CONCLUSION AND SUGGESTIONS

CONCLUSION

(1) Law and its Execution

From the study, we find that with the origin of the state, the administrative and the civil service also originated in the Vedic age. Though we do not find the term 'Civil Service' is that period, but it was included in the nature and function of the king (state) in the same way in function of the state is operated today. In Vedic age the law, duty or civil service were included in the term Dharma and whatever the function the king performed were deemed to be the service or duty for the welfare and protection of the people. Every body including the king was abide by the Dharma. Rajadharma was the constitutional law for the king to operate the function of the state: Thus in Vedic period the kingship i.e. state its units, administrative civil service and the law (Dharma) appeared. With the evolution of state and society these element including service also evolved and developed.

In Muslim period we find the state, its units, and administrative in a developed and systematic manner in comparison to Vedic age: in this period we find the Quran as a constitutional, administrative and service law for the Rules, officers and their subordinates. Every body was bound to follow the rules and principle of Quran was applied in criminal cases. Even today it is the personal law of Muslims.

In British period, the administrative units, administration. Civil service, officers and subordinates were in well defined position. Common-law of England justice, equity and good conscience were applied in India. With the transfer of power from East-India company to the British crown, Covenanted civil service were designated to Indian civil service and through open competitive examination, candidates were to be appointed: Thus we find the origination of present civil service from 1858: Through Government of India act 1919 and 1935 the said civil services were safe guarded under those Acts:
From the study of Historical perspective the following elements commonly appeared—

1. That there is a state in existence
2. That there is close relation between the state and its subjects.
3. That there are certain customs in the state which have the force of law.
4. That the state enacts law for Governance of the state and welfare of the people.

Now, in this continuation we come to law, which today the state commonly enacts: Now question arises here what is law? Whether the rules are included in the term law?

For obtaining the appropriate answer we have studied the definitions of various school of jurisprudence in Chapter III of the present thesis: It appeared from the definitions that they are not similar and lacking uniformity: But the common elements which appeared is that the law exists in a state whether is written or unwritten code: If the law is written from it has been enacted by the state: The other important element of law is that it is enacted for the welfare and protection of the people and the law is executed by the executive authorities and by their subordinates.

From the study of definitions of law I come to the conclusion that the law consists mainly two parts like a coin. The first part of the law comparison the enactment with preamble, object, scope and limitation along with their details. The second part of law is execution is actually the civil service which is directly rendered by implied or inherent in the first part but not analysed or separated for independent interpretation or study: Though we find rules framed under the provisions of the original Act but they guide only towards the departmental procedure as to how the work would be performed or executed: The performance of work or execution of law is made by the executive officer of civil service. Terminological meaning of civil service have been explained in chapter I of the thesis. Further an examples is produced here —

Tahsildar of a Tahasil is a civil servant. He makes an order of recovery of land revenue. If the person against whom land revenue is due fails to deposit the amount under demand, the Tahsildar may confiscate the property of the defaulter. Suppose the person against whom the land revenue is due failed to deposit the amount. Then the Tahsildar would make the order for recovery or pass the order for confiscating the property of the defaulter under the law and confiscate his property or spot: Here we observed that making order for recovery and confiscating of property or spot is actually the civil service rendered by the Tahsildar in lieu of his duty: The defaulter should have deposited the amount with the
Tahsildar or with Govt. Treasury, because it is Govt. money and which is to be utilised for public purpose: Hence the action taken by the Tahsildar is public interest though against the defaulter: This action of the Tahsildar is actually the execution of law. In lieu of his duty but without any norms or method.

On study and observation of executive officers, I found that the executive branch of the government execute the law. But the law is unless as that of air or electricity. Law is lifeless confined in the law books and in the form of words and sentences. The law becomes alive and functional only through the mind of authority (civil servant) now the law can see, here, walk and talk though the mind and person of the executive authority (i.e. civil servant).

But we know that the human mind is also unseen being and internal matter. No direct evidence is available as to the working of the mind of the another person. Similar in the case with executive officer who executive the law or reforms his duty. There must be projection and, combination between the law and the mind of the executive officer. Similar to that of a wheel with an axle.

As soon as the executive officer becomes ready for passing of an order or execution of law his mind strikes and adopts the law its principles and procedure for execution and at the same time the mind and the person of the executive officer (civil servant) is transformed from a ordinary mind or person into a legal mind and legal person. In this state law expects from him that there should be accuracy fairness and legal spirit in his execution. The said authority would executive the law as perform his duty through his mind first then though his organs and person. He will act or performed the function as per the direction given by his own mind but we can see his mind. The executive officer himself would decide as to how his mind is working. In several cases (given in chapter 1, 4, 5 and 6) these action of the executive officer where declared by the S.C. to be null and void arbitrary, unreasonable and against the principle of natural justice. Then how to be avoided these arbitrary action. No method developed to control the mind of the executive officer while execution.
I humbly proposed a method to control the mind of executive officer while and before execution as under –

Human mind is dynamic it requires stability while execution. There must be some pressure into the mind of the executive officer before and while execution or performance of his duty. For this purpose the executive officer must keep with him a cheque book while on duty. If he proceeds for execution then immediately he must record a note on the cheque book, giving date, time and place, that he is going to execute the law or performance of duty with his balance mind and with full care, caution and object of the law. Recording this note with short description of work would make his mind alert and ready for execution in right direction.

This method may be understood through certain examples –

1. A balanced minded driver of a vehicles may very well drive the vehicle his mind if dynamic or imbalanced any kind of accident may occur.

Similar is the case of executive office. If his mind not balanced, any kind of mistake error, arbitrariness or excessiveness may occur.

2. Several accident causes on road every day due to rough driving or negligence.

To avoid this situation we stop our vehicles at the chowk with red signal through their cause no accident.

The process of stoppage with vehicle at the chowk makes our mind alert together with people, convenience with green signal we proceed with a fresh and stable mind.

Similar in the case with the executive officer civil servant. Recording note on the cheque book will stop his dynamic mind and would get ready for execution with balanced mind this cheque book would be subject the inspection of higher authorities monthly.

3. Manu (In Manusmriti XII – 10-11) cautions every one to have self control so that his mind does not act as the instigator for committee any sinful action. According to Manu man is called Tridandin on whose mind he has three controls – viz

(i) Manodanda i.e. Control over his thought
(ii) Vakdanda i.e. Control over his speech and
(iii) Kayadanda, i.e. Control over his body

He who keeps these three control with respect to all created beings and wholly subdues desires and wrath, as surely gains complete success in life.

While execution of law the executive officer requires control over his thought speech and body.

For this purpose of the execution I put this three control under the term "balanced mind."

The other rules for functional or practical civil service with execution are proposed as under to be followed by the executive officer –

Execution –

(i) Without fear or favour
(ii) Free from political and personal influence
(iii) Without any prejudice or bias
(iv) With object of the law
(v) In public interest
(vi) As per the rules of law and principle of natural justice

II Rules

(1) The present civil service rule regulating the recruitment and condition of service are outdated. They require addition and modification as per the judicial decision indicated in chapter – 4, 5 and 6 of the thesis or fresh enactment by the appropriate legislature.

(2) The present rule are lacking of preamble object, scope and limitation of a valid law. Due to these reason and due to un-control exercise of discretionary powers by the executive authorities their action and so many rules have been declared illegal, null and void unreasonable and unconstitutional by the Supreme Court as have been
stated in Chapter IV th of the Thesis.

(3) Rule 11 of the central civil service (classification control and appeal) rule 1965 is defective offence and misconduct upon which penalties are imposed have not been defined. For what offence, or misconduct what penalty would be imposed, has not been prescribed in this rule.

(4) Enquiry and disciplinary authorities are required first the pass all the civil service rules regulating the recruitment and conditions of service of law government employees including specially the central or state civil service (classification, control and appeal rules ) 1965 for being eligible of the enquiry officer and disciplinary authority.

(5) It has been found that discretionary power of the disciplinary authority are vague. There is no guiding principles or method to control the discretionary power of the authority.

(6) Limitations for deciding D.E. cases has not been prescribed with rules.

(7) There is nor protective legal right in D.E. cases while D.E. proceedings.

(8) Conditions of service are not satisfactory

(9) The term government servant or civil servant is not in accordance with the legal spirit of our constitution.

(10) Our Supreme court has evolved and defined the terms of civil service concepts. They are, Appointing authority 1 Subordinate 2, Civil Servant 3, Civil post 4, Cadre 5, Permanent post 6, Temporary post 7, Quasi Permanes status 8, States 9, Dismissal, Removal, Reduction in rank 10, Arbitrary Termination 11, Suspension 12, Compulsory retirement 13, resignation 14, misconduct 15, Moral Turpitude

(1) Dharam Vs union of India (1980) U.J. SC 293
(2) Sampatram Vs State of Punjab AIR 1982 SC 1407
(4) Ibid - p.790
(5) Fundamental Rule 9 (22)
(6) Fundamental Rules 9 (13)
(7) Fundamental Rules 9(30)
(8) Champak Lal Vs Union of India AIR 1964 SC 1654
(9) Motiram Vs N E F Rly AIR 1964 SC 892
(10) Khemchand Vs Union of India AIR 1958 SC 300 (Para 13)
Mohammad Abdul Salam Vs Sarfaroz AIR 1975 SC 1064
(12) Orissa Vs Shiv prased Das AIR 1985 SC 701
(13) Takhetray Shivdattatray mankad Vs Gujarat AIR 1970 SC 143
(14) Rajkumar Vs India AIR 1969 SC 180
(15) State of Punjab Vs Ram Singh AIR 1992 SC 2188
misbehaviour, Malice, Malafide, etc. These terms are of jurisprudence importance and govt shall incorporate them in condition of civil rules as their part: There are other several decision on these terms in Art. 14, 16, 21, 39 & 311 stated in chapter IV, V, VI and VII of the thesis: The decision require incorporation in civil service rules.

Suggestions:-

1. The rules regulating the recruitment and conditions of Service of persons serving in the Union or the states must be modified in the light of Supreme Court decisions as stated in chapter IV, V and VI of the thesis.

2. The appropriate legislatures of the Union and of the states must take steps for the enactment of Civil Service laws as directed by Article 309 of the constitution.

3. The term misconduct and discretionary powers must be defined: Scope and Limitation for the exercise of discretionary power should be prescribed under the central Civil Service (classification and control and Appeal) Rules 1965.

4. Rule 11 of Central Civil Service (classification control and Appeal) Rules should be modified immediately: In this Rule, for what kind of offence or misconduct, what penalty should be imposed against the delinquent Government Servant should be prescribed.

5. The central and state Government should include the central civil service (classification, control and Appeal) Rules 1965, and other Civil Service (conditions) Rules in departmental examinations of the officers including C.P.C. Cr P.C. Administrative law and evidence Act.

6. The officers should not be appointed as enquiry officer and Disciplinary authority in Department proceeding cases until they pass the examination as stated in Para 5 above.

7. The delinquent Government employee should be provided legal assistance of a lawyer In D.E. cases at the Government Cost as his service does not cease during D. Enquiry.

(16) Durga Singh Vs State of Punjab AIR 1957 (Punjab) 97
(17) In re Megha Chandra 1994 14 J SC 465
(18) Pratap Singh Vs Stat of Punjab AIR 1964 SC 72
(19) State of Orissa Vs Govind Dass (1958) SC (C.A. No 288/58)
(8) All D.E. cases should be decided within 6 months.

(9) All the meaning, definitions and principles of Civil Service Terms like appointment, promotion, pensions, dismissal from Service etc, expounded by the Supreme Court and stated in chapter IV, V and VI of the thesis should be added in and as part of the Rules prescribed for conditions of Service.

(10) All executive officers must keep a check books with them, and record a note giving date, time, place and a brief description of the execution, that he is going to execute the law or complying his duty, or passing the orders (as the case may be) with BALANCED MIND and full care and caution. This check book is subject to the inspection of higher Authorities periodically.

(11) The executive officers must follow the other Rules of execution or Civil Service as pointed out in conclusion of the thesis while execution of law or passing of the orders.

(12) A uniform Civil Service law should be applied all over India.

(13) All Civil Services, laws and the rules be included in LLB Syllabus of the universities.

(14) Indian Civil Service Jurisprudence should be evolved at the instance of Government or by the jurists and should be treated as separate branch for study.