

in the Legislature is so small as to make them inconsequential. From the standpoint of the minorities, the choice obviously is between reservation and no representation on the one hand and transfer and adequate representation on the other. Here again the second alternative must be deemed to be more beneficial than the first. It would therefore be more in the interest of the minorities to insist on adequate representation than to persist in opposing the transfer of law and order. But, if the fear of mal-administration in the department of law and order to the prejudice of the minorities cannot be allayed by the grant of adequate representation to the minorities, I am prepared to add a proviso to my recommendation to the effect that if a minority of say 40 per cent, in the Legislative Council should decide by a vote that law and order be a reserved subject, it shall then be withdrawn from the list of transferred subjects. I make the proposal in preference to that of the Majority, because I hold that some day the subject shall have to be transferred if the principle of responsible government laid down in the Pronouncement of 20th August, 1917, is to be made good and that the proposal while it does not come in the way of giving effect to it immediately it does not preclude the possibility of cancelling the transfer, if experience shows that the fears entertained about it are well founded.

CHAPTER 2

THE EXECUTIVE IN WORKING

21. The introduction of a unified government based on ministerial responsibility gives rise to four important questions. Of these the first pertains to the stability of the executive, the second to communal representation in the Executive, the third to the enforcement of the responsibility of the Executive and the fourth to the mutual relation among the members of the Executive.

22. Regarding the first question it is said that owing to the communal bias of the members of the legislature, the legislature is bound to be composed of groups. With attachment to community more pronounced than loyalty to principles, the ministry may find itself resting on uncertain foundation of communal allegiance measured out in proportion to communal advantage so that if communities choose to transfer their allegiance according to their will and without reference to principles, ministries may crumble as soon as they are formed. To prevent such an evil it is proposed that the ministry might be formed from a panel of men chosen by the various groups in the Council and once it is formed it should be made irremovable during the lifetime of the Council. I recognise that the fear of an unstable executive may come true. But I do not think that it calls for a remedy or a remedy of the kind suggested. India is not the only country with the group tendency manifesting itself in the Legislature. The French Chamber of Deputies is a more glaring instance of the group tendency involving frequent disruption of the ministries. All the same the French

have felt that the situation, bad as it is, is not so intolerable as to call for a remedy. But assuming that what is anticipated comes true and the situation becomes intolerable, I am convinced that the remedy is not the right one. That the remedy will immensely weaken the responsibility of the ministers is beyond dispute. What, however, I am afraid of, is that the scheme instead of making for the coalescence of the groups will only serve to harden and perpetuate them; so that the remedy far from curing the disease will only aggravate it. The true remedy appears to me to lie along the line of reconstruction of the existing electorates.

23. I am totally opposed to the recognition of communal representation in the executive of the country. Under it, the disease will break out in its worst form in a most vital organ of the governmental machinery. It will be a dyarchy or triarchy depending upon the number of communities that will have to be recognised as being entitled to representation in the cabinet, it will no doubt be a communal dyarchy somewhat different from the political dyarchy which we have today. But that will not make it better than political dyarchy. The defects inherent in the one are inherent in the other and if the aim of constitutional reconstruction is a unified government, dyarchy in its communal form must be as summarily rejected as dyarchy in its political form. Indeed there is greater reason for the rejection of communal dyarchy than there is for the rejection of political dyarchy. For under political dyarchy the possibility of a Government based on principle exists. But communal dyarchy is sure to result in a Government based on class ideology.

24. It is a cardinal principle of the constitutional law of Great Britain and the self-governing Dominions that every minister is amenable to the law Courts. Indeed it is owing to this wise principle that British subjects at home and in the Dominions are secure in person and property against ministerial wrong doing. India alone stands in strange contrast with Great Britain and the Dominions in the matter of legal responsibility of the Executive for illegal acts. During the course of a better conflict between the judiciary headed by Sir Iliajah Impey and the Executive backed by Warren Hastings, the Executive in India as early as 1780 secured for itself immunity from the control of the Courts. That immunity has been continued to it ever since and now finds its place in sections 110 and 111 of the Government of India Act. Such an immunity was tolerated because it was local and not general. For it was provided that members of the Executive who could not be prosecuted in India were liable to prosecution in England for illegal acts done in India. This system of accountability if it was remote was none the less efficacious because under the old regime almost every member of the Executive by reason of the fact that he was a European returned to England. The composition of the Executive has now undergone a change. It is largely Indian in personnel and as the chances of any one of them going to England are so rare their liability can never in fact be enforced. The situation as it now stands provides no remedy either immediate or remote

against wrongful acts of ministers. To allow the situation to continue, is to destroy the very basis of constitutional government. I therefore recommend that sections 110 and 111 of the Government of India Act should be amended so as to allow all British subjects, whether Indian or European, the right to resort to the Courts in respect of illegal acts ordered by ministers. Such a change in the law was urged in 1919 in respect of ministers. But it was not then accepted because its acceptance, it was thought, would introduce an invidious distinction between Ministers and Executive Councillors. With the introduction of full responsible government in the Provinces, this objection does not survive.

25. I hold so strongly to the view of enforcing legal responsibility of ministers for illegal acts that I propose that the constitution should provide for the constitution of a tribunal composed of the Legislature or partly of the Legislature and partly of the Judiciary before which ministers may be impeached for acts unlawful in themselves or acts prejudicial to the national welfare. I am aware that owing to the introduction of ministerial responsibility impeachment has fallen into disuse. But I feel that ministerial responsibility in India is only in the making and until the Legislature and the Executive have become conscious of its implications it is better to provide a more direct means of curbing the extravagances of power in the hands of men who are unused to it and who may be led to abuse it by excessive loyalty to caste and creed. A safeguard is never superfluous because it is not often invoked.

26. In determining the relationship between the members of the executive—whether each should be liable for his acts only or whether each should be liable for the acts of all, in other words, whether the liability should be individual or joint — is a question on which no one can dogmatise. All the same I am for joint responsibility. I am aware that under it the Legislature is practically helpless in the matter of punishing a delinquent minister. With joint responsibility the legislature will not be able to dismiss a minister of whose acts it disapproves ; it will not be in position even formally to censure him, unless it is prepared to get rid of his colleagues as well. This no legislature functioning with a parliamentary executive date do. For if it does, and overthrows the executive, the executive will also overthrow the Legislature by asking for a dissolution. Notwithstanding this defect, I am in favour of joint responsibility and for two reasons. In a modern state the function of the executive as an administering body applying legislation has become a secondary function. Its main function is to determine policy and submit proposals to the Legislature. Indeed so necessary is the function that the usefulness of the Legislatures would be considerably diminished if the executive failed to perform it. But in order that the executive may perform the function of policy-making, there must be a unity of outlook among its members. Such a unity of outlook will not be possible without complete coherence in the executive. Joint responsibility, it appears to me, can alone ensure such coherence. Second

reason why I recommend joint responsibility is because I fear that the principle of individual responsibility will, never permit the growth of a common political platform transcending the boundaries of caste and creed. It will perpetuate groups and the Presidency will for ever be condemned to a rule of Government by Coalition of groups which by their readiness to form new combinations, will plague the administration with instability and which by their preference for a policy of *menoeuvres* to a policy of ideas, will fatally affect the integrity of the work of the administration. Under joint responsibility although a party may be a collection of units of varying views yet members of each unit, not only shall be forced to do the best they can to formulate a unified policy but will be compelled to be bound by it. The habit of submitting to a party programme which is wider than the group programme will furnish a kind of education, the need of which must be keenly felt by all who know the conditions of India.

27. How to secure joint responsibility is a matter of some importance. To do it by express terms of law will leave no liberty either to the Head of the administration or the Legislature to dismiss a minister without dismissing the whole of the executive. It is therefore better to leave it to convention. The question how to make the convention operative still remains. It seems to me that if instead of the Governor choosing the ministers, the task was entrusted to one of the ministers to choose his colleagues, a cabinet so formed is bound to function on the basis of joint responsibility and would yet leave room for getting rid of an individual minister without changing the whole personnel of the government I therefore suggest that the Governor should be instructed not to undertake directly the task of appointing individual ministers but to choose a chief minister and leave to him the work of forming a government.

28. My colleagues have recommended that there should be 7 ministers to take charge of the administration of the Presidency. I am unable to concur in the recommendation in so far as it fixes the number of ministers. It may be that the future government of the Presidency might be able to do with less than 7 or may feel the necessity for having more than 7 to make no mention of having to appoint ministers without portfolios for satisfying the personal ambitions of members of the Legislature without whose support it may not be possible to carry on the government of the Province. Under these circumstances the wisest course seems to me to leave the question of the number of ministers open to be determined by the Legislature of the day.

CHAPTER 3

THE POSITION AND POWERS OF THE GOVERNOR

29. Under the existing constitution the Governor of a Province does not occupy a well defined position. He has not the position of a constitutional head representing the Crown in the Province without any responsibility for the government of the Province. Nor is his position such as to invest him