

INVOKING EQUITY JURISDICTION OF THE INDIAN SUPREME COURT: SCOPE AND LIMIT

*Dushyant Thakur**

Abstract

The Supreme Court of India does an incredible task by enforcing the lengthiest Constitution of the world in the most populous democracy. For performing this task, the makers of the Constitution of India have vested some extraordinary powers in the Supreme Court in the form of Articles 32, 136 and 142 of the Constitution of India. The Supreme Court uses these provisions to invoke its Equity Jurisdiction. The purpose of this article is to expound and do a systematic study of Equity Jurisdiction of the Supreme Court, a distinctive head of jurisdiction under which the Supreme Court can exercise its power. The article discusses how these provisions are used to provide equitable remedies and, in some cases, evolve equitable procedure. This is done on the basis of principles of equity. It will be observed through a discussion on various provisions of the Constitution of India that the provisions, which act as the source of Equity Jurisdiction of the Supreme Court, are

*Dushyant Thakur is fourth-year student of Gujarat National Law University, Gandhinagar. The author may be reached at dushyant.dt1@gmail.com.

plenary in nature, with virtually no limits according to their text. However, to protect its misuse, the Supreme Court has imposed a boundary upon itself within which this jurisdiction can be invoked. These boundaries are imposed either by evolving principles or by using various maxims of equity. These limitations, within which the Equity Jurisdiction can be invoked by the Supreme Court, will also be discussed. However, such limits can be bypassed if the situation so demands, in the interest of justice.

I. INTRODUCTION

The Supreme Court of India was established as the apex court of the judicial system for the Union of India on January 26, 1950. This establishment led to the strengthening of the foundation of the rule of law in the freshly independent State of “India”. The importance of the Supreme Court in India can be demonstrated by its function to construe and enforce the lengthiest and the most intricate Constitution in the world’s most populous democracy. All these years since its establishment, the Supreme Court has played a major role in maintaining the integrity of democratic institutions and rule of law. Through its interpretations and power of judicial review, it has not only preserved but also enhanced judicial independence and protected fundamental rights.

Article 124(1) of the Constitution of India establishes the Supreme Court of India.¹ The Supreme Court is a multi-jurisdictional court²

¹INDIA CONST. art. 124, cl. 1. The Article states:
“124. Establishment and Constitution of Supreme Court.

with remarkably wide and varied jurisdiction.³ Jurisdiction of the Supreme Court is dealt from Article 131 to Article 143 of the Constitution of India. As per the Constitution, the jurisdiction conferred upon the Supreme Court can be divided under the heads of Original Jurisdiction (Article 131), Appellate Jurisdiction (Articles 132 – 134), Advisory Jurisdiction (Article 143), Special Jurisdiction for enforcement of fundamental rights (Article 32) and a discretionary residuary jurisdiction of an omnibus character to grant special leave to appeal (Article 136).⁴ The purpose of this paper is to expound on equity jurisdiction of the Supreme Court and understand the extent and limit of the same, in other words, to systematize equity jurisdiction of the Supreme Court. Equity jurisdiction is the jurisdiction which is exercised by the Supreme Court as a court of equity and decisions are taken by following the principles of equity. This will be dealt with in the subsequent sections of the paper.

After introducing the topic in Part I of this article, Part II deals with the concept behind equity, equitable and equity jurisdiction. In this Part, the author has also attempted to define the terms and in what sense these terms have been used in this article. Part III of the article aims to explore the scope of equity jurisdiction of the Supreme Court. In the opening of this Part, provisions of the Constitution of India under which equity jurisdiction can be invoked are enlisted. The Part has been further divided into three Sections, namely, A, B and C, under which the scope of equity jurisdiction under Articles 32, 136 and 142, respectively, have been discussed using various Supreme

There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.”

²1 M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 658 (6th ed. 2010) (hereinafter 1 Jain).

³Burt Neuborne, *The Supreme Court of India*, 1 INT'L J. CONST. L. 476, 478 (2003).

⁴M. Ramaswamy, *The Supreme Court of India*, 2 U.W. AUSTL. ANN. L. REV. 215, 219 (1953).

Court cases. Part IV has been divided into five sections, which are separate heads of various limits on invocation of equity jurisdiction by the Supreme Court. The Part also covers the need to limit power of the Supreme Court to invoke equity jurisdiction. With Part V, the author has concluded this article with his view on when such limits can be bypassed.

II. CONCEPT BEHIND EQUITY AND EQUITY JURISDICTION

In general terms, *equity* is a notion of fairness, impartiality and even-handed dealing. *Osborne* considered equity as fairness and related it with natural justice.⁵ For *Aristotle*, equity is a correction of the law, where the law is defective owing to its universality.⁶ The term “Equity” comes from the Roman term “*aequitas*”, which goes back to Sanskrit “*aika*” (that is “one”), and *aikatuan* (unit, likeliness), suggesting the idea of equality, equilibrium, and proportion.⁷

Equity as a system of justice was developed, parallel to the system of Common Law, by the High Court of Chancery in England. The court exercised its extraordinary jurisdiction in order to adjudge a dispute on the basis of principles of equity.⁸ In the words of *Snell* who emphasized on the technical sense of the concept of equity, “equity may be defined as a portion of natural justice which, although of a nature more suitable for judicial enforcement, was for historical reasons not enforced by the Common Law Courts, an omission which was supplied by the Court of Chancery.”⁹ Equity can also be defined

⁵*Osborne*, Dictionary of English Law 724 (Roger Bird ed., 7th ed. 1990).

⁶*Aristotle*, The Nicomachean Ethics V Ch. 10 (Ross's trans., 1925).

⁷María José Falcón y Tella, *Equity and Law* 23 (1st ed. 2008).

⁸Geo. Tucker Bispham, *The Principles of Equity: A Treatise on the System of Justice Administered in Courts of Chancery* 1-2 (11th ed. 1931).

⁹R.E. Megarry, *Snell's Principles of Equity* 1-2 (23rd ed. 1947).

as the system of law or body of principles originating in the English Court of Chancery and superseding the common and statute law.¹⁰

Thus, it can be comprehended from the above definitions that equity originated in the Court of Chancery upon the principles of natural justice and the idea of equality. It rose to provide for remedies which, for some reasons, could not be provided for by the Common Law Courts. However, it can also be perceived that equity has been defined above in terms of its origin. Conceptually, equity can be delineated as that branch of common law in which the existing procedures and remedies could not provide for relief in a particular case and calls for the exercise of justice and fairness by the judge.¹¹ In India, while deliberating upon the term “*equity*”, it was observed by a High Court that, among its usage in various senses, the most practical one is equivalent to natural justice. However, limiting its practical ambit in the court of law, the court further observed that jurisdiction for administration of equity should not be supposed as that wide and extensive which would result from carrying into operation of all the principles of natural justice because natural justice cannot be practically enforced in its widest sense and is left to the conscience of each individual.¹² Thus, equity can be defined in numerous ways. However, for the purpose of this article, the term *equity* has been used for the remedies provided by a judge of the Supreme Court on the basis of his discretion, which is to be exercised to provide an equitable remedy, keeping principles of equity in mind. Furthering this point, the focus of this article is not on the substantive rule of laws which were traditionally equitable (e.g. trust, specific relief etc.).

¹⁰Bryan A. Garner, Black’s Law Dictionary 619 (9th ed. 2009) (hereinafter Black’s Law Dictionary).

¹¹2 Craig Ducat, Constitutional Interpretation G3 (1st ed. 2009).

¹²Bharatha Charyulu v. R.B. Alivalu Manga Thayaru, A.I.R. 238 (AP: 1996).

Equity has undergone a process of transformation into a “sociological understanding”. From the basic principle that equity acts *in personam*, lately, it has offered relief to society at large.

Equitable as a general expression is something which is marked by a due consideration of what is fair, unbiased or impartial; according to natural justice, untrammelled by technical niceties of the law.¹³ It exists in equity which is available or sustained by an action in equity or under the rules and principles of equity.¹⁴ *Equitable* is something fair and reasonable which is recognized, regulated and enforced by the court of equity in accordance with the principles of equity.¹⁵

Further, the right to decide a matter in equity comes within the *equity jurisdiction* of a court. The equity jurisdiction does not suggest that the jurisdiction conferred on a court by the sovereign over specified subject matters and parties rather it refer to the merits of the case.¹⁶ *The Black's Law Dictionary* defines equity jurisdiction as the power in a common law judicial system to hear certain civil actions according to the procedure of the Court of Chancery and to resolve them according to equitable rules.¹⁷ To clarify, it should not be assumed that equity jurisdiction is an exercise of judicial discretion. When such discretion is exercised on the basis of principle of equity, then only it will be considered to be done under equity jurisdiction. Under equity jurisdiction, on the basis of the principles of equity, decisions are passed as justice demands. As per modern practice in India, the Supreme Court exercises both equity and legal jurisdiction and hence is capable of granting equitable and legal remedies, as the situation demands.

¹³P. Ramanatha Aiyar, *Advanced Law Lexicon* 489 (3rd ed. 2007).

¹⁴*Black's Law Dictionary*, *supra* note 10, at 617.

¹⁵Walker D.M., *The Oxford Companion to Law* 423 (1st ed. 1980).

¹⁶William Q. de Funiak, *Handbook of Modern Equity* 38 (2nd ed.1956).

¹⁷*Black's Law Dictionary*, *supra* note 10, at 929.

III. EQUITY JURISDICTION OF THE SUPREME COURT

In England, equity jurisdiction is exercised by the court of equity. This is not the case in India where the courts exercise jurisdiction over equity as well as law and no such system of exclusive jurisdiction is present.¹⁸ Therefore, the Supreme Court is not only a court of law but a court of equity as well.¹⁹ The Supreme Court as a court of equity should act to prevent legal fraud and to do justice by the promotion of good faith.²⁰

The Constitution of India nowhere mentions directly that the Supreme Court will be a court of equity or will exercise equity jurisdiction. However, the Supreme Court exercises equity jurisdiction, *implicitly*, under Article 32, Article 136 and Article 142 of the Constitution of India. Under Article 32, the Supreme Court can be approached for one's violation of fundamental rights. Supreme Court has power to grant special leave against any decree, order or judgment by any court in India under Article 136 and to pass any order or decree for doing complete justice under Article 142 in a pending matter. Even the Supreme Court has held that Articles 32, 136 and 142 of the Constitution of India confer equity jurisdiction upon the Supreme Court.²¹ These provisions provide discretionary power to the Supreme Court in order to do complete justice. Discretion lies in the heart of the equity jurisdiction.²² This discretion has intrinsic equitable powers

¹⁸Shiv Kumar Sharma v. Santosh Kumari, 8 SCC 600 (2007) (hereinafter Shiv Kumar Sharma).

¹⁹Chandra Bansi Singh v. State of Bihar, 4 SCC 316 (1984) (hereinafter Chandra Bansi Singh).

²⁰AP State Financial Corp v. M/S GAR Re-Rolling Mills and Anr., 2 SCC 647 (1994).

²¹G.M., O.N.G.C. Ltd. v. Sendhabhai Vastram Patel and Ors., Supp 2 SCR 448 (2005).

²²Zygmunt J.B. Plater, *Statutory Violations and Equitable Discretion*, 70 CALIF. L. REV. 524, 533 (1982).

to mould decision as per facts of a particular case through interpretation of laws and certainty for these newly framed principles is achieved through the doctrine of *stare decisis*. In India, this is achieved by virtue of Article 141. Such equity jurisdiction should be exercised so that justice is done in respect to both parties.²³

In the discussion which will follow in the article, it will be observed that Equity Jurisdiction of the Supreme Court is wide and unrestrained, providing it with plenary powers. Such wide power has been conferred upon the Supreme Court for the proper and effective administration of justice so that exceptional situations in larger public interest can be dealt with in order to build confidence in the rule of law and strengthen democracy.²⁴

A. *Scope of equity Jurisdiction under Article 32*

Remedy to the violation of fundamental rights is provided in Article 32 of the Constitution of India. It is Article 32 that ensures that one can approach the Supreme Court for the enforcement of Fundamental Rights under Part III of the Constitution. The Supreme Court can issue orders, directions or writs such as *certiorari*, *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* in order to enforce these Fundamental Rights guaranteed by the Constitution.²⁵ No act of the Parliament can abrogate or take away the jurisdiction conferred on the

²³T.N. Electricity Board v. Sumathi, 4 SCC 543 (2000).

²⁴Manohar Lal Sharma v. Principal Secy & Ors., 2 SCC 532 (2014).

²⁵INDIA CONST. art. 32. The Article states:

“32. Remedies for enforcement of rights conferred by this Part.

The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”

Supreme Court by Article 32 as it is an integral part of the Constitution.²⁶

Nature of the power vested in the Supreme Court by Article 32 is plenary and cannot be shackled by any legal constraint. It must be noted that power of the Supreme Court is not limited to issuing writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* or *certiorari* or what can be termed as “prerogative writs”. The jurisdiction of the Supreme Court has been enlarged by use of the expression “in the nature of” in the provision.²⁷ Therefore, the Supreme Court is empowered under Article 32 to make any order, as it may appear to be necessary to give proper relief to the aggrieved.²⁸ The court can mould its direction to provide a relief which is appropriate for a given situation. An application under Article 32 cannot be refused merely on the ground that a Common Law writ has to be modified in order to give proper relief to the applicant.²⁹ This is where the Supreme Court gets the power to invoke equity jurisdiction for granting equitable remedies. Such is the extent of this power that even if the petition is not found to be maintainable, appropriate orders based on the facts of a particular case can be given to do complete justice between parties.³⁰ Further, for awarding equitable remedy, the court has discretion to evolve a procedure appropriate for a given situation. The court can adopt such procedure as it thinks fit in the exercise of its new jurisdiction created for the purpose of enforcing fundamental

²⁶ D.D. Basu, *Commentary on the Constitution of India* 3709 (8th ed. 2014) (hereinafter 3 Basu).

²⁷ *Chiranjit Lal Chawdhuri v. Union of India*, AIR 41 (1951); *Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1 (1967) (hereinafter Naresh Shridhar case); *Bandhu Mukti Morcha v. Union of India*, 3 SCC 161 (1984) (hereinafter Bandhu case).

²⁸ *Kochunni v. State of Madras*, AIRSC 725 (1959).

²⁹ *P.T.I. v. Union of India*, 4 SCC 63 (1974).

³⁰ *Saihba Ali v. State of Maharashtra*, 7 SCC 250 (2003).

rights.³¹ Therefore, for protecting fundamental rights, an appropriate equitable remedy can be provided and for the same equitable procedure can be evolved as per the circumstances and fact of a case. Acharya Dr. D.D. Basu went to the extent to say that:

“Article 32 lays down a constitutional obligation on the Supreme Court to protect the fundamental rights of the people and for that purpose, it has all incidental and ancillary powers including power to forge new remedies and fashion new strategies designed to enforce the fundamental rights, particularly in the case of poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty has no meaning.”³²

In the recent times, new dimensions of Article 32 have been evolved.³³ Two among them includes making a liberal use of “directions” under Article 32 and public interest litigation under Article 32. Through these two new dimensions, Article 32 has seen the sociological understanding of the term “equity” whereby, invoking equity jurisdiction under Article 32, directions are being issued for greater public interest or public good including enforcement of Fundamental Rights.

a) Frame guidelines and give direction:

Exercising the ample power conferred to the Supreme Court, necessary directions can be issued under Article 32 read with Article 142 to fill the vacuum until such time the legislature steps in to cover the gap or the executive discharges its role.³⁴ In exercise of this power, various directions and guidelines have been issued by the

³¹Bandhu case, *supra* note 27.

³²Basu, *supra* note 26, at 3720.

³³Basu, *supra* note 26, at 3783.

³⁴Vineet Narain v. Union of India, 1 SCC 226 (1998).

Supreme Court such as: guidelines relating to emigration act, guidelines for adoption of minor child by foreigners, guidelines and norms for the appointment and transfer of Judges, guidelines which should be followed in the case of arrest and detention of a Judicial Officer.³⁵ One of the most famous examples of the exercise of such power is the framing of *Vishakha* guidelines for observance in workplaces relating to sexual harassment of working women.³⁶ In this case, Fundamental Rights were enforced under Article 32 if the Constitution of India in absence of any legislation by exercising power under Article 142. Most recent example of such exercise of power is the issuance of guidelines for the protection of Good Samaritans³⁷ in which the Court held that:

“This Court can issue such directions under Article 32 read with Article 142 to implement and enforce the guidelines, which are necessary for protection of rights under Article 21 read with Article 14 of the Constitution of India so as to provide immediate help to the victims of the accident and at the same time to provide protection to Good Samaritans. The guidelines will have the force of law under Article 141. By virtue of Article 144, it is the duty of all authorities-judicial and civil-in the territory of

³⁵Erach Sain Kanga Etc. v. Union of India and Anr., Writ Petition No. 2632 of 1978 (Guidelines relating to Emigration Act); Lakshmi Kant Pandey v. Union of India, 2 SCR 795 (1984) (Guidelines for adoption of minor child by foreigners); Supreme Court Advocates-on-Record Association and Others v. Union of India (II Judges case), AIR SC 268(1994) (Guidelines and Norms for the appointment and transfer of Judges); Delhi Judicial Service Association v. State of Gujarat, 4 SCC 406 (1991) (Guidelines which should be followed in the case of arrest and detention of a Judicial Officer).

³⁶ *Vishakha and Ors. v. State of Rajasthan and Ors.*, AIR SC 3011 (1997).

³⁷ *Savelife Foundation and Ors. v. Union of India (UOI) and Ors.*, 7 SCC 194 (2016).

*India to act in aid of this Court by implementing them.*³⁸

It can be observed that equitable remedy in the form of guidelines or directions is not *in personam*. However, this understanding of granting equitable remedy is traditional and has undergone a transformation in recent times. Now, though equitable remedies, relief is provided to society at large. Therefore, this invocation of equity jurisdiction is a part of the evolved concept to provide remedy to society at large. Further, it is imperative to point out here that such directions and guidelines, as per equitable principles, can always be requested from the Supreme Court. It further follows that guidelines have always been requested from the Supreme Court and has never been claimed as a right.

b) Public Interest Litigation:

The foundation stone of Public Interest Litigation (“**PIL**”) in India was laid down in S.P. Gupta case by Justice Bhagwati who held that, ‘any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision.’³⁹ The Supreme Court in a later case recognized that a person seeking relief in the public interest by filing PIL approaches a court of equity.⁴⁰ *Public interest* has been defined as a matter of public or general interest in which a class of the community has a pecuniary interest by which their legal rights and

³⁸*Id.*

³⁹S.P. Gupta v. President of India and Ors., AIR SC 149 (1982).

⁴⁰Narmada Bachao Andolan v. State of Madhya Pradesh and Anr. and State of Madhya Pradesh v Narmada Bachao Andolan and Anr. and Narmada Hydro-Development Corporation v Narmada Bachao Andolan and Ors., AIR SC 1989 (2011).

liabilities are affected.⁴¹ Therefore, it has been recognized that equity jurisdiction of the Supreme Court can be invoked for the matters concerning public interest. This public interest can stem from Fundamental Rights guaranteed under the Constitution of India or any other statutory right.

B. Scope of Equity Jurisdiction under Article 136(1)

Apart from the Constitutional provisions regarding Appellate Jurisdiction described under Article 132 to Article 134 of the Constitution of India, the Supreme Court has been empowered with discretionary power to grant special appeal from any judgment, decree, determination, sentence or order in any case of any court or tribunal within the territory of India under Article 136 (1).⁴²

Article 136 does not confer ordinary power to grant appeal as compared to the one given under Section 96 and Section 100 of the Code of Civil Procedure (“CPC”).⁴³ It is important to note here that it is not a right vested in the individuals but a discretion vested in the Supreme Court. Also, since the jurisdiction of the Supreme Court under this provision is discretionary in nature, relief or more appropriately “equitable relief” lies at the discretion of the court and this relief can be moulded as per circumstances and situation to advance interest of the justice.⁴⁴ The Supreme Court exercises equity jurisdiction under Article 136 as it is empowered to apply equitable

⁴¹Daniel Greenberg, Stroud’s Judicial Dictionary of Words and Phrase 2024-2025 (7th ed. 2010).

⁴²INDIA CONST. art. 136, cl. 1. The Article states:

“136. Special leave to appeal by the Supreme Court.

Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.”

⁴³N. Suriyakala v. A. Mohandoss & Ors., 9 SCC 196 (2007).

⁴⁴Orissa Cement v. State of Orissa, AIR SC 1676 (1991).

rules and principles if the situation demands for deciding upon cases and granting equitable remedies. Further, this power of the Supreme Court signifies discretion while exercising equity jurisdiction under this provision. This scope of jurisdiction depends upon the power of the Supreme Court to apply equitable principles and grant equitable remedies. Since this power is drawn from Article 136, the scope of the same can be used to determine the scope of equity jurisdiction under Article 136.

The start of the Article with a non-obstante clause itself expresses its overriding effect and indicates the intention of the framers of the Constitution of India to provide a residuary power unfettered by any statute or other provisions of the Constitution.⁴⁵ The power has extraordinary amplitude and cannot be taken away, expressly or impliedly, by any legislation. Special nature of the power under Article 136 shifts it beyond the purview of ordinary law in cases where the need of justice demands interference by the Supreme Court.⁴⁶ It has been held by the Supreme Court that the power is discretionary and equitable in nature and the Court intervenes when justice, equity and good conscience require such intervention.⁴⁷ Further, relief asked for under Article 136 cannot be denied if the party is entitled to it purely on the basis of equitable considerations though not under law.⁴⁸ Such special leave can be granted when the question which arises for consideration is more of equity and fair play than law.⁴⁹ The jurisdiction under Article 136 is plenary and residuary and is basically one of conscience.⁵⁰ Such extraordinary jurisdiction has been conferred upon the Supreme Court by the Constitution with

⁴⁵A.V. Papayya Sastry v. Government of Andhra Pradesh, 4 SCC 221 (2007) (hereinafter A.v. Papayya Sastry).

⁴⁶Union Carbide Corporation v. Union of India, 4 SCC 584 (1991).

⁴⁷A.V. Papayya Sastry, *supra* note 45.

⁴⁸Chandra Bansi Singh, *supra* note 19.

⁴⁹Nirmal Chandra Bhattacharjee and Ors. v. Union of India and Ors., 2 SCC 363 (1991).

⁵⁰Union of India v. Ashok Kumar Aggarwal, 16 SCC 147 (2013).

an implicit trust and faith and must be exercised with extraordinary care and caution.⁵¹

In a nutshell, it can be said that by virtue of equity jurisdiction of the Supreme Court under Article 136, it has discretionary power to grant special leave. This power, although is of extraordinary amplitude, but must be exercised on the basis of conscience and must be invoked only when it is required by justice, equity and good conscience. This jurisdiction being of equitable nature, the discretion is to be exercised in an equitable way and by following principles of equity. Reliefs, purely based on equitable considerations, can be awarded under Article 136 by the Supreme Court since it is an exercise of equity jurisdiction.

The Supreme Court has held that power under Article 136 forms part of the basic structure of the Constitution,⁵² thus, making it unfettered even by a constitutional amendment. The scope of equity jurisdiction of the Supreme Court under this provision is malleable. Further, the provision itself does not contain any qualifying word. Therefore, the Supreme Court by exercising its equity jurisdiction under Article 136 may pass any equitable order considering facts of the case.

C. Scope of Equity Jurisdiction under Article 142(1)

The Supreme Court has been vested with extraordinary power under Article 142(1) of the Constitution of India to make any such order or pass a decree which is necessary to do complete justice in a case or matter pending before it.⁵³

⁵¹Tirupati Balaji Developers Pvt. Ltd. v. State of Bihar, AIR SC 2351 (2004).

⁵²Delhi J.S.A. v. State of Gujarat, AIR SC 2179 (1991); Kunhayammed v. State of Kerala, AIR SC 2587 (2000); Supra note 46; Durga Shankar Mehta v. Raghuraj Singh, AIR SC 520 (1954).

⁵³INDIA CONST. art. 142. The Article states:

The use of the expression “complete justice” instead of “justice” should be specially noted which indicates that the provision strives for imparting justice to all parties of the case instead of any one party. The provision does not contain any limitation regarding the causes or the circumstances in which the power can be exercised nor does it lays down any condition to be satisfied before such power is exercised and exercise of such power has been left completely to the discretion of the Supreme Court.⁵⁴ This is the reason why the power of Supreme Court under Article 142(1) is extraordinary and discretionary in nature. The nature of power further indicates that there is no static formula for the exercise of this power being plenary in nature. This power is invoked to redress injustice and in doing so the Supreme Court acts in its equity jurisdiction to balance the conflicting interests of the parties and advance the cause of administration of even-handed justice.⁵⁵ Further, the rationale behind the power being justice-oriented, is guided by equitable principles.⁵⁶ It can also be said that nature of the power under Article 142(1) is residuary and is based on equitable principles.⁵⁷ If there is no provision in law or the situation arisen cannot be effectively dealt under the existing laws, that will not deter the Supreme Court to

“142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.

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.

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.”

⁵⁴E.S.P. Rajaram and Ors. v. Union of India and Ors., 2 SCC 196 (2001) (hereinafter E.S.P. Rajaram).

⁵⁵Lalaram v. Jaipur Development Authority, 11 SCC 31 (2016).

⁵⁶*Id.*

⁵⁷Laxmidas Morarji v. Behrose Darab Madan, 10 SCC 425 (2009).

proceed under Article 142 to do complete justice between the parties.⁵⁸ In such cases, the Supreme Court is not required to have recourse to any provisions of the CPC or any other principle deductible therefrom.⁵⁹

It can be stated in simple terms that Supreme Court while exercising discretion under Article 142 is guided by equitable principles. Further, power to do complete justice forms part of one of the three general classes of the division of Equity Jurisdiction and power to do complete justice can be effected by granting equitable remedies. Therefore, the Supreme Court by invoking equity jurisdiction does complete justice by granting equitable remedies guided by equitable principles. This can be substantiated by Supreme Court's verdict that equitable considerations must be looked into while passing orders under Article 142 and the Court should strive to "evolve an appropriate remedy, in facts and circumstances of a given case, so as to further the cause of justice, within available range and forging new tools for the said purpose, if necessary, to chisel hard edges of the law."⁶⁰ The Supreme Court, by invoking equity jurisdiction, has evolved various equitable remedies and recognized new equitable rights "to chisel hard edges of the law" which are discussed below.

a) Stay of execution of sentences:

Stay of execution of sentences is an equitable remedy. This is because when a stay is granted, "the state is enjoined from implementing" the imposed sentence and the claims of the petitioner are allowed to be heard.⁶¹ The Supreme Court, while exercising its equity jurisdiction

⁵⁸Delhi Development Authority v. Skipper Construction Co. (P) Ltd., 4 SCC 622 (1996).

⁵⁹Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai, 3 SCC 214 (2004).

⁶⁰C. Chenga Reddy v. State of A.P., 10 SCC 193 (1996).

⁶¹Hill v. McDonough, 547 U.S. 573, 584 (2006).

under Article 142, may pass an order to stay the execution of sentence and to grant bail pending the disposal of an application for the special leave to appeal under Article 136.⁶²

b) Frame guidelines and give directions:

This has been dealt with under Section A of this Part of the Article. The Supreme Court has the power to frame guidelines and give directions under Article 32 read with Article 142 of the Constitution of India by invoking equity jurisdiction.

c) Curative petition:

The power conferred upon the Supreme Court under Article 142 is curative in nature.⁶³ Using the same and Article 129⁶⁴ of the Constitution of India, the Supreme Court evolved the concept of curative petition in the case of *Rupa Ashok Hurra v. Ashok Hurra and Anr.* (“*Rupa Ashok Hurra*”).⁶⁵ Under curative petition, the Supreme Court may reconsider its judgments in the exercise of its inherent power in order to prevent abuse of its process and to cure a gross miscarriage of justice.⁶⁶

Although in the opinion of the majority, it was not possible to enumerate all grounds on which the petition may be entertained, the Court laid down the *ex debito justitiae* obligation and enlisted two grounds.⁶⁷ These grounds are basically the situations where there is violation of principles of natural justice.

⁶²K.M. Nanavati v. State of Bombay, AIR SC 112 (1961).

⁶³Supreme Court Bar Association v. Union of India, 4 SCC 409 (1998).

⁶⁴INDIA CONST. art. 129. The Article states:

“129. Supreme Court to be a Court of Record.

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”

⁶⁵Rupa Ashok Hurra v. Ashok Hurra and Anr., 4 SCC 388 (2002).

⁶⁶*Id.*

⁶⁷*Id.*

- The first is the situation where the person filing the curative petition was not party to the dispute but the judgment was given which adversely affected him or when he was party to the dispute but no notice of the proceedings was served upon him and the matter proceeded as though notice had been served.
- The second ground arises in the situations where scope of apprehension of biasness arises when the judge presiding over the dispute fails to disclose his connection with the parties and the judgment is passed, adversely affecting the person filing the curative petition.

The Supreme Court laid down a separate procedure, where other than these grounds, the curative petition can be accepted. According to the *Rupa Ashok Hurra* case, a second review is not permissible and the Court distinguished the same from the curative petition.⁶⁸ Being the highest court of the land, the Supreme Court possesses powers to correct a judgment in curative petition if the parameters laid down in *Rupa Ashok Hurra* case are satisfied.⁶⁹ This was incorporated in the Supreme Court Rules 2013, under Order XLVIII. By invoking equity jurisdiction, the Supreme Court evolved the extraordinary remedy of curative petition and also laid down the grounds and procedure for acceptance of this petition (equitable procedure). This was termed as creation of *curative jurisdiction* of the Supreme Court. If so, curative jurisdiction forms part or is a subset of equity jurisdiction of the Supreme Court.

d) *Social Justice Bench:*

The year 2014 marked a new beginning in Indian legal system for direct admission of Social Justice when the Supreme Court

⁶⁸Yakub Abdul Razak Memon v. State of Maharashtra, 9 SCC 552 (2015).

⁶⁹State of Tamil Nadu v. State of Kerala, 12 SCC 696 (2014).

established a Social Justice Bench to deal with the problem of the society and its members. Though the Bench got scrapped under the regime of Justice T.S. Thakur, it has now been reconstituted and will hear PILs and other related matters including environmental matters.

The system of equity has made constant efforts to bring justice and fairness. As per *Aristotle*, equity and justice 'coincide'.⁷⁰ For administration of Justice, the system recognizes natural law or rights and provides means to protect them. Principles of equity have provided means to bring Social Justice. Social justice can be understood as a species of genus 'justice' and given the wide scope of equity; it essentially comes under the concept of equity.⁷¹ Hence Social Justice Bench have been constituted by invoking equity jurisdiction of the Supreme Court have remedies, which will be provided will be equitable.

It is within the overreaching power of the Supreme Court to do complete justice with a matter under Article 142(1) of the Constitution to come up with such bench. Therefore, it can be said that the Social Justice Bench is constituted under Article 142(1) read with Article 145⁷² of the Constitution of India. The Supreme Court is the custodian of the Constitution in India. Justice is an amalgamation of social, economic and political justice as per the Preamble and the Constitution of India has maintained securing Social Justice as its ideal since the time of its inception.

In essence, it can be said that Supreme Court exercises power vested to it by Article 142 under equity jurisdiction. This is because the exercise of this power is guided by equitable principles, as the main aim of this provision is to do complete justice, which can be effected by granting equitable remedies. The Supreme Court, because of the

⁷⁰C. Douzinas, *The End of Human Rights* 42 (1st ed. 2000); A. Hudson, *Equity and Trusts* 10 (8th ed. 2015).

⁷¹*Air India Statuary Corporation v. United Labour Union*, AIR SC 645 (1997).

⁷²INDIA CONST. art. 145.

presence of this provision, is not stopped to do complete justice in the cases where the existing provisions are insufficient. By using the power under this provision, the stay can be granted in execution of sentence. Further, exercising its power under this Article, the Supreme Court may frame directions and guidelines where there is a lacuna in the law on a particular subject matter. Even under the Social Justice Bench, justice will be provided through Article 142. Also, by invoking this Equity Jurisdiction, the Supreme Court evolved extraordinary equitable remedy of curative petition. Therefore, the provision which confers extraordinary discretionary power upon the Supreme Court to make any order to do complete justice between the parties, which can be realised by awarding equitable remedies, is guided by equitable principles.

IV. LIMITS OF EQUITY JURISDICTION OF THE SUPREME COURT

It has been observed from the above part that wide discretionary power has been vested with the Supreme Court. Although, this discretionary power strengthens judiciary in a long way, however, it comes with its own disadvantages. This power can be misused either by the litigants or the judges themselves. When there are no floodgates for invoking equity jurisdiction of the Supreme Court, it may be abused by the litigants. Litigants may start approaching the court for trivial matters and to ask for something unreasonable. This will lead to increase of cost per case and increase in the burden of cases on the apex court of the country.

Also, when such wide discretion is given to a court by the Constitution itself, which is essentially plenary, irrespective of how high the moral code is maintained by the court, element of

arbitrariness seeps in. This arbitrariness will go against delivery of justice which is the ultimate aim of the equity jurisdiction. Further, by invoking this jurisdiction, the judge may surpass the law, hence functioning as a legislator. Therefore, to prevent these *susceptible* abuses of equity jurisdiction, some limits have been set by the Supreme Court itself.

These limits, which have been discussed below, may overlap at some point. However, it has been tried to keep them separate as far as possible. These limits have been divided into four sections. In Section A, limit over the exercise of discretion for invoking discretion has been discussed which is principled discretion and must be used judicially. In Section B, Maxims of Restraint and Maxims of Defense have been discussed as to how these maxims act as friction over the invocation of Equity Jurisdiction of the Supreme Court. In Section C, Section D and Section E, limits over invocation of Equity Jurisdiction by the Supreme Court under Article 32, Article 136(1) and Article 142(1) respectively along with the discussion that these limits are self-imposed and may be overridden by the Supreme Court, whenever necessity is felt. Although these limits have not been sharply defined and are not mandatory upon the Supreme Court, these limits are expected to be followed and respected in order to preserve the functioning of democracy and demarcating the line between respective organs of the State.

V. LIMIT OVER EXERCISE OF DISCRETION

Equity jurisdiction can be exercised only when some discretionary power has been entrusted with the Court. It is only by employing this discretionary power, equity jurisdiction is exercised. However, it is pertinent to note here that such discretion is not the personal discretion of the judge. Further, equitable relief is not to be granted on the unconstrained and intemperate discretion of what judge feels the

best. Discretion, in the context of exercising equitable jurisdiction, refers to *principled discretion* which is guiding light for any judge to grant equitable relief.⁷³ This discretion, which is *judicial discretion*, is limited. Judicial discretion is the discretion which is exercised on the basis of what is fair in the given circumstances is guided by the rules and principles of law.⁷⁴ While exercising judicial discretion, principles of equity are followed contrary to personal discretion. In the words of Benjamin Cardozo, the exercise of judicial discretion should be inspired by the established principles informed by earlier practices and based on logic in order to do what is just and fair.⁷⁵ Lord Mansfield in his famous *dictum* said that judicial discretion should be the one based on law governed by rule and one which is not arbitrary and vague.⁷⁶

This is particularly true in the Indian scenario too, where such discretion in the case of equity jurisdiction is exercised in accordance with justice, equity, good conscience and fairness to both the parties.⁷⁷ It has been held by the Supreme Court that discretion is not to be exercised in derogation of established principles of law and

⁷³Kevin C. Kennedy, *Equitable Remedies and Principled Discretion: The Michigan Experience*, 74 U. DET. MERCY L. REV. 609, 614 (1996-1997) (hereinafter Kennedy).

⁷⁴Black's Law Dictionary, *supra* note 10, at 534.

⁷⁵BENJAMIN CARDOZO, THE NATURE OF JUDICIAL PROCESS 141 (1921) (The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life. Wide enough in all conscience is the field of discretion that remains.).

⁷⁶Rex v. Wilkes (1770, K. B.) 4 Burr. 2527, 2539 (Discretion, when applied to a court of justice, means sound discretion guided by law. It must be governed by rule not by humour; it must not be arbitrary, vague and fanciful, but legal and regular.).

⁷⁷Kanshi Ram v. Om Prakash Jawal, 4 SCC 593 (1996).

cannot be “arbitrary, fanciful and vague.”⁷⁸ Further, while exercising discretion, facts and circumstances of a particular case must always be taken into consideration. Even conduct of the parties is also looked at while exercising judicial discretion.⁷⁹ Also, while exercising discretion under Article 136, equitable considerations must be noticed, otherwise, the Supreme Court will be failing in its duty.⁸⁰ Discretion must be exercised in terms of the existing statute and the same cannot go against any statutory provision.⁸¹ If the exercise of discretion *inter alia* will be against the public policy, such discretion may be denied.

Equity jurisdiction inherently forms a limit over a court’s exercise of judicial discretion. This is because while exercising the discretion under equity jurisdiction, principles of equity are to be followed. These, principles of equity, over so many years of application of the doctrine of *stare decisis* have become rigid and fixed. Thus, while invoking equity jurisdiction, the Supreme Court is required to keep itself within the bounds of the established principles of equity. This, in a way, forms a limit on the exercise of discretion by the Supreme Court, which in turn becomes a limit over its Equity Jurisdiction. Since discretion forms basis for the exercise of the equity jurisdiction by the Supreme Court, this limit on exercise of discretion will also act as a limit on the exercise of equity jurisdiction under Article 32, Article 136 and Article 142 of the Constitution of India.

A. *Maxims of Restraint and Defense*

A number of substantive maxims have been formed by the court of equity. Few among such maxims restrain the use of equity. These maxims can be called as *Maxims of Restraint*. One such maxim is

⁷⁸Jai Prakash Singh v. State of Bihar and Anr, 4 SCC 379 (2012).

⁷⁹M.P. Mathur v. DTC, 13 SCC 706 (2006).

⁸⁰Shivanand Gaurishankar Baswanti v. Laxmi Vishnu Textile Mills, 13 SCC 323 (2008).

⁸¹Shiv Kumar Sharma, *supra* note 18.

“equity follows the law”. This maxim forms significant limit over equity jurisdiction, as the court sitting in equity cannot depart from substantial rule of law.⁸² However, in England, in the case of conflict between equity and law, equity will prevail. Thus, equity follows the law but not slavishly nor always.⁸³ Conversely, in India, equity must act strictly within the strict bounds of the substantive rule of law. If the exercise of equity jurisdiction violates any express provision of law, the same cannot be done and equity jurisdiction can be exercised only when no law operates in the field.⁸⁴

In addition, there are *Maxims of Defense*, which can be used by the defendants to show why the case of the plaintiff seeking equitable remedy should not be accepted. Hence, they constrain and limit judicial discretion and in the process, acts as limits. Some of the recognized Maxims of Defense are “delay defeats equity” and “he who comes to equity must come with clean hands”. Although these are at the discretion of the Judge to accept, however, may be used to create some friction against abuse of equity jurisdiction, thus limiting its scope. Example can be taken of a case in which the Supreme Court refused to grant any relief under Article 136 on the basis of clean hands doctrine.⁸⁵

B. Limits over invocation of Equity Jurisdiction under Article 32

Article 32 has been considered as the most important provision in the Constitution of India. The Supreme Court has considered it to be part of the basic structure of the Constitution of India. The Supreme Court itself has considered the need to limit the plenary power vested in it under Article 32. The jurisdiction (or equity jurisdiction) under this

⁸²Kennedy, *supra* note 73, at 617.

⁸³Graf v. Hope Bldg. Corp., 254 NY 1.

⁸⁴Shiv Kumar Sharma, *supra* note 18.

⁸⁵Anil Bansal v. Ashok Kumar Bansal & Ors., 9 SCC 368 (2005).

Article can be invoked only for enforcement of the Fundamental Rights guaranteed by the Constitution of India and not any other legal right.⁸⁶ It has been held by the Supreme Court in several of its decisions that in a proceeding under Article 32, no question other than relating to Fundamental Rights can be raised.⁸⁷ Further, purely executive power cannot be interfered with in absence of violation of constitutional limitation circumscribing such power.⁸⁸ Article 32 cannot be used as a means to interfere in the implementation of a policy in absence of a direct and casual violation of a fundamental right guaranteed by the Constitution of India.⁸⁹ Though delay, acquiescence and the like do not take away the jurisdiction of the Supreme Court under Article 32, the court may refuse to grant relief in the exercise of its jurisdiction where delay affects the merits of the petitioner's claim.⁹⁰ Thus, in this case, the maxim "delay defeats equity" acts as a limit over the invocation of equity jurisdiction under Article 32. The Supreme Court cannot give directions to amend Rules or Acts. Furthering the point, no direction can be given which would be contrary to rules or the Act.

Coming on to the limits over the use of PIL, it should be kept in mind that where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.⁹¹ If an action is covered under a self-contained code, the jurisdiction of the Supreme Court could not be invoked in matters relating to its provisions.⁹² Also, PIL can only be

⁸⁶Basu, *supra* note 26, at 3735.

⁸⁷Gopal Das v. Union of India, AIR 1955 SC 1; Esmail v. Competent Officer, AIR 1967 SC 1244; Muneeb v. Government of J&K, 4 SCC 24 (1984); Amar Singhji v. State of Rajasthan, AIR 1955 SC 504; Star Sugar Mills v. Union of India, 4 SCC 299 (1983).

⁸⁸Gupta v. Union of India, SCC Supp 87 (1981).

⁸⁹English M.S.P.A. v. State of Karnataka, 1 SCC 550 (1994) (hereinafter English M.S.P.A.).

⁹⁰Tilokchank v. Munshi, 1 SCC 110 (1969).

⁹¹Titaghur Paper Mills Co. Ltd. v. State of Orissa, AIR SC 603 (1983).

⁹²G.Veerappa Pillai v. Raman and Raman Ltd., AIRSC 192 (1952).

used to seek a remedy against any grievance when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it.⁹³ Writ Petitions are also not meant to adjudge upon disputed question of facts.⁹⁴ The Supreme Court itself has prepared a guideline for PILs for the better administration of justice through the system.⁹⁵

Necessary directions or orders pertaining to the issue arising in the PIL can be given to fill the existing vacuum or void which is preventing the aggrieved party from getting a suitable remedy till a suitable law is enacted.⁹⁶ However, no directions can be given for amending an Act or the Rules.⁹⁷ The Judiciary, through PILs, strives to safeguards only fundamental rights⁹⁸ guaranteed by the Constitution of India but it cannot be used as a mean to interfere in the implementation of a policy.⁹⁹

C. Limits over invocation of Equity Jurisdiction under Article

136(1)

Power to the Supreme Court under Article 136(1) is extraordinary in nature. Its limit, while chasing injustice, is the sky.¹⁰⁰ This extraordinary power should be used by the Supreme Court with extraordinary care and caution. In the Constitutional Assembly Debates, Pandit Thakur Das Bhargava while expressing his opinion said that the Supreme Court, while exercising power under this

⁹³Union of India v. Association for Democratic Republic, 5 SCC 294 (2002).

⁹⁴Rourkela Shramik Sangh v. Steel Authority of India Ltd. and Anr., 4 SCC 317 (2003).

⁹⁵State of Uttranchal v. Balwant Singh Chauhal, AIRSC 1029 (2010).

⁹⁶*Supra* note 93.

⁹⁷*Id.*

⁹⁸3 Basu, *supra* note 26, at 3720.

⁹⁹English M.S.P.A., *supra* note 89.

¹⁰⁰A.V. Papayya Sastry, *supra* note 45.

provision, should not be restricted “by any canon or provision of law”. The makers of the Constitution of India also expected that the Supreme Court should not accept special leave unless it finds that a case involves a serious breach of some principle in the administration of justice or breach of certain principles which strike at the very root of administration of justice.¹⁰¹ The intention of the legislators regarding power under this Article was for the Supreme Court to exercise it by keeping in mind the settled judicial precedents.¹⁰² Therefore, interference should not be permitted unless substantial and grave injustice has been done by disregarding the forms of legal process or some violation of the principles of natural justice or otherwise.¹⁰³

Although the power has plenary in nature, the Court has imposed certain restrictions upon itself while exercising this power. In exercise of this extraordinary power, the Supreme Court will not assume a jurisdiction which is not warranted by the provisions of the Constitution nor offer to provide relief which has been omitted in the Constitution, for that will be tantamount to making legislation which is never the function of the court.¹⁰⁴ All remedies available to the aggrieved party under any law before the lower appellate authority must be exhausted. Although, Article 136 does not contain any period of limitation, the appeal must be filed without undue delay.¹⁰⁵ Delay is not condoned in the case of unusual and unexplained delay and laches¹⁰⁶ or where the petitioner has not come up with clean hand or where dilatory tactics have been adopted.¹⁰⁷ It can be observed that

¹⁰¹8 Constitutional Assembly Debates: Official Report 638-639 (photo. reprint 2003).

¹⁰²Ramakant Rai v. Madab Rai, 12 SCC 395 (2003).

¹⁰³Sanwat Singh v. State of Rajasthan, AIRSC 715 (1961).

¹⁰⁴Dhakeshwari Cotton Mills Ltd. v. CIT, AIR SC 65 (1955); Om Prakash Sood v. Union of India, 7 SCC 473 (2003).

¹⁰⁵1 Jain, *supra* note 2, at 789.

¹⁰⁶G.C. Gupta v. N.K. Pandey, 1 SCC 316 (1986); CCE v. Mathew Kurien, 9 SCC 23 (1999); State of U.P. v. Manisha Dwivedi, 6 SCC 763 (2001).

¹⁰⁷N. Balakrishnan v. M. Krishnamoorthy, 7 SCC 123 (1998).

the Supreme Court recognized principles of equity to act as a limit over invocation of equity jurisdiction. These principles are “delay defeats equity” and “he who comes to equity must come with clean hands”. However, the provision itself does not provide for any limit on itself, making it plenary. Thus, at last everything lies at the discretion of the judge and the only limit upon the exercise of Equity Jurisdiction under Article 136 is the “wisdom and good sense of the Judges” of the court.¹⁰⁸

*D. Limits over invocation of Equity Jurisdiction under Article
142(1)*

The power granted to the Supreme Court under Article 142 is a step ahead to the power conferred upon it under Article 136. The power is of wide amplitude. However, self-imposed restrictions exist while exercising equity jurisdiction under Article 142. The power was held to be of ancillary in nature which can only be exercised when not in express conflict with the substantive provisions of law.¹⁰⁹ Equity jurisdiction under Article 142 cannot be invoked to override any express provision.¹¹⁰ Though there is no limit on the use of power in the provision, it cannot be used to supplant the substantive provisions as the power is supplementary in nature.¹¹¹ Power under Article 142 is curative in nature. It cannot be used to supplant any existing substantive law which is applicable over the situation in question.¹¹² Further, this power is extended to make guidelines for an issue but only in those cases where the laws are not adequate to deal with an issue or there exists a lacuna in the law. Such guidelines cannot be framed or directions cannot be given where existing laws are

¹⁰⁸Balakrishna Iyer v. Ramaswamy Iyer, AIR SC 195 (1965).

¹⁰⁹Naresh Shridhar case, *supra* note 27.

¹¹⁰E.S.P. Rajaram, *supra* note 54.

¹¹¹State of Punjab v. Rafiq Masih (White Washer), 8 SCC 883 (2014).

¹¹²*Supra* note 63.

sufficient. Curative petitions are also accepted only in exceptional and extraordinary cases. Invocation of equity jurisdiction for the purpose of acceptance of curative petition has been limited by the grounds laid down in *Rupa Ashok Hurra* case. Also, it should be kept in mind that once Judgment or Order is passed in the Review Petition, the curative petition must be filed within a reasonable time.¹¹³ Thus, the maxim of “*delay defeats equity*” also operates as a limit for the curative petition.

To summarize, it can be said that provisions *prima facie* do not contain any limitation upon the exercise of equity jurisdiction. However, while exercising the equity jurisdiction, discretion is an indispensable element, over which some limits are imposed. Over and above these limits, there are self-imposed limits over the provisions under which the Supreme Court can invoke equity jurisdiction. Furthermore, in India, in the case of conflict between equity and law, law will prevail and will act as a limit on equity jurisdiction of the Supreme Court.

VI. CONCLUSION

Blackstone wrote, “*a court of equity and a court of law, as contrasted to each other, are apt to confound and mislead us: as if the one judged without equity, and the other was not bound by any law.*”¹¹⁴ However, in India, no such distinction in the jurisdiction of courts persists and the Supreme Court act as both, the court of law as well as the court of equity. Hence, confusion as to what extent equity jurisdiction can be invoked for the purpose of delivering justice and where the limit to such invocation arises gets increased.

¹¹³Supreme court Rules, 2013, rule 3, order XLVIII.

¹¹⁴William Blackstone, Commentaries on the Laws of England: A Facsimile of the First Edition of 1765—1769 (1979).

In India, provisions of the Constitution of India under which equity jurisdiction can be invoked implicitly give extraordinarily wide and discretionary power to the Supreme Court. The provisions, *per se*, do not impose any restriction or limit upon such use of power. Therefore, the Supreme Court, through various cases, has created a periphery for itself within which, such power can be exercised. Examining the language of the provisions signifies that it was the intention of the makers of the Constitution to provide the Supreme Court with open-ended and elastic power which can be exercised in extraordinary circumstances in order to preserve democratic system of this country. The self-imposed restrictions are also in line with intentions of framers of the Constitution of India. These restrictions should be followed and respected as far as the circumstances permit.

There is an alternate view which can be taken as a reason as to why the makers of the Constitution did not impose any limit on the provisions. It can be said that makers of the Constitution did not intend to limit the powers conferred upon the Supreme Court under the provisions because, there might be times when circumstances demand bypassing the restrictions and expansion of the boundary within which equity jurisdiction can be invoked. Absence of Constitutional Assembly Debates on Article 142 further strengthens this view. However, in such cases, equitable principles should be taken into consideration and principled discretion should be exercised to invoke equity jurisdiction for delivery of justice, in the form of equitable remedies, in greater public benefit with an aim of strengthening democracy and rule of law.