Appendix
Appendix-I

RECOMMENDATIONS OF THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION ON UNION-STATE RELATIONS*

Office of Governor

8.14.1 The Commission had issued a consultation paper with a questionnaire on the office of the Governor for eliciting public opinion. The issues raised and the suggestions made in the consultation paper related to amending articles 155, 156, 200 and 201 with a view to entrusting the selection of Governors to a Committee, making the five-year term a fixed tenure, providing for removal only by impeachment and limiting his powers in the matter of giving assent to Bills and reserving them for the consideration of the President.

8.14.2 After carefully considering the public responses and after full deliberations, the Commission does not agree to dilute the powers of the President in the matter of selection and appointment of Governors. However, the Commission feels that the Governor of a State should be appointed by the President, after consultation with the Chief Minister of that State. Normally the five year term should be adhered to and removal or transfer of the Governor should be by following a similar procedure as for appointment i.e. after consultation with the Chief Minister of the concerned State.

8.14.3 The Commission recommends that in the matter of selection of a Governor, the following matters mentioned in para 4.16.01 of Volume I of the Sarkaria Commission Report should be kept in mind:

- He should be eminent in some walk of life.
- He should be a person from outside the State.
- He should be a detached figure and not too intimately connected with the local politics of the State.
- 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, the persons belonging to the minority groups should continue to be given a chance as hitherto.

8.14.4 There should be a time-limit - say a period of six months – within which the Governor should take a decision whether to grant assent or to reserve a Bill for consideration of the President. If the Bill is reserved for consideration of the President, there should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the Supreme Court regarding the constitutionality of the Act under article 143.

8.14.5 In Jamalpur Gram Panchayat - Vs. Malwinder Singh - AIR 1985 SC 1394, the Supreme Court held that if the assent of the President were sought to the law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it. The court held that if the assent is sought and given, in general terms so as to be effective for all purposes, different considerations might arise.

In the case before the Supreme Court case the assent was given by the President for giving protection to the legislation under article 31 (as it then stood) and article 31A and the court held that such assent would not operate for the purposes of article 254(2) of the Constitution. However, the court upheld the law passed by the State Legislature on the ground that it fell under entry 18 of the State List and not entry 41 of the Concurrent List.

8.14.6 It is felt desirable that a suitable amendment should be made in the Constitution so that the assent given by the President should avail for all purposes of relevant articles of the Constitution. It would be inappropriate to drag the assent of President into such arguments. From the time the Bill is introduced till the assent of President is given, the whole procedure and proceedings are legislative in character. It is a collective action of the President, the House of the People, and the Council of States. It is not permissible to enquire as to how the mind of each member of the House and the President worked during the entire proceedings beginning with the introduction of the Bill and concluding with the according of assent by the President. The procedures are "certainly internal matters which are beyond the jurisdiction of the court to inquire into." The court is entitled to go into the questions as to whether the enactment is either ultra virus or unconstitutional. The assent of the President is not justiciable. See AIR 1983 SC 1019 at 1048 para 88 - M/s Hoechst Pharmaceuticals Ltd. Vs. State of Bihar and others. Even if noting sent to the President by the concerned Ministry does not reflect all the articles in the Constitution, which referred to the effect of the assent of the President i.e. articles 31A, 31C, 254, it cannot be presumed that the President was not aware of or did not bear in mind, the relevant articles dealing with the effect of the assent of the President. However, it is desirable that when a Bill is sent for the President's assent, it would be appropriate to draw the attention of the President to all the articles of the Constitution, which refer to the need for the assent of the President to avoid any doubts in court proceedings.

8.14.7 A suitable article should be inserted in the Constitution to the effect that an assent given by the President to an Act shall not be permitted to be argued as to whether it was given for one purpose or another. When the President gives his assent to the Bill, it shall be deemed to have been given for all purposes of the Constitution.

8.14.8 It is recommended that the following proviso may be added as second proviso to article 111 of the Constitution:

"Provided further that when the President declares that he assents to the Bill, the assent shall be deemed to be a general assent for all purposes of the Constitution."

Suitable amendment may also be made in article 200.

Failure of Constitutional Machinery

8.15.1 The Constitution of a country – or, for that matter, any enactment containing important and far-reaching provisions – is expected to provide for situations where circumstances arise, in which those provisions cannot be worked in strict conformity with the constitutional or statutory text, as applicable in normal circumstances. In India, the specific topic of failure of constitutional machinery in he States is dealt with, in three articles of the Constitution – articles 355 to 357 and 365 – of which, article 356 is the one most talked about and subject of controversy allegedly on grounds of having been frequently misused and abused.

8.15.2 It is important that article 356 is read with the other relevant articles viz. articles 256, 257, 355 and 365. Insofar as article 355 also inter alia speaks of the duty of the Union to protect the State against external aggression and internal disturbance
and to ensure that the government of the State is carried on in accordance with the Constitution, it is obvious that article 356 is not the only one to take care of a situation of failure of constitutional machinery. The Union can also act under article 355 *i.e.* without imposing President's rule. Article 355 can stand on its own. Also, Union Government can issue certain directions under articles 256 and 257. While article 356 authorises the President to issue a proclamation imposing President's rule over a State if he is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, article 365 says that where a State fails to comply with Union directions (under articles 256, 257 and others) "it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution". The scheme of the Constitution seems to clearly suggest that before rushing to issue a proclamation under article 356, all other possible avenues should be explored and as Dr. Ambedkar said, article 356 should be used only as a matter of last resort. It should first be ensured that the Union had done all that it could in discharge of its duty under article 355, that it had issued the necessary directions under articles 256-257 and that the State had failed to comply with or give effect to the directions.

**Use-misuse of Article 356**

8.16 Since the coming into force of the Constitution on 26 January 1950, article 356 and analogous provisions have been invoked 111 times. According to a Lok Sabha Secretariat study, on 13 occasions the analogous provision namely section 51 of the Government of Union Territories Act 1963 was applied to Union Territories of which only Pondicherry had a legislative assembly until the occasion when it was last applied. In the remaining 98 instances the article was applied 10 times technically due to the mechanics of the Constitution in circumstances like reorganisation of the States, delay in completion of the process of elections, for revision of proclamation and there being no party with clear majority at the end of an election. In the remaining 88 instances a close scrutiny of records would show that in as many as 54 cases there were apparent circumstances to warrant invocation of article 356. These were instances of large scale defections leading to reduction of the ruling party into minority, withdrawal of support of coalition partners, voluntary resignation by the government in view of widespread agitations, large scale militancy, judicial disqualification of some members of the ruling party causing loss of majority in the House and there being no alternate party capable of forming a Government. About 13 cases of possible misuse are such in which defections and dissensions could have been alleged to be result of political manoeuvre or cases in which floor tests could have finally proved loss of support but were not resorted to. In 18 cases common perception is that of clear misuse. These involved the dismissal of 9 State Governments in April 1977 and an equal number in February 1980. This analysis shows that number of cases of imposition of President’s Rule out of 111, which could be considered as a misuse for dealing with political problems or considerations irrelevant for the purposes in that article such as mal-administration in the State are a little over 20. Clearly in many cases including those arising out of States Reorganisation it would appear that the President's Rule was inevitable. However, in view of the fact that article
356 represents a giant instrument of constitutional control of one tier of the constitutional structure over the other raises strong misapprehensions.

**Sarkaria Commission**

8.17 Chapter 6 of the Sarkaria Commission Report deals with emergency provisions, namely, articles 352 – 360. The Sarkaria Commission has made 12 recommendations; 11 of which are related to article 356 while 1 is related to article 355 of the Constitution. Sarkaria Commission also made specific recommendations for amendment of the Constitution with a view to protecting the States from what could be perceived as a politically-driven interference in self-governance of States. The underlined theme of the recommendations is to promote a constitutional structure and culture that promotes co-operative and sustained growth of federal institutions set down by the Constitution.

**Should Article 356 be Deleted?**

8.18 The Commission had issued a consultation paper along with a questionnaire with a view to elicit the views and responses of the public. Large majority of the responses were against deletion of article 356 but favoured its being suitably amended to prevent misuse. There are three patent reasons which require the retention of the article:

(i) Article 356 and related provisions were regarded as a bulwark of the Constitution, an ultimate assurance of maintaining or restoring representative government in States responsible to the people.

(ii) In a fairly large number of cases the invocation of article 356 has been found to have been not only warranted but inevitable.

(iii) If this article is deleted, article 365 would lose relevance and use of article 355 in the absence of 356 might bring a drastic change in Union-State relations which may be worse from the point of view of both the States and the Union.

The Commission is, therefore, not in favour of deletion of article 356.

**Need for Conventions**

8.19.1 In considering the issues raised regarding article 356 the Commission found that a great part of the remedy to prevent its misuse lies in the domain of creating safeguards and constitutional conventions governing its use. The ultimate protection against the misuse of article 356 lies in the character of the political process itself. The Commission is, therefore, for generating a constitutional culture that relies on conventions and treats them with same respect as a constitutional provision.

8.19.2 Article 356 has been lodged in the Constitution as a bulwark, a giant protection and a remedy of the last resort. The invocation of article 356 is a constitutional device, the operation of which is vested in the executive domain. In invocation, it is therefore essential to preserve its stature in the constitutional scheme. If the exercise of this power is perceived to yield to political expediency, it will greatly damage the majesty of the executive power and the federal balance. The Commission, therefore, recommends, in the spirit of the framers of the Constitution, that article 356 must be used sparingly and only as a remedy of the last resort and after exhausting action under other articles like 256, 257 and 355.

8.19.3 It has been widely represented that the process of invocation of article 356 must follow the principles of natural justice and fair consideration. This aspect also weighed heavily during discussions in the Constituent Assembly and the Chairman of the Drafting Committee had hoped that warning would be given to the errant States and they would be given an opportunity to explain their
position. One other issue regarding the issue of such a warning is whether it should be made public or given wide publicity. The Commission have considered this aspect very carefully and have come to the conclusion that taking this matter to the public domain at this stage may apparently allow for transparency but is likely to generate a great deal of heat in the political domain providing the anti-social forces a free play for social disharmony and violence. It may also encourage from the very outset a process of litigation that may apply continuous brakes in exercise of the executive responsibility.

8.19.4 The Commission feels that in a large number of cases where article 356 has been used, the situation could be handled under article 355 i.e. without imposing President’s rule under article 356. It is most unfortunate that article 355 has hardly been used.

8.19.5 In case of political breakdown, the Commission recommends that before issuing a proclamation under article 356 the concerned State should be given an opportunity to explain its position and redress the situation, unless the situation is such, that following the above course would not be in the interest of security of State, or defence of the country, or for other reasons necessitating urgent action.

Situation of Political breakdown

8.20.1 One of the principal criticisms against the imposition of the President’s rule has been the unseemly hurry of Governors to recommend it - particularly in a politically conflicting context – without exploring all possibilities of having an alternative Government enjoying confidence of the House. Even while making such an exploration the Governors placed excessive reliance on their subjective satisfaction to ascertain majority support for one or the other political party by resorting to headcounts of supporters presented before them by the political parties.

8.20.2 The issue of determining the majority support of a political party in the House has been dealt with in the Rajamannar Committee Report, Sarkaria Commission and the Bommai judgement. The Commission notes that the political events in a divisive context in several States have repeatedly shown tremendous speed and mobility of shifting political loyalties. In such a situation the task that a Governor may impose upon himself to determine the majority support of one or the other party is indeed an onerous one. The assessment of the Governor, no matter how carefully and objectively determined, can lose validity in no time in the climate of quick shifting sands of political loyalty. It is, therefore, not a matter of subjective determination of the Governor or the President. The constitutional requirement is that a Government should enjoy the confidence of the House and its open and objective determination is possible only on the floor of the House. There may conceivably be exceptional circumstances and situations which are not conducive to hold the floor test. The Commission is not, therefore, in favour of a static binding rule but would rely on a political and constitutional process in a constitutional forum for a valid determination of majority support for a particular party in the House. The procedure suggested forms a part of the Bommai judgement and thus holds ground judicially.

8.20.3 The Commission recommends that the question whether the Ministry in a State has lost the confidence of the Legislative Assembly or not, should be decided only on the floor of the Assembly and nowhere else. If necessary, the Union Government should take the required steps, to enable the Legislative Assembly to meet and freely transact its business. The Governor should not be allowed to dismiss the Ministry, so long as it enjoys the confidence of the House. It is only where a Chief Minister refuses to resign, after his Ministry is
defeated on a motion of no-confidence, that the Governor can dismiss the State Government. In a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a Government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, (if there is one), to continue as a caretaker government, provided the Ministry was defeated solely on an issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate.

8.20.4 The problem would stand largely resolved if the recommendations made in para 4.20.7 in Chapter 4 in regard to the election of the leader of the House (Chief Minister) and the removal of the Government only by a constructive vote of no-confidence are accepted and implemented.

8.20.5 Clause (1) of article 356 contains the expression ‘or otherwise’. Clearly, the satisfaction of the President, as regards the existence of the situation contemplated under article 356, flows from two streams. It is immaterial that in most cases where article 356 had been invoked in the past it was on the basis of the report of the Governor. Given the circumstances of global nexus in activities of terrorism, insurgency, lawlessness, the material flowing from the source “otherwise” than the report of the Governor is equally germane to the scheme of invoking this provision. If, to meet with the desirable objective of transparency, as suggested by the Sarkaria Commission, the Governor’s Report is projected in the public domain by making it a speaking document and given wide publicity, it would raise serious problems in the discharge of the executive responsibility. For purposes of publicity it would be difficult to differentiate between the Report of the Governor and the materials received “otherwise”. The Commission recommends that normally President’s Rule in a State should be proclaimed on the basis of Governor’s Report under article 356(1). The Governor’s report should be a “speaking document”, containing a precise and clear statement of all material facts and grounds, on the basis of which the President may satisfy himself, as to the existence or otherwise of the situation contemplated in article 356.

Constitutional Amendments

8.21.1 Article 356 has been amended 10 times principally by way of amendment of clause 356(4) and by substitution/omission of proviso to Article 356(5). These were basically procedural changes. Article 356, as amended by Constitution (44th Amendment) provides that a resolution with respect to the continuance in force of a proclamation for any period beyond one year from the date of issue of such proclamation shall not be passed by either House of Parliament unless two conditions are satisfied, viz:-

(i) that a proclamation of Emergency is in operation in the whole of India or as the case may be, in the whole or any part of the State; and

(ii) that the Election Commission certifies that the continuance in force of the proclamation during the extended period is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned.

8.21.2 The fulfillment of these two conditions together are a requirement precedent to the continuation of the proclamation. It could give rise to occasions for amendment of the Constitution from time to time merely for the purpose of this clause as happened in case of Punjab. Circumstances may arise where even without the
proclamation of Emergency under article 352, it may be difficult to hold general elections to the State Assembly. In such a situation continuation of President’s rule may become necessary. It may, therefore, be more practicable to delink the two conditions allowing for operation of each condition in its own specific circumstances for continuation of the President’s rule. This would allow for flexibility and save the Constitution from the need to amend it from time to time.

8.21.3 The Commission recommends that in clause (5) of article 356 of the Constitution, in sub-clause (a) the word “and” occurring at the end should be substituted by “or” so that even without the State being under a proclamation of Emergency, President’s rule may be continued if elections cannot be held.

8.21.4 Whenever a proclamation under article 356 has been issued and approved by the Parliament it may become necessary to review the continuance in force of the proclamation and to restore the democratic processes earlier than the expiry of the stipulated period. The Commission are of the view that this could be secured by incorporating safeguards corresponding, in principal, to clauses (7) and (8) of article 352. The Commission, therefore, recommends that clauses (6) & (7) under article 356 may be added on the following lines:

“(6) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a proclamation issued under clause (1) or a proclamation varying such proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such proclamation.

(7) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a proclamation issued under clause (1) or a proclamation varying such proclamation:

(a) to the Speaker, if the House is in session; or
(b) to the President, if the House is not in session,

a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution.”

Dissolution of Assembly

8.22.1 When it is decided to issue a proclamation under article 356(1), a matter for consideration that arises is whether the Legislative Assembly should also be dissolved or not. Article 356 does not explicitly provide for dissolution of the Assembly. One opinion is that if till expiry of two months from the Presidential proclamation and on the approval received from both Houses of Parliament the Legislative Assembly is not dissolved, it would give rise to operational disharmony. Since the executive power of the Union or State is co-extensive with their legislative powers respectively, bicameral operations of the legislative and executive powers, both of the State Legislature and Parliament in List II of VII Schedule, is an anathema to the democratic principle and the constitutional scheme. However, the majority opinion in the Bommai judgement holds that the rationale of clause (3) that every proclamation issued under article 356 shall be laid before both Houses of Parliament and shall cease to operate at the expiry of two months unless before the expiration of that period it has been approved by resolutions passed by both Houses of Parliament, is to provide a salutary check on the executive power entrenching parliamentary supremacy over the executive.
8.22.2 The Commission having considered these two opinions in the background of repeated criticism of arbitrary use of article 356 by the executive, is of the view that the check provided under clause 3 of article 356 would be ineffective by an irreversible decision before Parliament has had an opportunity to consider it. The power of dissolution has been inferred by reading sub clause (a) of clause 1 of article 356 along with article 174 which empowers the Governor to dissolve Legislative Assembly. Having regard to the overall constitutional scheme it would be necessary to secure the exercise of consideration of the proclamation by the Parliament before the Assembly is dissolved.

8.22.3 The Commission, therefore, recommends that article 356 should be amended to ensure that the State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under article 356(1) has been laid before Parliament and it has had an opportunity to consider it.
Appendix-II

RECOMMENDATIONS OF THE SARKARIA COMMISSION REPORT

Institution of Governor under the Constitution

1. 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 outside the State. (iii) He should be a 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)

2. 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).

3. 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. 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)

5. 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 reasons (para 4.7.08).

6. 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)

7. 4.16.07 When before expiry of the normal term 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)

8. 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)

9. 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)

10. 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 commends 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 group 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).
11. 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).

12. 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)

13. 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).

14. 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).

15. 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) Then 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 a 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).

16. 4.16.16 If a notice of a 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)

17. 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 Ministry 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 4.11.30).

18. 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).

19. 4.16.19  Where a State University Act provides that the Governor, by virtue of his 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 this 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 a 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)

20. 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 over-riding reasons to the contrary. (Para 4.12.06).

21. 4.16.21 The discretionary power of the Governor as provided in Article 163 should be left untouched. (para 4.13.03).

22. 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).

23. 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 371 F(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 relates essentially to the administration of a State. (para 4.14.05).

24. 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).