Chapter Two

The Russian Constitution of 1993 – A Brief Outline of the Emerging Institutions
Mikhail Gorbachev was elected General Secretary of the Communist Party of the Soviet Union in March 1985. He assumed the leadership of a venerable and apparently secure monocratic system, in which political freedoms were limited. While many observers expected generational change and elite turnover to affect the character and style of Soviet leadership and many in the mid-1980's highlighted weaknesses as well as strengths in the Soviet system, very few saw Soviet Union heading towards a terminal crisis. A tantalizing and possibly unanswerable question is whether the Soviet Union was already in such a path when Gorbachev assumed the leadership or whether he and his coterie set it on that path. The debate regarding this is outside the scope of this study. Irrespective of how one might attempt to address this question, there were a number of signs which pointed to the coming of troubles at the institutional front. The new leadership inherited problems which demanded innovative solutions. In fact, the accumulated difficulties at home-front such as economic disaster, poverty and permeating inefficiency created a climate of opinion for urgent problem solving through radical reforms.

The adoption of Perestroika and the unanticipated consequences thereby proved fatal for the integrity of the Soviet political system. While the policy of Perestroika (restructuring) had relatively limited impact, the
associated policies of glasnost and demokratizatsiia undermined the very foundations of the monocratic rule. Glasnost facilitated not only a cultural renaissance, but the emergence of alternative ideological positions with which the party elite was ill-prepared to cope. The result was increasingly open schism within the ruling elite. Furthermore, as freedom of speech and freedom of opinion are almost inseparable companions, glasnost rapidly led to the emergence of informal political groups. The decisive blow to the old system came with the endorsement, in the All Union Extraordinary Nineteenth Party Conference, of the new electoral laws. This struck at the very heart of the established system of party control by the emergence of a multiparty politics.

A study of the tumultuous experiences of the post-independence Russia illustrates some of the deeper dilemmas and uncertainties at the institutional front. Russia, like many other Republics, witnessed the demise of significant features of its political system, in the midst of developing economic crisis. Thus, the early years of Russia's renewal proved extraordinarily disturbing marked by escalating conflict between President Yeltsin and the Congress of the People's Deputies inherited from the Soviet era. It was, in fact, a struggle between two institutions trying to impose one's authority on the other. To understand the evolution of political institutions in Russia, particularly the legislative and the executive organs, it is important to
understand the context of political change. Further, it is necessary to understand the phenomena of Perestroika and Glasnost, the changes brought about by the Nineteenth Party Conference, before embarking on an analysis of the developments in the post-Soviet institutions. Section one of this chapter outlines an analysis of the changes and political reforms brought out by the Nineteenth Party Conference and section two of it necessarily relates it to subsequent developments in the institutional structure of Russia by providing an overview of the context in which new institutions were adopted by the 1993 constitution.

I THE NINETEENTH PARTY CONFERENCE AND THE CONTEXT OF CHANGE IN THE SOVIET POLITICAL INSTITUTIONS

The brief history of Mikhail Gorbachev's reform has been rich and produced a number of milestones. The Nineteenth Party Conference, from 28 June 1988-1 July 1988, and the Plenum of the Central Committee that followed it a month later are two such milestones. To understand their importance in institution building in Russia, it is necessary to see how they fit into the process of political reform that Gorbachev introduced. The first phase of Gorbachev's efforts to transform the Soviet Union sought to establish a plan of radical political, cultural and economic reforms and begin their implementation. He also pursued the goal of consolidating his power in the institution of Soviet leadership - the Politburo, the Secretariat of the
Central Committee and the Presidium of the Council of Ministers. After the flurry of activities during the first six months of 1987, the aims of Gorbachev revolution were becoming clear to the Moscow establishment. The main objective was to reform the Soviet political system. Glasnost and democratization had already affected the existing traditional Soviet political system. But the pressure from below and the pressure from the media were insufficient to restore vigour to the political system and break bureaucratic resistance to Perestroika. Structural and institutional change in the stagnant political system was urgently needed.

Frustrated by the slow pace of implementation of his reforms and unable to combat the opposition within the party, especially in the Central Committee and the party apparatus, or to transform his economic and political reforms from mere words into tangible results, Gorbachev, at the beginning of 1987, decided to revive a long forgotten party forum - the All Union Party Conference. Traceable to Lenin, the Party Conference used to be an extraordinary party forum convened in the intervals between regular Party Congress in order to deal with pressing economic and political issues that could not be put off until the next regular Congress. All Union Party Conferences had a long and respectable history in the Soviet Communist Party. They were convened regularly under both Lenin and Stalin until 1932. Conferences gave party leaders and activists a forum in the years between
regular Congresses so that they could deliberate and enact binding resolutions on timely and fundamental issues. From 1917 to 1930, eight Party Congresses and eight Party Conferences took place. Here, the distinction between a Congress and a Conference should be kept in mind. A Conference traditionally does not elect a new Central Committee. However, no CPSU statute provided precise definition of the functions of the Conference. The only CPSU statute that mentioned about the All Union Party Conference read as follows:

Between Party Congresses and the Central Committee of the CPSU may, if necessary, convene a countrywide Party Conference to discuss pressing matters of party policy. The procedure for holding the Party Conference is determined by the CPSU Central Committee.¹

With the consolidation of authority under Stalin, the practice of convening All Union Party Conferences was discontinued evidently because Stalin found it unnecessary. The last such forum, the Eighteenth All Union Party Conference had been held in February 1941. Rather than dealing with any party affairs, it had served as a propaganda forum. Although the original idea of the All-Union Party Conference, as incorporated in the CPSU statute, was that it should serve as a party instrument to promote the implementation of party policy, Gorbachev's original intention was apparently to use it as an instrument for boosting his reforms – specifically by overcoming the deeply

¹ *Rules of the CPSU* (Moscow: Progress Publishers, 1977), Chapter 4, Article 40.
 entrenched opposition within the party and by replacing Central Committee members and other high-ranking party officials at the regional level who were prone to regarding Perestroika simply as a threat to their positions and privileges.

Learning the crucially important question of the Conference's agenda and after speaking about the importance of democracy, stressing that Perestroika is possible "only through democracy and due to democracy" and defining the further democratization of the Soviet society as an urgent party task,² Gorbachev further said:

I would like in this connection to take counsel on such a fundamental issue: possibly, it is advisable to convene an all-union party conference next year on the eve of the report and election campaign within the party, and extensively to review the course of implementation of the decisions of the 27th Congress of the CPSU and to sum up the first half of the five year plan period. It would be also right for the conference to discuss questions of further democratising the life of the party and society as a whole...

The very fact of convening an All Union Party Conference in accordance with the CPSU's rules would become a serious step in democratizing the life of the party and developing Communists activity.³

Despite the evident reluctance of the CPSU leadership to commit itself to the idea of the All-Union Party Conference, the CPSU Central Committee, the Plenum of 25-26 June adopted a formal decision to convene the


³ Ibid.
Nineteenth All Union CPSU Conference on 28 June 1988 and set out its agenda as follows:

- On the course of the fulfillment of the decisions of the 27 CPSU Congress, the main results of the first half of the 12 Five Year plan period, and the tasks of the party organisations in deepening the progress of reorganization; and

- On the measures to further democratize the life of the party and society. ¹

This was indeed a rather vague and flexible agenda, one that allowed everyone to interpret it in their own way. The explicit topics for discussion and the Conference's precise terms of reference had yet to become a forum for promoting Perestroika and achieving consensus on structural changes in the polity. In any event, the official announcement of the meeting revealed that:

the participants stressed the urgent need to deepen the process of restructuring and persistently conduct the struggle for full and consistent realisation of a radical economic reform and that they also realise the mutual link between the success of the party restructuring and economic reform.[and] that they were united in their understanding of the basic mutual link between the success of restructuring and determined implementation of the party policy of comprehensive democratization of social life, expansion of glasnost and development of inter party democracy, enhancement of the role of the Soviets of Peoples' Deputies and drawing in the broad masses of the working people into these processes. ⁵

The main theme of Gorbachev's speech in this Conference was the

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decentralization of political power. The transfer of power was to be based on giving more independence and responsibilities to the local Soviet of Peoples Deputies, clearly at the expense of the central party apparatus and the bureaucracy. He plainly put forth the proposition that substantial changes in the political system were an essential pre-condition for the success of Perestroika. To quote him: "Today we must have the courage to admit that if the political system remains immobile and unchanged, we will not cope with the task of the Perestroika".6

In fact, he was proposing the introduction of a system of checks and balances into the one-party rule in USSR. Essentially, the idea was to establish a 'presidential - parliamentary' system and to strip the central party apparatus of some of its powers which were to be transferred to the local Soviets. In addition, all party officials were to be subjected to something close to democratic accountability, not only to the Party Committees but also to the population at large. The entire package of proposals was accompanied by an explicit promise to the delegates that the proposed changes were not aimed at any lessening of CPSU control but, rather, that this control would be exercised more efficiently in future. Thus Gorbachev’s policy of Perestroika

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expressed itself as a restructuring of the language of politics itself. He located the roots of the current malaise in the absence of democratic institutions and called for open competitive elections in order to involve the population in the affairs of the government and to weed out time servers, retrogrades and incompetent officials. Most important, a Conference of the CPSU, first one to be held since 1941, was aimed at dealing with major questions of policy, prominent among them was the single issue of democratization and change. As Gorbachev put it in his closing remarks:

That lever, comrades, that will enable us to provide perestroika with the decisive force is the people, if we don't include people then we will neither solve the tasks of accelerating (our development), nor guarantee perestroika itself. Perestroika simply will not be... we need democracy like we need air.

As this new critical discourse on the need of democracy in the institutions of government gathered force, it began to depict in greater detail the real impotence of the earlier Soviets that the older system celebrated as authentic and authoritative institutions of people's power.

Towards the end of May 1988, the Central Committee of the CPSU convened to adopt a programme of reform that would serve as the framework

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9 Izvestia, 18 August 1989.
for discussion at the Party Conference. The 'theses' that emerged from this Plenum identified the party apparatus, its inability to appropriate public office and abuse the public trust as the principal opponent of reform and the chief reason for the country's slow progress during the first three years of Perestroika.¹⁰ In order to break the hold of the apparatus on the political life of the society, the 'theses' advocated a political Perestroika on three broad fronts:

First, competitive elections under secret ballot would replace the nomenclatura system of appointments as the means for selecting high level party and soviet officials.

Second, Soviets would be restructured in order to free them from the tutelage of the party organs and the branch apparatuses of the centralised ministers, thus enabling them to act as authentic institutions of popular government. In this respect, the theses called for a separation of the elected legislators and the executive departments of the Soviets; and

Finally, it called for the creation of a socialist government of laws, a concept that had been gaining currency in the professional literature on government and law.¹¹

The Nineteenth Party Conference acted as a major stepping stone in Gorbachev's programme of radical reforms. The Conference became a serious and exciting political theatre of the highest order. The drama of the Conference was evident in the significant changes of the Soviet political system proposed by its leaders and delegates. The resolutions attempted to

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¹⁰ Izvestia, 24 July 1989.
¹¹ Urban, n.7, p.27.
institutionalize Gorbachev's plan of grassroots democratization and Glasnost. They were directed at the introduction, for the first time in the Soviet history, of a system of checks and balances into the traditionally authoritarian system. The implementation of these checks and balances marked the most profound change of the Soviet political system since the advent of 'Stalinism.' It generally followed the agenda set forth in advance. It provided a blueprint of the new Soviet political system that Gorbachev sought to create. On its final day of work, the reform project included the following:

1. The creation of a USSR Congress of People's Deputies which would function as 'the country's supreme body of authority' comprising, in addition to the deputies representing territorial and national-territorial constituencies, others representing the principal elements of the political system - the party, the trade unions, the Komsomol, other mass public organisations, as well as co-operative, creative and scientific associations - all of whom should be democratically elected at congresses or Plenary meetings of their governing bodies. The Congress would meet annually to decide the country's most important constitutional, political and socio-economic issues and would elect a 'relatively small' bicameral USSR Supreme Soviet - a standing legislative, administrative and supervisory body - and elect by secret ballot the President of the Supreme Soviet.

2. Electoral competition with 'unlimited nomination of candidacies', would be the method for selecting deputies to Soviets at all levels. Elected Officials would be limited to two consecutive five year terms of office.

3. Each Soviet would elect the leaders of its executive committee on the basis of multiple nominations and secret ballot. Members of the executive committee (with the single exception of its chairperson) would not be eligible to serve as deputies in their respective Soviets. Deputies, in turn would be relieved of some portion of their work obligations in order to devote more time to their responsibilities as legislators and monitors of the operations of the executive departments of government.
4. Leadership of the Soviet would now be exercised by newly created Presidiums, formed in all Soviets above the level of the rural village or urban settlement, that would be composed entirely of elected deputies.

5. A 'Socialist rule-of-law state' (Sotsialistichesko Pravovoe Gosudarstvo) must anchor social, political and economic relations in the USSR. 'Accordingly, to make law and government decisions conform strictly to the requirements of the constitution of the USSR. It would be useful to set up a 'Committee of Constitutional Oversight.' In order to remove local political influences from the dispensing of justice, 'the unconditional independence of judges' (will be secured by) the election of district, city, area, regional and territorial courts by superior Soviets of People's Deputies.12

Thus, the most arresting features of the changes concerned the transformation of the system of Soviets into real legislative branch of the government, the electoral reforms, the introduction of a new Congress of People's Deputies, etc. We may now turn to briefly discuss each of these components of reform programme.

(i) Empowerment of the Soviets

The political system was to be changed by a partial shift of power from the party to the Soviet of People's Deputies. According to the new proposals, the Soviets were to become organs with real political authority exercising close control over political and economic issues at the local level, freed from Moscow's iron grip. The design of recommending first secretaries of local Soviets led to a limited separation of powers between the executive

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12 For the draft resolutions, see Urban, n.7, pp.45-46.
and the legislature. All this was intended to achieve a limited separation of powers by weakening the central party apparatus whose opposition to the radical reforms of Gorbachev was continuous and unabated.

The term 'Soviet' as applied to the Soviet Union’s political structure had two connotations: the first referred to an institution that was supposed to perform the function of a legislature; the second indicated the unity of the legislative and executive power because the legislature purportedly appointed the executive. The Soviets first came into being during the 1905 revolution as an organisation of workers. After the Bolsheviks seized power in 1917, the Soviets were chosen by Lenin as an alternative to a parliamentary government in a one party state. Thus the Soviets were political bodies of representatives elected by the people in direct, proportional and secret balloting on all administrative levels. The term 'Soviet' also connoted the executive branch of the government whose leading members again on all levels were appointed by the People's Deputies who constituted the Soviet as a legislative body. These people were also members of the legislative bodies elected by a popular vote. The executive body at the level below a Union Republic was called the Executive Deputies (Ispolkom), at the Republican and All Union level, they were called the Council of Ministers.

Until now, the soviets as legislative bodies were a total farce. The Deputies were elected by votes who had no choice of mandates. In fact, the
deputies were pre-selected by the party apparatus. They had no voice in whatever in who among them would be appointed to Ipsolkom and Council of Ministers because they had already been decided by the party apparatus or party bureaus. The Nineteenth Party Conference decided to make significant changes in the system of Soviets in both structure as well as functions. It decreed a number of changes, many details of which remained unclear. The provisions provided that the voters will have an opportunity to select from among a number of candidates for election of deputies of the Soviet; the party organisations or communities as well as mass associations and working collectives can nominate different candidates for the ballot. It was not clear as to how many candidates could be placed on the ballots, by what rules and procedures this should be decided and by whom it should be decided.

The proposed changes were potentially important ones and required major constitutional amendments. Conceptually the entire scheme of reform appeared promising. But the structural changes proposed needed a changed behaviour in the leadership, attitudinal change in the ruling elite, bureaucracies and the voters. The purpose of these political reforms were to separate the executive from the legislative branch through the immense strengthening of the legislative sector.
(ii) The Fusion of the Party Secretaries

Another controversial aspect of Gorbachev's proposed change concerned the First Party Secretaries at all levels, including the General Secretary. The First Party Secretaries were the symbol of Communist Party rule in the Soviet Union. In practical terms, they were the backbone of the party apparatus and of the Soviet political order. The First Party Secretaries were responsible for the performance of the geographic administrative territory in which they served. They were the party functionaries in whose hands remained all the reins of power.

Faced with bureaucratic opposition (particularly within the party apparatus), Gorbachev sought to enhance his stature by combining his top party position with the chair of a changed and potentially powerful legislature, a move that served to make him the head of the state. Khurshchev's formula of combining the top two executive positions, the First Party Secretary and Prime Minister had failed. Brezhnev's formula of combining the top party position with that of the Chair of the Supreme Soviet (head of the state) was meaningless in the light of purely symbolic nature of the Supreme Soviet. Gorbachev's formula created a greater confidence in the Supreme Soviet as it was expected to play a revised new role in the governmental structure. This fusion of the top party and legislative positions
created further confusion in the system. Under the new circumstances this proved to be dangerous for the political system.

A top propagandist, Fedor Burlatsky wrote during the pre-conference discussion:

I believe that the separation of the posts of party leaders and state leaders proposed by some participants in the current debate is wrong. In reality, it would lead to a struggle for personal power and total subordination of the state to the party. On the other hand, the unification of these two posts would lend a legitimate, legal nature to the practice, which has existed for more than 70 years now and conforms to the political awareness of our people, who personify supreme power.\(^{13}\)

The fusion of the positions, although quite practical in smoothing the relations between the two centres of power saved Gorbachev of a lot of troubles, it sowed the seeds of further crisis and confusion after the break-up of the Soviet Union.

(iii) New Legislative Organs

The Constitution of 1977 had provided that the "highest body of the state authority of the USSR shall be the Supreme Soviet of the USSR". Article 108 empowered this body to deal with all matters within the jurisdiction of the Union of the Soviet Socialist Republics. The Supreme Soviet was the apex body of a system of Soviets which existed at all levels.

from town, rural unions to all union level. Taken together, all these bodies claimed to be constituting the political foundation of the USSR. The Supreme Soviet consisted of two chambers, the Soviet of the Union and the Soviet of the Nationalities. On the other hand, the Presidium was the standing body of the Supreme Soviet elected in its joint session and exercising the functions of the highest state authority between the two sessions of the present body and to which it was accountable for all its work (Art. 119).

On the basis of the constitutional amendments adopted on 1 December 1988, an entirely new representative structure headed by the Congress of the People's Deputies to be elected on the basis of the new electoral rules, was created. The organisation of this new representative supreme legislative body was very different from the earlier body. The USSR Congress of People's Deputies, consisting of 2,250 elected members was declared as the standing legislative, administrative and monitoring body of the USSR state authority having again two chambers, Soviet of the Union and Soviet of the Nationalities. Gorbachev's political reforms also aimed at intensifying the political activity of the Soviet citizen through local Soviets.

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(iv) Reorganizing the Party Apparatus

As already mentioned party remained at the heart of the political system of the USSR till its decline with the abolition of Article 6 February 1990. The leading and guiding role of the Communist Party of the Soviet Union was emphasized in Article 6 of the 1977 constitution. The Article stated:

The leading and guiding force of Soviet society and the nucleus of its political system, of all state organisations and public organisations is the Communist Party of the Soviet Union. The CPSU exists for the people and serves the people. The Communist Party armed with Marxism-Leninism determines the general perspectives of the society and directs the great construction work of the Soviet people and imparts a planned, systematic and theoretically substantiated character to their struggle for the victory of communism.\(^{15}\)

Thus, the source of party's influence (over the Supreme Soviet) laid primarily in the strict control it exercised over the selection of candidates to run for election to the legislature, as well as in the party's power of appointment to all posts of any significance (the nomenclatura system). Moreover, the party's guiding principle of 'democratic centralism' required all its members to observe strictly its discipline in the execution of official decisions.\(^{16}\)

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16 Elizabeth Teague and Dawn Mann, "Gorbachev's Dual Role", *Problems of Communism*, vol.39, no.1(Jan-Feb,1990), p.4.
However, Gorbachev, in his main address at the Conference, reserved his strongest criticism for the party apparatus. Explicitly stressing that the party was no longer a 'truly democratic organisation', he harshly criticised the 'period of stagnation' and proposed a radical remedy - namely, limiting the prerogatives of the party organs throughout the pyramid of the party structure, reducing their size and the scope of their functions and radically restricting their opportunities for meddling in the activities of the elected central and local organs. Gorbachev's proposals aimed at reorganising the Central Committee apparatus, slimming down the party's central administrative machinery by reducing or abolishing the departments that they supervised, the economy and other areas of Soviet life and also by subjecting party organs to the control of elected bodies limiting their terms of offices.

During this period, Gorbachev also held a series of meetings with regional party secretaries where he drew attention to significance of moving to a state based upon the rule of law, pointing out that this meant every person and all institution must be subordinate to the law including the Politburo.\(^1^7\) The influence of democratic practice in non-communist countries and of his conversations with western politicians was apparent when Gorbachev told his audience of party officials in one of these off-record talks:

the whole world criticises us for the fact that the party rules the
country regardless of the law and because only a part of the society
(meaning Communist Party members) had a share in real power.\textsuperscript{18}

(v) \textbf{Electoral Reforms}

The electoral reforms proposed by Gorbachev intended to be another
means of establishing firm control over the activities of the party officials
and asserting democracy in USSR political procedures.

Revitalization of Soviets, as noted earlier, inevitably brought the
question of election to the forefront. The debate on political reform which
extended throughout 1987 and 1988 accepted that the existing electoral
system had to be discarded in order to take concrete steps towards
democratisation. In fact, "elections have not traditionally been an important
form of linkage between regime and the public in the USSR".\textsuperscript{19} The most
serious shortcoming of the electoral system was the absence of choice of
candidates and the over-detailed regulation by the central party authorities of
the desired characteristics of candidates. Therefore, thorough reform of
existing election system was evidently a precondition to any institutional
change of Soviet political system.

\textsuperscript{18} Ibid.

Earlier at the 27 Party Congress of March 1986, while devoting some attention to "further democratisation of society and promotion of people's self-government", Gorbachev declared, "it is apparently time to make necessary corrections in our election procedure as well". In January 1987 plenary session of the CPSU Central Committee Gorbachev again reemphasised the urgency of electoral reform in the light of the upcoming June 87 elections: "the Politburo considers the perfection of the Soviet electoral system to be a principal trend in the democratisation of our lives. According to the Twenty Seventh Congress on this score, appropriate proposals are being worked out".

However, though the draft proposal of the 19th Party Conference emphasised secret ballots and competitive elections as the norm in electing party and state officials, very little was made public as to how and by whom the drafts of the constitutional amendments and electoral law were composed. According to V. Vasilev, a member of the working group that drafted the constitutional amendments, two groups were formed in August 1988 by the Presidium of the Supreme Soviet, one to prepare a new law on elections, the other to compose a series of amendments to the constitution.

20 M.S. Gorbachev, "On Convening The 27th CPSU Congress And The Tasks Involved in Preparing for and Holding it" in M.S. Gorbachev, Selected Speeches and Articles (Moscow: Progress Publishers, 1987), p.410.
The nation-wide assessment officially concerned with the publication of draft amendments to the constitution on 22 October 1988 and the New Electoral Law, the next day. Finally on the basis of the resolutions in the 19th Party Conference, constitutional amendments were adopted on 1 December 1988 which provided for an entirely new representative structure headed by the Congress of People's Deputies of the USSR to be elected on the 26 March 1989 in accordance with new electoral laws, adopted at the same session of the Supreme Soviet.

(vi) Legal Reforms

The legal reforms proposed by Gorbachev at the conference were aimed at creating safeguards against abuse of official power and, as such, must be regarded as another aspect of his comprehensive political reform. The major reform of courts was intended to create greater independence of judicial system and to protect the rights of defendants. With the apparent aim of freeing the system of political interference and local control, the final resolution on 'Legal Reform' called for the term of office of the judges to be increased to ten years (from five) and for the establishment of a Committee for Constitutional Supervision to be elected directly by the Congress of People’s Deputies and placed in charge of 'ensuring that government laws and resolutions strictly corresponded to the requirements of the constitution'.
No such constitutional review body had previously existed in the USSR. Gorbachev clearly intended to use the legal system to reinforce his political reforms, by curbing the extensive powers of the local bosses and offering real legal protection to the citizens. Moreover, though he rejected the idea of competing political parties, he announced that public organisation (including non-communist groups) should play a more active role in the political affairs of the society.

The resolutions in the 19th Party Conference generally reendorsed Gorbachev's proposals for political restructuring. He, in his many ad-hoc interventions, appealed to the delegates to concentrate on political questions. Clearly the party leadership had deliberately decided to focus on political issues. This was, in fact, made clear by Gorbachev at the outset of his speech when he said:

Today we are facing many intricate questions. But, which one of them is the crucial one? As the CPSU Central Committee sees it, the crucial one is that of reforming our political system.22

In the background of pressing economic problems, the concentration of political issues by the leadership reflected both the political logic and strategic interest of the ruling elite. The Soviet economy required existence of three political conditions; First, major cuts and changes had to be made in

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the administrative personnel; Second, the very process of macro and micro economic decision making had to change; and third, to get the party apparatus out of the everyday business of running the economy, the Soviet political system had to be restructured in a way that would provide safeguards and checks and balances for implementing national policies. It was on these political conditions of economic reforms that the leaders of Kremlin focused on the institutional change in the Nineteenth Party Conference.23

The most important points concerned the establishment of a new type of presidency, a partial transfer of power and authority from the party organs to local soviets, competitive elections for party offices, a ten year maximum term for elected party and government officials, and the creation of a new legislature. Taken together, these resolutions curbed the role of the CPSU as the ultimate arbiter of every aspect of Soviet life. Although these provisions formed the kernel of the draft of legislative acts on the restructuring of the government bodies that the Conference commissioned, they did not provide a detailed plan for changing the Soviet system. The phase of formulating a definite project for democratization left great many matters unresolved: who would have right to nominate candidates for office?; what powers would belong to the envisaged Congress of People's Deputies?; who would serve on

23 See Bialer, n.13, p.218.
the relatively small Supreme Soviet and what would its relation be to the Congress?; and how would the Committee for Constitutional Supervision be composed?; as well as what authority it would have? These and a myriad of related questions were taken up by the working groups.24

What model should be used in designing the new legislature? A new debate was already underway within the community of legal specialists regarding the form of the representative institutions best suited to the Soviet society. As one deputy commented:

Now unfortunately, many of our democratic institutions don't work, in particular, the system of soviets. Either they don't discharge their representative functions or they do so in a formal way. The basic evil that we are trying to fill involves promoting the democratization of the representative institutions.25

At one pole were those who favoured reviving Lenin's conception of the commune state in which the Soviets appeared as working corporations. According to their view, the state structure proper to a socialist society would be one in which the distance between state and society were continually diminished. Through the system of Soviets, the citizens directly attended to their common affairs. The idea of checks and balances among the institutions of government was replaced by a fusion of legislative, executive and judicial power. From this perspective, the course charted by Lenin, in which the

24 See Urban, n.7, p.46.
25 Interview with the Deputy on 19 October 1988, quoted in ibid.
institutions of Soviets represented a higher form of democracy consonant with the very nature of a socialist society, should be the one followed 'today'.

In opposition to this view, a number of those legal specialists concerned with the matter of political reform came out in favour of some version of parliamentary government for the USSR. Inasmuch as Lenin's Soviets have always been paralysed as an advance over parliaments, this approach advocated to go a step backward. As one proponent of parliamentary government summed up:

We have tried for 70 years to realise the vision of the Marxist commune state. And these 70 years have shown that it does not work. The concept itself is mistaken. We need to adopt what does work, parliamentarianism.

B.P.Kurashvili and Fedor Burlatskii were the most outspoken proponents of parliamentary government in the USSR. Since the version of parliamentary government propounded by Kurashvili and Burlatskii at the time were rather truncated, certain elements associated with their proposals could be included into the reform project without at the same time

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26 These views were stated forcefully and greeted with enthusiastic and prolonged applause by individuals representing all informal as well as formal political organisations at public debates on the proposed constitutional amendments that took place in Moscow in November 1988.

27 Comment by a senior Soviet legal specialist who was closely associated with a number of members of Presidiums of working groups (21 October 1988), quoted in Urban, n.7, p.50.

28 Both were directly associated with Gorbachev circle, their view in Literaturnaya Gazeta, 15 June 1988, quoted in ibid.
introducing either a full-blown parliamentary system in the Soviet Union, or the more limited version of Soviet parliamentarianism that they espoused. Kurashvilli, however, anticipated that the political reforms about to be fashioned by the working groups would fail to satisfy his minimal parliamentary criteria and complained later that indeed this was unfortunately true. Members of the working groups who expressed their views on the question of parliamentary government for the USSR also maintained that a balance could and should be struck between parliamentarianism and Lenin's original concept of the Soviets adopted by incorporating elements of each into a single project.

The proposals of political reform brought out in the Nineteenth Party Conference were meant to revolutionise the political life in Russia. It also invoked a debate on the constitution and its working. In the words of R.F. Vasilev, a member of the Presidium's working group on the Electoral Law, the Constitution of 1977 was fake, it changed nothing in political life because it was not a constitution at all, just an empty document that boasted of the so-called achievements of the USSR in constructing socialism. The current project was of a different order. The political authorities were now in some way serious about changing political life.
The critical commentary registered in the nationwide assessment on the draft amendments that pertained to the office of the President of the Supreme Soviet tended to focus on the method by which he would be selected. Many participants in the public debate called for equal and direct national elections to fill the post. Many also feared that the combination of offices would concentrate tremendous power in the hands at each level of government and should therefore be checked by some mechanism of popular control. This same combination of offices, moreover, led a number of participants in the public debate to reject outrightly the idea of a President as outlined in the draft amendment. ‘Here’, ‘we have’, said one, ‘a tendency towards tyranny and the cult of the personality’. ‘What is this’, asked another, ‘but a new dictator?’ ‘This President will be less constrained than (Chilean Dictator) Pionochet’, argued a third, 'for here we have only one party'. It should be added here that each of these statements on each occasion were greeted with much enthusiasm. However, subsequent speakers were soft on Gorbachev and pointed out that he could be trusted in the new office.

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29 Interestingly, Kurashvili, who had propagated the notion of combining the offices of the party and government leader before the decision to do so was taken at the Conference, came out against the idea of President of the Supreme Soviet as it appeared in the draft amendment because without a multi party system, he thought, too much power would be concentrated in single pair of hands.

30 ‘Brateevo Meeting’, quoted in Urban, n.7, p.73.

31 Group of Socialist Initiative, quoted in ibid.

32 Constitutional Club, quoted in ibid.
Many were still unhappy with these new developments in the system as they could foresee the signs of yet another dictatorship that these proposed amendments contained. Once the Soviet Union ceased to exist, the problem at the political front exacerbated with these unpleasant constitutional provisions.

The proceedings in the Nineteenth Party Conference, the public debate thereby and the political reforms undertaken represented a celebration of democratic principles and ideals relating to parliamentary government, judiciary, constitutional court etc. seemed urgently important. Details and facts, on the other hand, often went missing. The influence exercised by a liberal democracy, more importantly that of American democracy was a case in point. During a long discussion of the project in the law faculty at Moscow State University, one professor opined: "I propose that we adopt the constitution of the United States of America in full and be done with it." On the topic of how the President of the Supreme Soviet was to be chosen, a member of the audience rose to his feet to endorse the idea of a national election for this office. 'We need a real President', he said, 'one who is elected by the people, just like in America'. Thus it showed restlessness on the part of the system to adopt a strong democracy. America seemed to symbolise the

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33 Views expressed by one professor during a long discussion of the project in the law faculty at Moscow State University, quoted in Urban, n.7, p.81.

34 See ibid.
democratic ideal for those who were involved in the discourse. America represented that which Soviet Union lacked – freedom, democratic institutions, separation of powers and constitutional government. In the period of Perestroika, the political reforms allowed a pluralism of opinion to express itself beneath the expansive umbrella of permitted freedom of speech. The inattention given by the leadership and the majority to the issues of detailed procedures stalked the entire proceedings of the Conference and exhibited the political illiteracy and the lack of far sightedness on the part of the leadership.

For all the limitations and filters built into the design of the USSR's new legislative institutions, the new provisions substantially altered the political context in which the existing institutions functioned and in so doing propelled their development in the direction of genuine legislature. This is most evident from the functioning of the Supreme Soviet and the Congress of the People's Deputies at a later stage. In contrast to the long standing pattern of blanket endorsement for the appointments made to ministerial and state committee posts by the authorities, the experience of legislative confirmation for these high governmental positions since 1989 onwards became altogether different. It stood out as a definite advance in the direction of parliamentary government.
To conclude our discussion on this section we can see that when Gorbachev took powers the country was in the midst of an acute systemic crisis. A plundered economy, a parasitical party and a scavenger society had put the Soviet Union on the edge of an abyss. Gorbachev’s Perestroika, through these political reforms as outlined above, aimed at a political revolution, created the hope and a potential for reversing the trend of a Soviet development that had been characterised by a breakdown of authority, alienation and economic stagnation. In bringing out these reforms, Gorbachev went a step ahead of the Chinese Society, but the course of reform led to an unleasement of forces, the destructive potentials of which he failed to recognise. The strategy of political reform was not well thought out and acted as just piecemeal reform suited to changing demands. He sought to initiate reforms from above. In so doing he expected the citizenry to accept these package of reform without questioning, criticising and suggesting any modification. That was indeed a tall expectation on the part of Gorbachev. He had forgotten unlike other leaders preceding him that he was dealing with a citizenry, which was endowed with higher education, informed, conscious, critical, vocal and demanding for a share in the management, of society in all its sectors. The strategy of dealing with such a qualitatively different and advanced citizenry should have been different from what was adopted by Gorbachev.

35 See Bialer, n.13, p.218.
As Perestroika entered its advanced stage, the configuration of political forces became considerably more complex. In part this was due to a backlash among those of conservative orientation who feared for their traditional values and who were offended and often attacked by those in the progressive camp continued to shower their revered institutions with criticism.

II CONSTITUTION OF 1993: EMERGENCE OF NEW INSTITUTIONS

After the fall of the old regime and the break-up of the Soviet Union, its largest republic, Russia underwent a phase of bewildering political transformation. Despite a multitude of reforms associated with the attempt to introduce democracy, and bring political order, Russia remained very unstable for few years. The institutions, old or new lacked the legitimacy or ability to resolve any of the key problems facing the country leading to an intensification of chaos and powerlessness. The fall of the regime and the abolition of the CPSU's constitutional monopoly of power in March 1990 unleashed a tide of structured political activities. But what made the Russian system so peculiarly immobile in the early 1990's was the absence of a true party system which could have bound together the presidential and the parliamentary majority. Politics in Russia was concentrated on the struggle between institutions rather than parties in the parliament.36

The Communist Party of the Soviet Union - a mass party built on the principles of strict centralism was the only organised force in the official political life. This ensured political control over all levels of society and the spread and duplication of commands issued from the single center. Mikhail Gorbachev and part of his team made serious efforts to turn this mechanism into a force that could be an instrument for positive change, but all these attempts failed. The party mechanism acted for many decades to protect conservatism and preserve the old state of things. The Communist Party apparatus had many diverse channels of influence and imposed curbs upon its leaders. It always retained complete control over the selection and the promotion of elite to positions of leadership.37

The control of ideology was another feature of the developed Soviet regime. A complete monopoly of the only correct line had been in place since the late 1920's. The law was reduced to an instrument of power. In the former USSR, bulk of the laws could be referred to one of the two categories: declarative propaganda laws and laws of real action.38 All Soviet constitutions were prime examples of the first category. The laws of real action were drafted and approved without much public discussions.

38 See ibid.
The political and the constitutional crisis in Russia throughout 1991-93 were marked by an intense debate over the new institutions. The presidential decrees during this period showed the presumably anti-democratic character of presidential actions against the parliament. But the problem is that the Russian Supreme Soviet had never been a parliament in the proper meaning of the word. An intertwining of politics, administration, the judiciary and even management was one of the core principles of the socialist political system. It was only after 1991, that the Russian parliament adopted a new role – to provide quasi-legal leverage for resistance to reforms. The parliament, despite all the rhetoric, became system of fortifications, which blockaded all the efforts of the reformers.39

The Constitution of Russia which was promulgated after the December 1993 referendum is said to have been drafted by a Constitution Drafting Committee convened by the pliant of the President. The Constitutional Drafting Committee called by Yeltsin met in Moscow on 5 June 1993. It was composed of some 700 delegates from political parties, social organisations, the regions, the republics of Russia. Earlier, under pressure from the regions and other political leaders, Yeltsin had agreed to extend the drafting process to incorporate the ideas of the parliamentary draft. Constitution making in Russia faced various problems at various

39 Ibid., p.23.
stages. However, the constitutional issues that the post-communist Russia had grappled with during the 1990's was not unprecedented or novel. What was rather unique was the abbreviated time frame within which institutional choices had to be made. Institutional choices in Russia were hamstrung by the abrupt appearance of a conflict of interests between different branches of government. The development of events indicated that in Russia, clear-cut decisions, determined by vested institutional interests, were taken favouring one system. Others were characterised by an institutional drift, the product of the intransigence of key political actors and the standoff that resulted. The December 1993 Constitution became the basis for a super-presidential republic with strong executive powers. Yeltsin successfully created a power base during his first term and was able, in spite of his personal unpopularity, to win re-election in July 1996.

The draft constitution revealed by Yeltsin in April 1993 and finally adopted in December 1993 drastically changed the configuration of institutions in Russia and it is resolutely a presidential draft constitution. This envisaged the abolition of the Congress of People's Deputies and its inner body, the Supreme Soviet. These bodies were replaced by a bi-cameral legislature known as the 'Federal Assembly'. The lower house, the Duma is elected on a proportional basis while the upper chamber, the Federation Council is made up of the elected presidents of the Russian republics and the
heads of the regional administrations. The President's nomination for the post of Prime Minister is to be ratified by the parliament while all other ministerial appointments are done in consultation with the higher chamber. The President has the power to dissolve the parliament and call the elections, while the parliament has the right to impeach the President (though a difficult procedure). The post of the vice-President has been abolished and it is now made more difficult to amend the constitution.\(^4\)

A clear observation of the Yeltsin constitution of 1993 shows that it formally established four branches of power for the federal state:

- The presidency (Section 4);
- The legislature (Section 5);
- The government (Section 6); and
- The judiciary (Section 7)

Further, since the bombardment and dissolution of the parliament, big changes have been made in the provisions for operating the Russian Federation. Earlier, in an attempt to win support from the 20 republics during his battle with the old parliament, Mr. Yeltsin had agreed to include as part of the constitution, the Federal Treaty drafted in 1992.\(^4\) The short and dramatic story of the institution of Constitutional Court was very sad as far as state-

\(^4\) See Article 93-1 of the constitution.

\(^4\) See *The Economist*, 6 November 1993, p.55.
building in Russia is concerned. This institution was intended to be the guardian of the constitution, but it rapidly managed to discredit itself. Certainly its position was rather difficult from the moment it was established. It had the mission of guarding the so-called controversial, obsolete and regularly amended constitution. In the early stages of its activity it tried to keep a sort of balance and political neutrality in its approach. But starting with the Communist Party trial the anti-reformist orientations of the court gathered force step by step. The pro-communist majority of the court became involved in the political games of the anti-presidential side. This led to a practical halt to its work and in public eyes discredited the very idea of an independent institution of judicial control. This went to such an extent that some members of the court promoted the idea of collective resignation – the best possible solution to save the face of the institution – potentially one of the crucial institutions in a democratic society.42

Chapter III of the 1993 constitution (Articles 65-79) deals with the federal structure of the Russian Federation. The constitution, in detail, gives the name of all the members of the federation, their jurisdiction and status with relation to the federation.

Apart from dealing with three institutions, the Presidency, Parliament

42 See Saikal, n.37, p.25.
(Legislature) and the judiciary, we will also take up the study of the institution of Constitutional Court and the federal institutions in subsequent pages.

In the draft constitution of 1993, the President has been given the position of an independent executive authority who shares the legislative initiative with the Federation Council and a State Duma. The President can insist on his candidate for Prime Minister using even such drastic means as the dissolution of the State Duma. He appoints the federal ministers, thereby controlling effectively the make-up of the cabinet. And this controlled cabinet may, when it so desired, ask the parliament for a vote of confidence. A vote of no confidence gives the President another excuse to schedule early elections for the corps of Deputies. If he does not decide simply to ignore the Duma's opinion formally, the constitution gives him that possibility as well, but the procedure has been made very complicated.

The most controversial articles give the President substantial powers to control the parliament, a major change from the Soviet era constitutions that brought Russia closer to the French model. Because Kremlin wanted to rule out the possibility of the bloody show down, the new law grants the Russian President the right to disband the Parliament if it fails to accept his nominee for the Prime Minister or attempt to force a vote of no confidence
twice in three months.\footnote{Article 84 of the 1993 Constitution.} The post of the vice president has been abolished owing to Yeltsin's bitter experience with his own running mate turned rival Alexander Rutskoi. If the President becomes disabled, power temporarily shifts to his Prime Minister. This is the reason why Yeltsin's opponents claimed that the President wants the power of a Tsar.\footnote{For a comparative analysis of the powers of the Tsar Nicolai II as given in 23 April 1906 Constitution and Yeltsin constitution 1993, see \textit{New Times International}, January 1994, no.2, pp.6-8.}

Unresolved questions of property and power in the post-Soviet Russia were at the heart of the 1991-93 president-congress struggle. In the ensuing political-constitutional scene, this struggle revolved around the key question of division of power between the president and the congress. This struggle greatly influenced the provisions of the new constitution. As it was imposed by Yeltsin and his team, the provisions seem to favour the executive institution thereby leading to the deliberate creation of a weak legislature. Any combination and permutation of political forces at institutions front might ignite another spell of fight for power. With this background we now move to analyse each of the political institutions and the provisions related to them. In the next chapter we will take up an analysis of the institution of presidency, one of the strongest pillars of the Russian political system.