

Plsg sem 2

Module II...

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Salient Features of the Swiss Constitution

This article throws light upon the twenty-one salient features of the Swiss constitution after its revision in 1999. Some of the features are: 1. The Preamble 2. A Written, Enacted and Adopted Constitution 3. A Rigid Constitution 4. Bill of Rights 5. Social Goals 6. Purpose of the State 7. Democratic Republican Constitution 8. Direct Democracy and Others.

Feature # 1. The Preamble:

The Swiss Constitution opens with a Preamble which begins by the words.

In the name of God Almighty, We, the Swiss people and Cantons..... "It expresses the firm resolve to renew the alliance, to strengthen liberty and democracy, independence and peace in solidarity, and openness towards the world. It expresses the determination of the Swiss people and Cantons to live our diversity in unity, respecting one another."

Further, it records that the Swiss people and Cantons adopt the Constitution with full consciousness of their common achievements and responsibility towards future generations.

It affirms faith in two fundamental guiding principles. "Only those remain free who use their freedom", and "The strength of a people is measured by the welfare of the weakest of its members."

The Preamble records a firm faith in sovereignty of the people and the Cantons and makes a firm resolve to maintain and strengthen Switzerland. It declares that the Swiss (Swiss Federation) stands organised on the principle of "Unity in diversity" and is committed to secure freedom and welfare for all the people, particularly for the weakest members of the **Swiss nation**.

Feature # 2. A Written, Enacted and Adopted Constitution:

The Swiss Constitution is a written and enacted constitution. It was drafted by a committee of the Swiss Parliament in 1848 and was approved by the Parliament, the Cantons and the people of Switzerland. In a similar way it was totally revised in 1874. This Constitution operated during 1874-1999.

In 1999, the Swiss Constitution was again totally revised. The totally revised draft was adopted by the Swiss Parliament on 18 December 1998, and approved by the people and the Cantons on 18th April 1999. A decree for the implementation of the new constitution was issued by the Swiss Parliament on 28 September 1999. The new totally revised constitution came into operation w.e.f. 1 January 2000

The Swiss Constitution has now 196 Articles:

These have been classified into six titles and each of which contains several Chapters. Title 1 contains General Provisions, Title 2- Basic Civil and Social Rights, Title 3. Federation Cantons and Municipalities, Title 4- People and Cantons, Title 5- Federal Authorities, and Title 6- Revision of the Federal Constitution and Temporary Provisions.

Title 1 has six Articles (1 to 6), Title 2 has 35 Articles (Article 7 to 41), Title 3 has 94 Articles (Article 42 to 135), Title 4 has 48 Articles (Articles 143 to 191) and Title 6 has 5 Articles (Article 192 to 196). It is now a fairly detailed constitution.

The new constitution of Switzerland is a more detailed Constitution. It has 196 Articles while the 1874 Constitution had only 123 Articles. It now contains a detailed Bill of Basic Rights of the people and a more detailed description of Federal powers and Federal-Cantonal Relations.

When compared with the Constitution of the U.S.A., we find it a very lengthy constitution. But when we compare it with the Indian Constitution, we find it relatively brief. Like the U.S. Constitution, it provides for the governmental system of the Swiss Federation and allows each Canton to have its own constitution within the parameters of Republicanism.

It is now a very detailed constitution because it contains a detailed Chapter on Bill of Rights and enlists such minor topics as fishing, hunting, gambling, lotteries, qualification for certain professions, sickness and several other such topics. In other countries, these matters are never mentioned in their constitutions.

Explaining the reason behind the inclusion of such topics in the Swiss Constitution R.C. Brooks writes, "it represents a compromise between the advocates of Cantonal rights and those in favour of a strong federal government and, therefore tries to anticipate and prevent causes of internal friction and possibility of civil strife."

The Swiss constitution is a duly ratified constitution. It was approved by the Swiss people and Cantons in 1848, 1874 and 1999.

Feature # 3. A Rigid Constitution:

This Swiss Constitution is a rigid constitution. The process of amendment is specific and complicated. A proposal for a total or partial amendment of the constitution can come either from the Swiss Federal Parliament or through an initiative sponsored by 1,00,000 voters.

In either case, the proposal becomes a part of the constitution only when it is approved in a referendum by a majority of Swiss voters as well as by a majority of the Cantons. The procedure of amendment of the Swiss constitution is, by all standards, a rigid one. The total revision of the Constitution in 1999 incorporated all the previous amendments in it, and thereafter, no new amendment has been made till date.

Feature # 4. Bill of Rights:

A major change affected by the new Swiss Constitution (2000) has been the incorporation of a detailed bill of rights. Under Title 2 Chapters 1 and 2 and Article 7 to 40, the Constitution now describes the basic, civil, social and political rights of the Swiss people.

The Constitution recognizes, grants and guarantees 34 rights of the people-The Rights of Human Dignity, Equality, Religion and Customs, Freedom of Expression, Freedom of Media, Association, Domicile, Property, Economic Freedom, Judicial Protection, Citizenship and Political Rights.

The Swiss bill of rights is a very detailed bill and incorporates almost all the rights and freedoms which stand recognized as essential conditions of civilized living and necessary for the enjoyment of the right to life.

Feature # 5. Social Goals:

The Swiss Constitution, under Title 2 Chapter 3 and Article 41 enumerates the social goals before the Swiss Federation. It has been laid down in Article 41 that the Federation and Cantons will ensure that every citizen should have the benefit of social security, health care, protection of family, fair and adequate employment and conditions of work, housing and education including continuing education.

The children and young people are to be encouraged in their development to become independent and socially responsible persons and they are to be supported in their social, cultural and political integration.

Further, both the Federation and the Cantons are to try to secure for every person social security, social insurance covering old age, disability, illness, accidents, unemployment, maternity, orphan hood and widowhood.

The Constitution also lays down that the Federation and Cantons will always try to secure these social

goals within the limits of their constitutional powers as well as within the means available to them. However, the social goals do not constitute the rights of the people.

The people do not enjoy the right to get these enforced by the state. In other words, in their nature, the social goals enumerated in the Swiss Constitution are similar to the Directive Principles of State Policy contained in Part IV of the Constitution of India. Article 41 of the Swiss Constitution which provides for these social goals, describes these as General Principles.

Feature # 6. Purpose of the State:

In its Article 2, the Swiss Constitution lays down the purpose of Swiss Federation.

It describes the following purposes:

- (i) To protect liberty and rights of the people,
- (ii) To safeguard the independence and security of the country,
- (iii) To promote common welfare, sustainable development, inner cohesion and cultural diversity of the country,
- (iv) To secure to all citizens, as far as possible, equal opportunities,
- (v) To work for safeguarding the long term preservation of natural resources,
- (vi) To promote a just and peaceful international order.

Feature # 7. Democratic Republican Constitution:

Ever since 1291, Switzerland has been a Republic. It is now headed by a seven-member plural executive whose members are elected by the two houses of Swiss Federal Parliament. All political institutions in Switzerland are elected institutions.

The people elect their representatives and they directly participate in the law-making through the devices of referendum and initiative. The Constitution also provides for Republicanism in the Cantons. Each Swiss Canton has the right to have a constitution provided it assures the exercise of political rights according to the Republican form. Article 51 declares, "Every Canton shall adopt a democratic constitution."

Feature # 8. Direct Democracy:

Switzerland has been the home of Direct Democracy. Zurcher has rightly written: "Switzerland and democracy have, in recent years, become almost synonymous." Since 1848, Switzerland has been working as a direct democracy through such modern devices of direct legislation—Referendum and Initiative.

Under the system of Referendum, the people have the right to approve or disapprove the laws or constitutional amendments passed by their legislature. Measures put to referendum become operational only when these secure majority of votes.

In case of constitutional amendments, holding of referendum is compulsory but in case of ordinary legislation it is optional i.e., it is held only when 50,000 Swiss voters make a demand for referendum.

Under the system of Initiative 100,000 Swiss voters can initiate any proposal for constitutional amendment, which gets incorporated in the constitution when the majority of Swiss voters as well as of Cantons approves it in a referendum.

The decision of the referendum is final. Referendum is a negative device by which people can rectify the errors of the Federal Parliament and Initiative is a positive device by which people can ensure desired constitutional changes.

In one full Canton and five half Cantons of Switzerland there is at work the institution of Landsgemeinde. It is a Cantonal Council of all the voters which makes laws, approves policies and elects the executive for running the administration.

The people of Switzerland use Referendum, Initiative and Landsgemeinde as devices of direct democracy within a system of representative democracy. They have a directly elected assembly of their representatives- the Federal Parliament. But they also directly participate in legislation through the devices of Referendum and Initiative.

Feature # 9. Federalism:

Article I of the 1874 Swiss Constitution described Switzerland as a confederation. But in reality, it was a federation with 23 Cantons (20 full and 6 half Cantons) constituting the Federation. Now the newly revised constitution (2000) of Switzerland directly describes it as the Swiss Federation.

“The Swiss confederation came into being to consolidate the alliance of the confederated members and to maintain and increase the unity, strength and honour of the Swiss nation.”

It further specified that “the objective of the constitution was to achieve the solidarity of the nation.” The 1874 total revision of the constitution was to achieve the solidarity of the nation. This total revision of the constitution was governed by the objective of making Switzerland a centralized federation by eliminating the weaknesses of the 1848 constitution.

The 1999 total revision of the Constitution has further given strength to federalism. Switzerland is now a federation both in name as well as in reality.

The federal character of the Swiss Constitution is reflected by its following features:

(i) Non-sovereign status of Cantons.

(ii) Supremacy of Swiss Constitution.

(iii) Existence of written and rigid constitution affecting a division of powers between the Swiss Federation and the Cantons.

(iv) The division of powers in the Swiss Constitution follows the pattern of the US federation. The powers of the Federation and the joint powers of the Federation and the Cantons have been laid down in the Constitution, and the residuary powers have been left with the Cantons.

(v) The federation has been given powers in respect of subjects of national importance and the Cantons have retained powers in respect of local and regional subjects.

(vi) The Cantons have been given equality of representation in the Upper House of the Swiss Federal Parliament- the Senate, Each full Canton, whether big or small, sends two representatives and each half-Canton one representative to the Senate.

(vii) The Cantons have their separate constitutions.

(viii) The Swiss Federal Court is an independent judiciary with the power of judicial review over the legislation passed by Cantonal legislatures.

(ix) There is dual citizenship, dual administration and a dual system of courts.

All these features clearly establish the existence of a federation in Switzerland. In the words of Zurcher, "Federation is the basic constitutional doctrine upon which the government of Switzerland is now based."

The new Constitution has now eliminated the old practice of describing Switzerland as a confederation. Switzerland is now a Federation both in name and reality. It is a federation with 23 Cantons (20 full Canton and 6 half Cantons) as its non-sovereign units.

Feature 10. Mixture of Parliamentary and Presidential Forms:

The Swiss system of government is a unique system which encompasses the features of parliamentary as well as presidential systems. There is a close relationship between the Swiss Federal Parliament and the Swiss Executive. The members of the executive (Federal Government) participate in the deliberations of the legislature.

The members of Federal Government (Ministers of Federal Government) are responsible before the Federal Parliament for their work and activities. These two are parliamentary features. The Swiss executive-the Federal Government enjoys a fixed tenure and it cannot be voted out of power by the Federal Parliament.

It is constituted by all the political parties and it is a plural executive. It cannot dissolve the Federal Parliament. These are indeed presidential features. As such, the Swiss system of is parliamentary as well as presidential in its organisation and working.

Feature 11. Plural/Collegial Executive:

A unique feature of the Swiss constitution is that it provides for a collegial/plural executive. All executive powers of the federation are exercised by a seven-member Federal Government. All the seven members collectively exercise power. Article 177(1) declares "The Federal Government shall take its decisions as a collective body." Every year one of its seven members is elected as the President and another as the Vice-president.

Next year the Vice-president becomes the President and a new member is elected as the Vice-president. This process continues and each member gets a chance to be the President and Vice-president. The President performs all the functions of the head of the state for one year.

The members of the Federal Government do not resign whenever the Federal Parliament rejects any measure or policy sponsored by it. There is no such thing as collective responsibility before the Federal Parliament. Thus, the Federal Government of Switzerland is a unique plural executive.

Feature 12. Bicameral Legislature:

Swiss Federal Parliament is a bicameral body. Its two houses are: The House of Representatives and the Senate. The former is the lower, popular, national house which represents the people of Switzerland and the latter is the upper house which represents the Cantons and their sovereign equality. Each full Canton two and each half Canton has one seat in the Senate.

The House of Representatives has a tenure of 4 years whereas the tenures of the members of the Senate depend upon the Cantons which they represent. In fact the members of the upper house are not elected simultaneously.

The Federal Parliament enjoys legislative, executive, financial and judicial powers which are jointly exercised by the two Houses. Both the Houses have equal powers in all spheres. In the words of C.F. Strong, "The Swiss legislature like the Swiss executive, is unique. It is the only legislature in the world, the powers of whose upper house are in no way different from those of the lower house."

Feature 13. Lack of Independent and Powerful Judiciary:

The Swiss Federal Court is the only federal court and in a way, it has the status of being the Supreme Court of Switzerland. However, it enjoys a secondary position in the constitutional system. The judges of the Federal Court are elected by the Federal Parliament for a period of six years, though the convention of re-electing the judges ensures a long tenure for the Judges.

The Judges are responsible before the Federal Parliament. The Federal Court has been given the responsibility to apply laws voted by the Federal Parliament. It has no power to reject federal laws. It submits an annual report of its working to the Federal Parliament. Thus, Swiss judiciary occupies a back seat in the constitutional system.

Feature 14. No Judicial Review over Federal Laws:

The Swiss Federal Court has been given the power of judicial review only in respect of the laws made by the Cantonal legislatures. The laws passed by the Federal Parliament are not subject to its power of judicial review. The provision for referendum as the means of popular review over the laws made by the Federal Parliament has been the main reason behind the denial of this power to the Federal Court.

However, for protecting the sanctity of the Federal Constitution, it has been given the power to review the constitutions and laws of the Cantons and declare all such measures as Ultra vires, which it finds to be in conflict with the Swiss Constitution.

In other words, the Swiss Federal Court has no power to determine the constitutional validity of federal laws. The right to interpret the Swiss constitution belongs to the Federal Parliament.

Feature 15. Conventions of the Swiss Constitution:

The history of the evolution of the Swiss constitutional system since 1848 has produced several constitutional conventions which have been regulating the behaviour of almost all the political institutions. In the Federal Government, when the President completes his term of one year, the Vice-president becomes the President and a new Vice-president is elected. This practice is repeated every year.

The Vice-chairmen of the two Houses of the Federal Parliament become chairmen in the next year. Constitutionally, both the House of Representatives and the Senate have equal powers, but by a convention, the former exercises more powers than the latter. Each judge of the Federal Court has a tenure of six years but by a convention, he is repeatedly elected unopposed.

The members of the Federal Government are also repeatedly elected so long as they continue to serve well. By another convention, the Cantons speaking the three main languages are always given a seat each in the Federal Government. Further, the Cantons of Berne, Geneva and Vaud are always given a berth in the Federal Government.

Feature 16. Dual Citizenship:

The system of double citizenship prevails in Switzerland. The Constitution states that every citizen of a Canton shall be a citizen of Switzerland. This entitles a person to enjoy the citizenship of his Canton as well as that of the Swiss Federation.

Feature 17. Provisions Regarding Language:

Switzerland, like India, is a multilingual state. The Swiss people speak German, French, Italian and Romansh. These four languages stand accepted as national languages. However, Article 70 declares German, French and Italian as the three official languages.

Romansh is used as an official language only for communicating with Romansh speaking people. Each Swiss citizen is expected to learn at least two of the three official languages. The number of people

speaking Romansh is quite limited, and that is why it has not been made an official language for all official work.

Feature 18. Provisions Regarding Army:

The Constitution now lays down that Switzerland will have an army. It will be organised as a militia and will have the responsibility to prevent war, defend the country, to maintain peace, to protect the people and to lend support to the civil authorities in emergencies. The Federation has the power to use the army. Civil defence is also a Federal subject. The Federation takes all decisions and makes laws regarding the organisation training and equipment of army. The Cantons can use their troops for maintaining public order in their respective territories.

Feature 19. Compulsory Military Training and Alternative Service:

Every Swiss man is required to render military service (Women stand exempted, but they can voluntarily join the military). Those men who fail to do military service are required to do an alternative service as laid by an appropriate Federal law.

In case a man undertakes neither military service nor an alternative service in lieu of it, he has to pay a service tax. Such a tax is levied by the Federation but collected by the Cantons. Further, compensation is paid to every person who suffers any injury or impairment during the course of military service.

Feature 20. Permanently Neutralized Status:

Switzerland is a permanently neutralized state. This status has been conferred upon Switzerland by an international treaty. Switzerland has taken upon itself the decision that it shall join neither any war nor any military alliance.

It refuses to be drawn into any military/controversial security related conference/treaty/organisation and alliance. Till 2002, it was not even a member of the United Nations. It joined this world body only in 2003, but without giving up its permanently neutralized status.

Feature 21. Rule of Law:

The Swiss Constitution accepts the principle of Rule of Law. Its Article 5 specifies its meaning:

- (i) Law is the basis of all activities.
- (ii) Law alone can place limitations on all activities.
- (iii) State activity must be in public interest and in proportion.
- (iv) State institutions and private persons must act in good faith.
- (v) The Federation and Cantons always respect International law.

Further Article 8 of the Constitution grants to all citizens the right to equality- before law. It also provides for social equality of men and women and special legal protection for disabled and disadvantaged people.