



Mains Practice Question

Q. The Jurisdiction of the Supreme court under Article 142 supersedes the executive and the legislature. Discuss (150 words)

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Approach

- Explain the provision of Article 142 highlighting the extent of jurisdiction of the Supreme Court under it.
- Discuss how this article enables judicial overreach citing some examples like verdicts in the Coal block case and the Supreme Court's intervention in the conservation of Taj Mahal.
- Briefly mention the pros and cons of Article 142 on the basis of the principle of check and balance.
- Conclude by highlighting the need to strike a balance between three pillars of government without encroaching on each other's area.

Introduction

- Article 142 of Constitution of India deals with Enforcement of decrees and orders of the Supreme Court. It states that the Apex Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing "complete justice" in any case pending before it.
- Such orders of the Supreme Court are enforceable throughout the territory of India as prescribed by any law made by Parliament or order of the President of India.

Body

Article 142 enables superseding the executive and the legislative

- From Article 142, the Supreme Court derives overarching powers to perform the functions of Executive and legislative in order to bring about complete **justice**.
- In this pursuit, Article 142 is supplemented by the **Articles 32** (Right to constitutional remedies), **Article 141** (The law declared by the Supreme Court shall be binding on all courts within the territory of India) and **Article 136** (Special Leave petition).
- This is often termed as **judicial activism**. To do "complete justice" it has often overridden the laws made by Parliament such as in the following cases.
 - **Union Carbide Case:** In 1989, the Supreme Court invoked Article 142 to provide relief awarding the compensation of to victims affected in the Bhopal Gas Tragedy.
 - **Coal Block Allocation Case:** In 2014, the Supreme Court used the said provision of the constitution to cancel the allocation of coal blocks granted from 1993 onwards who were guilty of wrongdoing and imposed a penalty on coal mined illegally.
 - **Ban on liquor sale on highways case:** In 2016. under Article 142 the apex court banned the sale of alcohol within a stipulated distance of 500 metres form the outer edge of the highway. Such a decision was taken to avoid accidents due to drink and drive.

Merits of Article 142

- Judiciary has used the powers under 142 for upholding citizens' rights and implementing constitutional principles when the executive and legislature fails to do so.
- As the guardian of the constitution Article 142 provides its power to fill the statutory vacuum.
- It also sets out a system of **check and balance** and controls to the other branches of the government. For example:
 - In Vishakha v State of Rajasthan case, Supreme Court laid down the guidelines to protect a woman from sexual harassment at its workplace
 - Bandhua Mukti Morcha Case the Hon'ble Court gave its landmark judgment on bonded labour system of India
 - In Olga Tellis Case where Right to livelihood was declared part and parcel of the right to life.

Demerits Of Article 142

- **Unaccountability:** One of the demerits of the powers of the Supreme Court under Article 142, is that unlike the executive and legislature, **it cannot be held accountable for its decisions.**
 - For example in one of the verdicts, the apex court banned e-rickshaws in certain parts of delhi without making provisions for alternative employment. However, it cannot be held accountable for violating the fundamental right to to carry on any occupation or trade.
 - In the coal block allocation case, The Supreme Court did not hear individuals and their particular facts, but only their associations were heard.
- **Judicial under-reach:** The problem of judicial under-reach arises where courts shirk its responsibilities, despite having the jurisdiction, resulting in injustice.
 - Like majority of the petitions/appeals filed before the Supreme Court under Article 136 of the Constitution of India are dismissed, but its judges are not liable to explain the reasons for such dismissal.
- Repeated interventions of courts can diminish the faith of the people in the integrity, quality, and efficiency of the government.

Conclusion

Thus, there is a need to strike a balance between three pillars of government without encroaching on each other's area. The powers under Article 142 being curative in nature cannot be construed as powers which authorise the court to assume the role of executive or legislature.

In the Bar association of **Supreme court vs. The Union of India Case** Supreme Court itself held that the power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to violate substantial rights.