

## **PAPER 6: JUDICIAL AND LEGISLATIVE PROCESS[Compulsory]**

### **Objectives:**

A lawyer whether academic or professional is expected to be competent to analyze and evaluate the legal process from a broader juristic perspective. Hence a compulsory paper on judicial process is essential in the LL.M. curriculum. The objective of this section of the paper is to study the nature of judicial process as an instrument of social ordering. It is intended to highlight the role of court as policy maker, participant in the power process and as an instrument of social change. This section of the paper further intends to expose the intricacies of judicial creativity and the judicial tools and techniques employed in the process.

Since the alternate aim of any legal process or system is to pursue justice a systematic study of the concept of justices and its various theoretical foundations is required. This section of the paper therefore, intends to familiarize the students with various theories, different aspects and alternative ways, of attaining justice.

### **Course Outcome:**

On successful completion of the course the student will be able to –

1. explain the concept and development theory of justice.
2. describe the concept of judicial process and its significance in social ordering.
3. express the tools and technique of judicial creativity.
4. describe the relation between law and justice and role of judicial process in the attaining the objectives of justice.
5. understand the process of law making.

### **Course content:**

#### **Unit I**

Nature of Judicial Process: Judicial process as an instrument of social ordering; judicial process and creativity in the law- common law model- legal reasoning and growth of law- change and stability; stare decisis; the Tools and techniques of judicial creativity and precedent; identifying ratio decidendi and obiter dicta; Legal development and creativity through legal reasoning under statutory and codified systems.

#### **Unit-II**

Special Dimensions of Judicial process in the constitutional Adjudications: notions of Judicial review; role in constitutional adjudication- various theories of judicial role; Tools and techniques in the policy making and creativity in the constitutional adjudication; variance of judicial and juristic activism.

#### **Unit-III**

Problems of accountability and judicial law making. Judicial process in India: Indian debate on the role of judges and on the notion of Judicial review; the “independence “ of judiciary and the "political" nature of judicial process; judicial activism and creativity of the supreme court; the tools and a techniques of creativity; institutional liability of course and judicial

activism- scope and limits. structural challenges.

#### **Unit-IV**

Legislation as a source of law: its relation with other sources of law; Supreme legislation: law making by Indian Parliament, interaction between law and public opinion; drafting of Bills; presentation and discussion in a Legislature Houses, subordinate legislation; types of subordinate legislation. major roles of interpretation of statutes: literal are plain meaning rule; golden rule; purposive approach: mischief rule; compromise approach.

#### **Unit V: Legislative Drafting**

Nature of Legislative drafting; diseases of language to be dealt and taken care of; its history in India and England; components or parts of legislation and their purposes; role of legislation in social welfare and transformation; role of draftsman; the skills, traits and abilities he should process; legislative draftman's position, duties and responsibilities: relation with the government legislative division, public and the society at large; impact of constitutional values and provisions on legislative drafting; impact of the General Clauses Act upon legislative drafting; impact of principles of statutory interpretation upon legislative drafting; steps in a legislative drafting: pre- draft preparation; drafting, deliberation with others; post draft refinement; drafting of delegated legislation- limits and cautions; drafting exercise

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