



MOHANLAL SUKHADIA UNIVERSITY, UDAIPUR

FACULTY OF LAW

SECOND SEMESTER MASTER OF LAWS

(Session 2018-19)

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

- i) Nature of Judicial Process.
- ii) Judicial Process as an instrument of Social Change.
- iii) Judicial Process and Creativity in Law – Common Law Model – Legal Reasoning and Growth of Law – Change and Stability.
- iv) 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

- i) Judicial Process and Criminal Procedure.
- ii) Judicial Process and Civil Procedure.
- iii) Judicial process in pursuit of constitutional goals and values.
- iv) Institutional liability of Courts and Judicial Activism.
- v) Principles of Constitutional Interpretation

Unit – III The Concept of Justice

- i) Concept of Rights and Justice
- ii) The concept of justice or Dharma in Indian thought
- iii) Dharma as the foundation of legal ordering in Indian thought
- iv) The concept and various theories of justice in the western thought
- v) 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

- i) Equivalence Theories-Justice as nothing more than the positive law of the stronger class
- ii) Dependency theories
- iii) 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
- iv) Analysis of selected cases of Supreme Court where the judicial process can be seen as influenced by theories of justice

SELECT BIBLIOGRAPHY

1. Julius Store : 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