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## COURT’S SWEEPING POWERS UNDER ARTICLE 142: WHETHER RENDERS COMPLETE JUSTICE WITHOUT OVERRIDING THE PROVISIONS OF SUBSTANTIVE LAW

*-SHANMUGAPRIYA.R, 3<sup>RD</sup> YEAR B.A.LLB*

### **INTRODUCTION:**

Recently a division Bench of the Supreme Court comprising Justice Aniruddha Bose and Justice Bela M. Trivedi held on Wednesday, October 4, 2023 that the powers conferred on the court by Article 142 of the constitution are complementary to those powers which are specifically conferred on the court by various statutes.<sup>1</sup> The said particular provision provides an unique power to the Supreme Court to do “complete justice” between the parties, where, at times, the law or statute may not provide a remedy. In those situations, the court can put an end to a dispute in a manner that would fit the facts of the case.<sup>2</sup> However, there exists criticism as to whether Article 142 renders complete justice without overriding provisions of substantive law.

### **Constitutional Provision: What is Article 142?**

Under Part V “the Union” in which Chapter IV from [Article 124 -147] covers the powers of the Union judiciary where Article 142 plays one of a significant role which is being invoked in various cases to render complete justice also comes with the issue whether this unique power of the apex court over shades the provisions of the substantive law in the name of providing complete justice. So, lets understand the meaning of Article 142 of the Constitution -

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<sup>1</sup> Union Bank of India Vs. Rajat Infrastructure Pvt. Ltd. & Or’s. and M/s. Sunview Assets Pvt. Ltd. 2023 (SC) 846.

<sup>2</sup> The wire, <https://thewire.in/law/courts-sweeping-powers-under-article-142-cant-be-used-to-override-substantive-law-sc>

*142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.*<sup>3</sup>

**Explanation of the Provision:**

From the very title of this provision, we can classify the two clauses that is being provided within it.

1. The enforcement of decrees and orders of Supreme Court is explained in Clause (1) as, the Supreme Court may pass such degree or order in matter pending before it which falls under the ambit of its jurisdiction where there is a need for doing complete justice and this decree and order so passed shall be enforceable throughout the territory of India that is equivalent to that of the laws made by the parliament.
2. Clause (2) that is Order as to discovery – the Supreme Court have all and every power to make any order for the purpose of securing the attendance of any person, the discovering or production of any documents or the investigation or production of any contempt of itself.

**Ambiguities in the provision:** The Supreme Court's definition of "complete justice" remains unclear, with some judgments suggesting it can be used when statutes are silent, but there's no specific rule or guideline provided by the law to explain when and under which circumstances it can be invoked. The Supreme Court have also discussed the scope of the power, holding that in its exercise no injustice should be caused to a person not a party to the case.<sup>4</sup>

**The major aspect as to whether Article 142 renders Complete Justice without overriding the provisions of Substantive law:**

**Arbitrariness in decision making:** Article 142(1) of the Constitution which gives wide and capacious power to the apex court to do complete justice should be exercised in legitimate manner and with caution, as its verdict ends the litigation between parties. As it was rightly held in the case of **Supreme Court Bar Association V. Union of India**<sup>5</sup> that the powers under Article 142 are supplementary in nature and could not be used to supplant or override a substantive law and “build

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<sup>3</sup> Article 142 of the Indian constitution

<sup>4</sup> A. Jitendernath vs Jubilee Hills Coop. House Bld. Soc. & Anr on 2 May, 2006

<sup>5</sup> Supreme Court Bar Association vs Union of India & Anr on 17 April, 1998

a new edifice where none existed earlier”. The Supreme Court has ruled in cases like the ban on alcohol sales along national and state highways, extending the ban to 500 meters without notification from the central government. This raises concerns about the court's discretion to invoke Article 142, where fundamental rights of individuals are being ignored. The apex court has also ruled that the top court's power under Article 142(1) is curative, aiming to balance equities between conflicting claims by addressing creases in the matter. These are the reason why the power under Article 142 (1) of the Constitution of India is undefined and uncatalogued, so as to ensure elasticity to mold relief to suit a given situation. The fact that the power is conferred only on this court is an assurance that it will be used with due restraint and circumspection.<sup>6</sup>

**Against the Doctrine of Separation of power:** Article 142 in India has been criticized for potentially allowing judicial overreach. Restraint and deference are facets of the rule of law, and when it comes to the separation of the role and functions of the legislature, the executive and the judiciary, the exercise of power by this court to do complete justice, being for a cause of matter, does not interfere with the encroach on the legislature’s power and function to legislate.

### **Suggestions and Conclusion:**

- It is essential to incorporate changes in the provision as to clear clarity about when can be this power of the Supreme Court can be invoked without misuse of it.
- The Supreme Court should explore the regulation of Article 142 use as an independent source of power, focusing on its scope with strict guidelines and components for delivering justice without infringing substantive law provisions.

Given the aforesaid background and judgments of this court, the plenary and conscientious power conferred on this court under Article 142(1) of the Constitution of India, seemingly unhindered, is tempered or bounded by restraint, which must be exercised based on fundamental considerations of general and specific public policy and mentioned earlier the powers under Article 142 are only supplementary in nature and could not be used to supplant or override a substantive law and “build a new edifice where none existed earlier”.

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<sup>6</sup> Business standards, [https://www.business-standard.com/india-news/article-142-1-of-constitution-crucial-its-exercise-must-be-legitimate-sc-123050100758\\_1.html](https://www.business-standard.com/india-news/article-142-1-of-constitution-crucial-its-exercise-must-be-legitimate-sc-123050100758_1.html)