

Article-142 Constitution of India – A Double-Edged Sword:

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Introduction:

Article 142 provides a unique power to the Supreme Court, to do “complete justice” between the parties, where at times law or statute may not provide a remedy i.e. it is conceived to meet situations which cannot be effectively tackled by the existing provisions of law. Article 142 provides for the “Enforcement of decrees and orders of the Supreme Court and orders as to discovery”. The said Article is reproduced hereunder for readily reference:-

“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.”

Object behind Article 142

Article 142 of the Constitution of India provides a special and extraordinary power to the Hon’ble Supreme Court to do complete justice to the litigants who have suffered traversed illegality or injustice in the proceedings.

Reason to incorporate Article 142

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 disadvantaged position of the judicial system.. This Article gives almost unlimited powers to the Hon’ble Supreme Court.

Article 142 confers plenary powers on the Hon’ble Supreme Court which empowers it to pass such decree or make such order, in the exercise of its jurisdiction, as is necessary for doing complete justice in any cause or matter pending before it and those decrees or orders shall be enforceable throughout the country in such manner as may be prescribed by or under any law made by the Parliament. These powers are inherent in the Court and are complementary to those powers which are conferred on the court by various statutes.

It was held in the case of *Delhi Development Authority (DDA) v Skipper Construction Co. P Ltd (1996)* that the fact that this unique power is conferred only on the apex court, is itself gives the assurance that it will be used with due restraint and circumspection, keeping in view the ultimate object of doing complete justice between the parties.

The Hon’ble Supreme Court held in *Supreme Court Bar Association vs Union of India (1998)* that powers provided under Article 142 are supplementary, complementary, and residuary to the powers particularly bestowed on the Supreme Court, which may very well be exercised as long as it is equitable and just to use it, and also, in particular, to make sure the strict adherence of due process of law, to do complete justice between both the parties while administering justice as per law.

The expression used in Article 142 is to endeavour ‘complete justice’ and its ambit was explained in the case of *Manohar Lal Sharma v. Principal Secretary* wherein it was held that the Hon’ble Supreme Court can deal with exceptional circumstances interfering with the larger interest of the public in order to fabricate trust in the rule of law. Also, it was held in *A.R. Antulay v. R.S. Nayak* that any discretion which is given by the court should not be arbitrary or in any way be inconsistent with provisions of any statute laid down.

Even in the *Siddiq v. Mahant Suresh Das* popularly known as the Ayodhya dispute, the Supreme Court had exercised the powers mentioned under Article 142 of the Constitution. It first refused to make two divisions of the land and it entirely handed over 2.77 Acre of land to Hindus. But the court felt that it would be an injustice to the Muslim parties by dismissing the Sunni Waqf Board’s claim as they witnessed an illegal demolition of their mosque in the year 1992. The Central Government was directed by the Supreme Court to grant a five-acre land in an alternative site within the purview of the area being acquired by the Central Government. Also, by the virtue of Article 142, it again directed the Central Government to include the Nirmohi Akhada in a body which would further be responsible for the management of the land.

The Apex court of the country while considering the safety of people has invoked its power under Article 142 for banning the sale of alcohol and to ensure that liquor vends are not visible or directly accessible from the highway within a stipulated distance of 500m from the outer edge of the highway, or from a service lane along the highway. Such a decision was taken to avoid accidents caused due to drink and drive.

Article 142 vis-a-vis PMLA:

The Hon'ble Supreme Court has invoked its plenary powers under Article 142 while forming the single member committee to protect the interest of the investors at large even in the PMLA Case namely; *National Stock Exchange Ltd.* The Hon'ble Supreme Court observed that they are concerned with the investors' money and properties remaining attached simplicitor cannot be a solution for the investors' money for which decrees have been passed and thus, only if those properties are liquidated, would the concerned Court be able to distribute the monies. In other words, the Hon'ble Supreme Court has exercised its powers under Article 142 of the Constitution of India with the objective of attaining a holistic solution for speedy recovery of the outstanding amounts to be distributed to investors. In view of the above, the Hon'ble Supreme Court has acted within the ambit of plenary powers granted under Article 142 of the constitution of India in the present PMLA case which is equitable and justified.

Conclusion

Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. It is true that Article 142 has been invoked for the purpose of doing tremendous good to large sections of the population and indeed to the nation as a whole. The Supreme Court has perceived its role as one which would require it to 'wipe away every tear from every eye', but perhaps it is time that the use of this vast, unlimited power included checks and balances.

