

Shrimati G. Durgabai (Madras: General): Mr. President, Sir, I wish to make it clear at the very outset that I stand here to support Clause 1 in Part II relating to the Provincial Judiciary. Sir, I wish to confine myself to that portion of the clause which lays down the procedure for the appointment of judges to the Provincial Courts. The clause runs on the following lines:

“...the judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed).”

Sir, we see thus by the manner provided in this clause we introduce some kind of intervention on the part of an external authority in matters relating to the Provinces and the Provincial Governments. I think this kind of intervention and this kind of procedure laid down providing for the necessity of an external authority is bound to provoke in the minds of some people at least the fear that this is a sort of encroachment over the jurisdiction of the Provincial Government as opposed to the principles of provincial autonomy. But, Sir I confess myself was holding this view for some time, whether it would not be desirable to leave this matter to the discretion of the Provincial Governments, namely the Governor acting on the advice of his Ministers. But on a careful consideration of the matter I find that the manner as suggested by the authors of this clause has greater advantages over the other. Hereafter in the new set-up conditions are bound to be different and the High Courts have got to take upon themselves greater and heavier tasks and onerous responsibilities. They are the repositories of the Constitution; they have got to interpret the Constitution. They are the guardians of the fundamental rights in the Constitution. Every common man must look to these courts for fair treatment and justice. They have got to see that their rights are safeguarded and they are in safe custody. Therefore, if we have got to achieve this, we have got to see to the successful working of these High Courts and this depends mostly upon the quality of the judiciary and the manner in which it is composed. The independence of the judiciary is a thing which has to be decided and this independence to a large extent depends on the way in which these judges are to be appointed. They should not be made to feel that they owe their appointment either to this person or that person or to this party or to that party. They have to feel that they are independent. It is only in that case that we get efficiency of administration of justice. It is with a view to secure this kind of independence that some sort of check is necessary and the authors of the clause have provided for this check by bringing in some external authority to have something to do with the appointments relating to the Provincial courts. We may feel why the Chief Justice of the Supreme Court also is brought into this picture but in the interests of the purity of administration of justice the Supreme Court has a great part to play hereafter. It is the highest of the High Courts of India and it will have a general advisory jurisdiction and a general appellate jurisdiction which is similar to that now exercised by the Privy Council relating to Indian units. Therefore, it is to review the work of all High Courts and also exercise the powers of general superintendence, direction and control in all matters relating to the provincial judiciary. Several matters of the High Courts have got to come before this Court by way of revision, reference and appeal. Therefore, the Chief Justice of the Supreme Court has got a great deal to do with these High Courts and not only that, the Supreme Court in itself has got to be composed from among the judges of the High Courts as we see.

Therefore, considering all these matters I feel that it is highly necessary that the Chief Justice of the Supreme Court is consulted by the President of the Federation in making these appointments to the provincial courts. Of course, this need not really leave a fear in our minds that the freedom of the provinces is curtailed to a large extent but this sort of check will be used only on rare occasions and generally the recommendations made by the Governor on the advice of his Ministers and in consultation with the Chief Justice of the High Courts will be accepted so long as they are right and also their choice is bound to be good generally, except in very rare instances when the intervention of the Federal Authority is to be brought.

There is another point to be taken into consideration, namely this, that we need not feel that we are doing something very unusual. There is no one uniform principle in all federal constitutions of the world that this power of appointment to the judges of the High Courts of the units should always rest with only the Provincial Governments. It is not necessary. We have got an instance provided to us in the Canadian constitution where the power of appointment rests with the Governor General who will make the appointment. Therefore, we can accept this principle without any fear or favour and adopt it in our system.

With these few observations, Sir, I support this clause and I commend it for the acceptance of the House.