

PAPER – 116

Judicial Process

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.
 - 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 Variants 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 Concept 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 based 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 - 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.