

CHAPTER TWO: THE NATURE AND SCOPE OF CONSTITUTIONS

1.0 Introduction

A constitution is the fundamental legal document that delineates the structure, powers, functions, and limitations of the organs of government. It defines the rights and obligations of citizens and provides the framework for political, legal, and social order within the state. The constitution stands as the supreme expression of sovereignty and authority, serving as the foundation for all other laws and institutions. Understanding the nature and scope of constitutions is therefore central to the study of constitutional law, as it enables an appreciation of how governance, legitimacy, and the rule of law are established and maintained.

2.0 Definitions of a Constitution: Broad and Narrow

2.1 The Broad Definition

In its broad sense, a constitution encompasses not only written laws but also the customs, usages, conventions, and established practices that govern the exercise of political power. It refers to the totality of rules, formal and informal, which determine how authority is distributed and exercised within a state. Such a broad conception recognizes that a constitution may evolve organically over time rather than through deliberate codification.

The United Kingdom provides a classic example of a state operating under a broad, uncoded constitutional system. The British constitution is not contained in a single written document; rather, it is derived from statutes such as the *Magna Carta (1215)* and the *Bill of Rights (1689)*, judicial decisions, and long-established conventions. Monarchical traditions and parliamentary practices, refined over centuries, continue to shape the governance framework. This evolutionary and flexible system contrasts sharply with the rigidity of written constitutions found in most modern democratic states.

2.2 The Narrow Definition

The narrow definition of a constitution, by contrast, refers to a codified and written legal document or a series of documents that constitute the supreme law of the land. A written constitution formally sets out the organs of government, prescribes rules for governance, guarantees fundamental rights, and provides procedures for amendment and enforcement. It

serves as the authoritative expression of the people's will and the legal foundation of statehood.

Ghana's 1992 Constitution fits this narrow conception. It was drafted by a Consultative Assembly, ratified through a national referendum, and came into force on 7th January 1993. The document consolidates the legal and institutional framework of governance and provides mechanisms for constitutional review and enforcement. It functions as a single, coherent legal text that binds all persons and institutions within the Republic.

3.0 Key Features of a Written Constitution

3.1 The Constitution as the Supreme Law

A written constitution is the highest law within a state, occupying the apex of the legal hierarchy. In Ghana, **Article 1(2)** of the 1992 Constitution declares that "this Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void." This provision enshrines the principle of constitutional supremacy, ensuring that every act of Parliament, executive action, or judicial decision conforms to constitutional requirements. The Constitution thereby establishes itself as the ultimate measure of legality and legitimacy.

3.2 Codification and Written Form

A written constitution derives its authority and coherence from its codified nature. Ghana's Constitution was enacted through a participatory process that reflects the sovereign will of the people. The judiciary has consistently affirmed its status as the nation's supreme law. In **Tuffuor v Attorney-General [1980] GLR 637**, Justice Sowah observed that "the Constitution is not an ordinary Act of Parliament. It embodies the will of the people and mirrors their hopes and aspirations." This statement captures the essence of constitutionalism the notion that all authority emanates from the people and is exercised within limits they themselves have established.

3.3 Establishment of the Organs of Government

A constitution provides for the establishment and regulation of the principal organs of government. The Ghanaian Constitution identifies and defines the roles of the **Executive**, **Legislature**, and **Judiciary**. These arms of government are independent yet interdependent, bound by the doctrine of separation of powers and sustained by a system of checks and

balances. Each organ operates within constitutionally prescribed limits to prevent the concentration and abuse of power.

3.4 Special Rules for Formation and Amendment

A key feature of written constitutions is their rigidity, reflected in the special procedures required for their amendment. Ordinary legislation cannot alter constitutional provisions. Ghana's amendment process is governed by **Articles 289 to 291** of the Constitution, which prescribe distinct procedures for entrenched and non-entrenched clauses. Entrenched provisions require public notice, a referendum with at least forty percent voter participation and seventy-five percent approval, and the President's assent. Non-entrenched provisions may be amended by a two-thirds majority in Parliament followed by presidential assent.

The Supreme Court has consistently reinforced these requirements. In **Prof. Stephen Kwaku Asare v Attorney-General (2012)**, the Court upheld the establishment of the Constitutional Review Commission but held that any actual amendment must strictly follow Article 289. Similarly, in **Dr. Francis Osei Bonsu v Attorney-General**, the Court invalidated a section of the *Citizenship Act* that sought to expand restrictions on dual citizens holding public office, holding that only a formal constitutional amendment could achieve such a result. These rulings underscore the inviolability of constitutional amendment procedures.

3.5 Judicial Review and Constitutional Enforcement

Judicial review is a cornerstone of constitutional governance. It empowers the courts to interpret and enforce constitutional provisions, thereby ensuring the supremacy of the Constitution. The landmark American case of *Marbury v Madison (1803)* established the principle that "it is emphatically the province and duty of the judicial department to say what the law is." This principle has been adopted within Ghana's legal system under **Article 2(1)**, which grants any person the right to challenge before the Supreme Court any law, act, or omission alleged to be inconsistent with the Constitution. **Articles 2(4)–(6)** make non-compliance with Supreme Court orders under **Article 2(2)** a high crime punishable by imprisonment of up to ten years and disqualification from holding public office. Judicial review thus acts as the ultimate safeguard for constitutional supremacy.

4.0 High Treason and Constitutional Protection

The 1992 Constitution provides strong mechanisms for its defence and preservation. Under **Article 3(2)**, any activity that suppresses or seeks to suppress the lawful political activity of

others is unlawful. **Article 3(3)** declares that any person who unlawfully suspends, overthrows, or abrogates the Constitution or aids and abets such acts commits the offence of high treason and, upon conviction, shall be sentenced to death. These provisions underscore the seriousness with which the Constitution guards its own integrity.

The courts have applied these provisions in several notable cases. In *State v Otchere [1963] 1 GLR 463*, five accused persons were convicted of conspiracy to commit treason after evidence revealed plans to overthrow the government through violent means. Similarly, in *Republic v Dr. Mac-Palm and Others [2023]*, the accused were charged with plotting a coup d'état. Although some were acquitted due to insufficient evidence, others were convicted and sentenced to death for high treason. Under **Article 19(2)(i)**, trials for treason must be conducted by a High Court composed of three Justices, and conviction must be unanimous. These stringent safeguards emphasise the sanctity of constitutional order and the gravity of acts aimed at undermining it.

5.0 Types and Classifications of Constitutions

Constitutions can be classified based on various criteria such as form, amendment process, and the distribution of political power. These classifications are not mutually exclusive; many constitutions embody features of more than one category.

5.1 Written and Unwritten Constitutions

A written constitution is one that has been formally codified and adopted as the supreme law of the land. Ghana's 1992 Constitution is written, providing clarity, accessibility, and certainty. Conversely, an unwritten constitution, such as that of the United Kingdom, derives from multiple sources including statutes, conventions, and judicial precedents. The British system is founded upon the principle of parliamentary sovereignty, which holds that Parliament may make or unmake any law, and no other body, including the courts, may question its validity. The case of *R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5* affirmed this principle, ruling that the government could not initiate the process of leaving the European Union without parliamentary approval. The decision highlighted the centrality of Parliament within the British constitutional framework.

5.2 Flexible and Rigid Constitutions

A flexible constitution may be amended using the same procedure as ordinary legislation, allowing it to evolve easily in response to changing political circumstances. The United

Kingdom's constitution exemplifies this category, as Parliament can alter constitutional arrangements through ordinary Acts. A rigid constitution, on the other hand, requires a special procedure for amendment. Ghana's Constitution is rigid because of the elaborate amendment processes under **Articles 289 to 291**. The Supreme Court cases of *Prof. Stephen Kwaku Asare v Attorney-General* and *Dr. Francis Osei Bonsu v Attorney-General* reaffirmed this rigidity and the exclusive procedures for amendment.

5.3 Republican and Monarchical Constitutions

A republican constitution provides for an elected head of state whose authority is derived from the people. Ghana's Constitution establishes the President as both head of state and head of government under **Article 57(1)**. The President exercises executive authority on behalf of the people and is accountable through constitutional checks and democratic elections. Historically, Ghana's 1969 Constitution adopted a semi-presidential model with a ceremonial President and a Prime Minister, but later constitutions unified executive power in the presidency.

By contrast, a monarchical constitution vests sovereignty in a hereditary ruler. The United Kingdom operates a constitutional monarchy, wherein the monarch performs largely ceremonial functions while political power rests with the elected Parliament and the Prime Minister. The monarchy's legitimacy is grounded in historical continuity and national tradition rather than electoral mandate.

5.4 Federal and Unitary Constitutions

A federal constitution divides power between a central authority and regional governments, each possessing constitutional autonomy. Countries such as the United States and Nigeria exemplify federalism, where both federal and state governments have distinct powers and institutions subject to the supremacy of the federal constitution. A unitary constitution, by contrast, concentrates sovereign authority in the central government, which may delegate power to subnational entities. Ghana operates a unitary system that incorporates decentralisation under **Articles 240 to 256**, providing for District, Municipal, and Metropolitan Assemblies as well as Regional Coordinating Councils. These bodies exercise delegated powers but remain subordinate to the central government, ensuring administrative efficiency while promoting local participation in governance.

6.0 Conclusion

The constitution, whether written or unwritten, serves as the foundation upon which all political and legal systems rest. It defines the structure of government, delineates powers, protects fundamental rights, and upholds the rule of law. Ghana's 1992 Constitution stands as a model of a written, rigid, republican, and unitary constitution that enshrines democratic values, constitutional supremacy, and accountability. Through its provisions for judicial review, amendment, and constitutional protection, it ensures both stability and flexibility within governance.

The study of the nature and scope of constitutions thus provides essential insight into how states maintain order, distribute power, and preserve liberty. For Ghana, the Constitution is not merely a legal instrument but a living embodiment of the people's collective will, serving as the ultimate guardian of democracy and justice.