



C. U. SHAH UNIVERSITY Wadhwan City

FACULTY OF:- LAW (LL.M.)

SEMESTER: -II

CODE: - 5LW02JUP1

NAME: – JUDICIAL PROCESS

Teaching and Evaluation Scheme:-

Subject Code	Name of the Subject	Teaching Scheme (Hours)				Credits	Evaluation Scheme							
		Th	Tu	Pr	Total		Theory				Practical (Marks)			Total
							Sessional Exam		University Exam		Internal		University	
							Marks	Hrs	Marks	Hrs	Pr/Viva	TW	Pr	
5LW02JUP1	JUDICIAL PROCESS	6	0	0	6	6	30	1.5	70	3	---	---	---	100

03. JUDICIAL PROCESS

Objectives of the course

A lawyer, whether academic or professional, is expected to be competent to analyse and evaluate the legal process from a broader juristic perspective. The objective of this 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 paper further intends to expose the intricacies of judicial creativity and the judicial tools and techniques employed in the process.

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

Syllabus

1. Nature of judicial process

- 1.1. Judicial process as an instrument of social ordering
- 1.2. Judicial process and creativity in law – common law model – Legal Reasoning and growth of law – change and stability.

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- 1.3. The tools and techniques of judicial creativity and precedent.
- 1.4. Legal development and creativity through legal reasoning under statutory and codified systems.

2. Special Dimensions of Judicial Process in Constitutional Adjudications.

- 2.1. Notions of judicial review
- 2.2. 'Role' in constitutional adjudication – various theories of judicial role.
- 2.3. Tools and techniques in policy-making and creativity in constitutional adjudication.
- 2.4. Varieties of judicial and juristic activism
- 2.5. Problems of accountability and judicial law-making.

3. Judicial Process in India

- 3.1. Indian debate on the role of judges and on the notion of judicial review.
- 3.2. The “independence” of judiciary and the “political” nature of judicial process
- 3.3. Judicial activism and creativity of the Supreme Court-the tools and techniques of creativity.
- 3.4. Judicial process in pursuit of constitutional goals and values – new dimensions of judicial activism and structural challenges
- 3.5. Institutional liability of courts and judicial activism – scope and limits.

4. The Concepts of Justice

- 4.1. The concept of justice or Dharma in Indian thought
- 4.2. Dharma as the foundation of legal ordering in Indian thought.
- 4.3. The concept and various theories of justice in the western thought.
- 4.4. Various theoretical bases of justice: the liberal contractual tradition, the liberal utilitarian tradition and the liberal moral tradition.

5. Relation between Law and Justice

- 5.1. Equivalence Theories – Justice as nothing more than the positive law of the stronger class.
- 5.2. Dependency theories – For its realization justice depends on law, but justice is not the same as law.
- 5.3. The independence of justice – means to end relationship of law and justice – The relationship in the context of the Indian constitutional ordering.
- 5.4. Analysis of selected cases of the Supreme Court where the judicial process can be seen as influenced by theories of justice.

Select Bibliography

- Julius Stone, *The Province and Function of Law*, Part II, 1.8-16 (2000), New Delhi.
- Cardozo, *The Nature of Judicial Process* (1995) Universal, New Delhi.
- Henry J. Abraham, *The Judicial Process* (1998), Oxford.
- W. Friedmann, *Legal Theory* (1960), Stevens, London.
- Bodenheimer, *Jurisprudence – the Philosophy and Method of the Law* (1997), Universal, Delhi
- J. Stone, *Legal System and Lawyers' Reasonings* (1999), Universal, Delhi
- U. Baxi, *The Indian Supreme Court and Politics* (1980), Eastern, Lucknow.

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- Rajeev Dhavan, *The Supreme Court of India – A Socio-Legal Critique of its Juristic Techniques* (1977), Tripathi, Bombay.
- John Rawls, *A Theory of Justice* (2000), Universal, Delhi
- Edward H. Levi, *An introduction to Legal Reasoning* (1970), University of Chicago.



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FACULTY OF:- LAW (LL.M.)

SEMESTER: -II

CODE: - 5LW02LER1

NAME: – LEGAL EDUCATION AND RESEARCH METHODOLOGY

Teaching and Evaluation Scheme:-

Subject Code	Name of the Subject	Teaching Scheme (Hours)				Credits	Evaluation Scheme							
		Th	Tu	Pr	Total		Theory				Practical (Marks)			Total
							Sessional Exam		University Exam		Internal		University	
							Marks	Hrs	Marks	Hrs	Pr/Viva	TW	Pr	
5LW02LER1	LEGAL EDUCATION AND RESEARCH METHODOLOGY	6	0	0	6	6	30	1.5	70	3	---	---	---	100

LEGAL EDUCATION AND RESEARCH METHODOLOGY

Objectives of the course

A post-graduate student of law should get an insight into the objectives of legal education. He should have an exposure to programmes like organization of seminars, publication of law journals and holding of legal aid clinics.

Law is taught in different ways in different countries. The LL.M. course, being intended also to produce lawyers with better competence and expertise, it is imperative that the student should familiarise himself with the different systems of legal education. The lecture method both at LL.B. level and LL.M. level has many demerits. The existing lacunae can be eliminated by following other methods of learning such as case methods, problem method, discussion method, seminar method and a combination of all these methods. The student has to be exposed to these methods so as to develop his skills.

Growth of legal science in India depends on the nature and career of legal research. The syllabus is designed to develop also skills in research and writing in a systematic manner.

Syllabus

1. Objectives of Legal Education
2. Lecture Method of Teaching – Merits and demerits
3. The Problem Method
4. Discussion method and its suitability at postgraduate legal teaching
5. The Seminar Method of teaching
6. Examination system and problems in evaluation – external and internal assessment.
7. Student participation in law school programmes – Organisation of Seminars, publication of journal and assessment of teachers.
8. Clinical legal education – legal aid, legal literacy, legal survey and law reform.
9. **Research Methods**

- 9.1. Social Legal Research
- 9.2. Doctrinal and non-doctrinal
- 9.3. Relevance of empirical research
- 9.4. induction and deduction

Identification of Problem of research

- 9.5. What is a research problem?
- 9.6. Survey of available literature and bibliographical research.
 - 9.6.1. Legislative materials including subordinate legislation, notification and policy statements.
 - 9.6.2. Decisional materials including foreign decisions; methods of discovering the “rule of the case” tracing the history of important cases and ensuring that these have not been over-ruled; discovering judicial conflict in the area pertaining to the research problem and the reasons thereof.

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- 9.6.3. Juristic Writings – a survey of juristic literature relevant to select problems in India and foreign periodicals.
- 9.6.4. Compilation of list of reports or special studies conducted relevant to the problem.

10. Preparation of the Research Design

- 10.1. Formulation of the Research problem
- 10.2. Devising tools and techniques for collection of data: Methodology
 - 10.2.1. Methods for the collection of statutory and case materials and juristic literature
 - 10.2.2. Use of historical and comparative research materials
 - 10.2.3. Use of observation studies
 - 10.2.4. Use of questionnaires/interview
 - 10.2.5. Use of case studies
 - 10.2.6. Sampling procedures – design of sample, types of sampling to be adopted.’
 - 10.2.7. Use of scaling techniques
 - 10.2.8. Jurimetrics
- 10.3. Computerized Research – A study of legal research programmes such as Lexis and West law coding
- 10.4. Classification and tabulation of data – use of cards for data collection – Rules for tabulation. Explanation of tabulated data.
- 10.5. Analysis of data

Bibliography

- High Brayal, Nigel Dunean and Richard Crimes, Clinical Legal Education: Active Learning in your Law School, (1998) Blackstone Press Limited, London.
- S.K.Agrawal (Ed.), Legal Education in India (1973), Tripathi, Bombay.
- N.R.Madhava Menon, (ed) A Handbook of Clinical Legal Education, (1998) Eastern Book Company, Lucknow.
- M.O.Price, H.Bitner and Bysiewicz, Effective Legal Research (1978)
- Pauline V. Young Scientific Social Survey and Research , (1962)
- William J. Grade and Paul K.Hatt, Methods in Social Research, Mc Graw-Hill Book Company, London
- H.M.Hyman, Interviewing in Social Research (1965)
- Payne, The Art of Asking Questions (1965)
- Erwin C.Surrency, B.Fielf and J.Crea, A Guide to Legal Research (1959)
- Morris L.Cohan, Legal Research in Nutshell, (1996), West Publishing Co.
- Havard Law Review Association, Uniform System of Citations.
- ILI Publication, Legal Research and Methodology.



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FACULTY OF:- LAW (LL.M.)

SEMESTER: -II

CODE: - 5LW01CVC1

NAME: – COLLECTIVE VIOLENCE AND CRIMINAL JUSTICE SYSTEM

Teaching and Evaluation Scheme:-

Subject Code	Name of the Subject	Teaching Scheme (Hours)				Credits	Evaluation Scheme							
		Th	Tu	Total	Theory				Practical (Marks)			Total		
					Sessional Exam		University Exam		Internal		University			
					Marks		Hrs	Marks	Hrs	Pr/Viva	TW		Pr	
5LW01CVC1	COLLECTIVE VIOLENCE AND CRIMINAL JUSTICE SYSTEM	6	0	0	6	6	30	1.5	70	3	---	---	---	100

COLLECTIVE VIOLENCE AND CRIMINAL JUSTICE SYSTEM

Course Objectives:

- This is a crucial area of Indian development with which traditional, western, criminology is not overly preoccupied.
- Collective political violence (CPV) is the order of the day, whether it is agrarian (feudal) violence, or it is atrocities against untouchables, communal riots, electoral violence, police violence (encounters), political violence by militant and extremist groups, gender-based violence or violence involved in mercenary terrorism and its containment.
- The emphasis of the course will be on fashioning overall democratic understanding and responses to meet this problem.

Course Contents:

Unit - 1. **Introductory**

- 1.1. Notions of 'force', 'coercion', 'violence'
- 1.2. Distinctions : 'symbolic' violence, "institutionalized" violence, "Structural violence"

- 1.3. Legal order as a coercive normative order
Force-monopoly of modern law
- 1.4. “Constitutional” and “criminal” speech : Speech as
incitement to violence.
- 1.5. “Collective political violence” and legal order.
- 1.6. Notion of legal and extra-legal “repression”.

Unit - 2. Approaches to Violence in India.

- 2.1. Religiously sanctioned structural violence : Caste and
Gender based
- 2.2. Ahimsa in Hindu, Jain, Buddhist, Christian, and Islamic
traditions in India
- 2.3. Gandhiji’s approach to non-violence
- 2.4. Discourse on political violence and terrorism during
colonial struggle.
- 2.5. Attitudes towards legal order as possessed of legitimate
monopoly over violence during the colonial period.

Unit - 3. Agrarian Violence and Repression

- 3.1. The nature and scope of agrarian violence in the 18-19
Centuries India.
- 3.2. Colonial legal order as a causative factor of collective
Political (agrarian) violence.
- 3.3. The telangana struggle and the legal order.
- 3.4. The Report of the Indian Human Rights Commission on Arwal Massacre.

Unit - 4. Violence against the Scheduled Castes.

- 4.1. Notion of Atrocities.

- 4.2. Incidence of Atrocities.
- 4.3. Uses of Criminal law to combat Atrocities, aftermath of Atrocities.
- 4.4. Violence Against Women.

Unit - 5. Communal Violence.

- 5.1. Incidence and causes of “communal” violence.
- 5.2. Findings of various commissions of enquiry
- 5.3. The role of police and para-military systems in dealing with communal violence
- 5.4. Operation of criminal justice system during, and in relation to, communal violence.

Select bibliography.

- 1. U. Baxi, “Dissent, Development and Violence” in R. Meagher (ed.), Law and Social Change : Indo-American Reflections 92 (1988).
- 2. G. Shah, Ethnic Minorities and Nation Building : Indian Experience (1984).

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FACULTY OF:- LAW (LL.M.)

SEMESTER:- II

CODE:- 5LW02PCD1

NAME:- Privileged Class Deviance

Teaching and Evaluation Scheme:-

Subject Code	Name of the Subject	Teaching Scheme (Hours)				Credits	Evaluation Scheme							
		Th	Tu	Pr	Total		Theory				Practical (Marks)			Total
							Sessional Exam		University Exam		Internal		University	
							Marks	Hrs	Marks	Hrs	Pr/Viva	TW	Pr	
5LW02PCD1	Privileged Class Deviance	6	0	0	6	6	30	1.5	70	3	---	---	---	100

PRIVILEGED CLASS DEVIANCE

Course Objectives:

- This course focuses on the "Criminality of the "Privileged classes". The definition of "privileged classes" in a society like India should not pose major problem at all; the expression nearly includes wielders of all forms of state and social (including religious) power.
- Accordingly, the course focuses on the relation between privilege power and deviant behaviour.
- The traditional approaches which highlight "white-collar offences", "socio-economic offences" or "crimes of the powerful" deal mainly with the deviance of the economically resourceful.
- The dimension of deviance associated with bureaucracy, the new rich (nouveau riche), religious leaders and organizations, professional classes and the higher bourgeoisie are not fully captured here.

Course Contents:

Unit - 1. Introduction.

- 1.1 Conceptions of white collar crimes

- 1.2 Indian approaches to socio-economic offences
- 1.3 Notions of privileged class deviance as providing a wider categorization of understanding Indian development.
- 1.4. Typical forms of such deviance
 - 1.4.1. Official deviance (deviance by legislators, judges, bureaucrats) Professional deviance : Journalists, teachers, doctors, lawyers, engineers, architects & publishers.
 - 1.4.3. Trade union deviance (including teachers, lawyers/urban property owners)
 - 1.4.4. Landlord deviance (class/caste based deviance)
 - 1.4.5. Police deviance
 - 1.4.6. Deviance on electoral process (rigging, booth capturing, impersonation, corrupt practices)
 - 1.4.7. Gender-based aggression by socially, Economically and politically powerful.

Unit - 2. Official Deviance.

- 2.1. Conception of official deviance – permissible limit of discretionary powers.
- 2.2. The Chambal valley dacoit Vinoba Mission and Jai Prakash Narain Mission – in 1959 and 1971.
- 2.3. The Chagla Commission Report on LIC-Mundhra Affair
- 2.4. The Das Commission Report on Pratap Singh Kairon.
- 2.5. The Grover Commission Report on Dev Raj Urs.
- 2.6. The Maruti Commission Report
- 2.7. The Ibakkar –Natarajan Commission Report on Fairfax.

Unit - 3. Police Deviance.

- 3.1. Structures of legal restraint on police powers in India.
- 3.2. Unconstitutionality of “third-degree” methods and use of fatal force by police.
- 3.3. “Encounter” killings.
- 3.4. Police atrocities
- 3.5. The plea of superior orders
- 3.6. Rape and related forms of gender-based aggression by police and para-military forces.
- 3.7. Reform suggestions especially by the National Police Commissions.

Unit - 4. Professional Deviance.

- 4.1. Unethical practices at the Indian bar.
- 4.2. The Justice Lentin Commission Report.
- 4.3. The Press Council on unprofessional and unethical Journalism.
- 4.4. Medical mal-practices.

Unit - 5. Response of Indian Legal Order to the Deviance of Privileged Classes.

- 5.1. Vigilance Commission
- 5.2. Public Accounts Committee
- 5.3. Ombudsman
- 5.4. Commissions of Enquiry
- 5.5. Prevention of Corruption Act, 1947.
- 5.6. The Antulay Case.

Text Books:

B.B. Pande, 'The Nature and Dimensions of Privileged Class Deviance' in the Other Side of Development 136 (1987; K.S. Shukla ed.)

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