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The Constitution of Russia: Genesis, Features and Political Implications

Russia has faced more than its share of social and political upheavals in the twentieth century. From an absolutist monarchy and feudalism under the Tsar to a radical socialist transformation to a liberal authoritarianism, Russia presents a unique case of rapid political transformations. Consequently, the Soviet Union and then Russia adopted four constitutions in the twentieth century apart from the revolutionary constitution of 1918 (Schmid 2010, 431–451). The documents of 1905 resembled a constitution but this term was absent because of the monarchical system under the Tsar Nicholas II. Compare this with the American constitution adopted in 1787 which retains its core till date. In short, the “core values” of Russian politics have been in continuous flux. The Russian constitution of 1993, which is fundamentally different from the earlier Soviet constitutions, is modelled on the liberal democratic constitutions of the West.

Why a New Constitution?

A new constitution became imperative following the dynamic political reforms of Gorbachev in the late 1980s. There was an attempt to integrate Russia with the Western liberal system and to usher in a market economy (Chenoy 2001, 51). This required a complete break with the Soviet system where the Communist Party of the Soviet Union (CPSU) as the dominant party was to be replaced by a multiparty system in a liberal democratic framework. The new Russian constitution was to be drafted in order to recreate a legal system and establish a new bureaucracy to execute the planned reforms.

Constitution making is a complex task. Consensus building is very difficult when the society and politics are fractured along ideological, regional and ethnic lines. The making of the constitution proved to be the most arduous task in Russia with the old guards battling for the continuation of earlier institutions while the reformers sought a departure from the past. These contradictions reflected in the conflict between the legislature and the president. The conflict between the Congress and the president or the legislature and the executive became the hallmark of Russian politics in the initial years. The bipolarity of the power structure hindered policy making in Russia. It also led to intra-institutional conflicts within the Congress of People's Deputies (CPD) where communists wanted to retain the core values of the old constitution while the radical reformers sought to destroy the legacies of the Soviet system and replace it by a liberal constitution akin to that of the West. It was a conflict between a decaying state socialism and radical reformism.

The existing 1978 constitution of the Russian Soviet Federative Socialist Republic (RSFSR) and the Soviet constitution were unable to provide a legal and political framework for governance and resolve the institutional conflicts that had emerged after the disintegration.¹ The Soviet constitution was amended several times over to suit the new Russian Federation. But the transformation of the political system was so fundamental that it swept away the very foundation of the Soviet structure. The piecemeal approach of accommodation through amendments proved to be insufficient and lacking. By 1993, the old Soviet

constitution was amended more than 400 times (Handerson 2011, 59). The “basic structure” and the “core” of the constitution were altered. The reforms of Gorbachev led to the creation of a Russian Legislature called the RSFSR Congress of People’s Deputies (CPD) on 27 October 1989 with 1068 deputies who were to elect the members of the RSFSR Supreme Soviet. The Supreme Soviet was to function as a “permanently functioning legislative, administrative and control agency of the state power of the Russian Federation” (Ibid., 60). On 15 June 1990, there was an important amendment in the 1978 constitution of the RSFSR. Article 6 that had established the supremacy of the CPSU was replaced by an amendment that allowed the emergence of multiple political parties. In another constitutional amendment, a legislation on the presidency in Russia was passed on 24 April 1991. The first direct election for the president was held on 12 June 1991 in which Boris Yeltsin received 57.30% of the votes cast. A complete new chapter was added to the existing constitution. The Minsk Agreement of 8 December 1991 between Yeltsin and his counterparts from Belarus and Ukraine resulted in the termination of the USSR as a subject of international law and established the Commonwealth of Independent States (CIS). On 21 December 1991, all the former republics of the USSR except Georgia and the three Baltic republics—Estonia, Latvia and Lithuania—signed the Alma Ata Declaration and became the members of the CIS. The attempts to accommodate the structural transformations to the old Soviet constitution by amendments created confusion where even the new lawmakers were occasionally unclear about the nature of the reform they were trying to undertake. Clearly, a new constitution that reflected the idea of the reconstituted state was necessary.

Yeltsin was elected the Chairman of the first CPD with Ruslan Khasbulatov as the Deputy Chairman on 5 June 1990 (Handerson 2011, 61). It was this CPD under Yeltsin which declared the sovereignty of the RSFSR on 12 June 1990 (Chenoy 2001). It established the supremacy of Russian laws over Soviet laws. After having declared sovereignty, the first task before the CPD was to initiate the process of drafting a constitution. A Constitutional Commission consisting of 102 deputies was set up by the CPD where a small working group under Oleg Rumyantsev prepared the initial drafts. This Commission was known informally as the

Rumyantsev Commission. The Commission presented a number of drafts: the first in November 1990, the second in October 1991, the third in March 1992 and the fourth in November 1992. A faction of the CPD known as the Communists of Russia issued its own draft of the constitution. Saratov University's Faculty of Law also presented its own draft (Handerson 2011, 66). But the communist faction of the legislature criticised this draft as "bourgeois". Other major political figures, such as Sobchak and Popov, called it "socialist", the democrats called it "eclectic" while the chauvinists called it "Russophobic" (Ibid., 67). An alternative draft was prepared by Professor Anatoly Sobchak and a jurist Sergei Alekseev (Alekseev 1993). This draft was critical of the Rumyantsev's draft for inadequate provisions on civic and political liberties and the separation of powers. It also argued that the CPD lacked legitimacy since it was elected in 1990 when the CPSU was the only legal party. Any legitimate constitution must be ratified by a duly elected constituent assembly. Another draft was prepared by the team of President Yeltsin headed by Sergei Shakhrai. This draft advocated a very powerful presidency with a 6-year term. The CPD refused to debate this draft. The Rumyantsev Draft reduced the power of the president who was to be a ceremonial head of the state (Chenoy 2001; Handerson 2011, 68). These alternate drafts reflected the tension between President Yeltsin and the legislature. The former wanted more executive powers while the latter desired a more balanced division of power between the legislature and the executive.

The dispute between the president and the legislature reached its peak in early 1993. According to the amended 1978 constitution of Russia, the president was the "head of the executive power", while the CPD was the "highest agency of state power". This ambiguity created the ground for conflicts between the two institutions. As a president of Russia, Yeltsin acquired powers to issue edicts and regulations within the constitutional framework. But the CPD had the overarching powers to cancel the legislation of both the president and the Supreme Soviet (Handerson 2011, 69).

These tensions resulted in a constitutional crisis over the issue of the president's power to appoint ministers. Yeltsin wanted to appoint his trusted economic reformer Yegor Gaidar as the Government (Council of Ministers) Chairman. But the CPD rejected this appointment. Gaidar was 54 short of majority votes of the 1041 delegates. Yeltsin blamed Khasbulatov (the Chairman of CPD) for this disaster and announced a referendum on the constitution on 24 January 1993. The CPD tried to check Yeltsin by banning a referendum which sought to dissolve either the CPD or the Constitutional Court or the president. The Chairman of the Constitutional Court Zorkin tried to negotiate between President Yeltsin and the CPD Chairman Khasbulatov. According to this, a new referendum was to be held on 11 April 1993. But the CPD did not hold this referendum. Yeltsin decided to hold his own referendum on 25 April. Against this, the CPD initiated the process of impeaching the president on 26 March 1993 for initiating a referendum. This, however, failed since the CPD was 72 votes short of the two-thirds majority required. Yeltsin held a referendum which apart from other had a question: Do you have confidence in the president of Russia, BN Yeltsin? According to official statistics, 58.6% voters supported Yeltsin's presidency. This referendum was a confidence booster for Yeltsin who used this to ram through the reforms he wanted. He created a Constituent Assembly on 5 June 1993. This was to be based on the 1990 Declaration of State Sovereignty and the 1992 Federal Treaty. Ironically, the 762 members were to be selected rather than elected. Only the members loyal to Yeltsin were selected with several coming from the Constitutional Court. The CPD argued that Yeltsin had no authority to create this assembly. It was a rubber stamp and 10 days were seen as insufficient for making the constitution. The Supreme Soviet Chairman Khasbulatov opposed this process as unconstitutional. The Deputy Chairman Ryabov criticised the process of creating a Constituent Assembly but asked the legislatures to participate. This Assembly issued a draft on 14 July. It was based primarily on the earlier presidential draft but it did take some elements from the parliamentary drafts, e.g. the Foundations of the Constitutional System. The CPD argued that only the legislature could adopt a constitution by a two-third majority in the CPD or a referendum. The rules of referendum stipulated that it must have the support of

more than 50% of the total electorate, and not just ones who voted. Since this was impossible, the constitution could be adopted only by the CPD (Handerson 2011, 76).

The legislature was turning hostile with almost no chance of reconciliation between the CPD and the president. There was also a fear of Yeltsin's impeachment by the CPD. On 21 September 1993, Yeltsin issued edict 1400, "On step-by-step constitutional reform in the Russian Federation" (Thorson 2012). This edict suspended the RSFSR constitution of 1978 and the Legislature. On 12 December 1993, an election was to be held for a new Federal Parliament and a referendum to approve the constitution. Both the CPD and the Constitutional Court opposed this edict. The Supreme Soviet held an emergency session in the White House on 22 September and announced that the president had lost his authority to rule. The Constitutional Court also denounced Yeltsin's edicts as illegal and unconstitutional. The Deputies refused to vacate the White House. Finally, a special army unit stormed the White House and arrested Khasbulatov, Rutskoi and other legislators. Several persons were killed. Yeltsin controlled the media and the army, and the flow of information was selective on many of these events.

Yeltsin issued a number of edicts during the course of this period. A Federal Council was added to the new legislature, and election to the Federal Assembly (the Duma and Federal Council) was to be held on 11 October 1993. The referendum on the constitution was to be held on 12 December. Yeltsin issued a decree on 15 October which required voters to decide the fate of the new constitution. According to the initial rule, the draft constitution would be adopted only if the majority of the voters supported the constitution. But it was modified later where the requirement was brought down to 50% of those who voted. In the real plebiscite held on 12 December, the question on the ballot paper was: "Do you support the adoption of the new Russian constitution?" This was to be answered without any reference or explanation to the actual provisions of the new constitution. Only 30.7% of the registered voters participated in this plebiscite (Sakwa 2008, 64). Of those who voted, 58.43% supported the adoption of the new constitution while 41.6% voted against it. Hence, the 50% threshold for the adoption of the constitution was fulfilled with this somewhat lopsided logic and the new

constitution was adopted. But in the process, the participatory nature of adopting the constitution in the twenty-first century was sacrificed. The legitimacy of the constitution was compromised on the following grounds: the old constitution cannot be dissolved by a decree; a partial plebiscite that does not look at the clauses and articles cannot decide the fate of the constitution; and in plebiscite only one-third of the voters voted for the adoption of the constitution. The questions asked in the plebiscite were too simple to capture the complexity of the constitution. Plebiscites that ask questions just in terms of “yes” or “no” are ploys by authoritarian rulers to reinforce their legitimacy. A new constitution was adopted on 24 December 1993. It is widely accepted that the voting was rigged and the ballot boxes were stuffed with bogus votes. Ballot papers were destroyed within an unusually short time which further raised the suspicion of malpractices.

Many commentators argue that the method of adopting the constitution was not legal but it was better to have a constitution than none. It was an improvement over several other drafts (Moore 1995; Sakwa 2008; Handerson 2011). Handerson argues that “it fits with a long Russian tradition of radical change imposed from above”. He further argues that “practical politics trumped concerns over formal legality”. According to Sakwa (2008, 63), this decree on election was both “unconstitutional and anti-constitutional”. This was an attempt to usurp the power of the legislature under the pretext of resolving the tensions between the legislature and the president. Hence, the genesis of the “rule of law” and the constitutional state of Russia was undermined from the beginning. Looking back into the Soviet history, one is reminded of the way Lenin dissolved the Constituent Assembly (CA) when the Bolsheviks did not get a majority in the elections to this CA in 1917. While many commentators felt that this step was necessary in the midst of revolutionary fervour, the step back from liberal democracy cost the Bolsheviks heavily when Stalin used similar methods to govern. In contrast, the Soviet constitution of 1978 had at least a measure of popular participation, as it was put out for public discussion and thousands of proposals were received that gave it some semblance of a managed participation. The 1993 Russian constitution had thus some similarities in the process of its making, though was radically different in its content.

An Outline of the Constitution

The constitution of 1993 was the first constitution adopted by the post-Soviet sovereign Russia. The text is divided into two parts: the substantive contents are in Section I which has nine chapters containing 137 articles, and the Concluding and Transitional Provisions are in Section II. The Preamble declares the Russian Federation a “multinational” state with a common history and fate in the “Fatherland”. It underlines the integrity and sovereignty of the state. It emphasises the civic and political rights of the citizens and a democratic basis of governance. The Preamble frames the identity of the Russian state and relates the nation to the state, while retaining the multiethnic composition of Russia. This is followed by Section I with following chapters: the first chapter (Articles 1–16) is on “The Foundations of the Constitutional System”; the second chapter (Art. 17–64) is on “Rights and Freedom of Man and Citizen”; the third chapter (Art. 65–79) is on the nature of “The Federal Structure”; the fourth chapter (Art. 80–93) is on “The President of the Russian Federation”; the fifth chapter (Art. 94–109) is on “The Federal Assembly”; the sixth chapter (Art. 110–117) is about “The Government of the Russian Federation”; the seventh chapter (Art. 118–129) is on “Judicial Power”; the eighth chapter (Art. 130–133) is on “Local Self Government”; and finally, the ninth chapter (Art. 134–137) is on “Constitutional Amendments and Review of the constitution”.

Fundamental Structure of the Constitution

Russia declares itself to be a democratic federation with a republican form of government (Art. 1). It recognises the multinational character of the state.

- a. **Democracy and Separation of Power:** The constitution has provisions for a democratic form of governance (Art. 1). It is a different matter that this is belied by shortcomings and the actual practices. The president and the State Duma are to be elected by the people through a secret ballot. The constitution also recognises the autonomy

of executive, legislature and the judiciary. The separation of power(s) is considered to be the cornerstone of the Russian constitution of 1993 (Remington 2001). The powers and autonomy of these institutions have been clearly elaborated. Despite the overriding powers granted to the president, the institutions of the legislature and judiciary have well-defined jurisdictions. They can work as checks and balances on the powers of the president. The president can be impeached by the legislature, while the legislature can also be dissolved by the president. Further, laws passed by the legislature can be challenged in the Constitutional Court.

- b. **Recognition of Civic and Political Rights:** The constitution recognises the fundamental rights and freedoms of man and citizen (Art. 2 and Art. 17–64). Art. 17 recognises the inalienable fundamental human rights and freedoms in accordance with the universal principles and norms. Art. 19 is about the right to equality irrespective of sex, race, nationality, language, religion and so on. The right to life, the most important right of any constitution, is in Art. 20. Art. 27 grants everyone right to travel abroad. Art. 28 is about the freedom of faith and religion. Art. 29 clearly recognises the freedom of ideas and speech and the freedom of mass communication and no censorship; the freedom of association (Art. 30) and the right to elect and be elected (Art. 32). Art. 35 recognises the right to private property. There are also provisions for the welfare model of the state. Art. 41 gives the right to health protection and medical aid, the right to education (Art. 43), maternity and childhood protection (Art. 38).
- c. **Federal Structure and Local Government:** Chapter 3 (Art. 65–79) outlines the federal structure of the state. Russia is divided into 85 federal subjects, an increase of two in 2014 with the addition of Sevastopol and Republic of Crimea. There are 22 republics (Crimea was 22nd), 9 *krais*, 46 *oblasts*, 3 federal cities (Sevastopol was third) and one Jewish autonomous oblast, and 4 *okrugs*. Republics are allowed to have their own constitution. In case of conflict between the law of the republic and the Centre, the latter will prevail. The residual powers have also been assigned to the Centre. A detailed discussion on the Russian federalism is the subject of the chapter on federalism.

- d. **Presidential System:** The president is elected by the voters through the direct secret ballot (Art. 81). He can initiate legislation, override legislation passed by the State Duma by issuing his own decree, and veto legislation passed by the Duma, and can dissolve the Duma (Remington 2001). He enjoys overwhelming appointing powers which make him very powerful. He appoints the chairman of the Government which has to be approved by the State Duma. He appoints the judges to the Supreme Court and the Constitutional Court with the approval of the Federation Council. He is also the head of the armed forces whose chiefs are appointed by him and can also be dismissed by him. The president also appoints the plenipotentiary representatives and the governors in the republics. He has the power of decree which can be used as a legislative power by the president. The most significant power with the president, however, is the power to dissolve the Duma. Art. 93 states that the president can only be impeached by the Council of the Federation in the case of treason or grave crime, advanced by the State Duma and confirmed by the Supreme Court. The decision of the Duma on advancing charges and the decision of the Federation Council on the issue of impeaching the president must be adopted by not less than two-thirds of the votes of the total number of legislatures of each house (The constitution of the Russian Federation 1993). It has to be initiated by not less than one-third of the legislatures of the Duma.
- e. **Bicameral Legislature:** The Federal Assembly consists of two houses—the upper house called the Federation Council and the lower house called the State Duma. Two deputies from each subject of the Federation will be the member of the Federation Council. The lower house consists of 450 members elected for 5 years since 2011 election. The seats are distributed according to the proportional representation system only after the amendments in 2005. The threshold limit for the political parties to become eligible for seats in parliament was 7% from 2007 to 2011 but will switch back again to 5% from 2016.
- f. **Amendment:** There are two types of amendments to the Russian constitution. Chapter 1 (Foundations of the Constitutional System), Chapter 2 (Rights and Freedom of Man and Citizen), and Chapter 9 (Constitutional Amendments and Revision of the constitution) cannot

be amended by the Federal Legislature. They require a proposal backed by three-fifths vote of all the members of the Federal Assembly (State Duma and Federation Council) and then a constitution Assembly would be convened (Art. 135). A draft new constitution “shall be adopted by the Constituent Assembly by two thirds of the votes of the total members or shall be submitted to an all-people referendum”.

The rest of the six chapters of the constitution can be amended by a specified majority in the Federal Assembly (two-thirds in the Duma and three-fourth in the Federation Council) and a ratification by at least two-thirds of the federal subjects. Some important amendments made in the Russian constitution included increasing the presidential term from 4 to 6 years and the term of Duma from 4 to 5 years in 2008. The basic rights, the nature of the state and its core values cannot be easily amended and would require the entire process of remaking the constitution.

Constitutionalism and Accountability

Constitutions are dead documents unless they are realised in practice (Chenoy 2001). The ideals they envisage remain paper swords unless they are supported by functional institutions. The degree of accountability of the rulers towards the citizen determines the level of democracy. Constitutionalism requires an accountable government with checks and balances where one institution is counterbalanced by another. The separation of power is the key to such balancing. In the case of Russia, there is a wide gap between the visions of the constitution and the real practices that fall far short of codified principles. Political accountability is a real problem in Russia. The fact that the constitution was adopted not through a consensus but imposed from above by an executive fiat reflects in the precedence of executive over the legislature.

A constitution represents a harmony between the social values and the norms of the ruling class. In the Soviet system, this harmony was attained by the socialist ideology of the state and the single-party system. State and party were intertwined. The Soviet state rather than the rule of law was the source of authority. In the case of Russia, the constitution gives primacy to the rule of law rather than state. But in reality, Russian politics is determined by the expediencies of the state rather than the virtues of the supremacy of law. The party state has been replaced by a presidential state (Sakwa 2008). Sakwa further argues that contemporary Russia has evolved from “sham to pseudo-constitutionalism” (Ibid., 2). The term “sham” was used by Weber to describe the Russian constitution of 1905. The word was commonly used to describe all Soviet Constitutions. The Russian justification similar to the Soviet period has been that their constitutional practice is contextual to the needs of their nation.

The constitutional and legal constraints on the executive are limited. Russian civil society is very weak and the subjects are divided. The powers of the president are so wide that Klyamkin and Shevtsova called it an “elected monarchy” (Klyamkin and Shevtsova 1999). The Russian constitution, unlike the Soviet constitution, does not suffer from the lack of separation of power, but rather that it unduly favours the executive (Sharlet 2008). The constitution empowers the president with wide legislative, executive and emergency powers. The government and the legislature have been subordinated to the president. Sakwa (2008, 13) sums it up by saying that “while the 1993 constitution embodies the principles of liberalism, it is predicated on the assumption that the strong president will also be liberal”. These powers are justified in the name of stability and order. With the increasing internal and external conflicts, it is easier to justify a strong presidency. Under both Yeltsin and Putin, the regime remained largely free from popular accountability and judicial oversight. What we witness in Russia is a personalised and patrimonial politics where the leaders and their oligarch allies enjoy extraconstitutional powers and privileges.

Political Implications

The imbalance in the constitution has contributed to the emergence of a very strong presidential system in Russia. Yeltsin used his powers to keep a check on legislature and create a personalised bureaucracy. His successor Putin went a step further in initiating several political reforms leading to the centralisation of powers. The federal system was restructured, and the powers of governors were drastically cut down to ward off any possible threats from any of the regions in future. After the end of his two terms, Putin became the prime minister of Russia and appointed his loyal colleague Medvedev as the president. As if this was not enough, he amended the constitution which allowed him to become a president for the third time after this artificial gap. It also changed the tenure of the presidency from 4 to 6 years. He controlled the legislature not through his legislative powers of decree but by promoting the United Russia Party, which emerged as the most dominant party in Russia. As a consequence, we witness an unprecedented power of the president over the political system in Russia today.

The Russian constitution has inherited several elements of its “civilisational” past. Cultural signifiers such as the flag, anthem and other traditions have been revived from the Tsarist linkage with the Orthodox Russian Church and yet the secular aspect of the Soviet time constitutions is integral to it. The multinational and federal character has been re-adapted from the Soviet past. The unitary character by way of the super president is a common characteristic that runs through all of Russian/Soviet history. Yet it has a section of un-amendable individual social and political rights similar to most liberal constitutions that cannot be diluted. The Russian constitution is embedded in the political culture of this complex nation.

Note

1. Every republic had its own constitution in the Soviet system. This system continues in the Russian Federation.

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