

[COMPULSORY PAPER-IV]

JUDICIAL PROCESS

(The entire syllabus is divided into four units. Eight questions shall be set in all with two questions from each unit. The candidate shall be required to answer four questions in all, selecting one from each unit. All questions carry equal marks)

UNIT-I

CONTEMPORARY NATURE OF JUDICIAL PROCESS

- Rule of Law: Doctrine of Independence of the Judiciary as an aspect of Separation of Powers-Notion of the Independence of the Judiciary and the Legal Profession: Appointment of Judges-Transfer of Judges
- Nature of the Judicial Process: Search for the Legislative Intention-Methods of Judicial Interpretation-Role of Philosophy (Logic), History, Tradition and Sociology-the Judge as a Legislator-Notions of Judicial Review-Constitutional Basis-Democratic Character of Judicial Review-Power of Judicial Review-Supreme Court's Approach to the Question of Its Own Jurisdiction-Article 32 & Article 136; Judicial and Juristic Activism-Judicial Creativity and its Limitations-Judicial Activism *vis- a-vis* Judicial Self-Restraint-Problems of Accountability of Justice

UNIT - II

INSTITUTIONAL STRUCTURING OF COURTS

- Judicial Person: Power Planning-Comparative Study Corporative Patterns of Workload

- Alternatives to Adjudication: Alternative Disputes Redressal Forum-Patterns of Court Management-Current Crises of the Indian Adjudicatory System

UNIT-III DOCTRINE OF PRECEDENT *STARE DECISIS*

- *Ratio Decidendi* and *Obiter Dicta*: Methods of Determining Ratio-Precedent in Common Law and Civil Law Countries-Operation of Precedent in India
- Constitutional Interpretations by the Supreme Court: Techniques of Innovation (subversion) of *Stare Decisis*-Supreme Court's Authority to overrule its Own Decisions-Advisory Jurisdiction and its Import on Precedent-Prospective Overruling in India-Basic Structure Theory and Limitations to Constitutional Amendments.

UNIT - IV INDIAN JUDICIAL PROCESS AND THE POLITICAL PROCESS

- Debates on the Role of Judges (Supersession, Commitment & Transfer): Socio-Economic Background of the Indian Judiciary-Politics of Judiciary-Political Process
- Jurimetrics: Concept-Conventional-Civil Law and Behavioral Perspective-Impact of Public Opinion on the Judicial Process-Role of the Appellate Indian Judges in the Development, Renovation and Retardation of Constitutional Goals

Suggested Readings:

1. A. S. Anand: 'Judicial Review: Judicial Activism-Need for Caution', 42 *Journal of Indian Law Institute* 149 (2000).
2. Benjamin Cardozo: *The Nature of Judicial Process*, Yale University Press, USA.

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3. Edgar Bodenheimer: *Jurisprudence-The Philosophy and Method of the Law*, Universal Law Publishing-An imprint of LexisNexis; Delhi.
4. Henry J. Abraham: *The Judicial Process*, OUP, USA.
5. John Rawls: *A Theory of Justice*, Harvard University Press, Cambridge.
6. Julius Stone: *Legal System and Lawyer's Reasoning*, Universal Law Publishing Co., New Delhi.
7. Julius Stone: *Precedent and the Law-Dynamics of Common Law*, Butterworth, Sydney.
8. Julius Stone: *The Province and Function of Law*, Universal Law Publishing Co., New Delhi.
9. Rajeev Dhavan: *The Supreme Court of India-A Socio-Legal Critique of its Juristic Techniques*, N. M Tripathi, Bombay.
10. S. P. Sathe: *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, Oxford University Press, New Delhi.
11. Upendra Baxi: 'On How not to Judge the Judges: Notes towards Evaluation of the Judicial Role', 25 *Journal of Indian Law Institute* 211 (1983).
12. Upendra Baxi: *The Indian Supreme Court and Politics*, Eastern Book Co., Lucknow.
13. Virendra Kumar: 'Basic Structure of the Indian Constitution: Doctrine of Constitutionally Controlled Governance', 49 *Journal of the Indian Law Institute*, 365-395, (2007).
14. W. Friedmann: *Legal Theory*, Stevens & Sons, Ltd., London.

TEACHING ASSIGNMENT

Since Semester IV has been devoted towards practical-oriented understanding of Law in general, giving the students an opportunity to practice one's teaching skills is critical. The student would therefore be given teaching assignments.

Each student will be assigned two topics in advance to deliver classroom teaching. Each student has to take up five teaching assignments of B.A.,LL.B (H) course. Each class will be of one hour duration and shall be assessed on the basis of his/her teaching performance. The class taken will be supervised, observed and evaluated by the Course teacher. Students are supposed to prepare a teaching plan and take the classes accordingly. Students are also required to prepare teaching material on the basis of the classes taken.

DISSERTATION

To make the LL.M. programme research oriented, students appearing for the Post-Graduate Degree Programme in Law Examination shall submit a Dissertation prepared under the guidance of a Research Supervisor [Allotted by Office of the Dean]. The evaluation of the Dissertation and *Viva Voce* will be conducted by a Board of Examiners comprising of the Dean of the Faculty, Supervisor concerned and one External Examiner. Every student has to prepare a dissertation, selecting any topic from subjects taught in the last three semesters, applying Legal Research Methodology. This work is to be submitted for evaluation and the students have to appear before an external examiner for *viva-voce*. The dissertation is expected to be an indepth and critical analysis of a legal problem of contemporary significance in the field chosen by the candidate. It must incorporate copious references to judicial decisions, law-review articles, statutes, books, monographs relevant to the topic in the form of footnotes and bibliographical references.

The student shall select the topic for Dissertation in consultation with the Research Supervisor and submit the topic along with the research proposal for approval of the Dean

The student shall select the topic for Dissertation in consultation with the Research Supervisor and submit the topic along with the research proposal for the approval of the Dean. Within 15 days of the approval of the topic, the student shall submit a synopsis of their proposed research paper to the supervisor concerned. Within a month of approval of synopsis, the student shall submit the first draft of his/her dissertation to the supervisor concerned. The second draft of the research paper shall then be submitted to the supervisor on approval of which, the student shall submit the final dissertation to the office of the Dean.

The Dissertation shall be between 120-150 type written pages on A4 size papers with 1.5 line spacing, 12 Font size for the body of the text and 10 Font size for the footnotes in Times New Roman and submitted in 4 copies. ILI Style of citation is to be followed for the footnotes (*available at:* <http://www.ili.ac.in/cstyle.pdf>).

Students shall attach Similarity Report generated by UGC approved software Turnitin with less than 20% similarity index along with the final submission.

Tentative Schedule:

Submission of Proposed Topic:	Third week of November
Allocation of Supervisor:	Second week of December
Synopsis submission:	Last week of January
Submission of First Draft:	Third week of March
Submission of Second draft:	Third week of April
Final Submission:	Second week of May