CHAPTER IV

SOVIET CONSTITUTIONAL PERSPECTIVE ON FEDERALISM IN THE CONSTITUTIONS OF 1918, 1924, 1936 AND 1977
A Constitution is generally regarded as the general plan for the organisation and the functioning of the state. It is the basis on which the territorial administrative division, the system of state agencies, etc. are established. Constitution provides a legal framework for the functioning of political institutions and determines political process at all 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 constitution, let us analyse the two varying concepts of 'constitution' as have been conceived by the Western scholars on the one hand by the Soviet writers on the other.

Western Perception of Constitution:

From the time of Aristotle the term 'Constitution' was used to mean the 'way of Government'. For Aristotle, a constitution was "an arrangement or 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".\(^1\) This necessarily involved

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limiting political power and subjecting it to laws. The western perception of constitution stems from this idea.

In 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. "Constitution" writes Wheare, "springs from a belief in a limited government whatever the nature and extent of the restrictions, however, they are based upon the common belief in a limited government and the use of constitution to impose these limitations."² Same idea was properly developed by C.M. McIlwain in his work 'Constitutionalism and the changing world'. He observed 'A constituted authority is one that is defined and there can be no definition which does not of necessity imply a limitation. Constitutional government is and must be "limited government" if it is constitutional at all. Whatever its form may be, whether monarchial, aristocratic or democratic in any state that we may properly call constitutional, the supreme authority must be defined and defined by law of some kind. That law may be unwritten and customary, as it has been for the greater part of its history; or it may be set forth in a single official document as in our state and federal constitutions but in every case it is a

law that puts bound to arbitrary will.  

This approach to the constitution reflects the continuation of Aristotalian understanding of constitutional rule consisting of three main elements. "First, it is rule in the public or general interest... Second, it is a lawful rule... Third, constitutional government means the government of willing subjects as distinct from a despotism that is supported merely by force".  

The constitution is thus a mechanism through which the government is made to follow the rule of law, which according to Dicey has three meanings.

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

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

3. The rule of law, lastly, may be used as a formula for expressing the fact that with us the law of the constitution...

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are not sources, but consequences of the rights of individuals, as defined and enforced by the courts...".  

The establishment of rule of law is sought to be achieved through the means of the division of power. "Constitution", writes Friedrich, "by dividing power provides a system of effective restraint upon governmental action". This division of power carried out with the intention of setting power to check power. The system of division of power is based on Montesquieu's theory of separation of powers. The functions of rule making, rule implementation and rule adjudication are treated as distinct and separate and are entrusted to legislative, executive and judicial branches of government in a prescribed manner. Each one of these organs is endowed with fair amount of independence. Together with ensuring the autonomy of the separate agencies of the government, care is taken to find devices to prevent dominance of one branch by another. A system of checks and balance is worked out so that each organ checks the other and preserves the observance of rule of law. Forcing of various powers to explain themselves and articulate their case to secure cooperation of the other agencies of the

government acts as a powerful stimulus to moderation and reas­
onableness of policy\textsuperscript{9} which forms the basis of Western percep­tion of constitution. According to Karl Loewenstein, a demo­
cratic constitutional order must provide for not only distrib­
ution of powers among different organs of government in order to avoid concentration of power in a single organ on a single person and to ensure their coordination, but also for the me­
thon 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 citizens 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.\textsuperscript{10}

Western constitutions and other constitutions based on this approach thus contain:-

1. Distribution of power functional as well as special to avoid the concentration of power.

2. A system of checks and balances aiming not only at limi­
ting power but also at the coordination of functions of the organs of political power with the purpose of ensuring smooth continuation of political process.


\textsuperscript{10} Ibid.
3. Procedure to resolve a possible deadlock keeping supreme arbiter either the people at large or an independent judiciary.

4. Procedure for amendment of the constitution.

5. A bill of rights and provision for their realisation.

6. In case of federal constitution, a scheme of distribution of powers between centre and constituent units.

A society having such arrangements came to be described as an 'open society' and its government came to be recognised as an agency of reconciling the conflicting interests of different strata of society. This view of constitutionalism is known as the liberal-pluralist view which admits:

a. Plurality of interests in society;

b. Capability of each section of society to identify and articulate its interest through its organisation; and

c. Availability of a mechanism through which the conflicting interests can be resolved into authoritative policies and decisions.11

The modern view of constitutionalism assumed existence of conflict and consensus in a society at different levels. According to William G. Andrews, "The matter of consensus has an important bearing on constitutionalism.

Order may be imposed through force, violence and arbitrary action by a dictator or Oligarch even if the extent and intensity of consensus in a community are low." 12

According to liberal-pluralist view, different sections of society advance conflicting demand for "authoritative allocation of values" in their favour. At the same time, there is a consensus regarding the mechanism and process through which their conflicting claims can be resolved and translated into authoritative policies and decisions. 13

This liberal pluralist view of constitutionalism is categorically rejected by the Marxist theory. According to them plurality of view in the society is not possible because "the history of all hitherto existing society is the history of class struggle", 14 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. 15

According to the Marxism, state is primarily an instrument of oppression. Its most important institution is 'public force', comprised of armed men, prisons and the

15. Ibid., pp. 33-4.
various appendages of oppression. Its function is to assure peace and public order so as to permit the continuation of production in a society divided by class antagonisms, and project a wrong image of reconciliation of interest with the help of religion, morals and other implements of culture.

The western liberal writers equate 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'. The concept of limited government on the other hand has been known since at least the time of Greeks. In ancient Greece and Rome it meant the 'rule of the oligarchy'. It was after the renaissance only that in Europe the movement for constitutional government arose to check the dynastic aristocracies and became associated with the democratic aspirations of the people.

"Separation of powers" which is so cardinal to western

18. Ibid., p. 8.
constitutionalism was perceived by Marx as a doctrine which is the product of an age in which "the royal power, the aristocracy and bourgeoisie are struggling for supremacy elevated into an 'eternal law'. On the basis of this understanding, Marx described Louis Bonaparte's Coup d'état of 2nd 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 representative organs of the bourgeoisie as a whole. In the Western democracy, the function 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'.

Further, "the traditional doctrine of the separation of power lost its practical significance in the age of the crisis of capitalism and of imperialism, since all power in the modern parliamentary bourgeois state is concentrated in the hands of the government. In the Soviet view, the facade of parliamentary government with separation of powers 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

20. Ibid.
from legislative as a specific merit of the Soviet system. In Marxist-Leninist view, separation of power often leads to the degeneration of the political system which manifests itself in the form of irresponsibility of the head of the state, the appointment of the government by the head of the state, and the absence of responsibility on the part of members of 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 the 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 alligiance. Like the rest of public servants, magistrates and judges were to be elective, responsible and revocable". Reisner endorsed this view when he stated, the separation of judicial power... has an additional advantage in that it tends to subordinate the administrative power to the judiciary in the interests of the bourgeois class at the same time giving the character of impartially and objectivity to what is, in fact class justice...."

Thus we see a liberal constitution, whether its

23. Kernig, n. 9, p. 315.
structure conforms to parliamentary model, presidential model or any combination of the two, only provides for a mechanism of management of this political process. It does not preclude social change but the pattern and degree of social change allowed by it is determined by the interplay of political forces. The sophisticated mechanism of liberal constitutionalism uses representative institutions only to create the ideological misconception. 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.25

In opposition to this, Lenin set 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".26 Lenin had always urged that the tactical opportunities afforded by the parliamentary system should be exploited fully. However, for his the conventional bourgeois concept of parliament never represented a means for achieving the 'proletarian democracy' which the working class was to create after seizing power. Once

26. Ibid., p. 36.
again in his polemic with Kautsky, Lenin expressed his views on parliamentary system: Take the bourgeois parliament; can it be that the learned Kautsky has never heard that the more highly democracy is developed, the more bourgeois parliaments were subjected by the stock exchange and the bankers? This does not mean that we must not make use of bourgeois parliament (the Bolshevik made better use of it than probably any other party in the world for in 1912, 14 we won the entire workers curia in the fourth duma) but it does mean that only a liberal can forget the historical limitations and conventional of the bourgeois parliamentary systems as Kautsky does".27 This character of the modern constitutionalism according to the Marxist theory was nothing but a device for legitimization of an exploitative capitalist system. Thus Marxist model of constitutionalism calls for a different mechanism.

**Soviet Perception of Constitution:**

Soviet approach to the constitution is based on the Marxist-Leninist understanding of society, state and law as also the actual requirements of the socialist society. 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 morals 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 ideological element created by the mode of production in one social superstructure is the state. It further says that the entire structure of the state is based on the property relation. The private property creates class interest and finally class antagonism, class hatred and constant struggle in the womb of history. In their Communist Manifesto they observed that:

"The executive of modern state is but a committee for managing the common affairs of the whole bourgeoisie". 28

"State" writes Lenin, "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 antagonisms are irreconcilable". 29

The Communist programme consists in the realisation of complete stateless and classless society through revolutionary action of the working class. This proletarian revolution will destroy the old State machine and replace it by a new one.

Lenin dwelling on this theme at length in 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". In his views only the Socialist Revolution brings about a state which exercise all its function in the struggle of the working people and society's progressive development. Lenin emphasised the protracted nature of 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 phase of building of material - technical base of a communist society.

30. Ibid., pp. 14-5.
32. Ibid., pp. 38-80.
The Soviet constitutional legislation has shown that it reflects distinct phases of the socio-economic transformation. The constitution is basically action programme to be translated into political practices. In other words they provide mechanism for realising and promoting a socialist society along socialist goals.\(^3^3\)

It has been argued that Socialist Constitutions must transcend the frame for the operation of Political process by Government, Parliament and Political Parties.\(^3^4\) The Soviet Constitutional Law accordingly embody:

1) Principles underlying the Soviet Social Structure;
2) Organisation of State System and State Power;
3) Legal status of persons; and
4) Foreign affairs.\(^3^5\)

Vyshinsky, the well known authority of law and constitutional matters, argued that "the Soviet constitution represents the sum total 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

\(^3^3\) Kernig, n. 9, Vol. 2, p. 183.

\(^3^4\) Ibid.

\(^3^5\) Chkhivadze, n. 31, pp. 240-42.
are reflected in the corresponding changes of Soviet constitutions accepted by the highest organs of State authority". 36

In 1936 Stalin held somewhat different view. He viewed, "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". 37 This stream of thought has been a subject to 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 legislative 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. 38

While there may be degree of difference of emphasis, all the Soviet Constitutions take note of not only of the past and present but also contain provisions reflecting


the future programme of the Socialist State. Constitution also seeks to create bodies and institutions union are essential to enforce the socialist programme. Stalin once observed that they are "the mirror of our success upto the day". 39 A socialist constitution is far from static. It is (Socialist Constitution) in perpetual and 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". 40 The legislature, executive and largely the judiciary too work in harmony and cooperation as separation of power, as prevalent in the west, is non-existent and there are no provisions for judicial review and the checks and balances. Constitutions play an important educative role as well. According to Hooker 41 the major function of the Soviet legal system is to provide a 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. The legal system is that dominated by an economic preoccupation.

39. Ibid.
As far as the form goes, Soviet constitution clearly identifies with the western pattern of constitutions such as the legislature and the ambit of its powers, the courts and their judicial functions, the envisaged scheme and nature of federalism, the division of powers between the federating members as also the conflict of revolving mechanism.

It may be seen that the Soviet constitutional practice has followed the Marxian dialectics in the sense that the socio-economic advance of the Soviet society has made an avowed demand on the constitutions to conform to the dynamic rationale of social development. This is reflected in the 1918, 1924 and 1936 and 1977 constitutions. Vyshinsky is not far removed from the actual socio-political reality in asserting that "Soviet constitution cannot be understood properly 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". Thus the Soviet constitutional perspective on federalism has to be understood in the totality of a country's socio-economic situation and only then we can critically assess the relevant provisions of the all-union constitution in order to project an over all view of the place of union republics in the Soviet federal system.

42. Vyshinsky, n. 36, p. 87.
The Constitution of 1918:

The idea of setting up a Soviet state on a federal basis was legally secured in the Declaration of Rights of the Working and Exploited people. "The Russian Soviet Republic" it said, "is established on the principle of a free union of free nations, as a federation of Soviet National Republics".43 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 characteristics 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 from the philosophy of laissez faire. On the other hand, the Declaration of Rights of the Toiling and Exploited People was an enunciation of the 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

43. Carr, n. 19, p. 126.
This declaration was endorsed by the Third All Russian Congress of Soviets and made a component part of the constitution of the RSFSR adopted in 1918. 44

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 a strengthening central power and others who desired a dispersal of power and initiative through local authorities. There were others who desired a concentration of

44. Chaube, n. 17, p. 16.
authority and discipline at the centre. Some 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 trading institutions, employees of the state and employees of private persons. Reisner upheld these ideas before the drafting commission in April 1918.

"It is indispensable to keep in mind that 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 or states, but a federation of social economic organisation. It is founded not on the territorial fetishes of state power, but on the real interests of the toiling classes of the Russian republic."  

At last the luxuriant debate was brought under control and the basic lines of Bolshevik policy were upheld. This involved "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 principle supporting pillar of the regime."\(^46\)

In the final debate on the constitution in the Fifth All Russian Congress of Soviet one speaker suggested to discard the terms 'federation' and 'republic' and advocated that Soviet state be termed as "All Russian Workers Commune". These syndicalist aberrations 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 familiar in the capitalist world.\(^47\)

The outcome of the debate was vaguely worded Article 9 of the Constitution of 1918: "The principal

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aim of the constitution of the RSFSR, 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".

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

Whatever the differences of opinion, the draft commission was agreed upon and submitted to 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.

48. Ibid., p. 139.

The Constitution (Fundamental Law) of the RSFSR of 1918 consists of two parts, fifteen chapters, six articles with 90 clauses (with some sub clauses). The first part, the Declaration of the Rights of Toiling and Exploited People, stated the policies of the new regime and ratified specific action which it had taken. The remaining chapters elaborated the general principle 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 exploiters both at home and abroad.  

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 experience of twelve months' 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...". 51

Political Set up:

Russia is declared to be a republic of the Soviets of Workers', Soldiers', and Peasants' Deputies. All the Central and local power belongs to these Soviets. 52

The constitution pleaded a federal form of government "organised on the basis of a free union of free nations as a federation of Soviet national republics". 53 The declaration, however, did not outline the nature of federal relation, "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". 54

52. Article One, Chapter One, Clause One, Chapter Five, Clause 10, Article 2.
53. Article One, Chapter One, Clause 2.
54. Article One, Chapter Four, Clause 8.
In this connection, 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 republics and separate regions in the federal government' should be determined when the republics and regions were eventually constituted. But this had not yet 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, and the word 'federal'

55. Carr, n. 19, p. 149.
56. Chapter Five, Article 2, Clause 11.
appeared in its title and in the initial chapters of the constitution devoted to general principles, the word, however, recurred in the body of the constitution. The extent and composition of the federation as well as much of its constitutional machinery were undefined.  

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

ORGANISATION OF THE CENTRAL POWER

The All Russian Congress of Soviets:

Since the Second All Russian Congress of Soviets in November 1917, the Congress had become the Supreme organ of state power of the RSFSR. It was solemnised by Article 24 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

57. Ibid., p. 148.
58. Grigoryan and Dolgopolov, n. 49, p. 35.
(b) representatives of regional congresses of Soviets on the basis of one deputy for every 1250000 inhabitants. 60
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. 61
Besides, the constitution created two organs under the Congress of Soviets namely, the All Russian Central Executive Committee (VTSIK) and the Council of People's Commissars, (Sovnarkom).

The Central Executive Committee:

The All Russian Central Executive Committee of Soviets was the "Supreme Legislative, administrative and controlling body" 62 during the six-monthly intervals between the sessions of the All Russian Congress. 63 This was elected by the All Russian Congress of Soviets and consisted of not more than 200 members 64 and after the

60. Article 25.
62. Article 31.
63. Article 26 and 30.
64. Article 28.
Eighth All Russian Congress of Soviets in December 1920 not more than 300 members.\textsuperscript{65} The All Russian Central Executive Committee of the Soviets was fully responsible to the All Russian Congress of Soviets.\textsuperscript{66}

The Council of People's Commissars:

The Council of People's Commissars was appointed by the All Russian Central Executive Committee. It also appointed People's Commissariats (departments for the purpose of conducting various branches).\textsuperscript{67}

The function of the People's Commissars was the "general management of the affairs".\textsuperscript{68} "It issued decrees, resolutions orders and in general, directed the activity necessary for the proper and rapid conduct of government's affairs."\textsuperscript{69} But the All Russian Central Executive Committee had the right to "revoke or suspend all orders, resolutions of the Council of People's Commissars".\textsuperscript{70} It should be noted here that legislative

\textsuperscript{65}"Decree of the Eighth All Russian/ of Soviets concerning the Soviet Constitution", cited in Rothstein, n.51, p.65
\textsuperscript{66} Article 29.
\textsuperscript{67} Article 3, Chapter 7, Clause 35.
\textsuperscript{68} Article 3, Chapter 8, Clause 37.
\textsuperscript{69} Clause 38.
\textsuperscript{70} Clause 40.
power were not confined to the representative organ, the Congress of Soviets, but were also shared by the Central Executive Committee, the Presidium of the CEC, and the Council of People's Commissars.

**The Council of People's Commissars:**

The Constitution made provision of seventeen departments. Each of the seventeen commissariats was to be headed by a People's Commissars and a collegium attached to the Commissariat.71

The Council of People's Commissars had dual responsibility. It is responsible both to the All Russian Congress of Soviets and the All Russian Central Executive Committee.72

Graham pointed out that Congress is 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

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71. Chapter 8, Clause 42, 43, 44.
72. Clause 46.
possesses is distinctly curtailed. In fact, it cannot 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 subordinate of the Commissaries administratively since they must all participate in administrative work and cannot, save by special dispensation... work out side of regular Commissariats. On the other hand, from purely political standpoint, the Commissaries 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".  

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 said 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 the all embracing political forces i.e. the Russian proletariat and the peasant masses. This political forces is 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". 74

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 were defined jointly in the Chapter 9, Article 3, Clause 49 of the Constitution without any general attempt to distinguish between them. The functions that solely reserved for the All Russian Congress were: (a) ratification and amendment of the fundamental principles of the Soviet constitution, (b) ratification of peace treaties. 75

Further the Central Executive Committee exercised

75. Chapter 9, Clause 51.
the power given to the Congress "only when it was impossi-
ble to convene the All Russian Congress of Soviets". 76

Other powers were:

a) Ratification and amendment of the constitution of the RSFSR;

b) General direction of the entire interior and foreign policy of the RSFSR;

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

d) Establishing boundaries for regional Soviet Unions belonging to the RSFSR;

e) Admission of new members to the RSFSR and recognition of the secession of any parts of it;

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

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

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

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

76. Graham, n. 73, p. 135.
j) Working out a basis and a general plan for the national economy and for its various branches in the RSFSR;
k) Approval of the budget of the RSFSR;
l) Levying taxes and establishing the duties of citizens to the state;
m) Establishing the bases for the organisations of armed forces;
n) State legislation, Judicial organisation and procedure, Civil and Criminal legislation etc;
o) 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;
p) Granting and cancelling Russian citizenship and fixing rights of foreigners; and
q) The right to declare individual and general amnesty. 77

The list of powers shows clearly that a long and comprehensive enumeration of seventeen questions of national importance fall within the competence of the 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 which they deem within their jurisdiction". This provision was the nearest thing in the constitution to an allocation of residuary powers.

77. Chapter 9, Clause 49.
Organisation of Local Soviets:

Local Government Organisation received considerable attention in the constitution. Two articles affirmed that such local Soviet or Congress of Soviets was the highest authority in its territory. Constitution provided for a hierarchical arrangements of local Soviets which extended downward from the regional level to the provincial, county, rural district and village Soviets. The larger urban Soviets were represented directly in the regional and provincial Congress of Soviets. The urban Soviets which had a population of not more than 10,000 persons sent their delegates to the county Soviets. Rural Soviets of less than ten members sent one delegate to the rural Congress. Each level of local government down to the rural district had its own Congress of Soviets and its own executive committee. Town and village Soviets also designated their own executive committees. 79

The Soviets:

The structure of Soviets is shown in the following

78. Article 3, Chapter 11, Clauses 59-60.

79. Chapter 10, Article 3, Clauses 53, 54, 55, Painsod, n.46, p. 354.
Jurisdiction of the Local Organs of the Soviets:

Chapter twelve of the constitution defined in general terms the tasks of the local Soviets and the regional, provincial, county and district Congresses of Soviets with their executive committees. These were:

a) The carrying into effect of all resolutions of the corresponding higher organs of Soviet power;

b) The taking of all measures to improve the territory in question culturally and economically;

c) The settlement of all questions having a purely local significance; and
d) The coordination of all Soviet activity within the territory in question. 80

The effect of the provision was to encourage the Soviets to absorb pre-revolutionary organs of local self-government and transform themselves into local government organs of the normal pattern.

Financial Policy:

In budgetary provision, a national budget was authorised and the authority to distribute revenue between Central and local authorities was reserved to the All Russian Congress of Soviet and the All Russian Central Executive Committee. Although local Soviets were authorised 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. 81

Above constitutional provisions reveal that federation was treated in the constitution as equivalent to decentralisation. It was a matter of administrative organisation rather

80. Chapter 12, Article 3, Clause 61.
81. Chapter 16, Article 5, Clauses 79-80.
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 whatever. These arrangements were designed to secure a reasonable degree of local self-government for national groups without endangering the essential unity of the RSFSR. But they were not federal in constitutional sense. Robert Conquest remarked that "the description of the 1918 constitution as federal has little justification in fact".

Amendments to the RSFSR Constitution of 1918:

When the RSFSR Constitution of 1918 was adopted operational problems were soon realised. 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 created in order to deal with crisis situation effectively accordingly. The 1918 constitution was amended. In December 1919, the 7th All Russian Congress of Soviets legislatively sanctioned the formation of the presidium of All Russian Central Executive Committee. The sessions of the CEC were to be convened every

82. Carr, n. 19, pp. 149-50.
83. Conquest, n. 59, p. 15.
two months. The Presidium now directed the sittings of ARCEC, supervised the execution of decisions adopted by, guided the activity both of the Central and local state organs and decided a number of other administrative question.

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 territorial division and to make preparations for the convocation of All Russian Congresses of Soviets and sessions of the All Russian Central Executive Committee.

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

The provincial Executive Committee were empowered to supervise and inspect the activity of all governmental institutions on the territories under their jurisdiction (except institutions belonging to the army in the field),
and were obliged to report back immediately to the respective Central organs on the results of such supervision and inspection. 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 People's Commissars was also given more powers by the same Congress. Mansheviks and SRS protested against Council of People's Commissars abrogating the legislative rights of All Russian Central Executive Committee. But their charge was refuted by the argument that the rapid development of events made it necessary for the Council of People's Commissars to be able to issue urgent decrees. But the above mentioned amendments in no way affected the fundamental principles of the constitution of the RSFSR as a whole.

The USSR Constitution of 1924:

The civil war and the foreign intervention in Soviet Russia made it imperative for the government to unite all

86. Triska, n. 84, p. 16.
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 a "Union of the several Socialist Republics as the only path of salvation from the imperialist yoke and national oppression".87 And the subsequent Union of the republics88 creating a new state, the Union of Soviet Socialist Republics on 30 November 1922, necessitated the adoption of a new constitution. On January 10, 1923, the presidium of new VTSIK, elected by the First All Russian Congress of Soviet 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 attitude 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 toward the liquidation of

87. Fainsod, n. 46., p. 365.
88. RSFSR, Ukraine, Belorussia and Transcaucasia.
the republics as the beginning of the organisation of the so-called "one and individual republics". This group opposed the creation of a second chamber in which the nationalities would have separate representation but at the twelfth party congress of communist party decided to embody Lenin's recommendations regarding CEC. The decision provided for formation of two chamber Executive Committee of the USSR. One chamber was to reflect the class interests of the working people of all nationalities while the other was to represent the specific interests of the individual nations. The Fourth Conference on the Central Committee of the Party met in June 1923 and gave the names of the two chambers and the group who opposed the creation of second chamber were denounced by Stalin, as "Great Power Chauvinists". Their views he referred "had no resemblance to communism or had nothing in common with internationalism".

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


90. Faissod, n. 46, p. 365.
contracting states. To prevent the RSFSR from dominating this chamber, their spokesman, Raskovsky, proposed that no single republic should have more than two fifths of the total states. 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. These demands were rebuffed because what Ukrainian leaders have in mind was a kind of confederation rather than a federation which motivated Stalin to say, "I perceive from the insistence of several Ukrainian comrades their desire define the Union as something between a confederation and federation with the preponderant weight on the side of confederation. He reminded them we are constructing not a confederation but a federal republic, one Union state, Uniting military and foreign affairs, foreign trade and other matters." 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 Soviets on 31 January, 1924. The

91. Ibid., p. 366.
92. Ibid.
1924 constitution consisted of two sections, 11 articles and 72 clauses. First section dealt with the background of the formation of the Union and second section with Union and Republic relations, bicameral CEC with a Presidium and the role of the Supreme Court.

**Soviet Federalism:**

The word 'Union' is used in place of 'federation' or 'federal' in the 1924 constitution. The constitution declared the Union to be "Voluntary Association of Sovereign nations on the basis of equality, reserving to itself the right of this free withdrawal from the Union". But this could not allow to be exercised to promote counter revolution. Stalin had already clarified his stand on October 10, 1920 in an article in Pravda:

"Of course, the border regions of Russian, 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 revolutionary". 93 This was interpreted from a class viewpoint, that is, 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

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peoples of the Union within a 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 reason that nationalism was largely a natural reflex to the stimulus of the "great power chauvinism" of the Russians. From the standpoint of bringing about equality among various nationalities, it was first necessary to raise eponymous nationalities to the level of more advanced Russians, technically, economically, culturally and spiritually. 

Scope of the Authority of the Union:

The Constitution mentioned 24 that come under the Union jurisdiction. These were:

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

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

c) Conclusion of agreements on admission of new republics into the Union;

d) Declaration of war and conclusion of peace;

e) Conclusion of foreign and domestic loans of the Union of Soviet Socialist Republics and granting permission for foreign and domestic loans to the Union Republics;
f) Ratification of international treaties;
g) Direction of foreign trade and establishment of a domestic trade system;
h) 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;
i) Administration of transport and communication;
j) Organisation and direction of the armed forces of the Union of Soviet Socialist Republics;
k) 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 deductions 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;
l) Establishment of a single monetary and credit system;
m) 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 Union of Soviet Socialist Republics;
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 authorised to exercise such powers as were not vested in the government of the USSR.

95. Article 1, Clause 1.
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 are delineated so as to give the federal authority obvious dominance over the economy. The federal authority received the right to centralize economic planning for the whole economic system of the Union; to regulate and control transport, posts and telegraph; to budget for the entire country to establish a single currency and credit system; and also to establish general principles for the use of natural resources.96 By these provisions 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 power to tax unless authorized by the federal authority; no possibility of accumulating resources out of profits to be gained by foreign trade, for that was a centralized state monopoly; and no authority to contract foreign loans unless sanctioned by the Centre.97 In the sphere of special policy, the Soviet federation left to

96. Article 1, Clause 1.

the various federating republics greater autonomy. The codes
of law, which are the major determinants of social relation­
ship, were to remain within the authority of the republics
but the federal legislature was authorised to establish basic
principles for structure and procedure of the courts and of
the civil and criminal codes of the republics. 98

Even in cultural matters the federal government left
education wholly to the member states of a federation. But
the federal government was authorised to establish general
principles for national education. 99

Sovereignty of the Constituent Republics:

Union is enjoined to safeguard the Sovereignty of each
and every constituent republic of the Union. 100 Each republic
will have its own constitution. The republican constitutions
are required to conform with the federal constitution. 101
The territory of each republic shall not be altered without
its consent. 102 A single citizenship is envisaged. 103 In
case of a conflict, the Union law will prevail. 104

98. Article I, Clause (a).
99. Article I, Clause (g).
100. Article 2, Clause 3.
101. Article 2, Clause 5.
102. Article 2, Clause 6.
103. Article 2, Clause 7.
104. Article 8, Clause 59.
Amending Power: The power to amend the constitution was vested in All Russian Congress of Soviets.  

Institutional Structure:

Except for one or two minor additions, no serious change in the organisation of the Soviet was sought to be effected even under this constitution. In fact, according to Otto Bihari, this constitution of the Soviet Union settled matters only forthcoming from 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 authority in the USSR and in between the sessions of the Congress, this authority was to be exercised by the VTSIK.

In the composition of the Congress the 1918 pattern was strictly followed. Thus, the membership of the Congress consisted of representatives of urban Soviet on the basis of one deputy for every 25,000 voters, and of representatives of regional Soviet Congresses on the basis of one deputy for each 125,000 inhabitants. The Congress, for its

105. Article One, Clause 2.
107. Article 3, Clause 8.
regular session, was convened annually, and since the Fourth Congress in April 1927, only once every two years by the VTSIK.

The 1924 constitution, however, adopted a special feature by changing the structure of the VTSIK. It was now made bicameral organs consisting of a Union Council designed to represent the general interest of the nationalities of the USSR and a Council of Nationalities whose function was to represent the specific interest of nationalities. The Union Council, consisting of 371 members, was elected by the Congress of Soviets on a proportional basis from representatives of the 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 a 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 VTSIK was quite unequal as to the exercise of power both

109. Article 3, Clause 11.
110. Article 3, Clause 8.
111. Article 4, Clause 14.
112. Article 4, Clause 15.
113. Article 4, Clause 15.
enjoyed equal rights.

Hence, the decrees and regulations of the VTSIK could have the force of law only after the agreed decision of the two.\textsuperscript{114} In the event of disagreement, the two chambers could set up a conciliation commission on a parity basis to put forward the draft of agreed decisions. If the disagreement still prevailed, the issue be referred to Congress of Soviets at the request of one of the chambers.\textsuperscript{115} Graham glorified the Soviet federation based on nationalities and their representation in a separate chamber. It was "without question one of the most far reaching experiments... even 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 problem of the cultural treatment of various nationalities" and "a daring innovation".\textsuperscript{116} Another innovation introduced by the 1924 constitution was the creation of the presidium at the Central level. Each chamber of the VTSIK elected its own presidium of seven members which was responsible for preparing the agenda for its sittings and dealing with current matters between sessions.\textsuperscript{117} Apart from this, there was the presidium of the VTSIK which was the highest legislative,

\textsuperscript{114} Article 4, Clause 22.
\textsuperscript{115} Article 4, Clauses 23-24.
\textsuperscript{116} Graham, n.73, p. 160.
\textsuperscript{117} Article 4, Clause 25.
executive and administrative organ of power in USSR.\textsuperscript{118} This presidium included the presidium of the two chambers\textsuperscript{119} plus seven members elected at the joint session of the two chambers.

The number of Chairmen of the VTSIK corresponded to the number of union republics and they also formed part of the Presidium.\textsuperscript{120} The VTSIK was accountable to the Congress of Soviets for its activities.\textsuperscript{121}

\textbf{Council of People's Commissars:}

The other organ of the Congress of Soviets was the Council of People's Commissars formed by the VTSIK which consisted of a Chairman, Deputy Chairman, Chairman of the Supreme Council of National Economy and other People's Commissars. The Council was responsible to the VTSIK and its Presidium,\textsuperscript{122} and the latter had the authority to annul the decisions of the former.\textsuperscript{123} In this connection, it is important to note that the principle of separation of powers was totally rejected. Like the pattern of the previous

\textsuperscript{118}. Article 5, Clause 29.  
\textsuperscript{119}. Article 4, Clause 26.  
\textsuperscript{120}. Article 4, Clause 27.  
\textsuperscript{121}. Article 4, Clause 28.  
\textsuperscript{122}. Article 6, Clause 40.  
\textsuperscript{123}. Article 6, Clause 41.
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 1972 constitution distinguished three categories of People's Commissariats: 'all union', unified and republican. The first category of all union commissariats, which existed only in Sovnarkhom of Council of People's Commissars of the USSR, included foreign affairs, military and naval affairs, foreign trade, ways of communication, and post and telegraphs. The second category of union republics or united commissariats existed both in the Government of the USSR and the Union Republics, with the latter responsible for executing the decisions taken at the centre. This group included the Supreme Council of National Economy and the Commissariats of Food, Labour, Finance, and Workman's and Peasants' Inspection. The OGPU or United States.

Political Administration, which was also provided for, in the constitution was attached to the Sovnarkhom of the USSR but functioned locally through representatives "attached to the Sovnarkhoms of the Union republics". The
third category of republics commissariats existed only in the republics had no counterparts in the Government of the USSR. These commissariats included of internal affairs, justice, education, health and social welfare.

The Supreme Court:

Unlike the 1918 Constitution of the USSR of the 1924 made provision for a Supreme Court and Procurator attached to the CEC to 'maintain revolutionary law throughout in territory of the Union'. The Supreme Court had Chairman, Vice-Chairman and four Chairmen of the Plenary Sessions of the Supreme Courts of the Constituent Republics. In addition there was to be representative of the Political Department of the Union. All of these judges and five more members are appointed by the Presidium of the CEC of the Union.

The jurisdiction of the Supreme Courts 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 Union Law.

125. Article 7, Clause 43.
126. Article 7, Clause 45.
rendering decisions on the constitutionality of laws passed by the Union Republics and settling disputes among them. 127

The Supreme Court had now power to pass on the constitutionality of union legislations or to declare any act of its organs Ultra-vires. In the event that the Procurator disagree under any decisions of the Supreme Court, he had the right to protest before the Presidium of the USSR CEC. The Supreme Court was thus strictly subordinated to the VTSIK which retained supreme judicial as well as legislative and executive power. 128 This was quite in consonance with Marxism-Leninism which favoured fusion rather than separation of powers.

127. Article 7, Clauses 43 (a), (b), (c), (d) and (e).

128. Painsod, n. 46, p. 368.
Institutional Structure at Centre Level:

ALL UNION CONGRESS OF SOVIETS

CENTRAL EXECUTIVE COMMITTEE OF THE UNION OF SOVIET SOCIALIST REPUBLICS

COUNCIL OF UNION

PRESIDUIUM OF SEVEN MEMBERS

STATE PLANNING COMMISSION

UNIFIED STATE POLITICAL ADMINISTRATION

COUNCIL OF NATIONALITIES

PRESIDUIUM OF SEVEN MEMBERS

PRESIDUIUM OF THE CENTRAL EXECUTIVE COMMITTEE OF UNION (USSR) COMPRISING THE MEMBERS OF THE PRESIDUIUM OF EACH CHAMBER

THE COUNCIL OF PEOPLE'S COMMISSARS OF THE UNION

CHAIRMAN VICE CHAIRMAN NINE COMMISSARIATS

SUPREME COUNCIL OF NATIONAL ECONOMY

1 2 3 4 5 6 7 8 9

Institutional Structure at Republic Level:

The constitution also outlined the organs of state Administration of the Union Republics on the pattern of central organs of State Administration, as is evident from the following diagram:

![Diagram of institutional structure]

Kamenev considered the Soviet federal (union) set up as sui-generis which he regarded as 'more solid union than any existing union'. 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 has been considerably extended since 1924 is evident from

129. Article 10, Clauses 64, 65, 66, 67.
130. Kamenev, cited in Graham, n. 73, p. 257.
the perusal of the amendments to the 1924 constitution.

**Amendments to the 1924 Constitution:**

In the period from 1924 to 1936 a number of amendments and addenda were introduced into the constitution of the USSR and the constituions of the Union Republics. They reflected, firstly, the development of national and state organisation of the USSR, delimitation of the jurisdiction of the USSR and that of the Union Republics, formations of Autonomous Republics, Regions and National Areas; secondly, the radical changes were carried out in the administrative territorial divisions of the republics; thirdly, the re-organisation of the organs of state administration (structural and functional changes were brought about).\(^{131}\) As a result of the national delimitation of Central Asia, the Uzbek and Turkman republics were admitted to the USSR as equal union republics in 1925. Later in 1929, Tadjikistan was elevated to the status of a union republic. Then the number of union republics increased from four to seven. This found reflection in the constitution of the USSR.

A number of Autonomous Republics and Autonomous

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Regions were formed in which RSFSR and other republics after 1920. Many national areas (whose number by 1936 went up to 10) were 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 the connection special all union legislative acts, such as "ordinance on state offences" and "ordinance on Military offences" were issued in 1927.132

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 of the Union and Autonomous Republics were united in a single budget). According to the "ordinance on local budgets", approved in April 1926, the local finances were also included into the single financial systems of the USSR. Since then the budget of the USSR which includes the republican and local budgets, has been approved by the highest organ of the state power

132. Ibid., pp. 84-5.
of the Soviet Union. Industrialization 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, old people's Commissariats were divided and new ones were created to effectively deal with developmental activity and around rapid changes.

The apparatus of worker's and peasant's 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 development, in all fields making it difficult to inspect from one single centre.

On July 10, 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 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.

The USSR Constitution of 1936:

The 1936 constitution marked a notable break in Soviet constitutional law. It was adopted as a result of important changes in the economic structure and class composition of Soviet Society Alfred G. Meyer has aptly concluded the experiences of 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 problems or problem confronting it precisely for the solution of those problems it functioned and structured itself". 133 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". 134 The period between 1918 and 1924 was really

one of struggle and privation in the 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 contents behind 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 stated, "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. The purpose of this constitution was the "registration and legislative embodiment of what has already been achieved and won infact". Hence, it was possible to introduce universal suffrage without any restrictions and without any 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 basis of Soviet society etc). 136

The constitution was arranged in 13 chapters covering 146 articles. The 1936 constitution was a lengthy document, compared with the constitutions of 1918 and 1924. Chapter one entitled the organisation of society, proclaimed the USSR as a Socialist state of workers and peasants, attribution of all power 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 eight

136. Ibid., p. 679.
and nine with local government and judiciary respectively;
chapter ten contained the basic rights and duties of citizens;
chapter eleven outlined the scheme of nomination and elections
and chapter twelve with arms, flag and capital. Finally,
chapter thirteen specified the procedure 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. In 1936, the number of
union republics increased by the promotion of Tadjikistan
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, the 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

137. The Russian, Ukrainian, Belorussian, Transcaucasian,
Turkmen, Uzbek and Tadjik.
1956, the Karelo Finish Union Republic reverted to the status of autonomous republic and was re-absorbed in the RSFSR. The number of union republics was thus brought down to fifteen and has remained unchanged since then. In his speech to the eighth congress of Soviets, Stalin took the opportunity to lay down three conditions which the territory of a 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 names 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. This meant that the autonomous regions would be entitled to the right of secession only after their elevation to the status of union republics.

**Jurisdiction of the USSR:**

There was a 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 enumerated power of the union covered:

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a) Representation of the USSR in the international relations, conclusion, ratification and denunciation of treaties of the USSR with other states, establishments of general procedures governing the relations of Union Republics with foreign states;

b) Question of war and peace;

c) Admission of new Republics into the USSR;

d) Control over the observance of the constitution of the USSR and ensuring conformity of the constitution of the Union Republics with the constitution of the USSR;

e) Confirmations of alterations of boundaries between Union Republics;

f) Conformation of the formation of the new territories and regions and also new autonomous republics and autonomous regions within union republics;

g) Organisation of the defence of the USSR, direction of all the Armed Forces of the USSR, the establishment of the directing principles of the organisation of military formation of the Union Republics;

h) Foreign trade on the basis of state monopoly;

i) Safeguarding the security of the state;

j) Establishment of the national economic plans of the USSR;

k) Approval of the single state budget of the USSR as well as of the taxes and revenues which go to the All Union Republican and the local budget;

l) Administration of the bank, industrial and agricultural establishments and enterprises and trading enterprises of
All-Union importance;
m) Administration of transport and communications;
n) Directions of the monetary and credit system;
o) Organisation of State Insurance;
p) Raising and granting of loans;
q) Establishment of the basic principles for the use of land as well as for the use of natural deposits, forests and waters;
r) Establishment of the basic principles in the sphere of education and public health;
s) Organisation of a uniform system of national economic statistics;
t) Establishment of the principle of labour legislation;
u) Legislation on the Judicial system and Judicial procedure, criminal and civil codes;
v) Laws on citizenship of the union, laws on the rights of foreigners; and
w) Issuing the Union acts of amnesty.

These powers were reserved to the USSR under article 14 of the 1936 constitution describing the jurisdiction of the federal union. A comparison of this article with its predecessor in the 1924 constitution disclosed a tremendous growth in the scope of this jurisdiction. In the constitution

139. Article 14 of the 1936 Constitution.
of 1924, only "formulation of the basis and the general plan of the national economy of the Union, and identification of industrial sectors and individual industrial enterprises having all union significance"140 were kept under the authority of the Centre. But the constitution of the 1936 already significantly widened the sphere of Central authority which included "management of banks, industrial and agricultural enterprises and establishments as well as trade organisations of all union subordination; general guidance of industry and constitution of Union Republican subordination",141 which meant that a major chunk of the national economy was handed over to the Centre. The same is 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 lower sub-divisions as well.142 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 has been adopted by the federal

140. Article 1 of the 1924 Constitution.
141. Article 14(1) of the 1936 Constitution.
142. Article 14(k) of the 1936 Constitution.
Supreme Soviet, the budgets of the Union Republics adopted by their Supreme Soviets constitute mere elaborations of parts of the all union budget and cannot stray far from latter.143

The Union Republic budget, as set by the union, can be increased to some extent by the union republic only if the latter can find new sources of income. That is the extent of initiative possessed by the union republics in regard to the budget. Taxes, however, cannot constitute such new sources of revenue since the union republics have no right to establish taxes on their own initiative. The union republics act only as tax-collectors for the union and their power in this field is 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, is fixed by the federal government and the union republics are required to turnover most of its proceeds to the USSR.144 Thus, in the economic field, there has been no real diminution in the scope of federal government, the economic problems in general are classed as within "the joint sphere of competence" of the union and the constituent republics. However, not only such important branches of economy as transport, defence, industries, machine building, the electrical industry etc.


144. Ibid.
are assigned to the exclusive jurisdiction of the union, but even in activities officially placed under the jurisdiction of both the Union and the Republics—such as finances, trade, agriculture, food, textile and other light industries.

Constitutional provision declared that federal departments exercise direction in these fields through like named departments of the republics which are granted "a wide sphere of activity", but only "within the framework of the directives and assignments" given them by the federal organs. Even in this category, enterprises deemed of "all Union importance"—it is the centre that decides when this is the case—are administered directly by federal organs. Finally, where direction of local industry is designated as "the sphere of competence of the republics", it is stated simultaneously that what this means is that in this sphere the Union "realises" only general direction in the measure that such is necessary by virtue of the interconnection between all the branches of the national economy and the single economic plan for the entire economic life of the Union. 145

Legislation concerning the judicial system, judicial procedure and criminal codes was brought under the exclusive

jurisdiction of the Union. 146 Whereas under the previous constitution the Union had merely been empowered to establish the 'fundamentals' of legislation in these areas. 147 Another addition to the enumerated powers of the Union was the requirement for Union confirmation of the formation of autonomous republics and administrative territorial sub-divisions within the Union republics. 148

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 discrepancy between the law of the Union Republic and all Union law the all Union law prevailed.

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 in the Constitution of the USSR. 149

146. Article 14(u) of the 1936 Constitution.
147. Article 1 (o) of the 1924 Constitution.
148. Article 14 of the 1936 Constitution.
149. Article 16.
As before, a Union Republic was free to secede from the USSR. 150

Technically, the integrity of the union republic is indestructible in the sense that the territory of a union republic may not be altered without its consent. 151

The constitution provided for a uniform union citizenship. 152

Institutional Structure:

Considering the changed social situation and new tasks of the Soviet state, certain changes in the institutional structure have been made.

The Under/1918 and 1924 constitutions of Soviets was vested with the "Supreme Power" and its Central Executive Committee (which was later converted under 1924 constitution into a bicameral body) was declared as "Supreme the Legislative, executive and controlling organ". Under/1936 constitution, however, the highest organ of state power and sole legislative organ in the USSR was the "Supreme Soviet of USSR", although 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.

150. Article 17.
151. Article 18.
152. Article 21.
Under the 1936 constitution the highest organ of state authority was declared to be the Supreme Soviet of the USSR.\textsuperscript{153} The Legislative power of the USSR was exercised exclusively by the Supreme Soviet of the USSR.\textsuperscript{154} And exercised all 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.\textsuperscript{155} The Supreme Soviet consisted of two chambers: The Soviet of Union and the Soviet of Nationalities.\textsuperscript{156}

The Soviet of the Union was directly elected by the citizens on the basis of one Deputy for every 30,000 of the population,\textsuperscript{157} and the Soviet of 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 district.\textsuperscript{158} The number of its members was increased, and in comparison with the 1924 constitution the Union Republics got higher representation in the Soviet of the Nationalities.

Both chambers served for a term of four years\textsuperscript{159} and

\textsuperscript{153}. Article 30 of the 1936 Constitution.
\textsuperscript{154}. Article 32.
\textsuperscript{155}. Article 31.
\textsuperscript{156}. Article 33.
\textsuperscript{157}. Article 34 of 1936 Constitution.
\textsuperscript{158}. Article 35.
\textsuperscript{159}. Articles 36 & 38.
had equal rights in initiating and enacting legislation. In case they disagree and their disagreements cannot be reconciled, the Presidium of the Supreme Soviet had the authority to dissolve the Supreme Soviet and order new elections,\textsuperscript{160} within a period not exceeding two months. According to Chaube, "These amendments brought the USSR political system to some approximation of parliamentary form of liberal democratic government."\textsuperscript{161}

**Presidium:**

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. It elected at a joint session of the Supreme Soviet of the USSR from among its members and consisted of a President, 15 Vice-Presidents (one from each republic) a Secretary and sixteen members.\textsuperscript{162} The Presidium functioned as a "Collegial Presidency."\textsuperscript{163} It may be noted that

\textsuperscript{160} Article 47.


\textsuperscript{162} Article 48 of 1936 Constitution.

\textsuperscript{163} Fainsod, n. 46, p. 373.
the Presidium of the Supreme Soviet of the USSR discharges the functions normally discharged by a head of state in Western liberal democracy. It ensured the observance of the Constitution of the USSR and the conformity of the constitutions and laws of the Union Republics to that constitution. More importantly, it interprets the laws of the USSR. This power rules out the possibility of judicial review of the laws of the Supreme Soviet of the USSR.

In the Soviet Union, though the constitution is the supreme law, the judiciary lacks the power of interpretation. For the presidium which is a part of the Supreme Soviet of the USSR, on the other hand, invalidation of a law of the USSR is out of the question. But the presidium can revoke decisions and ordinances of the Council of Ministers of the USSR as well as of the Council of the Union Republics if they do not conform to law.

Amending Power:

the Under/1918 and 1924 constitutions, the power to amend the constitution was vested in All Russian Congress of Soviets.

164. Article 49 elaborates the powers of the Presidium of the Supreme Soviet of the USSR.

165. Article 49 (f).
the
But under 1936 constitution, the constitution may be amended "only" by the Supreme Soviets of the USSR, adopted by a majority of not less than two thirds of the votes cast in each of its chambers. 166

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, in the intervals between sessions of the Supreme Soviet, to the Presidium of the Supreme Soviet. 167 It consisted of a Chairman, one first Vice-Chairman, the ministers of the USSR and 15 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. 168

The Council's decisions had to conform with the laws in operation and it verified the execution of its decision. 169

166. Article 146.
167. Articles 64-65.
168. Article 70.
169. Article 66.
The Council's decisions were binding throughout the territory of the USSR. Its powers and functions included:

a) Coordination and direction of the work of all unions and union republican ministers of the USSR and the USSR Council of Ministers, State Committees and of other institutions under its jurisdiction;

b) Adoption of measures to carry out the national economic plan and the state budget, and to strengthen the credit and monetary system;

c) Adoption of measures for the maintenance of public order, for the protection of the interests of the state and for the safeguarding of the rights of the citizens;

d) Exercise of general guidance in the sphere of foreign affairs;

e) Direction of general organisation of the Armed Forces of the country; and

f) Setting up of Committees for economic and cultural affairs and defence. The Council of Ministers of USSR was also endowed with the power to "suspend decisions and orders of the Council of Ministers of Union Republics and to annul orders and instructions of Ministers of USSR as well as acts of other institutions under its jurisdictions".

170. Article 68.

171. Article 69.
It may also be noted that Ministries of USSR were either All Union or Union Republican Ministries. 172

All Union ministries directed the work of their departments throughout the territory of the USSR either directly or through bodies appointed by it. 173 The Union Republican Ministries, as a rule, directed their respective branches of state administration through corresponding ministries of the Union Republics. 174 Each Union Republican Ministry was subordinated both to the Council of Ministers of the Union Republic and to the corresponding Union Republican Ministry of the USSR. 175 The Union Republican Ministry's responsibility was thus dual. In this context, it is important to note that though the Chairman of the Council of Ministers of the Union Republics are also ex-officio members of the USSR Council of Ministers, yet Article 74, 75, 76 and 87 gave the Union enormous power, which drastically affects the autonomy of the Republics.

Union Republic and Autonomous Regions:

The highest organ of state power in a Union Republic was the Supreme Soviet of the Union Republic, 176 which was

172. Article 74.
173. Article 75.
174. Article 76.
175. Article 87.
176. Article 57.
endowed with the power to both adopt and amend the constitution of the Republic in conformity with Article 16. (Article 16 required the republican constitution to be in conformity with the constitution of the USSR.) It also confirmed the constitution of the Autonomous Republics and defined the boundaries of their territories, approved the national economic plan and budget of the Republic, exercised the right and amnesty and pardon of citizens sentenced by the Judicial bodies of the Union Republics, decided the question of representation of the Union Republic in its international relations, determined the manner of organising the Republic's military formations. 177

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. 178 The Supreme Soviet of a Union Republic also elected its own Chairman and Vice-Chairman to conduct its 179 It also appointed the Council of Ministers of the Union Republic. Chapter VII (Article 89-93 dealt with the "Higher Organs of State Power in the Autonomous Soviet Socialist Republics"). Each autonomous republic had its own constitution.

177. Article 66.
178. Article 61.
179. Article 61.
Institutional structure was more or less as the USSR pattern at Central level.

**Local Bodies of State Authority:**

At the levels of Territories, Regions, Autonomous regions, areas, districts, cities and rural localities, there were Soviets of Working People's Deputies. The Soviets were popularly elected, the basis of representation of which was determined by the institutions of the Union Republics.

The Local Soviets of Working People's Deputies directed the activities of the organs of administration subordinated to them, ensured the maintenance of public order, the observance of the laws and protection of the rights of citizens; directed local economic and cultural development and determined the local budgets.

The local Soviets elected their Executive Committees consisting of a Chairman, Vice-Chairman (number not mentioned), a Secretary, and member (number not given). These executive organs were directly accountable both to the Soviets of Working People's Deputies which elected them and to the executive organ of the superior Soviet of Working People's Deputies.

180. Article 94.
181. Article 96.
182. Article 97.
Courts and the Procurator's Office:

Constitution also provided for a judicial system consisting of a Supreme Court of the union republics, territorial and regional courts, courts of the autonomous republics and autonomous regions, area courts, special courts of the USSR and people's courts. 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 and the Special Courts of the USSR were elected by the Supreme Soviet of the USSR for a term of five years. The supreme courts of the union Republics were elected by the Supreme Soviets of the union Republics for a term of five years. The Supreme Courts of the Autonomous Republics were elected by the Supreme Soviets of the Autonomous Republics for a term of five years. The courts of the territories 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.

183. Article 102.
184. Article 104.
185. Article 105.
186. Article 106.
187. Article 107.
188. Article 108.
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{189}

The judicial proceedings were conducted in the language of the Union Republic, Autonomous Republic or Autonomous region.\textsuperscript{190}

The Judges were independent and subject only to the law.\textsuperscript{191} According to Soviet Jurist N.H. Polyansky the independence of Judges referred to in Article 112..."does not and cannot signify their independence of policies. The Judges are subject only to the law....this provision expresses the subordination of the Judges to the policy of the Soviet regime, which binds its expression to the policy of the Communist Party cannot be in contradiction in our country."\textsuperscript{192}

The Procurator-General of the USSR, who was appointed by the Supreme Soviet of the USSR for a term of seven years was directed to exercise "Supervisory power over the strict-execution of law by all ministries and institutions subordinated to them as well as by officials and citizens of the USSR generally."\textsuperscript{193}

\begin{itemize}
\item \textsuperscript{189} Article 109.
\item \textsuperscript{190} Article 110.
\item \textsuperscript{191} Article 112.
\item \textsuperscript{192} Cited in fainsod, n. 46, p. 375.
\item \textsuperscript{193} Articles 113-114.
\end{itemize}
The Procurators of the Republics, Territories Regions, Autonomous Republics and Autonomous regions were appointed by the Procurator General of the USSR for a term of five years.\textsuperscript{194}

The areas, districts and city Procurators were appointed by the Procurators of the Union Republics, subject to the approval of the Procurator General of the USSR for a term of five years.\textsuperscript{195} The organs of the Procurator's office performed their function independently of any local organs whatsoever, being subordinated solely to the Procurator General of the USSR.\textsuperscript{196} In this connection, it is important to note that in the constitution of 1924, the Procurator's office was a part of the judiciary.

But in 1933, the office was separated from the Supreme Court of the USSR and 1936 "Stalin Constitution" gave it an independent status. Stalin is also credited to have put this office into abuse by placing the cheka (Secret police) at its disposal for persecution of his enemies (this abuse has been largely rectified in the period of de-Stalinisation).\textsuperscript{197}

The changes in the division of powers between the Union

\textsuperscript{194. Article 115.}\textsuperscript{195. Article 116.}\textsuperscript{196. Article 117.}\textsuperscript{197. Chaube, n. 17, p. 118.}
and the Union Republics introduced by the 1936 constitution tended to favour the former. Commenting on the 1936 constitution, A.I. Lepeshkin admitted that it reflected a significant increase in the power 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, he went on to say that in a number of cases, the increase in the authority of the all-union government and the restrictions regarding the 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". 198

The 1936 constitution was substituted to numerous amendments in succeeding years, but none significantly changed its basic character or altered the configuration of the regime. Most 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 in February 1944 when amendments

were enacted which extended the powers of the union republics by awarding them the right to enter into direct relations and conclude treaties with foreign states as well as to maintain their own military forces. However, the constitution reserved to the Union the right to establish 'the general procedure' governing the foreign relations of union republics and also the 'guiding fundamentals of the organisation of union republic military formations.' 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 decentralization 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

199. Article 18(a).
200. Article 18(b) and Article 60.
201. Article 14(a).
202. Article 14(g).
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 ministries. This process led to the reduction in the number of all union ministries and ultimately resulted in radical reorganization of the whole system of industrial management, leading to the formation of Sovnarkhoz (Council of National Economy). The system of Sovnarkhoz replaced the all union and union republican ministries which were as many as one hundred and forty one in all.

On May 10, 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 all 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 down to earth and efficient."


204. Ibid.
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."

From 1957 the Sovnarkhoz took over control of almost all union and union republican industrial plants and also a number of economic enterprises. The four fold division of industry into All-union, union Republican and local levels was reduced to union republican (which was administered by Sovnarkhoz) and local (for which local Soviets were responsible). Thus it provided for greater and wider association of administrative machinery at lower levels but many other provisions circumvented the areas of their functioning.

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 Supreme Courts. At the same time, similar presidiums were formed in the Supreme court of the Autonomous Republics and also in oblast and Krai Courts. The legal organs of the...

205. Ibid., p. 29.

206. Ibid., p. 30.
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. 207

The Act on placing the legislation on the judicial system of the Union Republics and the Insurance of the Civil, Criminal and Procedure Codes under which Republic Jurisdiction of February 11, 1957 delimited the legislative competence of the USSR and the Union Republics in the given field. The USSR was granted the right to establish the all-union fundamentals of legislation on the Judicial System and Judicial procedure and the Fundamentals of Civil and Criminal legislation. The Union republics were granted the right to legislate independently in the field of the Judicial System and Judicial procedure, and issue republican civil, criminal and procedure codes that take account of historical, national and other features and customs of the Union republics. 208

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

207. Ibid., p. 31.
economic life of these republics. A Central Asian national economic council and several other economic organs controlled by the central authorities were set up for the direct administration of the economies of the Central Asian republics and all the economic councils which had subordinated to the Central Asian republican Governments were liquidated.\(^{209}\) This reorganisation signified a virtual return to those methods of governing Soviet Central Asia which had been practised in the first period of Soviet rule. Hence, the formation of the Central Asian Economic Council marked the close of the period of the expansion of Union Republics rights in the sphere of industrial administration.

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 reorganised 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.\(^{210}\)


\(^{210}\) Ibid., p. 186.
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 culture rights.

The 1977 Constitution:

The discussion on the need to change the constitution of 1936 was started by Khrushchev at the Twenty-First Congress of the CPSU. 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 revelation was a series of corrective measures introduced after the Twentieth Congress. 211

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

All-round extension and perfection of socialist

211. Chaube, n. 17, p. 29.
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, and increased control over its activity. 212

It was a continuation of the spirit of the Twentieth Congress that made a further exposure of the evils of personality-cult at the Twenty Second Congress and assertion of faith, in the programme of the CPSU, as condition of transition to communism. 213

Constitutional Commission:

In April 1962, a constitutional commission presided over by Khrushchev was established. Brezhnev succeeded Khrushchev after latter's overthrow in October 1964. 214

The constitutional commission included "experienced party and Government workers, collective farmers, the intelligentsia, eminent scientists and legal specialists". 215 It has

213. N.S. Khrushchev, On the Programme of the CPSU, Ibid., p. 194.
been twice considered by the plenary meeting of the CPSU Central Committee. Commission reported that the nation-wide discussion of the draft constitution was extensive and far-reaching. According to Brezhnev, the draft constitution was debated by "over eighty per cent" of the adult population resulting in nearly 400,000 proposals for amendments intended to clarify, improve and supplement the draft proposals. 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 188 of the 173 articles of the draft. Furthermore, one new article was added, the special Seventh session of the USSR Supreme Soviet approved this draft unanimously on October 7, 1977. Thus the 1977 constitution of the 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 "epitomizes the whole sixty years' development of the Soviet

state". He called it "the law of life of developed socia-
society". The 1936 constitution had been drafted just
after the establishment of socialism. Since then a
great distance had been traversed by the Soviet state.
Economic development had been accompanied by considerable
levelling of the conditions of the people and the conso-
olidation of socialist consciousness creating an 'organic
integrity and dynamic force of the social system, its
political stability, its indestructible inter unity'.
It reflects the stage of mature socialism - an 'important
step' towards the great goal of communism. The 1977
constitution (with 174 articles) is, as a result, lengthier
and more elaborate in the principles that the 1936 consti-
tution (with 146 articles). In place of the single
chapter II of the 1936 constitution, 1977 text treats the
structure of Union in four separate chapters which, in
altogether 18 articles (as compared with 17 in 1936),
cover not only USSR and the Union republics (chapter 8
and 9) but also the subordinate national units, the
autonomous republics (Chapter 10) as well as the autonomous
regions and autonomous (previously national) areas
(Chapter II).

(Fundamental Law) of the Union of Soviet Socialist
Republics and the results of the Nationwide discussion
(1977), p. 3.

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 eliminations of the union and autonomous republics and the incorporation of the 'concept of an integral soviet nation' in the constitution. If accepted, this would have drastically curtailed the sovereignty of the union republics. Constitutional commission rejected this suggestion for the 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".220

Soviet Federalism:

The constitution contained a definition of 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".221 The two earlier Soviet constitutions (1924 and 1936) 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.222

221. Article 70 of the 1977 constitution.
222. Article 76 of the 1977 constitution.
this connection, it is important to note that the conventional theory of sovereignty needs to be modified in the federal system of the USSR. The USSR is not a one sovereign state; it is a union of sovereign states called Union Republics. In most federations, the conduct of foreign relations is the exclusive responsibility of the central authorities. In theory a line is drawn between internal and external sovereignty. In this regard, the USSR is 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.\(^{223}\) By virtue of this status the USSR enjoys three votes in the United Nations (the extra votes being accounted for by Ukraine and Byelorussia) and each republic has its own ministry of foreign affairs. However, the union republics have lost the power to maintain their own military formation.\(^{224}\) Instead Article 81 of the new constitution ordained the USSR to preserve the right of the union republics.

The concept of sovereignty in the context of the USSR cannot be properly understood in juridical sense which identifies with exclusive power. The allocation of power in the federal system is based on the functional interdependence and therefore, does not admit of the concept of 'balance of power' or check and balances' as in the U.S federation.\(^{225}\)

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223. Article 80
224. Article 18 A of the 1936 constitution of the USSR.
225. For details Chaube, n.17, chapter six
Jurisdiction of the USSR:

Matters falling within the jurisdiction of all-union organs are specified in article 73 that covers:

(1) The admission of new republics to the USSR; endorsement of the formation of new autonomous republics and autonomous regions within union republics;

(2) Determination of the state boundaries of the USSR and approval of changes in the boundaries between union republics;

(3) Establishment of the general principles for the organisation and functioning of republican and local bodies of state authority and administration;

(4) The ensuring of the uniformity of legislative norms throughout the USSR and establishment of the fundamentals of the legislation of the USSR and union republics;

(5) Pursuance of a uniform social and economic policy; direction of the country; economy; determination of the main lines of scientific and technological progress and the general measures for rational exploitation and conservation of natural resources; the drafting and approval of state plans for the economic and social development of the USSR; and endorsement of reports on their fulfilment;

(6) The drafting and approval of the consolidated budget of the USSR and endorsement of the report on its execution; management of a single monetary and credit system; determination of the revenues forming the budget of the USSR; and the formulation of the prices and wages policy;
(7) Direction of the sectors of the economy and of enterprises and amalgamations under union jurisdictions 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;

(10) 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 other forms of other economic activity on the basis of state monopoly;

(11) Control over observance of the constitution of the USSR, and ensuring of confirmit of the constitutions of the union republics to the constitution of the USSR; and

(12) Settlement of other matters of all union importance.

The list of powers clearly shows that the powers of the union Government are quite comprehensive and fully justifies the concept of an 'integral federation'.

226. Article 73.
Sovereignty of the Constituent Republics:

There is an elaborate structure of 'highest bodies' of state authority and administration to exercise their powers, refuting any apprehensions that a union of sovereign states cannot be a federation. These union republics retained their sovereignty in the form of right to secede from voluntary union of the USSR exercise their authority over the jurisdiction of the USSR.\textsuperscript{227} The sovereignty of a union republic is guaranteed by the provision of the constitution of the USSR under which the territory of a union republic may not be altered without its consent while the boundaries between union republics may be altered by mutual agreement of the republics concerned, subject to the ratification of the USSR.\textsuperscript{228} Constitutional guarantee of the rights of a union are the right to have its own constitution confirming to the constitution of the USSR with the specific features of the republic being taken into account;\textsuperscript{229} to ensure comprehensive, economic and social development on its territory.\textsuperscript{230} Union republics take part in decision making in the Supreme Soviet of the USSR, the Government of the USSR, and other bodies of the USSR in matters that came within the jurisdiction of the USSR.\textsuperscript{231} The USSR of course, maintain control over observance of the

\textsuperscript{227} Article 72.
\textsuperscript{228} Article 78.
\textsuperscript{229} Paragraph 3 Article 76.
\textsuperscript{230} Article 77, part.2.
\textsuperscript{231} Article 77, paragraph I.
constitutions of the USSR and ensuring of confirmity of the constitution of union republics to the constitution of the USSR.\textsuperscript{232} In the event of a disparity between the Union Republic law and an all-union law, the law of the USSR will prevail.\textsuperscript{233}

A union republic determined the division into territories, regions, area and districts and decides other matters relating to its internal administrative and territorial structure.\textsuperscript{234} As regards the autonomous territorial entities within the union republics, they are now allotted separate chapters. In the new constitution, however, the names of the 20 autonomous republics and eight autonomous regions are specified. New Autonomous republics and autonomous regions may be created by the union republics, but such formation need to be approved by the highest state bodies of the USSR.\textsuperscript{235} There are 10 such (National) autonomous areas within the USSR, which are less significant than the other types of autonomy and are not specified in the constitution. An autonomous republic is a constituent part of union republic. In the spheres not within the jurisdiction of the USSR and the union republic, an

\textsuperscript{232} Article 73, 11 \\
\textsuperscript{233} Article 74. \\
\textsuperscript{234} Article 79. \\
\textsuperscript{235} Article 73(1)
autonomous republic deals independently with matters within its jurisdiction. An autonomous republic has its own constitution, conforming to the constitutions of the USSR and the union republic with the specific features of the autonomous republic — being taken into account. Their 'autonomy' is political. While the 1936 constitution authorised the union republics to define the boundaries of the territories of the autonomous republics in them. The 1977 constitution provides that the territory of an autonomous republic may not be altered without its consent. An autonomous republic takes part in decision making, through the highest bodies of state authority and administration of the USSR and of the union republic respectively, in matters that come within the jurisdiction of the USSR and the union republic.

An autonomous republic ensures comprehensive economic and social development on its territory, facilitates exercises of the powers of the USSR and the union republic on its territory and implement decisions of the highest bodies of state authority and administration of the USSR and the union republic.

236. Article 82.
237. Article 60, Paragraph(h) of the 1936 constitution of the USSR.
238. Article 84 of the 1977 constitution.
239. Article 83(a)
240. Article 83(b)
In matters within its jurisdiction, an autonomous republic coordinates and controls the activity of enterprises, institutions and organisations subordinate to the union or the union republic.\footnote{241}

Below the level of political autonomy there are two levels of administrative autonomy: the autonomous region and the national area. An autonomous region is a constituent part of a union republic or an administrative territory. The Soviet of the autonomous region drafts the law necessary for there territory and then submit them to the Supreme Soviet of the Union Republic which adopts them.\footnote{242}

It shows that legislative initiatives for the Autonomous Regions belongs to the Regional Soviets, but the ultimate authority to adopt a proposal belongs to the union Republics. The autonomous areas are a special type of administration meant for the northern thinly populated, territories of the RSFSR.\footnote{243} The autonomous area enjoys all the rights of self government in the solution of various questions of local life especially national development. Each autonomous area has its own state organs: Area Soviet and its Executive Committee. The areas have special representation on the Soviet of Nationalities of the USSR Supreme Soviet to which they elect one deputy each.

\footnote{241. Article 83(c).} \footnote{242. Article 86.} \footnote{243. Under the 1936 Constitution they were called "National Areas".}
All the autonomous areas are constituent parts of an administrative territory or region. The supreme Soviet of the Union Republic Legislates for them.\textsuperscript{244}

Above provisions indicate that the division of power among the three tiers is flexible and calls for a great deal of collaboration.

**Amending Power:**

The constitution of the USSR may be amended by a decision of the Supreme Soviet of the USSR adopted by a majority of not less than two-thirds of the total number of Deputies of each of its chambers.\textsuperscript{245}

**Institutional Structure:**

Another important feature in safeguarding the interest and rights of union republics is the constitutional system of 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)\textsuperscript{246} and broad representation of union republics in these chambers. Each union republic elects 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 are eleven deputies from each autonomous republic, five deputies from each autonomous region and one deputy

\textsuperscript{244}. Article 88 of the 1977 Constitution.
\textsuperscript{245}. Article 174.
\textsuperscript{246}. Article 109.
from each autonomous area. Now each of the chambers has 750 members, and the ratio between the republics and the population will diminish from election to election.

Each union republic has 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 be brought to a nation-wide discussion. As both the chambers of Supreme Soviet of the USSR have 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. The new constitution remove the provision for dissolution in such cases and provides that the matter shall be postponed for debate in the next session or submitted to referendum.

Presidium:

Some minor changes are introduced in the constitution of 1977 with regard to the presidium. The 1977 constitution defines 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 with in the limits prescribed by the constitution.

247. Article 110.
248. Articles 113 & 114.
249. Article 47 of the 1936 Constitution.
250. Article 115 of the 1977 Constitution.
251. Article 119.
Presidium is elected at a Joint Session of the Supreme Soviet of the USSR from among its members, and consists of Chairman, 15 Vice-Chairmen, (one from each republic) one Secretary and 21 other members. Five more powers are added:

(1) Presidium can amend existing laws of the USSR when necessary;
(2) approve changes in the boundaries between the union republics;
(3) form and abolish Ministries and State committees of the USSR, on the recommendation of the Council of Ministers of the USSR;
(4) remove individual ministers of the USSR and replace them by persons recommended by the Chairman of the Council of Ministers of the USSR; and
(5) the Presidium of the Supreme of the USSR promulgates decrees and adopts ordinances. But overall nothing significantly new is added.

The Council of Ministers:

The absence of separation of powers in the constitution of the USSR is 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'. The new constitution of the USSR innovates a Presidium of the Council of Ministers as its standing body was resembling the cabinet committee of a council of Minister in liberal parliamentary systems,

252. Article 126.
253. Article 122.
254. Article 123.
255. Article 128.
comprise (1) Chairman (2) the first Vice-Chairman and (3) Vice Chairman. The Presidium, it is declared "shall function as a standing body of the Council of Ministers of the USSR to deal with questions relating to guidance of the economy, and with other matters of state administration."\(^{256}\)

As before, the Council of Ministers of the USSR shall be formed by the Supreme Soviet of the USSR at the Joint sitting of the two chambers. It shall consist of: (1) The Chairman of the Council of Ministers of the USSR First Vice-Chairman and Vice-Chairman Ministers of the USSR, and Chairman of State Committee of the USSR. The Chairman of Council of Ministers of Union Republics shall be 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 of the USSR, may include in the Government of the USSR the heads of the other bodies and organisations of the USSR.

The Council of Ministers shall be responsible and accountable to the Supreme Soviet to which it is obliged to report regularly on the work. In between the sessions of the Supreme Soviet, the Council of Ministers is responsible and accountable to the presidium of the Supreme Soviet.\(^{257}\)

Except the matters that fall within the competence of the Supreme Soviet or Presidium, the Council of Ministers is empowered to deal with "all matters of state administ-

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256. Article 132.
257. Article 130.
rative within the jurisdiction of the union...". 258

The Council of Ministers of the USSR has the right to "issue decisions and ordinances and verify their execution the decisions and ordinances of the Council of Ministers of the USSR are binding throughout the USSR. 259

In matters within the jurisdiction of the USSR, the Council of Ministers of the USSR has the right to suspend execution of decisions and ordinances of the Council of Ministers of the Union Republics, and to rescind acts of Ministries and State Committee of the USSR, and of other bodies subordinate to it. 260 The council of Ministers of the USSR coordinates and directs 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 are not mentioned. But it is 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. 261 There is no change in case of Union Republican Council of Ministers which continue as before. A perusal of the powers and functions of the Union Council of Ministers shows that they are extensive and indirectly influencing the authority of the republic and their highest representative bodies.

258. Article 131.
259. Article 133.
260. Article 134.
261. Article 135.
Institutional Structure at the Republic Level

The highest organ of state power in a Union Republic is the Supreme Soviet of the Union Republic, empowered to deal with all matters falling within its jurisdiction. Its exclusive prerogatives are the adoption and amendment of the constitution of the Union Republic; endorsement of the state plans for economic and social development of the Republic's Budget, and of reports of its fulfilment and formation of bodies accountable to it. The Supreme Soviet of a Union Republic elects a presidium as a standing body accountable to it, and also forms "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.

The Constitution of the USSR does not deal with the details of the internal arrangement of the Union Republics, but only lays down the general principles. Accordingly laws of a Union Republic shall be enacted either by the Supreme Soviet of the Union Republic or by a referendum.

The highest body of state authority in an autonomous republic is the Supreme Soviet of the Autonomous Republic with exclusive prerogative over adoption and amendment of

262. Article 137.
263. Article 138.
264. Article 139.
the constitution of the autonomous republic, endorsement of state plans for economic and social development and of the republic's budget; and the formation of bodies accountable to it. It also elects a Presidium and forms a Council of Ministers of the autonomous republic. Laws of an autonomous republic are enacted by the Supreme Soviet of the autonomous republic.

**Local Bodies of State Authority:**

At the level of Territories, Autonomous Regions, Autonomous Areas, districts cities, city districts, settlements and rural communities there are Soviets of People's Deputies, with their executive committees directly accountable to them. Their status is equivalent to that of popular committees on local matters with the difference that such powers are mainly not derived from the higher bodies of state power through delegation but from the constitution itself, even though there is provision for delegation of functions to the lower Soviets by the higher Soviet. Local Soviets of People's Deputies deal with all matters of local significance in accordance with the interests of the whole state and of the citizens residing in the area under their jurisdiction, implement of decisions of higher bodies of state authority, guide the work of lower Soviets of People's Deputies, take part in the discussion of matters of Republican and all union significance and submit their proposal concerning them.

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265. Article 143.
266. Article 145.
267. Article 149.
268. Article 150.
269. Article 148.
They direct state economic, social and cultural development within their territory, endorse plans of economic and social development and the local budget, exercise general guidance over state bodies, enterprises, institutions, and organisations subordinate to them, ensure observance of the laws, maintenance of law and order, and protection of citizen's rights and help to strengthen the country's defence capacity. 270

The local Soviets are a means of coordinating state policy with local interests, they ensure within their powers, all round economic and social development of their areas, exercise control over the observance of legislation by enterprises, institutions and organisations subordinate to higher authorities and located in their area, and coordinate and supervise their activity as regards land use, nature conservation, building employment of man power production of consumer goods, and social cultural, communal and other services and amenities for the public. 271

Courts and Procurator's Office:

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

270. Article 146.
271. Article 147.
The Supreme Court of the USSR;
The Supreme Courts of the Union Republics;
The Supreme Courts of the Autonomous Republics;
The Regional, Territorial and City Courts and
Courts of Autonomous Regions and National Areas;
and The District (City) People's Courts and
Military Tribunals in the Armed Forces. 272

All courts follow the "principle of the collectiveness of Judges and People's assessors". 273

The lowest of these courts are the district(city) people's courts; The People's judges of district(city) people's courts are elected directly by the citizens of the district for a term of five years. The people's assessors in such courts are elected for a term of two and a half years at meetings of citizens at their places of work and residence by a show of hands.

The high courts are elected by the respective Soviets for a term of five years.

Judges and People's assessors are responsible and accountable to their electors or the bodies that elected them, shall report to them, and may be recalled by them in the manner prescribed by law. 274

The Supreme Court of the USSR is "the highest judicial body in the USSR". It "supervises the administration of justice by the courts of the USSR and Union Republics within the limits established by law". The

272. Article 151
273. Article 152
274. Article 152
Supreme Court is elected by the Supreme Soviet for a term of five years and consists of a Chairman, Vice-Chairman, members and people's assessors and the Chairman of the Supreme Courts of Union republics are ex-officio members of the Supreme court of the USSR. 275

The judicial system of the USSR is governed by two kinds of jurisdiction of the courts, namely, the 'Courts of the first instance' and the 'Courts of the Second instance'. This distinction is not entirely similar to the distinction between the original and appellate jurisdiction in the Western democracy. The district people's courts sit as the courts of first instance dealing along with cases under original jurisdiction assigned to them by law. But as courts of second instance they deal not only with appeals, but also with protests. 276

The hearing of civil and criminal cases in all courts is collegial; in courts of first instance cases are heard with the participation of people's assessors. In the administration of justice people's assessors have all the rights of a judge. 277 Since 1957, the Supreme Court of the USSR has stopped hearing appeals from the Supreme courts of the union republics in civil and criminal cases. But it can hear 'protests' against a judgement of a supreme court of a Union Republic if it violates a law of the union or interests of the other union republics. Generally, on civil and criminal cases, the

275. Article 153.
276. Chaube, n,17, p.114
277. Article 154.
union republicans Supreme Court has the last say. There is no appeal against their judgement except by moving the Procurator General of the USSR.\textsuperscript{278} 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 Republican court. Stoppage of this practice increased the autonomy of the union republics.\textsuperscript{279} Judicial proceedings are 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.\textsuperscript{280}

Procurator's Office:

The "Strict and uniform observance of law" by all ministries and other state bodies and organisation is ensured by the Procurator General of the USSR and Procurator's subordinate to him".\textsuperscript{281}

The procurator General appointed by the Supreme Soviet of the USSR, is responsible and accountable to it or its presidium between its sessions.\textsuperscript{282}

The procurators of the Union Republics, Autonomous Republics, Territories, Regions and Autonomous Regions are appointed by the Procurator General of the USSR.

\textsuperscript{278} Cited in Chaube n.7, p.114.
\textsuperscript{279} Ibid., p.116.
\textsuperscript{280} Article 159.
\textsuperscript{281} Article 164.
\textsuperscript{282} Article 165.
The procurators of Autonomous Areas and the District and City procurators are appointed by the procurators of the Union Republics subject to confirmation by the procurator General of the USSR. 283 The term of office of the procurator General of the USSR and other procurators is five years (it was 7 years before). 284

The agencies of the procurator's office exercise their power independently of any local bodies whatsoever, and are subordinate solely to the procurator General of the USSR. 285 This means that the Republican or local Soviets of the USSR have no supervisory authority over the procurator's office at any level. The local procurators are controlled by the higher procurators and ultimately by the procurator General of the USSR, who in turn is accountable only to the Supreme Soviet of the USSR and between its sessions, the presidium of the Supreme Soviet of the USSR. Thus judiciary exercises functional autonomy.

Financial Power:

On the other hand, the most striking feature of Soviet fiscal federalism is the centralised pattern of budget allocation and budget revenues. The right to levy taxes and freely dispose off revenues is an important attribute of sovereignty. Independent control over some resources is the pre-condition for a community's freedom to set its own agenda. The Soviet Union's

283. Article 166.
284. Article 167.
285. Article 168.
fiscal system has so far denied to its republics the right to tax and to dispose of 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 talk of "management of the country's economy (sub-art.5), "management of the Sectors of the National economy, and of enterprises and amalgamations" (sub-article 8). However, in all these areas, the authority of the centre is not the same. Thus, matters of Defence are conducted absolutely independently by the centre. It is beyond the competence of the republics. In relation to the union enterprises, the republican organ have some rights included in the constitution of the USSR. Finally, federative republic directly administers the sectors under republican competence and partially the union republican sectors. But these sectors and enterprises are also an integral part of the country's economy. In short the term 'management' has different connotations in different sub-articles of article 73 and is a violation of the need for a unified terminology i.e. one of the basic requirements.

Other shortcomings of the existing system of regulation, is that there is 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 talks

286. Article 77, part 3.
of sectors of "national significance" in a most vague manner, which can be interpreted in as many ways as one wants, at the same time without clearly specifying the areas of authority of the republics. This creates the conditions for a high degree of centralisation in decision making and concedes a lot of freedom for the central organs in interpreting the concept of "national significance". 287

There are 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 provides the comprehensive economic and social development of union republics. Article 77 which includes a formula on complex economic and social development of the union republics reads 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 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.

287. Article 79.
It is apparent from this text, that it is full of ambiguity, on the one side it holds that republican governments have the higher authority in economic and social sphere, on the other hand, they are charged with implementing the decisions of the centre. But what if the republics interests in economic development diverge from the centre, (as usually happens) there is no clause accommodating the differences arising out of divergent view of point of the centre and state over certain issues. Moreover, the constitution declares that a republic authority over all union enterprises "is restricted to the sphere pertinent to their competence". But the area of competence is not clearly mentioned.

Another fact which draws attention is that the Council of Ministers of the USSR form an overwhelming part of the normative enactments in the economic sphere. Formally, they do not regulate the powers and authority of the federative republics. But under the existing conditions, sustaining extremely active functioning the Council of Ministers can intrude into the sphere of federal relation. Regulation of any economic question related to the organisation of the planning process or pricing, standardisation or material and technical supply inevitably necessitates fixing the powers of the republican administration.
However, as a whole the contentions of some writers that behind a facsimile of federal constitution therein lies a unitary spirit does not 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 has not been diminished. Federation is a relationship between various units to achieve their common ends. The federal system of the USSR has achieved considerable success in promoting the status and conditions of the ethnic minorities. To say there is no federation in the Soviet Union is to negate the meaning of the term 'federation'. Therein lies the validity of the USSR's claims to the status of a 'multinational state'.