

## Select Constitution-II

### Unit-3: Switzerland\_I

#### Swiss Political Traditions

##### Introduction

The Republic of Switzerland, known by the formal title of Swiss Confederation, is situated in the heart of western Europe. The country is surrounded by three powerful neighbours — France, Italy and Germany. The people of the country belong to different religious, racial and linguistic communities. In spite of all these differences, the Swiss constitute a thoroughly coherent nation. A high sense of democracy has developed in Switzerland. It may be mentioned here that Switzerland is known for its healthy tradition of self-government which has been established on Swiss soil for the last seven hundred years. This unit introduces us to the process of development of Swiss Constitution as well as its unique characteristics. Like many constitutions of the modern world, the Swiss Constitution has also passed through various stages. In this section we shall deal with the development of the Swiss constitution.

Originally Switzerland consisted of a number of sovereign States without any coordinating central authority. In the later part of the 13th century the various communities of these states entered into a league of mutual defence to protect their common rights. After the treaty of Westphalia in 1648, the confederation got recognition of its independent existence. However, the confederating units were very much sovereign in administering the internal affairs. The confederation had jurisdiction only over foreign relations, matters relating to peace and war and inter-Cantonal disputes.

After the French Revolution, some changes were brought in the Swiss system and the Congress of Vienna gave to Switzerland the old Confederation and added three more Cantons to it. However, the cantons maintained their internal autonomy. The new constitution further established a Diet which was empowered to declare war and conclude peace. Again, the act of Mediation added 6 more Cantons. Three more French speaking cantons were added in 1815 by the Federal Agreement of 1815 resulting in the present configuration of Switzerland.

Influenced by the Liberal Revolution of France of 1830, in Switzerland a liberal renewal movement known as 'regeneration' began. This movement emphasized on implementing democratic principles and resulted in abolition of aristocratic rule in as many as 12 cantons. However, religious differences were quite evident and in 1845, the seven Catholic **Cantons** formed a separate league called the *Sonderbund*. Such formation resulted in a Civil War where these seven Cantons were defeated. It paved the way for national integration and the Swiss Diet approved a new constitution for establishing a stronger and organized government in Switzerland in 1848. Modelled after the various provisions of the United States of America, the Constitution of 1848 transformed the Swiss Political system into a Federal system.

- **Swiss Federal Constitution of 1848** : The Federal Constitution of 1848 advocated for a

centralized government and, therefore, took over many rights and duties which were earlier enjoyed by the cantons. However, the cantons continue to enjoy their rights of self determination. The important features of this Constitution are as follows:

- Declaration of fundamental rights of the citizens: The new Constitution gave citizens a number of rights and freedoms, including the freedom of the press, freedom of religion, and the right to choose their place of residence.
- Elected two-chamber Federal Assembly: The Constitution vested legislative power in a Federal Assembly of two chambers; the Council of States and the National Council.
- Establishment of Federal Council: The executive power of the country was vested in a Federal Council, known as *Bundesrat* consisting of seven members elected by the Federal Assembly.
- Establishment of Federal Tribunal: According to the Constitution, a federal court of justice known as Federal Tribunal should be established to settle dispute between the Cantons.

The new constitution was accepted with a majority of 15½ cantons and Berne was designed as the Federal capital. The constitution of Switzerland was partially revised in 1866 and then totally revised in 1874.

- **The Federal Constitution of 1874** : The constitution of 1848 remained in force for 26 years. During this period, the demand for more centralization was made from many quarters. Some internal problems of the country also led to the growth of Radical movements. It resulted in the mobilization of public opinion leading to the revision of the Constitution of 1848. The new constitution came in to force on May 29, 1874.

The new constitution has given the Federal Government centralized control over military matters. It provided for nationalization of railway under federal ownership. The central administration became more important compared to the cantons. Moreover, the powers of the Federal Tribunal were considerably enhanced. The constitution has been amended a number of times since its adoption. The separate judicial systems of the Cantons were abolished.

**The Federal Constitution of 1999** : This Constitution of 1999 is the third federal constitution of the country and the administration of the country is presently run according to this constitution. At present there are 26 cantons constituting the Swiss federation. The new constitution came into force on 1st January 2000. It is a complete revision of the constitution without changing the structure of the Swiss federation as provided for by the 1874 Constitution.

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## SALIENT FEATURES OF SWISS CONSTITUTION

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The Constitution of Switzerland has its own unique characteristics. Now let us read the important characteristics of the Constitution:

- **Written and Lengthy Constitution:** The Constitution of Switzerland is lengthy and deals with various matters including details relating to matters like fishing and hunting, cattle diseases, gambling houses and lotteries. Usually, much of these issues belong to the sphere of ordinary laws and not constitutional laws. But such detailed discussions have been made to avoid any ambiguity regarding the division of powers between the federal and cantonal governments. Though, the constitution is a written one, certain conventions have also grown in course of time.
- **A Dynamic Constitution:** The Constitution of Switzerland is dynamic as it is changing with the changing time. The constitution has been amended several times to meet the new demands of the people. In this unit, we have found that the Swiss constitution of 1848 has been amended in 1874. Thereafter the constitution has undergone various changes.
- **Rigid Constitution:** The Swiss constitution may be classified as rigid as its amendment procedure is complex. The method of constitutional revision is discussed in detail in Chapter III of the Constitution of 1874. For amending the constitution, the instruments of Constitutional Referendum and the Constitutional Initiative are used. The Swiss constitution may be partially or totally revised. A total and partial revision of the Constitution can be made if both the Houses of Federal Assembly approve of the amendment and the same is also approved by a majority of the Swiss cantons and a majority of the citizens of Switzerland. Moreover, the citizens of Switzerland can also take initiative in the amendment of the constitution. For the total amendment of the constitution at least 50000 people should put their signature.
- **Republican Constitution:** The Constitution of Switzerland is Republican in character. In fact, Monarchy never existed in Switzerland. It is also believed that Switzerland is the first to experiment with republican institution in the world. According to Article 6 of the constitution, the Cantonal constitutions must ensure the exercise of political rights according to republican forms. Article 4 provides that the Swiss citizens are equal before

law. The constitution prohibits discrimination of the people on the basis of birth and there is equality on the basis of law. Thus every Swiss man and woman attaining the age of 20 years and who is not excluded from the rights of active citizenship, has the right to determine his government. Being a Republic, all political institutions of Switzerland – Federal, Cantonal and Communal – are elective in character. All Swiss citizens participate directly in the affairs of the government from election to amending the constitution.

- **Rights of the citizens:** The Swiss citizens are given certain rights by both the Federal and Cantonal constitutions. Though, the Constitution does not contain a formal Bill of Rights, yet some two dozen Articles scattered throughout the document deal with the rights of individuals. These rights are protected by the court of law. The Swiss citizens are entitled to various rights viz, right to equality, right to freedom of press, right to freedom of association and petition, freedom of belief, right to marriage, right to form associations, right to petition, etc. The Constitution of 1999 further increases the rights of Swiss citizens. It now contains nine fundamental rights of the citizens. Besides, the new constitution also contains certain 'social goals' which are not directly enforceable by the court of law but they aim at ensuring social security, health care and housing.
- **Provision of three-fold Swiss citizenship:** A citizen of Switzerland has three-fold citizenship – Communal, Cantonal and Federal. A person before becoming a citizen of Switzerland must be a citizen of Canton and he cannot be a Cantonal citizen without becoming a citizen of a Commune. Therefore, the federal constitution of Switzerland says that every citizen of a Canton is a Swiss citizen. Again, it is only by being a citizen of a Canton that one acquires the citizenship of Switzerland. An individual can acquire Swiss citizenship in a number of ways, like, by birth and by naturalization.
- **Provision of Federalism:** The Swiss Constitution provides for the establishment of federalism though Article 1 describes it as a Confederation. However, the Preamble of the Constitution states that to achieve the solidarity of the Swiss nation, a 'federal Constitution' has been adopted. The constituent units of Swiss Federalism are known as Cantons. Article 2 of the Constitution states the aim of the Constitution which 'is to preserve the outward independence of the fatherland, to maintain internal peace and order, to protect the freedom and the rights of the confederates and to promote their common prosperity'. The Swiss constitution declares the Cantonal sovereignty and they can amend their own constitutions. The federal government has been given the exclusive

control over foreign relations, despatch and reception of diplomatic agents, declaration of war, conclusion of peace treaties, management of the Swiss military system, maintenance of peace and order, ownership and control of railways, currency, banking, postal and telegraph, higher education etc. In the later period, various amendments made to the constitution further increased the power of the federal government. However, local autonomy is still guaranteed in Switzerland. The cantons still possess residuary powers and it is still from the cantons that the federal government draws authority and derives its constitutional usages. The constitution guarantees to the cantons their territory, their sovereignty, their constitutions, the liberty and rights of their people and the constitutional rights of citizens, and the rights and powers conferred by the people on the authorities. Thus, the cantons are regarded as the pre-existing and constituent members of the state. The Council of States of Switzerland represents the cantons and each canton, irrespective of its population or area, sends two representatives. Again, the approvals of cantons are required for the amendment of the constitution. However, amendments of the Swiss constitution made from time to time have contributed to the process of centralization. There are four main factors responsible for such rise of federal power is: war, economic depression, the demand for ever increasing social services and the mechanical and technological revolution in transport and industry.

- **Plural and non-partisan Executive:** Another unique feature of the Swiss Constitution is the provision for a plural executive, known as Federal Council or Bundesrat. Therefore in Switzerland one cannot find either a Parliamentary form of government like England or a Presidential form of Government like USA. The constitution of 1848 introduced the provision for a plural executive and it continues till date. Accordingly, the executive consists of 7 members and one amongst of them is elected by the Assembly to serve as its chairman and is designated as the President of the Confederation. Moreover, the members of the Federal council do not belong to a particular political party; rather they form a heterogeneous group belonging to four different political parties. Thus, the plural executive of Switzerland is a combination of ministerial responsibility and permanence of tenure. **Democratic Constitution:** The practice of democracy in Switzerland is very old. Therefore, James Bryce has opined that among modern democracies which are true democracies, Switzerland has the highest claim to be studied. Presence of democratic values in Switzerland is evident from the fact that the various small communities had popular governments from ancient period. All Swiss citizens are equal before law and

every citizen has been given the right to vote. The Swiss faith in democracy as a political principle is most characteristically revealed in the people's extensive use of the instruments of direct popular government. The country is known for its practice of direct democracy. The origins of Direct Democracy can be traced back to the late middle ages. The modern system of direct democracy with frequent use of referendum was started in the 19th century. Although various provisions for centralization of power have been made in Swiss constitution, democratic principles still prevail in the country. The method of Referendum and Initiative are frequently used as instruments of direct popular government. The most ancient of these instruments of direct democracy is Landsgemeinde or open town meeting in which every male adult can speak, make his own laws and elect officers. This method is still prevalent in five Cantons. Therefore, it is often said that democracy and Switzerland are synonymous. The principle of Swiss democracy is to be communal before being cantonal and to be cantonal before being federal. The opinions of all Swiss citizens are given equal weightage and the popular will is formed from bottom upwards. Moreover, the Swiss constitution was adopted by the people by their direct vote and can be amended only by the people themselves.

## **ORGANIZATION OF THE SWISS EXECUTIVE: THE FEDERAL COUNCIL**

As mentioned earlier, the federal executive of Switzerland is a plural body known as the Federal Council or *Bundersrat*. The Federal Council was instituted by the 1848 federal Constitution. The authority of the federal executive is vested in the council of seven members. These seven members of the council thus exercise the supreme directing authority of the confederation. The members of the federal council are elected for a period of four years from among the Swiss citizens who are eligible to be elected to the National Council of the Federal Assembly. Amongst the seven members of the Federal Council, one is elected by the Assembly as the President while another member is elected as the vice-President of the Swiss federation. The Swiss constitution also prescribes that, 'no more than one person from each canton may be chosen for the Federal Council'. Though the members of the federal council are elected for a period of 4

years, they are re-elected as many times as they desire to be elected.

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## UNIQUE CHARACTERISTICS OF THE FEDERAL COUNCIL

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The federal executive of Switzerland possesses certain unique characteristics. We have already learnt that this executive is a plural one. Besides, it has certain other uniqueness. Therefore, this section of the unit deals with these unique characteristics of the Swiss executive.

**Plural in character:** The executive power of the Swiss confederation is vested in a plural executive consisting of seven members known as Federal Council. According to Article 177 of Swiss constitution, the Federal Council is a collegial body, in which every member enjoys equal power and status. This system has proved to be very advantageous with the merits of the Cabinet system. The Swiss executive is representative of all opinions and areas of the country, which makes democracy more meaningful in Switzerland.

**Non-partisan executive:** The Federal Council is a heterogeneous group of politicians belonging to four different parties. They are chosen for their capacity as administrators. Therefore, *Lord Bryce* has remarked that the Federal Council, 'stands outside party, is not chosen to do party work, does not determine party policy, yet is not wholly without some party colour'. The Swiss citizens elect those persons as the executive who possess administrative skill, mental grasp, good sense, tact and temper but not the good speakers. Therefore, it is often said that in Switzerland, the office must seek the candidate, not the candidate the office. All differences among the members of the Federal Council arising out of their different party background or ideologies are sorted out through compromise as public opinion in Switzerland expects everyone to subordinate his own feelings to the public good. Therefore, Lowell has remarked that the Federal Council 'depends to a great extent on the confidence in its impartiality, and hence its position is fortified by anything that tends to strengthen and perpetuate its non-partisan character'.

**Long tenure of the Councillors:** we have already read in the previous section that in Switzerland though the councillors are elected for a term of 4 years, they tend to remain in office for a longer period or until they desire to leave the office. It is possible for several reasons. First of all, the role of political party in the formation of the government is minimum. Secondly, Swiss people prefer those persons in the affairs of the government with good temper,

dedication and administrative skills. As a result of it, the Federal Council is unique in its stability and becomes a permanent body though virtually chosen after every four years. The average period of service is more than 10 years, while some has served as the councilor up to 32 years. Therefore, the Federal Council is regarded as the most stable government in the world.

**Neither Parliamentary nor Presidential:** The Swiss Federal Council is neither Parliamentary nor Presidential. It is not parliamentary because, in a parliamentary system the cabinet implies a degree of party solidarity that the Swiss body does not possess. Party solidarity also implies political homogeneity and in the parliamentary government all the members of the cabinet belong to the same party. The members of the cabinet are responsible to the legislature, individually and collectively and can remain in office so long as it retains its confidence. On the other hand, though the Swiss Council is elected by the federal assembly, yet the Councillors are not required by the Constitution to be members of the Assembly. They become Councillors not because they belong to the Parliamentary majority party or are the leaders of the political parties, but in their capacity as administrators. Again, Federal Council is not a homogeneous whole and differences of opinion among Councillors are permitted and allowed to become known. Such differences cannot exist in a cabinet government. Unlike the cabinet government, the resignation of one councilor does not bring a crisis in the government. The Federal Councillors do not resign collectively or individually when their measures or policies are rejected.

**Swiss Executive is neither presidential type:** In a Presidential government, the executive is separated from the legislature. The administrative heads of different departments constitute the President's Cabinet and are appointed by the President; they remain in office so long as he wishes them to continue. The office of the President does not depend upon Congress. He is popularly elected for a term of four years. In Switzerland, there is a plural executive. Though the Swiss constitution provides for a President, he is not like the head of the state of a presidential form of government. The Swiss Federal Council is not a separate branch of government with an independent policy of its own. Thus, Switzerland provides to the world a unique type of executive which is neither parliamentary nor presidential.

**Stability of the Council:** The Federal council is known for its stability. The non-partisan character of the Council helps in its stability. Moreover, the Parliament cannot vote a Federal

Council out of office. In Switzerland, the concept of vote of 'no-confidence' does not exist which can force a government or a member to resign. For all these reasons the executive or the federal council is very stable in Switzerland. Stability of the executive in Switzerland secures continuity in policy and permits traditions to be formed.

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## **PRESIDENT OF THE SWISS FEDERATION**

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The President of the Swiss federation, whose constitutional title is the "President of the Confederation," is one of the seven Councilors and is chosen, as also the Vice-President, by the Federal Assembly from among the members of the Federal Council for a term of one year. However, it must be remembered that the Position of the Swiss President is not like the American President or the Prime- Minister of the UK. He does not enjoy any special power as the President of the Confederation. Like other members of the Council, he is given the charge of a department of federal administration.

The Swiss President is elected from the seven members of the Federal Council for a period of one year. No President can be re-elected for two consecutive years. However, he or she may be re-elected after a break of one year. The President as well as the Vice-President is elected on the basis of rotation. As the President of the country, he or she enjoys some precedence over his or her colleagues. However, this precedence is merely a formal one. The President is not even regarded as the chief administrator as he or she has no more power than his or her colleagues and therefore is no more responsible than other councilors for the administration of the country. All the decisions come from the Federal Council as a single authority.

The President of Swiss Confederation acts as the Chairperson of the Council. He or she presides over the meetings of the Council and has a casting vote in case of a tie. He or she also presides on ceremonial occasions. He or she also acts as a link between the various departments under the various members of the council. The functions of the President are laid down in the Law on the organization of Federal Administration of 1914 and it gives him or her certain very limited emergency powers, general supervisory powers, and the responsibility of the Federal Chancellery. It also states that 'the President represents the confederation at home and abroad'. Moreover, he or she performs all the ceremonial functions as the head of the state. Thus, though vested with no special power, the office of the Swiss President is the highest office open to Swiss politicians. From the above discussion it

is clear that all the members of the Federal Council occupy an equal status and equal powers. The members of the Federal Council are not chosen by the President. Therefore, the Swiss President performs only certain ceremonial functions and cannot be termed as the chief executive of the country.

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## **FUNCTIONS OF THE FEDERAL COUNCIL**

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Article 95 of the Constitution describes the Federal Council as 'the supreme executive and governing authority of the confederation'. Therefore, all the executive powers of the confederation are vested on the Council. Article 102 contains a list of the major functions and duties of the Federal Council. These are:

- The Federal Council conducts the affairs of the Confederation in accordance with federal laws and decrees.
- It should ensure due observance of the Constitution, the laws and decrees of the Confederation, and Federal Treaties. The Federal Council is empowered to intervene and take necessary action, either on its own initiative or in response to an appeal against a grievance, if Cantonal Governments do not co-operate in the proper execution of federal laws or decrees or other treaties.
- According to a constitutional provision the Cantons must have their Constitutions and alterations sanctioned by the Federal Assembly. It is the duty of the Federal Council to supervise the 'guarantee' of Cantonal Constitutions. The guarantee is granted provided that the Cantonal Constitution contains nothing contrary to the provisions of the Federal Constitution.
- The Constitution empowers both the houses of Federal Assembly, to each member of either House, to each Canton and a half-Canton and the Federal Council to initiate legislation. However, in practice, it is the Federal Council which really initiates major portion of the legislation to be enacted. Again, a Councillor is assigned to guide the bill all the way through the legislative process. The bill is examined in the committee in his or her presence and he or she gives advice and comments.
- As a result of the growing legislation and increasingly complex nature of governmental activities the Federal Assembly delegates to the Federal Council a great deal of discretion in the administration of the Federal laws. The Federal Council then issues rules and regulations which have the force of laws.

- The Federal Council takes part in the legislative process in the following ways:
  - Leading the preliminary proceedings of legislation
  - Submitting federal acts and decrees to the federal Assembly
  - Enacting ordinances in so far as the Federal Constitution or federal law empowers it to do so.
- The Federal Council examines the laws and ordinances of the Cantons that are required to be submitted for its approval. It also supervises the branches of Cantonal administration where such supervision is incumbent upon it.
- Federal Council looks into the execution of judgments of the Federal Tribunal and also of the agreements and arbitration awards upon the disputes between Cantons. The execution of the decisions of the courts and many provisions are left to the Cantons. However, if the cantons fail to carry out these obligations, then, as the last resort, the appeal is made to the Federal Council.
- Federal Council also performs the function of appointing. The Federal Council in practice delegates its right of appointment in very many cases to the various branches of administration and other independent authorities.
- According to the Constitution of Switzerland, the Federal Council should examine the agreements of the Cantons among themselves and with foreign states. The Council is also empowered to sanction them if they are in accordance with the constitution and law. If the treaties violate the rules and regulations of the Constitution, then it may declare the treaties null and void. All kinds of official relationships with foreign governments are established through the agency of Federal Council.
- The Federal Council conducts the foreign relations of Switzerland. Besides conducting the foreign relations of Switzerland, the Federal Council also safeguards the external interests of the Confederation, ensures external safety of the country and also maintains her independence and neutrality. Thus, the Federal Council manages the external affairs of the government. The Federal Council also negotiates treaties and ratifies them after approval of the Federal Assembly.
- Federal Council is also entrusted with the power of looking after the internal security of the Confederation and maintenance of peace and order. Federal Council also looks after the measures to be implemented if internal peace is disturbed in the cantons.
- In the time of emergency, when Federal Assembly is not in session, the Federal Council is empowered to call out troops and employ them wherever it finds necessary.
- Being the executive, the Federal Council is entrusted with the charge of the military affairs

of the Confederation and of all branches of the federal administration.

- The Federal Council also examines the laws and decrees of the Cantons which require its approval and supervise such branches of Cantonal administration as are placed under its control.
- The Federal Council also performs the important function of administering the Federal finances and prepares the budget and submits accounts of federal receipts and expenditure.
- The Federal Council supervises the official conducts of all officers and employees of the Federal administration.
- The Federal Council gives an account of its work to the Federal Assembly in each ordinary session. It also presents a report on the internal conditions in the country as well as foreign relations to the Federal Assembly. In that report, the Council may also recommend certain measures for the promotion of general welfare. If the Federal Assembly demands, the Council may also submit special reports to it.
- The Federal Council also exercises certain judicial powers. It hears appeals of private individuals against a decision of the Federal Railway Administration. It has also appellate jurisdiction over the decisions of the Cantonal governments in cases relating to discrimination in elementary schools, differences arising out of treaties relating to trade, patents, military taxation, question about occupation and settlement, Cantonal elections etc.

## **THE LEGISLATURE: THE FEDERAL ASSEMBLY**

### **INTRODUCTION**

The Federal Legislature of Switzerland is known as Federal Assembly. The Federal Assembly is bi-cameral. The Federal Assembly exercises the supreme power of legislation in Switzerland. The Swiss legislature is supreme and the Constitution expressly states that 'subject to the rights of the people and of the Cantons.....The supreme power of the Confederation shall be exercised by the Federal Assembly.' Thus, Federal Assembly of Switzerland exercises supreme powers in matters of legislation. This unit is going to deal with the different aspects of the Swiss Federal Assembly - its

organization, the composition of the both Houses of the Assembly and its powers and functions along with a discussion on the position of the Council of States.

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## **ORGANIZATION OF THE FEDERAL ASSEMBLY**

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As mentioned earlier, the Federal Assembly is bi-cameral in nature. The two chambers of the Federal Assembly are: 'Council des Etates' or the Council of States and 'Council National' or the National Council. In this section we shall deal with the organization and powers and functions of the two Houses of the Federal Assembly. The Federal Assembly can be legally dissolved only after the adoption of a popular initiative calling for a complete revision of the Constitution.

### **The Council of States**

- **Composition and Method of Election:** The Council of States is the upper House of Swiss Federal Assembly like the Rajya Sabha of Indian Parliament. The Council of States of the Swiss Federal Assembly represents the component units of the Confederation on the basis of equality. Every Canton, irrespective of its size or population, is entitled to two representatives and every half-Canton one representative. Twenty cantons send two representatives each while six half-cantons send one each. Therefore, the Council of States is now composed of 46 Councillors. There is no uniform procedure in all the cantons for the election of the members of the Council of States and the same varies from canton to canton. Each canton by its own laws determines the mode of election of the Deputies, the length of their term of office, and also the allowances to be paid to them. In certain Cantons the members are elected indirectly, while in some others they are elected directly. Therefore, in Switzerland, there is no uniform method of election, or a similar tenure of office or an equal fixed salary.

However, as we have already studied/learnt, the membership of the Council of States is usually stable as most of the members are re-elected for as long as they wish to serve.

- **Sessions:** The Council of States must meet once a year in ordinary session on a day. However, the Swiss Constitution has also made a provision for calling of special session either by Federal Council, or on the request of one-quarter of the

members of the National Council or of five Cantons. The Council of States elects its own Chairperson and Vice- Chairperson for each ordinary and extraordinary session.

The Chairperson presides over the meetings of the House and is responsible for the determination of the day to day business of the house. He/she can also vote in case of a tie.

- **Position of the Council of States:** The Council of States possesses equal power and responsibility with the National Council. All legislative measures may be introduced in either of the Houses and should be approved by both the Houses. In financial matters also, both the Houses enjoy equal powers. Thus, the framers of the Constitution wanted to give equal powers to both the Houses. In the initial years both the Houses exercised equal powers but in the later period, it is experienced that the experienced and talented persons prefer to go to the National Council. The members of the Swiss Council of States are not entrusted with any special power. Besides, the tenure of office of the members are not equal also. All these have made the Swiss Council of State a weaker state in comparison to the National Council.

However, it can not be said that the Council of States enjoys a subordinate position like the second chamber of the Parliamentary government. In India we have a Parliamentary type of government where the upper chamber or the Rajya Sabha enjoys a subordinate position. In Switzerland, laws can be originated in either House. In financial matters also, both the Houses are given equal powers. The annual budget is prepared by both the Houses alternatively. Moreover, the Council of States is not a submissive body; it can disagree with the measures taken or passed by the National Council. The National Council does not enjoy veto power over the legislative or financial powers of the Federal Assembly.

The Council of States, therefore, has its own entity. Because of its smaller size, its deliberations are more detailed than those of the National Council.

## **The National Council**

The National Council is a representative House of the Swiss people. It is the lower House of the Swiss Federal Assembly. The total strength of the National Council is not fixed by the Constitution and is changed from time to time with the change in population.

➤ **Composition and method of election:** The National Council is the larger chamber of the Federal Assembly. The total strength of members of the National Council is 200. The composition and organization of the National Council is regulated by the Federal Constitution. All the Swiss citizens who have attained the age of twenty and who have not been deprived of his or her political rights by the legislation of the Confederation or of the Canton where he or she is the resident has the right to participate in federal elections and other federal polls as the referendum. Article 72(2) of the Swiss Constitution has provided that the seats of the National Council should be distributed among the Cantons and half-Cantons in proportion to their resident population, each Canton and half-Canton being entitled to one seat at least. The main objective of such provision is to safeguard the interests of the people living in any particular canton. Zurich, which is the largest Canton of Switzerland, has the highest number of seats in the Council numbering 34 seats.

➤ The members of the National Council are elected by direct ballot on the basis of proportional representation. The members of the Council are elected for a period of four years. To become a member of the National Council, a person should possess all the qualities of a Swiss voter.

The National Council elects its own Chairperson and Vice-Chairperson for each ordinary or extra-ordinary session. The Chairperson is elected for one year. The election of the Chairperson is made in such a way as to guard against the concentration of power in one man, or one party or Canton or linguistic group. The Chairperson has a casting vote which he/ she exercises in case of a tie.

➤ **Sessions:** The National Council meets in regular sessions at the beginning of December. The Council generally has four sittings. In case of an emergency, the Federal Council may summon an extraordinary session. The sessions of the Council are usually very short lasting only about three weeks. During the sessions of the Council attendance of the members is regular and a member absenting himself without strong reasons is deemed neglectful of his duty. The members of the Council may speak in any of the four national languages. According to the Swiss Constitution the Council should conduct business only when an absolute majority of their respective members is present i.e. 101 in case of National

Council. It needs to be mentioned here that the concept of official opposition is absent in Switzerland. The National Council can not displace the Federal Councilors because the latter are not the members of the legislature.

- **Joint sessions:** The two houses of the Swiss Legislature i.e, the Council of States and the National Council usually sit separately. However, they meet in a joint session for three definite purposes—
  - to elect the Federal Council, the Federal Court, the Federal Insurance Tribunal, the President of the Federal Council as also the Vice-President, the President and the Vice-President of the Federal Court and of the Federal Insurance Tribunal, the Chancellor of the Confederation and the Commander in Chief of the Army.
  - to exercise the federal power of pardon,
  - to resolve conflicts of jurisdiction between the major federal organs.

Thus, from above discussion it is evident that the National Council is a very powerful second chamber.

## **POWERS AND FUNCTIONS OF THE FEDERAL ASSEMBLY**

The Constitution gives right to introduce legislation to both the Houses of the Federal Assembly –the Council of States and the National Council, to each member of the Houses, to each Canton and half-Canton and the Federal Council. Article 84 of the Swiss Constitution provides that the National Council and the Council of States ‘shall deal with all matters which the present Constitution places within the competence of the Confederation and have not been attributed to another Federal authority.’ Thus, there are very few constitutional limitations on the powers of the Federal Assembly within its jurisdiction. Moreover, both the houses work in coordination with each other. Now we shall discuss the powers and functions of the Federal Assembly:

**Legislative Powers:** The Legislative power of the Federal Assembly are as follows:

- The Federal Assembly, as a legislative body is competent to enact all laws and decrees dealing with matters which the Constitution assigns to federal authorities, and make laws dealing with the organization and mode of the election the federal authorities.
- The Assembly determines and enacts necessary measures to ensure the due observance of the Federal Constitution; the guarantees of Cantonal Constitutions

and the territory of the Cantons, the fulfillment of Federal obligations; adopts measures ensuring the external safety of the country, her independence and neutrality; the internal safety of Switzerland, and the maintenance of peace and good order, enacts the annual budget of the Confederation, approves State accounts and decrees authorizing loans.

- The Federal Assembly can demand all kinds of information, which it deems necessary, on the administration of the Confederation.
- The Constitution of Switzerland also states that all laws passed and resolutions adopted by the Federal Assembly must be submitted to the people for their acceptance or rejection if the law is not urgent. It is the duty of the Federal Assembly to decide what laws or resolutions are urgent.

● **Executive Powers:** Besides the legislative powers, the Federal Assembly also performs various executive powers. These are as follows:

- The two Houses of the Federal Assembly at their joint sitting, elect the seven members of the Federal Council, its President and Vice-President.
- The members of the Assembly also appoint judges of the Federal Court, the members of the Federal Insurance Court and the Commander-in-Chief.
- The Federal Assembly supervises the activities of the civil service, and even decides administrative disputes and conflicts of jurisdiction between federal officials. It determines salaries and allowances of the members of Federal Departments.
- The Federal Assembly is also vested with the power of controlling the Federal Army. It declares war and concludes peace, ratifies alliances and treaties. All treaties concluded by the Cantons between themselves or with foreign States must be confirmed by the Federal Assembly.
- If the Cantons fail to execute federal laws or obligations, the Federal Assembly decides on the nature of intervention against the offending Canton or Cantons.
- It also sees the relationship between the Confederation and the Cantons. The Assembly also guarantees the Cantonal Constitutions.

● **Judicial Powers:** Main judicial powers of the Federal Assembly are—

- The Federal Assembly grants pardon in joint sessions.
- It also hears appeals against the decisions of the Federal Council relating to administrative powers.

- The Assembly also supervises the performance of the functions of the Federal Tribunal.
- **Financial Powers:** The Federal Assembly of Switzerland also enjoys some financial powers. They are–
  - By making laws, the Assembly can levy taxes.
  - The Assembly decides on the public expenditures of the Confederation. It votes the annual budget as well as approves the annual account of the country.
- **Power of Constitution Amendment:** in Switzerland, the power of the Constitution is exercised by the Federal Assembly as well as by the citizens of the country. The powers of the Federal Assembly in regard to constitutional amendment are as follows:
  - The Federal Legislature may initiate either total or partial constitutional amendment.
  - When both the Chambers agree to revise the Constitution, the proposed revision is submitted to the people for their acceptance or rejection.
  - If one Chamber does not agree to the proposed revision, then the matter is referred to the people for final decision.

Besides the above powers, the Federal Assembly has also been entrusted with the power of deciding foreign policies for the country and supervising Switzerland's relations with foreign countries.

These are the important powers and functions of the Federal Assembly of Switzerland. The Swiss constitution has given the supreme authority of the Confederation to the Federal Assembly. The laws made by the Federal Assembly can not be vetoed by the President of the Confederation. Neither of these laws can be declared unconstitutional by the Swiss judiciary. The two Houses of the Federal Assembly works in harmony. By their activities and performances, these Houses have attracted talented and honest statesmen. However, over the years, it is believed that the process of direct legislation has contributed towards the decline of the powers of the Federal Assembly.