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Accused Can be Ordered to Give Voice Samples

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The Supreme Court has ruled that a **judicial magistrate** can order an **accused** to give his voice **samples even against his consent** in the course of a **criminal investigation**.

- The Supreme Court has issued this order under **Article 142** of the Constitution of India.
- It called upon the Parliament to make requisite changes in the Code of Criminal Procedure to provide for the same and till that happens, the magistrate will have the power to order the same.
 - The **87th Report of the Law Commission of India** describes a voiceprint as a **“visual recording of voice”**. Voiceprints resemble fingerprints, in that each person has a distinctive voice with characteristic features dictated by vocal cavities and articulates.
 - In a past judgment, the court said that the making of such far-reaching interpretations in the Criminal Procedure Code – which is silent on whether a court can order a person to give voice sample to police – should be best left to the legislature.
- The court also observed that the **fundamental right to privacy (Article 21)** cannot be construed as absolute and must bow down to compelling public interest.
- The court did not give any direct observation on **Article 20 (3)** of the Constitution which protects an accused from being compelled to be a witness against himself.
 - However, with this order, a person can be compelled to give his voice sample during the criminal investigation.
 - The **Chief Justice compared a voice sample** with other impressions like **specimen handwriting, or impressions of his fingers, palm or foot collected by police during the investigation**. By themselves, these impressions or the handwriting do not incriminate the accused person, or even tend to do so.
 - A voice sample will be taken for the **reason of comparison with other voices** in order to see if they match and are of the same person.

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.

Source: Tol