

Article 142: A Need for Judicial Restraint

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Abstract

This research paper attempts to focus on the Extraordinary Powers of the Supreme Court. How it was being used to help the deceased person in those cases where the present existing statutory provisions were inefficient to tackle it but there were several instances in which the court misutilized its power conferred by Article 142 and hence a need for the restraint of this judicial power was felt. This research paper also attempts to give some suggestive measures to maintain the balance between the powers conferred on the court by virtue of Article 142 and present existing statutory laws. Various recent case laws pertinent to the topic have also been referred to and discussed in detail for better understanding of the main objective of the paper.

Keywords: *Extraordinary powers, Case laws, Suggestive measures, Article 142, Provisions, Judicial*

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INTRODUCTION

As it is aptly said by Martin Luther King, Injustice anywhere is a threat to justice everywhere. A perfect world can only be made when justice is given primacy over injustice and for the same purpose the judicial system was established. In our country, judges and courts play a very important role [1]. Judges and courts exist to protect our liberties and our most fundamental and sacred rights as given in the Bill of Rights, as well as to protect us from unlawful and unwarranted trespass into our lives from the government. Judges and courts play a very important role in our daily lives and we entrust them to make some of the more important decisions that affect us. Once Marcus Cicero [2] said, Great is our admiration of the orator who speaks with fluency and discretion. But one thing that has to be taken into account is that whosoever is entrusted with the so-called discretionary power, it must only be used for the justifiable things but when that does not happen you need a restraint to it that will act as a guiding principle as to when and how it should be exercised.

This paper attempts to discuss the extraordinary powers conferred upon the Supreme Court by the virtue of Article 142(1) of Indian Constitution and its misuse in the name of complete justice [3].

While attempting to achieve the desired objective, it is also very important to first analyze the scope of Article 142(1) of the Indian Constitution, also the meaning of—complete justice—theoretically and judicially. Simultaneously, it is also felt necessary to understand the extent of influence exerted by the individual beliefs, thoughts, personal opinions and experiences of the judges while contemplating a judgment. The conflict of the constitutional provision with the statutory provisions forms the subject matter of this research paper following which a restraint to it is urged with a discussion on few instances where the power under Article 142 was exercised in contradiction with the statute. Lastly, the evolution of judicial activism in India, as well as the reliance placed on the same as a justification for overriding statutory provisions, has been subjected to scrutiny, before attempting to arrive at any conclusion [4].

Now in our country the apex court is the Supreme Court and its functioning may be termed as more of a supervisory jurisdiction ensuring that any decision of a lower court or tribunal has not led to injustice to any of the parties. It is for this very purpose that the apex court was entrusted with great plenary power in the form of Article 142 which says that 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. Now in order to understand the scope of Article 142(1), we need to know what Article 142(1) says: Article 142 of the Indian Constitution provides that 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 orders 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 [5].

The above-mentioned power of the Supreme Court of India is often referred to as its extraordinary power, based solely on one principle—the need to do complete justice. The expression *cause or matter* includes any proceeding pending in the court and covers almost every kind of proceeding in the court, including civil or criminal; or appellate or original. The power in exercise is circumscribed only by two conditions. Firstly, it can be exercised only when the Supreme Court otherwise exercises its jurisdiction, and secondly, that the order which the Supreme Court passes must be necessary for doing complete justice in the cause or matter pending before it [6]. However, it is expected from the court that this power should not be exercised frequently rather it should be used sparingly.

MEANINGS ATTRIBUTED TO THE TERM “COMPLETE JUSTICE”

Any discussion pertaining to Article 142(1) of the Indian Constitution necessarily focuses on the meaning of the phrase *complete justice* from a jurisprudential point of view, which could have multiple meanings, each conflicting with each other, yet being appropriate in its own domain. The possible sustainability of plural and competing reasons for justice - all of which strive to achieve impartiality, and which nevertheless differ from and its rival each other is called plural grounding [7]. This concept of plural grounding was elaborately illustrated by Dr. Amartya Sen [8]. The same is discussed in

brief and is as follows. There were three children namely—Anna, Bob and Carla. One day they all were quarrelling over the possession of a flute. Anna claims possession by saying that she’s the only one of the three who knows how to play it; and the others don’t deny. Bob defends his case by saying that he is the only one among the three who is so poor that he has no toys of his own. The others accept his reasoning as well. Lastly, Carla claims possession saying that she had made the flute with her own effort and labor, she deserves the possession of flute; the others also accept this. Now Taking into consideration all the three claims, theorists of different persuasions may take a different view. Bob, the poorest, would get direct support from economic egalitarians. Carla, the creator of flute, would receive immediate support from the libertarian while the utilitarian hedonist may give more weight to Anna’s pleasure. The general point of relevance being that in every situation is that one problem may be attributed having different rivalling solutions—each having its own accepted justification and you cannot deny to any of them prima facie. It is put forth that the same is the case while deciphering the meaning of complete justice. So, an inference can be drawn from the above-mentioned arguments that there is no straight-jacket formula available for finding any apt solution to a problem, which does not compromise with the terms of justice as it may vary according to the circumstances. The phrase complete justice, as mentioned in Article 142 (1), is the word of width used to meet different kinds of situations created by human beings [9]. Its meaning, in general, as well as in every factual circumstance shall be subjective and highly contested. Yet, one may try to identify certain characteristics that appear to be intrinsic to the concept of complete justice. To attempt such an answer, reliance may be laid upon John Rawls’ analysis of justice since it is a detailed work on the concept of justice. In short, Rawls puts forth that justice must be analogous to fairness [10]. There must not be any room for the existence of bias in a situation where complete justice has been delivered. Consequently, fairness is central to the content of complete justice. The notion of complete justice is just only if it is fair, and in the

absence of fairness it is deemed to be unjust. Pursuant to the same, the Supreme Court of India has placed fetters on the exercise of its extraordinary power to ensure that the justice delivered is fair. Firstly, the existence of complete justice must ensure the absence of any collateral injustice. As noted by the Supreme Court of India, while exercising the power under this Article, the Court cannot pass an order, which would cause injustice to others; those who are not before it [11]. Secondly, complete justice would be justice according to law; although the Supreme Court has the power to mold the relief, it would not grant relief which would amount to perpetuating an illegality. In the name of individualizing justice, it is also not possible for the Supreme Court to close its eyes to the Constitutional scheme and the right of numerous persons, who are not before the Court [12].

INSTANCES WHERE SUPREME COURT HAS INVOKED ARTICLE 142

Now it has become important for us to review the previous instances where the extraordinary power had been exercised by the Hon'ble Supreme Court of India in order to further understand the meaning of complete justice. In the case of *Zahira Habibullah Sheikh v. State of Gujarat* [13], power under this Article was invoked by the Supreme Court to transfer a criminal trial from one state to another within the jurisdiction of the Supreme Court. Similarly, in another case of *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav* [14], direction was issued to transfer prisoners from one prison to another. This power was also invoked under this Article in the case of *Vijay Shekhar v. Union of India* [15] to quash criminal proceedings filed against eminent persons, which was later found to be false, and a product of fraud and total abuse of process of court. Taking into consideration the interests of justice, the Supreme Court of India, in *J. Jayalalitha v. State* [16], granted one more opportunity to the accused party to produce defense evidence, even though the view of the High Court in that case was that sufficient opportunity had already been given to the concerned party. In another case of *Dulip Singh v. State of Bihar* [17], compensation was

awarded to a victim who was persuaded to have sexual intercourse on promise of marriage, who later retracted his earlier said promise. Similarly, in case of *Laxmi Devi v. Satya Narayan* [18], it was held that though the accused cannot be convicted for rape, he is bound to compensate the victim. To summarize all the above-mentioned points, for doing complete justice, the Supreme Court of India has issued appropriate directions in many other cases, taking into consideration the facts and circumstances of the case.

ARTICLE 142 IN CONFLICT WITH STATUTORY LAWS

It can be inferred from the instances that the Supreme Court of India has primarily placed its reliance on Article 142 to overcome jurisdictional and procedural loopholes, as well as to address rare and unique circumstances where the law was silent. However, there have also been instances where the opinion of the Supreme Court about complete justice has come to be at loggerheads with the law already laid down or with the statutory law. Any conflict arising between the existing law and the discretionary power under Article 142 raises important questions as to how complete justice is to be ensured. Therefore, the nature of the power must lead to the Court to set limits for itself within which it has to exercise those powers. The intention of reserving such power with the apex court—to correct, not to overrule—this principle must also not be forgotten while taking into consideration the extra-ordinary powers under Article 142. Accordingly, in some cases, the Supreme Court has laid down the restriction on itself about Article 142 [19]. The Court does not exercise the power to override any express statutory provisions. The power under the mentioned article is meant to supplement and not to supplant any substantive law applicable to the case under consideration. In the case of *Prem Chand v. Excise Commissioner* [20], the Court itself had suggested that its power under Article 142 cannot be exercised against a definite statutory provision. Similarly, in another case of *A. R. Antulay v. R. S. Nayak* [21], it was observed that however wide and plenary the language of the article, the directions given by the Court should not be inconsistent with, repugnant to,

or in violation of the specific provisions of any statute. Again, in another case namely *Supreme Court Bar Association v. Union of India* [22], it was held that though these constitutional powers cannot in any manner be controlled by any statutory provisions but at the same time one must not forget that these powers are not meant to be exercised when their exercise may come directly in conflict with what has been specifically given in a statute dealing with the concerned subject.

Also, when it comes to the point of Constitutional Supremacy, in contrast to opinion of the apex court, there have also been instances where the Court has expressed its view that the scope of Article 142 cannot be cut down by a statutory provision. In case of *Delhi Judicial Service Association v. State of Gujarat* [23], the Supreme Court observed that the power under Article 142 (1) to serve justice is entirely of a different level and of a different quality and that any prohibition or restriction contained in an ordinary law cannot act as a limitation to the constitutional power of the Court. A similar opinion had also been expressed by the apex court on numerous other occasions [23]. Moreover, such power had been specifically emphasized upon in the case of *in re Vinay Chandra Mishra* [24], where the Court declared that statutory provisions cannot override constitutional provisions. The limited view of Article 142 expressed in *Premchand* case was expressly overruled as being no longer a good law. The same question had been re-agitated before the Supreme Court in case of *Supreme Court Bar Association v. Union of India* [25], and this time the Court altered down its views as expressed in *Vinay Chandra* case. It observed that the power to do complete justice is a corrective power, which gives preference to equity over law, but it cannot be used to deprive a professional lawyer of the due process. The Supreme Court on numerous occasions asserted that it is not a court of restricted jurisdiction of only dispute settling [26].⁵

Nevertheless, on the point of imposing a self-limitation on its power, Supreme Court observed that the substantive statutory provisions dealing with the subject matter of a given case cannot be ignored by this Court,

while making an order under Article 142. These powers are not meant to be exercised, where it may come in conflict with what has been expressly provided for in a statute dealing expressly with the subject. Such manacles placed on the extraordinary power are consistent with the purpose of the provision. The Drafting Committee of the Indian Constitution had reserved such a power for the Honorable Supreme Court of India because it foresaw that there might be certain situations in which the law in force would have failed to anticipate. It is only in those exceptional situations that the extraordinary power may be exercised, and not to overlook or override the substance of any existing law, that Article 142 vests such power with the apex court. It must also be considered that wider will be the amplitude of power under Article 142, the greater will be the need of care for this Court to see that the power is used with the necessary restraint and not in an arbitrary fashion. In case of *State of Haryana v. Sumitra Devi* [27], it was held that no order can be passed under Article 142 contrary to statutory laws. In another case, an order passed under Article 142 was corrected thereafter on review as it was passed contrary to a statutory provision. The Constitutional Bench decision in *Secretary, State of Karnataka v. Umadevi* [28] also emphasized that complete justice under Article 142 means justice according to law, and not sympathy. Equitable considerations or individualization of justice have resulted in conflicting opinions and the Court would not grant a relief which would amount to perpetuating an illegality encroaching into the legislative domain.

RECENT CASES SUGGESTING THE MISUSE OF ARTICLE 142 OF INDIAN CONSTITUTION

The Supreme Court's use of its vast powers under Article 142 of Indian Constitution has done many good things and we cannot deny that fact but there must be some checks and balances on it otherwise it would lead to arbitrariness, as absolute power persisting anywhere would lead to arbitrariness. So, we will consider some recent cases wherein the misuse of Article 142 can be traced out. In the case of *Manohar Lal Sharma v. The Principal Secretary & Others* [29], commonly known as

Coal Block Allocation Case, allocation of coal blocks granted from 1993 onwards was cancelled in 2014 without even a single finding or entering any kind of interrogation that the grantees were guilty of any wrongdoing. The cancellation was coupled with a penalty of Rs. 295 per ton of coal already mined over the years. Article 142 had necessarily to be invoked. The individuals were not even heard on their particular facts, rather only their associations were heard. The result of it was devastating, so far as these lessees were concerned.

In another famous case of *State of Tamil Nadu v. K Balu* [30], the misuse of Article 142 was seen wherein the ban was put on the sale of alcohol along national and state highways. While the notification by the central government prohibited liquor stores along national highways, only those abutting the national highways was put in a place of ban by Supreme Court of India of around 500 meters by invoking Article 142. Subsequently, the Court in the absence of any similar notification by any of the state governments, extended the ban to state highways as well. As a result of the order, thousands of hotels, restaurants, bars, and liquor stores were forced to close down or discontinue the sale of liquor, resulting in lakhs of employees being thrown out of employment [31]. The most important point that has to be seen over here is that the total percentage of accidental deaths caused due to drunken driving, as found by the Court from the statistics of 2015 was only 4.2% as against the 44.2% caused by over-speeding. The Supreme Court had itself held that the right to employment is a basic right traceable to Article 31. However, in its order banning the sale of alcohol along highways, it made no reference to the loss of employment to lakhs of people, a direct consequence of the order, neither it gave any clear justifications on it.

Another instance is the transfer of cases filed against persons accused in the Babri Masjid demolition case. A two-judge bench passed an order which was opposite to that of an earlier three-judge bench decision of the Supreme Court, which was binding on it. Despite the decision of the larger bench, the Court was prepared to hold, while invoking Article 142,

that in view of the long pendency of the case for 25 years, it would direct that the trial now be transferred to Lucknow from Rai Bareli. In my opinion, the judgment did not merely supplement the law but supplanted it by reason of the binding nature of the three-judge bench decision, which was *res judicata* between the parties. The trial was in fact near to its completion at Rae Bareli, but as now the case stands transferred to Lucknow it would take at least two years more for the examination of a few hundred witnesses at Lucknow before conclusion of the trial, as the charge of conspiracy has also been gone into the case which cannot be done away with.

JUDICIAL RESTRAINT: A NEED FOR COMPLETE JUSTICE

It is true that Article 142 has been invoked for the purpose of doing good things and serving justice to large sections of the population and indeed to the nation. The Supreme Court has perceived its role seriously and it would always strive to wipe away the problems from the life of the deceased person but perhaps it is high time that the use of this vast, unlimited power must be restrained, and it must include checks and balances.

While one ponders over the possible solution to this conundrum, one cannot overlook the fact that today, we have a Court of 31 judges who sit in thirteen divisions of two or three to deliberate on important legal issues of the country. One would even be compelled to observe that India has thirteen Supreme Courts as each division represents, by itself, the Supreme Court of India, and each bench is independent of the other. Therefore, I propose that all cases pertinent to Article 142 should be referred to a larger Constitution Bench for better use of discretionary power on matters having such far-reaching impact on the lives of people. I also propose that in all cases where the Court invokes Article 142, the absolute power must not be given to the Court, so as to avoid any conflict between the extraordinary power and the existing statutory laws. One point that must be taken care of while using the powers of Article 142 is that court under Article 142 can use its power only to supplement the laws and not to supplant the laws. Also, if still court feels that the present

laws are not enough to tackle the concerned situation, it can advise the government to amend the present laws by telling the concerned government officials about the demerits of the present existing laws. So, by following the abovementioned procedure the best thing that we can take out from it is that there will be checks and balances on the powers of the Court and also there will not be any arbitrariness or misuse of power. Also, there must be some strict guidelines laid down in order to regulate the extraordinary powers of the Court.

CONCLUSION

Article 142 of the Indian Constitution is a very important and progressive measure that upholds the presence of justice in our legal system. The fundamental importance of such extraordinary power is neither in question, nor being undermined rather the main objective is to only examine and scrutinize the exercise of such extraordinary power, guaranteed by the Constitution of India, in an unrestricted manner. The exercise of such power, in contradiction with the existing statutory law, cannot be justified or allowed in the name of merely filling the vacuum. Such exercise undermines the legitimacy of the statutory law and questions the fairness of the proceedings itself. In fact, the nature of the extraordinary power itself is such that the apex court must curtail its power by binding itself not to exercise it against any existing statutory provisions since complete justice should not only be understood in terms of equity and good conscience, rather it must also uphold the integral element of rule of law. Moreover, the use of judicial activism as reasoning for supplanting existing statutory law is from nowhere justified since by doing so, the judiciary is stepping into the shoes of the Parliament.

Therefore, what was incorporated in our Constitution for making it a boon for the society must not become the bane and justice at any cost must not be compromised. As it was very aptly said by Sir Theodore Roosevelt, “Justice consists not in being neutral between right and wrong, but in finding out the right and upholding it, wherever found against the wrong.”

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