

**CONSTITUTION AND CONSTITUTIONALISM:
THE RUSSIAN EXPERIENCE, 1993 - 2018**

Thesis submitted to Jawaharlal Nehru University

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DECLARATION


I declare that the thesis entitled “**Constitution and Constitutionalism: The Russian Experience, 1993-2018**” submitted by me in fulfilment of the requirements for the award of the degree of **Doctor of Philosophy** of Jawaharlal Nehru University is my own work. The thesis has not been submitted for any other degree of this University or any other university.


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CERTIFICATE

We recommend that this thesis be placed before the examiners for evaluation.


Prof Archana Upadhyay
(Chairperson, CRCAS)


Prof Archana Upadhyay
(Supervisor)

Dedicated
To
Mummy, Papa & Kuka

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4th November, 2022

Abhijeet Singh

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PREFACE

The Thesis titled “Constitution and Constitutionalism : The Russian Experience, 1993-2018” has been written in fulfillment of the requirements for earning a Doctorate from Centre for Russian and Central Asian Studies, School of International Studies, Jawaharlal Nehru University, New Delhi.

While writing my MPhil Dissertation in the year 2018 I realised the need to focus on the legal, political and social aspects of Russia to get a holistic understanding of the evolution of Russia’s constitutional history. This called for a deep study of the Constitutional texts and documents that have been critical in shaping the process of constitutionalisation in Russia both historically and in the contemporary contexts. This journey has proved to be a great learning experience for me both academically and personally. The most important thing that I learned was the need for patience and consistency in my quest for academic excellence.

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CHAPTER 1

INTRODUCTION:

A CONCEPTUAL FRAMEWORK

Background

Constitutionalism¹ as an idea is often understood as a legal limit to the powers of the government, to put it more appropriately, as a limit to the powers of the executive, rule of law and the legitimacy of the government, so that it governs according to the law. Since the seventeenth century the theories of John Locke has been considered as the foundation stone of constitutionalism. The entire concept has been seen from a perspective which was developed in Western Europe and served as a bedrock for most of the western democratic set up.

Majority of the regimes in the contemporary world are having a constitutional government, rule of law and a mechanism to check any abrogation of power or its unbridled use. Constitutionalism as a practice has no absolute universal meaning rather it adheres to the basic minimum acceptance of laws and limited government. It is because of this reason that there is no universal model of democracy, let alone, constitutionalism or constitutions. There are more than 200 countries across the globe with each one of them having a different set of laws, different system to put those laws in place and different styles of executing those laws. The only uniting factor in almost all the constitutions around the world is the emphasis on giving maximum benefit to the citizens. The primary aim of a constitution is to embed a legal system which oversees the institutional functioning and robust systemic mechanisms for smooth functioning of the state.

There are certain common characteristics found in constitutions across the globe, entrenchment, separation of powers, constitutional conventions and writtenness, to name a few. These features are more like catalysts to take the reaction to the final stage where the product(s), constitutionalism and the ensuing political system, lend their support to the regime's stability. Then comes the constitutional conventions which are non legal but play a decisive role in the functioning of the law and the constitutional system. The term 'constitutional conventions' is a misnomer since they are the norms defined and designed by the society as a whole. The time period taken

¹ Constitutionalism is doctrine that a government's authority is determined by a body of laws or a constitution. Although constitutionalism is sometimes regarded as a synonym for limited government, that is only one interpretation and by no means the most prominent one historically. More generally constitutionalism refers to efforts to prevent arbitrary government.

for these norms to form is often too long and as a result they tend to define the society, the political culture and the way political communication takes place in a society. These conventions sometimes are so entrenched in the system that the constitution itself lends a helping hand to realise the warranted outcome as seen through these norms.

These norms are different in different nations just like the society, political culture and notions of justice. The framing of constitutions is a different journey in different states, and can not be a single and universal step taken towards the idea of constitutionalism. There might be a different understanding of the idea in different societies and the perspectives are bound to vary.

This study engages in elaborating the idea of constitutionalism that has existed in Russia, historically, under a different cultural², political³ and societal set up and has been put to test time and again, much to the 'alienation' of the European/American concept of the idea. The basic idea of having a constitution is to set a specific code of laws for the smooth functioning of a nation and as has been mentioned earlier every nation has different set of codes, cultures, constitutional and social norms, all this for the sake of preservation of a system, the identity of a nation and most important of all to protect the sovereignty of the nation and the citizens.

There can be various forms of governments and the constitutional design must be supportive and inline with the social and political system. Those responsible for drafting the American constitution had this fact in mind that resulted in an arrangement which symbolised the beliefs of Aristotle⁴, Montesquieu⁵ and Cicero⁶.

² Russian culture has been formed by the nation's history, its geographical location and its vast expanse, religious and social traditions.

³ The Tsardom of Russia or Tsardom of Rus' also externally referenced as the Tsardom of Muscovy, was the centralized Russian state from the assumption of the title of Tsar by Ivan IV in 1547 until the foundation of the Russian Empire by Peter I in 1721. From 1551 to 1700, Russia grew by 35,000 km² per year. The Russian Empire, also known as Imperial Russia, spanned Eurasia from 1721 to 1917 and also held colonies in North America between 1799 and 1867. The Soviet Union, officially the Union of Soviet Socialist Republics, was a transcontinental country that spanned much of Eurasia from 1922 to 1991.

⁴ Aristotle was a Greek philosopher and polymath during the Classical period in Ancient Greece. Taught by Plato, he was the founder of the Peripatetic School of philosophy within the Lyceum and the wider Aristotelian tradition. His writings cover many subjects. Aristotle provided a complex synthesis of the various philosophies existing prior to him. It was above all from his teachings that the West inherited its intellectual Lexicon, as well as problems and methods of inquiry. As a result, his

The American constitutional makers were wary of the dangers inherent in too much of democracy and this belief paved the way for the formation of two houses of the Congress, The House of Representatives and The Senate.

The idea of Constitutionalism in Russia has been churning since the 18th century when Catherine, The Great ⁷ thought of making the laws that would help her in managing the affairs of the empire in a much systematic manner. The Decembrists' Revolt⁸ was a watershed event in the history of Russia as it paved the way for constitutional framework in the Russian imperial system. In fact the Decembrist revolution ushered in a new wave of constitutional entrenchment in Russia, much on the lines of Glorious Revolution⁹ but neither that deeply entrenched nor radical and it lasted for a brief period of time

The formation of constitutions in early twentieth century, after the fall of Tsardom from Russia, following the Bolshevik Revolution¹⁰ was the first attempt in the direction of constitution making in the modern sense. The process of imbibing the values of constitutionalism latter developed in a much specific sense which suited the Russian context. The Constitution of 1918, 1924 were documents that were supposed to be the consolidating arms of socialism for the newly formed socialist state rather than being purely the documents of law. Though, this never meant that they were completely out of context or just an ideological document.

philosophy has exerted a unique influence on almost every form of knowledge in the West and it continues to be a subject of contemporary philosophical discussion.

⁵ Charles Louis de Secondat, Baron de La Brède et de Montesquieu, generally referred to as simply Montesquieu, was a French judge, man of letters, historian, and political philosopher. He is the principal source of the theory of separation of powers, which is implemented in many constitutions throughout the world.

⁶ Marcus Tullius Cicero was a Roman statesman, lawyer, scholar, philosopher, and academic skeptic, who tried to uphold optimate principles during the political crises that led to the establishment of the Roman Empire.

⁷ Catherine the Great, German-born empress of Russia (1762–96) who led her country into full participation in the political and cultural life of Europe, carrying on the work begun by Peter The Great. With her ministers she reorganized the administration and law of the Russian Empire and extended Russian territory, adding Crimea and much of Poland.

⁸ The Decembrist Revolt took place in Russia on 26 December 1825, during the interregnum following the sudden death of Emperor Alexander I.

⁹ The Glorious Revolution was the deposition in November 1688 of James II and VII, king of England, Scotland and Ireland, and his replacement by his daughter Mary II and her husband William III of Orange, stadtholder and de facto ruler of the Dutch Republic.

¹⁰ The Russian Revolution was a period of political and social revolution that took place in the former Russian Empire which began during the First World War. This period saw Russia abolish its monarchy and adopt a socialist form of government following two successive revolutions and a bloody civil war.

Review of Literature

The review of literature on the broad subject of the study has been discussed under the following themes:

- **Constitutionalism**

Lord Bolingbroke gave a classic definition of constitution as follows: “By constitution we mean, whenever we speak with property and exactness, that assemblage of laws, institutions and customs, derived from certain fixed principles of reason, directed to certain fixed objects of public good, that comprise the general system, according to which the community hath agreed to be governed” (Bolingbroke 1809).

Law professor Gerhard Casper captured the essence of constitutionalism in the following definition, Constitutionalism has both descriptive and prescriptive connotations. Used descriptively, it refers chiefly to the historical struggle for constitutional recognition of the people's right to 'consent' and certain other rights, freedoms, and privileges. Used prescriptively, its meaning incorporates those features of government seen as the essential elements of the Constitution”

The case of Russian Constitutionalism is one curious development, in order to find out what makes it so unique and debatable at the same time we need to take into account the process of its theoretical development. Constitutional making is not an isolated process it actually works in tandem with other societal and cultural processes while also taking into account the norms of the community as a whole. Each part of constitutional making represents a social value which in the long run helps shape the political system, defines the rights and the laws.

It has always been said that constitutionalism as principle in reality is somewhat absent in Russia but there has not been much discussion about the differing ways in which this principle can be realised based on the different historicities. We can understand the formation of constitutionalism, not just in Russia but in any other country, by analysing the various variables through the lens of transformative aspect of constitutionalism.

In the post Socialist countries, Russia undoubtedly is one, the transformative element has to be understood outside the conventional understanding of Hobbes, Locke, Rousseau and US Republican school. The movement of Russia towards constitutional development is in the aversive sense which will be discussed at a later stage. There was quest among the ruling circle to determine the best possible principle for the country so that the vices of the past can be done away with, while learning from them at the same time, and virtues be kept which accorded a unique trend of continuity and change to the Russian constitutional development.

Such a path of constitutional development might differ, and hugely in some cases, from the Euro- American understanding and perspectives on the subject in theory and practice. This direction has nothing to do with 'Anti' bias against some specific understanding of the theme. It is rather guided by the experiences of the nations in the past (Historicity), the zeal to correct the ailing arrangements and enter into a better future (Baxi 2013).

The concept of constitution making is incomplete without the mention of human rights as we will discuss later, since this conception of rights was noticed in the Soviet constitution of 1977, a system which by and large is considered as an epitome of absence of any constitutionalism.

The time period in which the constitution is being written has a tremendous impact on the framing of the document and thus the standard norms of behaviour, development, international human rights, laws and legal theory of laws decides the way law is written in the constitution. Apart from these there is one more factor which is crucial in determining the nature of the written document, the hardships that a society has to undergo for a political system to come up and establish itself also plays a crucial role in the formation of rights.

The task of the transformative aspect of constitutionalism is not just enhancing the governance capability for the development of the nation but also to correct the failing social norms by implementing the human rights in the broader context of socio economic rights. According to COCOS (Comparative Constitutional Studies) the constitution is vital for a Nation State to remain in form because it provides a political

identity to the people of the nation and helps them associate themselves with state, this is better known as the external dimension.

It provides a platform and a framework for governance structures, powers, forms, processes and institutions (Governance Dimension), to clearly mark a distinction between religion and politics (The Theocratic v/s Secular Dimension), to initiate the forms of political communication and its devices which helps in understanding Raison D'état (Hermeneutic Dimension), to create a basis for the use of authority and force with a certain monopoly over them (Legitimation Dimension) (ibid).

- **Aversive and Aspirational Constitutionalism**

While studying the case of Russian constitution we also need to track the *Cross-Constitutional influences* (Scheppelle 2003), which talks about aspirational and aversive models of constitutionalism. *Aspirational constitutionalism* refers to the aspirations of the those who are in direct command of framing the constitution. It is what they aspire to achieve as a nation by assimilating those values in the constitutional texts that they look forward to. It is an effort in the direction of realising these values in practice wherever the drafting and and interpretation of the constitutional text is involved.

As the word suggests, the goals of individual rights, rule of law are directly mentioned in the text, which are regarded in deed. These values are the opening statements of the constitutions, the text we know as preamble, the constitution of The Russian Federation is a prime example which shows the emphasis on releasing democratic values, equal rights for the citizens, self - determination (Russian Constitution 1993). This model defines a country in terms of its goals. The source of such values and striving can be internal demand, historical experiences and most importantly other nations' constitutional experiences.

Another side of cross constitutional influences is marked by the *Aversive constitutionalism* which is the negative counterpart of aspirational constitutionalism. These two models are two sides of the same coin in the sense that both derive equally from other constitutional texts and to a larger extent effected by the multiple constitutions that exist but the way such an impact gets imparted is different. Aversive

constitutionalism tend to focus on the negative aspects of the other texts, the part which was avoided in the due course of making of the other text.

Constitution builders sharply pay attention to the negative models that they have in their mind, a case with the US Supreme Court while acting as the final interpreter of the text of constitution, no matter what they think of where they wish to arrive in terms of the content of the constitutional text but what they don't wish to add is pretty much clear right from the beginning. This fact flows from the stark reality that whenever constitutions are written the political situation is tense rather than peaceful.

The times of desperate political situations calls for equally desperate actions, constitutions are drafted, ratified, assimilated in the times of crisis, or a change of regime, this exactly was the case of Russia be it 1917 or 1993. These situations makes the drafters of constitution very much wary of the ongoing problems and they tend to look at the crisis as a rift and their job is to draft a text which is capable of looking at the past and jump into a stable future while calming the present. Such an approach, most importantly, defines the trajectory of the constitution.

Thus, while aspirational constitutionalism, as the name suggests spearheads in to the future, aversive constitutionalism looks at the past to arrive at the future and make changes to itself so that it doesn't end up where it started. It takes the critique of the past as the negative building blocks of the new constitutional order. Aversive constitutionalism does not just refer to those options which are 2nd or the 3rd best, it tries to identify who you are by knowing who you are not. It incorporates a nation making sense of rejection of a particular type of constitutional possibility.

Other important conception of constitutionalism is the aspirational and *functional constitutionalism*. These two conception looks at the constitution as a document which becomes a manifestation of its purpose and promise respectively (Albert 2010). They are not incompatible rather they add a great deal in substance to each other. It would help if we place the purpose of constitution under the functional aspect, as it does not focus on the substance of the text.

This aspect of constitutionalism is, as a matter of fact, a simple layout in the form of a document containing laws and rules that are responsible for governing an entity. While writing a constitution for an entity the most basic questions regarding its

structure, membership, actions, modes of cohesion all needs to be answered. It is these answers that later become the rules as seen in the constitution and these answers are the source from which the governing agents derive the power to make an entity function in an efficient manner, they also provide the basis for the kind of relationship that the entity enjoys with the outside world.

Functional constitutionalism is thus like a blank sheet of paper, having a definite structure and a specific design, on which anything can be written having moral worth and intrinsic value. The constitution in purely functional terms is nothing but a book of laws with no moral or value guidance. It can be moulded or designed in any manner according the requirement, as the final reinforcement is done by certain higher theoretical principles which give life to a constitution. The Soviet constitution of 1936 was pretty much a case of functional constitutionalism as it was akin to a shell containing the exoskeleton but the defining elements of the shell can be filled according the requirements of the governing elites.

It is because of these aspects that functional constitutionalism will see no difference between the constitutions of North Korea and USA (explains to large extent the concept of function) despite having distinct content, jurisprudential values. On the other hand Aspirational constitutionalism goes for a set standard, morally high and defined values are the key components of this conception of constitutionalism. It focuses on the social requirement of a constitution and embarks itself on a path to realise those social goals which were primarily understood to be fulfilled by the constitution and thus it repudiates the functional constitutionalism.

Aspirational constitution reflects the vision that a society aspires to achieve (Russian constitution is somewhat inclined to assimilate more of the values that were nominal or absent during the Soviet times) and seeks cooperation from the community as a whole to pursue attempts to realise the same. John Austin's concept of positive morality¹¹ is what aspirational constitutionalism seeks to achieve. The realisation of ethical gains and a principled approach to the concept of jurisprudence are the biggest virtues of aspirational constitutionalism.

¹¹ By positive morality, Austin refers to anything human-made rules governing human conduct that lack one or more of the essential conditions of law.

Aspirational constitutionalism works in the realm which is defined by certain do's and don'ts, the area which is carved by focussing on these two zones is what it seeks to create for the most efficient governance, structures and institutions. This approach focuses on the set standard that could be referred to and followed since the realm between what should and what should not always has to be specified by keeping certain moral objectivity in mind against which it could be tested (Strauss 1992). In every arrangement there has to be certain right and wrong for a moral question which is fundamental for all societies. The way these questions are answered and a common standard of objectivity set for them is different for different societies since it depends on homogenous or heterogenous character of the society and the history that people have lived.

The 1832 first volume of the *collected laws of the Russian Empire* vested all the powers in the monarch, giving him control over the legislature, executive and judiciary. The article I of the codes clearly mention that, "The Emperor of all the Russians is an autocratic and unlimited monarch, god himself ordained that all must bow to his supreme power, not only out of fear, but also out of conscience" (Sakwa 1993). The situation changed when in 1906 when the constitution introduced a constitutional monarchy, on the similar lines after the Glorious Revolution in Britain, though it was nominal constitutionalism but not at all sham. The hold over unlimited power by the monarch was done away with which marked the first great stride towards the establishment of constitutionalism in Russia.

- **Imperial and Soviet constitutions[IsM]: Schools of thought of Russian Constitutionalism**

In Russia the first move, towards the formation of constitutional ideas, was taken in the 17th century, which witnessed further growth in the 18th century especially during the reign of Catherine, The great (Osipov, Smurgunov 2019). The development of ideas that took place in the reign of Alexander1 in 19th century was the first step towards the formation of a noble constitutionalism. The ideas were further developed by the thoughts of Mikhail Speransky and Decembrists like Nikita Muravyov and Pavel Pestel.

The Decembrist uprising of 1825 was a watershed event in the struggle for constitution in Russia. The two groups that emerged during this revolution were southern group led by Pestel and the northern group. These two groups had distinct understanding about the future course of action regarding the formation of constitution. The former was in the favour of strong republican state to achieve the goals of industrialisation and modernisation while the northern group was more inclined to a liberal conception of constitution making which was to have liberal and federal qualities but it were to remain monarchist at the same time (Sakwa 1996). The major difference in the constitutional understanding during the Soviet times was marked by the difference between 1936 and 1977 constitutions, where the former focussed on “Dictatorship of the Proletariat” and the latter declared the Soviet Union “The State of the people”, which spearheaded towards a complete transition of the Soviet state.

The Russian philosophy of constitutionalism can be broadly studied under *four different schools of thought* which were formed according to the differing ideals on the subject. The various problems that the society witnessed led to an aversion to those problems and an aspiration was created to achieve something better in their place. Abolition of serfdom, building a class free society, confidence in state and apprehension of state interference in development were certain premises on which the *Russian philosophy on constitutionalism* developed (Osipov, Smurgunov 2019).

The first school of thought is *liberal constitutionalism* which recognised the importance of individual rights along with the self imposed restrictions on aristocracy. There was a call for vertical and horizontal separation of powers and supremacy of law. The development of ethics of law and power, preservation of personal liberty in the economy and private ownership, as providing the avenue to the people to gather legal knowledge and availability of national code of laws (Speransky 2002).

The liberal form of constitutionalism was underdeveloped in Russia. The more fundamental type of constitution that took roots in the country was the *liberal conservative* one. This type was best suited for Russia’s realisation of the ideals of personal freedom and and traditional values of society. This strand of liberal thought gained ground after Nicholas I, and the expected reforms under Alexander II. “The

constitutionality of people's monarchy was based on the unity of Tsar and the people expressed through the rule of law and local initiative" (Kavelin 2008).

In his work, Kavelin focussed on the difference between constitution in broad and narrow sense, in the "The Nobility and Liberation of peasants", he wrote, "in its proper context the word constitution denotes a set of rules and laws of state and society which is based on reasonable, invariable foundations - it is an arrangement which guarantees liberty from unwarranted and licensed use of arbitrary power of the state and property, identity and rights as inviolable". In the narrow sense of the term he understood constitution as a political order based on the representation of interests and separation of powers.

The *third school of constitutionalism was presented by conservatism*. The prominent value that was represented by this school was that it focussed on the need for public order and power while denying the need for any constitution that is capable of limiting state power. This school focusses on tradition, customs, social practices and moral content of the law, the synthesis of Orthodoxy and the state in the political system, the details of democracy and the rule of law in the form developed in the Western Europe.

The *fourth school of Russian constitutionalism is Radicalism*: The Narodnik movement¹² and Marxism impacted hugely on this school of thought. the idea of constitutionalism was not denied per se, narodniks favoured on the provisions which were needed to protect the interests of the peasantry. In Russian Marxism the same approach took the form of class based concept of law and state, defending the rights of the working class. The right to work and social security was an important premise for the concept of state and law in Radicalism (Ibid).

The views regarding constitution and constitutionalism were somehow contested among various section of the society in Russia, where some even doubted if Russia needs a constitution at all. The notion of constitutionalism in Russia is much different from the way it is understood in the west because the western "Rule of Law" and

¹² Narodnik Movement was a 19th-century socialist movement in Russia which believed that political propaganda among the peasantry would lead to the awakening of the masses and, through their influence, to the liberalisation of the tsarist regime.

Russian “*Pravovoe Gosudarstvo*” (Law based state) are much different in their understanding of the way governance takes place. *Pravovoe Gosudarstvo* is derived from the German concept of “*Rechtsstaat*”¹³. The former vouch for a regime where law reigns supreme while the latter means the “Rule by Law”.

Rule by Law implicitly points to higher entity, that is the state, from where flows all the law. According to Donald D. Barry, “the concept of *Rechtsstaat* is based on positivist assumption that the state itself is the highest source of law”. There is a difference between rule of law and rule by law, the latter pointing to the fact that it is sustained by the theory of natural law suggesting that there exists law higher than the statutory law which governs the norms of the society.

The ideas of constitution in Russia were not fixed for every epoch but there was certain mix of ideas at every given time, during the imperial times it was mostly the codification of laws and jurisprudential rationality which emerged during the period of Enlightened Monarchy of Catherine- the great. The Soviet period witnessed a constitutional establishment which favoured the aims of the state at large rather than being an exclusive document of state, though certain parts of the constitution were typical of any other law document.

“Constitutional narrative with its implicit genre and rhetoric must be understood as the core of identity of any given society that chooses to organise itself through legal procedures within the framework of state” (Schmid 2010). These words are a true reflection of the jurisprudential wisdom that a nation seeks to achieve. This identity aspect, as elaborately explained above, is the core of the law design that takes root in any society in the form of its constitution and constitutionalisation.

The development of state institution is pretty much defined by the political culture and people’s mentality that has been shaped over the years. The concept of constitution reflect the individual specifics of the society apart from accepting the universal things. It represents the value based structure of the society. As a result the constitutions are not universally same they differ in content and practices and thus their norms are also different, making them state specific.

¹³ *Rechtsstaat* is a doctrine in continental European legal thinking, originating in German jurisprudence.

The constitutional norms and provisions reflects the creative potential of the process of constitutionalism in different nations through practical implementation of its provisions. According to Vladimir Geriye, “is there any absolute constitutional law binding on all countries and in all times? Are politics (in the sense of governance of state) and abstract theory, rather than alive art which should proceed from and conform to the reality as any other art does?”(Geriye 1996).

The Soviet regime had its own constitutions in 1918, 1924, 1936 and 1977. The way laws and rights were handled during this period led to the formation of a distinct state sponsored constitutionalism which was distinct from the traditional beliefs regarding constitutionalism. This development was unique to Russia as it was related to its sustenance and growth as a nation. The sense of justice that prevailed during this time was based on the positivist¹⁴ ideas of law as an expression of public will. The power of the state was viewed from the perspective of classes and state was considered as an exclusive source of all the powers that laws held. Such a view relegated natural justice to the background and positive law was often used as a rational tool to resolve political problems.

Laws approved and supported by the powers of the state were considered only if they are in line with the revolutionary tasks of the proletariat, the task of overthrowing capitalism and establishing socialism. The legal system was designed in such a manner that all the laws that flowed from the state were in conformation to the ideological set up which was the governing principle of the state itself at that time and the revolutionary legality was based on the principle of the subordination of law to politics and revolutionary expediency. The major aim of the constitutional document during the Soviet times was to maintain the regime and defend the principles of socialism as legitimate and carve out a niche for the system all over the world especially among newly independent third world countries.

Professor Mikhail Reisner, one of the developers of the first Soviet constitution was of the view that, “Russia needed a volatile and flexible constitution therefore it is not

¹⁴ Positivism is a philosophical theory which states that "genuine" knowledge is exclusively derived from experience of natural phenomena and their properties and relations.

built on the basis of legal law but teleology¹⁵ and expediency that allowed it to fit in with any content”, because the era of revolution demanded not a fixed constitution but the one which could put up with changing circumstances and revolutionary development.

The basic idea behind the Soviet constitution was that the society should always has access to the contemporary forms of law that gives instant justice, the laws should not be archaic, which once formed are not subject to change, rather they should be expedient enough to change according to the times, circumstances and purpose. The Soviet attitude to basic law was completely different from the western perspective which was based on the strict law based constitution. According to professor Reisner the basic aim of Soviet constitutional law was “to continuously criticise and work to improve the constitutional law”.

The first *Soviet Constitution of 1918* had 6 sections, 17 chapters and 90 articles (Ibid). The constitution was based on the following key principles: power was united in the form of Soviets, class based principle of organisation of power and administration, dictatorship of the proletariat and the peasantry. The state was based on the concept of federal nationality. The citizens were given a unified form of rights and duties at the same time. The social structure was based on the socialist principle. The policy of Soviet power in Russian free self determination of nation, proletarian internationalism and the democratic world of workers was followed.

The *Constitution of 1924* was a continuation of 1918 constitution in every sense, the 1936 constitution was a version which expressed victorious socialism, it was also built on the class based principle of law. The constitutionalism of the victorious socialism affirmed the universal and equal suffrage, emphasised the unity of the social and economic rights secured by the constitution, without giving any consideration for the bourgeoisie political rights. This continued till 1960’s with little change taking place. The major change was witnessed in the 1977 constitution.

The 1977 Constitution was an important document which introduced certain changes in the way the Soviet regime functioned and paved the way for constitutionalism

¹⁵ Teleology or finality is a reason or explanation for something as a function of its end, purpose, or goal.

which existed independent of the framework of constitutional law. The 1977 constitution for the first time explicitly mentioned that the Soviet Union is the state of the people. *Article 2* of the 1977 constitution mentions that, “*All the power in the USSR belongs to the people. According to Article 3 of the 1977 constitution: “The Soviet state is organised and functions on the principle of Democratic Centralism¹⁶, namely the electiveness of all bodies of state authority from the lowest to the highest, their accountability to the people, and the obligation of lower bodies to observe the decisions of higher one. Democratic centralism combines central leadership with local initiative and creative activity and with the responsibility of each state body and official for the work assigned to them”* (Soviet Constitution of 1977).

- **Democratic Centralism**

Democratic Centralism is a concept that seeks to define the system that is decent in the Rawlsian sense but at the same time not liberal when viewed from the western perspective. The question of a legitimate system is raised when we talk about non-western system which follows other regime that claims to be liberal but does not follow the western model of liberal democracy (Angle 2005). Rawls talks about decent regimes wherein he extends the category of well ordered people beyond liberal democratic framework.

According to Rawls, a decent hierarchical people which has as its basic structure a decent consultation hierarchy would also endorse the same laws of people which includes endorsing human rights. It should be noted that Rawlsian view would be that any liberal thoughts regarding decent democratic centralism should take into account the hierarchical cooperation that takes place between the higher and the lower levels of organisation since such an arrangement is valid enough to fulfil the fundamental ideas of social cooperation and makes a group count as a people. A variation is allowed at the doctrinal level since once it is known that what constitutes a proper “law of peoples”, it is possible to see that certain non liberal people may also endorse this law.

¹⁶ Democratic centralism is a practice in which political decisions reached by voting processes are binding upon all members of the political party

- **Russian Constitutionalism since 1991**

The Russian Constitution of 1993 was liberal in its approach, it upheld certain basic premises such as separation of powers, rule of law and defining the rights and duties of various levels of government (Sakwa 1996). The constitution of 1993 was the result of a compromise reached to achieve the objective of both individual freedom and the competence of the state (Osipov, Smurgunov 2019). The most outstanding achievement of the constitution of 1993 is that the Russian constitution court was recognised in practice and given an institutional standing.

The establishment of democratic trends in the institutional structure was marked by the document, Article 1 of the Russian constitution reads that: *The Russian Federation- Russia is a democratic federative law governed state with a republican form of government* (Russian constitution of 1993). The 1993 constitution meets world standards on human and civic rights. It lays down the standards of a social state and expresses the idea of social justice.

According to Sergie Shakhrai, the constitution is based on three main conceptual ideas, it is able to provide ideological basis and principles for every individual for public consent irrespective of their political views. It is procedural in nature and remedial in case a conflict takes place between different branches of government or between the federal government and region. The constitution also has an organisational aspect which allowed to use it as a general basis for social transformations in the country (Shakhrai 2013).

This constitution is a first of its kind which defined and limited state power in a serious sense of the term. This is a document based on norms which takes into account the ethical aspect which is required to establish a state that is desirable rather than suggesting immediate and radical changes. It marks a sharp break from the past as no state ideology has been given a reference in the constitution and guaranteed freedom of conscience, religion, thought and speech. It also clearly mentions certain values like “Social” and “Secular” state based on private property, rule of law and popular sovereignty (Sakwa 1996).

The present constitution gives huge precedence to the discourse on human rights formed by various international judgements on the subject most notably the European court of human rights. The Russian constitutional courts borrows hugely from the Verdicts and tries to induct the substantial aspect in its own interpretation while dealing with the issues of human rights or otherwise in the frontiers of the nation (Smirnova, Thornbill 2016). Article 17 mentions that: “*In the Russian Federation human and civil rights and freedoms shall be recognised and guaranteed according to the universally recognised norms of international law and this constitution*”.

The constitution has sought to give judiciary much independence and powers it has ever experienced. Article 118 clearly mentions that: “*Justice in Russian Federation shall only be administered by the court, judicial authority shall be exercised by means of constitutional, civil, administrative and criminal proceedings*” (Russian Constitution 1993). Much attention has been given to the fact that the courts should not fall victim to the executive pressure and to thwart such an attempt necessary gate keeping mechanisms has been put in place. The issues pertaining to the executive power came to light once the 1993 constitution came into practice and it was observed that it limited executive power not just on paper as the legislature was working as a genuine parliament. The constitution of 1993 has been able to combine constitution and constitutional order. The model of governance that emerged from the document is pseudo parliamentary, pseudo presidential which resulted in a unique hybrid. The government itself emerged as the third centre of power (Sakwa 1996).

The Russian constitution as a document of law is not a mere legal abstraction it has been given a status of a living entity since it could adjust and readjust according to the changing social norms and societal objectivity. There is a process of constitutionalisation which is known as secondary constitutionalisation which refers to a broad range of legally formative social actions and functions, which play an important role to identify the ways in which social practices contribute to the construction of constitutional law in Russia (Smirnova, Thornbill 2016).

The legal autonomy that was granted to the judicial institutions and practices paved a way for the secondary constitutionalisation (ibid). Article 120 of the 1993 constitution clearly mentions that the judges must be independent and be subordinate only to the constitution of the Russian Federation and Federal law. Article 125, establishing a

constitutional court, clearly gives the mandate to the court as the interpreter of the constitution and elaborates on the powers of the court regarding relationship between the federal and state governments.

In Russia the *Civil law system* is followed wherein the system relies on written statutes and other legal procedures which are constantly updated, thus giving a life to the constitution and an ability to transform itself according to the changing social and functional needs. In 2013 a new federal law was adopted that hardened guarantees for the independence of the judges by explicitly prohibiting extra procedural communication with the judges. The Administrative Litigation Code of the Russian Federation (2015) also contains a separate article on judicial independence. This rising autonomy of the judiciary is visible in the proliferation of legal action and especially in the expansion of litigation (ibid).

The Russian constitution shows a streak of continuity and change in terms of certain functional aspects. The idea of democratic centralism which the 1977 constitution embraces has been in Russia even after 1993. It owes its existence to the Russian idea of *sovereign democracy* which is in consonance with the idea of a strong leader who can remain at the helm of affairs, an idea supported by the personality centric politics in the Russian culture. The constitution in the post Soviet period has been shaped by the two leading personalities Boris Yelstin and Vladimir Putin.

The existing literature mainly talks about the constitutions in Imperial and Soviet times and the way constitutional processes unfolded in Russia post 1993 but there has not been much analysis over how these processes led to the development of a unique model of constitutionalism different from the West, a system which is based on a strong leadership at the centre yet focussing on the separation of powers, governance and independence of judiciary. The societal processes that are going on are watershed events that make constitutionalism in Russia stronger with each passing day. The study seeks to cover this gap and evolve an understanding of constitution and constitutionalism from the Russian perspective.

Definition, Rationale and Scope of Study

For the purpose of the current study Constitutionalism is understood as a process which allows integration of the social factors with the political processes. It is a

principle providing legal limit to the executive and providing illumination to the constitutional functions. Constitutionalism in Russia is defined by the Judicial functions of the Russian Constitutional Court, the principle of *Rule by Law* and legitimacy of the government in terms of popular support. A constitution as a living document is meant to guide a nation in what it should do and what it should abstain from in the domestic and international sphere. To understand a constitution is to understand the basic understanding of a nation, the way it functions and its standing in the world system. A constitution is not just a document it is a life-breath of the nation in terms of its own definition, as a living document it shapes political, social and socio-political perspectives. In the backdrop of this logic this study undertakes a nuanced study of the constitution(s) of Russia in different epochs of time.

The study focuses on the detailed analysis of the constitutional development over a period of time in Russia. The law codes since Ninth century to the Soviet Constitutions and the Post Soviet Constitution are all discussed and analysed to identify the distinct development of the process of Constitutionalism in Russia. Further the Constitutionalism in Russia is examined from the inherent laws in the constitution which gives a different meaning to the former in the Russian context. The similarities and differences in the way Russian constitutionalism and Western constitutionalism functions in specific situations of crisis is the further subject of study.

The constitution of 1993 paved a way for a new understanding of constitution and constitutional practices in Russia. The study has covered the developments that took place since 1993 and resulted in the shaping of constitutionalism and how the process is unique in essence from the western understanding of the concept. The amendments that took place in 2008 were also important in defining the trajectory of Russian Constitutional development till now.

Research Questions

The study is based on the following research questions:

- What is Constitutionalism?
- How is Russian Constitutionalism distinct from the conventional understanding of the concept and its processes?
- What are the Political and Social factors that historically shaped the process of Constitutionalisation in Russia?
- What has been the role of Judiciary and other Institutions like Duma and the Executive in impacting the evolution of Constitutionalism in Russia?
- What has been the role of Social processes in shaping the trajectory of Russian Constitutionalism?
- How has personality centric leadership impacted the course of Constitutionalism in Russia?
- What are the elements of continuity and change in the evolution of Constitutionalism in Russia?
- How has the political culture of Russia impacted the evolution of Constitutionalism in Russia?

Hypotheses

The study also undertakes the testing of the following hypotheses:

- The distinct trajectory of the Russian model of constitutionalism is primarily on account of the unique political culture in Russia, evolved through centuries, revolving around personality centric approach towards politics and nation building.

- Russian Constitutionalism can be comprehended only in the light of the historically continuous Socio-Political processes in the country, central to which is the unique The Russian Constitutional experience is a unique blend of *elitist political churning* and the social response to such processes.

Research Design and Methodology

The study is methodologically diverse. It is mostly based on qualitative material combining methods and data sources to acquire deeper insights into the historical evolution of the socio-political processes that have shaped the trajectory of Russia's constitutional journey. The study has relied on both historical and empirical material from the Russian political, social and cultural milieu to gain insights into the events and processes that have had a bearing on Russia's constitutional history.

Secondary analysis and desk study was followed by direct participatory fieldwork This involved qualitative interviews and interactions. Data has been acquired from representative surveys, general and focused interviews clustered around specific research questions and participant observation. Informal conversations especially with academics and researchers based in Russia also proved to be a valuable source of information.

The quantitative approach takes note of the fact that all the judicial litigations in Russia which were related to the study has been duly taken in consideration and given ample focus. Phenomenological approach has been used to understand the concept of constitutionalism as a live phenomenon that is experienced in the western and the non western societies to arrive at a conceptual and theoretical understanding of the theme of constitutionalism. The dynamic accounts of past events involves an attempt to interpret and capture the nuances, personalities and ideas that lead to those events has been taken into account in this study. Another purpose of the study is to highlight the epistemological foundation of constitutions and constitutionalism in Russia, the evolutionary difference between the way constitutions emerged in Russia and the West.

The study uses primary sources like Government Reports, speeches of prominent personalities and Politicians and official and institutional document like Federal court

reports. The study also included insights from the field trip to Russia to better understand the country and its social and cultural aspects. It also includes detailed discussions with Academicians from several prominent universities in both Moscow and St. Petersburg. Secondary sources like books, articles in research journals and monographs, articles in edited books, newspaper articles.

The study defines the concept of constitution and constitutionalism from the Russian perspective. The prime objective of this study is to trace the evolution of constitutionalism in Russia and its unique presence and to understand the functioning of constitution in Russia and the value set associated with it.

Chapterization

The study is organised into six chapters. The first chapter titled:

- **Introduction: A Conceptual Framework**, of this study introduces the concept of constitution and constitutionalism and the link between the two. The concept of constitution and constitutionalism have been in Russia since imperial times. The Soviet period added a distinct phase to the evolution of the concept. The various aspects constitution and constitutionalism and their linkages will be studied under the broad head of the Russian Schools of thought on constitutionalism, namely: Conservative, Liberal conservative, Liberal and Radical constitutionalism. This chapter will also discuss the concept of Aspirational, Aversive and Functional constitutionalism.

The second chapter titled:

- **Imperial Constitutions in Russia**, follows the historical events and the emergence of constitution for the first time in Russia starting from the Decembrist revolution of 1825 to the constitutional text of 1906. The written documents are explored in depth to understand the nature of the constitutions that developed during this period.

The third chapter titled:

- **Soviet Constitutions: An Analysis**, traces the development of constitutions in the Soviet period, the constitutions of 1918, 1924, 1936 and 1977 will be discussed and the element of continuity and change in the Soviet constitutions will be analysed, how they functioned and evolved and generated the social processes of their time. This chapter will also look into the way the judiciary functioned and the regime of law that existed during this time.

The fourth chapter titled:

- **Post Soviet Constitution and Constitutionalism**, explores the 1993 constitution that was formed after the disintegration of USSR. This chapter will highlight the linkages between constitutions and constitutionalism in the Aversive and Functional sense in Russia. This chapter will also deal with the judicial trajectory in Russia especially after 2000 when Putin assumed power.

The fifth chapter titled:

- **Role of Personalities and Political Culture in shaping Russian Constitutionalism** focuses on the role played by the leadership and political culture in the Post Soviet period in the drafting and execution of 1993 constitution of Russia. This chapter deals with constitutional crisis of the 1990's and the entrenchment process that began after 2000 under the leadership of Putin. The various institutions that were strengthened by Putin to consolidate the process of constitutionalism will also be discussed.

The Sixth chapter titled:

- **Conclusion** is the final chapter. It sums up all the broad arguments of the previous four chapters and highlights the key findings of the study.

CHAPTER 2

IMPERIAL CONSTITUTIONS

IN RUSSIA

Introduction

Kievan Rus and the system of law (882-1283 A.D.)

The advent of laws and law documents is not new to Russia, the very first of the laws were formed and promulgated in the early 9th century. The earliest of reference to the laws are in relation to the oral treaty known as '*Ryad*' which was made between the king, his army, tribal nobility and the people of the land. It is important to note that the events occurred in the early 'Rus' state but the kind of settlement among the subjects and the king shows some kind social acceptance given to the ruler in the Hobbesian¹ sense of social contract.

The Ninth century law was not developed in the sense of Rule of Law² or Rule by Law³ rather it was a matter of 'just' law concerned with primary objective of giving security to the people of the land and getting tributes and taxes in return for this service. Another important work that the king had to undertake was to provide specific trade routes and built towns. The relationship that king and people enjoyed was based on the treaty and any break from the regular functioning could result in exile or death of the prince. (Russian Primary Chronicle, 1953).

The very first instance of written laws in the early Russia came from the reign of Yaroslav- The Great⁴. It was in the early tenth century when he finally established firm hold in Novgorod (present day city) and Kiyv (present day city and capital of Ukraine), and the foundation for Novgorod Republic⁵ were laid. The Novograd was referred to as a city state because of the democratic functioning that it exhibited at that time which was much advanced than the other parts of Europe. The people had the

¹ Hobbes is famous for his early and elaborate development of what has come to be known as social contract theory, the method of justifying political principles or arrangements by appeal to the agreement that would be made among suitably situated rational, free, and equal persons.

² The rule of law is the political philosophy that all citizens and institutions within a country, state, or community are accountable to the same laws, including lawmakers and leaders.

³ The rule by law is a political philosophy where laws are made to be strictly followed while engaging in governance.

⁴ Yaroslav I the Wise was thrice Grand Prince of Novgorod and Kiev, uniting the two principalities for a time under his rule. During his lengthy reign, Kievan Rus' reached a zenith of its cultural flowering and military power. He codified the law and his codification is famously known as *Pravda of Yaroslav* which served as a base for the *Russkaya Pravda*.

⁵ A republic is a form of government in which the country is considered a "public matter", not the private concern or property of the rulers.

right to elect the city officials and the king and de- elect them as well. The concept of town meetings was quite popular in this republic which shows the activity of the society as a whole and the level of participation of the masses. The defining feature of these meetings is that all the people irrespective of their classes were the attendees. The task of government was carried out by different assemblies of state officials who were a part of highly institutionalised networks of public assemblies known as 'Veche's' (Klyuchevsky 2004).

Such an elaborate social and institutional arrangement coupled with provisions of elections of city officials and the king were remarkable in the temporal context provided these were the typical times for the Eastern Slavs who were in constant state of warfare with the Byzantine Empire. Laws are a result of social structuring, political culture and they are entrenched as such either orally or through a written document.

The first code of written laws, *Russkaya Pravda* which was written in the beginning of the twelfth century, was a landmark in the constitutional history in the lands of the East Slavs⁶. It was a codification of all the laws that were prevalent in the administration at the time when it was enacted. The law document was made by the king's administration for the efficient functioning of the royal court and it also looked into the relationship between the king and the subjects specifically relating to the criminal laws.

As the time passed the *Code of Yaroslav* saw certain additions which further intensified the written document as the reflection of social relations and the problems of the society. The addition of the property laws to the document made the right to property a legal right (in the princely lands). Another successful addition to the existing laws were made during the reign of Vladimir II Monomakh⁷ in the twelfth century which included criminal, procedural, civil, family law and rules of the bond of obligation (Grekov 1963).

Yaroslav's Pravda's major contribution was not just its written format but also the compartmentalisation of various branches of law and assigning institutions for each

⁶ The East Slavs are Slavic people speaking Eastern Slavic Languages. In the seventeenth century they evolved into the Russian, Ukrainian and Belorussian people.

⁷ Vladimir II Monomakh reigned as Grand Prince of the Kievan Rus' from 1113 to 1125. He is considered a saint in the Eastern Orthodox Church and is celebrated on May 6.

one of them separately. There was severe punishment for arson, mutilation of cattle and encroaching upon the property of the rich. There were elaborate provision for the system of feudal relations and social inequality. The different classes of feudal peasants were mentioned and specific guidelines were made for each one of them. The document also mentioned about hereditary law and liabilities. The legal proceedings were given focus and entire plethora of criminal law jargon like witnesses, oaths, ordaily (ordeal) was used. The legal proceedings paid attention to every minute detail and it was tasked upon the state to check false accusation and complaints and available methods were used to ascertain if any unscrupulous activity or complaint is made, thus making steps towards forensics as well.

The *Russkaya Pravda* was edited and written several times over the course of time and in the later parts secular laws were included which mentioned about statutory charters and trade treaties. The institutions that are mentioned in the *Russkaya Pravda* are of feudal characteristics and showcase the social composition of the time. The justice was delivered according the expedients stated by the law. The most important aspect is the institutionalisation of justice in the feudal times that too according to the crime shows the intricate details and care that must have been taken to ensure swift and speedy justice.

Law under Grand Duchy of Moscow (1283-1547)

This period lasting for more than two and half centuries saw many interesting developments specially the transformation of the principalities to a consolidated Russian national state. The making of nation state was a crucial development for other processes and the society as whole since the loose organisation now saw a tightly knit matrix of a collective identity. The concept of national state was vital to the realisation of laws, that emanated from the crown, throughout the empire. This period also saw the rise of present capital of modern Russian State, Moscow.

It was under this period that the Mongol suzerainty was challenged for the first time under the banner of the young Russian Prince Dmitry Donskoy at the *Battle of*

*Kulikovo*⁸. This battle marked the end of Mongol supremacy within the Russian land and this would in the near future make Moscow not just an important cultural hub but also a symbolic land for the entire western world. The idea of Moscow- The Third Rome⁹ was seen during these times the political situations necessitated a shift in centre of power, which ultimately moved towards Moscow because of the declining Mongol power and increasing Russian domination.

The major consolidation of Russian frontiers was witnessed when Ivan III¹⁰ laid the foundations of Russian national state and with this the first central government bodies, *Prikaz*, were created. They usually functioned as administrative, military, judicial and executive offices under the authority of either palace, church or other officer who was put in charge by the authority. Some of the prikazs were but under assemblies with advisory or legislative functions. There were different *prikaz* for different works and virtually every aspect of the crown rule was covered by a specific *prikaz*.

The reign of Ivan IV is vital for understanding the inception of new process of decision making and representation, though such a progress was in its infant stage at that time yet important as it was for the first time that a feudal representative body *Zemsky Sobor* was created. It was a specific body that was created for a particular class of people so that their issues can be discussed, addressed and any grievance whatsoever could be corrected and a fitting law could be passed in a procedural manne. (Keep 1995, Avaliani 1916).

⁸ The Battle of Kulikovo was fought between the armies of the Golden Horde of Mongols, under the command of Mamai, and various Russian principalities, under the united command of Prince Dmitry of Moscow.

⁹ Moscow, third Rome is a theological and political concept asserting that Moscow is the successor of the Roman Empire, representing a "third Rome" in succession to the first Rome and the second Rome. Third Rome refers to the doctrine that Russia or, specifically, Moscow succeeded Rome and Byzantium Rome as the ultimate center of true Christianity and of the Roman Empire. Third Rome thinking served to elevate Russia's conception of its place within the Orthodox Christian world and the requirement to preserve the faith and its rituals in unadulterated form. If this potentially messianic doctrine played a role in the establishment of the Russian patriarchate in 1589, and may have helped Russians acquire a sense of responsibility toward the Orthodox and later Uniate subjects of Poland-Lithuania and the Ottoman Empire, at no time did it figure in aggressive policies toward non-Orthodox or non-Uniate peoples.

¹⁰ Ivan III Vasilyevich, also known as Ivan the Great, was a Grand Prince of Moscow and Grand Prince of all Rus'. Ivan served as the co-ruler and regent for his blind father Vasily II from the mid-1450s before he officially ascended the throne in 1462.

These representative bodies were vast enough to include the rich and commoners and include the areas of conflict and necessary legislation. There were separate assemblies which could be convened regarding the different issues at stake, even the church was included by assimilating a *Holy Sobor* (Parliament of the Orthodox Clergy) for the purpose the assembly could be convened by the crown or the *Patriarch*¹¹. The first of the sobors held by Ivan IV was an important landmark in the Russian history as it addressed the issues of the lower nobility and the townspeople and such sobors also helped Russia during the *Time of Troubles*¹² where it helped in electing a Tsar till the Romanovs finally established a firm hold in Moscow.

Sudebniks of 1497 and 1450: The path to Social and Judicial Reforms

Another important contribution of Ivan III to the centralisation of Russian state and consolidation of national Russian law was the introduction of *Sudebniks* which reduced feudal lords sparring among themselves. The *Sudebnik* was a landmark development, piece of document that was promulgated to relieve Russia from centuries of Mongol influence and cater to the administrative issues that were keeping it from prospering. These documents were conservative in nature but enough to remedy the ills of the society. Meticulous planning was done and intricate details were furnished while drafting these codes, for example, Article I of the *Sudebnik* of 1497 states that, “*Boyars and major-domos are to administer justice. Neither the boyars, the major-domos nor the secretaries are to receive bribes for a judgement or participating in the judging of a case. Likewise no judge is to receive a bribe for a judgement. And no one is to use the court for purposes of revenge or favour* (Dewey 1966 pp 7-21)

¹¹ The highest-ranking bishops in Eastern Orthodoxy.

¹² The Time of Troubles was a period of political crisis which began in 1598 with the death of Fyodor Ivanovich, the last king of the Rurik Dynasty and ended in 1613 with the accession of Michael I of the Romanov Dynasty. It was a time of lawlessness and anarchy following the death of Fyodor I, a weak and possibly intellectually disabled ruler who died without an heir. His death ended the Rurik dynasty, leading to a violent succession crisis with numerous usurpers and false Dmitrys (imposters) claiming the title of tsar. Russia experienced the famine of 1601–03, which killed almost a third of the population, within three years of Fyodor's death. Russia was occupied by the Polish–Lithuanian Commonwealth during the Polish–Russian War (also known as the Dimitriads) until it was expelled in 1612. It was one of the most turbulent and violent periods in Russian history. In just 15 years, the crown changed hands six times. Estimates of total deaths caused by the conflict range from 1 to 1.2 million, while some areas of Russia experienced population declines of over 50 percent. The Time of Troubles ended with the election of Michael Romanov as tsar by the Zemsky Sobor in 1613, establishing the Romanov dynasty, which ruled Russia until the February Revolution in 1917.

The way it is framed clearly shows the emphasis given on the judicial independence and the fairness of justice to be imparted. The institution of bribery was known to plague justice since earliest of times and those responsible for justice have been given powers and at the same time warned to not indulge in something forbidden by the law. The *Sudebniks* were also documents of social character since they reflected societal aspirations. Since there were *Prikaz* which allowed the concern of the commoners to be heard by the crown as a feedback, the laws made and introduced in the 1497 document were no less than a peoples' charter for their benefit.

There were separate provision and punishments for different crimes and a specific officer was assigned to see that justice is administered properly and without any laxity. There are also provisions for a state official in case he mistreats a commoner or misuses his office, since this was most often seen during the infancy of Ivan IV, special care was taken to not let the morale of the general population be broken because of loopholes left on part of the state officials. Capital punishment was also a mode for delivering justice which was specifically meant for corrupt state officials, murderers and thieves, Article 8 and 9 (ibid).

The written nature of court proceedings and record of earlier decision was given primary importance. According to article 15 there has to be seal on the core decision to make it authoritative and there was also a fees that was needed to be be paid and article 16 deals with record of trail that must be retained by the specified state officials. This practice of keeping judicial records is akin to setting judicial precedents so that any case could be referred to in case of need and appropriate decision can be taken. In the context of modern times the judicial record is kept to take note of different circumstances and keep the verdict as fair as possible. The concept of judicial precedents also reflect the value system prevalent in the society and gives specific insights into the societal functioning of the time which must have accorded a helping hand to the decision makers to be just.

The most important law that was incorporated in the *Sudebnik* was regarding the unjust or faulty process of court procedure. Article 19 elaborates, "And whomever a boyar without proper trial declares in the wrong, and, with the secretary, issues a written court decision against him, then that decision shall be invalid, and that which was taken shall be returned. But the Boyar and secretary shall pay no fine, and the

parties shall commence proceedings anew”. This provision has been seen in many modern democratic state’s courts where people have a right to appeal in case of wrong decisions and the court itself reviews its wrong decision through a process of judicial review.¹³

The *Sudebnik* prescribed a time frame for the issuance of justice. The concerned parties were expected to report to the court on a specified date and observe the proceedings failing which there was a provision of judgement by default. The summons were issued in the name of the party and if they fail to appear in court at the prescribed date then on the eighth day it was the duty of the scribes to issue a judgement by default which must be acceptable to the parties in conflict.

Judicial and administrative matters were not the only concern of the time, there were issues that emanated not from inside the boundaries of Tsardom but from the outside. The medieval period in Russia was turbulent and there was constant warfare from other principalities and ruling dynasties like Sweden and Poland coupled with it was the problem of rough terrain, harsh winters, bandits looting the population and lack of agricultural productivity made matters worse. In order to take care of such situations the early form of decentralised style of policing was made where the representatives from the local population were given the charge of public safety and they worked directly under the crown or the central authority. The 1497 code had specific provision for thieves and bandits and they were supposed to be dealt with the most severe punishments, most of the time death was ultimate result (ibid).

Apart from dealing with the judicial and administrative functions the *Sudebnik* also dealt with the matters of the society. The social classes were mentioned in the code and their day to day functions were somehow effected and regulated by the contents of the code. The occupations of the people bifurcated them into classes and there were rules regarding different occupations and also the provision of payments (the modern equivalent of taxes) was there in case an exchange of services or goods took place between different classes.

¹³ Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body.

The Code of 1497 focussed tremendously on the concept of justice and a wide area of laws were covered to account for almost all the crimes and the nature of politics at the time. It laid crystal clear provision for deeds ranging from crime to administration to public offices and economic matters. In addition to this, various aspects of commoner's life which were covered including their travel, safety and governance, fees was levied on anyone travelling long distances.

Trade within the boundaries of the state was given focus to generate revenue and laws regulating long distance trade and trade among principalities were formed during this period. The murgence of trade also paved a way for cross cultural contact which resulted in cultural influences from all over Europe and beyond. This impact was much greater than what was seen during the treaties with Byzantine Empire because economic relations were forged and the sword was replaced by currency thus allowing more free movement among the people and values. Not only trade was booming inside the region but the notion of traders of the land and others also appeared and regulations were placed on the traders coming from outside.

The notion of traders from the land and traders from outside or foreign traders is an important one since such a distinction points towards the consolidation of the state in terms of a sovereign or as a Russian national state. The frontiers were marked and land boundaries were set not just at the borders but inside as well. Article 58 and 60 of the sudebnik specifically mentions the word foreigner and the rules regarding their conduct in case they participate in judicial proceeding. The formation of a Russian national state and the emerging culture was different from the way it developed in other parts of Europe owing to the three hundred years of being under the Mongol and Golden Horde influence. The immediate collapse of Rome at the hands of invading Ottomans provided another significance to Moscow which was termed as theological and political centre of Europe - The Third Rome¹⁴.

The Sudebnik of 1550 emerged from the pre existing document of 1497, it was a brainchild of Ivan IV. The most interesting aspect of this document is the way it was finalised and confirmed by the state institutions, the document was sent to the

¹⁴ Third Rome refers to the doctrine that Russia or, specifically, Moscow succeeded Rome and Byzantium Rome as the ultimate centre of true Christianity and of the Roman Empire.

Stoglav, a body consisting of highest ranking clerics, for the purpose of confirmation. The mode of deliberation at that time was quite unusual owing to the fact that the emperor was an absolutist. The making of the second code was not necessary because most of the laws were replicas of the 1497 code yet the code of 1550 was more intense in terms of punishments meted out to offenders and more vigorous in terms of its content.

Though the similarities between the two was there but in terms of sheer length and the social aspects covered by the later code was unprecedented. Both the codes were full of provisions and dealt with the procedures established by the state in terms of law. The procedural nature of the second document was in continuation of the first and at certain points it also provided clear specifications regarding a breach of law, for example the code of 1497 prohibited bribery and there was no punishment mentioned inside the code itself but the second document rectified this defect by putting in details regarding what punishment should be given when a specific rule is broken. This is an important aspect of a written document that is made to bring law and order within the boundaries of the state as it leaves little room for the arbitrary action of any state official.

An attempt was made to regularise the increasing trade within and outside the state and this can be seen by a number of statutes that were added regarding finance, fees and fines regarding trade. Vicegerents were mentioned in 1497 documents too but the 1550 code takes note of the fact that their power is somewhat unbridled and steps were taken to thwart the practices of injustice. Serious attempts were made to make the vicegerents answerable to the central government. Another major change in the document was with respect to the church and monasteries. The earlier practice of giving immunity charters to them was done away with which catalysed the centralisation of administration and made way for efficient management of the countryside of the state.

The Code of 1550's was a modern document in the sense that it gave new laws that were more logical and marked a break from the archaic traditions, though it still borrowed certain parts from the early law, and customs. The procedural nature of the document helped in institutionalisation of justice with clearly defined penalties for injustice, composition of courts with judges executing decisions and pragmatic

approach was taken to consider proofs rather than bizarre principles of the early customary law. The code of 1550 was more of a reformist document in terms of its content and the change it brought to the legal stream in Moscow.

One of the greatest and grandest law code that was written in Russia in the medieval times was the law code of 1649, *Sobornoe Ulozhenie*, or law code of the assembly of the land. This code was one of its kind in terms of magnitude outmatched only by the Russian Primary Chronicle and the modern constitution of the Russian Federation. The extent of this document was wide enough to cover almost every aspect of life at that time. The Code contains 25 chapters dealing with blasphemy, sovereign's honour, robbery, homicides, judiciary, tribal laws among other things. It covers both procedural and substantive aspects of justice and does not shy away from issuing capital punishments for severe crimes and gives special attention to the financial issues and prevalence of justice within the state.

The most common factor that every law document around the world has in common is the fact that constitutional writings, most of the time, are a product of prevailing discontent in the society. The outrageous circumstances precede the development of a new written or conventional forms of law so that the archaic forms and the redundant character of laws can be replaced and the simmering discontent can be exhausted. The Code of 1649 was no different as it was formed during the social unrest owing to the administrative excesses. The Russian constitutional making has always shown a tendency of aversion towards a particular group of values and while fomenting a new text and more focus is given on what's not needed rather than what is needed. This bottoms up approach has always helped the Russians in jumping from past to the present while also retaining the basics but at the same time paying heed to the need of the hour.

The Odoyevsky commission set things in motion as it was formed on the formal orders of the crown to settle down the agitating population and codify the laws of those times. Another function of this commission was to look into matters of judicial pronouncements of the earlier period and make a catalogue of what all the previous pronouncements had in common in terms of usefulness and what all needs to be omitted. It was supposed to act as a guide to the upcoming code in terms of public acceptability and aspirations.

The Law Code of 1649 borrowed hugely from the *sudebniks* of 1497 and 1550's and the Byzantine laws¹⁵. The social conditions during the drafting of this code were not favourable to any statute which in turn could exacerbate the public's anger and therefore an assembly of the land was convened by the crown and the draft was presented to them. This move made sure that whoever has been suggested in the code matched with peoples' aspirations and wouldn't favour misadministration, the major cause of the absolute discontent among the people. The phenomenon of each and every article being voted upon by the assembly was a first of its kind experiment in the Russian legislation and deliberation process (Encyclopedia of Russian History).

The decentralised nature of lawmaking suggested that a document seeking reforms in the true sense was in the making. The consultation process was held in such high regards that the members were able to make suggestions to the draft and whatsoever change they advised was subsequently added to the draft. Some of the articles were added to the draft based on the personal recommendation of the assembly members. This was the first time that the crown was overseeing the development of such a document without any direct involvement and influence.

The final document contained 25 chapters and 968 articles covering almost all of the civil and administrative matters. The final code was made using certain kind of drawdown approach with articles relating to theology i.e the church and related matters were placed in the first chapter and the Sovereign was placed in the second chapter, law courts in the third chapter and the matters of military personnel in the seventh. The kind of arrangement seen in the code also reflects the importance given to the centralisation of administration, which has been a trend in the codes of 1497 and 1550 as well, in order to reduce the gap between the crown and the public (ibid).

The code of 1649 holds a special place in the constitutional history of Russia because this law book was the first book of its kind to be published on a huge scale and read extensively by the people of the country as well people from abroad. The book was after a short span of fourteen years published in five other major languages including Latin, German, Danish, English and French and subsequently republished eight times.

¹⁵ Byzantine law was essentially a continuation of Roman law with increased Orthodox Christian and Hellenistic influence. Most sources define Byzantine law as the Roman legal traditions starting after the reign of Justinian I in the 6th century and ending with the Fall of Constantinople in the 15th century

This book had a profound impact on the future of Russian law making as it groomed the *Speransky codification of laws* in 1830, which will be discussed later in the chapter.

There were important changes that were made by the 1649 code, most notable among them was the initiation of separation of church and state in the Machiavellian¹⁶ sense. Article 13 empowered the Prikaz of the great court to initiate proceeding against priests, bishops, archbishops and other church officials. The right of the church over massive swathes of land was curbed and a limit was put on the church regarding the land that could be owned by it. The code imposed hefty restriction on indulgence of the church in trade and other financial activities. Chapter one talks about the state protection to the church and it was made evident from the statute about who is in charge. The church was made subordinate to the crown.

Chapter twelve mentions about the patriarch, the head of the church. The code was written in the fashion of first things first, the sovereign being mentioned in the chapter two and the church being enjoined in chapter twelve was clear indicator of the head being subordinate to the state, thus keeping religion under state control. The state further tightened its grip over the church by introducing Article 1 of chapter thirteen which decrees the creation of a separate monastery Prikaz (The Muscovite law code 1649). This resulted in creation of a separate office which overlooked the functioning of the church and virtually all the process of the church was under direct supervision of the state except for the Patriarch. This limitation on the authority of the church resulted in separation of crown policies and religious sermons.

The huge success of the code of 1649 in its times and beyond can be attributed to the fact that it was made out of concern for the public. To ease the tensed environment of the time was also an objective. Another major contribution of this code was that it set a precedent of deliberative law making for the generations to come. The assembly of the land was a central government having immense powers yet it kept itself out from the grass-root level and left the responsibility to the chancellery to gather input

¹⁶ Niccolò di Bernardo dei Machiavelli was an Italian Renaissance diplomat, philosopher and writer. He has often been called the father of modern political philosophy and political science. The theory of separation between the State and Religion is one of the most profound contribution that Machiavelli gave to the field of politics.

regarding people's choices and submit all the judicial pronouncements that took place in each chancellery. It was rather a smart move and an expedient step on the part of the assembly to keep itself out of any action and let those people do the work who knew ground zero.

Constitutional Development during the Russian Empire (1721-1917)

Writtenness is a crucial factor for any law to be ingrained by the society since it is one of the two ways through which constitutional convention are formed, the practice of law according to the social culture and values and the written document of laws, legal precedents and judgements. Wherever a law document is introduced it carries certain originalism in it in the sense that no two different states can have exactly the same set of laws. The laws differ just like judgements and nature of crime and so does the written component. Any laws written at a specific time is a mirror to the social context of that time and values too. We can not separate the sense of justice and the sense of morality of any epoch, they must be studied together to grasp the true nature of the circumstances.

The written documents were now a common trait for the Russian laws and sometimes the written component was a century ahead as compared to European powers of the time. The end of Rurik dynasty gave way to the difficult times, also known as the times of trouble, in the Russian history. The year 1613 was important because a new dynasty came at the helm of affairs in Moscow, The house of Romanovs, the dynasty which ruled Russia till 1917. The course of evolution from Tsardom to the Russian national state to the Russian Empire was not an easy one for it encapsulated terrible rule, era of disturbance and administrative excesses and the Mongol overlordship.

The formation of Russian empire was the craftsmanship of the most notable of the Russian emperors, Peter - The Great. An entire epoch of Russian history is shared by the policies and conquests of this man alone. The sheer brilliance and the military commander that he was made Russian into a dominant player in European politics and his progressive views and reformist agenda and attitude made Russia an A- Lister, diplomatically and politically. The ascension of Peter to the throne came at a time when the Russian neighbours specially the kingdom of Sweden was a formidable power and the Russian frontiers were all but secure.

The *Strelsty* was the regular army of Russia since the times of Ivan IV, but in 1698 it was disbanded by Peter because of the internal revolt that occurred while he was in Vienna. The formation of Russian Navy was the first step that he took to modernise Russia and make it militarily competent with the European powers of the time. The army was also redesigned based on the European concept of warfare. Russia witnessed a wave of not just military but social, political, administrative and economic reforms with the rise of Peter- the Great. The first Russian naval base-Taganrog on the Sea of Azov was founded by him, thus opening the Russian route to the open seas and oceans.

The Grand Embassy was an initiative taken by the him to get to know the European ways and culture in which he himself participated and went on an eighteen month trip in disguise. He introduced the European states system in Russia. The idea of Table of Ranks was established to formalise the military ranks and positions and this continued till 1917 when it was finally rolled back by the communist government. Collegia system was established to deal with civil matters and it housed various Government departments. It was his move that serfs were inducted into poll taxation with view to increase the agricultural output and and pursue them to vigorously take up agricultural activities.

Генералы	Генерал-фельдмаршал	Адмиралы	Генерал-фельдмаршал
	Шляхетские советники		
Генералы	Генерал-майоры	Адмиралы	Генерал-майоры
Бригадир	Генерал-лейтенант	Контр-адмирал	Генерал-лейтенант
Полковник	Генерал-майор	Контр-адмирал	Генерал-майор
Подполковник	Секунд-майор	Контр-адмирал	Секунд-майор
Мажоры	Секунд-майор	Контр-адмирал	Секунд-майор

Image 2.1 Table of Ranks introduced by Peter - The great in 1722.

Source: <https://courses.lumenlearning.com/boundless-worldhistory/chapter/the-modernization-of-Russia/>

One of the most critical social reforms introduced by Peter was the abolition of arranged marriages based on his assumption that such marriages leads to domestic violence since the two people are complete strangers and do not know the characteristics of each other so it would be much better to do away with such customs. The progressive leap was not just confined to social arena, the gamut of country's administrative machinery was changed. The main focus of Peter was to make Russia culturally and economically at par with Europe and the major roadblock according to him was the distribution of political power among the boyars and the crown, a trend which continued to exist since the time of Tsarist Russia.

In order to do away with such a political influence which coincided with the motives of the crown the first thing that he did was to impose heavy taxes and duties upon the boyars. Another step to considerably lower their political clout was the foundation of a governing senate which was entirely under the control of the emperor and took direct orders from the crown, a move which further consolidated his attempt to transform Russia to Autocracy. The governing body consisted of ten members who were personally known to the Emperor and all the recruitment and resignations were under the hand and seal of the central government i.e. the crown. Another body was created in 1713 by the royal issue, *Landrats*, that is the national council for every governorate. The provinces were also modelled on the basis of Swedish system and the areas were given importance according their political weight. The more politically important ones were given more political autonomy and the rest were more under the direct influence of the state.

The Table of ranks introduced in the year 1722 did away with the hereditary titles passing from one generation to another. The posts were now subjected to formal appointments on the basis of loyalty to the Tsar and the personal endeavour of the person to be appointed to a partial post or honour. The earlier system was replaced in such a manner that it now became possible for a common citizen of the state to enter the bureaucracy and rise in ranks if he has got skills. This step was crucial in making the central government more powerful and reducing the influence of boyars, thus replacing the archaic hereditary law, and creating a special pool of bureaucratic experts who were well versed the skills required for the task of modernisation that Tsar had taken up.

His reformist thoughts touched every aspect of the Russian life unlike his predecessor who focussed on defence and military matters. In realising his goal he made sure that the powers of church are cut down to such an extent that it should always function under the Tsar and not as a separate centre of power. The establishment of the Holy Synod made sure that his goals were materialised. The Synod replaced the institution of patriarch and all the decisions were taken by a director who was under direct control of the Tsar. Enormous focus was given on education and the Russian academy of sciences, St. Petersburg University and the academic gymnasium were founded.

The Romanov dynasty to which Peter belonged was brought at the helm of affairs by a semi democratic meeting known as *Zemsky sobors* to elect a suitable ruler to the crown and as a result his grand father Mikhail Feodorovich Romanov was given the responsibility of the crown. The Russian state, like any other state in the medieval times, was filled with revolts, resentment and excesses of the crown at particular moments. The power transfer to Romanovs in the 16 th century was in the midst of similar circumstances of trouble.

The true heir to Peter was found not in his son or grandson but his grand daughter in law, the German princess, Catherine- the great. The title that was supposedly used for Peter was also given to Catherine points to the fact that her rule was marked by the genius of a statesman and an apt military commander. The time when she deposed her husband and took matters in her own hand was dominated by Petrine thought and values. The image of Peter the great was revered by the Russian commoners and court alike. It was in her own interest and a political necessity to govern by stepping into the shoes of Peter.

Her rule coincided with the era of enlightenment¹⁷ and she readily accepted the new ideas and used them to fulfil her duties as a ruler and statesman. Much like Peter The Great she had a keen interest in arts, sciences and learning and patronised the ideals of enlightenment. Like her grand father-in -law she also believed in curbing the powers of the church and reduced the church's land holdings to a negligible amount and also reduced the size of the monasteries to such an extent that the state budget required to maintain such institutions gradually reduced to trace amounts of the entire state budget.

The Russian empire was a vast swathe of land expanding from the Pacific in the west to Baltic Sea in the east. In order to maintain these huge borders and keep a firm hold over the territorial expanse of the country the foreign policy needed was an elaborate and detailed one with much focus given on maintaining the crown's hegemony over the length and breadth of the empire while at the same time guarding the nation from hostile powers, a fact that Russia always has to remain careful of even in the modern

¹⁷ The Age of Enlightenment was an intellectual and philosophical movement that dominated the world of ideas in Europe during the 17th and 18th centuries.

times. The foreign policy of Catherine¹⁸ was aimed at strengthening the borders and searching for opportunities to check the belligerent neighbours.

The Charter to the Gentry¹⁹ was a notable document for the fact that it deviated from the policy of Peter to keep Nobels at bay and gave them extensive rights and privileges which were absent during his times. This documents recognised the rights of the Nobels in their respective areas of influence as legal custodians and gave them control over the serfs working under their jurisdiction. This was an attempt to please the nobles to consolidate her own position at the centre. The marked difference between the earlier policy regarding nobles came in the backdrop her aggressive foreign policy which needed backing from a dominant section of the political elites.

One of the most important documents she released during her reign was the “Catherine the Great’s instructions to the legislative commission” in 1767 or more famously known as *Nakaz*. The most charismatic thing about this document is that it borrows hugely from the philosophy of Montesquieu, a great French political thinker and philosopher who worked extensively on the idea of separation powers and more than 400 articles from him and others were verbatim in the document thus making it an important document since it represented the western values of democracy and liberty. The document also specifically mentioned about the liberties available in an autocratic state.

The pressing issue was not that the Russian state under Catherine the Great was an autocratic state, the important part was that it talked about liberties, no matter under what circumstances, ergo, the affect of such a document in effect was important. The Russian state was the largest state in terms of land area at that time and the political situations were not favourable for a liberal state in terms of its modern connotation. The likes of Great Britain, Prussia and other European powers

¹⁸ Empress Catherine the Great of Russia began the first League with her declaration of Russian armed neutrality in 1780, during the War of American Independence. She endorsed the right of neutral countries to trade by sea with nationals of belligerent countries without hindrance, except in weapons and military supplies.

¹⁹ Charter for the Rights, Freedoms, and Privileges of the Noble Russian Gentry also called Charter to the Gentry or Charter to the Nobility was a charter issued in 1785 by the Russian empress Catherine II.

were also in the phase of transition, specially Britain after having a successful Glorious revolution²⁰ which made it a constitutional monarchy.

The magnificence of the text lies in the fact that the French statesman and the foreign minister Dur de Choiseul, in 1769 banned the book terming it libertarian. It indeed was liberal as it was based on the enlightenment ideals and eulogised the principles of Montesquieu. This document paved way for the Russian enlightenment, no doubt the great period of poets began shortly after this book was released. This document was all about the introduction of liberal values, in limited terms and in an autocratic set up, to the people of Russia and the future movements regarding separation of power and against the excesses of the crown were the blooming effects of the seeds sown by this document, to an extent, in the Russian political thinking. Though this document was never able to codify the laws as had been previously done but the impact of the document on the upcoming generations was profound. The reason that the document failed to generate a true codification of laws for the time is that it was an initiative from the top without any feedbacks from the governorates thus alienating the very population for whom it was drafted. Denis Diderot famously quipped regarding the book, “There can be no true sovereign except the nation, no true legislator except the people” (Encyclopedia Britannica).

One of the most distinguishing aspect of the document is its justification of the autocratic rule and to an extent this justification became a norm and rightly so in the context of Russia. The instructions of Catherine were meant to consolidate her own power as a Monarch but the way the Russian frontiers were defined set a tone which would continue to guide Russian internal policy for the centuries to come and probably the modern Russian state is wary of the huge size of the nation and governs according the law of the land but with a distinguished character.

Article 1 of chapter 2 illustrates that, “The Possessions of the Russian Empire extend upon the terrestrial Globe to 32 Degrees of Latitude, and to 165 of Longitude”. The existence of a Russian national state was deep rooted with clear demarcation of the land boundary. Article 1 of chapter 1 also mentions that Russia is a European power,

²⁰ The most important outcome of the Glorious Revolution is that it established Parliament's power to govern the affairs of Great Britain as well as the right to name the next monarch to rule.

this was again a continuing tradition borrowed from the thoughts of Peter the great. His efforts at modernising Russia were continued during the reign of Catherine and this element of continuity was seen in an often repeating manner till 1917, though each time the form of goals changed but the inherent idea remained the same (ibid).

It has been argued that Catherine aspired to make herself the supreme power in all of Russia and thus her instructions were framed to achieve this goal. The fact of the matter is that she already was the empress and that too a powerful one with an elaborate foreign policy and support of the nobles, what she actually wanted from the this document was a strengthened Russia whom the neighbours and the hostile nations should fear alike and the only way to achieve it was a sustainable foreign policy and continued strategic warfare that could help in securing the vital lines along the frontiers for the emerging Russian Navy. Perhaps her idea was best captured when she remarked, “it is better to obey the Laws under the direction of one Master, than to be subject to the Wills of many”.

Much has been said about the reign of Ivan IV and his regime and indeed there were moments of excesses in that period. The rule of Peter the great was a period of constant and certain radical reforms. The reign of Empress Catherine, the enlightened ruler, gave way to further reforms and progressive enlightened thoughts took roots in Russia. These two rulers set the tone for future course of development of the Russian political culture, a culture that firmly believed in traditional values yet vouched for the new idea of every new epoch. The fact that Russia is the largest nation and the geopolitics involved needed a distinct approach in order to keep it secure was also one of the crucial factors that shaped the upcoming political culture that was seen in the decades to come.

The Russian Empire was the large contiguous and powerful empire by the time the reign of Catherine came to an end with her death in 1796. There was brief reign of Paul, Pavel Petrovich, which lasted for five years and in 1801 Alexander I ascended to the throne. His rule was a mixed lot of reforms, inconsistent foreign policy and most importantly the defeat of Napoleon at the hands of Russia. His beliefs were shaped by his tutor Le Harpe, who was a republican to the core and a humanitarian.

The reign of Alexander I saw great emphasis on education with three new universities founded by him in Kharkov, Kazan and St. Petersburg. A vast plan for public education was initiated and a separate programme was started to train teachers for educating the nation. A private committee was formed by the Tsar himself, *Naglesny Komitet*, whose sole purpose was to look at the legislative matters and draft good laws which would benefit the people. The creation of the Privy Committee was aimed at constitutional reforms and changing the malpractices in the judicial system.

The *Privy Council* consisted of Viktor Kochubey, Nikolay Novosiltsev, Pavel Stroganov and Adam Jerzy Czartoryski. Mikhail Speransky was not a member of this committee but he suggested a number of reforms like introduction of a parliament and the formation of state council to overlook the legislative and executive functions and make the governing senate of Tsar a court or a highest court in the Russian Empire. It was the idea of Mikhail Speransky to prepare a constitutional project which later formed the basis of code of law of 1832 and other subsequent reforms.

Alexander I is also credited with introducing a manifesto which made different executive bodies under the Imperial crown to facilitate the formal functioning of various divisions of the military. This manifesto formed the basis for future nomenclature of the distinct forces under Imperial Russian, Soviet Russia and the present day Russian republic. Apart from the forces the manifesto also created other state executive bodies like Ministry of foreign affairs, Justice, Internal affairs, Finance, Commerce and Education. This classification helped in easing the pressure on the collimates and the crown and created a specialised workforce that could outperform others in a given task. The most important contribution of Alexander I was the role that he played during the war with Napoleonic France, his policies during the war earned him the title of “Saviour of Europe” and this made Russian diplomatic position in the continent quite strong. The Congress of Vienna²¹ was a direct result of the Alexander’s triumph over France and the Russia was able to extract maximum benefit out of this newly found position in Europe and among its allies.

²¹ The Congress of Vienna of 1814–1815 was one of the most important international conferences in European history. It remade Europe after the downfall of the French Emperor Napoleon I.

Alexander I was succeeded by Nicholas I who saw an uprising which turned the future course of political actions in Russia and made the crown to rethink the progressive path enunciated by Peter the great and continued by Catherine the great and to some extent Alexander I. The Decembrist revolt was a discontent among the leading military officials and nobles who were introduced to the western knowledge and political culture during the Napoleonic wars. The class of such officers and nobles wanted a change in governance and mode of government and for the purpose they drafted a Decembrist constitution.

The major reason for this uprising was the policy of Alexander which granted a constitution to Poland while the Russians themselves lacked one. The cross cultural influence had a marked imprint on the Russian nobility. The demand for change came from within the deep rooted centres of power. The Decembrists were the first group to vouch for more liberal regime in Russia, though they were not successful as the Emperor responded with brutality to crush the revolt.

This uprising set the tone for future revolts which were yet to come and the audacity of this revolt was visible when the defiant group of soldiers tried to raid the winter palace. This was for the first time that the demand for liberal culture had a head on collision with the imperial Russian crown, which resulted in the widening of the gap between the simmering discontent between certain sections of the society and the Russian Imperial system. This revolt also showed the deep fractures and divisions among the nobility and various institutions of the state, which were ready to side with the revolutionary element if given a chance. The voice for change was heard from the upper sections of Russian society with this revolt which hitherto was conservative. The demand for change from the affluent classes made sure that the crown's reaction would be harsh but the seeds of social discontent were now placed more deeper within the societal realms which proved to have a shifting influence on the political culture and culminated in stronger defiant voices.

The Russian state experienced plethora of reforms during the reign of Alexander II²², the most important among them was the abolition of serfdom. The time when Alexander II took over the throne was tumultuous one and a strong desire for change was doing the rounds among the commoners, the Tsar wanted to avoid fomenting a revolution at every cost and thus released the famous Emancipation code of 1861. This code was of utmost importance as it freed two third of the Russian population from the clutches of nobility and gave them an independent life.

The emancipation code²³ gave way to the formation of a middle class in Russia, the serfs who were until now living the life of their masters had now an opportunity to migrate to other places in search of work and get education and improve their economic conditions. The immediate release of such a large population to the existing 'citizenry' gave way to a new social class which would go on to develop various ideas and allegiances in the near future. The emancipation was not just social in character, it was political, cultural and economic emancipation of the imperial Russian citizens. The time when these reforms were introduced coincided with the silver age of Russian culture when the nation was experiencing the influx of ideas and culture from the much advanced and developed nations like France and Britain.

The reforms in the legal system and the judiciary were commendable during the reign of Alexander II, as they are one of the most successful and pragmatic of the reforms ever introduced in imperial Russia. The existence of courts witnessed a complete makeover with the Estates of realm being discontinued and their place being taken by a unified system of judiciary which was separated from the executive. Judiciary had two specialised systems i.e general judicial settlements and local judicial settlements. The separation of courts from the executive was a step which created a literal manifestation of separation of powers in the typical western sense.

Another important feature that was included was adoption of the system of advocates which was never practiced in the Russian judicial system earlier. Elaborate provisions

²² Alexander II was Emperor of Russia, King of Poland and Grand Duke of Finland from 2 March 1855 until his assassination. Alexander's most significant reform as emperor was the emancipation of Russia's serfs in 1861, for which he is known as Alexander the Liberator.

²³ The emancipation reform of 1861 in Russia, also known as the Edict of Emancipation of Russia, was the first and most important of the liberal reforms enacted during the reign (1855–1881) of Emperor Alexander II of Russia. The reform effectively abolished serfdom throughout the Russian Empire.

The Tsar made the courts a profession arena for justice where professionals dealt with the cases in a fair light. The introduction of jury trials was one such initiative which further introduced the concept of jury nullification, whereby the jury has the right to absolve a convict of his conviction even if the law says otherwise. It was a principle which took note of the fact that law sometimes can be wrong and unjust therefore it should not work against a person who is right on his part. The doctrine of jury nullification was a new concept to be applied in an autocratic state. In practice, it was a break from the past practices of extrajudicial trial or divinity of the crown law and represented an important aspect of judicial reforms.

The Russian society underwent a tremendous amount of change in the due course of time, from Peter the great to Alexander II, much changed in terms of social classes, the common Russian citizen was now getting good education and the cultural influence that the masses had from their western European counterparts as the Russian space opened owing to the constant reforms set in motion by each Tsar in his/her own time. These situations gave rise to an intelligentsia which started thinking in terms of western values and hoped to realise them in their hinterland.

The Russia of 1860's and 1870's witnessed some of the most important revolutions in its history, some of them having roots in the growing intelligentsia and some ridiculing it. One of the movements that was a product of liberal thought and demeaned intelligentsia was Nihilism. It was a staunch critic of human institutions and laws as it believed they are corrupt and meaningless. Nihilists questioned all the old values that were dear to the Imperial crown and this attitude shocked the entire Russian establishment (Riasanovsky 1960).

Almost all the movements and revolutions that Russia witnessed at the dusk of 19th century had one element in common- peasants. The quest to make the revolutions populists made them focus on the peasants as it was the largest group in the Russian population. Another reason to involve peasantry by various groups in their struggles was that Russia no more was socially stagnant nation, the reform policies since the dawn of 17th century transformed the society to a civil society which had a thinking faculty and aware of its development. The peasants held a considerable clout as even the crown was aware of their potential in case a revolution springs up which had peasant participation.

Another movement was the Narodnik movement which emerged from the Russian intelligentsia in opposition to the Emancipation reforms of 1861. This movement also focussed on mobilising the masses, its very name Narodnik is derived from Narod which means people. It firmly believed in the fact that peasants must be mobilised to achieve mass mobilisation for more liberal policies from the Tsar. This reform movement further developed into an active revolutionary movement and *Narodnaya volya* is the faction which emerged from this movement and ultimately assassinated Tsar Alexander II. The quest for populism was the main idea behind every reform movement that was formed in the 1860's and 70's. They were the emerging signs that the Russian society at large was witnessing a transformation where the old beliefs were giving way to the new ones which were in sync with the emerging social values and culture.

The demand for new system was not radical at all, it was a demand to liberalise and provide equality to everyone under the regime. The changing realities and the industrial revolution placed people's hope in technology and the increased channels of communication and transportation made it difficult for absolutists to sustain their power amidst the increasing awareness of the population and a common thirst for change added fuel to fire. The fist had to be loosened enough to let the state function and tight enough to let the sovereign rule. It was this delicate balance of power and shifting priorities which shaped the end of nineteenth century and dawn of twentieth century. Tsar Nicholas II witnessed the wave of liberal movements, under these circumstances, that was unprecedented.

The Russian empire of late began realising the need to establish a government which worked well within the framework of law and there was an attempt to cover the autocratic powers with a legal shroud. The problem with the absolute powers of the Tsar were now visible as the Russian practice of rooting the crown in the glory of individual personification and the metaphorical references to god was now waning. The myth of the absolute power of the Tsar had now to be based on the premises of legality and Alexander II's attempt to bring in the legislation to do away with absolute powers was the first attempt in this direction. His successor Alexander III

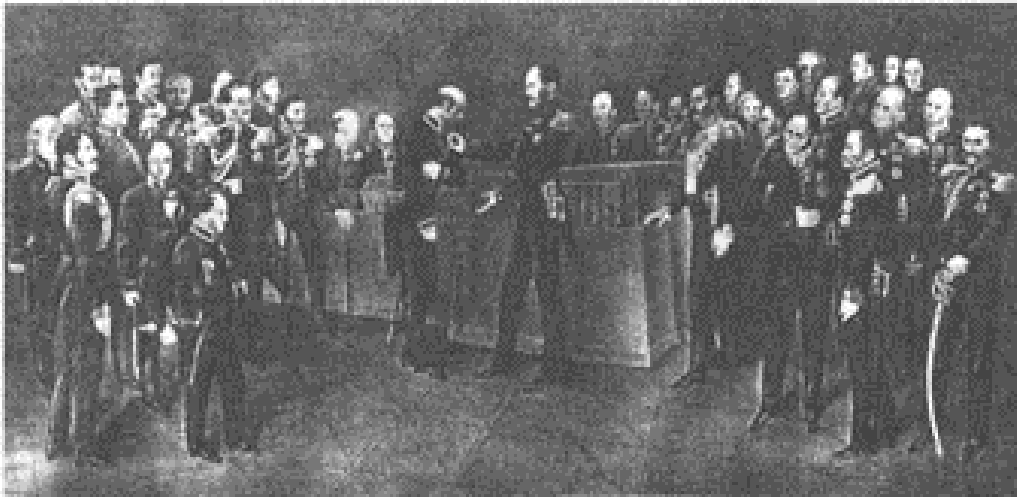
was a strict conservative and moved back to an era which was comparable to pre Petrine times with immense focus on orthodoxy and Slavophile²⁴ beliefs.

Despite the changing positions of the Tsars regarding the the mode of government the fundamental codes of 1832 already prefigured the fate of imperial Russian Empire. These laws were the culmination of long standing liberal aspiration of the Russian populace. The code of 1832 was an attempt to bind the crown to the laws, though not making the Tsar subservient to the document, it was an attempt to legitimise the crown based on the will of the people rather than persecuting them to oblige to the Tsar. This marked an immense shift from the earlier policy where the Tsar's image was placed next to god and a separate aura of christ is build for the Tsar to reside in psyche of his subjects.

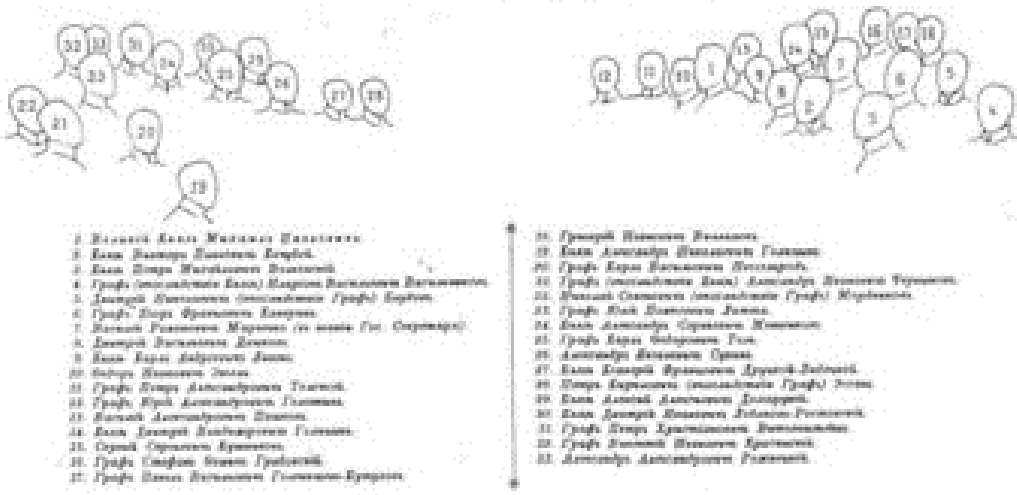
The 1832 codes put the powers of emperor in the perspective of autocracy while declaring that such power was derived from rule by legitimate consent of the people. The first part of the codes mentioned the source of emperor's authority. The emperor's authority was not questioned but various preceding statutes like the Peter's law of 1722, of naming an heir rather than depending on heredity, and Catherine's manifesto successfully placed the Emperor as the source of laws for the Russian Empire.

Alexander I's manifesto of 1810 was a continuing trend to the manifesto of Catherine and added content to the existing manifesto to further legalise the state institutions of justice. The basis of Alexander's manifesto lay in the fact that the social conditions of the time and people's thought regarding law and justice is the reason that the institutions must develop. The development must be grounded in the requirement of improvements in administration which is firmly based on law (Wortman 2013).

²⁴ A person who greatly admires the Slavic peoples or their languages.



Въ Великомъ Государствѣ Россійскомъ Мѣстѣ Государевѣ



Nicholas I conferring the Order of St. Andrew the First Called on Mikhail Speranskii for his work on the *Digest of Laws*, in the presence of the State Council

Source: *Gosudarstvennyi sovet, 1801-1901*, insert between 58 and 59.

Image 2.3. Depicting Nicholas I and Mikhail Speransky, in the aftermath of 1832 digest of laws

Source : <https://www.jstor.org/stable/j.ctt21h4wbq>.

Constitutional Monarchy and end of an Empire

With the turn of the century, the rising influence of industrial revolution started showing its effect on Russia, with the life of an average Russian still kind of backward as compared to western European nations and this being highlighted clearly

because of the more transparent conditions that the industrial revolution created, the people started organising themselves with might and for this purpose various populist movements were started. The 20th century Russia saw the rise of three distinct groups that were challenging the Imperial state, the liberal elements, who favoured a smooth transition of power and social reformation, they started mobilising people along the lines of liberal principles and thus forming the Constitutional Democratic Party in 1905. The major demand of this strand of thought was a constitutional monarchy.

The other major group that wanted a shift in power, though in a different way, was Narodnik tradition of thought who, as the name suggests, wanted a popular measure of redistributing the land according to work. The primary aim of this section was to give lands to the peasants so that they can have ownership rights and more equality within the regime. The Narodniks started Socialist Revolutionary party in 1901 for this purpose. This group also vouched for slow and gradual change and more rights for the working class of the empire.

The third and the most important group that emerged during this period was that of radicals who were the primary exponents of revolutions and Marxism in Russia. Their demand was clear, to do away with the old system and set up a commune, a socialist state which saw to each and every individual's demands and was based on the principles of marxism. They wanted a total revolution and radically change the social, political, and economic conditions of the country by taking out the imperial system from its roots and establish everything anew. This group founded the Russian Social Democratic Labour Party.

It was this party that gave birth to the Bolsheviks, as it split into two separate division following the difference of opinion among the party leadership. The radical elements came under the leadership of Vladimir Lenin and came be recognised as Bolsheviks and the moderate elements who wanted gradual change came under Yuli Martov, recognised as Mensheviks. The latter group favoured an umbrella approach of taking the liberals and the socialists together in the task of nation building and wanted to establish a constitutional Republic in Russia once Imperialism is disbanded.

Tsar Nicholas II succeeded Alexander III and just like his father believed in aristocratic highhandedness, an approach which proved futile in the coming years of his reign. The political and economic situations coupled with Russian backwardness in the economic sphere spiralled the problems of the crown and by the 1901 the discontent was at door of the crown. With two separate groups vouching for power and the third one in the making the leadership was inept at dealing with the looming problem. The domestic situations made the Tsar susceptible to inappropriate decisions, all this coupled with troubled foreign policy choice of retaining Manchuria which resulted in a catastrophic defeat at the hands of Japanese in 1904-05 which proved catastrophic for the Tsar.

The poor performance of the Russian army and Naval forces in the battle broke the Russian invincibility abroad and the ignited a wave of revolts at home. All these factors together resulted in the revolution of 1905. It was for the first time in Russian history that the masses participated in huge numbers in direct revolutionary activity and there was no way that this could be settled by force alone. Decisive interference from the crown was necessary to quell the angry and resenting masses and thus the famous October Manifesto was released by the Tsar which led to the formation of a constitution (1906) and constitutional monarchy in Russia.

The October manifesto or “The manifesto on the improvement of the state order” approved the creation of a duma and guaranteed basic civil rights. The freedom of speech and expression, association and assembly were some of the principles that were granted, further a working parliament in practice, the Duma, was created to make laws to legislate and it was given the powers to make laws and no such law could be implemented which was not passed by the Duma, though it needed the assent of the Tsar and the old bureaucracy was also having a significant influence on the the new legislative body.

The Russian constitution of 1906 was not a new document but a major revamp of the 1832 fundamental law code of Russia, the constitution established a bicameral legislature in Russia, the *State council* being the upper house and the *Duma*, the lower one. Article eighty four to ninety seven dealt with the formation of laws and their promulgation and article ninety to one hundred and nineteen dealt with the election of members to *Duma and the State Council*. The half of the membership of upper house

was to be filled by the Tsar and the other half by clerical and governmental interests. The lower house was supposed to be filled through a mode of indirect elections.

The Tsar reserved for himself the right to absolute veto over any legislation deemed unfit, though the Duma had the power to question the ministers of Tsar but it lacked the power to dismiss them or terminate their posts since it was the exclusive privilege of the crown. The constitutional amendments were not left to the Duma or the State council, the Tsar alone could rework the clauses or the law. The only safeguard that the parliament had was that in case the Russian crown makes any law during the absence of parliament the law must be ratified by the parliament within two months otherwise it would cease to be a law. Nonetheless, the constitutional arrangements suffered some defects which came to the fore once it started functioning and the resentment grew again and so did the quest for change and with the dawn of world war I the Russian Imperialism ended with the Russian revolution of 1917 and the last of Romanovs were executed by the Soviets.

Conclusion

The constitutional development in Imperial Russia was not a radical development rather it was a gradual process that unwound itself as the Tsars of every epoch were faced with the realities of their time. The common trait of each norm added to this development was the autocratic character that was held dearly by each ruler and the amount of effort given to codify the existing laws of the land. The Tsars had their personal experiences and this was reflected in the reforms, especially noticeable during the times of Romanovs. The laws of the Russian primary chronicle or the codification during the reign of Ivan IV was a reference point every time a new chapter was added to the existing corpus.

The phenomenon of electing the Romanovs after the end of Rurik dynasty was a peculiar development because neither the Ruriks nor the Romanovs were in favour of renouncing their rights in favour of popular representation but this trend coupled with certain radical steps of Peter, especially the law on succession of 1722, marked the genesis of future reforms and the formation of different law codes and emancipation reforms and charters with each one of them moving the empire a step closer to the realisation of the values of constitutionalism and rule by law, a concept which later would take roots in Russia, would be discussed in the upcoming chapter.

CHAPTER 3

SOVIET CONSTITUTIONS:

AN ANALYSIS

Introduction

“The constitution was made for the people and not the people for the constitution”

— Theodore Roosevelt

The constitution, a written document of laws, is framed in every epoch by every nation in one form or the other to govern the geographical boundaries and manage the affairs of the state according to the established principles, which are directly sourced from the aspirations of the populace. The written document of every nation has a definite epistemological foundation which nestles not in the state itself but the societal values which are held dearly by the people. The constitution is an arrow which moves in the direction of the aim but the aim is always shifting in terms of the changing times and thus the changing cultures and values.

It is this gliding in the air which makes a constitution a living document, a document which holds the power to govern people's lives according to those socially constructed rules that are contained inside of it. The social contract, in the Hobbesian sense, leaves a lacunae in the so called social ambit because people at first demand an ease in the anarchy but at the same time the human tendency to venture into fields of morality and judgements makes them question the existing system which gives them security from being hunted by a stronger force but deprives them of justice, the questions of what is just and unjust. The lack of general social guidelines is what prompts people to look for alternatives and it is this inquisitive search that lead to the compilation of first recorded law in human history.

The above statement made by Theodore Roosevelt is of utmost importance as it illuminates the actual necessity of the constitution, a document written for the betterment of life of the people and aiding the state with tasks of the governance. There has been much debate as to what is the source of law, the people or some divine rule which exists above people, is the law supreme or the people? The answers to this question is never sacrosanct as different circumstances call for different approaches. All law is circumstantial and so is the constitution, no two epochs of time are same culturally, socially or economically so how can the laws governing these three aspects be the same, they can't. The laws and the society are intertwined in such a manner

that each has a lasting impact on the other and they react spontaneously to the change in time.

In fact, the relationship between the constitution and the society follows the rules of natural sciences while also retaining the normative aspect in terms of values and social norms. These norms are the catalytic elements that shape changing laws and thus accords the constitution its distinctive aspect in any given society at a particular time. Laws has always existed in one form or the other but what converts laws from essentially being unwritten norms to the an authoritative written document is the process of social churning which usually is a result of a consternation ensuing from a demand for change in the hitherto existing political, social and economic conditions.

This one factor is the common link between all the existing documents of law in the world. It is because of this reason that the constitutions are referred as the bridge between the past and the present representing a transition from the old to the new. The constitution is an Avant-garde which takes a leap into the future yet its ties are not completely severed from the past that it emerges from. The reminiscent of the earlier culture lingers on in the form of social beliefs or the norms which are deeply entrenched into the society. It is the task of the constitutional working to keep them in check and eradicate them wherever possible.

Whenever we talk about the working and the functioning of the constitutional apparatus it is necessary to take into account the mode of such functions. The authority of the constitution is enunciated by placement of laws within the state and their role in governing and regulating the activities of the state. Laws are embedded into a system either when there is a 'Rule of Law' or there is 'Rule by Law'. These two concepts are the founding stones of constitutionalism in any political-legal system. It is very important to understand these concepts before analysing any written document or the least, giving it a hearty reading. The rule of law or 'La Principe De Legality', the French phrase from which it is derived, is a principle which establishes law as the supreme rather than men. It means governing according to the procedures established by the law and no one is above law, the government of the law managed by men.

The concept of the rule of law does not elaborate upon how or what laws to make or what the content of laws should be, the only emphasis is given to the law as such which must be above every mortal. It is a much formal concept which has its genesis in the famous statement made by the 13th century judge, Lord Bracton, “The king himself ought to be subject to god and the law, because law makes him the king”. The most important contribution to the concept of rule of law has been given by A.V Dicey who ardently specified that there shall be no discretion of whosoever for the rule of law to flourish. In his book, “Introduction to the study of the law of the constitution” he has given the three main principles of the rule of law.

The rule of law demands absolute supremacy of laws and no one can be punished or harmed in any other manner except prescribed by the law for the breach of the law. The law does not and should not differentiate between subjects according to the money or the position commanded by the subject and a specific procedure must be followed for any enquiry to be initiated against anyone and the offence must be proved legally. The constitution should be the written promulgation of the laws of the land which have so far accrued the rights to people living on the land. Constitution guarantees the already existing rights and these rights are the source for the constitution to come into being.



Image 3.1 Depicts the equation of Rule of Law

Source: LexisNexis Rule of Law Foundation

The rule by law is based on the concept of governing according to the laws formulated by the law making authority. It does not keep the law above all but functions according to the laws made by the state while state as an institution gives definition to the existing laws. In terms of functionality it is much similar to the Anglo-American concept of the rule of law in theory but in practice there is a marked difference. The rule of law, in principle, subsumes state. The state is not above the law and any wrong doing on the part of the state is dealt by the law accordingly. The law reigns supreme but the rule by law is another approach to the same question that rule of law caters to. Rule by law is considered as a lawful rule where the state tends to the questions of legality and justice according to the laws which at the first place were created by it and they can be altered or changed accordingly as the need arises.

It talks about a constitutional state in practice which is modelled on the concept of 'Rechtsstaat' emanating from the German Jurisprudence¹. The powers of the government are constrained by the law in the constitutional state which puts it together in the frame with the rule of law in terms of limited government and hence it passes the test of constitutionalism. It is interesting to note that the Rechtsstaat is the opposite of 'Unrechtsstaat', which means a state commanding arbitrary and unrestricted use of power, and it is possible to become one only through historical development which similar to the case of modern constitutionalism.

Constitutions of 1918 and 1924

It was important to take into account the concept of Rule of law and Rule by law before we look at the Soviet constitution of 1918. The Bolshevik revolution marked the end of Tsardom in Russia and the bolsheviks seized power. The formal establishment of the Soviet Union was yet to come in 1923 but the Sovietisation started right after the October revolution. The first Russian constitution sans imperial heritage was the constitution of 1918, which in essence was a continuation, in a limited sense, of the transformations introduced by Emperor Alexander II. The Russian legal system was hugely influenced by the German legal thought and thus developed its own model of Rechtsstaat, 'pravovoe gosudarstvo', the Russian model of a legal state and rule by law.

¹ The legal theory which is practiced in Germany.

The concept of Soviet democracy was an important innovation during the times of revolution and the ensuing civil war for four years. It was this set up which carved the Soviet model of government for the time being. The Soviet democracy or the council democracy was a system in which the people of the country were able to vent their thoughts and it was reflected on the national stage by the directly elected council for the purpose. These elected persons acted as channels for the demands made by the people, similar to the representative model of democracy. The concept of democracy practiced by the Soviets was an innovation in its own right as it gave voice to the lowest levels of the social order and the mode of election was such that every grievance made its way to the top. This representative delegation of views and demands from bottom to the top ensured mass participation for the cause of Bolsheviks.

Every council representing the people's interest was connected through each other via levels following a chain of authority which ultimately lead to the Congress of Soviets at the State level, the highest governing body of the Russian Soviet Federative Socialist Republic which looked at the all the government related matters of the time. The body functioned as the chief legislative organ of the Soviet Union after its formalisation and retained the spot until it was dissolved by the new constitution of 1936. The workers, soldiers, deputies and peasants were all included in the Congress of people's deputies until 1936.

The Soviet constitution of 1918 was the first document in the Russian history which established the authority of a written document and clearly described the source of such authority from which it derived its powers. The preamble of the constitution specifically declared the rights of the peasants, people on the whole were listed as the source of the constitutional authority which constituted the fundamental law of the Russian Socialist Federated Soviet Republic. An all out attempt was made to create awareness among the general masses about the new document that was promulgated, an attempt to gain popular acceptance and trust in the constitutional functioning of the infant republic.

The constitution of 1918 envisaged a federal set up for the nation to begin with. The Soviet Union was one big entity which was based on a federation of free nations, as a federation of Soviet national republics. The essence of federalism is power sharing

between the centre and the states and how this power is shared shapes the nature of federal structure. The federal satellites of the Union had no right to secede from the centre and the central laws were to play an important role in length and breadth of the nation, an approach that can be seen even during the Imperial times, to keep the frontiers of the country intact and prevent anyone from affirming a degree of autonomy which can generate unrest and secessionist tendencies.

The constitution was divided into seventeen chapters with specific focus on the nature of federated structure of the Soviet Union and its characteristics regarding the shaping of the future of the state according to the principles of Socialism. It must always be kept in mind while dealing with the constitutions of the Soviet Union that the document was based on laws affirming to the principles of socialism and anything going contrary to the socialist beliefs was rejected outrightly since it was the prime duty of the state to preserve the very ethos which formed the basis of the Soviet state. It can be said that the law of the land was loaded with socialist values and the exact nature of rule by law was decided according ideological considerations of the state.

The Russian constitutional text of 1918 was quite tautological in terms of its reference to one particular ideology and its linkage to the every concept of law that can be devised for administration and governance. The entire society was reclassified as equal with ownership rights vesting with the state thus imparting a sense of equality which was a long standing demand of the masses and was one of the several causes of October revolution. Since the constitution is deeply affected by the spatial and the temporal dimension in which it is placed it usually carries not just the knowledge but categorical ontologies related to the people, political system and political relations among the newly institutionalised legal norms and behaviour.

The constitution demanded participation of the masses in the project of building the state with clause 6 of article 3 (Constitution of 1918) making a universal obligation to work so that the vision of classless society could be achieved and the economic life of the country is boosted. The emphasis of rights was and has been a constant trend in the constitutional texts much before the 1918 document was created but the duties imposed along with the given rights was a first of its kind obligatory practice in a constitution, providing an opportunity for everyone to be a part of nation building and thus eliminating the alienation of the grassroots from the process and culminating a

national class of people who are united by the solidarity and the feeling of induced fraternity.

It is no surprise that the 1st world war ended with many drastic changes in the international political scene with colonialism coming to an end or severe decline but not without stern fighting. Russia being a European power also had colonies and the new constitution unilaterally made a law to end all colonial occupation and the right of self determination was given to all the colonial principalities that were hitherto under the influence or direct rule of the Russian Empire. Chapter 3 Article 4 of the constitution clearly stated that, “that all efforts should be made to conclude general democratic peace without annexation or indemnities, upon the basis free determination of the peoples”. It is under this view of the constitutional laws that Armenia and Finland were declared independent and the Russian troops were pulled back from Persia.

The government positions and the participation in the governance activities was left on the voluntary decision of the people to associate themselves with the state in governance positions and the institutions of the state. The constitution merely charted out the principles of the federation and the rest was left on the Soviets to decide if they wanted to participate or not and to what degree. The concept of democratic functioning in the form of leagues in which all the Soviets could participate was utilised to realise the goals of filling the federal Soviet institutions and government positions with the required people as functionaries from all over the state.

The Russian constitution of 1918, just like any other constitution, was a document born in the period of transition for the period of transition hence it incorporated certain principles which allowed the Soviets to bridge the existing problems. One such issue was the complete transfer of authority from the imperial vestiges of the past to the newly emerged working people’s union. The structure of the Soviet Union was federal to accommodate all the people even those with divergent cultural characteristics and the constitution provided them with the choice of retaining their autonomy and charting their own rules under the supervision of the local Soviet standing committees or the congress of Soviets and their executive organs.

The Soviet/Russian state was witnessing imperial downfall and a gradually increasing socialistic grip over itself, amidst the socialist development the question of religion was important since Russia became the vanguard of Christianity after the fall of the Eastern Roman empire and was given the title of Third Rome, a significant theological role which continues to be with it till modern times. It was in the backdrop of this fact that the Soviets had to decide on the question of religion and state, it was decided to give people a full chance to develop their conscience and practice what they want to and thus a theological state or even a state patronising one particular religion was taken off the books and the result was a secular constitution.

The right of being a theist or an atheist was given to the citizen rather than the state, another important issue was the church which was contentious even during imperial times and much was done by Peter the great and Catherine the great to limit its influence. This approach was continued without a doubt in the 1918 document with the religion being separated from the state. The freedom of expression was one crucial development which was fostered by the Soviets in the initial days of the Soviet republic with state promoting freedom of expression to an extent that the state went on to provide the amenities required to disperse the ideas using press. All the resources were provided to the workers and peasants thus eliminating the need to have capital for publishing. Though such an attempt can be attributed to the propagandist nature of the Soviet state since it was the ideology of socialism that it sought to flourish through the length and breadth of the nation but even in such a dire need of propaganda the utilisation of free ideas of the masses was a huge break from the past practices in the first place.

The constitution tried to materialise all possible aspect of modernity of that time for the people to flourish and enhance their cognitive faculty. The constitution proposed right to assembly and form trade unions. One of the most striking laws that was made was of free education to the people. The 1918 constitution possibly took note of the subdued citizens in the past and aimed to provide them not just mere rights but developmental opportunities to realise their potential. The document was one of its kind as it considered work as the basic unit of human existence and work was included in the duty of every citizen and immortalised by the maxim, "He shall not eat who does not work".

The approach of the Soviets to the questions of citizenship was different than other European nations of the time, the concept of citizenship by naturalisation was kept on priority and even the constitutional recommendation on this subject were quite clear. Article 20, 21 and 22 of chapter five of the 1918 constitution granted all political rights to the foreigners who were living on the Soviet land and even the Soviet citizens were accorded the rights to grant citizenship to foreigners without much institutional paperwork. The Soviet constitution recognised the stateless people and gave them the right to seek refuge in the Soviet Union in case of religious or political persecution. This approach is enough to explain the only autonomous oblast in modern day Russia, the Jewish Autonomous Oblast, a reminiscent of initial Soviet citizenship policies.

The Soviet state kept itself the farthest possible from any religious issue and at the same time focussed on the tenets of equality among the working Soviets. All the members of the state were equal before the law of the land and nothing and no one was allowed to discriminate among the Soviet citizens on the basis of one's race or one's national connections. It was against to Soviet law to advance particular favours to any one community or any minority, no such special considerations or separate laws were made for any community per se, everyone was a Soviet having the national laws to govern them, rights to enjoy as citizens and duties to perform as Soviets or the working people and toilers of the Federative Soviet Socialist Republic.

The state recognised the rights of the working class as a whole and the prime objective of construing a single nationality, the Soviet Nationality, was the aim of this policy. It was illegal by law to indulge into any practice, be it of any religion or sect of belief, that could work or has the potential to disturb the socialistic principles that were dear to the Soviets and the State. The founding notion of the state was kept sacred by the Soviet constitution and under no disguise was it handed over to anyone in the name of rights or equality or any other value. The primary aim of the constitution was the consolidation of the state and state power in order to create a vibrant set of citizens who were true Soviets and could strive to champion the principles of socialism, the de facto and de jure principle of the state.

The text contained detailed and elaborate plans for convening of meeting of the Soviet legislature apart from specifying the size of the chambers and the contribution of the

members from both the urban the rural congress of Soviets respectively. The legislative arrangements made in the constitution were nothing short of parliamentary democratic system of western Europe in terms of representation of the general public. The earlier instances where the direct representation was followed was the system of Soviet congress which continued till 1936 when the new constitution dissolved them. The urban congress of Soviets had one delegate for 25000 people and the provincial congress had one delegate for 125000 people. The legislature was supposed to meet twice a year (at least) and detailed notes were provided if the central legislature was delayed in its meetings and important matters were to be dealt with.

The Russian parliament had a unique organ, the all Russian central executive committee, the institution responsible for managing the affairs of the state and the work of peasants and toilers. The constitutional functioning was supervised by this institution apart from the provincial congress's work and the meetings among various levels of the government at the urban and provincial levels. The central executive committee was supposed to be the supreme legislative and executive body of the Russian Socialist Federated Soviet Republic. It is interesting to note that this body had much in common with the British parliament except that the executive was a separate institution otherwise it had all the characteristics of sacrosanctity that British parliament enjoyed.

The overall work of legislation was done by separate ministries or cabinets that were formed for specific departments. The people's Commissars as they were called were equivalent to a minister and the council of people's Commissar was a central body representing an all Soviet cabinet where important decisions were taken by the members, Commissars, for the departments ranging from communication to defence and internal affairs to justice, nothing was spared from the purview of this institutional arrangement. There were in all 17 Commissars for 17 different departments with each having his own college of which he was a president. The final stamp regarding any recommendation or decision of the Commissars was in the hands of executive committee but in case of urgency they were legally allowed to implement their decisions directly.

A strict chain of command was followed in the legislative sphere with the college of the people's Commissariats being the one with direct representatives from the

workers and they were in turn responsible to the Commissar who was in turn responsible for the jurisdiction of the area that comes under him and took decisions for the same. The council of people's Commissar was a body comprising of the individual commissars and in case of dispute between the commissars and their college it was his responsibility to report the same to the council and finally the council had the sole responsibility of the All Russian Congress of Soviets or the the Central Executive Committee.

The constitution talked extensively about the right to vote and all those people who were eligible to vote, an entire chapter was dedicated to the the purpose of granting legal right to vote and identifying those who were eligible to cast their votes in the respective congress of Soviets at the local, provincial and commissar's council. Article 20 of chapter five gave foreign citizens a constitutional right to be the citizens of the federal state provided they were accrued such status by the local Soviets or any other authority and these citizens were also under the ambit of the right to vote according to the 1918 constitution. The concept of welfare state was nowhere mentioned officially in the original text but several provisions of the text were enough to convey the state's intention to serve those who were not capable of working for themselves (Article 64).

Certain groups were not permitted to vote as prescribed by the law. There might be an argument regarding the removal of certain groups from the voter's list since taking away the right to vote is tantamount to virtually stripping off citizenship but here the constitution had provisions regarding those groups who were not allowed to vote and the reason for the same was also established according to the heinousness of the crime. This is not an exception to the rule since many democratic countries in the modern times have a blanket on all criminals alike and even those who are detained, the right to vote is based on the principle of universal adult suffrage which gives citizens a right to express their choice which was duly provided by the constitution of 1918.

The device of constitution and its mechanisms are mere reflections of the choices made by the people or the aspirations shown by the population at the national level before the drafting of the text takes place. The constitution must be a living representation of the will of the people since it is nothing less than a contract of the

state with the people, a contract of limits, laws and litigation. The three elements are necessary for any meaningful interpretation of the constitution. The 1918 document had surprisingly kept the task of interpretation with the executive committee since it was also acting as the supreme judicial power in the R.F.S.S.R. The rights of the people and the duties imparted on every citizen was a new invention of the 1918 text which to an extent showed the social set up of the country and to a larger extent the ideology governing the state.

The 1918 constitution was a document that dealt with the realities of a newly formed state and the newly emerged social class of workers, peasants and toilers. The constitutional set up provided by the document had certain set of rules and principles which were new to the legal jargon and they set the precedent for rules and legislations for years to come. The rule by law and the role it played in shaping the future of the Russian state was furthered by the constitutions of 1936 and 1977 respectively, the 1977 constitution being the torch bearer of true change in the constitutional theory and practice of Russia, to an extent that the 1993 constitution borrowed hugely from it.

The constitution of 1924 was the first true Soviet constitution as it officially ratified the creation of The USSR. The treaty of the creation of USSR in 1922 was given a legitimate force with the advent of this constitution. It was in all sense an extension of 1918 constitution and drew heavily from it. The length of the constitution was increased to eleven chapters and 72 articles while the 1918 text had 26 articles. The 1924 document was meant for augmenting the gains of the revolutionary struggles and to place the concept of revolutionary legality throughout the territory of the newly formed state. The revolutionaries had developed a clear idea of legal and socio-cultural connection and it was an attempt to connect the two with each other so that whatever is augmented could be strengthened.

The 1924 constitution for the first time talked about the national economy of the union, the word national signified the collective identity of the Union and the free self determination that Lenin emphasised, as the founder of the union. The text mentioned the laws of the union as fundamental laws of work and thus paved the way for future legislation according to the fundamental law of the land in conformity with the principles of socialism. The congress of Soviets was given the right to amend the

principles of the union thus according the right of constitutional amendments. The nature of the union was pronounced to be federal with every union republic having its independent sphere of Sovereignty, though limited not absolute.

The federal structure mandated by the 1924 constitution gave the rights to the Union republics to freely secede from the USSR as and when they preferred therefore embedding the principle of conformity rather than authority, self determination rather than forceful exertion. The citizenship was tantamount to the national identity that is the Soviets, it was an attempt to keep the fraternal bond among the workers, peasants and toilers strong enough so that the union republics sub nationality can't impede the path of development of the Soviet people as one true nation. The issue of representation of the people of the union was dealt in a similar manner as described in the 1918 constitution. In all there were no major changes in the 1924 constitution as it was just an extension of 1918 text. The full wave of reforms were witnessed in the 1936 constitution which was a lengthy document and did some serious recalibration in the Soviet society, economy and its international stature.

Constitution of 1936

The 1936 constitution was a document of triumph, a triumph of the beliefs of socialism, sovietisation and most importantly the industrialisation of the state and transforming it from agrarian to an advanced economy based on large industries and self sufficiency. The 1936 constitution was drafted from a perspective of a nation who dreamt of certain goals and realised them. It marked a complete transition of the society in terms of materialistic aspects as the Soviet Union was existing and flourishing and the document was drafted as living manifestation of the core principles of the state. It can be said to be more of a state's document and less of a people's document, as it has been mentioned earlier that the constitution was an epitome of the success of revolution and achievements of the state.

The opening chapter itself, of the document, talks about the organisation of the society, an unusual style of drafting for a constitutional text, and the nature of the state. The Soviet Union was now a reality and it was declared a union of Soviet Socialist Republics which was termed as a socialist state belonging to the workers, peasants and toilers of the union. Although the state ownership was practiced but

certain works and and private property gathered under the aegis of the former were permitted and protected by law under right to personal property. Article 15 of the constitution stated that the unions are sovereign to an extent permitted by article 14, that is barring certain important decisions regarding national importance they have every right decide for themselves on any other matter as prescribed by the law. The constitution was federal in character specifically mentioning the rights and obligations of the unions towards the centre while the centre was under an obligation to protect the sovereignty of the unions.

The legal set up provided by the 1936 constitution resembled a coming together federation system with each unit having equal powers vis-a-vis the centre. In this respect it was quite similar to the constitutional arrangements of USA in terms of power sharing arrangements among the units and the centre. Article 17 also promised the right to freely secede from the centre thus establishing the link between the centre and its constituent units, the units were also having their own constitutions apart from the Soviet constitution but the laws and rules of the unit's constitution were in conformity to the central laws. The advent of federal character represented a change in the Russian state as such an arrangement was never made for the annexed principalities of the empire with Poland being an exception which was given the right to have its own laws.

The issue of federal break up of powers between the centre and the states was dealt skilfully by the drafters as matters like defence of the state were kept under the control of the centre, specially economic rights to taxation and revenues generated from the local and the republican budgets were under the direct command of the centre. The central leadership had separated the religion from the state politics but the distinct cultural sensitivities of the republic were kept in mind and the constitution of each union was drafted while keeping in mind the specific character of the constituent unions, a lesson learned from the past practices of the empire, to keep the social forces under check and utilise the energy of the masses for the purposes of the state. The state was wary of the ethnic and cultural diversity of the Russian land therefore the contract of the citizen with the state was unitary, that is no dual citizenship was permitted in Soviet Union despite recognising the cultural and ethnic diversity, to

promote the feelings of nationalism based on the principles of socialism and the collective brotherhood of 'Soviets'.

At the outset of the 1936 constitution it was hailed as the most democratic constitution of the world and rightly so if the constitutional arrangement are viewed and understood in terms of functional constitutionalism. There were various bodies connected to each other in a specific chain of command with each lower body accountable to the body directly above it in terms of authority and all of them were answerable to the Supreme Soviet of the USSR, the sole legislative power of the state. The crux of the democratic trend of the constitution lies in participation of the people, the more the popular say the more democratic the process of governance and administration becomes. The supreme Soviet of USSR was divided into two chambers - the Soviet of Nationalities and the Soviet of the Union. These two chambers were akin to the western parliamentary system of having upper house and the lower house.

The western model talks about the two houses of the parliament, the lower house or the people's house and the upper house representing the constituent parts of the state by having at least one member from each part so as to make the chamber representing the diversity of the union. In a much similar fashion the Soviet of nationalities and the Soviet of the Union represented the upper and lower house of the Soviet model of parliamentary system. The former was more of an upper house representing the citizens on the basis of the unions and autonomous republic and thus accounting for the diverse culture of the state and the latter representing the citizens of the USSR at large as one national group. The Soviet 'parliament' was elected for a period of four years.

These two chambers were like a mini USSR in terms of the representation that they brought at the disposal of the central leadership, since the primary objective of the state was to educate the citizens about the policies of the state and the success of the Soviets in a short period of time that is from 1918 till 1936, it was an immense requirement that the supreme Soviet be a representation of the popular Soviet thought and hence elaborate provisions were made to make sure that everyone from the bottom to the top had a feeling of contribution to the functioning of the state. The members of the chambers were elected by the citizens on the basis of electoral areas. There was one member for every three lakh population in Soviet of the union and 42

members were there in the Soviet of nationalities for each union republic, autonomous republic, autonomous region and national area.

Such an arrangement made sure that the central leadership had control over the units and yet they were free enough to manage their own businesses which were not enumerated in article 14 (jurisdiction of the USSR as represented by its highest organs of power and organ's of state administration) of the constitution. Further the division of the units into Union republics, Autonomous republics, autonomous region and National region was an expedient machinery to manage the affairs dealing with various ethnicities contained in the respective regions and to instil Soviet discipline and feeling among the citizens while keeping a tab on any ethnic discontent which might run contrary to the principles of the state and the state goal of promoting socialism. The federal arrangement and representative chambers were like the two valves of the state whose deft operation by the central leadership proved beneficial in the long run.

The 1936 document was also an attempt to materialise the reformist approach the leadership and the legal aspect of these reforms were seen much clearly in the constitution than anywhere else. The constitutional theory of the state focussed on the legal narrative as endorsed by the state and the beliefs of the leadership based on reforming the socio- economic understanding of the citizens. The arbitrary use of authority was replaced by the legal decisions and the command structure now emanated from the bottom with its tentacles at the top. The constitution led to the development of a unique model of legal structure which took into the account the feedback generated at the grass-root level of the social order while maintaining the sanctity of the centre in terms of commands given while keeping in mind the feedback received.

The legal feedback- output model made the Soviet authority representative as envisaged by many western scholars who champion the cause of Westminster model and separation of powers in strict sense of the terms. The difference lies in the theoretical and the functional aspect of the system as the social conditions of Europe and the Soviet Union differed considerably with civil society providing the bulwark of civil consciousness and the Soviet congresses being the former's equivalent counterpart in the Soviet Union. The civil arrangements played an important role in

formation and functioning of the state as the systemic aspects of legislation and legality were based on the interplay of social forces both at the top and at the bottom.

The legal- feedback model, a term this study prefers to use, was not just a tool in the legal reformation quest of the leadership it was rather a constitutional device having been directly implied in the text of 1936 with respect to organisation of the state and the legislation of the supreme Soviet. The emphasis on the feedback aspect of the model rather than input is also important because the major focus of the leadership was to rectify the inherent defects in the society so that it can do away with the clutches of the past to embrace the necessary economic and political changes. The state was aware of inputs since it were those processes of change that were initiated or accomplished, the focus therefore was on the resulting feedback which was to be the deciding factor in the future course of action.

The legal feedback was much important in gaining the trust of the citizens and at the same time legitimising the leadership's role in building a self sufficient and politically, economically sound state. The question of legitimacy was in the minds of the leadership right from the beginning because the entire state was a reflection of the thoughts of the society and vice- versa. The goals of socialism can't be and won't be released until and unless the popular support for the same is not reflected in the process of exchange of ideas between the state the citizens. The Union of Soviets stood because the Soviet citizens believed in the idea of being a 'Soviet'.

The emphasis on the participatory politics was used as a means to develop the state's attempt with more vigour towards socialist construction. The popular participation was an important mean for socialist goals and the drafting committee of the constitution had this purpose in mind while referring to the European constitutions of the time and paying homage to several popular principles that were followed in the region. The constitutional aspects of varying degrees and sources (European) were all incorporated in the 1936 constitution but they were redesigned to suit the goals and nature of the Soviet state rather than being applied directly. Article 135 of the constitution provided universal adult suffrage in the USSR and everyone including those having a criminal past were allowed to vote with exception being those who have been convicted and stripped off of their electoral rights.

The council of people's commissar of the USSR was given sweeping executive powers and similarly the council of people's commissar of the union republics because of the way these institutions formed and derived legitimacy from the popular consent. In fact an entire chapter of constitution was dedicated to the administration and governance of the local units of the state like cities, districts and rural localities. This was a reason which marked the distinctive goals of 1918 and 1936 constitution, while the former focussed on dealing with the exigencies of revolution and its aftermath the latter was aware of the progress made in consolidation of revolutionary gains and therefore focussed much more on the popular participation not as an end but as a means towards realising certain ends of the state.

Joseph Stalin under whose leadership the constitution of 1936 was drafted and who took keen interest in every stage of its development personally favoured democratic ways for authority rather than outright claim to authority. In one of his most famous speeches after the end of second world war he openly talked about going to the polls along with non party people. It was in his interest to enlarge the democratic structure as widely as possible since the democratic centralism that was practiced in the USSR was held in very high esteem by him. The element of bourgeoisie was separated from the non party people because of the Soviet social system, according to Stalin. The extension of the party lines to the non party people was a thanksgiving for the war effort in which they relentlessly participated despite not being in the lines of the party on one hand and the quest on the part of Stalin to increase the reaches of the party to increase its popular base in the wake of newly emerged Soviet state which had gained credible standing in the international system, was another reason. The Soviet Union was an industrial superpower which needed all citizens to believe in its approach.

The interview of Joseph Stalin with Roy Howard (1936) was of tremendous importance to establish the concurrence between democratic political practice and the theoretical constitutional thought of the USSR and its leadership. According to Stalin, "the American and Soviet democracy is different and no model will devolve into the other they were capable of existing side by side". On matters of elections in the state, the Soviet leader agreed that an absolute quorum on single party elections is maintained as the state itself is composed of the Soviets that is peasants, toilers and workers and all the citizens are Soviets and the state is the union of the Soviets.

Though the elections were not multiparty but they were multi candidate elections in which plethora of individuals can contest elections even those who were non party people.

The reason for having one party and multi candidate election was quoted by Stalin as, “where there is no contending class only workers, peasants and toilers are there can be no exploitation only the difference of opinion among the people, so there can be no soil for the creation of other parties since where there are no contending classes there can be no contending parties because a party is also a representation of a particular class” (ibid). The universal adult suffrage included women as well, a development which was yet to be seen in many European nations, an equal electoral arrangement and gender neutral approach.

The major reason behind granting universal suffrage was to keep the bureaucratic system in check and allow the people to be the guide in making any decision regarding the efficiency of the bureaucracy. The popular support coupled with universal adult suffrage was to benefit the leadership and the party in two ways- it would boost the party’s legitimacy as the flag bearer of the common citizen and it would allow the leadership to assess the work of the party cadres in remote and distant locations of the state.

Apart from this the people can have a say in who is representing their interests to the central leadership and how the bureaucracy must function to realise the interests of the citizens otherwise the bureaucrats could be removed. The democratic elections would also come in handy for the party leadership to consolidate the Soviet hold and root out any incompetent forces that might harm the party’s stake. The leadership had firm faith in the advantages of democracy as it was seen as a means to curb bureaucratisation and connect with the citizens and despite much resistance from the local and regional party leaders the elections were conducted strictly on the basis of democratic centralism.

Democratic Centralism

Democratic centralism essentially is a concept which was profoundly used and found resounding success in the context where it was first used, the waning days of imperial

Russian empire. The ideas of Leninism were directly related to the principle of democracy but where the united stance of every member of the party was much needed rather than prolonged debate, it is under such circumstances that the idea of democracy and centralism were combined together to meet the requirements of time. The impeding progress of the Bolshevik revolution and the primary failure of the communist party to establish a vanguard state was seen as a gap by the leadership and it was decided to make the decisions of the party leadership strong enough to be followed by everyone in the party line and legitimate enough so that every worker could relate himself with the same and that's how democratic centralism found its advent in the Russian revolution.

Democratic centralism was a core idea of Leninism, which in itself was an amalgamation of the thoughts of Vladimir Lenin regarding the nature of the party and the state and the instruments required to consolidate the state and the party in the immediate aftermath of the revolution. The idea of a vanguard party was important as a prelude to establishment of communism as it would serve as an institution to create awareness among the masses about their political rights and duties. The idea of Soviet democracy was borne by the ideals of participation of the masses and the need for debates to chart the course of action for the party. The ideas of democracy and centralism were the two pillars of decision making for the communist party and continues to remain so for the Russian Federation.

When Lenin first adopted the policy of democratic centralism it was a means to fulfil the gaps in the command structure of the party because of the nature of dialectical combination of the two concepts - democracy and centralism, it had a huge potential to act as a cohesive force for the state. The idea of democratic centralism is removed from the liberal perspective of democracy but that does not mean that the former loses its credibility. The idea of centrally sponsored democracy is in consonance with the liberal perspective till the time the process of popular participation is robust. The Rawlsian notion of what constitutes a liberal regime and what principles must be followed for any state or regime to stake claim to be decent provides illuminating insight to the idea of democratic centralism as it was practiced in the Russian context.

The Law of the peoples² as enunciated by Rawls was an attempt to categorise the different systems of the world not only on the basis of liberal theory of democracy but also taking into account the well ordered principle so as to limit the possibility of bitterness among various societies or peoples, as he preferred to call them. The extension of the principle of well ordered societies is crucial to understand the Soviet arrangement of concepts. According to Rawls the societies have certain 'must haves' in order to be called liberal and in the same manner the international system have certain must haves to be called well ordered. The presence of certain ethos like deliberation and consultation and institutions of law and legislation are a prerequisite for any peoples or society to be called decent (Rawls 1999).

The decent people might not be necessarily liberal, yet this does not exclude them from being in the international system or make them a necessary candidate for any military intervention from a third party till the time the process of consultation and much needed democratic space is being provided to the citizens. The decent system has a decent hierarchical society the principle of social cooperation is fulfilled. The Soviet system of democratic consultation during the drafting of 1936 constitution and the universal adult suffrage were the two fundamentals of Rawlsian decent consultation hierarchy. The people's commissars council and the commisserate were the institutions that represented the local initiative in the decision making processes.

The institutions of Soviet of nationalities and the Soviet of Union were the two chambers of USSR legislative institutions based on the concept of Soviet democracy which represented the people of the state on the basis of universal adult suffrage. The mode of direct election to these upper and lower chambers of the USSR made sure that the consultation process was followed and an attempt was made by the leadership to draw the people closer to the state to realise the collective goal of communism. This continuous bridge of consultation was a necessary element in the well ordered liberal societies that Rawls envisaged.

² By 'Law of Peoples', Rawls means "a particular political conception of right and justice that applies to the principles and norms of international law and practice".

The decent societies consider their members as equals and give them ample chance to deliberate and discuss all the policies that are being framed for them, just like the liberal societies. The presence of institutions that represent local interests in legislative processes are the constituent elements of any well ordered or liberal society because that's how the participatory element is put to test. The people in a socialist country like USSR have a common aim, to realise the tenets of socialism in an efficient manner and it in turn is represented by the common good of all because it represents common good idea of justice for all and if the popular support nestles in the idea of common aim as the common good idea of justice then the society is no less decent than the liberal societies that it differs from in terms of realisation of common good principle (ibid).

The idea of Rawls's decent democratic non liberal societies is in strict congruence to the principle of democratic centralism, the juxtaposition of these ideas, in fact, gives a more clear perception about how the socialist systems works well within the sphere of decency while working according to the principles of democratic centralism. Democracy as such is realised when the choices of those people are taken into account for whom the decision is being taken, the idea behind debate is to assimilate the differing views on the subject and go on with the process until a popular opinion is reached. The difference between the liberal and the socialist perspective arises when the mode of implementing this decision is changed.

The liberal aspect takes into account the individuality of every person even after the popular consent is reached and thus the entire process can be challenged even if a single person diverts from the concluding decision while the notion of centralism removes this question from the picture. The specific case of USSR is important to understand in the light of this discussion because how events turn out to be depends not only on the people at the helm of affairs but to a larger extent, on the political and economic situation that nation finds itself in while deliberating on a specific subject. The revolutionary background coupled with World War I and the large frontiers left minimal space for unending debate. The idea of centralism was inherent much before the revolution started owing to the cultural and social disposition of Russia/USSR.

The ideological roots of USSR were incompatible with the tents of liberal democracy but that does not make it an indecent society as the level of mass participation

exceeded that of most of the liberal European societies. The universal adult suffrage given by the Soviet state covered men and women alike, unlike selective suffrage offered by the contemporary liberal societies of the west. The idea was to procure a popular base for the policies which were reflected as a common aim for the state and to take into account the preferences and concerns of the citizens. The dialogue between the leadership and the people marked the consultative phase in any of the legislation enacted by the Supreme Soviet owing to the robust system of local representation linked to the top through a hierarchical mechanism of feedback-output model as discussed in the earlier section.

The democratic aspect takes into account the views of all the participants, in case of USSR, all the soviets in one way or another were a part of a nation wide discussion, none of the member was kept aloof from the process and this fact was established by constitutional validation of people's participation. The core values of the Soviet democracy were realised by the principle of taking feedback from the Soviet people for their own betterment. The Soviet democracy was participatory and at the same time representative as well, the representative work done excellently by the plethora of institutions acting as essential connecting links. This way the Supreme Soviet's presence was maintained on the ground while keeping its position intact as the supreme legislative and executive body of the USSR (Angle 2005).

The aspect of centralism was included because of the prevalence of subjective ideas in any democratic debate, it was there to replace subjectivity with an objective decision which was put to task. The preference for a single outcome after a discussion was needed for the party to implement its aim for the economic and social development. The idea of economic upliftment was at the core of the State's objective and much could be achieved only if the collective single output is manifested in practical realms. The process of consultation required a broad platform for an efficient input to make way into the system while the application part had to be free from subjective moral judgements (ibid).

The emphasis on feedback in the feedback- output model was made keeping in mind the fact that subjectivistic notions can go inside the system but what's coming out had to be completely objective if it has to be applied to the socio-economic and political context. The dialectical relationship between democracy and centralism comes into

play when the feedback is generated and output is gained, this is where the clash between the subjective and objective has to occur to remove any remaining vestiges of judgements and personal opinions so that only the truth remains after the final argumentative churning and the phase is characterised by the combination of democracy and centralism to form the principle of democratic centralism.

Soviet Constitution of 1977

The 1936 constitution was principally the longest serving legal document in the Soviet history having far reaching results in the span of 41 years. The 1918 constitution marked a beginning of a socialist nation breaking free from the chains of imperialism while the 1924 constitution was a continuation of the 1918 text representing a transition phase. The next in line was the 1936 constitution which served primarily the legal purpose and made enormous forays in terms of legal democratic representation of the citizens to an extent that it resulted in one of the most democratic and representative regime of its time, though in atypical Soviet style democratic centralist policies, and had far reaching effects in terms creating a mass awareness of party politics and policies.

The period after 1953, following Stalin's death, saw some of the most dramatic moments in the Soviet history with the Secret speech³ delivered by the new leader, Nikita Khrushchev, having had tremendous impact on the domestic and foreign policy of USSR but it had little to no impact on the constitutional principles which took roots during the 30 years of Stalin's rule. The constitutional laws, by the time, became conventions in certain areas like discussion of the party policies among the Soviets regarding any new law and legislation. The committee responsible for drafting 1977 constitution was set up by Nikita Khrushchev in 1961 itself. The constitution was lengthy and detailed as compared to the earlier constitutions and contained certain radical changes with respect to the relationship between the state and the people.

The 1977 constitution was a landmark event for the fact that it came out in the era when the USSR achieved a tactical parity with the west primarily the USA and the

³ "On the Cult of Personality and Its Consequences", also popularly known as the "Secret Speech", was a report by Soviet leader Nikita Khrushchev, First Secretary of the Communist Party of the Soviet Union, made to the 20th Congress of the Communist Party of the Soviet Union on 25 February 1956.

much of the Leninist goals of state building in a manner deemed fit for a socialist state were achieved. The laws and conventions that found mention in this text were a direct result of the economic, social and international achievements, in terms of International standing of the USSR among the allies and foes alike, of the Soviet state, apart from this the cultural gains that were realised during the premiership of Khrushchev were somewhat visible in the text at certain instances.

The Soviet adventure in terms of technological advantages were witnessed in 1957 when the first man made satellite, the Sputnik, entered space and subsequent launch of various Soviet satellites and the ultimate first manned mission to space with Yuri Gagarin on board Vostok⁴ spacecraft showcased the Soviet scientific prowess coupled with the detonation of Tsar Bomba(Bomb) in 1961, the largest thermonuclear device to be detonated on the face of earth, along with huge progress made in terms of agricultural and industrial output, fruition of five year plans initiated by Stalin, lead to the realisation of much talked about goals that were mentioned by Stalin in one of his speeches in 1946 where he talked about Soviet state's goals.

The 1977 constitution was in effect the 'result of results', bringing radical changes to the Soviet views regarding citizens and the state. The Soviet victory in the Second World War gave immense prestige to the Soviet Union and other developments in other fields consolidated the Soviet aim of seeking growth opportunities for socialism around the world. When the 1977 constitution was in the process of drafting the socio-political and ideological unity was reached and the state was characterised by the leading force of working people and proletarian dictatorship was a reality.

It is in the wake of the achievements and developments that the constitution went on to declare the Soviet Union the state of the whole people, which hitherto has been overlooked by the Vanguard⁵ party. The role of the party was now not confined to supervision of nascent socialist forces but to overlook the development of ultimate stage of communism. The preamble to the 1977 constitution admittedly declares the fact that USSR is a mature socialist society, having a high organisational capacity and

⁴ Vostok 1 was the first spaceflight of the Vostok programme and the first manned spaceflight in history.

⁵ A vanguard party is a political party at the fore of a mass-action political movement and of a revolution. It was first effected by the Bolshevik Party in the Russian Revolution of 1917.

the working people are patriots and internationalists. The leaders of the USSR were carrying forward the legacy of the Lenin who talked about international socialism but it was replaced by Stalin's 'Socialism in one country' owing to the weak socialist movements in rest of the Europe. It was this dream of world communism that the state wanted to realise with the help of strengthened socialism at home. The virtues of the Soviet consciousness and socialist achievements were to act as a successful model of socialism for other countries of the world so that they could follow the lead of the USSR and attain true development and freedom by witnessing successful revolution in their respective places.

Article 2 of the constitution states that the USSR belongs to the people and the people of the union exercise state power through Council of people's Deputies and all other state bodies are under the control of or accountable to the Council of people's deputies. Article 3 mentions the state principle of democratic centralism, a feature carried as it is from the 1936 constitution. The idea of democratic centralism were further realised in Article 5 which States that, "Major matters of state shall be submitted to nationwide discussion and put to popular vote". The institution of referendum connects the centre directly to the people with little scope of anyone being left out and the further mechanism of popular vote ensured that people's voices made important contribution to the state policies.

The legitimation attempts that were earlier made by ensuring democratic means were now employed not to secure validity but to cash in on the developed consciousness of the working class. The shift in rhetoric was partly due to the fact that the Soviet people were developing in every aspect and partly due to the acknowledgement of the fact by the party that its role as consolidator of the socialist values has now changed to exporter of the socialist values in consonance with the principle of 'World Communism'. The ideology of Marxism-Leninism determined the foreign policy of the USSR, a planned, systematic and theoretically substantiated character was imparted at home and abroad to realise the greater goals of the state in the international sphere.

The 1977 constitution was a careful creation while at the same time being a document representing Soviet development. The text clearly mentions the dominant nature of the communist party but all the while focusses on the principle of democratic

centralism to maintain the thread of revolutionary legality and also control the nationalistic urges from brewing out of control. The Soviet Union was a federation with 15 union republics held together by the string of ideology and it was necessary to adhere to the party line while giving enough scope of self determination to cultural diversities that made up the union. The legal theory that was set forth by the constitution was wary of the contemporary development in the international law and it was an attempt to align the Soviet judiciary with the outside world specially when the nation developed and emerged as a world leader.

The constitutional law in the Soviet Union was the basic law but not the only source of law, since the system immensely relied on the feedback generated during democratic discussions and popular vote little scope was left for the constitution to be sacrosanct. There are two reason for various conventions to develop which aided the constitutional law in its day to day functioning, first, the Soviet Union was based on and driven by Marxist - Leninist approach so any drawbacks which were seen to be impeding the development of a socialist society were done away with and secondly the popular vote on all matters made sure that any archaic element in the law was replaced by the popular demand. Therefore the constitutional law was a part of the Soviet state law the latter being a compendium of feedbacks and socialist development taking place in the state, continuously.

The 1977 constitution derives its origin and functionalism principally from two areas, the principle of democratic centralism and the socialist internationalism or world communism. The constitution of USSR was a manifestation of the Socialist ideas and it was a principle document in defining the duties and responsibility of the state in terms of promoting the socialist values. The legal aspect of the 1977 constitution flows from the popular culture that the state endorsed and as a result the constitution became a prime source of Soviet state law. The legal document of the state had an ideological connotation and it represented the ethos of a socialistic culture when viewed from ideological perspective.

It was a text featuring the developments attained by the state and paved a way for future developments while being dominantly connected to the past, a feature shared by the three previous constitutions. The element of continuity was one crucial factor that linked the legal framework of the state with its ideological framework. The 1977

text aptly eulogises the socialist ideology while working in close concurrence with the Leninist-Marxist core values and at the same time supported changes necessary to keep the past intact and make it stronger with each passing day. This was the most important contribution of the 1977 constitution, preserving the continuity and making necessary changes to it, all the while making it more vigorous and suitable to its times.

It also explicitly marked the relation between the state policy and social relations thus mandating constitutional legality to the humongous relationship between state policy and social structure. When article 4 of the text mentions that “Soviet state and all its bodies function according to the socialist law and all concerned must abide by the constitution of the USSR and the Soviet laws” what it meant was not two different views of the law, it conveyed the formal structure of the law of the land which equally derived from the constitution and the socialist law. The function of socialist law was to enhance the functionality of the constitutional law and together working in tandem they formed the fundamental law of the USSR.

The foreign policy was elaborately pronounced in the 1977 constitution which was not the case with the 1936 constitution, though foreign relations are maintained but an entire chapter on the subject was added in 1977 only. There was a substantive focus on the foreign relations of USSR and the principles guiding the relations with allies and hostiles were written down. The state’s position on disarmament, world peace was in accordance with the socialist principles and the most important of all the endorsement of war propaganda in any form was banned in the Soviet Union. The international laws as it existed at the time was given full credit and the constitution had laws in place to abide by such laws and international treaties signed by the USSR.

The first chapter in article 6 mentions the role of Communist party of the Soviet Union, which until now was in the background as the earlier constitution namely 1918, 1924 and 1936 never had a direct mention of the CPSU but the 1977 did. This is because of the fact that the 1970’s was a time when Soviet Union developed much of the values required for it to be called an advanced socialist state so it had to gradually move towards achieving the communist state that it sought since the beginning. This called for a direct role for the party because now the state belonged to the whole people so that vanguard role must give way to the constructive function that

the party had to undertake in wake of new developments and international standing of the USSR.

The Soviet model of democracy was one important feature that linked the social culture of the state to the social development of the state. The principles of democratic centralism were congruent with the party function, the party needed popular representation and opinions regarding its policies and any attempt at decision making had to take into account the phenomenon of revolutionary legality. In order to streamline the Soviet citizens and their beliefs according to the party ideology the democratic principles were the ultimate means. This approach ensured maximum participation and conformity to the foundational principles of the state.

The 1944 amendment to the 1936 constitution gave the republics of Ukraine and Belorussia a recognition in the United Nations General Assembly according to the international law which provided Soviet Union two extra seats in the UNGA. The 1977 text carries this precedent and allows the union states to enter into relations with other states, conclude treaties with them and take part in the work of international organisations thus abiding by the Leninist ideas of free self determination. The decision making powers of the Union republics were enhanced by Article 112 which allowed them have more say in matters relating to the Supreme Soviet.

The judiciary of the USSR was a behemoth of an institution with varying structures at every level to enforce justice according to the socialist principles. One important feature of the Soviet judiciary was that it functioned not according to the maxim of 'law is supreme' but according to the principles of Marxism- Leninism. Any notion of justice or a law being just going against the Soviet principles were declared out of league and were not admissible in territory of the state. The judicial interpretation was solely based on Soviet justice and had to abide by the fundamental law of the land. The vast expanse of judicial institutions can be understood with the help of the following diagram.

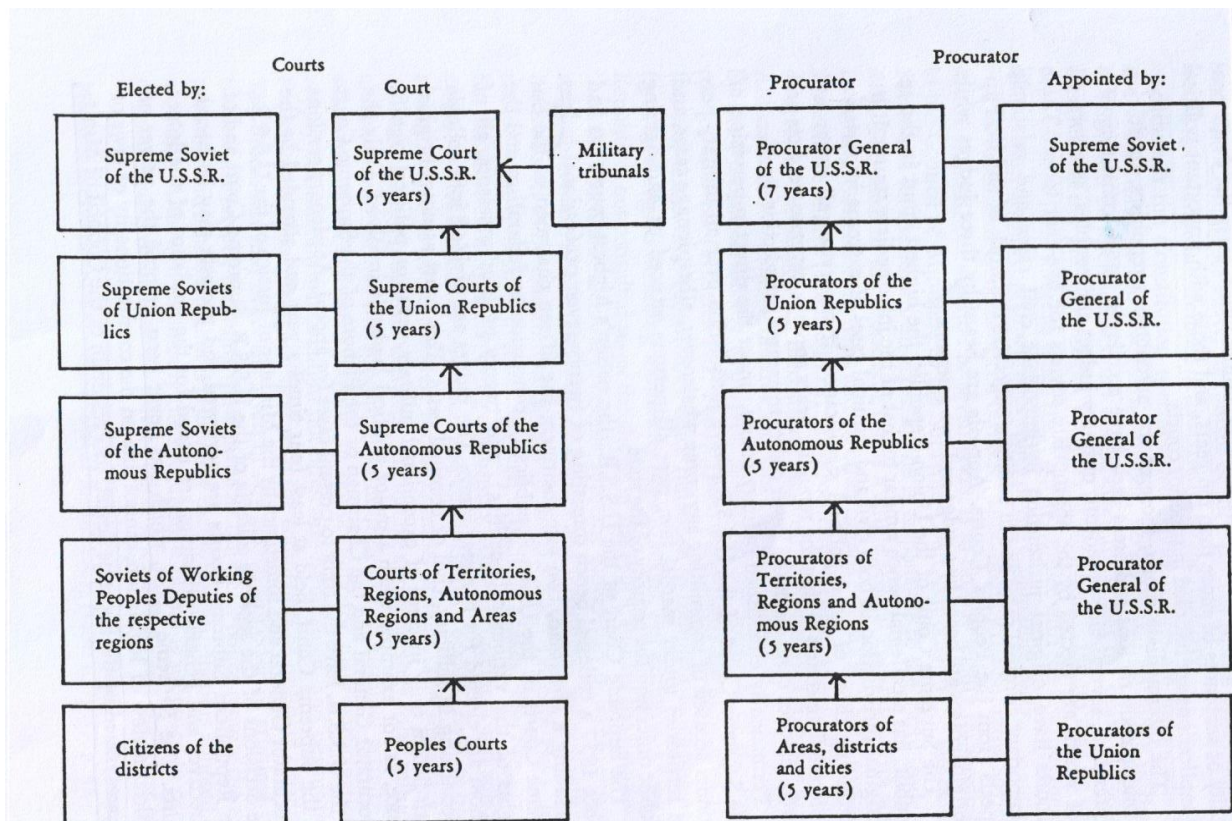


Image 3.2- Representing the Soviet Judiciary (1977 constitution)

Source: <http://www.jstor.org/stable/42866671>

The office of procurator was a unique invention of the Soviet constitutional law, though such institutions with supervisory functions over governmental institutions were in function in Sweden much before they appeared in the USSR but the way the procurator's office functioned differed significantly than its Swedish counterpart. This office was vested with supreme powers over uniform observance of the law by all ministries, state committees and institutions. The mode of appointment of the procurator general made sure that the authority confined to this post was unquestionable as the Supreme council of USSR was directly responsible for his appointment. The procurator general of the union republics and autonomous region too were appointed by the Procurator general of the USSR pointing to the importance of this institution.

The nature of work that the Procurator's office undertook made it necessary that it was under the direct command of the central leadership and therefore no

decentralisation was done in terms recruitment to this office. It was responsible for executing authoritative supervision of all the concerned institutions and report any mishandling of the funds or delineation from the state goals or socialist principles. Another major concern that this institution addressed was the increasing corruption among the highly bureaucratised ranks of the Soviet Union. The office of Procurator general was highly independent and given extraordinary powers by the party and all the local agencies of the procurator's office were directly responsible to the office of Procurator general of the USSR.

The 1936 constitution and 1977 constitution had many things in common as far as the judiciary is concerned and the centralised control was retained over the judiciary in both of them. The courts had people's representative as accessors and one judge, accessors aim was to function as co- judges since jury system was not used in the USSR. The Supreme Court judges and all other court officials were elected for term of five years on the basis of equal and direct suffrage. The judiciary was an institution for the people and was in turn elected by the people at the grassroots level while the higher courts were elected by the council of people's deputies. The party with its role increased to an entire new level following the Soviet social and international development made sure that the judiciary represented the popular sentiment but at the same time various checks were placed on the judiciary so that it can't meddle with the tasks of the party. The principles of democratic centralism were followed to express the Soviet legal theory in practice but this expression was supposed to run hand in hand with the goals of state and no stance was tolerated that defied the principles of socialist justice and jeopardising the fundamental law of the state.

Conclusion

The constitutional development that took place once the Soviet Union was established was not completely dissociated with what had been in practice since 1923. The first two constitutions of 1918 and 1924 were the documents that established the tone of legal culture in Russia based on a written document. The 1918 document served as a letter head for all subsequent constitutions that were formed for it represented the founding principles of the Union. It was more of document characterising the state rather than codifying the laws for the state, yet it was fundamental in terms of its

approach and completed the task consolidating the revolutionary legality in the then USSR.

The next in line was the constitution of 1924 which furthered the developments of 1918 constitution with little more details on the talk of the state to achieve a level of development so that the Soviet Union could stand in the international system. This was also important because the civil war added to national legal experience and gave a glimpse of the international laws and its direct and indirect effects on the legal culture of the country. The 1936 constitution was a defining document which served the Soviets for the longest time and it was huge as compared to the previous two constitutions. This document made its mark as it represented that time which stabilised the Union in the times of crisis and gave immense international prestige.

The 1977 constitution was adopted when the Union had already achieved its socialistic goals to an extent and was on the path to embrace communism from socialism. The constitutional design was thus modified to suit the needs of a developed socialist state rather than a nascent state looking for its rightful place, a task achieved well by the constitutions of 1918 and 1924. The road to constitutional development in Russia during Soviet times was challenging and full of struggles but the way the Soviet legal system emerged and went on to adopt certain universal principles like fundamental duties, universal equal adult suffrage, procurator system among others were commendable.

CHAPTER 4

POST SOVIET CONSTITUTION
AND CONSTITUTIONALISM

Introduction

“A government of laws and not of men”

— John Adams

The premiership of Brezhnev saw the maximum military output that USSR could ever achieve but apart from this the time of 1970's witnessed a major decline in the Soviet economy and the issue of stagnation further exacerbated the problem. The usual US response in terms of foreign and military policy (during the Reagan administration the concept of Strategic defence initiative also known as star wars¹ was much hyped and discussed) further added to the worries of the already lopsided Soviet economy which was, at the time, contributing a quarter of itself to the country's military, logistical and weapons programme development. The arms race coupled with the poor domestic economic policy were the ongoing processes when a change in leadership took place after Brezhnev. Yuri Andropov and Konstantin Chernenko were able leaders but their rule was short lived and finally in 1985 the command came to Mikhail Gorbachev.

Gorbachev came to the seat of power when the Soviet economy was shattering and the instability within the system was growing. The era of late 1980's was tumultuous for the Soviet Union the central leadership was going weak in terms of its hold over the satellite states owing to unfulfilled economic demands. The ever increasing security concern among the Soviet military elite was putting a further stress on the overburdened economy. The Gorbachev leadership sought reduced tensions with the west by portraying USSR as a friendly state and agreeing on mutual limitations to put an end to arms race. The Gorbachev leadership tried to improve the Soviet economic condition by implementing the program of '*Perestroika*', which means restructuring. It was an initiative to overhaul the structural shortcomings of the system to provide much needed economic buoyancy.

The issues were not resolved by mere restructuring and the second wave of reform '*Glasnost*', was introduced. Though the economic reforms undertaken even after perestroika were not able to shift the economy from command based structure to

¹ The Strategic Defense Initiative, nicknamed the "Star Wars program", was a proposed missile defense system intended to protect the United States from attack by ballistic strategic nuclear weapons.

market based structure because of the lack of political will and the complex and conservative nature of the Soviet elites who held sway over the bureaucratic and military institutions within the system. The Glasnost programme was more political in nature rather than economic as it sought to achieve a degree of political liberty unheard in the USSR. The leadership tried to bring people into the mainstream politics for democratising the system according to the western model. The most outstanding change that was brought to the constitutional law which made the communist party of Soviet Union as the only legal political entity.

This change was to have far reaching consequences as was seen in the near future but the most immediate effect was seen in the Soviet political set up. The foremost effect was the withering of the ideological shield which acted as a binding force. It was the command of ideology which kept the people together. The issue of nationalism started growing in various republics of the Union, especially in Russia along with the Baltic States, a sign which openly showcased the loosening Soviet grip. It was under these circumstances that Gorbachev introduced Boris Yelstin to the crumbling Soviet structure, a man who were to become the first president of Russia after the demise of Union.

The USSR finally ceased to exist with effect from 31 December 1991 after much controversy among the Gorbachev and Yelstin camp and unsuccessful attempts by the hardliner Soviets to regroup Soviet forces. The newly formed Russian Republic was no less economically shaken, it had been the largest republic in the union and almost represented the the similar economic and social scenario after the disintegration. The new republic was the world's largest country, still is, and the leadership choose democracy for the effective administration of the state, though much of the powers were vested in the office of the president. The new leadership had two objectives in mind, to contain the opposing forces from further escalating the already tense economic and political situation and to enforce a legal regime according to a popular constitution. The ideas of glasnost and perestroika had already provided a base to the newly emerging Russian constitutionalism, different in theory and effect from the Soviet constitutional laws. The drafting of the 1993 document gave practical relevance to these ideas and a new constitutional phase developed in Russia.

The most striking difference between the Soviet constitutions and post Soviet constitutions was that of approach. The Soviet constitutions represented state according the goals of socialism while the post soviet constitution was inherently based on the ideas of liberalism, rooted in the glasnost programme. The laws made under the new constitution were in in extreme synchronisation with the values of liberty, equality, democracy and the like. The most striking feature was that the constitution, more or less, tried to tread the path according to the western understanding. This can be attributed to the fact that the new state was being driven by a group of people more commonly known as Atlanticist². The Russian constitution of 1993 was not an entirely new law document, there was an element of continuity which bridged the norms of the Russian state with Imperial Russia and the Soviet Russia. The liberal ideas that it embraced were present before the advent of socialism in Russia and the concept of legality that it promulgates have been seen in the Soviet times in the form revolutionary legality.

The 1993 text is an amalgamation of the conscious minds of the people and experiences of the Soviet past coupled with the imperial conservatism when it comes to the Russian values. All the constitutions of Russia had an organic sense to them, they were never too far from the people whom they addressed, the popular element of law was ever present as it was a crucial factor during imperial times to draw on the identity of Russian people to mark the greatness of the Russian state, the Soviet leadership was aware of the contribution of the toilers and the workers in the organisation of state and sustaining it while the 1993 constitution was framed at a time when the feelings of Russian nationalism were revived by a leader who in turn became the president because of the said surge in the nationalistic ideas

Just like every other constitution the Russian constitution was state specific or to put it more succinctly it was society, people, culture and norms specific. There is not a single legal tradition that can overlook these factors and sustain itself in as law of the land since laws and morality both are drawn from culture and every political culture has its own legal culture. The state and its institutions are shaped by the people and their inherent mentality which is a product of centuries of cultural fabrication. No two

² Atlanticism is a belief in the necessity of cooperation between North America and Europe.

constitutions and the respective constitutionalism can be the same, the element of universality has to give way to the idea of national specificity. The phenomenon of absolutism is not applicable to the laws since it would amount to robbing the human race of centuries old traditions and customs tantamount to legal enslavement. The only exception to such an argument is the theory of natural rights which is free from from any cultural or traditional influence since these rights are intrinsic to human nature, but such an approach if applied to legal discourse is narrow and there exists a plethora of laws once the ambit of natural laws recedes. The constitution of 1993 was one such document whose purpose was to serve a democratic republican state having an imperial and socialist past.

It has already been discussed that the Russian state was plagued by instability owing to the dissolution of Soviet Union and opposing camps within the state to seize state power. In the backdrop of these acts the task of constitution building was taken which made it necessary to not only include the pan Russian citizens content into it but also address the issue of state building. The 1993 constitution represented an understanding between the liberal and democratic social set up and structural and institutional capability of the state and it was an attempt to promote the growth of a vibrant civil society and an order backed by legal prowess of the state. The October 1993 events when the Russian white house was shelled by the army on the direct order of Boris Yelstin proved the existence of a newly found order based on the might of the ideas of nationalism, a feature that has always been one of the characteristics defining constitutionalism in Russia.

Constitution of 1993

The constitution of 1993 was ratified in a usual style of holding a referendum and gave a fresh start by replacing the 1977 constitution, though entirely different in its approach yet culturally connected. There was an ideological break between the Soviet laws and the laws of Russian Federation laws and the constitution had democracy, open economy and liberty at its core, there was no state sponsored ideology or principles that guided the constitutional laws like the Soviet times. Though the system remained centralised which was inherent in the way the power was transferred (actually taken) from CPSU to the Russian presidency. The weak economy and the

problem of national integration played a decisive role in deciding the nature of the office of the president of Russia.

The idea of cultural pluralism which was contained by the external shell of Soviet ideology came to the fore for the first time since Imperial Russia and it became increasingly difficult for the new regime to tackle the issue firmly owing to domestic chaos and international pressure. The constitutional design favoured cultural pluralism, gave democratic rights of self determination and introduced a liberal discourse which was not well suited to the problems that were becoming increasingly evident, certain autonomous regions started the demand for independence and some declared independence from the Russian state (Chechnya). The cultural distinctness of Russia and the problems of subnational movements were the major reason that shaped the Russian constitutional design in 1993 apart from the October crisis. The ideological stronghold of the past made it necessary for the new leadership to cement its presence strongly and curb any movement that was raised to topple the established government.

The 1993 constitution was framed in the backdrop of complete power transfer from one systemic orientation to another and thus its objectives were not just to define the legal and societal relationship but also to help rebuild an entire nation sans an ideology patronised by the state. The modern constitution begun with an established constitutionalism in its own right. The notion of state and power was to be clearly defined and the difference between absolute and limited power was focussed upon in the constitution, though the 1993 events culminated in a very strong president's office. The exceptional need was the demand of exceptional times where existence of the state was necessary in question than principled approach to the constitutional provisions which requires gradual commitment.

The constitution recognised the multi cultural universe of the Russian state while promoting the idea of united Russian people. The focus was on the reconstruction of the society and state together so that the national adhesion and civil cooperation could go hand in hand. The dual objectives of creating a national society and a civil society was a step to revise the value of liberty in defining the relation of the state to the society. The practical ideal of unity of the state was carried forward as it is from the past (Imperial and Soviet) with specific references to human rights and civil peace.

The constitutional authority was vested in people and recognition was given to the world community thus opening the discourse of international laws and human rights to guide the state in achieving these principles on the domestic front.

The soviet practice of democratic centralism was replaced by a simple democratic law bound principle which was to govern a federal, republic of Russia. The ideas of federalism was a soviet legacy which continued to assist the new Russian state. Immense focus was placed on rights and freedom of citizens. Article 2 of the constitution mentions civil rights to be of supreme value thus indicating the endeavour of the state to nurture the civil society, it now became a legal responsibility mandated by a constitutional decree. The idea of sovereignty was placed for the first time in the people of the state rather than a person or a party, recognising the multinational nature of the sovereign. The presence of multinational character in the source of sovereignty of the Russian state marked the willingness of the state to acknowledge the differences among the people as far as their cultures are concerned and giving them complete freedom to decide for themselves in their individual rights. There was an absence of a state sponsored ideological identity that acted as a base for the people in the past. The people were allowed to directly elect their representatives at the centre, state and local level.

The devices of free elections and referendum were the means to realise the democratic aspirations of the state and the people. The drafters were careful enough to evade any possibility of a power struggle among the elites and thus made separate provisions so that no party could stake claim to the government except by legal method of election or referendum, “Nobody should usurp power in the Russian Federation. The seizure of power or usurpation of state authority shall be prosecuted under the federal law” (Article 3 Clause 4 Russian constitution of 1993). The aversive aspect of constitutionalism was seen in the 1993 constitution as the makers were clear about what should not be permitted rather what should be under the laws.

The laws were given preponderance over any party or person and it was the law of the Russian Federation which was to reign supreme, a trend which defined the future of Russian constitutionalism and the rule of law which replaced the system of rule by law followed in the Soviet Union. The autonomy of several regions were preserved as it was done during the Soviet times to account for different social traditions. All the

local, state and autonomous bodies were granted equal status and equal access to the constitution. The Soviet practice of dual constitution, the federal one and the one of the constituent units, was continued and the autonomous districts and regions were allowed to have their respective constitution but in conformity to the central constitution.

The constitution covertly managed to realise the values of three D'S, democratisation, decentralisation and delegation. The constitutional provision for direct elections gave each and every person a right to register his/her say in the government formation at the local, state and central level and the system of dual constitution delegated the power of legislation to the people concerned to account for difference in social norms in the existing sub national groups. The constitution proclaimed Russia as a social state (inclined towards welfarism) having responsibility towards the betterment of its citizens. The constitution preserved the soviet practice of citizens welfare while tactfully avoiding any ideological reference rather it paved a way for the development of free market oriented welfare state.

The constitution created three different bodies for the administration of state authority viz Parliament (Legislature), Executive (President and PM) and Judiciary and all three of them were independent, a division which was based on Montesquieu's separation of powers, a primary requirement according to western democratic thought for any decent constitutionalism to exist. Constitution provided ample scope for the federal government, state government and the respective government bodies to work in tandem as there were clearly demarcated legal boundaries set up by the constitution. The drafters were aware of the clash of authority in cases of official arrangements and treaties regarding division of powers thus laws were made to incorporate official treaties and arrangements for smooth functioning of the government.

Article 13 of the constitution proclaims that the Russian state is ideologically neutral and recognised ideological diversity. There was an attempt to diversify the domestic politics for a healthy competition thus political diversity and multi party system was chosen for the federation. Russian history is rife with strikes, violent outbursts and revolutions so the constitution allowed for public associations but at the same time serious attempts were made to curb any form of racial, national, religious or

revolutionary association. The Russian federation like its Soviet counterpart stayed away from any theological leaning with complete freedom to the citizens to practice any religion and keeping all the religious association equal before the law.

Writteness of the laws were preferred over conventions as no law could have any effect in the Russian federation unless published officially. The constitution provide the basis for recognition of natural rights of man and principles governing human affairs. The legal system of Russia was all encompassing as it took note of not just all the international laws but also international agreements that were made by the Russian Federation. The legal effect of International treaties was assimilated in the legal system of Russia and if any rule/rules was made by any treaty which is/are distinct from law, then those rules must be applied without disturbing the constitutional fabric.

The constitution realised the international conventions while dealing with the issues of human rights the soviet practice of stripping away the citizenship on the basis of law was removed and basic democratic rights based on international standards were incorporated as a norm. The issue of human rights was discussed during Soviet times too but not much was achieved as the deviation from socialist principles was seen as an act against national unity and it was dealt accordingly. These provisions were removed from the 1993 constitution. Article 18 is of utmost importance when it comes to implementation and definition of human and civil rights. It has been mentioned therein that laws does not describe the implementation of these basic human rights but the other way round that is the application of laws should be in accordance with these rights as they are inviolable in character. The content of the laws must derive from the content of the rights and the functioning of legislature, executive and judiciary should be such that these rights are guaranteed by the law itself.

The principle of equality was granted to everyone irrespective of race, religion, culture and beliefs and gender neutrality was adopted as the state principle. No difference was recognised between a man and woman except for the natural ones. The state was responsible for the dignified life of its subjects with freedom from any form of humiliation or torture that might derogate the form of human existence. There was a provision for detention of a person only when it was permitted by the court and extensive checks were put in place to prevent illegal or prolonged detention. The right

to private property was reinstated and anti snooping provisions were added to guarantee freedom from state coercion and a right to good life. Article 24 touches upon necessary legal instruction for right to information to the citizens about any matter that directly or indirectly affect their lives unless it is protected or made an official secret by law.

The state allowed sub national identity within the republic anyone belonging to any autonomous region or to any other country had full right to ascertain the said nationality without fear and linguistic freedom was accorded to everyone. The Soviet practice of limiting movement within the state was ended and the citizens were allowed to travel and settle through out the length and breadth of the country. The liberal principles of freedom of speech, thought and expression were advanced to the citizens without any restrictions and any propaganda which aroused the feeling of discontent in the country or had the potential effects of stirring consternation among the citizens or group of citizens was prohibited by law.

The fourth pillar of democracy was given ample freedom with regards to information dissemination and exchange. There were legal prohibitions on the censorship of press or gagging it. The civil society was promoted by giving people a free chance to associate and develop their conscience according to their needs. State intervention in the public associations was prohibited till the time they were in consonance with the laws. Russian history had many instances of citizen's protests since imperial times though this trend became passive during the Soviet era. The constitution guaranteed right to assemble, protest or hold rallies. The popular participation in the affairs of the state was constitutionally guaranteed and people were allowed to vent their thoughts regarding affairs of the state either directly or through their representatives. Universal adult franchise was the principle adopted for elections with the exception being such people who were rendered ineligible by law. The right to professional and economic freedom was provided to everyone and monopolies were prohibited to check the oligarchic tendencies which were on the rise at the time.

The right to property was given to everyone and protected by the law but it was not absolute as the state had the right to acquire any property legally for the purpose of greater good. Though such an act of the state made it necessary to arrange for due compensation to the owner for the acquired property. The state was given a social

responsibility by this provision to not harass anyone in the name of national interest. The constitution makes the state responsible to International treaties regarding climate and environment and specific provisions were made to ensure the same in the domestic sphere (Article 36). The idea of compulsory labour was removed from the legal terminology. The labour laws were made according to the democratic principles not socialistic principles, equal wages were guaranteed to everyone without any discrimination and minimum wage was established as prescribed by the law. The issues remained the same but the legal jargon and understanding changed according to the organising principles of the state.

Since the Russian Federation was proclaimed a social state having welfare responsibility towards the betterment of its citizens, the international rules regarding basic maternity care, childhood and family were incorporated in the constitution and necessary guarantees and provisions were made. The state was responsible for the elderly, disabled and the unemployed and state pensions were made compulsory by law, a widespread practice in the Soviet times. Though Russia was a social state based on welfare state principles the economic hardships faced by it at the time made it very difficult to realise every constitutional principle by word. The huge legacy of social benefits left by the Soviet state was difficult to fulfil for obvious reasons.

The principle of free and compulsory education was taken from the western constitutions as they had a huge impact on the framing of the 1993 constitution while the leadership tried hard to move away from Soviet legacy. Academic freedom was granted to the intelligentsia of the post soviet Russia and even the soviet writers who were exiled or barred were allowed to return. The individual endeavour to preserve him/herself was recognised by law. No one was allowed to impede anyone else's rights. The principle of Habeas Corpus was embodied in the new Russian constitution though no specific written reference has been made. The law guaranteed protection from unjustified restraint of any person and the person had the right to a free legal assistance to defend himself/herself in the court of law. Right to fair trial and neutral adjudication is embodied in the legal rights of a person facing trial. The responsibility is not to be placed on the accused to prove his/her innocence, according to the law.

There is a plethora of rights concerning the defendant and his actions in the law courts, the constitution makers have tried hard to give full representation even to most

necessitous of the defendants. The constitution provides relief from double jeopardy and specific regulations are laid to collect evidences. The procedure of evidence collection must conform to the federal procedure otherwise they would be rendered inadmissible in the law court. There is prohibition on any self incriminating statement made by the person himself or any of his close relative with the federal laws playing an important role in deciding the closeness of the relation and thus removing the chances of any mala fide intent or foul play. The doctrine of ultra vires³ is well recognised and the laws necessitates plentiful action in case any administrative wrongdoing is reported along with compensation to the victim of such excesses.

The protection from ex post facto⁴ laws have been granted by the constitution. The timing of the crime must be kept in mind while adjudicating and in case a crime has been committed and the related law changes during or after the crime has been committed then retrospective adjudication should take place and jeopardise the accused. The crime must be considered only when it is established by law when it was committed, no offence can be imposed on an antiquated action which was not regarded as a crime defined by law. The constitution is liberal enough to account for any gaps in the law which does not account for international human rights or deals with them half heartedly.

Recognition of International Law

The constitutional principles have given preponderance to the universal human human rights. The constitution holds the international law in high regard and an attempt is made to account for the universally agreed principles of justice. The preamble mentions about the world community and Russia being a part of it, this has been clearly specified in certain parts of the constitution especially while dealing with human and civil rights. The post soviet legal doctrine makes it impossible for any law to find mention in the constitution that is in conflict with human rights. The only limit on human and civil rights by the federal laws can be placed where it becomes necessary to protect the constitutional order, peace of the state, defence of the country

³ Ultra vires ('beyond the powers') is a Latin Phrase used in law to describe an act which requires legal authority but is done without it.

⁴ Ex post facto is most typically used to refer to a criminal statute that punishes actions retroactively, thereby criminalising conduct that was legal when originally performed

or security of the state. Another instance where the limits on human rights can be imposed is when the emergency provisions are in effect and such restriction is also defined by the respective laws enacted. The constitution recognises the emergency provisions and these were inserted considering the chaotic environment when the constitution was being drafted.

The constitution draws a fine balance between individual beliefs and the citizen's duty towards the fatherland, it is obligatory for the citizens to defend the fatherland and at the same time there are rights which allow an individual to opt for any other civilian services in favour of the nation if his/her beliefs are contrary to military service obligations. This is how the constitution manages national security while taking utmost care to not disturb national harmony. The constitution guarantees anti extradition law to the Russian citizens which protects them from an arbitrary action by any foreign state. The law allows the Russian citizens to have citizenship of any other state while being Russian citizens, an attempt to realise the promise of internationalism that the constitution envisaged.

The constitution retains the soviet era legal rights for the stateless person treating him at par with the Russian citizens as far as the rights and duties are concerned but such an extension of rights is subject to change in case a federal law specifies otherwise. The state is given powers by the constitution to consider foreign nationals seeking asylum in the state while complying to the universally recognised international laws on the subject. A complex extradition procedure is mentioned in the constitution which necessitates that any criminal or political proceeding must have congruence with the federal laws or the international federal treaty regarding the crime for which a person is held liable. If the laws or treaty of the state finds no mention of the crime that the person is accused of committing he/she can't be extradited.

The federal system noticed little change in the present constitution. Much of the old soviet arrangement was retained except for a few changes in the functioning of the republics. The nomenclature was kept as it is except for the changes brought about by dissolution of the Soviet Union and certain territories were changed in the process. The concept of dual constitutions is retained by the Russian Federation with a federal constitution functioning at the centre and the constitution of the republics characterising specific cultural distinctions. Both the soviet and the Russian

lawmakers were wary of the multi national character of the state and the constitutional arrangements were made to assimilate these differences.

The laws made by the federal government is to have effect in entire state and any law made for particular republic or autonomous region must take into account the executive and legislative concurrence of the the said region. The idea of self determination is applied actively to the centre- republic, centre- autonomous region which streamlines the legal culture throughout the country and prevents dissent. The law necessitates that the federal government must respect any treaty between itself and any autonomous region and no usurpation should take place which jeopardises the autonomy. The laws establish a mutual relationship between the centre and the constituent units and provides immense scope for deliberation in case any change to the status of a constituent entity is to be made. The issue of linguistic imposition is handled deftly and no patronage is given to one language to the disadvantage of another.

Though Russian is the official state language but the states have been given a free hand to determine their own official languages. The idea of Russification and the soviet policy of indirect dominance of Russian language is avoided and no reference to compulsory learning of the Russian language is made in the legal narrative. In the USSR language was the basis of any person's ethnicity and if the person does not speak the ethnic language then he would be considered Russian even if he belonged to any other ethnicity, that is the person would be considered a Russian national but not a member of his ethnic group if he doesn't know that language. This policy is reversed and full cooperation is given to the citizens to develop and study their own language.

The rights of minorities are duly recognised and apart from constitutional guarantees the concerned international laws and International treaties of the state are willingly admitted in the legal discourse of minority rights. The ethic minorities in the Soviet days were subject to Sovietisation to contain ethnic tensions and the issue of minority rights were relegated to the background so that the entire country started representing just one nationality that is the soviet nationality. Such an attempt, for the time being, pacified the minorities but below the surface there were severe contentions that grew over a period they were noticed in the waning days of the USSR. The constitution

borrowed hugely from these experiences and necessary provision are included in the 1993 constitution to prevent hegemony in any form.

The constitution of 1993 ensured the democratic functioning of the state. The democratic aspirations of the new constitution can be broadly placed into three categories namely, the economic system, the political system and the social system. The grant of right to property is an essential step towards the creation of a free market economy. The constitution guarantees freedom of occupation and economic activity. The recognition of broad political rights of the citizens and allowing ideological plurality is a crucial break from the soviet past. The political competition is promoted which allows people the rights to choose their representatives from plurality of options. The constitution favours social pluralism and attempts to create condition so that idea of nationalism can prosper and coexist with multinational character of the state. The socio- economic and political arrangements provided by the 1993 constitution favours all round democratisation.

Separation of Powers: Parliament and President

This constitution, just like any democratic constitution, divides the responsibilities and powers among among the centre, state and the local bodies. The areas of national defence, amendments to the constitution, treaty obligations, managing the system of representative institutions, principles of federal policy, economic policies, nuclear power, international relations and federal state services are exclusive domains of the federal government.. The joint jurisdiction covers wide ranging issues like laws of the republic and autonomous regions, protection of human and civil rights demarcation of state property, education, environmental pollution and municipal government.

The states are given full powers in those areas which are neither under the federal government or the joint jurisdiction of both. This principle is quite similar to the demarcation of central, provincial and concurrent subjects in other democracies around the world. The separation of jurisdiction and powers among the various levels of government is the most important aspect of constitutionalism. The limits of power of any one branch of the government forms the crux of any government which functions in a limited manner, such a system exists around the world in other

democracies. The constitution also prohibits any barrier to the functioning of an open market until and unless necessary federal law is made to stop such a movement.

The constitution focused on stabilising the economic system and sufficient provision are added to ensure smooth economic function. The constitution validates Rouble as the only official and legal tender in Russia. The economy of the state at the time of drafting the text was weak hence the authority of taxation was kept with the federal government. The law also provides for additional fiscal and monetary measures for the economy and the federal government shall take any step deemed necessary to align the economy with the international financial and monetary system. The shock therapy of the 1990's, designed keeping in mind the economic hardships faced by the country, was a legal measure having a constitutional mandate.

Every democratic nation needs to address the issue of the clash in jurisdiction since it is only possible in democracy. It reflects a vibrant democracy where no one branch exerts complete authority and there is an authority which resolves such clashes, ie. the constitution. The supremacy of constitution and constitutional arrangements is a necessary precursor to the establishment of constitutionalism. The federal jurisdiction and jurisdiction of the constituent units is separated by the constitution. The laws made by the constituent entities or any autonomous region or local body must conform to the constitutional arrangements and federal laws and any law which usurps the federal authority or stands in stark opposition to the federal constitutional arrangement should be dropped and federal law is to prevail. The constitution also recognises the rights of republics in the sphere of law making and any legal act which is specific to the entity must reign supreme if there is to be a clash among the federal laws and the said legal act. The constitution makes a fine balance in terms of legislation of laws at the federal and the state level and each has been given particular powers and. respective limits are imposed.

The real strength of any constitution lies in recognising the limits to the central power and the constituent powers. No constitution can allow the centre to have sway over all the decisions taken for the nation as it opens the door towards a unitary form of government while at the same time the autonomy of the units needs to be restricted as unbridled autonomy breeds succession. The text of 1993 manages to keep the scales

perfectly balanced which disallows either side an excess taste of its authority thus checking unitary tendencies of the centre and the secessionist tendencies of the units.

The constituent republics are given full rights to establish bodies of local governance or any region of federal significance independent of the federal government but the formation of such local entities must conform to the basic principles of the constitutional order and the principles governing the formation of local bodies as enunciated by the federal laws. The constitution, while maintaining the principles of federal autonomy, stipulates that the federal government and the government of the constituent entities of the Russian Federation along with the executive bodies of the federation and executive bodies of the constituents units must form a unified system of executive authority in the Russian federation, an arrangement to ensure federal unity and principles of federal separation at the same time.

The principles of delegation and devolution of powers is a cornerstone of the present Russian constitution as it allows the maximum development of local governing bodies and gives voice to the grassroots of the political hierarchy. The executive bodies of the federal government are allowed to have their own bodies and appoint officials. The executive bodies of the centre can delegate their functions to the state executive bodies according to the arrangement reached by the two within the limits specified by the constitution. Similarly the state government executive bodies can delegate their functions to the federal government executive bodies on the basis of a legal arrangement provided by the constitution. The cross delegation of powers arrangement allows a more nuanced approach while dealing with local issues and also provides a stage for cooperation between the federal and the constituent unit's executive. Apart from this the federal principles guides the implementation of policies of the federal state on the entire territory of the country which keeps the elements of coercion in check.

The constitution declares the president to be the head of the Russian state and a guarantor of the constitutional rights and freedom. It is interesting to note that though the president is the head of the state but he is not supreme, the constitution and the presidential chair complement each other. All the presidential duties emanate from the constitution thus essentially the power and authority of the president flows from the constitution thus breaking away from the past practice of party being the supreme

power and constitution acting as a second fiddle in managing the affairs of the state. The constitution provided a four year (which was effectively increased to six years by 2008 amendments) term for the office of the president and a limit of two consecutive terms was set on the reelection of the same person to the office.

A considerable western influence is seen in the constitutional provisions related to the election of the Russian president and his official duties and length of his term as a first citizen of the state. The office of the president in Russia is powerful like its American counterpart but there are certain differences in the executive powers enjoyed by the two offices. The American president is the head the state and the head of the government while the Russian president is the head of the state but a separate institution runs the government. The Russian constitution envisage formation of a parliament while the US system has congress but no parliament.

The constitution provides the procedure of checks and balances on the powers of the president within the federal framework. The president's office can dissolve the government only according the provisions of the constitution. Another important contribution of the constitution is to bring the role of judiciary in conciliating the disputes between the federal and the state government bodies. The president is not allowed to single handedly deal in such cases and it is mandatory that the matter must be referred to the appropriate court before arriving at any final decision. The judiciary and the office of the president have equal powers on matters regarding violation of the constitution.

The constitution provides the office of president the ultimate powers as far as the armed forces of the Russian Federation are concerned, he is assigned the post of commander-in-chief of the Russian forces and his decision regarding any military action is final according to the law. The constitution also confers the power to impose an emergency in the entire country or a part of it as required by the circumstances in a manner prescribed by the law regrading such an action. The president has a mammoth share when dealing with the international issues involving Russia as the issue of citizenship, grant of political asylum and certain other matters are exclusively dealt by the president's office.

The powers of the president are unprecedented and any law or legal treaty made by him is to be followed in the entire country without dissent but his powers are not absolute as the source of the powers of the president lies in the constitution itself and any presidential decree violating the basic constitutional provisions shall have no effect whatsoever. This is one of the most important achievement of the constitution as it takes away the dangers of absolutism and puts Russian in the league of nations having a definite constitutionalism in function. The reference of separation of powers as mentioned earlier marks a break from the past where the laws had to conform to the state ideology.

The constitution provides elaborate procedure for the removal of the president from the office. The impeachment procedure is a legal device which has a constitutional backing. Article 93 of the constitution allows the lower house of the Russian legislature to initiate such proceedings against the president. The impeachment procedure is to be ratified by the constitutional court of Russia and the Supreme court of Russia before being presented to the upper house for accent and giving the process a final practical effect. The legal procedure to remove a president is quite complex sharing the systemic nuances with the American impeachment procedure.

The role of the legislature in the impeachment procedure ensures that any political foul play against the president is negated. It is because of this reason that the law demands that impeachment charges must be supported by a majority of the members of the lower house and a commission is specifically formed for the purpose to look into the accusations. The constitution imposes a time limit under which the charges pressed must be adopted by the upper house and if this time limit is not respected the federal law dissolves the charges of impeachment on the president and he is reinstated in his office. It is interesting to note how detailed and intricate procedures are put in place to safeguard the president from any political bandwagoning and the Russian legislature from political whims of the President, thus giving a big ode to Montesquieu while realising the principles of separation of powers and thus maintaining the balance of power among different arms of the government.

The Russian parliament or federal assembly as it is known consists of two chambers- the council of federation (upper house) and the state дума (lower house). The upper house is an official representative of the constituent units of the federation with each

constituent unit having two representatives, one from the state executive body and other from the state legislative body, this arrangement is unique to Russia in terms of constituent unit's representation in a federal set up. The lower house, Federal assembly consists of 450 deputies elected for a term of five years through direct elections. The upper chamber members are not directly elected but appointed and one member from each constituent unit is nominated. The federal law also allows the president to nominate members to federal assembly like the Indian practice which allows the Indian president to nominate members to the upper house as per the law.

The constitution prohibits anyone from holding dual posts which was common under the leadership of Boris Yelstin. The constitution also prohibits members of the lower house of the parliament to engage or own any other office of profit while serving their terms as the legislators of the Russian Federation. The members of the parliament are given legal immunity during their term of office and the upper house is of a permanent character while the lower is dissolved every five years on the completion of its term, sharing the likes of parliamentary systems around globe like U.K and India.

The two chambers of Russian parliament are supposed to hold separate sessions, there is also a mention of the joint session of the two houses. Each house has a procedure to elect the leader of the house and it is the responsibility of the leader of the house to set up committees and organise parliamentary to resolve any in-house issues under their authority. The constitution gives the right to each chamber to make their separate convention dealing with the business of the house and procedures for governing the day to day activity of the house. The implementation of the federal budget is the joint responsibility of both the houses, the accounts chamber is supposed to have the representatives from both the houses of the parliament and the composition, procedures and rules of this chamber are determined by the federal law.

The right to initiate a legislation is not confined to any one branch of the government rather the constitution allows a wide array of legal representatives to introduce a new legislative initiative. The president, council of federation, members of council of federation, deputies of state дума, legislative bodies of constituent entities of Russian Federation, the constitutional court of Russia, the Supreme Court of Russia and the Arbitration court of Russia are all capable of initiating legislation within their

respective constitutional powers. This is very different from what is practiced in the parliamentary democracies where the right to adopt a legislation is the constitutional right of the legislature and any judicial pronouncement requires a legislative ratification for it to become an enforceable law.

The legislative powers of the two houses of the parliament are different with respect to passage of federal laws. The lower house that is the state Duma alone has to power to adopt any federal law by the majority of the members voting in favour of the law. It is then forwarded within five days to the upper house that is the Council of Federation for further examination. If the half of the council members agrees to the law or if there is no action for fourteen days it is deemed to be passed by the council. If there is any disagreement with respect to the law within the council the Duma has to reconsider the law and if the Duma rejects the proposal of the council while considering then the law must be passed by an absolute majority in the Duma, two third of the members, and the law is considered to be successfully passed.

The powers of the president are at par with the legislature in terms of promulgation of law and its ascension as a constitutional law. The constitution gives president the veto over any legislation forwarded by both houses of the parliament and he can seek reconsideration. The houses on their part have to revisit the laws and take into account the objection raised by the president but if the same law is again forwarded to the president with two third majority then the president is legally bound to sign that law and promulgate it within Seven days. The constitutions allow no one to hold a sway over any legal procedure.

A federal constitutional law has to be passed by the both the houses with absolute majority each of them separately supporting the adoption of law. The constitution allows the president to dissolve the state Duma but certain restrictions has been imposed to check political mala-fide. If the Duma presses charges of impeachment against the president the presidential power to dissolve the house is, for the time being, dissolved. Another safeguard to protect from presidential excesses is that the Duma can't be dissolved while emergency is in operation in the federation or a part of it.

Government and Judiciary

The Russian Federation has evolved a new mode of government which is neither parliamentary nor presidential, it is an essential mix of the features of the two. The parliamentary form of government functions around the parliament which is a separate seat of power distinct from the office of the president and the president can't dismiss the parliament, it is the sole action of the lower house which passes a no confidence motion to that effect and thus allows the president to dismiss the government. The Indian system of government is a typical example of the parliamentary government where the Lok Sabha is responsible for running the government and the office of the president makes decision regarding the government according to the advice tendered by the Lok Sabha.

The presidential system on the other hand, as the name suggests, has the president as the head of the state and the head of the government. He is appointed directly and it is beyond the power of the senate or the house of representatives to remove him or pass a no confidence motion against him as there is no parliamentary responsibility. Both the congress and the president are independent of each other in the US. None the above two classifications and characteristics completely match with the constitutional arrangements of the Russian Federation. It is a hybrid of the two forms of government - the parliamentary form of government and the presidential form of government.

The government in the Russian federation is the executive head and consists of the chairman of the government of Russia, deputy chairman and the federal ministers. The chairman of the government is appointed by the Russian president as advised by the state Duma. The constitution makes it mandatory for the lower house and President to converge at a choice while determining the executive head of the government which is not seen in the presidential or parliamentary forms of governments. The constitution allows the state duma to reject presidential nominations for the post of chairman and if the deadlock continues between the president and the Duma then President is allowed to dissolve the Duma and call for new elections.

The responsibility to present the budget has been given to the government and it has to present the budget to the state Duma. The deferral budget and its report are the sole

concern of the government and the analytical part is done by the Duma. The government of the Russian Federation act as an implementing tool of all the constitutional laws, legal decrees and legal promulgations of the president of Russia. The decrees of the government of Russian Federation have a binding effect on the entire territory of the country. The constitution allows the president to abolish any decree or law of the government that is in conflict with the constitutional laws, federal laws or the promulgations of the president of the president of Russia. The government can tender its resignation only to the president and it is in his right to accept or reject such resignation.

The constitution provides the president of Russian Federation with the powers to appoint chairman of the government, the members of the government, dismissal of the government and the dissolution of the parliament. These powers represent the overlapping nexus of the powers that a Prime Minister enjoys under parliamentary form of government and the powers enjoyed by the President under the Presidential form of government. This is close to the French model of the Presidential form of government as envisaged by the 1958 French constitution under Charles de Gaulle (Akron law review, Krylova). The French president was not supposed to take the advice of parliament while dismissing the government.

This evident difference can be attributed the absence of any real party system in Russia, the party system is somewhat unstable in the country while the French Republic functions with a robust party system at play. The absence or lack of a well grounded party system places an extra responsibility on the president to make the government stable. The French system looks at the parliament and the government to make a decision and a motion of no confidence is passed in the parliament before the president can actually dismiss a government whereas in Russia this process becomes complex as the there is little to no party politics (Ibid).

The president plays a more direct role in the dismissal of the government in Russia. The constitution is successful in creating large system of checks and balances where the president has to take into account the advice of the parliament and the government itself to dismiss the government. The dissolution of the parliament is introduced in Russia for the first time by the 1993 constitution. The powers of the president while dismissing the lower house are subject to fulfilment of conditions, one being the

failure of the lower house to reach a consensus with the president in nominating the chairman of the government and second being a no confidence vote being passed by the government. The parliament is also empowered by the constitution to impeach the president which is similar to the US model of presidential impeachment. The presidential nominations in judiciary are all subject to legislative approval. The constitution has avoided the concentration of power in any one branch of the government (ibid).



Image 4.1. Judiciary in Post Soviet Russia.

Source: Russian Legal information agency.

The Russian judicial system recognises the means of constitutional, civil, administrative and criminal proceeding towards justice. The constitution recognises the principle of judicial independence from executive and the presidential office and subordinated only to the constitution. The judges are provided a permanent tenure and no interference is allowed by the constitutions which might hamper their idea of justice. Any action of the executive to the disadvantage of the judges while in office is prohibited by law.

The judges can be removed from their office only according to the procedure established by law and on grounds mentioned in the constitution. The judges are protected from any criminal proceeding while discharging their official duties, any proceeding of criminal liability can be initiated only according to the prescribed law and for the offence committed in their individual capacity. The institution of jury is not completely abolished but its use is specified to certain cases where the law allows it. The constitution gives a separate budget for the courts to thwart any chances of judicial dependence on any external source for finances. This measure, to an extent, prevents the judges from being coerced externally to shift the path of justice.

The constitutional court of Russia is tasked with the job of determining the constitutionality of federal laws, legislative laws, presidential decrees, the legislations of the executive bodies, legislations of constituent units of Russian Federation and the legal pronouncements of the state Duma. The President of the Russian Federation alone can't have a say in the the acts of constitutional court or seek for constitutional interpretation of any federal law. Such an act has to be in accordance with the laws specified by the constitution and requires a consent from all the union executive, legislative bodies, constituent unit's executives and legislative bodies. The constitution has given immense powers to the constitutional court with respect the any legislation or decree passed by any institution in the entire territory of Russian Federation.

The constitutional court is the authority which decides the constitutionality of laws enacted by federal and state legislative bodies or any legal pronouncement of the president and any law can be quashed which violates the constitutional principles, in this manner it is the final arbiter and interpreter of the constitution of Russian Federation. The Supreme Court on the other hand is the highest court in Russia which

deals with all administrative, civil, criminal and other matters which are under the jurisdiction of the lower courts. The Supreme Arbitration court of the Russian Federation similarly acts as the highest state organ dealing with the economic disputes and other matters handled by lower arbitration courts and guide them in their routine functioning.

The constitutional design in terms of judiciary is a complex arrangement to ensure speedy and efficient delivery of justice. The practice of assigning different aspects of law and justice to different institutions within the ambit of the institution of judiciary is a unique device to ensure institutional efficiency. The Constitutional court, the Supreme court and the Supreme court of Arbitration are the three highest courts in the Russian Federation that are tasked with different responsibilities and thus allow more robust judicial system. This arrangement of intra-judicial separation of economic, legal and constitutional interpretation by three different devices under the common institution allows procedural flexibility and greatly increases the judicial output. The judiciary plays an important role as an institution to define and refine the phenomenon of constitutionalism as an entrenched quality of any political system.

The appointment of judges is not a closed affair since the Council of Federation upon nomination by the president has been tasked with appointment of the judges of the Supreme Court, the Constitutional court and the Supreme Arbitration court of the Russian Federation. Another important institution provided by the constitution is the Procurator system under which the office of Prosecutor General exists, a practice inherited from the Soviet past. This is the only centralised structure in the judicial system of the Russian Federation. The office of Prosecutor General is one of the most powerful organs of the Russian judiciary and maintains a strict hierarchy wherein the public prosecutors are subordinated to the higher prosecutors of the constituent units and they are headed by the Prosecutor General.

The Russian constitution gives constitutional recognition to the third tier of democracy that is the local self governing institutions and a separate chapter is devoted to describe their powers, functions and duties. The rights of the local population are recognised by the constitution in issues pertaining to the local interests and the management of local property. The people are free to use any mode of

elections either direct or indirect, referendum or any other means deemed fit to elect the officials to the posts of local government bodies.

The principle of devolution of powers is a democratising trend but at the same time also respects the historical traditions and moral considerations of the local population. Article 133 provides legal protection to the rights of the local institutions and in any event where the state government or federal government body's actions results in any sort of exploitation of the rights of local government, the constitution mandates the provision of compensation and there is complete constitutional prohibition on any attempt to ban the rights or usurp the authority of local self governing bodies which are provided by the constitution.

Civil law system and Dictatorship of law

The Russian legal discourse is based on Civil Law System, a branch of legal system which had its origin in Europe and most of the democratic countries around the world follow this system. The civil law system is, most of the time, codified and kept as a separate instrument of the state which is seen as a reference, as and when the need arises. It acts as a primary source for a state and all other legal pronouncements, degrees and government laws has to conform to the basics of the law system to exist as laws in any country where the civil law system is followed. The civil law system is often contrasted with the common law system which is sometimes referred to as the judge made law system since it is based on precedents.

The major source of common law system is the U.K, where such system has been in practice since long owing to the superiority of the parliament to an extent that Jean-Louis de Lolme famously quipped, "the parliament can do everything but make a woman a man and a man a woman". It is necessarily a looking back into the past to arrive at a decision in the present conflicts and no specific codification of laws is found under such and neither there is an attempt for codification. The common law system is based on the principle of '*Stare Decisis*', a principle which emphasise on the fact that similar cases should yield similar results based on the earlier precedents and judgements.

The Civil Law system emanated from the Roman jurisprudence and the most important single source of this system is the text of *Corpus Juris Civilis* (*body of civil law*), also known as the code of Justinian, being passed by the Eastern Roman Emperor Justinian I. The civil law system draws heavily from the laws of the Napoleonic Code,⁵ the legal system of Germanic,⁶ city states, feudal law and practices of the local population in different parts of Europe. The concept of law had always taken into account some universal notions and any attempt at codification always tried to assimilate such principles to make the text authoritative.

The question of natural laws can't be evaded if one is trying to grasp the concept of civil law since the foundation of the system is laid in terms of natural laws. The laws which are made to govern the state or a society can't ignore the human factor since positive laws⁷ can't stay in isolation rather they need complimentary relationship with natural laws to stay afloat in any human society or state. The inherent rights which all humans possess are not given by the state but are guaranteed as such with the help of positive laws which are in turn provided by the state. The Roman literature on laws took into account the theory of Cicero who referred to the presence of natural law before the human made laws.

The civil law system begins in the conceptual den of abstractions which gives way to the formation of general principles. The element of legality is slowly acquired over time and the introduction of new principles and ideas is always welcomed in this system, it is because of this reason that the corpus of laws in the civil law system is ever increasing and there is no such phenomenon of socio-legal stagnation. It also attempts to distinguish the substantive character of laws from the procedural character of laws. The substantive laws represent the duties of the members of the society in terms of social behavior while the procedural laws determines the degree of just or unjust based on written laws which are determined in a court of law.

⁵ The Napoleonic Code is also called the "French Civil Code of 1804" defined the concept of equality before the law and also secured the right to property.

⁶ Early Germanic law was the form of law followed by the early Germanic peoples. It was an important element of early Germanic culture.

⁷ Positive laws are human-made laws that oblige or specify an action. Positive law also describes the establishment of specific rights for an individual or group.

Table 4.2 Difference between Civil law System and Common Law System

	Common law	Civil law
Also known as	Anglo American, English, Judge made, legislation from the bench	Continental, Roman, Romano-Germanic
Source of laws	Case laws, Statutes/ Legislations	Statutes/ Legislation
Lawyers	Judges act as impartial referees, lawyers are responsible for presenting the case	Judges dominate trials
Judge's Qualification	Career lawyers (elected or appointed)	Career judges
Degree of Judicial Independence	High, separate from the legislative executive branches of the government	High, separate from the legislative and executive branches of the government
Juries	Provided at trial level in some jurisdictions	May adjudicate in conjunction with the judges in serious criminal matters
Policy making role	Courts share in balancing power	Courts have equal but separate powers
Examples	USA, UK, India, Australia	All European Union states except Ireland and Cyprus, Russia, all of East Asia except Hong Kong

Source : *Judicial process: Law, courts, and politics in the United States, 2017.*

The major focus in the Civil law system is on the law of the statutes and it pushes the common law principles to the background. Statutory law functions in almost all the democratic countries of the world since it is made by a specific branch of the

government, the legislature, rather than the regulatory law passed by the executive or the common law which as such emanates from the judicial actions. The civil law recognises the statutes by all three levels of the government, the central, the state and the local governments, thus subtly strengthening the idea of federalism in the legal discourse of the country where it is being practiced. It is this process of these statutes coming together and compiled to make an extensive body of laws which is known as codification of laws.

The civil law is also known as citizen's law and rightly so since it recognises the elements of natural law and assimilates them into the corpus of statutes to provide the principles of just government. The civil law system deals with civil, criminal, administrative and economic matters thus covering the entire legal discourse of a state/ society. The jurisprudence emanating from this system is highly persuasive but not sacrosanct since the principle of evolution of laws negates such imposition.

The civil law system in Russia is followed since Imperial times, the USSR marked a break in this practice because the civil law was replaced by the socialist laws though codification was an important part during the Soviet times too. The Russian Federation recognises the civil law system and the 1993 constitution codifies the legal and social laws in existence. The private rights of citizens are given due place and are legally protected by the constitution. The constitution favours a civil society and grants public rights which are fundamental in nature and guarantees inviolability of the private rights like right to property or personality rights. The Supreme Court has the power of legislative initiation, the Russian constitution also recognises international law while dealing with the issue of human rights. Bilateral treaties also act as a source of law apart from the constitutional laws and federal laws. The case law is also recognised as a source of law and the judicial precedents are seen as important sources of judicial interpretation which makes the corpus of laws more robust. The legal system of Russia thus relies on codification, judicial interpretation, international laws, treaty obligations and federally constituted laws

The Russian civil law system is one based on the concept of *Pravovoe Gosudarstvo*, the Russian equivalent of rule of law but if we contextualise the phrase legally then it is more closely related to the German concept of *Rechtsstaat*, that is rule by law. The major difference between the two theories of constitution based government is rule of

law relies on legal positivist⁸ approach which does not take into account the idea of morals, statutes are important and they are capable of being morally neutral, and the rule by law recognises the theory of natural laws and place an equal emphasis on morals while dealing with the idea of just and unjust as this school of thought considers multiple sources of law.

The Russian constitution is not utterly normative or empiricist document as suggested by the legal positivist school it is rather an expression of the will of the people, the norms of the society the recognised structure of the general morality which is a product of history. The constitution is about the laws but it is also about the people's aspirations and longing for a democratic state based on laws and governed according to the laws and not by absolute power. The constitution had to be a bridge for them to rise as a nation while maintaining its integrity and unity and the tumultuous transfer of power and ground realities of the time made it impossible to overlook the looming issue of state fracture.

The Russian state works in the arena of dichotomy between the rule of law and law of the rule. To do justice according to the law at one's own discretion is a dangerous game as it invokes the fear of authoritarianism but on the other hand it also allows to recognise the empirically non verifiable variables which are important elements for bringing justice or injustice. The rule of a person according to the law is not whimsical rather a pragmatic approach to account for a separate set of state specific variables which are important but can't be covered under the general rule of law. The Russian Federation is a historic entity having a rich imperial lineage, a communist reconstruction and a post communist resurrection as a nation-state plagued with the issues of secession and sovereignty challenged by various groups within its territory.

It is important to understand the survival of the state before referring to its legal and political structure, the survival rests on a consolidated sovereignty which must be kept intact for a state to remain as such. The Russian situations demanded the Russian solution which favoured the leadership to deal with secessionist movements by

⁸ Legal positivism is a school of thought of analytical jurisprudence developed largely by legal philosophers during the 18th and 19th centuries, such as Jeremy Bentham and John Austin

augmenting and consolidating state sovereignty in typical Weberian⁹ sense so that the monopoly to use force on a legitimate basis rests with the state only. The Chechen wars made it almost impossible to rely on empiricist ideas of the rule of law as it was necessary to invoke extra legal powers in the hands of president to save the state. "No form of government can survive that excludes dictatorship when the life of the nation is at stake" (Rossiter 1948).

The idea of constitutional dictatorship can be understood in terms of the American response to the twin towers attack on its soil and the subsequent response of the US administration to check the growing global terrorism. The USA Patriot act was passed in 2001 which limited the power of the courts to review and limit the executive actions and gave unprecedented power in the democratic history of the USA to detain any individual. The phenomenon of 'midnight knocks' became normal. The right to information which was taken by the people of USA after much efforts in the 1970's was taken away by the sweep of a pen. The creation of the Department of Homeland Security (which was actually a merger of existing 22 federal agencies) went unopposed and the executive saw a wartime like surge in powers (Young 2003).

The American response was initiated to deal with a terror attack and the Russian response was initiated to deal with an attack on its sovereignty. The constitutional dictatorship is not the dictatorship of men but a dictatorship of laws, the length of this dictatorship is based on the gravity of the episode for which it was initiated. There is always a chance that any legal measure undertaken to deal with the issue at a particular time might remain in force even after the threat is gone. The American response was to a threat emanating from outside and the Russian response was to deal with a threat within the state and part of the Russian 'multitude of cultures and nationalities', and this is where the difference lies. The constitutional dictatorship in Russia is essentially a dictatorship of the law where the law reigns supreme while accounting for the cultural heterogeneity of the Russian Federation apart from other factors.

The state of Russia follows a unique blend of constitutionalism which recognises the principles of limited government, separation of powers, an independent judiciary but it also inherits the past practices of rule by law and the state being governed by laws

⁹ Relating to the socio-economic theories of Max Weber.

which are themselves a product of wide ranging inputs that affect the state is one way or the other. The emphasis of Vladimir Putin on the concept of dictatorship of law is evident enough to showcase the will of the leadership to embrace constitutionalism and democracy and abolish authoritarianism in any form. This combined with the unique cultural and historical realities of the Russian Federation gives ample scope to the constitution to play an important role in upholding the sovereignty while dealing with any emergency. It is imperative for the leadership to keep the laws supreme and rule according to the laws which are not just empiricist but also laden with morals and values so that the constitution can account for the diverse social fabric and the geopolitical realities of the nation.

Conclusion

The Russian history is rife with examples of numerous attempts by the leaders of respective times who vouched for constitutions and codification of laws and the nation has progressed ever since. The experiences of Russia in the post Soviet scenario has been peculiar in the sense that the idea of democracy was upheld while retaining the past practices which are more closely related to the authoritarian practices of Tsarist Russia or Soviet Union. The emergence of the notion of dictatorship of law is one of the leading contributions of the Russian state in the 21st century. The ideas of John Rawls's decent democratic centralism and the Kantian¹⁰ notion of 'Constitutional state' are aptly defined by the Russian constitution.

The leadership has played an important role in changing the character of the state from authoritarian to democratic with wide ranging changes brought in the fields of judiciary and bureaucracy. The economic reforms have paved the way for market oriented democracy and the tax reforms ensured free market economy to operate. The constitution has achieved the aspirations of the people. The executive is powerful but not unlimited and the legislature is a complimenting agency to the executive yet independent. The judicial reforms at regular intervals provides enough scope to the laws to account for changing national and International perspectives. The constitution has not provided the device of judicial review but the power of judicial initiation of legislation is a powerful constitutional arrangement to check any failure on the part of executive or legislature.

¹⁰ Immanuel Kant was a German philosopher and one of the central Enlightenment thinkers

CHAPTER 5

**ROLE OF PERSONALITIES
AND POLITICAL CULTURE
IN SHAPING RUSSIAN
CONSTITUTIONALISM**

Introduction

“Political culture refers specifically to the basic norms for political activity in a society. It is a determining factor in what ideologies will dominate a country’s political regime, it is unique to a given country or a group of people”

— Patrick O’ Niel

Political culture is a dominant aspect of political development of a country from a sociological perspective, a concept deep rooted within the subconscious thoughts of the people so much so that it is imbibed in their very life. It is for this reason that not just the development trajectory of the culture is different but even the defining stands of every political culture is distinct from one another. The reason that different political systems exist in different parts of the world can be attributed to the unique set of beliefs that are held close by the people, political culture is not just an abstract and dissociated value system which operates within the circles of the ruling elite but the masses too.

Political set ups like democracy- parliamentary or presidential, Authoritarian systems or a hybrid systems consisting of both democratic and autocratic tendencies are all dependent on the political culture. India having a democratic structure and a country ‘P’ having a theological autocratic structure is all the result of a distinct political culture which in turn resulted in diametrically opposite institutional development. Political culture is rooted as much in institutions and political structure of a country as much it is rooted in the values and sentiments of the people of the country. The entire value system which consists of emotions, sentiments and feelings of the people is always self sustaining and reinforces itself and such a process is mutual and covers the entire community. This results in a separate set of values for a given community which also shares a deep rooted connection with shared histories of the people of that specific community and hence the political behavior and political processes draw their meanings in a particular political culture.

According to Almond and Powell political culture is defined as “the pattern of individual attitudes and orientation towards politics among the members of a political system”. Political culture works as an adhesive for the people who identify themselves as belonging to a same set of ideas regarding their political understanding

and share common moral principles and associate themselves with a shared understanding of mutual identities. It is a generational trait which passes on from one to the other with certain changes over a period of time but the changes are not significant and hence a country can associate itself, as a community with shared value system, with a similar set of beliefs and principles for almost an indefinite period of time.

Political culture in general represents a huge cache of ideas but certain beliefs deal specifically with the governance aspect of a community. It provides an understanding as to how a government should run what all institutions should form and what their functions should be. The specific beliefs which give credibility and value to a political system are a defining feature of a political culture of a political system. Political development as a process is dependent upon political culture because the how a political system develops is based on the meaning that is given to the political processes over a period of time. It is these meanings which define one system from the other as values and morals change with community and so does the general and the political culture.

Factors governing political culture

History plays an important role in shaping the culture of a country as much depends on the shared history as to how people look at situations and their solutions. A society might be peace loving or might be at war with its own members (Tribes of Africa) or there can be a tacit understanding regarding cooperation among each other (North America and Europe after the Second World War). It has subjective overtures to its existence since it focuses on norms, behavior traditions and symbols. This gives a certain element of predictability to a specific culture and it can be known as to how a society will react to or understand a particular political situation or process.

It is not the political processes which makes the system predictable it is the people's beliefs and values which makes a political system work in certain way which gives predictability to the political processes. There are values which are endemic to a specific system like a democratic set up have people whose hopes beliefs are tied to elections and a general political tone which is used to discussion and debate. Such

values which give meanings to the political processes are political values and they form a part of a belief system which too is political in nature.

The question of how people think and what people expect of their political set up to be is dependent on certain historical, social, economic and geographical factors. All these factors largely impact in shaping the outlook of the people towards political processes which in turn shapes the beliefs and values. Political beliefs and political values thus form a political system which responds to stimuli from the outside or the inside. Anything in history which alters or disturbs any of the social, economic or geographical placement of a community results in recalibration of political values and beliefs which results in a change in system. The resultant culture is also different because historical development of a community is closely associated with the political development of the community.

A history of social upheaval in any form will shape the subsequent political system which gives hope to the people that they are capable of a change from bottom to the top if need be, the attitudes and beliefs of the people are shaped in such a manner that they vouch for change if their aspirations and expectations are not satisfied. The Russian political system has seen this issue since the times of the Russian empire while on the other hand the British monarchy sustained itself without much difficulty no matter how dicey the situation turned. The answer to this question lies in the historical development and following political development in the two countries the former depicting a series of violent revolts and upheaval while the latter having some deep rooted beliefs and customs regarding the monarchy and the crown which, even though the king abdicated, remained intact.

Geography is a huge factor which affects the formation of a political culture in a community. A safe and a protected geographical space gives way to more homogenous and streamlined political culture as opposed to a country having vast and unprotected borders. The landmass of Russia has been huge since the state came into being and it had a troubled time dealing with the adversaries from all directions and resulting in a huge number of different ethnic people settling in its boundaries each having their own set of beliefs and values which hardly coincided with the Russian perspective. This historical fact gave an aspiration to the people that they need secure borders and different ethnicities demanding different models of political development.

will result in chaos and fracture of the Russian state and hence there was a quest to develop a homogenous leadership based on the Russian values and Russian beliefs which imparted a Russian political culture which in turn called for a homogenous leadership and a leader who could take care of the vast undefended borders.

Social and economic factors are a deciding factor in defining the general and political culture of a nation to the extent that economics decide the reach of the people to necessary things and things of leisure. Economically well off nations are at an advantage when it comes the information and awareness of the subjects which results in rapid growth and industrialisation. The more industrialised a nation becomes the more readily people welcome change to accommodate the changes brought by economic advancement.

This not true in case of an agrarian economy, it is very difficult to induce a change in such an economic structure because the society is conservative and any attempt is vehemently opposed by the inertia of things that are going on since long but such social set up presents a dilemma. The few who get to lay their hands on the beliefs of the advanced economies are ready to accept them and a desire to infuse these beliefs into their own systems makes them question the existing set up which usually results a massive, long and a countrywide churning, violent or non violent, that results in toppling of the old political system with a new one. It is not that the entire country gets to experience the new values or beliefs which results in change it is that select few that give hope to the remaining people that what's coming is better than what has prevailed till now. This more or less explains the transition from Imperial to the Soviet system in Russia.

Political culture, as discussed earlier, is not static it keeps on updating depending on the changes in the political ideas and political beliefs. Such a movement of political culture with the passage of time and development of ideas results in secularisation of the political culture. The advancement of ideas must be rational and logical and the orientation of political beliefs must represent this logical and rational shift. This amounts to people getting entrenched with political vocabulary and voluntary participation in the political processes. The participation itself is not universal but there are factors which guide the amount of awareness generated within a system. The shift in norms, values and traditions must be the one reflecting social change and

accommodating values which are forward looking if not liberal. Such a movement represents a shift which is not sudden but gradual and also accounts for the conservation of a few values which are intrinsic to system while also accounting for a change in the overall perspective of the political set up.

Political Culture: Stability, Continuity and Change

Since political culture is a descriptive and defining element of a political system it also imparts, meaning to the maintenance of a system and its progress over a period of time while it is stable. Since political communication and effective cohesion among the people decide the degree of stability or stability of a system it becomes imperative that the culture as such must act as conduit for people to know the active evaluation of a system in which they reside. Political authority must be able to communicate with the people for it to remain active and dynamic as political culture also decides the pattern of the authority as well as its stability.

The way people look at authority and understand it gives legitimacy to the authority and any system, if it wants to sustain and develop, must take into account the aspirations and hopes of the people whom it represents and governs. Traditions and norms become equally important when stability of system is discussed since it is more often the conventions which rules rather than the formal structures of power in fact the formal structures have to function within the limits set by the societal conventions in many cases. The traditions and norms are so deep rooted in a community that no matter what drastic situation people face they refuse to let go certain basic beliefs which defines them and their community.

Over a period of time with the changes in human understanding of social things, with advancements in science and technology people embrace changes that are gradual and harmless but anything which is sudden and radical and threatens their very core of existence is repelled by full force. This repulsion is strong enough to break the entire political system and create chaos and the resulting rebuilding of the system is essentially the portrayal of the core values and belief systems of the people.

The political beliefs and political values are an important indicator of what system is and what it can become over a period of time but to say that political development

will change the political system's core is a mistake. If people of country 'A' predisposed to monarchy and their internal political beliefs are associated with the seat of the monarchy it becomes nearly impossible to uproot the system. The one who wears the throne might change but the allegiance of the people to the belief will remain the same while on the one hand if people of country 'B' are predisposed to a republican form with a democratic set up it is nearly impossible to rule them with an iron hand of authority.

It can be understood in the context of Russia as an aspiration of the people who desire peace internally and safety from the external threats. Their perception of them being Russian citizens is dependent on remaining safe from the outside incursions that they have witnessed since medieval times, be it the Mongol invasion or threat from European powers or in the more recent past the vulnerability of their borders exposed during the Second World War. Their history has shaped their political beliefs and their geography compelled them to think of a leadership which is strong and unified and could provide them with most security and safety. The political beliefs of the Russian people and their ideas are a defining feature of their own political culture which believes in a powerful ruler.

This has been the case with the Russian system since its inception, it has been the one man/woman who went out of his/her way and defended the motherland and emancipated the people from clutches of foreign rule or established Russia as an imperial power. This phenomenon of personalities is yet another defining feature of the Russian political culture. With the passage of time old beliefs gave way to the new ones and hence the imperial system was replaced by the Soviet system and the Soviet system was replaced by democracy but this change was followed by a constant companion - Continuity. It is this continuing aspect of the political culture which defines Russian system from the others and it comes naturally to the country because it is the representative of the people of the country. It's not an artificial construct not it has been imposed from the outside it has been there and passed on from generation to generation - a typical trait of political ideas and beliefs.

The phenomenon of personality cult

Throughout the history it has been a constant phenomenon that people started out acting according to the circumstances. These circumstances are carried forward from the past in some cases or making of the actions taken in that period of time. In the times of crisis emerges the need to stand up and face the troubles and also give hope to others in order to survive and make the better of all the troubles. It is in these times that personalities are made, sharpened and earn a name for themselves. The actions taken during this time become traditions and they stay for a long period of time and act as guidance for further actions in similar circumstances.

This process leads to the generation of a phenomenon which evolves around a person/personality. This personality is less about a person and more about how he/ she behaved in a particular situation and what impact it had on the immediate surroundings of the person. It becomes important to note that the personality which emerges is not only confined to beliefs of the people but politics of the given time also gets shaped by it and vice versa. The politics involved results in a broader participation of the personality and this interaction with the people gives rise the term personality cult. The cult personality is associated with faith of the people in the larger than life image of the leader, the politics through which he affects the lives of the people or social norms which are set by a particular set of actions which define the nature of the relation between the people and their leader.

Personality cult is not just a matter of someone emerging as the leader because of his actions it is also a matter of faith, something which emanates in the psychology of the people. When people start recognising the distinct traits of their leader then it becomes completely different phenomenon. The personality is not just a name but becomes a politics derived from faith and rooted in faith. The entire community looks upto the that personality to talk them out from trouble and steer them away from any hardships that they might face.

Another important aspect of a personality cult is that it always emerges in turbulent times. It is one of themes defining aspect of this phenomenon and also explains why it is so much deeply rooted in faith. During normal circumstances people are not looking for saving themselves neither they are concerned about the existential crisis.

The cult of a person develops when the turbulence sets in a nation or a society and people are concerned about their survival that's when one person rises who capitalise on the given circumstances and forms an aura of invincibility around his name which leads to a following by the masses.

It is not possible to define the terms cult of personality exactly as every period in time there has been different notions attached to the phenomenon of personality. It is not necessary that the person having a cult following in one epoch of time might result in another person gaining the same following by following in the footsteps of his predecessor. The following is dependent on the political, social and economic circumstances and the factor of the masses is a constant companion of the the cult phenomenon. Without the masses realising the potential of a person he/ she can never become a phenomenon. The personality actually gains its true form from the belief of the masses.

Another important aspect the personality cult is that it relies on symbolism and difference. It is absolutely necessary for a person to have a distinct place among the masses not only in their psyche but also in the real time. There are rituals which were performed to separate the king or the leader from the masses similar during the Middle Ages there were certain characteristics which defined a particular way in which the cult could be established and the distinctness could be preserved. In modern times the cult followed in the times of extraordinary threat originating in the face of a war of troubles in the domestic realm which provided the suitable ingredients for a person to rise above all and gain cult prominence among the masses.

In terms of politics a cult is a system of beliefs that even person must subscribe to and must follow and respect it. It is considered to be all pervading and present everywhere in every aspect of the people's life. In the modern times it is carefully constructed, maintained and propagated among the masses subtly so that their belief doesn't falter and there is no threat to the status quo that the leader enjoys. It is also used as device to make sure that entire political system revolves around one person's persona.

Political Religion: Cult and the Individual

The concept of personality is also associated with the belief structure which symbolises by people's faith in the person as they place their faith in god. The concept of political religion is important to understand the cult figure because an understanding of the cult following can only be understood in terms of its religion like following. As mentioned earlier it is the trouble which makes a cult like phenomenon and it is the general human tendency to look for solace in a belief.

The concept of political religion borrows hugely from the concept of religion itself. Both of them subscribe to the notion of unquestioned devotion and belief of the highest level. Just like the religion boasts itself of being superior to another belief or set of rules and behavior similarly a cult is constructed and maintained so that no one questions the sacrosanct aura constructed around the cult personality. It is also used as a weapon against the enemies or anyone trying to prove the cult's fallacies.

The cult moves nearer to religion when the attempts at securing the position of the person is moved in the direction of making him revered and conferring a status of god on a mortal entity. Cult is a hybrid notion which brings politics and religion in the damaged realm and tries to gather strength from both religious principles and political beliefs.

The thing that separate religion from logic is that it asks for devotion and favours unquestioning loyalty and anything which tries to update it of change with anything new or advanced is taken care of in a most brutal manner. The same thing happened with the phenomenon of cult personality. It started off as an arena of mutual cooperation among the people to put faith in one man who according to them was capable of clearing them through the harsh times. Somehow after a period of time this belief in cult personality would turn back to the same people who brought it in the first place.

The unquestioning loyalty towards the person who acted as a messiah in tough times gets converted to illogical but fully accepted norm. This transfer of exceptional personality during tough times to normally accepted following in normal times is what gave meaning to the cult personalities. It starts as an option to repel certain

circumstances but ends up taking a pervasive role in the social and political life of the people. The phenomenon of cult is not limited to people rather it can also be a result of a political discourse or theory related to the economic or social life of the masses.

Marxism in itself is a political ideology but ended up giving some of the most well known cult personalities across the globe. Castro of Cuba, Tito of Yugoslavia, Vladimir Lenin and Joseph Stalin of The Soviet Union are some of the most prominent cult personalities which came into existence because of the communist and social principles given by the ideology of Marxism. It will be correct to describe Marxism not just as a political discourse but a form of religion which gave enormous hopes to people sick of capitalism and other system of markets which were prevalent during those times.

One of the best parts of the formation of cult personality is that it requires a comparing entity against which the entire bulwark of its existence can be knitted. It is not possible to imagine a person rising to the level of being venerated like god in normal circumstances. The phenomenal approach towards unquestioning obedience is formed when the people experience a near fatal existential crisis. This is the truth about the formation of the Soviet Union. The union came into existence when chaos gripped the country fully in the ongoing period of the First World War. The defeat at the hands of Japanese in 1905 and the subsequent losses that the Imperial army suffered gave an impetus to the Bolsheviks to rise in unison against the weakened Imperial state.

The formation of the Bolshevik party and its overtake of the power vacuum created by the abdication of the Tsar Nicholas II provided a fertile ground for the founder of the Bolshevik Party, Vladimir Lenin, to occupy the seat of the messiah who was capable of ridding the masses of Russia from the clutches of the 'Evil Russian Empire'. The good vs the evil and the saviour vs the destroyer is what defines the formation of cult around a time period which gives strength to the conception of one man being the heroic saviour. This is where the journey of cult phenomenon starts.

Religion is one of the forms of spiritual oppression which everywhere weighs down heavily upon the masses of the people, over burdened by their perpetual work for

others, by want and isolation ... Those who toil and live in want all their lives are taught by religion to be submissive and patient while here on earth, and to take comfort in the hope of a heavenly reward. But those who live by the labour of others are taught by religion to practise charity while on earth, thus offering them a very cheap way of justifying their entire existence as exploiters and selling them at a moderate price tickets to well-being in heaven. Religion is opium for the people. Religion is a sort of spiritual booze, in which the slaves of capital drown their human image, their demand for a life more or less worthy of man.

Despite Marxism's atheistic stance, there are inherent in Marxism (and indeed Marxism–Leninism) many tenets that are wholly compatible with a religious and/or spiritual outlook. Marxism promises adherents a utopian future at the conclusion of linear time, in which equality, harmony and an end to suffering await humankind. It also values asceticism, places emphasis on the inner transformation of the individual, and calls for absolute faith and self-sacrifice in order to achieve this end.

The Marxist¹ ideology was applied in such a manner in Soviet system that any attempt to promote disbelief in the ideals of the party were viewed as anti Bolshevik² Party and anti Soviet which punishable by death. Just like religion permits no offence in terms of belief the party took cognisance of even small deviations from the established belief system. The sacred nature of the party was one of the defining elements of the Soviet cult and the personality cults emanating therefrom. The existence of hit squads and the action of secret police in the phenomenon known as 'midnight knocks' were justified in the name of a larger goal of realising state unity and the Marxist ends. Marxism as a religion was aimed to give a rosy picture of the

¹ Marxism is a left-wing to far-left method of socioeconomic analysis that uses a materialist interpretation of historical development, better known as historical materialism, to understand class relations and social conflict and a dialectical perspective to view social transformation.

²The Bolsheviks also known in English as the Bolsheviks, were a far-left, revolutionary Marxist faction founded by Vladimir Lenin that split with the Mensheviks from the Marxist Russian Social Democratic Labour Party (RSDLP), a revolutionary socialist political party formed in 1898, at its Second Party Congress in 1903.

After forming their own party in 1912, the Bolsheviks took power during the October Revolution in the Russian Republic in November 1917, overthrowing the Provisional Government of Alexander Kerensky, and became the only ruling party in the subsequent Soviet Russia and later the Soviet Union. They considered themselves the leaders of the revolutionary proletariat of Russia. Their beliefs and practices were often referred to as Bolshevism.

future to the people. It talked about classless societies, food for all, equality for all and a road to salvation.

As already discussed, the term 'cult' derives from the religious sphere, but it is important to note that in the ancient world, the sharp differentiation between religious and secular spheres that characterises many Western democracies today did not exist. It is also important too that the imperial notion of cult following emanated from the fact that the kings were considered as an extension of god on Earth and they drew their powers from 'Divine rights theory'³.

The cult following was carefully designed in the Soviet Union. It was associated with the sacrifice of the Soviets during the Civil war⁴ in Russia. The phenomenon of declaring the heroes of the Soviet Union marked the first step in making people realise the invincibility of the Soviet ideology and asked people to pay respect to the great nation and homage to the people who sacrificed for the Soviet dream to come true. The leader cult and its manifestation through ritual can have a unifying effect on a society, stressing social, political and moral cohesion. Many of the concepts that Simon Price discussed in relation to the Roman imperial cults can be applied, with some modifications in terminology, to the leader cults of the 20th century.

The imperial cult stabilised the religious order of the world. The system of ritual was carefully structured; the symbolism evoked a picture of the relationship between the emperor and the gods. The ritual was also structuring; it imposed a definition of the

³ In European Christianity, the divine right of kings, divine right, or God's mandate is a political and religious doctrine of political legitimacy of a monarchy. It stems from a specific metaphysical framework in which a monarch is, before birth, pre-ordained to inherit the crown. According to this theory of political legitimacy, the subjects of the crown have actively (and not merely passively) turned over the metaphysical selection of the king's soul – which will inhabit the body and rule them – to God. In this way, the "divine right" originates as a metaphysical act of humility and/or submission towards God. Divine right has been a key element of the legitimisation of many absolute monarchies. Significantly, the doctrine asserts that a monarch is not accountable to any earthly authority (such as a parliament) because their right to rule is derived from divine authority. Thus, the monarch is not subject to the will of the people, of the aristocracy, or of any other estate of the realm. It follows that only divine authority can judge a monarch, and that any attempt to depose, dethrone or restrict their powers runs contrary to God's will and may constitute a sacrilegious act. It is often expressed in the phrase *by the Grace of God*, which has historically been attached to the titles of certain reigning monarchs. Note, however, that such accountability only to God does not *per-se* make the monarch a sacred king.

⁴ The Russian Civil War was a multi-party civil war in the former Russian Empire sparked by the overthrowing of the monarchy and the new republican government's failure to maintain stability, as many factions vied to determine Russia's political future. It resulted in the formation of the RSFSR and later the Soviet Union in most of its territory. Its finale marked the end of the Russian Revolution, which was one of the key events of the 20th century.

world. The imperial cult, along with politics and diplomacy, constructed the reality of the Roman empire. In a similar manner in the Soviet Union of the 20th century, the personality cult of the leader stabilised the political order and, through carefully structured ritual, provided a definition of the relationship between the leader and the people, and a definition of the world.

The good of the people takes preponderance over good of the individual even at the cost of some individuals suffering the larger public is viewed as a collective which must be taken care of. It functions as a communitarian goal to take care of the real needs of the society as a whole rather individuals having their own specific needs catered to. Participation in rituals, and the generation and acceptance of propaganda, expresses faith in the goals of the regime, and loyalty to the Party and to Marxist–Leninist ideology and vision. It demonstrates a willingness to bring about change at both the level of the individual and as a collective. The significance of correct portrayal was extremely necessary as the rites, symbols and language of Bolshevism were so pervasive as to be virtually inescapable, with Stalinism presented as a new form of civilisation.

Vladimir Putin: 21st Century phenomenon of Cult following

Boris Yeltsin's second term as President of the Russian Federation saw some of the toughest economic times in Russian history. Russia never truly recovered from the economic depression following the collapse of the Soviet Union. By 1995, the Russian GDP had decreased to 58 percent of its level in 1989 (Lane 2004). From there, the economic situation only worsened. By 1998, the Russian government owed 113 billion rubles in interest for state loan bonds as well as salary to all of the workers. The maximum amount of taxes that could be raised was 164.6 billion rubles. Also at this time, \$22 billion from the IMF had gone missing. There was no hope for the Russian economy if things did not improve rapidly. The United Nations could not help any more while Russia hastened toward economic ruin (Shevtsova 2003).

The growth rate of the Russian GDP in 1998 was -4.9 percent and inflation reached its peak in 1999 at 85.8 (Tompson 2004). Also on August 17 of 1998, Prime Minister Sergei Kiriyenko declared Russia to be bankrupt. Some people lost their entire

savings in that financial collapse (Shevtsova 2003). This was the economic legacy left behind by President Boris Yeltsin for President Putin to clean.

In wake of the financial crisis, social unrest was a big issue facing the Russian people. Miners who had not been paid blocked the railroad tracks and gathered in front of the home of the Russian cabinet. Other social problems included rampant disease, a failing education system, millions of homeless children, and widespread and thorough corruption. Even life expectancy for men decreased from 64.2 years in 1989 to 57.6 in 1994. Crime and corruption were very common as well in this time period (Shevtsova 2003). The social condition of Russia in the 90s decade was quite bleak and several separatist movements in regions that were not ethnically Russian, such as Chechnya, began to move forward. All of these social issues only weakened the Russian state further and started to unravel any unity present in the state.

While many of Russia's social problems of the 1990s stemmed from the shrinking economy, the largest culprit of both was the lack of leadership from the top, especially from President Boris Yeltsin himself. This lack of leadership and Yeltsin's attachment to power led to much political instability in Russia. The oligarchs of Russia pretty much ran amok doing whatever they wanted and the regional leaders (such as governors) ignored directions from Moscow. The system, mostly created by Yeltsin quickly spiraled out of his control.

But Yeltsin was not ready to give up what power he already had. During his two terms as President of the Russian Federation, he went through seven prime ministers. Yeltsin's biggest fear was that the prime minister would oust him the way Yeltsin himself had overthrown Gorbachev. Each time a prime minister got too powerful or admired, Yeltsin would fire him. The political scene in the Kremlin was one of constant personnel shifts. By the time Putin was appointed Prime Minister, he was just another in a long line of Yeltsin minions. Yeltsin was so concerned with his own power that his internal policies had suffered greatly (Shevtsova 2003).

If the social, economic, and political problems that faced Russia were not enough, the physical security of the state was also in peril. Chechnya best demonstrated the problems Russian Federation was having with some separatist groups. The First Chechen War took place from 1994 to 1996 and was a bid to prevent Chechnya from

separating from the Russian Federation. The threat was not an army sitting at Russia's borders, instead it was losing territory. Putin said it best when he stated in a speech, "During all of its times of weakness Russia was invariably confronted with the threat of disintegration" (in Tsygankov 2005). Such was the threat in 1994 during the First Chechen War (which was not truly considered a war by the Russian government, but more of an armed intervention). The danger that prompted the second Chechen War was more of an actual military threat than a threat of disintegration. On August 2, 1999, Chechen separatist attacked and invaded the neighboring region of Dagestan. Later in that month, some of Moscow's and other cities' residential buildings were bombed, taking the lives of over 300 civilians. From there, the then Prime Minister Putin ordered "anti-terrorist operations," which are commonly referred to as the Second Chechen War⁵.

The eve of Putin's ascendancy to power had all of the markers of instability: economic collapse, out of control corruption, the threat of disintegration, terrorism, social problems not seen since the early days of the Soviet Union, etc. This instability had a marked effect on Russian politics. To be frank, the state was falling apart. President Yeltsin was losing control of not only regions inclined toward separatism, but also the regional governors and the oligarchs he helped into power. The Russian people needed a leader to take on these problems with much more success.

Early 2000s: The Change and the Introduction of the concept of Sovereign Democracy

Putin offered many contrasts with his predecessors both as a Prime Minister and later as President. First of all, he was young by comparison. He was only 48 when first elected at a time when most Russian leaders were elderly. Putin was middle-aged and athletic while the ageing President Yeltsin could barely speak and suffered from a heart condition. As Yeltsin's hand- chosen successor, Putin and Yeltsin also have

⁵ The Second Chechen War took place in Chechnya and the border regions of the North Caucasus between the Russian Federation and the Chechen Republic of Ichkeria, from August 1999 to April 2009. In August 1999, Islamist fighters from Chechnya infiltrated Russia's Dagestan region, declaring it an independent state and calling for holy war. During the initial campaign, Russian military and pro-Russian Chechen paramilitary forces faced Chechen separatists in open combat and seized the Chechen capital Grozny after a winter siege that lasted from December 1999 until February 2000.

many similarities. Both took office at tumultuous times in Russian history. Both Yeltsin and Putin were elected for second terms and let Russia through a war in Chechnya. Yet, it is Putin around whom we see a personality cult forming, not Yeltsin. What difference did the leadership of Putin make?

When Putin took office as President of Russia, he took on a huge amount of problems. Russia was having trouble on all fronts: economically, socially, and security. Over the course of his two terms in office as president, Putin was able to win the war in Chechnya, the economy improved drastically, and his approval rates remained high. Under Putin, the GDP growth rate went from 4.9 percent in 1998 to 9 percent in 2000 and remained positive for the next few years. Also, life expectancy, lowered to 58.83 for men in 1999, climbed to 62.29 by 2002 (Thompson 2004). The “anti-terrorism operations” in Chechnya while Putin was Prime Minister were wildly popular (over 60 percent approval rate) compared to the first war in Chechnya during Yeltsin’s first term in office (54 percent disapproved) (Shevtsova 2003). The results of the second election also show the difference in the two leaders. In his second run for the Russian presidency, Yeltsin only won about 53 percent of the vote, while Putin won over 70 percent of the vote for his second term. So, was the difference between Putin and his predecessor simply success, or was it more? The answer is both, because many of the same differences in Putin that promoted success are also the same attributes that spawned his personality cult.

Sovereign Democracy

Sovereignty refers to an unchallenged authority over a specific boundary and there is no institution or person that can raise any objection to such exercise of power. Sovereignty is a state defined concept and it rests with the state and not in any person. The concept of sovereignty is a state phenomenon but it has its roots in social and culture and thus the concept of sovereignty carries distinct connotations for each state. In the case of Soviet Union the sovereignty that sprang up in various newly independent republics was different.

Russia’s concept of sovereignty has evolved since the Colour Revolutions began in the early 2000s, an evolution they have shared with the world through domestic and international policy modifications. In the 1990s Russian policies frequently contained

undemocratic undertones, but they were hidden under pro-Western democratic rhetoric. Once the Colour Revolutions occurred this veil of pro-Western sentiments has been almost completely removed from the Russian dialogue, and a more straightforward challenge to international democracy promotion taken. This is where the Sovereign Democracy first saw its emergence in the Russian context.

Sovereign democracy was understood in Russia as an attempt to define the democracy according to what the social and cultural context of Russia desires and secondly sovereignty of the nation was put awards of democracy. Russian society, and therefore Russian sovereignty, is distinct and cannot be expected to conform to Western norms and models. The Russian people have always identified themselves as a distinct group of people even among the Europeans, they share the European civilisational aspect but they are different in their own Russian way. Its political culture and norms are rooted in European civilization yet distinct. There is a specific Russian variety of that civilization. Russian political culture is holistic, instinctively centralized and there is a geopolitical subtext.

The geopolitical reality that Russia faced since earliest of times of its formation and the constant threat it faced from the marauding neighbors and internal wars it became necessary for Russia to have an authoritarian design to preserve its identity and the sovereignty of the country. The survive of the state is necessary for it function with values of democracy or separation of powers or any other value. If there is no state there can be no value which can be realised.

As mentioned previously democracy is secondary to sovereignty, however the concept of “democracy” has not disappeared from the official Russian political discourse. Over the last decades the achievement of democracy has been correlated to modernization, a symbol of national progress. Western governments, especially the United States, inserted this theory into the wider political discourse to increase the likelihood of democratic transitions. Currently, democracy remains a significant topic in Russian political discourse, associated with modernization, regardless there have been many measures taken to restrict it in political practice. This is primarily because sovereign democracy identifies the international world in terms of the standard realist interpretation of world affairs: as an essentially lawless dangerous place structured around brutal competition, and democratic practices must be suspended to preserve

the sovereign state. Valerii Zorkin, the current Chairman of the Constitutional Court of the Russian Federation, claimed: “In this sense, we really found ourselves in a chaotic world in which everything has become unpredictable. In this anomic global chaos there is only one law—the law of the strong and aggressive: the superpowers, dictators, and leaders of mafia-like and terrorist groups”.

The sovereign democracy discourse among elites underlines the importance of Russia independence, and the international law of noninterference. Sovereign democracy also stresses the importance of Russian sovereign and democratic externally and internally. Internal sovereign democracy is a type of political life for the society in which the state, its organs and activities are chosen, formed and directed exclusively by the Russian nation with all its many forms and unities, in order to achieve the material well-being, freedom and justice for all citizens, social groups and peoples who form that nation.”

He also asserts the importance of the population to sovereignty; Russian popular sovereignty differs drastically from the liberal definition of the term. Sovereign democracy designates the population as a collective entity, which embodies the whole nation, and rather than following their own individual goals the Russian citizen must “bow to the will of the nation.” Western liberal democracy is quite different, it entails citizens must pursue their own private interests to contribute the good of the nation.

Sovereign democracy values collective initiative in a nationalist display rather than individual freedoms. In essence, the collective will of the population is achieved through the state, however sovereign democracy does not offer an explanation of what determines the collective will. The majority of Russian elites maintain that the civil society lacks the organization and trust to effectively carry out the collective will. Therefore, government’s role is not to decide what the collective will of society is, but instead to determine what it is and imposes it. A charge, which according to Surkov, must be accomplished by a formable personality, “strong personalities often compensate for the collective’s ineffectiveness, the lack of mutual trust and self-organization.”

Since this single strong personality does not design the collective will, elites assist by acting as functional agents of civil society. Political analyst Vlad Ivanenko perceived

sovereign democracy as assuming society contains two groups: elites and ordinary citizens. Elites must keep the state together and uphold internal unity when exposed by internal and external threats. Their vital task allows them to control the majority of the national wealth and rule unopposed. The philosophy of sovereign democracy serves as a consolidating doctrine for the governing elites and creates an elite confederation, which assures democratic progress in Russia. After the Colour Revolutions President Vladimir Putin saw an express need for this type of elite confederation. His solution was to create the nongovernmental organization the Public Chamber of the Russian Federation.

Integrating State and Society

As discussed previously, reasserting the power of the Russian state, internally and externally, has been a central goal of the Putin administration, and one way to achieve this has been to institutionalise relations between the state and civil society. The doctrine of sovereign democracy has served as a model for the Kremlin's efforts to control civil society. Civil society is the vehicle in which the ranges of citizen's initiatives are explored, and is fairly independent from state mechanisms.

In essence, it is the relationship between state and society, as well as society's engagement as an active participation in public interests. President Vladimir Putin's administration effectively removed the term "civil society" from the vocabulary of democratic reformist, who condemned Putin's authoritarian policies, by twisting the rhetoric of civil society to their own purposes. The Russian version of civil society stressed the significance of the collective interest of the nation, and the expectation that citizens must subordinate their private interests to further state interests. This very narrow view of the public realm caused any deviation from these boundaries to be labeled non-credible extremism.

Putin defined civil society not as a chaotic arena where private and public interests competed equally, but rather as a unified body working towards state interests. If these two groups do not efficiently work together the Kremlin believed the sovereignty of the state would be threatened. From 2003 to 2004, three events transpired that deeply alarmed the Kremlin, and made the campaign to command civil society an extreme priority. First, the crisis in Beslan, which shocked the nation,

emphasized popular apathy and corruption had made the state more susceptible to terrorism. Second, and most significant, the Colour Revolutions, especially the Orange Revolution in Ukraine, amplified suspicions of foreign organizations working in Russia. Third, mass protests began in Russia, which objected to the monetization of social benefits, served to reinforce anxieties raised by the recent revolutions in Georgia and Ukraine. The protests confirmed the Kremlin's worse fear; the potential for political unrest in Russia. In reference to a Colour Revolution Surkov stated, "I am not able to say that this issue is no longer on the agenda, because if they can achieve this in four states, why not do it in a fifth?"

Putin presented numerous speeches that contain many references to constructing a sturdy civil society, and the necessity of integrating civil society into the power sphere of the executive branch. This goal became a reality in 2004 when he began formulating the structure of civil society he deemed appropriate for Russia. This section examines Vladimir Putin's creation of the Federal Public Chamber in order to institutionalise Russian civil society, which was purposed with delivering feedback to the state. Creating "social chambers", usually staffed by NGO representatives that counselled and consulted government agencies, became a common tactic used by the Kremlin to strengthen the sovereign state. The Public Chamber stood at the head of this initiative.

On September 13, 2004, twelve days after the Beslan school hostage crisis, Putin emphasized the need for political unity, cementing the executive authority's chain of command, and proposed the creation of the Public Chamber. The new chamber would symbolize a promise to give civil society more input in policy-making and serve as a "platform for extensive dialogue, where citizens' initiatives could be presented and discussed in detail.

The new Public Chamber consisted of 126 prominent members of civil society, who were selected under careful consideration; Putin either directly or indirectly selected all of the members. For example, the official Russian Public Chamber website describes the organization's formation in three stages, in accordance with Russian federal law. The first forty-two members Putin appointed himself, and these were "Russian citizens who had performed special services to the state and society." These

first forty-two members selected the next forty-two from popular Russian NGOs. The previously chosen eighty-four members selected the final forty-two from a pool of candidates that had advanced from regional and federal districts.

This executive unity would allow the two groups to “work as a single integrated organism with a clear structure of subordination”, and this new chamber “essentially means civilian control of the work of the state system.” Putin formally submitted the Public Chamber bill in December 2004, and it received final approval by the Duma and Federal Assembly in March 2005. Putin himself signed the bill into law one month later; the Public Chamber of the Russian Federation became operational January 2006.

The Kremlin’s vision of who may be a legitimate participant of civil society played a large part in the selection of the members of the Public Chamber. All of the members were successful and admired individuals, bringing prestige and credibility to the new chamber. President Putin stated in 2005 that the members should be “citizens who have broad public support, personal authority, and influence in society and their professional milieu”.

The Public Chamber stands at the center of organized civil society. It serves as a model for the various other regional public chambers and councils, and its members, as mentioned previously, are some of the most influential individuals of civil society. It outlines the federal government approved version of how state and society should interact. The Public Chamber is a detailed example of the boundaries between the Russian state and society, as depicted in the doctrine of sovereign democracy.

James Richter describes this as; “The very notion that this creature of the state [Public Chamber] should represent society reflects the belief that the state serves as the embodiment of a collective will separate from and higher than the particular interest of society itself,” and it is a “more or less unified coalition of social notables” whose primary task is to assist the state in comprehending that state’s national interests. Many regions in Russia have conformed to Putin’s ambition to organize civil society and have modeled their own Public Chambers after the Federal Chamber. In 2007 four of the then seven federal districts contained local Public Chambers, and in 2009

they had formed in six districts. As of 2013 Public Chambers can be found in all eight federal districts, moreover the majority of the regions located in those eight districts have formed their own local chambers.

The Kremlin encouraged regional chambers to adhere to the federal model, the vision of state and society inherent in sovereign democracy, however there is no concrete evidence that suggests they were forced to do so. The Kremlin believed if the majority of regions choose to replicate the federal chamber the vertical power structure would be strengthened, as would the nation’s internal sovereignty. It would do this in two ways. First, it would create a detailed outline of the proper, Kremlin approved, role of public initiatives in Russian society. Secondly, the federal Public Chamber would dominate a statewide network of regional chambers insuring centralized control.

The figure shown below follows shows a map of the Russian Federation divided into its eight federal districts. Each districts’ regions are separated into those that contain local public chambers and those that do not. Of the eighty-three regions sixty-nine have local public chambers compared to the fourteen that do not.



Figure 5.1: Depicting Public chambers in different regions of Russia

The state fracture of the 1990's : From Yelstin to Putin

When the Soviet Union collapsed, the damage was not limited to economics and politics, but it was also took away something much more important: Russia's super power status. Even though the last days of the Soviet Union were marked with rapid decline, it was still feared as a nuclear-wielding super power. Arguably, the loss of prestige was much more devastating than the economic depression and political chaos in the immediate post-Soviet period. How could one be proud to be Russian if Russia was a failure? When Russia was weak? Combined with this were the nationalist movements at a sub-national level. Regions such as Chechnya tried to assert their independence from the Russian Federation like the Soviet Republics had established their own sovereignty (Kuznetsov 2010). Nationalism in Russia in the early 1990s was defined along ethnic, regional, or religious lines, and therefore did not provide a unifying ideology.

Under President Boris Yeltsin, the Kremlin attempted to produce a new kind of nationalism in an attempt to unite all the Russian regions, not just the ethnically Russian regions. The new definition of "Russian" would include anyone who accepted Russian culture and values. Later, President Putin expanded the concept to include the Russian speaking population abroad, left over from the Soviet Union (Panov 2010). In opening up the concept of "Russianness," Yeltsin and Putin gave all of the people living in Russia a reason to unite behind one ideology, much like Communism had in the days of the Soviet Union. This was especially important in the regions prone to independence.

Putin's conception of "Russianness" also had the side effect of encouraging patriotism, as he often spoke about in his speeches. Putin defined patriotism as "a feeling of pride in one's country, its history and accomplishments [and] the striving to make one's country better, richer, stronger, and happier" (in Sakwa 2004, p. 163). Putin demonstrated a desire to return Russia to great power status (Tsygankov 2005). He claimed that this could be done without imperialism or nationalism (Sakwa 2004). Yet, can one work toward the rather ambitious goal of great power status without nationalism? Drukman defined nationalism as simply the feeling of the superiority of

one's own nation. Putin claimed that Russia deserved to be a great power and to be richer, etc.

Within a short period of coming to power, Putin had purposed an ideology and a goal that could unite Russia at a time when it seemed to be falling apart. Although Putin expressed an interest in distancing his idea of patriotism as far as possible from the concept of nationalism, one cannot completely separate Putin's conceptualization of Russian patriotism from the concept of nationalism. Nationalism itself has a bad reputation, especially in Europe. When defined along ethnic or racial lines, nationalism can cause immense destruction and has already done so in Europe.

Putin's idea of Russian nationalism was to give a multi-ethnic, multi-religious, incredibly diverse country a common identity and a common goal: the return of Russia to its former glory. Like Stalin and Lenin, Putin found a popular cause, the restoration of Russian glory, and an ideology, Russian nationalism, and used it to its full extent his election campaign and his terms in office. Putin's personal association with nationalism also contributed to his personality cult. He himself was nationalist more so than the corrupt government of the time.

Vladimir Putin: The Ideal Russian First Citizen

When Vladimir Putin entered the national stage in Russian politics as the appointed Prime Minister in 1998 under President Boris Yeltsin, he was largely an unknown entity. His previous political experience consisted of being an aide to the St. Petersburg mayor and head of the post-Soviet incarnation of the KGB, the FSB (Foreign Security Services). Before his career in politics, Putin worked for the KGB first in St. Petersburg then in East Germany. This was not the person anyone saw as the future president of Russia. Yet, somehow it worked and he did become one of the most important politicians in the world. He also enjoyed a ridiculously high approval rate for most of his terms in office. How did this happen? Earlier, in the study it has been mentioned that politics in Russia has become increasingly personal, and this explains much of Putin's politics. His ability to relate to the people of Russia was a great asset to him during his successive terms in office.

The team behind Putin has gone to many lengths to show Putin as a shining example of Russian masculinity. He is athletic, strong, stoic and emotional at the appropriate times, he supports the military and espouses patriotism. But more importantly, he is one of them, a Russian. One example of his connection to the people on a more personal level was his family history. His parents were factory workers in Leningrad (now, St. Petersburg) where they survived the siege in World War II. The story goes that Vladimir Putin the elder was wounded in the siege and donated his rations to the hospital despite his own starving and that of his wife and their eldest son (who died during the blockade). The emotional tale was a way of connecting Putin to the Russian people. He commented once that every Russian lost family in World War II and “any falsification or distortion in the portrayal of the war was therefore looked on as ‘a personal insult, a sacrilege’” (Wood 2011). When Putin tells the story of his own family’s suffering in the war, he is also telling the story of so many other Russian people. This connection allowed many Russian people to identify with Putin and therefore be more apt to support him.

Along with his association with World War II, Putin also related to the Russian public with his words. In several of his speeches, he uses the phrase “my friends” or “my fellow Russians” to level the playing field (see President Putin’s New Year’s address to the Russian people Dec. 31, 2007). The administrations before Putin were mostly led by elites and the so-called oligarchs. Putin was different. He is a man’s man, for lack of a better term. Putin used slang in his speeches, such as his statement that he would ‘wipe out’ the Chechen terrorist ‘in the john’ (Shevtsova 2003, 72). Not only did Putin impress the Russian masses with his normality, he also showed off his masculinity in spectacularly public ways. There are many photos of Putin shirtless or enjoying some dangerous physical activity. One photo shows him fishing in Siberia shirtless. This photo made its way to a tabloid front page with a headline that said “Be Like Putin” (<http://www.cbc.ca/news/world/story/2007/08/22/putin-shirtless.html>). Putin has also been known to shoot Siberian tigers with a tranquilizer gun and co-pilot fighter jets over Chechnya. One writer for BBC suggested that these stunts by Putin are to show a man that Russian men should aspire to be (Rodgers, 2009).

Putin has made himself into the ideal Russian man. He is patriotic, masculine, active, athletic, strong, etc. He also emphasizes a duty to Russia and its people. From his first

inaugural address, Putin promised to take care of Russia, just as his predecessor is said to have instructed. To commemorate World War II, he visited veterans, schools, and churches. One scholar notes that each setting gave him another role: “The forms of the masculinity vary, including different presentations as dutiful son, solicitous father, and leader of men” (Wood 2011, p. 175). He is a role model of a Russian man because he can be all of these things. He portrays himself as the “defender, even the savior of the Motherland” (ibid). This portrayal of the leader as an ideal is an essential part of forming a cult of personality. Such actions show that the leader is worthy of admiration and should be followed; just others should try to be like him.

Putin’s public image was helped along greatly by the media. The media portrayed the Vladimir Putin that Putin and his advisors wanted the public to see. The public saw Putin as that patriotic, masculine ideal that saw every Russian as his friend. There were not whispers of past indiscretions or any skeletons in the closet. Putin’s domestic media coverage is usually flattering and the reason is not that Putin is perfect, or that the media just loves him that much. Fear of persecution is nothing new in Russian history. Under the Soviet Union, the press was rigidly controlled, until the program of glasnost, which allowed for more media freedom, was initiated by Soviet leader Mikhail Gorbachev. The media retained a large amount of freedom even though the presidency of Boris Yeltsin. Today’s Russian media has a Freedom House rating of “not free” (<http://www.freedomhouse.org/country/russia>). This lack of media freedom has allowed Putin’s image to remain largely untarnished.

Putin’s path to restricting media freedom started with simply buying companies. The Russian government, or the state-owned company Gazprom, bought out the three national television networks by 2001, and today owns many smaller media outlets. Yet, the Russian government does not own all of Russian media. To keep control over the media that the government does not own, government-friendly businessmen persuaded to buy into the media market and get control over their investments. Media control has been an invaluable tool for those developing personality cults. Stalin controlled the Soviet media with an iron fist, as did Chiang and Mao. Putin’s actions concerning the media have fallen directly in line with the other leaders with personality cults, especially with those who actively pursued personality cults.

Redeeming a dictator: Putin and Stalin

Like Stalin emulating Lenin and Chaing Kai-Shek emulating Sun Yat Sen, so Putin, too, emulated Joseph Stalin. Joseph Stalin will always hold an odd position in Russian history. He was a cruel dictator who routinely killed many of his own political supporters and was responsible for the death and imprisonment of more people than Hitler. Yet, he also led the Soviet Union into its height of power and was the hero of the Great Patriotic War (World War II). One historian who was not a fan of Stalin by any means expressed his grudging admiration, writing that, in “his crude and bloody way...his [Stalin’s] policies turned the country into a superpower” (Zubok 2005). Stalin had his own personality cult, partially made from emulating Vladimir Lenin. Putin, associating himself with the memory of World War II, also linked himself to Stalin himself.

No matter what opinion of Stalin one holds, it is indisputable that he was striking historical figure. Putin, in many ways, does have a few characteristics in common with the old dictator. First, Putin openly praises Stalin in a domestic context and has, like Stalin, taken on a sort of paternal role over all Russia (Wood 2011). Putin’s words also showed his emulation of Stalin: in 2000, Putin began his speech with the same address used by Stalin to begin his speeches. Putin also had Stalin honored in other ways including a plaque made to honor Stalin for his leadership during World War II (Wood, 2011). This also gave the appearance of a connection between the two leaders as wartime Russian leaders. Stalin, of course, led the Soviet Union through World War II and Putin through the second Chechen War. When Putin honored Stalin’s actions as a leader during war, he also brought attention to his own wartime leadership.

Stalin and Chaing both wanted the support of their predecessor’s supporters, so they allowed themselves to be the successor, the one to uphold their mentor’s ideals, etc. Yet Putin chose to emulate a rather controversial figure in using Stalin as an example. What did Putin hope to gain from this? The answer is simple: Stalin’s accomplishments. As earlier stated, Stalin made Russia strong. Stalin made Russia into a nuclear wielding superpower that put people into outer space. Upon taking his position as President, Putin had a goal in mind: Russia’s return to great power status (Tsygankov 2005). It is, therefore, only logical that Putin use Stalin as a model. When

Putin associates himself with Stalin, he is saying that his goal is possible and he would be the one to achieve it.

When a personality cult has taken shape, the leader often gets many things named after him. From buildings to cities, the leader's name appears all around the public. Surprisingly, several things have been named after Putin already. Many of these things are in Russian popular culture and everyday life. From the early days of his presidency, Putin found himself the namesake of candy bars, meat dumplings, canned foods, and even a hit song ("Someone Like Putin") (White and Mcallister 2008). Putin's name became part of the everyday vocabulary for the Russian people. Everywhere they were reminded that Putin was their leader, and, as the song implies, someone to admire and respect. Using Putin's name in brands and other popular culture phenomena started the solidification of Putin's personality cult. At first, the public was taken by Putin's strength and apparent success, but increasingly, his name appeared in their everyday lives, keeping Putin himself in their everyday lives.

Yet, Putin's name was not always used with his consent. Putin has tried to avoid having his name used on certain brand names. The first example is Putinka vodka released in 2003 and made by a Moscow distillery. All parties deny any affiliation with Putin, but the name is suspiciously similar. Those marketing the product were aware of the association and hoped the popularity of Putin himself would drive sales of the vodka brand. It was a success: in 2006, Putinka was Russia's number two selling vodka (Osborne, 2007). In 2011, another vodka brand attempted to capitalize on Putin's name. The attempted name was "Volodya and Medvedi," oddly similar to Vladimir and Medvedev, and the suggested symbol was a bear, the symbol of United Russia, the party to which Putin belongs. The government of Russia did not allow the patent to go through and banned the name, although it was able to get through in Ukraine.

Along with songs, food, and vodka, Putin has also had something much larger named after him: a mountain. Late in 2010, the president of the former Soviet republic of Kyrgyzstan drafted a law to name a mountain after Putin, then Prime Minister of Russia. The former president Yeltsin also has a peak named for him in the same mountain range. Putin's mountain is 4,446 meters high, while Yeltsin's is only 3,500

meters tall. This matters because Vladimir Lenin's name is on the highest peak (<http://www.bbc.co.uk/news/world-asia-pacific-12113463>). Giving Putin a higher peak than that of the first president of the Russian Federation shows his position in history. It shows that Putin's place in history will be a little higher than that of Yeltsin. That is like saying that one of the contemporary American presidents has a place above George Washington. The naming of things show that Putin is not only on the mind of the collective Russian public, but it also shows how other think of him and his place in the world.

On March 4, 2012, Putin was once again voted into the office of President of the Russian Federation after serving two terms in that office and one term as Prime Minister under President Dmitry Medvedev. Since becoming Prime Minister under President Yeltsin in 1999, Putin has been in the political spotlight and played a central role in Russian politics. It has been suggested that his role remained unchanged from his terms as president and the one as Prime Minister. Despite the change in his institutionally defined position, Putin's appearance of being in charge has remained unchanged.

The perception of Putin as the authority figure has been hinted at and speculated yet there is no hard evidence to support this hypothesis. His new presidential term lasts until 2018 and he will have the option to run for re-election for another term. All of this adds up to a man with a constant presence at the top of Russian politics for nearly 20 years, or more if he decides to seek re-election. To put this in perspective, Leonid Brezhnev ruled the Soviet Union for 18 years, the longest of the Soviet rulers after Stalin. Yet, this past election was quite different from the others in which Putin has participated. As an incumbent in 2004, Putin received over 70 percent of the vote as did his sponsored candidate, Medvedev in 2008. This passed election saw Putin gaining approximately 64 percent of the vote, accusations of election fraud, and protests in Moscow. Yet, an article from BBC states, "no one doubts that Putin won more than 50 percent of the vote" (Kendall, 2010).

CHAPTER 6
CONCLUSION

The study dealt with the broad question of what constitutes constitutionalism in Russia. The difference between the understanding of the concept as understood in the west and as understood in Russia, how constitutionalism in Russia is different and what factors makes it distinct is explored in depth. The study also tried to shed light on the fact that the Russian constitutional development is not a process in vacuum but a complex procedure which unfurled itself over a course of thousands of years. It is not just a thing of politics but also of society. The study is significant in the fact that it elaborates social and political processes which discusses the internal nuances of the socio-political, economic and geo-political realities of a country and makes its constitutional practices distinct.

The study shows the relevance of understanding the social context of laws. One can't arrive at substance of laws without knowing the social condition in which they were framed. The constitution as a document needs to be understood in its social context, political conditions during the time of its making and the understanding of the masses regarding the legal set up which governs them. In the contemporary period it becomes extremely significant to understand the domestic context of the country to understand its responses to the outside world. The political system and the political institutions and constitutional understanding define the way in which a country behaves in the international system and the policies it frames.

The study has also looked at the question of how constitutions are made, what processes the society and the country goes through in order to arrive at a set of laws, institutions and a political culture. Every political system has a distinct political culture and the way it gets shaped but the society and vice versa has been answered through this study. Constitutionalism as a process and phenomenon in Russia evolved according to the Russian values and the understating of the Russian society. Since the beginning of the first consolidated Russian State how the laws and constitutions were shaped and which processes were involved is the subject matter of the study.

Constitutionalism, as understood classically has been defined as a system where several parameters are observed by the government while dealing with its day to day business. Some of the parameters are rule of law, separation of powers and most importantly the constitutional legality of the acts of government. Nothing should be done by the government which contravenes the constitution principles and puts the

constitutionalism aspects in jeopardy. These parameters have come a long and in a sense have acquired a universal character as far as a government and its functions are concerned. But does this mean that universalism is absolute and there can be no deviation from the above mentioned facts.

The question of existence of the principle of Constitutionalism in Russia has been answered and looked at according to the prevailing social realities and the social realities differ not just culturally but also time period plays an important role in defining the role and contents of the constitutions. This has been one of the most interesting aspect of constitutions that their contents change according to the general understanding of the society whom it is supposed to govern. Universality does not amount to absolutism in terms of realisation of these principles. Constitution in itself is nothing more than book if it can't create to the society for which it exists and neither does the government is responsible for coming up with a different text every time it comes to power.

The key research questions that were explored during the course of the study are as follows:

- How is Russian Constitutionalism distinct from the conventional understanding of the concept and its processes?
- What has been the role of Social processes in shaping the trajectory of Russian Constitutionalism?
- What are the elements of continuity and change in the evolution of Constitutionalism in Russia?
- How has personality centric leadership impacted the course of Constitutionalism in Russia?
- What are the Political and Social factors that historically shaped the process of Constitutionalisation in Russia?

The study also tests the following hypotheses:

- The distinct trajectory of the Russian model of constitutionalism is primarily on account of the unique political culture in Russia, evolved through centuries,

revolving around personality centric approach towards politics and nation building.

- Russian Constitutionalism can be comprehended only in the light of the historically continuous Socio-Political processes in the country, central to which is the unique The Russian Constitutional experience is a unique blend of *elitist political churning* and the social response to such processes.

The study is divided into six chapters namely:

- Introduction: A Conceptual Framework
- Imperial Constitutions in Russia
- Soviet Constitutions: An Analysis
- Post Soviet Constitution and Constitutionalism
- Role of personalities and Political Culture in shaping Russian Constitutionalism
- Conclusion

The chapters of the study track the trajectory of the constitutional development in Russia over a period of Ten centuries. The introductory chapter, as the name suggests, highlights and explains the key concepts of the study like Constitutionalism, Constitutionalisation. It also discusses the themes of literature that are explored for the purpose of this study. The Research methodology and design used for this study also forms a part of this chapter.

The second chapter follows the historical events and the emergence of constitutions in Russia as law texts and legal charters. It also traces the advent of constitutional text for the first time in Russia starting from the Decembrist revolution of 1825 to the constitutional text of 1906. The written documents are explored in depth to understand the nature of the constitutions that developed during this period.

The third chapter traces the development of constitutions in the Soviet period, the constitutions of 1918, 1924, 1936 and 1977 are discussed and the element of continuity and change in the Soviet constitutions is analysed. The questions regarding the functions served by the constitutions in this period and their evolution is

discussed. The social processes of this time and how the constitutions and society shaped each other is also discussed. This chapter also looks into the way the judiciary functioned and the regime of law that existed during this time.

The fourth chapter explores the 1993 constitution that was formed after the disintegration of USSR. This chapter will highlight the linkages between constitutions and constitutionalism in the Aversive and Functional sense in Russia. This chapter also deals with the judicial trajectory in Russia especially after 2000 when Putin assumed power.

The fifth chapter focuses on the role played by the leadership and political culture in the Post Soviet period in the drafting and execution of 1993 constitution of Russia. This chapter deals with constitutional crisis of the 1990's and the entrenchment process that began after 2000 under the leadership of Putin. The various institutions that were strengthened by Putin to consolidate the process of constitutionalism are discussed. The sixth chapter concludes and sums up the major findings of the study besides testing the two hypotheses.

The historical development of Constitutionalism in Russia is important to understand its distinct character. In order to know the social processes it is vital to know how it has been shaped over a period of time and how the aspirations of people are accustomed to the political culture that developed as a result of political, social and historical forces. The Soviet period is also remarkable for its own contribution to the country and coming with unique inventions of governance and laws. The Post Soviet space was a space of new understandings and coming to terms with the changed realities of the twenty first century but at the same time the new constitution of the Post Soviet period has some remarkable and continuous trends which carries the forward the unique continuity of Political Culture in Russia. The following chapters form the core of the study and discusses the key research questions and tests the hypothesis.

- Imperial Constitutions in Russia
- Soviet Constitutions: An Analysis
- Post Soviet Constitution and Constitutionalism

- Role of personalities and Political Culture in shaping Russian Constitutionalism

The very first instance of written laws in the early Russia came from the reign of Yaroslav- The Great. It was in the early 10th century when he finally established firm hold in Novograd (present day city) and Kiyv (present day city and capital of Ukraine), and the foundation for Novograd Republic were laid. The Novograd was referred to as a city state because of the democratic functioning that it exhibited at that time which was much advanced than the other parts of Europe.

The constitutional development in Imperial Russia was a slow and difficult process owing to so many changes that were taking place in the times like continuous wars and shifting borders. This led to an ongoing assimilation of different people and change in the political and social structure of the country. The common trait of each norm added to this development was the autocratic character that was held dear by each ruler and the amount of effort given to codify the existing laws of the land. The Tsars were moved by the sweeping changes that were witnessed in the European nations and tried to install some of the changes in Russia as well. It was particularly noticed in the Romanov period which resulted in the convergence of certain constitutional principles in Russia and Europe. Despite all these efforts Russia always retained its unique character of laws and constitutions and legal reforms.

The phenomenon of electing the Romanovs after the end of Rurik dynasty was a peculiar development because neither the Ruriks nor the Romanovs were in favour of renouncing their rights in favour of popular representation but this trend coupled with certain radical steps of Peter The Great, especially the law on succession of 1722, marked the genesis of future reforms and the formation of a different law codes and emancipation reforms and charters with each one of them moving the empire a step closer to the realisation of the values of constitutionalism and rule by law, a concept which later would take roots in Russia.

The Russian constitutional development is a distinct process which set its course in the medieval times. The first instance of any attempts at codification of laws in the Russian society was witnessed in the year 1497, the first Russian law code - Sudebnik, by Vladimir Gusev. The instances can also be found in the earlier period but they were not the codified law documents at the national level. The law document

during the Kievan Rus and later during the middle of thirteenth century were some instances when attempts were made to regulate the society based on some written documents.

The Old Russian law during the Rus period served as a source of legal system during the early parts of ninth century which derived its content from the Rus Byzantine treaties and the old slavic customary law. The Russkaya Pravda (Russian Justice) was a major source of laws for the Russian people till sixteenth century. The defining element of the Russian society was the concept of Ryad, an oral treaty between the prince and the people, an arrangement between Knyaz and Druzhina, the prince and the army and the nobility and people. This system paved a way to assign responsibility on all the parties, prince was supposed to protect the people guard the kingdom from external attacks and the people were supposed to pay taxes and provide force for the the irregular army.

The Slavic and Finnic tribes invited Prince Rurik to rule them and in the backdrop of this invitation the Ryad came into existence. This historical account which is mentioned in the Laurentian text of the primary Chronicle represents a different understanding of the ruler as understood by the people. It was the people who decided to invite a ruler from a different tribe because they wanted their own land to be free of in - fighting among the tribes and a certain legal system to be there so that they can have a good life. The people wanted certain order and they were willing to give a part of their anarchical freedom for the purpose of realising this order and this is where things turned out to be different for Russia than other countries.

Russia witnessed the first wave of constitutionalism in the seventeenth century and the eighteenth century. The most important personality which comes to mind is the Catherine - The great. Her thrust towards enlightenment pushed Russian in the direction of European ideals of having a constitution and laws. But this process was not followed in vacuum rather the phenomenon of state building was specific to the society in which it started forming. It was rational aspect of constitutionalism to take into account the societal peculiarities.

The elaborate social and institutional arrangement coupled with provisions of elections of city officials and the king were remarkable in the Imperial context

provided these were the typical times for the Eastern Slavs who were in constant state of warfare with the Byzantine Empire. Laws are a result of social structuring, political culture and they are entrenched as such either orally or through a written document.

The first code of written laws, *Russkaya Pravda*, was a landmark in the constitutional history in the lands of the East Slavs. It was a codification of all the laws that were prevalent in the administration at the time when it was enacted. The law document was made by the king's administration for the efficient functioning of the royal court and it also looked into the relationship between the king and the subjects specifically relating to the criminal laws. The development of laws in this manner was the primary step during early days of what came to known as the Russian national state. It was further developed in the medieval centuries by several rulers of Russia, Ivan IV being the most prominent.

The first Soviet Russian Constitution adopted in June 1918 had six sections, 17 chapters and 90 articles. It was based on the following key principles: (1) the unity of power in the form of soviets; (2) the class-based principle of organisation of power and administration: the dictatorship of the proletariat and the poorest peasantry; (3) the federal, nationality-based structure of the state; (4) the unity of rights and duties of citizens of the Soviet Republic; (5) the socialist nature of the social structure and the policy of the Soviet power in Russia; and (6) free self-determination of nations, proletarian internationalism and the democratic world of workers. The constitution adopted in 1924 and the constitutions of the Union Republics adopted on its basis in general continued the traditions of constitutional-ism established by the first Soviet Constitution of 1918.

Constitutionalism of the victorious socialism expressed in the Soviet Constitution of 1936 is also built on the class-based principle of law as an expression of the will of the ruling class. Ideological constitutionality of that period is based on the idea of abolishing the exploiting classes and expanding the social foundation of the power as an alliance between the working class and the peasantry, strengthening the position of the Communist Party and denying political pluralism. In contrast to the previous period of constitutional development, the constitutionalism of the victorious socialism affirms the universal and equal suffrage, emphasises the unity of the social and economic rights secured by the Constitution, and does not recognize any bourgeois

political rights. In addition, it affirms the conditional nature of the idea of withering away of the state under communism and reinforcement of the foundations of the socialist state.

Up until the early 1960s, the Soviet constitutionalism was influenced by Stalin's Constitution of 1936 and its main characteristics given by Stalin in his report "On the Draft Constitution of the USSR in 1936". The denunciation of the cult of Stalin in 1956 along with further steps to eliminate Stalinism gave rise to the idea of drafting a new constitution that would be based on the idea of socialist legality and law. This resulted in the development of the foundations of socialist constitutionalism.

In April 1962, it was decided to draft a new Constitution of the USSR and the Constitutional Commission was established. Although worked on rigorously, the new constitution was not adopted in 1967 as planned due to both domestic and international constraints. It was only in 1977 that a new constitution was adopted to lay down the constitutional principles of developed socialism. The new Soviet constitutionalism adopted the general ideological basis of the previous constitutions, but modified a few fundamental ideas of the constitutional order.

The 1977 constitution was adopted when the Union had already achieved its socialistic goals to an extent and was on the path to embrace communism from socialism. The constitutional design was thus modified to suit the needs of a developed socialist state rather than a nascent state looking for its rightful place, a task achieved well by the constitutions of 1918 and 1924. The road to constitutional development in Russia during Soviet times was challenging and full of struggles but the way the Soviet legal system emerged and went on to adopt certain universal principles like fundamental duties, universal equal adult suffrage, procurator system among others were commendable.

The current Russian constitution adopted by popular vote in December, 1993 is the product of an axiological and social compromise that was the result of a longer constitutional crisis than the events of October, 1993. The origin of the compromise lies in the problem of search for a combination of individual freedom and competence of the state, the people and the power, spontaneous self-organisation of society and the order, which is typical of Russian constitutionalism.

Developed during an acute conflict between the two branches of power, representative and executive (according to another interpretation: old Soviet and new democratic forces), the constitution proclaims liberal values of natural rights and freedoms of man and citizen and establishes the doctrine of the rule of law, separation of powers, democracy and civil society. The liberal values enshrined in the constitution also include cultural pluralism of society, the freedom of choice in politics, economics and spiritual life, and the protection of privacy and private property. An important achievement of constitutional process is the creation of the Constitutional Court. Institutional presence of the Constitutional Court in Russia is a sign of development of constitutionalism, although its role in Russia is estimated differently.

In addition, the Russian Constitution lays down the standards of a social state and expresses the ideals of social justice. It preserves the rights to work, housing and social security, which emphasises its relationship with the social philosophy of law and social law. Finally, the current Constitution has elements of the conservative philosophy of preserving the unity and integrity of the strong Russian state, while asserting the principle of federalism in its structure. Other conservative provisions include those that take into account specific features of the Russian social and spiritual culture located in the expression of a strong presidency.

According to one of the drafters of the current Russian Constitution, Sergei Shakhrai, it is conceptually based on three main ideas. First, the Constitution is able to provide an ideological basis for public consent on the basis of ideas and principles that are equally important to all individuals regardless of their political views. Second, it is procedural in nature and as such applicable in the context of a conflict between different branches of power or between the federal centre and a region.

Third, the Constitution has an organisational aspect, which allowed using it as a general basis for social transformations in the country (Shakhrai, 2013). Thus, the constitutional outlook affirmed the practical nature of the constitution as a tool for legal and socio-political transformations. In contrast to the Soviet constitutions, which subordinated law to politics, the new Russian constitutionalism is based on the priority of law and its ability to serve as a “core of crystallisation of the order” (Ibid).

All this means that the current Russian Constitution is somewhat eclectic in value terms, which makes it flexible in selecting a possible option of the development of social relations. In general, the modern philosophy of law provides conditions within the framework of state constitutionalism to combine activities of a free and socially responsible individual and an enduring public order in Russia. In this philosophy, constitutionalism is not only of the liberal-innovative nature, but also has a conservative sense closely related to the strengthening of the constitutional traditionalism. The ideology of conservative constitutionalism (or constitutional conservatism) aims at strengthening the constitutional nature of the country – the struggle for constitutionalism.

The Russian understanding of constitutionalism is different from the conventional understanding because of certain intrinsic factor endemic to Russia alone. The history of Russian state and its own struggles against foreign powers and the typical Geopolitical realities have gone a long way in deciding the course of constitutionalism. The inherent difference stems from the fact that the Russian people want themselves to be protected against any kind of aggression from the outside which they have witnessed in the past, be it Mongol occupation or Napoleon's attack on Moscow or the Second World War. Every event marked its own imprint on the shared understanding of the Russian people and their views regarding the constitution, process of constitutionalisation and constitutionalism.

In every case the constitution was framed with respect to the demands that come from the people. These demands are reflection of the necessities of the time and must be addressed accordingly in order to preserve the societal integrity and the state apparatus. Aspirations of the people plays an important role in any law document because anything which does not correspond to the needs of the people is bound to be rejected by them and sooner or later will result in its breakdown. In order to function as a legitimate device a constitution must strive to strike a balance and understanding for the people for whom it is devised. Anything which does not conform to the norms and conventions is bound to be shattered because it would not be able to stand the test of times and aspirations of the people.

Russian constitutionalism holds on to the most important aspect of constitutionalism. It is the popular appreciation of the ruler in the imperial times, the satisfaction of the

workers in the Soviet times and sky high approval ratings of the present president Vladimir Putin which corresponds to the peoples support and admission of the fact that Russian is in need of a distinct system which can't be compared with any other system for comparative perspectives. It is the genuine demand of the people and the popular support that emanates from within the system that gives a distinct definition to the constitutionalisation process in Russian and a different Russian understanding of the Russian constitutionalism. It possible for the any system to lack a feature or two among several features that are enshrined in the definition of constitutionalism but that does not make a system unconstitutional.

No system is perfect because constitutional principles are not realised perfectly anywhere in the world. It is the basic minimum requirements which defines constitutional mechanisms and the government's will to incorporate the people in its decision making and functioning. This criteria too is not sacrosanct because of different histories of the people. The constitutionalisation and constitutionalism is different in USA as compared to UK of which the former has been a colony and shares important cultural and historical bonds and yet they have distinct trajectories towards the realisation of constitutional ideals.

Constitution represents an ideal, those values of the society which individuals deem fit for their survival and good life. Constitution and constitutional processes are the roots which provide life to the state as a whole. It gives a definition to the collective aspirations of the people and allows them to represent what they seek to achieve. It is the constitution which gives meaning to a government because it is in the constitutional text that the form and functions of a government are mentioned. Constitutionalism is not decided and defined from the outside but from within the system. Any outside judgments will result in adulteration of the values which the constitution represents. Whether the government is constitutional or not or constitutionalism exists or not is to be decided according to the text of the constitution and not from outside principles.

The outside principles merely act as a guide to ensure that whatever laws exist in the country must work for the betterment of the people and help them in releasing their higher potential and allow them to lead a life which is progress oriented. It does not mean that the very same principles are allowed to override the social values of a

particular society just because they does not sit well with the notions of the outside principles. The issue of whether there exists constitutionalism or not is sometimes not even dependent on the fact of having no written constitution at all. It doesn't mean that the society is not constitutional and there are severe abuses of power in such a society. It is because constitution as such is important because of the values it imbibes in the government, in the legal system and the people. Constitutional values can exist even if a constitution is not written exclusively.

The most prominent example in this regard is the United Kingdom, having no written constitution and a special arrangement where the monarchy exists with the parliament having a final say in all systemic and policy related matters. The UK parliament is so powerful that, according to De Lolme, "it can do everything except make a man a woman and a woman a man". This phrase does not mean that the UK is an absolutist state having no rule of law or executive excesses it just means that the legal and the administrative system is suited and customised according to the requirements of the country because of its past practices and hybrid arrangement of constitutional monarchy. The values which the constitution upholds are important because it is these values which give meaning to the constitution and result in the process of constitutionalisation.

Constitutionalisation is not a process which can take place from the outs or can be imposed upon the people when they can't relate with the content because it seems alien to them. Only those laws and that document will result in successfully percolating in the society which rose from the society through an intense and deep churning, a result of years of deliberation among the members and years of introduction to the people. The process of constitutionalisation is important for any constitutionalism to exist. Constitutionalism is the realisation of the constitutional principles by the people and upholding them but that upholding is not possible until and unless the process of constitutionalisation is not there.

For the purpose of this study a field trip to Russia was arranged in the March'2022. It was an attempt to further understand the country and have a close look at the society and the people. Many academic institutions like Lomonosov University, MGIMO, National Research University Higher School of Economics and Lenin Library were visited as a part of this academic trip. The faculty at these institutes were highly

supportive of my endeavour to know Russia as a nation, as a society, as an economy and a part of the larger global structure. It was an enlightening experience to connect with some of the most illuminating Russian minds who helped me unravel certain doubts regarding my study. Many random interviews with the natives of the city of St. Petersburg and the capital city Moscow were conducted to know the local point of view regarding concepts of constitutions, laws, constitutionalism and the present Russian leadership. All of the insights that were gained during the course of this academic field trip have assimilated in this study to further enhance the research.

Key Findings of the Study

- Western notion of constitutions and constitutional processes is not applicable universally owing to tremendous differences in historical experiences and political processes in different countries.
- The constitution is not just a legal document but also represents a Nation's will to adhere to a certain system of laws. There is no universal manner in which this will could be realised. It can only be decided by the National self determination principle as to which mode of legal processes serves the National interest.
- Russia has historically seen tumultuous episodes of political disturbances and the psychology of people is framed in such a manner that the weak leadership at the centre is viewed as a dangerous and threatening to the existence of the country.
- The phenomenon of personality cult is one continuous element in the Russian political system since the beginning. It is the one man looks at all approach which gives unique blend of authority and democracy to the Russian political and social life.
- One of the most important aspects of Constitutionalism in Russia is that it was always seen in the political culture of the country. In the Tsardom of Russia it was seen in the law texts that were mandated by the Tsar himself, in the Russian Empire the two most prominent advocates of the process were Peter The Great and Catherine The Great.

- The Soviet period witnessed its own unique trend of Constitutional experiences which were ideological in nature but devised the concept of Democratic centralism to suit their needs. Democratic centralism, as a value, was instrumental in framing the 1936 Constitution and 1977 Constitution.
- The Post Soviet times witnessed an attempt to realise certain western principles in the democratic structure of Russia, the attempt was successful but there was cultural continuity which is specific to Russia. The emphasis of the leadership on the Russian Values and Russianness of things is a reality and the present day constitutionalism conforms to those values while also accepting the global values including international law and Human Rights regime.

**KEY PERSONALITIES
OF RUSSIA**



Ivan IV: The Rurikid dynasty Monarch Responsible for key changes in the Administrative functioning of the Russian State. He was the grand prince of Moscow from 1533 to 1547 and the first Tsar of all Russia from 1547 to 1584.



Peter The Great Peter I, most commonly known as Peter the Great, was a monarch of Russia who modernised it and made it a European power. The Architect of the Russian Navy, First Emperor of the Russian Empire.



Catherine The Great: The Enlightened Monarch of the Russian Empire.
Catherine II, most commonly known as Catherine the Great, was the last
Empress of Russia and the longest-ruling.



Alexander II was Emperor of Russia, King of Poland and Grand Duke of Finland from 2 March 1855 until his assassination.

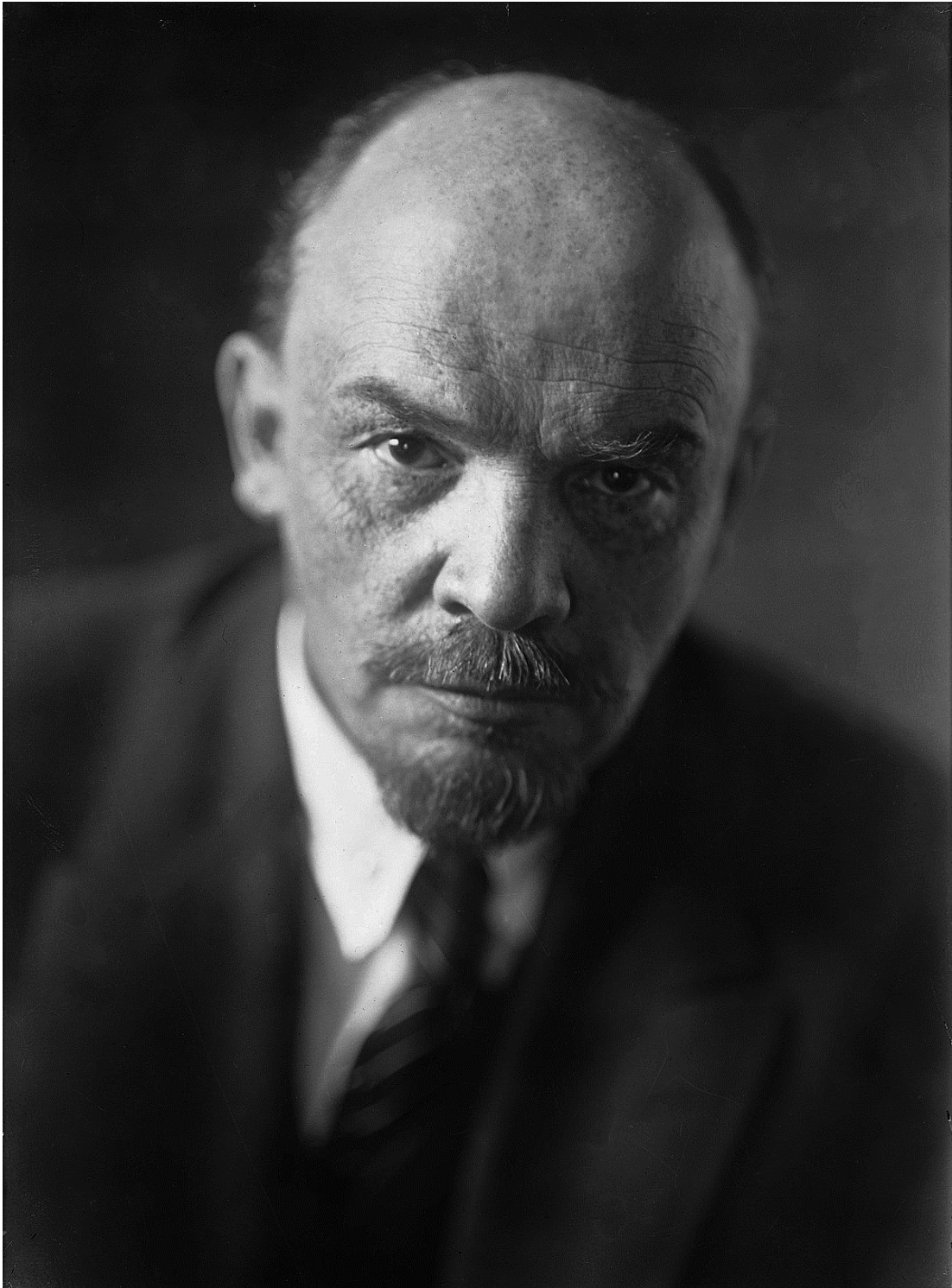
Alexander's most significant reform as emperor was the emancipation of Russia's serfs in 1861, for which he is known as Alexander the Liberator.



Alexander III was Emperor of Russia, King of Poland and Grand Duke of Finland from 13 March 1881 until his death in 1894. He was highly reactionary and reversed some of the liberal reforms of his father, Alexander II. This policy is known in Russia as counter-reforms.



Nicholas II or Nikolai II Alexandrovich Romanov, known in the Russian Orthodox Church as Saint Nicholas the Passion-Bearer, was the last Emperor of Russia, King of Congress Poland and Grand Duke of Finland, ruling from 1 November 1894 until his abdication on 15 March 1917.



Vladimir Ilyich Ulyanov, better known as Vladimir Lenin, was a Russian revolutionary, politician, and political theorist. He served as the first and founding head of government of Soviet Russia from 1917 to 1924 and of the Soviet Union from 1922 to 1924.



Joseph Vissarionovich Stalin was a Georgian revolutionary and Soviet political leader who led the Soviet Union from 1924 until his death in 1953. He held power as General Secretary of the Communist Party of the Soviet Union and Chairman of the Council of Ministers of the Soviet Union.



Vladimir Vladimirovich Putin is a Russian politician and former intelligence officer who have served as the president of Russia since 2012, having previously served between 2000 and 2008.

One of the longest serving leaders of Russia and responsible for uplifting Russia politically and economically since the turn of the century.

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