

# Constitution and Constitutionalism

- What is a constitution?
- What is constitutionalism?
- How is constitutionalism and constitution related?

- Constitutions exist because they lay certain rules for the political system. The constitution is thus a document of rules that govern the government.
- A constitution consists of the basic norms which the people setting up the polity have accented to with the aim of establishing the kind of government that want and setting up the rules that should guide it.
- Constitutions are expected to bring stability, predictability and order to the actions of government.
- The constitution is the supreme law of the country and as such no law is higher than it and can contradict it

- Historical, constitutions are traceable to the 18<sup>th</sup> century. The US has the first written constitution in 1787 and France in 1789.
- The establishment of the constitution in these two countries and consequently in many other countries points to the fact that the making of the law is aimed at ensuring the establishment of a new order. Constitutions have come to be, in some cases, after a war, revolution, national independence, creation of a new political order for a colonised state etc

# Why have a Constitution?

- What is the purpose of constitution?
- 1. the empowerment of state
- 2. establishment of unifying factors
- 3. provision of government stability
- 4. protection of freedom and rights
- 5. it helps legitimise administration

# Types of Constitution

- Written Constitution.
- Unwritten Constitution
- Rigid Constitutions
- Flexible Constitution
- Monarchical, Republican, federal, unitary, presidential, parliamentary

# Basis for distinguishing types of government

- From the types identified above, four things may be used in distinguishing types of constitution.
- 1. the first is the form of a constitution or status of its rule. It is with this that one distinguished whether a constitution is written or unwritten, or whether it is codified or uncoded.
- 2. the second is the ease with which the constitution can be changed. When this is used in distinguishing the type of constitution, one may talk of rigid and flexible constitution

- 3. the third is the degree to which the constitution is observed in practice. This leads to distinguishing between whether a constitution is effective, nominal, or façade constitution
- 4. the content of the constitution and the structure of governance that the constitution establishes will determine if the constitution is monarchical or republican, federal or unitary, presidential or parliamentary

# Written Constitution Vs Unwritten Constitution

- The distinction between a written constitution and an unwritten constitution may be misleading in one takes the words: written and unwritten at the face value. No constitution is entirely written and no constitution is entirely unwritten depending only on conventions, customs and traditions. Truth is every constitution is a blend of written and unwritten parts. Just that one is more dominant.
- A written constitution is enshrined in laws. Written constitutions are often created. This is to say it is written.
- The unwritten constitution is not documented, rather it is found in customs and traditions. Unwritten constitutions are organic entities which have evolved over time in history. While a number of states now have written constitution, Israel, New Zealand, and the United Kingdom do not have written constitution. Likewise, states like Bhutan, Saudi Arabia, and Oman, which are not democratic states operate on the model of unwritten constitution.

# Codified Constitutions and Uncodified Constitution

- A codified constitution is one in which key constitutional provisions are collected together within a single document, known as “written constitution.” A codified constitution is made of higher laws, which ordinary laws can not contradict. It is the highest law of the land. This means a country with a codified law has hierarchy of laws.
- A country running an uncodified law is one in which there are various sources for its laws. Some of which include statutes laws, made by parliament, common law, conventions, and various works of authority that clarify and explain the constitution unwritten elements.
- In addition, the absence of a codified constitution means that the legislative arm enjoys freedom to interpret the law as it likes, and the right to make and unmake any law, since there is no supreme body of laws that renders other laws *ultra vires*

# Rigid Constitution and Flexible Constitution

- The difference between a rigid constitution and a flexible one is based on the issue of how easy it is to amend a constitution. In flexible constitution, laws of great importance can be changed through ordinary legislative processes and conventions.
- While written and codified constitutions are likely to be rigid and unwritten and uncodified constitutions are likely to be flexible, it does not follow that written constitutions are rigid and unwritten ones flexible.
- A rigid constitution may require a referendum to amend or even a special majority in the legislative arm. For instance, there may be a special requirement of a two-third majority of the two houses. In the USA, three-quarter of the states must in addition give support.
- The only source of change of rigid constitutions has been with continuous interpretation by the courts.

# Effective, nominal, or façade constitution

- This distinction rests on the relationship between what obtains in the constitution and what obtains in the actual practical day to day running of government. it boils down to the issues about constitutional rules and principles and the practice of government
- An effective constitution fulfils to criteria
- 1. in a major respect, an effective constitution ensures that the practical affairs of government correspond to the provision of the constitution
- 2. what obtains in condition is so because the constitution has the capacity to limit government behaviour.
- An effective constitution is not a situation whereby a constitution obtains but one in which the constitution constrains government actions and inactions, thereby establishing constitutionalism

- A nominal constitution is one in which its principles actually state how government should behave but such constitution fail to limit government behaviour. E.g USSR. The court often has little or no power to enforce the constitution
- In the case of façade constitution what we have is that there are constitutions that are mere decorations but the dictatorial tendencies of the government will not allow such constitutions to have any relevance.

- Monarchical constitutions confers constitutional supremacy in a dynasty.
- Republican Constitutions invests constitutional supremacy or political authority in the people.
- Unitary constitutions establishes a single national body
- Federal constitution divides power between a federal government and other levels of government
- Parliamentary constitution ensures that the executive derives and is accountable to the assembly
- Presidential constitutions separates the executive arm and the legislative arm.

# Constitutionalism

- This refers to the practice of limited government ensured by the existence of a constitution.
- For constitutionalism to be obtained we must have a situation in which there is a body of fundamental laws and government institutions and political processes are properly constrained by such constitutional provisions.
- Constitutionalism aims at ensuring the protection of liberty through the establishment of checks on government
- Constitutionalism champions the need for the rule of law in opposition to arbitrary rule by public officials.

- The idea of constitution and constitutionalism mean different things but they are related. To have constitutionalism there must be constitution in place; and there may be a constitution and not constitutionalism if the spirit of the constitution is not obeyed