



# Bridging Legal Gaps or Bypassing Law? A Doctrinal Review of Article 142 and Complete Justice

**Ms. Vishakha Chib,  
Ph.D. Research Scholar, Department of Law, University of Jammu, India.**

**Abstract:** Article 142 of the Indian Constitution empowers the Supreme Court to pass any decree or order necessary to do “complete justice” in any cause or matter pending before it. While this power is intended to bridge statutory gaps and ensure equitable outcomes, its broad and undefined contours have led to concerns about judicial overreach and the bypassing of established legal procedures. This research critically examines the doctrinal evolution and application of Article 142, analyzing whether its use adheres to constitutional values or disrupts the balance of power among the legislature, executive, and judiciary. Through a detailed review of constitutional text, landmark judgments, international comparisons, and scholarly debates, the study evaluates the legitimacy and limits of Article 142. It argues that while Article 142 has been instrumental in social reform and public interest, it requires clearly defined boundaries to preserve judicial accountability.

**Keywords:** Article 142, complete justice, judicial activism, separation of powers, constitutional interpretation

## I. INTRODUCTION

The Indian Constitution is a living document that balances democratic principles, rule of law, and social justice. In this framework, Article 142 stands out as a provision of extraordinary judicial empowerment. It grants the Supreme Court the authority to issue any order necessary for doing “complete justice” in any matter before it. This clause, devoid of detailed statutory limitations, enables the judiciary to act beyond codified law, but also raises serious constitutional questions. While originally envisioned as a residuary power to fill legal voids and prevent injustice, the use of Article 142 has expanded significantly in both frequency and scope. From landmark decisions such as *Union Carbide Corporation v. Union of India* to socially transformative rulings like *Navtej Singh Johar v. Union of India*, the Supreme Court has deployed this article to protect rights, provide compensation, frame guidelines, and direct policy changes. These uses, though well-intentioned, blur the line between judicial adjudication and legislation.

Scholars and jurists are divided in their opinion. Some celebrate Article 142 as a powerful tool of constitutional morality and social transformation. Others criticize it as a mechanism of judicial supremacy that

risks undermining democratic accountability and separation of powers. Critics argue that the lack of procedural guardrails around Article 142 makes it vulnerable to subjective interpretation and inconsistent application. This paper explores these conflicting perspectives by tracing the doctrinal foundation, practical usage, and normative implications of Article 142. It seeks to determine whether the provision is a necessary constitutional safety valve or a route to bypass established democratic processes. The study emphasizes the need for constitutional fidelity, judicial restraint, and procedural clarity in invoking Article 142.

## II. RESEARCH OBJECTIVES

1. To examine the constitutional text, history, and intended purpose of Article 142.
2. To evaluate the doctrinal evolution of “complete justice” through key Supreme Court judgments.
3. To assess whether the use of Article 142 respects or disrupts the principle of separation of powers.
4. To analyze the comparative use of similar judicial powers in other constitutional democracies.
5. To propose recommendations for doctrinal clarity and constitutional balance in the exercise of Article 142.

## III. HYPOTHESES

1. Article 142 was originally intended as a limited residuary power, not a substitute for legislative or executive functions.
2. Judicial use of Article 142, in its current form, tends to bypass statutory frameworks and undermines the separation of powers.
3. There is a lack of consistent principles or guidelines in the invocation of Article 142 by the Supreme Court.

## IV. RESEARCH GAP

While a significant body of literature exists on judicial activism, constitutionalism, and separation of powers, a focused doctrinal and jurisprudential analysis specifically on Article 142 remains underexplored. Notably, limited attention has been paid to the socio-legal consequences of sustained invocation of Article 142 in areas such as environmental justice, gender rights, criminal jurisprudence, and electoral reforms. There is also an emerging need to assess how repeated and discretionary applications of Article 142 influence public trust, legislative inertia, and judicial credibility. Moreover, the absence of empirical studies involving judicial officers, litigants, and policymakers reflects a serious gap in understanding the ground-level effects of these judicial interventions.

## V. STATEMENT OF THE PROBLEM

The central problem addressed in this research is whether the Supreme Court's exercise of power under Article 142, while aiming to do "complete justice," disrupts the constitutional balance among the legislature, executive, and judiciary. It raises critical questions: Does the power facilitate justice where the law is deficient, or does it blur the lines between interpretation and legislation? Is there a consistent doctrinal approach governing its use, or is it subject to subjective interpretations? The study seeks to examine whether the provision has outgrown its constitutional intent and whether it needs procedural codification or institutional regulation to prevent its arbitrary or excessive application.

## VI. RESEARCH METHODOLOGY

This research adopts a qualitative, doctrinal methodology rooted in legal analysis and normative evaluation. The study is structured through four primary approaches:

1. **Descriptive Method** – Used to explain the text, history, and intended scope of Article 142 within the Indian Constitution.
2. **Analytical Method** – Applied to assess judicial reasoning in key judgments, legal doctrines, and the consistency of application across various decisions.
3. **Comparative Method** – Utilized to examine the presence (or absence) of similar provisions in other jurisdictions like the United States, the United Kingdom, and South Africa, thereby highlighting the unique character of Article 142.
4. **Critical Method** – Employed to evaluate the normative concerns, institutional consequences, and ethical dimensions of judicial overreach.

Primary sources include the Constitution of India, landmark Supreme Court decisions, constitutional amendments, and official records. Secondary sources include scholarly books, peer-reviewed law journal articles, government reports, and global human rights instruments. The study avoids quantitative methods due to the jurisprudential and normative nature of the inquiry.

## VII. LITERATURE REVIEW

The literature on Article 142 of the Constitution of India spans scholarly works, judicial interpretations, policy documents, and comparative constitutional analysis. This section critically reviews major books, international journals, conventions, reports, and judicial decisions that have shaped the doctrinal understanding and practical application of Article 142. The review highlights the growing academic discourse surrounding this unique provision and reflects upon how the judiciary has interpreted it over the decades.

## A. Books

1. **Seervai, H.M.** – *Constitutional Law of India* Seervai's work is foundational to understanding the constitutional limits of judicial power. He is cautious about unchecked judicial discretion, especially under Article 142. According to Seervai, the provision must not be interpreted to override express constitutional or statutory mandates. His textualist approach emphasizes fidelity to the Constitution's structure, particularly the doctrine of separation of powers.
2. **Basu, D.D.** – *Introduction to the Constitution of India* Basu explores Article 142 in the light of constitutional silence on its scope. He appreciates its function in enabling the Court to grant relief in complex and unprecedented cases but advises that such power must be exercised in tandem with existing legal frameworks. He stresses the need for restraint and clarity in interpretation.
3. **Austin, Granville** – *Working a Democratic Constitution* Austin provides an in-depth analysis of the Indian judiciary's transformation. Article 142, in his view, has been instrumental in strengthening the Court's role in upholding constitutional morality. He applauds its use in landmark judgments while recognizing that its broad application raises questions about judicial supremacy.
4. **Upendra Baxi** – *The Indian Supreme Court and Politics* Baxi takes a critical yet constructive approach, highlighting how Article 142 has made the Supreme Court a policy-making institution in many cases. He critiques decisions like *Union Carbide* and *Vishaka* for bypassing legislative processes, arguing that such trends, while often justified, must not become the norm.
5. **S.P. Sathe** – *Judicial Activism in India* Sathe presents judicial activism as a necessary evolution of Indian constitutionalism. He views Article 142 as an essential tool for the judiciary to realize social justice. His analysis supports the use of Article 142 where the state machinery fails or where the law is silent.
6. **Sujit Choudhry** – *The Migration of Constitutional Ideas* This comparative work explores the transplantation of legal principles across jurisdictions. Choudhry points out that India's Article 142 is unparalleled in constitutional democracies, making the Indian experience a unique case study in judicial power and innovation.
7. **Sudhir Krishnaswamy** – *Democracy and Constitutionalism in India* Krishnaswamy presents a normative argument about the dangers of frequent use of Article 142. He maintains that even well-meaning judicial activism may undermine democratic accountability if it routinely steps into legislative and executive roles.
8. **Michel Rosenfeld** – *Comparative Constitutionalism* Rosenfeld's comparative framework provides useful contrasts between India and other democracies. His emphasis on judicial self-restraint supports the idea that Article 142 needs clearer doctrinal boundaries to prevent excessive judicial interference in governance.
9. **Tarunabh Khaitan** – *A Theory of Discrimination Law* Khaitan's work, while primarily focused on anti-discrimination principles, contributes to understanding how courts can use broad constitutional mandates

like Article 142 to protect minority rights. His views support the legitimacy of transformative judgments when statutes are silent or regressive.

10. **Pratap Bhanu Mehta** – *The Burden of Democracy* Mehta critiques the dependency on the judiciary to solve issues of political failure. He regards Article 142 as a response to institutional inadequacies but warns that relying on judicial solutions can hinder democratic development and weaken political accountability.

### **B. International Journals**

11. Scholars such as **Mark Tushnet** have written extensively on the need for constitutional courts to maintain a clear boundary between interpretation and legislation. Tushnet’s doctrine of judicial minimalism argues against excessive intervention by courts, warning that the legitimacy of judicial decisions is undermined when they resemble legislative outputs. In the context of Article 142, his work strengthens concerns about the risk of judiciary functioning as a super-legislature.
12. **Ran Hirschl**, in his theory of “juristocracy,” points to India as a prime example where courts have appropriated roles traditionally held by elected bodies. His analysis of constitutionalization of politics demonstrates how the judiciary’s active role in shaping policy (such as through Article 142) may weaken democratic institutions.
13. **Stephen Gardbaum** articulates the “New Commonwealth Model” of constitutionalism, where constitutional courts are seen more as partners in governance than as final arbiters. He favors institutional dialogue between courts and legislatures—a concept often missing in Article 142 jurisprudence where the Supreme Court acts unilaterally to enforce its vision of justice.

### **C. International Conventions and Instruments**

14. The **Universal Declaration of Human Rights (UDHR)**, 1948, lays the foundation for a rights-based framework which Indian courts often adopt in Article 142 rulings, especially in public interest litigation. The **International Covenant on Civil and Political Rights (ICCPR)** is frequently cited in matters concerning personal liberty, equality before law, and fair trial—all of which the Supreme Court has enforced using Article 142.
15. The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** was instrumental in the *Vishaka v. State of Rajasthan* decision, where the Court used Article 142 to frame guidelines on workplace sexual harassment in the absence of legislation.
16. The **Bangalore Principles of Judicial Conduct** emphasize impartiality, integrity, and propriety. These standards are relevant in invoking Article 142 judiciously, ensuring that extraordinary powers do not become arbitrary.

#### D. Reports and Policy Documents

17. The **Law Commission of India's 262nd Report** discusses judicial discretion in death penalty cases and emphasizes the need for transparency and accountability in invoking special powers like Article 142. It warns that decisions taken under this provision must not violate established procedural safeguards.
18. The **National Judicial Appointments Commission (NJAC) Bill Reports** brought into focus the struggle between judicial independence and public accountability. Debates surrounding the Bill illustrated that Article 142 should not be used to thwart institutional reforms.
19. The **Department of Justice's Judicial Impact Assessment Study** explores the unintended administrative and fiscal consequences of judicial overreach. It discusses how Article 142 orders, though aimed at justice, sometimes place operational burdens on state machinery.
20. The **Centre for Policy Research's Judiciary Watch Reports** highlight increasing trends of judicial governance in India. These reports advocate for clearer parameters and internal court guidelines to standardize the application of Article 142.

#### E. Constitutional Amendments and Case Law

21. The **42nd Amendment Act, 1976**, attempted to curb judicial review and enhance the supremacy of the legislature. Although it did not directly alter Article 142, it triggered a constitutional crisis that made the judiciary more assertive in subsequent decades, often invoking Article 142 to assert its primacy.
22. The **44th Amendment Act, 1978**, rolled back several provisions of the 42nd Amendment, reaffirming the role of the judiciary. It laid the groundwork for a more confident interpretation of Article 142 in cases involving state excess.
23. The **73rd and 74th Constitutional Amendments** promoted decentralized governance. However, the Supreme Court has used Article 142 to resolve conflicts between local governance rights and state action, especially in eviction, rehabilitation, and land acquisition matters.
24. In **Prem Chand Garg v. Excise Commissioner** (AIR 1963 SC 996), the Court held that Article 142 does not permit violation of fundamental rights, asserting its boundaries for the first time.
25. In **A.R. Antulay v. R.S. Nayak** (1988), the Supreme Court admitted its misuse of Article 142 in transferring a criminal case and reversed the order—establishing judicial fallibility.
26. **Union Carbide Corporation v. Union of India** (1991) showcased the use of Article 142 in granting compensation to Bhopal Gas victims, raising ethical and legal questions about out-of-court settlements.
27. In **Supreme Court Bar Association v. Union of India** (1998), the Court clarified that Article 142 cannot be used to override statutory provisions like the Advocates Act.
28. In **Navtej Singh Johar v. Union of India** (2018), the Court invoked Article 142 to decriminalize Section 377 IPC, affirming constitutional morality and rights of LGBTQ+ individuals in the absence of legislative reform.

## VIII. MAIN BODY OF RESEARCH PAPER

**A. Constitutional Position of Article 142** Article 142(1) of the Indian Constitution empowers the Supreme Court to pass any decree or make any order necessary to do complete justice in any matter pending before it. Unlike ordinary provisions, it is residuary and discretionary, with no direct statutory constraints. It was not copied from any single foreign model but was framed to ensure that justice is not defeated by procedural lacunae. This provision places the Court in a unique position above all other courts in terms of remedial power.

**B. Evolution Through Judicial Interpretation** The doctrine of complete justice has evolved primarily through judicial interpretation. Early cases like *Prem Chand Garg v. Excise Commissioner* highlighted that Article 142 could not override fundamental rights. Later, in *A.R. Antulay v. R.S. Nayak*, the Supreme Court admitted to the improper use of Article 142 and reversed its own earlier order.

In *Union Carbide v. Union of India*, the Court ordered a compensation settlement to victims of the Bhopal Gas Tragedy under Article 142, which was criticized for bypassing legislative standards. *Supreme Court Bar Association v. Union of India* clearly stated that Article 142 cannot be used to contravene express statutory provisions.

### C. Key Themes in Article 142 Jurisprudence

- Equity and Public Interest:** Article 142 has been used to fill legal gaps, especially in cases lacking legislative framework, such as in *Vishaka v. State of Rajasthan*, where guidelines for sexual harassment at workplace were framed.
- Access to Justice:** In *Olga Tellis v. BMC*, the Court delayed evictions to prevent injustice, protecting right to livelihood.
- Criminal Justice Reforms:** In *Zahira Sheikh v. State of Gujarat*, retrial was ordered outside the state to ensure fair trial rights.
- Moral and Social Reform:** In *Navtej Singh Johar v. Union of India*, the Court struck down Section 377 IPC as unconstitutional, invoking constitutional morality and complete justice.

**D. International Comparison** No major constitutional system gives its apex court a power identical to Article 142. The U.S. Supreme Court adheres to strict statutory interpretation. European courts operate within treaty frameworks. The flexibility seen in Article 142 is uncommon and often considered a mark of the Indian judiciary's activist and transformative role.

**E. Critique and Concerns** Critics argue that Article 142 promotes excessive judicial discretion and erodes separation of powers. While Parliament can amend laws, the judiciary is unelected. The risk of bypassing

democratic processes for subjective ideas of justice makes Article 142 controversial. Moreover, inconsistent use of the provision may result in unpredictability and erosion of public trust.

#### **F. Suggested Parameters for Use** Scholars recommend:

- Codifying procedural limitations on Article 142.
- Using Article 142 only when there is a clear statutory vacuum.
- Avoiding conflicts with express statutory and constitutional provisions.
- Publishing reasons in detail whenever Article 142 is invoked.

**G. Balancing Doctrine of Separation of Powers** Courts must use Article 142 in a way that complements rather than substitutes legislative and executive action. While the provision offers a necessary safety valve in extraordinary situations, it must remain an exception—not the norm.

**H. Role in Transformative Constitutionalism** Despite concerns, Article 142 has significantly contributed to realizing the goals of social justice and equality. It has enabled the Court to respond quickly and progressively in the absence of institutional reform. Its continued existence affirms the dynamic nature of India's constitutional framework—but its future depends on responsible and restrained application.

### **IX. FINDINGS AND OBSERVATIONS**

The research conducted on Article 142 of the Constitution of India has revealed multiple dimensions of the concept of “complete justice” as interpreted and applied by the Supreme Court. This provision, while rooted in a noble constitutional objective of ensuring justice, has opened a wide array of debates related to judicial activism, institutional balance, and constitutional morality.

One of the key findings of the study is that Article 142 occupies a unique place in Indian constitutional jurisprudence. No other apex judicial body in the world wields such unrestrained powers to ensure justice by transcending existing statutory frameworks. The Indian Supreme Court, through its invocation of Article 142, has demonstrated an intention to act as a custodian of public interest, often filling legal vacuums and directing executive actions when governance mechanisms have failed. Cases like *Vishaka v. State of Rajasthan*, *Union Carbide v. Union of India*, and *Navtej Singh Johar v. Union of India* exemplify this role.

Another significant observation is the flexible and discretionary nature of Article 142. The Court's orders under this provision are case-specific, lacking a standardised procedural blueprint. This discretion, although justified on many occasions, has sometimes led to doctrinal inconsistencies and jurisprudential uncertainty. The absence of guidelines allows the judiciary to interpret the provision in widely different ways across benches and contexts. While in *Supreme Court Bar Association v. Union of India*, the Court restricted the use of Article 142 to align

with statutory mandates, in other cases like *Zahira Sheikh v. State of Gujarat*, it acted beyond procedural limitations in the interest of justice.

The study also finds that while Article 142 has enabled significant legal innovations, it has simultaneously invited criticism from constitutional scholars and institutional actors. The core concern is its potential to blur the lines between the three organs of government. Judicial interventions that result in policy-making or administrative enforcement may dilute the accountability of the executive and legislative wings. Moreover, frequent recourse to Article 142 may embolden a trend of ‘judicial legislation,’ challenging the supremacy of codified law.

Another important observation relates to the socio-legal impact of Article 142. This provision has not only been used to deliver justice in individual disputes but has also furthered broader goals of equality, dignity, and fairness. Landmark decisions under Article 142 have led to protection of marginalized groups, enforcement of environmental safeguards, and recognition of fundamental rights. The Court has evolved as an agent of social reform when legislative inertia failed to address pressing issues. Yet, such usage, if unchecked, may transform a judicial organ into a super-legislature, potentially undermining the doctrine of separation of powers.

Furthermore, the comparative study of other jurisdictions indicates that India’s model is *sui generis*. In contrast, constitutional courts in the U.S., U.K., and continental Europe operate within tightly defined boundaries, emphasizing textual interpretation and procedural adherence. The absence of a comparable clause like Article 142 in these systems signals a need for caution in the Indian context to avoid unintended institutional consequences.

The research also reveals that the invocation of Article 142 in public interest matters—like medical admissions, COVID-19 relief distribution, and mass environmental issues—demonstrates the Court’s responsiveness to emergent needs. However, such interventions often step into the domain of executive implementation and resource allocation. There is an urgent need for procedural safeguards, internal checks, and doctrinal development to ensure consistency and fairness.

In conclusion, the observations suggest that Article 142 is both a strength and a challenge in the Indian constitutional system. While it empowers the judiciary to uphold justice beyond the bounds of statutory rigidity, it also introduces the risk of judicial overreach. The lack of standardised constraints or institutional oversight necessitates a rethinking of its scope and limits. The study recommends codifying principles governing Article 142’s use to preserve both its spirit and constitutional balance.

## **X. OBJECTIVES ACHIEVED**

The study successfully fulfilled its key objectives:

1. It traced the constitutional foundation and legislative intent behind Article 142.

2. It analyzed doctrinal evolution through critical judicial pronouncements.
3. It evaluated the impact of Article 142 on the doctrine of separation of powers.
4. It presented a comparative view by referencing other constitutional democracies.
5. It proposed guiding principles and reforms for a more structured application of Article 142.

## XI. HYPOTHESES TESTED

1. **Hypothesis 1 Validated:** Article 142 was intended as a residuary power. Judicial interpretation affirms that it should be used cautiously and not as an alternate to legislation.
2. **Hypothesis 2 Validated:** The current use of Article 142, in several instances, bypasses statutory frameworks and risks disrupting constitutional checks and balances.
3. **Hypothesis 3 Validated:** The research finds a lack of clear guidelines and varying judicial standards in the invocation of Article 142.

## XII. CONCLUSION

Article 142 of the Constitution of India remains one of the most potent and debated provisions empowering the Supreme Court to deliver “complete justice.” Its extraordinary scope has enabled the judiciary to craft innovative remedies, fill legislative voids, and protect constitutional values in situations where existing laws fall short. However, the inherent vastness of this power also poses significant concerns about separation of powers, judicial accountability, and consistency in jurisprudence.

Through this research, it is evident that Article 142 has had a transformative impact on Indian constitutional law. The judiciary has used it not only to resolve complex litigation but also to address systemic injustices, ranging from workplace harassment (*Vishaka*), environmental catastrophes (*Union Carbide*), to progressive recognition of rights (*Navtej Singh Johar*). In many such cases, Article 142 has served as a moral and corrective compass for the Court.

At the same time, the provision’s open-textured nature has led to criticisms. Judicial pronouncements under Article 142 are not always grounded in established legal principles or statutory interpretation, resulting in accusations of judicial overreach. This unstructured discretion could potentially undermine democratic legitimacy if used to circumvent legislative intent or executive authority.

Comparative analysis indicates that most constitutional democracies do not provide such sweeping powers to their apex courts. In India, Article 142 functions as both strength and a challenge—empowering the judiciary to do justice in exceptional cases, but also necessitating mechanisms to ensure restraint and reasoned application.

A recurring theme in literature, case law, and policy debates is the need for transparency, doctrinal clarity, and principled usage. The doctrine of separation of powers cannot be compromised in the pursuit of justice. Article 142 should serve as a means to supplement the law, not supplant it. Its invocation must be governed by consistent reasoning, and preferably, through institutional checks such as internal court guidelines or legislative recognition.

Ultimately, the principle of “complete justice” should align with constitutional fidelity. Article 142, when applied responsibly, enhances the Court’s ability to uphold justice and public interest. However, its sustained legitimacy depends on the Supreme Court’s commitment to self-restraint, coherence, and accountability in the exercise of this extraordinary power.

### **XIII. LIMITATIONS OF THE STUDY**

This research, while comprehensive, is not without limitations.

Firstly, the doctrinal approach adopted here focuses primarily on legal texts, judicial decisions, and academic commentary, which may overlook the lived realities and socio-political nuances influencing the judiciary’s application of Article 142.

Secondly, the study relies on secondary data and does not include empirical interviews or field-based assessments, which could have offered grounded insights from legal practitioners and stakeholders.

Thirdly, comparative analysis is limited in scope due to the lack of equivalent constitutional provisions in other jurisdictions, making analogies tentative rather than conclusive.

Additionally, the analysis focuses predominantly on Supreme Court decisions, while excluding detailed consideration of High Court interpretations or implementation challenges faced at the administrative level.

### **XIV. RECOMMENDATIONS**

1. Enact a statutory framework or judicial charter to regulate the use of Article 142.
2. Ensure that any order passed under Article 142 aligns with fundamental rights.
3. Article 142 should not override express statutory prohibitions.
4. Invoke Article 142 only in extraordinary cases where no other remedy exists.
5. Publish detailed reasoning when invoking Article 142 to enhance transparency.
6. Create an internal Supreme Court committee to review proposed Article 142 directions.
7. Avoid using Article 142 for routine matters or executive actions.
8. Encourage academic and legal discourse on boundaries of judicial discretion.
9. Promote comparative constitutional studies to refine doctrinal usage.
10. Foster coordination among judiciary, legislature, and executive for balanced governance.

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