



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

SUPREME COURT BAR ASSOCIATION

VS

UNION OF INDIA & ANR

AUTHORED BY - NAVEENA G.J
Student, III-Year, BA.; LL.B.(HONS),
SASTRA DEEMED TO BE UNIVERSITY,
Email: naveenagopalakrishnan307@gmail.com

1. Factual Matrix of the case:

In this case, the defendant, V.C. Mishra, was found guilty of criminal contempt of court for interfering with and obstructing the court of justice by attempting to threaten, overawe, and overbear the law by using derogatory, disrespectful, and threatening language by the Supreme Court. The suspension was ordered by the supreme court, which noted the seriousness of the contemner's disrespectful behavior and asserted its authority under Article 12(g) read in constitution with Article 142 of the Indian Constitution to prevent the suspension of an advocate's practice. A petition under Article 32 of the Constitution was submitted, seeking the following remedies, by a party who was offended by the supreme court bar association's direction to suspend from practice. Declare in a suitable writ, direction, or declaration that the Bar Council's disciplinary committee, which was established by the Advocates Act of 1961, has sole authority to investigate and bar an advocate from practicing law for professional or other misconduct resulting from a sanction for contempt of court or other offenses, and that the Supreme Court of India or any High Court, in the exercise of its inherent jurisdiction, has no such authority. The learned Solicitor General contended that under Articles 129 and 142 of the Constitution, this court cannot exercise any "jurisdiction" or "punishment" that is not expressly authorized by law¹. Additionally, because the Advocate Act gives a statutory body sole authority to punish an advocate for professional misconduct by suspending his license, this court cannot exercise any "jurisdiction" under Articles 142 or 129 or even Section 38 of the Advocate Act. The Supreme Court Bar Association, through its Honorary Secretary, filed this petition under Article 32 of the Indian Constitution in response to the Supreme Court's decision in the initial case, Re. Vinay

¹ <https://main.sci.gov.in/jonew/judis/13280.pdf>

Chandra Mishra, in which the court found the defendant, an advocate, guilty of criminal contempt of court and ruled that the license of an advocate to practice law may be suspended or confined by the Supreme Court and High Court.

2. Substantial questions of law or Issues before the Court:

1. Whether the Punishment for established contempt of court committed by an advocate can include Punishment to debar the concerned advocate from Practice by suspending his license for a Specified Period, in the exercise of its Powers under Article -129 read with Art. 142. of the constitution of India?
2. Does the court properly exercise its authority by combining the provisions of Articles 129 and 142 of the Constitution?

3. Arguments by the parties:

3.1 Appellant's Contention:

The appellant of this case that is Supreme Court Bar Association argued that a three-year suspension from practicing law is not an appropriate writ, direction, or declaration that the bar councils established under the Advocates Act of 1961 alone have exclusive jurisdiction to investigate the misconduct committed by an advocate or suspend based on inquiry from practicing law for professional or other misconduct as a result of sanctions imposed. The Supreme Court Bar Association asserted that the High Courts within its jurisdiction do not have any rights, powers, or authority in that area.

3.2 Respondent's Contention:

The defendant contended that any high court within the jurisdiction of the supreme court can punish a person who disobeys the court by any means necessary in order to carry out justice. Any person who has engaged in misconduct or contempt of court may be penalized by the relevant court within their jurisdiction or the supreme court, according to Article 142 of the Indian Constitution. According to Article 129 of the Indian Constitution, the Supreme Court has the authority to punish, including for contempt of court. Additionally, it was contended that Vinay Chandra Mishra had engaged in criminal contempt of court, making him liable for punishment and giving the supreme court the legal authority to do so.

4. Judicial Interpretations that deduced the verdict:

In *Re. V.C. Misra's* case, the Bench cited Section 38's appellate authority as additional justification for its decision to suspend the contemner's license. **O.N. Mohindroo Vs. The District Judge, Delhi & Anr.**² A Supreme Court appeal according to Section 38 of the Act has been ruled to not be a restricted appeal. The Supreme Court is authorized to issue any order it sees fit on such an appeal, but it is spelled out in that Section that "no order of the Bar Council of India shall be varied by the Supreme Court to prejudicially affect the person aggrieved without giving him a reasonable opportunity to be heard. **In Bar Council of Maharashtra vs. M.V. Dabholkar & Ors.**³ a seven-judge panel of this court examined the Advocates Act of 1961's general structure and made the following observations, among others According to the Act's provisions and the Scheme, one of the main goals of the establishment of State Bar Councils and the Bar Council of India is to ensure that the etiquette and professional standards set forth by the Bar Council of India are upheld. The Supreme Court first held in **Prem Chand Garg v. Excise Commissioner, U.P., Allahabad**,⁴ the first case in this segment, that even though Article 142(1) gives the Supreme Court the authority to issue any order necessary to achieve complete justice between the parties, the Court cannot issue an order that conflicts with the fundamental freedoms protected by Part III of the Constitution. The Court believed that the discretion granted by Article 142 (1) could only be used to deviate from simple procedural standards.

5. Interpretation put forth by the court:

According to a ruling in the matter of *Supreme Court Bar Association v. Union of India*, Section 12(1) of the 1971 Contempt of Courts Act specifies that if contempt is shown, the offender may be fined, imprisoned for a short period in a civil facility, or both. After reading subsection (2) of section 12(2), it becomes clear that the Act limits the court's ability to impose an excessive punishment and then prescribe a sentence in subsection (2) of section 12. The judgment also shows that a court of record cannot punish a contemner under common law or any statutory law by suspending a person's license to practice any profession, such as law, chartered accounting, medicine, or any other, for a set period when that professional is found guilty of contempt of court. Only in cases of professional misconduct may an advocate's license be suspended and/or he be expelled from the state in accordance with the Advocate Act of 1961. The only subject on the court's agenda, when it was functioning under Article 129 of the Indian Constitution, was

² 1971 AIR 107, 1971 SCR (2) 11

³ 1976 AIR 242, 1976 SCR (2) 48

⁴ 1963 AIR 996, 1963 SCR Supl. (1) 885

contempt of court. As a result, under Article 129 of the Indian Constitution, a court has no authority to punish or suspend an advocate's license. Moreover, a court cannot assume control over the bar council of India's disciplinary procedures. The supreme court has the jurisdiction to punish for improper behavior or judicial disobedience, but it is not within its purview to revoke an advocate's right to practice law. The ability to complete justice under Article 142 of the Indian Constitution is a form of corrective action that favors equity over the law, but it cannot be used to deny any professional lawyer the protections provided by the Advocates Act, 1961 by suspending that lawyer's right to practice law while the contempt case is being handled. The supreme court has the power to punish, rather than suspend, any professional worker from performing his job after hearing both the arguments made by either party and the court's ruling. After the supreme court bar association won the lawsuit, Vinay Chandra Mishra's license was reinstated and it was no longer suspended.

6. Verdict of the case:

A practicing lawyer who is in contempt of the supreme court cannot have their license suspended under that court's authority. According to every article of the constitution, the Supreme Court has the power to penalize the offender and not suspend his license. The suspension of a professional worker's license due to professional misconduct is not something the supreme court may do in accordance with articles 142 or 129 of the Indian constitution. The court ruled correctly when it stated that only the Advocates Act of 1961 has the authority to suspend an advocate's license for any wrongdoing he may have committed. This decision was made in response to a complaint from the Supreme Court Bar Association.

7. Critical Comments:

A practicing lawyer's license was suspended due to contempt of court by the supreme court in this particular case. I agree with the court's conclusion that the supreme court lacks the power to suspend the license of any professional engaging in any form of contempt. License suspension can also be done in accordance with the Acts under the professions. The Supreme Court has the authority to penalize or imprison a person for misconduct or contempt of court under Articles 129 or 142 of the Indian Constitution, but it is not permitted to stop that person from engaging in their line of work under any other provision of the Constitution.