CHAPTER: III

CONSTITUTIONAL DEVELOPMENT IN POST-SOViet UZBEKISTAN
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Dissolution of the Soviet Union took place in December 1991. After the disintegration of the former Soviet system, the first and foremost challenging task before the political leaders of various independent countries to ensure an autonomous space in the committee of nations. In order to do so, the leaders promised to develop their states on the basis of western type liberal democratic order and adopting certain internationally acclaimed principles such as the rule of law, opening the polity for a multi-party system, liberal Constitutionalism, participatory democracy, free market economy and so on.

President of Uzbekistan Islam Karimov was member of the Communist Party of Soviet Union in 1989. Soon after the disintegration of the former Soviet Union, Uzbekistan banned the CPSU (Communist Party of Soviet Union) and confiscated its office assets as elsewhere in the former Soviet republics. However, the Communist Party also changed its shape as a Democratic Party (Akbarzadeh 2005: 9).

In the process of nation building for a new state was based on new principles, such as the primary task always is formation and adoption of a new Constitution which always remained one of the primary tasks. After realising this fact, Islam Karimov needed a Constitution that would not only legitimise his regime but also constructs Uzbekistan as a democratic state without harming the interest of the ruling sections.

I

Formation of New Constitution

Not only the Constitution but also the process of formation of Constitution plays important role in the democracy building. A process which is deliberative, participatory, open, transparent and accountable process leads to formation of a political society which fosters progressive, collective values and ideals. Such a
process ensures social justice, political equality and generates a cultural base for
evolution of democratic norms and practices. John Rawls argues that individuals are
rational beings and they can work out certain set of principles which are more
democratic and forward looking in nature.

However, in the case of post-Soviet Uzbekistan, no debates and deliberations
took place about the new Constitution and its making. The Constitution was to be
drafted and enacted as quickly as possible. The Post-Soviet constitutional process
started by the Constitutional Commission headed by President Islam Karimov. The
Constitution was made under the supervision of Germany, France and Britain’s
judicial institution’ experts (Levitin 2001:174) and leaders of the People Democratic
Party of Uzbekistan (Goneng 2002: 207). In the Constitutional Commission numbers
of the members were 64.\(^12\) However, Islam Karimov and other elites played key role
in the drafting and adopting the new Constitution of the republic.

The draft was published in the summer 1992 and opened for media and
nationwide referendum. Under the draft Basic Law, Uzbekistan was declared a
Secular, Democratic and Presidential Republic. Religion was officially separated from
the state, and no political ideology or religion could be established as the official or
state ideology. The draft Constitution guaranteed freedom to political parties and
public associations. It also included human rights, which was based on the universal
declaration. Such draft of human rights was ratified by the Uzbek parliament in 1990.
The new Constitution draft also prevented censorship of the mass media. However,
draft of the Constitution does not envisage any possibilities of the president’s removal
from his post except on the ground of illness. According to the draft of the
Constitution the president cannot be subjected to impeachment even in the event of
his anti-constitutional actions. The Parliament can be dissolved by the president if
there are insurmountable internal differences in the parliament. This can also be done
even in case if the Parliament repeatedly adopts decisions contravening the

According to the draft, the president of the Republic of Uzbekistan was elected
for five years and no one can occupy his post for more than two consecutive terms,

\(^{12}\) Encyclopedia of Uzbekistan, 2005

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and when president leaves the office on the completion of their term; he acts as a lifelong member of Constitutional Court (SWB 1992: 1483/B4). But on 5 September 1992, Islam Karimov and other experts had informed Interfax\(^\text{13}\) (News agencies) that legislations of Switzerland, Portugies, Turkey and USA and other countries were taken into account during the writing of the draft (SWB 1992: 1483 B/4).

Finally, a new Constitution was adopted by the Supreme Soviet of Uzbekistan on 8 December 1992 (Andersohn 1997: 302). The draft was prepared and adopted by the Constitutional Commission headed by the President of Uzbekistan, Islam Karimov, at the 11\(^{th}\) session of the Uzbek Supreme Council i.e., the parliament. In the race among Commonwealth of Independent States (CIS), Turkmenistan was the first to enact a Constitution (18 May 1992) and Uzbekistan was second.

According the Izvestia\(^\text{14}\) (Russian news agency) correspondence Uzbekistan has a new holiday named the Constitution Day to be observed on 8 December. It was declared as an official non-working day. The basic law of the young independent state went into effect from the same day. The people’s deputies and the local press unanimously noted that it was a day of historic importance for the people of Uzbekistan. The republic’s entire state system and all its lawmaking activity will be built on its foundation, and it will determine the future course of the life of multinational people (CDPSP 1992: 26).

According to the president Islam Karimov, at the session “the new Constitution is a qualitatively new document in term of its essence, philosophy and ideas. It does not contain even a trace of communist ideology, a class- based approach or party-mindedness” (CDPSP 1992: 26).

The President stressed on the noble aims as allegiance to human rights and state independence, and awareness of a profound responsibility to the present and future generations. Among the chief values that are declared are trust on the historical experience of the Uzbek state are, respect for democracy and national law, ensuring a

\(^{13}\) Interfax is a Russian non-governmental news agency based in Moscow. It was established in 1989. It employs around 1,300 journalists based in emerging markets. The organization concentrates on news concerning Europe and Asia.

\(^{14}\) Izvestia (Russian) is a long-running high-circulation daily newspaper in Russia. The word “izvestiya” in Russian means “delivered messages”, derived from the verb izveschat (“to inform”, “to notify”). In the context of newspapers it is usually translated as “news” or “reports”.  

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decent life for citizens, creation of a humane, law governed society, and the ensuring peace and ethnic accord among all citizens (Karimov 1992: 2-9).

The Uzbek Constitution focused on freedom of thought, of conscience and of religious convictions. It codified the rights of every person to follow his own convictions and to profess any religion or not to profess one at all. The legislature, executive and judicial branches are proclaimed to be the three main pillars of the state, and a mechanism for their interactions is spelled out (Karimov 1996: 47-48).

II

Salient Features of the New Constitution

The preamble of the Uzbek Constitution states that:

the people of Uzbekistan, solemnly declaring their adherence to human rights and principles of state sovereignty, aware of their ultimate responsibility to the present and the future generations, relying on historical experience in the development of Uzbek statehood, affirming their commitment to the ideals of democracy and social justice, recognizing priority of the generally accepted norms of the international law, aspiring to a worthy life for the citizens of the Republic, setting forth the task of creating a human and democratic rule of law, aiming to ensure civil peace and national accord, represented by their plenipotentiary deputies adopt the present Constitution of the Republic of Uzbekistan(Preamble of Uzbek Constitution 1992:8).

The Constitution of the Republic of Uzbekistan is divided into 26 chapters with 6 parts and 128 articles (Akbarzadeh 2005: 121). It has established a democratic political system based on the principle of Social Justice.

Uzbekistan has adopted the presidential form of government with unitary type of political system. The Constitution of Uzbekistan guarantees a wide range of political rights and civil liberties to the people. Although in practice these rights and liberties are for less than the rights and liberties available to the people of the developed and
democratic countries of the world but at least an initiative has been taken in this
direction (Geneng 2002: 206-207).

The dilemma of the new Constitution: Modernity Vs Tradition

A Constitution represents a country’s acceptance of certain universal values which are
recognised as essential for human development. Similarly, it also reflects its own
tradition, culture and values on which a country is based and its society was
traditionally organised. Traditions are the foundation of the society; institutions,
modes of behavior, and values that have been passed down from generation to
generation. These are the traditions that, to a great extent, form the basis for daily
lives of the members of a society including that of Uzbekistan. Every generation
accepts these traditions in Uzbekistan and takes them into account to correlate past
with the future.

Leonid Letvin criticised the new Uzbek Constitution. He argues that “The
Constitution of the Republic should be an integral part of Uzbek civilisation and
culture, not the other way round. This makes sense philosophically. What is the
situation at hand? With the exception of a few unique national terms such as Oliy
Majlis there was really nothing in the Constitution that relates to the cultural and
historical foundation of the land except perhaps for the reference to family. There
are assurances that the family system is a core element of society and is entitled
to protection by the government. There are specifics reference to the obligations
of parents to their children and vice-versa. The mutual obligations of parents and
children is so firmly rooted in the consciousness of the Uzbek people that
Constitutional guarantees are perhaps superfluous. Outside the Constitution there
are a number of democratic traditions that the Uzbek people have. The institution
of the Mahalla\textsuperscript{15} is a good example. It has such great democratic potential that it
has been considers a ‘house of Mahalla’ in a bicameral\textsuperscript{16} Uzbek parliament,

\textsuperscript{15} Mahalla institution occupies a highly important place in the society system of Uzbekistan – some
kind of public self-government. The Mahalla resolves a number of problems related to the social
aspects of life inside town blocks or kishlak

\textsuperscript{16} Bicameral (bi + Latin camera, chamber) is the practice of having two legislative or parliamentary
chambers. Thus, a bicameral parliament or bicameral legislature is a legislature which consists of two
chambers or houses. Bicameralism is an essential and defining feature of the classical notion of mixed
government. Bicameral legislatures tend to require a concurrent majority to pass legislation.

How far it is correct to measure a country’s Constitution on the basis of whether it is based on its own traditional values or not? Letvin fails to understand the fact that the Uzbek society remained away from the political, social and cultural developments which were taking place across the globe during the twentieth century. Due to the closed Soviet political system people were not familiar with the functioning of the liberal democracy. More shockingly they were also not aware of the various developments in the field of individual freedoms, liberties and so on. Under such circumstances, it was necessary to have a Constitution which enshrines certain human values which were relished across the world. The new Constitution was a right step in this direction.

Another significant development in the world polity was growing relevance of a state in bringing development in the society. State was recognised as a catalyst, leader and vanguard of implementing various human values and securing people’s lives. However, it was not unchecked and unstoppable as the Soviet state was. Rather it was to be with proper checks and balances which keeps state’s arbitrary power under control. Keeping in view, the new Constitution was expected to build an altogether new state which was to be self-regulatory since there was no history of political awareness amongst the masses. The new state has failed to become an ideal state so far, neither it seems to be moving in this direction.

The new Constitution grants extraordinary powers to the president (Anderson 1997: 302). The president of the republic is the head of the state (article 89). He is directly elected by direct election by the people for a term of seven years. Earlier, the tenure of the president was five year but with a Constitutional amendment, 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.
However, in reality, President enjoys unrestrained powers and there is no Constitutional provision to remove the president except on health grounds (article 96). Although, the Prime Minister is the head of the government, but the President appoints the Prime Minister from the party which has majority in the parliament. The President has the right to remove him too.

Salient features of Uzbek Constitution:

The 1992 Constitution of Uzbekistan contains a preamble and 128 articles. The document is divided into 26 chapters and six parts. It declares Uzbekistan a sovereign, democratic and secular republic.

A. Uzbekistan: A Democratic Republic

The new state declares itself a democratic state. The words such as socialist democracy which were mentioned in the Soviet era Constitutions are no more mentioned. This was a clear, first and foremost departure from the Soviet ideology. Constitution of the 1992 reads as:

The people are the sole source of state power. State power in the Republic of Uzbekistan shall be exercised in the interests of the people and solely by the bodies empowered therefore by the Constitution of the Republic of Uzbekistan and the laws passed on its basis. Any seizure of powers belonging to state authority, suspension or termination of activity of the bodies of state authority contrary to the procedure prescribed by the Constitution, as well as the formation of any new or parallel bodies of state authority shall be regarded as unconstitutional and punishable by law (article 7).

However, the document does not mention whether the state is a liberal democracy, parliamentary democracy something else. What is more relevant here is that only two institutions, i.e., the presidency and the parliament are recognised as people's institutions. It clearly discards any role for other political institutions.

Article 10 of the Constitution says that "The Oliy Majlis (Legislature) and President of the Republic, elected by the people, shall have the exclusive right to act on behalf of the people. No section of society, political party, public association,
movement or individual shall have the right to act on behalf of the people of Uzbekistan.” In other words it does not recognise other institutions which are recognised as the pillars of democracy as the genuine representatives of the people.

B. Individual Rights and Freedoms

The new Constitution has made provisions related to the basic human rights and civil rights, freedoms and duties. It states, “All citizens of the Republic of Uzbekistan shall have equal rights and freedoms, and shall be equal before the law, without discrimination by sex, race, nationality, language, religion, social origin, convictions, individual and social status. Any privileges may be granted solely by the law and shall conform to the principles of social justice” (article 8). It further says, “Constitution of the Republic of Uzbekistan and the state shall be bound by mutual rights and mutual responsibilities. Citizens' rights and freedoms, established by the Constitution and the laws, shall be inalienable. No one shall have the power to deny a citizen, his rights and freedoms or to infringe on them except by the sentence of a court” (article 19).

Chapter seven of the new Constitution deals with the Personal Rights and Freedoms. In this chapter, articles 24 and 25 accept the right to life and regard it as an “inalienable right” of every human being.

According to the article 26, “no one may be adjudged guilty of a crime except by the sentence of a court and in conformity with the law. Such a person shall be guaranteed the right to legal defense during open court proceedings. No one may be subject to torture, violence or any other cruel or humiliating treatment. No one may be subject to any medical or scientific experiments without his consent”.

The Constitution talks about removal of any encroachment on individual freedoms. It also preserves everyone’s right to protection against encroachments on his honour, dignity, and interference in his private life. While protecting the freedom of personal space, it also guarantees inviolability of the home. “No one may enter a home, carry out a search or an examination, or violate the privacy of correspondence and telephone conversations, except on lawful grounds and in accordance with the procedure prescribed by law” (article 27 ).

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Defending and strengthening liberal democracy, the Constitution also guarantees "freedom of thought, speech and convictions". Everyone shall have the right to seek, obtain and disseminate any information, except that which is directed against the existing Constitutional system and in some other instances specified by law. Freedom of opinion and its expression may be restricted by law if any state or other secret is involved (article 29).

Article 30 of the new Constitution ensures citizens right to have access to documents, resolutions and other materials, relating to their rights and interests.

Chapter 8 of the Constitution is related to Political Rights. Article 32 says that as "all citizens of the Republic of Uzbekistan shall have the right to participate in the management and administration of public and state affairs, both directly and through representation. They may exercise this right by way of self-government, referendums and democratic formation of state bodies" (article 32).

According to article 34 "all citizens of the Republic of Uzbekistan shall have the right to form trade unions, political parties and any other public associations, and to participate in mass movements. No one may infringe on the rights, freedoms and dignity of the individuals, constituting the minority opposition in political parties, public associations and mass movements, as well as in representative bodies of authority."

Although the new Constitution enshrines all rights and freedoms in the document but it significantly fails in preserving them. All these freedoms remain only on papers as the Constitution does not mention the institutions which will be responsible for protection of these liberties. Such as in Unite Kingdom (UK) it is the parliament's responsibility, in case of United State of America (USA) the American Supreme court is the supreme body responsible for the protection of individual rights. Similarly in case of India the judiciary is well equipped with all powers for the protection of all individual rights and freedoms. The new Constitution of Uzbekistan does not provide any such institutional safeguards. In the absence of such mechanisms the Uzbek government has been criticized for violation of human rights.
C. Supremacy of the Constitution and Law

Establishing supremacy of laws over the individuals is the most important move towards establishing a modern state. Supremacy of law and not the individual choices demands that every individual is equal before the law. Law treats everyone as equal whether the concerned person is the president, people’s representative or an ordinary citizen. Besides, it also ensures citizens right to question any act, law or state action which harms the principle of equality before law.

According to article 15 of the Constitution, the law of the Republic of Uzbekistan provides absolute supremacy to the Constitution of the Republic of Uzbekistan. None of the laws or normative legal acts shall run counter to the norms and principle established by the Constitution (article 15 and 16).

According to article 7 of the Constitution, the people are the sole source of state power. State power in the Republic of Uzbekistan shall be exercised in the interest of the people and solely by the bodies empowered, therefore, by the Constitution of the republic and the laws passed on its basis. Any seizer of powers belonging to state authority, suspension or termination of activity of the bodies of state authority contrary to the procedure prescribed by the Constitution, as well the formation of any new or parallel bodies of state authority shall be regarded as unconstitutional and punishable by law.

It is the responsibility of the Constitutional Court to decide whether any law or state action is in conformity with the provisions of the Constitution or not. It has the powers to declare any law void if it violates any provision of the Constitution.

D. Separation of Powers

A major safeguard mechanism for individual rights and liberties is the system of separation of powers amongst the various institutions. The doctrine of separation of powers is based on the assumption that if the powers are concentrated in the hands of any one institution there are always possibilities of its misuse. This is based on Lord Acton’s famous saying – “Power corrupts, and absolute power corrupts absolutely”. In order to prevent institutions, from misusing their powers the American Constitution makers established a system in which each democratic institution was provided
certain defined functions. However, such compartmentalisation should not affect the work efficiency of these institutions. In order to do so a new mechanism of checks and balances had evolved. It prevents misuse or arbitrary use of power as every institution keeps a check on the actions of other institutions. Such mechanisms are considered necessary for building a democratic state.

The doctrine of Separation of Powers is the basis of the Uzbekistan’s political system. The Legislative, Executive and judicial powers of the government are separated and vested in three independent organs of the government (Merritt 2004: 16). The article 11 of the Constitution of the republic clearly manifests this feature of the Constitution. According to the Article 12 of the Constitution of Uzbekistan, public life shall develop on the basis of diversity of political institutions, ideology and opinions. The system of state power of the Republic of Uzbekistan is based on the principle of Separation of Powers into legislative, executive, and judicial:

- Judicial: the Constitutional Court of the Republic of Uzbekistan, the Supreme Court of the Republic of Uzbekistan, the Supreme Economic Court of the Republic of Uzbekistan, the Economic Court of the Republic of Karakalpakstan, regional, Tashkent City, district, city, and economic courts, Supreme Military Court of the Republic of Uzbekistan etc.

However, like other provisions of the Constitution, this part of the Constitution is also a myth. In reality, the Constitution clearly establishes supremacy of the presidency over all other democratic institutions such as the parliament, Constitutional Court and so on. There are no provisions regarding preventing any misuse of power by the President of the Republic. The Constitution does not mention any process of his/her removal accept if he himself or herself decides so on the health grounds. Such a provision leaves scope for extreme misuse of powers by the presidency.
E. Flexible Constitution

A Constitution is expected to reflect certain values on which a society stands. Any damage to the Constitution is also considered as damage to these social values. In other words, stability of the Constitution is a prerequisite for a stable path of political development and democratisation. Frequent changes in the Constitution or any major change may harm the whole process of democratisation. In addition to this, continuation of a Constitution also reflects a society's consensus on these values and its determination and commitment for them. However, a major challenge before the Constitution makers is to ensure that on the one hand, a Constitution reflects the continuity of these values but at the same time there should be adequate flexibility of amendments as per the changing times and circumstances.

In case of Uzbekistan the method of amending the Constitution is flexible. The Constitution of Uzbekistan can be amended by laws, passed by at least two-thirds of the deputies of the Oliy Majlis of the Republic. According to the article 128 of Constitution, the Oliy Majlis of the republic may pass a law altering or amending the Constitution within six month of submission of the relevant proposal, with due regard for its nation-wide discussion. If the Oliy Majlis of the Republic of Uzbekistan reject an amendment to the Constitution, a repeated proposal may not be submitted for one year.

The revision of the Constitution should be undertaken in the context of the sixth section of the present Constitution. Each individual chapter must be looked at very closely, whatever it deals with the general Constitutional principles, regulates the basic structure and activities of the government and protects the rights and freedoms of the people, or deals with the more practical matters. Matters of Constitutional principle will need to be changed on the basis of a referendum, whereas amendments to the more specific principles will have to be carefully prepared by highly qualified experts. The matter of the structure and activities of the government will be resolved by the Oliy Majlis.
F. Presidential Form of Government

The most important part of the Uzbek Constitution is its presidential system. Constitutional provisions have been described in Chapter 19. The features of the Uzbekistan presidential system of government is as follows.

Article 89 of the 1992 Constitution affirms that the President of the Republic of Uzbekistan will be the head of state and executive authority. The President of the Republic of Uzbekistan simultaneously serves as Chairman of the Cabinet of Ministers.

The Constitution prescribes following preconditions (article 90) to be the president of the republic:

1. Any citizen of the Republic of Uzbekistan who has reached at the age of 35, is in full command of the state language and has permanently resided in Uzbekistan for at least 10 years, immediately preceding the elections, shall be eligible for the post of President of the Republic of Uzbekistan. A person may not be elected to the office of President of the Republic of Uzbekistan for more than two consecutive terms.

2. The President of the Republic of Uzbekistan shall be elected for a term of seven years (earlier the tenure of the president’s post was five years). He shall be elected by citizens of the Republic of Uzbekistan on the basis of universal, equal and direct suffrage by secret ballot. The procedure for electing President shall be specified by the electoral law of the Republic of Uzbekistan.

3. During his term of office, the President may not hold any other paid post; serve as a deputy of a representative body or engage in commercial activity (article 91).

4. The President shall enjoy personal immunity and protection under law.

The Constitution describes the duties of the president as follows (section and articles):

According to the article 93, the President of the Republic of Uzbekistan shall:
1. Guarantee the rights and freedoms of citizens and observance of the Constitution and the laws of the Republic of Uzbekistan;
2. Protect the sovereignty, security and territorial integrity of the Republic of Uzbekistan, and implement the decisions regarding its national-state structure;
3. Represent the Republic of Uzbekistan in domestic matters and in international relations,
4. Conduct negotiations, sign treaties and agreements on behalf of the Republic of Uzbekistan, and ensure the observance of the treaties and agreements signed by the republic and the fulfillment of its commitments;
5. Receive letters of credence and recall from diplomats and other representatives accredited to him;
6. Appoint and recall diplomats and other representatives of the Republic of Uzbekistan to foreign states;
7. Present annual reports to the Oliy Majlis on the domestic and international situation;
8. Form the administration and lead it, ensure interaction between the highest bodies of state authority and administration, set up and dissolve Ministries, state committees and other bodies of administration of the Republic of Uzbekistan, with subsequent confirmation by the Oliy Majlis.

Powers of Appointment

The president appoints and dismisses the Prime Minister, his Deputy Prime Ministers and other members of administration, the procurator general and his deputies. He is the Chairman of the Cabinet of Ministers and the Supreme Commander-in-Chief. The president appoints diplomats, represents the country and conducts negotiations with the heads of foreign countries, proclaims a state of war, and, if necessary, a state of emergency to restore order in the interests of national security.

Present of the Oliy Majlis of the Republic of Uzbekistan his nominees for the posts of Chairman and members of the Constitutional Court, the Supreme Court, and, the Higher Economic Court, as well as the Chairman of the Board of the Central Bank
of the Republic of Uzbekistan, and the Chairman of the Stare Committee for the Protection of Nature of the Republic of Uzbekistan. Appoint and dismiss judges of regional, district, city and arbitration courts; Appoint and dismiss hokims (heads of administrations) of regions and the city of Tashkent with subsequent confirmation by relevant People's Deputies; the President shall have the right to dismiss any hokim of a district or a city, should the latter violate the Constitution or the laws, or perform an act discrediting the honour and dignity of a hokim;

Legislative Powers

The president enjoys the following legislative powers: He has the right to dissolve the Oliy Majlis. He forms the national security and state control services. He presents to the Oliy Majlis his nominees for the posts of chairman and members of the Constitutional Court, the Supreme Court and the Higher Economic Court, together with the Chairman of the Board of the Central Bank, and he also appoints and dismisses judges of regional, district and city courts. He appoints and dismisses regional hokims. He suspends and repeals any acts passed by the bodies of state administration as well as hokims. The Constitution thus consolidates the presidential system of the republic, where the president is provided with a strong power. The image of the president is more significant and weighty than the image of parliament and local government institutions in Uzbekistan.

Judicial Powers

The President consults Oliy Majlis of the Republic of Uzbekistan for the nomination of the posts of Chairman and members of the Constitutional Court, the Supreme Court, and the Higher Economic Court. He also appoints and dismisses judges of regional, district, and city and arbitration courts.

Military Powers

He Serve as the Supreme Commander-in-Chief of the Armed Forces of the Republic and is empowered to appoint and dismiss the high command of the
Armed Forces and confer top military ranks.

He can proclaim a state of war in the event of an armed attack on the Republic of Uzbekistan or when it is necessary to meet international obligations relating to mutual defense against aggression, and submit the decision to the Oliy Majlis of the Republic of Uzbekistan for confirmation. He award orders, medals and certificates of honour of the Republic of Uzbekistan, and confers qualification and honorary titles of the Republic of Uzbekistan;

Veto Powers

Suspend and repeal any acts passed by the bodies of state administration or hokim; signs the laws of the Republic of Uzbekistan. The President may refer any law, with his own amendments, to the Oliy Majlis for additional consideration and vote. Should the Oliy Majlis confide its earlier decision by a majority of two-third of its total voting power, the President shall sign the law.

Emergency Powers

Have the right to proclaim a state of emergency throughout the Republic of Uzbekistan or in a particular locality in cases of emergency (such as a real outside threat, mass disturbances, major catastrophes, natural calamities or epidemics), in the interests of people's security. The President shall submit his decision to the Oliy Majlis of the Republic of Uzbekistan for confirmation within three days. The terms and the procedure for the imposition of the state of emergency shall be specified by law. Serve as the Supreme Commander-in-Chief of the Armed Forces of the Republic and is empowered to appoint and dismiss the high command of the Armed Forces and confer top military ranks.

Proclaim a state of war in the event of an armed attack on the republic of Uzbekistan or when it is necessary to meet. International obligations relating to mutual defense against aggression, and submit the decision to the Oliy Majlis of the Republic of Uzbekistan for confirmation. Award orders, medals and
certificates of honours of the Republic of Uzbekistan, and confer qualification and honourary titles of the Republic of Uzbekistan. Form the national security and state control services, appoint and dismiss their heads, and exercise other powers vested in him (chapter 19 of Uzbek Constitution). The President shall not have the right to transfer his powers to a state body or official.

The article 94 of Uzbek Constitution say that the President of the Republic of Uzbekistan shall issue decrees, enactments and ordinances binding on the entire territory of the Republic on the basis of and for enforcement of the Constitution and the laws of the Republic of Uzbekistan.

Article 95 of the Constitution talks to that any insurmountable differences arise between the deputies of the Oliy Majlis, jeopardizing its normal functioning, or should it repeatedly make decisions in opposition to the Constitution, the Oliy Majlis may be dissolved by a decision of the President, sanctioned by the Constitutional Court. In the event of the dissolution of the Oliy Majlis, elections shall be held within three months. The Oliy Majlis may not be dissolved during a state of emergency.

According to the article 96 in case if the president of the Republic of Uzbekistan fail to perform his duties due to poor health an emergency session of the Oliy Majlis shall be held within ten days. This session shall elect an acting President of the Republic of Uzbekistan from among its deputies for a term of not more than three months in this case the general elections of the President of the Republic of Uzbekistan shall be held within three months. However, the Constitution also states that after completion of his term of office, the President shall be a lifetime member of the Constitutional Court.

Amendments Related to Powers of the President

Extending the term

The President of the Republic of Uzbekistan shall be elected for a term of seven years. (This amendment to Constitution of the Republic of Uzbekistan on changing the
Constitutional period of the presidency is connected with the results of Referendum on January 27, 2002 and was officially published on 22 May 2003).

The President of the Republic of Uzbekistan issues decrees, enactments and ordinances binding on the entire territory of the republic on the basis of and for enforcement of the Constitution and the laws of the Republic of Uzbekistan.

The Constitution of Uzbekistan does not make provision for the impeachment of the president that is for summarily deposing him from office or convicting him for misdeeds. Uzbekistan is the only nation of the Commonwealth of Independent States (CIS) that lacks this Constitutional provision. In the Constitutions of all the CIS countries such as Russia, Armenia, Kyrgyzstan and Kazakhstan have made provisions in their Constitutions to deal the situation of all the other issue is but Uzbek Constitution does not make such type of provisions.

C. The legislature: Oliy Majlis

The highest representative body of the state is the Oliy Majlis. It is the Supreme Assembly of the Republic of Uzbekistan (article 76). This body exercises legislative powers. In 2004, Uzbekistan has a bicameral legislature-Senat (Upper house) and Qoqunchilik Palatasi Kengashi (Lower house). Initially, there was a unicameral legislature but in due course bicameral legislature has been established in the republic by Constitutional amendment. 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 indirect election for five years terms.

In accordance with the results of the referendum of January 27, 2002 the structure of the Oliy Majlis was changed. The Oliy Majlis of the Republic of Uzbekistan was enacted on June 1, 2004 as a bicameral parliament and consists of a Legislative chamber and a Senate. (This amendment to the Constitution of the Republic of Uzbekistan was officially published on May 22, 2003) (Kazi 2005: 5).

- The members for the Legislative (lower) chamber of the Republic elected by
territorial constituencies on a multi-party basis for a term of five years. The total number of seats in the house is 120.

- The Senate (upper chamber) of the Republic of Uzbekistan consists of territorial representatives (senators) by six from: the Republic of Karakalpakstan, each region of Uzbekistan (now there are twelve) and Tashkent city, chosen by the Legislature thereof. The President of the Republic of Uzbekistan also appoints sixteen members of Senate from most authoritative citizens. All the senators are elected for a term of five years.

The Senate and the Legislative chamber of Oliy Majlis adopt and amend the Constitution and laws of Republic of Uzbekistan. It has power to regulate customs, currency and credit systems, problems of the administrative – territorial structure, and alteration of frontiers of the Republic of Uzbekistan and approve the budget or the country and Oblasts. They ratify the decrees issued by the President regarding the establishment and abolitions of the state institutions of country.

The Legislative chamber (lower house) of Oliy Majlis has its speaker and other officers and may determine of its Proceedings.

The Senate (upper house) of Oliy Majlis has power to elect its Chairman and other officers and may determine of its Proceedings. The Senate rectifies the decrees of the President on the appointment and removal of the higher officials of the country and elections of the Constitutional Court, Supreme Court, Higher Economic Court of the Republic of Uzbekistan, and other representative bodies. Besides, it also rectifies the international treaties and agreements and realises other activity.

The right to initiate legislation in the Oliy Majlis of the Republic of Uzbekistan is vested in the President of the country, the Republic of Karakalpakstan through the highest body of state authority, the deputies of the Oliy Majlis of the Republic of Uzbekistan, the Cabinet of Ministers of the Republic of Uzbekistan, the Constitutional Court, the Supreme Court, the Higher Economic Court and the Prosecutor General of the Republic of Uzbekistan.
The *Oliy Majlis* has power to pass laws, decisions and other acts. Any law shall be adopted when it is passed by a majority of the total voting power of the deputies of the *Oliy Majlis*.

Promulgation of the laws and other normative acts shall be a compulsory condition for their enforcement. For practical purposes the legislation may be divided into five groups.

a) Laws relating to federal procedure, among them are laws concerning presidential elections; parliamentary elections, elections to district, regional, and municipal council of people's deputies, and elections to central election committees, self-governing agencies, and political parties.

b) Laws, rules and procedures related to commerce falls under this group. The group comprises the regulation of the civil code, the land code, and the tax code, the regulation of private enterprise and guarantees for private of commercial bevies, guidances for agricultural cooperatives, farms, and the simulation and development of private enterprise.

c) Citizen's rights and freedoms have been mentioned in the third group. These rights of freedoms include the labor code, the housing code, the family code, measure concerning legal recourse for actions and decision impeding the rights and freedoms of citizens, supplementary aid to women, guarantees relating to the activities of attorneys and the social protection of attorney, and empowerm of the *Oliy Majlis* to protect citizens' rights.

d) Cultural heritage, culture and education have been included in the fourth group. In this group there are laws relating to the official language, the medal of honor of Tamer lane, and education. There is also a decree concerning a national program to increase legal consciousness in society.

e) Legislation about foreign, policy, and economic policy, such as the basic principles of the foreign policies of the Republic of Uzbekistan, about foreign investment, and guarantees for foreign investors (Levitin 2001: 176-177).

The spirit of liberal democracy in general and parliamentary democracy in particular lies in the fact that it accepts differences amongst the people over various issues. It does not demand consensus on all issues (Rather the whole idea of politics in
the liberalism is management of various ideas). Parliament is considered a place where people's representatives can sit and express their grievances. The ruling party is expected to listen to these demands patiently. Attempts are never made to enforce any consensus on the parliament. Any such action kills the very spirit of democracy.

In case of Uzbekistan, the parliament is not recognised as a capable body which can overcome its differences. This seems to be the reason that the Article 95 states: “Should any insurmountable differences arise between the deputies of the Oliy Majlis, jeopardising its normal functioning, or should it repeatedly make decisions in opposition to the Constitution, the Oliy Majlis may be dissolved by a decision of the President, sanctioned by the Constitutional Court. In the event of the dissolution of the Oliy Majlis, elections shall be held within three months. The Oliy Majlis may not be dissolved during a state of emergency.”

It provides powers to the president to decide the future of the parliament. Such provisions can be called against the very soul and spirit of democracy building. In reality it does not seem different from the Soviet parliament which was there to accept the decisions which were already taken in the Communist Party Polit Bureau. In the new Uzbekistan it is the president and his office which decides the content of various laws and not the parliament.

**Judicial Authority in the Republic of Uzbekistan**

Uzbekistan's legal system is based almost exclusively on Tsarist and Soviet civil law traditions. The judicial authority in the Republic of Uzbekistan shall function independently from the legislative and executive branches, political parties and public. The judicial system in the Republic of Uzbekistan shall consist of-

- The Constitutional Court of the Republic,
- The Supreme Court,
- The Higher Economic Court of the Court of the Republic, and
- The Arbitration Court of the Republic of Karakalpakstan (Judicial in Idex for Uzbekistan 2002: 2).
With the approval of legislature, the President appoints judges and has right to
dismiss them (article 107). These courts' judges are appointed for a term of five years.
The judicial branch also includes regional, district, town, city, Tashkent city courts
and Arbitration Courts appointed for a term of five years. The Constitutional Court of
the Republic of Uzbekistan hears cases relating to the constitutionality of acts passed
by the legislative and executive branches. Besides, it hears the matter regarding the
Constitutionality of the laws of the Republic of Uzbekistan and other acts passed by
the Oliy Majlis of the republic, the decrees issued by the President of the republic, the
enactments of the government and the ordinances of local authorities, as well as
obligations of Uzbekistan under inter-state treaties and other documents; confirm the
Constitutionality of the Constitution and laws of the Republic of Karakalpakstan to
the Constitution and laws of the country; interpret the Constitution and the laws of the
Republic of Uzbekistan.

The Supreme Court of the Republic of Uzbekistan is the highest judicial body of
civil, criminal and administrative laws. The rulings of the Supreme Court are final and
binding throughout the Republic of Uzbekistan. The Supreme Court of the republic
has the right to supervise the administration of justice through the Supreme Court of
the Republic of Karakalpakstan, as well as through regional, city, town and district
courts.

Any economic and management disputes that may arise between entrepreneurs,
enterprises, institutions and organisations based on different forms of ownership, are
settled by the Higher Arbitration Court and other Arbitration Courts within their
authority.

The Constitutional Court

According to Article 19 of the Law of the Republic of Uzbekistan on the
Constitutional Court, No. 103-I (30 August 1995), this body considers “the
Constitutionality of acts by the legislative and executive powers”. Individuals cannot
present cases for consideration to the court, which does not have jurisdiction over
questions concerning the Constitutionality of regulations issued by state agencies,
including the procuracy. The Constitutional Court has not been an active institution,
rendering only ten to fifteen decisions a year, and is reportedly considered a dead institution.17

Article 13 of the Law of the Republic of Uzbekistan on Procuracy, No. 257-II of 21 August 2001, enhanced the Constitutional Court’s jurisdiction to enable it to review decisions and instructions by the prosecutor general to ensure they comply with the Constitution; no cases have yet been presented to the court. Citizens have right to appeal for decisions by regional and district-level prosecutors to be reviewed, but the Constitutional Court has so far declined.

In December 2003, parliament passed a law reducing the number of articles in the Criminal Code specifying offences punishable by death from four to two. The two dropped articles—“genocide” and “initiating or waging an aggressive war”—had not been in use. The Uzbek Criminal Code has been revised on numerous occasions, usually with regard to its provisions on the death penalty. Although, the code initially included 13 articles providing for capital punishment, five of these were removed in 1998, and the remaining eight were further reduced to four in October 2001. The death penalty now may apply only to crimes of ‘premeditated aggravated murder’ (art. 97 part 2) and “terrorism” (art. 155 part 3). The government also announced a reduction in prison terms and an increase in the number of offences punishable by fines rather than by prison sentences.

Depending on the norms of international law, the Constitution of Uzbekistan, which stipulates the right to live, as well as to conduct the concerted measures on further liberalisation of criminal penalty, on August 2005, the decree of the president of the Republic of Uzbekistan “On abolishment of death penalty” was issued, providing for its full cancellation from 1 January 2008. Abolishment of death sentence requires wide range of explanatory works among the population, preparing them to be ready for change on further liberalisation of criminal penalty, as well as solution of financial and origination matters.

Nominally independent of the other branches of government, the courts remain under complete control of the executive branch. As in the system of the Soviet era, the Procurator General and his regional and local equivalents are the state’s chief

17 For more detail see http://www.abanet.org/rol/publications/uzbekistan_jri_2002_english.pdf
prosecuting officials and the chief investigators of criminal cases, a configuration that limits the pretrial rights of defendants.

III

Some Development in Constitution after Creation of the New Constitution

Although, hard criticism has been directed at Constitutionalism in Uzbekistan, but it cannot be denied that the Constitution has provided effective mechanism for the legal system of the land.

In accordance with the Constitution, in its first legislative period the Oliy Majlis in 15 session's enacted 10 legal codes, passed 145 statuses, and made 216 amendments and additions to acts. The president has issued more than 60 decrees under the Constitution. Needless to say, the number of new laws is not as significant as their effectiveness (Levitin 2001:176).

The main goal behind all Constitutional principles laws and decrees, is to make reforms effective so that it can have an influence on the lifestyle of the people of the republic.

The Uzbek Constitution shows the hierarchy of law includes: the Constitution of the Republic of Uzbekistan, Constitutional laws, codes, ordinary laws, decrees of the President, decrees of the Cabinet of Ministers, normative acts.

Main Constitutional Laws of the Republic of Uzbekistan

Constitutional laws are fundamental branch of public legislation and deals with the rules concerning the Constitution and the structure of the state and status of the citizen in state. They lie within the Constitutional Court of the Republic Uzbekistan jurisdiction:

- On referendum (1991) (Russian)
- On the Cabinet of Ministers of the Republic of Uzbekistan (1993)
• On the courts (1993)
• On the Supreme Economic Court (1993)
• On the Oliy Majlis of the Republic of Uzbekistan (1994)
• On the Constitutional Court (1995)
• On the results of the referendum and the basic principles of organization of state power (2002)
• On the Legislative chamber of the Oliy Majlis of the Republic of Uzbekistan (2002)
• On the courts (2000)

There are also laws on elections:


**Codes**

• Air Code of the Republic Uzbekistan (1993, Russian)
• Code of the Republic Uzbekistan on Administrative Responsibility (1994, Russian)
• Code of Criminal Procedure of the Republic Uzbekistan (1994, Russian)
• Criminal Code of the Republic Uzbekistan (1994, Russian)
• Civil Code of the Republic Uzbekistan - Part One (1995, Russian)
• Civil Code of the Republic Uzbekistan - Part Two, (1996, Russian) - articles 386-727; articles 728-960; articles 961-1199 (Butler 1999 :3-41)
• Custom Code of the Republic Uzbekistan (1997, Russian)
• Code of Economic Procedure of the Republic Uzbekistan (1997, Russian)
• Code of Civil Procedure of the Republic Uzbekistan (1997, Russian)
• Criminal - Executor Code (1997, Russian)
• Tax Code of the Republic Uzbekistan (1997, Russian)
• Land Code of the Republic Uzbekistan (1998, Russian)
• Housing Code of the Republic Uzbekistan (1998, Russian)
• Family Code of the Republic Uzbekistan (1998, Russian)
• City-planning Code of the Republic Uzbekistan (Stalbovskaya 2005).

Ordinary laws

The charter of market law - a new Civil Code (Russian), Articles 386-727, Articles 728-960, and Articles 961-1199 were adopted in 1995-96, and a Tax Code (Russian) in 1997.

Amongst the market law are on:

• Legal protection of programs databases (English)
• Auditor activity (1991),
• Dissatisfaction and privatization (1991),
• Enterprises (1991), (Rahmov et al 1992 : 129)
• Entrepreneurship (1991),
• Taxes from enterprises, associations, and organizations (1991), (Rahmov et al 1992 : 100)
• Stock exchanges and stock exchange activity (1992),
• Deckhands (or farmer) economy (1992),
• Securities and the stock exchange (1993),
• Currency regulation (1993) (Russian)
• Monetary system (1994),
• Limitation of non-political activity (1994),
• Stimulation of small and private entrepreneurship (1995),
• Banks and banking activity (1996) (Russian)
• Joint-stock societies and the defense of the rights of stockholders (1996)
• Mechanism for the functioning of the securities market (1996),
• Bankruptcy (1998) (Russian)
• Investment activity (1998) (Russian)
• State control over activity of economic subjects (1998)
• Economic societies and partnerships (2001),

There are decrees on measures to radically increase the share and significance of the private sector in the Uzbek economy (2003) and others.

**Human rights**

In accordance with the Constitution of the Republic of Uzbekistan, "all citizens of the republic shall have identical rights and freedoms and be equal before the law without distinction of sex, race, nationality, language, religion, social origin, convictions, and personal and social status". There is an authorized person for human rights/ Ombudsman at the *Oliy Majlis* of the Republic of Uzbekistan.

The State shall ensure the rights and freedoms of citizens consolidated by the Constitution and other laws on:

• Freedom of Conscience and Religious Organizations (1991)
• Agencies of Self-Government of Citizens(1993) (Russian),
• Warranties of the Citizens' Suffrages (1994),
• State Language (1995),
• Appeal in Court of Operations and Solutions Infringing Right and Freedom of the Citizens (1995),
• Political Parties (1996),
• The National Center of the Republic of Uzbekistan on Human Rights (1996),
• Defense of the Consumer Rights (1996) (Russian),
• Defense of the Professional Activity of a Journalist (1997),
• Guarantees and Freedom of Access to Information (1997),
• Mass Media (1997),
• The Authorized Person of the Oliy Majlis of the Republic of Uzbekistan for Human Rights/Ombudsman (1997),
• Principles and Guarantees Freedom of Information (2002),
• Address of the Citizens (2002),

However, in spite of various laws the situation of human rights remains poor in the country. Time and again various international agencies have criticized the Uzbek government for its violent and inhuman methods. All these means have been adopted in the name of countering terrorism in the country. Though the government has been denying any such allegations.

The spirit of Constitutionalism remains under serious threat unless effective mechanisms are made to ensure that the fundamental rights are respected. It also depends on the state’s ability to ensure a dignified life for every citizen. So far such willingness cease to exist in the Uzbek state.

Development of NGO

NGOs of the Uzbekistan made a valuable contribution to social and economic development of the country. Main instruments of a NGO development in Uzbekistan are:

• Law on Non-Governmental Non-Profit Organizations (1999) (Abramson, 1999 :4-10)

There is Committee on Democratic Institutions, Nongovernmental Organizations and Bodies of Self-governance at Oliy Majlis.
Regulation of the legal profession

Any defendant has the right to defense. The right to legal assistance is guaranteed at any stage of the investigation and judicial proceedings. The organization and the procedure of it are specified by laws on:

- The Procures (1992)
- Advocator (1996) (Russian)
- Decree on the National Programmed for Raising Legal Culture in Society.
- The Procures (2001)

Legislations Related to Social reforms

A system of social legislation is being formed. Legal assistance to citizens, enterprises, institutions and organisations is offered by:

- Fundamental Principles of State Youth Policy (1991)
- Employment (1992),
- Protection of Labor (1993)
- State Pension Security for Citizens (1993),
- Civil Code (1995/1996) and Laws on
- Additional Guarantees for Women (1999),

After independence, legal and Constitutional changes in Uzbekistan still carry most of the insignia of the old Soviet legal system. The law remains primarily a tool with which to exercise and is far from a rule of law that would be capable of protecting or be willing to protect individual rights against the state.
Strabrock (2005) expresses view on the rule of law in Uzbekistan as the "International community should keep quiet 'accept defeat'. On the contrary, a reinforced genuine rule of law reform is required. It should be noted that reforms taking place in the Caucasus or the rest of the former Soviet Union do not go unnoticed. With these legal reforms in sight, a certain momentum for reform can be carried in Central Asia as well."

**Freedom of Expression and New Media Law**

Media (print and electronic media) is considered as fourth pillar of democracy. An independent functioning of media not only makes citizens aware about their democratic rights but also inform them what is happening in the polity, society or economy in and outside the country. In the 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.

According the Uzbek Constitution the mass media (print and electronic media) shall be free and act in accordance with the law. It shall bear responsibility for trustworthiness of information in a prescribed manner. Censorship is impermissible (article 67).

In 1997 a law on the media, the need for which the media themselves had been talking about for so long was finally adopted. The new law on protection of the professional activity of journalists and the law on freedom of access to information were based on a postulate that is not being implemented in practice (*CDPSP 1998*: 20).

Article 4 of new law "censorship of the news media is not allowed in the Republic of Uzbekistan. No one has the right to demand that reports and articles intended for publication cleared in advance, that alterations be made in their texts or that they be pulled from print in their entirety" (*CDPSP 1998*: 20). This article repeats almost verbatim Art. 4 of the law "On Protection of the Professional Activity
of Journalist.” Furthermore, this provision is also set down in article 67 of the Constitution of Uzbekistan.

Article 14 of the law protecting journalists' professional activities established liability for violating that law. It reads: “officials of stated agencies, enterprises, institutions and organisations shall be held liable for engaging in censorship, exerting pressure on journalists or interfering in their professional activities” (CDPSP 1999: 19).

Although a government decree officially eliminated state censorship in 2002, the government has continued to severely restrict independent journalism, particularly following the Andijan uprising of 2005. Licensing and regulation are the purview of the State Press Committee and the Inter-Agency Coordination Committee, which use their authority to harass and delay the activities of independent media outlets (World Press Freedom Review 2003). In late 2006, authorities further tightened state control by requiring re-registration by all media outlets not passing a summary review of qualifications. In 2005 some 30 to 40 independent television stations and seven independent radio stations were in operation, but four state-owned television stations, run by the Television and Radio Company of Uzbekistan, dominated the market. No live programming is allowed. Total newspaper readership is estimated at only 50,000; the newspaper market is dominated by the state-owned papers Pravda Vostoka, Halq Sozi, and Narodnoye Slovo. The largest privately owned News papers are Novosti Uzbekistana, Noviy Vek, Noviy Den’, and Mohiyat, etc.

The state controls newspaper distribution and materials supply. In the early 2000s, newspaper articles occasionally have criticised government policy and social conditions, but bribery of journalists is common. The only national news agency, the Uzbekistan News Agency, is state-controlled. Agency France-Press, Anadolu Ajansı (of Turkey), the Associated Press, Interfax (of Russia), and Reuters are foreign agencies with offices in Uzbekistan. The government forced Radio Free Europe–Radio Liberty to close its Tashkent office in late 2005.
January 16, 2007 President Islam Karimov has endorsed amendments to the country's media law that tighten officials' already powerful grip on the press, according to reports in Uzbekistan's state-controlled media.\footnote{For more detail see http://www.rferl.org/featuresarticle/2007/01/E37BADE0-B893-4AEC-9016-00BB38BC228B.html, accessed on 24 April 2007.}

In Uzbekistan censorship mechanism was developed back during Soviet times and is still in operation. Uzbek government is still censored, even though censorship is legally prohibited by the country's Constitution and the laws "on Protecting the Professional Activities of Journalist" and "On the News Media."

Among other things, it bars legal entities with significant foreign ownership from establishing media outlets in Uzbekistan specifically, those in which foreign investors hold at least a 30 per cent stake. Uzbekistan has tightened its grip on independent media since a May 2005 military crackdown to quell unrest in the eastern city of Andijan. Western governments and rights groups consistently accuse Islam Karimov's administration, which has dominated political and public life since the disintegration of the Soviet Union by 1991 denying access to the media to political opponents.

These laws have been adopted to defend the interests of the neediest strata of the populace under the complex conditions of a transition to a market economy.

**Building a Participatory Democracy in Uzbekistan**

In order to strengthen the participatory democracy Uzbekistan has adopted a law which deals with the issues and formats of referendum. The law says that the referendum can be held only at the national level. No referendum could be held at the state or local levels. It further divides the referendum in two categories:

1. National Referendum: The decision of holding a referendum in Uzbekistan is made by the joint conduct of the Legislative Chamber and the Senate of the Oliy Majlis of the Republic of Uzbekistan. The Legislative Chamber and the Senate of the Oliy Majlis of the Republic of Uzbekistan can also designate the date of holding a referendum.
2. Compulsory (Obligatory) Referendum: The amendments to the Constitution of the Republic of Uzbekistan must be adopted by not less than two-thirds of the total number of deputies of the Legislature Chamber and members of the Senate of the Oliy Majlis of the Republic of Uzbekistan, or by a referendum of the Republic of Uzbekistan.

a. The Republic of Karakalpakstan which is an Autonomous Republic belonging to the Republic of Uzbekistan shall have the right to secede from the Republic of Uzbekistan on the basis of a nationwide referendum held by the people of Karakalpakstan.

b. Optional Referendum: Uzbekistan can also hold referendums regarding major matters of public and state life, which are submitted for a nationwide discussion. The procedures for holding referendums shall be specified by law.

The Constitution had undergone two major amendments in 2000 and 2002, respectively. These two amendments were about the changes in the presidential term of office and the structure of the parliament. The relevant Articles are as follow:

1. Article 9: Major matters of public and state life shall be submitted for a nationwide discussion and put to a direct vote of the people (a referendum). The procedure for holding referendums shall be specified by law.

2. Article 32: All citizens of the Republic of Uzbekistan shall have the right to participate in the management and administration of public and state affairs, both directly and through representation. They may exercise this right by way of self-government, referendums and democratic formation of state bodies.

3. Article 74: The Republic of Karakalpakstan shall have the right to secede from the Republic of Uzbekistan on the basis of a nationwide referendum held by the people of Karakalpakstan.

4. Article 78: The joint conducting of the Legislative Chamber and the Senate of the Oliy Majlis of the Republic of Uzbekistan shall include: ...3) adoption of decision on holding a referendum of the Republic of Uzbekistan and designation the date of its holding.

5. Article 127: The Constitution of the Republic of Uzbekistan shall be altered by law adopted by a majority, not less than two thirds of the total number accordingly of deputies of the Legislature Chamber and members of the
Senate of the Oliy Majlis of the Republic of Uzbekistan, or by referendum of the Republic of Uzbekistan.

Referendum in Practice

In addition to the Constitution of Uzbekistan, the Law on Referendum in Uzbekistan and the Law on the Central Electoral Commission also govern the procedures of holding referendums.19

Uzbekistan has held four referendums that were all accepted by the voters. The first one was held on March 17, 1991 concerning the question on whether to agree with Uzbekistan as a sovereign republic. The second one was held on December 29, 1991 regarding the independence of Uzbekistan. The third one was held on March 26, 1995 on the question of extending President Islam Karimov's term to the year 2000.

The last one was held on January 27, 2002 concerning two questions. The voters agreed to the creation of a bicameral parliament at the next election and to extend the president's term of office from five to seven years. The referendum was criticized for lack of public debates on the issues that made the general public vote without understanding what the issues were. Furthermore, the ballot was staged to implicitly encourage Uzbek people/citizens to vote in favour of the proposals, as Reuters reported on January 27, 2002.20 People who voted for “Yes” needed only to drop the ballot into the boxes, while one had to go into the booth and cross out the question in order to vote against the proposals. Moreover, the voting process was also allegedly manipulated. It is said that some voters received more than one ballot papers. And when some voters went into the booth, he or she might be asked whether he or she was against the proposals.21 Given all the controversies, both turnout and results of this referendum were highly criticized.22

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In short we can say that the fourth national referendums, the last one, in particular, were accused as unfair. The realisation of direct democracy in Uzbekistan might have to wait until a free and open democracy takes roots (Bantekas 2005: 79).

Another significant step has been taken in the direction of building a participatory democracy is adoption of a new law on the functioning of political parties in the country.\textsuperscript{23} It has provisions related to various factions of political parties in the parliament as well.

Besides, few amendments have been made in order to make prime minister's appointment more consensuses based. Earlier it was president's supreme prerogative to decide the Prime Ministerial candidate. However, now president would consult with various political parties and factions before the appointment of the Prime Minister. Various provisions according to the new amendments are as follows:

- Article 4 talks about the procedure of appointment of the Prime Minister of the Republic of Uzbekistan. The candidature of the Prime Minister of the Republic of Uzbekistan is recommended by the President of the Republic of Uzbekistan for consideration and approval by the Legislative Chamber and the Senate of \textit{Oliy Majlis} of the Republic of Uzbekistan after holding consultations with each of the factions of political parties represented in the Legislative Chamber of \textit{Oliy Majlis} of the Republic of Uzbekistan, and deputies elected from the initiative groups of voters, within a month after the election of office holders and the formation of the bodies of chambers of \textit{Oliy Majlis} of the Republic of Uzbekistan. The candidature of the Prime Minister of the Republic of Uzbekistan is recognised as approved if the candidate gains the majority of votes of the total number of deputies of the Legislative Chamber and members of the Senate of \textit{Oliy Majlis} of the Republic of Uzbekistan.

- In the case of triple rejection of the recommended candidature of the Prime Minister of the Republic of Uzbekistan by the Legislative Chamber or the

\textsuperscript{23} On strengthening the role of political parties in the renewal and further democratization of state governance and modernization of the country adopted by Legislative Chamber on February 28, 2007 approved by Senate on March 29, 2007.
Senate of Oliy Majlis of the Republic of Uzbekistan, the President of the Republic of Uzbekistan appoints an Acting Prime Minister of the Republic of Uzbekistan, dissolves the Oliy Majlis of the Republic of Uzbekistan or one of its Chambers. In the case of the dissolution of the Legislative Chamber, the Senate of Oliy Majlis of the Republic of Uzbekistan, new elections shall be held within three months of the date when the decision on dissolution was adopted.

- Article 5 is related to the procedure for dismissal of the Prime Minister of the Republic of Uzbekistan. The Prime Minister of the Republic of Uzbekistan is dismissed from the post by the President of the Republic of Uzbekistan:
  a) According to an application from the Prime Minister to resign;
  b) In case it becomes impossible for the Prime Minister to execute his powers;
  c) In case insuperable disagreements within the Cabinet of Ministers of the Republic of Uzbekistan emerge threatening its normal functioning, as well as the repeated adoption of resolutions by the Cabinet of Ministers that contradict the Constitution, the laws of the Republic of Uzbekistan, the decrees and resolutions by the President of the Republic of Uzbekistan;
  d) Upon the initiative of factions of political parties in the Legislative Chamber of Oliy Majlis of the Republic of Uzbekistan submitted for consideration by the President of the state. The President takes a decision on dismissal of the Prime Minister of the state if this initiative shall be supported with necessary substantiation by the leading factions of political parties at the Legislative Chamber of Oliy Majlis of the republic and when this initiative is put to vote by the President of the republic in the Legislative Chamber and the Senate of Oliy Majlis of the Republic of Uzbekistan it gains the votes of more than two thirds of the total number of deputies in the Legislative Chamber and the Senate of Oliy Majlis of the Republic of Uzbekistan, respectively.

- Dismissal of the Prime Minister of the Republic of Uzbekistan will simultaneously lead.  

Article 8 is concerned with the entering into force of this Constitutional Law and this would Constitutional Law shall enter into force from 1 January 2008.  

\[24\text{For more detail see }\text{http://www.uzconsulate.mfa.uz/drupal/modules.php?op=modload&name=News&file=article&sid=165&mode=thread&order=0&thold=0, Accessed on 4 March 2007.}\]
The New Law on Political Parties

On 11, April 2007 the president of the republic Islam Karimov signed the Constitutional law “On Strengthening the Role of Political Parties in the Renewal and Further Democratisation of State Governance and Modernisation of the Country” Article – 34 of Uzbek Constitution says “all citizens of the republic of Uzbekistan shall have the right to form trade unions, political parties and any other public associations and participate in mass movements” (article 34).

The draft laws was submitted by the president of Uzbekistan in November 2006 to Oliy Majlis as a legislative initiative were adopted by the legislative chamber on February 28, 2007 and approved by the senate of Oliy Majlis on March 29, 2007. After public discussions only minor amendments were introduced to the draft laws. This Constitutional law was forced in the republic in January 2008.\(^\text{25}\)

Purpose of law is to strengthen the role of political parties in the renewal and further democratization of the state governance and modernisation of the country. The law is the basis for introducing the relevant amendments to the Constitution of the country of Uzbekistan, as well as changes and additions to the current legislation.

The article 2 of draft law is on “Faction of Political Parties in the Legislative Chamber” clearly formulates the legal status of party factions of various political orientations. This has been done in order to significantly increase the role of factions of political parties in tackling tasks of Oliy Majlis of the republic while taking into consideration the intensifying processes of competition and interactional struggle in the course of discussing and adopting the draft laws. In particular, it is provided that the faction of a political party which gained the majority seats in the legislative chamber makes up a parliament majority.

The parliamentary majority also consist of several factions of political parties and deputies elected from the initiative groups of voters who establishes a block based on the similarity or coincidence of their programme objectives.

\(^{25}\) Comments and assessments of foreign political and experts circles of the Constitutional law “on strengthening the role of political parties in the renewal and further democratization of state governance and modernisation of the country” Ruta Print,Tashkent. 2007 page. 5,17.
The definition of faction, their blocks set up in the parliament of the country as a parliamentary majority of opposition is introduced into the national legislation to develop article 34 of the Constitution of the Republic of Uzbekistan. It contains a provision that no one can infringe the rights and freedoms of persons, who make up the opposition minority in political parties, in representative bodies of power.

According to the article 3 of the law will allow not only the extension for authority and capacity of the political factions of the legislative chamber, but it will also considerably democratise the process of decision making in the chamber. In order to create the legal mechanisms, which will provide an opportunity for political parties in the legislative chamber, regional Kengashs of people’s deputies, and deputies elected from the imitative groups of citizens, to actively influence the process of establishing bodies of executive power in the center and at the local level.

Article 4 of the law is related to the procedure of appointment of the Prime Minister of the Republic of Uzbekistan. The candidature of the Prime Minister of the Republic of Uzbekistan is recommended by the president of Uzbekistan for approval by the legislative chamber after holding consultations with each of the factions of political parties represented in the legislative chamber. The candidature of the Prime Minister of the republic is recognized as approved if the candidate gains the majority of votes of the total number of deputies of the Legislative Chamber and members of the Senate of Oliy Majlis of the Republic of Uzbekistan.

In order to enhance a parliamentary control over the activity of government, clause ‘D’ of the Article of the draft law envisages that the Prime Minister of the republic of Uzbekistan can be dismissed from the post by the president of Uzbekistan "upon the initiative of factions of political parties in the legislative chamber submitted for consideration by the president of Republic of Uzbekistan according to the existing rule. the president of the Republic of Uzbekistan takes a decision on dismissal if this initiative shall be supported with necessary substantiation by the leading faction of political parties of the parliament and when this initiative is put to vote by the president in the legislative chamber and the senate it gains the votes of the two third number of deputies, senators."
Comparison between 1992 Constitution and New Law of Political Parties  
2006

<table>
<thead>
<tr>
<th>Article</th>
<th>Before 2006</th>
<th>After 2006</th>
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<tr>
<td>Article 89</td>
<td>The president of the Republic of Uzbekistan is head of state and executive authority of the Republic of Uzbekistan simultaneously serves as chairman of the cabinet ministers.</td>
<td>The President of Republic of Uzbekistan is the head of the state and ensures the concerted functioning and interaction of bodies of state power.</td>
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<tr>
<td>Article 93, clause 15</td>
<td>Have the right to proclaim a state of emergency throughout the Republic of Uzbekistan or in a particular locality in cases of emergency (such as a real outside threat, mass disturbances, major catastrophes, natural calamities or epidemics), in the interests of people’s security. The president shall submit his decision to the Oliy Majlis of Uzbekistan for confirmation within three days. The terms and the procedure for the imposition of the state of emergency shall be specified by law.</td>
<td>Appoint and dismiss from their posts hokim of provinces and the city of Tashkent in accordance with the law. The president has the right to dismiss from their posts by his decision the hokim of districts and cities in the case where they violate the Constitution, laws or committing of acts, which discredit the honor and dignity of the hokim.</td>
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<tr>
<td>Para 2 of article 102</td>
<td>The hokim of the region and city of Tashkent shall be appointed and dismissed by the President with subsequent confirmation by the appropriate Soviet of People’s Deputies (Shall be stated in next mention additions)</td>
<td>The hokim of a province and the city of Tashkent is appointed and dismissed from the post by the President of the Republic of Uzbekistan in accordance with law.</td>
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The draft law provides a new edition of article 89 of the Constitution, which envisages that “the president of the republic of Uzbekistan is the head of the state and ensures the concerted functioning and interaction of bodies of the state power.” This wording fully corresponds to the analogous wording available in the Constitutions of many democratic countries. The norms of the executive branch of power in the Republic of Uzbekistan shall be excluded from the Constitution.

Clause 15 of article 93, part two of article 102 of the Constitution, which provides the procedure of approval of the hokim of provinces the procedure of approval of the hokim of a province are brought in line with the norms of the Constitutional law on strengthening the role of political parties in the renewal and further democratisation of state governance and modernisation of the country.

The above mentioned amendments are introduced into the Constitution of the Republic of Uzbekistan to further democratise of state governance, increasing the role and responsibility of legislative, executive branches of power, government and state
bodies at the local level for implementing their due constitutional authority and mainly aim at enhancing the influence of political parties on political and economic life processes of national renewal.

The draft laws de facto creates normative-judicial preconditions and organizational, legal condition for most active and broad participation of all political forces in the country in establishing the state bodies, resolution of concrete issues in economic, political, and cultural domains.

Constitutional Development in Uzbekistan: An Assessment

On the basis of above discussion it is clear that in the present set up the presidency has a very strong role to play. In fact it would not be incorrect to say that democracy is still a hostage in the hands of the presidency. President has extraordinary appointment powers which help him in maintaining his grip over the system. Besides, he is the supreme commander of the armed forces. Consequently, force has been used time and again to suppress any attempt to pressurize the government. In addition to this, what makes the Uzbek presidential system peculiar is that there is no formal provision for the removal or dismissal of the president. Such a discrepancy forces political scientist to question the very essence of establishing a 'republic' in the new nation. Republic is a country where the head of the state is directly or indirectly elected by the people. He/she would be the accountable to the people's representatives. The president can be removed if he/she works against Constitution. Such provision does not exist in the Uzbek Constitution.

The section on development in the Constitution of Uzbekistan after its adoption shows that many new laws and codes have been adopted in order to establish rule of law in the country. There are serious attempts to break the country's past from its future. Various laws are adopted in order to codify various economic, political and social activities.

However, what remains suspected is the right implementation of these laws. Adoption of laws and their genuine implementation are two different things. It needs
to be remembered that Uzbekistan administration is one of the most corrupt agency in the post-Soviet space. Hence, it is hard to trust that these laws will make any real difference in the life of people as corruption is deeply entrenched in the system.

New laws have been adopted for the functioning of the parliament, political parties and media. These laws attempt to bring some content of democracy and participation in the functioning of these programs. However, media remains under complete state control. Political parties are not allowed to function independently the presidency. It makes parliament as nothing but a chamber for approval of laws decided by the presidential administration. Introduction of new chamber is not expected to bring many changes as Uzbek system is a unitary system. Here, the new chamber will work for the delay and create obstacles in the process of law making. In other words, the new chamber will complicate the process of law making rather than making it smoother.

The development of Constitution and laws in the new Uzbekistan shows that the attempts to bring changes and modernisation in the structure and functioning of the new state will be under serious threat unless these provisions are implemented with a genuine and fair spirit.

The next chapter is an attempt to show how the political institutions created in the Constitution have been functioning since the last almost two decades. Our argument is a clear division between the Constitution in theory and practice can be explained only after looking into both aspects; Constitution as a document and as an emerging polity. After discussing the political developments and development of various institutions some trends about Constitutional development can be identified.