NON-STATE CONFLICT RESOLUTION SYSTEM

RESEARCH PROJECT ESPOUSED BY KARNATAKA STATE LAW UNIVERSITY

'SADDHARMA NYAYAPEETA'

SIRIGERE

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AT

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I. INTRODUCTION

Standard of living and quality of citizens' life is measured in terms of pursuit of happiness. But human nature being what it is conflicts are bound to be there in every community/society. Conflicts affect development and also wholeness of life. Conflicts frequently occur in modern complex society and hence are to be resolved at the earliest.

While almost one hundred years of colonial rule and more than Seven decades of independence have resulted in enormous changes, indigenous culture and social organisation have proven to be remarkably resilient. Around 65 per cent of the populations continue to live in rural communities and derive their livelihood from agriculture while 35 per cent live in the expanding towns. State of Karnataka as in entire India has a modern legal and judicial system. This system exists alongside a vibrant informal justice system built upon customary values and practices as these have adapted to recent change.

Traditional communities in State of Karnataka were self-regulating and relatively insular. Social relations were essentially kinship relations. The rights and obligations of each individual flowed directly from membership of the extended family. Reciprocity was a key feature of indigenous morality. Patterns of inheritance to land, special knowledge, and personal property could be patrilineal /matrilineal as in many societies. Men dominated public life, even in matrilineal societies. Leadership status was more often ascribed than hereditary.

As opposed to state-centered societies, whereby designated authorities are charged with maintaining social order within a given territory, non-state justice system is typically fluid, widely dispersed and actively contested. While local leaders assist in maintaining social order, they usually lack socially approved means of enforcing their decisions. Moreover, the influence of local leaders rarely extends beyond a relatively small number of people. Consequently, the role played by traditional leaders in the maintenance of social order varies greatly. The concept of "crime" as a transgression against the state by an individual law-breaker was, by definition, absent in "stateless" societies[1]. Instead, wrongs were committed against people, property, and the supernatural order, rather than against the state.

[1] **Under world justice'** wherein loaded guns/weapons will decide the so called high stake claims by the persons who could engage them because of money power may fit to be termed as might/money is right; **'Police Station justice'** is also another mode for resolving petty offences and even civil cases on payment of so called office expenses.

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The fact that there was no sovereign enforcer of rules meant that justice was typicall compensatory and negotiated on a case-by-case basis by kin groups. When wrongs occu rural Karnataka today, 'traditional' dispute resolution mechanisms tend to promote th reparation of social relations damaged by the dispute by, for example, the payment o compensation, whereas state justice seeks to deliver abstract and impartial justice throug law enforcement and the punishment of individual offenders.

India's Constitution is the supreme law and establishes the national system o government and law. Custom is recognised as part of unwritten or underlying law subject to various qualifications. It is clearly subordinate to state law and is adopted onl insofar as it is not "inconsistent with a constitutional law or statute, or repugnant to th general principles of humanity". In practice, custom or tradition has not played significant role in the workings of the formal state justice system. The notable exceptio is the Village Court- Nyaya Panchayats /Grama Nyayalayas whose primary task is t "ensure peace and harmony" and endeavour to obtain "amicable settlement of disputes in accordance with local custom. Non State justice Courts are accessible and the represent an interesting response to 'traditional' justice. Village courts-Gram Nyayalayas are a hybrid institution that draws upon the authority of both state justic and 'traditional' justice. They are created by the state, have jurisdictional powe established under statute, and, in theory, are subject to review by formal state courts. A the same time they are presided over by village leaders and are supposed to resolv disputes in accordance with local custom.

It is unfortunate that even after 70 years of Independence the laws are enacted in Englis and administration of justice is carried out in alien language not known to the natives. N proactive steps being taken up by any government for imparting elementary leg education at school level even in the context of 'ignorance of law is no excuse'. Thu there is yeaning gap between the traditionally accepted justice system by the natives an the super imposed alien legal system. In this contextual background should Governme of Karnataka Respond to Non-State Justice Systems?

There has been a general recognition of the fact that most societies are multi-legal, that in addition to the state law they display kindred regulatory system of norms, institutio and culture performing functions similar for social groups that the State law aspires perform for the entire society. But, no government did characterize the group regulato systems as "law" or "legal system" owing to logical and ideological reasons.

Undoubtedly, there exist more than two broad complexes of norms, institutions, a processes in Indian society by which disputes are "settled'- the inherited and indigenis official national and regional legal systems and the traditional 'systems' of local tribun

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[2] 'Clear proof of usage will outweigh the written text of law'-*Collector of Madurai* V *Moto Ramalinga*

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operating with customary law norms. Equally indubitably, these systems support and complement each other in variety of ways.

Any system of administration of justice, however best it may be cannot claim monopoly over justice and fair-play. All disputes do not admit prototype procedure and solutions. The system is to be customized to suit the dispute so that the possibilities of arriving at mutually acceptable and durable solutions are enhanced. Whether generalist courts have competence to decide all kinds of disputes? The question is why every dispute is to be taken to courts. Courts' time is precious and it is to be rationed by making it available to those cases which deserve to be dealt with by courts. Certain of the disputes by nature are not suitable to be litigated. They deserve to be dealt with by alternative methods of negotiation, mediation, conciliation, arbitration, etc.

In *Bar Council of India V Union of India*[3] (2012) the Supreme Court has held that Parliament can set up effective alternative institutional mechanism or make arrangements which may be more efficacious than the ordinary mechanism of adjudication of disputes through judicial courts. This decision was with reference to the establishment of Permanent Lok Adalat (PLA) having jurisdiction in respect of public utility services. Common man can raise a dispute before permanent Lok Adalat and not going to court at first instance is not anathema to the rule of law and not arbitrary or irrational. There is no constitutional right of any person to have the dispute decided by the court only. What is essential is that it must be a creature of statute and should adjudicate the dispute between the parties before it after giving reasonable opportunity to them consistent with the principles of fair play and natural justice. The legal technicalities do not get paramountacy in conciliation or adjudicatory proceeding. It does not mean abhorrence to the rule of law or violation of principles of fairness and justice or contrary to Articles 14 and 21of Constitution of India.

There is a feeling that the present system of administration of justice is not responsive to the needs of the masses. They are losing faith in the justice delivery system. 'Perhaps, nothing short of total transformation is needed.

However, there are distinct advantages with our native institutions of dispute resolution which are prominently absent in the administration of justice through courts. It is fascinating to note that these systems which were prevalent in India since time immemorial and which are prevailing even today though not having any statutory basis are emerging in different forms under the banner 'alternative dispute resolution systems' in different parts of the world. The adoption of court system as the main stream of justice has blurred our vision of the native institution. We have to recapture the picture of native institutions to understand their relevance in the present day Karnataka.

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[3] AIR 2012 SC 3246

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British Colonialism introduced the western institutions of law in the Indian Culture. have instructed Researcher the need to understand the nature of western legal institutio properly before we can judge their 'value' to the Indian culture and society.

Even though the introduction of legal institution in India is centuries old, no student law or culture, has raised the question of the relationship between law and Indian cultu in any serious sense. Thus, a prelude to the kind of research study so sorely needed tod is undertaken

TRUTH AND FALSITY IN LAW AND INDIAN CULTURE

The notions of truth and falsity play an extremely crucial role in law. There are la intend to punish falsity even if these are specific in nature[4] there are punishments f lying in certain circumstances.(perjury, for instance) and the testimony of eye-witness is crucial in different kinds of trials. 'Bearing false witnesses' is considered a heino one. The notions of truth and falsity are not theoretical terms in the sense that they do n carry a technical meaning as defined in some specific branch of law or in the sense th they are specifically jurisprudential terms. Legal language works with normal meanin of these words as they are connoted by these natural language terms.

Semantic scope, meaning of 'TRUTH' & FALSITY'

The Oxford English Dictionary provides us with **two core meanings** of the term **'falsit** On the hand, being contrary to truth, it carries the following meanings: Insincerit deceitfulness and is a counterfeit character. On the other hand, possessing of su character, it also involves treachery and fraud. When the word 'false' is used as objective, apart from being 'wrong and erroneous', it carries the meanings of bei mendacious, deceitful and treacherous. Lying involves the intent to deceive and th implies untrustworthiness

Equally, the notion of **'truth'** carries meanings like 'faithfulness', 'fidelity', 'loyalt and constancy'. These meanings are also carried over into the notion of trust', leading the suggestion that 'truth' and 'trust' are intimately connected to each other.

There is also another set of meanings of 'truth' and 'false hood' This is called philosophical 'conception of truth' instead of the Aristotelian conception of 'tru because it is mainly among philosophers that the notion of ''truth' is defined entirely term of the 'accuracy' or correctness' of description. Here, 'truth' and 'falsity' are seen properties of natural language sentences or of propositions: only some or anot sentence or proposition can be true or false.

[4] Laws governing forgery and creation of false documents

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These two meanings often go together. Someone who speaks false sentence is also considered untrustworthy and his behaviour is seen as being deceitful. Consequently, when one speaks of 'falsity' in law, one intends both sets of meanings.

In India, there is a clear and fundamental distinction between 'lies' and deception'. These are seen as two different acts, even if, in some cases, they include both. That is, one could lie without deception and truth does not dovetail with trustworthiness. **Consequently, when Indians use English, they use it in the 'Indian' sense, where a fundamental semantic distinction is made between a lie and a deception**

There are many practices in India, which include the process of child rearing, that involve learning and being taught to lie or tell falsehood. One's mother or siblings or grandparents teach the child to lie so that it may not provoke the anger of father; friends lie to each other as a matter of course and marrying one's child off by telling a "thousand lies is considered a morally good thing. That is, one's process of socialization involves learning to tell lies. Deception is an act of a different kind; it is even conceivable that one can deceive another by telling the truth. Falsity and deception are separated from each other as truth is distinct from trustworthiness. Lying is not an immoral act by nature; in fact one can be morally praiseworthy precisely because one tells a lie. By the same token, truth –telling is not, in and of itself a moral act; one could be profoundly immoral because one tells the truth. This internal disjunction between lie and deceit on the one hand and truth and trustworthiness on the other divorces truth telling and lying from immediate moral judgments

Indian Penal Code not only denies the Indian semantic sense but also postulate its opposite as both morally superior and legally defensible.

THE WITNESS AND THE JUDGE

The Consequence of difference between 'truth' and 'falsity' to the function of two crucial figures in the court of law, namely, the witness and the judge.

Indians had absolutely faced no problems in committing perjury, in swearing on the Gita, or on the holy waters of the Ganges or anything else one cared to introduce to swear upon and yet commit perjury in the state established court. It is the most common picture around the court buildings that people congregate looking for a job; any lawyer could hire a number of 'eye witnesses' from among them for specified money. If anything at all is certain in the Indian Courts, it is this: 'eye witnesses' lie under oath and commit perjury.

Even the Police pre supposes this social fact and make use of it in their working: they simply hire 'eye witnesses' as and when needed. Imagine a case of where a thief-Chain snatcher steals/snatches a gold necklace from a woman, pawns it in some shop or another

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in exchange of money. The pawn broker immediately melts the necklace to recover th gold. When apprehended by the police, the latter surrenders the gold to the police, who i turn, pass it on to a gold smith. He is now entrusted to transform the recovered gold into necklace. In no court of law can that necklace function as evidence. The thief/chai snatcher did not steal/snatch that specific necklace which the police introduce in th court: the lawyers suspect and the judge 'knows' this for a fact but the necklace i accepted as evidence. The police know too that what they do might not be 'proper' but, a many police officers in different parts of India have countenanced because they do this t 'protect the society from criminals'.

This situation stands to reason: lying is neither immoral nor reprehensible in India culture. This does not mean that Indians do not value trustworthiness or put a premium o deceit. Lying is not a moral issue in Indian culture. If lying is not a moral issue, lyin under oath ceases being legal issue. However, perjury is.

Lying does not create either a pragmatic or a moral problem in India. We can get alon perfectly well with each other, even by emphasising the importance of truth-tellin despite having knowledge of the fact that most of us lie in many circumstances. And th it is also morally meritorious to lie in many circumstances.

To have clarity consider two societies: One where people tell only the truth and anoth where people only lie. Logically speaking, there is no problem of communication nor there any possibility of misunderstanding in either of these two societies: It is merely issue of knowing how to frame questions in these societies and how to interpret the answers. In a society comprised entirely of truth-tellers, one can predict their behavio and seek communication with them on the assumption that one's question elicits truthf answers. In the other society, where everyone lies all the time and never tells the tru the situation is equally predictable: one can communicate perfectly well with them to by assuming that all their answers are lies and by framing questions in such a way th negations of these lies provide us with the truth. The Problem arises because India, li any other society and culture, is mixed in nature: there are people who lie and people w tell truth.

FIGURE OF JUDGE:

One of the basic concerns of law has been to protect the judge. Even though pronounces judgments, he can either fall back on the precedent or on the detai procedural aspects of the law: it is the law that judges and not the person of the judg Allowing this escape route enables one to free the judge from concerns about incurr blood debt or have blood of individuals on his hand in specific kinds of trial, in genera makes room for his fairness and impartiality. In fact, this consideration dictates the r of the judge: he is supposed to be objective, impartial and impersonal. In a very st

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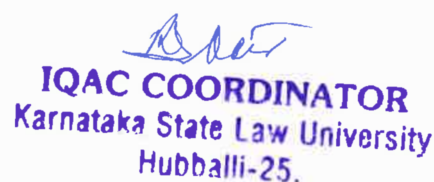
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sense, it is his role to obey the law and see to its enforcement. He brings in, to put it in its ideal form, very little of his personal conceptions of morality and justice into the picture. Even where his ideas are different from the letter and spirit of the law, it is his duty to follow the law and confine him-self to doing this. He 'represents' justice only and strictly to the extent law allows him to be 'just'. No more, no less. It is the law which can be just or unjust but never the judge as a figure.

In contrast to this stands the Indian Judiciary that sees itself as the 'embodiment' of justice. Very regularly, especially in the lower courts, the judge sees his role as someone who dispenses 'justice', often completely independent of or even oblivious to legal provisions and statues. It is not merely a question of self-representation of the judge but also how he is perceived by the people who go to the court. They go there seeking justice in the literal sense of the term and, in the figure of the judge, they find such a person. In fact, a 'good judge' is someone who metes out justice and punishes injustice. In many senses, he represents what the king was alleged to be (fountain of justice) in the pre-modern India: justice embodied and personified. It is this attitude of both the public and the judiciary that helps us to understand the phenomenon of massive corruption of the judiciary in India: the law is what the judge says and what he says depends on his personal beliefs. In short, it is neither surprising nor abnormal to see a judge acting arbitrarily and capriciously: that is what a judge is.

If we bring these two figures of the judge and the witness together, it is oblivious how the legal institutions is different in India from what is supposed to be. Its difference does not lie in the lack of education of the judiciary or in the illiteracy of the people: it lies in the very nature of this culture. The problem is to do with the fact that Indian culture is a developed culture that too it has its own notion of justice, truth and so on. When an alien institution is superimposed on an evolved indigenous structure without any awareness of the nature and existence of the latter, distortions and deformations are inevitable. Precisely that has happened in India due to colonial imposition.

Consequently, the presence of western legal institutions in India confronts two different sets of problems. On the one hand, it is neither possible nor is it desirable to abolish these western institutions of law in India. On the other hand, some of the key concepts and institutional roles that India has indigenously developed are at the opposite of the spectrum than those required by the western judicial institutions. Some kind of balance between these two is need of the hour. We need to understand that problems exist which are hardly mentioned in the literature available. It is almost as though one is denying daily experience of a people in order to embrace an alien experience which can never be one's own. A comparative study of law needs to address itself to these issues.

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NATURE OF JURIDICAL FACT

The western legal institutions being forcibly transplanted on an indigenous organis there were distortions and deformations. It is time to become a bit clearer about wh such distortions consists of.

A juridical fact is a description of some event, circumstance or by using act some another legal statute or provision relevant to the event in question. The only duty of th judge is to determine what constitute the legal facts of the case while the lawyers attem to transform some or another description (of an event, a circumstance, or an action) into juridical fact. That is to say, laws and jurisprudence play role that scientific theories pla in the natural science. However, the crucial difference lies here: in a scientific theory, fact should be deducible (logically or mathematically derivable) from the hypotheses the case of law, this relationship is not deductive but transformational in nature[5]. Ev though 'logic' and 'reasonableness' are involved in the transformational process, t lawyer does not deduce juridical facts from the statues but changes one kind description, say death, into another, say manslaughter or murder.(That is why one needs skill here, which requires practising law). The Judge determines the success of th transformation. If one looks at juridical facts in this light, one also sees that 'rhetoric' law does not deal so much with 'persuasion' as it does with 'thinking'.

'Rhetoric' refers to the thinking activity (which is actually a problem solving activit required to transform a sentence from natural language into a juridical fact. The only go and duty of the judge is to determine whether or not such a transformation has be successful and whether a juridical fact has come into existence or not. Outside of this, t Judge has no other extra-judicial goal, nor can he have any.

INDIGENOUS INSTITUTIONS AND HOW THEY WORK

Confronted by some dispute or another, some or another local authority tries to resolve The basic goal of this authority (whether an Individual or a group of people constitut by the tradition in an area) is not just to solve the dispute. Its goal is to reach a settleme in such a way that both the disputants and the community of which they are a part c continue to live peacefully thereafter. Such an authority is the 'judge' in the indigeno tradition. This judge then has a goal that goes beyond the mere settling of disputes: he h to judge in a way that satisfies not only the disputants but also the community. It is goal to restore peace, where it has been disturbed by the dispute and the quarrel.

Where such notions of a judge and settling disputes enjoy currency and have seeped i popular consciousness, there, when disputes enter the courts (the English super impo

[5]Gold necklace stolen converted by the goldsmith who illegally bought it again will be reconverted at the inst of police investigation into a new necklace to be used as evidence in the court of law)

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legal institution) the expectations do not change. Nor, does the idea about the role and nature of the judge. The judges who sit on the benches have some such situation regarding what a judge is. Therefore, their goal in these courts of law is multi-determined: apart from judging what the juridical facts are, the judge has other, extra-legal goals. They consist of finding 'just' solutions, restore imbalance and redress the wrongs. They also include, to the extent possible, the goal of a ensuring a peaceful community. It is in this sense that a distortion occurs in Indian law because of the superimposition of English legal institutions.

Of course, this situation leads to another kind of distortion. One of the basic functions of law in western culture is to reduce arbitrariness and capriciousness in settling disputes. Both the formulations and the enforcement of law are standardised and uniform to prevent excesses and ensure fairness. However, the super impositions of English legal institutions actually encourage precisely that arbitrariness which law is supposed to prevent. Now, the figure of the judge uses the legal institution, which gives him the power to do what he does, to make arbitrary pronouncements because of the culturally specific notion of the judge. Such arbitrariness does not occur in the context of the indigenous cultural institution: there reasonableness prevails because of the extra-legal goal and the need to satisfy the disputants and the community. In the context of modern court, however, these constraints which necessitates reasonableness are not present leaving only the individual facing the legal the power of the judge-as- an individual: the modern courts in India encourage arbitrariness precisely because they reduce the same in the western culture.

The distortions occur at the level of formulation and promulgation of the law itself. To appreciate this distortion, we need to keep in mind that one of the basic ideas in both politics and law. Is that the laws of a country are formulated to protect and further the general interests of society. To the extent possible, law tries to reconcile the particular interests of the Individual and groups with general interests of the society. Neither law not politics is meant to further the particular interests of any single community, group or individual. This is to say, laws are not meant to protect or further corporatist. There is always a tradeoff in both politics and law between the special or particular interests of specific groups and individuals and the general interests of the society.

Such general interests cannot be constituted by aggregating the particular interests of any given group of Individuals, even if and where that group constitutes the majority. When laws partially protect the specific interests of a group or sets of Individuals, they are admissible only in so far as such laws either protect or further the general interests of society as a whole. Otherwise, democracy would be completely identical to mob rule or the tyranny of a group (whether it is the majority or the minority) over the rest of the society. In such cases, laws become the expression of the interests of some or another

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group in power or of a group (or sets of group) capable of currying favours with the makers.

For such ideas to make sense, we need to have a conception of the notion of 'interes whether it is an institutional interest or interests that are either particular or genera nature. In India, the notion of 'interest' makes no sense here given, among other thin the absence of any vernacular equivalent of the word that even remotely comes clos the meaning of the word 'interest'. The absence of the word is striking because Ind culture does not have a vocabulary to make any sense of discourse on Interests-whet institutions, private, public general or social. If this the case, what is the ***ratio legis*** laws promulgated in India? The answer is predictable: laws are made in order to fav some specific groups, individuals and institutions. Legislations are meant to explic favour specific groups (say, the reservation policy that favours only particu economically weaker section -group in society), this or that caste group, widows orphans, cricket players, and so on. In short, law favours those able to buy the law mak or those interests groups whose votes the politicians need badly.

When the State promulgate laws that only favour and further corporatist interests, citiz of such a polity use such laws mostly retributively. That is, seeking personal vengea becomes the major if not the sole goal of the citizenry, when they take to the courts. S is also increasingly the case in India: One goes to the court in order to punish one's r or alleged enemies. The so-called '**atrocity cases**' or cases involving '**dowry**' '**domestic violence**' are beginning to become increasingly common and widespr because the law finally allows redressing acts of injustice but because one merely se to punish one's enemies or one's husbands. Most such cases are fakes but they fulfill goal of seeking personal vengeance. Or, again, one goes to the courts seeking o personal gains, which the law encourages. In other words, the institutions of Engl courts in India encourage just the opposite of such laws are meant to: a 'vengef 'spiteful' and 'selfish' citizenry. Instead of promoting a cohesive society, such la encourage divisiveness and conflict in society. If this is not a perversion, what else is?

Of course, such laws are enforceable because they are approved by a majority vote in relevant parliament. The majority is not and cannot be motivated by the general inter of the society as a whole, while approving such laws. Its reason too is as narrow as reasoning of an individual who contemplates his own benefit. Consequently, these la have totally perverse goals, and their effects are also equally perverse.

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TERMS OF REFERENCE AND SETTING THE CONTEXT

Pursuant to the call from the authorities of Karnataka State Law University [6] I undertook the study on **'SADDHARMA NYAYA PEETHA AT TARALABALU MATH'**, situated in Sirigere, Chitradurga District, Karnataka State – and to submit a report" on the following –

a) Scope and relevance of Non State Justice System ('NSJS'); and

b) Reflection of NSJS on STATE JUSTICE SYSTEM (SJS) Karnataka State.

In view of decennial celebration of Karnataka State Law University one such research study endeavour is undertaken in an arena of Non State justice system with special reference to "Saddharma NyayaPeeta" at Sirigere, Chitradurga District.

Here, efforts have been made to appreciate the relevance of the indigenous dispute resolution ethos and their getting laced into the modern Alternate dispute resolution processes.

Part-II of the research report gives an insight into the indigenous dispute settlement institutions and process that were practiced in India since time immemorial.

Part-III is taking stock of pre-independence efforts to promote self-rule in the villages

Part-IV is devoted to have a better understanding of Alternate dispute resolution (ADRs) processes in terms of ethos underlying them.

A picture of emergence of Arbitration and Conciliation with new vigour to solve contemporary problems in the Adjudication process followed and practiced at *"Saddharma NyayaPeeta" at Sirigere, Chitradurga District* is given in Part-V.

Part-VI is devoted to comparison between State legal System (SLS) and Non-State Legal System

Part-VII discusses how the participatory processes found their way into the Code of Civil Procedure.

Concluding remarks are offered in Part-VIII.

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[6] Vide Dated: 13th February 2019