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**AHT 203; MODERN GOVERNMENT IN AFRICA**

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**QUESTION; WRITE ABOUT THE HISTORY OF CONSTITUTIONS AND CONSTITUTIONALISM IN AFRICA**

**INTRODUCTION**

Constitution is the rule book for a state. It sets out the fundamental principles by which the state is governed. It describes the main institutions of the states and defines the relationship between these institutions for example between the executive, legislature and judiciary. The purpose of a constitution is to provide checks and balances, to provide checks and balances to ensure that occupants of various offices don’t abuse their power, exploit and dehumanize the people. It is the constitution that gives legitimacy to all countries in the world. A constitution defines boundaries, economic systems and ideologies of a country. The societies which do not have a constitution are not recognized as states or countries.

Constitutionalism is a bundle of expectations about the conduct of government while the constitution is a political-legal construct. The idea of constitutionalism may be embodied in the constitution, a legally binding document. The idea has such power that even political actors respect them. Constitutionalism stands for a set of interrelated concepts, principles and practices of organizing and thereby limiting government power in order to prevent despotism. It is often described as a liberal political philosophy that is concerned with limiting government. Consequently, it is attacked for weakening government when the states need to be strong. Limiting what government can do however does not necessarily result in a weaker state whatever weakness means in the context and it means very little.

The history of constitutions and constitutionalism in Africa is a complex and fascinating one. Many African countries have gone through periods of colonization, independence struggles and post- independence challenges that have shaped their constitutional development. Colonialism played a significant role in shaping constitutionalism in Africa. European powers imposed their own legal systems and governance structures on African countries during the colonial period. These constitutions often did not reflect the interests or values of the African people leading to tensions and resistance movements. The struggle for independence in Africa was closely tied to demand for constitutional reform. Leaders like Kwame Nkrumah in Ghana, Jomo Kenyatta in Kenya and Nelson Mandela in South Africa fought for constitutions that would enshrine the right and aspirations of their people.

However, the post-independence period in Africa has been marked by political instability, authoritarianism and constitutional crises. Many African countries have experienced coups, civil wars and human rights abuses that have undermined the principles of constitutionalism. Some leaders have manipulated or ignored constitutional provisions to stay in power indefinitely leading to widespread discontent and protests.

In recent years there has been a renewed focus on constitutional reform in Africa. Many countries have undertaken constitutional reviews or amendments to address issues of governance, accountability and human rights. The African Union and regional organizations like ECOWAS and SADC have also played a role in promoting constitutionalism and democratic governance on the continent.

**THE HISTORY OF CONSTITUTIONS AND CONSTITUTIONALISM**

Unfortunately, for a very long time following the independence of the former colonies in Africa the concept of constitutionalism was unknown to political leaders on the continent and largely ignored by political scientists .The interest in the in true constitutionalism did not begin until the demand by the African people for more democracy and for a different kind of citizenship began to emerge about (1990-1991).It is essentially from that period African citizens began to express to see political power exercised in accordance with universally acceptable standards.

The attempt to subject the exercise of political power to a legal framework and thus to limit arbitrary behavior constitutes the birth of African constitutionalism. This recent evolution has understandably aroused the curiosity of specialists in the fields of constitutional law and political science for at least a decade. Several African countries are currently engaged in the constitution making process. In Africa, constitution making usually takes three phases.

The first phase took place at the independence in the 1960s and was typically led by the colonial power. Constitution making during this phase was part of the decolonization process. A dominant concern was to aggregate power in a centralized authority as a way of maintain unity. In the former British colonies what is popularly termed a Lancaster model was imposed. Nwabueze argues that in the former British colonies the situation was different as in those countries the constitutions were made in Africa and were freely chosen without dictation or imposition by the French colonies.

The second phase was from independence to 1989. During this phase, constitution amendments were made to the independence constitutions designed to concentrate power in the presidency. This was the era of governments in Africa which culminated into one party state systems of governance. This period was marked by the development of autocratic constitutions, through the enactment of numerous amendments to the independence constitutions designed to centralize power in the presidency and the executive. For example, from 1980 to 2000 the Zimbabwe constitution was repeatedly amended on the pretext that it needed to be made more relevant to Zimbabwe’s particular situation. The amendments centralized more and more power in the executive. In many countries, these practices culminated in the installation of one party systems of government

The third phase, which runs from 1989 to the present, is associated with the worldwide wave of democratization. During this period constitution making has centered on rebuilding the political community as well as structures that had been distorted by political manipulation and violence during the era of authoritarian rule. In this context, constitution making process typically follows the conclusion of a peace agreement or may even be among the settlement terms. It is intimately linked to the dynamics of negotiations designed to convince parties to lay down arms. Recent events following elections in Kenya, Uganda and Zambia suggest democratic backsliding in several African countries thus the focus is on rebuilding the political community as well state structures which collapsed during conflict and securing the protection of human rights

Constitution making in Africa is influenced by; legacies of history this entails the legal order which was inherited from European colonialism at the time of independence. Nature of the constituted state in which the African states had some modified version of the west minister model. A constitution is a supreme law and if any other law is inconsistent with the constitution which other law shall to the extent of the inconsistency be void. The independence constitution in most African countries has been completely tampered with.

**Amendment of the constitution**

African leaders considered the independence constitution as a barrier to central planning, financial coordination and formulation of policies on important issues such as health, education and agriculture. The independence constitution frustrates the goals of equity and faster delivery of service. It has permitted the importation of undesirable political practices that are incompatible with the African way of life. As a result, the leaders considered constitution as a political weapon and introduced several amendments such as; Coercive powers of the state have been extended thus interfering with the bill of rights, they have gone ahead to revise the entire constitution so that it conforms to the legal order that is acceptable to the ruling regime.

The total impact of the above amendments led to the constitution no longer was the supreme of the land. The state became coercive that is it controlled public affairs and strengthened all aspects of public order and law. Emergence and predominance of a form of presidency which was imperial in character was formed. The political arena was limited and mismanagement of public resources was a norm. These aspects of Africa’s have drastically changed with the onset of the 21st century. The constitutional reforms have put in place systems and values of developing democracy in Africa.

For example, a country like Kenya witnessed the following constitutional amendments.

1. In 1974 parliament lowered the minimum voting age from 21 to 18. There was no explanation for this change. This was a positive gesture in the sense that the youth were given a greater participation in electing leaders and also contesting for elective positions.
2. The president got the power through constitutional amendment to pardon anyone who had been disqualified from contesting in general elections for five years due to an election offence.
3. A preservation of public security act was enacted. This act provided for detention without trial, hence interfering and contravening the bill of rights as provide for the independence constitution.

African has a rich history of traditional governance systems that predate colonial rule. These systems often had unwritten rules and structures that guided societal organization. With the arrival of colonial powers new legal frameworks were imposed leading to the adoption of written constitution in many African countries. These constitutions were often based on the models of the colonizers. Constitutionalism in Africa has faced challenges over the years including authoritarian regime, political instability and conflicts. However, there has been a growing trend towards constitutional reforms and strengthening of institutions. Today, many African countries have adopted progressive constitutions that enshrine principles of human right, separation of powers and accountability.

**hallenges of constitution** **and constitutionalism**

Weak institutions such as judiciaries and electoral bodies can hinder the implementation of constitutional principles and the protection of rights. There is also lack of adherence to constitutional principles as many African countries have constitutions that are not effectively enforced or respected by those in power. Political instability and frequent changes in leadership can undermine the stability of constitutional democracies and lead to constitutional crises.

Most conflicts in independence constitution in Africa are crisis of governance, marginalization, mismanagement of economies and poverty leading to a scramble for resources. Appropriate constitution design and good governance could make major contributions to national cohesion, economic development, a decrease in the rate of marginalization and increased access to governance structures thereby leading to the reduction of tensions that often lead to conflicts. Developments seeks to expand choices for all people. Developments would promote the economic, social, civil and political realization of human rights through the provision of jobs.

**CONCLUSION**

The history of constitutions and constitutionalism in Africa is a story of struggle, resilience and ongoing reform. African countries continue to grapple with the legacy of colonialism, the challenges of post- independence governance and the need to build strong, inclusive and democratic systems for the future.

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