

## Chapter 8

# New Swiss Constitution

### 1 Salient Features of the new Swiss Constitution

A careful examination of the new Swiss constitution reveals a number of basic characteristics. These are :

**1. A large Constituion :** The new constitution of Switzerland is one of the largest constitution in the world. The 1874 Constitution has been replaced by the Constitution 1990. The new constitution integrates the accumulated amendments into a new, consolidated text. The present Swiss Constitution contains one Preamble and 6 Titles. Each Titles is subdivided into various chapters, sections and articles. There are altogether 197 articles which are placed under 6 Titles. Each of the 6 Titles are arranged under different headings such as Greneral Provisions (Title 1); Basic, Civil and Social Rights, (Title 2) ; Federation, Cantons and Municipalities (Title 3); People and Contous (Title 4); Federal Authorities (Title 5); and Revision of the Federal Constitution and Temporal Provisions (Title 6).

**2. Preamble :** Like all other modern written constitution, the Swiss Constitutions begins with a Preamble. Again as in the case of US and Indian Constitutions or the Charter of the UNO, the Preamble to the Swiss Constitutions informs us that the Swiss Constitution has been adopted by the Swiss People and the Contons. The Constitution has been adopted in the name of God Almighty. It renews Swiss people's resolve to strengthen liberty and democracy, independence and peace in solidarerty and openness towards the world, determination for mutual respect and recognition and conciousness towards future generations.

**3. General Provisions :** The new Swiss Constitution mentions general provisions of the Constitution. Title 1 is named as 'Greneral Provisions'. Under the heading of the 'General Provisions' subjects mentioned are Swiss Federal, Purpose, Cantons, National Langnages, Rule of law and Individual and Social Responsibility. The Constitution recognizes the national languages of Switzerland. The National Languages are German, French, Italian and Romansh. It is said that



the law is the basis for and limitation of state activity and Federation and Cantons respect international law. Every individual should strive not only for his or her advancement but also for the attainment of the goals of state and society.

**4. A Federal Constitution :** The Swiss Constitution sets up a federal state structure. Article 1 of the Swiss Constitution throws light on the formation of the Swiss Federation. It says "The Swiss People and the Cantons of Zurich, Berne, Lucerne, Uri Schwyz, Obwald, Nidwald, Glarus, Zug, Fribourg, Solothurn, Basel-city, Basel-land, Schaffhausen, Appenzell Outer Rodes, Appenzell Inner. Rhodes, St. Gall, Grisons, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchâtel, Geneva, and Jura form the Swiss Federation." Thus the Swiss Federation is composed of the Federal Government and 26 states, called 'Cantons'. It is worth mentioning that of the 26 Cantons (states) six are half Cantons. These are : Basel Stadt, Basel Landschaft, Appenzell Innerrhoden, Appenzell Ausserrhoden, Unterwalden ind dem wald, Unterwalden obdem wald.

**5. A Democratic Constitution :** The Swiss Constitution is regarded as the most democratic constitution in the world. The Swiss Constitution guarantees essential democratic rights to its citizens. It recognizes right to life and personal freedom, freedom of faith and conscience, freedom of opinion and information, freedom of assembly, freedom of the media etc. The Federal Parliament is a bicameral legislature consisting of the House of Representatives and the Senate. The House of Representative composed of representatives elected directly by the people whereas the Sentate consists of delegates of the Cantons. Members of the Federal Government are also elected by the Federal Parliament. The President of the Federation is also elected.

Moreover, Switzerland is regarded as the home of direct democracy. The Swiss Constitution provides opportunity to the people to participate in the making of laws. Two important direct democratic methods – initiative and referendum – provide unique opportunity to the swiss people to directly participate in the affairs of the state. The entire Chapter 2 of Article 4 has dealt with different aspects of these two methods of direct democracy.

**6. Basic Rights :** The Swiss Constitution recognizes basic rights of the citizens. The Swiss Constitution make mention of human dignity which is to be respected and protected. The Swiss Constitution



enumerates the basic rights of man. Constitutionally all humans are equal before the law and men and women have equal rights. The Constitution guarantees to its citizens basic civil, social and political rights. Rights of the citizens include, among others, right to life and personal liberty, freedom of faith and conscience, freedom of opinion and information, freedom of the media, freedom of language, freedom of art, freedom of assembly, freedom of association etc.

**7. A Bicameral Legislature :** In Switzerland, there is a bicameral legislature. The federal legislature in Switzerland is designated as the Federal Parliament. The Federal Parliament is the highest authority of the federation. It has two chambers, the House of Representatives and the Senate. The House of Representatives is composed of 200 representatives directly elected by the people whereas the Senate consists of 46 delegates of the Cantons.

**8. Federal Government :** The Federal Government is the highest governing and executive authority of the Federation. Important features of the Federal Governmental systems are : (i) The Federal Government consists of seven members and the members are elected by the Federal Parliament. They are elected for a term of four years among all Swiss citizens eligible to be elected to the House of Representatives.

(ii) Second important authority of the Federal Government is the Presidency. One of the members of the Federal Government is elected as the President of the Federation and another is elected as Vice-President of the Federal Government. They are elected by the Federal Parliament and they are elected for a term of one year.

(iii) Another important feature of the federal governmental system is The Principle of Collective Authority and Division into Departments. The Federal Government takes its decision as a collective body. Moreover, for the preparation and implementation of the decisions, the matters of the Federal Government are distributed among its members according to Departments.

**9. Federal Judiciary :** Federal authorities also include federal judicial authorities. The federal judicial authorities include the Federal Court and other judicial authorities. The Federal Court, known as Bundesgericht, is the highest judicial authority. Judges of the Federal Court are elected by the Federal Parliament. The Federation also establishes a Federal Criminal Court and other judicial agencies.

**10. Revision of the Constitution :** Provisions for revision of



the Federal Constitution occupies an important place in the Federal Constitution. Chapter 1 of Title 6 has been devoted to this purpose. Revision of the Federal Constitution may be of two types : total and partial. Article 193 and 194 have envisaged the procedures respectively for a total and a partial revision. According to Article 195, the Constitution revised in total or in part shall enter into force as soon as it is accepted by the people and the Cantons. Thus, in this sense, the Swiss Constitution may be regarded as a rigid constitution.

**11. Continuity and Change :** One important feature of the Swiss Constitution is its continuity and change. In course of time, it has changed. But at the same time, it has retained its basic structure unchanged. Initially it was a confederation of states. Now, it has turned into a full-fledged federation. Again, from the beginning Swiss political system has been designated as democratic. Switzerland has been an historic example of direct democracy. It not only recognizes the basic democratic rights of the people but also recognizes the rights of the people to directly participate in the political process of the country. Two important direct democratic methods—initiative and referendum—provide unique opportunity to the Swiss people to directly participate in the affairs of the state. Thus Switzerland which started to emerge in the 13th century as a federal democratic state, has now become a modern federal democratic state. In course of time and in the midst of many changes, it has evolved and adapted itself to the changing needs of the time but keeping its basic democratic and federal character intact.

**12. Republican Country :** Switzerland is one of the oldest republican state in the world. It is ruled neither by absolute nor by constitutional monarchy. As a matter of fact, the Swiss political system is based on the principle of popular sovereignty. It means that all powers belong to the people. This has been strengthened by enabling the people to directly participate in the law-making process of the state. It is true that the Swiss President is not much powerful. His post is merely ornamental and he performs ceremonial functions. He is merely head of the state. Still, all these features explain that, unlike U.K., Switzerland is a republican country.

In the end some other remarkable features of the Swiss Constitutional system may be mentioned. (i) Swiss governmental system is neither



parliamentary nor presidential. The President of the Swiss Federation is merely ceremonial head of the state and, as a matter of fact, he is one of the seven-member Federal Government. He is, by no means, comparable with the US President. Again the Swiss governmental system is not parliamentary because the lower chamber of the Swiss Parliament has hardly any role in the formation of the federal government. Not only that, the Swiss Parliament has hardly any significant control over the ministry.

(ii) The second thing which attracts our attention is direct democracy. In contrast to many modern democratic states, Switzerland still, to a great extent, practices direct democracy. Direct democratic methods have enabled the Swiss people to directly participate in the affairs of the state. It enhances, among the people, the feeling of attachment to the political process. It gives legitimacy to the government and enhances its stability. It is a better way of expressing popular sovereignty than indirect methods of democracy. (iii) Moreover, the Swiss constitutional system is remarkable for its adaptability. It has adapted itself to the changing needs of time and people. This exhibits its in-built power of survival. It demonstrates the strength of the constitutional system.