CHAPTER TWO

PERSPECTIVES ON FEDERALISM IN THE CONSTITUTIONS OF 1918, 1924, 1936 AND 1977
The term ‘Constitution’ refers both to the institutions, practices and principles that define and structure a system of government, to the written document that establishes or articulates such a system, and also a commitment to the limited government. Some scholars argue that constitution inherently limits the government, either by regularising the governmental processes and thus prohibiting capricious actions or by establishing policies or procedures that cannot be modified by ordinary legislative actions. Others see limitations as the result of specific constitutional provisions, such as the ‘bill of rights’ or the ‘separation of powers’.

A constitution constitutes a polity in a variety of ways. First, a constitution marks the existence of a polity of claims its own sphere of authority. This authority may be defined in terms of a particular region, particular people and particular issues. Such authority need not be national. In federal systems, for instance, each subnational government may have its own constitution.

Secondly, a constitution not only asserts that there is a polity, it also describes how that polity will be governed. Constitutions typically enumerate the institutions of the state. Because institutional designs affect both the distribution of political powers and the making of the governmental policies the structure of the state is often hotly contested in debates over making or amending a constitution.

A constitution also provides vocabulary for politics. Both the identities one can claim and the claims one can make in the political spheres are, at least in part, constitutionally constructed. By privileging one set of identities over another, a constitution shapes political discourse. Thus Constitution is an attempt to construct politics, both institutionally and rhetorically.

A constitution is the general plan for the organization and functioning of the state. It is the basis on which the territorial administrative divisions, the system of state agencies, etc. are established. Constitution provides a legal framework for the functioning of the political institutions and determines the political processes at all
the levels. It is a device of measuring the extent of centralisation of a particular federal polity.

In order to have a proper understanding of the concept, the analysis of the two varying concepts of 'constitution', as have been conceived by the Western scholars and the Soviet scholars, is very important.

CONSTITUTION IN THE WESTERN PERCEPTION:

From the time of Aristotle, the term 'Constitution' was used to mean the 'way of Government'. For Aristotle, a constitution was "an arrangement in regard to the offices of the state", or "an organisation of offices in a state, by which the method of their distribution is fixed, the sovereign authority is determined, and the nature of the end to be pursued by the association and all its members is prescribed". In the Western eyes, constitution has been viewed as a mechanism of imposing restraints on the arbitrary power of government in order to safeguard the freedom of citizens which, thus, means a mechanism through which the government is made to follow the rule of law. This according to Prof. A.V. Dicey has three meanings:

1. It means... the absolute supremacy or predominance of regular law as opposed to the difference or arbitrary power and excludes the existence of arbitrariness of prerogative, or even of wide discretionary authority on the part of the government."

2. It means again, equality before law, or equal subjection of all classes of the ordinary law of the land administered by the ordinary law courts".

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2 For the Western notion and theory of federation, see, K.C. Wheare, Modern Constitutions (London; Oxford University Press, 1963), and C.H. McIwain, Constitutionalism and the Changing World (Cambridge; Cambridge University Press, 1969).
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(3) The rule of law may be used as a formula for expressing the fact that with us the law of the constitution... are not sources, but consequences of the rights of individuals, as defined and enforced by the courts....3

The establishment of the rule of law is sought to be achieved through the means of the division of powers4 which is based on Montesquieu’s theory of separation of powers.5 This forms the basis of Western perception of the Constitution.

According to constitutional expert, Karl Loewenstein, a democratic constitutional order must provide for not only distribution of powers among different organs of government in order to avoid concentration of power in a single organism on a single person and to ensure their coordination, but also for the method by which constitutional order can be peacefully adjusted to changed conditions - constitutional amendments. It must include a bill of rights with effective civil liberties. While granting the individual citizen a subjective right, they are not automatically and directly enforceable against the state. They require action on the part of the public authority to make them realizable.6

In the Western - liberal-pluralistic system, different sections of society advance conflicting demands for "authoritative allocation of values" in their favour. However, there is a consensus regarding the mechanism and process through which their conflicting claims can be resolved and translated into authoritative policies and decisions.7

3 A.V. Dicey, as cited in A.C. Kapoor, Principles of Political Science (New Delhi; 1963), pp.441-42.
5 S.A. DeSmith, Constitutional and Administrative Law (Penguin; 1917), p. 41.
6 Loewenstein, n.4, p. 171.
This liberal-pluralist view of constitutionalism is categorically rejected by the Marxist theory. According to them, plurality of views in the society is not possible because, "the history of all hitherto existing society is the history of class struggle", and society as a whole is more and more splitting up into two hostile camps, into great classes directly facing each other: bourgeoisie and proletariat.

Marxism views state primarily as an instrument of oppression. Its most important institution is 'public force', comprised of armed men, prisons and the various appendages of oppression. Its function is to ensure peace and public order so as to permit the continuation of production in a society divided by class-antagonism, and to project a wrong image of reconciliation of interests with the help of religion, morals and other implements of culture.

A Western-Liberal writer equates democracy with constitutional/limited government. Logically, people's power is unlimited. A government responsible to the entire people cannot be limited. A limited government in pure democracy is a logical "absurdity". In practical terms, it can serve the interest of a particular class or section of the people who need protection from the control of the government by 'others'.

"Separation of powers" which was so cardinal to Western constitutionalism was perceived by Marx as a doctrine which is the product of an age in which "the royal power, the aristocracy and bourgeois are struggling for supremacy elevated into an "eternal law". On the basis of this understanding, Marx described Louis Bonaparte's Coup D'état of 2 December 1851 as a "victory of the executive over the legislative power" in the sense that it was the victory of ruling clique over the

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9 ibid., pp.33-34.
10 Kemig, n. 4, p. 99
representative organs of the bourgeoisie as a whole. In the Western Democracy, the functions of the separation of power, according to Marxist Leninist doctrine is 'to safeguard the independence of the executive power, which is regarded as the bourgeoisie's soundest and most effective protection against Parliament.

In the Soviet view, the facade of parliamentary government with separation of power, conceals the role of the upper bourgeoisie of finance capital and big business which exert their power via an increasingly influential executive. Lenin regarded the separation of executive from legislative as a specific characteristic of parliamentarianism, their fusion as a specific merit of the Soviet system. In Marxist-Leninist view, separation of powers often leads to the degeneration of the political system which manifests itself, in the form of irresponsibility of the heads of the state, and the absence of responsibility on the part of members of the parliament towards their electors.

Similarly, the concept of independent judiciary was also outrightly rejected by Marxian theory. Marx clearly advocated that:

"the judicial functionaries were to be divested of their sham independence which had but served to mask their object subservience to all succeeding governments to which, in turn, they had taken and broken, the oath of allegiance. Like the rest of the public servants, magistrates and judges were to be elective, responsible and revocable".

Thus, one finds that the liberal constitution, whether its structure conforms to parliamentary model, presidential model or any combination of the two, only provides for mechanism of management of political processes. It does not preclude social change but the pattern and degree of social change allowed by it is determined

13 ibid., pp. 156-57.
14 Kernig, n. 6, p. 31.
15 Carr, n. 12, p. 154.
by the interplay of political forces. Lenin held that the essence of liberalism was summed up in its assertions that bourgeois parliamentarism destroys classes and class divisions, since the right to vote and the right to participate in the government of the country are shared by all citizens without distinction.\(^\text{18}\)

In opposition to this, Lenin sets forth his own view that "parliamentarism does not eliminate, but lays bare the innate character even of the most democratic bourgeois republics as organs of class oppression."\(^\text{19}\) Lenin had always urged that the tactical opportunities afforded by the parliamentary system should be exploited fully. However, for him the conventional bourgeois concept of parliament never represented means for achieving the 'proletarian democracy' which the working class was to create after seizing power. This character of the modern constitutionalism according to Marxism, was nothing but a device for legitimization of an exploitative capitalist system. Thus, Marxist model of constitutionalism calls for a different mechanism.

**CONSTITUTION IN THE SOVIET PERCEPTION**

Marxist-Leninist understanding of society, state and law as also the actual requirements of the socialist society determines the Soviet approach to the constitution. This approach conceives a contention as an outcome of the prevailing constellation of social forces.

On the basis of searching analysis of human history, Marx and Engels demonstrated that political institutions as well as moral culture of society at any historical stage were determined by the character of the prevailing economic relationship emanating from the prevalent mode of production. In Marxian perception, the economic mode of production current in history determines the character of the entire social superstructure and the first and most important ideological element created by the


\(^{19}\) ibid., p. 36.
mode of production in one social superstructure is the state. It further maintains that
the entire structure of the state is based on the property relations. The private
property creates class interest and finally class antagonism, class hatred and constant
struggle in the womb of history. In the *Communist Manifesto* they observed that,
"The executive of modern state is but a committee for managing the common affairs
of the bourgeoisie".\(^{20}\) Lenin wrote:

"State is a product and manifestation of the irreconcilability of class antagonism.
The state arises when, where and to the extent that class antagonism objectively
cannot be reconciled. And, conversely, the existence of the state proves that the
class antagonism objectively cannot be reconciled. And, conversely, the existence
of the state proves that the class antagonism are irreconcilable".\(^{21}\)

Lenin, in his *State and Revolution* argued that, "the liberation of the oppressed class
is impossible not only without a violent revolution but also without the destruction
of the apparatus of state power which was created by the ruling class and which is
the embodiment of this alienation".\(^ {22}\) In his views, only the Socialist Revolution
brings about a state which exercises all its functions in the interest of the working
people and society’s progressive development.\(^ {23}\) Lenin emphasised the protracted
nature of the transition period.

According to him, the society must pass through various stages of growth and
maturity. Starting with the initial "dictatorship of the proletariat", a socialist society,
next reaches the phase of "victorious socialism". This is followed by the phase of
building of material - technical base of a communist society.\(^ {24}\)

The Soviet constitutional legislation has shown that it reflects distinct phases of the
socio-economic transformation. The Constitution is basically action programme to

(Moscow; Progress, 1950), p. 35.
\(^ {22}\) ibid., pp. 14-15.
\(^ {24}\) ibid., pp. 38-40.
be translated into political practices. In other words, they provide mechanism for realising and promoting a socialist society along socialist goals.\(^\text{25}\) It has been argued that Socialist Constitutions must transcend the frame for the operation of political processes by governments, parliaments and political parties.\(^\text{26}\) The Soviet Constitutional law, accordingly, embodies:

(a) Principles underlying the Soviet social structure;

(b) Principles underlying the Political power;

(c) Organisation of State system and State power;

(d) Legal status of persons; and

(e) Foreign affairs.\(^\text{27}\)

A.V. Vyshinsky, the well known Soviet authority on law and constitutional matters, argued that:

"the Soviet constitution represents the sum total of the historic path along which the Soviet state has travelled. At the same time, they are the legislative basis of the subsequent development of state life... changes in the socio-political life of our country are reflected in the corresponding changes of Soviet constitutions accepted by the highest organs of the state authority."\(^\text{28}\)

In 1936, Stalin held somewhat different view. According to him:

"A Constitution must speak of that which already exists, of that which has already been achieved and won now, at the present time. A programme deals mainly with the future, a constitution with the present".\(^\text{29}\)

\(^{25}\) Kemig, n. 4, p.183.

\(^{26}\) ibid., p. 184.

\(^{27}\) Chkhikvadze, n. 23, pp. 240-42.


\(^{29}\) J.V. Stalin, *Problems of Leninism* (Moscow; Progress, 1953), p. 688
This stream of thought has been a subject of stringent criticism by others. The critics of Stalin's views have pointed out that the constitutional development was hampered by Stalin's formulations in so far as these "go beyond the framework of recording in legislatives frames what has already been achieved and won in actual fact; and that the constitutions which may be adopted in the future must include formulations of the directions and tasks of the development of the Soviet State.\textsuperscript{30}

While there may be a degree of difference in emphasis, all the Soviet constitutions take note of not only the past and present but also contain provisions reflecting the future programme of the socialist state. Stalin once observed that they are "the mirrors of our success up to the day."\textsuperscript{31} A socialist constitution is far from static. It has been in perpetually progressive motion, moving towards the ideal socialist or communist society of the future in which the welfare of the working population is identical with the well-being of the entire society.\textsuperscript{32} According to M.B. Hooker,\textsuperscript{33} the major function of the Soviet legal system is to provide means of transforming society towards the Communist ideal outside which no true liberty can exist. In terms of this function the main method employed is that of endowing society with the economic organisation that conforms to this ideal.

As far as the form goes, Soviet constitution is somewhat similar in form to the Western pattern of constitutions such as the legislature and the ambit of its powers, the court and its judicial functions, the envisaged scheme and nature of federalism, the division of powers between the federating members as also the conflict resolution mechanism.

It may be seen that the Soviet constitutional practice has followed the Marxian dialectic in the sense that the socio-economic advance of the Soviet society has

\textsuperscript{31} ibid., p. 182.
\textsuperscript{32} Kemig, n. 4, p. 184.
made an avowed demand on the constitutions to conform to the dynamic rationale of social development. This is reflected in all the previous Soviet constitutions. Vyshinsky is not far removed from the actual socio-political reality in asserting that "Soviet constitutions cannot be properly understood without proper analysis of the historic settings in which they were developed and adopted and of the conquests whose formal record and legal confirmation they were".34

Thus, the perspective on the federalism in Soviet constitutions has to be understood in totality of the country's socio-economic situation. Only then, one can critically assess the relevant provisions of the all-union constitution in order to project an over-all view of the place of the union republics in the Soviet federal system.

FEDERALISM IN THE RSFSR CONSTITUTION OF 1918

The idea of setting up a Soviet state on a federal model was legally secured in the Declaration of Rights of the Working and Exploited people. "The Russian Soviet Republic," it said, "is essentially established on the principle of a free union nations, as a federation of Soviet National Republics".35 This declaration was endorsed by the Third All Russian Congress of Soviets and made a component part of the constitution of the RSFSR. The salient features of this declaration was its difference from any other declaration of rights since 1689. Rights in such declaration have meant the rights of the individual primarily against the state resulting in from the philosophy of laissez faire. On the other hand, the Declaration of Rights of the Toiling and Exploited people was an enunciation of state structure itself. It sprang from the Marxist theory that the rights of citizens are related to the specific socio-political structure. It is only when the authority of the working class is established. This declaration was endorsed by the Third All Russian Congress of

34 Vyshinsky, n. 28, p.87.
35 Carr, n. 12, p.126
the Soviets and made a component part of the constitution of the RSFSR adopted in 1918.36

The Debates in the Constitution Commission

The Constitution Commission, appointed by the Third All Russian Congress of Soviets, widely debated the questions of the nature of the state power, centralisation as against dispersal of power and authority and unitary or federal form of government. The conflicting views among the Soviet leadership over the nature of the state during transition period were quite natural as the period of the drafting of the constitution was one of grave and continuous crises both in economic and external policy which threatened the existence of the regime. The need of the hour was a strong state machinery to establish and consolidate the victory of the revolution.

The basic conflicts were between those who pressed for strengthening central power and others who desired a dispersal of power and initiative through local authorities. There were others who desired a concentration of authority and discipline at the centre. Still others advocated the one and indivisible republic. There were many who advocated 'syndicalist' framework. It proposed a republic comprising five federations of workers-land workers, industrial workers, employees of the trading institutions, employees of the state and employees of private persons. Reisner, the representative of the People's Commissariat of Justice upheld these ideas before the drafting commission in April 1918. He said:

"It is indispensable to keep in mind that the territorial organisation and territorial federalism cannot serve as a basis for the solution of state questions in a socialist republic. Our federation is not an alliance of territorial governments of states, but a federation of social-economic organisations. It is founded not on the territorial fetishes of the state power, but on the real interests of the toiling classes of the Russian Republic."37

36 Chaube n. 11, p.16.
37 Carr. n. 12, pp. 136-8.
At last, the luxuriant debate was brought under control and the basic lines of the Bolshevik Party were upheld. This involved, as historian Merle Fainsod puts it:

"Subordinating the local Soviets to centralised authority, safeguarding the concentration of legislative and executive power in the Supreme governmental organs, repudiating the syndicalist deviation, organising the federal republic on nationality - territorial lines, and recognising the industrial working class as the principal supporting pillar of the regime." 38

In the final debate on the constitution in the Fifth All Russian Congress of Soviets, it was suggested that the terms 'federation' and 'Republic' be discarded and advocated that Soviet state be termed as "All Russian Worker's Commune". These syndicalist aberration led to the intervention of Stalin who suggested that the plan of the constitution now being worked out by the commission must be temporary, being designed for the period of transition from the bourgeois to the socialist order. In this intervening period, the state form of the Socialist Republic was to conform to a pattern of territorial sovereignty known in the capitalist world. 39

The outcome of the debate was Article 9 of the Constitution of 1918, which skillfully combined a recognition of the transitional character of the Soviet state power with a reminder that, while it lasted, it must be strong:

"The principal aim of the RSFSR constitution, which is designed for the present transition period, consists in the establishment of the dictatorship of the urban and rural proletariat and the poorest peasantry in the form of a strong all Russian Soviet power for the purpose of the complete crushing of the bourgeoisie, the abolition of the exploitation of man by man and the establishment of socialism, under which there will be neither division into the classes nor state power." 40

Further the establishment of Socialism could be conceived only as an international event, the Russian federation was merely the first unit of an eventful world federation of socialist republics. In this transitional period, everything in the constitution remained provisional. 41

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40 ibid., pp. 138-39.
41 Ibid., pp. 140-41.
Whatever the differences of opinion, the draft constitution was agreed upon and submitted to the Central Committee of the Party and the Fifth All Russian Congress of Soviets in July 1918. Thus, the constitution of this new republic was adopted in July 1918, after an intense debate among the Soviet leadership over its nature and content.  

The Constitution (Fundamental Law) of the RSFSR of 1918 consisted of two parts, fifteen chapters, six articles with ninety clauses (with some sub-clauses too). The first part, the Declaration of the Rights of Toiling and Exploited People, stated the policies of the new regime and ratified specific actions which it had taken. The remaining chapters elaborated the general principles of the Constitution and spelled out the forms of the new governmental structure. Commenting on the Soviet Constitution of RSFSR of July 1918, Lenin observed; "it was neither the creation of lawyers nor it copied from other constitutions. It embodied the workers' experience of struggle and organisation against the exploitation both at home and abroad".  

Andrew Rothstein argued:

"What distinguishes the Constitution of July 1918 from all similar enactments that followed successful upheavals in previous history was, that it was not framed in accordance with preconceived notions of abstract principles. It summed up the general experiences of twelve month's working of the Soviets of peasants' and workers' throughout the country. Its underlying principles were those suggested by the facts of real life .... The written Soviet constitution is not the product of a lecture room or study. It is a living and elastic organism capable of expanding and contracting, or altering according to the lessons drawn by the Russian workers from their every day experience...."  

Political Set-up

Russia was declared to be a republic of the Soviet of Workers, Soldiers and Peasants’ Deputies, and all the Central and local power belonged to these Soviets. The Constitution provided for a federal form of government "established on the basis of a free union of free nations as a federation of Soviet national republics". The declaration, however, did not outline the nature of federal relations:

"...leaving to the workers and peasants of each nation to decide independently at their authoritative Congress of Soviets if they wish to participate in the federal government and in other federal Soviet institutions and on what terms".

Here, it would be pertinent to point out that the resolution of the Third All Russian Congress of Soviets on the drafting of the Constitution provided that the order of participation of individual republic and separate regions in the federal government should be determined when the republics and regions were eventually constituted. But this had not occurred and a constitution could not well be made for a federation of indeterminate or non-existent units. What was in fact created in 1918 was a Russian Republic of undefined territorial extent. Though room was made for incorporation in it of ‘autonomous region’ on voluntary basis. It was laid down in the constitution that the highest organs of an autonomous region, its congress of Soviets and executive committee, would have the same rank and status as the regional congress of Soviets and executive committee of any other region, Russian or non-Russian of the RSFSR.

As a whole the uncertainties were reflected in the constitutional provisions while the RSFSR was freely referred to as a federation. The word 'federal' appeared in its

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46 Article 1, Chapter 1.
47 Article 8, Chapter 4.
48 Carr. n. 12, p.148.
49 Article 11, Chapter 5.
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title and in the initial chapters of the constitution devoted to the general principles. It also recurred in the body of the constitution. But the extent and composition of the federation as well as much of its constitutional machinery remained undefined.⁵⁰

This constitution did not make any innovation by creating new institutions. The structure of government outlined by the constitution represented essentially a codification of institutions which had already emerged.⁵¹

Organisation of the Central Power

The All Russian Congress of Soviets: Since the All Russian Congress of Soviets in November 1917, the Congress had become the supreme organ of state power of the RSFSR.⁵² It was solemnised by Article 25 of the constitution. The Congress made a Uni-Cameral Legislature, (a) consisting of representatives of urban Soviets on the basis of one deputy per 25,000 voters. and (b) representatives of regional congresses of Soviets on the basis of one deputy for every 1,25,000 inhabitants.⁵³

The ratio in favour of urban workers and the system of indirect elections for rural deputies were designed to neutralise the numerical preponderance of the peasantry and to prevent it from swamping the Soviet machinery.⁵⁴ Besides, the constitution created two organs under the Congress of Soviets viz., the All Russian Central Executive Committee (ARCEC) or (VTsIK) and the Council of People’s Commissars (Sovnarkhom).

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⁵⁰ Carr, n. 12, p. 149.
⁵¹ Grigoryan and Dolgopolov, n. 42, p. 35.
⁵³ Article 25, Chapter 6.
⁵⁴ Fainsod, n. 38, pp. 354.
The Central Executive Committee: The All Russian Central Executive Committee of Soviets was the "supreme legislative, administrative and controlling body" during the six-monthly intervals between the sessions of the All Russian Congress. This was elected by the All Russian Congress of Soviets and consisted of not more than 200 members, and after the Eighth All Russian Congress of Soviets in December 1920 not more than 300 members. The All Russian Central Executive Committee of the Soviets was fully responsible to All Russian Congress of Soviets.

The Council of People’s Commissars: The constitution made provisions for seventeen departments, each of which was to be headed by a People’s commissars and a collegium attached to the Commissariat. The Council of People’s Commissars were appointed by the All Russian Central Executive Committee.

The Council of People’s Commissars had dual responsibility. It was responsible both to the All Russian Congress of Soviets and the All Russian Central Executive Committee. The function of the People’s Commissars was the "general management of the affairs" ... It issued decrees, resolutions, orders and, in general, directed the activity necessary for the proper and rapid conduct of government’s affairs. But the All Russian Central Executive Committee had the right to "revoke or suspend all orders, resolutions of the Council of People’s Commissars". It should be noted here that legislative powers were not confined to the representative organ, the

55 Article 31.
56 Article 26, 30.
57 Article 28.
58 "Decree of the Eighth All Russian Congress of Soviets concerning the Soviet Constitution", cited in Rothstein, no. 44, p. 65.
59 Article 29.
60 Article 43,44, Chapter 8.
61 Article 6, Chapter 29.
62 Article 46, Chapter 8.
63 Article 37, Chapter 8.
64 Article 38, Chapter 8.
65 Article 40, Chapter 8.
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congress of Soviets, but were also shared by the Central Executive Committee, the Presidium of the CEC, and the Council of People's Commissars.

M.W. Graham pointed out that Congress was powerless to protest without overthrowing the entire Council of Commissars. Hence, it may easily be seen that the power of effective political control with the Congress theoretically possessed was distinctly curtailed. In fact, it could not force the resignation or eviction of any one commissary. Another aspect brought out by Graham was the ARCEC limitations. He wrote:

"Peculiarly enough, the Central Executive Committee members are subordinates of the Commissaries administratively, since they must all participate in administrative work and can not, save by special dispensation ... work out side of regular Commissariats. On the other hand, from purely political standpoint, the Commissariats are, both as individual and as a whole, responsible to the CEC in its collective capacity. Thus, by a peculiar reciprocal arrangement, the administrative servitor is the political master, and the political servitor is administratively supreme. This is the fundamental paradox of Soviet Political Organisation." 66

This reflected a fusion of legislative and administrative power rather than separation of power. The spokesman of the People's Commissariats of Justice at the time of drafting of constitution had mentioned that the Russian Republic had:

"no interest in any division or balancing of political forces for the simple reason that it bases itself on the domination of all embracing political forces, i.e., the Russian proletariat and the peasant masses. These political forces are engaged in the realisation of a single end, the establishment of a socialist order and the heroic struggle requires unity and concentration of power rather than division." 67

Jurisdiction of the All Russian Congress and the All Russian Central Executive Committee

The competence of the All Russian Congress of Soviets and the All Russian Central Executive Committee was defined jointly in Chapter 9, Article 49, of the Constitution without any general attempt to distinguish between them. The functions solely reserved for the All Russian Congress were: (a) ratification and amendment of the

67 Carr. n. 12, p.155.
fundamental principles of the Soviet Constitution, (b) ratification of the peace treaties.

Further, the Central Executive Committee exercised the power given to the Congress only when it was impossible to convene the All Russian Congress of Soviets.\(^6^8\) Other powers were:

1) Ratification and amendment of the Constitution of the RSFSR;

2) General direction of the entire internal and foreign policy of the RSFSR;

3) Establishing and changing boundaries, also ceding territory belonging to the RSFSR;

4) Establishing boundaries and the competencies of the regional unions of Soviets included in the RSFSR, and settlement of disputes among them;

5) Admission of new members to the RSFSR and recognition of the secession of any part of it;

6) The general administrative division of the territory of the RSFSR and the approval of the regional unions;

7) Establishing and changing weights, measures and money denominations in RSFSR;

8) Foreign relations, declaration of war and ratification of peace, treaties;

9) Making loans, signing commercial treaties and financial agreements;

\(^6^8\) Graham, n. 66, p. 135.
10) Working out a basis and a general plan for the national economy and for its various branches in the RSFSR;

11) Approval of the budget of the RSFSR;

12) Levying taxes and establishing the duties of citizens of the state;

13) Establishing the bases for the organisations of armed forces;

14) State legislation, judicial organisation and procedures of civil and criminal legislation etc;

15) Appointment and dismissal of the individual People's Commissars or the entire Council, also approval of the President of the Council of People's Commissars;

16) Issuing of general orders concerning the acquisition and loss of the rights of Russian citizenship and the rights of the foreigners within the territory;

17) The right to declare individual and general amnesty.\(^69\)

The list of powers indicated that a long and comprehensive enumeration of seventeen 'questions of national importance' fell within the competence of All Russian Congress of Soviets and of the All Russian Central Executive Committee. Their enumerated powers were supplemented by a provision that they could "decide on any other matter they deemed within their jurisdiction."\(^70\) This provision was the nearest thing in the Constitution to allocation of residuary powers.

\(^69\) Article 3, Chapter 9, Clause 49.

\(^70\) Graham, n. 66, p.141.
Financial Policy

In budgetary provisions, a national budget was authorized and the authority to distribute revenue between central and local authorities was reserved to the All Russian Congress of Soviets and All Russian Central Executive Committee. Although local Soviets were authorized to impose taxes for purely local needs, their budgetary estimates had to be approved by higher soviet authorities and the estimates of all town, Provincial and Regional Soviets had to be ratified by the All Russian Central Executive Committee and the Council of People's Commissars. 71

Above constitutional provisions reveal that federation was treated in the constitution as equivalent to decentralisation. It was a matter of administrative organization rather than of the essential character of the constitution, of specifically federal machinery as distinct from the division of powers between central and local organs of government, the constitution of 1918 contained no trace of it whatever. These arrangements were designed to secure a reasonable degree of local self-government for national group without endangering the essential unity of the RSFSR. But they were not federal in the constitutional sense. 72 Robert Conquest remarked that, "the distinction of the 1918 RSFSR constitution as federal has little justification in fact." 73

Amendments to the RSFSR Constitution of 1918

When the RSFSR Constitution of 1918 was adopted, operational problems were soon realized. Institutional structure was found to be ill-suited to the requirements of the existing situation of civil-war and military intervention of the imperialist states demanded that certain existing organs were to be strengthened and new one to be created in order to deal with crisis situation effectively. Accordingly, the 1918 constitution was amended. In December 1919, the 7th All Russian Congress of

71 Article 5, Chapter 16, Clause 79-80.
72 Carr, n. 12, pp. 149-50.
73 Conquest, n. 52, p. 15.
Soviets sanctioned legislatively the formation of the Presidium of All Russian Central Executive Committee (ARCEC). The sessions of the CEC were to be convened every two months. The Presidium now directed the sittings of ARCEC, supervised the execution of decisions, adopted and guided the activity both of the central and local state organs, and decided a number of other administrative questions.

In the intervals between the sessions of the All Russian Central Executive Committee, the Presidium had the right to approve or annul the decisions of Council of People’s Commissars. This body was also to decide questions relating to administrative and territorial division and to make preparations for the convocation of All Russian Congress Soviets and sessions of the All Russian Central Executive Committee.74

According to the decisions of the Seventh All Russian Congress of Soviets, the Executive Committees elected by the Gubernia (Provincial), Uyezd (country) and Volost (rural) Congress of Soviets were considered the highest organs of Soviet state power within the territories of regional, countries and rural Soviets in the intervals between the sessions of the corresponding Congress of Soviets.75

The provisional Executive Committees were empowered to supervise and inspect the activity of all governmental institutions on the territories under their jurisdiction and were obliged to report back immediately to the respective central organs on the results of such supervisions and inspections. On December 29, 1920, the Congress of Soviets resolved to further extend the powers of the Presidium which could now annul the decisions of the Council of People’s Commissars. It could also adopt necessary administrative decisions on behalf of the CEC. The Council of Peoples

74 Carr. n. 12, p. 268.
75 Fainsod, n. 38, p. 268.
Commissars was also given more powers by the same congress. But the above mentioned amendments in no way affected the fundamental principle of the Constitution of the RSFSR as a whole.

FEDERALISM IN THE CONSTITUTION OF 1924

The civil war and the foreign intervention in the Soviet Russia made it imperative for the government to unite and non-Russian regions under a single union in order to save its socialist existence. Although the process began immediately after the revolution, the resolution of the Fourth Party Congress in 1921 specifically called for "Union of the Several Socialist Republics" as the only path of salvation from the imperialist yoke and national oppression. Therefore, the subsequent Union of the Republics creating a new state, the Union of the Soviet Socialist Republics on the 30 November 1922, necessitated the adoption of a new Constitution. On 10 January 1923, the presidium of new VTsIK, elected by the First All Russian Congress of Soviets of the USSR, appointed a Commission to draft the new Constitution.

Debates in the Constitution Commission:

The Debates that accompanied the drafting of the 1923 Constitution of the USSR brought into focus divergent attitudes concerning the question of federalism. At one extreme were the opponents of federalism. Their conception of the "Union of Republics" was not as a union of equal state entities with a mandate to guarantee the free development of national republics, but as a step towards merging of the republics as the beginning of the organisation of the so-called "one and individual republics".

77 ibid., p.17.
78 Fainsod, n. 38,p. 365.
79 RSFSR, Ukraine, Belorussia and Transcaucasia.
nationalities would have separate representation. At the 12th Party Congress of the Communist Party, they decided to embody the recommendations of Lenin regarding the CEC. The decision provided the groundwork for formation of two chambers Executive Committee of the USSR. One chamber was to reflect the class interest of the working people of all nationalities while the other was to represent the specific interests of the individual nations. The Fourth Conference of the Central Committee of the Party met in June 1923 and gave the names of the two chambers. The group which opposed the creation of second chamber was denounced by Stalin, as consisting of "Great Power Chauvinists". Their views, he referred "had no resemblance to communism or had nothing to do with internationalism".81

Leaders from Ukraine, on the other extreme, insisted for a form of Union which would guarantee the non-Russian republics a measure of real autonomy. This group favoured a second chamber composed of representatives of the contracting states. To prevent the RSFSR from dominating this chamber, their spokesman, Raskovsky, proposed that no single state should have more than two fifths of the total seats. They also demanded that Soviet of Union and Soviet of Nationalities should each have its own Presidium. Finally, they proposed that the Commissariats of Foreign Affairs and Foreign Trade should be made Union Republican rather than all Union or Unified Commissariats.82 These demands were rebuffed because what Ukrainian leaders had in mind was a kind of confederation rather than federation. This motivated Stalin to say:

"I perceive from the insistence of several Ukrainian comrades their desire to define the Union as something between a confederation and federation, with the preponderant weight on the side of confederation ... We are constructing, not a confederation, but a federal republic, one union-state, uniting military and foreign affairs, foreign trade, and other matters."83

81 Fainsod, no. 38, p. 365.
82 ibid., p.366.
83 ibid.
The final draft reflected these views. A special commission of the Central Committee of the Party, including representatives from party organs of the Union Republic considered the draft constitution and approved it. The draft was then approved by the CEC of the Union Republics on 6 July 1923, and subsequently ratified by the Second All Russian Congress of the Soviets on 31st January 1924. The 1924 Constitution consisted of two sections, 11 articles and 72 clauses. First section dealt with the background of the formation of the Union and the Second section with the Union and Republics relations, the Central Executive Committee transformed into a bicameral assembly: All Union Council and Council of Nationalities (Article 13, 15), both with Presidium, and the role of the Supreme Court.

Soviet Federalism:

In the 1924 Constitution, the word 'Union' was used in place of 'federation' or 'Federal'. It declared the Union to be "voluntary Association of Sovereign nations on the basis of equality, reserving to itself the right of free withdrawal from the Union". But this was not allowed to be exercised to promote counter revolution.

Stalin had already clarified his stand on 10 October 1920, in an article in Pravda:

"Of course, the border regions of Russians, the nations and tribes which inhabit these regions... possess the inalienable right to secede from Russia, but the demand for secession... at the present stage of the revolution (has become) counter revolution". 84

This was interpreted from a class point of view, that was considered legitimate only if exercised by the working class of the nationality, in question, or in constitutional terms, in favour of the ideal of national equality of peoples of the Union within federative socialist system. It was further argued that the socialist system by doing away with social, ethnic, religion, cultural, and economic inequality would ipso facto put an end to separatist trends for the obvious reasons that nationalism was largely a natural reflex to the stimulus of the "great power chauvinism" of the

84 Carr. n. 12, p. 382-83, also see, Fainsod, n. 38, p.367.
Russians. From the standpoint of bringing about equality among various
nationalities, it was first necessary to raise titular nationalities to the level of more
advanced Russians, technically, economically, culturally and spiritually. 85

Scope of the Authority of the Union

The Constitution mentioned 23 items that came under the Union Jurisdiction. These
were:

1) Representation of the USSR in International relations, the conduct of
all diplomatic relations, conclusion of political and other treaties with
other states;

2) Approval of changes in the boundaries of the union and regulation of
changes to boundaries between the union republics;

3) Conclusion of agreements on admission of new republics into the
union;

4) Declaration of war and conclusion of peace;

5) Conclusion of foreign trade and domestic loans of the Union of Soviet
Socialist Republics and granting permission for foreign and domestic
loans to the Union Republics;

6) Ratification of international treaties;

7) Direction of foreign trade and establishment of a domestic trade
system;

85 R.R. Sharma, "Ethnic and National Diversities: Parameters of National Integration in
the USSR", in The Second Revolution: Democratization in the USSR, Indian Centre
for Regional Affairs, (New Delhi, Patriot, 1989), pp. 87-88.
8) Establishment of the basis and general plan for national economy, definition of branches of industry and individual industrial enterprises of all-Union significance, conclusion of concessionary agreements; both all-Union and in the name of the Union Republics;

9) Administration of transport and communication;

10) Organisation and direction of the armed forces of the Union of Soviet Socialist Republics;

11) Approval of a consolidated state budget of the Union of Soviet Socialist Republics which includes the budgets of the Union Republics; determination of all Union taxes and other revenues, the deduction from them and the increments which go to form the state budgets of the Union Republics, granting permission for additional taxation and revenue for the formation of budgets and of the Union Republics;

12) Establishment of a single monetary and credit system;

13) Definition of basic principles of land tenure and land use, and of the use of minerals, forests and waters in the whole territory of the USSR,

14) Uniform Union legislation, inter-republican migration and the establishment of a migration fund;

15) Definition of the fundamentals of the judicial system and judicial procedure and of the Civil and Criminal Legislation of the Union;

16) Definition of the fundamentals of the labour legislation,

17) Definition of the basic principles of public education;

18) Definition of common measures for people’s health’
19) Organisation of common measures for peoples health care;

20) Fundamental legislation in the sphere of Union citizenship with respect to the rights of foreigners;

21) Promulgation of all-Union acts of amnesty;

22) Suspension of decisions of Congress of Soviets and CEC of the Union Republics which do not conform to this constitution; and

23) Settlement of disputes arising between the Union Republics. 86

The division of powers between the federal government and its constituent republics resembled in many respects the division of powers in the United States. Specified powers were given to the Centre, while jurisdiction of the Union Republic was stated in residual form, the republics were authorized to exercise such powers as were not vested in the government of the USSR.

But all important powers of the budgetary Control and economic planning, and direction for the USSR as a whole were so broadly framed that they embraced the whole economic system of the USSR. In ‘Article 1’ the powers of the Central Authorities and those of the member Republics were delineated so as to give the federal authority obvious dominance over the economy. The federal authority received the right to centralised economic planning for the whole economic system of the Union. 87 Because of this the Republics became agents of the federal authority, when they participated in administration of the economy. They enjoyed no autonomy in the economic fields; no powers to tax unless authorised by the federal authority; no possibility of accumulating resources out of the profits to be gained.

86 Constitution of USSR, 1924, Article 1, Chapter 1.
87 ibid.
by foreign trade, for that was a centralized state monopoly; and no authority to contract foreign loans unless sanctioned by the Centre.\textsuperscript{88} In the sphere of special policy, the Soviet federation left to the various federating Republics greater autonomy. The codes of law, which were the major determinants of the social relationship, were to remain within the authority of the Republics but the federal legislatures were authorized to establish basic principles for structure and procedure of the courts and of the civil and criminal codes of the Republics.\textsuperscript{89}

Even in the cultural matters, the federal government left education wholly to the member states of the federation. But, the federal government was authorised to establish general principles for national education.\textsuperscript{90}

**Sovereignty of the Constituent Republics:**

Union was enjoined to safeguard the sovereignty of each and every constituent Republic of the Union.\textsuperscript{91} Each Republic had its own constitution. The republican constitutions were required to conform to the federal constitution.\textsuperscript{92} The territory of each republic was not to be altered without its consent.\textsuperscript{93} A single citizenship was envisaged.\textsuperscript{94} In case of a conflict, the Union law would prevail.\textsuperscript{95} The power to amend the constitution was vested in All Russian Congress of Soviets.\textsuperscript{96}

\textsuperscript{88} J.N. Hazard, "Fifty Years of Soviet Federation", \textit{Canadian Slavonic Papers} (Toronto) vol. 14, 1972, Vol. 4, p. 593.
\textsuperscript{89} Article 8, Chapter 1.
\textsuperscript{90} Article 9, Chapter 1.
\textsuperscript{91} Article 3, Chapter 2.
\textsuperscript{92} Article 5, Chapter 2.
\textsuperscript{93} Article 6, Chapter 2.
\textsuperscript{94} Article 7, Chapter 2.
\textsuperscript{95} Article 59, Chapter 8.
\textsuperscript{96} Article 2, Chapter 1.
Perspectives on Federalism in the Various Constitutions

Institutional Structure at the Union Level:

Except for one or two minor additions, no serious change in the organisation of the Soviets was sought to be effected through this constitution. In fact, according to Otto Bihari, this constitution of the Soviet Union settled matters of the federal character of the state. The Central government organs defined by the constitution were as follows: The Congress of Soviets was established as the Supreme organ of the authority in the USSR and in between the sessions of the Congress, this authority was to be exercised by the VTsIK.

The 1924 constitution adopted special feature by changing the structure of the Central Executive Committees of the USSR. It was now made bicameral organs consisting of a Union Council and a Council of Nationalities and its function was to represent the specific interests of nationalities. The former consisted of 414 members, and was elected by the Congress of Soviets on a proportional basis from representatives of Union Republics. The Council of Nationalities was organised on the basis of five representatives from each Union and Autonomous Republic and one representative from each Autonomous Region. The composition of the Council of Nationalities as a whole was the "subject to the confirmation of the Soviet Congress of the Union". Although the numerical strength of the two chambers of the Central Executive Committee was quite unequal as to the exercise of power, both enjoyed equal rights.

Hence, the decrees and regulations of the Central Executive Committee could have the force of law only after the agreed decisions of the two. In the event of disagreement the two chambers could set up a conciliation commission on parity.

97 Otto Bihari, Socialist Representative Institutions (Budapest; 1970) pp. 81-82.
98 Article 8, Chapter 3.
99 Article 13, Chapter 4.
100 Article 4, Chapter 14.
101 Article 15, Chapter 4.
102 Article 22, Chapter 4.
103 Article 22, Chapter 4.
basis to put forward the draft of agreed decisions. If the disagreement still prevailed, the issue was to be referred to a regular or extraordinary Congress of the USSR at the request of one of the chambers. 104

Graham glorified the Soviet federation based on nationalities and their representations in a separate chamber. It was "without question one of the most far reaching experiments... ever undertaken by any civilised government in attempting to solve the problem of the peaceful co-existence of many different cultural and ethnic groups". He called the Soviet experiment "a scientific approach to the problems of the cultural treatment of various nationalities "and a daring innovation". 105

Another innovation introduced by the 1924 Constitution was the creation of the Presidium at the Central level. Each chamber of the Central Executive Committee elected its own Presidium of seven members which was responsible for preparing the agenda for its sittings and dealings with current matters between sessions. 106 Apart from this, there was the Presidium of the CEC which was the highest legislative, executive and administrative organs of power in USSR. 107 This Presidium was formed by the Central Executive Committee and comprised 21 members, including the full membership of the Presidia of the Union Council and the Council of Nationalities. 108

The number of Chairmen of the CEC corresponded to the number of union republics and they also formed part of the Presidium. 109 The CEC was accountable to the Congress of Soviets for its activities. 110

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104 Article 23-24, Chapter 4.
105 Graham, n. 66, p. 160.
106 Article 25, Chapter 4.
107 Article 29, Chapter 5.
108 Article 26, Chapter 4.
109 Article 27, Chapter 4.
110 Article 28, Chapter 4.
The Council of People’s Commissars

The other organ of the Congress of Soviets was the Council of people’s Commissars formed by the CEC which consisted of Chairman, Deputy Chairman, Chairman of the Supreme Council of National Economy and other People’s Commissars.

The council was responsible to the CEC and its Presidium, and the latter had the authority to annul the decision of the former. In this connection, it is important to note that the principle of separation of powers was totally rejected. Like the pattern of the previous constitution the legislative powers were vested, in addition to the Congress of Soviets in the Central Executive Committee and its Presidium the Council of People’s Commissars, in the Commissariats of the people and even in the Council of Labour and Defence.

The Supreme Court

Unlike the 1918 Constitution of the RSFSR, the Constitution of the USSR of 1924 made provision for a Supreme Court and Procurator attached to the CEC to maintain revolutionary law throughout the territory of the Union. The Supreme Court had Chairman, Vice-Chairman and four Chairmen of the Plenary Session of the Supreme Courts of the Constituent Republics, and one representative of the Political Department of the Union. All these judges and five more members were appointed by the Presidium of the CEC of the Union.

111 Article 40, Chapter 6.
112 Article 41, Chapter 6.
113 Bihari n. 97, p. 80.
114 Article 43, Chapter 7.
115 Article 45, Chapter 7.
The jurisdiction of the Supreme Court included giving opinions on questions of union legislation to the Supreme Courts of the Union Republics, examining decisions of the lower courts to discover infractions of the Union Law, rendering decisions on the constitutionality of laws passed by the Union Republic and settling disputes among them.\textsuperscript{116}

The Supreme Court had no power to transfer the constitutionality of union legislation or to declare any act of its organs \textit{ultra vires}. In the event that the Procurator disagreed with any decision of the Supreme Court, he had the right to protest before the presidium of the USSR-CEC. The Supreme Court was thus subordinated to the CEC which retained supreme judicial as well as legislative and executive power.\textsuperscript{117}

This was quite in consonance with Marxism - Leninism which favoured fusion rather than separation of power.

\textbf{Institutional Structure at the Republic Level:}

The Constitution also outlined the organs of state administration of the Union Republics on the pattern of Central organs of State Administration,\textsuperscript{118} which shown in the following diagram:-

\begin{center}
\begin{tikzpicture}
\node[draw] at (0,0) {\textit{CONGRESS OF THE REPUBLICS}}; \\
\node[draw] at (0,-1) {\textit{CENTRAL EXECUTIVE COMMITTEE}}; \\
\node[draw] at (0,-2) {\textit{PRESIDIUM OF THE CEC}}; \\
\node[draw] at (0,-3) {\textit{COUNCIL OF PEOPLE'S COMMISSARS}}; \\
\end{tikzpicture}
\end{center}

\textsuperscript{116} Article 43, (a), (b), (c), (d), and (e), Chapter 7.
\textsuperscript{117} Fanisod, n. 38, p. 368.
\textsuperscript{118} Article 64, 65, 66, 67, Chapter 10.
Bolshevik leader, Kamenev, considered the Soviet federal (Union) set up as "sui-generis" and regarded it as "more solid union than any existing unions". It may be noted that in a period when total orientation of Soviet political system was directed towards centralisation and unitary statehood, the innovation in bicameralism testified to the federal character of the Soviet system. The fact that federal framework had been considerably extended since 1924 is evident from the perusal of the amendments to the 1924 constitution.

Amendments to the 1924 Constitution

In the period between 1924 and 1936, a number of amendments and addenda were introduced into the Constitution of the USSR and the constitutions of the Union Republics. They reflected, firstly, the development of "National and State Delimitation", specifying the jurisdiction of the USSR and that of the Union Republics, formation of Autonomous Republics, Regions and National Areas, secondly, radical changes were carried out in the administrative territorial division of the republics, thirdly, reorganization of the organs of the state administration (structural and functional changes) was brought about.

A number of autonomous Republics and autonomous Regions were formed in the RSFSR and other republics after 1920. Many national areas were also created. The total number of autonomous Republics within the USSR reached 22 by the end of 1936. The Constitution was amended to incorporate these changes. Other amendments were introduced to specify the jurisdiction of the USSR and the Union Republics. These amendments led to enhancement of the powers of the Union. It was found to be expedient to extend powers of the USSR and in this connection "special all-Union Legislative Acts", such as "ordinance on State Offence" and "Ordinance on Military Offence" were issued in 1927.

119 Kamenev, Cited in Graham, n.66, p. 257.
121 ibid., pp. 844-85.
In civil legislation, too, the powers of the USSR were extended. In budgetary system, a single budgetary system was established (under this system the revenues and expenditures of the USSR and all the Union and Autonomous Republics were united in a single budget). According to the "Ordinance on the Local Budgets" approved in April 1926, the local finances were also included into the single financial system of the USSR. Since then, the budget of the USSR which included the Republican and local budgets, was approved by the highest organ of the state power of the Soviet Union. Industrialisation and collectivisation necessitated a partial reorganisation of the system of state administration. It also necessitated a new administrative territorial division of the country. With every passing year, the old people's commissariats were divided and new ones were created to effectively deal with developmental activity and all-round rapid changes.

The apparatus of workers' and peasants' inspection was reorganised, passing from the method of inspection to the method of verifying the fulfilment of decisions passed by the central state bodies. The system of workers' and peasants' inspection was abolished and commission of fulfilment took its place. This measure was necessitated by the fact that manifold developments in different fields made it difficult to inspect from a single centre.

On 10 July, 1934, the People's Commissariat of Internal Affairs was created to safeguard revolutionary order and state security, to protect the state frontiers, and to manage the civil registrar's office. Of great importance was the extension of the functions of the Supreme Court of the USSR in the system of the state organs. The Supreme Court was now empowered to supervise the constitutionality of all acts issued by central institutions. It was also authorised to give (at the request of the CEC of the USSR) its opinion regarding validity of Union - Republican legislation.
FEDERALISM IN THE USSR CONSTITUTION OF 1936

The 1936 constitution marked a notable break in the Soviet Constitutional law. It was adopted as a result of important changes in the economic structure and class composition of Soviet society. Alfred G. Mayer has aptly summed up the experience of the Soviet constitutional development. He writes:

"Every Soviet political system destroyed itself by its success. Each rendered itself superfluous and jeopardised its own existence by solving some major problem or problems confronting it and precisely for the solution of those problems it functioned and structured itself". 122

In fact, the previous constitutions contained nothing concerning the embodiment of socialist system. In his report to the Fifth All Russian Congress of Soviets, Lenin said, ".....we do not yet know of socialism that can be put into paragraphs of law". 123

The period between 1918 and 1924 was really one of struggle and privation in Russian history. But towards the end of the period of NEP, conditions had improved and the country had made great economic progress. The consequent socio-economic changes, thus, sanctioned a new constitution.

The new constitution was adopted on 5 December 1936. The main thrust of it, as it was then claimed, was to bring the fundamental law into conformity with socio-economic changes that had taken place during the preceding years. "The new constitution.....' Stalin said, 'proceeds from the fact that there are no longer any antagonistic classes in society; that society consists of two friendly classes of workers and peasants; that it is these classes, the labouring classes that are in power". 124 The purpose of this constitution was the "registration and legislative embodiment of what has already been achieved and won, in fact". Hence, it was possible to introduce universal suffrage without any restriction and without any

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124 Stalin, n. 29, p. 690.
disfranchised classes and to abolish the inequality between workers and peasants. Thus, this constitution was directed towards:

(a) Further democratization of the elective system - in the sense of substituting 'equal election' for 'elections not fully equal'; 'direct elections' for 'elections having multiple stages'; and 'secret elections' which were 'open'; and

(b) Making more precise the social economic basis of the constitution in the sense of bringing the constitution into conformity with the present correlation of class- forces in the USSR (the creation of new socialist industry, the liquidation of the Kulaks, the confirmation of socialist property as the bases of Soviet society etc). 125

The constitution was arranged in 13 chapters covering 146 articles. The 1936 constitution was a lengthy document, as compared to the previous constitutions. Chapter One entitled the organisation of society, proclaimed the USSR as a Socialist state of workers and peasants, attribution of all powers to the working people of town and country as represented by Soviets of working people's Deputies. Chapter two outlined the system of federalism. Chapter three laid down the Supreme organs of state power in the Union, Chapter four - the Supreme organs in the Republics; Chapter five and six dealt with the administrative machinery of the Union and constituent republics; Chapter seven contained Articles regarding the Highest Organvs of the State Power of the Autonomous Soviet Socialist Republics; Chapter eight and nine with local governments and judiciary respectively; Chapter ten contained the basic rights and duties of the citizens; Chapter eleven outlined the scheme of nomination and elections, Chapter twelve dealt with the Arms, Flag and 125 ibid., p. 679.
Capital of the USSR; and Chapter thirteen specified the procedures for amending the constitution.

The Soviet Federation:

'Article 13' declared USSR to be a "federal state", formed on the basis of the "voluntary association of equal Soviet socialist Republics". Prior to the drafting of the 1936 constitution, the USSR consisted of seven Union Republics.126 In 1936, the number of Union Republics increased by the promotion of Tadzhikistan which had previously been merely an autonomous republic within Uzbekistan, and by the promotion in the 1936 constitution of Kazakhstan and Kirghizia to the rank of direct members of the union. At the same time, Transcaucasian Federation was dissolved and its three constituent republics, Georgia, Armenia and Azerbaijan, joined the Union directly. As a result the number of Union republics in the USSR rose to eleven. In 1940 five more union republics were added. In 1956, the Kerelo-Finish Union Republic was reverted to the status of autonomous republic and reabsorbed in the RSFSR. The number of union republics was thus brought down to fifteen and it remained unchanged. In his speech to the Eighth Congress of Soviets, Stalin took the opportunity to lay three conditions which the territory of the national minority should satisfy to gain union republic status: First the republic concerned must be a border republic in order to be in a position to demand secession if and when the occasion arises. Second, the nationality which gives its name to a given Soviet Republic must constitute a more or less compact majority within that republic. Third, the republic must have a sufficiently large population.127 This meant that the autonomous regions would be entitled to the right of secession only after their elevation to the status of the union republics.

126 The Russian, Ukrainian, Belorussian, Transcaucasian, Turkmen, Uzbek and Rajik.
127 J.V. Stalin, On Draft Constitution of the USSR (Moscow; Progress, 1951), pp. 56-57.
Jurisdiction of the USSR

There was specified division of power and the subjects assigned to the Central Government were enumerated in Article 14. Residuary powers rested with the constituent republic. The jurisdiction of the Union of Soviet Socialist Republics as embodied in its highest organs of power and organs of state administration included:

1) representation of the Union in international relations, and conclusion and ratification of treaties with other states;

2) questions of war and peace

3) admission of new republics into USSR

4) control over the implementation of the constitution of the USSR and ensuring the conformity of the constitution of the union republics with the constitution of the USSR;

5) approval of modifications of boundaries between the union republics;

6) approval of the formation of new territories and regions and also of new autonomous republics within the union republics;

7) organisation of the defence of the USSR and the direction of all the armed forces of the USSR;

8) foreign trade on the basis of state monopoly;

9) protection of state security;

10) establishment of the national economic plans of the USSR;

11) approval of a single state budget for the USSR and also of the taxes and revenues which go to form the union, republican and local budgets;
administration of the banks, industrial and agricultural institutions and enterprises, and also of trading enterprises of all union importance;

administration of transport and communication;
direction of the monetary and credit system;
organisation of the state insurance;
concluding and granting loans;
establishment of the basic principles of land use as well as of the use of minerals, forests and waters;
establishment of the basic principles in the spheres of education and public health;
organisation of a uniform system of national economic accounting;
establishment of the fundamentals of the labour legislation;
legislation on judicial organisation and procedure and of criminal and civil codes;
laws on union citizenship and on the rights of the foreigners; and
issuing all-union acts of amnesty.\textsuperscript{128}

In comparison to the 1924 Constitution, tremendous growth in the scope of the jurisdiction of the Union had taken place. In the Constitution of 1924, only

\textsuperscript{128} Constitution (Fundamental Law) of the Union of Soviet Socialist Republics, 1936, Article 14., Chapter 2.
and identification of industrial sectors and individual industrial enterprises having all union significance\textsuperscript{129} were kept under the authority of the Centre. But the constitution of 1936 already significantly widened the sphere of central authority which included "management of the banks, industrial and agricultural enterprises and establishments of trade organisations of all union importanc and general guidance of industry\textsuperscript{130} which meant that a major chunk of the national economy was handed over to the Centre. The same was true of the power to tax and to spend. The union budget comprised not alone the state budget of the USSR, but the budgets of the Union Republics and the lower sub-divisions as well.\textsuperscript{131} The Central Government not only fixed the total sum of the Union Republic budget, but it set the distribution between the Republic government and local government and the expenditure for various republican activities, such as health, education and local industry. After the "All Union" budget was adopted by the federal Supreme Soviet, the budgets of the Union Republics constituted mere elaborations of parts of the all union budget and could not stray far from latter.\textsuperscript{132} The Union Republic budget, as set by the union, could be increased to some extent by the union republic only if the latter could find new sources of income. That was the extent of initiative possessed by the union republics in regard to the budget. Taxes, however did not constitute such new sources of revenue since the union republics had no right to establish taxes on their own initiative. The union-republics acted only as tax-collectors for the union and their powers in this field was limited to the adjustment of rates within ranges set by the USSR. The most important of all sources of revenue in the Soviet Union, the turnover tax, was fixed by the federal government and the union republics were required to turnover most of its proceeds to the USSR.\textsuperscript{133} Thus, in the economic field, there had been no real diminution in the scope of federal government, the

\textsuperscript{129} The USSR Constitution of 1924, Article 1, Chapter 1.
\textsuperscript{130} Constitution, n. 128, Article 14 (1) of the 1936 Constitution.
\textsuperscript{131} Article 14 (k), of the 1936 Constitution.
\textsuperscript{133} ibid.
economic problems in general were classified as within "the joint sphere of competence" of the union and the constituent republics. Constitutional provisions declared that federal departments exercised direction in these fields through like named departments of the republics which were granted "a wide sphere of activity", but only "within the framework of the directives and assignments" given to them by the federal organs. Even in this category, enterprises deemed of "all union importance" on the decision of the centre - were administered directly by the federal organ. Finally, where direction of local industry was designated as "the sphere of competence of the republic", it was stated that in this sphere the Union "realised" only general direction in the measure that such was necessary by virtue of the interconnections between all the branches of the national economy and the single economic plan for the entire economic life of the Union.134

Legislation concerning the judicial system, judicial procedure and criminal codes was brought under the exclusive jurisdiction of the Union.135 Whereas under the previous Constitution the Union had merely been empowered to establish the 'fundamentals' of legislation in these areas.136 Another addition to the enumerated powers of the union was the requirement for the Union confirmation of the formation of autonomous republics and administrative territorial sub-divisions within the union republics.137

The jurisdiction of the Union government was specified in Article 14 and Union republics exercised their authority outside the jurisdiction of the USSR. But in the event of the discrepancy between the law of the Union Republic and all Union law, the latter prevailed.

135 Article 14 (u) of the 1936 Constitution.
136 Article 1 (o) of the 1924 Constitution.
137 Article 14 of the 1936 Constitution.
Perspectives on Federalism in the Various Constitutions

Position of the Union Republics

The Union was enjoined to protect the sovereign rights of the Union Republics. Each Union republic had its own constitution which took into account the specific features of the Republic and was drawn up in full conformity with the Constitution of the USSR.\(^\text{138}\)

Earlier, the Union Republics were free to secede from the USSR.\(^\text{139}\) But technically, the integrity of the Union Republic was indestructible in the sense that the territory of a Union Republic could not be altered without its consent.\(^\text{140}\) The Constitution provided for a uniform Union citizenship.\(^\text{141}\)

Institutional Structure

Considering the changed social situation and new tasks of the Soviet state, certain changes in the institutional structure had been made. Under the previous Constitutions, the "Supreme Power" was vested in the All Russian Congress of Soviets of the USSR and its Central Executive Committee (converted into bicameral legislature under 1924 Constitution) was declared as the "supreme, legislative executive and controlling organ". Under the 1936 Constitution, however, the highest organ in the USSR was "Supreme Soviet of USSR", the Soviets of working people’s Deputies were declared to be the "Political Foundation of the USSR" and all power belonged to "Working People" as represented by the Soviets of Working People’s Deputies.

Under the 1936 Constitution the highest organ of the state authority was declared to be the Supreme Soviet of USSR.\(^\text{142}\) The Legislative power of the USSR was exercised exclusively by the Supreme Soviet of the USSR,\(^\text{143}\) which exercised all

\(^{138}\) Article 16 (1936 Constitution).
\(^{139}\) Article 17.
\(^{140}\) Article 18.
\(^{141}\) Article 21.
\(^{142}\) Article 30, (1936 Constitution).
\(^{143}\) Article 32.
the federal powers either alone or through the federal organs accountable to it, i.e.,
the Presidium of the USSR Supreme Soviet, the Council of Ministers and the
Ministries of the USSR. 144

The Supreme Soviet consisted of two chambers: The Soviet of the Union and the
Soviet of the Nationalities145 The Soviet of the Union was directly elected by the
citizens on the basis of one Deputy for every 3,00,000 of the population.146 The
Soviet of the Nationalities was also directly elected on the basis of twenty five
deputies from each union republic, eleven deputies from each autonomous republic,
five deputies from each autonomous region and one deputy from each national
district147

Both the chambers served for a terms of four years148 and had equal rights in
initiating and enacting legislation. In case they were to disagree, the matter would
be referred to a conciliation commission formed by both the chambers on a parity
basis. If the disagreement still persisted, the Presidium of the Supreme Soviet of
the USSR could dissolve the Supreme Soviet of the USSR and order fresh
election.149 According to Chaube, "these amendments brought the USSR political
system to some approximation of parliamentary form of liberal democratic govern-
ment".150

Presidium

144 Article 31.
145 Article 33.
146 Article 34.
147 Article 35.
148 Article 37 and 38.
149 Article 47.
Second Revolution : Democratisation in the USSR, Indian Centre for Regional Affairs, (New
The Supreme Soviet of the USSR was the highest organ of state power in the USSR. Functionally, its most significant part was the Presidium of the Supreme Soviet of the USSR, which was elected at a joint session of the Supreme Soviet of the USSR from among its members and consisted of one President, 15 Vice Presidents (One from each republic) a Secretary and sixteen members. The Presidium functioned as a "Collegial Presidency". It may be noted that the Presidium of the Supreme Soviet of the USSR discharged the functions normally carried out by the head of state in Western liberal democracy. It ensured the observance of the Constitution of the USSR and the conformity of the Constitution and laws of the Union Republics to that Constitution. More importantly, it interpreted the laws of the USSR. This power ruled out the possibility of judicial review of the laws of the Supreme Soviet of the USSR.

In the Soviet Union, though the Constitution was the supreme law, the judiciary lacked the power of interpretation. For the Presidium which was a part of the Supreme Soviet of the USSR, on the other hand, invalidation of a law of the USSR was out of the question. But the Presidium could revoke decisions and ordinances of the Council of Ministers of the USSR as well as of the Council of the Union Republic if they did not conform to the law.

Amending Powers

Unlike the previous Constitutions, the 1936 Constitution could be amended "only" by the Supreme Soviets of the USSR, adopted by a majority of not less than two thirds of votes cast in each of its chambers.
Council of Ministers:

The erstwhile "Council of People's Commissars" was renamed as "Council of Ministers" under 1936 constitution. Executive and administrative authority was vested in a Council of Ministers whose appointment required the confirmation of Supreme Soviet. The Council of Ministers of the USSR was responsible and accountable to the Supreme Soviet of the USSR, and during the intervals between sessions of the Supreme Soviet, to the Presidium of the Supreme Soviet. It consisted of a chairmen, one first Vice-Chairman, the Ministers of the USSR and fifteen chairmen, of various Departments, and the Director of the Central Statistical Administration. The Council of Ministers of the USSR included the Chairman of the Council of Ministers of the Union Republics as ex-officio members.

Ministries of USSR were either All Union or Union Republican Ministries. All Union Ministries directed the work of their departments throughout the territory of the USSR either directly or through bodies appointed by it. The Union Republican Ministries, as a rule, directed their respective branches of the state administration through corresponding ministries of the Union Republics. Each Union Republican Ministry was subordinated both to the Council of Ministers of the Union Republics and to the corresponding Unions Republican Ministry of the USSR. The Union Republican Ministry's responsibility was thus dual. In this context, it is important to note that though the Chairmen of the Council of Ministers of the Union Republics were also ex-officio members of the USSR Council of Ministers, yet Article 74, 75, 76 and 87 gave the Union enormous powers which drastically affected the autonomy of the Republics.

156 Article 64-65.
157 Article 70.
158 Article 74.
159 Article 75.
160 Article 76.
161 Article 87.
Perspectives on Federalism in the Various Constitutions

Union Republics and Autonomous Regions:

The highest organ of the state power in a Union Republic was a Supreme Soviet of the Union Republic, which was endowed with the power to both adopt and amend the Constitution of the Republic in conformity with Article 16 (it required the republican constitution to be in conformity with the Constitution of the USSR). The Supreme Soviet of a Union Republic elected its own Presidium consisting of a President, Vice-President, Secretary and members of the Presidium of the Union Republic, the powers of which were defined by the Constitution of the Union Republic. The Supreme Soviet of a Union Republic also elected its own Chairman and Vice-Chairman to conduct its sittings. It also appointed the Council of Ministers of the Union Republics. Each autonomous republic had its own Constitution. Institutional pattern was more or less on the pattern of USSR at the Central level.

Court and the Procurator’s Office

The Constitution also provided a judicial system consisting of a Supreme Court of the Union Republic, territorial and regional courts, courts of the autonomous republics and autonomous region, area courts, special courts of the USSR and people’s court. Under the 1936 Constitution, the Supreme Court was declared to be the highest judicial organ which was charged with the supervision of the judicial activities of the judicial organs of the USSR. The Special Courts of the USSR were elected by their Supreme Soviet for a term of five years. The Supreme the Courts of the Union Republics were also elected by their Supreme Soviets for the

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162 Article 57.
163 Article 61.
164 Article 61.
165 Article 102.
166 Article 104.
167 Article 105.
same tenure.\textsuperscript{168} The Supreme Court of the Autonomous Republics were also elected by their Supreme Soviets for the same tenure.\textsuperscript{169} The courts of the territorial regions, autonomous republics, autonomous regions and areas were elected by the Soviets of Working People's Deputies of the respective territories, regions, autonomous regions or areas for a term of five years.\textsuperscript{170} The People's courts were elected by the citizens of the districts on the basis of universal, direct and equal suffrage by secret ballot for a term of three years.\textsuperscript{171}

The judicial proceedings were conducted in the language of the Union Republic, Autonomous Republic or Autonomous Regions.\textsuperscript{172} Theoretically judges were independent and subject only to the law.\textsuperscript{173} According to Soviet Jurist N.H. Polyansky, who reiterated it,

"The independence of the judges referred to in Article 112 of the Stalin Constitution does not and can not signify their independence of politics. The judges are subject only to the law - this provision expresses the subordination of the judges to the policy of the Soviet regime, which finds its expression in the law. The demand that the work of the judge be subject to the law and the demand that it be subject to the policy of the Communist Party cannot be in contradiction in our country."\textsuperscript{174}

The changes in the division of powers between the Union and the Union Republics introduced by the 1936 Constitution, tended to favour the former. Commenting on the 1936 Constitution, constitutional expert A.I. Lepeshkin admitted that it reflected a significant increase in the powers of the Central Government at the expense of the republics. In his opinion, such an increase was justified where rigid centralisation was required for the administration of key branches of the economy and the distribution of material resources in the interest of the country as a whole. However,

\textsuperscript{168} Article 106.  
\textsuperscript{169} Article 107.  
\textsuperscript{170} Article 108.  
\textsuperscript{171} Article 109.  
\textsuperscript{172} Article 1120.  
\textsuperscript{173} Article 1112.  
\textsuperscript{174} Cited in Fanisod, n. 38, p. 375.
in a number of cases, the increase in the authority of the all-Union government and the restrictions regarding powers of the republics reflected a "tendency to excessive centralisation which occurred in the period of the spread of the personality cult of Stalin, who tried to collect in his own hands all branches of state administration.\textsuperscript{175} 

The 1936 constitution was subjected to numerous amendments in succeeding years, but none significantly changed its basic character. Most of the alterations were minor in nature, registering the admission of new union republics, shifts in political submits and rearrangements in administrative structure. The most startling development took place on 1 February 1944 when amendments of two Articles were enacted extending the powers of the Union republics by awarding them the right to enter into direct relations and conclude treaties with foreign states,\textsuperscript{176} as well as to maintain their own military force.\textsuperscript{177} However, the Constitution reserved to the Union the right to establish 'the general procedure' governing the foreign relations of Union Republics\textsuperscript{178} and also the 'guiding fundamentals of the organisation of union republics military formations.'\textsuperscript{179} The rights granted to the Union Republics in foreign affairs and defence were radical deviations from the general centralist trend of the Constitution. With the advent of Khrushchev era, a new period marking the process of decentralisation of state control and extension of the rights of the Union Republics dawned upon the horizon of the Soviet federation. The administration of the national economy centralised into thirty All Union People's Commissariats was transformed into the union republican organ, with responsibilities for the factories invested in the individual republics. This process began in 1954 and by 1956 fifteen thousand factories had been placed under the control of republican

\textsuperscript{176} Article 18(a).
\textsuperscript{177} Article 18(b) and Article 60.
\textsuperscript{178} Article 14(a).
\textsuperscript{179} Article 14(g).
This process led to the reduction in the number of all union ministries and ultimately resulted in radical reorganisation of the whole system of industrial management, leading to the formation of Sovnarkhoz (Council of National Economy). This system of Sovnarkhoz replaced the All Union and Union Republican ministries which were as many as one hundred and forty one in all.\textsuperscript{181}

On 10 May, 1957, the USSR Supreme Soviet issued a law on the organisation of the Sovnarkhoz and justified this step for the following reasons:

1) It is impossible to "exercise effective control over production via a few union branch ministries and departments";

2) It is essential to "bring management into closer contact with production, with factories and the construction industry and to render it more humble, subdued and efficient";

3) It is essential to eliminate "the multiplicity of departmental barriers which impede the further development of specialisation and cooperation in industry and maximum utilization of available reserves", and

4) "The time is now ripe to extend further the rights of the Union Republics in the sphere of economic development."\textsuperscript{182}

From 1957, the Sovnarkhoz took over the control of almost all Union and Union Republican industrial plants and also a number of other economic enterprises. The decentralization of the legal system also began in 1954 with the restriction of the powers of the USSR Supreme Court and the delegation of considerable number of its former functions to the newly formed Presidium of the Union Republican

\textsuperscript{181} ibid.
\textsuperscript{182} ibid., p. 29.
Perspectives on Federalism in the Various Constitutions

Supreme Courts. At the same time, similar Presidia were formed in the Supreme Court of the Autonomous Republics and also in Oblast and Krai Courts.

The legal organs of the individual Union Republics were made responsible for confirming sentences passed within their territory. The Supreme Court of the All Union was to intervene only if a particular case had already been before the Supreme Court of the given Union Republic and if the sentence passed by the latter was contrary to All Union legislation or infringed upon the interests of another Union Republic. 183

In the 1960's the process of decentralisation, which began in 1954, came to a halt and sign of reverse tendency became apparent. At the end of 1962, the Central Asian Bureau of the Communist Party was formed. Directly subordinated to Moscow, it exercised control over the political, cultural and economic life of these republics. Similar was the case within the other republics.

The process did not stop here. The traditionally republican level ministries as those of education, autonomous for over fifty years, were transferred into Union Republican bodies in 1965 and into All Union organs in 1966. For the first time under the Soviet regime, a central ministry of education was established in Moscow. In 1966, the Ministries for the Defence of Public order, previously republican bodies were recognised into Union Republican ministries, and the USSR Supreme Court also began to broaden its supervisory functions which was later on followed by the appropriate legislation. 184 In the mid 1960s, it was urged that the new constitution should contain guarantees of the sovereignty of the Union Republics reflecting their rights in state’s economic and cultural rights.

183 ibid., p. 31.
FEDERATION IN THE USSR CONSTITUTION OF 1977

The discussion on the need to change the Constitution of 1936 was started by Khrushchev at the Twenty-first Congress of the CPSU in 1959. In January 1956, at the Twentieth Congress of the CPSU, Khrushchev revealed how Stalin, having accumulated immense power in the Party and the Government, oppressed his opponents. This revelation led to the re-examination of Stalin’s personality and policies as well as the principles of management of the Party and government. The natural consequence of this exercise was a series of corrective measures introduced after the Twentieth Congress. 185

Finally in 1961, the Communist Party of the Soviet Union adopted a new programme at its Twenty second Congress. This programme set the following direction for the development of the Soviet state:

All-Round extension and perfection of socialist democracy; active participation of all citizens in the administration of the state, in the management of the economic and cultural development; improvement of the government apparatus, the increased control over its activities. 186

It was a continuation of the spirit of the Twentieth Congress that made a further exposure of the evils of the personality cult at the Twenty Second Congress and assertion of faith, in the programme of the CPSU, as condition of transition to communism. 187

Constitutional Commission

In April 1962, a Constitutional Commission presided over by Khrushchev was established. Brezhnev succeeded Khrushchev after the latter’s ouster from power.

185 Chaube, n.11, p. 29.
187 ibid., p.194.
in October 1964.\textsuperscript{188} The Constitutional Commission included, "experienced party and government workers, collective farmers, the intelligentsia eminent scientists, and legal specialists".\textsuperscript{189} Commission reported that nation-wide discussion of the Draft Constitution was extensive and far-reaching. According to Brezhnev, it was debated by "Over eighty per cent" of the adult population resulting in nearly 4,00,000 proposals for amendments intended to clarify, improve and supplement the draft proposals.\textsuperscript{190} In the light of these proposals Supreme Soviet introduced 150 amendments and specifications into the draft. Later on, the Supreme Soviet session made another 12 changes into the draft. Changes affected 118 out of the 173 articles of the draft. Further more one new article was added,\textsuperscript{191} the special seventh session of the USSR Supreme Soviet approved this draft unanimously on October 7, 1977. Thus, the 1977 Constitution of USSR grew out of the fulfilment of the programme of the Communist Party of the Soviet Union that was adopted in 1961.

Brezhnev claimed that this Constitution "epitomized the whole sixty years development of the Soviet State". He called it, "The law of life of developed socialist society".\textsuperscript{192} The 1936 constitution had been drafted just after the establishment of socialism. Since then a great distance has been traversed by the Soviet state. Economic development had been accompanied by considerable levelling of the conditions of the people and the consolidation of the socialist consciousness creating an ‘organic integrity and dynamic force of the social system, its political stability and its indestructible inner unity’. It reflected the stage of mature socialism - an ‘important step’ towards the great goal of communism.\textsuperscript{193} The 1977 Constitution (with 174 articles) was as a result, lengthier and more elaborate in principle than

\textsuperscript{190} ibid., pp. 4-6.
\textsuperscript{191} Boris Topornin, The New Soviet Constitution of the USSR (Moscow; Progress, 1980), p. 16.
\textsuperscript{193} ibid., pp. 20-21.
the 1936 constitution (with 148 articles). In place of the single Chapter II of the 1936 constitution, the 1977 text treated the structure of the Union in four separate chapters, which, in altogether 18 articles (as compared with 17 in 1936), covered not only the USSR and the Union Republics (Chapter 8 and 9) but the subordinate national units, the autonomous republics (Chapter 10) as well as the autonomous regions and autonomous (previously national) areas (Chapter - 11).

The Constitution of 1977 preserved the structure of federal arrangement of 'union-republic' relationships and division of state power. In fact, constitutional commission had received some proposal suggesting the elimination of the union and autonomous republics and the incorporation of the 'concept of an integral Soviet Union' in the constitution. If accepted, this would have drastically curtailed the sovereignty of the Union Republics. Constitutional commission rejected this suggestion for dismantling of the federal structure and branded them 'grossly erroneous'. Brezhnev went on to state that "social and political unity does not at all imply the disappearance of national distinctions".194

Soviet Federalism

The Constitution described the USSR as "an integral, federal, multi-national state formed on the principle of socialist federalism as a result of the free self-determination of nations and the voluntary association of equal Soviet Socialist Republics".195 The previous constitution simply proclaimed the voluntary union of equal Soviet Socialist Republics and no emphasis was made on the socialist character of the Soviet federation. The new constitution contained a direct reference to the sovereign character of a Union Republic.196 In this context, it is important to underline that the conventional theory of sovereignty needed to be modified in the federal systems of the USSR. It was not a single sovereign state, but a 'Union'

195 Article 70 (1977 Constitution).
196 Article 76.
of sovereign states called Union of Soviet Socialist Republics. In most federations, the conduct of foreign relations was the exclusive responsibility of the Central authorities. In theory a line is drawn between internal and external sovereignty. In this regard, the USSR was a unique case. In 1944, a constitutional amendment gave the republics the power to enter into relations with other states, conclude treaties with them, exchange diplomatic and consular representatives and take part in the work of international organisations.197 By virtue of this status the USSR enjoyed three votes in the United Nations (the extra votes being accounted for by Ukraine and Belorussia) and each republic had its own ministry of foreign affairs. However, the Union Republics had lost the power to maintain their own military formations.198 Instead Article 81 of the new Constitution ordained the USSR to preserve the sovereign rights of the Union Republics.

The concept of sovereignty in the context of the USSR cannot be properly understood in juridical sense which is identified with exclusive powers. The allocation of power in the federal system was based on the functional interdependence and therefore, did not admit the concept of 'balance of power' or 'checks and balances' as in the U.S. federation.199

**Jurisdiction of the USSR**

Matters falling within the jurisdiction of all union organs were specified in Article 73 that covered:

1) admission of new republics into the USSR; approval of the formation of new autonomous republics and autonomous regions within union republics;

197 Article 80.
198 Article 18a (1936 Constitution).
199 Chaube, no.11, pp. 165-67.
2) determination of the state frontier of the USSR and approval of modifications of boundaries between union republics;

3) establishment of the general principles for the organisation and activity of republic and local organs of state power and administration;

4) ensuring the unity of legislative regulation throughout the territory of the USSR, the establishment of the fundamentals of legislation of the USSR and the Union Republics;

5) implementation of a uniform socio-economic policy and direction of the economy of the country, determination of the basic directions of scientific and technical progress and general measures for the rational utilization and protection of natural resources; the working out and approval of state plans for the economic and social development of the USSR and the approval of reports on their fulfilment; and

6) working out and approval of a single state budget for the USSR and approval of the report on its execution; direction of a single monetary and credit system; establishment of taxes and revenues which go to form the USSR state budget; and the formulation of the wages and price policy;

7) directions of the sectors of the economy and of enterprises and amalgamations under union jurisdiction and general direction of industries under union republican jurisdiction;

8) issues of war and peace, defence of the sovereignty of the USSR and safeguarding of its frontiers and territory and organisation of defence, direction of the armed forces of the USSR;

9) state security;
representation of the USSR in international relations and USSR's relation with other states and with international organisations, establishment of the general procedure for and coordination of the relations of the union republics with other states and with international organisation, foreign trade and forms of other economic activity on the basis of state monopoly;

11) control over the observance of the USSR Constitution and ensuring the conformity of the Union Republic Constitutions to the Constitution of the USSR; and

12) settlement of other matters of all-Union significance.\textsuperscript{200}

These powers clearly indicated that the powers of the union government were quite comprehensive and fully justified the concept of an integral federation.

**Sovereignty of the Constituent Republics:**

There was an elaborate structure of 'highest bodies' of state authority and administration to exercise their powers, refuting any apprehensions that a union of sovereign states could not be a federation. These Union Republics retained their sovereignty in the form of 'right to secede from voluntary union' of the USSR and exercise their authority over the jurisdiction of the USSR.\textsuperscript{201} The sovereignty of a union republic was guaranteed by the provision of the Constitution of the USSR under which the territory of a Union Republic could not be altered without its consent while the boundaries between union republics might be altered by mutual agreement of the republics concerned subject to the ratification of the USSR.\textsuperscript{202} Constitutional guarantee of the rights of a union were the right to have its own constitution

\textsuperscript{200} Article 73 (1977 Constitution).
\textsuperscript{201} Article 72.
\textsuperscript{202} Article 78.
confirming to the constitution of the USSR with the specific features of the republic being taken into account\textsuperscript{203} to ensure comprehensive, economic and social development on its territory.\textsuperscript{204} Union Republics took part in the decision making in the Supreme Soviet of the USSR, the Government of the USSR, and other bodies of the USSR in the matters that came within the jurisdiction of the USSR.\textsuperscript{205} Then the Centre of course, maintained control over observance of the Constitution of the USSR and ensured the conformity of the Constitutions of Union Republics to the Constitution of the USSR.\textsuperscript{206} In the event of the disparity between the Union Republic law and an all-Union law, the law of the USSR prevailed.\textsuperscript{207}

A Union Republic determined the division into territories, regions, areas and districts and decided other matters relating to its internal administrative and territorial structure.\textsuperscript{208} As regards the autonomous territorial entities within the Union Republics, they were allotted separate chapters. In the new Constitution however, the names of the 20 autonomous republics and autonomous regions were specified. New autonomous republics and autonomous region could be created by the Union Republics, but such formation needed to be approved by the highest state bodies of the USSR.\textsuperscript{209} There were 10 such (National) autonomous areas within the USSR which were less significant than other types of autonomy and were not specified in the constitution. An autonomous republic was a constituent part of union republic. In the spheres not within the jurisdiction of USSR and the Union Republic, an autonomous republic dealt with matters within its jurisdiction independently. An autonomous republic had its own constitution, conforming to the Constitution of the USSR and the union republic with the specific features of the

\textsuperscript{203} Article 76, para 3.
\textsuperscript{204} Article 77, para 2.
\textsuperscript{205} Article 75.
\textsuperscript{206} Article 73 (11).
\textsuperscript{207}Article 74.
\textsuperscript{208} Article 79.
\textsuperscript{209} Article 873(1).
autonomous republic being taken into account.\textsuperscript{210} Their ’autonomy’ was political. While the 1936 Constitution authorised the Union Republics to define the boundaries of the territories of the autonomous republics in them,\textsuperscript{211} the 1977 constitution provided that the territory of an autonomous republic would not be altered without its consent.\textsuperscript{212} An autonomous republic took part in the decision making through the highest bodies of state authority and administration of the USSR and of the Union Republic respectively in matters that came within the jurisdiction of the USSR and the Union Republic.\textsuperscript{213} An autonomous republic ensured comprehensive economic and social development of its territory, facilitated exercise of the powers of the USSR and the Union Republic on its territory, and implemented decisions of the highest bodies of the state authority, administration of the USSR and the union republics.\textsuperscript{214} In matters within its jurisdiction, an autonomous republic coordinated and controlled the activity of enterprises, institutions and organisations subordinate to the Union or the Union Republic.\textsuperscript{215}

Below the level of political autonomy, there were two levels of administrative autonomy, the ’autonomous region’ and the ’national area’. An ’autonomous region’ was a constituent part of a Union Republic or an administrative territory. The Soviet of the autonomous region drafted the law necessary for these territory and then submitted them to the Supreme Soviet of the Union Republic which adopted them.\textsuperscript{216}

It reflected that the legislative initiatives for the autonomous regions belonged to the Regional Soviets, but the ultimate authority to adopt a proposal belonged to the Union Republics. The autonomous areas were a special type of administrative level

\textsuperscript{210} Article 82.
\textsuperscript{211} Article 60(h) (1936 Constitution).
\textsuperscript{212} Article 84 (1977 Constitution).
\textsuperscript{213} Article 83 (a).
\textsuperscript{214} Article 83(b).
\textsuperscript{215} Article 83(c).
\textsuperscript{216} Article 83.
meant for the thinly populated northern territories of the RSFSR. These enjoyed all the rights of self-government in the solution of various question of local life especially national development. Each autonomous area had its own state organs: Area Soviets and its Executive Committee. The areas had special representation on the Soviets of Nationalities of the USSR Supreme Soviet to which they elected one deputy each. All the autonomous areas were constituent parts of an administrative territory or region. The Supreme Soviet of the Union Republic legislated for them. Above provisions indicated that the division of power among these three tiers was flexible and called for a great deal of collaboration.

Amending Powers

The constitution could be amended by a decision of the Supreme Soviet of the USSR adopted by a majority of not less than two-third of the total number of Deputies of each of its chambers.

Institutional Structure:

Another important feature for safeguarding the interest and rights of Union Republics was the institutional system of the Soviet state bodies, viz., the two chamber structure of the Supreme Soviet of the USSR - 'the Soviet of the Union' and the 'Soviet of Nationalities', and broad representation of Union Republics in these chambers. Each Union Republic elected thirty two deputies to the Soviet of Nationalities, regardless of the size of its territory or population. Besides deputies from Union Republics, elected to the Soviet of Nationalities were eleven deputies from each autonomous republic, five deputies from each autonomous region and...
one deputy from each autonomous area. Each of the chambers had 750 members, and the ratio between the republics and the population diminished from election to election.

Each Union Republic had the right to initiate legislation through its highest bodies of state authority as well as the right to submit proposals to the Supreme Soviet of the USSR, that bills and other very important matters of state were brought to a nation-wide discussion.

Both the chambers of the Supreme Soviet of the USSR had equal powers. The 1936 Constitution provided that, in the event of their disagreement, a conciliation commission would be set up to bring about an agreement, failing which both the chambers would be dissolved. In contrast, the new Constitution removed the provision for dissolution in such cases and provided that the matter shall be postponed for debate in the next session. On persistence of disagreement, the matter would be submitted to a national wide referendum.

**Presidium**

Some minor changes were introduced in the Constitution of 1977 with regard to the Presidium. The 1977 Constitution defined its official status as that of a ‘standing body’ of the Supreme Soviet of the USSR, accountable to it for all its work and exercising the functions of the highest body of state authority of the USSR between the sessions of the Supreme Soviet within the limits prescribed by the Constitution.

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220 Article 110.
221 Article 113 and 114.
222 Article 47 (1936 Constitution).
223 Article 115 (1977 Constitution).
224 Article 119.
Presidium was elected at a joint session of the Supreme Soviet of the USSR from among its members, and consisted of Chairman, 15 Vice-Chairmen (one from each republic), one Secretary and 21 other members.\textsuperscript{225} Five more powers were added:

1) Presidium could amend existing laws of the USSR when necessary;

2) Approved changes in the boundaries between the Union Republics;

3) It formed and abolished Ministries and state committees of the USSR, on the recommendations of the Council of Ministers of the USSR;

4) The Presidium could remove individual ministers of the USSR and replace them by persons recommended by the Chairman of the Council of Ministers of the USSR,\textsuperscript{226} and

5) The Presidium of the Supreme Soviet of the USSR promulgated decrees and adopted ordinances.\textsuperscript{227}

But overall, nothing significantly new was added.

The Council of Ministers

The absence of separation of powers in the Constitution of the USSR was most clearly revealed in the description of the Council of Ministers as the 'Government of the USSR' and the 'Executive and administrative body of state authority.'\textsuperscript{228} The new Constitution of the USSR innovated a Presidium of the Council of Ministers as its standing body, resembling the cabinet committee of a Council of Minister in Liberal - Parliamentary system, comprised of Chairman, the first Vice Chairman, and Vice Chairmen. The Presidium, it was declared, would function as a standing

\textsuperscript{225} Article 120.
\textsuperscript{226} Article 122.
\textsuperscript{227} Article 123.
\textsuperscript{228} Article 128.
body of the Council of Ministers of the USSR to deal with question relating to guidance of the economy, and with other matters of state administration.229

As before, the Council of Ministers was formed by the Supreme Soviet of the USSR at the ‘Joint Sitting’ of the two chambers. It consisted of the Chairman of the Council of Ministers of the USSR, First Vice Chairman and Vice Chairmen, Ministers of the USSR and Chairman of the State Committee of the USSR. The Chairman of Council of Ministers of Union Republics was ex-officio members of the Council of Ministers of the USSR. The Supreme Soviet of the USSR, on the recommendation of the Chairman of the Council of Ministers included in the Government of the USSR the heads of the other bodies and organisations.230

The Council of Ministers was responsible and accountable to the Supreme Soviet to which it was obliged to report regularly on the work. Between the sessions of the Supreme Soviet, the Council of Ministers was responsible and accountable to the Presidium of the Supreme Soviet.231

Except the matters that fell within the competence of the Supreme Soviet or Presidium, the Council of Ministers was empowered to deal with "all matters of state administration within the jurisdiction of the Union...."232 The Council of Ministers had the right to issue decrees and ordinances and surprise their execution. The decrees and regulations were binding throughout the territory of the USSR.233

In matters within the jurisdiction of the USSR, the Council of Ministers had the right to suspend the execution of decrees and ordinances of the Council of Ministers of the Union republics, and to rescind the acts of Ministries and State Committees of
the USSR, and of other bodies subordinate to it. The Council of Ministers of the USSR coordinated and directed the works of all-Union and Union Republican Ministries, State Committees of the USSR and other bodies subordinate to it. Details of these Ministries and state administration were not mentioned. But it was stated that "the procedure for transforming enterprises and amalgamations from republic or local subordination to union-subordination shall be defined by the Presidium of the Supreme Soviet of the USSR". There was no change in the case of Union Republican Council of Ministers which continued as before. A perusal of the powers and functions of the Union Council of Ministers showed that they were extensive and indirectly influencing the authority of the republic and their highest representative bodies.

Institutional Structure at the Republic Level

The highest organ of state power in a union republic was the Supreme Soviet of the Union Republic, empowered to deal with all matters falling under its jurisdiction. Its exclusive prerogatives were the adoption and amendment of the Constitution of the Union Republic, endorsement of the state plans for economic and social development of the Republics' Budget, and of reports of its fulfillment and formation of bodies accountable to it. The Supreme Soviet of a Union Republic elected Presidium as a standing body accountable to it, and also formed "Council of Ministers of a Union Republic", i.e., the 'highest executive and administrative body of the state authority' in the Republic responsible and accountable to the Supreme Soviet of that Republic or between sessions of the Supreme Soviet to its Presidium.

234 Article 134.
235 Article 135.
236 Article 137.
237 Article 138.
238 Article 139.
The Constitution of the USSR did not deal with the details of the internal arrangement of the Union Republics but only laid the general principles. Accordingly, laws of the Union Republic were enacted either by the Supreme Soviet of the Union Republic or by a nation-wide referendum.

The highest body of state authority in an autonomous republic was the Supreme Soviet of the Autonomous Republic with exclusive prerogatives over adoption and amendment of the Constitution of the autonomous republic, endorsement of state plans for economic and social development and of republic's budget and the formation of bodies accountable to it.\(^{239}\) It also elected a Presidium and formed a Council of Ministers of the autonomous republic Laws of an autonomous republic were enacted by the Supreme Soviet of the autonomous republic.

The Court and the Procurator's Office

The Courts in the USSR were organised on the territorial principle in the following hierarchy:

a) The Supreme Court of the USSR;

b) The Supreme Courts of the Union Republics;

c) The Supreme Courts of the Autonomous Republics;

d) The Regional, Territorial and City Courts and Courts of Autonomous Regions and National Areas;

e) The District (City) People's Courts; and

f) Military Tribunals in the Armed forces.\(^{240}\)

\(^{239}\) Article 143.
\(^{240}\) Article 151.
All courts followed the "principle of the collectiveness of judges and people's assessors." The lowest of these courts were the District (City) People's Courts. The People's Judges of District (City) People's Courts were elected directly by the citizens of the district for a term of five years. The People's Assessors in such courts were elected for a term of two and half years at meetings of citizens at their places of work and residence by a law of hands (open ballot). The high courts were elected by the respective Soviets for a term of five years.

Judges and People's Assessors were responsible and accountable to their electors or the bodies that elected them, reported to them and could be recalled by them in the manner prescribed by law.

The Supreme Court of the USSR was "the highest judicial body of the USSR." It supervised the administration of justice by the courts of the USSR and Union Republics within the limits established by law. The Supreme Court was elected by the Supreme Soviet for a term of five years and consisted of a Chairman, Vice Chairman, members and People's Assessors. The Chairmen of the Supreme Courts of the Union Republics were ex-officio members of the Supreme Court of the USSR.

The judicial system of the USSR was governed by two kinds of jurisdiction of the courts, viz. the 'Court of the First Instance' and the 'Court of the Second Instance'. This distinction was not similar to the distinction between the original and appellate jurisdiction in the Western democracy. The 'District People's Courts sat as the Courts of the First Instance with cases under original jurisdiction assigned to them by law. But as 'Courts of Second Instance' they dealt not only with appeals, but also with protests.
The hearing of civil and criminal cases in all courts was collegial; in Courts of the First Instance cases were heard with the participation of the People's Assessors. In the administration of justice People's Assessors had all the rights of a judge. After 1957, the Supreme Court of the USSR had stopped hearing appeals from the Supreme Courts of the Union Republics in civil and criminal cases. But, it could hear 'protests' against a judgement of a Supreme Court of a Union Republic if it violated a law of the Union or interests of the other Union Republics. Generally, on civil and criminal cases, the Union Republican Supreme Court had the last say. There was no appeal against their judgement except by moving the Procurator General of the USSR. Prior to the passage of the 'Statute on the Supreme Court of the USSR,' on February 12, 1957, the Supreme Court of the USSR could demand the records of any case in Union Republic Court. Stoppage of this practice increased the autonomy of the Union Republics. Judicial proceedings were to be conducted in the language of the Union Republic, Autonomous Republic, Autonomous Region, or Autonomous Area or in the language spoken by the majority of the people in the locality.

Financial Powers

The most striking feature of the Soviet fiscal federalism was the centralised pattern of budget allocation and budget revenues. The right to levy taxes and freely dispose off revenues is an important attribute of the sovereignty. Independent control over some resources is the precondition for a community's freedom to set its own agenda. The Soviet Union's fiscal system had denied to its Republics the right to tax and to dispose off revenues, except in accordance with the terms established by the central authorities. Article 73 of the Constitution defining the area of competence of the centre talked of "management of the country's economy (sub-Article 5),

245 Article 154.
246 Article Chaube, no. 11, p. 114.
247 Article 154.
248 Article 159.
"management of the sectors of national economy, and of amalgamation and enterprises" (sub-Article 8). However, in all these areas, the authority of the centre was not the same. Thus, matters of Defence were conducted absolutely independently by the centre, and was beyond the competence of the Republics. In relation to the Union enterprises, the Republican organ had some rights included in the Constitution of the USSR. 249 Finally, federative republic directly administered the sectors under Republican competence and partially the Union Republican sectors. But these sectors and enterprises were also an integral part of the country's economy. In short the term 'management' had different connotations in different sub-Articles of Article 73 and was a violation of the need for a unified terminology i.e. one of the basic requirements.

Other shortcoming was that there was no clear segregation of authority between the centre and the Republics according to the areas of activity (including the more significant branches of the economy.) Article 73 of the Constitution talked of sectors of "national significance" in a most vague manner, which could be interpreted in as many ways as one wanted, at the same time without clearly specifying the areas of authorities of the Republics. This created the conditions for a high degree of centralisation in decision making and conceded a lot of freedom for the central organs in the interpretation of the concept of "national significance". 250

There were also other shortcomings in the management of national economy, imparting ambiguity to the powers and authority of both the Central and Republican administrative bodies. Article 77 provided the comprehensive economic and social development of Union Republics. This Article, which included a formula on complex economic and social development of the Union Republics, read as follows:

"The Union Republic provide for the complex economic and social development on their territories, facilitate exercise of the powers on its territory and implement

249 Article 77, para 3.
250 Article 79.
Perspectives on Federalism in the Various Constitutions

the decisions of the highest bodies of state authority and administration of the USSR. In matters that come within its jurisdiction, a Union Republic coordinates and supervises the activity of enterprises, institutions and organisations subordinate to the Union. 251

It is apparent from the text, that it was full of ambiguity. On the one hand it held that Republican government had the higher authority in economic and social sphere, on the other side, they were charged with implementing the decisions of the Centre. But what if the republics interests in economic development diverged from the Centre, there was no clause accommodating the differences arising out of divergent view of point of the Centre and State over certain issues. Moreover, the Constitution declared that a republican authority over all Union enterprises was "restricted to the sphere pertinent to their competence". But the area of competence was not clearly mentioned.

Another fact which drew attention was that the Council of Ministers of the USSR formed an overwhelming part of the normative enactment in the economic sphere. Formally, they did not regulate the powers and authority of the federative republics. But under the prevailing conditions, sustaining extremely active functioning of the Council of Ministers could intrude into the sphere of federal relations. Regulation of any economic question related to the organisation of the planning process or pricing, standardisation of material and technical supply inevitably necessitated fixing the powers of the republican administration.

However, as a whole the contentions of some writers that behind the facsimile of federal Constitution therein lay a unitary spirit, does no hold much truth. Though, economic centralism stood in the way of political autonomy which led to an inevitable tendency towards political centralisation, yet the functional interdependence of the federal system of the USSR had not diminished.

251 Article77.
Federalism is a relationship between the various units to achieve their common end. The federal system of the USSR had achieved considerable success in promoting the status and conditions of the ethnic minorities. To say, there was no federation in the Soviet Union was to negate the meaning of the terms 'federation'. Therein lay the validity of the USSR's claim to the status of a multinational state.