



MOHANLAL SUKHADIA UNIVERSITY, UDAIPUR
FACULTY OF LAW
SECOND SEMESTER MASTER OF LAWS

PAPER – I (PAPER CODE - 42901) : (PAPER NAME – JUDICIAL PROCESS)

Max. Marks: 100 (80 External + 20 Internal)

Min. Marks: 40

Unit I: Nature of Judicial Process

- a. Nature of Judicial Process.
- b. Judicial Process as an instrument of Social Change.
- c. Judicial Process and Creativity in Law – Common Law Model – Legal Reasoning and Growth of Law – Change and Stability.
- d. The tools and techniques of Judicial Creativity and Precedent - Doctrine of Precedent- Ratio decidendi and Obiter Dictum-Methods of determining Ratio- Stare decisis and its exceptions.

Unit II: Judicial Process in India

- a. Judicial Process and Criminal Procedure.
- b. Judicial Process and Civil Procedure.
- c. Judicial process in pursuit of constitutional goals and values.
- d. Institutional liability of Courts and Judicial Activism.
- e. Principles of Constitutional Interpretation

Unit III: The Concept of Justice

- a. Concept of Rights and Justice
- b. The concept of justice or Dharma in Indian thought
- c. Dharma as the foundation of legal ordering in Indian thought
- d. The concept and various theories of justice in the western thought
- e. Various theoretical bases of justice : The liberal contractual tradition, the liberal utilitarian tradition and the liberal moral tradition

Unit IV: Relation between Law and Justice

- a. Equivalence Theories-Justice as nothing more than the positive law of the stronger class
- b. Dependency theories
- c. The independence of justice theories mean's to an end, relationship of law and justice - The relationship in the context of the Indian Constitutional ordering
- d. Analysis of selected cases of Supreme Court where the judicial process can be seen as influenced by theories of justice

SELECT BIBLIOGRAPHY

1. Julius Stone : The Province and Function of Law, Part II, Chs. 1-8-16 (2000), Universal, New Delhi
2. Cardozo : The Nature of Judicial Process (1995), Universal, New Delhi
3. Henry J. Abraham : The Judicial Process (1998), Oxford
4. J.Stone : Precedent and the Law : Dynamics of Common Law Growth (1985), Butterworths
5. W. Friedmann : Legal Theory (1960), Stevens, London
6. Bodenheimer : Jurisprudence - The Philosophy and Method of the Law (1997), Universal, Delhi
7. J. Stone : Legal System and Lawyer's Reasoning (1999), Universal, Delhi
8. U. Baxi : The Indian Supreme Court and Politics (1980), Eastern, Lucknow
9. Rajeev Dhavan : The Supreme Court of India - A Socio-Legal Critique of its Juristic Techniques (1977), Tripathi, Bombay
10. John Rawls : A Theory of Justice (2000), Universal, Delhi
11. Edward, H. Levi : An Introduction to Legal Reasoning (1970), University of Chicago