O.I.* (1998) 4 SCC 409

³⁵ *M.C. Mehta v Kamalnath* (2000) 6 SCC 213

³⁶ *Ibid*

³⁷ Constitution of India, 1950, art. 142

³⁸ *Narpat Singh v Jaipur Development Authority* (2002) 4 SCC 666 (SC); *Durga Shankar Mehta v Raghuraj Singh* (1954) AIR 520

³⁹ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225

⁴⁰ *Ibid*

⁴¹ Ninad Laud (n 10)

THE IMPLICATION & LIMITATIONS IN EXERCISING THE POWER UNDER ARTICLE 142

The judiciary has time and again innovated in its competency to iron out the creases left by legislative gaps. In adherence to the exercise of power under art. 142(1), the Supreme Court has formulated the “*Doctrine of Irretrievable Breakdown of Marriage*” to grant the decree of divorce where the same is not a recognised ground enumerated in Ss. 13 or 13B of the Hindu Marriage Act, 1955⁴². A pertinent question that arises is whether the Judiciary is under the unfettered power of art. 142(1) encroached on the function of the Legislature by providing a pre-condition to do away with the cobwebs of technicalities in the dissolution of marriage. While on the other hand, whether such curated ground exercised under article 142(1) forms a precedent per se under art. 141⁴³ and if invoking art. 142(1) which is to judge the necessity of actions to pursue complete justice beyond the codified laws, can be accounted as precedent given such extra-ordinary jurisdiction is subjected to exceptional merits of a case.

The stance about the *Doctrine of Irretrievable Breakdown of Marriage* was clarified in *Anil Kumar Jain v Maya Jain*⁴⁴ where the Court held:

“Although the irretrievable breakdown of marriage is not one of the grounds indicated whether, under Sections 13 or 13B of the Hindu Marriage Act, 1955, for grant of divorce, the said doctrine can be applied to a proceeding under either of the said two provisions only where the proceedings are before the Supreme Court. In exercise of its extraordinary powers under Article 142 of the Constitution, the Supreme Court can grant relief to the parties without even waiting for the statutory period of six months stipulated in Section 13B of the aforesaid Act. This doctrine of irretrievable breakdown of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution...”⁴⁵ Moreover, the Apex Court in the case of *Naveen Kohli v Neelu Kohli*⁴⁶ appealed to the Legislature to incorporate the doctrinal rationale as a ground for divorce acknowledging outrightly that the direction of the Court

⁴² Hindu Marriage Act, 1955, s. 13; Hindu Marriage Act, 1955, s. 13B

⁴³ Constitution of India, 1950, art. 141

⁴⁴ *Anil Kumar Jain v Maya Jain* (2009)10 SCC 415

⁴⁵ *Ibid*

⁴⁶ *Naveen Kohli v Neelu Kohli* (2006) 4 SCC 558

cannot be equated to amending the law for the same is a function of the legislature while a “mere direction of the Court without considering the legal position is not a precedent”⁴⁷. It was further refined in the case of *J & K Public Service Commission v Dr. Narinder Mohan*,⁴⁸ where the Supreme Court has held that orders under Article 142 are made under peculiar facts and circumstances and do not constitute binding law under Article 141.⁴⁹ However, a general rule of law is certainly in existence to provide consistency in exercising the powers under article 142(1) which includes that such jurisdiction must be invoked to render complete justice to both the parties⁵⁰ and the decision can be extended to parties beyond the proceedings situated in similar circumstances.⁵¹ Secondly, the Court shall endeavour to neutralise any “undeserved and unfair” advantage accessed by any party in exercising the powers⁵². Thirdly, in matters where justice was delayed for a prolonged time and thus, it is equivalent to justice being denied as in the case of *Babri Masjid demolition case*⁵³, were to remedy the wrongs committed against the Muslims, where even though their claim was overturned, they were compensated with the conferment of 5 acres of land in Ayodhya.⁵⁴

CONCLUSION

Powers exercised under article. 142(1) has at times, therefore been inconsistent, contradictory, and inconvenient for the nation persisting on the practice of common law but such power is nevertheless necessary to rekindle hope where it is lost, to advance the cause of the underprivileged, and to do away with the cumbersome access to justice. In general parlance thereby, art. 142 shall be invoked only when the ordinary course of law is cumbersome and incapable to tread the path of natural justice. In overruling a bad law, art. 142 should not be invoked to materialise the desired result because it is ultimately a power to exercise in the

⁴⁷ *Vishnu Dutt Sharma v Manju Sharma* (2009) 2 LW 195

⁴⁸ *J & K Public Service Commission v Dr. Narinder Mohan* (1994) 2 SCC 630

⁴⁹ Harish B.N. & Protima Pandey (n 3)

⁵⁰ *Arjun Khiamal Makhijani v Jamnadas C. Tuliani* (1989) 4 SCC 612

⁵¹ *Union of India and Ors. v M. Baskar and Ors.* (1996) 4 SCC 416

⁵² *Ramakrishna Verma v State of U.P.* (1992) 2 SCC 620

⁵³ Mohammad Siddiq (n 6)

⁵⁴ ‘Disputed Ayodhya site goes to temple, Muslims to get alternative land: SC’ (*Business Standard*, 9 November 2019) <https://www.business-standard.com/article/current-affairs/disputed-ayodhya-land-goes-to-temple-alternate-5-acre-land-for-mosque-sc-119110900411_1.html> accessed 16 February 2022

quiver of the Supreme Court and not a right to take pleasure in. Such law should be discarded based on the “legal and existent ground”⁵⁵ because the powers under it, are an exception, not a rule. Tracing the scope of judicial activism to secure the ends of justice under article 142 must be treaded diligently by the constitutional courts as they guide the arc of law towards justice. The power under art. 142 is extra-ordinary and not be normalised in due procedures for even the course of complete justice must be through law even if abuse is speculative from such powers to perpetrate illegality. The law, *per se*, does not become an abuse because it is again an onus upon the Judiciary to punish a crime and remedy a wrong and not necessarily to prevent one precisely when it is mere speculation.

⁵⁵ Rajat Pradhan (n 24)