



MANIPAL UNIVERSITY JAIPUR

School of Law

Department of Law

Course Hand-out

Judicial Process| LA 8001 | 4 Credits

Session: Jan- May, 2017 | Faculty: Dr. Vijay Laxmi Sharma

Course Outcomes: At the end of the course, students will be able to

[LA 8001.1 CO.1] to Understand the relationship of dharma with law and society

[LA 8001.2 CO.2] to develop legal skills in relation to the judicial creativity under statutory and codified systems.

[LA 8001.3 CO.3] to analyse the role of judicial process in Constitutional adjudications

LA 8001.4 CO.4] to know the concept of justice through judicial process in India

A. SYLLABUS

Nature of Judicial Process-a. Judicial Process as an instrument of social ordering, b. Judicial process and creativity in law- common law model- legal reasoning and growth of law- change and stability, c. the tool and techniques of judicial creativity and precedent, d. legal development and creativity through legal reasoning under statutory and codified systems.

Special Dimensions of Judicial Process in Constitutional Adjudications-a. Notions of Judicial Review, role in constitutional adjudication- various theory of judicial role, c. tools and techniques in policy making and creativity in constitutional adjudications, d. varieties of judicial and jurist activism, e. problems of accountability and judicial law making

Judicial process in India- a. Indian debate on the role of judges and on the notion of judicial review, b. the independence of judiciary and political nature of judicial process, c. judicial activism in creativity of supreme court-tools and techniques of creativity, d. judicial process in pursuit of constitutional goals and values- new dimensions of judicial activism and structural challenges, e. institutional liability of court and judicial activism-scope and limits

The concept of justice- a. the concept of justice and dharma in Indian thought, dharma as the foundation of legal ordering in Indian thought, c. the concept and various theories and justice in the western thought, d. various theoretical basis of justice : the liberal contractual tradition, the liberal utilitarianism tradition and liberal moral tradition

Relation between law and justice- a. equivalence theories- justice as nothing more than positive law of the stronger class, b. dependency theories- for its realization justice depends on law, but justice is not the same as law, c. the independence of justice – means to end relationship of law and justice- the relationship in the context of Indian constitutional ordering, d. analysis of selected cases of supreme court where the judicial process can be seen as influenced by theories of justice

B. TEXT BOOKS

- i. Julius Stone: The Province and Function of Law, Part II, 1.8.16 (2000), New Delhi.
- ii. Cardozo, The Nature of Judicial Process (1995), Universal, New Delhi
- iii. Henry J. Abraham, The Judicial Process, Oxford (1998)
- iv. W. Friedtman, Legal Theory, Stevens, London (1960)
- v. Bodenheimer, Jurisprudence- the Philosophy and Method of Law, Universal, Delhi (1997)

