

# FACULTY OF JURIDICAL SCIENCES

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# Lecture- 05



### **What is the present situation of the discretionary power of judges in India**

The judges of the Supreme Court enjoy wide discretionary powers under Article 142. And while exercising these powers the supreme court has made good to many cases. In the petition related to the Taj Mahal, the Supreme Court issues direction when the marbles of its start yellowing. The Supreme Court uses its power judicially to secure our heritage and to prevent its beauty. Similarly, there were many undertrials behind the bars for more than the specified time. The Supreme Court took the matter to its consideration and released the innocents. And there are many cases where the Supreme Court has provided relief and has done justice. But, now the Courts have gone to the extent that they can override the rules and laws made by the legislature by exercising their power under Article 142. In recent years several judgements have been passed which have undermined the principles of independent judiciary and separation of powers.

**The Coal Block Allocation Case:** The Supreme Court cancelled the allocation of coal blocks in 2014 which were granted in 1993 without any valid reason. The court didn't even find that none of the grantees was guilty of any offence. This cancellation carried with them with a huge penalty. The individuals were not heard on their own stand but only their associations were heard.

### **Issues and challenges**

The powers enshrined under Article 136 and 142 are extraordinary powers. And while keeping this in view the judges should use these powers in rare cases where there is a substantial question of law or where great injustice has been done. This power should not be used in a casual manner. It should be used to secure the interests of the large public and for the better administration of justice. One of the main issues with these discretionary powers is that there is no straight-jacket formula for its use. So, it should be ensured that no injustice has been caused and no laws of the parliament are put at the risk. It cannot overrule the substantive law. But there have been many cases where the Supreme Court has tried to have a balanced judgement.

In **Damodar S. Prabhu v. Sayed Babalal H (2010)**, the court framed some guidelines related to Sec. 138 of Negotiable Instruments Act, 1881. In the same case, the court said that framing law under art 142 is out of their jurisdiction but it was necessary to do justice as there were no laws laid down by the legislature.

### **Critical analysis**

No doubt that the judges are awarded some wide and extraordinary discretionary powers. But these powers should be used in a judicious way to do justice. In the case of **J. Jayalithaa & Ors. v. State of Karnataka & Ors. (2013)**, the court held that the use of power under Article 142 should not be in contrary to any law. Such exercise of power should not undermine any statutory provisions of the country. However, the court has issued some guidelines and regulations in the case of **Vineet Narain & Ors. v. Union of India (1997)** as there were no laws made by the legislature and this was necessary to do justice to the parties.

### **Conclusion**

Our constitution has described many of the discretionary powers for the judges of our country. But these powers should be used in rare conditions where there is grave injustice or the matter requires the interference of the Court. The casual use of these powers may cause harm to the mechanism of our Constitution. It should be ensured that these powers should not be used arbitrarily and these powers must be used to secure the interests of the large public and for the better administration of justice. One of the main issues with these discretionary powers is that there is no straight-jacket formula for its use. So, it should be ensured that no injustice has been caused and no laws of the parliament are put at the risk.