CHAPTER: I

INTRODUCTION: THEORETICAL FRAMEWORK

The Republic of Uzbekistan (formerly the Uzbek Soviet Socialist Republic) is located in the Central Asia. It is situated geographically, between the two Central Asian rivers – Syr Darya and Amu Darya. It is bordered by Kazakhstan in the north, Turkmenistan to the north-west, Kyrgyzstan to the east, Tajikistan to the south-east and Afghanistan to the south. Surrounding a territory of about 448,000 sq. km, and with a population of over 27.34 million (July 2008)¹, Uzbekistan is the most populous country in the Central Asia. Being surrounded by other Central Asian republics and having no common border with Russia or China, make Uzbekistan a significant geo-political player in the Central Asian region (McCary 2004: 10-11).

Uzbekistan was under the Russian colonial rule in the second half of the 19th century. After Bolshevik Revolution of 1917, it became a part of the Soviet Union. It stayed under the Communist Party monopoly and a centralised political system for more than seven decades. It emerged as an independent state after the disintegration of the Soviet Union in December 1991. In the aftermath of dissolution of the erstwhile Soviet Union the government of Uzbekistan initiated economic and political reforms on a large scale.

In its agenda of political reforms, attempts were made to establish multi-party system based on liberal democratic model of political system. It also adopted a new Constitution in 1992 in order to develop conducive environment for robust institutional building.

The Constitution of Uzbekistan is considered to be the guiding document for establishing the liberal democratic order in the country. Various scholars have symbolised the adoption of the Constitution in Uzbekistan as a mile stone in the process of democratisation. Different theories have also been evolve to explain the

nature and features of a Constitution and its impact on the political institutions of the country.

This chapter deals with the theoretical aspects of the Constitution and Institution. It has been divided into three sections. The first part deals with the Constitution and its various theories, second part focuses on the various theories of institution and, the third part gives a brief overview of Constitutional development and institution building in Uzbekistan.

I

Defining Constitution

A Constitution is broadly a set of rules, written and un-written, that seek to establish the duties, powers and functions of the various institutions of government, regulate the relationships between them, and define the relationship between state and individual. The term ‘Constitution’ came in use in social sciences and law from Roman jurisprudence where it designated the decrees and other acts of supreme imperial power. In modern legal terminology, ‘acts’ come closest in meaning to the word Constitution. It was applied to only those ‘state acts’, whose objective was to direct state power and its basic institutions. James Bryce defines Constitution as ‘a frame of political society, organise through and by, i.e., to say, one in which law has established permanent institutions with recognised function and definite rights’ (Strong 1930: 10).

A government which is being driven by the Constitution is called a Constitutional Government. Such government is based on the principle of limited government. It believes that unrestrained government can harm the individual freedoms. Therefore, certain checks and balances on its power are required. Constitution defines these powers and provides the basic structure of the government in the form of laws. In other words, the ‘rule of law’ is central to the Constitutional government which implies that the governing power is subject to legal restraints and the law itself cannot be arbitrary.
The idea of limited government or Constitutional government emerged on the British land. Although the evolution of the Constitutional government can be traced back to the Bill of Rights of 1689 and the Act of Settlement of 1701, and, even to the Magna Cart of 1215, more helpful to think of Constitutions as late 18th century. However, the Age of Constitution was begun by the enactment of the first written Constitution of the United States in 1787.

Both USA and UK are recognised as the homeland of liberalism. Like liberalism, evolution of Constitution in the contemporary world development of the Constitution is closely associated with the liberal-democratic values, such as – individualism, freedom, reason, equality, Constitutionalism and so on. These values also demand a limited government which protects people’s life and property. Therefore, the Constitution should guarantee the individual rights, especially the right to freedom of expression. It should also establish political, social and economic equalities and justice, and should eliminate discrimination.

Besides, along with these aspects, evolution of Constitution went hand in hand with the evolution of the notion of democracy and democratization. The classical liberal thought and classical democracy theories have also evolved almost simultaneously. It was believed that a Constitution has no relevance in the absence of an institutional structure which protects the values enshrined in the Constitution. More so, evolution of the neo-liberal thought in the twentieth century has also greatly influenced the new idea of Constitution. Neo-liberal school of thought demands a participatory democratic procedure even for making of a Constitution (Rawls 1979: 320-323). Consequently, since the 1970s, Constitutional questions have moved to the centre of the democratization theories.

After disintegration of the Soviet Union all the countries of the region have adopted their own model Constitution. They all have chosen different values and institutions and enshrined them in the Constitution. However, in many respects they are similar yet distinct from each other. The next section deals with various types of the Constitutions existing across the world.
Classification of Constitutions

According to K.C. Wheare Constitutions can be broadly divided into three categories. They are as follows (Wheare 1966: 14-21):

Diagram: 1.1

(Classification of Constitutions)

1. Written or codified and Un-written or Un-codified Constitutions

Written Constitutions are, in theory, those that are enshrined in laws. The unwritten Constitutions on the other hand are embodied in the customs and traditions. The former are human creations whereas the later are considered as organic entities as they have evolved through history.

This system of classification, however, has now largely been abandoned. The prime reason behind this is that, almost all the states now possess basic written documents that lay down major Constitutional provisions. Only liberal democracies (Israel, New Zealand and the United Kingdom) continue to have unwritten Constitutions, together with a handful of nondemocratic states such as Bhutan, Saudi Arabia and Oman.
Secondly, this classification has always been misleading. No Constitution can be called entirely written in the sense that all its rules are formal and legally enforceable. Few Constitutions, for instance, specify the roles of, or even mention, political parties and interest groups. Similarly, no Constitution is entirely un-written in the sense that none of its provisions have any legal substance, all of them being conventions, customs or traditions.

2. Codified and Un-codified Constitutions

A more appropriate classification than the above mentioned written-unwritten distinction is the difference between codified and un-codified Constitutions. A codified Constitution is the one in which key Constitutional provisions are collected together within a single legal document, popularly known as a ‘written Constitution’ or ‘the Constitution’. As pointed out above, most Constitutions can be so classified, even though they may differ in the degree to which Constitutional detail is specified and the extent to which other provisions are unwritten. The significance of codification is, nevertheless, considerable.

First, in a codified Constitution, the document itself is authoritative in the sense that it constitutes, higher law, indeed the highest law of the country. The Constitution binds all political institutions, including those that enact ordinary law. The existence of a codified Constitution thus establishes a hierarchy of laws. Second, the status of the codified document is ensured by the fact that at least certain of its provisions are entrenched, in the sense that it is difficult to amend or abolish them. The procedure for establishing the Constitution and for subsequently revision it must therefore be in some way more complex and difficult that the procedure for enacting ordinary statute laws.

Finally, the logic of codification dictates that, as the Constitution sets out the duties, powers and functions of government institutions in terms of ‘higher’ law, it must be justifiable, meaning that all political bodies must be subject to the authority of the courts, and in particular a supreme or Constitutional court.

Un-codified Constitutions are although few in numbers but have very different characteristics. For instance the British Constitution, which is properly thought of as
an un-codified but partly written Constitution, draws on variety of sources. Chief amongst these are the statute law, which is promulgated by the parliamentary procedure as common law, conventions and various work of authority, clarifies and explains the un-written elements of the Constitution (Heywood 2007: 316).

The absence of a codified document implies, that the legislature enjoys sovereign or supreme authority. It has the right to make or unmake any law whatsoever, nobody having the right to override or set aside its laws. By virtue of their legislative supremacy, bodies such as the UK's Parliament and Israel's Knesset are able to function as the ultimate arbiters of the Constitutional means.

3. Rigid and flexible Constitution

An alternative form of classification distinguishes between rigid and flexible Constitutions. It is related to the question- What procedures exist for amending a Constitution? How easily does the Constitution adapt to changing circumstances? On the face of it, codified Constitutions are likely to be relatively inflexible because laws of Constitutional significance can be changed only through the ordinary legislative process and convention. However, there is no simple relationship between written Constitution and rigidity, or unwritten ones and flexibility.

Although flexibility can vary in degrees, it is not directly proportional to the formality of its procedures and rules. Whereas the US Constitution has endured, albeit with amendments, since 1787, France has had, over the same period, no fewer than 17 Constitutions.

Similarly, amendment procedures may be more or less complex or difficult. In Australia, Denmark, Ireland and Spain, for example, referendums are used to obtain the public's approval for Constitutional amendments or ratify ones endorsed by the legislature (Heywood 2007: 316).

In other cases, special majorities must be achieved in the legislature, as in the requirement in Germany's Basic law that amendments must have two-third support in the both houses of the parliament- Bundenstag and Bundesrat.
In the USA, in addition to two third majorities in both houses of the Congress, Constitutional amendments must be ratified by the two-thirds states, this requirements has meant that a mere 26 Constitutional amendments have been passed, with ten of these (the so-called Bill of Rights) have been introduced in the first two years of the Constitutions’ existence.

Another way of looking at the Constitution is the difference between Constitution in theory and practice. The degree to which the Constitution is observed in practice is: effective, nominal or facade Constitution. The content of the Constitution based on the institutional structure establishes the monarchical or republican, federal or unitary, presidential or parliamentary forms. The former are human artifacts in the sense that they have been created, while the latter have been seen as organic entities that have evolved through history.

Constitutionalism is the concept under which it is studied how the theory and practice of Constitution are different from each other. The next section deals with Constitutionalism:

**Constitutionalism**

‘Constitutionalism’ indicates a set of institutionalised relationship between the people and government, different levels of government, and various other political institutions. The first relation depends upon the people’s rights and duties enshrined in the Constitution. The second is related to the extent of centralisation or concentration of decision-making and implementation power in the government. The third component of Constitutionalism depends on the functional mechanisms mentioned in the form of various institutions. The first relation involves a choice between individualism and collectivism and the second between federal and unitary. The third relation is considered value-free for governmental machinery. Within the framework of same political objectives as defined in the first two features of the Constitution, there may be different kinds of governmental mechanisms to achieve these objectives.

As a means, Constitutionalism has three main objectives – liberty, democracy and interest of the people of the country. Laski has added equality as the fourth aim.
At the end it guarantees the fundamental rights and liberty and protects them. It checks the states to be arbitrary or to concentrate all the power in itself.²

The classical thinkers and theorists on Constitutionalism, particularly James Bryce and K. C. Wheare, are primarily concerned with evolving a suitable definition of Constitution. Bryce defines Constitution as 'a frame of political society, organised through and by law; and that is to say one in which law has established permanent institutions with recognised function and definite rights' (Strong 1930: 10).

Nonetheless, K. C. Wheare has defined the idea of Constitutionalism as a mechanism of imposing restraint on the arbitrary power of government in order to safeguard the freedom of citizens. According to him Constitutions 'spring from a belief in a limited government whatever the nature and extent of the restrictions, however, they are based upon the common belief in a limited government and the use of Constitution to impose these limitations' (Wheare 1966: 7).

C. H. Mcilwain (1969: 244) has developed the same idea in his book Constitutionalism and the Changing World. He observed that a Constitutional authority is defined, and there can be no definition which does not necessarily imply the limitations. Constitutional government is and must be 'limited government' if it is Constitutional at all. Whatever its form may be—monarchical, aristocratic, or democratic—in any state that one may properly say Constitutional, the supreme authority must be defined by a law. That law may be un-written and entirely customary, as it has been for the greater part of its history' (Mcilwain 1969: 244).

Mcilwain (1969) expressed the following views on Constitutionalism:

1. There is fundamental difference between the government of the people and the Constitution of the people. The people are the sole authority and the fountain head of power. The people sanction the formation of government;
2. The power bestowed with the government by the Constitution is defined by the people. Thus, the people restrict the powers and also check it and Constitution from becoming arbitrary;

² The Constitutional System of the Soviet Union (1960), Edited by Research Board, p. 52
3. The government is formed on the basis of Constitution. Constitution is framed first and then the government is formed;
4. Constitutionalism does not support the abuse of power;
5. Where Constitution and the government are considered one and the same, in fact, there is no Constitution, because no control exists to check the government from becoming arbitrary.

According to McIlwain, it must be the written Constitution to restrict the powers of the government (McIlwain 1969: 244). According to Friedrich, the Constitutionalism by dividing power provides a system of effective restrains upon the governmental actions. In studying Constitutionalism one has to explore the methods and techniques by which such restraints are established and maintained. It is a body of rules ensuring fair play, thus, rendering the government responsible (Fredrick 1968: 24).

There are two types of limitations on government in Constitution under such limitations the decision making powers are prescribed, and procedures are also defined. If these arrangements are short circuited or contravened such government actions are considered illegitimate (Andrew 1971: 13). A democratic constitutional order must provide distribution of powers among different organs of government. It should be done not only to avoid concentration of power in a single organ or a single person but also to ensure their coordination but also for the method by which Constitutional order can be peacefully adjusted to changed conditions i.e. provisions for the constitutional amendments. It should also include a Bill of Rights which makes civil liberties effective.

The view of Constitutionalism is known as the liberal pluralist view that admits plurality of interests in society, capability of each section of society to identify and articulate interest through its organisation and availability of a mechanism through which the conflicting interests can be resolved into authoritative policies and decisions. In other words, modern view of Constitutionalism assumes existence of conflict and consensus in society at different levels.

However, liberal pluralist view of Constitutionalism is categorically rejected by the Marxist thinkers. According to Marxist philosophy plurality of view in the
society is not possible because 'the history of all hitherto existing society is the history of class struggles' (Marx and Angels 1950: 33). According to the Marxist philosophers, the Constitutionalism was employed to create a free market society, which conformed to liberal view of Constitutionalism. It treats Constitutionalism as an end in itself. It only provides for a mechanism suited to management of public affairs without determining the actual course of social change. It leaves the function of determining social policy and program to the different political parties competing for power in an open market.

From the above discussion it becomes clear that Constitution is very significant in the institution building, protecting individual rights and ensuring various freedoms. As a visionary and guiding document, the roles of the Constitutions can be enumerated as (a) empowering states, (b) establishing unifying values and goals, (c) provide political stability, (d) protection of various freedoms, and (e) extending legitimacy to political regimes. This role cannot be achieved in the absence of Constitutionalism.

Now another significant question is - what is the link between a Constitution and institution. We can imagine of a political system without a written Constitution but not without institutions. In fact, it is the institution which makes a Constitution truly implementable.

II

Defining Institutions

Institutions are the foundations of social life. They consist of formal and informal rules, monitoring and enforcement mechanisms that define the context within which individuals, corporations, labour unions, nation-states and other organisations operate and interact with each other. Institutions are settlements born from struggle and bargaining. They reflect the sources and power of those who made them. They also affect the distribution of resources and power in the society. Without stable institutions life becomes chaotic and arduous, as people have learnt following the devise of communist regime in Eastern Europe after 1989. The sudden weakening of old political Constitution, property right, law enforcement and other institutions
generated tremendous confusion as these countries began to move towards capitalism and democracy (Campbell 2004: 1).

An institution according to Goodin and Klingeman (1996: 133) is a collection of interrelated rules and routines that define appropriate, rational action in the larger context of norms and values. Implementation of the Constitution depends upon development of these institutions. Political institutions are instruments for the functioning of the government in a state.

Dougless North (1990) has defined institutions as ‘the rule of the game in the society or more formally the humanly devised constraints that shape human interaction’. According to Arend Lijphart an institution is a ‘formal and informal rules and practices that are used to translate citizen preferences into public choice’ (Lijphart 1984: 3). Peter Hall defines institutions as ‘formal rules of interaction, compliance procedures, and standard operating practices that structure the relationship between individuals in various units of the polity and economy’ (Hall 1986:19). Johan P. Olsen says that an institution is a ‘number of interconnected rules and routines which define adequate action as relationship between a role and situation (...) political institutions are supposed to make decisions in the absence of agreement on objectives” (Olsen 1991: 96-7).

Changing scenario at the national and international level has influenced nature of the institutions. Modern age is an age of coalition governments, transnational corporations and the world is rapidly becoming a global village. All this has made it important to be able to manage public affairs effectively. It is also necessary to optimise the outcome of various government actions without exploiting or discriminating against the disadvantaged sections or the minority groups. The crux of collaboration is to hold together for a sufficient period of time in order to bring about the desired results. All this is even more critical in the human development sector where the poor, the caretakers of the environment and the peace loving, among others, are left out of the development process (North 1999: 4).

Moreover, institutions do not emerge in a vacuum. They always undergo various changes, replace prior institutions. The difference lies largely in the investigator’s focus. If attention is directed primarily to the processes and condition
giving rise to new rules and associated practices, we have to study institutional creation or history of institution building.

There are differences in institutional processes. These characterisations are over sampled and can be misleading. Consider regulative rules. If they appear rational and transparent, this reflects the extent to which certain types of social settings and procedures have been constructed to be institutionalised to serve as seats of collective authority.

As with institutional creation is the development, recognition, and naming of a recurrent problem to which no existing institution provides a satisfactory answer. These processes can be viewed as giving rise to collective sense-making activities as actors attempt to understand and diagnose the problem and propose what are, at the outset, various ad hoc solutions. Once these responses have been ‘generalised into solutions,’ it may be possible for the participants to engage in ‘a more thoroughgoing theorisation’ of the situation. In other words, to formulate general accounts as to how the system works and, in particular, of which solutions are appropriate in which contexts. In one context may then diffuse to other situations regarded as similar (Peters 2005: 33-35). This is how institutions emerge, evolve and further gets strengthened.

Political Institutions

The political institutions are defined in two ways: formal and informal. Informally, or in a broader sense, political institutions are ‘the rules of the game’. In a formal or narrower sense they can be defined as formal arrangements for aggregating individuals and regulating their behavior through the use of explicit rules and decision-making processes enforced by an actor or set of actors formally recognised as possessing such power (Chingermayer and Feiock 2001: 2). Substantial confusion exists between scholars who use the term ‘institution’ to refer to an organisational entity such as a family, a business firm, political party, or a university, and the scholars who use the term institution to refer to formal and informal rules operating within or across organisation.
The problem with the first type of definitions is that the definition of rules remains ambiguous. Rules can be further categorised as formal and informal rules. People mostly follow predefined rules of behavior (which are informal in nature). Most of these rules are not formalised as laws or other written regulations. Instead, they are ‘routines’, ‘customs’, ‘compliance procedures’, ‘habits’, ‘decision styles’ or even ‘social norms’ and ‘culture’. On the other hand, including ‘habits’, ‘culture’ and the like have the advantage of incorporating most of the things that guide individual behavior (Goddin and Klingemenann, 1996: 145). The problem with this type of definition is that ‘institution’, as a concept becomes too diluted. If so, it risks the same fate as that of other popular concepts in the (such as ‘planning’ and ‘rationality’). Such a broad conceptualisation of political institutions would conflate formal institution and overall culture of society (Levi 1990: 404).

Political decision-making of a country is framed by institutional rules and procedures. The very establishment of political institution is regulated in most of the countries by a Constitution. Moreover, given the force of law itself a preserve institution this is the more formalisation of informal conventions and norms (Knight 1998: 1-2).

Most approaches agree that institutions influence actors’ strategies. This is obvious from the fact that institutions determine: (a) who are the legitimate actors, (b) the number of actors, (c) the ordering of action, and, to a large extent, (d) what information actors will have about each other’s intentions. This is a very important part of institutional analysis because it has been shown that even small and seemingly unimportant changes in institutional rules affecting strategy greatly influence the outcome of political processes.

In the modern time, there are four types of political institutions containing a number of sub-institutions with rules specifying the process of decision-making. These rules dictate how to appoint members of the decision-making assembly, how voting procedures should be organised, who should be appointed as judges, civil servants, policy-makers, army officers, etc (March and Olsen 2006: 6-7).

Analyzing why institutional differences occur and what difference they make is very important area of study for the modern political scientists. More specifically,
political scientists ask three different but inter-related questions about political institutions: which institutions are best suited for creating 'good' government and societal relations. This is normative. The second is empirical. It is about what explains the enormous variation in institutional arrangements? And thirdly, what difference those differences make for political behaviourisms, political power and the outcome of the political process? (Goddin and Klingemenann 1996: 146).

Political Institutions and Political Theory

Classical Political Theory and Institutions

The classical political theory does not just consist of discussions of political ideals and individual duties. For Plato and Aristotle - as well as for Machiavelli, Locke, Rousseau, Hobbes and others, the major problems was to explain which political institutions produce the best type of society and individual. Plato's Republic is largely a comparison of different forms of government - democracy, oligarchy, monarchy and tyranny. In the Laws, the 'Stranger from Athen's (Plato) compares the Constitutions of Sparta and Crete, arguing that the state is needed not only for defense against foreign enemies but also to secure internal peace and to promote civic virtue, a first rate law-maker protects society from bad government.

Aristotle has pointed out the need for different institutions in government. These are the deliberative, the executive and the judicial authority. Aristotle's empirically based discussion of in the specifics of these institutions shows that the old Hellas served somewhat like a laboratory for the study of the effects of variation in political institutions (Malnes and Midgaard 1993, Sabine, 1961).

Indeed, when political science started to emerge as a modern academic discipline in the late 19th and early 20th centuries, the classical tradition had a great impact. Both in Europe and the US, students were, to a great extent, concerned with what may be called 'Constitutional architecture'. A central question was what kinds of Constitutions are to be preferred. This often resulted in detailed configurative studies of the origins and operations of different national Constitutions and other political institutions.
Contemporary Political Theory and Institutions

The institutions have come to enjoy a similarly central place in contemporary political theory. John Rawls's *Theory of Justice*, initiated a wave of renewed interest in this area. Rawls's theory broke with the utilitarianism that dominated political philosophy, demonstrating the significance of a markedly normative discourse in which concepts such as justice, equality, and rights again took center-stage. Addressing some of the criticisms made of his original theory, in an article in 1985 Rawls made comment that the basic principles on which he had built his theory should be regarded not as metaphysical postulate, but as being based 'solely' upon basic intuitive ideas that are embedded in the political institutions of a Constitutional democratic regime and the public traditions of their interpretations (Rawls 1985: 226).

Instead of an anonymous strategic game-like situation, Rawls's 'original position' is intended now to be discursive political institution, in which representatives, deliberation and negotiation find the common principles of social and political order that should prevail in society. The Rawlsian goal is a society in which an overarching consensus prevails on the principles of justice. The principles of justice should conform a consensus in political institutions which is in no way undermined by the fact that different groups and individuals hold fundamentally divergent views regarding cultural, religious and ideological questions.

According to Rawls, just political institutions can generate a just society, not a just society that generates just institutions. As should be obvious, these accords with the view of institutions held in classical theory, institutions are not only 'the rules of the game'. They also affect what values are established in a society, that is, what we regard as justice, collective identity, belonging, trust, and solidarity (March and Olson 1989: 126). Character of political institutions, and then we can at least, to some extent, decide which norms shall prevail in society in which we live because we can, at least sometimes, choose how to design our political institutions.

The construction as well as the operation of political institutions was central in the classical traditions in political theory. They largely evaporated during the post-world war II period of behavioural and group-theoretic political science of various kinds. In theories such as structural functionalism, system analysis, group theory, and
later economic approaches such as neo-Marxism, formal political institutions played little or no role. In structural functionalism, the systemic needs of the social system tended to produce political institutions those were more or less automatically functional in relation to these needs. Every society tended to give rise to a set of institutions needed to solve 'the perennial and basic problems of any society'. In group theory in its various forms, institutions were largely seen as arenas where political battles between groups with pre-defined interests took place. However, the specific construction of the arenas as such was not considered as an important variable for determining the outcomes of such battles.

**Marxism and Political Institutions**

In the traditional Marxist political analysis, political institutions\(^3\) have no independent function, because they were seen as mirroring the basic economic structure of society. Rational actors would simply construct the type of institutions that would serve their pre-defined goals. Occasionally, institutions were seen as intermediate variables where political actors, if successful, could invest power which later could be used to enhance that power. Thus, analyses were carried out in an institution-free world, where autonomous agents pursued their pre-defined self-interests.

In many respects, this picture is an exaggeration. Many scholars continued to analyse political institutions during the era dominated by behaviouralism. The group theory scholars studying comparative historical paths to development, state-building and democracy especially continued to pay attention to political institutions.

The increased focus on the importance of political institutions during the 1980s had many sources. The first thing to notice was that this enhanced interest in institutions took place at about the same time in parts of the discipline that were theoretically and methodologically very different. Secondly, this simultaneous reorientation happened independently in separate sub-fields (Hall 1986; Shepsle 1986). Neo-Marxists were among the first to pay attention to the specific organisational forms of the state (Terborn 1978: 102).

\(^{3}\) In Marxist theory political institutions, laws, etc. are viewed as parts of the superstructure which hinges upon the base which comprises mode of production.
Organisational theorists discovered the importance of organisational culture (Meyer 2006). Scholars in comparative-historical analysis argued for the need to bring the state back in during 1950s and 1960s (Stepan and Skach 1993: 1-22). It was expected that most of the developing countries of the world would follow a similar path towards modernisation, and that Western capitalist democracies would converge over time. Early comparative studies of public policy seemed to confirm that (a) there were important signs of convergence and (b) politics played little or no role.

Thus, despite important institutional variation between, for example, the social democratic countries of Scandinavia and the liberal United States, political behavior and political outcome seemed to be heading towards the same paths differences in political mobilisation and the organisational strength of social classes. This gradually led to a large extent to the differences in political institutions (Grafestien 1992: 1).

Formal political institutions determined political mobilisation. Thus, they were not to be seen only as intermediate variables where already powerful agents invested power to enhance their future political strength, instead they were ‘social forces in their own right’. It could be shown that while trying to explain important differences in public policy or interest group, mobilisation between countries with reference to class and group theory or behavioural categories gave paradoxical results. This did not emphasise with the theories, a focus on how formal political institutions historically structured the political process.

Comparing Britain, Sweden and the US, Steinmo shows that Constitutions influenced the distribution of tax burdens more than did the organisation strength of different social classes. In a comparison of health policy in France, Sweden and Switzerland, the political institutionalisation of possible veto points were shown to explain the way in which interests groups influenced policy more than the initial strength of these interest groups.

The political position of the courts vis-a-vis the legislatures around the turn of the century has been shown to be an important factor behind the very different choices of organisation and strategy taken by the administrative capabilities of the government. It has been seen as crucial for explaining different paths of social and labor-market. Comparing eighteen countries, it has been shown that the institutional
structure of the governments’ unemployment policy explains, to a significant degree, the variation in the strength of the national union movements, which in turn explains a large part of the variation in social insurance and labour market policies (Rothestein 1992: 33-56).

**Figure: 1.2**

**Institutional Theories**

![Diagram of Institutional Theories]

- **Historical Institutionalism** - Stephen D. Kranzer and Paul Pieron
- **Neo-Institutionalism** - M.D. North, James G. March and Johan P. Olsen
Historical Institutionalism

Historical institutionalism studies were focused at how power over political process was structured by the specific character of the state and what role where historical traits played in it central role. But political institutions, it was argued, not only distribute power and influence strategies. Institutional theorist point out that, to understand important variation in the lines of development between different social systems, it is not social or economic structural variables but political institutions that are the most important explanatory factors (Peters and Pierre 2007: 170-173).

Therefore, it can be argued that politics, understood as institutional engineering, has regained much of the centrality that it lost during the earlier era of behavioural and group theory. The renewed focus on political institutions has, to some degree, turned upside down behavioural, group theoretical or Marxist mode of explanations stressing social and economic forces as explanations for political processes. On the other hand, it is far from being certain that political science as a profession will come up with the most interesting and precise answers as to what role political institutions really play, how all the differences in institutional structure can be explained, and what causes change in political institutions (Peters and Pierre 2007: 170-173).

Institutions are viewed as formal structures, informal rules and procedures that structure the conduct. Historical analysts emphasise that the political institutions are not entirely derivatives from other social structures such as class, but have independent effects on social phenomena; that social arrangements are not only or even primarily the result of aggregating individual choices and actions; that many structures and outcomes are not planned or intended but rather are the consequences of unanticipated effects and constrained choice; and that history is not usually ‘efficient’ a process ‘that moves rapidly to a unique solution’ although one that is much more indeterminate and context-dependent (Peters and Pierre 2007: 167-187).

The historical group takes a social constructivist position that assumes that capabilities and preferences, that is the very nature of the actors, cannot be understood except as part of some larger institutional or determining them. Institutions construct actors and define their available modes of action; they constrain behaviour, but they also empower it. Analysis from this perspective is aimed at providing a detailed
account of the specifics of institutional forms because they are expected to exert strong effects on individual behavior, structuring agendas, attention, preferences, and modes of action.

Scholars attempt to show that political systems are not neutral arenas within which external interests compete but rather complex forms that generate independent interests and advantages and whose rules and procedures exert important effects on whatever business is being transacted. The structure of political systems such as the state matters. Although, individuals build these structures, there is no assurance that they will produce what they intend. Current choices and possibilities are constrained and conditioned by past choices. The structure itself plays role of a constraint.

B. Rational Choice Theory of institutionalism

The rational choice theory is also termed as positive theory. It includes scholars such as Moe (1989), Shepsle, and Weingast (1987). They view institutions as governance or rule systems, arguing that they represent rationally constructed decisions established by individuals seeking to promote or protect their own interests. The approach represents an extension of the neo-institutional work in economics including the transaction cost approach of Williamson and the work of agency theorists and its application to the study of political systems. An early advocate of importing economic models to explain political behaviour argues that voters and customers are essentially the same people (Peters 2005: 47).

Rational choice theorists argue that economic models developed for economic organisations require modification if they are to be applied to political systems. But they also insist that many of the basic questions are a parallel including why do public organisations exist, and how are we to account for their varying forms and governance mechanisms? How can elected political officials, as principals, control their bureaucratic agents? What are the effects of political institutions on political and social behaviour? As Peters (2005) observes, within this approach, institutions are conceptualised largely as sets of positive (inducements) and negative (rules) motivations for individuals, 'with individual utility maximisation providing the dynamic for behaviour within the models'.
Rational choice theorists recognise that in the reality of politics social choices are not chaotic. They are quite stable due to the distinctive role that institutions play. Thus, the task is to understand this role, and more fundamentally, to determine where these institutions come from in the first place (Moe 1990: 216).

The general argument embraced by these theorists is that economic organisations and institutions are explained in the same way that they are structures that emerge and take the specific form they do because they solve collective action problems and thereby facilitate gains from trade.

Establishing a political institution to overcome a collective action problem itself presents a collective action problem. The formation of an institution is, according to Robert Bates, subject to the very incentive problem that it is supposed to solve. For among rational self-interested actors, such institutions (and the selective incentives necessary for their creation) would never arise. In other words, logically, the game starts only after the actors have been constituted, and their order of preference has been formed as a result of processes that cannot themselves be considered as part of the game (Grafstein 1992: 77).

An important arena of application for both historical and rational choice theorists has been that of international relations. Rational models view nation-states as self-interested actors attempting to maximise their own advantage in dealing with other nations. Rules are accepted when they lower the transaction overall level of uncertainty. As discussed above, historical institutionalist, such as Krasner (1983) has emphasised the important independent effects of the emergence of cooperative norms among participating nations. In addition, he points out that ‘institutions do not merely reflect the preferences and power of the units constituting them; the institutions themselves shape those preferences and that power’ (Krasner 1983: 36).

Thus, although both historical intuitionalists and rational choice theorists agree on the importance of institutions in political life, important differences in assumptions and perspectives remain. Rational choice theorists are more likely to stress the micro foundations of institutions asking how institutions are devised to solve collective action problems experienced by individuals. On the other hand, the historical institutionalists are more likely to emphasise a macro perspective tracing the

Preferences are more likely to be treated by rational choice theorists as stable properties of actors, whereas for historical institutionalists, preferences are thought to be more problematic, emergent from the situation (endogenous) and context-specific. And the two camps are attracted to different sets of problems. Historical institutionalists begin with empirical puzzles that emerge from observed events of comparisons; rational choice theorists are more likely to be attracted to situations in which observed behavior appears to deviate from what the general theory predicts (Campbell 2004: 10-13).

Instead of creating political institutions, political leaders have been shown to be important in solving collective action problems. Leaders must enjoy a reputation for trustworthiness among would-be members. But in an adverse condition, their role must not be beyond critical scrutiny. Historical analysis seems to show that political leaders are more likely to create inefficient than efficient social institutions.

The contribution of the rational choice theory has been to furnish with such idea namely, the important institutions are the ones which are capable of solving the problem of collective action, which is to say, the ones that make co-operation seem possible and rational for the agents involved. The problem at the moment, however, is that there is no way to understand why such institutions arise other than undertaking 'soft' historical case studies of their origins. To understand why society at all is possible, the economic approaches in political science must take socially, historically and culturally established norms about co-operation, trust, honour, obligation and duty into account.

Lastly, the rational choice theorists put emphasis on central concept of equilibria and view institutions as central mechanisms in sustaining this condition, whereas historical institutionalists, like their 19th century counterparts, are more interested in historical change than in equilibrium. The factors producing political and economic change broadly viewed as institutional change.
C. Neo-Institutional Theory

Neo-institutionalism in political science may be viewed, at least in part, as a reaction to the behaviouralist emphasis that dominated the field at mid of 20th century. In a situation that somewhat resembles the instance of economics; the new institutionalists in political science and political sociology have grouped themselves into two quite distinct camps: the historical and the rational choice theorists.

In the 1980s new institutionalism, sometimes called 'neo-institutionalism', has seen a revived focus on the study of institutions as a lens for viewing work in a number of disciplines including economics, international relations and political science. John W. Meyer proposed an early influential formulation (Meyer and Rowan). Authors like Paul DiMaggio and Walter W. Powell consciously revisited influence of Weber's thoughts institutionalism in the early 1980s (DiMaggio and Powell 1983). Consequently, the following decade saw an explosion of literature on the topic across disciplines. DiMaggio and Powell's 1991 anthology summarizes work on institutions in sociology. In economics, the new institutionalism is most closely associated with Washington University in St. Louis, where Douglass North, who won a Nobel Prize in 1993 for his work in new institutionalism, currently teaches.

New institutionalism recognizes that institutions operate in an environment consisting of other institutions, called the institutional environment. Every institution is influenced by the broader environment. In this environment, the main goal of organizations is to survive. In order to do so, they need to do more than succeed economically, they need to establish legitimacy within the world of institutions.

Much of the research within New Institutionalism deals with the pervasive influence of institutions on human behavior through rules, norms, and other frameworks. Previous theories held that institutions can influence individuals to act in one of two ways: they can cause individuals within institutions to maximize benefits (regulative institutions), similar to rational choice theory or to act out of duty or an awareness of what one is "supposed" to do (normative institutions). An important contribution of new institutionalism was to add a cognitive type influence. This perspective adds that, instead of acting under rules or based on obligation, individuals act because of conceptions. "Compliance occurs in many circumstances because other
types of behavior are inconceivable; routines are followed because they are taken for
granted as 'the way we do these things' (Scott 2001: 57). Individuals make certain
choices or perform certain actions not because they fear punishment or attempt to
conform; neither do they do so because an action is appropriate or the individual feels
some sort of social obligation. Instead, the cognitive element of new institutionalism
suggests that individuals make certain choices because they can conceive of no
alternative.

What causes institutional Change?

Another significant aspect of institutional aspect is what brings institutional change.
Broadly, it occurs due to three different reasons. One is by sheer accident or
unforeseen circumstances. The interaction of different institutions may result into new
types of institutions which were unforeseen earlier. A second type is evolutionary
change, i.e., the institutions that are best suited at certain stages of social development
simply survive through the operation of some kind of selective mechanism. Thirdly,
institutions might also change due to the intentional design by strategic agents.

Thus, to understanding the implications of institutional change is probably one
of the most challenging problems for political science. The question is whether we
know enough about the outcomes of different political institutions that political
science can become something like an architectonic discipline. The question has come
up recently when many of the former East European, African, and Latin American
countries have been in the process of establishing democracy institution building.

Usually, if political systems are tightly structured by institutions, changes can
only occur at certain times. It is only during such formative moments that political
actors are able to change the institutional parameters or the nature of the ‘game’.
These formative moments of political history are distinguished by the fact that
existing political institutions are so incapacitated as to be unable to handle a new
situation.

Constitution plays an important role in the formation of various political
institutions in the state. Constitution is a guidebook for the function of these
institutions as it provides them legitimacy and decides their structure. The
development of these institutions is the real litmus test of the effectiveness of the Constitution in any country. Apart from government institutions (Legislature, executive and judiciary), development of non-governmental institutions (Political parties, media, pressure groups, etc.) is also vital for it. In reality, these are the institutions, which perform the function of interest articulation and aggregation. They are the real watchdogs of the Constitution. They not only unveil government's affairs but also make people aware about their rights and obligations. The more develop these institutions are, more the safe Constitution is.

In the newly emerging democracies, especially in post-socialist countries, the issue of Constitutional development has become very significant. These countries do not have any prior experience of democratic institution and democratic political system because of which it is a challenging task for them to cope up with emerging social, political and economic problems. Since these problems of each country have unique elements, the democratic institutions building too reflect the same. Therefore, the present study is an attempt to investigate Constitutional development in Uzbekistan. It also includes the role as well as the making of institutions in the Republic.

III

Constitutional Development and Institution Building in Uzbekistan

Uzbekistan owns a long cultural heritage and strategic space in the history. The leading cities of the famous Silk Road – Samarkand, Bukhara, and Khiva – are the known cities of Uzbekistan\(^4\). The Arabs conquered the region in the eighth century A.D., and introduced Islam in Central Asia. The indigenous Samanid dynasty established an empire in the 9th century. Genghis Khan and his Mongols companions overran its territory in 1220. In the 1300s, Timur, known in the west as Tamerlane, built an empire with its capital at Samarkand. Later, separate Muslim city-states emerged with strong ties to Persia. In 1865, Russia occupied Tashkent. By the end of

\(^4\) Many well-known conquerors passed through the land. Alexander the Great stopped near Samarkand on his way to India in 327 B.C. and married Roxanna, daughter of a local chieftain.
the 1885 Russia had conquered the whole of Central Asia⁵ (Vaidyanath 1967: 30). In 1876, the Russians dissolved the Khanate of Kokand, while allowing the Khanates of Khiva and Bukhara to remain as direct protectorates⁶. Russia placed the rest of Central Asia under colonial administration and invested in the development of Central Asia’s infrastructure, promoting cotton growing and encouraging settlement by Russian colonists.⁷

The Socialist Revolution took place in October 1917. In the aftermath of the Bolshevik Revolution, Uzbekistan became part of the Soviet Union. Soviet power was established in Uzbekistan in 1924. During the Soviet era, Moscow used Uzbekistan for its tremendous cotton growing and natural resource potential. In 1927 Uzbekistan adopted its first Constitution which guaranteed all the democratic rights of the citizens. It adopted the second and third Constitutions in 1937 and 1978 respectively. But largely they were reflection of the elements of Soviet Union Constitutions. The Constitution of the socialist state was based on popular Sovereignty, Supremacy of the Constitution in peculiar sense, supremacy of the parliament in limited sense, rights and duties of citizens viz. right to work, right to education, right to equality, and religious and political liberty, etc. (Agzamkhojayev 1982: 21-24).

The Soviet Union had a bicameral legislature (Soviet of the Union, and Soviet of the Nationalities), established by the 1924 Constitution. The central legislature was responsible for making of laws. Every Union republic and the autonomous republic of the USSR had their own unicameral legislatures. These legislatures were to look into the administration of the republics. The Soviet judicial system was integrated in nature. The Supreme Court was responsible for the matters associated with the different republics. In the civil society institutions such as, media, labour organizations, and other social groups were allowed to function formally but in reality, they were controlled by the CPSU. A peculiar feature of the Soviet system was its bureaucratic structure. The Soviet bureaucracy was responsible for the implementation of all development activities. The Communist Party of the Soviet

⁵ The Russian conquest of the Central Asian region was completed with the capture of Mere (January, 1884) and Kushka (March 1885).
⁶ Khiva, Bukhara, Samarkand, and Tashkent were parts of Turkistan. Turkistan was ruled by the Russian Tsar.
Union played a vital role in legitimizing the centralization of power. The Soviet Constitution, according to tradition, provided a special place to the CPSU in the political system of the country (article-6 of USSR 1977 Constitution). There were specific articles, which stressed the promotion of native languages, education, and preservation of the cultural heritage of various nationalities. However, these Constitutional provisions were never came into practice, and remained a theoretical definition. After disintegration of the Soviet Union on 1, September 1991, Uzbekistan declared its independence.

After independence, Uzbekistan initiated programmers for political and economic development in the country. After getting independence, Uzbekistan adopted its own Constitution in 1992 and it which led to the foundation of various political institutions. There Constitution of the republic declared Uzbekistan as a democratic and secular state. The proposed study tries to understanding the process of Constitutional development and institutions in Uzbekistan in the Post- Soviet period.

Uzbekistan has adopted Presidential form of government, in which the supreme power is given to the President. The president of the republic is the head of the state (article-89). He is elected by direct election for a term of seven years. Earlier, the tenure of the president was five year but with a Constitutional amendment of 2002, it increased for two more years. Besides, he is the highest official of the supreme executive powers and the guarantor of the Constitution, laws, rights and liberties of citizens, national independence, territorial integrity, and the observance of the international agreements. He also determines the policy and represents his republic in international relations. The power of appointing the Prime Minister [article 93(9)] is vested in the President. In reality, President enjoys unrestricted powers and there is no Constitutional provision to remove the president except health reason (article 96). Prime Minister is the head of the government. The President appoints the Prime Minister from the party, which has majority in the parliament. The President can remove him.

In 2004, Uzbekistan has a bicameral legislature (Oliy Majlis)-Senate (Upper house), Qoqunchilik Palatasi Kengashi (Lower house).Earlier there was a unicameral legislature but bicameral legislature has been established in the republic by
Constitutional amendment of 27 January, 2002. The parliament is a law making body and confirms the various appointments, made by the President. However, the President has a veto power over the legislation passed by the parliament. He can dissolve the parliament, on his own wish. Members of the parliament are elected through direct election for five years terms.

The Uzbek judiciary is composed of Constitutional Court, Supreme Court, Higher Economic Court, and the Arbitrary Courts. With the approval of legislature, the President elects judges and can dismiss them (article 107).

In any democracy, free and fair elections are recognized as litmus test for the representatives to get legitimacy from the people. In Uzbekistan, as far as elections are concerned they have been taking place with regular intervals. For competitive elections, parties are the key players. A mature party system, in which parties have effective role in decision-making and in articulating and aggregating peoples' interests efficiently, is also essential for evolution of a democratic culture. The efficiency of parties also depends upon their role in election for president and Prime Minister.

However, as far as the political parties are concerned they do not have any vital role in the election of president, who controls the law making. Parties depend on the Presidential support for their better performance in the elections. The analysis of election data shows that the presidential party has won majority in the parliament. The opposition parties have been facing continues ban by the election commission. Some of the important parties are; People’s Democratic Party of Uzbekistan, Progress of the Fatherland, Fidokorlar National Democratic Party, Adolat Social Democratic party of Uzbekistan and Milli Tiklanish Democratic Party, etc. Birlik, the Erk, and The Islamic Renaissance Party, etc. are banned in the republic.

Another pillar of democracy is free media (print and electronic media). An independent functioning of media not only aware citizens about their democratic rights but also inform them what is happening in the politics, society or economy in and outside the country. In the new Constitution, press and media are given freedom. There are many TV channels and Press is working in Uzbekistan. However, official crackdowns on free press is quite often and reports suggest that media is not free and
supervised officially by the government. The Constitution does not explicitly bar censorship and all media are in fact subject to the stringent regulations of the Committee for the protection of the State secret (Babajanian 2005: 217-221).

Apart from the above-mentioned governmental and non-governmental institutions, interest and pressure groups are equally significant for a democratic political system. They are the institutions, which perform almost all the functions performed by political parties, but they do not contest elections. There are several interest groups operational in Uzbekistan. In Uzbekistan Birlik which is a large and powerful group. There are some other groups like, Intersoz, to protect the interest of non-indigenous nationalities, especially the Slavs.

Since independence, Islam Karimov has been the president of the Uzbek republic. As mentioned above, president enjoys unlimited powers in the new system. Constitution restricts the presidential terms for not more than two times but Karimov decided to contest for the third time and continues as the president. Various Constitutional amendments are used as tools for enhancing presidential power. Many Western and Asian scholars, for his authoritarian way of governance, have criticized Karimov. He has been misusing his position and opposition is not allowed, either to emerge or to function independently. The opposition parties have been banned, censorship has been imposed and opposition leaders are either in jail or in exile and those who are in the country they are in perpetual threat. Democratic institutions have not been allowed to perform their obligations in a Constitutional manner and they face continues challenge from the bureaucracy. For these reasons, the nature of Uzbek political system is being characterized as secular-authoritarian political system. However, president and his coterie call it their own model of democracy. They justify it on the name of stability and people's unawareness about the functioning of a new system.

Scope of the Study

The study has tried to develop a broad understanding of actual issues of transformation of the political institutions in the republic. The major objectives of the study are to understand the evolution of democracy in Uzbekistan in the context of
Constitution making; to study the Constitution and Constitutional development in the Uzbek republic; to analyze the role of the Constitution in the development of the political institutions in Uzbekistan; to study the impact of political institutions on the social life of the citizens of the republic; and, to study the problems, associated with the development of the democratic institutions in the Uzbekistan.

**Hypotheses**

The hypotheses of the study are as follows:

- The overall development of Constitution and Political Institution shows the impact of history i.e. of the Soviet political culture of the *nomenclatura*.
- In Constitution making, democratic procedure was not followed, therefore the further development has been undemocratic i.e. Constitution is a document reflecting the wishes of President and not of the people.
- The inherent authoritarian regime and the excessive centralisation of powers in the president of the republic have weakened the process of institution building in Uzbekistan.
- The Constitution has failed in establishing the essential democratic institutions and structures in the country.
- External actors have influenced the process of Constitutional development and institution building in the Republic.

**Methodology**

The proposed research work is an analytical and descriptive study of the Constitutional development and institution building in Uzbekistan. Therefore, the study is based firstly on the critical analysis of the texts related to the Central Asian countries in general and Uzbekistan in particular. This is supplemented by a study of a large number of other legal documents related to the Constitutional development and institution building. A theoretical base of the study will be sought to be created by an in-depth study of the legislations passed by the parliament and decrees issued by the President of the republic.
Further, the study is also draw upon reports and periodicals emanating from Uzbekistan. The proposed study takes into account the historical, analytical and descriptive methods, which is obvious form the nature and scope of the topic. The study has made use of both primary and secondary sources, available in English language. For arranging interaction and collection of primary and secondary data from the concerned institution, University organization academicians and other related professional a short term field trip was arranged to Uzbekistan. In this context unstructured interview was conducted for facilitating effective discussion with a focus on the title and objective of the proposed research work.

Chapterisation

The present research is an attempt to study the Constitutional development and institution-building in Uzbekistan, as also to trace the political development which is taking place in the republic. However, in order to understand the Constitutional development and institution-building in the country. It is necessary to have some idea of the native political system and institution which existed prior to the coming of Russian to Central Asia in general, and the aftermath of the October Revolution, in particular.

In the second chapter, an attempt has been made to examine the historical background of Uzbekistan during Tsarist and Soviet periods. This chapter also cover the Constitutional development before and after October revolution of 1917. Brief analysis of four Constitutions of the Soviet Union has also been discussed (RSFSR Constitutions of 1918, USSR Constitutions of 1924, 1936, 1977) in the chapter. It takes into account Gorbachev's reform policy and its impact on the Central Asian Republics. The chapter also deals with the institution-building and development during the Soviet period.

Third chapter is related to the Constitutional development in Uzbekistan in the post-Soviet period. The making of Constitution, various influences on this process is the main focus of the chapter. It also sheds light on the various changes made in the Constitution in last seventeen years by the president or by parliament. The political and social values enshrined in the Constitution, has also been discussed in the chapter. In this chapter an effort has been made to analyse the separation of power between
various institutions is followed or not, if yes then in what manner has it been implemented. The chapter also highlights the various challenges to the Constitutional development, which the Uzbekistan is facing. These challenges are authoritarian regime, weak opposition, influence external on Constitution, and Media, etc.

Forth chapter focuses on the Political Institutions in the post-Soviet Uzbekistan. In this chapter an effort has been made to explore the various dynamics of institutions such as participation of the people in the political process of the country, their influence in the decision-making, and their dependence or independence, on any specific section of the society. The chapter also focuses on the government institutions (Parliament, Presidency, and Judiciary) and non-government institutions (i.e. media, political parties, etc.). It also discusses the various challenges to the institution building which the Uzbekistan is facing. The major challenges like authoritarian regime, weak opposition, ethnic conflict, and economic problems, violation of human rights, unfair elections and controlled media have been discussed in this chapter.

The chapter fifth deals with the various external influences in the process of the Constitutional development and institution-building, like Constitution making process, Presidency, Parliament, multi-party system, democratic values, Judiciary, Ombudsman, etc.

In the chapter six, Constitutional development and institution building have been analysed and the broad conclusions of the present study arrived at have been presented.