Constitutional Supremacy: The Apex Doctrine in Ghanaian Constitutional Law

Introduction

In every constitutional democracy, the Constitution serves as the fundamental legal document governing the state. In Ghana, the doctrine of **constitutional supremacy** establishes the 1992 Constitution as the **supreme law of the land**. This principle, clearly affirmed in **Article 1(2)**, ensures that all laws, actions, and omissions whether by public officials, private persons, or entities must conform to the Constitution or be declared null and void.

This review explores constitutional supremacy in Ghana, drawing on relevant constitutional provisions, judicial precedents, and comparisons with related doctrines such as constitutionalism, the rule of law, separation of powers, judicial review, and natural justice. It also analyzes the mechanisms through which constitutional supremacy is maintained and enforced.

1. Defining Constitutional Supremacy

The term "supreme" signifies the highest authority. In legal terms, **constitutional supremacy** means that the Constitution overrides all other laws and governmental actions. **Article 1(2)** of the 1992 Constitution provides:

"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 gives the Constitution binding and overriding authority across all arms of government and legal systems, including statutes, executive acts, judicial decisions, and customary law.

2. The Hierarchy of Laws in Ghana (Article 11)

To understand constitutional supremacy, one must consider the **hierarchy of legal sources** under **Article 11** of the 1992 Constitution:

1. The Constitution;
2. Acts of Parliament;
3. Existing law (laws in force before the Constitution);
4. Common law and the doctrines of equity;

5. Customary law;
6. International law incorporated under **Article 75** through treaty ratification and parliamentary approval.

At the apex of this hierarchy is the Constitution. All other laws derive validity from it and must conform to its provisions. In case of conflict, the Constitution prevails.

3. The Scope of Constitutional Supremacy: Acts and Omissions

a. Positive Acts

Constitutional supremacy applies to all **positive acts** by government officials, individuals, or entities. Any such act that contravenes the Constitution is unconstitutional and void.

b. Omissions

It also extends to **omissions**, where duty bearers fail to perform constitutional obligations. Such inaction can amount to a constitutional violation.

Illustration:
In *New Patriotic Party v. Attorney-General (31st December Case)* [1993–94] 2 GLR 35 (SC), the Supreme Court held that failure to act in accordance with the Constitution is unconstitutional.

4. Case Law on Constitutional Supremacy

Tuffuor v. Attorney-General [1980] GLR 637 (SC)

Facts: The appointment of a new Chief Justice was challenged as unconstitutional.
Holding: The Supreme Court held that the Constitution is a **living document** and must be interpreted to promote its supremacy and integrity.
Principle: The Constitution overrides all laws or acts inconsistent with it.

Additional Case

In *Republic v. High Court (Commercial Division), Accra; Ex parte Attorney-General (NML Capital Ltd Case)* [2013–2014] 1 SCGLR 389, the Supreme Court reaffirmed that **constitutional provisions prevail even over international arbitral obligations** if inconsistency arises.

5. Constitutional Supremacy Distinguished from Related Doctrines

a. Constitutional Supremacy vs. Constitutionalism

Constitutionalism means that government powers are limited by law. It assumes constitutional supremacy because only a supreme constitution can impose such limits. Without supremacy, constitutionalism remains aspirational. However, supremacy can exist without genuine constitutionalism, as seen in authoritarian states with "supreme" constitutions not followed in practice.

b. Constitutional Supremacy vs. Separation of Powers

The **separation of powers** divides government authority among the legislative, executive, and judiciary. Any encroachment by one arm into another's domain breaches the Constitution and thus violates supremacy itself.

c. Constitutional Supremacy vs. Rule of Law

The **rule of law** comprises:

- Legality (no punishment without law);
- Equality before the law;
- Respect for fundamental rights.

These are upheld only to the extent the Constitution permits. If the Constitution lawfully restricts rights (for instance, under Article 31 during emergencies), such restrictions are valid under the rule of law.

d. Constitutional Supremacy vs. Judicial Review

Judicial review is the power of the judiciary to assess the constitutionality of laws and actions. It is the **mechanism** by which supremacy is enforced. Under **Article 2(1)**, any citizen may invoke the jurisdiction of the Supreme Court to challenge unconstitutional actions or omissions.

e. Constitutional Supremacy vs. Natural Justice

Natural justice embodies two rules: the right to a fair hearing and the rule against bias. However, these are subject to the Constitution. For example, where the Constitution

empowers the Chief Justice to empanel judges (Article 128), that provision prevails even if it appears inconsistent with common law notions of bias.

6. Elements for Enforcing Constitutional Supremacy

a. Written Constitution

Ghana's Constitution is written and codified, giving it clarity and stability. This distinguishes it from systems like the United Kingdom's, where constitutional norms are unwritten and flexible.

b. Judicial Review

Under **Article 2(1)**, the Supreme Court has **original jurisdiction** to interpret and enforce the Constitution. It may:

- Review legislative enactments;
- Examine executive actions and omissions;
- Declare unconstitutional laws void.

This power ensures that constitutional supremacy is enforceable rather than symbolic.

Conclusion

Constitutional supremacy is the cornerstone of Ghana's constitutional system. It ensures that all state organs and citizens operate within the bounds of the 1992 Constitution. It also guarantees institutional accountability and the protection of rights.

However, effective supremacy depends on:

1. A **written constitution** that provides clarity and accessibility; and
2. A **strong judiciary** empowered to strike down unconstitutional acts.

Thus, constitutional supremacy in Ghana is not only a legal doctrine but also a **practical guarantee of democratic governance** and the **rule of law**.