RUSSIAN PRESIDENCY AND THE OTHER ORGANS OF THE STATE
Introduction

In the study of Presidency and the Functioning of Democracy in Russia this chapter is significant and will help to understand how far the constitution has provided separation of power among the three branches of the state viz. Executive, Judiciary and Legislature which is essential for any genuine democracy. This chapter at the same time will also analyse the constitutional powers and role of the president and try to study important cases as and when the constitutional powers have been invoked by the president.

As we have seen in the second chapter, the post 1991 Russia emerged under difficult circumstance and the birth of the new constitution in Russia was long and painful process (Sakwa 1996: 54) with many favouring continuation of socialism of soviet era over capitalist democracy. Despite all the hue and cry over the new constitution, history shows, there is no such thing as a constitution that will please everyone (Baglay 1993: 7-9). Concession must be made provided that the main constitutional goal of human rights and freedom are guaranteed; accordingly the new Russian constitution of 1993 incorporates human and civil rights as supreme value (Article 2). The republic that was created by the basic law was a feat of political genetic engineering, an amalgam of practices that could be described as a French executive presiding over a bicameral parliament. The upper house is more like an American Senate and lower house as that of modern German Bundestag, populated in turn by regional Soviet bureaucrats and watched over by uniquely Russian judiciary.

The constitution that was adopted significantly augmented the presidential authority and limited the powers of the parliament as well as the republics. The increasing role and powers of the president in effect contradict the democratic principle. Some political analysts say that it is only a ‘delegative democracy,’ while others say that it ensures an ‘authoritarian president’. In other words, the model of government that emerges from the document is both pseudo parliamentary and Superpresidential (Sakwa 1996: 62).

The basic principle of the Russian constitution of 1993 is liberal in overall conception. However, some of its democratic procedure might be flawed since liberalism was given precedence over democracy. Nevertheless, the constitution upholds certain basic principles of democratic state building such as separation of
power (Sakwa 1996: 60) but having separate state bodies does not always necessarily ensure their independence and decisive decision-making or autonomy. Under the new constitution, the powers of other bodies like- Federal Assembly is visibly much less than those granted to the president. Hence, the principle of separation of power is observed in the barest minimum (Chenoy 2001: 63).

The Russian constitution of 1993 ensures the executive supremacy over the legislature by conferring extensive decision-making powers with presidential decree having the same force as parliamentary law. The executive branch is more powerful not only because of the president’s political position, which is legally superior to that of all other institutions. It is also because it enjoys considerable institutional independence and freedom of manoeuvre (Willerton 1998: 46).

(I)

PRESIDENT AS THE HEAD OF STATE AND THE GURANTOR OF CONSTITUTION

After dissolving the parliament on 21st September by presidential decree\(^1\) and bloody impasse with the parliament on October 1993,\(^2\) President Boris Yeltsin unilaterally crafted a new set of political rules for governing Russia. According to the new constitution that was adopted on 12 December 1993 referendum\(^3\), Russia established a presidential system. In the constitution, the president is named the head of the state rather than the chief executive. Executive power is exercised by the government. The president appoints the prime minister whose official title is ‘the Chairman of the Government of the Russian Federation’.

According to the new Russian constitution, the president is the highest elected official in Russia and is the head of Russian State, which is one of the primary responsibilities under the both first and second republic. Other most important

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state duties of the president is the role as a guarantor of the constitution, and of basic
human and civil rights of the citizens of the country. The president is also responsible
for protecting the sovereignty of Russian Federation, including its independence and
borders. The president outlines priorities for domestic and foreign policies of the state
and ensures coordination between all government agencies. On foreign policy, the
president not only sets foreign policy priorities, but oversees their implementation,
and conducts negotiations with leaders of foreign countries and signs international
treaties. The president is also commander-in-chief of the armed forces and as head of
state represents Russian Federation at home and abroad. In the event of aggression,
the president can declare martial law and in special circumstances a state of

Article 80(1) of the Russian constitution states, “The President of the Russian
Federation shall be the head of the state.” The president as the head of the state has
many ceremonial roles to play and vast powers to exercise. In this capacity the
president confers State awards of Russian Federation and awards honorary titles of the
Russian Federation and to higher military and higher special ranks.

As the head of the state, the president represents the country domestically and
internationally giving him enormous and far-reaching power to “define the basic
domestic and foreign policy guidelines” (Article 80 (3). This seems to place the
president above all three powers of the state. Some critics maintained that it would be
better to place the president within the framework of the executive power, as was
done in United States of America (Baglay 1993: 7).

Furthermore, the president plays the role of the “guarantor of the constitution
of the Russian Federation, and of human and civil rights and freedoms, he shall take
measures to protect the sovereignty of Russian Federation, its independence and state
integrity, and ensure concerted functioning and interaction of all bodies of the state
power” (Article 80 (2). These functions go beyond the framework of single power that
requires president to be above the three bodies’ viz. Executive, Judiciary and
Legislature. This provision invests lot of unclear and undefined powers to the
president a “power that could in certain circumstances be used to subvert the
constitution” (Sakwa 1996: 60).
Eligibility and Tenure

The eligibility to contest for the post of president is not stringent but simple and easy for any contending candidate to qualify. It only requires that the candidate should have attained the age of 35 years and should be residing in the Russian federation at least for the last 10 years. The president of Russian Federation is elected through the procedure laid by the Russian federal law, on the basis of universal, equal and direct suffrage in a secret ballot for tenure of four years (Article 81.2 and 4).

The president is eligible for two consecutive terms, if he so desires. The constitution further mentions that "no person shall hold office of the president of the Russian Federation for more than two terms in succession" (Article 81.1 and 3). On the eve of Yeltsin’s completion of two successive terms which was due in July 2000 there was speculation that Yeltsin may amend this constitutional provision to ensure his third term. However, contrary to popular belief this provision came into force in 1999-2000 for the first time since adoption of Constitution in 1993 when president Yeltsin before completion of two consecutive terms resigned and paved way for Putin.

Significantly, the constitution is silent about whether the president can face the election and occupy the post of presidency after a gap of some tenure and could be interpreted in two contradicting ways. Firstly, one cannot hold office even after a gap of some tenure and on the other hand it can also be interpreted as, one can hold office after a gap of one or more tenure, since the constitution has only mentioned ‘two consecutive terms’ without further detail. This loophole has a potential for constitutional crisis and political conflict in the future.

The constitution also stipulates that the president’s term can be terminated before completion, in “the event of his resignation or sustained inability due to health to discharge his powers or in the event of impeachment” (Article 92.2 and Article 93). While, since the constitution came into force, none of the president has been impeached or has suffered inability to discharge duties due health problem but Yeltsin resignation on December 1999 in effect has invoked this provision for the first time. This provision will be discussed in more detail in under the impeachment section of the president.
Since adoption of presidency in Russia in 1991 till 2005 Russia had four presidential elections in 1991, 1996, 2000 and 2004. In the first two elections Yeltsin won the election and last two were won by Putin.

**Impeachment**

The constitution of Russia can be credited with one of the toughest and near impossible procedure for the impeachment of any democratically elected political head of the state in the world. The president of Russian federation can only be impeached from the office on the basis of a charge of treason or for committing some other grave crimes (Article 93.1). The procedure of impeachment of the president involves many difficult and complex processes:

- In the first stage, the State Duma has to adopt a decision to file a charge against the president by two-thirds of the deputies of the house. The ruling of the special commission formed by the State Duma follows it. After which, the State Duma files a charge against the president in the Supreme Court with the initiative of at least one-third of the deputies of the State Duma.
- In the second stage, the Supreme Court gives its ruling confirming the presence of element of crime in the charge.
- In the third stage, the Constitutional Court gives a ruling that the established procedure has been followed and observed in filing the charge.
- In the final stage, the Federation Council by a vote of two thirds of the total membership of the house removes the president from the office.

The decision of Federal Council to remove president should be adopted within three months from the date of filing of charge by the State Duma. Failing to do so will nullify the charges against the president (Article 93.1, 2 and 3).

Of many attempts to impeach Russian President the first attempt in 1993 in the Russian First Republic and the 1998-99 impeachment process is worth discussion as they had huge implication for the Russian presidency.

The first attempt to impeach Russian president was during the first Russian Republic which came to an end on 21st of September 1993 when Yeltsin issued decree 1400 disbanding parliament, suspending parts of constitution and forbidding
the Constitutional Court to meet. This impeachment move failed when the impasses between Yeltsin and Parliament ended in violent confrontation in 4-5 October 1993 known as ‘October Revolution’, when rioters attempted to defend parliament and the president called in the military to shell the parliament building and disbanded the legislative branch by force (Rodin 1993: 5-6). Yeltsin’s move of disbanding and shelling the parliament though was personal achievement but was one of the darkest days for Russian parliamentary democracy.

The last move to impeach president Yeltsin was formally launched on 9 June 1998 on account of five impeachment charges, including instigating the 1991 Soviet Union collapse, improperly using force against hard-line lawmakers in 1993 known as the coup-d’état of October 1993, launching the botched 1994-96 war in Chechnya, ruining the nation’s military and waging genocide against the Russian people by pursuing economic policies that impoverished the country. On 21 August 1998 Duma put up impeachment of Yeltsin for voting but hours before impeachment hearing begin the Duma passed a nonbinding resolution calling on the president to resign.

This impeachment process was significant as it nearly created a constitutional standoff between the president and the Duma. The Duma has already twice rejected Yeltsin nomination of Prime Minister Sergei Kiriyenko and if rejected for the third time the president can dissolve the Duma, on the other hand if Duma voted to impeach president the president cannot dissolve the Duma. It was under this cloud of uncertainty that impeachment hearing began.

Voting on all five charges took place two days later, on 24 August 1999 out of 422 Duma members, 408 Deputies registered on the morning voting; however, only 348 valid ballots were cast. In the end, the Chechen war charges garnered the most support, but even this fell 17 votes short of the 300 necessary to move the process to the next stage. The 1998-1999 impeachment attempted against Boris Yeltsin could only reach the stage of deliberation and voting on impeachment, finally resulting in

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the survival of president. This time too, the threat of Duma dissolution and Yeltsin’s health recovery checkmated the impeachment proceeding.

The contrast between the Yeltsin and Putin presidencies is nowhere more visible than in president and parliament relations. Yeltsin never commanded majority of votes in the Duma. It was only the 1999 Duma elections that for the first time resulted in pro Kremlin majority in Duma and ushered into non confrontation period between President and Duma. Since then the Duma has not taken up any impeachment process and censure resolution against President Putin.

To remove the president, the parliamentarians require “rapid and well coordinated actions by both the houses of the parliament, special commission, the Supreme Court and the constitutional court so that it is impossible that they could bring about president’s impeachment” (Fish 1997: 326). The failure to impeach the president twice resulted in State Duma’s attempt to amend the constitution in June 1998. It sought to simplify the impeachment process by doing away with the role of Supreme Court and a special commission created by the State Duma. This move also failed because of lack of consensus among political parties.

**Succession**

The post of the vice president came into conflict with the president at the time when Vice President Rutskoi betrayed Yeltsin. On 21 September 1993, Yeltsin issued a decree disbanding parliament and ordering new elections. This move was countered by the parliament through impeachment of Yeltsin. During this stalemate, Vice President Alexander Rutskoi sided with the parliament and got himself sworn in as the president of Russia after the impeachment of Yeltsin. This event had far-reaching consequences as Yeltsin, who was the architect of the new constitution, ensured that there would no more be the post of vice-president in the new republic. This absence of vice presidency in Russian political system is similar to the French practice.

The constitution stipulates that the ‘head of government’ will succeed the president temporarily as ‘acting president’ in all the instances where the president is

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unable to perform his duties. In the event of prime minister succeeding president, the election for presidency must be conducted not later than three months or in other words the acting president cannot continue for more than 3 months at a stretch (Article 92. 2 and 3).

The failing health of Yeltsin and his inability to discharge his duties led to the idea of reintroducing the vice presidency among the parliamentarians (Kiselyov 1997: 1-2). However, such a step was unrealistic and was not viable. It involved amending many articles of the constitution simultaneously, through complex and difficult constitutional process including convening a constitutional convention (Kiselyov 1997: 1-2)

In 1998, a situation arose where Yeltsin’s health was not stable, with a life threatening heart problem. At the same time, there was no full-fledged prime minister as Chernomyrdin government was dismissed and the acting Prime Minister Sergei Kiriyenoko was replaced. Had Yeltsin died before he persuaded State Duma for appointment of new government, there would have been a constitutional crisis. The constitution only says that head of the government (prime minister) will take over as the acting president, with no such provision for the acting-prime minister taking over the office of president, nor has it given further line of succession. This provision has been invoked once in 1999 since the constitution came into force, when Yeltsin unexpectedly resigned during his New Year eve speech in 1999 and the presidential election was due on June 2000. Accordingly, 1st January 2000 the Prime Minister Putin took over the office as an acting president for three months till March 2000 presidential (Moser 2001: 96-97).

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8 See Constitution Article 92(3) also see Const. chapter 1, 2, 9.
Chapter-III

(II)

FUNCTIONS AND POWERS OF THE RUSSIAN PRESIDENT

The 1993 constitution hands over a large amount of power in the hands of the president. This has been done at the cost of powers of other institutions which are considered significant for the evolution of democratic polity.

Appointment and Removal Powers of the President

The president appoints the head of the government of the Russian Federation with the consent of the State Duma. He also appoints the deputy prime minister(s) and federal ministers on the proposal made by the head of the government. He decides on the dismissal of the Government of the Russian Federation (Article 83 a, c, e). Yeltsin invoked these constitutional provision many times. The first arbitrary dismissal of government came in March 1998 with the dismissal of Chenomyrdin government and naming Sergei Kiriyenko.9 Since then, Yeltsin arbitrarily dismissed and appointed a series of prime ministers and governments.

Putin unlike Yeltsin, during his presidency had two prime ministers Mikhail Kasyanov appointed on 7th May 200010 and stayed in office till 24th February 200411. After 2003 Duma election Mikhail Fradkov was appointed as prime minister on 5th March 200412 who remained in the office till end the period of this study (this clause will be further discussed under the sub-heading president and the government).

The president submits the candidate to the State Duma for the appointment to the office of director of the Central Bank of Russian Federation. Likewise, he submits the candidate(s) to the Federal council for the appointment of general prosecutor, judge(s) to different courts of Russian Federation and appoints justice(s) in other

12 Vladimir Putin makes decision to appoint Mikhail Fradkov Prime Minister, Pravda, Moscow 01.03.2004 (English version of this newspaper can be accessed from URL: http://english.pravda.ru/
federal courts. Accordingly, the president puts a proposal of their removal to the concerned houses (Article 83 f).

The president forms and heads the Security Council and Presidential Administration of the Russian federation. He appoints and removes the high command of armed forces of the Russian federation. Furthermore, he appoints and recalls the diplomatic representatives in consultation with the Federal Assembly committees (Article 83 g, i, k and l).

With regard to the federal regions the president “appoints and dismisses plenipotentiary representatives of the president of the Russian federation” (Article 83 j). This clause was enshrined to enhance federal control over the regions. However, during Yeltsin’s presidency the regions were able to exert pulls and pressure on the presidency resulting in many compromises between federal government and regions. This was put to an end by Putin’s decree forming seven federal districts throughout Russia and appointing presidential representatives in all districts who became mediator between the regions and the centre, along with the legislation that grants president power to dismiss regional governors if the court determined their actions have contravened federal law.13 These steps of Putin have redefined the relations between federal government and regions, further discussion on this issue will be dealt in detail in Chapter IV.

**Legislative Powers (Power to Issue Decree)**

One of the controversial provisions that give enormous power to the president and place him above the legislature is his power to issue decrees and directives. These are equivalent to the law and are enforced throughout territory as a mandatory. The only check on the president’s power to issue decree is that the decree should not breach the constitution and federal laws (Article 90). However, the question that remains, whether the Constitutional Court, which is the authority to interpret the constitution, will be able to keep check on president’s misuse of his decree issuing power? Most likely, the Constitution Court will interpret the constitution in president’s favour, since the president appoints the judges.

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The decree making authority has been controversial from the start and has been used extensively and perhaps sometimes abusively by both the presidents, Yeltsin and Putin. President Yeltsin was sharply criticised for operating outside the bounds of law by issuing hundreds of decrees in order to circumvent an oppositional legislature. President Vladimir Putin has been even more widely condemned - within and outside of Russia - for asserting authority through the issuance of decrees, e.g. his establishing a system of seven federal districts and creating the state council. The strong presidential tilt to the constitution often described as “superpresidentialism” is considered a contributing factor to the authoritarian trends of recent years (Fish 2005; McFaul et al. 2004).

Presidential decree-making power is central concern of theories of democratic consolidation and stability in presidential systems though, granting of such exceptional powers to the executive head to carry out difficult reform measures is not unusual in other countries. The use of this special power in the long run may give rise to undesirable developments, as it undermines consensus-building and delays development of core representative institutions (Nagy 2000: 111). Many observers have argued that the concentration of unilateral policy making power in the presidency invites confrontation with an opposing legislative assembly, sometimes resulting in extra constitutional action by one side or the other, and endangering democratic processes (Linz 1994: 3-90).

At the beginning of 1994 Yeltsin was compelled to rule by decree as discussed above until the Duma and Federation Council could establish their internal rules and procedure for approving legislation. It was not until August 1994 that more than four laws were passed in a month and more than 12 laws overall were signed by the president. As a result, for reforms to continue and at least some policies to be enacted, the president made numerous decrees from January to August 1994. It is unclear how many normative decrees were signed during this period because the official publication of decrees did not disclose the information.

Even though the president is constrained by several policy areas in which he cannot issue normative decrees (law making presidential decrees), there are many other spheres in which he can. Thomas Remington, Steven Smith and Moshe Haspel (1997: 37) found that during Yeltsin presidency most normative decrees were issued
in the areas of administrative reorganisations, social welfare, economic policy, sectoral support, state programs, and national defence.

After the 1999 Duma election when pro president parties came to dominate Duma and with the reorganization of the Federation Council, when it also came in tune with the president, we can see a normalization of relation between the Federal Assembly and president Putin. Accordingly, President Putin preferred to operate by the normal legislative process, in contrast to president Yeltsin who often relied on presidential decrees to enact important policy changes. This argument can be substantiated with Remington's analysis of issuance of Presidential Decrees form 1994-2003. According to him the least decree issued by Yeltsin in any given year was not less than 150 with the highest being in 1996 when he issued more than 450 decrees. While for Putin except during his inaugural year 2000, when he issued nearly 200 decrees, the corresponding years the issue of decrees decreased to less than 150 by 2003 (Remington 2003: 56). 14

Presidents’ Military Powers

The president of Russian Federation has wide military power that ensures his control over the military of the Russian federation. President forms and heads the Security Council and approves the military doctrine of Russian Federation. He appoints and removes the high command of the Armed Forces of the Russian Federation (Article 83 g, h and k). The president is also “the supreme commander-in-chief of armed forces of the Russian Federation” (Article 87.1). In this capacity, the president in the event of the external aggression or on direct threat of aggression can introduce martial law. The only check on the president is that in event of imposition of Martial Law, he should immediately inform the State Duma and Federation Council. This provision can be enforced “on the territory of the Russian Federation or in areas thereof” (Article 87.2).

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14 The numbers of decrees was classified and were not published. Hence, are not included in the analyses.
Diplomatic Powers of the Russian President

As the head of the state, the president carries out many diplomatic functions. He represents the country outside the State. He conducts talks and signs international treaties and instrument of ratification (Article 86 b and c), attends summit conferences and conducts negotiation at the highest level on behalf of his country. He also “accepts the credentials and instruments of recall of diplomatic representatives accredited with him” (Article 86 d). The president also exercises a leadership in the foreign policy (Article 86 a). Accordingly, he determines the basic foreign policy of the country. In this effect the constitution grants him the power to appoint and recall diplomatic representatives from foreign states and international organizations after consulting the concerned committees of Federal Assembly (Article 80. 3 and 4 and 83.l).

The cabinet reshuffle of November 1994 was followed by major reshuffle in the personnel of foreign ministry invoking the president’s power of appointment and dismissal in the diplomatic corps. On June 21 1995, the State Duma moved a failed ‘no confidence motion’ against government. Despite the failure, the State Duma adopted several constitutional amendments. One of them was a bid to curtail the president’s exclusive power over foreign affairs. The State Duma passed that the president would require the consent of the State Duma for the appointment of the foreign minister. Once again it failed because of the rejection by the president and Federation Council.

Emergency Powers

The Russian president enjoys the power to declare “state of emergency” on the territory of the Russian Federation or localities of that territory. This provision can be exercised in circumstances and procedures laid by the federal constitutional law. The president, like in the case of martial law, should immediately notify to the Federal Council and State Duma after declaring “state of emergency” (Article 88). After the adoption of the 1993 constitution this clause was used for the first time in 1994, when president Yeltsin launched a military campaign against Republic of Chechnya by

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15 "Ryblun Pledges Support for Chubays, ITAR-TASS, 7 November 1994, translated in Summery of World Broadcasters, SU/2148, B/1 9 November 1994."
presidential decree. Correspondingly, he also invoked the 'state of emergency' in the Republic of Chechnya through a presidential decree (Agafanov 1995: 1-3).

Veto Power

According to the constitution the State Duma acts first on all legislation and the Federation Council may only accept or reject the version passed by the Duma. If the Federation Council rejects legislation, a two-thirds majority of the Duma may override the Federation Council. However, if the Federation Council fails to act on legislation within 30 days, the bill passes automatically to the president for his approval or veto. In the event of presidential veto on legislation, only two thirds majority in each house can override the veto (Articles 105 and 107).

a) Package veto: Beside power to introduce legislation and issue decrees, the most important power of the president in law making process is veto power. President if so desires can veto entire pieces of legislation without being overridden by parliament. Similar to the executive power to introducing legislation, with ultimate veto power the president has a significant agenda setting capabilities in that he/she can ensure that only the bills he/she support are passed. This is very rare, however and most often a veto can be overridden by parliament. Depending on the president’s ability to command a majority in the parliament, he/she will be more or less able to convince parliamentarians not to override veto.

b) Partial veto: Similar to the packaged veto, the partial or line-item veto gives president the ability to veto parts of legislation instead of the entire bill. This can be particularly important if he supports the bill but disagrees with only few parts. In many countries, such as United States where pork-barrelling by congress people often ensures that amendments will be added to a bill, the president can veto the parts he chooses. This is especially useful if he proposed the bill, so he can use a partial veto to pass legislation closer to his own objectives (Troxel 2003: 26-28).
Veto 1994-1998: Numerous bills are withdrawn or delayed each year following a veto by the Federation Council or president.\textsuperscript{16} The president and Federation Council power to issue vetoes serves as checks on the Duma’s authority in law-making, but the Duma can override them with two thirds super majority vote. As discussed in the above two paragraphs the Duma and the Federation Council can override the president’s vetoes with two-thirds of votes of the total numbers of deputies in each house (Article 107). There is no set time frame in which they must be overturned, so often there are large gaps between the time when legislation is vetoed and when it is reconsidered by the parliament. Before bills are sent to the president, they must be adopted by the State Duma. Once passed by the Duma, they are then forwarded to the Federation Council which can choose to veto, not consider, or approve them (Article 106). If Council members veto a bill, it is resubmitted to Duma for a decision (Article 105). To override the Council of Federation’s veto requires two-third votes of the total number of Duma deputies (Article 105). When Duma deputies overturn a veto or council members approves or decide not to deliberate on a given legislation within 14 days of receiving it from the Duma, it then proceeds to the president, who must sign or veto it. The council and president are both constrained by the 14 days they have in which to issue a veto or approve the bill. If the president returns the bill, Duma deputies can approve it with his amendments by a simple absolute majority or override the president’s veto with a two-thirds supermajority vote. After the Duma decides to pursue either of these policy actions the Federation Council must resolve to do the same for it to be finalized.

Residual Powers

The president grants political asylum and also decides on the question of granting citizenship of Russian Federation (Article 89 a). In the event of disagreement between bodies of state power and also between bodies of state power of components, the president may use a ‘conciliation procedure’ and refer to the appropriate court for resolution. The president can suspend the enactments made by the bodies of the executive power of components if these enactments violate the constitution, international commitment, human rights and freedom or the decision is awaited to be

taken up by the appropriate court (Article 85). The president also has power to put forward proposal to amend or revise the constitution of the Russian Federation (Article 143). Moreover, it is only the president who can schedule referendums if need arises according to the procedure set by federal constitutional law (Article 84 c).

(III)

PRESIDENCY AND THE GOVERNMENT

Before going further into this section it is important to briefly understand the exact meaning of government in Russian context. The Russian government tends to be confused with the presidential administration. The Russian government formally has its own organizational structure and the prime minister heads the Russian government (cabinet). Cabinet is usually referred to as a collection of the most significant members of the executive branch. In Russia all ministers are cabinet members. Therefore 'cabinet' can be used interchangeably with the term 'government' in the case of Russia. Meanwhile, the term 'government' as well as the term 'executive' may refer not only to the chief administrative office but also to all others who execute the laws and to them as a group (Rhodes and Dunleavy 1995: 57). Russia’s government, as a hybrid of presidential and parliamentary system, is subject to the tension producing “dual democratic legitimacies” (Huskey 1999: 98).

In relation to the government, the president wields large and wide powers. The president determines the guidelines of the state’s domestic and foreign policy, within which the prime minister and cabinet organizes its work (Article 80. 3 and Article 113). The president also has right to chair the session of the government (Article 83 b) and therefore it would not be wrong to say that he is the real policy maker and head of the government.

On the basis of the normative decrees of the president, the constitution and the federal laws, the government of the Russian federation issues decrees and directives and ensures their implementation (Article 115.1). In the event that the government decrees are at variance with the president’s decree, the constitution and federal laws, the president can repeal them (Article 115.3). This further gives the president more
power to control the government and in sum practically ensuring his complete control over the government.

The president has absolute power in relation to appointment and dismissal of the government. Article 3 (1) says that “the Chairman of the Government of the Russian Federation shall be appointed by the President of the Russian Federation with consent of the State Duma”. Further, Article 112(2) states that “the chairman of the government of the Russian federation shall propose to the president of the Russian Federation candidates for the office of Deputy Chairman of the Government of Russian Federation and federal ministers”. Within no time of the constitution coming into force, Yeltsin flouted Article 112(2) for the first time in 1994 after the new parliamentary election in 1993. He appointed Prime Minister Chernomyrdin and unilaterally selected other ministers and appointed them through presidential decree sideling the role of prime minister in proposing the name of the ministers. Once again, in 1998 Yeltsin seriously flouted the constitution that provides one-week time for formation of government, when he took more than the specified one-week time to form Primakov government (Babayena, and Kolesnikov 1998: 1-2).

“The President of the Russian Federation may take a decision about the resignation of the government of the Russian federation.” This particular clause was invoked many times by president Yeltsin. The growing criticism of economic and political crisis and the August 1998 economic meltdown in Russia led to wide use (misuse) of this provision by Yeltsin to save himself. He changed six prime minister for the record in eighteen months till the appointment of Putin in August 1999 (Khan 1999: 13). He also dismissed many individual ministers and reshuffled the ministry many times. The first Cabinet reshuffle was done in November 1994, when Yeltsin appointed Anthony Chubais as Deputy Prime minister, Alexander Nazarchuk as Agriculture Minister, Valdmir Panskov as Finance Minister and Yevgeny as Minister of Economy.

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17 Also see Constitution Article 111(1), 83(a) and 112 (2) in appendix.
19 Yeltsin flouted Constitution Article 112.
20 See Constitution Article 117(2) also see Article 83(b) in appendix.
The sweeping power of the president to appoint and dismiss the government did not remain unchallenged from the legislature for long. This challenge remained one of the problems that Yeltsin faced during his presidency. In June 1995, the State Duma moved a failed ‘no confidence motion’ against the government. Following the failure, the State Duma sought to make constitutional amendment to curb some of the president’s powers. One of them was that the consent of the State Duma would be required for the appointments of the Prime Minister, Deputy Prime Minister and Ministers of Foreign Affairs, Defence, and Internal Affairs.22

It further tried to arm itself with the power to move no confidence motion against individual minister in which the president was required to act within two weeks.23 The president vetoed this move and therefore it could not materialise. This failure did not deter the communist dominated State Duma. It further tried to curb the president’s power by passing a motion on constitutional law in December 1996. The proposed law said that the prime minister should be dismissed only with the consent of the State Duma.24 This move also failed, as the Federation Council did not pass it.

Following the December 1999 election, the pro-Kremlin Unity Party became the dominant force within the Duma and relation between the president and the legislative branches became far more harmonious than they had been during 1990s. This development produced a striking new model of coalition politics within the Duma and a new pattern of legislative-executive relations. These developments have produced lasting and significant changes in relation between the government/parliament and presidency (Remington 2003: 233).

Putin unlike Yeltsin had a cordial relation with the Duma and hence did not face any confrontation in regard to government formation and dismissal. Further, this also led to Putin judiciously invoking those provisions related to government formation and dismissal. Since assuming office of president in 2000 Putin changed only two prime minister. He appointed Mikhail Kasyanov as prime minister on 7th May 2000 who stayed in the office till 24th February 2004 (Radio Free Europe,

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Moscow, 24 February 2004). Viktor Khristenko remained as an acting prime minister for a short period from 24 February 20004 to 5th March 2004 and Mikhail Fradkov was appointed as prime minister on 5th March 2004 (Radio Free Europe, Moscow, 5 March 2004) who remained in office till the study period of this thesis. Putin, in contrast to Yeltsin, had only one prime minister who served the entire period of third Duma tenure (1999-2003).

In spite of both France and Russia having executive presidency with parliamentary government, unlike France, in Russia the constitution does not mention anything about the majority party forming the government. Hence, the constitution does not oblige the president to appoint prime minister from the largest party. Only he has to be sensitive to balance the forces to avoid the defeat of government by a vote of no confidence motion. This provision gives enough space to the president to change the government as often as he likes. Yeltsin exercised this power many times during his presidency. This provision is also one of the hindrances to development of political parties and party system in Russia, as majority party is not privileged to form the government.

(I)

PRESIDENCY AND THE FEDERAL ASSEMBLY

The president’s victory in the bitter conflict between the president and the legislature during 1991-93 obviously resulted in adoption of a constitution that provides strong presidency over the legislature. In the new constitution, the president enjoys sweeping powers over the legislature. It ranges from the power to legislate by decree to the extent of dissolving of the State Duma—duly elected by the people.

Although the 1993 constitution laid the foundations for executive dominance, the political control enjoyed by the president depends on the support he enjoys in the Federal Assembly. Boris Yeltsin’s inability to build a stable and disciplined presidential majority post-October 1993 produced a weak form of what Arend Lijphat termed as “consensual” as opposed to “majoritarian” parliament-president relation (Lijphart 1999: 217). Although legislative politics endured periods of adversarial
conflict, such as the impeachment vote of 1998 the executive was forced to bargain and compromise with the assembly. The Putin presidency changed the dynamic of parliament-presidential relations. The relation between the parliament and the president became more majoritarian with Kremlin acquiring majority backing in both houses of the Federal Assembly, which has in turn resulted in executive dominance in the policy sphere. The result being Putin could establish a basis of political support not enjoyed by Yeltsin (Chaisty 2005: 119).

Despite the fact that the president’s power has increased manifold while the power of the legislature has decreased, it seems that both the chambers of the Federal Assembly still enjoys many powers - both in relation to the president as well as in making policy. This is evident, since more than 600 laws were enacted during 1994 to 1997 through regular parliamentary processes. This gives enough reason to convince us that policy is being made by more than presidential decree alone (Remington et al. 1998: 228-291). The president’s position in relation to the legislature will be discussed under three headings for better understanding:

a) President’s Power Over Legislature: The president addresses the joint session of the Federal Assembly annually on the ‘state of nation’ and on the basic guidelines of the state’s domestic and foreign policy (Article 84 f and 100.3). The constitution stipulates that the State Duma should have its first session after the thirtieth day of its election but the president has a power to convene State Duma for a sitting if the need arises before the stipulated time (Article 99.2).

The president is also the only authority in Russian Federation who can dissolve the State Duma before the expiry of its term. This provision gives greater power to the president over the legislature. Both president Yeltsin and Putin have used this power as a tool to keep the State Duma on its knees. This power can be exercised by the president under three circumstances as laid down in the constitution:

• Firstly, as stipulated in Articles 111 of the constitution, the president can dissolve State Duma if his proposal of a candidate for appointment as the head of the government is rejected for the third time. In 1998 the use of this provision was narrowly averted when Yeltsin dismissed Prime Minister Chernomyrdin and proposed

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25 Also see Constitution Article 111(4) also see 84 (b) and 109(1) in appendix.
Sergi Kiriyenko. The State Duma rejected Kiriyenko candidature for two times and decided to hold third and decisive vote by secret ballot. It was finally aborted when Yeltsin dared the State Duma to defy him three times, with a clear message to dissolve the State Duma in the event of third rejection (Moser 2001: 92-93).

- Secondly, following the expression of no confidence in the government for the first time the president can either disgrace the State Duma or dismiss the government. In the event if the State Duma is disgraced and the State Duma passes no confidence again for the second time within three months, the president can dissolve the State Duma or dismiss the government (Article 117.3, 84 b and 109.1). In 1995, the State Duma in protest against Chechen guerrillas' hostage crisis, held a no-confidence motion against the government on 21 June and again in 1 July. The second motion failed to pass due to the threat of eminent dissolution (Sakwa 1996: 153). Hence, the use of this provision was also averted.

- Thirdly, if the head of the government submits to the State Duma a motion of confidence and if the State Duma refuses its confidence. The president can dissolve the State Duma or dismiss the government within seven days (Article 117.4, 84 b, and 109.1). In response to 21st June 1995 no-confidence motion on government, Prime Minister Chernomyrdin countered by tabling 'confidence motion' in the State Duma. Later, he withdrew confidence motion with the defeat of no-confidence motion in the State Duma on 1st July 1995. This time too with the withdrawal, the president was spared from invoking this provision.

The constitution prevents president from dissolving State Duma under four circumstances. Firstly, according to Article 109.4 the president cannot dissolve the State Duma from the moment the State Duma file a charge against the president for his impeachment until the Federation Council adopts the decision (the process takes three months Article 93.3). Secondly, the president cannot dissolve the State Duma following one year of its election (Article 109.3). Thirdly, the president cannot dissolve the State Duma when the martial law or state of emergency is in operation throughout the territory of Russian Federation (Article 109.4). Fourthly, the president cannot dissolve the State Duma within six months preceding the expiry of his term of office (Article 109.4). Though check on the president's power is very important, the
above four circumstances are very insufficient and limited. That leaves loophole for presidential abuse of power in respect to State Duma dissolution.

In Russia, it is the president who sets the date for the election of the State Duma in the event of its dissolution. This is unlike in other democratic states where the election commission is the authority that schedules the elections in the country. This according to the constitution is to ensure that the State Duma is convened within four months from the date of dissolution as stipulated by the constitution.\(^\text{26}\)

The president also enjoys the right to legislative initiative (Article 104.1), that is, he can submit draft laws to the State Duma (Article 84 d). The constitution further says that any federal law passed should be submitted to the president within five days to sign and promulgate. In other words, the federal law passed cannot become law until signed by the president. Here again, the president enjoys the right to either sign the law or reject it (presidential veto power is discussed separately below). The only limitation being that he must act within fourteen days. However, if the State Duma and Federation Council re-examines the rejected law and passes it again, the president is bound to sign and promulgate the law within five days of its submission (Article 84 e and Article 107).

President Yeltsin because of his strained relation with the Duma sought to rule the country through decree than by law to enact important policy changes, on the other hand president who had pro-Kremlin majority in Duma during his tenure preferred to operate by normal legislative process. According to the number and importance of presidential decrees continued to decline at the same time the Duma readily passed number of presidential bills centralising political power and curtailing the rights of opposition (Remington 2006: 66). Thus, Putin has used his control of the Duma to enact a far reaching agenda of measures restricting political competition and initiative. Parliament has enacted a substantial body of president initiated legislation giving Putin all the legal authority he needs to control the outcomes of political process in the country (Remington 2006: 67).

b) President in Relation to the Federation Council: The Federation Council has many constitutional functions to exercise in relation to the president.

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\(^{26}\) For detail on this provision see Constitution Article 109 (2) also see Article 84 (a).
When the president issues a decree of emergency and martial law the president should inform Federation Council. It is the Federation Council that confirms the decrees of the president (Article 102 b and c, Article 87.2 and Article 88). It appoints Justice to the Constitutional Court, the Supreme Court and the Superior Court of Arbitration of the Russian federation in accordance to the proposal made by the president. It also appoints and removes Procurator General according to proposal made by the president. The Federation Council is also the only authority that can remove the president according to the charges filed by the State Duma.²⁷

Putin’s federal reforms brought substantial changes to the institution that represents regional interests in national policymaking. According to constitution, each member of the federation will have two representatives in the council, one each from the executive and the legislative branches (Article 95). Taking advantage of this the regional governors and speakers of the regional assemblies used to occupy seats in the Federation Council and influenced the federal decision-making. Putin in June 2000 replaced the governors and speakers of regional assemblies, with two individuals appointed by the region representing the executive and legislature.²⁸ With the changes regional executives and legislative heads are no longer the ex-officio members of the Council, instead they got the right to delegate representatives to the Federal Council.²⁹

Most of the early speculations about Putin’s reforms argue that one of the main purposes was to weaken the Federation Council as an independent force in Russian politics. This was part of larger strategy aimed at reducing the power of Russia’s governors and republican presidents. Federation Council was created by Yeltsin as part of 1993 Constitution. It was designed to serve as a counter weight to the Duma, and an institution that would help strengthen the presidency while providing direct representation to the regions. Putin’s reform of the Federation Council was adopted in August 2000. The changes appeared to be designed to reduce the body’s role as an obstacle to recentralization (Slider 2005: 124-25).

²⁷ For further detail see constitution Article 102 f along with Article 103 g and Article 93.
²⁹ For more detail, also see Chapter IV of this thesis under Putin’s Federal Reforms.
c) State Duma in Relation to the President: The State Duma too, like the Federation Council, is entrusted by the constitution to play some important role in its relation to the president. In regard to appointment of the head of the government of Russian Federation, it is only the State Duma that can give consent to the president (Article 103.1a and Article 83a). It appoints and removes the head of the Central Bank of Russian Federation according to the president's proposal (Article 103.1c and Article 83.d). One of the most important powers and functions of the State Duma is to file a charge against the president for his impeachment. In other words, impeachment proceeding against president can only be originated from the State Duma (Article 103.1g and Article 93).

As discussed in above Duma did not have a cordial relation with the president during the nineties owing to communist domination of the chamber. On the other hand, Putin was successful in bringing pro-Kremlin parties into majority in the third Duma (1999-2003), when the pro-Kremlin parliamentary faction Unity formed an alliance with three other factions, and gained control over the agenda. In December 2003 Duma election, Putin’s United Russia Party and its alliance Liberal Democratic Party of Russia, Motherland and Nationalist Group scored majority, once again dominating the Duma. This time too Putin was able to get friendly majority in the Duma.

(V)

PRESIDENCY AND THE JUDICIARY

Judiciary in former Soviet Union never secured the status, autonomy, or enforcement powers necessary to play a meaningful independent role. Judges were appointed and removed at the absolute discretion of Communist Party leaders. Given the minor role played by the courts in the former USSR, the post-soviet judiciary in Russia begins as a relatively weak institution. Although political regime has changed, the courts are still widely perceived as ineffectual which is true given the constitutional constrains and the political cloud over the Judiciary. Richard Sakwa (2004: 107) says, “The personalised and arbitrary nature of Yeltsin’s rule was nowhere more in evidence than in the judicial system”.

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The president has many powers and functions in regard to the judiciary. The Federation Council on the basis of names submitted by the president appoints the judges of the Constitutional Court, Supreme Court and Arbitration Court. He also appoints all the judges of other federal courts in accordance with the procedure laid by federal law (Article 128.1 and 2, also see Article 83 f). According to the president’s direction, the procurator-general is appointed and removed from the office by the Federation Council (Article 129.2, also see Article 83 f). The Constitution also gives president the power to “grant pardons” (Article 89 c). Moreover, the president can put forward an application to the Constitutional Court to resolve cases relating to the compliance with the constitution (Article 125.2). Likewise, he can put forward an application to the Constitutional Court for the interpretation of the constitution of Russian Federation (Article 125.5).

There is a serious view among scholars and the politicians in Russia that, the president’s powers over judiciary can influence the judgment of the courts in his favour. This is because the Federation Council appoints the judges of the Constitutional Court, Supreme Court and Superior Court of Arbitration only in formality. In reality, it is the president who appoints his men as the judges by proposing candidates name to the Federation Council.

The past disputes have shown that this apprehension was not wrong. The Constitutional Court has always given its ruling in favour of the president either in procedural or in legal cases. Such example can be seen from the State Duma’s challenge of president’s decrees on Chechnya30 and court ruling that the Russian president has the right to send a federal law adopted by the parliament back without having considered31. In both the cases, the courts ruling went in favour of the president.

Putin as a law graduate was acutely sensitive of the role that laws play in shaping social relations and within three years into office of presidency, by 2003 eleven major laws had transformed the judicial environment. The judicial reforms were designed to improve guarantees for the human civil rights of individuals and the

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economic rights of citizens a move to part way from the soviet style system which was based on an inquisitorial ideology towards more adversarial system. Other main reason as Trochev and Solomon put “was aimed at severing the dependency of courts on regional government and at strengthening courts more generally” (Trochev and Solomon 2005: 91).32

However, despite all these changes one of the significant moves of President Putin is creating more dependence of the Judiciary on executive. This was done by enabling the right of the president to appoint one member on “Qualification Commission,”33 the commission which hires and sacks judges (Russian regions have their own “Qualification Commission”) (Huskey 2005: 172).

Putin’s judicial reform on one hand, took the positive step of weakening the role of the prosecutor general’s office and transferring some of its powers to the courts. But on the other it increased the dependence of the courts on the executive branch, which fit the basic tendency of Russian politics, strengthening the autocratic presidency (Shevtsova 2005: 189). Like wise, Sharlet (2001: 196) argues that Putin’s “politics of law was used as an instrument for reengineering the distribution and flow of political power”.

Conclusion

From the analysis of the Russian presidency according to the constitutional provisions, while citing cases as and when invoked and exercised by the president, a clearer picture has emerged that Russian presidency is ‘superpresidential’. He wields an extensive power incomparable to either French system or American system. Though democracy is the basic principle behind the Russian Constitution of 1993, economic liberalism took precedence over democracy. Hence, the constitution has ensured strong presidency at the cost of the legislature. Therefore, one would not be wrong to agree with Professor Chenoy’s (2001: 68) assertion that, “the constitution

32 For detail on Judicial Reforms, see Robert W. Orttung and Peter Reddawy (eds.) (2005), 

was drafted with the single purpose of legitimising a strong executive who would be instrumental in changing the state controlled economy into private one”.

Both president Yeltsin and Putin have tried to make the presidency the central institution of the Russian political system. Many observers consider the “super-presidential” nature of Russia’s political system to be the source of many problems, such as low accountability of officials, a weak party system, and disengagement of citizens from the state (Remington 2006: 70).

The concept of separation of power, which is the backbone of any modern democratic state, acts as an important mechanism for checks and balances. In Russia this exists only in paper since it cannot be put into practice as in western democracies. The president’s supremacy is ensured by the constitution over all the three branches of the state with little oversight by the parliament over the president. Likewise, the judiciary, which is still at nascent stage of developing into a proper institution is practically influenced and controlled by the president through his appointment power.

The 1993 constitution grants the president power to appoint the prime minister as practiced in France, thus, technically separating the head of state and head of government. However, as Sakwa (1996: 147) has argued that a typical pattern of Soviet politics was also replicated in Russia with the formal granting of direct presidential control over four key areas of the government viz. security, defence, home and foreign affairs. The result being that it nullifies the concept of separation of the head of state and head of government.

The new Russian Constitution, which has been functioning for the past one decade, has faced many ups and downs during the course of time. It can be credited for being able to avoid October 1993 like situation from repeating. However, it is also true that throughout Yeltsin presidency, the legislature and the president did not see eye to eye, with the State Duma always trying to curb the sweeping power of the president through constitutional amendments. Though, President Vladimir Putin has some how managed to calm this conflict between the executive and the legislature, still remains to see how long can they keep each other happy.