CHAPTER 13

THE STATE EXECUTIVE

1. The General Structure.

As stated at the outset, *our* Constitution provides for a federal Government, having separate systems of administration for the Union and its Units, namely, the States. The Constitution contains provisions for the governance of both. It lays down a uniform structure for the State Government, in Part VI of the Constitution, which is applicable to all the States, save the State of Jammu & Kashmir which has a separate Constitution for its State Government, for reasons which will be explained in Chap. 15.

Broadly speaking the pattern of Government in the States is the same as that for the Union, namely, a parliamentary system,—the executive head being a constitutional ruler who is to act according to the advice of Ministers responsible to the State Legislature (or its popular House, where there are two Houses),—except in matters in respect of which the Governor of a State is empowered by the Constitution to act 'in his discretion' [*Art.* 163(1)].

2. The Governor.

Governor.

At the head of the executive power of a State is the Governor just as the President stands at the head of the executive power of the Union. The executive power of the State is vested in the Governor and all executive action of the State has to be taken in the name of the Governor. Normally, there shall be a Governor for each State, but an amendment of 1956 makes it possible to appoint the same person as the Governor for the two or more States [*Art.* 153].

Appointment and term of Office of Governor.

The Governor of a State is not elected but is appointed by the President and holds his office at the pleasure of the President. Any citizen of India who has completed 35 years of age is eligible for the office, but he must not hold any other office of profit, nor be a member of the Legislature of the Union or of any State [*Art.* 158]. There is no bar to the selection of a Governor from amongst members of a Legislature but if a Member of a Legislature is appointed Governor, he ceases to be a Member immediately upon such appointment.

The normal term of a Governor's office shall be five years, but it may be terminated earlier, by—

(i) Dismissal by the President, at whose 'pleasure' he holds the office [*Art.* 156(1)]; (ii) Resignation [*Art.* 156(2)].

The grounds upon which a Governor may be removed by the President are not laid down in the Constitution, but it is obvious that this power will be sparingly used to meet with cases of gross delinquency, such as bribery, corruption, treason, and the like or violation of the Constitution.[1]

There is no bar to a person being appointed Governor more than once.[2]

Why an appointed Governor.

The original plan in the Draft Constitution was to have elected Governors. But in the Constituent Assembly, it was replaced by the method of appointment by the President, upon the following arguments[3]:

(a) It would save the country from the evil consequences of still another election, run on personal issues. To sink every province into the vortex of an election with millions of primary voters but with no possible issue other than personal, would be highly detrimental to the country's progress.

(b) If the Governor were to be elected by direct vote, then he might consider himself to be superior to the Chief Minister, who was merely returned from a single constituency, and this might lead to frequent *friction* between the Governor and the Chief Minister.

But under the Parliamentary system of Government prescribed by the Constitution, the Governor was to be constitutional head of the State,—the real executive power being vested in the Ministry responsible to the Legislature.

> "When the whole of the executive power is vested in the Council of Ministers, if there is another person who believes that he has got the backing of the province behind him, and, therefore, at his discretion he can come forward and intervene in the governance of the province, it would really amount to a surrender of democracy."[3]

(c) The expenses involved and the elaborate machinery of election would be out of proportion to the powers vested in this Governor who was to act as a mere constitutional head.

(d) A Governor elected by adult franchise to be at the top of the political life in the State would soon prefer to be the Chief Minister or a Minister with effective powers. The party in power during the election would naturally put up for Governorship a person who was not as outstanding as the future Chief Minister with the result that the State would not be able to get the best man of the party. All the process of election would have to be gone through only to get a second rate man of the party elected as Governor. Being subsidiary in importance to the Chief Minister, he would be the nominee of the Chief Minister of the State, which was not a desirable thing.

(e) Through the procedure of appointment by the President, the Union Government would be able to maintain intact its control over the States.

(f) The method of election would encourage separatist tendencies. The Governor would then be the nominee of the Government of that particular province to stand for the Governorship. The stability and unity of the Governmental machinery of the country as a whole could be achieved only by adopting the system of nomination.

"He should be a more detached figure acceptable to the province, otherwise he could not function, and yet may not be a part of the party machine of the province. On the whole it would probably be desirable to have people from outside, eminent in something, education or other fields of life who would naturally co-operate fully with the Government in carrying out the policy of the Government and yet represent before the public something above politics.[3]

The arguments which were advanced, in the Constituent Assembly, *against* nomination are also worthy of consideration:

(i) A nominated Governor would not be able to work for the welfare of a State because he would be a foreigner to that State and would not be able to understand its special needs.

(ii) There was a chance of friction between the Governor and the Chief Minister of the State no less under the system of nomination, if the Premier of the State did not belong to the same party as the nominated Governor.[4]

(iii) The argument that the system of election would not be compatible with the Parliamentary or Cabinet system of Government is not strong enough in view of the fact that even at the Centre there is an elected President to be advised by a Council of Ministers. Of course, the election of the President is not direct but indirect.

(iv) An appointed Governor under the instruction of the Centre might like to run the administration in a certain way contrary to the wishes of the Cabinet. In this tussle, the Cabinet would prevail and the President-appointed Governor would have to be recalled. The system of election, therefore, was far more compatible with good, better and efficient Government plus the right of self-Government.

(v) The method of appointment of the head of the State executive by the federal executive is repugnant to the strict federal system as it obtains in the *U.S.A.* and *Australia*.

Status of appointed Governor so far.

In actual working, it may be said that in States where one party has a clear majority, the part played by the Governor has been that of a constitutional and impartial head, but in those States where there are multiple parties with an uncertain command over the Legislature, the Governor has acted as a mere agent of the Centre in various matters, such as inviting a person to form a Ministry, because he belonged to the ruling party at the Centre, even though he had no clear following (as in the case of Sri Rajagopalachari in Madras, after the General election in 1952) or bringing about the removal of a Ministry having the confidence of the Legislature, by means of a report under Art. 356(as happened in Kerala in 1959, in the case of the Communist Ministry headed by Sri Namboodiripad). Nevertheless, there is one aspect in which the system of appointing an outsider by the Centre has proved to be beneficial, and that is the prevention of disruptive and separatist forces from impairing the national unity and strength as might otherwise have been possible without the knowledge of the Centre, under a locally elected Governor.

It is from this standpoint alone that one can tolerate the patently undemocratic instances of appointing a retiring or a retired member of the Indian Civil Service or the Indian Administrative Service (who is obviously a veteran bureaucrat) or of the Armed Forces as a Governor.

Conditions of Governor's office.

A Governor gets a monthly emolument of Rs. 36,000[5], together with the use of an official residence free of rent and also such allowances and privileges as are specified in the Governor's (Emoluments, Allowances and Privileges) Act, 1982 as amended in 1998 (w.e.f. 1-1-1996). The emolument and allowances of a Governor shall not be diminished during his term of office [*Art.* 158(3)-(4)].

Powers of the Governor.

The Governor has no diplomatic or military powers like the President, but he possesses executive, legislative and judicial powers analogous to those of the President.

I. *Executive.* Apart from the power to appoint his Council of Ministers, the Governor has the power to appoint the Advocate-General and the Members of the State Public Service Commission. The Ministers as well as Advocate-General hold office during the pleasure of the Governor, but the Members of the State Public Service Commission cannot be removed by him, they can be removed only by the President on the report of the Supreme Court on reference made by the President and, in some cases, on the happening of certain disqualifications [*Art.* 317].

The Governor has no power to appoint Judges of the State High Court but he is entitled to be consulted by the President in the matter [*Art.* 217(1)].

Like the President, the Governor has the power to nominate members of the Anglo-Indian community to the Legislative Assembly of his State, if he is satisfied that they are not adequately represented in the Assembly; but while the President's corresponding power with regard to the House of the People is limited to a maximum of two members, in the case of the Governor the limit is one member only, since the Constitution (23rd Amendment) Act, 1969 [*Art.* 333].

As regards the upper Chamber of the State Legislature (in States where the Legislature is bi-cameral), namely, the Legislative Council, the Governor has a power of nomination of members corresponding to the power of the President in relation to the Council of States, and the power is similarly exercisable in respect of "persons having special knowledge or practical experience in respect of matters such as literature, science, art, co-operative movement and social service" [*Art.* 171(5)]. It is to be noted that 'co-operative movement' is not included in the corresponding list relating to the Council of States. The Governor can so nominate 1/6 part of the total members of the Legislative Council.

II. *Legislative.* As regards *legislative* powers, the Governor is a part of the State Legislature [*Art.* 164] just as the President is a part of Parliament. Again, he has a right of addressing and sending messages, and summoning, proroguing and dissolving, in relation to the State Legislature, just as the President has in relation to Parliament.[6] He also possesses a similar power of causing to be laid before the State Legislature the annual financial statement [*Art.* 202] and of making demands for grants and recommending 'Money Bills' [*Art.* 207].

His powers of 'veto' over State legislation and of making Ordinances are dealt with separately. (See Chap. 14 "Governor's power of veto" and "Ordinance-making power of Governor".)

III. *Judicial.* The Governor has the power to grant pardons, reprieves, respites, or remission of punishments or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which executive power of the State extends [*Art.* 161]. He is also consulted by the President in the appointment of the Chief Justice and the Judges of the High Court of the State.

IV. *Emergency Power.* The Governor has no emergency powers[7] to meet the situation arising from external aggression or *armed rebellion* as the President has [*Art.* 352(1)], but he has the power to make a report to the President whenever he is satisfied that a situation has arisen in which Government of the State cannot be carried on in accordance with the provisions of the Constitution [*Art.* 356], thereby inviting the President to assume to himself the functions of the Government of the State or any of them. [This is popularly known as 'President's Rule'.]

3. The Council of Ministers.

As has already been stated, the Governor is a constitutional head of the State executive, and has, therefore (subject to his discretionary functions noted below), to act on the advice of a Council of Ministers [*Art.* 163]. The provisions relating to the Council of Ministers of the Governor are, therefore, subject to exceptions to be stated presently, similar to those relating to the Council of Ministers of the President.

Appointment of Council of Ministers.

At the head of a State Council of Ministers is the *Chief* Minister (corresponding to the *Prime* Minister of the Union). The Chief Minister is appointed by the Governor,[8] while the other Ministers are appointed by the Governor on the advice of the Chief Minister. The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State and individually responsible to the Governor. The Ministers are jointly and severally responsible to the Legislature. He/They is/are publicly accountable for the acts or conducts in the performance of duties.[9] Any person[10] may be appointed a Minister (provided he has the confidence of the Legislative Assembly), but he ceases to be a Minister if he is not or does not remain, for a period of six consecutive months, a member of the State Legislature. The salaries and allowances of Ministers are governed by laws made by the State Legislature [*Art.* 164].

Relationship between the Governor and his Ministers.

It may be said that, in general, the relation between the Governor and his ministers is similar to that between the President and his ministers, with this important difference that while the Constitution does not empower the President to exercise any function 'in his discretion', it authorises the Governor to exercise some functions 'on his discretion'. In this respect, the principle of Cabinet responsibility in the States differs from that in the Union.

Article 163(1) says—

> "There shall be a Council of Ministers.... to aid and advise the Governor in the exercise of his functions, *except* in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

It is because of this discretionary jurisdiction of the Governor that no amendment was made by the 42nd Amendment Act in Art. 163(1) as in Art. 74(1), which we have noticed in Chap. 11.

In the exercise of the functions which the Governor is empowered to exercise in his discretion, he will *not* be required to act according to the advice of his ministers or even to seek such advice. Again, if any question arises whether any matter is or is not a matter as regards which the Governor is required by the Constitution to act in his discretion, the decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called into question on the ground that he ought or ought not to have acted in his discretion [*Art.* 163(2)].

A. The functions which are specially required by the Constitution to be exercised by the Governor in his discretion are—

Discretionary functions of Governor

(a) Para 9(2) of the 6th Sch. which provides that the Governor of Assam shall, in his discretion, determine the amount payable by the State of Assam to the District Council, as royalty accruing from licences for minerals.[11]

(b) Art. 239(2) [added by the Constitution (7th Amendment) Act, 1956] which authorises the President to appoint the Governor of a State as the administrator of an adjoining Union Territory and provides that where a Governor is so appointed, he shall exercise his functions as such administrator 'independently of his Council of Ministers'.

B. Besides the above functions to be exercised by the Governor 'in his discretion', there are certain functions under the amended Constitution which are to be exercised by the Governor 'on his special responsibility',—which practically means the same thing as 'in his discretion', because though in cases of special responsibility, he is to *consult* his Council of Ministers, the final decision shall be 'in his individual judgment', which no court can question. Such functions are—

Special Responsibilities.

(i) Under Art. 371(2), as amended,[12] the President may direct that the Governor of Maharashtra or Gujarat shall have a special responsibility for taking steps for the development of certain areas in the State, such as Vidarbha, Saurashtra.

(ii) The Governor of Nagaland shall, under Art. 371A(1)(b) (introduced in 1962), have similar responsibility with respect to law and order in that State so long as internal disturbances caused by the hostile Nagas in that State continue.

(iii) Similarly, Art. 371C(1), as inserted in 1971, empowers the President to direct that the Governor of Manipur shall have special responsibility to secure the proper functioning of the Committee of the Legislative Assembly of the State consisting of the members elected from the Hill Areas of that State.

(iv) Art. 371F(g), inserted by the Constitution (36th Amendment) Act, 1975, similarly, imposes a special responsibility upon the Governor of Sikkim "for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim".

In the discharge of such special responsibility, the Governor has to act according to the directions issued by the President from time to time, and subject thereto, he is to act 'in his discretion'.

Discretion, *in practice*, in certain matters.

C. In view of the responsibility of the Governor to the President and of the fact that the Governor's decision as to whether he should act in his discretion in any particular matter is final [*Art.* 163(2)], it would be possible for a Governor to act without ministerial advice in certain *other* matters, according to the circumstances, even though they are not specifically mentioned in the Constitution as discretionary functions.[13]

(i) As an instance to the point may be mentioned the making of a report to the President under Art. 356, that a situation has arisen in which the Government of State cannot be carried on in accordance with the provisions of the Constitution. Such a report may possibly be made against a Ministry in power,—for instance, if it attempts to misuse its powers to subvert the Constitution. It is obvious that in such a case the report cannot be made according to ministerial advice. No such advice, again, will be available where one Ministry has resigned and another alternative Ministry cannot be formed. The making of a report under Art. 356, thus, must be regarded as a function to be exercised by the Governor in the exercise of his discretion.

Obviously, the Governor is also the medium through whom the Union keeps itself informed as to whether the State is complying with the Directives issued by the Union from time to time.

(ii) Further, after such a Proclamation as to failure of the Constitution machinery in the State is made by the President, the Governor acts as the agent of the President as regards those functions of the State Government which have been assumed by the President under the Proclamation [*Art.* 356(1)(a)].

(iii) In some other matters, such as the reservation of a Bill for consideration of the President [Art. 200], the Governor may not always be in agreement with his Council of Ministers, particularly when the Governor happens to belong to a party other than that of the Ministry. In such cases, the Governor may, in particular situations, be justified in acting without ministerial advice, if he considers that the Bill in question would affect the powers of the Union or contravene any of the provisions of the Constitution even though his Ministry may be of a different opinion.[14-15]

President's control over the Governor.

It is obvious that as regards matters on which the Governor is empowered to act in his discretion or on his 'special responsibility', the Governor will be under the complete control of the President.

As regards other matters, however, though the President will have a personal control over the Governor through his power of appointment and removal,[16] it does not seem that the President will be entitled to exercise any effective control over the State Government against the wishes of a Chief Minister who enjoys the confidence of the State Legislature, though, of course, the President may keep himself informed of the affairs in the State through the reports of the Governor, which may even lead to the removal of the Ministry, under Art. 356, as stated above.

Whether Governor competent to dismiss a Chief Minister.

A sharp controversy has of late arisen upon the question whether a Governor has the power to dismiss a Council of Ministers, headed by the Chief Minister, on the *assumption* that the Chief Minister and his

Cabinet have lost their majority in the popular House of the Legislature. The controversy has been particularly intriguing inasmuch as two Governors acted in contrary directions under similar circumstances. In West Bengal, in 1967, Governor Dharma Vira, being of the view that the United Front Ministry, led be Ajoy Mukherjee, had lost majority in the Legislative Assembly, owing to defections from that Party, asked the Chief Minister to call a meeting of Assembly at a short notice, and, on the latter's refusal to do so, dismissed the Chief Minister with his Ministry. On the other hand, in Uttar Pradesh in 1970, Governor Gopala Reddy dismissed Chief Minister Charan Singh, on a similar assumption, without even waiting for the verdict of the Assembly which was scheduled to meet only a few days later. Quite a novel thing happened in Uttar Pradesh in 1998 when the Governor Romesh Bhandari, being of the view that the Chief Minister Kalyan Singh Ministry had lost majority in the Assembly, dismissed him without affording him opportunity to prove his majority on the floor of the House and appointed Shri Jagdambika Pal as the Chief Minister which was challenged by Shri Kalyan Singh before the High Court which by an interim order put Shri Kalyan Singh again in position as the Chief Minister. This order was challenged by Shri Jagdambika Pal before the Supreme Court which directed a "composite floor test" to be held between the contending parties which resulted in Shri Kalyan Singh securing majority. Accordingly, the impugned interim order of the High Court was made absolute.[17]

Before answering the question with reference to the preceding instances, it should be noted that the Cabinet system of Government has been adopted in *our* Constitution from the United Kingdom and some of the salient conventions underlying the British system have been codified in our Constitution. In the absence of anything to the contrary in the context, therefore, it must be concluded that the position under our Constitution is the same as in the United Kingdom.

In *England,* the Ministers being legally the servants of the Crown, at law the Crown has the power to dismiss each Minister, individually or collectively. But upon the growth of the Parliamentary system, it has been established that the Ministers, *collectively*, hold their office so long as they command a majority in the House of Commons. This is known as the 'collective responsibility' of Ministers. The legal responsibility of the Ministers, as a collective body, to the Crown has thus been replaced by the *political* responsibility of the Ministry to Parliament, and the Crown's power to dismiss a Prime Minister of his Cabinet has become obsolete,—the last instance being 1783.[18] The Crown retains, however, his power to dismiss a Minister individually and, in practice, this power is exercised by the Crown on the advice of the Prime Minister himself, when he seeks to weed out an undesirable colleague.

Be that as it may, the above two propositions as they exist today in England have been codified in Cls. (1) and (2) of Art. 164 of our Constitution as follows :

> "(1) ... *and the* Ministers *shall hold office at the pleasure of the Governor;*
>
> (2) *The* Council *of Ministers shall be* collectively *responsible to the Legislative Assembly of the State.*"

In the above context, the legitimate conclusion that can be drawn is that—

(a) The Governor has the power to dismiss an individual Minister at any time.

Testing majority support.

(b) He can dismiss a Council of Ministers or the Chief Minister (whose dismissal means a fall of the Council of Ministers), *only* when the Legislative Assembly has *expressed* its want of confidence in the Council of Ministers, either by a direct vote of no-confidence or censure or by defeating an important measure or the like, and the Governor does not think fit to dissolve the Assembly. The Governor cannot do so at his pleasure on his *subjective estimate* of the strength of the Chief Minister in the Assembly at any point of time, because it is for the Legislative Assembly to enforce the collective responsibility of the Council of Ministers to itself, under Art. 164(2).

The above view of the Author has been upheld by the Supreme Court in *S.R. Bommai* v. *Union of India*,[19] (a 9-Judge Bench) by observing that wherever a doubt arises whether a Ministry has lost the confidence of the House, the only way of testing is on the floor of the House.[20] The assessment of the strength of the Ministry is not a matter of private opinion of any individual, be he the Governor or the President.[21]

4. The Advocate-General

Advocate-General.

Each State shall have an Advocate-General for the State, an official corresponding to the Attorney-General of India, and having similar functions for the State. He shall be appointed by the Governor of the State and shall hold office during the pleasure of the Governor. Only a person who is qualified to be a Judge of a High Court can be appointed Advocate-General. He receives such remuneration as the Governor may determine.

He shall have the right to speak and to take part in the proceedings of, but no right to vote in, the Houses of the Legislature of the State [*Art.* 177].

REFERENCES

1. A glaring exception to this sound principle took place when the President, on the advice of the National Front Prime Minister Sri V.P. Singh, in December 1989, asked all the Governors to resign, simply because another Party had come to power at the Union. Of course, eventually, some of them were not required to resign.
2. Thus, Sri V.V. Giri, who was appointed Governor of U.P. in 1958, was appointed Governor of Kerala in 1960 for the unexpired portion of his term and in June 1962 he was reappointed Governor of Kerala for a second term, limited up to June 1964 (*Statesman*, 10-6-1962), Srimati Padmaja Naidu, Governor of West Bengal, also got a second term.
3. C.A.D., Vol. VII, p. 455.
4. Indeed there did occur some friction between the Governor and the Chief Minister during 1987-89 in Andhra Pradesh and Kerala where they belonged to different political parties. But, strikingly, there was disagreement between the Governor Govind Narain Singh and the Chief Minister of Bihar (1985); and Governor Smt. Sarla Grewal and the Chief Minister of Madhya Pradesh (1989) even though hailing from the same party.
5. Emoluments of Governor as enhanced *vide* Act No. 27 of 1998, s. 2 (w.e.f. 1.1.1996).
6. Of course, as has been pointed out in other contexts, the Upper House of the Union Legislature, *i.e.*, the Council of States or of the State Legislature, *i.e.*, the Legislative Council, is not subject to dissolution but is subject to a system of periodical retirement.

Hence, the President or the Governor's power of dissolution must be understood to refer to the dissolution of the House of the People and the Legislative Assembly, respectively.

In those States where the State Legislature consists of one House only [*Art.* 168(1)(b)] (p. 233, *post*), a dissolution of the Legislative Assembly results in the dissolution of the State Legislature (because there is no Legislative Council to survive.)

7. Only the Governor of Jammu & Kashmir is vested with the power to impose Governor's Rule under s. 92 of Constitution of J. & K.
8. The Governor may appoint a person to be the Chief Minister on his own estimation that such person is likely to command a majority in the State Assembly and he can exercise this power even before the Assembly is fully constituted. Such act, itself, would not establish *mala fides* on the part of the Governor [*Rajnarain* v. *Bhajanlal*, (1982) P.&H., dated 20-10-1982; *Statesman* (D)/21-10-1982].
9. *Secretary, Jaipur Development Authority, Jaipur* v. *Daulat Mal Jain*, (1997) 1 S.C.C. 35 (para 10).
10. It is striking that no member of the 1975 Abdullah Ministry of Jammu & Kashmir was initially a member of the State Legislature.
11. The Naga Hills-Tuensang Area has been taken out of this discretionary sphere, by making it a separate State, named Nagaland. Hence, Para 18 of the 6th Sch. has been omitted in 1971.
12. That is, as amended by the Constitution (7th Amendment) Act, 1956,and the Bombay Reorganisation Act, 1960. By the Constitution (32nd Amendment) Act, 1973, Andhra Pradesh has been taken out of Art. 371 and provided for separately, in *new* Art. 371D.
13. *Samsher* v. *State of Punjab*, AIR 1974 S.C. 2192 (paras 47, 88, 153).
14. This happened in the case of the Kerala Education Bill [*vide* In re *Kerala Education Bill* AIR 1958 S.C. 956]. In *Hoechst Pharamaceuticals* v. *State of Bihar*, AIR 1953 S.C. 1019 (para 89), the function under Art. 200 has been held to be discretionary.
15. In some cases, the Supreme Court has observed that unless a particular provision of the Constitution expressly *requires* the Governor to act in his discretion, his power to act without the advice of Ministers cannot be drawn by implication [*Sanjeevi* v. *State of Madras*, (1970) 2 S.C.C. 672 (*677*). But this observation is now to be read subject to the exceptional contingencies mentioned in the 7-Judge decision in [*Samsher* v. *State of Punjab*, AIR 1974 S.C. 2192, *above*].
16. The dismissal of the Tamil Nadu Governor, Prabhudas Patwari in October, 1980 [*Statesman*, 31-10-1980] demonstrates that the President's 'pleasure' under Art. 156(1) can be used by the Prime Minister to dismiss any Governor for political reasons, and without assigning any cause.
17. *Jagdambika Pal* v. *Union of India*,(1999) 9 S.C.C. 95.
18. *Vide* HALSBURY, LAWS OF ENGLAND (4th Ed. 1974), Vol. 8. Pp. 696-97.
19. *S.R. Bommai* v. *Union of India*, (1994) 3 S.C.C. 1.
20. *Ibid.*, para 395.
21. *Ibid.*, para 119.