

Article 142 of the Constitution

May 20, 2022

In news– Recently, the Supreme Court Bench has invoked the extraordinary power conferred on the court under Article 142 of the Constitution to the release of Rajiv Gandhi assassination case convict A G Perarivalan.

What is Article 142 of the Constitution?

- **Article 142 titled 'Enforcement of decrees and orders of the Supreme Court and orders as to discovery, etc.'** has two clauses.
- **Article 142(1) reads 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**, 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.
- **Article 142(2) reads: "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."**
- **In the case of Perarivalan, the Supreme Court invoked Article 142(1)** under which it was empowered to pass any order necessary to do complete justice in any matter pending before it.
- It held that it was not a fit case to be remanded to the

Governor for his consideration under Article 161 of the Constitution.

- **Article 142, which started out as draft article 118,** was adopted by the Constituent Assembly on May 27, 1949.

Scope of Article 142-

- While the powers under Article 142 are sweeping, **the Supreme Court has in its judgments over the years defined its scope and extent. Some important cases in this regard are**
 - Prem Chand Garg v. Excise Commissioner, U.P., Allahabad' (1962).
 - 'A.R. Antulay v. R.S. Nayak & Anr' (1988).
 - 'Union Carbide Corporation v. Union of India' (1991).
 - 'Supreme Court Bar Association v. Union of India' (1998).
- In its 2019 judgment in the Ayodhya case, **the Supreme Court used the extraordinary powers under this provision to grant 5 acres of land in Ayodhya situated outside the disputed area to Muslim parties,** saying, in an implicit reference to the demolition of the Babri Masjid in 1992, that it was **invoking Article 142 "to ensure that a wrong committed must be remedied".**

The case of Perarivalan-

- **Perarivalan had submitted a mercy petition to the Tamil Nadu Governor in 2015 seeking release under Article 161 of the Constitution, under which the Governor is empowered to "grant pardons, reprieves,** respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence".
- After failing to receive a response, he moved to the Supreme Court, which in 2018 underlined the Governor's right to decide on the remission petition.
- In September 2018, the **Tamil Nadu Cabinet** headed by

then Chief Minister Edappadi K Palaniswami **recommended the release of all seven convicts, including Perarivalan.**

- The Governor, however, continued to sit on the recommendation, and in July 2020, Madras High Court reminded him that the Constitution had not prescribed a time limit for him to act on such issues only “because of the faith and trust attached to the constitutional post”, and warned that it might be forced to intervene.
- But the Governor did not react, and in January 2021, the Supreme too warned that it will be forced to release the convict on grounds of inordinate delay.
- **In February 2021, the Governor’s office forwarded the state government’s recommendation to President Ram Nath Kovind.**
- The file has been lying with Rashtrapati Bhavan ever since.
- **The Supreme Court has now ruled that inordinate delay by the Tamil Nadu Governor in exercising his powers under Article 161 can be subject to judicial review.**
- It has rejected the Centre’s submission that the President has exclusive power to grant remission in cases pertaining to Section 302 (murder) of the IPC and **used its powers under Article 142 to release Perarivalan**

Further

reading:

<https://journalsofindia.com/article-142-and-ayodhya-verdict/>