

**MEANING, NATURE AND SCOPE OF 'AID' AND 'ADVICE' UNDER
INDIAN CONSTITUTION: A CRITICAL ANALYSIS**

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Chapter I: Introduction:

India has adopted a Parliamentary form of government with President as a head of the Executive. The position of President though looks similar to that of the British monarch, it varies drastically when powers and functions of the President are analyzed in the constitutional framework. Art. 53(1) vests the executive power of the Union in the President and provides that, "it shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution."¹ However, if such power is allowed to be exercised by the President as per his sweet will, India will soon be transformed into a dictatorship of President. To avoid this, Art. 74(1) provides that there shall be Council of Ministers to *aid and advice* President on the exercise of his executive power² and such advice except in some cases where President's discretion to be exercised, has to be binding on the President.³ Similarly in the case of Governor, Art. 163(1) provides for Council of Minister at the state level to *aid and advice* Governor that shall be binding except certain circumstances where Governor has to exercise his discretion.⁴

U. N. R. Rao v. Smt. Indira Gandhi throws light on the interesting dynamical relationship between 'aid and advice clause' in Art. 74(1) and 'principle of collective responsibility' as envisaged by Art. 75(3). It decides that due to mandatory nature of Art. 74(1), where there has to be Council of Minister to aid and advice President and without such advice President cannot carry out his functions, Art. 74(1) prevails over Art. 75(3). Thus, even if the Lower House is dissolved, the Council of Ministers continues to aid and advice the President.⁵ Similarly, even if the Lower House of the State Legislative Assembly is dissolved, Art. 163(1) prevails over Art. 164(2).

In this paper researcher deliberates on the relationship between 'aid and advice clause' and 'the principle of collective responsibility'. Term collective responsibility has changed its application

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¹ Art. 53, CONSTITUTION OF INDIA, 1950.

² Art. 74, CONSTITUTION OF INDIA, 1950

³ *Samsher Singh v. State of Panjab*, AIR 1974 SC 2192 (Supreme Court of India).

⁴ Art. 163, CONSTITUTION OF INDIA, 1950

⁵ *U. N. R. Rao v. Smt. Indira Gandhi*, AIR 1971 S.C. 1002 (Supreme Court of India).

over the period of years due to the invocation of certain Common Law conventions and at times these conventions override written provisions of the Constitution. In the first part of this paper researchers analyzes who is actually capable of giving *aid and advice* and who actually exercises that capacity. In the second part of this paper researcher focus on when we talk about the responsibility of minister for the actions taken by him in his official capacity, exactly for what kind of actions minister is liable collectively or individually.

In light of many scandals like 2G Spectrum Scam, Coalgate Scam, researcher felt a need to freshly look into the concept of ‘aid and advice’ and how it is being exercised in the current political scenario when it comes to responsibility of Council of ministers as a whole. When Constitution was drafted there were many the possibilities, which could not be rightly assumed to arise in reasonably foreseeable future, like the emergence of coalition government. However, in light of new political dimensions, we need to go back to original idea and analyze its suitability.

Chapter II: Research methodology:

Aim:The aim of the paper is to study and analyze the relationship between ‘aid and advice clause’ and how it has been interpreted.in Art. 74(1) and Art. 163(1) with the ‘principle of collective responsibility’ provided under Art. 75(3) and Art. 164(2).

Objective:

The objective of the paper is to understand how ‘aid and advice clause’ and how it has been understood or misunderstood.

Research Questions:

1. Whether it is prerogative in its real sense of Prime Minister to constitute his Council of Ministers or it has been influenced by other factors? If it is influenced, what are those factors?
2. What is the difference between Council of Ministers and Cabinet. With do we associate Collective responsibility for aid and advice rendered?
3. Whether individual responsibility is provided by our Constitution. If yes how is it related to collective responsibility?

Scope and Limitations:

The scope of this paper is limited to understanding the relationship between ‘aid and advice clause’ and ‘principle of collective responsibility’. It includes analyzing UK Conventions which have been incorporated in Indian political system and how it has impacted the working of Indian political system. The debate about whether ‘aid and advice’ is binding on President or Governor is excluded from the scope of this paper.

Time and space have been major limitations for this paper.

Chapterisation:

The paper has been divided into four chapters:

1. Constitution of Council of Ministers:

This chapter deals with what are the factors influencing political choices made by Prime Minister in order to constitute his Council of Ministers.

2. Collective Responsibility and Policy Formulation:

This chapter briefly distinguishes between Council of Ministers and Cabinet. It shows how in reality it is Cabinet that aids and advises the President by formulating policy however ironically collective responsibility is imposed on entire Council of Ministers

3. Individual Ministerial Responsibility and Administrative Action:

This chapter discusses the difference between policy decision and administrative action and with what exactly individual responsibility can be associated.

Sources of Data:

The researcher has relied on primary sources in the form of case laws, as well as on secondary sources such as articles, journals, and books.

Citation Format:

The NLS Guide to Uniform Legal Citation has been followed.

Chapter III: Constitution of Council of Ministers:

British Conventions have played very crucial role in the interpretation of Art. 74 and 75 that deal with the constitution and collective responsibility of council of ministers. ‘Aid and Advice’ clause in Art 74(1) give rise to many conventions regarding the appointment of Prime Minister and constitution of Council of Ministers. Art. 75(1) states that Prime Minister has to be appointed by the President, however it is the convention that leader of the majority party in Lok Sabha should be appointed as Prime Minister and on the advice of Prime Minister all other ministers in Council of Ministers are appointed by the President.⁶

By virtue of Art. 74(1), Prime Minister is a head of Council of Ministers and has to advice on the selection of ministers in his council and allocate portfolios and shuffle the constitution of Council of Minister whenever and however, he or she pleases. This discretion of constituting his own ministry is the prerogative of Prime Minister. While we take into account discretion of Prime Minister, an important question to be answered is that whether such discretion is still exercised as been envisaged.

Importance of Party Politics:

When Prime Minister allots portfolios he has to take into account interest of other party leaders who have offered him position of Prime Minister and who party expects to have a particular portfolio. The most important example of this is the removal of then Defense Minister V. K Krishna Menon, from Nehru’s Council of Ministers in November 1962 succumbing to immense party pressure and also pressure from other parliamentarians and Indian Press when Indian Army was miserably defeated in China War of 1962. Besides this, Prime Minister also has to give due importance to regional leaders and represent States and Union Territories adequately.⁷

⁶ P. B. Mukharj, THE CRITICAL PROBLEMS OF INDIAN CONSTITUTION, 155 (1967).

⁷ D. C. Gupta, INDIAN GOVERNMENT AND POLITICS, 164 (1st edn., 1973).

Pressure from Opposition Parties:

Though it is Prime Minister who decides who is to be in his Council, often it is influenced by the opinion of Opposition. For instance, When Malviya, a minister in Nehru's cabinet was accused of alleged fraud of election funds from *Saifuddin and Company* of Calcutta, the inquiry was initiated and the report was submitted. It was demanded by Opposition that the Report should be placed before House for the discussion but Prime Minister Nehru removed Mr. Malviya before that under pressure from Opposition. Ten years after this, when Mrs. Indira Gandhi allotted Mr. Malviya Cabinet Rank in her ministry, leader of Jan Sangh Mr. Lal Krishna Advani demanded an explanation to House for the selection of Malviya despite his selection being the prerogative of Mrs. Indira Gandhi.⁸

Factors Affecting Portfolio Allocation:

Not merely selection but also portfolio allocation is the major function of Prime Minister. However, this might also be affected by various political circumstances. For instance, Sardar Vallabhbhai Patel due to his involvement in integration of princely states had to be given a portfolio of Home Minister due to political significance attached to his work and PM Nehru yielded. Madhu Limaye who was a Minister of Food in Charan Singh's Government felt betrayed when he was not appointed as External Affairs Minister who claimed to work relentlessly in the party for Prime Ministership of Charan Singh. Even further Two leaders of All India ADMK namely, Dr. Sathivani Muthu and Bala Pazhanur threatened to create a crisis for the survival of Charan Singh government by leaving the ministry if they are not allotted with portfolios of their choice, Charan Singh had no option but to succumb to their demands.⁹

Chapter IV: Collective Responsibility and Policy Formation:**A. What is collective responsibility?**

The principle of *Collective Responsibility* is provided in Art. 75(3) of the Constitution, it *states* that all ministers in Council of Minister shall *swim together and sink together*. This means that all ministers are collectively responsible for *policy* decisions taken by Council of Ministers.¹⁰ Even if

⁸ *Id.* at 168.

⁹ *Id.*

¹⁰ *Common Cause v. Union of India*, 1999 6 SCC 667 (Supreme Court of India).

a single minister is liable, all ministers are vicariously held liable and cannot continue to hold office irrespective of no individual fault.¹¹

This also implies that all ministers have to support all policies of Council of Minister in the House and outside the house even if he personally disagrees with the same. If any minister does not agree with any particular policy he has to resign.¹² There have been a number of resignations in the past because of the differences with the Cabinet. Dr. Mathai resigned as a Finance Minister because he disagreed with the Cabinet on the question of scope and powers of the Planning Commission, which was proposed to be set up then. C. D. Deshmukh resigned because he differed from the Cabinet on the issue of reorganization of States, especially on the question of Bombay. On September 5, 1967, Foreign Minister Chagla resigned because of his differences with the Government's language policy, especially the place of English. Several other Ministers have resigned from the Central Council of Ministers owing to their differences with the Cabinet.¹³

Art. 74(1) talks about the mandatory presence of Council of Ministers headed by Prime Minister to *aid and advice* President and as Council of Minister is *collectively responsible* for the aid and advice so rendered. The important question here is who has the capacity to render such aid and advice and what is the scope of the authority, which makes Council of Ministers collectively responsible.

The important question here is in practice whether all these ministers participate in decision making and policy formation or now and if all of them do not *aid and advice* President by participating in policy formation of government, who actually participates in such policy formation and how valid it is to hold all of them collectively responsible for policy formulated by chosen few.

Formulation of Cabinet:

Our Constitution envisages collective role of Council of Ministers, which consists of around 50-60 ministers in all, though the number of ministers in his council is nowhere, stated. In reality, however, selected important ministers in Council of Ministers to govern the business of government. Council of Ministers consists of a hierarchy of three types of Ministers namely, Cabinet Minister (rank one), Minister of State(rank two) and Deputy Ministers(lowest ranked ministers). The senior Central

¹¹ State of Karnataka v. Union of India, AIR 1978 SC 68 (Supreme Court of India).

¹² S. G. Deogaonkar, PARLIAMENTARY SYSTEM IN INDIA, 34 (1st edn., 1997).

¹³ Venkateshwaran, CABINET GOVERNMENT IN INDIA, 73-93 (1967).

Government member Gopalswami Ayyangar proposed this division for the first time.¹⁴ Such a division mentioned in Sec. 5 of Salaries and Allowances of Ministers Act, 1952. This Act in itself is unconstitutional because there is no such hierarchy mentioned in the Constitution and validity of this Act was not challenged.

In the case of India today much reliance is placed on British convention overriding expressed constitutional provision of Constitution. British Convention is that some selected 15-20 Cabinet ministers known as 'Cabinet' actually takes all policy decisions. Today with increasing dependence on science and technology, swift and unsteady pace of democratic process demands quick and effective decisions. It makes the working of government very complicated and challenging, governmental affairs become very sensitive in such case Prime Minister usually has very few politically wise and trustworthy colleagues as a part of Cabinet who take decisions on the behalf of entire Council of Ministers. Cabinet meets frequently but entire Council of Minister hardly meets and interacts. Cabinet looks into affairs of all ministries but Minister of State and Deputy Minister only look after particular ministries allotted to them.¹⁵

Policy formulation and role of cabinet:

Cabinet is considered as 'executive committee' of Parliament, however, in reality, it is executive, which indirectly controls Parliament. If a bill is introduced by private member and is not supported by Cabinet, no confidence motion can be passed by the Parliament, but with the majority in Parliament Cabinet can win such motion. In first Parliament 315 bills were introduced by Cabinet and only 7 were introduced by a private member. In third Parliament also the figures were 273 and 3 respectively. Thus practically statistics show that Cabinet controls legislative business of Parliament to a very great extent.¹⁶

In addition to legislative business all important policy making is done by Cabinet. Economic development planning is done by Planning Commission with Prime Minister as its head. Other ministers are also part of in relation to duties ascribed to his or her ministry. The work of all

¹⁴ *Supra* note 7.

¹⁵ *Supra* note 12

¹⁶ *Supra* note 7.

ministries is again coordinated by Cabinet through Cabinet Secretariat, which due to nature of work and responsibility involved is a very powerful body.¹⁷

All important foreign treaties and agreements are signed by Prime Minister or Minister of External Affairs who enjoys Cabinet rank. Other dealings with foreign nations take place through diplomats who has to brief about it to External Affairs Minister. Many times treaties signed are merely informed to Parliament or not even briefed about the same.¹⁸

When inquiry commissions are set up under the head of Auditor and Comptroller General, Election Commissioner, Supreme Court Judge Cabinet makes such appointments. Usually, appointments of Supreme Court, High Court judges, Chiefs of Armed Forces are first cleared by Cabinet.¹⁹

When state emergency is imposed by President under Art 356, in reality, it is Cabinet who on the report of governor decides whether to impose emergency or not. After fourth General Elections, it was alleged that state emergencies imposed maliciously in many states by Smt. Indira Gandhi. It was alleged that she pressurized Governors to send the report, dictated and manipulated the content of such reports to suit her needs. Thus, President's Rule in a state is actually Cabinet's Rule.²⁰

Cabinet and Collective Responsibility:

The above discussion leaves no room for doubt that Cabinet and not the entire Council of Ministers participates in policy formation of the government. A similar position is there in Britain where Cabinet plays the very crucial role. Ramsay Muir in his '*How Britain is Governed*' expresses how in the Parliamentary form of government Cabinet has become as powerful as a dictator. Professor Keeton lamented that, "Parliament has 'passed' into oblivion and Cabinet has come to occupy the uppermost position in Parliamentary framework of government. However when we analyze the situation in Indian context according to researcher Cabinet overstepping its boundaries is unconstitutional. As Art. 74(1) clearly states that without any mention of hierarchy policy decisions are envisaged to be taken by entire Council of Ministers and entire Council of Minister is *collectively responsible* for such policy formulation under Art. 75(3). It is unconstitutional here to

¹⁷ *Supra* note 7.

¹⁸ *Supra* note 7.

¹⁹ *Supra* note 7.

²⁰ *Supra* note 7.

held entire Council of Ministers responsible for policy formed by chosen few members of Cabinet. Thus, incorporating British Convention is not valid here.²¹

B. Principle behind choosing Parliamentary form over Presidential form of government:

Framers of the Constitution adopted Parliamentary form on the basis of the principle that, '*many heads are better than one head*'. J. S. Jagdale in his book '*The British Constitution*' has rightly stated the position of Prime Minister in Parliamentary form of government. He states that, '*all ministers are of equal status is blatantly the wrong statement, he states that except Prime Minister all other ministers are nearer to equal.*' Important question here is whether the Parliamentary form of government as its been practiced in India today serves this principle or not.

Prime Minister: New Dictator

In Indian context Art. 74(1) declares Prime Minister as a Head of Council of Minister. Art. 78 provides for duties of Prime Minister regarding informing President about policy decisions taken by Prime Minister and his Council of Ministers. However, in reality, his duties, powers and functions are more complex and crucial.

Each minister in his individual capacity is accountable to Prime Minister who manages the collective responsibility of Council of Ministers. Prime Minister is responsible for assessing work of a ministry and depending on that whether to reshuffle, promote or demote the minister. If a minister is caught in any scandal it is Prime Minister who decides whether to stay by the concerned minister or asked him to resign or dismiss him.²²

Prime Minister being a leader of the majority party is also a leader of the lower house. He helps the speaker to govern the house by giving suitable explanations to his policies time to time. For instance, when in 1965, virtual revolt took place by South Indian states, Lal Bahadur Shastri reassured that English will continue to be alternative language as far as non-Hindi speaker require and whether they require or not will be decided by non-Hindi speakers themselves. Parliamentary supremacy was never envisaged by our Constitution. However, leaders like Indira Gandhi made many amendments like 24th and 25th Amendment Acts to remove minimum thresholds like

²¹ Rajni Goyal, MAJOR CONSTITUTIONS, 134 (2nd edn., 2005).

²² R. A. W. Rhodes, COMPARING WSTMINISTER (2009).

Fundamental Rights on passage of law and thus with the help of majority tried to bring about dictatorship of Cabinet.²³

Prime Minister and Party Political Dynamics:

Another important source of Prime Ministerial power is his position in the Party. Because of popularity of Nehru in Congress, he was invited by Lord Mountbatten to form a provisional government. A similar situation was there when Narendra Modi, because of his charisma and appeal was selected over other experienced leaders like L. K. Advani. However at the time of appointment of Nehru there was genuine hope by seniors party leaders including then Congress President Acharya Kriplani that there would be collective sharing of power. However after becoming Prime Minister he asserted Prime Ministerial supremacy not only over party leaders but also on other ministers in his Council of Minister like Home Minister Sardar Vallabhbhai Patel who was of the opinion that considering Prime Minister supreme is against democratic principle of rule of many. Later when Kamraj Plan was being implemented, requiring senior Congress leaders who are holding important political positions to resign and work for party-strengthening, even though all Union ministers and all Chief Ministers placed their resignations, Nehru selectively accepted resignations of eight Central Ministers and six Chief Ministers who were going against Nehru politics.²⁴

After Nehru, even Indira Gandhi did not consult important party leaders or financial experts like Morarji Desai and T. T. Krishnamachari on policy issues like devaluation of rupee. There are many instances where Prime Minister dominated the political scene not only at Central level but also at state level. Prime Ministers at times kept Chief Ministers under his or her tight control and those who tried to disobey Prime Minister were kept out of patronage of Prime Minister. For instance, at the time of Smt. Indira Gandhi, in 1971 then Chief Minister of Andhra Pradesh K. Brahmananda Reddy was pressurized by Mrs Gandhi so as to accommodate then Education Minister P. V. Narsimharao in his Cabinet because she wanted Prime Ministership to go to a person belonging to Telangana region. Serious corruption charges were leveled against then Haryana Chief Minister Bansi Lal. Though several MPs and MLAs demanded inquiry into his continuation of office, he was allowed to continue without any such inquiry because he enjoyed patronage of Prime Minister. There are many such examples, especially during reign of Smt. Indira Gandhi. Many allegations

²³ *Supra* note 21.

²⁴ *Supra* note 7.

were made against this, but she continued to ‘nominate’ people in positions in State Governments because she identified that without support and cooperation of state political situation in her favor she cannot rule as per her will.²⁵

Increased Importance of Party President:

Analysis of functioning of party system in India reveals that lack of cooperation in organizational and political wing of the party. The ministers and legislators serve their allegiance not to the people, as it should be the case, but to the Congress Working Committee. Prior to independence, both Parliamentary and organizational wing of the party was working together deciding policy of the nation. However in recent days often these two wings are at loggerheads as to who should control the policy formation of the nation. As none of them compromised often organizational wing sponsored election expenses of a candidate and once the candidate is elected used him as a puppet.²⁶

The recent example of Party President controlling policy formulation of a nation is introduction of food security legislation. National Food Security Act, 2013 was passed by UPA-II Government because so was desired by Party President Sonia Gandhi’s National Advisory Council. This shows that not just appointments of leaders but also policy formulation is affected by Party President, thus again allowing one person to dictate.

Thus in all it can be said that, even if we have Council of Ministers on the principle that there should not be concentration of powers in one hand, this principle fails to take into account modern day Parliamentary systems where either Prime Minister or party president or some other party leaders have become so important that all the power is concentrated in his or her hand, thus resulting in a system it never intended.

²⁵ *Supra* note 7.

²⁶ P. S. Ramu, *Party Control Over Executive in India*, THE INDIAN PRESIDENCY AND WORKING OF PARLIAMENTARY DEMOCRACY, (3RD edn., 1994).

Chapter V: Individual Responsibility of a Minister

Convention in United Kingdom state that though Cabinet as a whole is responsible to the government, individual ministers are answerable to work of their respective ministry. When action of a particular ministry is criticized and Prime Minister does not come to the support of concerned minister, action is considered as the individual responsibility of a minister and does not bind entire Cabinet. Thus, In United Kingdom, in addition to collective responsibility there is a principle of individual responsibility, that is followed which gives flexibility to Prime Minister to decide whether to dissolve government by taking collective responsibility or ask concerned minister to resign by declaring it to be individual responsibility, depending upon political circumstances.²⁷ Thus, Council of Ministers is *collectively responsible* to lower house and minister is *individually responsible* to Prime Minister.

There is only clarity in Indian Constitution regarding collective responsibility of Council of Ministers for working of the government and policy formulation in that regard in Art. 75(3). Indian Constitution is silent on *individual responsibility* of the minister for defaulting policy making. However, there have been several instances where individual minister has been held liable and asked to resign without affecting entire Council of Minister. For instance, V. K. Krishna Menon was asked to resign in 1962 due to the defeat in Indo-China war, it was not actually his fault but he was forced to resign and responsibility was not taken by Council of Ministers.

According to researcher, it is unconstitutional to bring into picture individual responsibility by invoking convention regarding individual responsibility as it directly goes against constitutionally recognized principle of *collective responsibility*. There is a reason that Constitution has adopted collective responsibility as against individual responsibility, the reason being that each ministry will take different policy stance and it would be really difficult for a Council of Minister to function as one body and run the government. This problem has become prominent in case where coalition governments are involved and each party has different ideology and wants to influence policy making as per that ideology, so to harmonize the functioning of the government there has to be single policy making body. Another reason according to researcher is that if individual ministerial responsibility is allowed it gives very potent weapon in Prime Minister's hands where he has still

²⁷ *Supra* note 22.

continue to be in power by asking defaulting minister to resign. Thus, according to researcher no such convention should be directly invoked.

A. Individual Responsibility and Non-Policy Actions:

There is no ambiguity that when it comes to policy formulation, Council of Ministers is *collectively responsible*, however, minister can be held individually responsible for administrative malfunction of his ministry. The source for this claim can be traced to Art. 78(c), where President can submit for reconsideration a particular decision taken by individual minister to Council of Ministers, collective responsibility is ensured. The word used 'decision' can reasonably be associated with 'policy decision' and administrative actions in implementation of such decision can make individual minister liable.

Another important question here is about responsibility of individual minister for maladministration due to negligence of his or her subordinates, *i.e.* civil servants. Under Common Law, so as far as legal liability is concerned, unless the wrong is committed under the direction of the minister, civil servant is individually liable. However, when it comes to political responsibility the situation becomes complex. The classical theory is that civil servants do not have individual authority to take decisions, they work under control and guidance of minister of that department. Thus, no civil servants but minister who is ultimately responsible to Parliament for functioning of his ministry.²⁸

A similar question arises regarding the accountability of minister when it comes responsibility of 'operational decisions' of Executive Agencies or 'Next Step Agencies' under the control of a concerned ministry. Minister is not responsible for errors committed by such agency by going against policy of minister and taking decisions. However, minister can discharge his accountability by dismissing or disciplining the head of concerned agency and reporting the same to the Parliament.²⁹ Thus, it is clear that when it comes to administrative action, minister can be held liable personally.

²⁸ D. D. Basu, COMMENTARY ON THE CONSTITUTION OF INDIA, 4694 (8th edn., 2007).

²⁹ *Id.*

B. Waving of Collective Responsibility in Current Indian Scenario:

There are many instances in India where collective responsibility was easily waved at the cost of individual even when the decision taken was policy decision. The latest example of this is 2G scam where decision was taken by individual minister without consulting Council of Minister and despite it being policy decision, responsibility was imposed only on one minister who held portfolio of Telecom Ministry.

Constitution of India lays down clear obligations regarding accountability of public exchequer. Article 114(3) of the Constitution reads, "*Subject to the provisions of Article 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this Article.*"³⁰ Accounts of the money spent have to be rendered to Comptroller and Auditor General of India and under Art. 151 report made on the basis of such accounts can be placed before Parliament, where Parliament ultimately decides whether accountability has been discharged or not.³¹

“Without going into the merits of the case, because this is a matter in which financial and legal issues were involved, the concerned ministry could not have taken a final decision without obtaining the approval of the Council of Ministers. Primarily in this case telecom policy was changed and molded to benefit certain companies at the cost of public exchequer. Under the Rules of Business framed under Article 77 of the Constitution, every case which has financial implications or where there is legal advice necessary shall be submitted to the Council of Ministers in case of difference of opinion between the concerned ministry, finance ministry and law ministry.”³² It is irrelevant what the Minister for Communications decided because the case does entail financial implication. There is evidence to believe that there was divergence of views between the administrative ministry, finance ministry and law ministry. Regardless of the orders the minister passed it was the duty of the secretary of the Ministry of Communications to withhold issue of orders and submit the file for obtaining orders of the Council of Minister. This was not done despite the fact that the Rules of

³⁰ Art. 114, CONSTITUTION OF INDIA, 1950.

³¹ Art. 151, CONSTITUTION OF INDIA, 1950.

³² Art. 77, CONSTITUTION OF INDIA, 1950.

Business state that it is the duty of the secretary to ensure compliance with the rules. The 2G spectrum case is a prime example of both the minister and the secretary not observing the Rules of Business. This is an example of everyone ducking responsibility and accountability.³³

C. Art. 78(c) and Duty of Prime Minister:

When a particular policy decision is not considered by Council of Ministers, President before acting on advice of individual minister can ask Prime Minister to submit this decision before Council of Ministers so that advice can be collective in nature. However, in reality, it is usually considered only by Cabinet and not entire Council of Ministers.³⁴ Thus, question remains the same how can entire Council of Minister be held responsible for the aid and advice of Cabinet.

When there is policy failure on the part of individual minister like A Raja in case of 2G Spectrum case, it is duty of Prime Minister under Art. 78(c) to make sure that no individual minister can take policy decisions and policy has to be formulated collectively by Council of Ministers. However, in such cases it seems that collect responsibility for aid and advice given by single minister is not discharged by Council of Minister and individual responsibility is imposed on the Minister which was never envisaged by our Constitution at least for all the advice given regarding policy matters.

Conclusion

After analyzing ‘aid and advice clause’ in Art. 74(1) and Art. 163(1) in relation to ‘collective responsibility’ provided in Art. 75(3) and Art. 164(2), researcher has come to the conclusion that there is basic flaw in our understanding about who can ‘aid and advice’ the President and Governor. In light of recent political changes, with rising of coalition governments and increased importance given to party organization, Prime Minister or Chief Minister is losing his or her *prerogative* to select his own Council of Ministers. Party politics has become so important that things like policy formulation which clearly fall within exclusive authority of government has been influenced by what other leaders who are not even part of Council of Ministers demand.

³³ A. S. George, *Accountability, Responsibility, Punishment Go hand in Hand*, THE SUNDAY GUARDIAN, available at <http://www.sunday-guardian.com/analysis/accountability-responsibility-punishment-go-hand-in-hand> (last visited on December 25, 2015).

³⁴ *Supra* note 7.

Our Constitution talks about ‘aid and advice’ of Council of Minister and nowhere except in Art. 352 in limited sense it mentions of Cabinet. By directly invoking British convention is unconstitutional as Constitution never provides for any such hierarchy. It has so happened that all policy decisions are taken by Cabinet so as to aid and advice President, however responsibility is being placed on entire Council of Ministers. Thus, making those ministers who were never involved in policy making responsible for aid and advice given by the chosen few ministers in Cabinet.

Lastly and most important, where Constitution expressly provide for collective responsibility for policy decisions taken by ministries. However, going against that provision once again reliance has been placed on British Convention where concept of responsibility is flexible and it is discretion of Prime minister whether to place individual responsibility on a concerned minister or take collective responsibility. In Indian context in absence of such flexibility, collective responsibility should be entrusted. It is duty of Prime Minister under Art.78(c) that decisions are taken collectively and no individual minister should advice President or take policy decisions even if concerns only his department. In recent years it seems that by placing whole responsibility on single minister Prime Minister is just washing his hands off his duties, which needs to be challenged constitutionally

