



Article 142

For Prelims: Pardoning Power of the President, Article 72, President, Governor

For Mains: Challenges in adoption of Complete justice by Supreme court (Article 142), Article 162

Why in News?

Recently, the Supreme Court has invoked its **extraordinary powers to do complete justice under Article 142 of the Constitution** and ordered the release of A.G. Perarivalan in former [Prime Minister Rajiv Gandhi assassination case](#).

- The court protected federalism by holding that States had the power to aid and advice the Governor in case of pleas of pardon under [Article 161](#) made by convicts in murder cases.
- **Article 161 provides** that the **Governor of a State shall have the power to grant pardons**, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

What is the Supreme Court's Ruling?

- Tamil Nadu Council of Ministers' advice in 2018 to pardon Perarivalan was **binding on the Governor under [Article 161](#)** (Governor's power of clemency) of the Constitution.
- The Governor's reluctance to **take a call on the pardon plea has compelled the court to employ its constitutional powers under Article 142** to do justice to Perarivalan.
- The Supreme Court used Article 142 of the Constitution that grants it extraordinary powers to do complete justice, to release Perarivalan.
- The court dismissed **the Centre's argument** that the President exclusively, and not the Governor, had the power to grant pardon in a case under **Section 302 (murder) of the [Indian Penal Code](#)**, saying **this contention would render Article 161 a "dead-letter" and create an extraordinary situation** whereby pardons granted by Governors in murder cases for the past 70 years would be rendered invalid.

What is Article 142?

- **Definition:** Article 142 provides **discretionary power to the Supreme Court** as it states 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.
- **Constructive Application:** In the early years of the evolution of Article 142, the general public and the lawyers both lauded the Supreme Court for its efforts to bring complete justice to various deprived sections of society or to protect the environment.
 - The **Cleansing of Taj Mahal and justice to many undertrials** is a result of the invocation of this article only.
- **In the Union Carbide case**, relating to the victims of the [Bhopal gas tragedy](#), the Supreme Court placed itself above the laws made by the Parliament or the legislatures of the States by

saying that, to do complete justice, it could even override the laws made by Parliament.

- However, in the **Supreme Court Bar Association v. Union of India**, the Supreme Court stated that Article 142 could not be used to supplant the existing law, but only to supplement the law.
- **Cases of Judicial Overreach:** In recent years, there have been several judgments of the Supreme Court wherein it has been foraying into areas which had long been forbidden to the judiciary by reason of the [doctrine of 'separation of powers'](#), which is part of the [basic structure of the Constitution](#). One such example is:
 - **The ban on the sale of alcohol along national and state highways:** While the notification by the central government prohibited liquor stores along National Highways only, the Supreme Court put in place a ban on a distance of 500 metres by invoking Article 142.
 - Additionally, and in the absence of any similar notification by any of the State governments, the court extended the ban to State highways as well.
 - Such judgments have created uncertainty about the discretion vested in the court to invoke Article 142 where even fundamental rights of individuals are being ignored.

Way Forward

- The Supreme Court needs to introspect on whether the use of Article 142 as an independent source of power **should be regulated by strict guidelines**.
- Another option is that all cases invoking Article 142 **should be referred to a Constitution Bench** of at least five judges so that this exercise of discretion may be the outcome of five independent judicial minds operating on matters having such far-reaching impact on the lives of people.
- In all cases where the court invokes Article 142, the government **should bring out a white paper to study the beneficial as well as the negative effects of the judgment** after a period of six months or so from its date.

What is Pardoning Power of President?

- **Article 72 empowers the President the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence** of any person convicted of any offence. The meaning of these terms is as follows:
 - **Pardon:** It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments, and disqualifications.
 - **Commutation:** It denotes the **substitution of one form of punishment** with a lighter form of punishment. For example, a death sentence may be commuted to rigorous imprisonment.
 - **Remission:** It implies **reducing the period of the sentence without changing its character**. For example, a sentence of rigorous imprisonment for five years may be remitted to rigorous imprisonment for one year.
 - **Respite:** It denotes **awarding a lesser sentence in place of one originally awarded due to some special fact**, such as the physical disability of a convict or the pregnancy of a woman offender.
 - **Reprieve:** It implies **a stay of the execution of a sentence (especially that of death)** for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

UPSC Civil Services Examination, Previous Year Questions

Q. With reference to the Constitution of India, prohibitions or limitations or provisions contained in ordinary laws cannot act as prohibitions or limitations on the constitutional powers under Article 142. It could mean which one of the following? (2019)

(a) The decisions taken by the Election Commission of India while discharging its duties cannot be challenged in any court of law.

(b) The Supreme Court of India is not constrained in the exercise of its powers by laws made by the Parliament.

(c) In the event of grave financial crisis in the country, the President of India can declare Financial Emergency without the counsel from the Cabinet.

(d) State Legislatures cannot make laws on certain matters without the concurrence of Union Legislature.

Ans: b

Exp:

- According to Article 142(1) of the Indian Constitution, 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 orders 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.
- Thus, Article 142 supplements the powers already conferred upon the Supreme Court under the Constitution to guarantee that justice is done and in doing so the Court is not restrained by lack of jurisdiction or authority of law.
- **Therefore, option (b) is the correct answer**

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