CHAPTER-V

WORKING OF FEDERAL SYSTEM IN INDIA AND SWITZERLAND

For federal states the issue of finding the appropriate federal structure of government is now a policy issue of major debate. After a long institutional stability, many federal states, including USA, Canada, Switzerland and many others in the world today are trying to redefine their internal structures, knowing that there is no “ideal model” of federalism. Rather there is uniqueness in each available system. As Watts wrote, federalism is a pragmatic technique that depends upon the precise form of its adoption or upon the development of innovations in its applications. Federations have varied in many ways reflecting the character and significance of the underlying economic, social and political diversities. In addition, although federalism has a long history, its operations have also been moulded and affected by the changing realities of the situation present at this juncture. Thus after going through the constitutional provisions of India and Switzerland, now it is necessary to examine the actual working of these federal systems the first thing to be observed is that no federalism works strictly in accordance with the constitution on which it is based. But there is a general view that a principle characteristic of federal system is that they, more than other regimes, rely upon fixed constitutional arrangements for their maintenance and the securing of those ends for which they are instituted. In federal set up these constitutional arrangements are in a written form as in India and U.S.A. Although these constitutions have kept up the spirit but various political, economic and social forces
emerge as a consequence for which the working constitution becomes different from the original written one. As observed by Riker, developments in the actual working of any federalism may fall into one of the following categories.¹

1. The central government can completely overawe the constituent governments;

2. The central government cannot completely overawe the constituents, but it can keep them from over-ruling its own decisions;

3. The constituent governments cannot completely overawe the rulers of the centre, but they can significantly vary the behaviour of the officials of the centre, though central officials cannot overawe them; and

4. The constituent governments can unilaterally completely overawe the rulers of the centre.

Now, the question arises into which of the above categories does the working of Indian and Swiss federal systems fall. Thus an attempt is made in this chapter to deal with the working of these two systems.

WORKING OF FEDERAL SYSTEM IN INDIA

The working of federal system in India has evolved into two distinctly different phases.

I. First Phase: Centralized Federalism

II. Second Phase: The Change of trend from Centralized to Co-operative Federalism.
First Phase: Centralized Federalism:

As we know Indian constitution is neither purely unitary nor truly federal. The founders of Indian constitution shaped its framework to suit the Indian situation, which includes its history, traditions, social consensus, regional aspirations, cultural diversities and of course changing political values and realities. On 26th Jan 2007, the constitution and the Republic of India completed 57 years of their life. In an age when events move and developments take place at the speed of a tropical cyclone, this is not a short period in the life of a nation to take stock of our achievements and failures and attempt a self-appraisal of the working of our constitution and the democratic institutions established there under.

Apart from all that is contained in the provisions of the constitution, as seen in the preceding sections of a theoretical study of the Indian federal system, it shall be worthwhile to look into some practical aspects of the highly controversial issue. M.M.Shah, former Union minister for industries, during the course of his address delivered at the Harold J. Laski Institute of Political Science in Ahmedabad on Oct 11, 1959 said: "the centre is becoming a stram roller and the states appear to be in a pitiable position"2 According to several important critics of the Constitution, a situation has now come to stay that shows how it is being worked out much different from the wishes of the founding fathers. Such a weighty allegation refutes the affirmation of Dr. Ambedkar who had said in the constituent assembly that the states "are sovereign in the field which is left to them by the constitution as the centre in the field which is assigned to it".3
Several commentators on the working of the Indian constitution viewed that the states in the Indian union have not shown either the will or the capacity to change in a significant way the behaviour of the government at the centre or to overawe it completely. On the other hand the centre has displayed both the will and the capacity not only to keep the State Governments from overruling its own decisions but also to completely overawe them except on a few occasions and that especially between 1967 and 1971. The centre has been exercising greater control over states than what was laid down in the constitution but that it was the outcome of a number of fortuitous factors like

A. The Tradition of a strong Centre from the Past.

B. The Uni-Party rule of the congress.

C. The inadequacy of the financial resources available for states

D. The system of planning

E. The role ascribed to the governor as the agent of the centre.

A. The Tradition of a Strong Centre from the Past.

Independent India inherited the tradition of a strong central government from the days of British rule. The British left the country before the idea of autonomous units could take a firm root. It was only under the government of India Act of 1935 in which the provinces got real autonomy for the first time and the new system was at work for less than two years when the congress ministries resigned their office in consequence of developments arising out of the second world war. This was two short a period for the politically conscious sections of the
people to become firmly attached to the concept of provincial autonomy. It was this that was responsible highly centralized and for the willingness with which state governments became reconciled on the whole to the growing paramountacy of the centre. Looking to the centre for leadership and guidance may be regarded as a part of India's political culture.  

This trend of centralization continued even after independence, when the constitutional framers made the centre strong. In this context, C. Rajagopalchari is reported to have said in 1962: “the independence of the states is being forgotten and a unitary state is being established in India thoughtlessly”. It may be argued by some that this trend was not a departure from the articles of the constitution but it is merely the logical outcome of the concept of a strong centre embodied within the federal system. It is the framers of the constitution who provided for the features of a federation, in the country and later changed the true nature of Indian federalism by incorporating certain Unitary (Non-federal) features in the constitution as well. Further more, it can be said that perhaps for this very reason that founding fathers of the constitution refrained from describing India as a federation and preferred to call it a ‘Union of States’. This has lent support to the contention of the scholars that the Indian constitution is federal in form but unitary in spirit.

B. Uni-Party Rule of Congress:

The Pre-1989 regime of single-party rule both at the centre and the state was one among the various factors that were responsible for the erosion of state autonomy, which proved to be the most powerful.
More than two decades i.e., from 1947 to 1967, the congress party ruled both at the centre and the state. Though there was a break for uni-party rule in the general election of 1967 but in the general elections to state assemblies in 1972 restored once more the rule of the congress both at the centre and the states. This was the main reason to weaken the will of state governments for autonomy. It created a feeling among the state leaders that it would be best for them to abide by the decisions of the central leaders. All observers have pointed out the significance of uniparty rule at the crucial factor in the growth of the predominance of the centre in the period upto 1967. Santhanam, for instance, has stated that it was democratic centralism of congress during these years that was responsible for the strength of the central government and the relative subordination of state governments. Asok Chand also says: "one party government at the centre and the states has facilitated and even encouraged parliament to consider itself as the apex of a legislative and executive pyramid. The Prime Minister and other ministers have not hesitated to take an indirect and sometimes even a direct hand in settling and deciding issues, which are constitutionally the responsibility of states. The limited sovereignty of the states is thus being surrendered by usage and sufferance and it would be difficult for a state later to reassert or regain its constitutional authority. It may be claimed that "advice" tendered by the union Ministers is in their capacity as members of the congress infraction of the sovereignty of states."6

Even C.S. Pandit observes: "in the last 20 years, with the congress in power in practically all the states, the centre developed the role of a patriarch controlling and running the subsidiary units
through party chief minister. Whatever conflicts arose were settled within the party.\(^7\)

The congress as a party has been a highly centralized organization. State units have had little freedom to take decisions on their own. Though for example the state committees took the first step in nominating candidates for election to state assemblies it was the central parliamentary board that took final decisions on the matter. This gave to it a sort of control over the congress members in the assemblies. Similarly, it was the parliamentary board that decided as to who should be the leader of the congress legislature parties in states and, therefore, who should be chief Minister. It is one its instructions that chief ministers selected the other ministers. The tenure of chief Ministers of states did not depend so much on their having the confidence of the state legislatures as on that of the central leadership. This explains why in general state governments lost both their will and their capacity to oppose the centre. On all policy issues, like legislation on ceilings on agricultural holdings and urban property, state governments accepted the directions from the states in the years 1967-71 once more tilted away from them Unitarianism gained further strength.

All this is in conformity with the theory that the extent to which the federal equilibrium is maintained in any country, which has a federal constitution, depends on the kind of party system, which exists in it. Thus, the congress party rule both at the centre and the states, made federalism to exist only in the name.
C. Inadequacy of Financial Resources Available for the States:

Another factor, which has contributed to the paramountacy of the centre, is the inadequacy of the financial resources of the state. It arises out of the difficulty in devising a financial system under which both the central and state governments will be in a position to raise resources independently of each other and adequate to discharge the responsibilities which they have to shoulder under the constitution. This makes them financially dependent on the centre and financial dependence leads to political dependence to some extent.

Under the constitution taxes like income tax, corporation tax, excise duties, and customs which have a national and inter-state base and which have to be levied on the basis of uniformity have been made over to the central government. Taxes like those on land and buildings, sales taxes, taxes on motor vehicles and on entertainments, which have a local base, have been made over to states. The central taxes are not only more lucrative but also grow with the growth in national economy. The taxes are less lucrative and less elastic. Besides this the centre has foreign aid and deficit financing at its disposal. All this enables it to command large resources while the states are not in such a position. There is thus an inevitable element of inadequacy in the financial resources of states. Thus, this inadequacy makes the states more dependent on the centre.

To some extent financial dependence of the state is desirable as representing a centripetal force. But the extent of dependence goes too far, wrong attitude begin to make an appearance amongst those responsible for financial management in the states as well as at the
centre. In the states, excessive dependence on the centre tends to produce irresponsibility and operational inefficiency. At the centre, dominant financial power in relation to the states gives central authorities exaggerated notions of their importance and knowledge and does not allow sufficient place to the point of view of the states. It is important, therefore that the degree of financial dependence of the states on the centre should be reduced to the minimum, because that minimum would be adequate from the point of view of giving the centre controlling powers in the context of national integration.

From this brief survey it follows that steps have to be taken to reduce the financial dependence of the states on the centre to a minimum if the federal equilibrium is to be maintained.

D. The System of Planning:

The system of planning was another important factor in the growth of the paramountcy of the centre. In the post-independence period the country has rightly embarked on planned economic development as that is the only way by which a backward economy can be modernized, the national income increased and the standard of living of the masses improved. The successive five-year plans have been formulated and implemented for this purpose.

During these years, the role of the centre in the formulation and execution of the Five-Year Plans became paramount and that of the states quite subsidiary. The planning commission which has been entrusted with the work of formulating the plans and seeking to their proper execution is a body, which is entirely under the control of the centre. Till recently half of its members consisted of central ministers
and the other members have always been its nominees. The Prime Minister has been its chairman and the Union Minster for planning its Vice-Chairman except during certain years. The states are not represented to it.

In shaping the plan at different stages and giving it a final form the national Development Council on which the chief Ministers of all states are represented is consulted and its approval taken. But as pointed out by many observers the role of the council has all along been a formal one. Before a Five Year Plan is given its shape each state is asked to prepare its own plan in the light of the targets and priorities laid down by the planning commission. But no state plan comes into operation unless it is scrutinized and approved by the commission. It is true that there are frequent discussions between the commission and the concerned state representatives before a state plan is finalized by the former. But these discussions are also of a formal character. In the end it is the views of the commission that prevail. Thus the centre through planning commission determines the line on which a state should develop its economy. For ex in fourth Five Year Plan the states proposed an outlay of Rs. 8,708-89 crores and that approved by the commission came to only Rs. 6,060 crores.

Though the state plans deal with subjects in the state exclusive list they require the approval of the planning commission before they put into operation and this approval is even needed for individual schemes. This made Santhanam to observe: “Planning for purpose of economic development practically superseded the federal constitution so far as states were concerned but these supersession was not legal or constitutional but was by agreement and consent. Planning has
been comprehensive. It has covered all the spheres of the activities of both the centre and the states. In fact, it has covered even the sphere of literature, art and even sports, under educational planning, grants have been given for establishing gymnasium, for cricket coaching etc. So the planning may in some sense be called totalitarian, but for the evil association of the word totalitarian.8

Thus planning system has become a factor in the erosion of state autonomy. It has led to the imposition of uniformity of policy in spheres like land tenures, agriculture and education where such uniformity produces disastrous consequences. It has thus defeated the primary purpose of federalism, which requires that when conditions, circumstances and traditions differ from state to state each state should be free to adopt policies, and programmes, which suit it best.

E. Role of the Governor:

The role of the governor also contributed to the growth of the paramountcy of the centre. It is because of his double role as the constitutional head of the state and as the agent of the centre in it. Constitution nowhere mentions that he should act as agent of the centre nor he has any function regarding this. It is only an inference that is drawn from the fact that the president appoints him and hold's his office during the president's pleasure. It is however, his role as the centre's agent that gives him opportunity to tilt the federal balance in favour of the centre in normal times and to upset it completely in times of emergency under Art 356 of the Constitution.
Commentators observe that due to his double role there is a change to misuse discretionary powers. Where a single party like congress is in power both at the centre and the states, it is natural for the party in power at the centre to bring pressure on the governor to exercise his discretionary powers in a way that suits its interest. He yields to such pressured because he holds his office during the pleasure of the president which means of the party in power at the centre. In any conflict between his loyalty to the central government and to the state of which he is the constitutional head it is the former that determines the course of his action. In this way the centre uses him as its instrument in setting up a state a government over which proves hostile to it or removing from office one which proves hostile to it. Such a use of his discretionary powers results in the erosion of state autonomy. Under these circumstances the government of a state tends to be carried on not in accordance with the wishes of the local electorate but of the party in power at the centre.

In addition to this it is also one of the duty of the governor as the agent of the centre to report whether a situation has arisen under which the government of his cannot be carried on in accordance with the provisions of the constitution and whether the state should come under presidents rule which means the rule of the central government. Under such a rule state autonomy completely disappears and the state comes to be administered directly by the centre. Unitarism takes the place of federalism under Art 356. There is a possibility of the centre bringing pressure on the governor to report in such a way that the state may come under its direct control. In 1969 one commentor observed: "Since the promulgation of the constitution
nineteen years ago, the congress party has been the ruling party at the centre. In states where the congress party was not in power or was defeated, the centre never hesitated even for a single moment to interfere in their domestic affairs by clamping presidents rule under article 356. This was done on nineteen occasions and sometimes for reasons too slender to justify it... it is the fact that the centre had misused the powers under Article 356."\(^9\) Such a misuse became easy as the centre had in the governor an agent on whom it could exercise pressure to get a report recommending presidents rule.

The above survey shows that the strong centre became a paramount under the influence of the operation of a variety of factors.

**Second Phase: Trend towards Co-operative Federalism:**

The overbearing presence of the centre in all fields created resentment among the states even when the congress party ruled at the centre and in most states. To restore their autonomy, the states demanded a shift from centralized federalism to "Co-operative federalism". The end of congress party rule at the centre and rise of regional parties to power in the states seemed to provide an alternative that could avoid the shortcomings of centralized federalism. What exactly was connoted by the term "co-operative federalism" in the Indian context was not spelled out clearly anyone. To the states, the idea was to get the centre to consult them in all matters that concerned them. In practice, there was no question of the states being given veto power over any decisions of the central government, as co-operative federalism in its one formulation would have it. Even so, an environment was created whereby the states came
to have a larger say in the centre's policy than before, with both positive and negative results.

The positive effect is that, with a larger role in economic policy, and with interjurisdictional competition, states registered much faster growth than previously. Per capita income in the major states grew on average at the rate of 4.02 percent per annum in the 1990's, as compared to 3.03 % in the 1980's. In several states, the rate of per capita GSDP growth doubled, exceeding 5 % per annum. Poverty levels have also come down remarkably in a number of states.

The negative aspect was that, almost every state is trying to lure investors from other states and from abroad. But only those having a good infrastructure and an investor-friendly environment are able to attract private investment.

Another interesting development that one witnesses is the growth of competitive federalism among the states. In the present liberalized market economy of India, the centre is withdrawing itself from many crucial sectors of socio-economic development. The state is allowed of course, under the rules and regulations framed by the centre to negotiate for foreign direct investment. This does not mean that states have treaty-making power. The competitive federalism has another dimension too. The developed or developing and performing states like Andra Pradesh, Karnataka, etc are demanding greater shares in the financial allocation made by the centre. They argue that central allocation should be linked to the performance level of the state. This may have adverse impact of the underdeveloped states like Bihar, Uttar Pradesh, and etc. we should never forget that the basic
objective of an economic union is to maintain minimum regional balance in term of growth and development. Here the role of centre assumes critical federal significance. As a means of nation building, federalism in India has largely succeeded in building a federal union and a federal nation. There are various factors, which have contributed for co-operative federalism are as follows:

Changing Role of Political Parties:

In democratic country like India, the party system plays a crucial role in altering environment of federalism. From 1950, till 1967 to be exact the Indian federation has functioned as a unitary state and the constitutional framework of centre-state relation was unchanged. This was due to single party dominance both at the centre and the state. After the decline of the congress party's dominance both at the centre and in several states, cases of grievances and complaints and conflicts and confrontation between the centre and the states began to take shape. It is during this period that the non-congress and regional parties came into existence and thus there was a growing demand for greater state autonomy.

The fourth general election of 1967 was the final turning point because this election changed the course of politics in India. Because this led to the replacement of dominant party system by the multiparty system in which no particular party claimed absolute majority at any level of the political structure. This marked the emergence of new leadership with the disappearance of the old guards of the 'great tradition'. The spirit of nationalism retreated and regional aspirations started gaining ground during this period. Regional parties
particularly Akali Dal in Punjab and the DMK in Tamil Nadu, Left Front of West Bengal (1969), Namboodripad’s government of Kerala and the national Conference of Jammu and Kashmir articulated their respective regional demands and echoed demands for a re-orientation of centre-state relations in India.

The 1977 elections to the Lok Sabha and thereafter to the state assemblies, which brought about change in the configuration of political forces at the centre and the states, sparked off a fresh debate on centre-state relations in India. The advent of the Janata Party at the centre and in majority of the states in the post-emergency era with its commitment to the process of devolution and decentralization in policy making raised widespread speculation that a reverse process of federalization set in motion. The demand for a greater autonomy for the states was voiced by the ruling Janata Party at the centre and by a number of states like West Bengal, Tripura, Karnataka, Tamil Nadu, Gujarat and the Jammu & Kashmir.

In 1980 there was change in the Indian party system, with the rise of BJP with its “Hindutva” agenda. It is also important to note that from 1980’s onwards the party system is also characterized by “Regionalisation” and “Federalisation” whereby national parties get limited to certain regions and states. Thus these new developments were bound to have long-term repercussions on India’s federal structure.10

Even the emergence of strong regional parties has been quite prominent at the national level. The regional parties has quite instrumental in the formation of the government at the centre. As a
result, the regional parties have been quite vocal in demanding state autonomy. This trend in fact has brought a change in federal structure of India and shaped centre-state relations in new settings.

**Coalition Government:**

The role of political parties, regionalism and party system had a tremendous influence on the working of the federal structure in India. The shift in the Indian party system from one-party dominant system to multi-party system after the fourth general election had a considerable bearing on the working of the system. The end of one-party dominance in 1967 election resulted in a situation of political change in which political parties are at one and the same time, trying to enter into coalitions with a view to fill jointly the political vacuum created by the congress and also to forge a viable independent identity to avail themselves singly of the newly created prospects of alteration of power. The coalition experiments emerged in state politics and from the period 1967-71 there have been more than twenty different coalition governments in the Indian states.

The turning point in the history of coalition in India can be identified with the Janata party rule (1977-79), which brought for the first time, a group of non-congress parties to the centre. This was a historic moment for opposition parties, which succeeded in providing an alternative to the congress at the national level. All these experiments became catalyst in the democratization process strengthening the multi-party system, policy-making and power sharing processes. The emergence of co-alitions both at the state level as well as the central level, the state became more conscious about
their region and conflict started between centre and state with regard to more autonomy to states in all spheres. The series of coalition governments came to power from 1989 to restructure the relationship between the centre and the state and ensure greater autonomy to the states, especially in financial areas, and to make amendments to Art 356 of the constitution to prevent its misuse. One can observe that a centre-state relation during coalition at the national level was smooth and healthy than in one party dominant system.

Thus there is a general agreement that in a country like India with its vast size, with regions at different levels of development and with linguistic and other diversities federalism is most appropriate. It follows from this that everything should be done to preserve and not to weaken the spirit of federalism.

WORKING OF FEDERAL SYSTEM IN SWITZERLAND

Switzerland, or the Helvetic Confederation as it is formally called is the first and oldest of the great classical federations in the contemporary world. Its origin goes back at least to the thirteenth century. The institutions and organizations of Switzerland reflects the experience of the last seven centuries. Methods of government developed more by a process of gradual change, as the territory was extended than by upheavals or revolution. The history of Switzerland is marked by a process of evolution from inter-state alliances to an alliance of states and finally a federal state. In its more than 700 years of formal existence, Switzerland developed a deeply rooted federal system. It was first developed as 'conjuratio' (a Community of polities with a shared law), then as a confederation, and subsequently as a
federation. Since 1848, federalism has been a cornerstone of the Swiss political system. The Swiss federal system is often presented as a prototypical federal system, in both its formal aspects and its harmonious application of the principle of federalism.

Just as each federal system contains some characteristics common to other federal arrangement, so each federal system has some unique features as a result of its historical background and political culture. Thus, this unique pattern of federalism enabled the consolidation of a highly federalized system that not only included the relationship of the cantons with the federal government, but also incorporated the social and economic aspects of Swiss life. The constitution of 1848, whose essential features are still relevant today, gave legal expressions to the lessons drawn from Switzerland's history: the unity of the Helvetic state could only be realized by respecting the individuality of its member states. The Swiss federal constitution of 1848 was instructed by the mature concept of political federalism, by the constitution of United States, and by the long tradition of Swiss federalism. Although certain words and phrases used in the body of the constitution describe Switzerland as a confederation, she is in reality a federation. This is clear by its preamble to the constitution, which says that this constitution is adopted "with the intent of strengthening the alliance of the confederates and of maintaining and furthering the unity, strength and honour of the Swiss Nation". The constitution of 1848 allowed for a peaceful co-existence and conflict resolution and the integration of Swiss society. The central importance to Swiss federalism is non-centralization, subsidiarity, solidarity and co-operative federalism that
ensures their peaceful co-existence. The Swiss federal constitution of 1848 was instructed by the mature concept of political federalism, by the constitution of United States, and by the long tradition of Swiss federalism. The federal state is made up 26 autonomous cantons and half-cantons. When founding the federation in 1848, the 26 cantons kept their own statehood, their own Constitutions and most of their political autonomy. They transferred only a few competences to the federal government. As such no two federal system are completely alike and no forms of the constitution remain original because various political, economic and social forces emerge as a consequence for which the working constitution becomes different from the original one and Swiss is no exception to it.

At this juncture, it is very essential to observe the working of federal system in Switzerland in respect to the relation between the federal government and the cantons. We can observe that the Swiss federal system is partly centralized in some aspects and too much decentralized in some other aspects.

Swiss federalism is one of the few example of real federalism in the world, most of the federal polities operate in theory only. In a federal system though the division of powers is made between central and state governments on the principle of equality, but it is the centre that enjoys more powers than the state. Where as, in case of Switzerland, cantons enjoys more powers than the central government. Since its inception in 1848, the 26 cantons kept their own statehood, their own constitution and most of their political autonomy to themselves; only a few powers were actually transferred to the confederation. According to the guiding principle laid down in
article 3 of the federal constitution, the cantons can exercise all rights, which are not explicitly transferred to the confederation. Since 1848, the working of federal system falls in three levels: 1. Municipalities at the local level, 2. Cantons at the intermediate level, and 3. Confederation at the national level. All the three levels of government have specific constitutional tasks though their nature and extent naturally vary. Historically speaking, the Swiss federation represents a case of "non-centralization". There are no universal provisions concerning the division of power between the federation and the cantons; any responsibility may be attributed to either the federation or the cantons. Furthermore, the federation and cantons can assume joint responsibility. A question may arise that how do the government and cantons co-operate? How are the cantons able to influence the government? And how does inter cantonal co-operation work? In a federal system, such as in Switzerland, a number of instruments ensure the co-operation not only between the government and the cantons, but also among the cantons themselves. The influence that cantons can exercise over the government is known as vertical federalism, while co-operation at cantonal level is known as horizontal federalism. Vertical federalism not only extends upwards, but also downwards, from the government to the cantons. Let us discuss the vertical and horizontal arrangements of Swiss federalism.

**Vertical Federalism:**

1. Bicameral Legislation and Cantonal Interests:

   Law making in the Swiss parliament reflects the equal importance of democratic and federal influence. Both chambers in Switzerland are equally strong and have the right to initiate constitutional
amendments, new laws and regulations, or propose the revision of existing legislation. All the proposals and bills need to be approved by a relative majority in both chambers. How does this strong element of federalism work out in law making? On one hand, public opinion still considers the council of the states to be a stronghold of cantonal interest as was the intention of the fathers of the constitution. On the other hand, empirical research has sometimes found that the council of the states is not at all a federalist institution because it defends mostly the same group interests as can be identified in the National Council. Indeed unlike the German 'Bundesrat', the members of the council of states are not representatives of the cantonal executives but are elected by the people. Thus, it is clear that they are responsive to their cantonal government interests. And these constituencies are the same for the national council and the council of the states. However, the two chambers differ in terms of representation because they are elected according to different rules.

In the council of states, the number of representatives from each canton is one or two, depending on whether historically the canton counts as a half or full canton, regardless of the population. As a result, small and rural cantons are over-represented compared to their presence in the national council, where the number of representatives is proportional to the size of the electorate.

The national council is elected on a proportional basis, where as the council of states is elected according to majority rule. As no political party today has the necessary electoral backing of 50 percent to win seats alone, the results of the election mainly depend on
electoral coalitions. Such electoral coalitions are most frequent among the three major bourgeois parties, while the social democrats either rely on the Green party, which is weak, or have no coalition partner at all. Therefore, the bourgeois parties are more successful in the elections to the second chamber.\(^{14}\) Therefore the political left is highly underrepresented and the political centre and right are overrepresented in the council of states.

From these differences of representation one could theoretically expect a systematic bias of the council of states in favour of rural interests or those of the small cantons. An empirical comparison of all parliamentary decisions in the period of 1995-97 on the conflict dimensions left-right, federalism-centralism, interventionism-liberalism and materialism-post-materialism gives some surprise findings. Congruent with the expectations the national council is more on the post material side. Yet for the rest, both the chambers revealed the same basis i.e., liberalist and federalist. Furthermore, when both the chambers differed in any decision, it was only in 60 percent of the cases that the proposals of the council of states were more liberal federalist and successful.

These findings do not fully correspond to the traditional image of the council of states as a strong hold of cantonal sovereignty. Indeed, the second chamber may have lived up to this image in the 10\(^{th}\) century, when a strong catholic conservative coalition opposed the shift of power to the central government, which was at that time dominated by the Radicals and Protestants. In the 20\(^{th}\) century, however, the central cleavage was no longer between Catholics and
protestant bourgeois forces and the social democrats. Under this left-right division, federalism versus centralism was no longer considered to be a key question. Rather in the contemporary political arena, it depends on the issue at hand whether the political parties opt for centralism or for federalism.

Thus council of states does not primarily represent the federalist ideal of decentralization nor does it defend the rights of the cantons. Rather, it seems that the different political forces that are over represented in the council of states i.e., the Catholics, bourgeois parties, and rural interests try to turn this to their own advantage. Given the strength of the conservative forces in the council of states, this chamber tends to protect the status quo and reject innovations proposed by the executive and first parliamentary chamber.

2. Double Majority Clause and Veto Power of Small Cantons:

Besides bicameral system, a second institution of vertical federalism is double-majority rule. This rule applies to Mandatory referendums, which are held for any alterations of the federal constitution and for accession to certain international treaties. In these referendums, the double majority must approve the proposal to come into force both by the majority of the voters and majority of the cantons. Furthermore the double-majority rule applies to popular initiatives.

The principle of democracy (one person, one vote) and the principle of federalism (one person, one vote) can sometimes collide; it is possible that a proposal obtains a popular majority, but a majority of the cantons reject it, or vice versa. Between 1848 and 2001, there
were 10 such cases, with six of them occurring in the last 30 years. It seems the risk of collision is growing.\textsuperscript{15} There are two reasons for this development. First, the number of proposals to which the double-majority rule applies has been growing. Secondly, disparity in size of population between cantons is rising because of migration from rural to urban cantons. For ex. Whereas in 1848 the population of the canton of Zurich was 17 times as large as the population of the canton of Uri, today it is 34 times bigger. The 115 smallest cantons together constitute a blocking federalist majority, even though they represent a tiny democratic minority. Theoretically, the most narrow federalist veto power possible today (i.e., 51\% of the votes in smallest cantons against all the other votes) represents just 9\% of the Swiss population. Raimund Germann calls this a change of balance: the weight of the federalist principle has increased relative to the weight of the democratic principle.\textsuperscript{16}

The analysis of the collision cases shows that the issues involved were usually important and controversial, dealing with economic, energy, cultural or immigration policy. In eight of the ten cases, it was the federalist side that blocked the proposal. Vatter and sager analyzed the winners and losers of the double majority clause. They found that this rule protected the interest of small and medium sized, mainly conservative catholic cantons in German speaking part of Switzerland, whereas the urban cantons with a large population, such as the canton of Zurich, were always on the losing side.\textsuperscript{17}

Today, the double majority rule plays a prominent role in foreign policy issue, such as the question of whether to join the European Union. The people of Switzerland are deeply divided over this kind of
issue. The small and rural cantons in the German-speaking part are isolationist and conservative strongholds, whereas large urban and French speaking cantons are on the integrationist side. Due to the double majority rule, the isolationist conservative forces have a systematic advantage over the integrationist side.

3. The Influence of the Cantons on Federal Policy Formulation:

If the specific federalist role of the council of states rather weak, this does not mean that cantonal interest are not articulated at all indeed, looking at the whole policy-cycle, we can find that in the two-phases of policy formulation and implementation, the influence of the cantons is strong. Policy formulation in Switzerland is characterized by an extended pre-parliamentary stage, before bills are introduced in parliament. This parliamentary stage consists of two parts: extra-parliamentary expert commissions first elaborate a draft bill; subsequently, a formal consultation process takes place, during which the political parties, the cantons, the trade unions, and employers and professional associations make their comments on the draft. The function of this parliamentary state is to prepare a consensus on the bill and reduce the future defeat in a popular vote. Thus when an executive council nominates a committee of experts to evaluate the various options for a new bill, it tries to appoint members who represent the different interest involved, including the interests of the cantons. According to an analysis in 1970, the cantons participated in more than 75% of all extra parliamentary commissions. In particular, it was the urban cantons that were well represented in these commissions.18
However, despite this strong cantonal participation, Lehmbruch concludes that "the Cantons themselves, as institutionalized corporate actors, have no strong influence in federal policy making-contrary to some preconceived ideas. They certainly play a role in decentralized issue areas, such as education policy, and cantonal actors may exert some influence in specific fields, such as territorial planning, but their role is relatively marginal to the central domains of economic and social policy". Several studies conclude that it was not the cantons but rather economic interest groups and the federal agencies that exerted significant influence on policy formulation.


Most federal policies are implemented by the cantons and municipalities. Today this process is characterized by a high degree of co-operation between the sub national units and the federal government. Most federal programmes are implemented by the cantons and the communes. The complexity of modern infrastructure and of economic and social interventions has stimulated the development of a co-operative federalism. This is to say that in many policy areas, legislative powers have shifted to the centre, while the cantons remain responsible for policy implementation. The division of labor entails close co-operation between the federation, the cantons and the municipalities based on revenue sharing and financial compensation by block grants and subsidies.

Since the federal authorities depend on the cantons for the implementation of their policies, they usually refrain from the use of force. Given cantonal discretion the way in which policy
implementation is organized varies greatly among the cantons. Moreover, implementation of federal policies cannot be taken for granted at all; it depends on the political will, the administrative resources and the capacity at the sub-national level. Small cantons for instance, often fail to implement new and complex policies because the necessary resources are beyond their reach.

Altogether, this kind of co-operative federalism strengthens conflict resolution capacity, flexibility, and the adaptability of the political system. On the other hand, it sometimes produces inconsistent policy outcomes, reduces governance capacity of the centre and weakens the sense of responsibility.

5. Party System:

The political parties in Switzerland also adhere to a strictly federal structure. The individual cantonal sections of a political party are often very autonomous and organize the electoral campaigns for the house of Representatives and the senate independently from the party's sections in other cantons; a party does not necessarily have a nation wide strategy in federal electoral and voting campaigns. This why, for example, the national parties have only small party headquarters at the federal level.

Horizontal Institutions:

The cantons do not only have an intense level of co-operation with the government, but also work closely with one another known as horizontal institutions. These institutions allow the cantons to take collective action without the involvement of the confederation. There
are two types of horizontal instruments: intercantonal organizations, so called conferences, and inter-cantonal agreements, so-called concordats.

The most important elements of horizontal co-operative federalism are the concordat, that is international treaties functioning as instruments of regional co-operation. The concordats allow the sub-national units to regulate administrative, legislative and juridical matters among themselves, but they also face severe constraints. Concordats are most effective if signed by all the cantons, but this is hard to achieve. Some concordats work with only a certain number of signatory cantons. The cantons in the east of Switzerland have signed a large number of concordats, while the cantons in French and Italian-speaking parts appear to be more reserved. Yet this form of inter-cantonal co-operation becomes more and more important in the context of ongoing geographical, economic and political integration. Further, the cantons are increasingly adopting this strategy in order to defend their powers and prevent centre state intervention on the whole, the effects of inter-cantonal treaties proved to be inconsistent. On one hand, regional concordats enable solutions that are adopted to local needs. On the other hand, inter-cantonal agreements suffer from a lack of democratic legitimacy due to their bureaucratic character.

Inter cantonal organizations play an important role as consultative institutions. They proved a forum to share experiences and to co-ordinate tasks between cantonal politicians and officials. There are more than 500 inter-cantonal organizations. Traditionally, the conference of cantonal ministers was most influential but today the conference of cantonal governments is most influential. This body
was established as an attempt on the part of the cantons to extend their direct influence on the federation, particularly with regard to foreign policy and to the process of European integration. In the 1990's direct negotiations between cantonal and federal executives in the framework of the conference weakened traditional channels of influence.

But horizontal instruments of federalism have to be judged critically because in recent years it has become clear that they hardly serve as effective means to prevent new federal competences. They also impede co-ordination with the federation and are unlikely to produce viable solutions, mainly due to the increasing differences between the cantons administrative structure and interest.20

Thus, like other federal constitutions, the Swiss constitution is not only an act of union but sets up a form of government with a limited separation of powers and a procedure for revision, and also by reserving certain topics to the union rather than to the cantons. The peculiarity of Switzerland is that most cantons have a much more plausible and more nearly continuous history of acting as states than do other federation. It set up a federal state in which the cantons retained ample autonomy in many areas of policy-making under the 'residual powers' clause of Art 3.21 the cantons enjoyed wide cantonal autonomy in policy making, equal representation at the federal level, perfect bicameralism and cantonal majority of constitutional revisions thus represented a formidable set of guarantees to the cantons. The cantons acted as central actors. As said the cantons are the actors between the federation and the communes. They are also the only
actors free to determine their own policy-making role within the limits of the federal constitution. Despite the shift in responsibilities that took place over the last decades, the central government controls only about one-third of public revenue and expenditures, while the cantons and municipalities manage about two-thirds of public financial and human resources. It is the cantons and municipalities that are the main actors in a wide range of policy areas. Furthermore, cantons and municipalities play a prominent role in the implementation of most federal programs. Thus, even today, Switzerland remains one of the world’s most decentralized countries. The factors that supported decentralization are:

Historical Legacy:

Historical speaking Switzerland was not a nation but a confederation of small independent states bound together by treaties. In 1848, these cantons decided to join in the erection of a federal nation-state. Their were two main grounds for this step: a) an inability of the old system to allow for reforms as only unanimous decisions which had to be ratified by all cantons were possible, b) a need to integrate i.e. to create a common market allowing for the free flow of goods and the free movement of persons across cantonal frontiers. However, in 1848, the cantons were not ready to give up their sovereignty entirely and to melt into a unitary state. The cantons, agreed to create a central authority to which they would delegate some-and only some of their responsibilities (i.e. the cantons expressed their resistance to the idea of central communes to be granted as much autonomy as possible. Following the end of civil war, the defeated catholic cantons in their minority expressed their
resistance to the idea of central governing authority. They wanted the cantons and communes to be granted as much autonomy as possible. The 1848 constitution represented a compromise settlement between the vision of the radicals and the need to keep the old Sounderbund cantons on board; it set up a federal state giving much autonomy to cantons.

**Principle of Subsidiarity and Solidarity:**

Federalism in Switzerland is based on the principle of subsidiarity means that the central power should only carry out tasks, which are above the means of the constituent elements (i.e. the cantons) and should not interfere in the powers granted to cantons. Swiss federalism is characterized and defined by the idea of solidarity between the cantons and different parts of the country. Inter-cantonal competition exists to a certain degree (e.g. where the taxation policies are concerned), but transfer of payments evens out differences between weaker and stronger cantons or regions.

**Multicultural Conflicts:**

The constitution of 1848 replaced old historical treaties for mutual assistance between the cantons by a modern common government. Yet at that time the cantons were deeply divided by four different languages, two religions and ethnicity. Therefore, federalism has been the structural element of power sharing that offered the societies of the cantons the utmost autonomy of keeping their own government, ample opportunities to live differently and to maintain their regional tradition and culture as well. Thus the cleavages of religion and language have transcended cantonalism without strengthening centralism.
Direct Democracy:

The direct democracy has played a crucial role in constraining the centralizing tendency in Swiss federal system. Democracy is based on the principle of one person, one vote and one value. But this understanding of democracy as a pure and efficient majority-producing instrument does not correspond to the Swiss perception of democracy. In Switzerland, democracy is perceived as a tool of individual and collective self-determination and thus of individual and collective freedom. If self-determination cannot be achieved individually, it has to be achieved democratically within a community. If democracy is understood as an aim to guarantee individual or collective self-determination, it can only be optimized in a decentralized and federal way. According to Swiss view, federalism and democracy have to be seen as complementary to ensure freedom and self-determination. Direct Democracy empowers people and involves them in the political decision making process the Swiss vote more often than anyone else in the world. Switzerland has a long tradition of village and cantonal assemblies where all citizens participate and play an active role in the political life at the local level. In larger communes and municipalities as well as the cantonal level citizens can participate through their rights of initiative and referendum which go beyond those granted at the federal level. When votes on communal and cantonal issues are included, along with elections for local parliament, it is clear, that Switzerland has one of the most politically aware and active populations in the world. “The Swiss do not just elect representatives to the national parliament once every four years and then forget about political they are constantly
involve and have a strong sense of civic responsibility." Says Hans Hirter. Hirter says Swiss federalism permits a far greater decentralization of power than in many other countries. "Many decisions are made at a communal or cantonal level," he says "the cantons are responsible for executing and adapting laws to suit their own needs and this too helps provide a sense of unity and empowerment." Thus federalism is even necessary condition for the establishment of a consensus-driven democracy. Without federalism, democracy will erode and vice versa.

**Implementation of Policy by the Lower Levels of Government:**

Federal law is normally not implemented by the federal ministries and their agencies but by the cantons or even the communes who hire and appoint their own staff for carrying out these federal tasks. Thus, for instance, forests and forestry services are regulated in a federal law. However, it is the cantonal forestry agency, which is responsible for applying this law. The so-called federal office for environment and forests only supervises the cantons by carrying out some inspections and issuing guidelines if this is necessary for a uniform application of the law; in addition, it examines and approves requests for federal subsidies. It is only in a few limited areas that the federal administration implements its laws either through the ministry concerned as in the cases of the army or of border and custom controls, or through specialized, semi autonomous agencies such as the railway and postal services. In some other cases, such as the construction of national highways, federal and cantonal agencies work together very closely. On the cantonal level, the situation is similar for
the communes: they implement not only their own laws and projects but are also responsible, in many areas, for the implementation of cantonal laws and programs, e.g. in areas such a education, health or environmental protection. Together with the clear delimitation of tasks between the central and cantonal, as well as the cantonal and communal level, the almost total absence of line agencies at the regional and local level reduces the problem of overlapping powers and activities to a very large extent.

A Balanced Financial Distribution:

Regarding financial distribution, particularly regarding taxation, Swiss federal system is the most decentralized country. Tax sovereignty lies primarily in the cantons and secondarily in the confederation. In Switzerland, the most important source is the income tax levied on the income of individuals, followed by VAT (Value Added Tax). Whereas VAT is a purely federal tax, the income tax goes to all levels of government: the cantons get the highest share (45% in 1997), followed by the communes (36.8% in 1997) and the federal government (18.2% in 1997). The overall repartition of income shows the following pattern: the federal government gets approx. 30%, the cantons have a share of approx. 40% and the communes get almost 30% and thus, generate almost the same amount of income as the federal level. All the three levels have revenue-raising powers and broadly speaking aim at self-financing, although there is a considerable degree of revenue sharing. Reflecting the distribution of tasks in policy implementation, cantons and communes spend more than the federation. The cantons spend more about 40% and the
federal government and the communes spend each approx 30%. Example: 67% of all expenditures at the cantonal level in the area of justice and police, 53% and 34% of expenditure in the area of education at the cantonal and communal level respectively. Cantons spend more than 54% and communes more than 44% in the area of public health, leaving just 1.1% for the federal level. With 63% communes are the largest spenders in the area of environmental protection and urban planning. Decentralization can be costly when it comes to general administration costs: here, the share of communes is 43.2% as compared with 37.6% for cantonal administrations and as little as 19.2% for the federal administration.24

**Power Sharing:**

Power sharing is institutionalized in different forms and at different levels. This is also one of the main factor for decentralized federal system. For ex: the government and parliament have to share their power with the people who can interfere through initiative and referendum. Parliament consists of two chambers, one (the national council) representing the people, the other (the council of states) representing the cantons. Thus the people and the cantons have to share their powers, through their representatives. The members of parliament are elected on the basis of proportionality and their composition very clearly reflects the wishes of all voters. Thus, the majority has to share its power with the minority. The government in Switzerland consists of seven ministers only: this composition consists power sharing between different parties and cultures. The four largest parties are represented according to their strength and at least two of
the members of government must be from the French and Italian-speaking parts of Switzerland. The members of government are elected by parliament and only have to leave if they are not re-elected. The position of the government is not affected in parliament or by referendum. There is no vote of confidence this system has led to a very stable coalition, which is in power since 1959.

Decentralized government with the strong cantons and communes is just the vertical dimension of this culture of power sharing. This pattern applies for the relationship between the central and the lower levels, thus giving the decentralized units considerable possibilities to negotiate decisions by the central level.

In a nutshell, they are probably more autonomous more organic and more ‘self-conscious’ than regional units in other federal system centralization in the Swiss system, though significant, has not gone as far as it has done in other federal states with the result that Switzerland is still the most decentralized of the main federations. The process of centralization over time has been driven by three main factors:

1. The desire to facilitate economic activity by creating a single economic space governed by harmonized regulation.

2. The desire to grant citizens equality of rights in the political and social spheres, which has translated into the strengthening of Swiss citizenship and

3. The building of a welfare state and a strong nationalist ethos in the radical party.
The slow but persistent centralizing tendency was clearly displayed with regard to the harmonization of legal codes. An 1898 constitutional revision paved the way for the adoption of single civil code in 1907 and single penal code in 1937. After WW-I and even more so after WW-II, the same centralizing dynamic was on display in the progressive creation of a welfare state, with more and more power conferred to the central level. This trend was reflected in the fact that the 1874 constitution was amended more than one hundred times over the course of the following century. Despite the shift in responsibilities that took place over the last decades, the central government controls only about one third of public revenue and expenditures, while the cantons and municipalities manage about two-third of public financial and human resources. It is the cantons and municipalities that are the main actors in a wide range of policy areas. Thus even today, Switzerland remains one of the world’s most decentralized countries.

The main reason for the lack of centralization in Switzerland is obvious according to the basic constitutional rule; any transfer of power to the federation requires a constitutional amendment, which is subject to a referendum and the requirement that both the majority of the people and the majority of the cantons must give their approval. This represents a high barrier to centralization. Indeed, between 1848 and 1997, almost one-third of the 140 constitutional amendments proposed by the national parliament were rejected in the vote, even though parliament is cautious in submitting proposals, as it is aware of the difficulties in achieving a majority among the politically heterogeneous cantons. There were even fewer
constitutional amendments achieved by means of popular initiatives: the success rate among the 121 initiatives launched between 1848 and 1997 was less than 10%.27

Thus a slow but unambiguous process of centralization thus took place in the Swiss federal system. It is very clear that at first, the Swiss federal state started from a situation of extreme decentralization more commonly associated with confederations than with federations. The power shift that has occurred over time can then partially be explained by the very low initial level of centralization. Secondly, centralization has largely been confined to legislation, while policy implementation has been left to the cantons and the communes. Hence, for example, while legal codes have been harmonized, the organization of the judicial system is still in the hands of the cantons. Thirdly, centralization in the Swiss system, though significant has not gone so far as it has done in other federal states with the result that Switzerland is still the most decentralized of the main federations.

After going through the details regarding the working of federal systems of India and Switzerland let us at this juncture, sum up and make a comparative perspective of these two systems. Indian federal system is a centralized system where our constitution has provided for strong centre. At present, the trend is more towards co-operative federalism. So far as Switzerland is concerned, it has adopted a federal system by uniting all the cantons. Though this system has given limited powers to cantons, in practice the cantons enjoy more powers than the confederation (centre). And thus this system is a decentralized one in the world. But several reforms have been made to
make centre strong which will be discussed in detail in the forthcoming chapter. In comparing these two systems with respect to intergovernmental relations, differences are more obvious than similarities; Switzerland is a strongly federalist country. In contrast, India was clearly, centralist in the past and it is changing its trend towards decentralization. The influence of the lower levels of government on the legislative process remains comparatively low in India but in Switzerland influence of lower levels of government is more on the legislative process the success of Switzerland in preserving decentralized federalism can, in some measure be attributed to the element of the sovereignty of people and cantons in the federal process. As it has been rightly said: "liberty lives in the hearts of men and women and when it dies there, no parliament, no judiciary in short no constitution can save it." Therefore, ultimately, and in the final analysis, it is the political education of the people, who have to make the final choice of their masters and may bring the country towards its goal without much concentrating on original document and working of a constitution and will give better accountability and better stability for a political set up.
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