

4 Constitutionalism and Constitution

4.1 CONSTITUTIONALISM

Constitutionalism is the principle which states that government processes should be governed by the fundamental laws of the land, otherwise known as constitution.

All democratic States, or in other words, all governments which claim to be democratic have the tendency to make rules to ensure that limits are set to what rulers, governments and public officials can do, and what in fact, they cannot do for the purpose of conducting the affairs of men in society properly. Constitutionalism, therefore, is a democratic principle; and as a principle, it emphasises that those who govern the society should do so in accordance with laid down rules of public behaviour. Such laid down rules are made to enlarge the freedom of their subjects, not to deny them their basic human rights such as are contained or declared in the United Nations Declaration on Human Rights or in the constitutions of most modern States. In all of these documents, emphasis is made with due respect to human essence and the dignity of man.

On the other hand, constitution refers to a series of fundamental laws, rules, principles and institutions (written or unwritten) concerning how a political community is governed. This is where it differs from constitutionalism. References are often made to the constitutions of specific countries e.g. the Constitution of the United States of America (USA), Nigeria, Great Britain, India, France, etc.

As regards the concept of constitutionalism, no one need talk of the constitutionalism of a country. Constitutionalism is both a concept and a democratic principle. It is not only concerned with setting limits of official behaviour and conduct, it is also concerned with setting limits to the actions of the ordinary citizen. It is, to say with emphasis, one of the most important principles of democracy which the law courts adhere to strictly in dealing with cases. Therefore, the crux of the notion of constitutionalism is that government and society are subject to a body of laws that are superior to the immediate will of any government official, to the majority of the community, or as long as the community remains in force, and even to the immediate will of the whole society at large.

The heart of constitutionalism is, therefore, a moral principle that government, even a democratic one, can act legitimately only in as far as it follows certain laid down procedures specified in a constitution or the fundamental law of the land. For instance, the Oba in Yorubaland is elected by a body of kingmakers; but should an Oba ever emerge without being so elected, such an Oba would have come into being contrary to the principle of constitutionalism. In Britain, the Queen or King must assent to a bill passed by both Houses of Parliament. If the monarch so refused to abide by laid down rules, the monarch would have violated the essence of constitutional government (constitutionalism). If a defeated President refuses to accept defeat after a general election, the President would have violated the principles of constitutionalism. In the event of any of the above violations, the bases of peace, law and order in a society would be rocked. Let us take a more detailed look into the constitution.

4.2 CONSTITUTION

A constitution is a series of fundamental laws, rules, and principles, written or unwritten, concerning how a political community is to be governed. Examples of constitutions are those of Nigeria, the United States of America, Canada, Switzerland, Australia, all 'unwritten'. In most cases, every political community, organisation, association, is invariably known to have rules which guide its operations (constitutions). Social clubs, town unions and meetings often make references to the constitution of their organisations.

Let us reflect on the term 'constitution' within the context of a small village. The question is, has it any constitution? Yes, it has a constitution, which may either be written or unwritten. If constitution is defined as a series of fundamental laws, principles and institutions concerning how a political community is governed, then how is this true of the village or community head known as Okpala-Uku, Chief, Oba, Emir or Eze who performs specific functions. In the village, around the office of the community head may exist the council of elders which advises the community head, age-grades and social groups of various kinds which carry out the functions of government. Besides, the village has its customs and traditions, taboos, norms, values and sanctions for breaching these fundamental rules. This office may equally have institutions, some of which may be religious in character, or civil in nature, which settles disputes, tries offenders to the rules, customs and traditions e.g. murder, theft, incest, etc. Therefore, the existence of these fundamental rules, principles and institutions in the village proves that the village has a constitution.

Since the village has its constitution, what about big towns, states and nations of the world? The truth is that they all have their constitutions, the series of fundamental rules, principles and institutions, written or unwritten, according to which they are governed. The constitutions of nations vary from one country to another in terms of scope or contents provided.

4.3 SCOPE OF CONSTITUTION

The scope of constitution means its contents. This differs from one constitution to another. However, a constitution generally should contain the following:

(a) Political Institutions

The constitution should establish the essential political institutions of the State. These must include the legislature, executive and judiciary. Other political institutions which a constitution establishes vary. Some constitutions would consider it essential to establish an electoral commission, civil service commission, judicial service commission, national population commission, etc. These are autonomous bodies established by the constitution to guarantee their independence and impartiality.

The constitution, in addition to establishing these political institutions, clearly defines their structures, functions and powers. For example, the constitution should define the composition of the legislature, the tenure of office of members, and the functions and powers of the legislature.

The constitution should also determine the relationship among all the political institutions. By this provision, the constitution determines the extent to which powers will be separated or fused and the required checks and balances.

(b) Fundamental Human Rights

A modern constitution should entrench the *fundamental human rights* into it to guarantee their existence. These include right to life, personal liberty, freedom of speech, press, association, meeting or assembly, religious freedom, right to private life, property, etc. The constitution provides the limitations of rights and the means for guaranteeing them.

(c) Qualifications for Voters and for Office Holders

The constitution provides the *qualifications for voters* within the State for any election of public officers. The constitution further provides the *qualifications for public office holders*. It provides the method of political recruitment for various public office holders e.g. the legislators, chief executives, ministers, ambassadors, members of statutory commissions etc.

(d) Sharing of Powers

The constitution provides whether the system is *unitary*, *federal* or *confederal*. In a unitary constitution, governmental powers are centralised, while in a federal system, the constitution shares

the governmental functions and powers between the central government and the governments of the constituent units. In a confederal constitution, the constitution establishes the union government and governments of the component units, and states clearly the relationship between these two governments.

(e) Parliamentary or Presidential System

The constitution provides either for *parliamentary* or *presidential* system. If it is a parliamentary system, the constitution provides for the fusion of powers between the legislature and executive. If it is a presidential system, it provides for a single executive with separation of the executive from the legislature and checks and balances.

(f) Party System

Most liberal democratic States do not provide for political parties in their constitutions. For instance, the USA constitution does not provide for party system. However, in all one-party States, party system is always provided for. For example, the constitutions of the U.S.S.R., Sierra Leone under the 1978 Constitution, Ghana under Kwame Nkrumah, etc. all state clearly inside them that only *one* political party is allowed to operate in the state.

(g) Methods of Amendment

The constitution provides the method and procedure for its amendment. When the procedure is like the way ordinary laws are made by the legislature, it is called a flexible constitution. Where on the other hand, special rigorous procedure is used to prevent unpopular and easy change of the constitution, it is a rigid constitution.

(h) Principles and Objectives of the State

Sometimes, a constitution may contain principles which would guide government in its operations and the objectives which the State seeks to achieve. This is found in the Indian Constitution. It is also found in the Constitution of the Federal Republic of Nigeria in Chapter 2 entitled: 'Directive Principles and National Objectives of State Policy'. This aspect of the constitution is always not judicious.

4.4 SOURCES OF CONSTITUTION

Sources of constitution refer to the origins from which the constitution derived its power. Every constitution no matter its age, scope, and nature has grown to be what it is by drawing from a variety of sources. Generally speaking, the constitutions of the world today have grown to be what they are by deriving their power and binding force from a number of sources which includes **agreements reached between the ruler and his subjects, usages, customs and traditions, parliamentary statutes, conventions, judicial decisions, conferences, advisory opinions** of textbook writers in law, politics, history, etc. Let us consider these constitution sources.

(a) Agreement between the Ruler and his Subjects

An example of a historic agreement between a ruler and his subjects was the Magna Carta (the Great Charter) of 1215 in Great Britain between King John and his subjects. The importance of Magna Carta and its several confirmations in later years lay not so much in the actual contents, since it predated the era of representative government in Britain, as in the fact that it contained statements of grievances the settlement of which was brought about by the joint efforts of various classes of people in the British community. The famous clauses of the charter such as, that no man should be punished except by the judgement of his peers or the law of the land, and that no one should be denied justice, both laid the foundation for the rule of law, trial by the jury and *habeas corpus*.

(b) Usages, Customs and Traditions

Customs and traditions form the source of, for example, many usages of the British parliament and of the British constitution in general. A good example is the need for the Crown to prorogue parliament. In Nigeria, sharia court or customary court is a part of the Nigerian judicial system.

(c) Parliamentary Statutes

Constitutions derive their sources from a variety of rules of law, chief of which are Acts of Parliament, constituting the foremost source of constitutional authority. In Great Britain, for instance, statutes provide a large body of the sources of the British constitution. Among these Acts of Parliament includes the Bill of Rights (1689) and the Act of Settlement (1701). Each of these Acts was a landmark in Britain's constitutional development because each of them passed a law on issues of some fundamental, constitutional importance.

(d) Conventions

The conventions of the constitution are rules which do not have the force of law but which, 'cannot, nevertheless, be disregarded since they are sanctioned by public opinion and perhaps indirectly, by law proper.' These are rules, the breach of which may not earn the lawbreaker the wrath of the law either in civil or criminal proceedings. In clearer terms, they may be called political precepts and practices necessary for developing within the law and existing political institutions. We may also regard them as political practices which are binding. They are the rules of the game of government and politics. They are rules which exist to supplement the legal framework of the constitution; they serve as a guide to those who manage the affairs of government. For example in Great Britain, (a) the crown reigns and does not rule; (b) parliament must meet at least once a year; (c) the crown must choose as Prime Minister, the leader whose party wins the general election; (d) the Crown must prorogue and dissolve parliament.

(e) Case-laws or Judicial Precedents

Related to parliamentary statutes and constitutional conventions are case-laws or judicial precedents. These refer to the decisions of courts of law which are stated in authoritative terms in the law reports. They are often referred to as judge-made laws. They often crystallise into reference points in law and are quoted by judges in court when trying similar or related cases. Judges make law in the process of interpreting the statute law. Examples of case-laws in Nigeria include the Supreme Court's interpretation of 25 percent votes in the two-thirds of the state of Nigeria requirement for winning the elections of the Federal executive (the presidency). Judges can always apply it to determine future cases.

(f) Advisory Sources

Before discussing national conferences as sources of constitutional authority, reference needs to be made to the authoritative authors of textbooks. Here, the student must be careful. Not all textbook writers come within this purview. The authority of a legal text as a source of constitutional authority is confined to the extent to which it analyses hidden ideas of the laws enacted by parliament or decided by the courts of law or important ideas not covered by the laws. Much of the writings of Nigeria's eminent lawyers, political scientists and historians such as Chief Rotimi Williams, Professors Nwabueze and Eme O. Awa are sources of constitutional authority.

(g) National Conferences

A great deal of constitutions derive their sources from decisions and understandings arrived at, at national conferences. In the Nigerian context, the London Conferences of 1957 and 1958 reached fundamental decisions which have formed parts of the Nigerian Constitution.

In various parts of the world, similar conferences have been held in which basic constitutional decisions were reached which have affected their constitutional evolution. Democracy believes in

negotiation, open and free discussion of national issues at either group or conference levels where people meet to decide their fate and determine their destiny.

4.5 TYPES OF LAW

The constitution is law, being by its very nature the fundamental framework law of the land; the law on which other laws either hang or derive their authority. Most students hardly regard the constitution as law, and this raises the question on the definition of law. In the simplest term, laws may be defined as the rules of civil conduct recognised by the courts. There are various types of law and these can be simply distinguished as follows: *constitutional law*, *statute law*, *customary law*, *delegated legislation* and *bye-law*. All these are discussed fully below.

(a) Constitutional Law

Constitutional Law refers to the laws of the constitution whether they are largely written or unwritten. For instance, the provisions contained in the Independence Constitution of Nigeria (1960), the Republican Constitution of 1963, and the Presidential Constitution of 1979 are referred to as Constitutional law.

(b) Statute Law

Statute law refers to legislation enacted by parliament (Acts of Parliament). When a law has been passed, for instance in Britain, in the two Houses of Parliament (the House of Commons and the House of Lords) and assented to by the British monarch, such a law is entered in the statute book, and becomes a statute or Act of Parliament. The same is true of Nigeria and the United States. When a law has been passed in the two Houses of legislature of these countries and assented to by their President, such a law is entered into the statute book for records and becomes a statute or an Act of Parliament.

(c) Customary Law

Customary law refers to laws emanating from the customs and traditions of the people. Customs cover a wide area of social life. For example, taking a traditional title, becoming an Oba, Emir, Eze; marriage, land holding, inheritance, the burial of titled persons in the society are governed by a variety of customs and traditions. Custom may require that the aspirant to Ozo title for instance, provides three cows, several kegs of palm wine, so much money and so forth before assuming office. It might equally prescribe that a man must pay the bride price before taking his wife from the in-laws. The scope covered by customary law in our social life is very wide.

(d) Delegated Legislation

Delegated legislation refers to laws, rules and regulations made by bodies other than the parliament, and which for varied reasons are empowered to make such rules by an enabling Act of Parliament. Such laws are largely made by government officials and are also referred to as statutory instruments.

(e) Bye-Law

Bye-law refers to laws made by local authorities which have obtained the power to make such laws either from the parliament or from the national constitution.

Generally speaking, law is very vital to the efficient working of the governmental system.

4.6 IMPORTANCE OF CONSTITUTION

Earlier, it was pointed out that a constitution is a series of fundamental principles, institutions and laws concerning how a political community is governed. It is very important to states and nations at large, and many reasons can be adduced to show why it is important. The reasons include the following:

(a) Limitation of Power(s)

Constitutions limit the exercise of power(s) by political leaders by preventing them from either becoming too powerful or tyrannical. They define the limits, powers and functions of the organs of government.

(b) Protection of Citizens' Rights

Constitutions (written or unwritten) are used to protect citizens' rights as well as define their duties and obligations to the State. No constitution can be said to be complete if it does not make provisions for the protection of the fundamental or basic rights of the citizens. The Nigerian Constitutions of 1960, 1963 and 1979 declared and protected the rights of Nigerian citizens; the current Constitution of USA did likewise. Citizens' rights are also adequately protected by the Constitution of Great Britain.

(c) Certainty of Rules

Constitutions make for the certainty of rules with which a people are ruled, rather than subject them to the whims and caprices of political leaders.

(d) Political Stability

Constitutions make for political stability and orderly change of government. They make provisions for both the process of acquiring political power, or for assuming public office, and even, of relinquishing political power.

4.7 TYPES OF CONSTITUTION

Constitutions are usually classified as:

- (i) Written and unwritten
- (ii) Unitary and federal
- (iii) Rigid and flexible
- (iv) Parliamentary and presidential

Written Constitution

A constitution is said to be written if all the fundamental principles, institutions and laws of a State are contained in one comprehensive document. The examples of written Constitution are constitutions of Nigeria 1960, 1963 and 1979, the Constitution of India 1950, the constitution of France 1789, the Constitution of Western Germany 1949, the Constitution of the Union of Soviet Socialist Republics (USSR) 1936, etc.

Unwritten Constitution

A constitution is described as unwritten if all the basic fundamental principles, institutions and laws (provisions) of that State are not contained in one comprehensive document similar to any of the constitutions mentioned above. For instance, Great Britain has unwritten constitution. However, it may not entirely be correct to say that the British constitution is unwritten. It is written and contained in several sources other than in a single document. It consists largely of a variety of customs, rules of law, statutes, conventions, judicial decisions. It is for this reason that reference is made to the British Constitution as being largely unwritten. The truth of it all is that it is written but not written together in one book.

In summary, a constitution is said to be written, if all the fundamental principles, institutions and laws of that State are contained in a comprehensive document. On the other hand, a constitution is said to be unwritten if the fundamental principles, institutions and laws of that State are not contained in one book, but rather in several sources.

Merits of Written Constitution

- (a) **Certainty of Rules:** A written constitution makes for certainty of rules with which a people are governed. In the absence of laid down rules, fundamental principles and institutions, the people would be subject to the whims and caprices of the ruler which might not be in accord with the demands and requirements of the constitution.
- (b) **Basis for Measuring Governmental Performance:** A written constitution provides the indices or bases for measuring and assessing the performance of rulers and administrators, as principles governing their operation are written down.
- (c) **Limitation of Power:** A written constitution limits powers by defining the duties and functions of organs of government in such a way that there is a measure of separation of governmental powers.
- (d) **Minimisation of Controversies:** A written constitution minimises arguments and controversies especially in federal States. The provision of the constitution are known and the activities of government go on through routine and experience.
- (e) **Political Stability:** It makes for a stable political system since it stipulates the methods, manner of acquiring and of relinquishing public office.
- (f) **Guarantee of Civil Rights:** A written constitution invariably guarantees basic citizens' rights as well as define their duties and obligations to the State. These are clearly written in the constitution. Their being written down ensures their existence.

Demerits of Written Constitution

- (a) **Delay in Change of Government:** It makes for delay in change of government. The processes of changing government must be observed or else, the change may be referred to as being contrary to the constitution.
- (b) **Limited Opportunity for Flexibility:** Under a written constitution, there is limited opportunity for flexibility in terms of constitution amendment, political action or decision making. There are laid down procedures for adopting any constitutional matters.
- (c) **Danger of Degeneration into a Static Political Order:** Under a written constitution, there is the danger of degenerating into a static political order in which development and innovation are obstructed.

Let us now examine the unitary and federal types of constitution.

Unitary Constitution

A unitary constitution is one in which there exists a predominant central government which may grant operating powers to subordinate levels of government known as local authorities. An example of a unitary constitution is that of great Britain where, for instance, the local authorities are known by different names such as authorities, municipalities, country councils, city boroughs, county boroughs, etc. In some other countries, the subordinate levels of government (local authorities) answer uniform names throughout the country such as local councils and urban councils.

The important thing about the unitary constitution rests with where it derives its operating power. This power is usually granted to it by the central government, In other words, in a unitary constitution, the local authorities are the creatures of the predominant central government which has power to modify the territorial boundaries of the local authority, increase or reduce its operating powers and sustain it by a system of financial grants. Every local level of government derives its powers directly from the central government. The diagram below illustrates the unitary constitution.

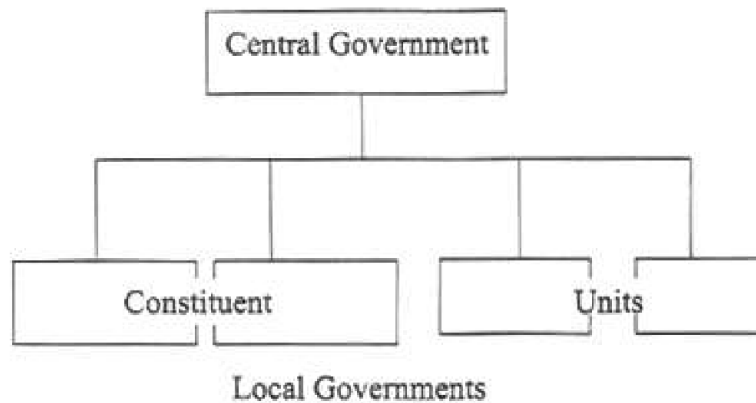


Figure 4.1: Illustration of the unitary constitution

Nations operate the unitary constitution because they see something good in it. There are also nations which veer away from the unitary to some other form of constitution. The mere fact that some nations adopt, and others do not adopt the unitary constitution shows that the unitary constitution has its merits and demerits. These merits and demerits are treated in Chapter 5.

Federal Constitution

A federal constitution is one in which the powers of government and administration are shared or divided by the national constitution between a general or federal government and component government units. According to this arrangement, two levels of autonomous governments operate, cooperate and exist side by side. The federal constitution defines the nature of the relations between the central and the component governments. The diagram below illustrates the constitution as the main source of authority of the federal and state governments.

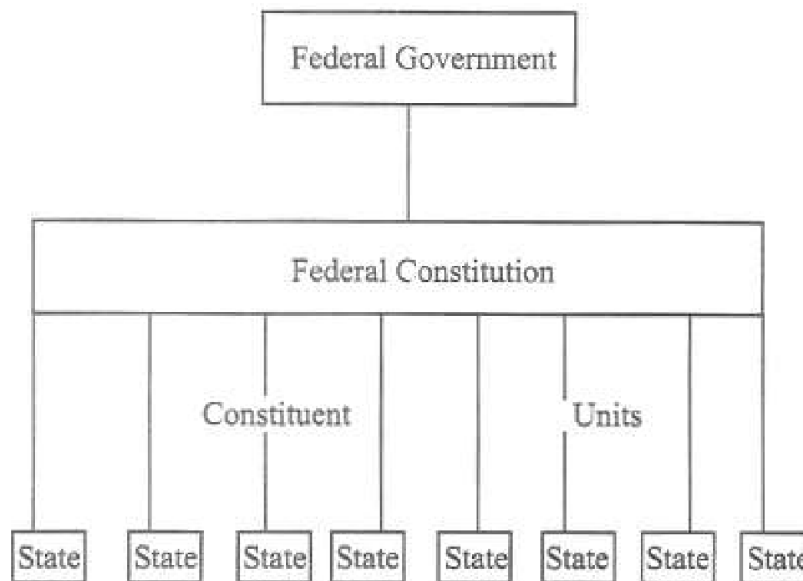


Figure 4.2: Illustration of a federal constitution

By establishing two levels of government and administration existing and functioning concurrently, the implications are that there are two legal judicial systems and two public administrative services. These are federal and state judicial services and the federal and state public services which create dual jurisdictions that claims the obedience and allegiance of every citizen in the federal. The citizen is, thus, subject to two levels of authority.

Since the federal constitution is a kind of agreement between the federal and State governments concerning how best to live and work together, the federal constitution usually establishes a supreme

court whose duty is primarily to interpret the constitution and say finally what it is. The Supreme Court in a federation is a very important institution because it plays the crucial role of umpire in the game of federal government and policies. It is always there to declare 'unconstitutional', the acts of either the federal government or the state or component governments whenever either goes contrary to the provisions of the constitution. One feature of federal constitution is that it is invariably written and the amending procedures are consciously made difficult. We shall examine and discuss in greater details its main features, merits and demerits in Chapter 5.

Rigid Constitution

The term 'rigid' constitution means one which is not easy to amend. The difficulties involved in amending constitutions vary. Federal constitutions are invariably written, and most written constitutions are associated with rigid constitutions. A rigid constitution is, therefore, one which has a laid down procedure for its amendment. For instance, the United States of America operates a rigid constitution. To amend its constitution requires the concurrence of two-thirds of the members of both Houses of Congress and the concurrence of three-quarter of the state legislatures. The Nigerian Constitution (1979), especially the provisions on creation of more states, required that at least two-thirds majority of each of the Houses of the National Assembly should be in agreement to the proposal. If the above conditions are not met, it would be difficult to bring about the constitution change. Thus, constitutions are rigid if they are not easy to amend.

Merits of Rigid Constitution

- (a) **Restraint on Unscrupulous Politicians:** A rigid constitution serves as an institution which restrains unscrupulous politicians from manipulating the constitution to achieve personal or sectional advantages.
- (b) **Compatibility with Democratic Requirements:** A rigid constitution is compatible with the requirements of democratic government that the people should be consulted before fundamental changes and decisions which affect their lives are taken.
- (c) **Checks against Rash and Hasty Decisions are Taken on them:** During the period of delay which is associated with rigid constitutional changes, the highlights of controverted problems may be discovered and identified for solution.
- (d) **Political Stability:** A rigid constitution also makes for political stability because as there are laid down procedures for constitutional change, the chances of violent change or revolution are minimised.

Demerits of Rigid Constitution

- (a) **Resistance to Change and Innovation:** A rigid constitution poses the danger of resistance to changes and innovations. When practised over time, it begins to win adherents and fanatical supporters who become too conservative and resistant to changes and innovations.
- (b) **Delay of Rapid Growth and Development:** A rigid constitution requires often the consultation of a cross-section of the citizens of a country before amendments are made, and change introduced. Even though this practice is democratic, where it is overdone, it may lead to delay of rapid economic growth and development.
- (c) **Abuse of Democratic Rights:** A rigid constitution may create conditions under which democratic rights are abused or trampled upon.

Flexible Constitution

A flexible constitution is one which is easy to amend. The method and process of making both constitutional law and ordinary law is the same. For instance, the making of a law in the House of Commons (Great Britain) which operates a flexible constitution, requires the two Houses of Parliament

to pass an Act of Parliament. This process and method is followed in making a law on say, the abolition of the British monarchy or on a minor issue such as export of palm oil from Nigeria. In terms of importance, the two issues, abolition for the British monarchy and the export of palm oil from Nigeria, are not equal. But the process of making law on both of them is exactly the same. But in a rigid constitution, there is always a laid down procedure for amending the constitution and a different process for making an ordinary law. A constitution is, therefore, said to be flexible if it is easy to amend and the process of making fundamental laws is the same as the process of making ordinary laws. As a type of constitution, it is associated with the government of Great Britain.

Merits of Flexible Constitution

- (a) **Flexibility and Adaptability:** The flexible character of the constitution enables the political system to adapt to changing needs and circumstances of the country.
- (b) **Quick Decision:** It bestows on the legislature supreme powers to make quick decisions which, under a rigid constitution, would take a longer time to make.
- (c) **Management of Conflict:** It is suited to management of conflict(s) because controversial issues which are likely to generate tension are easily resolved into national law.

Demerits of Flexible Constitution

- (a) **Blurring of Legislation:** The flexible constitution does not distinguish between types of legislation when making them. In short, it adopts the same method in making all laws. As a result, it masks or even blurs the importance of constitutional legislation.
- (b) **Subject to Easy Manipulation:** The flexible constitution is subject to easy manipulation. Unscrupulous politicians and statesmen can take advantage of the flexible character of the constitution to get selfish bills or ill-considered legislation enacted.
- (c) **Elitist in Character:** The flexible constitution is elitist in character. It does not make for full-scale consultation of all interests likely to be affected by the amendment before the bill is passed into law. For this reason, it is nonetheless susceptible to dictatorship by either a party or a clique, capable of holding the nation to ransom.

Parliamentary Constitution

A constitution is said to be parliamentary when the executive powers of governments and administration are vested in a cabinet (a small group of important ministers of State) which is responsible to parliament. A parliamentary constitution has the following features:

- (a) **Fusion of Powers:** A parliamentary system of government is characterised by fusion of powers. The members of the executive are also the members of the legislature. This means that those who make the law also enforce the law.
- (b) **Collective Responsibility:** The principle of collective responsibility prevails. The members of the cabinet (the executive) are jointly or collectively responsible to the legislature for all their decisions. They are bound to support and defend government policies inside and outside of parliament. A defeat of the cabinet on an issue of policy in the House results in mass resignation of *all* the members of her cabinet, dissolution of the House and a general election in which all legislators are challenged to go back to the electorate to renew their mandate.
- (c) **Distinction between a Non-Partisan Head of State and a Partisan Head of Government:** In a parliamentary system, a distinction is often made between the Head of State who may be a monarch or a President and his chief minister known as Prime Minister, who is Head of Government. The Prime Minister appoints ministers from his party supporters and assigns them

portfolios. As was pointed out above, he and his ministers are collectively responsible to the legislature along with them since he is head and chairman of the cabinet.

- (d) **Pivotal Status of the Prime Minister:** In a parliamentary system, the Prime Minister occupies a pivotal position. He is the leader and chairman of meetings of the cabinet which often holds in secret. He appoints ministers, assigns them portfolios and has power to reshuffle his cabinet anytime. During this time, he can drop any minister, who, in his opinion, is not doing well. The life of the cabinet depends on how much popular support it enjoys in parliament. His status as Prime Minister makes him the spokesman of not only the cabinet, but the nation as a whole. Most importantly, he is the Head of Government.
- (e) **Political Homogeneity:** The parliamentary constitution requires members of the executive to hold a common view on government policy. For this reason, all members of the executive (cabinet) must belong to the same political party or an alliance of parties. Any member of the executive who is not prepared to hold and toe the line of government policy must be ready to resign.
- (f) **Party Discipline:** Under the parliamentary constitution, very serious emphasis is laid on party discipline. This discipline disallows party members in parliament to vote as they like. Every member must toe the party line of action always. A chief whip is appointed to monitor the voting behaviour of all the members. The reason for strict party discipline in parliament is to prevent the danger of a 'vote of no confidence', in the executive, which always has serious consequences for all the party members.
- (g) **Official Opposition:** Under the parliamentary constitution, there is always an official opposition. The leader of the opposition is paid a salary from the public purse. In Great Britain, there is a lot of 'give and take' between the government and the opposition; in fact, the opposition is called Her Majesty's opposition. The opposition is responsible to the nation for how objectively it is opposing the government in power. In short, the work of opposing is considered as important as the work of governing directly.
- (h) **Removal of the Executive:** The weapon for removing the executive from office is the adverse vote in the House known as vote of no confidence. Whenever the executive is defeated on an issue of major policy, it must be prepared to resign en masse. Also when the Prime Minister resigns, the cabinet collapses, except a successor is immediately named.

Presidential Constitution

A constitution is said to be presidential, not only where the President is popularly elected, but where the organisation of the executive is such that the Head of State is also the Head of Government. The Head of State (President) combines the exercise of ceremonial and executive functions of State.

The constitution of a presidential system is characterised by the following features:

- (a) **Headship of State and Government:** As Head of State and Head of Government, the President exercises both ceremonial and executive functions of State. Among his vast stretch of functions put down in the constitution, the President acts in varied capacities namely, as:
 - (i) *Chief Executive:* The President determines the national goals, symbolises the unity of the nation and is the nation's number one economic manager.
 - (ii) *Fountain of Appointments:* The President appoints his ministers, ambassadors and diplomats, and receives diplomats; he appoints the top echelon of the judiciary (the judges of the Supreme Court), heads of all government departments, commissions, authorities, parastatals, not necessarily from among his party supporters, but from among the free citizens of the country. All his appointments are different aids to help him carry out his mandate. He has the power to sack them whenever he thinks fit.
 - (iii) *Commander-in-Chief of the Armed Forces:* The President is Commander-in-Chief of the armed forces i.e. the army, navy and air force.

- (iv) **Chief Legislator:** Although the constitution precludes him from being a member of the legislature, he is the chief legislator. He gets his bills passed in parliament through his party or other supporters. Where the President combines headship of State with headship of party and government, he is in a position to play a tremendous legislative role. He summons, prorogues and dissolves parliament.
- (v) **Veto Power:** The President is constitutionally given veto power i.e. power to refuse assent to bills passed by the legislature. In Nigeria, during the second republic, the President was given 30 days to exercise this power after which the bill might be re-introduced in parliament. If two-thirds of both Houses pass the bill again, then it becomes law whether or not the President has signed it. The 30 days' rule ensures that no one man can hold the nation to ransom, and that power belongs to the people.

However, it must be noted that the President performs many other ceremonial and executive functions. He opens new establishments, receives foreign diplomats and ambassadors etc.

- (b) **Separation of Powers:** The presidential constitution entrenches separation of powers and checks and balances. By separation of powers, the personnel and functions of the three organs of government, legislature, executive and judiciary are separated in such a way that no one of them has a controlling power over either of the others.

The members of the executive are not members of the legislature, and the judiciary are not members of the executive. Separation of powers is used to guarantee liberty and freedom of citizens as well as protect them against tyranny and political excesses of public officials.

The legislature could refuse to grant the executive money to carry out its mandate, or if need be, impeach the President out of office. The President could veto the Acts of the legislature. The judiciary could nullify the Acts of both the legislature and executive by declaring them, 'null and void' or 'unconstitutional'.

- (c) **Impeachment:** In order to remove a public officer from office, the presidential constitution does not, as is the case in the parliamentary constitution, make use of the adverse vote of no confidence. Rather, it uses the weapon of impeachment. This involves very cumbersome procedures to prove that the President has committed very serious offence of gross misconduct. The presidential constitution grants the courts powers to question the constitutionality of either Acts of Parliament or the Acts of the executive which they can declare 'null and void' or 'unconstitutional'. In presidential system, the judiciary exercises tremendous powers by acting the role of the bulwark of democracy.
- (d) **Co-equal Powers of Legislative Houses:** There exists legislative Houses with co-equal powers. During the Nigerian Second Republic (1979 - 1983), the House of Representatives and the Senate had co-equal powers especially in terms of financial legislation. We shall go into greater details in our study of presidentialism in Chapter 5.

KEY POINTS

Constitution

Constitution is a series of fundamental laws and principles (written or unwritten), (legal and extra-legal), staging the way and manner by which a political community is governed e.g. the constitutions of Nigeria, USA, France, USSR, etc.

Scope of Constitution

The scope of constitution means its contents. The constitution contains the establishment of political institutions, their structure, functions, powers and relationships. It also contains the fundamental human rights. It contains qualification for voters and for candidates for election. A federal constitution contains

the division of functions and power between the central government and constituent units. The constitution contains methods of its amendment.

Constitutionalism refers to the idea that the processes of government should be governed by a body of fundamental laws and principles, and that the rulers should be limited by the provisions of the constitution which is the supreme law of the land.

Sources of Constitution

- (i) Historic agreements and understanding reached between rulers and the ruled e.g. Magna carta (1215) in Great Britain are basic constitutional sources.
- (ii) Other sources of constitution include usages, customs and traditions of a people.
- (iii) The most important among constitution sources are parliamentary statutes (i.e. Acts of Parliament).
- (iv) Conventions of the constitution are other sources.
- (v) Other sources are judicial precedents (case-laws, writings in a single document) e.g. the Constitutions of USA, France, Nigeria, Canada, etc.

Types of Constitution

(a) Written and Unwritten Constitutions

An unwritten constitution is one in which all the fundamental rules and principles which govern a State are not written in one comprehensive document e.g. the British Constitution, while the written one as in the Nigerian Constitution is done in one document.

(b) Unitary Constitution

A constitution is unitary if there is a predominant central government from which the subordinate levels of government called local government authorities, have obtained their operating powers e.g. the British Constitution.

(c) Federal Constitution

A federal constitution exists wherever there are two autonomous levels of government neither of which can modify each other's powers, and both of which derive their operating powers from a common source - the federal constitution.

(d) Rigid Constitution

A constitution is rigid if it is not easy to amend i.e. there are laid down procedures for its amendment and unless this procedure is strictly followed, it cannot be amended.

(e) Flexible Constitution

A constitution is flexible if the method of amendment follows the same process of making or changing all types of laws without distinction.

(f) Parliamentary Constitution

A constitutional system is said to be parliamentary wherever the executive known as the cabinet (consisting of the Prime Minister and a handful of important ministers) are members of the legislature in which it depends on the continuous support of its majority in order to be in power. The Head of State is different from Head of Government (Prime Minister) in parliamentary system.

(g) Presidential Constitution

A constitution is presidential if the organisation of the executive is such that the Head of State is also the Head of Government at the same time and their powers are exercised by a single person called the President. The constitutional system rests on the democratic principle of 'separation of powers' and 'judicial review' of both legislative and executive arms of government.

SAMPLE EXAMINATION QUESTIONS

Essay Questions

1. Why is constitution important in the machinery of government?
2. What is a constitution? Discuss the main sources of the constitution of any West African country.
3. Discuss the merits and demerits of a rigid constitution.
4. What is meant by a written constitution? Discuss the merits.
5. What are the characteristic features of a federal constitution?
6. Distinguish between constitution and constitutionalism.

Objective Questions

1. Constitutionalism emphasises that those who govern the State should do so
 - (a) according to their whims and caprices.
 - (b) according to laid down rules of public behaviour.
 - (c) according to the direction of the judges.
 - (d) according to the satisfaction of their egos.
2. Parliamentary statutes constitute a large measure of
 - (a) the preamble for most constitutions.
 - (b) the source of the Nigerian Constitution.
 - (c) a source of most constitutions.
 - (d) the directive principle of most constitutions.
3. A constitution is said to be flexible if it is
 - (a) easy to amend.
 - (b) the British Constitution.
 - (c) easy to read and understand.
 - (d) written piece-meal, instead of in one book.
4. The federal constitution is the foremost source of authority in
 - (a) dual coordinate powers of governmental authorities.
 - (b) the Federal government as the all-inclusive government.
 - (c) the component government as the junior partner.
 - (d) the local level of government.
5. The Lord Chancellor of Great Britain, whose roles fuse into the three arms of government - legislature, executive, and judiciary-modifies - the principle of
 - (a) fusion of powers.
 - (b) parliamentary supremacy.
 - (c) rule of law.
 - (d) separation of powers.

Answers to Objective Questions

1. b
2. c
3. a
4. a

