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## LIMITS OF “COMPLETE JUSTICE”: A CRITICAL APPRAISAL OF ARTICLE 142 OF INDIAN CONSTITUTION

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### ABSTRACT

*"I incarnate myself to protect the righteous and destroy the wicked from age to age whenever there is decline of righteousness and rise of unrighteousness."*

**- Shirimadbhagwatgeeta**

The thought of conducting research on the true scope and limit of Article 142 was prompted by the highest court of India frequent invocation of its authority under this Article and the manner in which that authority is being exercised in the case ranging from Bhopal gas tragedy case<sup>55</sup> to Ram Janmabhoomi case<sup>56</sup> and recently in A. G Perarivalan case<sup>57</sup> and irretrievable breakdown of marriage case<sup>58</sup>. This item is now frequently used, despite the fact that its intended use was limited. The supreme court has directed a number of orders that violate the powers of the other two organs. The question of the theory of separation of powers has been brought into focus by this occurrence. This has raised questions regarding the Supreme Court's actions' legality. This point of view is used to examine the provisions of Article 142. The words "complete justice" and "justice" make up the phrase "complete justice." The Dictionary defines "complete" as "having all necessary parts, elements, or steps or thorough or concluded," whereas various jurist, scholar and social scientists have interpreted and defined "justice" in a variety of ways. Plato puts it this way: Equity is a legitimate, amicable connection between the fighting pieces of the individual or city'. According to Hobbes and Rousseau, "justice" is the process of granting and safeguarding a person's liberties and rights. The court has used this authority to issue a number of orders that invade the authority of the other two organs. The doctrine of separation of powers has come under scrutiny as a result of this phenomenon, casting doubt on the highest court actions. In this context the provision of Art. 142 is studied.

**Keywords-** Justice, Constitution, Court, Power, Rights.

<sup>55</sup> Union Carbide Corporation v. Union of India 1989 SCC (2) 540

<sup>56</sup>M SiddiqvsMahant Suresh Das &Ors 2019 SCC OnLine 1440,

<sup>57</sup>2022 SCC OnLine SC 755

<sup>58</sup>R.Srinivas Kumar vsR.Shametha



## INTRODUCTION

This research relates to the study of drawing the limit of Article 142 of the Constitution of India. Article 142 occurs in Chapter IV of Part V of the Constitution of India. It pertains to the Supreme Court of India, which is part of the Union Judiciary that deals with the execution of judgments, instructions from the Supreme Court regarding discovery, etc.<sup>59</sup> Article 142, clause (1), grants the Supreme Court the authority to render complete justice in each case or subject that is before it. The purpose of this study is to determine if the Supreme Court has been granted substantive authority that confers extra-ordinary powers under this Article, as the highest court has interpreted in a number of cases, and whether this authority is subject to the rule of law. a cornerstone of our Constitution the Constituent Assembly Debates do not shed any light on the precise, scope and limit of this provision, and the Supreme Court's frequent invocation of its authority under this Article and the manner in which the authority is being exercised motivated the thought of this to make a research on the true scope and limit of this Article. whereas no such power exists in United States. Not only US but no other Constitution in the world allows for such power except for Bangladesh<sup>60</sup> and Pakistan<sup>61</sup> which seems to have borrowed the provision from constitution of India. Apex court in India has exercised this power in cases ranging from Bhopal gas tragedy case<sup>62</sup> to Ram Janmabhoomi case<sup>63</sup> and recently in A.G Perarivalan case<sup>64</sup> and irretrievable breakdown of marriage case<sup>65</sup> Although it was meant to be used sparingly, this item is now commonly utilized. The apex court has issued a number of directives that infringe on the purview of the other two organs using this power. This phenomenon has highlighted the question of the theory of separation of powers. The validity

of the Supreme Court's actions has been questioned as a result of this. The provisions of Article 142 are examined in this perspective. "The term 'complete justice' is comprised of two words, that is, 'complete' and 'justice'. The Merriam-Webster Dictionary defines 'complete' as 'having all necessary parts, elements, or steps or thorough or concluded', whereas 'Justice' has been understood and defined by various scholars, philosophers, and social scientists in various ways and connotations. Plato defines it thus: 'Justice is a proper, harmonious relationship between the warring parts of the person or city'. Hobbes and Rousseau understand 'Justice' as a process of giving and protecting the rights and liberties of a person."

## NATURE AND SCOPE OF ARTICLE 142

The Indian constitution's Article 142 grants the Supreme Court unlimited authority to administer complete justice. The concept of judicial activism in India has taken on a new dimension as a result of this provision's exorcism of the "power to do complete justice." it is necessary to understand jurisdictions of the Court under article 142. Brief survey is presented here.

### Article 142 provides....

"The Highest Court may exercise its authority to issue any decree or order necessary to provide full justice in any case or matter that is before it. Any such decree or order shall be enforceable throughout India in accordance with any applicable laws passed by Parliament and, in the absence of such laws, in accordance with any manner the President may by order specify."

"The Court shall, as regards the entirety of the territory of India, have all and any power to make any order for the purpose of securing attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of courts. This power is subject to

<sup>59</sup>The constitution of India, art. 142.

<sup>60</sup>The Constitution of the People's Republic of Bangladesh, art. 104

<sup>61</sup>The constitution of Islamic republic of Pakistan, art. 187

<sup>62</sup>i.b.

<sup>63</sup>i.b.

<sup>64</sup>i.b.

<sup>65</sup>i.b.

provisions of any law made in this regard by Parliament.”

It is evident that the apex court used this extraordinary power very rarely during the **first Phase** of the Indian constitution's development. During the Nehruvian era of socio-economic reform, both the legislature and executive branches were very involved.

**Second Phase** was of tyrant crisis of 1975-76. The Supreme Court's powers were restricted during this time. Therefore, this article's powers were not utilized. However, there are some instances in which art are utilized.142, focusing solely on its procedural aspects.

The **Third Phase** was one of "judicial populism," when new judicial processes such as judicial activism and public interest litigations emerged. Liberal interpretations of the constitution's provisions began at this point. Art.142 was also interpreted broadly to mean doing the people full justice.

The era of new economic reforms, also known as the **Fourth phase**, marked a significant shift in the country's economic, political, and social structures. Because of these regular changes once in a while unpredicted, legal executive needed to meddle in the administrative strategies and some of the time needed to carry out the roles of the different organs of the state. During this time, the supreme court frequently makes use of the power granted by Article 142 and we can see un precedent move of supreme court in recent years.

"The plenary powers under Article 142 are the residual source of power which the Supreme Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of due process of law, to do complete justice between the parties while administering justice according to law,"<sup>66</sup> said A S. Anand j.

## INHERENT POWERS U/A. 142 OF THE CONSTITUTION

Why is the judiciary endowed with inherent powers, then? "According to Prof. Dr. N.R. MadhavMenon, "The constitution specifically commands them to restrain the executive's excesses, uphold democracy and the rule of law, and defend citizens' fundamental rights in all situations." Because of this, the procedure specifically grants the court the authority to render complete justice"<sup>67</sup>

According to Dr. Prakash<sup>68</sup>, the goal of Article 142 (1) is to prevent the Supreme Court from having to rely on the executive to carry out its orders and decrees. A dependence of this kind would go against the constitution's fundamental principles of independence for the judiciary and separation of powers. This power transfer to the judiciary is outlined in the constitution and is intended to be used for the greater good of society.

The Privy Council and the Federal Court previously combined their authority to function as India's ultimate court. The Government of India Act of 1935 set down the authority of the Federal Court, but there was no system in place to carry out its directives. Article 142 of the Constitution gives the court the authority to issue any order, decree, or instruction under that article in order to remove this barrier to the administration of justice and to make the process straightforward and quick. "The framers of the constitution do not appear to have conceived of providing such power," claims Dr. Prakash, referring to the Supreme Court's interpretation of the Union Carbide Case<sup>69</sup>. It is observed that there was no debate on the floor of the constituent Assembly while it adopted Article 142<sup>70</sup>. The fact that "complete justice" has not been discussed indicates that it is only intended for procedural purposes.

<sup>67</sup>Prof. Dr. N.R.MadhavMenon, Accountability of Judges of Superior Courts and Transparency in Judicial Administration: Issues and Concerns Judiciary in India Constitutional Perspectives, (ed.) by Prof G.Manohar Rao, Dr.G.B. Reddy, V.Geeta Rao"

<sup>68</sup> "Dr. Prakash, "Complete Justice -under Art. 142" (2001)"

<sup>69</sup>Union Carbide Corporation v. Union of India 1989 SCC (2) 540"

<sup>70</sup> Originally it was Art. 118 of Draft Constitution

<sup>66</sup> "Justice A.S.Anand, 'Judicial Review -Judicial Activism: Need For Caution', in Soli Sorabji, (ed).. Law and Justice: An Anthology, Universal Law Publishing Co. Delhi, 2003"

"Every legal system is having some gap between law and justice, the gap is between Law as it is & Law as it ought to be," wrote Justice J.S. Verma, the former Chief Justice of India. This is why certain explicit provisions acknowledge the inherent powers of the court. There is always a space between equity and law. A corrective power, the power to execute complete justice has prioritized equity over law.<sup>71</sup> Whereas no such power exists in United States. Not only US but no other Constitution in the world allows for such power except for Bangladesh<sup>72</sup>, Nepal and Pakistan<sup>73</sup> which seems to have borrowed the provision from constitution of India

However, it should be noted that only the Supreme Court is granted such broad authority to pass any order or decree in the interest of justice under Article 142, and neither the High Courts nor the lower court and tribunals are granted similar authority. Therefore, in accordance with this article, the Supreme Court, as the sole repository of such extensive powers, may issue a variety of orders.<sup>74</sup>

Numerous jurists claim that the court has the residuary power, which it may exercise whenever it is just and equitable to do so, especially to ensure the application of due process of law.<sup>75</sup> *The Delhi Judicial Service Association of Tis Hajari Court New Delhi v. A.K. Shrivastav*<sup>76</sup> Case illustrates that Article 142 and the powers it grants are essential elements of the constitution. According to the constitution, this court is essential to the administration of justice, and the authority granted to it by Articles 32, 136, 141, and 142 is a fundamental aspect of the constitution's design. The authority of this court under these articles of the Constitution cannot be restricted by laws passed by the federal or state legislatures.

<sup>71</sup>J.S.Venna, *New dimensions of Justice*, Universal Law Publishing Co.

<sup>72</sup>"The Constitution of the People's Republic of Bangladesh, art. 104"

<sup>73</sup>"The constitution of Islamic republic of Pakistan, art. 187"

<sup>74</sup>Ajit Sharma, "Inherent powers of the Supreme Court under the Constitution", (2006)

<sup>75</sup>M.P. Jain, S. Pal and R. Pal, *M.P. Jain Indian Constitutional Law: With Constitutional Documents* (LexisNexis Butterworths Wadhwa Nagpur, 2010).

<sup>76</sup> AIR 1991 SC 2176

"Justice is a virtue that transcends all barriers" was observed in the case of *S Nagaraj v. State of Karnataka*<sup>77</sup>. It cannot be hindered by the procedural rules or legal technicalities. Because of this broad definition of "justice," the court is able to use the powers granted to it in a variety of cases, each of which is decided by the court based on its own facts and circumstances, to render "Complete justice" as required by Article 142.

The causes or conditions under which the power may be used in accordance with Article 142 are also unrestricted. The best way to exercise this authority is entirely up to the highest court. The word "justice" appears twice in the constitution: once in the preamble and once in Article 142, which is interesting to note. It contains residual powers, which gives it a unique judicial review feature.

Administrative authority is limited by Article 142. In the age of globalization, as the state performs more administrative functions and acquires more administrative power as a result, the inherent power of the court must be frequently used to correct injustice caused by administrative power abuse. As a result, the Supreme Court of India moves forward with disciplining the daily exercise of executive power.

#### **ANALYZING THE NATURE AND SCOPE OF ARTICLE 142.**

This topic is up for discussion. "Article 142(1) is far from following this trend, despite the fact that the jurisprudence surrounding other Constitutional provisions has developed extensively, giving them more concrete and stable interpretations. Creatively, the nature and scope of power envisioned in Article 142(1) have continued to be discussed."<sup>78</sup>

It is noted that the art was accompanied by a marginal note. The phrase "enforcement of

<sup>77</sup> AIR 1993 4 SCC (suppl) page 595.

<sup>78</sup>Rajat Pradhan, "IRONING OUT THE CREASES: RE-EXAMINING THE CONTOURS OF INVOKING ARTICLE 142(1) OF THE CONSTITUTION" 13.



decrees and orders of Supreme Court" in section 142 indicates that the authority is procedural rather than substantive.<sup>79</sup>

The Constitution's Article 142 addresses the Supreme Court's inherent powers. Under section, the High Courts are granted similar powers.<sup>151</sup> of the C. P. C.482 of Cr.P.C. Both of these sections are incorporated into procedural laws. On the basis of this, a logical conclusion is reached regarding Art's powers.<sup>142</sup> are procedural and do not grant significant authority.

The court is granted three distinct powers in Part II of the article,

- a) the first of which is a power to ensure the attendance of those appearing before it.
- b) The capacity to discover and produce documents.
- c) Authority to investigate and disdain for itself.

The first two powers fall under the procedural law of evidence. The third perspective if read with Article 129 prompts obvious end result that the power under Workmanship. Art. 142 is procedural because<sup>129</sup> grants substantial authority to the court to impose punishment for its contempt. According to Article 129, the Supreme Court shall be a court of record and shall have all such powers, including the authority to punish for its own contempt.<sup>80</sup>

A majority of four Supreme Court justices ruled in Prem Chand Garg<sup>81</sup> Although the powers granted by Article 142(1) are indeed broad, any order to carry out "complete justice" under this clause "must not only be consistent with the fundamental rights guaranteed by the Constitution, it cannot even be inconsistent with the substantive provisions of the relevant statutory laws," the court ruled. These remarks were made when determining that a rule

requiring the petitioner to offer security for expenses in a petition filed under Article 32 of the Constitution was unlawful.<sup>82</sup>

However, the tables turned when the Prachanda's case was over ruled in In Re Vinay Chandra Mishra <sup>83</sup> when the court used its substantive authority to punish the court's critic in a contempt of court proceeding. The court firmly stated that "The majority's findings in the Prem Chand Garg case are no longer valid legal precedent "in that situation. As a result, Article 142's scope was expanded. The bench went on "The power of this court under Article 142 of the Constitution cannot be limited or restricted by legislation passed by the federal or state legislatures, though when exercising that power, the court must take into account the statutory provisions governing the issue at hand. What would constitute "complete justice" in a case or topic would depend on the particulars of each circumstance."

As a result, there was a complete shift, with wide interpretation taking the place of restricted interpretation. The *Supreme Court in Union Carbide Corporation vs. Union of India*<sup>84</sup> Venkatachaliha j. rejected the argument that Article 142 imposed limits and held that "The power under Article 142 is at an entirely different level and of a different quality," expanding the scope of Article 142. According to Article 142, "prohibitions or limitations on ordinary law provisions cannot, ipso facto, act as prohibitions or limitations on the constitutional powers. "if such restrictions are accepted, they would suggest that statutory provisions take precedence over constitutional but scope In the case of *Supreme Court Bar Association v. Union of India*,<sup>85</sup> which partially overturned the decision of Vinaychandra Mishra and held that such a wide power that has overriding effect over the statute's provisions is not contemplated by the constitution, 142 was

<sup>79</sup>Article 142 Constitution of India: Declaration Of Law Implied By The Highest Court Of Land - Trials & Appeals & Compensation - India, "available at: <https://www.mondaq.com/india/trials-appeals-compensation/882136/article-142-constitution-of-india-declaration-of-law-implied-by-the-highest-court-of-land> (last visited November 15, 2022).

<sup>80</sup>Eastern Book Company - Practical Lawyer, "available at: <https://www.ebc-india.com/lawyer/articles/2001v7a3.htm> (last visited November 15, 2022).

<sup>81</sup>1963 AIR 996

<sup>82</sup>Article 142," *Indian Constitutional Law and Philosophy* available at: <https://indconlawphil.wordpress.com/tag/article-142/> (last visited November 15, 2022).

<sup>83</sup> AIR 1995 SC 2348

<sup>84</sup> 1992 AIR 248,1991 SCR, Supp- (1) 251

<sup>85</sup> (1998) 4 SCC 409

once more examined. When using such a large amount of power, therefore, caution must be exercised and restraint must be observed.

## II PRINCIPLE OF SEPARATION OF POWER WITH REGARDS TO INDIA.

It is acknowledged that the Indian Constitution's basic structure include the principle of separation of power and rightly held in the case of *Indira Gandhi v. Raj Narain*<sup>86</sup>.

India adheres to British Parliamentary Democracy, in which the legislature and executive branches are combined. The executive government of the Union is vested in the President, who acts on the advice of ministers, according to the Constitution of India, which was adopted on January 26, 1950. The constitution establishes a Parliament for the purpose of enacting laws and a Supreme Court with the authority to interpret those laws but while interpreted the law the **presumption of constitutionality** taken into consideration and The Indian Constitution's various provisions demonstrate the separation of powers and establish a system of checks and balances. The concept of separation of powers is implicitly incorporated into the Indian Constitution. The Constitution does make provisions for a reasonable separation of functions and powers between the three Governmental Organs, despite the fact that there is no explicit provision recognizing the doctrine of absolute separation of powers.<sup>87</sup>

**Executive Powers:** The executive power of the federal government and the state government is held, respectively, by the president and the governor. State of Punjab in *Rama Jawaya Kapoor v. State of Punjab* in *Rama Jawaya Kapoor v. State of Punjab* "Although it is impossible to define "executive power" precisely, it refers to a role that did not technically belong under the legislative or judicial realm. As a result, the court considered the aspect of separation of powers while defining executive power." When defining

the word "executive powers," the top court said thus.

Art. 73 says that the executive power of the Union and the legislative power of the parliament go hand in hand. Art. 77 says that the President can make rules to make it easier for the government to do business. The president uses his executive authority to make a number of appointments, including those of prime ministers and other ministers, Supreme Court judges, attorneys general, and so on. They all hold the position at the President's pleasure.

However, India does not have a system of separation of power, according to Article 79 The President is a member of the Parliament. The authority to call parliament's sessions is vested in the President. Every bill that is approved by both houses of parliament is sent to the president for his approval before it can become law. Only after the president gives his approval does the bill become law. The President's approval is required before any financial or money bills can be introduced in the Lok Sabha. Art. 123 stipulate that the president may issue an ordinance when the legislature is not in session and when the circumstances warrant it. This authority overlaps with parliament's legislative authority. Art. 72 grants the President the authority to commute or suspend the sentence of any person convicted of an offense, as well as to grant pardons, reprieves, respites, or remissions of punishment. This is nothing more than the executive's judicial authority. In the event of an emergency, the president takes over all legislative authority. Under delegated legislation, the executive also exercises law-making authority. Additionally, the executive's tribunals and other quasi-judicial bodies carry out judicial duties.<sup>88</sup>

**Legislative Powers:** The Indian constitution follows the English model for how the Parliament is made up. It establishes a bicameral legislature with Rajya Sabha and Lok Sabha. Although we adhere to British practice when it

<sup>86</sup> 1975 AIR 1590

<sup>87</sup> Re Delhi Laws Act Case [1951 AIR 332] - Black n' White Journal, "available at: <https://bnwjournals.com/2020/09/15/re-delhi-laws-act-case-1951-air-332/> (last visited November 15, 2022).

<sup>88</sup> Ibid.



comes to the composition of the parliament, the parliament is not a complete sovereign in comparison to the UK. The Indian Constitution defines the powers, rights, privileges, and responsibilities of the Indian Parliament. The fundamental restriction on the Indian Parliament's legislative authority is that it cannot enact legislation that would violate the basic structure of Indian constitution.<sup>89</sup>In an emergency, the President has explicit authority to suspend the Constitution. In a similar vein, article 257 grants the president the authority to assume both legislative and executive authority in the event of a breakdown in the state's administrative machinery. The legislature has unlimited authority subject to these restrictions.

**Judicial Powers:** "The Supreme Court of India is the country's highest court and the final authority to interpret the Constitution and laws. All Indian courts are obligated to follow the law that the Supreme Court has declared to be valid. People also refer to the court as the guardian and protector of their fundamental rights. As the final appellate court in all civil, criminal, and other cases, the Supreme Court contributes to the nation's legal uniformity. A Court of Record with original, appellate, and writ jurisdiction, the Supreme Court."

**Independence of the Judiciary:** "Article 50 states that the state must take steps to separate the executive and judiciary. The judicial branch's independence is an essential feature of the Federal Constitution. Because India's constitution is essentially federal, it includes provisions to ensure an independent judiciary. U/A 124 says that the President chooses the judges for the Supreme Court. However, he has limited discretion in this matter because he must consult with Supreme Court judges and High Court."

While making these arrangements. A president's order can remove a Supreme Court judge on the grounds of demonstrated misconduct or incompetence. However, they can only be

removed through impeachment for certain reasons.

The constitution grants the Chief Justices of the Supreme Court and High Court the authority to hire staff and set the terms of service for officers and other court employees. Because they are deducted from the Consolidated Fund of India and States, respectively, the administrative costs of the Supreme Court and High Courts are not subject to legislative vote.

The conduct of a judge of the Supreme Court or of a High Court in the performance of his duties as a judge is not subject to discussion in either the state legislature or the parliament. The authority to oversee the operation of subordinate courts is granted to the higher judiciary. In addition, it acts as a legislature by enacting regulations governing its operations and case disposal.

In addition to making laws, the legislature has judicial authority when it violates its privilege, impeaches the president, or removes judges. In the Parliament, the legislature has the power to impose punishment for violating freedom of speech; This falls under the authority and privileges of the parliament. The executive may also have an impact on the way the judicial system works by appointing judges to positions like chief justice. When amending and revalidating a law declared ultra vires by the Court, the legislature exercises judicial powers. The legislature fulfills the responsibilities of the judicial system by disqualifying its members and impeaching judges. Top of each legislative service is a part of the governing body; It integrates the executive branch into the legislature. A member of the legislature is the council of ministers elected to advise the President and Governor. In accordance with Article 123, 213 of the Indian Constitution, the executive can, in certain circumstances, exercise the legislative power of the legislature. If the President or the Governor determines, while the legislature is not in session, that certain circumstances call for immediate action, they may issue an ordinance with the

<sup>89</sup>Patrick Fitzgerald, "THE 'PARADOX' OF PARLIAMENTARY SOVEREIGNTY," 7 *Irish Jurist* (1966-) 28-48 (1972).

same force as an act passed by Parliament or the State legislature. Through Articles 118 and 208, the Constitution grants state and federal legislatures, subject to the Constitution's provisions, the authority to establish regulations governing their respective business practices and procedures.

In accordance with delegated legislation, the executive exercise law-making authority.

The courts and other semi legal bodies which are part the leader they release legal capabilities. Judicial duties are also carried out by executive-level administrative tribunals. There should always be a member of the judiciary on higher administrative tribunals. The higher legal executive is met with the force of overseeing the working of subordinate courts. In addition, it acts as a legislature by enacting regulations governing its operations and case disposal. As a result, in addition to carrying out their respective duties, the three branches of the state occasionally carry out the duties of the other branch. But the judiciary is on a different level because the constitution gives it the power to review decisions. The "system of checks and balances" is indicated by this.

### MECHANISM OF CHECK AND BALANCE

The Indian Constitution consolidates the standard of balanced governance. The laws enacted by the parliament and state legislatures can be reviewed by the courts. In the exercise of their judicial review authority, as stipulated in Article 13 of the Constitution, the Supreme Court and the High Courts would declare any law in violation of Part 3, i.e. Fundamental Rights, to be ultra vires. If the actions of the executive branch or laws passed by the legislature violate any provision of the constitution, the Supreme Court has the authority to declare them null and void. Even parliament's authority to amend the constitution is subject to the court's constant scrutiny. Any law that alters the fundamental structure of the Constitution can be declared

null and void by the court.<sup>90</sup> The legislature cannot enact a law declaring that the Court's decision is null and void when a legislative act is invalidated by the courts due to legislative incompetence; It cannot overturn or reverse the Court's decision. Anyway, it is at Freedom to reenact something very similar. The legislature has the ability to alter the judgment's foundation. Other grounds can be used to challenge the new law or the amendment to that law, but the court's decision cannot be overturned or hampered in any way. It is essential for each organ to function within the boundaries of its established authority. The check-and-balance system would ensure that each organ's actions are within its clearly defined limits. Articles 32 and 226 grant the higher judiciary the authority to exercise judicial review, which entitles the courts to examine the constitutionality of each and every law enacted by Parliament and the state legislature. Executive actions are also subject to judicial review. The golden trinity of Articles 14, 19, and 21 are the grounds for challenging a legislative or executive action. In India, judicial review is based on the idea that the Constitution is the supreme law of the land and that all governmental agencies must operate within the framework of the Constitution because they derive their powers from it.<sup>91</sup> It is also necessary to mention that Article 245 establishes the legislative authority of both the Parliament and the State legislature. The control of the executive is ensured by making it accountable to the Parliament, as stipulated in Article 254 and the VII Schedule. Any law that is in direct opposition to the VII Schedule will be null and void to that extent. Under ordinance, the executive has limited legislative power. The President's approval of the need to pass an ordinance can be subject to judicial review.<sup>92</sup> In India, there is a separation of functions rather than a separation of powers, according to some thinkers. There is overlap between these roles.

<sup>90</sup>KeshawanandBharati v Union ofIndia, AIR 1973 SC 1461

<sup>91</sup>V.N. Shukla and M.P. Singh, *V.N. Shukla's Constitution of India* (Eastern Book Company, 2017).

<sup>92</sup> 2S. R.Bomma V Union ofIndia AIR 1994 SC 1918

As a result, there has always been a significant debate regarding the nature and scope of the doctrine of separation of powers in the constitution of India. The limits of the doctrine's applicability must be established by judicial pronouncements, which are issued from time to time. A brief overview of these cases is provided.

In *Re Delhi Laws Act Case*<sup>93</sup> "the Supreme Court made the first observation that the principle that one organ should not perform functions that essentially belong to others is followed in India, unless the constitution has vested power in a body by a ratio of 5:2, the court decided that, in exceptional circumstances, the constitution's provisions show that the theory of separation of powers is not a fundamental part of our constitution. As a result, the separation of powers theory was initially viewed as an exception rather than a constitutional provision."

The issue of partition of abilities was again raised and conflict Between two points of support of democracy came in glare of exposure in the locus exemplary instance of *Keshava Singh case*<sup>94</sup>. "Keshava Singh was convicted of disobeying the Uttar Pradesh Assembly and sentenced to prison. He then filed a petition in the High Court through an attorney, claiming that his detention was illegal. He was granted bail by an Allahabad High Court order. Both the lawyer who argued the case and the two judges who granted Keshava Singh bail were summoned by the Uttar Pradesh assembly. They were accused of disobeying the House, and an arrest warrant was also issued for Keshava Singh. After that, the advocate, the two judges, and the petition were brought before the Allahabad High Court's full bench. The court issued a notice preventing the speaker of the assembly from issuing a warrant against them. When disagreement reached this point, the President got involved by referring the matter to the supreme court under Article 143 of the Indian Constitution." The **decision of the**

**High Court was upheld by the Supreme Court**, which ruled that the "judge who entertains the petition challenging any order of legislature imposing any penalty on the petitioner for its contempt... does not commit contempt of the said legislature and legislature is not competent to initiate proceedings against that judge. "As a result, this order maintains the judiciary's independence and upholds the principle of power separation.

In the case *State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal*,<sup>95</sup> J. D. K. Jain argued that the separation of powers doctrine needs to be reinterpreted in light of the changing political environment. He has proposed reading the doctrine not as a restriction on the power of the government, but rather as a means of preventing the government from being inactive or failing to meet the want of the society and aspirations of the people. The job of the Courts in this setting is vital. Through judicial reform and, especially, by broadening the nature of its authority under the name of complete justice, the Supreme Court in particular is fulfilling the role that is anticipated in a modern state.

### iii. Judicial Activism.

Today, the Indian Supreme Court is the world's most powerful apex court. Using its authority granted by Article 142 of the constitution, it is issuing various directives to meet the expectations of the people aspiration. This adds a new dimension to Indian judicial activism "The following two ideas serve as the foundation for judicial activism: (i) Theory of vacuum filling and (ii) Theory of Social Want."

### Year of judicial Activism under article 142 in India

1.1950-1970: This is the phase of the traditional judiciary, in which the judiciary primarily focuses on determining whether laws are constitutionally valid and has a limited functional domain.

<sup>93</sup> 1951 AIR (SC) 332

<sup>94</sup> IN Re Keshavasinh AIR 1965 SC 745

<sup>95</sup> AIR (2010) SC 148



2. 1970–2000: After the year 2000, this phase of judicial activism continues. During this phase, the judiciary renders numerous important judgments. After the Crisis was rejected in 1977, the High Court's extreme stance became apparent. Article 21 of the Indian Constitution, which addresses the protection of life and individual liberty, was altered as a result of the activist mindset, has been used to infer numerous rights that are essential to the welfare of citizens and article 142 also deals in the cases for example In the *Jain Hawala case*,<sup>96</sup> the courts sought to regulate investing agencies in high-profile corruption cases. In the *Zahira Habbibullah Sheikh V State of Gujarat*,<sup>97</sup> the courts issued directions and moved the criminal trial from Gujarat to Maharashtra. safeguard fairness and to keep away from political obstruction in the delicate case, *M.C Mehta V Association of India*<sup>98</sup> was the situation where PIL was petitioned for authorizing street security rules, to control politicization and criminalization of understudy chamber decisions in universities, Lingdoh Board was comprised and the proposals of this council were looked to be executed in *College of Kerala V Council of Principal's case*.<sup>99</sup> There the supreme court has worked out its power under complete justice. Most lobbyist yet dubious choices are conveyed by the zenith court under this arrangement.

### JUDICIAL RESTRAINT IN INDIA

A power of interpretation of law for the judiciary is judicial restraint. It is an idea that suggests judges should restrain their use of their authority by abstaining from interfering in the decision-making process or the proceedings with their personal preferences and viewpoints. Legislative requirements. It suggests that judges should hold off on overturning laws unless they are clearly unlawful. The legal professionals who favour judicial restraint contend that because judges lack the authority to make policy, they

must rely on legislative purpose, stare decisis, and the rigid application of judicial interpretation. Any restrictions on the judiciary's power that are stated or implied by the Constitution or any law are considered judicial restraints. The limitations relate to three areas:

1. Political color issues;
2. presumption of Legislative authority;
3. discretionary power in the administrative matter.

The court determined that because basic rights are suspended during an emergency, the writ of habeas corpus cannot be maintained in *ADM Jabalpur v. Shivkant Shukla*<sup>100</sup>. J. Katju stated in *State of U.P. v. Jeet Singh Bist* that the judiciary must exercise restraint and Don't interfere with the legislative and executive branches of government. The independence of the judiciary is safeguarded by judicial restraint.

If judicial activism is not properly targeted, it could end up becoming an unguided missile. According to Article 142, "The Supreme Court may pass such decree or make such orders in the exercise of its authority as are required for carrying out complete justice in any cause or matter standing before it." In a number of cases, such as *State of Tamil Nadu v. K. Balu*<sup>101</sup>, the prohibition of liquor stores within 500 meters of national highways led to the loss of many jobs. In another case, coal mining licenses issued prior to 1993 were revoked in 2014 with a fine of Rs. 295 per tonne of coal mined without granting the right of *audialterampartem*.<sup>102</sup> Subhash Kashinath Mahajan: SC/ST amendment act.

### Babri Masjid demolition case

In this instance, the Supreme Court's three-judge bench decision was reversed by a two-judge bench in an order. In light of the case's lengthy 25-year pending period, the court once more invoked Article 142 once the bigger

<sup>96</sup>Vineet Narayan V Union of India, 1998 AIR (SC) 889

<sup>97</sup> (2004) 5 SCC 353 110

<sup>98</sup>AIR (1988) SC 190 1

<sup>99</sup> AIR2010 SC 253

<sup>100</sup>1976 AIR 1207

<sup>101</sup>2017 2 SCC 281

<sup>102</sup> "Manohar Lal Sharma vs The Principal Secretary & Others on 25 August, 2014"

bench's ruling was presented. An additional retrial that was moved from Raebareli to Lucknow. The judgement supplanted the law and did not enhance it which is the core essence of the passing of laws.

The Supreme Court requests that judicial activism be restrained since it upsets the natural equilibrium of the organs. The organ that is not doing its duty should be controlled because the constitution does not stipulate that if other organs fail, the judiciary will take the throne and represent them all. Judicial restraint has been established to stop the emergence of a judiciary government. Nevertheless, judicial constraint does not imply duty neglect. The judicial system has been given authority to ensure that the legislative and executive branches act in accordance with the constitutionally defined scope of their authority. It is done to avoid tyranny of the few over the many.

1. ***Kihota Holohan v. Zachillu and Others***<sup>103</sup> - The Supreme Court was urged to consider whether the 52nd Amendment Act of 1985 was lawful. Regarding the legality of clauses restricting legislators' freedom, the court held silent. The concerns were not deemed significant enough by the court to render the amendment illegal.

2. ***State of Rajasthan v. Union of India***<sup>104</sup> - The court dismissed the petition because it addressed a political issue.

3. ***Union of India v. S.R. Bommai***<sup>105</sup> - The Art. 356 power exercise that had a political component was under scrutiny. The judiciary must stay away from involvement because doing so would mean submitting to the political dominion.

4. ***In Almitra H. Patel v. Union of India***,<sup>106</sup> - The court stated that it could only order the municipal authorities to carry out the legal requirements when asked if instructions should be given to the municipal corporations on how to make Delhi clean.

Although the Supreme Court took Article 142 too literally, which led to judicial activism and the above judgements, it was intended to benefit a broad segment of the population and even the nation as a whole. Now is the moment to provide checks and balances to the unrestricted authority granted by this Article.

### **HAS SUPREME COURT FAILED TO RESPECT THE INDIAN CONSTITUTION IN ITS JUDICIAL ACTIVISM?**

"It has often been said that the Indian Supreme Court has taken on the job of the Legislature by its activity; the accusation is that it has not only fulfilled the limited role of a law provider but has also taken on the role of a plenary lawmaking body, similar to the Legislature. Many advocates of judicial restraint have stated that certain remedies created by the Supreme Court, such as the "continuous mandamus," show the judiciary's disregard for judicial restraint." This is unfavorable because it shows disrespect for other equally powerful branches of the government. Of fact, our Constitution recognizes three equally powerful branches of government. No democracy or constitution grants the judiciary total authority. Any attempt to rewrite the Constitution by the court should be viewed as unconstitutional. A judicial act that is solely motivated by objectives other than those outlined in the Constitution must be regarded as constitutionally illegitimate, and it must be stopped in its tracks. The fundamental query that follows is whether the Supreme Court has upheld judicial activism while adhering to the doctrine of division of powers. The answer must be an unequivocal affirmative. The Constitution has always been upheld by the Court. It has ably carried out its main duty of preserving the Constitution's objectives.<sup>107</sup> The Court has a constitutional obligation to uphold the law, not for every infraction but only for those that have serious repercussions for the general public. The constitutional goal of socioeconomic fairness served as the Court's inspiration, but it has been somewhat circumspect in its reform. Only when

<sup>103</sup>AIR 1993 SC 412"

<sup>104</sup>;(1977) INSC 145(6TH MAY 1977)"

<sup>105</sup> "1994 (3) SCC 2734"

<sup>106</sup>(1998) 2 SCC 416."

<sup>107</sup>"Overstepping by judiciary in Judicial Activism: Reaction by other organs," 9.

both the legislative and executive branches have failed to pass legislation in a certain area, that the Court has determined that the courts must step in, and that too only until the Parliament passes appropriate legislation that addresses the issue. The Court has weathered the test of time and proven to be an exemplary example of an active judiciary in a democratic setting because it is realistic and cautious. 93 The aforementioned examples so unequivocally demonstrate that Indian courts merely gave specific instructions, not breaking the required constitution. While some of them undoubtedly have a legislative bent, they were merely written to fill in the gaps until the legislature passed a specific statute to address the issue.<sup>108</sup>

#### ARTICLE 142: IRRETRIEVABLE BREAKDOWN OF MARRIAGE

By using its competence to take up cases under Article 142, the Supreme Court has often utilized its inherent powers in specific divorce proceedings solemnized by statute laws, personal laws, or customary laws. The Indian constitution gives several organs considerable authority in order to maintain a peaceful and conflict-free society. In a similar vein, the Indian Supreme Court is the supreme court, which has the authority to grant special leave in response to orders or decrees issued by any lower court in the nation. It is also responsible for providing the people with justice by passing decrees or other orders required to provide full redress in any case or matter that is currently before it. These are popularly known as "in-hand powers" or inherent powers of the Supreme Court have the sole purpose of providing full justice to anybody at any time. As a result, the Supreme Court has frequently tended to favour using Article 142 in many cases and has subsequently issued rulings to provide full justice to the individuals who have been wronged.

Therefore, these powers have been granted in order to guarantee that no party is left without recourse during his last resort and to ensure that justice is administered without regard to jurisdictional constraints. Thus, it is reasonable for us to examine the current interpretation of Article 142, determine whether or not such powers require judicial restraint, and examine a specific instance in which the existing provisions fail to uphold the rule of law, giving the Supreme Court the authority to serve as a remedy. The Supreme Court ruled in *Supreme Court Bar Association vs Union Of India*<sup>109</sup> that such orders should be issued by the court where it is required to provide full justice. The power should, however, "be used sparingly rather than frequently. "The case of R. Srinivas Kumar v. R. Shametha<sup>110</sup>, in which the Supreme Court granted divorce for a marriage solemnized under customary laws by using its authority granted under Article 142. The court stated that there had been an irretrievable breakdown of the marriage between the parties considering the facts of the case and even though there was a lack of consent between the parties, and divorce had to be granted to ensure complete justice to the aggrieved parties. Now, if these powers are limited, a fair situation emerges where one or both parties are rendered helpless as a result of the limitations set forth by the legislature or the judiciary itself. As a result, in my opinion, it is legitimate to allow the Supreme Court to exercise the inherent powers that were granted to it for the benefit of the people, as doing otherwise could have unintended consequences and prevent the court from providing full justice to the people.

According to Adv. K.K. Venugopal,<sup>111</sup> this specific item could only be utilized to augment the legislation rather than replace it. In light of this being the primary justification for the Supreme Court's undefined jurisdictional powers, it stands to reason that these are only granted so that

<sup>108</sup>Hon'ble Mr. K.G. Balakrishnan, Judicial Activism under the Indian Constitution available at [http://www.sci.nic.in/speeches/speeches\\_2009/judicial\\_activism\\_tcd\\_dublin\\_14-10-09.pdf](http://www.sci.nic.in/speeches/speeches_2009/judicial_activism_tcd_dublin_14-10-09.pdf)

<sup>109</sup>(1981) 1 SCC 436

<sup>110</sup>(2019) 9 SCC 409

<sup>111</sup>Article 142 and the need for judicial restraint - The Hindu, "available at: <https://www.thehindu.com/opinion/op-ed/article-142-and-the-need-for-judicial-restraint/article18474919.ece> (last visited November 15, 2022).



they can be used to address instances in which the law's current provisions are ineffective. Such powers only apply in certain predefined conditions and are inherent in nature. They are also somewhat discretionary. Therefore, until and unless the Hindu Marriage Act of 1955 contains a specific provision dealing with the irretrievable breakdown of marriage as a ground for divorce, till then, we have no other choice than to deal with the marriage bonds issue here in this article under Article 142 exclusively. Since those rights are meant to be employed in order to legitimate the administration of justice, there must be clear and factual grounds for the exercise of this discretionary power. These inherent abilities, along with the Supreme Court's role as the protector of justice in the modern world, can be used to defend against the injustice that the Court sees and to maintain that position. Therefore, it should be used carefully to ensure that justice is served until the necessary revisions and particular provisions are included in the desired piece of law.

### CONCLUSION/SUGGESTION

"The creators of the Indian Constitution have learned from the operation of all written international constitutions. They are aware of the challenges our constitution faces in operating. One of the fundamental elements of our constitution, as decided by the framers of the constitution of India, was the division of powers. However, the Framers' idea of separation of powers has a distinct basis. While each of the three state organs is autonomous within its own domain, there are checks and balances. They are permitted to make changes to other organs. They can step in, but only in urgent instances, with the goal of upholding the rule of law and carrying out full justice. the duty of guarding and the examination of the Supreme Court's decisions rendered under Article 142 shows that the court gradually came to understand the rationale for the introduction of the provision granting the Supreme Court the authority to act in the interests of full justice.

Furthermore, it is clear from the aforementioned instances that the supreme court did not restrict the legislative branch's ability to enact laws to address various problems, nor did it impose any restrictions on the executive branch's ability to make choices that would ensure justice. It is incumbent to the judiciary to protect constitutional authority. Judiciary has the authority to conduct judicial reviews for this."

In my finding there is no need to limit the power of supreme court but limit the discretion of single bench and pertinently in those matter which is necessary for the society at large and involvement of question of law, should be considered by constitution bench so, that the decision-making process can be guided by the opinions of five separate judges. The lower courts must also have the authority to award divorce on the grounds of irretrievable breakdown. In some situations, there is no hope of reconciliation and the marriages are irretrievably shattered. However, courts cannot award a divorce decision since the highest Court alone has the authority to do so under Article 142 of the Constitution, and no other court has that authority. The spouses suffer as a result, leading miserable lives. Other courts must have the authority to give divorce and it must be included as a reason for divorce with appropriate safeguards. Some persons who are destitute are unable to approach the Supreme Court and live their whole of their golden period of life in misery and waiting or divorce.

### BIBLIOGRAPHY

1. M.P. Jain, Indian Constitutional Law 98 (Kamal Law House, Calcutta,)
2. Shailendra Kumar, "Sketching the Limits of Article 142 of the Constitution of India: A Constitutional Necessity" in S. Khurshid, S. Luthra, et.al, *Judicial Review: Process, Powers, and Problem* 365-383(Cambridge: Cambridge University Press, 2021)
3. Constitution of the People's Republic of Bangladesh, art. 104

4. The constitution of Islamic republic of Pakistan, art. 187
5. Rajat Pradhan, "Ironing out the Creases: Re-examining the Contours of Invoking Article 142(1) of the Constitution, (2011) 6 NSLR 1
6. Supreme Court, Complete Justice and Article 142: Scope for Unlimited Judicial Action, 7 Student Adv (1995) 82
7. R. Prakash, Complete Justice Under Article 142, (2001) 7 SCC J-14
8. Deontology and Consequentialism in the Indian Context: Analyzing the Morality of the Supreme Court's Powers under Article 142, 4.1 NLIU LR (2014) 1
9. Article 142: Incomplete Justice? CNLU LJ (3) [2013] 40
10. Carma Arts & Crafts (P) Ltd. v. MCD, 2007 SCC Online Del 384.

