

Council of Ministers as policy makers: Constitutional status and commission's recommendations with regard to size in India

Dr. Nagendra Ambedkar Sole

**Associate Professor & Head Of the Department, Department of Public policy ,Law
and Governance, Central university of Rajasthan**

E-mail-snambedkar@curaj.ac.in

ABSTRACT

In most democracies, politics is related to the electoral processes by which citizens elect the policy makers who represent them. Politics exert strong influence on policy making as they try to anticipate how their policy statements and actions might affect their chances for re-election. Policy makers are, therefore, sensitive to the views of the groups and individuals who supported them to win office in the first place and whose support may be essential to keep them in office.

Policy process in India is shaped by institutions created by the Indian Constitution. The Constitution of India adopted in January 26, 1950 does not fix the size of the council of ministers. It is up to the Prime Minister and Chief Ministers to determine the size of the Council of Ministers according to the exigencies of time and requirements of the situation. However over a period of time the experience of minority and coalition governments both at the centre and in the states resulted in 'Jumbo Sized Council of Ministers.' The 91st Constitutional Amendment, however, restricted the size of the council of ministers upto 15% of the Lower House of parliament or State Legislative Assemblies. In this article, an attempt has been made to present to constitutional status and the recommendations of the various Committees and commissions to shrink the top layers of the government and focus more on the governance and accountability issues. A compact and small sized Council of Ministers is one of the essential requirements of good governance.

Keywords: Policy makers, Indian Constitution, Size of Council of Ministers, Administrative Reforms Commission, Constituent Assembly, Aid & advice, Political defections.

In most democracies, politics is related to the electoral processes by which citizens elect the

policy makers who represent them. Politics exert strong influence on policy making as they try to anticipate how their policy statements and actions might affect their chances for re-election. Policy makers are therefore sensitive to the views of the groups and individuals who supported them to win office in the first place and whose support may be essential to keep them in office. Thus Harold Laswell terms "Politics as who gets what, when and how."¹

Policy process in India is shaped by institutions created by the Indian Constitution. Indian Constitution provides for a federal framework with a parliamentary system of government based on westminister model wherein council of ministers is responsible to parliament. In this article, an attempt has been made to present the position of council of ministers. It includes not only the constitutional position at present with regard to council of ministers but also the views expressed by various committees and commissions regarding the size of the council of ministers in India. At the outset, one should make it clear that the original constitution adopted in 1950 does not mention anything about the size of the council of ministers. It is up to the Prime Minister to decide its strength according to the exigencies of the time and requirements of the situation. But the choice of the PM is limited to the extent that he must consider the claims and views of the leading members of parliamentary party in both houses. The need to provide representation to various regions and castes are considered important factors which no Prime minister can afford to ignore. In this context, mention may be made to two Articles of Indian Constitution, i.e. Articles 74 and 163 of Indian Constitution dealing with Council of Ministers at Union and State level respectively. Article 74 states that there shall be a Council of Ministers with a Prime Minister at the head to 'aid and advice'² the President. However, the 42nd Amendment made it explicit that the President shall act in accordance with such advice and 44th Amendment however added that the President can send the advice back for reconsideration once³. In

case the Council of Ministers sends the same advice again to the President then President must accept it. Article 163 expressly recognized that there are areas in which the Governor has to act without the aid and advice of Council of Ministers.

There are two types of situations in which the Governor is expected to use his discretion:

- (a) Those which are implied by the nature of parliamentary democracy and the constitution
- (b) Those where the constitution has expressly imposed special responsibility on the Governor.

It would be proper to Governor to disregard the advice of the Council of Ministers and act in his discretion:

- (i) Where bias is inherent or manifest in the advice
- (ii) Where decision is irrational and pervert
- (iii) Where Council of Ministers disable or disentitle itself
- (iv) Whereas a matter of propriety Governor has to act in his discretion⁴.

For example when the Council of Ministers refused to grant sanction to prosecute a minister even though the Lokayukta, a former Supreme Court judge had held that there were sufficient grounds for prosecution. In this case court upheld that the order of the governor sanctioning prosecution which was refused by the Council of Ministers⁵.

The constitution does not classify ministers into different ranks but in practice four ranks have come to be recognized.

1. **Cabinet Minister-** He has a right to be present and participate in every meetings of the cabinet. For proclamation of an emergency under article 352 the advice must come from the prime minister and other Council of Ministers.
2. **Minister of state with independent charge-** He is a minister of state who does not work under a cabinet minister. When any matter concerning his department is on the agenda of the cabinet he is invited to attend the meeting.
3. **Minister of state-** He is a minister who does not have independent charge of any department and works under a cabinet minister. The work to such minister is allotted by the cabinet minister.
4. **Deputy Minister-** He is a minister who works under a cabinet minister or a minister of state with independent charge. The work to him is allotted by the minister under whom he is working⁶.

Thus, the council of ministers is made up of cabinet ministers, ministers of state and deputy ministers. In accommodating various party factions, as well as providing representations to different regions and groups, the size of the council of minister grew increasingly unwieldy.⁷

Experience of other countries

Australia

As regards the size of the Council of Ministers, it should not exceed twenty at any one time and there is a minimum representation in the ministry from each House. In India a person should become a member of either House of Parliament or State Legislature within six months of becoming a minister although a minister can be appointed from any of the House. As regards to U.K. Disraeli's cabinet consisted only 12 members in 1874. Over a period of time, the size of the British cabinet grew steadily till it became 22 in 1935. Winston Churchill reduced the cabinet to 16 in 1951. However there has been a trend to keep the size of cabinet to 20.⁸ The United States of America (USA) and Japan considered it desirable to have a small Cabinet of 10 to 13 members. It can be mentioned that in order to be an effective deliberative body, the size of the Cabinet should be kept within controllable limits. When it is small, it is easy to settle questions conveniently by intimate discussions. Decisions can be taken by consensus and that would be conducive to the demands of secrecy, needs of coordination and the capacity of the public exchequer.⁹

There has been a discussion with regard to limiting the size of Council of Ministers since pre-independence days. The Government of India Act, 1935 had limited the size of the Council of Ministers to ten. However the Drafting Committee of the Constituent Assembly did not agree with this view while formulating Articles 74 and 163. Nehru's Government in 1947 consisted of a Prime Minister, Deputy Prime Minister, and 12 other Ministers. N.Gopalaswami Ayyangar was included in to the Cabinet without portfolio to examine the governmental structure. He recommended three categories of ministers in the council of ministers and their functions and powers. He preferred the terms 'Deputy Minister', Parliamentary Secretary and the term Minister of State¹⁰.

The Government of India had appointed a committee in 1967 to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor. The committee recommended that the size of the Council of Ministers at the Centre and the states be limited to 10 percent if the strength of the Lower House in the case of Unicameral and to 11 percent of the strength of the Lower House in the case of a Bicameral Legislature.

The committee on Defections 1969, expressed the view that lure of minister ship is an important factor in political defections and limiting the size of the council of ministers not only act as a hindrance on political defectors, but also provide some respite to the Prime minister as well as chief minister from the pressures of the defectors to make them as ministers. The Committee had recommended

that the size of the Cabinet should have some relation to the size of the legislature.

During the 1970's the First Administrative Reforms Commission (FARC) headed by Kenegal Hanumanthaiah discussed the issue of restricting the size of the Council of Ministers, and suggested to limit the size of the ministers to 10 percent of the strength of the State Assembly in a Unicameral State Legislature and 11 percent in bicameral State Legislatures.

The First ARC study team on the **"Machinery of the Government of India and its Procedures of Work"** had suggested that a convention should be made in limiting the size of the Cabinet around twelve. However, the FARC did not accept the recommendation on the grounds that:

- In case there are few Cabinet Ministers, each will have to handle a large number of departments which might adversely affect administrative efficiency.
- In a federal setup, it is essential to provide representation in the Cabinet to each important state or region¹¹.

As regards the size of the Council of Ministers, the FARC suggested a range between 40 to 45 ministers: 16 Cabinet ministers, 15 to 18 Ministers of State and the remaining being Deputy Ministers. However, the exigencies of political situations have not permitted the Prime Minister to observe these limits¹².

Further the First ARC suggested that taking a broad view of the needs of the administration in different states, the big states like Uttar Pradesh, Bihar, Madhya Pradesh and Maharashtra may have about 20 persons in the Council of Ministers. The middle sized states like Madras, Mysore and Andhra Pradesh may have 14 to 18 Ministers and small states like Kerala, Haryana and Punjab 8 to 12.¹³

The National Commission to Review the Working of the Constitution (NCRWC) in 2002 had also deliberated on the size of the Council of Ministers and made the following recommendations:

1. The practice of having oversized Council of Ministers must be prohibited by law. A ceiling on the number of ministers in any State or the Union government is fixed at the maximum of ten per cent of the popular house of the legislature.
2. The practice of creating a number of political offices with the position, perks and privileges of a minister should be discouraged and their number should be limited to two per cent of the total strength of the Lower House¹⁴.

However, over a period of time the experience of minority and coalition governments both at the centre and in the states resulted in large sized Council of Ministers in order to accommodate the coalition partners in the government thus leading to tremendous drain on the government exchequer. Moreover, the size of the Council of Ministers in larger states appears to be disproportionate. At one point of

time, there were 79 ministers in Union Government, 76 ministers in Bihar, 69 in Maharashtra, 93 in Uttar Pradesh and a small state like Arunachal Pradesh with only 60 members Legislative Assembly had 43 ministers. Thus there has been a tendency to have a oversized ministries in order to give representation to various shades of opinion.¹⁵ It also tends to reflect the relative strength of major partners, majority party factions, the power of coalition, a degree of regional balance and the representation of important minority communities such as Muslims, Sikhs and untouchables.¹⁶

The 52nd Constitutional Amendment Act, popularly known as Anti-Defection Law 1985 prescribes disqualification for the members who defects from their original political parties. However, the same Law protects bulk defections in the nature of split and merger¹⁷. It is seen over the years that these provisions have been grossly misused by the legislators to avoid disqualifications. The provision of split has been misused to engineer multiple divisions in the party. Further, it is also observed that the lure of ministership plays a dominant role in the defections. To counter the above and also to strengthen the Anti Defection Law, the government of India had brought in the Constitutional Amendment in 2003 to amend two articles 75 and 164 and insert a new article 361 B after and also to amend the Tenth Schedule of the Constitution. The constitutional Amendment bill was sent to standing committee. The standing committee members had expressed the following views:

1. Ratio for Upper House and Lower House for minister ship should be fixed within the 10 per cent limit prescribed in the proposed legislation
2. The provision of bill relating to limiting the size of the Council of Ministers to 10 percent of the membership of the two houses of the Parliament/Legislative Assembly is likely to put the states at disadvantage which have single chamber Legislatures. Such states with unicameral Legislature may demand for the creation of Upper House- the Legislative Council, to be at par with bicameral states with respect to the size of Council of Ministers
3. Considering many new subjects and areas of activities which come up like WTO etc. limit of 10 per cent should not be fixed for the size of Council of Ministers
4. Limiting the size of Council of Ministers to 15% of Lower House¹⁸

Finally the members of the standing committee on Home Affairs had agreed on limiting the size of the Council of Ministers to 15 per cent of the Lower House for the following reasons:

1. Attempts to bring uniformity in Law with respect to the size of the Council of Ministers in the country
2. Since only a few states (U.P., Bihar, Maharashtra, Andhra Pradesh, J&K, Karnataka) have bicameral Legislatures and the Council of Ministers is accountable to the Lower House only, considering the strength of the Lower House for

the purpose of size of Council of Ministers therefore seems logical.

3. It will not develop propensity amongst the states to go for second chamber to accommodate more ministers.¹⁹

An exception is made only for small states such as Sikkim, Mizoram and Goa where the strength of the Assembly is 40 or less. In these states the state government can have a maximum of 12 ministers. Thus, there has been a sea change of Council of Ministers after the enactment of the 91st Constitutional Amendment Act, 2003. The total number of ministers including the Prime-minister/Chief minister shall not exceed 15% of the Lower House.

Second Administrative Reforms Commission

The Second Administrative Reforms Commission (SARC) headed by M.R.Veerappa Moily, had recommended the following suggestions on the size of the Council of Ministers. The Commission had divided the 28 states into 3 groups on the basis of the strength of their legislative Assemblies.

The first group consisted of bigger states like Uttar Pradesh, Bihar, West Bengal, Madhya Pradesh, Rajasthan, Gujarat, Maharashtra, Andhra Pradesh, Karnataka and Tamilnadu having Assemblies strength between 200 and 400. In the above states, the Second Administrative Reforms Commission suggested that the strength of the council of ministers should not exceed 10% of the strength of the State Legislative Assemblies.

The second group of states consisted of medium sized states like Jammu & Kashmir, Punjab, Haryana, Assam, Jharkhand, Orissa, Chhattisgarh and Kerala having Assemblies strength between 80 and 200. In the medium sized states, the Second Administrative Reforms Commission had suggested that the strength of the council of ministers should not exceed 12% of the strength of the state Legislative Assemblies.

The third group of states consisted of small states like Himachal Pradesh, Uttarakhand, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya and Goa having Assemblies strength of below 80 members. In these states, the SARC had suggested 15% of the strength of the respective Legislative Assemblies. Thus the SARC had recommended graded system ranging between 10 to 15% of the strength of the Legislative Assemblies as the size of the Council of Ministers. Further, it had suggested that "the maximum number of ministers permissible for the medium sized states should not exceed the number prescribed for a large state having 200 legislators and similarly the maximum number of ministers permissible for small states may not exceed the number prescribed for a medium sized state having so legislatures."²⁰ However, the SARC had not recommended for minimum number of members to be included in the Council of Ministers. It has to be mentioned that the newly formed states like the Union Territory of Delhi and Puducherry, the Indian Constitution itself limits the size of Council of Ministers to 7 and 6 respectively.

Of late, there has been a trend to have a small sized council of ministers at various Indian states as well as at the union Government levels. The reasons could be the clear cut majorities of the political parties, thus the Prime Minister and chief ministers of the states are not under the pressure to accommodate various groups/ Political parties. Even at the Union Government level the Prime Minister of India, Narendra Modi, believes in the 'Minimum Government and maximum Governance', thus limiting the size of the Council of Ministers i.e. Government and focussing more on governance. Thus the policy makers i.e. Council of ministers, should aim at shrinking the top layers of the government and expand at the grass roots level and the small sized Council of Ministers should increase coordination between different departments and facilitate rapid decision making. However, the moot question is that shrinking the size of the government itself will automatically lead to better governance.

¹ Michel E kraft and Scott R. Furlong (2013). Public policy, politics, Analysis and Alternatives. Los Angels, Sage.

² Bedi, R.S. (2003). The Constitution of India. New Delhi, Orient Law House. P 495.

³ Ibid, P.524 and also see Singh M.P. & Saxena Rekha. (2011). Indian politics: Constitutional foundation and institutional functioning, Second Edition. New Delhi PHI P. 127

⁴ Sharma, Brijkishore, (2011). Introduction to the Constitution of India, Sixth Edition, New Delhi, PHI, P. 214.

⁵ Ibid., P. 214

⁶ Ibid., P. 161

⁷ Robert Hardgrave JR. & Stanley Kochanek (2008). India: Government and politics in a developing nation. 7th Ed. Boston, Thomson Learning, P.94

⁸ Arora, R.K. and Goyal Rajni.,(1995) Indian Public Administration, New Delhi, Vishwa Prakashan, P. 118

⁹ Ibid., P. 118

¹⁰ Sharma P.D. and Sharma B.M., (2009). Indian Administration: Retrospect and Prospect.,Jaipur: Rawat Publication, P. 74.

¹¹ Pylee, M.V., (1968). Constitutional Government in India. Bombay: Asia Publishing House. P.376.

¹² Arora, R.K., & Goyal Rajni, Op.Cit., P.118.

¹³ Sharma, P.D. and Sharma, B.M. Op.Cit., P.75.

¹⁴ Quoted by Maheshwari, S.R. (1972). The Administrative reforms Commission, Agra: Laxmi Narain Agrawal, PP.84-86.

¹⁵ Siuli Sarkar.(2010). Public Administration in India, New Delhi, PHI P.110.

¹⁶ Robert Hardgrave Jr.and Stanley kochaneck. (2008). India: Government and politics in a developing Nation. Boston: Thomson Learning,. 7th Ed., P. 94

¹⁷ Bedi, R.S. and Rita Aryan, The Constitution of India, Op. Cit., P.553 and See also Austin, Granville. (2012). Working a Democratic Constitution: A history of Indian Experience. New Delhi: Oxford University Press. P. 662.

¹⁸ http://raiyasabha.nic.in/book2/reports/home_aff/104threport.htm

¹⁹ ibid

²⁰ Govt. Of India (2009). Second Administrative Reforms Commission. Fifteenth Report; State and District Administration, P22.