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Article 142 and the Paradox of Complete Justice: Judicial Activism, Overreach, and the Separation of Powers in the Wake of the 2026 Jantar Mantar FIR Quashing

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ABSTRACT

Article 142 of the Constitution of India empowers the Supreme Court to pass orders necessary to do “complete justice” in any cause or matter pending before it. While conceived as an exceptional and residuary judicial power, its expanding application has generated persistent concerns regarding judicial activism, institutional overreach, and the separation of powers. This paper examines these tensions through the Supreme Court’s September 2026 order in Shailendra Mani Tripathi v. Union of India, concerning the quashing of First Information Reports arising from the Jantar Mantar student protests against alleged irregularities in the NEET-UG 2026 examination. The paper first traces the constitutional and doctrinal development of Article 142, examining its evolution from a residual mechanism for exceptional relief to a broader instrument of judicial intervention. It analyses the tension between Union Carbide Corp. v. Union of India, which recognised the breadth of Article 142, and Supreme Court Bar Association v. Union of India, which emphasised that the power is supplementary and cannot supplant substantive law. The paper then evaluates the Jantar Mantar order, focusing particularly on its nationwide application, reliance upon executive assurances, interaction with the statutory mechanism governing withdrawal of prosecution, and the Court’s declaration that the order should not be treated as a precedent. The paper argues that the order is defensible from the standpoint of immediate individual justice, particularly in protecting constitutionally protected dissent, yet raises significant institutional concerns. It contends that the structural characteristics of Article 142 create a risk that judicial activism may gradually develop into functional substitution of legislative or executive roles. The paper therefore advocates principled restraint rather than constitutional restriction, proposing that future exercises of Article 142 should demonstrate the inadequacy of ordinary remedies, remain appropriately confined to the controversy before the Court, and avoid converting political or executive commitments into judicially created institutional arrangements.

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I. INTRODUCTION

India's Constitution, unlike most liberal democratic frameworks, contains a provision that explicitly empowers its highest court to transcend the ordinary limits of positive law in order to achieve justice. Article 142(1) provides 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", and that any decree so passed or order so made "shall be enforceable throughout the territory of India".¹ The breadth of this language, which sets no predefined limit and requires no consultation with Parliament or the executive, is both its genius and its constitutional hazard.

From relative obscurity before the Bhopal gas leak settlement litigation of 1989 to 1991, Article 142 has evolved into one of the most consequential and contested provisions in Indian constitutional law. It has been invoked to resolve the Ayodhya title dispute² and, in 2025, to deem Bills passed by a State legislature to have received the Governor's assent.³ The Court has also, acting under Articles 32 and 141, laid down guidelines on workplace sexual harassment in the absence of legislation.⁴ The September 2026 order quashing the NEET-UG protest FIRs is the latest development in this expanding jurisprudence.

The hypothesis this paper advances is as follows: the aspiration for complete justice, when operationalised through judicial activism, carries within it the structural conditions for judicial overreach; and such overreach, even where motivated by legitimate concern for rights and equity, places the separation of powers in constitutional jeopardy. The Jantar Mantar quashing order, examined as part of a broader pattern rather than in isolation, illustrates this dynamic with particular clarity.

A. The text and intent of Article 142

Article 142 originated as Draft Article 118, which the Constituent Assembly adopted without debate on 27 May 1949.⁵ It is best understood as a residuary equity power: a safety valve for exceptional cases where strict application of law would produce injustice and where no ordinary

¹ INDIA CONST. art. 142, cl. 1.

² *M. Siddiq (Dead) through Legal Representatives v. Mahant Suresh Das*, (2020) 1 SCC 1 (India).

³ *State of Tamil Nadu v. Governor of Tamil Nadu*, W.P. (C) No. 1239 of 2023, 2025 INSC 481 (India Apr. 8, 2025).

⁴ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India) (guidelines laid down "in exercise of the power available under Article 32 of the Constitution" and to be "treated as the law declared by this Court under Article 141").

⁵ 8 CONSTITUENT ASSEMBLY DEBATES (May 27, 1949) (India) (Draft Article 118 adopted without debate), <https://www.constitutionofindia.net/debates/27-may-1949/>.

legislative or executive remedy was available. On this understanding, the power was to supplement, not supplant, the law. Critically, the term “complete justice” was left undefined, rendering the provision inherently discretionary. This was not necessarily an oversight; in leaving the phrase open, the Assembly in effect entrusted the Supreme Court with the institutional wisdom and self-restraint needed to deploy the power responsibly.

The provision attracted comparatively little judicial attention until *Union Carbide Corp. v. Union of India*,⁶ where the Court upheld the US\$470 million settlement of the Bhopal gas leak claims that it had recorded in February 1989, holding that “[p]rohibitions or limitations or provisions contained in ordinary laws cannot, *ipso facto*, act as prohibitions or limitations on the constitutional powers under Article 142.” This assertion of near-plenary power was, however, considerably tempered in *Supreme Court Bar Association v. Union of India*,⁷ where the Court held that the powers under Article 142 are “in the nature of supplementary powers” and “curative in nature”, that they cannot be used to “supplant” the substantive law applicable to the case, and that Article 142 “cannot be used to build a new edifice where none existed earlier”. The tension between these two formulations remains unresolved.

B. The spectrum from judicial activism to judicial overreach

Judicial activism and judicial overreach occupy distinct points on a continuum, though the boundary between them is contested. Judicial activism denotes the willingness of courts to step beyond a passive interpretive role, reading constitutional provisions purposively to protect fundamental rights and correct democratic failures. Judicial overreach, by contrast, occurs when courts venture into domains constitutionally reserved for the legislature or executive, whether by making policy, substituting judicial preferences for democratic choices, or issuing orders that exceed what is necessary for the resolution of the matter before them.

The distinction carries concrete doctrinal consequences. In *State of Karnataka v. Umadevi*,⁸ a Constitution Bench held that “[c]omplete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.” Earlier still, in *Prem Chand Garg v. Excise Commissioner*,⁹ the Court had held that an order made to do complete justice “must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be

⁶ *Union Carbide Corp. v. Union of India*, (1991) 4 SCC 584, 619 (India).

⁷ *Sup. Ct. Bar Ass’n v. Union of India*, (1998) 4 SCC 409, 443 (India).

⁸ *Sec’y, State of Karnataka v. Umadevi* (3), (2006) 4 SCC 1, 48 (India).

⁹ *Prem Chand Garg v. Excise Comm’r, U.P., Allahabad*, AIR 1963 SC 996, 1000 (India).

inconsistent with the substantive provisions of the relevant statutory laws.” These doctrinal limits have, however, proven difficult to enforce in practice.

II. THE JANTAR MANTAR QUASHING ORDER: FACTS, LAW, AND DOCTRINAL IMPLICATIONS

A. Factual background

Between 20 and 25 July 2026, thousands of students gathered at Jantar Mantar in New Delhi and at protest sites across several States to demand accountability for the alleged leak of the NEET-UG 2026 examination paper. The protests were organised primarily under the banner of the Cockroach Janata Party (CJP). Police in Delhi, Bihar, Maharashtra, West Bengal and Assam registered FIRs against an indeterminate number of participants.¹⁰ After the protests, the CJP’s central demand was the withdrawal of all criminal cases against student protesters.

According to the account later given to the Supreme Court by the Solicitor General, the Central Government gave three assurances to CJP leaders on 25 July 2026: that FIRs registered between 20 and 25 July would not be pursued, that no fresh FIRs would be filed in relation to the same incidents, and that compensation would be provided to the families of students who had died by suicide in connection with the cancellation of NEET-UG 2026.¹¹ These assurances had not been embodied in any statutory or executive instrument and remained, at that stage, political commitments. The Union, through the Delhi Police, and the States of Bihar, West Bengal, Maharashtra and Assam then filed applications before the Supreme Court seeking the quashing of the FIRs, and the Solicitor General told the Court that the applications had been filed pursuant to those assurances.¹²

The matter came before the Court in *Shailendra Mani Tripathi v. Union of India*.¹³ On 1 September 2026, a Bench comprising Chief Justice Surya Kant, Justice Joymalya Bagchi and Justice V. Mohana invoked Article 142 and quashed all FIRs registered in connection with the protests of 20 to 25 July, extending its order to every State and Union Territory, including those that had filed no application before the Court, and barring the registration of fresh FIRs over the same incidents. The Delhi Police was, however, permitted to register a fresh FIR in respect

¹⁰ Namrata Banerjee, *SC Quashes Jantar Mantar Protest FIRs Across India, Permits Fresh FIR Against 2873*, SUP. CT. OBSERVER (Sept. 1, 2026), <https://www.scobserver.in/journal/sc-quashes-jantar-mantar-protest-firs-across-india-permits-fresh-fir-against-2873/>.

¹¹ Debby Jain, *Supreme Court Quashes FIRs Across Country Over Student Protests; Bars Future FIRs*, LIVELAW (Sept. 1, 2026), <https://www.livelaw.in/top-stories/supreme-court-quashes-firs-across-country-over-student-protests-bars-future-firs-548094>.

¹² Banerjee, *supra* note 10; Jain, *supra* note 11.

¹³ *Shailendra Mani Tripathi v. Union of India*, W.P. (Cr.) No. 280 of 2026, 2026 SCC OnLine SC 1754 (India Sept. 1, 2026) (order).

of 2,873 individuals said to have serious criminal antecedents and to have been present at the Jantar Mantar protest site, confined to offences involving bodily harm or destruction of property; press reports state that these individuals were identified through facial recognition technology.¹⁴ The Court also directed the Central Government to formulate, in consultation with the States and Union Territories, a pan-India policy for compensating the families of students who died by suicide in connection with the NEET-UG 2026 examination, within three months.¹⁵ As reported, the Bench clarified that its directions were issued in the “peculiar facts and circumstances of the case” and were not to be taken as a binding precedent.¹⁶

B. The doctrinal case for and against the order

The order can be defended on its facts. The applications before the Court sought to give legal effect to executive assurances that had not yet been translated into legal relief. The student protesters had exercised freedoms guaranteed by Article 19(1)(a) and (b) of the Constitution.¹⁷ The Bench drew a clear distinction between bona fide participants and individuals said to have serious criminal antecedents, carving out the 2,873-person exception accordingly.¹⁸ Justice Bagchi observed from the Bench that a quashed FIR becomes “completely obsolete, completely academic and completely a part of history”,¹⁹ emphasising the permanent and irreversible character of the relief. In this framing, the Court was doing precisely what Article 142 envisions: providing a remedy where the ordinary machinery of criminal law would have produced a protracted and unjust outcome.

The case against the order is, however, constitutionally significant. The power to withdraw from a prosecution is vested in the executive, specifically in the Public Prosecutor acting under Section 360 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 321 of the Code of Criminal Procedure, 1973), subject to the consent of the court in which the case is pending.²⁰ By quashing FIRs on the strength of executive assurances, and at the request of the Union and State Governments themselves, rather than through that statutory mechanism, the Court bypassed a procedure designed to ensure structured and accountable exercise of prosecutorial

¹⁴ Banerjee, *supra* note 10; Ranjit Kumar Sinha, *Supreme Court Order on Jantar Mantar Protest Helps Buy Time*, DAILY PIONEER (Sept. 7, 2026), <https://dailypioneer.com/news/slug-lite/supreme-court-order-on-jantar-mantar-protest-helps-buy-time?year=2026>.

¹⁵ *Supreme Court Quashes FIRs Arising from NEET-UG Protests, Invokes Article 142 to Protect Young Protesters*, THE INDIAN LAWYER (Sept. 5, 2026), <https://theindianlawyer.in/supreme-court-quashes-firs-arising-from-neet-ug-protests-invokes-article-142-to-protect-young-protesters/>.

¹⁶ Jain, *supra* note 11.

¹⁷ INDIA CONST. art. 19, cl. 1(a)–(b).

¹⁸ Binny Yadav, *The Supreme Balance*, INDIA LEGAL (Sept. 12, 2026), <https://indialegallive.com/cover-story-articles/il-feature-news/jantar-mantar-protest-dissent-criminality-supreme-court/>.

¹⁹ Banerjee, *supra* note 10 (oral observation of Bagchi J. during the hearing).

²⁰ Bharatiya Nagarik Suraksha Sanhita § 360 (2023) (India); Code of Crim. Proc. § 321 (1973) (India) (repealed).

discretion. The order's nationwide reach, extending to States that had filed no applications before the Court, raises further questions about the territorial limits of Article 142 and the constitutional standing of State governments that were not before the Court. For the petitioners, Senior Advocate N. Hariharan sought copies of the FIRs and of the list of the 2,873 individuals, arguing that the numbers alone did not disclose who had been named or what was alleged against them.²¹

C. The non-precedent paradox

The Bench's declaration that the order is not to be treated as a precedent²² warrants careful scrutiny. As a matter of constitutional theory, the assertion is self-contradictory. A three-judge Bench of the Supreme Court exercises the Court's original and appellate jurisdiction, and under Article 141 the law it declares is binding on all courts within the territory of India.²³ A declaration of non-precedential status does not, and cannot, erase the institutional signal the order conveys. Future governments, litigants and protest movements will be aware that the Court has, at least once, invoked Article 142 to quash FIRs arising from nationwide political protests on the basis of executive assurances. The non-precedent caveat may preclude direct citation but cannot foreclose analogical reasoning.

The order therefore produces what may be described as the Jantar Mantar paradox: an act of institutional restraint in confining the order to its facts, nested within an act of institutional expansion in deploying Article 142 to perform a function that Section 360 of the Bharatiya Nagarik Suraksha Sanhita, 2023 was designed to serve. The Court's addition of the non-precedent caveat confirms its own awareness of the order's constitutional implications;²⁴ that awareness does not, however, reverse the constitutional ground shifted.

III. THE THESIS EXAMINED: COMPLETE JUSTICE, ACTIVISM, OVERREACH, AND SEPARATION OF POWERS

A. The structural logic of overreach

The hypothesis advanced in this paper is not that every invocation of Article 142 constitutes judicial overreach, nor that the Supreme Court acted improperly in the Jantar Mantar matter. The argument is structural: the design of Article 142, open-ended, discretionary, enforceable

²¹ Banerjee, *supra* note 10.

²² *Article 142 Explained: Why Supreme Court Quashed NEET Protest FIRs*, OUTLOOK INDIA (Sept. 2, 2026), <https://www.outlookindia.com/national/article-142-explained-why-supreme-court-quashed-neet-protest-firs>.

²³ INDIA CONST. art. 141.

²⁴ *See* Yadav, *supra* note 18 (describing the disclaimer as "the Court acknowledging the danger inherent in what it had just done").

throughout India, and unreviewable by any superior tribunal, creates an institutional architecture in which the pursuit of complete justice will, over time and under institutional pressure, expand beyond what the separation of powers can accommodate.

This logic is apparent from the trajectory of Article 142 jurisprudence. In *Union Carbide*²⁵ the Court invoked the provision to settle a mass tort claim; the intervention was genuinely residual. In *Vishaka*,²⁶ though not itself an Article 142 case, the Court, acting under Article 32 and declaring its guidelines binding under Article 141, filled a legislative void on workplace sexual harassment, a legitimate but more expansive exercise of judicial power. By the *Tamil Nadu Governor* case (2025),²⁷ Article 142 was being used to supply assent to legislation, a function that Article 200 assigns to the Governor.²⁸ The Jantar Mantar order of 2026, read against this lineage, represents a further displacement: the Court conferred judicial sanction on a political negotiation,²⁹ bypassing the statutory procedure for withdrawal from prosecution.

Critics, including former Vice-President Jagdeep Dhankhar, who in April 2025 described Article 142 as a “nuclear missile against democratic forces” available to the judiciary and spoke of judges acting as a “super Parliament”,³⁰ have attacked the provision in the strongest terms. That characterisation overstates the position; the Court does not legislate in any conventional sense. It nonetheless identifies a genuine institutional concern: not that any individual order is catastrophically wrong, but that the cumulative pattern of expansive Article 142 use reconfigures the constitutional landscape in ways that the text of Articles 50, 122 and 212, and the broader separation-of-powers framework, did not contemplate.

²⁵ *Union Carbide*, *supra* note 6.

²⁶ *Vishaka*, *supra* note 4.

²⁷ *State of Tamil Nadu*, *supra* note 3; see also *In re Assent, Withholding or Reservation of Bills by the Governor and the President of India*, Special Reference No. 1 of 2025, 2025 INSC 1333 (India Nov. 20, 2025) (advisory opinion of the Constitution Bench under Article 143(1) that Article 142 does not permit the orders of the Governor or the President to be substituted and does not allow for “deemed assent”, and that it would not be appropriate for courts to prescribe timelines under Articles 200 and 201); RR Singh, *The Long Arm of Article 142: Judicial Innovation or Constitutional Overreach? Critical Analysis of Tamil Nadu vs Governor Case*, LAW TREND (Apr. 14, 2025), <https://lawtrend.in/supreme-court-judicial-activism-overreach-separation-of-power/>; *Article 142: The Supreme Power or Judicial Overreach?*, INSIGHTS ON INDIA (Apr. 19, 2025), <https://www.insightsonindia.com/2025/04/19/article-142-the-supreme-power-or-judicial-overreach/>.

²⁸ INDIA CONST. art. 200.

²⁹ Sinha, *supra* note 14 (describing the order as having “codified a negotiated deal between the Centre, state governments, and the CJP”).

³⁰ *Judiciary Can't Attack Forces of Democracy, Says Vice-President Jagdeep Dhankhar on Supreme Court Verdict*, THE HINDU (Apr. 17, 2025), <https://www.thehindu.com/news/national/vice-president-dhankhar-supreme-court-judges-president-state-bills-timeline/article69460514.ece>; see also *Article 142: The Supreme Power or Judicial Overreach?*, NEXT IAS (Apr. 19, 2025), <https://www.nextias.com/ca/current-affairs/19-04-2025/article-142-supreme-power-or-judicial-overreach>.

B. Judicial activism as both remedy and risk

The Jantar Mantar order illustrates the dual character of judicial activism under Article 142. The qualities that make the provision a powerful instrument for justice, its flexibility, its speed, and its capacity to transcend legislative deadlock, are the same qualities that make its expansion constitutionally hazardous. The Court acted before political pressures could destabilise the situation further; it protected young citizens from criminal proceedings which, as the Court saw it, should not be allowed to define their futures; and it secured a commitment to compensate families of students who had died. These outcomes are unimpeachable on their merits.

The methodology employed, however, carries risks that outlast the immediate facts. By normalising the judicial substitution of prosecutorial decision-making, Article 142 activism creates conditions for what one commentator has termed “governance by litigation”:³¹ a cycle in which the prospect of judicial intervention discourages the executive from developing robust statutory frameworks, on the assumption that the Court will supply ad hoc relief when systemic failures become acute. On this view, the absence of a dedicated statutory mechanism for withdrawing protest-related FIRs may be attributable in part to precisely this expectation.

The separation of powers is not merely a formal constitutional arrangement. It reflects a considered theory of institutional competence: legislatures are suited to making general rules, executives to implementing them, and courts to adjudicating disputes about their application. When courts systematically substitute their assessments of what the executive should have done, even where those assessments are sound, they erode the institutional capacity that democratic governance requires. A constitutional order in which the Supreme Court functions as the primary guarantor of executive accountability is one in which the legislature has atrophied and the executive operates on judicial licence. That is an unstable constitutional arrangement.

C. Doctrinal limits and the case for principled restraint

The doctrinal limits established in *Supreme Court Bar Association*³² and *Prem Chand Garg*³³ provide the appropriate framework for a principled application of Article 142. The power is supplementary, not legislative; curative, not reformatory; residual, not routine. Any order under the provision must, per the Court’s settled doctrine, be consistent with fundamental rights and

³¹ Md. Imran Wahab, *Article 142 of the Constitution of India: The Supreme Court’s Extraordinary Power to Do “Complete Justice”*, LEGAL SERVICE INDIA (May 5, 2026), <https://www.legalserviceindia.com/Legal-Articles/article-142-indian-constitution-complete-justice-supreme-court/>.

³² *Sup. Ct. Bar Ass’n*, *supra* note 7.

³³ *Prem Chand Garg*, *supra* note 9.

must not perpetuate illegality or build a new edifice where none existed.³⁴ A further constraint, one the Bench implicitly acknowledged through the non-precedent caveat, is that Article 142 should not be invoked where an adequate statutory remedy exists. Section 360 of the Bharatiya Nagarik Suraksha Sanhita, 2023 provides such a remedy for withdrawal from prosecution. The Court's election to proceed under Article 142 rather than direct compliance with that mechanism constitutes the most defensible target of the overreach critique.

The appropriate institutional response is not to curtail Article 142 by constitutional amendment; the power serves a genuine function in India's constitutional design. The response is to insist on principled doctrinal discipline in its application. Future Benches should be required to articulate expressly why the statutory remedy was inadequate before invoking Article 142; to confine relief to parties and States before the Court; and to resist deploying the provision as a vehicle for converting executive settlements into judicial orders. These are not procedural formalities. They are the institutional guardrails that the provision's residual character presupposes.

IV. CONCLUSION

The September 2026 quashing of the Jantar Mantar protest FIRs under Article 142 is simultaneously defensible and constitutionally concerning. It is defensible because it protected citizens from criminal proceedings arising from what the Court treated as bona fide participation in protest. It is concerning because it exemplifies the structural dynamic at the heart of this paper's hypothesis: the pursuit of complete justice through judicial activism carries within it the conditions for judicial overreach, and that overreach, accumulated across decades and successive invocations of Article 142, places the separation of powers at genuine constitutional risk.

Article 142 is not inherently pathological. Deployed with restraint, as a residuary remedy where legislative or executive mechanisms have genuinely failed, it is a valuable feature of India's constitutional architecture. The problem arises when the provision migrates from residual to routine use, from supplement to substitute, from equity to institutional policy-making. The Jantar Mantar order, read alongside the *Tamil Nadu Governor* case (2025),³⁵ the Chandigarh mayoral election case (2024)³⁶ and the foundational precedent of *Union Carbide*,³⁷ suggests that this migration is underway.

³⁴ *Umadevi*, *supra* note 8, at 48; *Sup. Ct. Bar Ass'n*, *supra* note 7.

³⁵ *State of Tamil Nadu*, *supra* note 3.

³⁶ *Kuldeep Kumar v. U.T. Chandigarh*, Civil Appeal No. 2874 of 2024, 2024 INSC 129 (India Feb. 20, 2024).

³⁷ *Union Carbide*, *supra* note 6.

The Court's declaration that the order shall not serve as a precedent is its most candid acknowledgement of the constitutional anxiety that expansive Article 142 use generates. Caution expressed *post hoc* cannot, however, undo institutional precedent established *ex ante*. If India's constitutional democracy is to preserve the separation of powers that Articles 50 to 144 of the Constitution collectively envision, the Supreme Court must exercise principled restraint in invoking Article 142, even where that restraint means forgoing immediate relief that is difficult to withhold on the merits. The true test of constitutional discipline is not how courts behave when justice and the Constitution point in the same direction, but how they conduct themselves when the demands of equity strain against the structure of law.
