Article 142 – The Supreme Court's Power to Do 'Complete Justice'

Mains: *GS II – Judiciary*

Why in News?

The recent use of Article 142 to facilitate the closure of FIRs connected with nationwide exam protests has once again brought this debate into focus.

What is Article 142?

- **Article 142** – The Supreme Court of India is vested with a unique constitutional power under **Article 142**, which enables it to pass any decree or order necessary for doing "complete justice" in a matter before it.
- Unlike ordinary judicial powers, Article 142 provides the Court with considerable flexibility to mould relief according to the circumstances of a case.
- **Constitutional Origins and Scope –** Article 142 has its roots in the **Government of India Act, 1935**, and in the colonial judicial tradition of deciding matters according to "justice, equity and good conscience" where written law was inadequate.
- In the Draft Constitution, the provision appeared as **Article 118** and was adopted by the Constituent Assembly in 1949 without substantial debate.
- Consequently, the Constitution did not define the expression **"complete justice"**, leaving its contours to be developed through judicial interpretation.
- The provision essentially allows the Supreme Court to:
    - Grant relief beyond conventional remedies where necessary to achieve justice.
    - Fill gaps in existing law.
    - Devise practical remedies suited to exceptional circumstances.
    - Ensure that its judgments are effectively implemented.
- However, Article 142 is **not an unrestricted constitutional licence**.
- The Court has itself recognised that the power must operate within the broader constitutional framework.

How the Scope of Article 142 Evolved through Judicial Practice?

- **Bhopal Gas Tragedy** – In the aftermath of the **Bhopal gas tragedy**, the Supreme Court used its extraordinary powers to facilitate a settlement between victims and Union Carbide, including a substantial compensation package and closure of criminal proceedings.
- Although the settlement remains controversial, it demonstrated how Article 142 could be used when ordinary legal processes appeared inadequate to provide timely relief.

- **Ayodhya Dispute** – In the **Ayodhya dispute**, the Court used its constitutional powers while crafting a comprehensive remedy following its determination of the title dispute.
- It directed that the disputed site be allotted for construction of a Ram temple while providing an alternative five-acre plot for a mosque.
- **A.G. Perarivalan's case** – The Supreme Court invoked Article 142 in 2022 to order his release after considering the prolonged pendency of the matter and the surrounding constitutional circumstances.
- The Court has also used Article 142 in cases involving **irretrievable breakdown of marriage**, environmental protection, prison reforms, compensation and public interest litigation.
- An empirical study covering Supreme Court decisions between 1950 and 2023 reportedly found **791 direct invocations** of Article 142, demonstrating the significance of this provision in Indian constitutional jurisprudence.

Why is Article 142 Considered Necessary?

- **Filling gaps in legislation –** Law cannot anticipate every factual situation. Article 142 enables the Court to provide remedies where legislation is silent or inadequate.
- **Protection of fundamental rights –** The provision can become particularly valuable when procedural limitations threaten substantive justice.
- It allows the Court to protect constitutional rights where conventional remedies may prove insufficient.
- **Addressing extraordinary situations –** Large-scale disasters, complex constitutional disputes and cases involving prolonged institutional failure may require remedies that Parliament or ordinary judicial procedures have not specifically contemplated.
- **Preventing miscarriage of justice –** The ultimate objective of Article 142 is to ensure that technicalities do not defeat substantive justice.
- It reflects the constitutional philosophy that courts must sometimes go beyond rigid procedural boundaries to secure fairness.

What are the Judicially Imposed Limitations?

- Recognising the possibility of excessive discretion, the Supreme Court has attempted to place constitutional boundaries on Article 142.
- In **Prem Chand Garg v. State of Uttar Pradesh (1962)**, the Court held that orders under Article 142 cannot violate fundamental rights.
- More importantly, in **Supreme Court Bar Association v. Union of India (1998)**, the Court clarified that Article 142 can **supplement existing law but cannot supplant it**. In other words, the provision can fill a legislative gap but cannot be used to completely override a statutory framework.
- This distinction is central to maintaining the **separation of powers**. The judiciary can interpret and apply law, but ordinarily cannot assume the legislative function of rewriting statutes.

What are the Controversy around Article 142?

- **Absence of clear standards –** The Constitution provides no precise test for determining when Article 142 should be invoked. This can result in different benches

adopting different approaches.

- **Risk of judicial legislation –** Critics argue that when the Court creates remedies not contemplated by legislation, it may effectively enter the domain of Parliament.
- **Separation of powers –** In a constitutional democracy, the legislature makes laws, the executive implements them and the judiciary interprets them. Excessive reliance on Article 142 can blur these institutional boundaries.
- **Unequal application –** The enormous discretion available to the Court raises questions about consistency. A remedy granted in one case may not necessarily be available to another similarly situated litigant.
- **Democratic accountability –** Unlike Parliament, judges are not directly elected. Therefore, when judicial decisions substantially alter policy outcomes, concerns arise regarding democratic legitimacy and accountability.
- The former Vice-President **Jagdeep Dhankhar** has described Article 142 as a "nuclear missile" against democratic institutions, while former Attorney General **K.K. Venugopal** has compared it to a "Kamdhenu" capable of providing virtually unlimited judicial power.

The Recent FIR Controversy

• The recent decision concerning FIRs arising from exam-related protests illustrates the difficult boundary between **complete justice and statutory procedure**.
• Ordinarily, criminal cases are examined individually before being quashed under the applicable statutory framework. Courts generally consider whether the allegations disclose an offence, whether the proceedings are malicious and whether continuation of the case would constitute an abuse of process.
• The criticism is that using Article 142 to collectively dispose of thousands of FIRs may bypass these ordinary safeguards.
• If criminal proceedings are terminated primarily as part of a negotiated settlement, questions arise about whether Article 142 is being used to **supplement the law or effectively replace the statutory mechanism**.
• At the same time, supporters could argue that the Court was responding to an exceptional situation where a large number of cases had emerged from a common episode and where the concerned government itself had decided not to pursue the prosecutions.
• Article 142, in this view, allowed the Court to deliver a practical and comprehensive remedy rather than subjecting thousands of individuals to repetitive litigation.
• The controversy therefore is not merely about the outcome but about **the institutional route through which the outcome was achieved**.

What could be done?

- Clearer judicial guidelines on when Article 142 may be invoked.
- Restricting its use where a specific statutory remedy already exists, except in genuinely exceptional circumstances.
- Greater reliance on Constitution Benches for decisions involving major departures from established legal frameworks.
- Providing detailed reasoning explaining why ordinary statutory remedies are inadequate.
- Ensuring that Article 142 does not violate fundamental rights or fundamentally alter legislative policy.
- Maintaining institutional dialogue between the judiciary, legislature and executive.

What lies ahead?

- The appropriate approach is therefore not to abolish or excessively restrict Article 142, but to develop principled restraints on its exercise.
- The legitimacy of the Supreme Court ultimately depends not merely on its ability to deliver justice, but also on demonstrating that such justice is delivered **through constitutional discipline, reasoned adjudication and respect for the separation of powers**.
- Thus, Article 142 should remain a **safety valve of the Constitution, not a substitute for the Constitution's institutional checks and balances**.

Reference

[The Indian Express| Article 142]