

## Complete Justice Under Article 142

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Article 142 of the Constitution of India reads:

"142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.-(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made 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."

The object of Article 142(1) is that the Supreme Court must not be obliged to depend on the executive for the enforcement of its decrees and orders. Such dependence would violate the principles of independence of the judiciary and separation of powers, both of which were held to constitute the basic structure of the Constitution. The interpretation of complete justice by the Apex Court has given it a different dimension which was not intended by the founding fathers.

The interpretation of complete justice has not been consistent. From 1963 to 1989, the interpretation of complete justice was that it cannot be adverted to, to defeat statutory provisions. The first case in the series is *Prem Chand Garg v. Excise Commr., U.P., Allahabad*<sup>1</sup>. In this case, the question before the Constitution Bench was that, whether the Supreme Court could frame a rule or issue an order which would be inconsistent with any of the fundamental rights. Answering the question in the negative, Gajendragadkar, J. (as the learned Chief Justice then was) for the majority observed<sup>2</sup>:

"An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws." (emphasis supplied)

This view was approved by the same learned Judge in *Naresh Shridhar Mirajkar v. State of Maharashtra*<sup>3</sup> which was decided by a larger Bench of nine Hon'ble Judges. Once again, the proposition made in *Garg* case<sup>1</sup> was approved by a seven-Judge Bench in *A.R. Antulay v. R.S. Nayak*<sup>4</sup>. A three-Judge Bench of the Apex Court reiterated this view in *Arjun Khiamal Makhijani v. Jamnadas C. Tuliani*<sup>5</sup> thus:

"... Article 142 does not contemplate doing justice to one party by ignoring mandatory statutory provisions and thereby doing complete injustice to the other party by depriving such party of the benefit of the mandatory statutory provisions."<sup>6</sup>

This view was overturned by the Supreme Court in *Delhi Judicial Service Assn. v. State of Gujarat*<sup>7</sup> wherein K.N. Singh, J. (as he then was) for a three-Member Bench observed:

"This Court's power under Article 142(1) to do 'complete justice' is entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court."<sup>8</sup>

These observations were approved by the Constitution Bench which decided *Union Carbide Corpn. v. Union of India*<sup>9</sup>. Venkatachaliah, J. (as he then was) held that prohibitions or limitations or provisions contained in ordinary law cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142.

In *V.C. Mishra, Re*<sup>10</sup> which was overruled by a Constitution Bench in *Supreme Court Bar Assn. v. Union of India*<sup>11</sup> the Apex Court reasserted that *Prem Chand Garg* case<sup>1</sup> was no longer good law in view of the law laid down in *UCC* case<sup>9</sup>. In *Bonkya v. State of Maharashtra*<sup>12</sup> a two-Judge Bench held that the amplitude of powers available to the Supreme Court under Article 142(1) of the Constitution of India is, normally speaking, not conditioned by any statutory provision but it cannot be lost sight of that the Court exercises jurisdiction under Article 142 of the Constitution with a view to do justice between the parties but not in disregard of the relevant statutory provisions. The unbridled nature of the power was reiterated in *Keshabhai Malabhai Vankar v. State of Gujarat*<sup>13</sup>. The Apex Court held that undoubtedly it has the power untrammelled by any statutory limits.

In *Supreme Court Bar Assn. v. Union of India*<sup>11</sup> though the Court took the position that Article 142 gives it unlimited power, it seems it adopted a cautious and balanced approach. Dr A.S. Anand, J. (as the learned Chief Justice then was) for the unanimous Constitution Bench observed: (SCC p. 432, para 48)

"Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject."

Supreme Court Bar Assn. case<sup>11</sup> was referred to in *M.S. Ahlawat v. State of Haryana*<sup>14</sup> wherein it was held that the order passed by the Supreme Court by issuing a show-cause notice and conviction summarily under Section 193 of the Indian Penal Code for making false statement, was one without jurisdiction and such an order could not be passed relying on Article 142. In *M.C. Mehta v. Kamal Nath*<sup>15</sup> it was held that the exercise of power under Article 142 of the Constitution cannot be pressed into aid in a situation where action under it would amount to contravention of the specific provisions of a statute. This position was reiterated in *E.S.P. Rajaram v. Union of India*<sup>16</sup> by a five-Judge Constitution Bench wherein the earlier decisions on this point including Supreme Court Bar Assn. case<sup>11</sup> were referred to. D.P. Mohapatra, J. speaking for the unanimous Constitution Bench observed thus<sup>17</sup>:

"13. In the case of *State of Punjab v. Bakshish Singh*<sup>18</sup> concerning a departmental proceeding against a police constable this Court rejecting the contention raised by the appellant that the Supreme Court could not cure inconsistency because the respondent had not filed any cross-appeal, this Court removed the inconsistency by invoking Article 142 of the Constitution and by referring to Order 41 Rule 33 and Section 107(1)(a) of the Code of Civil Procedure, 1908. This Court referring to the decision of the Constitution Bench in Supreme Court Bar Assn. case<sup>11</sup> reiterated the position that while exercising power under Article 142 of the Constitution the Court cannot ignore the substantive right of a litigant while dealing with a cause pending before it and can invoke its power under Article 142. The power cannot, however, be used to supplant substantive law applicable to a case. This Court further observed that Article 142 even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby achieve something indirectly which cannot be achieved directly."

It is submitted that the decisions rendered in *Garg*<sup>1</sup> and *Antulay*<sup>4</sup> cases reflect the correct position in law and the contra-view taken in *Delhi Judicial Service Assn.*<sup>7</sup>, *UCC*<sup>9</sup>, *Mohd. Anis*<sup>19</sup> and *Re V.C. Mishra*<sup>10</sup> is not correct for the following reasons:

(a) The proposition that ordinary laws cannot run counter to constitutional provisions had its beginning in *Marbury v. Madison*<sup>20</sup>. In this historic decision, Chief Justice John Marshall of the US Supreme Court struck down Section 13 of the Judiciary Act, 1789 as unconstitutional. Likewise, the Supreme Court of India also has the power of judicial review and it enjoys the power to strike down statute law. But without striking down, the Supreme Court cannot ignore or disregard statutory provisions merely because Article 142 is a constitutional provision.

(b) Article 142 is an article which deals with procedural aspects and the two words "complete justice" cannot enlarge the scope of the article. In construing the expression "complete justice", the scheme of the article should be looked into. It is not right to construe words in a vacuum and then insert the meaning into an article. Lord Greene observed in *Bidie v. General Accident, Fire and Life Assurance Corpn.*<sup>21</sup>:

"The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words in vacuo, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of prima facie meaning which you may have to displace or modify. It is to read the statute as a whole and ask oneself the question: 'In this state, in this context, relating to this subject-matter, what is the true meaning of that word?' " (emphasis supplied)

Lord Greene is not alone in this approach. In *Bourne v. Norwich Crematorium*<sup>22</sup> it was observed:

"English words derive colour from those which surround them. Sentences are not mere collections of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put back again into the sentence with the meaning which you have assigned to them as separate words, so as to give the sentence or phrase a meaning which as a sentence or phrase it cannot bear without distortion of the English language." (emphasis added)

Holmes, J. in *Towne v. Eisner*<sup>23</sup> had the same thought. The learned Judge observed:

"A word is not a crystal, transparent and unchanged: it is the skin of living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used."

Reference may also be made to the observations of Gwyer, C.J.:

"A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implications of the context, and even by considerations arising out of what appears to be the general scheme of the Act." (Per Gwyer, C.J. - *The Central Provinces and Berar Act*<sup>24</sup>, FCR at p. 42)

It is submitted that the observations extracted above squarely apply for the interpretation of complete justice.

(c) Complete justice should be according to rule of law which is a basic feature of the Constitution vide *Kesavananda Bharati v. State of Kerala*<sup>25</sup>, *Indira Nehru Gandhi v. Raj Narain*<sup>26</sup> and *P. Sambamurthy v. State of A.P.*<sup>27</sup>

(d) Article 142(1) by employing the words "complete justice" reflects Section 151 of the Civil Procedure Code, 1908 and Section 482 of the Criminal Procedure Code, 1973. All these provisions deal with inherent powers and they are more or less similarly worded. Section 151 CPC reads:

"151. Saving of inherent powers of court.â€"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

Section 482 of the Code of Criminal Procedure, 1973 reads:

"482. Saving of inherent powers of High Court.â€"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

Article 142(1) substantially uses the words occurring in the aforesaid statutory provisions which are procedural laws. Order XLVII, Rule 6 of the Supreme Court Rules, 1966 is also similarly worded. Therefore complete justice can be done to cure procedural infirmities and it does not confer any substantive power.

(e) Article 118 of the Draft Constitution became Article 142 of the present Constitution. No debate has taken place on the floor of the Constituent Assembly on complete justice while Article 118 of the Draft Constitution was considered by the Constituent Assembly. In fact the makers of the Constitution do not seem to have thought of conferring such a power as interpreted by the Supreme Court in *Union Carbide Corpn. case*<sup>9</sup>. The absence of any discussion on "complete justice" would only go to show that the article is intended for procedural purposes only. Though Article 118 to the Draft Constitution was adopted without any debate on it, it was referred to, when Article 112 of the Draft Constitution<sup>28</sup> was debated. Pandit Thakar Das Bhargava expressed his views as follows<sup>29</sup>:

"... At the same time the jurisdiction of the article is almost divine<sup>28</sup> in its nature, because I understand that this Supreme Court will be able to deliver any judgment which does complete justice between States and between the persons before it. If you refer to Article 118, you will find that it says: '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.' "

Shri Alladi Krishnaswami Ayyar also made mention of complete justice as under<sup>30</sup>:

"... If only we realize the plenitude of the jurisdiction under Article 112<sup>31</sup>, if only, as I have no doubt, the Supreme Court is able to develop its own jurisprudence according to its own light, suited to the conditions of the country, there is nothing preventing the Supreme Court from developing its own jurisprudence in such a way that it could do complete justice in every kind of cause or matter."

(f) The marginal note appended to Article 142 supports the view that the article does not confer any substantive power on the Apex Court. The marginal note of Article 142 reads: "Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc." The marginal note speaks of enforcement and discovery and not about complete justice. Had the makers of the Constitution wanted to confer the power to override statutory provision, its importance would have been spelt out in the marginal note. It is settled law that the marginal note is a part of the statute or the Constitution as the case may be and a permissible internal aid in construing a statute. Though the marginal note cannot cut down the scope of the enactment, it can be resorted to if there is an ambiguity in the enactment. The Supreme Court adverted to and relied on the marginal note of Article 368 in *Golak Nath v. State of Punjab*<sup>32</sup>, a decision by an eleven-Judge Constitution Bench. In *Bengal Immunity Co. Ltd. v. State of Bihar*<sup>33</sup>, a seven-Judge Constitution Bench of the Supreme Court construed the marginal note of Article 286 to find out the meaning of the phraseology employed in the article. Thus viewed, the marginal note of Article 142 suggests that the article concerns itself with procedural aspects.

(g) The words "complete justice" cannot be read in isolation. They occur in Article 142 of which clause (2) also forms part. A reading of clause (2) of Article 142 proves beyond doubt that Article 142 is an article of procedure.

Article 142(2) confers three different powers on the Supreme Court. They are:

- (i) Securing the attendance of persons before it.
- (ii) Discovery and production of documents.

(iii) Investigation and punishment of contempt of itself.

The first two powers belong to the area of the law of evidence which is admittedly a procedural law. The third aspect if read with Article 129 shows that it also deals with an aspect of procedure. Our Constitution devotes two articles for dealing with contempt power of the Supreme Court. They are Articles 129 and 142(2). Article 129 says that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for the contempt of itself. It is supplemented by Article 142(2) which inter alia, deals with the investigation and punishment of the contempt of the Apex Court. Article 129 confers substantive power on the Apex Court to punish for contempt of itself. Article 142(2) supplements it by specifically conferring the power of investigation and punishment. The investigation area belongs to the area of the law of procedure.

These cumulative factors strongly strengthen the view that Article 142 is a provision of procedure and therefore the interpretation put on "complete justice" to the effect that statutory provisions may be overridden, is clearly erroneous. Then a question may arise as to what for the complete justice provision is inserted in Article 142. This was answered by Gajendragadkar, J. (as he then was) in *Prem Chand Garg v. Excise Commr., U.P., Allahabad*<sup>1</sup> in the following words: (AIR p. 1003, para 13)

"It may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court, for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties." (emphasis supplied)

These observations signify that the complete justice provision can be invoked for procedural purposes only. Therefore Article 142 does not confer substantive power on the Supreme Court to do "complete justice".

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- AIR 1963 SC 996 Return to Text
- Ibid., at p. 1002, para 12. Return to Text
- AIR 1967 SC 1 at p. 14 Return to Text
- (1988) 2 SCC 602 at pp. 656, 730 Return to Text
- (1989) 4 SCC 612 Return to Text
- Ibid., at p. 623, para 11 Return to Text
- (1991) 4 SCC 406 Return to Text
- Ibid., at p. 462, para 51 Return to Text
- (1991) 4 SCC 584. See also *Maniyeri Madhavan v. Sub-Inspector of Police*, (1994) 1 SCC 536 in which a Division Bench of the Supreme Court held that it need not follow the procedure prescribed under Section 6 of the Delhi Special Police Establishment Act, 1946 when the Court exercises jurisdiction under Article 142 of the Constitution. Another two-Judge Bench in *Mohd. Anis v. Union of India*, 1994 Supp (1) SCC 145 held that Article 142(1) being a constitutional power, cannot be limited or conditioned by any statutory provision. Return to Text
- (1995) 2 SCC 584 Return to Text
- (1998) 4 SCC 409 Return to Text
- (1995) 6 SCC 447 Return to Text
- 1995 Supp (3) SCC 704 Return to Text
- (2000) 1 SCC 278 Return to Text
- (2000) 6 SCC 213 Return to Text
- (2001) 2 SCC 186 Return to Text
- Ibid., at p. 195, para 13 Return to Text
- (1998) 8 SCC 222 Return to Text
- 1994 Supp (1) SCC 145 Return to Text
- 1 Cranch 137 (1803) Return to Text
- (1948) 2 All ER 995, 998 Return to Text
- (1967) 2 All ER 576, 578 Return to Text
- 245 US 418, 425 : 62 L Ed 372, 376 Return to Text
- 1939 FCR 18 : AIR 1939 FC 1, 7 Return to Text
- (1973) 4 SCC 225 Return to Text
- 1975 Supp SCC 1 Return to Text
- (1987) 1 SCC 362 Return to Text
- Article 136 of the present Constitution. Return to Text

- Constituent Assembly Debates, Vol. VIII, p. 638. Return to Text
- Ibid., at p. 639. Return to Text
- Present Article 136 of the Constitution of India. Return to Text
- AIR 1967 SC 1643 Return to Text
- AIR 1955 SC 661 Return to Text