Courts and its endeavor to do Complete Justice

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Fiat justitia, ruat caelum. — Let justice be done, though the heavens may fall.

There is an orderliness in the universe, there is an unalterable law governing everything and every being that exists or lives. It is no blind law; for no blind law can govern the conduct of living beings. Today, when we live in an age where the legal systems are highly developed that governance of rights and liabilities depend upon law and its principles rather than equity, we still find the basis of such laws from the concept of Justice. Justice has been the central theme of all the civilisations in the world. It was the central theme of the American Declaration of Independence when the colonies resolved to throw out a long standing government when it failed to protect the dues of a man.

What is Justice, asked Plato. Justice is a proper, harmonious relationship between the warring parts of the person or city. According to the Hobbes and Rousseau’s Model of Sovereignty, Justice is a process of giving and protecting the rights and liberties of a person. “The aim of justice is, as the Romans used to say, to give each his due, and in order for each to be given what is his….‘give’, in this sense, means to protect the right of possession. Each man gets ‘what belongs to him’ in the course of voluntary exchanges that constitute the economic process, and, by virtue of the operation of the market, each receives for his contribution, precisely the amount that will impel him to increase the supply of the most urgently demanded commodities…”

1 Plato, The Republic, Book-I, 331 BC.

Justice is the act by which the Society/Court/Tribunal gives to a man what he is entitled to, as opposed to protecting against injury or wrong. Justice is the rendering of what is right and equitable towards one who has suffered a wrong. Therefore, while tempering the justice with mercy, the Court has to be very conscious that it has to do justice in exact conformity to some obligatory law for the reason that human actions are found to be just or unjust as they are in conformity with or in opposition to the law.3

Justice is an illusion as the meaning and definition of 'justice' varies from person to person and party to party. Party feels having got justice only and only if it succeeds before the court, though it may not even have a justifiable claim. There are times when a party may continue with adversarial litigation just to satisfy his ego that justice is when he wins the case, without realizing that at times, even if he eventually wins, he may not get to enjoy the fruits of the litigation for they would have dried and died long back.

It is in these situations that the court has to play a role of a mediator rather than a conventional adjudicator and ensure that complete justice is done. The Founding Fathers of the Constitution, cognizant of the realities of life, wisely engrafted rights, duties and practical procedures in the nation’s Constitution for a democratic way of life. While Chapters dealing with the rights and liabilities have been included, the drafting committee also engrafted chapters on their enforceability by including institutions of Union and State judiciary within the Constitution itself. Articles 32, 136, 142, 226, etc of the Constitution strengthen the desires of imparting complete justice. These provisions are part of discretionary jurisdiction of the courts and have often been invoked in matters requiring the court to intervene and ensure that rights and entitlements of persons are duly protected.

Of these, Articles 136 and 142 are more important and often go together. Article 136 provides a discretion to the Supreme Court to grant a special leave to appeal against any judgment, decree, determination, sentence or order of a court. Such right to appeal is not an automatic right and only if the Court is of the opinion that the matter is such as requires the interference by the apex court is the leave granted. The scope of Article 136 has been well
explained in the case of **N. Suriyakala v. A. Mohandoss & Ors.**,\(^4\) wherein the court held that “Article 136 was never meant to be an ordinary forum of appeal at all like Section 96 or even Section 100 CPC. Under the constitutional scheme, ordinarily the last court in the country in ordinary cases was meant to be the High Court. The Supreme Court as the Apex Court in the country was meant to deal with important issues like constitutional questions, questions of law of general importance or where grave injustice had been done. If the Supreme Court entertains all and sundry kinds of cases it will soon be flooded with a huge amount of backlog and will not be able to deal with important questions relating to the Constitution or the law or where grave injustice has been done, for which it was really meant under the constitutional scheme. After all, the Supreme Court has limited time at its disposal and it cannot be expected to hear every kind of dispute.” The court in **Tirupati Balaji Developers (P) Ltd. & Ors. v. State of Bihar & Ors.**,\(^5\) held that Article 136 which is worded in the widest-possible terms. A plenary jurisdiction exercisable on assuming appellate jurisdiction subject to grant of special leave against any kind of judgment or order made by any court or tribunal and in any cause or matter has been embodied and vested in the Supreme Court. It is an extraordinary jurisdiction vested by the Constitution in the Court with implicit trust and faith and extraordinary care and caution has to be observed in the exercise of this jurisdiction. Article 136 does not confer a right of appeal on a party but vests a vast discretion in the Supreme Court meant to be exercised by the considerations of justice, **call of duty and eradicating injustice.** In **State of Maharashtra v. Champalal Punjaji Shah**,\(^6\) the court held that the Supreme Court should not hesitate to interfere in cases where the decision of the lower court will lead to miscarriage of justice. In **Gopal & Ors. v. State of T.N.**,\(^7\) the court held that unless there is any infirmity or any illegality in the order of the lower court or that it would lead to failure of justice, the court should not interfere by exercising its discretionary jurisdiction under Article 136.

The essential question herein is what happens when the Supreme Court does exercise its jurisdiction under Article 136 and grants leave to appeal. Does the jurisdiction from that point becomes one of statutory appeal thereby vesting the right and obligation to deal the matter in as

\(^4\) (2007) 9 SCC 196; and Manish Goel v. Rohini Goel, AIR 2010 SC 1099
\(^5\) AIR 2004 SC 2351
\(^6\) AIR 1981 SC 1675
\(^7\) AIR 1986 SC 702
such or the case would continue to be one under the discretionary jurisdiction of the court? The answer is quite obvious and the latter is to be upheld. In a series of cases, the Supreme Court has held that even where leave to appeal has been granted under Article 136, the matter does not travel beyond the discretionary jurisdiction of the court, though it may thereby invoke the appellate jurisdiction of the court, and in such a case, the court can even refuse to interfere even if it has granted leave. In *Kunhayammed & Ors. v. State of Kerala & Anr.*, the court held that `when leave to appeal is granted the appellate jurisdiction of the Court stands invoked; the gate for entry in the appellate arena is opened. The petitioner is in and the respondent may also be called upon to face him, though in an appropriate case, in spite of having granted leave to appeal, the Court may dismiss the appeal without noticing the respondent.` In a number of decisions including those of the constitution bench, the apex court has held that leave once granted can always be revoked on the application of the other party if the same is shown to be not a fit case.

In light of the above, it can be said that the functioning of the apex court is largely governed by its endeavor to ensure that justice is done. It does not function as a conventional court intending to decide matters between parties following the rigors of procedure, though is not marked by complete absence of it. Rather, the Supreme Court’s functioning may be termed as more of a supervisory jurisdiction ensuring that any decision of a court or tribunal has not lead to injustice to any of the parties. It is for this very purpose that the apex court was entrusted with great plenary power in the form of Article 142 which says that 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.

It is to be noted that this article uses the word `complete justice` rather than the term `justice`. This is because complete justice travels much beyond the concept of giving justice to a party. Complete justice strives at imparting justice not just for one side alone, but for all. Even if a party has wronged another, the court cannot become an instrument to perpetuate wrong upon him. The expression `complete justice` engrained in Article 142 is of wide amplitude “couched

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8 AIR 2000 SC 2587
with elasticity to meet myriad situation”. Complete justice is justice according to law and the Supreme Court would be well within its power to even mould the relief so sought by the parties to ensure that no illegality is perpetuated.\(^\text{10}\) The main purpose of Article 142 and the endeavor to do *complete justice* has been explained by this court in *Manohar Lal Sharma v. Principal Secy & Ors.*\(^\text{11}\) wherein the apex court held that “the Supreme Court has been conferred with very wide powers for proper and effective administration of justice. The Court has inherent power and jurisdiction for dealing with any exceptional situation in larger public interest which builds confidence in the rule of law and strengthens democracy. The Supreme Court as the *sentinel on the qui vive*, has been invested with the powers which are elastic and flexible and in certain areas the rigidity in exercise of such powers is considered inappropriate.” In *Shahid Balwa v. Union of India & Ors.*,\(^\text{12}\) the court said that Article 136 read with Article 142 of the Constitution of India enables this Court to pass such orders, which are necessary for doing complete justice in any cause or matter pending before it and, any order so made, shall be enforceable throughout the territory of India. The power to do *complete justice* under Article 142 is in the nature of a corrective measure whereby equity is given preference over law to ensure that no injustice is caused.\(^\text{13}\)

Equipped with such great discretionary powers, the Supreme Court has often taken up the task of ensuring that honest parties are not the ultimate sufferers and that the guilty/or the wrong is ultimately punished. Power under Article 142 is very wide and can be used to pass any order which the court thinks is necessary for doing *complete justice* between the parties. There can be no straight jacket formula for its exercise nor there can be any fetters or limited scope of application for the powers under Article 142 is plenary in nature. It seeks to ensure that no injustice is caused by the rigors of law or due to the perversity of findings recorded by the courts below or such cases. It acts as an equity jurisdiction without losing the characteristics of being an action in *accordance with law*. Article 142 is used as a tool to balance the conflicting interests of the parties and to ensure that ultimately, the righteous succeeds. It is an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration

\(^{10}\) Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. AIR 2006 SC 1806

\(^{11}\) (2014) 2 SCC 532

\(^{12}\) (2014) 2 SCC 687

\(^{13}\) Supreme Court Bar Association v. Union of India & Anr., AIR 1998 SC 1895
of justice and for preventing any manifest injustice being done. However, the power is to be exercised only in exceptional circumstances for furthering the ends of justice and not in a casual and a mechanical manner. The purpose of Article 142 is to do effective, real and substantial justice, coextensive and commensurate with the needs of justice in a given case in order to meet any exigency that may arise.\textsuperscript{14} However, it is not to be exercised in a case where there is no basis in law which can form an edifice for building up a superstructure. Keeping these principles in mind, the apex court has not hesitated to exercise its power under Article 142, though fully aware of the restraints in judicial decision making process, in order to do complete justice.

The court in \textit{Commissioner of Income Tax, Shimla v. Greenworld Corporation, Parwanoo},\textsuperscript{15} ordered fresh income tax assessment. It held that it was necessary for doing complete justice that an order passed on dictates of superior without following the due process be quashed as being a nullity. In \textit{Damodar S. Prabhu v. Sayed Babalal H},\textsuperscript{16} the court framed the following guidelines relating to compounding of Sec. 138 Negotiable Instruments Act 1881 proceedings:

\begin{quote}
\textit{“(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.}

\textit{(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10\% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the court deems fit.}

\textit{(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15\% of the cheque amount by way of costs.}

\textit{(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20\% of the cheque amount.”}
\end{quote}

\textsuperscript{14} Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors. AIR 2004 SC 3467
\textsuperscript{15} (2009) 7 SCC 69
\textsuperscript{16} AIR 2010 SC 1907
In relation to framing the guidelines, the court said that it was aware that framing such guidelines may amount to judicial law making, thereby breaching the perimeters of its jurisdiction, however, in order to do complete justice the court would be justified in framing such guidelines in cases where there is compete legislative vacuum. The same rationale was used in issuing directions/guidelines in the Vineet Narain\textsuperscript{17} and Vishkha\textsuperscript{18} cases as well as the Amarnath Shrine case.

In Satbir v. Surat Singh & Ors.,\textsuperscript{19} the court held that ordinarily this Court does not interfere with an order of acquittal recorded by the High Court; but if the High Court arrives at its findings overlooking important facts and relying upon few circumstances which do not in any way impair the probative value of the evidence adduced during trial, this Court would be failing in its duty to do complete justice if it does not interfere with such order of acquittal. The Court re-appreciated the evidence and critically examined the judgment of the High Court and its reasoning before finally allowing the appeal and convicting the accused persons. The court in exercise of its power under Article 142 sat as if exercising jurisdiction as a Court of Appeal, which it does not do under Article 136 even where leave has been granted.

In Monica Kumar (Dr.) & Anr. v. State of U.P. & Ors.,\textsuperscript{20} this court held that:

“…..We are conscious of the well-settled law laid down by this Court in the above referred decisions and many more that in case of persons against whom prima facie case is made out and charge-sheet is filed in the competent court, it is that court which will then deal with the case on merits in accordance with law and the High Court should not, except in extraordinary circumstances, exercise its jurisdiction under Section 482 CrPC so as to quash the prosecution proceedings after they have been lodged.

45. Under Article 142 of the Constitution this Court in 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. The expression “cause” or

\textsuperscript{17} AIR 1998 SC 889
\textsuperscript{18} AIR 1997 SC 3011
\textsuperscript{19} AIR 1997 SC 1160
\textsuperscript{20} AIR 2008 SC 2781
“matter” would include any proceeding pending in court and it would cover almost every kind of proceeding in court including civil or criminal. Though there is no provision like Section 482 of the Criminal Procedure Code conferring express power on the Supreme Court to quash or set aside any criminal proceedings pending before a criminal court to prevent abuse of process of the court, but the inherent power of this Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any court to do complete justice in the matter before this Court. If the Court is satisfied that the proceedings in a criminal case are being utilised for oblique purposes or if the same are continued on manufactured and false evidence or if no case is made out on the admitted facts, it would be in the ends of justice to set aside or quash the criminal proceedings. Once this Court is satisfied that the criminal proceedings amount to abuse of process of court, it would quash such proceedings to ensure justice. This Court’s power under Article 142(1) to do “complete justice” is entirely of different level and of a different quality. What would be the need of “complete justice” in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court has seisin of a cause or matter before it, it has power to issue any order or direction to do “complete justice” in the matter.

The court noticing that the series of complaints and criminal prosecutions were filed for the purpose of seeking vengeance, in the interest of doing complete justice, all such cases were quashed even in those cases where a charge-sheet had been filed.

In E.K. Chandrasenan v. State of Kerala, the court held that Article 142 empowers the Supreme Court to pass any order which it deems necessary in order to do complete justice.

21 AIR 1995 SC 1066
The court said that power under article 142 can be resorted to for initiating *suo moto* proceedings of enhancement of sentence in criminal cases even in those cases where the accused had approached the Supreme Court challenging his conviction.

In *Sandeep Subhash Parate v. State of Maharashtra & Ors.*,\(^{22}\) the Supreme Court was dealing with a matter wherein the appellant had completed his Engineering degree after obtaining admission on the basis of a false caste certificate. Though the court was of the opinion that such practices should not be allowed, however, it invoked its power under Article 142 to do *complete justice* given the fact that the student had already completed his education and his time and efforts would go waste if he would now be denied a degree. Therefore, the court in order to do *complete justice* directed the student to pay a cost and in return, the college was to issue him a degree, despite cancelling the certificate issued to him.

The Constitution Bench of the Supreme Court in *Secretary, State of Karnataka & Ors. v. Umadevi (3)& Ors.*,\(^{23}\) allowed regularization of irregularly appointed persons in exercise of its power under Article 142 simply because they had worked on the post/department for more than 10 years without any challenge. However, the court clarified it to be a one time measure and not a rule. A similar decision was rendered by the court in the case of *H.C. Puttaswamy & Ors. v. Hon’ble Chief Justice of Karnataka & Ors.*\(^{24}\)

Thus, as can be seen from the above instances, the courts have used Article 142 as a tool for doing *complete justice*. The apex court has always risen to the occasion to ensure that supremacy of law prevails, yet its strict adherence does harm to no one. The power under Article 142 can be likened to the `equity jurisdiction` of the court exercising power in order to ensure that no injustice is caused to a person. There have been cases where the court has played a balancing act and sought to do justice by protecting even those who had faulted. The power under Article 142 has been well explained by this court in its Constitution Bench judgment in *Supreme Court Bar Association* (Supra) wherein the court held that “*these powers are of very wide amplitude and are in the nature of supplementary powers. This power, exists as a separate and independent basis of jurisdiction, apart from the statutes. It stands upon the foundation, and*

\(^{22}\) AIR 2006 SC 3102  
\(^{23}\) AIR 2006 SC 1806  
\(^{24}\) AIR 1991 SC 295
the basis for its exercise may be put on a different and perhaps even wider footing, to prevent
injustice in the process of litigation and to do complete justice between the
parties. This plenary jurisdiction is, thus, the residual source of power which this Court may
draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the
observance of the due process of law, to do complete justice between the parties, while
administering justice according to law.” However, the court clarified that it needs to be
remembered that the powers conferred on the court by Article 142 being curative in nature
cannot be construed as powers which authorise the court to ignore the substantive rights of a
litigant while dealing with a cause pending before it. This power cannot be used to "supplant"
substantive law applicable to the case or cause under consideration of the court.

This brings us to an important discussion as to whether powers under Article 142 can be
used in a manner which supersedes even the express or implied provisions and requirements of a
statute. No doubt that powers under Article 142 are of wide amplitude and can be exercised by
this court in the manner it deems fit so as to ensure that no injustice is caused to a party, but the
question is, can the power be exercised in a manner that renders a statutory provision a mere
dead letter or of no worth before such an equity clause? The answer is an obvious NO. The apex
court through a large number of its rulings held that statutes cannot be completely given a go-by
while exercising a discretionary and equity jurisdiction. In M.S. Ahlawat v. State of Haryana & Anr.,\textsuperscript{25} the court held that under Article 142, the court cannot altogether ignore the substantive
provisions of a statute and pass orders concerning an issue which can be settled only through a
mechanism prescribed in another statute. While reviewing its earlier order, the court corrected its
order punishing the petitioner under Section 195 of Code of Criminal Procedure, 1973 holding
that the requirements of the provisions cannot be ignored in exercise of powers under Article
142. Similarly, in M.C. Mehta v. Kamal Nath & Ors.,\textsuperscript{26} the court while dealing with the issue
whether a punishment could be imposed by the apex court while hearing a Writ Petition for
causing pollution when such an act is covered by Prevention of Water Pollution Act and
Prevention of Air Pollution Act, held that Article 142 could not be invoked in contravention of
statutory provisions. In the Supreme Court Bar Association case (Supra), while deciding the

\textsuperscript{25} AIR 2000 SC 168
\textsuperscript{26} AIR 2000 SC 1997
issue whether the court can also suspend or remove an advocate for committing contempt of the court by exercising power under Article 142 when such a power has been vested with the Bar Council, the court held that indeed statutory provisions cannot curtail the constitutional powers of the court; however, at the same time these powers are not to be exercised when the exercise of such power is going to be in direct conflict with a statutory provision. The court refused to interfere in light of the fact that statutory proceedings could be initiated.27

In J. Jayalalithaa & Ors. v. State of Karnataka & Ors.28 this Court held that the court should not exercise its powers under Article 142 of the Constitution when such an exercise would be contrary to law. The court relied on its earlier judgment in A.B. Bhaskara Rao v. CBI, wherein this Court held that the powers under Article 142 of the Constitution cannot be exercised by this Court in contravention of any statutory provisions, though such powers remain unfettered and create an independent jurisdiction to pass any order in public interest to do complete justice. The court refused to pass any orders while directing the authority to consider the case under the relevant Rules and to pass orders in accordance with law. In Manish Goel v. Rohini Goel (supra), it was noted by the Court that `Though the power under Article 142 of the Constitution is a Constitutional power and hence cannot in any way, be controlled by any statutory provisions, the Supreme Court would not pass any order under Article 142 of the Constitution which would amount to supplanting substantive law applicable or ignoring express statutory provisions dealing with the subject. That is, the Supreme Court cannot pass an order or grant relief which is totally inconsistent or goes against the substantive or statutory enactments pertaining to the case. This power of the Court is to be used sparingly in cases which cannot be effectively and appropriately tackled by the existing provisions of law or when the existing provisions of law cannot bring about complete justice between the parties.` Even in Government of West Bengal v. Tarun K. Roy & Ors.,29 the court refused to exercise its power under Article 142 noting that such a course would be in direct conflict with statutory provisions.

27 See also: Manohar Lal Sharma (Supra)
28 (2014) 2 SCC 401
29 (2004) 1 SCC 347
The law on Article 142 was well summed up in *Laxmidas Morarji v. Behrose Darab Madan*,\(^{30}\) wherein the court held that:

“Article 142 being in the nature of a residuary power based on equitable principles, the Courts have thought it advisable to leave the powers under the article undefined. The power under Article 142 of the Constitution is a constitutional power and hence, not restricted by statutory enactments. Though the Supreme Court would not pass any order under Article 142 of the Constitution which would amount to supplanting substantive law applicable or ignoring express statutory provisions dealing with the subject, at the same time these constitutional powers cannot in any way, be controlled by any statutory provisions. However, it is to be made clear that this power cannot be used to supplant the law applicable to the case. This means that acting under Article 142, the Supreme Court cannot pass an order or grant relief which is totally inconsistent or goes against the substantive or statutory enactments pertaining to the case. The power is to be used sparingly in cases which cannot be effectively and appropriately tackled by the existing provisions of law or when the existing provisions of law cannot bring about complete justice between the parties.”

A similar view was taken in the case of *Modern School v. Union of India & Ors.*,\(^{31}\) wherein this court held that when any legislation is operating in the field, the courts should not be loathe to impose any further restrictions. This Court normally does not pass an order even in exercise of its jurisdiction under Article 142 of the Constitution of India which would be contrary to the law. Once the legislature has laid down an educational scheme, the jurisdiction of the court is merely to interpret the same. It cannot and should not issue any other or further direction. It would not supplant a statutory provision by issuing any direction except in some exceptional cases. The need of the day, therefore, is strict implementation and enforcement of the statute. The administration, in the event, it comes to the conclusion that the rules are required to

\(^{30}\) (2009) 10 SCC 425  
\(^{31}\) AIR 2004 SC 2236
be amended, is free to do so; but only because there are a few cases of mismanagement, the same
by itself should not be considered to be an indicia that all institutions are being run in an
unprofessional or unethical manner thereby asking courts to pass necessary orders.

Thus, to conclude, the Supreme Court has been given wide discretionary power to do
*complete justice* between the parties under Article 142 of the Constitution. It can pass any order
which it deems fit in the facts and circumstances of the case. However an order which the Court
passes in order to do complete justice between the parties must not only be consistent with the
fundamental rights guaranteed under the Constitution, but should also be consistent with the
substantive provisions of the relevant statute. In other words, this Court cannot altogether ignore
the substantive provisions of a statute. This Court should be slow in exercising this great
discretionary power and it should not pass any order which would amount to supplanting the
substantive law. Further, the court must exercise judicial restraint in relation to invoking Article
142 and it should not exercise the power on the ground of sympathy or on mere asking. This is
because this great plenary power is also a discretionary and extra-ordinary power which is not to
be exercised in a mechanical manner. There must be strong and cogent reasons for exercising
this discretionary jurisdiction for the powers under Article 142 are meant to be exercised in order
to further the needs of justice and to fill in lacuna or vacuum in law and not as part of regular
exercise of jurisdiction of the court.

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