

“Swiss Constitution and Concept of Direct Democracy in Switzerland”

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ABSTRACT

Switzerland is landlocked located in the western part of Europe. There are various people of race, religion and language in the country. The country contains 23 states known as Cantons and three Cantons are further subdivided into two which makes it 26 Cantons in total. The Swiss constitution is lengthy and written constitution containing 196 articles divided into six titles. The Swiss constitution adopted the direct democracy system. The reason behind the adoption of this type of democracy system in the country so that people can take part in the political affairs of the country such as law making, amending the provisions of the constitution and revision of the constitution approved by the legislature i.e. Federal Parliament of Switzerland. The participation or direct democracy is exercised through referendum and initiative. There should be majority voters and that of the Cantons to ratify the bill that should be enacted as law or amending the provisions of the law or the revision of the constitution through referendum and initiative in the country and it overruled or neglected by the Legislature and cannot be challenged or declared unconstitutional by the court as there is no judicial review for this. The Cantons can also have their own referendums. So in the sense, the sovereign rests with the people not with the government.

INTRODUCTION:

Switzerland is a landlocked country situated in the heart of the Western Europe. The Swiss are not homogeneous people. They differ sharply in race, religion and language. German, Italian and French are the three languages spoken in the country. These three languages have been recognised as official languages of the Confederation. The Swiss Confederation consists of the 23 sovereign states known as Cantons. The three cantons are further divided into half. So in total there are 26 Cantons in the country each with its own constitution and citizenship.

HISTORICAL REVIEW:

Before the French Revolution, the Swiss Confederation consisted of 13 Cantons which acted as completely sovereign states in the management of their internal affairs. The Confederation had jurisdiction only over foreign relations, matters relating to peace, and war and inter-cantonal disputes. These affairs were managed by a Diet which met at irregular intervals in one of the Cantons. The members of the Diet were agents of their respective Cantons. The decisions of the Diet were not legally binding on the Cantons unless they were unanimous. There was no central agency to enforce the decision of the Diet. The individual rights of the cantons were so preponderant and the federal organisation so weak that it has been said that there was no such thing as Swiss state exists.

During the period of French Revolution, the regime of the Directory France invaded and conquered Switzerland in 1798. The victors destroyed the old constitution and reorganised the

cantons under the centralized government with the democratic features on the lines of the revolutionary France. The new state was named Helvetic Republic. The Cantons were further subdivided so as to form mere administrative departments. The Swiss reacted so strongly against the French-imposed constitution that the Napoleon Bonaparte had to restore the old federal system by his Act of Mediation of 1803. Under this Act, six more cantons were added to the original thirteen. After the fall of the Napoleon Bonaparte, the Congress of Vienna of 1815 restored the old confederate and the Cantonal institutions and added three more cantons were added to Switzerland.

The period of 30 years from 1815 to 1848 was marked by a struggle between the forces of unification on the one hand and those of greater Cantonal autonomy on the other. In 1845, seven catholic cantons formed a separate league known as Sonderbund. This led to a civil war which was soon suppressed. The defeat of the Catholic Cantons was, in fact, the victory of the champions of the national unity. In 1848, after the defeat of the catholic cantons, a new liberal constitution was framed. It was drafted by the Diet and approved by the people in a referendum. This constitution transformed Switzerland into a federation, though the country is still known as the Swiss Confederation. The Constitution of 1848 was based on the American model. It was the child of compromise.. the cantons retained their sovereign character so far as their sovereignty was not limited not limited by the Federal Constitution. The powers of the Federal government extended to foreign and military affairs as well as to certain economic matters. The legislative power was vested in a bicameral legislature known as the Federal Parliament and the executive power of the Federal Government elected by the Federal Parliament. The highest judicial organ was the Federal Supreme Court which had no power to declare laws unconstitutional.

The Constitution which was drafted in 1848 remained in force till 1874. In meantime, a movement for a total revision of the constitution grew strong. The movement had four objectives which were as follows:

1. National Centralisation
2. Extended democracy
3. Re-informed and anti- clericalism
4. State intervention in social and economic fields

The Federal Parliament drew up a new constitution and referred it to the people for their approval. It was adopted by a vote of 3,40,889 and fourteen and a half Cantons against 1,98,000 and seven and a half cantons. The new constitution came into force on 29th May, 1874, but due change in course of time, there many changes in the socio-economic life of the people of Switzerland. The Swiss people were eager to revise the Constitution of 1874 as the of changes in the conditions in last 125 years in the country. So they arranged a constitutional conference in last period of 1997 and after the discussion the constitutional conference prepared a new Constitution. The Central government issued a decree to accept the new constitution on 18th December, 1998 and the new constitution of 1999 which was revised constitution of 1998 is now the working constitution o Switzerland.

SALIENT FEATURES OF THE CONSTITUTION:

The salient features of the Swiss Constitution are as follows:

1. A written & lengthy Constitution:

The Swiss constitution of 1848 as amended in 1874 and which was totally revised in 1999 is a written file. The new constitution of Switzerland is more thorough constitution. It has 196 articles and these have been classify into six titles and each of which contains numerous chapters.

2. A rigid Constitution:

The Swiss constitution is a rigid constitution. The constitution cannot be amended by ordinary law creation process. The process of amending the constitution is difficult. An amendment can become law only when it is agreed by majority of the Swiss voters and by a majority of the cantons through referendum.

3. A Republican Constitution:

The Constitution of Switzerland is Republican in character. It is also believed that Switzerland is the first to experimentation with the Republican institution in the world. The constitution led the establishment Republicanism not only at the centre but also in different cantons. Being a Republic, all potential institutions of Switzerland - Federal, Cantonal and Communal are elective in character. The principal of Republicanism is in fact the bulwark of Swiss democracy.

4.Federalism:

Art 1 of the 1874 Swiss constitution describes Switzerland as a Confederation. But in reality, It was a Federation with 23 cantons (20 full & 6 half cantons) constituting the federation. The 1999 total revision of the constitution has given strength to the federation. Switzerland is now a federation both in name as well as on reality.

The Federal nature of the Swiss Constitution is reflected by its following features; Non-Sovereign status of Cantons, Supremacy of Swiss Constitution, Existence of Written and rigid constitution affecting a division of powers between the Swiss Federation and the cantons, the cantons have their separate constitution etc. All these features clearly established the subsistence of a federation in Switzerland.

5. Direct Democracy:

Switzerland has been the home of direct democracy. Since 1848, Switzerland has been working as a direct democracy through such policy of direct legislation- Referendum and initiative. Under the system of referendum, the people have the right to approve or disapprove the laws or constitutional amendment approved by their legislature. Under the systems of initiative Swiss voters can initiate any proposal for Constitutional amendment, which get

incorporated in the constitution when widely held of Swiss voters as well as of cantons approves it in referendum.

6. Plural Executive:

A exclusive features of the Swiss constitution is that it provides for plural executive which consists of seven members elected by the Federal Assembly for four years. The executive powers are in a group exercised by the Federal Council. The president is elected by the Federal Assembly for a period of one year only, and is simply "first among equals". He in no way enjoys a position superior to that of the rest of his colleagues.

7. Bicameral Legislature:

The Swiss Legislature is a bicameral body. The upper house known as the Senate (Council of States) correspond to the cantons of Switzerland or equal basis like that of American Senate which accords equality to all the stages. It is a small house consisting of 200 members. Both the houses have kept on par in respect of their powers.

8. Bill of Right:

A major change affect by the new Swiss Constitution has been the amalgamation of a complete bill of Rights. Under Title 2 chapter 1 and 2 and article 7 to 40, the new constitution describes the basic, civil, social and political rights of the Swiss people. The bill of rights is a very detailed bill and incorporates almost all the rights and freedoms which stand acknowledged as essential conditions of civilized living and necessary for the enjoyment of the right to life.

9. Triple Citizenship:

The system of triple citizenship prevails in Switzerland. The constitution states that every citizen of the cantons and local authorities in that canton shall be the citizen of Switzerland. This entitles a person to enjoy the citizenship of his cantons and local authorities under it as well as that of the Swiss Federation.

10. No Judicial Review:

The Swiss judiciary play a less fundamental role then the judiciary in India or USA. The Swiss Federal Tribunal has only restricted judicial review authority. It can declare only cantonal law unconstitutional. But it does not exercise judicial review of the laws passed by the central government.

11. Permanently Neutralized Status:

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

The political system of Switzerland has such features as direct democracy and plural executive, the political maturity of the Swiss, and the status of a permanently neutralized and internationally recognized neutral state. Those have all combined to give Switzerland an honourable place in the world, and its constitution enjoys a unique place in the world of constitution.

DIRECT DEMOCRACY:

Direct democracy is defined as the a form or system of democracy in which the citizens are given an extraordinary power to the amount that the people can participate in the process of legislation or law- making and granting them a maximum or major self-determination in the political of the state in which they resides. In Switzerland, the direct democracy has been a long tradition. The origin of the concept of the direct democracy in the country can be traced back to the late middle ages. The archaic forms or the assemblies of the electorate discussing the major political issues have been practised in the part of the country since the foundation of Old Swiss Confederacy dated to 1291.

J S MILL VIEW ON STATE AND DIRECT DEMOCRACY & ITS SAFEGUARDS:

J.S. Mill considered the state as the product of the will of the people who composes it rather than an instrument for the promotion of their interests. He argued that the state interference is indispensable for the development of the personality of an individual in the state. He also does not emphasis the negative character of the state like Bentham. In the sphere of the self-regarding actions which the individual alone no interference of the state can be tolerated. The state can interfere in the cases of the encroachment of the other's rights , infliction on them any loss or damage not justified by his own rights, falsehood or duplicity in dealing with the others, unfair or ungenerous use of the advantages over them even the selfish abstinence from the defending them against the injury.

He is the strong supporter of the democracy, but is against the tyranny of the majority. He pleads for the toleration of the minority opinion. The J.S. Mill states that the states though a natural growth do not e=resemble the trees which once planted are growing while the men are sleeping. The government is to be nourished through proper care by the individuals. According to him, the government is an organisation acquired and evolved by the people, in course of time by the habit of obedience of its laws and actively participating in its type being dependent upon the local conditions of the people. The government has to be worked by the ordinary men and it requires for its existence and proper functioning not only their simple acquiescence but their active participation. His insight into government is clearly revealed the points according to him must be satisfied by the government of the following three conditions which given by him:

1. The people must be willing to accept it.
2. They must be willing and able to do what is necessary to keep it standing.

3. They must be able and willing to do what it requires of them to enable it to fulfil its purposes.

In any of these conditions or points are not fulfilled, any form of the government however promising it may look, will be a failure. Clearly the conditions and view on the democracy supports the principles of the direct democracy.

However, he supported the best form of the government is not the utopian or chimerical but a highly practical employment of the scientific intellect, and to introduce into any country the best constitutions is one of the most rational objects to which practical effort can address itself.

He says that the democracy is not ideally the best form of the government unless it can be so organised that no class, not even the numerous, shall be able to reduce all but itself to political insignificance and direct course of legislation and administration by its exclusive class interests. In accordance to these conditions, he considers the representative form of government is ideally the best policy. Despotism however benevolent, can never be a good government as its subjects suffer in their intellectual, moral and political capabilities. There is no such as a good despotism.

He also stated that the best government is not only which is most efficient but the one which serves as the best school of citizenship for imparting political education and training of the citizens. Such a government should promote virtue and intelligence of the people. Its value should not be judged in terms of its work.

The main criteria for a good government is the degree to which it tends to increase the sum of good qualities among the governed collectively and individually, more than efficiency of the administration. In this considered he considered the representative government as the best government because it was a means of bringing the general standard of intelligence and honesty existing in the community and the individual intellect and the virtue of its wisest members, more directly to bear upon the government and investing them with the greater influence on it, than their work in general has under any other mode of organisation.

Due to the expected loopholes in the direct democracy, he suggested a number of reforms as intelligent safeguards and methods by which democracy can be effectively ensured and worked properly. These are as follows:

1. There should be system of proportional representation to ensure that each section of the society got representation to its voting strength.
2. Right to vote should have contained the qualification i.e. it must be restricted to those who can read, write and can at least do the simple problems of the arithmetic and those who pay no taxes and to tax people as members of the legislature have every motive to be lavished and never economise as far as the money matters are concerned.
3. There should be polarity of voting as such, intellectuals with distinction should be given more votes.

4. There should be open ballot system. Secret ballot would lead to irresponsible and selfish voting.
5. Women should also be given the right to vote.
6. There should be Second chamber for those who were not adequately represented.
7. The idea of the annual elections to the Parliament should be rejected. He was against the control of the intellectual by those who are inferior to them.
8. There should be no payment to the members of the Parliament.
9. There should be more legislative powers to the Lower House. The final authority to legislate must be with the Lower House but the bill could be done by the Upper House as it had the legal ability.
10. The expenditure on elections should be not borne by the candidates.
11. Local governments must be expanded to enable more people to participate in democracy.
12. In the Parliament, there should be reforms done for social evils such as labour chases, immoral practises done by the people and making laws to counter its expansion and prohibit it.
13. Public servants should not be popularly elected, they should be selected through competitive examinations.

DIRECT DEMOCRACY IN SWITZERLAND:

The most salient feature of the Swiss Constitution is what known as the institution of direct democracy. The instruments of direct democracy are referendum and initiative. The referendum consists of the submission of the people, for the approval or rejection, of a law passed by the legislature. The initiative is the right of the people to initiate or propose a piece of legislation. The referendum and initiative are used both in Centre and in the Cantons.

REFERENDUM:

The referendum consists of the submission of the people, for the approval or rejection, of a law passed by the legislature. The referendum is of two kinds:

1. OBLIGATORY REFERENDUM:

In the Federation, the referendum is compulsory in respect of the constitutional changes. If both Houses of the Federal Parliament agree on a constitutional amendment, it must be submitted to the voters and becomes law if approved not only by a majority of the qualified voters but also by the majority of the Cantons.

2. OPTIONAL REFERENDUM:

In the Federation, the referendum is optional in respect of ordinary laws. Article 89 of the Swiss constitution states that if 50,000 citizens or eight Cantons make a demand, federal laws of general effect and federal decrees shall be submitted for the approval of the people. Similarly, if 50,000 or eight Cantons make a demand, international treaties concluded for an indefinite period or for more than fifteen years are submitted

for the approval or rejection by the people. Federal decrees which came into force immediately have likewise to be submitted for the approval of the people if a demand to that effect is made by 50,000 or eight Cantons.

REFERENDUM IN CANTONS:

In the Cantons, the compulsory referendum is in the use for the amendments to the constitutions and in several for the adoption of ordinary laws. The optional form of the referendum is in use in almost all the Cantons for ordinary laws.

INITIATIVE:

The initiative is in the Federation for constitutional law. If 50,000 voters desire a total revision of the constitution or if the majority of the voters favours for the revision of the constitution, both Houses of the Federal Parliament are dissolved and fresh elections were held. The newly elected Parliament proceeds to consider the proposed revision. When approved by both Houses, it is submitted to the citizens for their approval and becomes law if approved by a majority of voters and by a majority of the Cantons.

PROCEDURE FOR PARTIAL REVISION:

A proposal for the partial revision of the Constitution may be submitted by 50,000 voters by means of an initiative petition. If the demand is submitted in the form of a duly drafted bill complete in all respects, it is called formulated initiative. If the demand is couched in general terms it is called unformulated initiative.

If both Houses of the Parliament agree on the proposal contained is an unformulated initiative, a regular legislative measure is drafted and submitted to the voters and Cantons for their approval. If it is approved by a majority of the Cantons, it becomes law. If the Federal Parliament does not agree to the proposal, the question is submitted to the people. If a majority of the voters are in the favour of the revision, then the Federal Parliament has to draft a bill on the lines suggested in the initiative and submit it to the voters. If the bill is approved by a majority by voters and also by that of the Cantons it becomes law.

PROCEDURE FOR FORMULATED INITIATIVE:

When a demand is presented in the form of a bill complete in all details, the Federal Parliament must submit it for the approval of the voters and the Cantons. If the bill is approved by a majority of the voters and by the majority of the Cantons, it becomes law. If the Parliament does not approve the bill, it may submit it to the voters recommended that it has been rejected, but if the bill is approved by a majority of the voters and that of Cantons, it becomes law despite the opposition of the Parliament. The Federal Parliament has another alternative. It may draft its own bill and present it to the voters together with the bill proposed by popular initiative. Of the two bills thus submitted, the one which is approved by the people and the Cantons become law.

SCOPE OF INITIATIVES:

The initiative is not used in the Federation for ordinary laws.. the initiative is in use in all Cantons, except one, for constitutional laws and in all, except a few, for ordinary legislation. The procedure in the Cantons is almost the same as in the referendum.

MERITS OF DIRECT DEMOCRACY:

The merits of the direct democracy system of Switzerland are:

1. More effective popular sovereignty:

Democracy is based on the principle of the popular sovereignty. The institution of referendum and initiative upholds this principle more effectively than representative democracy. People directly take part in legislation. Laws made by them express their will more authentically than those made by their representatives.

2. Minimum evils of the party system:

The referendum and initiative minimize the evils of the party system. In many countries, party system has been responsible for the failure of the democracy. Parties and their leaders often act from partisan motives, ignore national interests and the wishes of the people, misguide and confuse the masses by their partisans and even corrupt the means of patronage they command.

3. Safeguards the interests of the people:

It safeguards the interests of the people against the vagaries , high handedness, arrogance and incompetence of the legislature.

4. Inculcates Responsibility and Patriotism:

It inculcates the people a sense of responsibility and strengthens their sentiments of patriotism. It also gives them the valuable political education and familiarizes them with intricacies of legislation.

5. Damper to Radical Politics:

It acts as damper to the radical politics, minimizes the possibility of the political upheavals and discourages the unbridled demagogy.

DEMERITS OF THE DIRECT DEMOCRACY:

The demerits of the direct democracy system in Switzerland are:

1. Less importance to the Legislature:

It was said that the referendum and initiatives undermine the power and prestige of the legislature. It is obvious that when the people themselves legislate, the legislature is bound to lose its importance.

2. Legislation requires experts:

Another reason for its demerits is that in the modern society legislation requires the experts and technical knowledge which the masses are not supposed to possess. The laws initiated by the people are bound to be slipshod, ambiguous and incoherent.

3. Unnecessary delay by referendum:

It is argued that the referendum involves unnecessary delay, other measures of urgent importance are delayed which often leads to harmful consequences.

4. Slow social transformation:

Finally, it is said that the people being conservative by temperament, laws aimed at eradicating deep-rooted social evils have no chance of being enacted. It thus slows down the tempo of social.

5. No Judicial Review:

If the bill or the law is amended by the people and Cantons by the majority of vote in referendum and revision of the constitution through initiative, it cannot be challenged in any court of the country and declared unconstitutional.