CHAPTER-IV

THE NATURE OF FEDERAL SYSTEM IN INDIA AND SWITZERLAND: A CONSTITUTIONAL FRAMEWORK

After being made a brief survey of genesis of federal system in India and Switzerland it has been seen that though these constitutions are born out of different cross cultures and vary substantially in terms of federal content and historical background, some common fundamental principles with some common purpose are visible. And this common variable in any federal set-up seems to be that constitutions have been designed to impose limits on the exercise of authority by the holders as well as the wielders of power. In other words, a federal state derives its existence from the constitution. Every power-executive, legislative or judiciary- whether it belongs to the federation or to the component units is subordinate to and controlled by the constitution to prevent the exercise of authoritarian power by an individual, group or political party or an individual family power-politics broker.¹ In a federal polity, the constitution, inter alia, delineates, delimits and distributes powers between the organs of the state at federal or union level on the one hand and those at the level of the states, provinces or the units on the other. The difficulty of any treatment of federalism is that there is no agreed definition of a federal state. The other difficulty is that it is habitual with orthodox scholars on the subject to start with the model of the united states, the oldest (1787) of all federal constitutions in the world and to exclude any system that does not confirm to that model from the category of 'federation'.² Today, federal constitution has been transformed, through the ages to such an extent that it would be more useful from
a comparative standpoint to widen the concept of federalism. A modern research worker on the subject of federalism, categorically asserts that the question whether a state is federal or unitary is one of the degree and the answer will depend upon how many federal features it possess. With reference to the creation of federation in many states, Dicey made his celebrated observations regarding the conditions and aim of federalism. The substance of his observation was that federalism was the result of a compromise between two conflicting sentiments, viz., a) the desire for national unity and b) the determination to maintain the independence of each man’s separate state. In his celebrated words:

“A federal state is a political contrivance intended to reconcile national unity and power with the maintenance of state rights.”

It is created whenever several existing states find it advantageous, for geographical, racial or political reasons to combine themselves under a common or national organization so far as their common interests are concerned, while retaining independence regarding all other matters which are not primarily of common interest. So in this chapter an attempt is made to analyze in detail the legal features of federal system present in India and Swiss constitution comparatively.

**NATURE OF INDIAN FEDERAL SYSTEM**

The Constituent Assembly of India produced a new kind of federalism to meet India’s peculiar needs, the significant absence of the expression like federal or federation or federalism in the constitutional vocabulary has led constitutional experts to doubt the
appropriateness of the appellation 'federal' to the constitution of India. This peculiarity has influenced the constitutionalist to label Indian constitution with different names viz 'Quasi-Federal', Unitary, Centralist, etc. The thinkers seem to have ignored the historical pulls and pressures as well as circumstances under which the Indian constitution was framed. Principle of federalism is neither a myth nor watered down in the Indian constitution, opines H.M.Seervai rather the federal principle is dominant in the Indian Constitution.4

The Indian constitution is basically federal in form and is marked by the traditional characteristics of a federal system, namely, supremacy of the constitution, division of powers between the union and state governments, existence of an independent judiciary and a rigid procedure for the amendment of the constitution. It establishes the duly polity, with clearly defined spheres of authority between the union and the states to be exercised in fields assigned to them respectively. There is an independent judiciary to determine issues between the union and the states or between one state and another. An amendment in the respective jurisdiction of the union and the states can be brought about only by invoking a special procedure in parliament and ratification by a majority of the states.

1. Provisions for a Federal Union:

The makers of Indian constitution keeping in view of the continental size and huge number of its population on one hand and diverse nature of its society on the other opted for a federal system instead of a unitary one. Federalism is one of the dominant features within the constitution without using the word 'federal'.
Article 1 of the Indian Constitution declares, "India, that is Bharat, shall be a Union of States", the term union is preferably used to indicate four things.

a) That the Indian Constitution is not the result of the agreement by the units

b) That the constituents have no entitlement for secession.

c) That the Union can directly control the units in case of the failure of the constitutional machinery.

d) That the Union is privileged with more powers, influences and incentives than the constituent units.

Dr. B.R. Ambedkar explained the position of Indian constitutions federal scheme clearly while introducing the Draft Constitution in the Constituent Assembly: "......... though India was to be a federation, the federation was not the result of an agreement by the states to join in a federation, and that federation not being the result of an agreement, no state has the right to secede from it. The federation is a union because it is indestructible. Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people, a single people living under a single imperium derived from a single source." The emphasis on India being a "Union" was to convey the fact that it was not the result of a compact or agreement between the constituent units but a forthright declaration by the constituent units but a forthright declaration by the constituent Assembly, which derived its powers and authority from the sovereign people of India.
Article 2 provides that parliament may by law admit new states into the union of India or establish new states on such terms and conditions as it deems fit.7

Article 3(a) states that the parliament is empowered to form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state. (b) increase the area of any state (c) decrease the area of any state (d) alter the boundaries of the state (e) alter the name of any state.8

Article 3 also includes a saving clause in the constitution to protect the rights of the state in regard to the changes in their territories. The first condition is that no bill for the purpose can be introduced in either house of parliament except on the recommendation of the president. Secondly, where the proposal contained in the bill affects the area, boundaries or name of any states, the bill must be referred by the president of the legislatures of the concerned states for expressing opinion thereon. Such an opinion has to be expressed within a period specified by the president. Parliament is not bound to accept or act upon the views received on time.9

Article 4 of the Indian Constitution states that any law passed by parliament affecting the area of any states shall contain necessary and consequential amending provisions of the first and fourth schedule and such law not be deemed to be an amendment of this constitution for the purpose of article 368.10 Thus, it is clear that for affecting the area of any state or making any territorial adjustments
between two or more states, it is not necessary to invoke the provisions of Article 368.

2. **Provisions for Amendment:**

   The Rigid constitution is one of the important features of federal system. The central problem in devising a procedure for constitutional change is to reconcile two principles: the need for preventing ill-considered change and the need to allow desirable and substantial amendments to be made. The necessity of provision for change is recognized in all constitution by various methods, which make the amending process more difficult than the enactment or ordinary legislation. "While we want this constitution to be as solid and permanent as we can make it, there is no permanence in constitution. There should be certain flexibility. If you make anything rigid and permanent, you stop the nations growth, the growth of a living, vital organic people... in any event, we could not make this constitution as rigid that it cannot be adapted to changing conditions" so said India's first Prime Minister Jawaharlal Nehru on the nature of the Indian Constitution.11

**Amendment Method:**

   Part XX, Article 368 of the constitution provides for three methods of amendment of different parts of the Constitution. These are

   i) By Simple majority: Certain parts of the constitution are open to amendment by simple majority of the members of the house present and voting. These includes:
• Admission or establishment of new states, formation of new states, and alteration of areas, boundaries or names of existing states (Art. 4)

• Creation or abolition of legislative council (Art 169)

• Admission of the tribal areas of the state of Assam, Meghalaya, Tripura and Mizoram.

To introduce bills pertaining to Art 4 and 169, a precondition is that there should be a presidential recommendation to introduce such bills and the state legislative assembly concerned should have passed resolution to that effect.

ii) By Special Majority: Certain parts of the Constitution can only be amended by a special majority i.e., a majority of the total members of the house as well as two-third majority of the members present and voting. Part III and IV of the Constitution, which deal with the fundamental Rights and Directive Principles respectively belong to this category.

iii) By both Special Majority and Ratification of the states: Certain articles cannot be sought without ascertaining special majority and ratification by the required number of states. The following are the articles and subject concerned.

• Election of the president and the manner of election (Art 54 & 55)

• Extent of the executive power of the Union (Art 73)

• Extent of the executive power of the states (Art 162)
• Union Judiciary (Chapter IV or Part V)
• High Court for a Union territory (Chapter V of Part V and Art 241)
• The three list (seventh Schedule) and
• Provision of Art 368 itself

**Amendment Procedure:**

According to Art 368, an amendment may be initiated only by the introduction of a bill for the purpose in either house of parliament. When the bill is passed in each house by a majority of the total membership of that house and by a majority of not less than two-thirds of the members of that house present and voting, it shall be presented to the president for his assent. When the president gives his assent, the constitution stands amended in accordance with the terms of the bill. But, in case of certain amendments, ratification by the legislatures of not less than one-half of the states by resolution to that effect is required before the amending bill is presented to the president for assent.\(^\text{12}\)

The amending process of the Indian Constitution shows India has an edge over other constitutions in certain vital aspects. The procedure for amendment must be classed as "rigid" in so far as it requires a special majority and in some cases, a special procedure prescribed for ordinary legislature.

**3. Provisions for Distribution of Powers:**

Distribution of Powers between the union and the units and all the branches of government in a federal system is a natural
phenomenon of constitution. The federal policy survives on the co-operation and co-ordination between the central and state governments. The dual government system and the division of powers are parts of the federal system. To avoid confrontation or a repugnant situation, the framers of the constitution made a detailed provision of the powers of both union and the units. Under such provisions, both governments exercise their powers in the administrative domain.

Article 1 of our Constitution describes India as a “union of States”. When the British power was established in India it was highly centralized and unitary. To hold India under its imperial authority, the British had to control it from the center and ensure that power remained centralized in their hands. Following the precedent set by the Government of India Act of 1935, the constitution makes perhaps the world’s most clear and detailed distribution of powers between the federation and its constituent units. The division of powers in India between center and state divided into

1. Legislative Powers
2. Administrative Powers
3. Financial Powers

1. Legislative Powers:

Part XI, Article 245 to 255 contains a charter of distribution of powers between center and state. The distribution of legislative powers is under following two heads:

1) The territory over which the federation and units shall, respectively, have their jurisdiction.
ii) The subjects to which their respective jurisdiction shall extend.

According to Article 245 states that "subject to the provisions of this constitution, parliament can make laws for the whole or any part of the territory of India and the legislature of a state may make laws for the whole or any part of the state"\(^{14}\)

Article 246 confers exclusive jurisdiction on parliament and the state legislatures to make laws with respect to any of the matters enumerated in List-I, II, III i.e., union, state and concurrent list of the seventh schedule\(^{15}\). List I or the union list includes 99 subjects including residuary powers, (the union has exclusive power to make any law with respect to any matter not enumerated in the concurrent list or state list). Subjects of national importance requiring uniform legislation are included in this list. The more important examples are: defence, armed forces, foreign affairs, insurance coinage, banking etc.

List II or the State list comprises 61 items over which the state legislature has exclusive power. Some subjects of vital importance under the state list are: State taxes, police, administration of justice, local Self-government and agriculture. List III or the concurrent list, which comprises 52 subjects, accords power to both the union and state to legislate according to the needs of time. Important subjects in concurrent list are Criminal law and procedure, Civil Procedure, marriage, contract, welfare, labour, social planning etc.

The constitution vests the power to legislate on residuary subjects i.e., subjects not enumerated in any one of the three lists, in the union Parliament under Article 248. It is obvious that one may
struck, by the size of the union list and the scope of central authority. Relating to this K. Santhanam declared "it is an inevitable political tendency of all federal constitutions that the federal list grows and the concurrent list fades out, because when the central legislature takes jurisdiction over a particular field of legislation, the jurisdiction of the provincial legislatures goes out. Therefore, we may take it that in ten years or fifteen years time, the entire concurrent list would be transferred automatically to the federal list". The size of the concurrent list which in Asok Chanda's opinion, can be justified as being necessary in view of the retarded political and economical development in the past and the need for effecting national co-ordination over their growth in future.

The makers of the constitution had foreseen exceptional circumstances, too. Under such conditions either the normal distribution of powers stands suspended or the union legislature gains a sway over the state subjects. These extraordinary circumstances are:

1) In the National Interest: Article 249 states that parliament has the power to legislate with respect to a matter enumerated in the state list in the national interest if the council of states declares by a resolution that such legislation is expedient in the national interest.

2) Under proclamation of emergency: While the president makes the proclamation of emergency, the parliament has the power to legislate with respect to any matter in the state list [Article 250].
3) By agreement between states: Article 252 states that parliament has the power to legislate for two or more states by consent and adoption of such legislation by any other state.20

4) To implement treaties: Article 253 states that parliament has the power to legislate on any subject for implementing an international treaty, agreement or convention.21

5) Under a proclamation of failure of the constitutional machinery: When a proclamation is made by the President under Art 356, the President may declare that the powers of the state legislatures shall be exercisable by or under the authority of parliament.22

**B) Administrative Powers:**

It is common in federal systems that the administrative relations between the union and the states are fraught with difficulties. The constitution of India seeks to achieve a smooth working relationship between the two levels. The administrative relations between centre and states have regulated in Article 256 to 263 in chapter II of Indian Constitution.

Article 256 of Indian Constitution states that, the executive power of every state shall be so exercised as to ensure compliance with the laws made by parliament and any existing laws which apply in that state, and the executive power of the union shall extend to the giving of such directions to a state, may appear to the government of India to be necessary for that purpose.23

It may be considerable to note that the main theme of Art 256 is uninterrupted operation of union laws in every part of the territory in
India. This article imposes a positive duty on the states to "ensure compliance" with the parliamentary enactments. To ensure compliance means to secure compliance and therefore, this phrase is comprehensive enough to denote not only to the effective operation of the laws of parliament but also their obligation to aid the union government, which such assistance is necessary, in the enforcement of those laws.

The constitution clearly provides for inter-governmental delegation of functions between the union and states. As such, according to Article 258, the union can confer powers on states in certain cases—Article 258(1) reads, notwithstanding anything in the constitution the president may with the consent of the government of a state, entrust either conditionally or unconditionally to that government or to its officers functions in relation to any matter to which the executive power of the union extends. Article 258(2) states, a law made by parliament which applies in any state may, notwithstanding that it relates to a matter with respect to which the legislature of the state has no power to make laws confer powers and impose duties, or authorize the conferring of powers and the imposition of duties upon the state or officers and authorities thereof.

Though the theme of Articles 258 and 258(A) is intergovernmental delegation of functions between the union and states, the main purpose of Article 258 originally seems to be decentralization of administrative powers as far as possible.
Article 260 provides that the government of India may undertake any executive, legislative or judicial functions in a foreign territory. Such functions have to be discharged by agreement with the government of such territory, which is not a part of the territory of India, by the government of India.26

Another provision that facilitates the smooth transaction of administrative business is embodied in Article 261 directing that full faith and credit shall be given to public acts, records and judicial proceedings of the union and the states in all parts of the Indian Territory.

It also contains a provision relating to the inter-state rivers and river valleys. In this direction Article 262(1) authorizes parliament to provide by law for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-state river or river valley.

Finally, in order to have a smooth relations and smooth working of the administrative machinery of the country Article 263 of the constitution empowers the president to appoint an inter-state council and this council is charged with the following relevant duties.

1. Inquiring into the advising upon disputes, which may have arisen between states.

2. To investigate and discuss subject in which the states or the union and the states have a common interest.

3. To make recommendations for the better co-ordination of policy and action with respect to these duties.
C| Financial Powers:

Finance is the backbone of politico economic strength and so it is the essential pre-requisite of government. Part XII, chapter 1 of the constitution deals with finance. The success of a federal system depends on the proper exercise of respective powers by the union and the constituent states. Such powers and functions are however, unthinkable in the absence of adequate financial resources. Unlike other federations, the Indian constitution has tried to demarcate the area of taxation as completely as possible. Every possible tax has been assigned either to the state or to the union. The constitution tries to prevent finances from becoming a bone of contention between centre and states.

Article 265 says that no tax can be levied or collected except by the authority of law. In other words no tax can be imposed by an executive order.27

Article 266 provides for a consolidated fund of India and of the state, subject to the assignment of certain taxes to the state, all revenues received by the government of India, all loans raised by that government by the issue of treasury bills, loans or ways and means advances and all moneys received by that government in repayment of loans shall form one consolidated fund to be entitled “the consolidated fund of India shall be credited to the public account of India.”28

Article 267 empowers parliament and legislature of a state to create a contingency fund for India or for states, as the case may be.

Article 268 states that stamp duties and duties of excise on medicinal and toilet preparations are levied by the union, but they are
collected by, and assigned to the states.\textsuperscript{29} By virtue of Article 269 the center levies and collects taxes on sale or purchase of goods rather than newspapers and taxes on consignment of goods shall all be levied and collected by the government of India but shall be assigned to the states concerned and distributed among the states as may be decided by parliament by law. Again Clause (2) of Article 269 gives an impression that parliament is free to formulate any principle for the distribution of the net proceeds of the taxes and duties mentioned in Article 269(1) among the states, it is in fact, not so fee, because the same article, as shown earlier has imposed on it an obligation to adopt the “collection principle” as the basis of distribution of the said net proceeds among the states.

Another important provision, pertaining to the financial relationship between the union and the states is embodied in Article 272, which provides that union duties of excise mentioned in the union list, except those covered by article 268, shall be levied and collected by the union, but, if parliament by law so provides, the whole or any part of the net proceeds of the duty shall be paid to the states, and those seems thus determined shall be distributed among the states in accordance with such principle of distribution as may be formulated by the union.

Article 274 is concerned to all bills relating to taxation in which the states are interested, the constitution requires the prior recommendation of the President.\textsuperscript{30} Thus, when a bill which effects the meaning and scope of the term agricultural income as applied to Indian income-tax is to be introduce in the house of the people, the
presidents recommendation in necessary. The purpose of such recommendation by the president is to safeguard the interest of the states by making it obligatory for the union government to consult them through the president.

Giving assistance to states in the form of grants and loans are embodied in Article 275 of Indian constitution. Article 276 empowers the states to impose a tax, which is in the nature of a tax on income, in respect of professions, trades, or employment or the benefit of municipalities, district boards or other local authorities.

As the distribution of the financial resources has to be adjusted from time to time having regard to the changing economic conditions and varying financial needs of the union and the federating units, provision under Article 280 is made for the appointment of a Finance Commission to discharge this function. The commission has to be constituted by the president after every five years. The commission is to consist of a chairman and four members to be appointed by the president. It is the duty of the commission to make recommendation to the president as to I) the distribution between the union and the states of the net proceeds of taxes which are to be, or may be, divided between them under this chapter and the allocation between the states of the respective shares of such provinces. II) The principles which should govern the grants-in-aid of the revenue of the states out of the consolidated fund of India. III) Any other matter referred to the commission by the president in the interest of sound finance.

And Article 281 states that the president shall cause every recommendation made by the Finance Commission under the
provision of this constitution together with an explanatory memorandum as to the action taken thereon to be laid before each house of parliament.31

Article 282 to 290 have been grouped together under the subtitle "Miscellaneous Financial Provisions"32

The framers of the constitution realizing that the union and state government would not be able to raise sufficient funds through taxation, made provisions to enable them to borrow on the security of their consolidated funds. Therefore, the union executive is empowered under Article 292 to borrow from anywhere it likes upon the security of the consolidated fund of India. Parliament may fix from time to time the limits within which such borrowings could be made as well as the giving of guarantees within such limits.

Again from Articles 301 to 307 provides for provisions dealing with inter state trade and commerce in the constitution. Under Article 302 parliament may impose restrictions on trade and commerce and intercourse in any part of the territory of India in the public interest.

Article 307 empowers the parliament to appoint such authority as it considers appropriate for carrying out the purposes of Article 301,302,303 and 304 and to confer on that authority such powers and duties as it thinks necessary.

Emergency Provisions:

The emergency provisions comprise nine articles 352-360 of Part XVIII of the constitution. Accordingly the emergency provisions empower the president in effect to suspend the constitution and to
take over the administration of a state or states of the Indian union if he is satisfied that there is a threat to the security of the nation or a breakdown in the constitutional machinery of a state or states or a financial emergency.

During proclamation of financial emergency according to Article 360, the executive authority of the union shall extend to the giving of directions to observe canons of financial authority as may be specified in the directions, to require the education, salaries and allowances of all or any class of persons serving in connection with the affairs of a state, and to require all money bills or other financial bills to be reserved for the consideration of the president after they have been passed by the legislature of the state.

**Provision for Citizenship:**

In a federation, there are two governments, which directly exercise their respective powers over the same individual. Therefore, the constitution confers the powers to legislate regarding citizenship upon both the union and the state legislatures, relating to their respective jurisdictions, this would obviously lead to a conflict of jurisdiction and allegiance, owing to diverse commands of the union and state laws of citizenship. Example U.S.A., Switzerland and Australia are the classical federations where the deal citizenship prevails.

Some other constitutions have avoided such complications, by providing for a single citizenship, viz., that of the union, and conferring on the union parliament exclusive power to legislate regarding citizenship. Under this category comes the constitution of Canada, India, and Nigeria.
As stated earlier, in U.S.A there is a dual citizenship with separate privileges and immunities but in India there is a single citizenship notwithstanding the adoption of a federal polity. Indian constitution avoids all the complications that arise out of double allegiance and different sets of privileges and immunities as in the U.S.A.

There is no separate state citizenship in India. This is why a citizen of India has a fundamental right to move freely in and to reside or settle in any part of India, without any interference from the states (Art 19(1) (d) (e)), except in so far as provided in cl.(5) of Art 19. The legislative power with respect to citizenship, naturalization and aliens belongs exclusively to the union legislature (List I, entry 17 Sch-VII).

**Provision for Settlement of Disputes:**

Due to the dual government involved in a federation, with a division of powers as between the two governments by the constitution, federal constitutions usually provide machinery for settlement of disputes, which are bound to arise as between the union and the states on the one hand, and the states inter se, on the hand. The more common machinery is adjudication by a supreme constitutional court.

In India, the supreme court has been given exclusive original jurisdiction which extends to settle the disputes a) between government of India and one or more states b) between the government of India and one or more states on one side and one or more states on the other, c) between two or more states (Art-131).
THEORETICAL NATURE OF SWISS FEDERAL SYSTEM

The Swiss political system is often presented as a prototypical federal system, in both its formal aspects and its harmonious application of the principle of federalism. The theoretical definition of federalism given by Daniel J. Elazar seems particularly apt for the Swiss federal system:

“A mode of political organization that unites separate polities within an overarching political system by distributing power among general and constituent governments in a manner designed to protect the existence and authority of both. By requiring that basic policies be made and implemented through a process of negotiation that involves all polities concerned, federal systems enable all to share in the overall systems decision making and executing processes.”

Just as each federal system contains some characteristics common to other federal arrangements. So each federal system has some unique features as a result of its historical background and political culture. The modern Swiss federal system, which dates back to the mid-nineteenth century, is a product of the country’s historical development between the thirteenth and nineteenth centuries. The Swiss polity was founded on constitutional choice, and the Swiss constitution of 1848 was a direct result of the constitutional design process that was developed so successfully during the country’s history. The constitution of 1848 formed the basis of a new constitutional choice. The definition given by the Vincent Ostrom to this phenomenon seems highly relevant: “Federalism can be conceptualized as constitutional choice reiterated to apply to many..."
different units of government in a system of government where each unit is bound by enforceable rules of constitutional law". 36

The framers of Swiss Constitution of 1848 had before them the normal task of most modern constitution makers to create a system of government that would provide security against external enemies and internal conflicts and furnish the conditions necessary for the attainment of a good life for a maximum number of individuals. They also had before them a series of obstacles to overcome, many of which were peculiar to Switzerland: severe religious differences, linguistic pluralism, limited natural resources and past reliance upon the canton as the principle unit of government. The emphasis on federalism was considered necessary not only to create unity but also to recognize the historical importance of the cantonal units and the cultural differences that existed among them. In 1848 the makers of the Swiss Constitution sought to establish a federal system of government in Switzerland. The object was to achieve unity in purpose and in action. The purpose was to consolidate the alliance of the confederated states and to increase the strength, honour and unity of the Swiss nation. Unity in action was essential to achieve this purpose.

The central elements of the Swiss federal state are: 37

1. The autonomy and sovereignty of the cantons, which are not only decentralized administrative units of the federal government but also constituent states of the confederation.

2. The allocation of responsibilities between federal government and cantons according to the basic rule set out in Art 3 of the
federal constitution, according to which the confederation is competent only for matters, which are attributed to it by the constitution.

3. Federalism based on partnership, consisting of collaboration in solidarity with one another and mutual consideration between the confederation and the cantons.

4. Participative federalism, whereby the cantons collaborate in shaping the will of the confederation.

5. The three-tier structure of the state, with confederation, cantons and municipalities, whereby the organization of the municipalities is a matter for the cantons, but the confederation must take into consideration the effects of its actions on the municipalities.

6. Financial federalism, whereby the taxing powers are divided up between the confederation and the cantons and the confederation shall leave sufficient source of financing to the canons and promote financial equalization among the cantons.

CONSTITUTIONAL PROVISIONS OF SWISS FEDERAL SYSTEM

Article 1 defines, "Switzerland as a confederation consisting of the united peoples of the 26 sovereign cantons and half cantons". 38

The implication of the article is that a canton or half canton is a member state of the confederation and as such a self-governing entity fully equipped with a regional government, administrative apparatus, parliament and judiciary.
Article 2 defines, "The purpose for which the confederation is formed is to secure the independence of the fatherland against foreign nations, to maintain peace and good order within, to protect the liberty and the rights of the confederates, and to foster their common welfare". This article spells out the guiding principle for defining the balance between cantonal sovereignty and central powers. It interprets that the there is no field at all in, which the cantons are in a narrow sense 'sovereign', since some principles of the federal constitution cover all fields.

Before 1848 the cantons guaranteed each other governments and sovereignty, and the present article is not completely logical attempt to substitute the central governments guarantee for that of the collectivity of the cantonal governments. The first phrase of the article completes Article 1 of the constitution by inscribing the territories of the canton as in 1874 into the constitution. This guarantee of territory can only be a guarantee as against other cantons, since violation of the territory of Switzerland by a foreign country is primarily a violation of federal, not of cantonal territory.
This article guarantees Cantonal sovereignty [that is to say, the guarantee of the autonomy of one canton as against another canton, not against the confederation itself] and guarantees the constitutional structure of the canton.

Article 6 reads, "The cantons are obliged to ask of the Confederation the Federal Guarantee of their constitutions.

a) Every canton shall adopt a democratic constitution. The cantonal constitution must be approved by the people, and must be subject to revision if a majority of the people so requires.

b) The cantonal constitutions must be guaranteed by the confederation shall grant this guarantee if the constitutions are not contrary to federal law.42

The above articles clarify that although the word used in the constitution is "Confederation", yet it is more appropriate to call it a federal government. The cantons are supreme in their own spheres and they can amend their constitution. However, three restrictions have been imposed upon the cantons. Every canton must have a republican constitution. It must be subject to revision or amendment by popular vote. No constitution should contain anything that is contrary to the federal constitution.

**Provisions for Amendment:**

Switzerland has a rigid constitution but not as rigid as America. The Provision governing the amendment of the Swiss Constitution are contained in Chapter III, Article 118 to 123 of the Constitution. Minor
changes were made in the provision for amendment in 1874, when the
Swiss constitution itself underwent a total revision. A major change in
this provision was effected in 1891, when the popular initiative was
adopted for the first time as a mode of Constitutional amendment.

Article 118 states that there are two methods of amendment i.e.,
Total revision and Partial revision.43

**Total Revision:**

A proposal for total revision may be introduced in the forms
fixed by federal legislation (Art.19), if both chambers of the federal
assembly are in agreement upon the desirability of making a total
revision, they may proceed to draft a new constitution. If the two
chambers disagree, or if 50,000 voters demand a total revision, the
question whether the federal constitution shall be revised shall be
submitted to the vote of the Swiss people by ayes and nays in one case
as in the other (Art. 120). If, the majority of the Swiss Citizens taking
part in the vote reply negatively, then the question of total revision is
dropped. If they vote positively then the two houses of federal
assembly are re-elected with a view to preparing a revision (Art.120
(2)).

The revised constitution comes into force only if it receives the
approval of the majority of the Swiss citizens casting a vote and the
majority of the cantons. In order to determine the majority of the
cantons, the vote of each half-canton is counted as half vote. The
result of the popular vote in each canton is considered to be the vote
of that canton (Art.123).
Thus a revised constitution may be effective if a majority of all the votes cast and a majority in at least 11 1/2 cantons approve it. In fact, dissolution of the federal assembly has never taken place because of a disagreement between the two houses on a total revision of the constitution or of a demand for a total revision of the constitution by the voters.

**Partial Revision:**

Proposal for partial revision of the constitution which aims at the introduction, setting aside or modification of specified articles of the constitution, modification of specified articles of the constitution, may be made by each house of the federal assembly and by means of a popular initiative which consist in the request presented by fifty thousand voters. Initiative proposals for modification or introduction of several different provisions in the constitution must be presented separately as different initiatives (Art.121).

An initiative request may be in the form of a general proposal or of a complete draft.

If the federal assembly approves a general proposal it shall prepare a partial revision along the lines of the proposal and submit its draft to the people and the cantons for adoption or rejection. If the federal assembly does not approve a general proposal, the question of partial revision shall be submitted to the decision of the people. If a majority of them vote in the affirmative the federal assembly shall undertake the revision of the constitution in conformity with the decision of the people.
If the initiative request for the partial revision of the constitution in the form of a complete draft and it is approved by the federal assembly, the draft shall be submitted to the people and the cantons for adoption or rejection. If the federal assembly does not approve a complete draft for a partial revision of the constitution, it may prepare its own draft or recommend the rejection of the proposed draft and submit its own draft or recommendation of rejection together with the draft proposed by the initiative to the decision of the people and the cantons (Art. 121).

The amended federal constitution or the amended part of the constitution shall come into force when it will have been accepted by the majority of the Swiss citizens taking a part in the vote and by the majority of the states.

In order to maintain the majority of the states, the vote of a half-canton is counted for a half vote. The result of the popular vote in each canton is held to express the vote of the state.

Here it is to be noted that the Swiss constitution does not grant the people the right to initiate any proposal for ordinary legislation or to repeal or amend any federal law although thirty thousand voters may by petition, compel the federal assembly to submit any federal law to the vote of the people for adoption or rejection. It is clear, therefore, that in Switzerland it is easier for the people to amend their constitution than ordinary statutes against the will of the legislature.

**Distribution of Powers in Switzerland:**

A federation can only exist on the basis of solidarity of its partners. Partnership is indispensable not only between the cantons
but also between the federal branches of government and cantonal branches of government. Without such solidarity, the confederation cannot exist. This is the philosophy behind Article 44 of the new constitution, which reads as follows:44

1. The confederation and the cantons shall collaborate, and shall support each other in the fulfillment of their task.

2. They owe each other mutual consideration and support. They shall grant each other administrative and judicial assistance.

3. Disputes between cantons, or between cantons and the confederation shall, to the extent possible, be resolved through negotiation or mediation.

In fact, federalism in such a small county as Switzerland is only possible if the division of powers finds its complementary balance in a network of informal co-operation at all levels of government and administration.

**Legislative and Administrative Division of Powers:**

The distribution of governmental powers between the federal and cantonal governments is roughly similar to that in the United States. The constitution simply enumerates the powers specifically assigned to the federal government and leaves all the enumerated residual powers to the cantons. But however in quantity and scope, the powers granted to the Swiss federal government by the constitution are much broader than the United States. Article 3 of the Swiss constitution, which is similar to the provision of American constitution reads: "the cantons are sovereign so far as their sovereignty is not limited by the federal constitution, and, as such, they exercise all the rights which are not delegated to the federal
power."45 It is clear, therefore, that the constitution works on the federal principle that the federal government should have delegated powers while the cantons have residual powers.

It must also be noted that Article 2 of the transitory provisions of the Swiss federal constitution has been interpreted to mean, "federal law breaks cantonal law".46 Thus in any case where the two come into conflict, the cantonal law is considered to be void. Further, the Swiss do not have a supreme court in the American with the power of judicial review.

The question arises as to the areas in which the canton remains sovereign. The answer seems to be that there are no areas of government in which cantons retain a completely free hand. The constitution gives the Swiss federal government at least supervisory functions in all aspects of political life. This does not mean, however, that Switzerland has a unitary form of government. Federalism is kept alive and flourishing in Switzerland by means of two main expedients, by giving the cantons "primary" responsibility in certain areas and by relying heavily on the cantonal governments for the execution of federal laws. Article 27 of the constitution is an excellent example of the first expedient. Under this article cantons are responsible for providing primary education. But the federal constitution lays down the standards of such education, which must be adequate, compulsory, and in public schools free of charge and non-sectarian. The constitution authorizes the federal government to enforce the standards of primary education.

There are many provisions in the constitution, which illustrates the second main expedient of keeping federalism alive in Switzerland. Article 20 of the constitution prescribes that federal law determine the
organization of the army but the execution of such law within the cantons shall be ensured by the cantonal authorities, within the limits fixed by federal legislation, and under the supervision of the confederation.

Article 23 bis reads the confederation shall maintain such reserves of cereals as will ensure the country's food-supply. It may compel millers to store corn, and to take over its own supplies of corn in order to facilitate turnover of its reserve. 47

The confederation shall encourage the growing of cereals within the country, facilitate selection and acquisition of high quality home-grown seed, and give assistance to those growing corn for their own use-taking especial account of the needs of the upland areas. It shall buy home-grown corn of good quality suitable for milling at a price, which makes production possible. Millers may be compelled to repurchase this corn on the basis of its market value.

The confederation shall take steps to maintain the national milling industry and, at the same time, safeguard the interests of the consumer of flour and bread. Within the limits of the powers transferred to it, it shall supervise trade in cereals and bread-flour, and the prices thereof. The confederation shall take the necessary measures to regulate the import of bread flour and may reserve to itself the exclusive right of such importation. The confederation shall grant cheap transport facilities to millers where need exists, so as to lessen their costs of transporting (corn) to the interior of the country. It shall take measures designed to equalize the cost of flour to the advantage of the upland areas.

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Article 24 states that “the confederation has the right of high supervision over the control of water-regulation and forests. It shall give assistance to the work of mountain streams, and to the afforestation of their collection areas it shall lay down rules to ensure the up-keep of these works and of the forests already in existence.”

The words in this article are interpreted as meaning of concurrent powers of the confederation and cantons in the same field; typically the confederation issuing the general rules by which the cantons are bound and which supersede cantonal law inconsistent with them ('federal law breaks cantonal law'), whereas the cantons issue subsidiary rules. The relationship must be distinguished from the situation where the confederation is alone competent (posts, railways, etc) and where the cantons are alone competent (income tax and etc).

Article 24 bis states that water-power is under the supervision of the confederation.

Federal legislation shall lay down general provisions to safeguard the public interest and to ensure the rational exploitation of water-power. This legislation shall, as far as possible, take into account the interest of inland navigation.

Subject to these reservations, the regulation of water-power belongs to the cantons.

Nevertheless, when a stretch of water is claimed as a source of water-power and is under the sovereignty of two or more cantons, and the cantons are unable to agree in a joint concession, then the
granting of the concession belongs to the confederation. In the same way, the confederation has the right to grant the concession when the stretch of water forms the national boundary, subject to the consultation of the cantons concerned.

Payments made for the use of water-power belong to the cantons, or to those entitled to them under cantonal legislation.

The confederation fixes the amounts of payment for the concessions it grants after consultation with the cantons interested, and with reasonable regard for cantonal legislation. Within the limits to be fixed by federal legislation the cantons determine the amounts of payment for other concessions.

Export to a foreign country of energy produced by water-power may only take place by consent of the confederation.

In all concessions of water-power made after the coming into force of the present article there shall be a reservation that the terms are subject to any future federal legislation.

The confederation is authorized to make legislative provisions on the subjects of transmission and distribution of electric power.

Article 24 ter states that legislation upon navigation is a federal matter.49

Article 25 reads the confederation is authorized to make legislative provisions concerning shooting and fishing, particularly with a view towards preservation of alpine game, and the protection of those birds beneficial to agriculture and forestry.50
Article 26 states the legislation concerning the construction and running of railways is a federal matter.\textsuperscript{51}

This is to say, legislation concerning railways is an exclusively federal matter. The power of legislating on this matter may not be delegated to the cantons, nor may the legislation be executed by the canons. The same is the case with articles 20, 24\textit{ter}, 28, 36, 37\textit{ter}, 38, 39, and 41.

Contrary to the division of legislative powers, the division of administrative powers is not so sharp, under the constitution of Switzerland, 1874. Various provisions of the federal constitution provide that the execution of federal laws relating to specified matters shall be a responsibility of the states (cantons) and that such execution by the states shall be subject to supervision and control by the federal government (Art 102 (2), (5), (13)) which includes the giving of directions, in case of failure to take necessary measures against the defaulting cantons"(Art 27) including military intervention.

The matters in respect of which the administration of federal law is committed by the constitution to the cantons include:

Article 27 says that the confederation is entitled to establish a federal university and other institutions of higher education, in addition to the already existing polytechnic school, and to subsidize institutions of this nature.\textsuperscript{52}

The cantons provide for adequate primary education, which shall be exclusively under the control of the civil authority. Such education is compulsory and in the public schools, free.
The public schools shall be such that they may be attended by adherents of all religious sects without any offence to their freedom of conscience or belief.

The confederation shall take the necessary measures against cantons, which fail to fulfill these obligations.

Article 27 bis states that subsidies shall be paid to the cantons to help them fulfill their obligations in the field of primary education. The details shall be settled by law. Organization control and supervision of primary schools remain cantonal matters, subject to Article 27.

Article 37 of the confederation exercises high supervision over the roads and bridges in the maintenance of which it is interested. The money due to the cantons named in Article 30 on account of their international alpine roads shall be kept back by the confederation if the roads are not properly maintained.

The other powers include, Regulation of cinema (Art 27 B), Measures for the welfare of the people and economic security of the people (Art 31 B), Regulations relating to banks (Art 31 C), Measures to prevent economic crisis and relief of unemployment (Art 31 D), Measures for social insurance and family welfare (Art 34 C, 34D), System of weights and measures (Art 40).

In practice, the federal principle is maintained by the participation of the cantons in the matter of implementation and execution of most federal laws example Art 27 B (4), Art 40, Art 69(A)) and above all, by the device of referendum under Art 89(2) which
provides that if 30,000 citizens or 8 Cantons so demand, a federal law must be submitted to the people who may reject it at the referendum held for the purpose, by a simple majority vote.

2) Financial Division of Powers:

As already said, finance is the backbone of politico economic strength and so it is the essential pre-requisite of government.

Article 28 reads "Custom duties are a federal matter. The confederation has the right to levy import and export duties."53

The constitution of 1848 made Switzerland a free-trade area internally, and allotted the control of customs duties at the frontier to the confederation, to the exclusion of the cantons.

Article 29 says that the following principles shall govern the assessment of the rates at which federal customs duties shall be levied.

1. Import duties.
   a) Materials necessary for the industry and agriculture of the country shall be taxed as low as possible.
   b) The same principle shall apply to the necessaries of life.
   c) Luxuries shall be subject to the highest duties.

   These principles shall be observed whenever commercial treaties are negotiated with foreign countries, unless there be compelling reasons to the contrary.

2. Export duties shall be as low as possible.
3. Customs legislation shall include appropriate provisions for cross-frontier and market trading.

Notwithstanding the provisions above, the confederation retains the right to take extraordinary measures temporarily in exceptional circumstances.

The implication of this article is that customs duties should be levied for fiscal purposes, subject to the interest of the consumer, and particularly of the poorer consumer.

Article 30 reads that the yield of the customs duties is paid into the federal exchequer. The indemnities previously paid to cantons for the redemption of customs duties, road and bridge tolls, and other charges of this nature, are abolished.54

Article 32 bis reads that the confederation is authorized to legislate upon the manufacture, import, rectifying, sale, and taxation of distilled drinks. The receipts acquiring from duties upon the sale and retail trade within the limits of the cantonal territory remain the property of the cantons.55

Article 36 states that the posts and telegraphs throughout the confederation are a federal matter. The yield of the post and telegraph administration is paid into the federal exchequer. The rates shall be fixed throughout the territory of the confederation according to the dame principles and as reasonably as possible the inviolability of the secrecy of letters and telegrams is guaranteed.56

Article 41 bis States the confederation is authorized to levy stamp duties on negotiable instruments, receipts for insurance
premiums, bills of exchange and similar documents, on bills of lading and other commercial documents: concerning the transfer of real property and mortgages are not covered by this authorization. Documents upon which the confederation has levied a stamp duty, or which it has exempted form such duty, cannot be subjected to stamp or registration duty by the cantons.

Article 41 ter states the confederation is authorized to tax raw and manufactured tobacco.

Article 42 reads that the federal expenditure is covered by:

a. The income from federal property.

b. The income from federal customs duties levied at the Swiss frontier.

c. The income from posts and telegraphs.

d. The income from the monopoly of gunpowder.

e. The income from half the gross yields of the service-exemption tax levied by the cantons.

f. The contributions of the cantons, on a scale to be laid down by federal legislation, which shall take into account their taxable capacity.

g. The income from stamp duties.

This article mentions some of the main sources of income of the confederation, but it does not include all the constitutional sources (e.g. tobacco, alcohol, banks, gambling)
Article 49 explains that no person may be compelled to pay taxes the proceeds of which is specifically appropriated in payment of the purely religious expenses of an religious community of which he is not a member.57

Article 54 defines that no marriage fee or similar tax may be levied on either spouse.

Article 62 says internal taxes on the transfer of property are abolished throughout Switzerland.

Article 63 taxes on the transfer of property of foreign countries are abolished, subject to reciprocity.

Article 89 says that federal decrees of general import whose entry in force admits of no delay can be declared urgent by a decision of a majority of all the members of each of the two councils.58

Federal Grants to Component Units and Shared Taxes:

Article 27 bis subventions shall be granted to the cantons to aid them in carrying out their obligations in respect of elementary education.59

Article 30 states the indemnities hitherto paid to the cantons in respect of the redemption of customs, road and bridge tolls, local dues and similar revenues are abolished.60

Article 32 bis explains that Half of the net receipts accruing to the confederation from the taxation of distilled beverages shall be distributed among the cantons in proportion to their populations ordinarily resident; each canton is bound to expend at least ten
percent of its hare in combating the causes and effects of alcoholism. The other half of the receipts remains the property of the confederation; it shall be set apart for old age and dependents insurance, and shall be paid into the funds established for the same until the time such insurance, and shall be paid into the funds established for the same until the time such insurance is introduced.

Article 34 quater states that the confederation shall... institute a system of old age and surviving dependents insurance... the insurance plan shall be carried into effect with the cooperation of the cantons... the financial contributions of the confederation and the cantons shall not exceed, altogether, one half of the total sum necessary for the insurance.61

Article 39 states that the confederation may exercise its monopoly of note issue through a state bank... at least two-thirds of the net profits of the bank, after payment of interest or reasonable dividend on the endowment or share capital, and deductions of payments to reserve funds, shall go to the cantons.

**Provisions for Citizenship:**

Citizenship in Switzerland has a threefold basis communal, cantonal and federal. A person cannot be a Swiss citizen without being a citizen of a canton and a person cannot be a cantonal citizen without being a citizen of a commune.

The provision of the constitution of Switzerland relating to citizenship in Art 43 to 49, are elaborate as well as complicated.
a) Though there is no general federal law relating to acquisition of federal citizenship and it is provided that in order to be a citizen of a canton (Art-43) and though the citizenship of a canton is governed by legislation by that canton the federal constitution confers power upon the federal legislature relating to various matters relating to citizenship. E.g.

i) Acquisition and loss of Swiss nationality (Art-44)

ii) Determination of the status of children of foreign parents (Art-44)

iii) Prevention of double taxation (Art-46)

iv) Rights of citizens of one canton settling in another canton (Art-47)

b) Federal citizenship is important in as much as it confers certain special rights and privileges e.g.,

i) Right to take part in federal elections (Art-43)

ii) Right not to be expelled from any part of Switzerland (Art-44)

iii) Right to settle in any part of Switzerland, subject to the conditions laid down in Art-45.

Provisions for Settlement of Disputes:

In Switzerland the determination of disputes between the union and the states as well as between the cantons is the exclusive jurisdiction of the federal tribunal, under Article 110 of the Swiss
constitution. But as has been seen, the federal tribunal cannot invalidate any federal law even if it encroaches upon the state sphere as assigned by the constitution.62

CONCLUSION

The foregoing analysis shows that though there are some common features in federal system. But each federal country adopts its own institution and organization within the federal set up to suit its needs and aspirations there are no uniform patterns of organizational or institutional features in the various federal constitutions but there is one common feature amongst all federal constitution is that is division of powers between the union and states made by the constitution, which is to be interpreted in the court of law as a legal instrument. Anyhow, a student of political science should not be obvious of the difference between the law and the practice of the constitution, signifying the difference between the federal government and federal constitution. In the words of Prof. Wheare, " a country may have a federal constitution, but, in practice, it may work in such a way that its government is not federal or a country with a non-federal constitution but which provides the example of a federal government."63
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