ANNEXURE
EXTRACTS FROM CHAPTER IV OF THE
REPORT OF THE COMMISSION ON CENTRE-
STATE RELATIONS
S.A.RKARIA COMMISSION REPORT PART - I)
RECOMMENDATONS

4.16.01 A person to be appointed as a Governor should satisfy the following criteria:

(i) He should be eminent in some walk of life.
(ii) He should be a person from outside the State.
(iii) He should be detached figure and not too intimately connected with the local politics of the State; and
(iv) He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.

In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance as hitherto.

(Para 4.6.09)

4.16.02 It is desirable that a politician from the ruling party at the Union is not appointed as Governor of a State which is being run by some other party or a combination of other parties.

(Para 4.6.19)

4.16.03 In order to ensure effective consultation with the State Chief Minister in the selection of a person to be appointed as Governor, the procedure of consultation should be prescribed in the Constitution itself by suitably amending Article 155.

(Para 4.6.25)

4.16.04 The Vice-President of India and the Speaker of the Lok Sabha may be consulted by the Prime Minister in selecting a Governor, The Consultation should be confidential and informal and should not be a matter of constitutional obligation.

(Para 4.6.33)

4.16.05 The Governor's tenure of office of five years in a State should not be disturbed except very rarely and that too, for some extremely compelling reason.

(Para 4.7.08)
4.16.06 Save where the President is satisfied that in the interest of the security of the State, it is not expedient to do so, the Governor whose tenure is proposed to be terminated before the expiry of the normal term of five years, should be informally apprised of the grounds of the proposed action and afforded a reasonable opportunity for showing cause against it. It is desirable that the President (in effect, the Union Council of Ministers) should get the explanation, if any, submitted by the Governor against his proposed removal from office, examined by an Advisory Group consisting of the Vice-President of India and the Speaker of the Lok Sabha or a retired Chief Justice of India. After receiving the recommendation of this Group, the President may pass such orders in the case as he may deem fit. (Para 4.8.08)

4.16.07 When, before expiry of the normal terms of five years, a Governor resigns or is appointed Governor in another State, or has his tenure terminated, the Union Government may lay a statement before both Houses of Parliament explaining the circumstances leading to the ending of the tenure. Where a Governor has been given an opportunity to show cause against the premature termination of his tenure, the Statement may also include the explanation given by him, in reply. (Para 4.8.09)

4.16.08 As a matter of convention, the Governor should not, on demitting his office, be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-President or President of India. Such a convention should also require that, after quitting or laying down his office, the Governor shall not return to active partisan politics. (Para 4.9.04)

4.16.09 A Governor should, at the end of his tenure, irrespective of its duration, be provided reasonable post-retirement benefits for himself and for his surviving spouse. (Para 4.10.02)

4.16.10 (a) In choosing a Chief Minister, the Governor should be guided by the following principles, viz.

(i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the government.
(ii) The Governor's task is to see that a government is formed and not to try to form a government which will pursue policies which he approves.

(b) If there is a single party having an absolute majority in the Assembly, the leader of the party should automatically be asked to become the Chief Minister.

If there is no such party, the Governor should select a Chief Minister from among the following parties or groups of parties by sounding them, in turn, in the order of preference indicated below:

(i) An alliance of parties that was formed prior to the Elections.

(ii) The largest single party staking a claim to form the government with the support of others, including 'independents'.

(iii) A post-electoral coalition of parties, with all the partners in the coalition joining government.

(iv) A post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including 'independents', supporting the government from outside.

The Governor while going through the process described above should select a leader who in his (Governor's) judgement is most likely to command a majority in the Assembly.

(c) A Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of taking over. This practice should be religiously adhered to with the sanctity of a rule of law.

(Paras 4.11.03 to 4.11.06)

4.16.11 The Governor should not risk determining the issue of majority support, on his own, outside the Assembly. The prudent course for him would be to cause the rival claims to be tested on the floor of the House.

(Para 4.11.07)

4.16.12 The Governor cannot dismiss his Council of Ministers so long as they continue to command a majority in the Legislative Assembly. Conversely, he is bound to dismiss them if they lose the majority but do not resign.

(Para 4.11.09)

4.16.13 (a) When the Legislative Assembly is in session, the question of majority should be tested on the floor of the House.
(b) If during the period when the Assembly remains prorogued, the Governor receives reliable evidence that the Council of Ministers has lost 'majority', he should not, as a matter of constitutional propriety, dismiss the Council unless the Assembly has expressed on the floor of the House its want of confidence in it. He should advise the Chief Minister to summon the Assembly as early as possible so that the 'majority' may be tested.

(c) Generally, it will be reasonable to allow the Chief Minister a period of 30 days for the summoning of the Assembly unless there is very urgent business to be transacted like passing the Budget, in which case, a shorter period may be allowed. In special circumstances, the period may go up to 60 days.

(Paras 4.11.10, 4.11.11 and 4.11.13)

4.16.14 So long as the Council of Ministers enjoys the confidence of the Legislative Assembly, the advice of the Council of Ministers in regard to summoning and proroguing a House of the Legislature and in dissolving the Legislative Assembly, if such advice is not patently unconstitutional, should be deemed as binding on the Governor.

(Para 4.11.17)

4.16.15 (a) The Governor may in the exigencies of certain situations, exercise his discretion to summon the Assembly only in order to ensure that the system of responsible government in the State works in accordance with the norms envisaged in the Constitution.

(b) When the Chief Minister designedly fails to advise the summoning of the Assembly within six months of its last sitting, or advises its summoning for a date falling beyond this period, the Governor can summon the Assembly within the period of six months specified in Article 174(1)

(c) When the Chief Minister (who is not the leader of the party which has absolute majority in the Assembly), is not prepared to summon the Legislative Assembly within 30 days of the taking over [vide recommendation 4.16.10(c) above] or within 30 days or 60 days as the case may be, when the Governor finds that the Chief Minister no longer enjoys the confidence of the Assembly [vide recommendation 4.16.13 (c) above], the Governor would be within his constitutional right to summon the Assembly for holding the “Floor Test”.

(Paras 4.11.19 and 4.11.20)
4.16.16 If a notice of no-confidence motion against a Ministry is pending in a House of the Legislature and the motion represents a legitimate challenge from the Opposition, but the Chief Minister advises that the House should be prorogued, the Governor should not straightaway accept the advice. He should advise the Chief Minister to postpone the prorogation and face the motion.

(Para 4.11.22)

4.16.17(a) When the advice for dissolving the Assembly is made by a Ministry which has lost or is likely to have lost majority support, the governor should adopt the course of action as recommended in paras 4.16.12, 4.16.13 and 4.16.15 (c) above.

(b) If ultimately a viable Ministry fails to emerge, the governor should first consider dissolving the Assembly and arranging for fresh elections after consulting the leaders of the political parties concerned and the Chief Election Commissioner.

(c) If the Assembly is to be dissolved and an election can be held early, the governor should normally ask the outgoing Ministry to continue as a caretaker government. However, this step would not be proper if the outgoing Minister has been responsible for serious mal-administration or corruption.

(d) A convention should be adopted that a caretaker Government should not take any major policy decisions.

(e) If the outgoing Ministry cannot be installed as a caretaker Government for the reason indicated in (c) above or if the outgoing Ministry is not prepared to function as a caretaker Government, the governor, without dissolving the Assembly, should recommend President’s rule in the State.

(f) If fresh election cannot be held immediately on account of a national calamity or State-wide disturbances, it should not be proper for the Governor to install a caretaker Government for the long period that must elapse before the next election is held. He should recommend proclamation of President's rule under Article 356 without dissolving the Assembly.

(g) If it is too early to hold fresh election, the Assembly not having run even half its normal duration of five years, the Governor should recommend President's rule under Article 356 without dissolving the Assembly.

(Paras 4.11.25 to 4.1130)

4.16.18 The Governor has no discretionary power in the matter of nominations to the Legislative Council or to the Legislative Assembly. If at the time
of making a nomination, a Ministry has either not been formed or has resigned or lost majority in the Assembly, the Governor should await the formation of a new Ministry.

(Para 4.11.31)

4.16.19 Where a State University Act provides that the Governor, by virtue of this office, shall be the Chancellor of the University and confers powers and duties on him not as Governor of the State but as Chancellor, there is no obligation on the Governor, in his capacity as Chancellor, always to act on Ministerial advice under Article 163(1). However, there is an obvious advantage in the Governor consulting the Chief Minister or other Ministers concerned, but he would have to form his own individual judgement. In his capacity as Chancellor of University, the Governor may be required by the University's statute to consult a Minister mentioned in the statute on specified matters. In such cases, the Governor may be well advised to consult the Minister on other important matters, also. In either case, there is no legal obligation for him to necessarily act on any advice received by him.

(Paras 4.11.37 to 4.11.39)

4.16.20 The Governor, while sending ad hoc or fortnightly reports to the President, should normally take his Chief Minister into confidence, unless there are overriding reasons to the contrary.

(Para 4.12.06)

4.16.21 The discretionary power of the Governor as provided in Article 163 should be left untouched.

(Para 4.13.03)

4.16.22 When a Governor finds that it will be constitutionally improper for him to accept the advice of his Council of Ministers, he should make every effort to persuade his Ministers to adopt the correct course. He should exercise his discretionary power only in the last resort.

(Para 4.13.04)

4.16.23 Certain specific functions have been conferred (or are conferrable) on the Governors of Maharashtra and Gujarat [Article 371(2), Nagaland [First Proviso to Article 371A(1)(b), Article 371A(1)(d) and article 371A(2)(b) and (f)], Manipur [Article 371C(1)], Sikkim [Article 371F(g)] and Arunachal Pradesh [First Proviso to Article 371H(a)] to be exercised by them in their discretion. In the discharge of these functions, the Governor concerned is not bound to seek or accept the advice of his
Council of Ministers. However, before taking a final decision in the exercise of his discretion, it is advisable that the Governor should, if feasible, consult his Ministers even in such matters, which relate essentially to the administration of a State.

(Para 4.14.05)

4.16.24 It would be neither feasible nor desirable to formulate a comprehensive set of guidelines for the exercise of the discretionary powers of the Governor. A Governor should be free to deal with a situation according to his best judgement, keeping in view the Constitution and the law and the conventions of the Parliamentary system outlined in this Chapter as well as in Chapter V "Reservation of Bills by Governors for President's consideration" and Chapter VI "Emergency Provisions".

(Para 4.15.06)

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(Para 4.15.06)