Appendices
Appendix-I


1. Dr B.R. Ambedkar, Constituent Assembly Debates, Vol. VII, Lok Sabha Secretariat, New Delhi, 1999, p. 43, "though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation, and that the federation not being the result of an agreement, no State has the right to secede from it. The federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to disputes."
2. Pt. Jawaharlal Nehru, Constituent Assembly Debates, Vol. VIII, Lok Sabha Secretariat, 1999, pp. 455-56, "It probably would be desirable to have people from outside-eminent people, sometimes people who have not taken too great a part in politics. Politicians would probably like a more active domain for their activities but there may be an eminent educationist or persons eminent in other walks of life, who would naturally, while cooperating fully with the government and carrying out the policy of the government, at any rate helping in every way so that policy might be carried out, he would nevertheless represent before the public some one slightly above party and thereby, in fact, help that government more than if he was considered as part of the party machine. ... it is obviously desirable that eminent leaders of minorities - I use the word for the sake of simplicity: in future I hope we will not use the words 'majority' and 'minority'- eminent leaders of groups should have a chance. I think they will have a far better chance in the process of nomination than in election."
3. A.K. Ayyar, Constituent Assembly Debates, Ibid., pp. 431-32, "In the normal working of the Constitution, I have no doubt that the convention will grow up of the Government of India consulting the Provincial Cabinet, in the election of the Governor. If the choice is left to the President and his Cabinet, the President may, in conceivable circumstances, with due regard to the conditions of the Province, choose a person of undoubted polity and position in public life who at the same time has not been mixed up in Provincial party struggle or factions. Such a person is likely to act as a friend and mediator of the Cabinet and help in the smooth working of the cabinet government in the early stages. The Central fact to be remembered is that the Governor is to be constitutional head, a sagacious counsellor and adviser to the Ministry, one who can throw oil over troubled water. If that is the position to be occupied by the Governor, the Governor chosen by the Government of India, presumably with the consent of the Provincial government, is likely to discharge his functions better than one who is elected on a party ticket by the Province as a whole based upon the
universal suffrage or by Legislature on some principle of
election."

4. **Dr. B.R. Ambedkar, Constituent Assembly Debates**, 
Ibid., pp. 468-469, "It has been said in the course of
debate that the argument against election is that there
would be rivalry between the Prime Minister and the
Governor, both deriving their mandate from the people
at large. Speaking for myself, that was not the argument
which influenced me because I do not accept that even
under election there would be any kind of rivalry
between the Prime Minister and the Governor, for the
simple reason that the Prime Minister would be elected
on the basis of policy, while the Governor could not be
elected on the basis of policy, because he could have no
policy, not having any power. So far as I could visualize,
the election of the Governor would be on the basis of
personality; is he the right sort of person by his status,
by his character, by his education, by his position in the
public to fill in a post of Governor? In the case of Prime
Minister the position would be: is his programme
suitable, is his programme right? There could not,
therefore, be any conflict even if we adopt the principle
of election." "I want to warn the House that the real issue before the House is really not nomination or election because as I said this functionary is going to be a purely, ornamental functionary, how he comes into being, whether by nomination or by some other machinery, is a purely psychological question - what would appeal most to the people a person nominated or a person in whose nomination the Legislature has in some way participated. Beyond that, it seems to me it has no consequence. Therefore, the thing that I want to tell the House is this: that the real issue before the House is not nomination or election, but what powers you propose to give to your Governor. If the Governor is purely a constitutional Governor with no power more than what we contemplate expressly to give him in the Act and has no power to interfere with the internal administration of the Provincial Ministry, I personally do not see any very fundamental objection to the principle of nomination."

5. **Dr. B.R. Ambedkar, Constituent Assembly Debates,** VIII, p. 546, "The Governor under the Constitution has no functions which he can discharge by himself; no
functions at all. While he has no functions, he has certain duties to perform, and I think the House will do well to bear in mind this distinction.....A distinction has been made between the functions of the Governor and the duties which the Governor has to perform. My submission is that although the Governor has no functions still, even the constitutional Governor, that he is, has certain duties to perform. His duties, according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because, the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry. The second duty which the Governor has, and must have, is to advise the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for reconsideration. I do not think that anybody in this House will question the fact that the Governor should have this duty cast upon him; otherwise, he would be an absolutely unnecessary functionary: no good at all. He is the representative not of a party; he is the representative of the people as a whole of the State. It is in the name of the people that
he carries on the administration. He must see that the administration is carried on a level which may be regarded as good, efficient, honest administration. Therefore, having regard to these two duties which the Governor has namely, to see that the administration is kept pure, without corruption, impartial, and that the proposals enunciated by the Ministry are not contrary to the wishes of the people, and therefore to advise them, warn them and ask them to reconsider. I ask the House, how is the Governor in a position to carry out his duties unless he has before him certain information.
Appendix-II

RECOMMENDATIONS OF THE SARKARIA COMMISSION REPORT

Power and Functions of the Governor under the Constitution

1. 5.19.01 Normally in the discharge of the functions under Article 200, the Governor must abide by the advice of his Council of Ministers. Article 200 does not invest the Governor, expressly or by necessary implication, with a general discretion in the performance of his functions there under, including reservation of Bill for the consideration of the President. However, in rare and exceptional cases, he may act in the exercise of his discretion, where he is of opinion that the provisions of the Bill are patently un-constitutional, such as where the subject-matter of the Bill is ex-facie beyond the legislative competence of the State Legislature, or where its provisions manifestly derogate from the scheme and framework of the Constitution so as to endanger the sovereignty, unity and integrity of the nation, or clearly violate Fundamental Rights or transgress other constitutional limitations and provisions.

(paras 5.6.06 and 5.6.13(i))

2. 5.19.02 In dealing with a State Bill presented to him under Article 200, the Governor should not act contrary to the advice of his Council of Ministers merely because, personally, he does not like the policy embodied in the Bill.

(paras 5.6.09 and 5.6.13(ii))

3. 5.19.03 Needless reservation of Bills for President's consideration should be avoided. Bill should be reserved only if required for specific purposes, such as:
a) to secure immunity from the operation or Articles 14 and 19 vide the First Proviso to Article 31A(1) and the proviso to Article 31C.

b) to save a Bill on a concurrent List subject from being invalidated on the ground of repugnancy to the provisions of law made by Parliament or an existing law vide Article 254(2);

c) to ensure validity and effect for a State Legislation imposing tax on water or electricity stored, generated, consumed, distributed or sold by an authority established under a Union law vide Article 288 (2)

d) a bill imposing restrictions on trade or commerce, in respect of which previous sanction of the President had not been obtained, vide Article 304 (b) read with Article 255.

(Para 5.14.05).

4. 5.19.04 Normally, when a Bill passed by the State Legislature is presented to the Governor with the advice of the Council of Ministers that it be reserved for the consideration of the President, then the Governor should do so forthwith. If, in exceptional circumstances, as indicated in para 5.19.01 above, the Governor thinks it necessary to act and adopt, in the exercise of his discretion, any other course open to him under Article 200, he should do so within a period not exceeding one month from the date on which the Bill is presented to him. (Para 5.16.04)

5. 5.19.05 a) Every reference of a State Bill from the State should be self-contained, setting out precisely the material facts, points for consideration and the ground on which the
reference has been made. The relevant provisions of the Constitution should also be indicated.

b) If the reference is made under Article 254 (2), the provisions of the Bill which are considered repugnant to or inconsistent with the specific provisions of a Union Law or an existing Law, should be clearly identified.

(para 5.15.01(i) (ii))

6. 5.19.06 State governments often consult the Government of India at the drafting stage of a Bill. Generally, high-level officers of the State government hold discussions on the provisions of the draft Bill with their counterparts at the Union. This is a healthy practice and should continue.

(para 5.15.02).

7. 5.19.07 a) As a matter of salutary convention, a Bill reserved for consideration of the President should be disposed of by the President within a period of 4 months from the date on which it is received by the Union government.

b) If, however, it is considered necessary to seek clarification from the State government or to return the Bill for consideration by the State Legislature under the Proviso to Article 201, this should be done within two months of the date on which the original reference was received by the Union government.

c) Any communication for seeking clarification should be self-contained. Seeking clarification piecemeal should be avoided.

d) On receipt of the clarification or the reconsidered Bill from the State under the proviso to Article 201, the matter should be disposed of by the President within 4 months of the date of
receipt of the clarification or the back reference on the reconsidered Bill, as the case may be, from the State government.

e) It is not necessary to incorporate these or any other time-limits in the Constitution.

(paras 5.16.03 and 5.7.09).

8. 5.19.08  

a) As a matter of convention, the President should not withhold assent only on the consideration of policy differences on matters relating, in pith and substance, to the State List, except on grounds of patent unconstitutionality such as those indicated in the recommendation in paragraph 5.19.01 above.

(para 5.10.06).

b) President's assent should not ordinarily be withheld on the ground that the Union is contemplating a comprehensive law in future on the same subject.

(para 5.7.08).

9. 5.19.09  

If a State Bill reserved for the consideration of the President under the First Proviso to Article 31A (1) or the Proviso to Article 31C clearly tends to subvert the constitutional system of the State, by reason of its unduly excessive and indiscriminate abridging effect of Fundamental Rights or otherwise, then, consistently with its duty under Article 355 to ensure that the government of every State is carried on in accordance with the provisions of the Constitution, the Union government may advise the President to withhold assent to the Bill.
Appendix-II

(para 5.8.06 and 5.8.07).

10. **5.19.10** In cases where the Union government considers that some amendments to a State Bill are essential before it becomes law, the President may return the Bill through the Governor in terms of the Proviso to Article 201 for reconsideration, with an appropriate message, indicating the suggested amendments. The practice of obtaining the so-called conditional assent should not be followed when a constitutional remedy is available.

(para 5.11.02).

11. **5.19.11** To the extent feasible, the reasons for withholding assent should be communicated to the State government.

(para 5.17.01).

12. **5.19.12** State governments should eschew the wrong practice of mechanical and repeated re-promulgation of an Ordinance without caring to get it replaced by an Act of the legislature.

(para 5.18.12)

13. **5.19.13** In due regard to the requirement of clause (2) of Article 213, whenever the provisions of an Ordinance have to be continued beyond the period for which it can remain in force, the State government should ensure, by scheduling suitably, the legislative business of the State Legislature, enactment of a law containing those provisions in the next ensuing session. The occasions should be extremely rare when a State government finds that it is compelled to re-promulgate an Ordinance because the State Legislature has too much legislative business in the current session
or the time at the disposal of the Legislature in that session is short. In any case, the question of re-promulgating an Ordinance for a second time should never arise.  

(Para 5.18.14).

14. 5.19.14 A decision to promulgate or re-promulgate an Ordinance should be taken only on the basis of stated facts necessitating immediate action, and that too, by the State Council of Ministers, collectively.  

(Para 5.18.15).

15. 5.19.15 Suitable conventions should be evolved in the matter of dealing with an Ordinance which is to be re-promul gated by the Governor and which is received by the President for instructions under the Proviso to Article 213 (1).  

(Para 5.18.16).

16. 5.19.16 The President may not withhold instructions in respect of the first re-promulgation of an Ordinance, the provisions of which are otherwise in order, but could not be got enacted in an Act because the legislature did not have time to consider its provisions in that session. While conveying the instructions, the Union government should make it clear to the State government that another repromulgation of the same ordinance may not be approved by the President, and if it is considered necessary to continue the provisions of the Ordinance for a further period, the State government should take steps well in time to have the necessary Bill containing those provisions passed by the State Legislature, and if necessary, to obtain the assent of the President of the Bill so passed.  

(Para 5.18.17).
17. **5.19.17** The recommendations in paras 5.19.01 to 5.19.11 will apply *mutatis mutandis* to the seeking of instructions from the President for the promulgation of a State Ordinance. However, keeping in view the urgent nature of an Ordinance, a proposed Ordinance referred by the Governor to the President for instructions under the proviso to Article 213 (1) should be disposed by the President urgently and in any case within a fortnight.

(para 5.18.23)
Appendix-III

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 the 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 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 judgment. 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 is 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 judgment 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.