



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service officer



a professional
Procurement from the World Bank.

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal



Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LD JAIKWAL
VS
STATE OF UTTAR PRADESH

AUTHOR – LAKSHMI K

Student, III-year, BA.; LL.B.(Hons),
SASTRA DEEMED TO BE UNIVERSITY,

Email: lakshmikummar20841@gmail.com

ABSTRACT

Any behavior that challenges the court's authority, hinders the court's regular operations, or obstructs the administration of justice constitutes contempt of court. Any disrespect and disregard for a judge, judicial court, or both may fall under this category. In India, the courts' authority to administer justice is granted by the Constitution. According to Article 129, the Supreme Court shall be a court of record and shall have all the authority of a court of record, including the authority to penalize for self-inflicted contempt. Every High Court must be a court of record and have the authority of one, including the ability to penalize for self-inflicted contempt, as stated in Article 215. According to contempt of court, 1971 there are two types of contempt namely Civil and Criminal contempt. This paper aimed to examine contempt of court in the case of L D JAIKWAL VS STATE OF UTTAR PRADESH.

KEYWORDS: Supreme Court, Contempt of Court, Civil Contempt, Criminal contempt, Court of record.

Case title	LD JAIKWAL VS STATE OF UTTAR PRADESH
Case number	Contempt Case No: 144/81 Criminal Appeal No: 611of 1982.
Date of the Order	05-11-1982
Jurisdiction	Supreme Court of India

Quorum	Hon'ble Thakkar, M.P And Hon'ble Sen, A.P.
Appellant	L D JAIKWAL
Respondent	State of Uttar Pradesh
Counsel for Appellant	N.N Sharma, Mrs. Pankaj Verma & Mrs. Vijay Gupta.
Counsel for Respondent	Dalveer Bhandari
Acts and Section Involved	Contempt of Courts Act 1971 ➤ Section 2 ➤ Criminal Contempt 2(c).
Citation	1984 AIR 1374 1984 SCR (3) 833 1984 SCC (3) 405 1984 SCALE (1)862

INTRODUCTION:

¹Any country that has a contempt of court statute has as its main goal to give the courts a weapon to use against parties, attorneys, and other individuals who obstruct court procedures. It is an extremely helpful and significant tool in the hands of the judiciary, ensuring that the orders granted by the court in the exercise of the power vested in them shall be obeyed and enforced.

If a court did not have such a provision, a situation of right would exist without a means of remedy in the event that the right was violated. ²The last resort sanction for disobeying a judge's orders is contempt of court. The judiciary has imposed penalty for contempt of court in numerous situations where the integrity and honor of the court were despised.

¹ <https://indiankanoon.org/doc/830334/>

² <https://legaldata.in/court/read/788271>

FACTS OF THE CASE:

In this case *LD JAIKWAL VS State of Uttar Pradesh*, LD JAIKWAL is a senior advocate, where his client guilty under section 5 clause 2 of prevention of corruption act. [**Section 5(2) defines A special judge may grant a pardon to someone who is alleged to have been directly or indirectly involved in or privy to an offence in order to get their testimony, provided that person is truthful and complete in disclosing all relevant information.**]The client was convicted by Special Judge, Dehradun, So Advocate was required to appear before Special judge to make his submission on question of sentence which is imposed on the client. Where the Advocate appeared in shirt and trouser in disregard to rule which require him to appear in court attire while appearing in professional capacity, so the Special Judge told him to leave the court and come back in proper court attire because of this instruction from Special Judge, advocate got annoyed and left the court. Some other advocate appeared on his case behalf of accused. Special Judge delivered his judgement on the case and imposed sentence of 4 years rigorous imprisonment to the accused (i.e. Advocate Client). As per provision under law, Advocate JAIKWAL and his client had an option to appeal to high court against the order of Special Court, So far as special court's Judge was concerned, the matter should have been ended there itself, At this point, Advocate JAIKWAL, who was the senior advocate of long standing and not an immature advocate, made a written application to the special judge worded in scurrilous/ insulting language making imputation/charge that the judge was "Corrupt Judge" and that he was "contaminating the seat of the justice". The offending in his application is quoted as "**I am making a complaint against you to highest authorities in the country, that you are corrupt and do not deserve to be retained in service. It is better for all of us if people like you are removed as soon as possible. As far the quantum of sentence, I will never bow down before you. You may award the maximum sentence. Anyways, you should feel ashamed of yourself that you are contaminating the seat of justice**". There was no known provision for making such an application after the matter is disposed of by the judge, also there was no legal purpose of making such an application. Obviously this is made to terrorize and harass the judge for giving judgement against his client.³Law provides mechanism for appeal and there is no provision which permits to adopt a court of intimidation in order to frighten the judge, and also advocate JAIKWAL not only wrote application to special judge but forwarded the application to many high rank authorities and officials like Prime Minister, Secretariat, Chief Justice of India, President Bar association, Dehradun, Chief Secretary

³ <https://www.livelaw.in/news-updates/karnataka-high-court-slap-say-sorry-and-forget-not-acceptable-contempt-case-220934>

of UP Government etc., which was really uncalled without any occasion and need.

ISSUE:

- Whether making such application by an advocate after the matter is disposed by a judge, making imputation/charges and threatening a judge amounts to contempt of court?
- Whether he appeal to Supreme Court?
- Whether his appeal dismissed or approved?

ARGUMENT MADE BY THE PARTIES:

Argument by the appellant:

⁴He is a senior advocate, even though he was not in is formal attire and scandalize the judge. He expressed his sorrow to special judge as directed by the Supreme Court and tendered a written apology. That accepted his wrong that he had lost his mental balance and done everything in the heat of the argument. He raised appeal before Supreme Court and he prayed for three weeks' times to give him an opportunity to do so. And also tendered a written apology. He obliged the order from Supreme Court and wrote sorry letter to special judge.

⁵Argument by the respondent:

The appellant was a senior advocate and he required to appear to court in formal attire. It is unacceptable to take an unjustifiably lenient stance at the expense of morality and the judge who has been embroiled in controversy to maintain a populist point of view. It is actually more difficult to resist the desire to indulge than to follow the path of responsibility, which is marked with many obstacles. The institutional perspective requires that the route of responsibility not be blocked by populist reasons. The appellant sent copies of the application to the Administrative Judge, Chief Secretary, and other authorities without cause or necessity, alleging that the Judge was a "corrupt Judge" who was tainting the courtroom. The appellant also made a written application to the judge in scurrilous language, accusing the judge of being a "corrupt Judge," and adding that he was contaminating the seat of justice. His conduct was directed against the dignity of court. If such an apology should be accepted, it would in fact be virtually issuing a license to scandalize courts and commit contempt. And his apologize was only a paper apology not from his heart.

⁴ <https://www.the-laws.com/Encyclopedia/Browse/Case?caseId=004891351000&title=l-d-jaikwal-vs-state-of-uttar-pradesh>

⁵ <https://www.legalserviceindia.com/legal/article-2633-power-of-contempt-of-court-a-critical-analysis.html>

JUDICIAL INTEPRETATION WITH OTHER CASES:

⁶IN RE: VIJAY KURLE AND OTHERS.

⁷Two letters were sent to Chief Justice of India Ranjan Gogoi by *Vijay Kurle*, Rashid Khan Pathan, and Nilesh Ojha on March 20 and March 19, respectively. In the letters mentioned above, scandalous accusations were made against Justices RF Nariman and Vineet Saran. The Court noted that the aforementioned letters make extremely scurrilous and scandalous claims about the judges, and that these claims cannot be made about judges or the courts. The Court further observed that the defendants did not exhibit even the slightest sign of regret or offer an apology. Thus, this behavior should not be tolerated and should not be given a pass and the Court further noted that individuals should be aware of how to question a judge's credibility and authority before commenting on or criticize the court's decision. As a result, the Court found all three attorneys guilty of contempt of court and sentenced them to 3 months of simple jail as well as a fine of Rupees 2000.

⁸BIJAYA MAJHI VS STATE OF ODISHA

The learned counsel for the informant is not wearing a neck band throughout the hearing, which is a strong indication that the said counsel has disobeyed the dress rule outlined in the Advocates Act. Every profession has a certain dress code, and those who work in that profession can be identified by their apparel. The Advocates Act of 1961 established guidelines for lawyers' attire, which mandates that they always wear a black robe or coat with a white shirt and white neckband. The dress code for attorneys is set down in the rule created under Section 49(1) (gg) of the Advocates Act of 1961, regardless of whether they are Senior Advocates or other attorneys. This Court has a duty to restore the profession's dignity, including the required dress code. Because of the foregoing, the informed counsel for the informant is required to deposit '500 as cost with the High Court Bar Association Welfare Fund and file a copy of the receipt with this Court by the next day.

⁹RACHITA TANEJA VS ADTHIYA KASHYAP

A cartoonist named RACHITA TANEJA was charged with tweeting offensive material critical of the court in the ongoing case of ADTHIYA KASHYAP v. RACHITA TANEJA (2020). ¹⁰The

⁶ SMC (Crcl) no. 000002-000002/2021

⁷ <https://indiankanoon.org/doc/5348324/>

⁸ BLAPL/8452/2021, ODHCO1-064912-2021

⁹ (CrI) No.4 of 2020.

¹⁰ <https://indiankanoon.org/doc/139982989/>

aforementioned post received a lot of shares and subscribers after going viral. The Attorney General went on to say that as such publications are intended to undermine public perceptions of the Supreme Court, even the cartoons themselves were in violation of the court's honor. The contemnor argued that reasonable criticism could not be justified as contempt and that the Court's foundation was far more solid than one might think.

INTERPRETATION PUT FORTH BY THE COURT:

According to sec 2(C) of Contempt of Courts Act, 1971.

“Criminal contempt” is the dissemination of any matter or the performance of any other act, whether by words, spoken or written, signs, visible representations, or any other means. which—

- 1) Scandalizes, tends to scandalise, or diminishes, tends to diminish the authority of any court;
- 2) Prejudices, or interferes, or tends to interfere, with the proper course of any judicial proceeding; or
- 3) Interferes, tends to interfere, or obstructs, or tends to obstruct, the administration of justice in any other way

The phrase "contempt of court" simply means acting disrespectfully or disobediently towards a court of law, which entails wilfully disobeying a court order or treating the judiciary with contempt. If the defendant is found guilty of contempt of court, the judge has the authority to impose penalties such as fines or to commit him to jail for a specified amount of time. This phrase can also be taken in terms of the judiciary's freedom from restrictions.

Section 49 of Advocates Act, 1961

g) The limitations on practise that senior attorneys must adhere to [(gg)] and the type of clothing or robes that attorneys must wear when they appear before any court or tribunal while taking into account the weather

An advocate should conduct himself with dignity while making his case and when appearing before a judge.

According to the Advocates Act of 1961, the Bar Council of India Rules, which govern a lawyer's attire, all lawyers must wear a black robe or coat with a white shirt and a white neckband. Gowns are optional barring when appearing before the Supreme Court and High Courts.

Bar Council of India Rules

DUTIES TO COURT

Rules 1 to 10 Section of Chapter II of Part IV:

An advocate shall conduct himself with dignity and Self Respect at the times of presentation of his case and while otherwise acting before a court. An advocate shall submit his grievance to proper authorities whenever there is proper ground for serious complaint against a judicial officer (Rule 1).

An advocate shall maintain towards the courts a respectful, attitude, bearing in mind that the dignity of the judicial officer is essential for the survival of a free community (Rule 2).

Rule 1 to 10 Section 1 of Chapter II of Part VI:

An advocate shall appear in court at all times only in the prescribed dress, and his appearance shall always be presentable (Rule 5).

VEREDICT OF CASE:

Allahabad high court initiated a contempt of court against the advocate. Based on the facts of the case the contempt of the court proceedings initiated against the advocate, Allahabad high court found the advocate found guilty of having committed criminal contempt under section 2 (c) (i) of the Contempt of the Court Act, 1971, after providing the full opportunity of hearing, Hon'ble High Court imposed sentence of 1 week of simple imprisonment with fine of Rupees 500. Sentence further said in default to undergo, further term of simple imprisonment of 1 week. Aggrieved by the decision of Allahabad high court, Advocate LD JAIKWAL made an appeal to Supreme Court.

Decision of Supreme Court:

Appellant advocate had not tendered an apology to high court but expressed his sorrow before Supreme Court saying that "He had lost his mental balance". Supreme Court was reluctant to hear him, then appellant prayed for the time of three weeks so that he can render an apology to the Special Judge and the court also accepted his prayer and allowed him 3 week time to render an apology. After this advocate appeared before Special Judge and tendered written apology stating "He is apologizing as directed by Hon'ble Supreme Court".

Therefore the circumstances clearly showed that he was not sorry, and it was just a paper apology. He didn't apologize from the bottom of his heart, but rather from his pen. There is difference between "to say sorry" and "to feel sorry". It is in this context that Supreme Court have been

obliged to make an opening remarks at the commencement of his Judgment as

“The Supreme Court rejects the contention that the conviction should be overturned and the applicant should not be punished just because he has made an apology”. Otherwise, all that person wanting to intimate a judge by making the grossest imputation against him has to do, is to go ahead and scandalize him and later on tender a formal empty apology which cost him practically nothing. If such apology were to be accepted were to be accepted as a rule and not as exception, The Supreme Court will essentially be granting permission for people to scandalize the court and act in contempt of it without consequence.

It will be rather difficult for any member of BAR who care for Self Respect to join judiciary if they are expected to pay such a price for it. Furthermore, no sitting judge will feel free to rule on any subject in accordance with his conscience out of concern for being humiliated and hounded by an advocate who doesn't mind bringing irrational accusations if the judge disobeys him.

If the situation were to be continued, advocate who can cow down the judges, and makes them fall in line with their wishes, by threats of character assassinations and persecution, will be preferred by the litigants to the advocate who are mindful of professional ethics and believe in maintaining the decorum of the court.

According to the Supreme Court, the high court had every right to impose a serious penalty. Additionally, the punishment given cannot be deemed excessive or out of context. An appeal is dismissed.

CRITICAL COMMENTS OF THE CASE:

According to what has been said, I do not believe that just because the appellant has submitted his apologies, we should vacate the Judgment and spare him punishment. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing. The Supreme Court will essentially be granting permission for people to scandalize the court and act in contempt of it without consequence the circumstances shows that the apology was made on paper and that his pen, not his emotions, was used to express his remorse.

His sorry is from pen not from heart. And it's not necessary to write a letter with malicious purpose and forwarding copy of the application to other higher authorities also his action is violation to sec 2 (c) of Contempt of Courts Act, 1971.