

Total Time Alloted: 3 Hours

Total Marks : 250

Question Paper Specific Instructions

- Please read each of the following instructions carefully before attempting questions.
- There are EIGHT questions divided in two sections.
- A candidate has to attempt FIVE questions in all.
- Questions no 1 and 5 are compulsory and out of the remaining, THREE are to be attempted choosing at least ONE from each section.
- The number of marks carried by a question /part is indicated against it.
- Word limit in questions, wherever specified should be adhered to.
- Attempts of questions shall be counted in chronological order. Unless struck off, attempt of a question shall be counted even if attempted partly. Any page or portion of the page left blank in the answer book must be clearly struck off.

NOTE: Please take a printout of the answer Booklet and give answers in stipulate time. So that actual examination scenario is stipulated.

Name: RUPAL JAISWAL
Subject: Contemporary Legal Developments
Phone: _____

Teacher's Remark

↓(a) Explain the scope of originality in the context of Indian copyright law.

Originality in copyright Act 1957 is a pre-condition for recognition of author's rights in the work [S. 13].

The Rationale for this requirement is to balance author's rights over his creation with the public interest [R G Anand case]

SCOPE OF ORIGINALITY UNDER THE ACT

① Doctrine of modicum of creativity -

explains that work need not be something entirely unknown but must have:

↳ minimum degree of skill, judgment in its execution

↳ some labour expended by author

→ creativity i.e. must not be copied

Applied in Eastern Book Company v/s
D B modak to hold "no copyright in
judgments but the headnote is copyrightable."

② Originality not required in plot/idea
but its expression

(eg) in Zee Telefilms v/s Sundial Communications -
script of "Krish Kamhaiya" copyrightable

③ Lower threshold of originality for
cinematography works or sound recordings

(eg) statutory license to cover versions

④ Originality not required for Broadcasters
record rights or performers rights

clearly, Sweat of the brow
doctrine inapplicable in India and minimum
originality is a must under the Act

4(b) Discuss the role of competition Act in promoting innovation and economic growth. How far has it been successful?

Competition Act 2002 replaced the monopolies and Restrictive Trade Practices Act 1970 and shifted focus from restriction of competition to its promotion.

Role of Competition Act /

- ① Protection of consumer interests
- ② Competition Commission of India has power to curtail predatory pricing
- ③ Prohibition of anti-competitive agreements [S. 3]
- ④ horizontal like Cartels or vertical like exclusive dealing agreements

③ Preventing abuse of dominance [s. 4]

eg recent Google case where fine imposed by CCI.

④ Penalizing the violators - eg Bajaj Auto

vs TVS Motors

In this type of ^{cases} high penalty is in accordance with the law

Success of Competition Act

Yes

→ promoted competitive markets eg in re

Cartelization of zinc sulphide batteries

→ Resolution through settlements and leniency (2023 Amendment)

No

→ limited success in prevention - post-mortem evaluation

→ delayed investigations by directors general

→ overuse of leniency provisions - thus affecting deterrence

Recent amendment increases penalty to global turnover and fixes 150 days timeframe - a welcome step.

* (C) Are there any limitations or exemptions on type of information that can be disclosed under RTI Act?

In P.U.C.L v/s Union of India, the Supreme Court recognized Right to Information as part of Art 21. Thereafter, Right to Information Act 2005 made it a statutory right. However, this right not absolute.

Limitations on RTI

Section 8 prescribes statutory exemptions when Public Information Officer can refuse information:

- ① in the interest of sovereignty and integrity or security of state
- ② Protection of IPRs, except when public interest outweighs it.

- ③ Third Party Information [s. 11]
may be refused or issued after notice
to third party in public interest
- ④ Personal information [s. 8(1)(j)] -
sensitive information or even non-
sensitive (amended by 2019 Amendment
Act)
- ⑤ Difamatory content
- ⑥ Against public morality or health to
disclose
- ⑦ disclosure prohibited under Official
Secrets Act, 1923.

Thus RTI Act creates several
exceptions which may be abused. Supreme
court guidelines in Aruna Roy v/s UOI
shows the way forward.

L(d) discuss the impact of supreme court decisions on balancing freedom of the press and right to fair trial.

Freedom of press flows from Art. 19(1)(a) of the Constitution while right to fair trial is a salutary right under Art. 21 and 20 of the Constitution.

However, the menace of media trials (called Kangaroo courts by Justice N V Ramana) has compelled judiciary to balance the two.

Judicial decisions - impact on freedom of Press

① Restriction on publication of confessions :
In Nilesh Navlakha v/s State of Maharashtra,
supreme court advised media to restrain

from agenda-driven trials

- ② Postponement of publication (eg) in Sahara India v/s SEBI, media restrained through gag order.
- ③ Prohibition on violating victims' privacy: (eg) in Rhea Chakraborty v/s State of Bihar, interim order issued.
- ④ Invocation of contempt powers under S-2(c) against media trial (eg) in MP Lohia v/s State of Bihar.
- ⑤ Directions issued in PILs (eg) in Hussainara Khatun case.

Thus, Supreme Court decisions aim at ensuring freedom of press on same pedestal as any ordinary citizen and doesn't violate right to fair trial.

1(c) what are the essential conditions on patentability under Indian Patent Act?

Can software be patented under the Indian Patent Act?

Patent Act 1970, based on principles of TRIPS Agreement balances rights of patentee to sole commercial exploitation with public interest. Therefore, prescribes exhaustive pre-conditions for patentability.

Essentials of Patentability

① Novelty: invention must not be anticipated or mere modification of existing state of art. (eg) R K Anand 4/5 Registrar, Delhi High Court ✓

② Inventive step: [S. 2(ja)]

↳ must have Technological significance or economic significance

↳ must not be obvious (to a person skilled in the art [Bajaj Auto v/s TVS motors])

③ Capability of industrial application :

Thus, (S.3) excludes a patent which is not useful. able to replicate

④ Must not fall under any exceptions under S.3 like prior user, prior publication etc.

eg) Dhanpat Sethi v/s Nilkamal Plastic
Crates - refused patent to "bamboo
kilta" used by traditional leg growers

Thus, the patent Act is an example

of model to balance incentive to patentee with public interest. Evergreening (Novartis AG v/s Union of India) also prevented by it v/s 3(d)

Q(a) What is the polluter pays principle? Discuss case where these principles were applied by courts in India.

Polluter Pays Principle evolved out of Principle 16 of the Rio Declaration (1992).

It is also statutorily recognised under S 20 of the NGT Act 2010.

↓
The speaker says

Meaning of Polluter Pays

It entails that a person who degrades or harms the environment must also pay for the consequences. As per Supreme Court in M.C. Mehta v/s Union of India (1984)

It includes

↓
obligation to pay the victims of for loss to life, property

↓
restoration costs of the environment

For up state board

Application of Polluter Pays by Courts

- ① In Union Carbide Corporation v/s Union of India, the victims of Bhopal Gas Tragedy were compensated (including children born with disabilities)
- ② Shri Ram Industries Case (MCMETA v/s Union of India), the discharge of effluents and oleum gas leak damaged environment, Shri Ram Industries made to compensate for it. Held, must be commensurate with deep pockets.
Totally, in Art of Living Foundation Case, even NGT levied penalty for encroachment of Yamuna floodplains.

Thus, polluter pays principle is part of law of the land in India.

Applied by Courts even suo motu

- ① In the Brahmapuram landfill fire case, the NCT itself (without any citizen approaching it) levied crores of penalty on Kochi municipal corporation
- ② Sukhdev Singh vs Union of India
 - ↳ Polluter pays must have element of deterrence
 - ↳ levied penalty as per profits gained from the environmental damage along with costs of restoration

Evaluation of polluter pays principle

- ↳ post facto application - cost slips in after damage already ~~done~~
- ↳ can promote "pay and pollute" mentality

- penalty levied often no deterrence for MNCs with deep pockets
- no monitoring of payments/ restoration on ground.

Further, passing of Public Liability Insurance Act 1991 has imposed upper limit of 50 crores on liability of hazardous polluters.

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De Facto IAS

2(b) What are the legal requirements for a valid digital signature under IT Act? How does IT Act differentiate between digital and electronic signature?

The Information Technology Act 2000 was passed in recognition of "digital revolution" that was unfolding in the 1990s.

To further adoption of technology and good governance, the IT Act recognizes digital and electronic signatures explicitly.

De Facto IAS
Requirements of valid digital signature,

s.3 of the Act accords recognition to such techniques of affixing digital signature which are safe and tamper-proof.

Three conditions for digital signature to be valid:

↳ must be affixed using asymmetric crypto system and hash function

↳ the record/affixed signature cannot be modified/altered by anyone except the digital signature certificate holder

↳ any alteration on e-record post affixing the signature is discovered instantly.

Difference between the digital signature and electronic signature

Basis	Digital sign (S.35)	E-sign (S.3A)
Technique used	asymmetric crypto system and hash function	any technique prescribed under <u>Schedule II</u> (8) <u>addhaar verification</u>


Scope	Digital sign is narrower and limited to techniques stated above	e-sign is broader in scope and includes <u>digital signature</u>
Issuance	Digital signature certificate issued by the certifying Authorities	e-signature certificate issued by certifying authorities

However, despite the differences, IT Act requires both to be equally secure and free from tampering.

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81/2


Q(c) what constitutes infringement of copyright under the Act? Discuss the concept of "fair use" and its limitations.

Copyright is an incorporeal, intangible exclusive right of the author in his creation. It is a negative right i.e. the author can prevent its unfair usage by unauthorized third parties  through an infringement suit.

Infringement under the Act

S.51 of Copyright Act 1957 recognizes infringing actions as under:

① copying - like reproduction, adaptation, translation, communication of work to the public without author's consent.

 in Humans of Bombay v/s People

of India Pvt. Ltd. (2023), Court restrained direct replication of Plaintiff's social media content.

② Substantial taking - i.e. mere re-arrangement of author's work without any creativity

eg in R G Anand v/s Deluxe Films

③ Import of infringing copies

④ Affixing author's copyright on own work

⑤ Sale or abatement to sale or storing or distributing infringing copies.

Concept of fair use

① S. 52 of the Copyrights Act exempts "fair dealing" for:

↳ private use

↳ for critical review or comment

- ↳ for reporting current news and events
- ① in ~~supercassettes~~ Supercassettes v/s Myspace
- ② use for instruction in educational institutions
 - ① University of Oxford v/s Rameshwar
Photocopy allowed compiled reading material
- ③ in a private space or closed residential premises
- ④ use in judgments
- ⑤ excerpt taken, reasonable though for a commentary
- ⑥ translation of Acts of Legislature.

Limitations on fair use

Civic Chandran v/s Ammini Amma held

fair use must not be :

- ↳ for commercial gain
- ↳ in competition with the copyright holder
- ↳ be mala fide - thus, an unreasonable amount of content can't be replicated.

9½

④ (a) What is the role of National Green Tribunal in environmental protection? Discuss the jurisdiction and powers of NGT in handling environmental disputes

National Green Tribunal, premised on similar environmental tribunals existing in Australia and New Zealand, was set up as a statutory quasi judicial authority under NGT Act 2010.

Role of NGT in Environment Protection

- ① speedier environmental justice
 - eg not required to follow CPC
- ② applies essential principles of environmental law eg Polluter Pays in In Re Brahamapuram landfill fire case

- ③ Advises the government on preventive measures to protect environment (eg) it issued direction for Western ghats to be declared Eco sensitive zone.
- ④ Balances finality with justice (eg) decisions only appealable in supreme court
- ⑤ creates deterrence against environmental damage (eg) in Art. of Living foundation vs Union of India, imposed heavy fine of restoration of Yamuna floodplains.

Jurisdiction of NGT

S. 10 of the Act provides jurisdiction to NGT.

- ① Territorial - within the territory of

India or if effects of a polluting action in India.

⑥ subject matter jurisdiction: over any civil matter involving substantial question related to environment.

"substantial question" defined in S.3 as:

- ↳ matters involving substantial damage to the environment
- ↳ involves violation of rights to pollution free environment etc, A -

De Facto IAS
Powers of NCT in handling environmental disputes

- ① All powers of civil court:
- ↳ call for evidence
 - ↳ production of document
 - ↳ issue summons, warrants

- ② Judicial proceeding
↳ Thus principles of natural justice ✓
↳ but flexible procedure (no CPC)

- ③ Power to impose : ()
↳ fine Ⓐ in subdiv 4/s union of India
↳ forfeiture of polluting equipment
↳ ~~imprisonment~~ up to 3 months to 3 years

- ④ quo motu power ()
(eg) in In Re Ban on firecrackers, directed
a total ban on firecrackers in NCT, Delhi
to curb air pollution.

Clearly, NCT is a salutary
tribunal with power to enforce its
decisions and thereby further "Just
Transition".

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4(b) How has judicial activism influenced growth of PIL in India? How can judiciary balance activism and restraint in handling PIL?

Judicial activism refers to the philosophy of judiciary not only deciding, adjudicating but also issuing directions, monitoring compliance etc. proactively.

Judicial activism - growth of PIL

Public Interest Litigation means a public spirited individual able to agitate grievances of socio-economically up and underprivileged before the court
[Hussainara Khatoon v/s State of Bihar,
Krishna Iyer J]

Judicial activism ~~seen~~ led to PIL as judges became more actively

involved in dispensing not just decisions
but doing complete justice.

① Relaxed locus standi is only agreed
can approach

(eg) Mazdoor Kamgar Sabha case

② Letters treated as petitions (eg) in
Sunil Batra v/s Delhi Administration

③ Private dispute can be converted to

PIL, if public interest involved

(eg) in Kunal Kamra v/s Union of India

④ Focus on rights of equal opportunity for
justice (eg) Asia Triad case

Balance between activism and restraint

In State of Uttarakhand v/s Balwant
Singh Chauhan, the Supreme Court

called on judiciary:

- ↳ to exercise judicial restraint (i.e. not interfere in functions of executive)
- ↳ verify identity and genuineness of PIL litigant
- ↳ Registry to ensure public interest involved
- ↳ exemplary damages for frivolous petitions in name of PIL

Thus, following aforesaid guidelines can help in balancing judicial activism and restraint. And ensure "Public interest litigation" does not turn into "Publicity Interest litigation".

4(c) Discuss the various provisions on compulsory licensing under the Patent Act, 1970.

Compulsory licensing under s. 84 of the Patents Act 1970 aims at ensuring that patentee does not abuse the statutory monopoly to the prejudice of public interest.

Provisions on compulsory licensing

① When compulsory licence granted?

s. 84 has 3 grounds:

→ when the invention has not been able to satisfy reasonable requirements of the public

↳ ~~patentee~~ failed to work the invention to an adequate extent

↳ ~~not~~ available at a reasonable price

However, the patent can be granted only after lapse of 3 years.

② Conditions for compulsory license: [S. 86]

↳ reasonable royalty to the ~~patentee~~

↳ license must be non-exclusive

↳ provide for profitability to the licensee

③ Other grounds of compulsory license

↳ government can, with notice, use for own non-commercial purpose (S. 100)

↳ government can grant license to any third party for export to a country, pharma products (S. 101)

- ① factors to be considered before grant:
- ↳ licensee had approached patentee with reasonable terms, patentee refused
 - ↳ capability of the applicant to work the patent ^{profit} with license
 - ↳ financial capital available to satisfy public requirements.
 - ↳ availability of invention through imports

Judicial cases:

~~Bayer Corporation~~ v/s Union of India -
anti-cancer drug Nexavar was compulsorily
licensed to NATCO, when Bayer Corporation
refused.

② Thus, compulsory licensing regime
in India is in line with TRIPS ^{✓, noted!}

8(a) How do provisions of IT Act 2008 and its amendments address intermediary liability for content hosted on their platforms? Discuss with the help of decided cases.

Information Technology Act under S. 79 provides for immunity to the intermediaries hosting third party content on their platform.

Provisions on intermediary liability

Statutory under

IT Act

(S. 79, S. 69 A, S. 69)

under rules framed

per IT Act S. 89

(IT Rules 2021)

Under the Act

↳ Immunity under S. 79 :

From third party content stored, published, accessed, shared on the intermediary platform.

↳ Restrictions:

- must not be involved actively abetting the criminal act / offence
- failure to remove content on acquisition of actual knowledge of prohibited content through a court order or government agency
(Shreya Singhal v/s Union of India)

Leno push

Impact of Amendments [2008 Amendment Act]

- ↳ actual knowledge of removal / blocking order (S. 69A) required → restricted obligation to remove only when notified
- ↳ expanded definition of intermediaries (S. 2)
to include e-commerce websites, auction sites, e-market place etc.

Judicial cases Liability under the IT Rules

- ↳ Rule 3 imposes obligation to display/publish "Website User Agreement" and Terms and conditions for use by intermediary
- ↳ prohibited content: intermediary must not cause to be hosted, shared, stored defamatory, obscene sensitive personal information, inciting offences etc.
- ↳ Take down order must be complied within 15 days and if sensitive matter, 72 hours

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~~There~~ Losing safe harbour: if intermediary,

- ↳ fails to take down within reasonable time
- ↳ shares sensitive user data without consent
- ↳ Involved not just in Transmission but

also alteration modification of content.

Judicial cases

- ① On liability of e-commerce platform
 - ② Christian Louboutin classified intermediaries into active and passive - former liable
 - ③ copyright infringement:
 - ④ Amazon Inc. v/s Amway - intermediary not liable for infringing products put on sale by vendors.
- Thus, intermediary liability in India still an evolving arena.

13

8(b) Discuss the legal provisions and penalties for contempt of court related to media trial.

Media trials refer to the media's coverage of a criminal trial, in an agenda-driven manner, such that has ability to influence outcome of the case.

Thus, courts have applied contempt provisions to discipline the media.

Provisions on contempt

① Contempt of Court Act, 1971 defines criminal contempt [S. 2(c)] as "any act
→ lowers the dignity of the court
→ interferes with administration of

justice

↳ obstructs the due course of judicial proceedings.

eg) in M P Mohia v/s State of Bihar, the SC levied exemplary fine on media for interference in trial, constituting contempt.

② Constitutional powers:

↳ Supreme Court (under Art. 124) has power to punish not just for own but also contempt of lower judiciary / tribunals

↳ High courts' power (under Art. 215) to punish for its contempt.

PENALTIES

Under contempt of Court Act,

- ↳ court can impose fine, as deemed fit
- ↳ if failure to pay fine, imprisonment upto one year
- ↳ if repeated contempt, such directions as deemed fit.

Contempt invoked against media

- ① in R K Anand v/s Registrar of Delhi High Court
- ② Dr Rajesh Talwar v/s Union of India
- ③ Rhea Chakraborty v/s State of Bihar - gay order on media

Thus, media trial has been curbed to some extent using contempt of court provisions.

8 (c) what are the requirements of a Trademark to be eligible for registration under the Trademark Act? Discuss the difference between distinctive and descriptive trademark. Trademarks Act 1999 provides for registration of trademark voluntarily with the Trademarks Registry created under the Act.

Essential Requirements of Trademark

① Distinctiveness : ie. must be able to distinguish goods of one seller from that of another

(eg) Preetendra Singh v/s Green Light Pvt. Ltd., Monsoon Harvest farms held to be distinct trademark.

② Non-descriptiveness :

→ must not be a common word which describes essential nature, form, shape or size of the products.

(eg) in F Hoffmann La Roche v/s Geofroy "drogovit" was held to be a coined term and hence not descriptive.

③ Capable of graphical representation i.e. either audio, visual, etc. even a domain name was held trademarkable in Satyam Infoway v/s fyenet.

DIFFERENCE BETWEEN

Basis	Distinctiveness	Descriptive
Nature	unique or unusual (eg) <u>Playboy</u> for a magazine	describes ordinary characteristics of a product (eg) "mango" for a product of mango

Trademark	Permitted as it has capacity to distinguish goods/services of one seller from another	Not permitted as it can prevent <u>honest and customary</u> usage by other traders
Exception	No exception - Trademark must be <u>distinctive</u>	Exception for <u>long usage</u> and due to which, the word came to <u>acquire distinct meaning</u>

Thus, to be registered under Trademarks Act, the mark must be distinctive and not descriptive.

5(a) Define "information" and "right to information" as per the RTI Act.

Information as per RTI Act includes

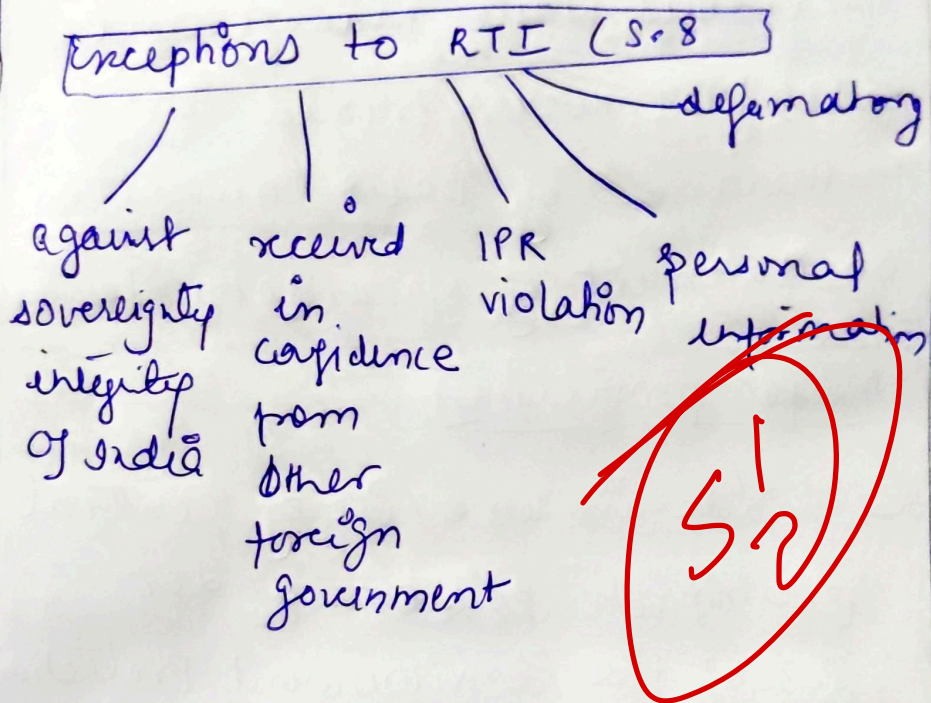
- ↳ documents
- ↳ records, registers
- ↳ data
- ↳ electronically stored information
- ↳ notings, notes
- ↳ communications etc.

File notes is
also included

Right to Information on the other hand:

- ↳ right to access
- ↳ make copies
- ↳ seek certified copy
- ↳ ~~dis~~ take notes
- ↳ reproduce in own words

However, not all information is accessible under Right to Information.



5(b) What are the major provisions of Hazardous Wastes (Management and Handling) Rules, 1989?

Hazardous Waste Management Rules 1989 were framed in furtherance of Basel Convention on Movement of Hazardous Wastes.

Major provisions

→ made in exercise of Central Government's power under S. 3 of the Environment Protection Act 1986

→ Applicable to:

- all industries handling hazardous wastes
- all educational science laboratories

~~Confidential~~
~~Not to be used~~

• medical establishment

→ prohibition on

- establishment of hazardous waste producing facility without consent of CPCB
- discharge of hazardous wastes into air, water etc

→ segregation of waste into hazardous and non-hazardous

→ Establishment of hazardous waste handling facilities by group of producers or by local government.

→ penalty on violators

Thus, the Rules aim at upholding Art. 21 Right to healthy environment.

5(c) What legal remedies are available to the owner of a trademark in case of infringement?

Trademark is the exclusive incorporeal right of a holder in affixing it on own goods/services. It also grants negative right to prevent another from using the same.

Remedies against infringement

① Suit for infringement in district court having jurisdiction

eg in Yahoo! vs Feroze Nadiqwal
Yahoo filed suit for infringement

② Action for passing off (s.27)

- common law right recognized in an unregistered trademark.

Three conditions before passing off

Plaintiff
to establish
goodwill
of that
mark

Defendant's
dishonest
use on
own goods

caused
or likely
to damage
Plaintiff's
business

eg in Ervin Warnink case,
Lord Diplock recognized this
remedy.

Outcomes of infringement action

injunction
(eg in
Yahoo case)

~~Corbin~~

damages
or
account of
profits

forfeiture of
infringing
goods

S.I.

5(d) How does Art. 19(1)(a) interact with Art. 21 in the context of trial by media?

Art. 19(1)(a) grants right to freedom of speech and expression. This ~~also~~ includes freedom of the Press (Indian Express Newspapers case).

Art 21 is the right to life and liberty (implied right to fair trial in K. Hussainara Khatoon v/s State of Bihar)

Interaction of both in media Trial

① Media trial violates Art 21

→ right to fair trial breached as bias created in judiciary (Dr. Rajesh Talwar v/s Union of India)

↳ presumption of guilt created
- as against "presumed
innocent unless proven guilty")

② in Jessica Lal Murder case

② media trial not exercise
of freedom of press

↳ Art 19(2) specifies "contempt
of court" as a reasonable
restriction.

↳ even "~~defamation~~" incitement
to an offence" is a restriction
on media trial u/Art 19(2).

Thus, freedom of speech u/a 19(1)(a)
available to press can be
restricted under 19(2) in the
interest of fair trial under Art. 21.

①

5(c) Public Interest litigation has been a significant tool in protecting the environment. Discuss with the help of cases.

Justice P N Bhagwati once remarked "PIL is the tool to bring social change". However, today, the environmental justice is also being dispensed through PIL.

PIL to protect the environment

① Preventing hazardous activities (cf) in Ranjit Singh v/s Union of India, electric power cable affecting Great India Bustard is considered

② framing environment policy

eg) National steering Committee
to monitor directions created
in TN Godavarman v/s Union of
India

③ expanding horizon of right to
healthy environment :

eg) in Rural Litigation and
Entitlement Kendra Case

④ Compensatory regime /
pollution separation eg) in
~~unsub~~ m c mehatay v/s Union of
India

⑤ Upholding sanctity of
environment and tribal rights

eg) in Vedanta case (Niyamgiri
hills)

Thus, PIL has ushered in
environmental activism in India.

Chandru Chug