
UNIT 6: BRITISH ADMINISTRATION AND LAW

Structure

6.0 Objective

6.1 Introduction

6.2 The Background

6.2.1 British Thinking on Administration

6.2.2 British interests

6.3 Institutional Framework

6.3.1 Judicial System

6.3.2 Administrative System

6.3.3 Extent of Indian Participation

6.4 Let Us Sum Up

6.5 Answers to Check Your Progress Exercises

6.0 OBJECTIVES

This Unit talks about how the structure of administration and judiciary were gradually being built up by the British. This would involve looking at the ideological orientation and specific requirements of the rulers on the one hand, and the various changes and innovations made in the field of administration, on the other. In this Unit you will study:

- various ideas and elements that went into the making of the British administrative policy
- the institutional framework that evolved in accordance with that policy, and
- an assessment of the administrative and judicial system introduced by the British in India.

6.1 INTRODUCTION

You have seen in the earlier Units how the British gradually controlled the entire country through a series of conquests. The East India Company was transformed from a mere commercial body into a political force. Mere conquests could not possibly hold the empire together for a long time. It had to be sustained by evolving a comprehensive system of administration. This unit is therefore, concerned exclusively with ideas and institutions. We discuss the British ideas on how to govern India, and then go on to describe the kind of administrative institutions which were evolved in order to govern and control India.

6.2 THE BACKGROUND

The vast territories of India were controlled by a massive administrative structure, and various branches of which were held together by a set of laws. Before we go into the details of this structure, let us look at the background to these administrative innovations. These changes in the field of administration and law were a product of certain ideas which had gained currency in 19th century Britain. There administrative change also catered to certain British interests in India. Let us look at both these aspects.

6.2.1 British Thinking on Administration

The administrative and legal system introduced by the British did not take shape overnight and did not evolve in a vacuum. It was spread well over eighty years, was implanted through a series of measures and acts, and was based on the initiative taken by British administrators and thinkers. A number of its provisions and schemes continue even today. It did not evolve in a vacuum but should be seen against the background of intellectual movements in the late 18th and early 19th century Britain, which looked upon the British administration of India as one of its major concerns.

One of the earliest influences that can be seen is the idea of improvement. This influence, evident at the earliest in Cornwallis, looked at the creation of English style aristocracy in land as the best means of developing India. This aristocracy, identified by Cornwallis as the Zamindars was looked upon as trustees who would encourage the growth of trade and production under them. This coupled with English style institution of law and administration- where the object was to separate revenue and judicial function of administration would effectively ensure the improvement of India under the landed aristocracy.

Whereas Cornwallis worked mainly with the ideas and perceptions which came before utilitarianism, Macaulay was a liberal who had grown up in interaction with both the missionary zeal of evangelicalism and the emerging pragmatism of 1830s and 1840s. Thus we see him take up the codification of laws with vigour. However, though he approved of this aspect of institutionalism, he did not at all agree with their goal of reforming India.

Between the concern of Cornwallis and Macaulay came the intellectual current called 'utilitarianism' with James Mill, Jeremy Bentham, David Ricardo, John Stuart Mill as were its major exponents showed a special interest in the Indian question, and were largely responsible for the kind of administration and judicial system that came into being in India. The utilitarians reflected on how to govern and control India and their ideas gradually gained acceptance in British perhaps because they represented and combined the interest of the British merchants, manufacturers and missionaries. What were their ideas on India and prescription for the Indian problem?

- Indian society was seen by them as completely devoid of the values of rationalism and individualism, which were seen as the essential principles for building a modern society.

- A traditional and decadent society like India could be improved through proper legislation, which would impart “human justice” as against “divine justice” practised in traditional societies. This meant that “British administration with its principles of justice and uniformity could convert India into progressive and dynamic society.
- However in this scheme the instrumentality of education was rejected by Mill. And so was the Indianisation of the Government structure. Given their character, Indians were seen unfit in the task of their over ‘modernisation’. Mill therefore dismissed the idea of giving any power and responsibility to Indians. Utilitarians prescribed a modern machine of government, run by the British.

In other words, from the 19th century onwards when information about India began trickling into the European societies, there began a debate among thinkers, scholars and administrators on the Indian problem and its solution. Among them the utilitarians, with their well defined structure of ideas, a set its of followers, their keenness on India, and the readymade applicability of their concerns (of taxation, forms of government and administration of justice) to India, proved to be the most outspoken and effective. In 1819, James Mill was admitted into the executive government of the East India Company. This made it easier for the utilitarian ideas to be implemented in the Indian situation. Their ideas can be summed up in the format of problems and prescribed solutions.

Problems

- Indian society was backward, decadent, retrograde and despotic. There was degradation of the many by the few and absence of any security for the individual and his rights.
- This resulted in poverty, therefore crime
- Servility and superstition was (characteristic of Indian people)

Solution

- Advancement of society through the establishment of a good government with good laws and sound administration.
- This would lead to freeing of individual initiative from despotism, customs and communal ownership (which Mill saw a sign of a primitive society and inhibiting the making of a civil society).
- This would give a free and full scope for capital and labour and place due emphasis on individual rights and ownership (as against communal ownership, characteristic of Indian society).
- Towards the same and it was necessary to legally define and protect individual right in land.

To put it briefly, the utilitarian thinking was an advocacy of a ‘Rule of Law’. Laws were to be scientifically defined and embodied in a written form in codes. They were to be implemented through the creation of a body of local courts to

make law accessible to every man. Only this could create an individualist competitive society.

6.2.2 British Interests

By now you must have become familiar with British ideas on law and its relationship with the society. But at the same time, it would be wrong to overlook the interests, which were also at work behind the introduction of British administration and law in India. It suited the British requirements in India to have a uniform system of administration. And the British need for a new administration and laws varied with the changes in the British interest in India and the combination of interest groups in Britain.

As you are aware, the imperial interest in India did not remain the same throughout. They changed during the different stages of the British rule. They also represented the interests of different social groups in Britain in different stages. During the first stage of the British rule in India till 1813, British interests lay mainly in

- the East India Company's monopoly of trade with India, and the elimination of other European competitors,
- the control over financial resources, through taxation.

Both these objectives could be fulfilled without having to disturb the existing institutions and administrative apparatus. British rulers at this stage were not very different from that of traditional rulers, interested mainly in the appropriation of agricultural surplus. No attempt was, therefore, made to create a uniform administrative structure or even to renovate the old one at this stage. No basic changes were introduced in the judicial system and administration. Whatever little changes were made in the field of administration were only made at the top of the structure of revenue collection and were linked to the objective of smooth revenue collection. A modern judicial system or a uniform administrative structure for India was not seen as necessary at this stage, since it was not considered relevant for the fulfillment of British objectives during the first stage of the British rule in India.

This scenario changed considerably after 1813. As you are aware, the British economy and society were going through a major transformation, caused mainly by the Industrial Revolution. The mercantilist trading corporations were now giving way to the industrial bourgeoisie which had become the dominant force in the British society. The East India Company was gradually losing its monopoly over Indian trade. The British interests in India no longer represented the interests of the company but of the Industrial capitalist class. The interests of the British industrialists lay in using India as

- a market for their manufactured industrial goods,
- a source of raw material (like Jute, Cotton etc.) for their industries, and foodgrains, opium etc. for export.

All this required much greater penetration into Indian economy and society and control over Indian trade not only with Britain but with other countries also. India

was now expected to play a new role. It was perhaps not possible to perform the new role with the traditional administrative institutions. They had to be changed and transformed to suit the new requirements. And hence started the process of transforming Indian administration the details of which you will study in the next section. Similarly, the entire legal structure had to be overhauled to promote modern business, create a market economy, free commercial relations and to regulate the various economic transactions smoothly with the help of modern laws. And hence started the process of the transformation of Indian administration and judiciary, the details of which you will need in the following section.

Check Your Progress 1

- 1) What according to utilitarians, were the problems of the Indian society, and what was the way out? Write in ten lines.

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- 2) Why did the British go in for administrative reforms in the 19th century? Write in ten lines.

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6.3 INSTITUTIONAL FRAMEWORK

Having discussed the dominant British ideas on the question of law and administration, let us now look at the framework of administrative institutions that evolved in the 19th century, and the extent to which the ideas discussed above, were incorporated into this framework.

6.3.1 The Judicial System

The building up of an adequate structure of administration started taking shape from 1793 under Cornwallis, and continued, with interruptions, down the 19th century. During Cornwallis Governor Generalship important changes were made in all the branches of administration including the judicial system. These changes involved a divorce of revenue from civil administration, i.e., the separation of judicial from executive functions and the multiplication of judicial courts.

The separation of civil and revenue administration meant, that the collector hitherto the holder of judicial and revenue responsibilities was now deprived of his judicial functions and concerned mainly with revenue. The collection of revenue and the administration of justice were now to be carried out by separate

officials appointed for the purpose. There was now a collector responsible for the collection of revenue and Judge Magistrate with civil and criminal jurisdiction, broadly the structure of the new judiciary was something like this

Civil Courts

Sadar Diwani Adalat

Provincial Court I-IV

District Courts Presided over by a District Magistrate from Civil Services

Registrar's Courts

Subordinate Courts (Presided over by Indian Judges called Munsif and Amins)

Criminal Courts

Sadar Nizamat Adalat (Sadar Fauzdari Adalat in Madras, Bombay)

Court of Circuit (Presided over by Civil servants)

Local Courts (Presided over by Indian Magistrates, called principal Sadar Amin in Madras)

This system of a hierarchy of courts was tried and implemented first in Bengal which had assumed the states of a Laboratory for the British rule where they could make experiments in the field of administration, and they extend it to the rest of the country. Before we proceed further, let us try and understand the chart above. The Sadar Diwani Adalat and Sadar Nizamat Adalat formed the top of the pyramid and were situated in Calcutta. Below there were the provincial courts of appeal (in the case of civil courts) and the courts of circuit (in the case of criminal courts) which were established in the towns of Calcutta, Dacca, Murshidabad and Patna. Below there were the registrar's courts and all those were presided over only by the Europeans. The participation of Indians was confined to subordinate positions such as Munsifs, Amins; the Qazis and the Pandits who merely advised the judges on the existing Mohammedan and Hindu laws.

Thus was laid the foundation of a new judicial structure in India. In the coming years, this structure grew and evolved. Many changes are made in it and it was subsequently applied to other parts of India. Let us at this stage look at some of the important characteristics of the judicial structure developed in India in the 19th century.

One important feature of the system of law that was erected was that enough tolerance was displayed toward the existing traditional and religious laws. The criminal courts did not altogether abolish the Muslim criminal law but applied it in a somewhat modified form, so as to make it less harsh. Similarly the civil courts also did not do away with the customary laws which had been followed by the local people. Evidently at this stage the East India Company was not bent upon an overhauling of the system. Only a partial modification was attempted. The existing institutions of justice and also revenue appropriation were not dismantled.

Another feature of the new judicial system was the establishment of a whole network of laws through the process of enactment of laws and codification of old laws. This was well in keeping with the 19th century British passion for the condification of laws. The traditional system had been based on 1) customary laws based on traditions and social practices, 2) religious laws based on Shastras and Shariat, and 3) laws flowing from the will and authority of the rulers. As against this, the British created a new system of laws. They introduced regulations, codified the existing laws and systematised and the laws were now open to judicial interpretations and subsequent amendment. Through the Charter Act of 1833, all law making authority was vested in the Governor General-in-Council. In the same year, a law Commission was appointed. Headed by Lord Macaulay, it prepared the Indian Penal Code which was applicable throughout the country. Thus there came into being, for the first time, a set of laws which included into its fold every Indian.

The two main theoretical principles underlying the entire judicial system were the notions of the Rule of Law and Equality before law.

The Rule of law for India was an integral part of utilitarian thinking on law. They posited the Rule of Law as the possible solution to the three main problems:

- 1) Tremendous discretionary power in the hands of individuals who were likely to misuse it;
- 2) lack of definition of individual rights, and
- 3) the existence of a large body of unwritten laws without any clear direction.

The Rule of law meant that the administration was now to be carried out strictly according to certain laws which defined the rights, privileges and obligations of the people, and not according to the personal desires of the rulers. It also meant that in theory at least, nobody was above law, even the officials. And those who supervised law, were in theory, accountable to the same once formulated, could place restrictions on the actions of the rulers. However, the laws formulated and interpreted were such that they contained enough space for the oppression of the people. As it happened, various bureaucratic misdeeds, did not require a violation of law, they could be done well within the legal rights of the officials. Despite the theoretical principle of “rule”, there remained domains of action, e.g. by the police or army, which remained unaffected by restrictions which should have followed from the principles. A great deal of extra –legal continued to be exercised by the police and civil-servants. In fact, under the Rule of Law, legality itself became an instrument of power and oppression.

Equality before law meant that in theory all the citizens irrespective of their caste, status etc. were now placed at an equal footing in the eyes of the law. The concept of equality before law did not of course, include Europeans into its fold. Separate courts and laws were set up for them. In criminal cases they could be tried only by the European Judges. In reality total equality before law could not possible by implemented. But it did bring about a national equality among Indians.

In practice, the Indian people had to pay a heavy price for the undeniably laudable principles of the Rule of Law and Equality before Law. Justice became very expensive and therefore out of reach for most people. Now the stamp fee had to be paid which was very costly. It cost Rs. 1,000 to start action in a court on a property worth Rs. 50,000. Moreover, the new laws were quite complicated and most people could not understand or interpret them. Lawyers, therefore, had to be employed and that added to the expenses. To seek justice people now had to come to the district towns or the provincial centres. Also the legal process generally became very lengthy and sometime law suits dragged on for years. To take one example a zamindari in Madras went into litigation in 1832 to settle some inheritance and debt suits. The Judgment was finally delivered only as late as in 1896 i.e. after 64 years.

However, the judicial system introduced in India did have the merit of saving in motion the process of the unification of India. Now it was possible to conceive of India, in judicial terms at least, as one unit. The British formulated and used the idea of legality as an instrument of legality was to be used by the leaders of the national movement to defend civil liberty and right to challenge government authority within the limits of law.

6.3.2 Administrative System

The main aim of the British administration in India was the maintenance of law and order and the perpetuation of the British rule. A fairly adequate body of written laws had already been created to facilitate the tasks of administration. The three main pillars of the British administration in India were:

- the Civil service
- the Army, and
- the Police.

Let us briefly see the composition and functions of each of them.

The main job of the civil service was to translate law into action and the collection of revenue. The term 'civil services' was used, for the first time by East India Company mainly to demarcate its civilian employees from the military and ecclesiastical counterparts. The service was initially only commercial in nature but was later transformed into a public service.

From the very beginning it was a grade post-the gradations being-Apprentices, writers, factors, junior merchants then finally senior merchants. It was from senior merchants that appointments for higher services including the Governor were made. This system of grading continued till 1839.

The appointment to these services was the sole prerogative of the court of Directors of the East India Company. These nominated civil servants indulged in corruption, bribery and illegal private trade. Cornwallis tried to check this corruption, arising out of apolycy of patronage practised by the court of Directors. He imposed certain restrictions on the civil servants (like forbidding private trade) but increased their salaries as compensation. For instance, the collector of a district was to be paid 1500 a month, besides one per cent commission on the

revenue collected from his district. At this stage, the company's service was perhaps the highest paid service and the world.

All this, however, failed to solve the twin problems of corruption and inefficiency. Lord Wellesly, who arrived in 1798, took significant steps in this direction. He introduced the idea of a suitable training for the civil servants in India. He felt that the foundation of the training of the civil servants should be laid in England and further training imparted in India. This was founded the Fort William College in Calcutta on 24 November 1800, where the civil Services were to receive training in literature, science and languages in India. After five years, an East India College was established at Hailybury for imparting two years, training to young officers for the civil services. Indian Civil Services for the next fifty years or so remained the product of the Hailybury College.

The method of recruitment, however, remained through the system of patronage in the hands of the court of Directors who were free to nominate their sons and nephews for the services.

The idea of 'competition' for recruitment (as against nomination practised earlier) was introduced for the first time by the Charter Act of 1833. But it was to be a very limited competition and could be termed as nomination-cum-competition for recruitment. The Court of Directors was to first nominate four times the number of civil servants required. These nominated candidates had to go through a competitive examination, through which one fourth could ultimately be selected to join the coveted Civil Services.

But gradually the demand for open Public competition started gaining ground. The Charter Act of 1853 ultimately took away the power of the court of Directors to make nominations and made a provision for open completion. For regulations regarding age, qualification and subjects for the competitive examination a committee was appointed headed by Macaulay which was to submit its recommendation to the Board of control. Subsequently the college at Hailybury was abolished in 1858 and the competitive examinations became the sole responsibility of the Civil Service Commission. This competitive examination was to be held annually in England and it was therefore, virtually impossible for an Indian to compete in it. In late 19th century there began a demand that the competition examination should be held in Indian.

The officers of the civil service were employed both in the control officer and the district. The chief Officer in the district was the collector who was initially responsible exclusively for the collection of revenue. He had the authority to decide all disputes related to the boundary and the rent. He was assisted by a Tehsildar who was an Indian. After the reforms of 1831 the offices of the Magistrate (you have head about him in sub-section 24.3.1) and the local chief of Police were also transferred to him. This gave him total authority in the district. Given the large size of some of the districts, a post of Deputy Collector placed between the Collector and the Tehsildar in the hierarchy was also aerated after 1831. This was soon converted into an uncovenanted post which meant that experienced Indians could be employed as Deputy Collectors.

The Indian Civil Services in years to come, developed into one of the most efficient and powerful civil services in the world. Its members played a very crucial role in the framing of the British Polices in India and also in maintaining and running the mighty British empire in India. After 1947, independent India inherited this system of Civil Services, which continue in its essentially original form even today.

The Army and the Police

Something needs to be said about the other two pillars of British administration. The bulk of the Company's army consisted of Indian soldiers. In 1857 the Indians constituted about 86% of the total strength of the Company's army. The main reason for this large share of Indians lay in the expense involved in maintaining an exclusively British army. Also, given the Company's expansionary policy, company was required to maintain a large army. How company to rely on an army largely India. However, the officers of the army, as in other branches of administration, were exclusively British. The highest an Indian could reach was the post of a *Subedar*.

The army played a crucial role in the expansion of British dominions over the Indian rulers. However, after the conquest over India was over and the rivalry with foreign powers eliminated; keeping India under subjection became the main task of the army. A secondary task was to fight England's wars wit the Russian, or the French or with Indian neighbouring countries.

Police, the third Pillar of the British administration was created by Cornwallis. So far, the function of the Police was performed-by Zamindar through their armed retainers. They were now striped off their power, their armed retainers were disbanded and in ties place, a police force was set up. This force was entirely at the command of the government of the East India Company. This force was grouped into *Thanas*, headed by a *Daroga* who was an Indian. These *thanas* were initially under the general supervision of the District Judge. Later the post of District superintendent of Police was created to head the police organisation in the district. Finally the organisation of the police force was handed over to the civil service and the collector in the district also controlled the police. The main task of the police was to handle crime and also to prevent conspiracy against the British rule. Later, in the 20th century the police was employed in a big way to suppress the growing national movement.

6.3.3 Extent of Indian Participation

One noticeable feature of the judicial and administrative reforms introduced by the British was the absence of Indians from responsible offices. This was well in harmony with the utilitarian thinking on the Indian question represented mainly by Mill. Moreover Cornwallis, the initiator of these reforms in India did not seem to have much faith in the efficiency and sincerity of the Indians. The field for their employment was therefore, narrowed to subordinate positions such as the *Amin* and Police *Daroga*. This policy of excluding Indians was applied to almost every branch of the government like army, Police, Civil Services, judiciary and

engineering. In fact it had officially been laid down in 1793 that all higher posts in administration worth a salary of 500 a year or more could be held only by an Englishman. This was so mainly because the British were convinced that an administration based on British ideas, institutions and practices could be firmly established only by Englishmen. The dominant British thinking of that time seemed to be in favour of providing good administration for the Indians, not one run by them.

However, after 1813 under Hastings, there started the process of the gradual Indianisation of the lower branches of services, mainly the judiciary. As the judicial system was made more extensive, more Indians were included in it. The argument given was that if justice had to be made locally available then local people should be involved in it. Bentinck advocated the inclusion of Indians on the grounds of orienting administration to the local needs, which could only be defined by the Indians themselves.

A major reason for Indianisation was the expense involved. The wars fought under Hastings, especially the Anglo Burmese war produced a financial crisis. This crisis was compounded with the need to make administration more extensive. The extension of the chartered services (services held by the Englishmen) was virtually impossible. So, on the one hand there was the need to make the administration more extensive. And on the other hand, was their inability to bear the cost of the extensive administration, by British standards. This did not threaten the British aspirants for the lucrative Indian posts, as they did not want to compete for the subordinate jobs in India.

It was mainly for this reason that the claims of the Indian people for a share in administration were being publically recognised, and the British Government was also providing the justification in terms of justice, moral obligation, and local needs etc. a regulation of 1831 placed in the hand of the Indian Judicial officers a large share of the judicial responsibility. Bentinck was succeeded by Auckland who increased the power and salary of the Indian Judges.

But it must be remembered that the top posts, involving decision-making authority were reserved strictly for the British till the late 19th and early 20th centuries when the Indians started making an entry into the coveted civil services.

Check Your Progress 2

1) Write five lines on each of the following

- i) Rule of Law.
- ii) Equality before Law.
- iii) Police
- iv) Army

2) Read the following statements and mark right(✓) or wrong (×):

- i) Under the new judicial system, the civil and revenue administration were separated from each other.
- ii) The existing traditional and religious laws were abolished from the very beginning under the new system.
- iii) The Indian Penal Code was applicable only in Bengal.

- iv) Indian participation in the British Services was confined to lower ranks only.

6.4 LET US SUM UP

In the 19th century India started a process in which new legal and administrative institutions came into being, grew and took a definite shape. This process was a product of certain British ideas on the Indian problems from the early 19th century onwards, as well as certain changes in British interests pressing for administrative reforms. The result was network of laws applicable throughout the country and a vast administrative structure to implement the laws. This structure was truly modern in nature and pan-Indian in its spread. Its impact, clearly visible only in the 20th century was somewhat ambivalent in nature. To the British Government it provided the channels for control over the Indian people, and for greater penetration into India. To the Indians on the other hand, it provided the ground on which a protest could be launched and the authority of the British could be challenged.

6.5 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) See Sub-sec. 6.2.1
- 2) In your answer you should refer to the changes in the British interest thereby necessitating a comprehensive administrative structure in the 19th century. See Sub-sec. 6.2.2.

Check Your Progress 2

- 1) i) and ii) See-sec. 6.3.1 iii) and iv) See Sub-sec. 6.3.2
- 2) i) ✓ ii)× iii)× iv) ✓