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BALANCING JUDICIAL POWER AND ACCOUNTABILITY UNDER ARTICLE 142: PRESENT CHALLENGES

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Abstract

The provision enshrined under Article 142 of the Constitution of India enables the Hon'ble Supreme Court to pass such decree or orders as are necessary for doing complete justice in any matter pending before it. Being an exceptional remedy, the jurisdiction conferred is plenary, which, however been criticised for its potential to override statutory mandates and bypass legislative intent. While the judiciary has used this power to address situations where no law exists or when statutory remedies were inadequate, it often raises concerns regarding the balance of power among the organs of the State. The paper intends to explore how this wide discretionary power has evolved through judicial pronouncements and if exercised arbitrarily, can undermine the rule of law and constitutional supremacy. Relying upon doctrinal research methodology and analysis of significant cases such as Union Carbide v. Union of India and Supreme Court Bar Association v. Union of India, the study also examines the comparative jurisprudence in jurisdictions like the UK and the USA, where no equivalent provision is found. By considering these, the findings suggest that although Article 142 serves a vital function in bridging legislative gaps, its unregulated invocation might erode public confidence and lead to encroachment upon functions which were not intended by the framers of the Constitution.

Keywords- art 142, constitution, judiciary, activism, court

I. Introduction

The guardian of the Constitution, the Supreme Court of India, is vested with significant responsibilities to ensure that constitutional mandates are upheld in both letter and spirit. With powers conferred by Article 142, it allows the Court is allowed to pass a decree or orders that it deems fit for doing complete justice, even in the absence of an express statutory provision.

Originating from the need to bridge legislative voids, the said Article provides an extraordinary jurisdiction, which has been used in circumstances where rigid application of law would lead to injustice. ¹Often invoked in matters involving human rights, environmental law, or where conflicting statutory interpretations couldn't be resolved through conventional means. Despite its noble intention, the open-endedness of the language used in Article 142 has raised questions on whether such power would be misused or not.² The framers of the Constitution might have envisaged it as a tool to enforce fundamental rights, but by lacking procedural safeguards, its application has sometimes undermined the doctrine of separation of powers. While fewer restrictions were imposed on its usage, the judicial discretion exercised under this Article must needs to be balanced with constitutional principles, otherwise leading to a blurring between judicial and legislative functions. ³

In the backdrop of recent legal controversies, Article 142 has assumed an increasingly pivotal role in shaping judicial outcomes, especially where legislative inertia or executive reluctance prevailed. With the political climate being volatile and public trust in judicial activism fluctuating, the necessity to evaluate how courts apply such powers is becoming more urgent.⁴ This study seeks to examine whether the invocation of Article 142 was consistently in line with constitutional morality or was swayed by extra-legal considerations, and how it affected the balance of powers among organs of the State. One aim of this article is to understand the doctrinal expansion of "complete justice", and another is to identify the instances when the same might have clashed with democratic accountability and statutory frameworks. Without disregarding its usefulness, the study sheds light on whether judicial overreach has become more normalised than exceptional. Divided into five parts, each section focuses on specific facets of Article 142, its historical evolution, landmark case laws, contemporary usage, theoretical critiques, and comparative perspectives. ⁵Relying upon doctrinal analysis, case law survey, and interpretative methodology, secondary sources like academic commentaries and constitutional debates are also been consulted for framing a more nuanced argument throughout the discussion.

II. Constitutional Text and Legislative History

Article 142 of the Constitution empowers the Supreme Court to pass decrees or orders as may be necessary for doing complete justice in any cause or matter pending before it, which might not have been specifically provided for elsewhere in the Constitution. Article 142(1) authorises

such orders to be enforceable throughout the territory of India, and under clause (2), confers powers upon the Supreme Court to secure the attendance of persons and the production of documents necessary for investigations or trials, which may otherwise be unattainable if relied only upon ordinary statutory powers.⁶

In the Constituent Assembly Debates, wherein various framers had differing views, Dr. B.R. Ambedkar emphasised that the provision would be rarely used and was meant for extraordinary situations only. The ambiguity surrounding what complete justice meant had led to a few members raising objections to its vagueness, fearing that unchecked judicial authority could encroach upon functions which was otherwise legislative or executive⁷. When discussing the limits of such residual powers, it was cautioned by some that too much reliance upon judicial wisdom could result in undermining the will of the people expressed through laws. The debates reflect an awareness that Article 142 could, if misused, contribute to a centralisation of power in the judiciary, which is inconsistent with the federal structure and democratic ethos. The provision, however, was ultimately retained, although without definite procedural safeguards which should have accompanied such an exceptional power.⁸

Granting such wide powers to the apex court under Article 142 was intended to ensure that justice is delivered even where the statutory law fails to provide an effective remedy. The framers, although not unanimously, had believed that in exceptional circumstances, the judiciary must possess residual discretion to fill the gaps that weren't foreseen. However, by relying upon this provision frequently, it had created an impression that constitutional limits could be circumvented. Being positioned uniquely, the Court's power was thought to promote equity, but it was applied in matters better handled by the legislature or the executive.⁹

III. Judicial Interpretation and Landmark Judgments

3.1 Broad Interpretations

In *Union Carbide Corporation v. Union of India*¹⁰ The Hon'ble Supreme Court was invoking Article 142 to enforce a settlement which otherwise lacked statutory backing and could not have been secured through ordinary legal channels. The reliefs granted, including compensation schemes and immunities, were considered beyond the contours of enacted laws, where the procedural norms weren't strictly adhered to. Although justice was being aimed at, bypassing existing legislation created a precedent where judicial activism seemed more like overreach.

Had the legislature been consulted, perhaps a better framework might have evolved, but due to urgency, such was not taken into account.

In *Prem Chand Garg v. Excise Commissioner*,¹¹ the Supreme Court was of the view that although Article 142 empowers it to pass orders for doing complete justice, such power cannot be exercisable in ways which violate the fundamental rights of citizens. The Court have emphasised that no residual jurisdiction should override express constitutional limitations, yet the reasoning was not always consistent or clear. Being concerned with the imposition of costs as a condition to hearing, the judgment highlights how judicial discretion, if it weren't constrained properly, might lead to infringement of liberties which the Constitution seeks to protect.

In *Subrata Roy Sahara v. SEBI*¹² The Supreme Court invoked Article 142 powers to enforce strict compliance against the corporate entity for economic irregularities and violations of securities laws. This case has illustrated the apex court's willingness to exercise residual jurisdiction in matters involving corporate governance, where less remedial measures were deemed inadequate. Although the court acted to safeguard investors' interests, questions arise on whether judicial overreach could disrupt the balance between regulatory bodies and corporate autonomy. The order was passed with great firmness, yet it sometimes appears that lesser deference was shown to procedural safeguards.

3.2 Restrained Approaches

In *Supreme Court Bar Association v. Union of India*¹³ The Supreme Court has held that the exercise of powers under Article 142 cannot override the statutory framework established by the Parliament, which is a fundamental principle that should be respected by the judiciary as well as by other branches of government. If the Court acts beyond its jurisdiction, it risks creating less legal certainty and undermining the doctrine of separation of powers, which is the core of constitutionalism. The judgment, which was delivered in a situation that demanded urgent intervention, still reminds that the judicial power could of not be used as a substitute for legislation, and it should be exercised with a restraint that preserve the democratic accountability and the balance of power, which is less about power and more about responsibilities that every organ of state have towards the citizens. This ruling is important for legal practitioners, who often feel badly about the scope of judicial activism, but must recognise that there is less room for overreach in a constitutional democracy like India's.

In *A.R. Antulay v. R.S. Nayak*¹⁴ It was held by the Supreme Court that Article 142 can be invoked for correcting judicial error which was resulting from an overreach, showing how the apex court's power of doing "complete justice" may be used to remedy mistakes in the judicial process which otherwise would have resulted in injustice. If this power were not exercised by the Court, the error could have been perpetuated, thereby undermining the public's confidence in the legal system. However, the use of Article 142 in such a situation must be applied cautiously so it does not substitute the proper appellate or review procedure, which is designed to check judicial errors systematically.

In *Rupa Ashok Hurra v. Ashok Hurra*¹⁵ The Supreme Court clarifies the curative petition jurisdiction that is exercised under Article 137 of the Constitution. The Court hold that such a petition is to be filed only in exceptional circumstances, where no other remedy is available and the fundamental rights were infringed. It is emphasised that the curative petition must be reviewed cautiously to prevent abuse of process. If there were fewer petitions entertained, judicial finality would be undermined. However, the Court also notes that the curative jurisdiction is not substituting for the ordinary appeal, and it should be used sparingly by parties who have exhausted all other options.

State of Tamil Nadu v. Governor of Tamil Nadu, which relates to the Article 142 powers, having been decided by the bench of Justices J.B. Pardiwala and R. Mahadevan, establishes important clarification regarding the Governor's function towards the state bills, which was seen as necessary intervention by the judiciary to restore the constitutional mechanism. The Governor, not being authorised to exercise an absolute veto, had indefinitely withheld his assent, which had violated the principle laid down under Article 200. By asserting that bills returned for reconsideration must be assented to within one month, the Court ensured the legislative supremacy wasn't diluted by executive delay. At the same time, under Article 201, the President shall decide the fate of bills reserved for consideration, but no time limit has been adhered to before. Having invoked its inherent power under Article 142, the Court declared ten pending bills as deemed assented, to prevent breakdown of the state's legislative procedure. Though the ruling dealt with Tamil Nadu, its implications extend towards Telangana and other states, where similar constitutional deadlocks arose.

Upholding the idea of cooperative federalism, the judgment asserts that the separation of power doctrine must not be compromised by inaction or arbitrary delay from constitutional

functionaries.

IV. The Doctrine of Separation of Powers and Article 142

The doctrine of separation of powers is a fundamental constitutional principle, divides the powers among the legislature, executive, and judiciary to ensure that no branch exercises the others' functions improperly. Under the Indian Constitution, this principle is implied through various articles, although it is not explicitly mentioned. Article 142 empowers the Supreme Court to pass any order necessary for doing complete justice, which sometimes results in the judiciary stepping beyond its usual role. If such powers were misused, it may disturb the balance of power intended by the Constitution. The principle was intended to prevent the concentration of authority and promote accountability within government¹⁶.

The judiciary has intruded into the domains of the executive and legislature by issuing directions for policy formulation, which raises questions about the doctrine of separation of powers. For instance, in *Prakash Singh v. Union of India*, police reforms were mandated by the Supreme Court, showing the court's active role beyond adjudication. Under Article 142, the Court's power to pass any order necessary for doing complete justice is often invoked to fill policy gaps. If less restraint were exercised, it may lead to conflict between branches of government, disturbing the constitutional balance that the separation of powers intends to maintain.

The jurisprudential dilemma between justice and legality has always been a difficult one, which courts struggle to balance in their decisions. While legality requires a strict adherence to the letter of the law, justice demands fairness and equity, sometimes requiring deviation from legal rules; this often causes tension, which results in conflict within judicial reasoning. The Constitution embodies both principles through articles like 14 and 21, which give courts the power to ensure due process is followed.¹⁷ If the judiciary were to prioritise legality over justice, less just outcomes would happen; however, too much focus on justice could undermine legal certainty, making the balance precarious and difficult to maintain.¹⁸

V. Comparative Constitutional Analysis

The comparative constitutional analysis between the apex courts in the U.S., U.K., and Canada has revealed several important differences, as their powers and remedies are distinctly shaped

by their legal traditions and constitutional frameworks.¹⁹ The U.S. Supreme Court, which is long been empowered to grant equitable remedies under Article III, uses its authority not only to award damages but also to shape legal outcomes, sometimes in a controversial manner.²⁰ . In contrast, the U.K. courts' power of judicial review, though being limited by the doctrine of parliamentary sovereignty, allows them to invalidate unlawful government actions, however, it is less expansive than in the U.S. Canada's Supreme Court, under the Charter of Rights and Freedoms, provide remedies tailored to rights violations, including declarations and injunctions, which are designed to protect individual rights effectively. If these courts were to exercise fewer powers, their role in protecting constitutional principles would have been diminished, potentially affecting legal certainty and public trust, which courts must carefully balance in the interest of justice and legality.²¹.

The constitutional provision under Article 142 of the Indian Constitution, which empowers the Supreme Court to pass any decree or order for doing complete justice, has no exact equivalent among many global constitutional models, which instead have less expansive judicial powers while balancing the separation of powers differently. In the field of comparative constitutional law, the balance of power between judiciary, legislature, and executive differs widely some countries granting courts a more restrained role, others providing broader discretion. For instance, the U.S. Supreme Court's power of judicial review is firmly entrenched but does not extend to the sweeping authority of Article 142.

Likewise, the U.K.'s courts, limited by parliamentary sovereignty, exercise judicial review, which is less invasive²². If courts exercised fewer powers, it might protect legislative supremacy, but it risks undermining rights protections. The Indian model's unique mix of judicial activism and self-restraint, sometimes criticised, attempts to maintain a delicate equilibrium between justice and legality, which are essential in a diverse democracy like India.

India could learn several lessons from comparative jurisdictions that highlight the evolving nature of constitutionalism and judicial powers.²³ For example, the U.S. Supreme Court's exercise of judicial review has been widely studied, although it has faced criticism for overstepping its bounds. In contrast, the U.K.'s model, constrained by parliamentary sovereignty, offers fewer checks but still preserves fundamental rights. Canada's Charter remedies provide a more balanced approach, which courts actively protect individual rights without undermining the legislature. If India adopts aspects from these systems, it will enhance

the effectiveness of its constitutional framework while lessening potential conflicts between branches of government, which is seen as a source of instability in governance. This comparative analysis, therefore, is an important tool for legal reform and jurisprudential development.²⁴

VI. Contemporary Use in the Present Scenario

In the present scenario, judicial interventions have increasingly been playing a role in electoral disqualifications, remission of sentences, environmental governance, and bail and sentence suspensions, which are essential to uphold constitutional principles and public interest. For instance, the Perarivalan case, which has been controversially handled, shows how remission of sentences is subjected to judicial scrutiny, although sometimes the courts were overstepping their bounds. Electoral disqualifications have been applied with less consistency than expected, raising questions about the equitable enforcement of laws like the Representation of the People Act, 1951. Environmental governance in issues like Delhi pollution and river conservation, which are heavily dependent on judicial activism and sometimes are seen as bypassing the executive. If courts had exercised less intervention, it could have affected environmental outcomes badly²⁵. Bail and sentence suspension cases also reflect a judiciary that is balancing individual liberty with public safety, though occasionally this balance is tilted wrongly. This judicial trend, while necessary, could have been better structured to avoid ambiguities that weaken legal certainty²⁶.

Concerns about judicial populism and public policy intervention have grown significantly in recent years, especially where courts have been perceived to be overreaching their constitutional mandate, which in turn affects the separation of powers doctrine.²⁷ The judiciary's increasing involvement in policy matters, which traditionally fall within the executive or legislature, is sometimes criticised as undermining democratic processes, yet others argue that such activism is necessary to protect fundamental rights guaranteed under articles 14 and 21 of the Constitution.²⁸ Public perception, which is shaped by media coverage, plays a pivotal role in framing judicial decisions, though the media tends to sensationalise rulings, resulting in a distorted understanding of complex legal issues. If the courts were less influenced by public opinion, they could have preserved greater judicial independence; however, judicial actions being portrayed through a populist lens often causes less confidence in the rule of law, paradoxically. The delicate balance between judicial accountability and

independence is therefore challenged by this interplay of public and media scrutiny, which requires more careful analysis for future reforms in constitutional adjudication.²⁹

VII. Criticisms and Constitutional Challenges

The criticisms and constitutional challenges that surround the invocation of Article 142 of the Constitution have been frequently debated, as the power to pass any decree necessary for doing complete justice has been perceived by many as lacking sufficient safeguards, which raises concerns about judicial overreach. Legislative guidelines, which provide clearer criteria for the exercise of this power, have been suggested to reduce arbitrary use and ensure consistency in judicial decisions.³⁰ If a balancing mechanism were implemented, possibly through a constitution bench review, it would have ensured that the broad discretion vested in the Supreme Court is exercised with more accountability and less risk of undermining parliamentary sovereignty. Such a mechanism, which reviews the appropriateness of invoking Article 142 in complex or politically sensitive cases, helps maintain the balance of judicial activism and constitutional limits. This upholds the rule of law, which must not be compromised by excessive judicial intervention that appears to bypass legislative intent³¹.

The lack of accountability for directions issued under Article 142 of the Constitution has been widely criticised, especially by academic scholars, senior advocates, and former judges, who argue that the exercise of this extraordinary power is rarely subjected to sufficient review or oversight, which undermines democratic principles. Though the Supreme Court has been empowered to deliver justice in a manner that is complete and effective, the absence of clear procedural safeguards has led to concerns that the directions often operate without transparency and may result in inconsistent applications across different cases.³² If the judiciary had been more cautious in using this power, the public trust of been preserved better, yet the critics emphasise that such unchecked discretion risks violating the doctrine of separation of powers. Moreover, the principle of judicial accountability, which is fundamental under constitutional governance, is sometimes overlooked when Article 142 is invoked, leading to apprehensions about the erosion of legislative prerogatives and constitutional balance.³³

VIII. Recommendations and the Way Forward

- To ensure the proper use of Article 142, legislative and judicial guidelines need to be established that clearly define the circumstances under which such extraordinary powers

are to be invoked. The guidelines must include the necessity for detailed reasons to be recorded, and that the directions issued should not contradict existing statutory laws or constitutional provisions. A constitution bench should review each case where Article 142 is exercised, providing a balancing mechanism between judicial activism and legislative authority. Failure to adhere to these protocols risks undermining the rule of law and the principle of separation of powers, which are the cornerstone of the constitutional framework in India.

- The need for a balancing mechanism in the use of exceptional powers under Article 142 has been generally recognised, with a constitution bench review being the most effective approach for ensuring that judicial restraint is maintained. Such a review should include both legislative purposes and constitutional principles, avoiding judicial-legislative conflicts. When such powers are employed without proper scrutiny, the constitutional checks and balances undermining the democratic structure of India's Constitution. As a result, the involvement of a constitution bench serves as an essential check to guarantee that Article 142 is exercised by the rule of law and the idea of separation of powers, avoiding abuse and excess³⁴
- The transparency in the exercise of powers under Article 142 is an essential requirement to maintain trust in the judicial system, which has been criticised for the lack of accountability in its directions. The transparency is achieved by requiring detailed reasons to be recorded and published, which allows the public and other branches of government to scrutinise the decisions. A review by the Law Commission or Parliamentary Committee is necessary to provide oversight that ensures the judicial actions comply with constitutional mandates and respect the separation of powers. Such review mechanisms not only enhance the legitimacy of judicial decisions but also prevent the overreach of the judiciary into legislative or executive domains. If these reviews were conducted regularly, fewer abuses of power and constitutional conflicts would be witnessed, strengthening the democratic framework as intended by the Constitution of India. This legal oversight must be integrated within existing procedural laws for its effectiveness.³⁵

IX. Conclusion

Article 142 has always been a significant tool for ensuring complete justice; however, its applications often lack the uniformity required by constitutional principles. Being a double-

edged sword, it has led to both remarkable judgments and unpredictable precedents, which creates confusion among litigants and the lower judiciary. The powers under Article 142 were exercised without codified limitations, resulting in greater uncertainty with legal outcomes. When judicial discretion expands beyond statutory frameworks, it affects the balance between the judiciary and other institutions that is essential in a democracy. Without proper guidelines, the invocation of such powers has often attracted criticism from legal experts and constitutional scholars. Judicial activism through this Article sometimes undermines the legislative intent and disrupts the federal structure of governance. Therefore, while it serves as a vital remedy in complex legal situations but unchecked usage leads to erosion of the rule of law. Hence, its careful regulation must become integral to constitutional justice.

Recognising the necessity of Article 142 for delivering justice in hard cases, its application was often carried out in a manner lacking consistency with the constitutional ethos. The principles for exercising such extraordinary power have not been uniformly developed, which contributes towards confusion among jurists and adjudicators. Urging for a principled and limited application is being stressed to avoid misuse by courts that interpret justice broadly rather than narrowly. A dialogue between different branches is essential to create a shared understanding of constitutional interpretation, especially when judicial pronouncements intrude into the legislative domain. Without structured interaction, the risk of institutional friction increases. The judiciary must exercise Article 142 within the boundaries prescribed through constitutional practices, which are guided neither solely by moral conscience nor undefined notions of justice. Inter-branch engagement promotes harmonisation on constitutional values, enabling the branches to function more effectively together to uphold the rule of law and protection of fundamental rights.

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