SECTION II

PROVINCIAL EXECUTIVE

CHAPTER 1

DUAL VERSUS UNIFIED GOVERNMENT

8. My colleagues have recommended that the subject of Law and Order should be continued as a reserved subject for five years after the new regime has come into operation. I would not have cared to differ from my colleagues if their recommendation had involved nothing more than a short period of waiting to allow the Council an opportunity of settling down to its work. But unfortunately their recommendation involves more than this and is accompanied by a proviso that "after that period it should be left to the decision of the Legislative Council with the concurrence of the Upper House and of the Governor to decide that the subject should be transferred." I am unable to agree to this recommendation which means the continuance of dyarchy for an indefinite period. Such a recommendation cannot be supported except on the assumption that dyarchy is a workable system of Government and that as it has been successfully worked in the past it can be expected to work in future. This assumption is in my opinion quite untenable.

9. Many things have been pointed out as being responsible for the unsatisfactory working of dyarchy as a form of Government. It is true that the Transferred side of the Government was hampered by certain checks which were introduced by way of safeguards. The subjects transferred to the control of the ministers all related to the well-being of the people, as distinguished from subjects relating to the maintenance of law and order. Indeed the subjects were transferred largely because they were of that character. As a matter of policy, therefore, the finances of the Presidency should have been in the hands of a minister. For it is obvious that no policy has any chance of reaching fruition unless the Finance Department found the ways and means required for the same. This could be expected of the Finance Department only if it belonged to the Ministerial side of the Government. But it did not. Section 45A(*3*) provided for the constitution by rules under the Act of Finance Department and for the regulation of the functions of that department. The department as constituted is neither a Transferred nor a Reserved one but was common to both sides

of the Government. Yet as rule 36(1) of the Devolution Rules laid down that the Finance Department should be controlled by a member of the Executive Council, that department was virtually converted into a Reserved Department. Having been placed into the hands of the Executive Councillor, not responsible to the legislature, it is only natural that the department should be on the Reserved side and the head of the department more or less identified with the work of the reserved departments to the disadvantage of the Ministers. The position assigned to the Governor in relation to the Transferred subjects was another factor which worked to the detriment of the transferred side of the Government. Under section 52(*3*) it was laid down that in relation to the transferred subjects the Governor shall be guided by the advice of his ministers, unless he sees sufficient reason to dissent from their opinion. But the common complaint has been that the Governors instead of reducing their interference to exceptional occasions of fundamental difference claimed that in law the ministers were merely their advisers and they were free to reject their advice if they thought fit to do so. This perverse interpretation made the position of the ministers worse than the position of the Executive Councillors. For, the Executive Councillors could not be overruled in ordinary cases except by a majority of votes. While under the interpretation put by the Governors upon section 52(*3*) Ministers were at the mercy of the Governor and were without the protection enjoyed by the Executive Councillors. There was another thing which also helped the aggrandizement of the powers of the Governors as against the ministers and which tended to cripple the activity of the latter. The Instrument of Instructions issued to the Governor charged him to safeguard the interests of all members of the services employed in the Presidency in the legitimate exercise of their function and in the enjoyment of all their recognised rights and privileges. The duty was confined only to the question of the safeguarding of the interests of the services. But the Governors placed a wider interpretation on this instruction and insisted that all matters relating to the services including the question of their appointments, posting and promotions in the Minister's department should be under the charge of the Governors. In Bombay the Governor claimed this right even with regard to the services functioning under the Executive Councillors and to make it known that the Governor has this power; the ordinary form "the Governor in Council is pleased to appoint" was changed to "Governor is pleased to appoint". The position assigned to the Secretary of a Ministerial Department also helped to weaken the authority of the minister and to increase the autocracy of the Governor. For, in all cases, where the Secretary differed from the decision of the ministers, he was permitted to approach the Governor over the head of his political chief and get his decision altered by the fiat of the Governor.

10. All this undoubtedly had an adverse effect on the satisfactory working of dyarchy. But what I wish to guard against is the inference often drawn that in the absence of these factors dyarchy could have been

a workable system of Government. For I maintain that dyarchy is in itself an unworkable system of Government. Fortunately for me I am not alone in holding this opinion. The Government of Bombay, some members of which individually support the continuance of the system of dyarchy, has itself condemned it in 1919, as an unworkable system in words which are worth quoting : "A reference to the records of Government will show that there is scarcely a question of importance which comes up for discussion and settlement in any of the departments of Government which does not require to be weighed carefully in the light of considerations which form the province of another department of Government. The primary duty of the Government as a whole is to preserve peace and order, to protect the weak against the strong, and to see that in the disposal of all questions coming before them the conflicting interests of the many different classes affected receive due attention. And it follows from this that practically all proposals of importance put forward by the Minister in charge of any of the departments suggested for transfer……will involve a reference to the authorities in charge of the reserved departments……there are few, if any, subjects on which they (the functions of the two portions of the Government) do not overlap. Consequently the theory that, in case of a transferred subject in charge of a Minister, it will be possible to dispose it off without reference to departments of Governments concerned with the control of reserved subjects is largely without foundation."

11. The dualism due to division of subjects is but one of the inherent defects which makes dyarchy unworkable. There is also another. Under it, it is not possible for the Executive to act as a unified body with a common policy. Such a unity can be secured only by a common allegiance arising out of a common mandate. Ministers who are appointed from the legislature are bound to feel a real obligation towards that body that indeed is the reason why they are appointed and they would not serve their intended purpose unless they felt such obligation But every link that binds them to the legislature works only to separate them from their official colleagues with the result that the dualism inherent in dyarchy tends to come to the surface. Once this dualism has established itself between the two halves of government — and the many instances in which Ministers and Executive Councillors have opposed each other by speech and vote in open Council prove its possibility — government must become impossible. This dualism in dyarchy is kept in check by a coalition But this coalition is a forced and artificial union between two parties with totally different mandates and can easily lead to an impasse. That such an impasse has not occurred in the Bombay Presidency does not negative this inherent defect in dyarchy. It only throws in clear relief that in this coalition the ministers had surrendered themselves to the Councillors.

12. Notwithstanding these inherent defects, there are people who hold that dyarchy has been successfully worked in this Presidency. That view can be agreed to only if it means that the Governor was not obliged to

suspend the constitution or to bring into operation the emergency powers given to him by the Government of India Act. This is true. But the question is not whether dyarchy worked. The question is whether it worked as a responsible form of Government. For it must not be overlooked that in 1919 there were many other alternative forms of Government competing with dyarchy for acceptance. There was the Congress League Scheme and there was the Scheme by heads of the Provinces, to mention no others. But all these schemes were rejected in preference to dyarchy because they failed to satisfy the tests of responsible government. Any estimate of the working of the dyarchical system of Government must therefore be based upon that supreme consideration alone. If we bear this fact in mind and then attempt to evaluate the working of dyarchy, the conclusion that in this province dyarchy has been a failure is beyond dispute. Responsible government means, that the Executive continues to be in office only so long as it commands a majority in the House. That is the essence of the doctrine of ministerial responsibility. Now if we apply this test to the working of dyarchy in the Bombay Presidency and take into account the occasions on which the Council divided on motions relating to the transferred subjects, we find a most unedifying spectacle that the ministers have been defeated time and again on the floor of the House and yet they have continued in office as though nothing had happened. This lamentable tale is told by the following table : —

Year		Total No. of Divisions	No. of divisions in which Government were neutral	No. of Government defeats	No. of Government defeats if official block is eliminated	No. of Government successes	No. of ties
1921	..	3	..	2	2	1	..
1922	..	17	..	4	8	9	..
1923	..	4	1	1	2	1	..
1924	..	19	..	10	14	5	1
1925	..	30	1	..	11	18	..
1926	..	3	..	..	1	2	1
1927	..	26	..	3	10	16	..
1928	..	2	..	1	1	1	..

These figures show that in 1921 out of three divisions the ministers were defeated on 2 ; in 1922 out of 17 on 8 ; in 1924 out of 19 on 14 ; in 1925 out of 30 on 11 ; in 1926 out of 3 on 1 ; in 1927 out of 26 on 10 ; in 1928 out of 2 on 1. Notwithstanding this there has never been a case in this Presidency of a minister having resigned. With these facts before us it is impossible to agree to any conclusion which implies the dyarchy has worked as a responsible system of government.

13. It is of course open to argument that if the ministers did not resign it is because the Council did not intend by these divisions to indicate want of confidence ; otherwise it would have refused supplies to the ministers whom it had discredited by its adverse vote. That the Bombay Legislative Council was too effete to impose its will effectively upon the ministers is a fact too well known to need mention. Its division into cliques and factions, its vicious way of following men rather than principles, made it a toy in the hands of the executive, so much so, that the House as a whole failed to exercise even the selective function which any popular House conscious of its power is expected to fulfil. Any popular House, howsoever dominated by the executive, will not tolerate the candidature of any member of the House for office unless he shows that he has some power of speech, some dexterity in the handling of a subject, some readiness of reply and above all some definite vision which can constitute the basis of a rational policy of social and economical betterment. Even in England where the dominance of the cabinet is as complete as it could be, no Prime Minister in filling the subordinate offices of Government will choose men who have not shown themselves acceptable to the House of Commons. The Legislative Council of Bombay was incapable even of this, with the result that the choice for political office did not always fall on the best man available. But supposing that the Council being better organised, had imposed its will more effectively on the executive. What would have been the result ? Would it have made dyarchy work as a responsible form of Government ? My answer is emphatically in the negative. For, any effective action on the part of the legislature against the Executive can produce only one result, namely, it will lead to the use by the Governor of the emergency powers of suspension and certification, which are entrusted to him under the Act. That this is the inevitable result of strong action on the part of the legislature is the testimony of all provinces where the constitution has been suspended. But to admit this is to admit that the moment the Council begins to assert its power to the fullest extent dyarchy must crumble unless jacked by the emergency powers of the Governor. It is therefore obvious that in either case dyarchy fails. It fails by the inaction of the legislature as in the Bombay Presidency. It fails as much by the action of legislature as in Central Provinces. In the one case by reason of the weakness of the legislature the executive gets the freedom to be irresponsible. In the other case the legislature by force of action compels the Governor to keep into being an irresponsible executive.

14. Many have suggested that dyarchy would have worked better if the Governor has chosen to conduct himself as a constitutional head in accordance with the provisions of Section 52(*3*) and the advice given by the Joint Parliamentary Committee. I do not share this view. First of all there is no foundation of facts to support the contention that the Governor was bound to act as a constitutional head. It is often forgotten that though the dyarchical form of government was selected as being a responsible form of government implying that the Governor in relation to the ministers was to

be a constitutional head. But the Joint Report made it quite clear that he was not to be reduced to that position. They expressly stated, "We do not contemplate that from the outset the Governor should occupy the position of a purely constitutional Governor who is bound to accept the decision of his ministers. We reserved to him the power of control because we regard him as generally responsible for his administration". Nor did the Joint Parliamentary Committee recommend that he should work as a constitutional Governor. The Committee distinctly stated in paragraph 5 of their Report that the Ministers will be assisted and guided by the Governor who will accept their advice and promote their policy whenever possible. This is far from saying that the Committee intended him to function as a constitutional head. Indeed such an intention would be inconsistent with the provisions of the Act under which the Governor's dictatorial powers were expressly reserved and nothing that is said in the Joint Report or in the Report of the Parliamentary Committee nullifies their use ; so that if the Governor has himself governed and has not allowed the ministers to govern through him it is no fault of his. But granting that the Governor should have acted as a constitutional head, the question again is, would it have made dyarchy workable as responsible form of government ? My answer to this question is also in the negative. For, as I see the situation, if you take away the power of the Governor and make him a constitutional head, you thereby expose the existence of the reserved side of the Government to an attack from a popularly elected chamber. From this peril the reserved side deprived of the protection of the Governor has only one escape and that is to consent to be ruled by the wishes of the Council. In other words, if you remove them from the leap of the Governor, you have no other alternative except to place them on the same footing as the transferred side. But this is only another way of stating that if the desire is to reduce the position of the Governor to that of a constitutional head you must first put an end to dyarchy.

15. So far I have argued against the view that dyarchy is not a system which is made unworkable by certain other factors and in support of the view that owing to its inherent defects, it is not only unworkable but it is incapable of being worked as a responsible form of a government. Of course dyarchy with complete dualism involving the functioning of two separate governments and two separate legislatures, in one the legislature is subordinate to the executive and in the other the executive is subordinate to the legislature, is free from the criticism which has been urged above against the system of dyarchy-with-dualism such as is in operation. But the alternative of dyarchy-with-dualism was rejected by the Government of India in 1919 and is open to the same objections which apply to the system of government that was established by the Morley-Minto Reforms and which have never been so forcibly voiced as in the Montagu-Chelmsford Report A return to such a system at this stage in the evolution of political life in India is unthinkable and I therefore refrain from saying anything on

a possible recourse to such a system. The only alternative left is to discontinue dyarchy and transfer all subjects to the control of the ministers.

16. So far the general grounds of my opposition to the recommendations of my colleagues who have given their sanction to the continuance of dyarchy have been stated. I now proceed to state my grounds of objection to the continued reservation of the particular subject, namely law and order. The principal reason urged against the transfer of law and order to the charge of a minister is that being subject to the wishes of the electorates and being removable by an adverse vote of the Council the minister will not be able to administer the department impartially. The inevitable consequence of such a situation, it is feared, will be that the services working in the administration of that department will be placed in a false position. Never knowing when they will be supported and when they will be censured, the uncertainty will paralyse their action to the grave detriment of peace and good government It is further urged that in view of the series of Hindu-Moslem riots which have, of late, become so very common we ought not to transfer law and order to the control of a minister who is subject to the vagaries of public opinion and who is likely to be swayed by communal prejudices, Hindu or Moslem.

17. To be frank this argument has produced no effect upon me although my colleagues seem to have been considerably impressed by it. It is one of the stock arguments of bureaucracy. To admit its force is to accept that bureaucratic government is the best form of government Unfortunately bureaucratic government has been known to India too long for anybody to be deceived by any such argument It is so extravagant that its acceptance would involve the negation of all responsible government Whatever its antecedents, responsible government, it must be recognised has come to stay in India. Any change time can bring along with it must be in the direction of expansion of the principle. Any Plan therefore which hinders the broadening of this basic principle must create a serious conflict between the Government and the people. Nor does it appear to me that there exists any ground why we should needlessly give rise to such a conflict by acting upon the bureaucratic argument For, in my opinion, the fear that the ministers will succumb to the clamour of their followers in the House or that their followers will be malevolent in their attitude is not backed by experience and in so far as it is, it does them a great injustice. The suspension of the Local Boards and Municipalities which had been captured by the non-co-operators in 1922 at a time when Mr. Gandhi was in the plenitude of his power gives us hope to say that ministers can be trusted to act independently of the wishes of the electorates when such an action is demanded of them. Members of Government will I am sure testify that the Bombay Legislative Council has invariably acted with the necessary restraint which consciousness of responsibility always brings with it. But even if one is compelled to admit that the House may not keep itself unruffled on occasions of communal feeling and communal clash

this is no argument against transfer. For one may point out in reply that no community whatever its attitude towards another has any vested interest in disorder such as will induce its accredited representatives to be so irresponsible as to lead them to work against peace and goodwill. The fear therefore which operates on the mind of those who support the reservation of law and order is merely the fear of the unseen, unknown and the untried. My colleagues in not recommending the transfer are no doubt adopting a most cautious course. But I am not certain that they are thereby following the wisest course. For, there is such a thing as too much caution which prohibits the liberty to make an experiment which the wisest course must demand in order to find out whether or not the fear is real. The very same fear of the unknown which is now urged against the transfer of law and order was urged in 1919 against the transfer of the subjects now entrusted to the control of the ministers. But they were all brushed aside by the Secretary of States and the Government of India who both consented to take the leap in the dark. I prefer to adopt the same course with respect to law and order.

18. But there is another reason why if we are to make the experiment it is wise that we should make it without delay. It is obvious that the transfer of a subject brings in its wake an increase in the number of Indians employed in the services. It is possible that the Indians might be less efficient, at any rate, less experienced than the European members of the staff. To postpone the transfer of law and order is therefore to increase the dangers incident upon every transitional stage. Consequently it is much the safest to take the step at once and emerge through that stage while the experienced trained civil servants, who could be relied upon to loyally assist in working the new constitution with as little dislocation as possible, are still with us. Fortunately for me this suggestion comes from a very important authority, in fact it comes from an experienced civil servant, who supplied his views in a note to Mr. Barker who has reproduced the same in his book on the "Future of Government of India and the I.C.S.".

"I propose to state," says Mr. Barker, "the lines of such criticism, as it is advanced in a Note written by an experienced civil servant……In the first place it is urged by the author of the Note that the maintenance of law and order, and matters concerned with land revenue and tenancy rights, ought to be transferred." "These departments," he urges, "are administered under Government by the strongest and most able branch of all the services in India—the Indian Civil Service. The principles of their administration have long been laid down, and are well understood. The service has great tradition behind it which will ensure that, mat administration will get the best assistance and most outspoken advice……It is admitted that the people of India are quiet and easily governed people, though occasionally liable to excitement over things affecting their caste or religion. The task of maintaining law and order is not therefore a very difficult one……the argument that land revenue and tenancy questions affect the interest of the masses rather than

of the classes who will be represented in the Legislature (and therefore, on the fifth of the canons mentioned above, should not be transferred) is absolutely inconsistent with the franchise and electorate scheme which has been put forward for the Provinces……The convinced advocate of the compartmental system who is afraid to transfer some at any rate of the departments concerned with law and order and with revenue administration admit that he is afraid of his own scheme. I, though I am not an advocate of dyarchy, should not be afraid to make the experiment, because I should hope to find among the Ministers that common sense, goodwill, and forbearance which are essential to the success of any scheme, dyarchical or not."

19. I quite realise the anxiety of the minorities in respect of the transfer of law and order. But it is somewhat difficult to understand how they expect to gain by its reservation. There will be no difference between a bureaucrat in charge of law and order and a minister from the standpoint of personal bias if the bureaucrat is to be an Indian. If he is to be a European, then the most that can be said of him is that he will be a neutral person. But this is hardly an advantage. For, there is no guarantee that a neutral person will also be an impartial person. On the contrary a person who is neutral has also his interests and his prejudices and when he has no such interest he is likely to be ignorant. The European personal of the bureaucrat is therefore a doubtful advantage to the minorities who are anxious for the reservation of law and order. What however passes my comprehension is the failure of some of the representatives of the minorities to realise the great advantage which the ministerial system gives them as against the bureaucratic regime. For the best guarantee which the minorities can have for their own protection is power to control the actions of the executive. The bureaucratic system is impervious to this control. If it protects the minorities it is because it likes to do so. But if on any occasion it chooses not to take action the minorities have no remedy. In other words, a minister can be dictated to ; but a bureaucrat may not even be advised. This it seems to me is a vital difference between the regime of the bureaucrat and the regime of the minister. Personally myself, I do not see how the minorities will lose by the transfer of law and order and I say this, although I belong to a minority whose members are treated worse than human beings. My view is that in a Legislature where minorities are adequately represented, it is to their advantage that law and order should be transferred. For, such transfer gives them the power of control over the administration of the subject which is denied to them under reservation. I think the minorities should consider seriously whether there is not sufficient truth in the statement that a rogue does better under the master's eye than an honest man unwatched ; and if they do I think they will realise that they can with good reason prefer inferior officers, over whom they can exercise an influence, to the most exemplary of mankind entirely free from such responsibility.

20. There is however another and a more important reason why Minorities prefer reservation to transfer. It is because their representation