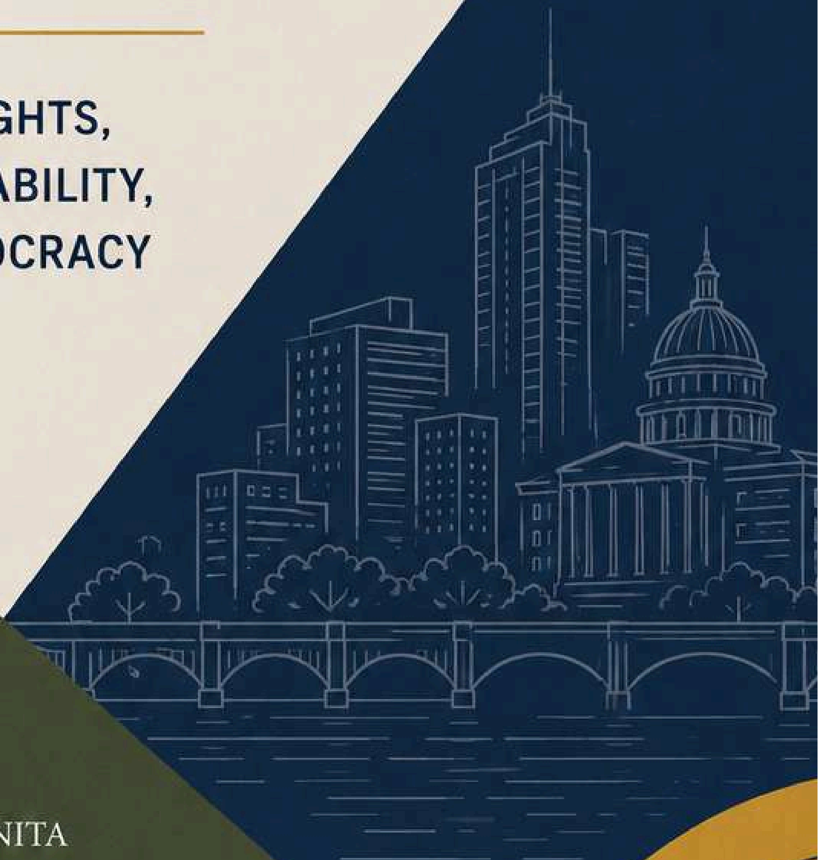
LAW AND PUBLIC GOVERNANCE:

URBAN RIGHTS, ACCOUNTABILITY, AND DEMOCRACY



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PREFACE

Law, governance, and democratic institutions play a central role in protecting citizens' rights, ensuring public accountability, and regulating relations between the state and society. Contemporary challenges related to urban development, corruption, and constitutional governance demonstrate the importance of legal and institutional frameworks in supporting transparent, responsive, and democratic public systems.

The chapters in this volume examine selected issues concerning governance, citizenship, and democratic practice. The first chapter explores the impact of substandard and unauthorized constructions on urban space and citizens' rights, drawing attention to the relationship between urban regulation, public safety, and legal protection. The second chapter examines the role of the Economic and Financial Crimes Commission in promoting good governance in Nigeria, focusing on the challenges of combating corruption and strengthening institutional accountability. The third chapter discusses the constitutional implications of Article 70 in Bangladesh and its effects on parliamentary democracy.

By bringing together these studies, this volume highlights the relationship between legal regulation, public administration, and democratic representation. The chapters demonstrate how institutional capacity, constitutional safeguards, and rights-based approaches can contribute to more accountable and inclusive governance.

It is hoped that this book will serve as a useful academic resource for researchers, students, legal professionals, and policymakers interested in public law, governance, urban rights, anti-corruption studies, and democratic institutions. We extend our sincere appreciation to all contributing authors for their valuable scholarly efforts.

Editorial Team
July 2026, Türkiye

CHAPTER 1
THE IMPACT OF SUBSTANDARD AND UNAUTHORIZED CONSTRUCTIONS ON URBAN SPACE AND CITIZEN'S RIGHTS

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INTRODUCTION

Urban development plays a fundamental role in stimulating economic progress, attracting investment, and improving overall quality of life within communities. Well-planned urban growth contributes to employment opportunities, infrastructure modernization, social cohesion, and sustainable development. However, the proliferation of substandard and unauthorized constructions represents a serious challenge to these objectives. Buildings erected without proper permits or in violation of technical standards generate substantial risks for cities and their residents. Beyond the immediate dangers related to structural instability and public safety, such constructions weaken the regulatory systems designed to ensure orderly development. They erode trust in public institutions, distort fair competition in the construction sector, and compromise the long-term sustainability of urban environments.

Moreover, the implications of illegal and low-quality constructions extend far beyond technical non-compliance. They disrupt the cultural and architectural coherence of urban spaces, affect social inclusion, and challenge the legal principles that govern land use and spatial planning. This study therefore examines the multifaceted consequences of unauthorized construction practices through five interconnected analytical perspectives: the relationship between architecture and cultural context; the impact on gender-sensitive and inclusive urban design; the broader dynamics of urban studies and social space; the transformation of spatial identity and architectural representation; and the legal and regulatory frameworks, including enforcement mechanisms. By integrating these dimensions, the research highlights the complex and systemic effects that substandard construction practices exert on contemporary cities and on the rights and well-being of their inhabitants.

1. LITERATURE REVIEW

Scholars note that substandard and unauthorized construction is a key aspect of urban informality, a global phenomenon driven by socioeconomic pressures and weak regulation. Such development often lacks legal recognition, secure tenure, and proper infrastructure, creating unsafe and inadequate living conditions.

Beyond physical impacts, informality also disrupts spatial and social dynamics, limiting public space, access, and services while producing irregular urban layouts (Rafeian & Kianfar, 2023).

In numerous African cities, rapid urbanization and weak regulatory enforcement foster informal construction that disrupts urban layout and infrastructure. Research in cities like Maputo shows that limited control produces narrow streets, insufficient public spaces, and poor utility access, impairing mobility and living conditions. Such development increases infrastructure costs and creates unstable urban environments, reducing cities' ability to deliver essential services (Mottelson, 2023).

Research shows that unregulated urban growth and informal construction can infringe on socio-economic rights, including access to adequate housing, equality, and a decent standard of living. These effects go beyond physical infrastructure, directly affecting citizens' ability to live in safe and equitable urban environments. Secure property rights are crucial for fair urban development, as they ensure tenure security, access to services, and economic inclusion factors often undermined in areas dominated by unauthorized construction (Deppisch & Yilmaz, 2021; Zazyki, et. al., 2022).

In Europe, even well-regulated urban systems face challenges from informal construction, which can disrupt city coherence, strain infrastructure, and prompt adaptive enforcement. Legal frameworks increasingly impose administrative and criminal penalties to protect public interests and heritage. In Asia, rapid population growth, shifting land rights, and migration drive unauthorized building, weakening spatial identity, property rights, and equitable access to infrastructure, complicating formal governance (Yang et. al. 2023).

In developed countries like the USA and Australia, unauthorized construction is usually localized, involving code violations rather than large informal settlements, yet it carries legal and social consequences, including litigation and civil enforcement. In transitional contexts, such as Moldova and other post-Soviet states, informal building contributes to spatial fragmentation, weak governance, and risks to citizens' rights, highlighting the need for stronger enforcement and alignment with European standards.

2. METHODOLOGY

This study uses a comparative, mixed-methods approach to examine how substandard and unauthorized construction affects urban space, infrastructure, and citizens' rights across diverse regions: Republic of Moldova, Europe (EU), Asia, Africa, USA, and Australia. Data sources include legal and policy reviews, literature on informal construction and socio-spatial inequality, spatial analyses of urban form, and assessments of impacts on housing, mobility, public services, and property rights. The analysis focuses on three dimensions: regulatory frameworks and enforcement, urban spatial outcomes, and social and rights impacts. Cross-regional comparison highlights differences in governance, enforcement, and planning effectiveness, providing evidence-based insights for strengthening legal compliance, urban functionality, and inclusive development.

3. RESULT AND DISCUSSION

In the Republic of Moldova, unauthorized and poor-quality construction remains a serious issue despite recent legal reforms. The adoption of the Urbanism and Construction Code of the Republic of Moldova aims to improve regulatory clarity and address common violations, such as building without permits, unsafe structural changes, and insufficient technical oversight. Although these measures seek to simplify procedures and reduce legal ambiguities, enforcement continues to be weak. As a result, illegal constructions are still widespread, especially in Chisinau, where they disrupt urban planning and strain authorities. In response, stricter penalties, including criminal liability and increased fines for both developers and officials, have been proposed to mitigate these risks and protect public safety and heritage.

Across Europe, unauthorized construction is managed through robust legal and planning systems aimed at ensuring orderly urban development, safety, and environmental protection. National building and zoning laws define illegal construction and outline developer and authority responsibilities. In countries like Italy and Belgium, sanctions may include fines, compulsory demolition, or immediate removal of non-compliant structures, with regional authorities such as in Brussels-Capital and Wallonia empowered to enforce compliance efficiently (Cornill, 2025).

European regulatory systems prioritize strict compliance with planning standards and building codes to protect the functional, aesthetic, and cultural integrity of urban areas. Authorities are often empowered to take immediate corrective actions such as stopping construction or ordering demolition without lengthy judicial procedures, reflecting the importance of safety, heritage preservation, and orderly development.

At the same time, many countries adopt preventive and regularization approaches that combine public awareness, compliance monitoring, and enforceable sanctions, demonstrating a proactive and comprehensive strategy toward unauthorized construction. These frameworks show that addressing illegal building is not only a regulatory matter but also essential for protecting public welfare and maintaining the integrity of the built environment (City Engeenering, 2025).

Similarly, in several Eastern European countries, recent legal reforms have strengthened penalties for unauthorized construction, eliminated previous opportunities for post hoc legalization, and required the demolition of illegal structures unless specific transitional rules apply. These changes signal a shift toward a zero-tolerance approach and a stronger focus on compliance and urban order.

Overall, European legal frameworks show that tackling illegal construction goes beyond planning control and represents a matter of strict legal compliance. National and regional laws clearly define unlawful building practices, establish enforcement mechanisms, and impose proportionate sanctions, highlighting the importance of protecting urban development, environmental and cultural assets, and citizens' rights to safe living conditions. By integrating preventive policies, conditional regularization, and firm enforcement, European countries adopt a comprehensive and proactive strategy for managing unauthorized construction and maintaining the quality of urban environments.

In the USA, construction regulation operates within a decentralized system where authority lies primarily with state and local governments. Rather than a single national code, jurisdictions adopt their own rules, often based on model standards that become legally binding once enacted locally.

These regulations aim to ensure safety, structural integrity, and public welfare, requiring thorough review and approval before permits are issued. Local authorities oversee compliance through inspections and ongoing monitoring of construction activities.

Unauthorized construction or violations of building codes are treated as serious offenses. Developers and property owners may face fines, stop-work orders, mandatory corrections, or even demolition of noncompliant structures. Enforcement practices in major cities demonstrate a strong commitment to legal compliance and public safety, while violations can also lead to civil liability for damages or injuries. Overall, this decentralized framework combines clear standards, active enforcement, and accountability to maintain safe and legally regulated urban environments (Clark et. al.,2025).

In Australia, unauthorized construction typically appears as planning deviations and compliance disputes handled at the local government level. Problems arise when property owners carry out significant modifications without approval, requiring authorities to enforce standards that protect neighboring properties and maintain building regulations. These situations highlight the ongoing balance between private property rights and collective urban rules, showing that even well-developed systems must continuously address noncompliant construction.

At the same time, construction regulation in Australia is supported by a comprehensive legal framework at both national and state levels. A key element is the National Construction Code of Australia, which establishes mandatory technical and safety standards for most building activities. These rules are enforced through state and territorial legislation, ensuring consistent application across the country. The code covers structural integrity, fire safety, accessibility, and health standards, making compliance legally binding for all stakeholders. Overall, this integrated system provides a solid basis for ensuring safety and addressing unauthorized or substandard construction (Mottelson, 2023).

In Australia, the decentralized system places primary responsibility for construction permits, supervision, and enforcement on state and local authorities.

These bodies ensure compliance not only with the National Construction Code of Australia but also with regional planning rules and state-specific legislation. Any construction carried out without the necessary approvals such as permits, licenses, or technical compliance is considered a legal offence across all jurisdictions.

Penalties vary by state but generally include significant fines, daily sanctions for ongoing violations, stop-work orders, and, in some cases, mandatory demolition of illegal structures. For example, in Queensland, repeated offences can result in substantial financial penalties and even imprisonment, while in South Australia, individuals may face fines of up to $120,000 along with additional daily penalties. These strict measures highlight the serious legal and financial consequences of noncompliance and emphasize the key role of local and state authorities in ensuring safety, regulatory compliance, and the integrity of urban development (Porter Consulting, 2025).

In Australia, construction professionals must hold proper licenses to legally perform building activities. Carrying out work without the required authorization is considered a criminal offence and may result in heavy fines, imprisonment, and civil liability. These rules emphasize that compliance with building and planning regulations is mandatory, as failure to obtain approvals not only breaches legal obligations but also increases risks to public safety. Unlicensed construction exposes both builders and property owners to significant financial and legal consequences, highlighting the essential role of licensing in maintaining safety standards and protecting urban communities.

Across Asia, unauthorized construction occurs in diverse contexts, from highly regulated cities to rapidly expanding peri-urban areas. Rapid urbanization, combined with limited enforcement capacity, often leads individuals and communities to build without permits, particularly on land not designated for residential use. This results in the growth of informal settlements and unregulated structures driven by urgent housing needs (Nicolletti et. al., 2022).

Socio-economic pressures like population growth, rural-to-urban migration, and limited affordable housing often drive vulnerable groups toward informal construction. Unauthorized building thus reflects both regulatory breaches and broader social inequalities.

Authorities respond with fines, demolition, and enforcement measures, but these actions underscore the tension between strict regulation and addressing the underlying socio-economic drivers of informal urban growth.

4. ARCHITECTURE AND CULTURAL CONTEXT

Unauthorized construction can have lasting impacts on both the physical and cultural fabric of cities, particularly where historical heritage is central to local identity. Buildings erected outside planning rules or without preservation standards can damage, obscure, or disrupt heritage sites, undermining architectural cohesion and gradually eroding the distinctive character that embodies a community's history, traditions, and collective memory. Such unregulated development threatens not only the cityscape but also the symbolic and cultural significance of historic areas (Fuet et. al., 2023).

Research shows that rapid, poorly regulated urbanization increasingly threatens cultural heritage. Without protective legal and planning measures, historic structures may lose authenticity, and uncoordinated growth can produce buildings that clash with historical context, scale, or aesthetics.

The impact of informal or unauthorized construction is a global concern. In many historic cities, unregulated development through new buildings or infrastructure can disrupt traditional layouts, weaken environmental and cultural contexts, and erode community identity and social engagement with heritage sites.

These challenges highlight the importance of integrating heritage conservation into comprehensive urban planning. A balanced approach that aligns legal rules, cultural values, social needs, and development goals can protect historic areas while keeping them vibrant and accessible for future generations.

Unauthorized and informal construction poses significant risks to cultural heritage and urban form worldwide, affecting cities' ability to preserve historical identity and architectural continuity. In the Republic of Moldova, protected monuments and historically significant buildings are often threatened by illegal demolition, poor maintenance, or unapproved modifications, gradually undermining their cultural value and disrupting the coherence of historic urban areas.

Such activities contribute to the fragmentation of traditional architectural ensembles and the loss of authenticity in culturally important spaces (Dulgher, 2021).

Analyses indicate that weak institutional enforcement, administrative shortcomings, and occasional corruption have allowed unauthorized construction to persist, undermining the practical effectiveness of legal protections for cultural heritage in the Republic of Moldova. This enforcement gap enables irreversible changes to urban landscapes, highlighting the need for stronger governance, greater accountability, and consistent application of planning and conservation laws.

Across Europe, rapid urbanization and poorly controlled development increasingly threaten the integrity of historic cities. New constructions that disregard preservation standards can erode the authenticity and cohesion of culturally significant areas. For instance, Kotor Old Town in Montenegro has faced potential risks to its UNESCO status due to intensive development and tourism pressures (Lagrave, 2017).

These cases highlight the persistent challenge of balancing urban growth and economic development with cultural heritage protection, despite international and European legal safeguards.

In the USA, historic preservation is supported by a multi-layered legal framework at federal, state, and local levels. The National Historic Preservation Act establishes procedures to identify and protect historic properties, including mandatory reviews of projects affecting designated sites. While these regulations guide careful assessment of development impacts, conflicts still arise when private interests intersect with protected areas, showing that enforcement and planning balance remain crucial.

Similarly, in Australia, heritage protection relies on legal and institutional frameworks such as the Australian National Heritage List and state-level regulations to preserve culturally significant sites. Despite these measures, historic buildings and landscapes face pressures from urban expansion and occasional neglect, illustrating that legal protection alone is insufficient without consistent enforcement and sustainable planning strategies (The Conversation, 2019).

In Asia, rapid urban growth in historic city centers threatens traditional cultural landscapes. For example, the classical gardens of Suzhou face development pressures that may compromise their spatial integrity and cultural significance, showing how modernization can disrupt historic architectural patterns and social uses of space. Likewise, in Tanzania, cities like Dar es Salaam have experienced demolition or neglect of historic buildings due to new construction, gradually eroding architectural heritage and weakening community connections to traditional environments (Flores de Leon, 2020).

Overall, these global examples show that unauthorized or poorly regulated construction can severely threaten cultural heritage and alter urban identity. They highlight the need for strong legal frameworks, effective governance, and integrated planning policies that balance development with the protection of historically and culturally significant sites.

5. GENDERED SPACES AND INCLUSIVE DESIGN

Unauthorized construction often contributes to urban environments that limit safe and equitable access to public spaces, especially for vulnerable groups like women, children, and people with disabilities. Informal developments can block sidewalks, restrict access to parks and communal areas, and disrupt neighborhood layouts, reinforcing existing social inequalities. Research in gender-sensitive urban planning shows that factors such as safety, visibility, and accessibility shape how different groups, particularly women, navigate cities. Weak or inconsistent enforcement of planning regulations further exacerbates these inequities, leaving marginalized populations disproportionately affected by poorly designed or unauthorized spaces (Ortiz et. al., 2025).

Inclusive design provides a framework for creating urban spaces that are safe, accessible, and responsive to the needs of all residents. By integrating mobility, safety, and social diversity into planning, it promotes equity and broader participation in communal life, going beyond basic accessibility standards to foster interaction, well-being, and civic engagement. Such approaches help public spaces support community cohesion and equal opportunities for all city dwellers.

Globally, informal or unauthorized construction often worsens spatial inequalities and limits access to public areas. In the Republic of Moldova, traditional planning frequently lacks gender-sensitive frameworks, so unplanned developments disproportionately affect women, children, and people with disabilities by blocking mobility and access to communal spaces, reflecting systemic gaps in inclusive urban governance.

In contrast, some European cities, like Vienna and Luxembourg, are embedding gender-sensitive and participatory planning approaches. Initiatives include improved street lighting, accessible infrastructure, and safety measures tailored to diverse mobility patterns. These efforts aim to counter historically male-centric urban design, integrating social equity into city planning and offering a model for addressing gendered disparities in urban environments globally (Centre for Universal Design Australia, 2025).

In the USA, urban planning is guided by accessibility laws, particularly the Americans with Disabilities Act (ADA), which mandates barrier-free design. These rules ensure public infrastructure is accessible to people with disabilities and promote consideration of gender-inclusive spaces. Compliance supports functional accessibility while guiding planning strategies that create safer, more equitable urban environments for all residents (US Access Board,1990).

In Australia, advocacy groups, professional networks, and academic research have highlighted the importance of gender equity in architecture and urban planning. These efforts seek to amplify women’s participation in design decisions, address systemic exclusions, and incorporate inclusive perspectives into urban development (Wikipedia, 2023).

In Asia, rapid urbanization often outpaces inclusive planning, leaving public spaces that inadequately meet the needs of women and marginalized groups. However, emerging policies and research in countries like Japan, India, and China are promoting gender-responsive design, emphasizing safety, accessibility, and social inclusion.

In Africa, gender-focused urban planning research shows that poorly designed spaces can reinforce restrictions on women’s mobility, while well-planned environments can empower women, increase participation, and improve safety in public areas (Rampaul & Chipungu, 2022).

Overall, these regional examples show that while some areas have developed strong gender-sensitive planning mechanisms, many still struggle to implement them effectively. This highlights the global need to integrate gender-inclusive frameworks into urban governance to ensure safety, equitable access, participatory decision-making, and meaningful engagement with public spaces for all residents.

6. URBAN STUDIES AND SOCIAL SPACE

Unauthorized and informal construction can seriously disrupt the functionality and social dynamics of urban areas by limiting residents' mobility and access to city spaces. Unpermitted structures often block streets, impede transit routes, and restrict access to utilities and community services, causing congestion, delays, and circulation inefficiencies. These obstructions can also create safety hazards, increase accident risks, and hinder emergency response, especially in dense urban settings. As such, illegal construction is not just a planning violation but a major threat to urban mobility, safety, and accessibility, highlighting the need for effective enforcement, strategic design, and coordinated planning to maintain city functionality (Tijjani et. al., 2025).

Unauthorized and informal construction disproportionately impacts socially and economically marginalized groups, worsening existing urban inequalities. Research shows that disadvantaged communities often have limited access to public services, recreational areas, transportation, and other essential amenities. This not only restricts mobility and opportunities but also reinforces social and spatial segregation, excluding vulnerable populations from full civic and economic participation. Informal developments frequently cluster in under-resourced neighborhoods, reducing infrastructure investment and limiting social interaction and upward mobility. Thus, unregulated construction deepens socio-economic divides, showing that planning failures affect both physical space and broader social equity (Nicoletti et. al., 2022).

When key transportation routes are blocked or informal settlements emerge without designated public spaces, residents face reduced access to employment, education, and social opportunities. These spatial constraints reinforce socio-economic inequalities by limiting marginalized communities' access to urban services and infrastructure.

Studies comparing planned and unplanned areas show that unregulated development often results in narrow streets, limited public spaces, and inadequate communal facilities, hindering mobility and safe neighborhood access. These deficiencies also restrict investments in essential infrastructure like utilities, transit, and recreational amenities, ultimately entrenching social exclusion and economic marginalization. The findings underscore the importance of inclusive urban planning and effective enforcement to ensure equitable access and sustainable city growth (Mottelson, 2023).

Unauthorized and informal construction significantly alters urban layouts and shapes residents' daily experiences. By encroaching on streets, public pathways, and infrastructure zones, these developments disrupt mobility, hinder essential services, and exacerbate social inequalities. The severity of these impacts varies globally, depending on governance, planning capacity, enforcement, and socio-economic context.

In the Republic of Moldova, particularly in cities influenced by post-Soviet planning, informal construction undermines the coherence of formal infrastructure and public spaces. Rapid unregulated growth strains transportation networks, limits pedestrian safety, and produces fragmented urban patterns. These developments reflect historical planning discontinuities and gaps in governance, complicating public service delivery and reducing equitable access to amenities. Overall, unauthorized building practices in Republic of Moldova reshape the urban landscape, reinforce social stratification, compromise safety, and challenge the ability of city authorities to maintain inclusive, functional, and sustainable urban environments (Sprinceana, 2016).

Across Europe, even with established urban planning systems, unauthorized and informal construction remains a major challenge, especially where enforcement is weak or land administration is underdeveloped. Such unregulated growth fragments city layouts, disrupting spatial coherence and complicating the delivery of infrastructure like transportation, utilities, and public services. In some Eastern European countries, regulatory lapses have produced disconnected neighborhoods and noncompliant developments that hinder coordinated urban management.

These fragmented patterns not only reduce mobility and service efficiency but also threaten sustainable development, emphasizing the need for stronger enforcement, better governance, and proactive measures to maintain both legal compliance and the functional integrity of European cities (United Nations Human Settlements Programme & The International Federation of Surveyors, 2008).

In the USA, although urban development is guided by established planning, zoning, and building regulations, unpermitted or noncompliant construction such as additions, modifications, or infill can still cause localized disruptions. These irregular developments may block streets, limit public access, and hinder municipal services, creating inconsistencies within regulated neighborhoods. Furthermore, major infrastructure like highways often acts as physical barriers, restricting pedestrian mobility, fracturing social networks, and increasing spatial segregation. These factors show that both unauthorized construction and infrastructural design can affect social cohesion and access to amenities. Overall, even with strong regulatory frameworks, unpermitted development and planning gaps can undermine equitable urban space, mobility, and resource access, highlighting the need for vigilant enforcement and inclusive urban design (Aiello et. al., 2025).

In Australia, informal and unauthorized urban growth, particularly in rapidly expanding suburbs, challenges the provision of infrastructure and essential services. Unregulated construction can create bottlenecks, reduce pedestrian access, and disrupt utilities, transport, and emergency services, highlighting the need for coordinated planning and governance. Such developments also exacerbate socio-spatial inequalities by limiting access to public spaces and infrastructure for vulnerable populations, emphasizing the importance of inclusive urban design.

Similarly, in Asia, fast urbanization and unplanned settlements strain formal planning systems, often occupying land intended for roads, green spaces, or public infrastructure. This disrupts connectivity, reduces mobility, and disproportionately impacts marginalized communities, reflecting gaps in governance and enforcement. Proactive planning and inclusive urban policies are thus essential to maintain accessibility, mobility, and service provision.

Across Africa, rapid population growth and limited municipal capacity have fueled the spread of informal settlements lacking roads, sanitation, public transport, and utilities. These deficiencies restrict residents' access to social, educational, and economic opportunities, reinforcing marginalization and socio-economic inequality. Weak governance and fragmented planning processes perpetuate spatial inefficiencies, making integrated urban planning and regulatory oversight critical to improving mobility, service access, and equitable development (Magidi & Bhanye, 2025).

Globally from transitional cities in Eastern Europe to regulated but occasionally disrupted USA urban systems, rapidly growing cities in Asia and Africa, and evolving urban landscapes in Moldova and Australia unauthorized and poorly managed construction has far-reaching effects beyond the built environment. Such development disrupts mobility, strains infrastructure, and reinforces social inequalities, limiting equitable access to services and opportunities. These patterns underscore the necessity of strong urban governance, strategic planning, and inclusive enforcement to ensure cities remain functional, accessible, and socially integrated, supporting diverse populations while promoting safety, fairness, and cohesion.

7. SPATIAL IDENTITY AND ARCHITECTURAL REPRESENTATION

Unauthorized and informal construction significantly impacts the visual and social fabric of urban areas, disrupting neighborhood coherence, architectural continuity, and the legibility of spatial identity. Buildings erected outside formal planning and design regulations can obscure historic or culturally significant landmarks and weaken the symbolic, functional, and aesthetic qualities that define a city's character. Research highlights that the built environment's physical layout, architecture, and cultural markers shape residents' sense of belonging, community engagement, and connection to shared history. Thus, unregulated development fragments neighborhoods, undermines social cohesion, and diminishes the meaningful interaction of inhabitants with their surroundings (Tzortzi & Saxena, 2024; Mansour et. al., 2023).

The spread of unauthorized and informal construction can seriously disrupt the clarity, coherence, and visual organization of urban spaces, weakening neighborhood identity and spatial legibility. Consistent architectural and urban patterns support local memory, collective heritage, and the symbolic meanings residents attach to places. When historical layouts or culturally significant structures are replaced by irregular or noncompliant developments, the visual order deteriorates, affecting how people perceive, navigate, and connect emotionally with their surroundings. This erosion of spatial identity undermines residents' sense of belonging, social interaction, and engagement with public spaces. The consequences highlight the strong link between the built environment, cultural representation, and social well-being, emphasizing the need for integrated planning, heritage protection, and effective regulatory enforcement to maintain the integrity and meaningfulness of urban spaces (Mahgoub et. al., 2022).

In the Republic of Moldova, unauthorized and informal construction significantly threatens the visual cohesion and spatial integrity of historic urban areas, especially in older city centers where architectural heritage shapes local identity. Buildings erected or altered outside formal planning disrupt historic streetscapes, obscure culturally significant elements, and fragment the city's visual narrative, weakening residents' sense of place, collective memory, and the symbolic value of the built environment.

Similarly, across Europe, architectural heritage anchors urban identity, with historic cities relying on traditional layouts, landmarks, and distinctive streetscapes to preserve cultural continuity and social cohesion. While regulatory frameworks aim to protect this identity by controlling modifications and new developments in heritage zones, informal or unauthorized constructions can create visual inconsistencies, diminishing the unique character and historical narratives of these urban environments (Senderos et. al., 2025).

In the USA, urban identity is shaped through preservation laws, zoning, and planning practices that aim to balance historic continuity with modern growth. Preservation ordinances protect historic districts and buildings, supporting visual cohesion and cultural heritage.

Yet, unauthorized or incompatible construction can disrupt neighborhood identity by introducing elements that clash with established architectural patterns, highlighting the need to align new development with historic and social character.

In Australia, urban identity reflects the interaction of colonial heritage, indigenous cultural landscapes, and contemporary development. Heritage regulations aim to preserve the visual and symbolic integrity of historic sites, but rapid population growth and housing demand can lead to constructions that clash with existing patterns, weakening urban legibility and residents' connection to place. Effective planning must harmonize development with heritage to protect collective memory and neighborhood identity.

In Asia, urban identity combines traditional architecture, historic layouts, and modern high-density development. Unauthorized or poorly regulated buildings can replace culturally significant structures with generic forms, eroding distinct spatial qualities. Historic Chinese cities illustrate "spatial identity crises," where rapid high-rise development disrupts traditional streetscapes, diminishing residents' sense of belonging and highlighting the tension between modernization and preservation of urban continuity (Duan et. al., 2022).

Across Africa, rapid urbanization poses challenges to heritage preservation. In cities like Dar es Salaam, heritage organizations work to protect historic buildings and cores, yet informal and unauthorized construction fragments urban layouts, damages historic fabric, and disrupts how communities relate to their cultural and spatial heritage, weakening residents' sense of place and connection to their environment (Wikipedia, 2024).

These regional examples show that spatial identity and architectural character are vital to how residents experience cities. Unauthorized or poorly regulated construction disrupts visual and cultural continuity, erodes social cohesion, and weakens the symbolic and functional value of urban spaces, underscoring the need for integrated planning and heritage-aware strategies that preserve urban identity amid modern development.

8. LEGAL AND PENAL DIMENSIONS

Substandard and unauthorized construction breaches urban planning and building regulations, threatening public safety and orderly city development. Legal systems typically respond with a range of enforcement measures, including fines, stop-work orders, and demolition mandates. Persistent non-compliance can lead to the suspension or revocation of construction permits and professional licenses, highlighting the essential role of regulatory enforcement in upholding urban standards and ensuring adherence to legal and technical requirements (Respicio et. Co, 2025).

When construction violations are severe, persistent, or pose significant risks to life, property, or public welfare, legal systems may escalate enforcement from administrative penalties to criminal charges. In these cases, unauthorized building is treated as a public safety offense, with many national laws criminalizing deliberate or negligent breaches of planning and building standards. Sanctions can include fines, probation, or imprisonment, particularly when illegal construction results in structural failures, injuries, or extensive property damage. Consequently, several jurisdictions have enacted reforms explicitly establishing criminal liability for building without permits or violating approved urban plans and technical regulations (Kun Uz, 2024).

These legal frameworks often impose stricter penalties for repeat violations or offenses causing serious harm, emphasizing that adherence to construction laws is vital for public safety and individual rights. By incorporating criminal sanctions, states reinforce accountability, deterrence, and the protection of urban stability.

Authorities typically rely on technical experts engineers, architects, or certified inspectors to verify compliance with safety standards, planning regulations, and architectural norms. Their assessments are crucial for identifying deviations, evaluating risks to occupants and the public, and guiding appropriate corrective actions such as remediation, reinforcement, or demolition. Expert reports also serve as key evidence in administrative and criminal proceedings, establishing fault, causation, and the severity of violations.

Additionally, civil liability provides another accountability layer. Property owners or affected parties can pursue compensation for material damage, obstruction, or diminished property value caused by unauthorized construction. This private legal recourse complements public enforcement, ensuring that those harmed can secure redress while reinforcing broader compliance with urban regulations (Law 4 you, 2026).

Overall, these legal mechanisms demonstrate an integrated enforcement system where administrative actions, criminal sanctions, technical assessments, and civil remedies work together to ensure compliance with construction laws, protect public safety, and promote professional responsibility.

In the Republic of Moldova, construction is regulated by a comprehensive legal framework centered on the Urbanism and Construction Code, supported by the Criminal Code and the Contravention Code. This framework mandates that all construction activities must be based on a valid urbanism certificate and a building permit issued by competent local authorities in line with approved urban plans.

Key provisions of the Urbanism and Construction Code establish compliance and enforcement requirements, including:

- obtaining an urbanism certificate before design;
- securing a building permit before starting construction;
- adhering strictly to approved project documentation and zoning rules.

Non-compliance triggers a multi-level liability system, encompassing administrative, civil, and criminal accountability.

At the administrative level, the Contravention Code of the Republic of Moldova imposes sanctions for unauthorized construction or deviations from approved plans, including fines, stop-work orders, and requirements to bring structures into legal compliance. Where compliance is impossible, authorities may order demolition. Local public bodies, such as mayoralties and construction inspectorates, are empowered to verify permits, inspect sites, and enforce regulations. Public officials are also held accountable if permits are issued unlawfully or contrary to urban planning rules.

More serious violations fall under the Criminal Code, which criminalizes the use or commissioning of unfinished or unsafe buildings that endanger life, health, or property.

Penalties may include criminal fines, loss of professional or administrative rights, and imprisonment for negligent or intentional harm. This approach treats severe construction violations as threats to public safety and social order rather than mere administrative infractions.

Lesser offenses, such as building without authorization or not following approved project plans, are subject to contraventional liability, typically resulting in fines or corrective actions, though repeated or harmful violations may escalate to criminal prosecution.

Civil liability provides an additional layer of accountability, allowing affected parties such as neighboring property owners to seek judicial remedies for material damage, property devaluation, or interference with lawful property use. Courts often rely on expert technical assessments to determine non-compliance, establish causation, and define necessary remediation.

Overall, Moldova's legal framework integrates administrative sanctions, criminal prosecution, civil remedies, and technical expertise. Recent reforms show alignment with European standards, strengthening enforcement, accountability, and urban safety, though challenges remain in consistently preventing informal construction, especially in rapidly growing cities like Chisinau.

In the European Union, construction regulation is highly standardized, focusing on structural safety, environmental protection, and public interest. Enforcement combines fines, permit revocation, and criminal penalties for serious risks. Technical expertise, certification, and compliance verification are mandatory, with many countries using digital systems to enhance transparency and efficiency. The EU model emphasizes preventive regulation and coordinated governance to maintain consistent, high-quality urban development across jurisdictions.

In the USA, construction regulation is highly decentralized, with authority split among federal, state, and local governments. While there is no uniform national building code, jurisdictions enforce detailed local standards. Non-compliance, such as unpermitted construction or code violations, can trigger fines, stop-work orders, mandatory corrections, and, in cases of injury or major damage, criminal liability.

Civil litigation plays a central role, with courts often relying on expert testimony, making the system litigation-driven and financially risky for violators.

In Australia, construction laws are similarly strict, emphasizing safety and professional responsibility. The National Construction Code of Australia provides uniform technical standards, enforced through state and territory legislation. Authorities impose administrative penalties, suspend or revoke licenses, and, for serious breaches, pursue criminal sanctions. Compliance audits, certification, and independent verification are increasingly used to ensure adherence, highlighting the focus on accountability and oversight.

Across Asia, regulatory frameworks vary widely. Developed countries like Japan and Singapore maintain strict enforcement and high technical standards, with both administrative and criminal penalties for violations. In contrast, many developing regions face challenges from informal construction and weak enforcement. Despite differences, common trends include reliance on administrative sanctions and ongoing efforts to strengthen regulatory systems and compliance, reflecting a mix of advanced and evolving construction governance across the continent (The Exchange Asia, 2025).

In Africa, construction regulation differs widely across countries, often shaped by institutional capacity and urbanization pressures. Many states face challenges such as weak enforcement and widespread informal building, which undermine planning systems and threaten public safety. However, reforms are emerging, including stronger legal frameworks, higher penalties, and improved urban governance. Civil liability exists but is generally less developed or less used than in other regions.

Globally, construction regulation relies on a multi-layered enforcement system combining administrative sanctions, criminal penalties for serious violations, expert technical assessments, and civil remedies for damages. While the Republic of Moldova is aligning with European standards, notable regional differences remain: Europe and Australia emphasize preventive regulation and safety, the USA relies heavily on litigation and financial penalties, and Asia and Africa show mixed regulatory maturity and enforcement capacity.

Overall, these comparisons reveal a worldwide trend toward stronger regulatory frameworks, greater accountability, and increased use of technical expertise to ensure construction is safe, legal, and serves the public interest.

CONCLUSION

Unauthorized construction significantly impacts urban life, undermining both the visual and functional coherence of cities while creating social inequalities by restricting access to safe, well-planned spaces. Protecting cultural heritage, ensuring inclusivity, and enforcing legal standards are therefore essential to safeguard rights and maintain the structural and social integrity of urban environments.

Addressing these challenges requires an interdisciplinary approach that combines architectural expertise, social policy, and legal enforcement. Integrating these perspectives enables the development of comprehensive strategies that promote balanced urban growth, uphold the rule of law, and enhance safety and sustainability. Such a holistic framework is crucial for creating cities that are functional, resilient, equitable, and responsive to community and legal needs.

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CHAPTER 2
THE EFCC AND THE PROMOTION OF GOOD GOVERNANCE IN NIGERIA: A DREAM OR REALITY?

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INTRODUCTION

One of the main disadvantages of democracy, socio-economic development, and credibility in regards to institutional credibility in Nigeria is corruption. Since returning to democracy in 1999, successive governments have faced the challenge of establishing good governance in Nigeria; good governance is characterised by accountability, transparency, rule of law and the delivery of efficient public services. However, it has frequently been undermined by systemic / institutional corruption that exists within Nigeria's Political, Administrative and Economic systems. If the public's perception is that public resources are being mismanaged or used for private gain, then the ability of the government (the state) will be diminished; consequently, the citizenry will lose faith in governmental institutions. Therefore, in the context of Nigeria, anti-corruption initiatives will form the primary focus of the governance agenda for the nation; as a result, several anti-corruption agencies (e.g., the EFCC) have been established to combat the problem.

Of these agencies, the Economic and Financial Crimes Commission (EFCC) is the principal agency responsible for addressing economic and financial crimes. The EFCC was established in 2004 under the Economic and Financial Crimes Commission (Establishment) Act; its mandate includes the investigation, prevention, and prosecution of economic and financial crimes (e.g., money laundering, fraud, embezzlement and other varieties of economic crimes). The establishment of the EFCC signified a renewed commitment by the Nigerian Government to comply with global anti-corruption standards, thereby restoring public confidence in Nigeria's governmental institutions (Adegbite, 2021). The Commission has had various successful operations, including the prosecution of high-profile political persons, the recovery of stolen assets, and cooperation with global partners to combat trans-national economic crime. However, the EFCC remains contentious as to its efficacy relative to promoting good governance.

Supporters of the EFCC's position contend that the agency has demonstrated significant levels of institutional endurance and operational courage in pursuing politically exposed persons previously viewed as beyond the reach of law enforcement; consequently, the EFCC's asset recovery actions, in conjunction with greater visibility relative to anti-corruption measures, have raised public knowledge concerning anti-corruption and deterred certain forms of financial malpractice. Finally, the EFCC's participation in global efforts toward anti-money laundering has improved the international perception of Nigeria's governments in their attempt to combat corruption.

Some critics believe that political influence and selective prosecution often limit the effectiveness of the EFCC. In addition, many believe that corruption investigations involving members of the ruling party are not pursued while investigations do occur against members of opposition parties. This perception of bias has raised concerns about the independence and credibility of the EFCC (Uzochukwu et al., 2022; Okonkwo & Usman, 2023). Some challenges include weak judicial processes, slow-moving trials, and a lack of successful convictions, all of which prevent the EFCC from accomplishing its anti-corruption goals. As a consequence, high-profile cases are often delayed in the courts, and these delays reduce the deterrent effect of anti-corruption enforcement, increasing public distrust.

The EFCC is also not functioning effectively due to existing structural and institutional constraints. The EFCC has limited operational budget and available staff to conduct thorough investigations and obtain successful prosecutions. In addition, the governance environment (including a weak political will to prosecute corruption and strong patronage networks) has limited the effectiveness of the EFCC. The institutions responsible for anti-corruption are usually not adequately linked to important reforms in the judiciary, legislature, and public administration. Such weaknesses have established systematic loopholes that create opportunities for corruption (Nwaodu & Ibeogu, 2023). This debate about the role of the EFCC raises questions about the extent to which the EFCC is a true accountability mechanism or simply a symbolic agent in the effort to combat corruption in Nigeria.

While the presence of an EFCC demonstrates a commitment to combating corruption, the effectiveness of the EFCC is dependent upon the degree to which it operates autonomously, uses due process, and obtains consistent judicial decisions. Without these characteristics, anti-corruption initiatives may be perceived to be driven by political motivations rather than genuine reform.

This paper adopts a review-based research design to critically assess the contribution of the EFCC to good governance in Nigeria. The study of the EFCC is based on the study of its evolution as an organisation, its strategic actions, and its limitations in conducting investigations, while incorporating the available empirical literature and current theoretical constructs. The purpose of this research is to provide a comparative evaluation of the EFCC with its relationship to the governance structure at large, and assess the EFCC's potential to serve as a catalyst for transparency, accountability, and democratic consolidation, especially in an environment characterised by widespread corruption and weakness in institutional capacity.

The importance of this study will be enhanced if public and government officials in Nigeria continue to seek changes to government institutions and renewed efforts to combat corruption. Given the calls from citizens and other stakeholders for greater government accountability and judicial independence, this is a valuable time for the EFCC to establish itself as an important instrument in ensuring where the EFCC fits on this continuum and how the EFCC may help shape the direction of major political reforms and thereby strengthen the democratic trajectory of Nigeria (Ibrahim & Abdullahi, 2024). Ultimately, the anti-corruption efforts in Nigeria will not only depend on the success of the EFCC but also on the commitment of political leaders to maintain integrity, transparency, and the rule of law.

Based on the foregoing, this research seeks to address the following research questions:

- What has been the EFCC's input towards enhancing good governance in Nigeria?
- To what extent has the EFCC objectively and satisfactorily carried out its anti-corruption role?

- What structural, political, and legal barriers hinder the performance of the EFCC?
- Is the impact of the Commission a dream and not a reality for the public and academics?

Drawing on critical analysis of academic literature, official reports, and institutional assessment, this research aims to characterize the EFCC as a revolutionary or a constrained bureaucracy in Nigeria's struggle for good governance.

1. CONCEPTUAL FRAMEWORK AND THEORETICAL FOUNDATION

1.1 Conceptual Clarifications

1.1.1 Good Governance

Good governance describes how governmental authority is wielded, how collective decisions are made, and how public resources are utilized to promote the welfare of society. Good governance is not limited to how the formal institutions of government function, but also how the quality of relationships between the state and its citizens affects governance. According to the United Nations (2021), good governance has six fundamental characteristics: transparency, accountability, participation, responsiveness, equity and the rule of law. These characteristics make governance systems inclusive, efficient, and capable of creating public value while protecting citizens' rights and freedoms.

Transparency, for instance, means that the government's actions, decisions, and financial transactions must be made public, allowing citizens access to this information and holding government officials accountable. Accountability is also critical, since it requires that public officials be held accountable for their actions and that there be consequences for acts of misconduct. Participation means that all citizens should have the opportunity to participate in the decision-making process, thus enhancing the legitimacy of the democratic process. Lastly, responsiveness refers to the ability of the institution to respond quickly and effectively to the needs of the people; equity refers to the fair and balanced distribution of resources and opportunities; and finally, the rule of law ensures that individuals are protected from the arbitrary use of governmental power.

Addressing these principles are particularly challenging for governance in Nigeria. Nigeria suffers from high levels of corruption, limited institutional capacity and a politically oligarchical system that severely constrains administrative efficiency and destroys citizen confidence in the government's administrative system. Corruption has a number of negative effects on the system of governance, including distorting the implementation of public policies, frustrating the equitable distribution of public resources and reinforcing inequalities between different groups. As a direct result, the quality and consistency of governance outcomes are often limited, and citizens are often provided with poor service delivery from the government, do not have adequate access to justice, and are excluded from a meaningful role in the public decision-making process.

Anti-corruption agencies such as the Economic and Financial Crimes Commission (EFCC) are critical components of this complex governance environment. The EFCC was established to investigate economic and financial crimes, and it contributes directly to promoting two fundamental aspects of good governance (accountability and transparency) by investigating and prosecuting corruption, recovering stolen public assets and restoring the integrity of institutions and deterring financial misconduct in both the public and private sectors.

The extent to which the EFCC promotes good governance is dependent on many factors including the agency's independence as an institution, operational capacity and the greater political milieu. Although the EFCC has the potential to enhance the rule of law and build trust in government, many challenges exist for the EFCC including selective enforcement of corruption by the EFCC, delays in judicial process and political interference in the work of the EFCC, which undermine the effectiveness of the agency. Thus the performance of the EFCC is viewed as an indicator of Nigeria's commitment to good governance. To achieve good governance in Nigeria, there must be a multi-faceted approach that includes the establishment of anti-corruption institutions, institutional reform, political will and active engagement of citizens. Improving the efficiency of the judiciary and encouraging civic accountability will promote the establishment of a governance structure which is transparent, inclusive and responsive to the population's needs.

1.1.2 Corruption

Corruption has many definitions but is often classified as the illegal act of taking advantage of one's position for personal gain. The most common types of corruption include bribery, embezzlement, nepotism, and influence peddling. However, other forms of corruption exist outside the "traditional" definition such as: inflating contracts; diverting public funds; capturing regulators; or manipulating public policy for the benefit of private parties.

Corruption undermines good governance by disrupting the processes of governance and totally eroding the moral and ethical basis upon which public institutions are supposed to function. In Nigeria, corruption is now systemic in nature as it permeates all levels of the political and administrative systems. This is especially true in key sectors such as public procurement, where inflated contracts and kickbacks are prevalent; and the judicial process, where there is a high level of influence which negatively impacts the delivery of justice (Adetula & Ezeani 2022). On top of the above-mentioned problems, political corruption, mainly through electoral malpractice and patronage networks, has facilitated the access of unqualified and unskilled individuals to positions of authority, thereby creating a vicious cycle of bad governance.

Corruption is a problem that has many dimensions and effects. The economic impact of corruption is misallocation of limited public resources and it reduces the effectiveness of government resources and development of the country. The social impact of corruption is the diversion of public resources from essential services such as healthcare, education, and infrastructure, which disproportionately affects those who are most in need. The institutional impact of corruption is a weakening of the credibility and effectiveness of public institutions leading to a breakdown of trust and civic participation by citizens.

Corruption also has a very negative impact on democratic governance by undermining accountability, transparency and the rule of law. When public officials act without fear of repercussion for unethical behaviour, it fosters a culture of complacency to unethical behaviour as well as weakening democratic institutions and processes. Therefore, to effectively address corruption in Nigeria requires the existence of strong legal frameworks; political will; reform of institutions; and continued efforts to instil ethical behaviour in public service.

1.1.3 Anti-Corruption

Anti-corruption is the term used for the procedures, regulations, and organizations that exist in a community to reduce the occurrence and occurrence of corrupt behaviour. The goal of these efforts is not only to punish corrupt conduct but also to promote ethical behaviour, increase accountability, and rebuild the public's confidence in the way that corrupt acts are handled.

Anti-corruption strategies include various forms of legislation, regulatory authorities (i.e., enforcement agencies), judicial processes, reforms of the public sector, and investments in civic engagement initiatives with the goal of supporting service, honesty and ethical behaviour.

Anti-corruption organisations, such as Nigeria's EFCC, have grown in response to Nigeria's extensive extent of corruption among political and administrative organizations.

The EFCC was established by the Economic and Financial Crimes Commission (Establishment) Act of 2004. The Commission is responsible for the investigation and prosecution of a range of economic and financial crimes, including but not limited to fraud, money laundering, and embezzlement, as well as to provide the general public with information about economic and financial crimes and work with other countries to combat transnational economic and financial crimes.

The Commission's activities are part of Nigeria's overall anti-corruption framework. By taking action against high-profile corrupt actors and recovering corrupt assets, the EFCC assists in creating the perception that there is no one above the law. However, many factors can affect the EFCC's ability to effectively combat corruption, such as: independence, access to funding, and cooperation with the courts and other oversight authorities. While the EFCC is a key component of Nigeria's anti-corruption effort, there are ongoing needs for continued reform to enable the EFCC to maximize its resources and achieve long-term results.

1.2 Theoretical Foundations

This study is underpinned by the agency theory as well as institutional theory.

1.2.1 Agency Theory

The Agency Theory offers a valuable perspective on understanding corruption in Public Governance Systems by looking at the relationship between the 'principals' (citizens) and 'agents' (public officials and institutions). Ideally, agents would work in the best interests of the principals, implementing policies and managing public resources in an effective way. Also, agents may also use their positions for personal gain rather than act on behalf of the principals' interests because of the lack of oversight and restricted enforcement of the actions of agents and the unequal distribution of information about an agent's behaviour.

This creates an opportunity for agents to engage in corruption because of their access to resources and knowledge excluded from the public conscience. Corruption, therefore, is viewed through the principal-agent theory's lens as a principal-agent problem where the absence of sufficient oversight of agents results in their engagement in opportunistic behaviour to the detriment of the public good.

To reduce corruption and the effects of the principal-agent problem, institutions like the Economic and Financial Crimes Commission (EFCC) are established for the purpose of monitoring, investigating and sanctioning the actions of public officials who violate laws or abuse their authority. The work of the EFCC makes it a significant part of the accountability mechanism in Nigeria's overall governance framework.

The effectiveness of the EFCC, however, is contingent upon the degree of autonomy it has from political interference. If the EFCC is influenced or controlled by political elites (who are also the 'principals' in the public governance framework), then it may not be able to effectively administer justice. Political interference may result in the EFCC only being selective in its enforcement and politically motivated in its prosecution of public officials who have committed offences, thereby casting doubt on the EFCC's legitimacy and ability to be an impartial enforcer of accountability (Adegboyega & Mohammed, 2023).

1.2.2 Institutional Theory

Formal rules are not the only predictors of the behaviour of parties in a given society; informal social norms and established customs also influence governance results. The degree to which anti-corruption efforts are effective depends primarily on how solidly, consistently, and independently institutions are in a jurisdiction. Institutions that are well-run, transparent, and insulated from outside influences will be able to serve their functions of enforcing regulatory regimes, ensuring compliance with those regulations, and discouraging individuals from engaging in corruption. These kinds of environments create predictability and build accountability, thus supporting good governance.

In contrast, when sociocultural norms are weak, as is often the case in Nigeria, informal social practices routinely undermine formal social rules. Political patronage and clientelism, along with bureaucratic ineptitude, frequently take precedence over the established and legal processes responsible for the governance of individuals and governance institutions. Delayed justice and selective prosecution destroy the credibility of the anti-corruption institutions, allowing those persons who do corrupt things to avoid being held responsible for their actions. These structural deficiencies promote an environment in which corruption can fester, even though there may be formal governance systems.

As such, the effectiveness of the Economic and Financial Crimes Commission (EFCC) cannot be determined solely by the statutory power the EFCC possesses; the ability of the EFCC to promote good governance is also influenced by the political and institutional context in which it operates, including the degree of independence in the judiciary, the level of political will to promote good governance, and the level of social norms in the broader community that affect the likelihood of enforcing laws and holding individuals accountable for their corrupt actions.

These theories together help query whether the EFCC has been an effective tool in bringing about good governance or merely a veneer for political necessity. Agency Theory brings to light the risk of politicisation and capture; Institutional Theory sheds light on the organisational weaknesses that impair performance.

Together, they highlight that combating corruption and instigating governance is not solely a question of institution building but ensuring that institutions are independent, legitimate, and regular in action.

2. METHODOLOGY

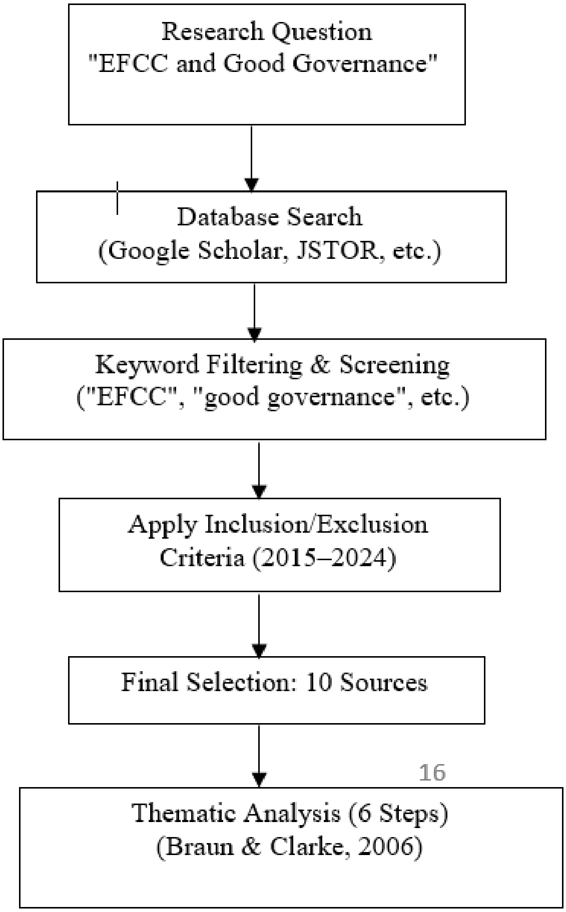
This study adopts a Systematic Literature Review (SLR) to critically investigate the role played by the Economic and Financial Crimes Commission (EFCC) in promoting good governance in Nigeria. The SLR provides a systematic and replicable approach to identifying, evaluating, and synthesizing scholarly and institutional literature that is relevant to EFCC efficacy.

Data were gathered from scholarly databases including Scopus, Google Scholar, JSTOR, and EBSCOhost, where the search was confined to publications between 2015 and 2024. The keywords used in combination for the search include: "EFCC," "good governance," "corruption in Nigeria," "anti-corruption," and "selective justice." The inclusion criteria were peer-reviewed articles, reports, and papers on Nigeria and the EFCC, while opinion articles, duplicates, and non-empirical pieces were excluded. A total of 118 studies were initially retrieved, screened, and narrowed to 10 high-quality sources in line with PRISMA guidelines.

Thematic analysis, which is the qualitative approach suitable for investigating and interpreting patterns within data, was employed in analyzing the data collected. Following Braun and Clarke's (2006) six-step process, the emerging major themes included institutional autonomy, political interference, legal constraints, public trust, and governance impact. These themes provide insight into the EFCC's ability, constraints, and growing influence in Nigeria's anti-corruption campaign.

Though SLR gives rigour, among the limitations are publication bias and lack of primary data that may impact contextual depth. Even so, the approach gives a reasonable foundation for analyzing how anti-corruption agencies like the EFCC impact governance outcomes in complex political environments.

Figure 1. Systematic Literature Review (SLR) Framework



3. RESULTS

3.1 Thematic Analysis

Thematic analysis of selected literature revealed five recurring and interlinking themes that permeate the discourse around the EFCC's function in the context of Nigeria's governance: institutional autonomy, political interference, legal and judicial limitations, public perception and trust, and governance reform impacts.

Table 1. Summary Table of Themes and Supporting Literature

S/N	Theme	Key Sources
1	Institutional Autonomy and Capacity	Adegboyega & Mohammed (2023); Okereke (2023)
2	Political Interference and Selective Justice	Uzochukwu et al. (2022); Okonkwo & Usman (2023)
3	Legal and Judicial Constraints	Ekhator (2022); Nwaodu & Ibeogu (2023)
4	Public Perception and Trust	Adetula & Ezeani (2022); Uzochukwu et al. (2022)
5	Governance Reform Impact	Adegbite (2021); Ibrahim & Abdullahi (2024)

3.1.1 Institutional Autonomy and Capacity

The literature shows a recurring point from many researchers that there is actual tension between institutional independence versus operational capacity for the Economic and Financial Crimes Commission (EFCC). The Commission has a statutory mandate to investigate and prosecute economic crimes; however, its success is highly contingent upon the receipt of executive support which could cast doubt on the Commission's independence (Adegboyega & Mohammed, 2023). Political appointment of individuals to lead the organization, reliance on budgetary allocations from the president and limited discretion to exercise prosecutorial discretion are reasons the Commission's institutional credibility has been weakened (Ibrahim & Abdullahi, 2024). Therefore, the organization is susceptible to political influence and selective enforcement.

Furthermore, there are operational challenges impacting the EFCC including inadequate funding, limited manpower, and insufficient technical resources. The combination of these factors limits the EFCC's ability to conduct robust investigations and effectively prosecute cases, especially in remote (or rural) areas where corruption may not be as visible, but where it, nonetheless exists (Okereke, 2023). Therefore these structural and capacity deficiencies will negatively affect the overall effectiveness of the Commission.

3.1.2 Political Manipulation and Selective Justice

The second primary theme identified in the literature relates to the public's perception of the vulnerability of the Economic and Financial Crimes Commission (EFCC) to political interference. Numerous studies indicate that the EFCC may be selectively enforcing the law, aggressively pursuing cases against opposition or rival members of the ruling party, while being relatively lenient towards allies in government (Uzochukwu et al., 2022; Okonkwo & Usman, 2023). This creates significant issues regarding the impartiality and fairness of the administration of justice.

The negative perceptions surrounding being perceived as a politically motivated agency rather than an impartial one greatly diminish public confidence in the EFCC and create significant legitimacy problems with its ability to act as an anti-corruption agency. As accountability mechanisms are no longer perceived as being based upon compliance with rules, there is a diminished belief in accountability systems, which reduces public support for anti-corruption initiatives. Thus, there continues to be a perception by the public that the EFCC is being utilized to conduct political witch-hunts, which calls into question both the motivation and effectiveness of Nigeria's more broad-based anti-corruption efforts.

3.1.3 Judicial and Legal Challenges

Despite numerous high-profile corruption cases being pursued by the Economic and Financial Crimes Commission (EFCC) ; However, major obstacles remain within the court system. The length of time it takes to complete trials due to ongoing delays from adjournments caused by procedural issues ultimately diminishes the overall effectiveness of anti-corruption efforts (Ekhator 2022). The decline in deterrent value from executing prosecutions after the downturns and Failed to try people has led to less faith and trust in the criminal justice system.

The requirement for proving guilt "beyond reasonable doubt" requires a prosecutor to have enough evidence to win a conviction; however many professional defense attorneys will find any loopholes that exist within the procedure.

In addition, sometimes there are various allegations against judges who may be corrupt or have been corrupt. All these issues significantly hinder the ability of the EFCC to achieve convictions; therefore, it is suggested by academics that there should be extensive reforms made to the judicial system including creating special anti-corruption courts designed to speed up the process and improve outcomes of prosecutions (Nwaodu & Ibeogu 2023).

3.1.4 Perception by the Public and Trust in Anti-Corruption Agencies

The public support is the ultimate determiner of the legitimacy and viability of anti-corruption agencies. Literature has a contradictory perception of the EFCC in Nigeria. Some perceive the Commission as a necessary watchdog, but others view it as ineffective or politicized (Adetula & Ezeani, 2022). High-profile but open-ended cases—especially against former governors, ministers, and political allies—have perpetuated public mistrust. Conversely, EFCC's publicity campaigns, asset recoveries, and youth programs have slightly improved its reputation, particularly among young Nigerians.

3.1.5 Impact on Transparency and Governance Reforms

EFCC's inputs to transparency as well as broader reforms in governance remain contentious. On the one hand, its efforts in asset recovery, financial investigative inquiries, and engagement with global agencies like Interpol and the World Bank have made notable impacts (Adegbite, 2021). Conversely, academics contend that the achievements of these institutions are eroded by the fact that the public financial management system has not undergone systemic reforms and that there is weak law enforcement against corruption. The EFCC's effectiveness, thus, seems more symptomatic than transformative—yielding short-term gains without targeting the sources of poor governance (Ibrahim & Abdullahi, 2024).

3.2 Discussion of Results

The review attests that EFCC's role in good governance in Nigeria remains a work in progress. In so far as its institutional framework and working mandate are robust, political interference and institutional weaknesses continue to dilute its efficiency. The independence of the Commission is undermined by political interference in appointments and budgetary allocations, which curbs its impartiality and enforcement capacity (Adegboyega & Mohammed, 2023). This is also worsened by pervasive feelings of selective justice whereby anti-corruption crusades are perceived to target political opponents rather than applying fairly (Uzochukwu et al., 2022).

Judicial inefficiencies that include lengthy prosecutions and formalities also undermine the efficiency of the EFCC (Ekhator, 2022). While efforts at asset recovery and sensitization to the public have improved, the role of the agency in systemic governance reform remains limited. They are reported to be indices that although the EFCC reflects the vision of good governance, its practical impact remains constrained by Nigeria's complex political and legal environment.

In reality, the EFCC is a dream walking, not yet a governance reality. Symbolic enforcement has to give way to real improvement, where deeper reforms in the judiciary, political system, and institutional checks and balances have translated anti-corruption into effective governance changes.

CONCLUSION

This review examined critically the contribution of the Economic and Financial Crimes Commission (EFCC) to good governance in Nigeria. Drawing from a systematic review of literature and thematic analysis, the study concluded that while the EFCC has been relatively successful in accomplishing its work through asset recovery, public sensitization, and financial investigation, its general contribution to governance reform is impeded by deep-seated structural and political challenges.

The problems identified so far include limited institutional freedom, political interference, judicial inefficiencies, and overall sentiments of selective justice. Such restrictions have undermined popular trust in the EFCC and limited its potential to be an actual force for change.

Whilst the Commission was envisioned to be a watchdog on public accountability, it has, in most cases, operated within a politicized environment that reduces its neutrality and effectiveness.

Nonetheless, the EFCC remains an indispensable agency that can contribute to Nigeria's anti-corruption and governance agenda. Its limited success is a vision yet to be completely fulfilled—a dream in motion, not a lost battle.

To improve its performance and promote sustainable governance, the following are recommended:

- Promote Institutional Autonomy: The EFCC should be granted operational and budgetary autonomy through legislative change to reduce executive control and promote neutrality.
- Strengthen the Judicial Process: The establishment of special courts to try anti-corruption cases and accelerated prosecution of corruption cases will improve prosecutorial effectiveness and reduce backlog.
- Increase Transparency and Accountability: Periodic public release of EFCC activity, including reports on significant cases, will build confidence and increase credibility.
- Enhance Interagency Coordination: Improved coordination with other anti-corruption agencies, civil society, and the international community will yield a coordinated and more effective governance reform agenda.

Through the adoption of these measures, the EFCC can evolve to become a reliable instrument for the realization of Nigeria's good governance vision.

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CHAPTER 3
THE CONSTITUTIONAL CONUNDRUM: ARTICLE 70 AND THE CURTAILMENT OF PARLIAMENTARY DEMOCRACY IN BANGLADESH

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INTRODUCTION

The Constitution of the People's Republic of Bangladesh, adopted on November 4, 1972, established a Westminster-style parliamentary democracy founded on the ideas of popular sovereignty, rule of law, and fundamental human rights. Article 70, embedded within this constitutional framework, has fundamentally altered the character of parliamentary governance in Bangladesh and ignited an enduring scholarly and political discourse on its compatibility with democratic constitutionalism.

Article 70 stipulates that an individual elected as a Member of Parliament on behalf of a political party must vacate their position either by resigning from that party or by voting in opposition to the directives of that party (Nira & Faiaz, 2026). Unlike analogous provisions in other regions, the anti-defection clause in Bangladesh is recognized as an unequivocal limitation on legislative autonomy in voting decisions. The impact is profound: the Parliamentary system in Bangladesh has been characterized as a mere rubber stamp, where legislative deliberation serves only a nominal function in the decision-making process, with actual authority remaining with party leadership (Hasan, 2024).

Recent political developments have heightened the present significance of this issue. In conjunction with the student-led mass uprising of July-August 2024 and the establishment of an interim government, the Constitutional Reform Commission (CRC) was formed with the mandate to examine constitutional restrictions that obstruct democratic administration. Mustafa (2026) asserts that the CRC conducted extensive public consultations and published white papers on structural impediments to democratic government, with Article 70 identified as a primary focus of reform. The Commission's conclusions corroborate the assertions of civil society organizations: Article 70 can function both as a vehicle for executive stabilization and as a means of systematically incapacitating parliament.

Attorney General Md Asaduzzaman has articulated this concern more emphatically, characterizing Article 70 as solidifying what he refers to as a Prime Ministerial Dictatorship throughout the fifteen years of the previous regime. In public statements cited by New Age (2026), the Attorney General noted that the absolute nature of the anti-defection law granted the executive branch unchecked control over the legislature.

This decision aligns with the CRC's initial recommendations advocating for the complete repeal of Article 70 rather than a gradual adjustment. Nevertheless, prominent political parties, including the Bangladesh Nationalist Party (BNP) and Jamaat-e-Islami, have advocated for limited reform, proposing that Members of Parliament (MPs) should possess the autonomy to vote, with exceptions pertaining to financial legislation, amendments to constitutional provisions, confidence votes, and matters of state security (Mustafa, 2026). The stark divergence between proponents of comprehensive reform and advocates of incremental reform underscores the contentious nature of anti-defection law within the political economy of Bangladesh.

The chapter seeks to accomplish three primary objectives. The analysis commences with an exploration of the historical setting of Article 70, situating it within the political landscape of post-1971 Bangladesh and addressing the reasonable concerns of the framers over governmental stability. Secondly, it constitutes a vital constitutional examination of the conflict between Article 70 and essential constitutional ideas, including the basic structural doctrine and the freedom of conscience within representative democracy. Third, it performs a comparative analysis of anti-defection mechanisms within the selected Westminster and Commonwealth legislations to identify alternative regulatory frameworks.

The primary argument presented in this article is that Article 70, in its current absolutist form, is unconstitutional as it undermines the essential structure of the Constitution by abolishing the separation of powers and the fundamental rights of elected representatives. The complete repeal of Article 70(b), rather than a selective change, is the fundamental prerequisite for reinstating parliamentary democracy in Bangladesh, provided it is complemented by necessary institutional reforms.

1. LITERATURE REVIEW

1.1 Historical Origins of Anti-Defection Provisions

The incorporation of anti-defection clauses in South Asian constitutions cannot be discussed without referencing the significant political turmoil prevalent during the years of independence.

Bhuiyan (2024) observes that political defections have become prevalent in emerging countries like Bangladesh, India, and Pakistan; thus, constitutional architects incorporated anti-defection provisions or stabilizing mechanisms. The practice of floor-crossing, defined as the transition of elected officials between parties for ministerial positions or financial incentives, reached epidemic levels in Pakistan during the period from 1947 to 1971, particularly among provincial assemblies.

The ephemeral Government of East Pakistan, led by Chief Minister Ataur Rahman Khan (1956-1958), exemplified the destabilizing consequences of unchecked defections. The Khan administration collapsed within two years due to systematic floor-crossing, an event that significantly shaped the constitutional awareness of the framers of the Bangladesh constitution (Hasan, 2024). The historical tragedy prompted the Constitution Drafting Committee, chaired by Dr. Kamal Hossain, to endorse anti-defection measures as a mechanism for ensuring stable governance in the nascent nation. This experience's historical significance was subsequently acknowledged in the judicial assessment of the constitutional legitimacy of Article 70. In Khandaker Mushtaq Ahmed v. Bangladesh (1981), the High Court Division was required to assess whether the original intent of the framers justified the continued imposition of restrictions on parliamentary independence, despite the significant alterations in the circumstances that prompted the creation of Article 70. Although the decision did not eventually influence the execution of Article 70, the court's reasoning revealed a substantial difference between original intent jurisprudence and the principles of democratic evolution. The Court observed that constitutional provisions must be interpreted in light of changing circumstances, asserting that a constitution is a dynamic instrument intended to endure across generations. This observation, however obiter dicta, established a substantial jurisprudential basis for subsequent challenges to Article 70, grounded in evolving democratic norms rather than the static conditions of 1972. The ruling demonstrates that even justices reluctant to invalidate Article 70 acknowledge the legitimacy of examining whether measures created in response to specific historical circumstances are constitutionally justifiable when those circumstances are absent.

The academic commentary has, however, raised more and more the question whether the response of the framers was commensurate to the alleged threat. Nira and Faiaz (2026) assert that while the historical context warranted a regulatory mechanism, the rigid interpretation of Article 70, which permits no exceptions for conscience voting or constituency interests, represents a constitutional overreach that the framers may not have fully comprehended.

1.2 Constitutional Tensions: Article 70 and Fundamental Rights

The discourse regarding the contradiction between Article 70 and Article 7 of the Constitution and the fundamental rights assured has been substantial. Article 39(1) guarantees the right to thought and conscience for all people, including Members of Parliament in the execution of their legislative responsibilities. This assurance is effectively superseded by Article 70, which mandates that representatives prioritize a party order over personal judgment, under the threat of expulsion from membership (Hasan, 2024).

The court's response to these matters has been significantly limited, with Abdus Samad Azad v. Bangladesh (1998) representing the most significant judicial scrutiny of Article 70's constitutional adherence. The High Court Division was assigned to evaluate whether Article 70 violated the fundamental rights protected in Part III of the Constitution, particularly the freedom of conscience granted by Article 39(1). The petitioner, a prominent political figure facing potential disqualification for anticipated dissent, argued that compelling MPs to vote against their conscience constituted a blatant infringement of constitutionally protected rights. The High Court Division, in upholding Article 70, articulated several interconnected justifications. The Court concluded that, although MPs are elected according to party platforms and manifestos, their conduct in Parliament must correspond with party positions to maintain democratic accountability to the electorate. The mandate theory of representation posits that voters select legislators primarily based on party affiliation, and hence, changing parties constitutes a breach of the political mandate. The Court designated Article 70 as a mandatory provision necessitated by the peculiar political conditions in Bangladesh, emphasizing the framers' legitimate concerns about governmental instability.

The Court distinguished between the freedom of conscience protected by Article 39(1) and the freedom to vote contrary to party directives, asserting that the latter is not encompassed within constitutional protection.

The rationale in Abdus Samad Azad v. Bangladesh (1998) has been subject to considerable academic scrutiny. Karim (2014) argues that the Court's mandate theory relies on empirically questionable assumptions about voter behavior, emphasizing that constituency-level factors—such as candidate personality, local development records, and patronage networks—significantly influence electoral outcomes in Bangladesh. Hoque (2013) contends that the distinction between freedom of conscience and voting freedom is conceptually unsustainable, as voting is the principal mechanism through which parliamentary representatives implement their conscientious evaluations of public policy matters. Despite these objections, Abdus Samad Azad (1998) remains the dominant precedent, with subsequent challenges to Article 70 dismissed on similar grounds, demonstrating the judiciary's institutional reluctance to undermine a provision considered essential for governmental stability.

1.3 Empirical Dimensions of Parliamentary Subordination

Alongside doctrinal research, modern literature has sought to quantify the democratic shortcomings associated with the execution of Article 70. Rafi (2025) conducts a comprehensive empirical assessment connecting Bangladesh's constitutional framework to internationally recognized governance metrics. The analysis indicates that Bangladesh's voice and accountability score—a composite metric created by the World Bank reflecting citizens' perceptions of their capacity to engage in governmental selection and express themselves freely—was merely 0.28 in 2023, positioning Bangladesh in roughly the 35th percentile worldwide. This indicator signifies the systemic constraints on political participation and legislative independence that Article 70 embodies and maintains.

In its 2023 annual assessment, Freedom House assigned Bangladesh a score of 39 out of 100, categorizing the country as partly free and emphasizing notable democratic shortcomings.

The report clearly delineates executive supremacy over the legislature as a principal factor inhibiting political rights, noting that the ruling party's significant parliamentary majority, along with constitutional stipulations that restrict legislative independence, has reduced Parliament to a mere ratifying body. This depiction aligns with Hasan's (2024) characterization of parliament as a rubber stamp institution, whose deliberative functions have been compromised by the constraints of Article 70's voting provisions and the absence of meaningful intra-party democracy.

The empirical correlation between the enactment of Article 70 and diminished governance indices requires thorough examination. The analytical difficulties of causal attribution in intricate governance systems endure; yet, the historical association between the progressively rigorous implementation of Article 70 and the decline of democratic indices suggests a relationship that goes beyond mere coincidence. When Members of Parliament cannot exercise independent judgment on legislation, meaningful scrutiny of executive actions becomes essentially impracticable. When party leadership controls all parliamentary votes, the separation of powers already diminished under Westminster systems entirely collapses. These quantitative metrics offer actual corroboration for the theoretical and doctrinal criticisms long asserted by legal scholars.

1.4 Democratic Theory and the Anti-Defection Paradox

Theoretical literature highlights the inherent contradiction that efforts to stabilize the government through the support of democratic governance simultaneously undermine democracy by diminishing the autonomy of the legislative branch. The stability-representation dilemma is a feature of anti-defection laws.

Proponents offer three arguments. The stability thesis posits that unrestrained floor-crossing results in governmental instability and disruption of policy. The rationale behind the mandate posits that voters select candidates based on party identification; thus, floor-crossing constitutes a breach of the electoral mandate. The corruption prevention rationale asserts that anti-defection contradicts the concept of commodifying parliamentary votes.

Critics detect the associated democratic deficiencies. The critique of deliberative deficiency highlights that legislators must be capable of modifying their viewpoints depending on rational discourse to establish a deliberative parliament. The argument of representation deficit highlights a discrepancy between party allegiance and constituency representation. The argument on the accountability deficit highlights that Article 70 effectively protects the executive from parliamentary accountability, as government backbenchers lack the authority to vote against executive-proposed laws, regardless of their quality.

1.5 Comparative Anti-Defection Frameworks

A comparative analysis reveals significant differences in defection regulation between countries. The United Kingdom, illustrating the Westminster system, does not possess constitutional or statutory anti-defection provisions. Floor-crossing is regulated by political customs and party disciplinary actions rather than legal sanctions, reflecting the Burkean perspective of Members of Parliament as representatives who utilize autonomous judgment.

The United Kingdom's method of upholding party discipline without constitutional mandates warrants specific consideration, as it illustrates that governmental stability does not necessitate legal restrictions on parliamentary voting. The mechanism via which British parties uphold discipline is referred to as the whip system, an informal political institution devoid of constitutional or statutory foundation. Party whips distribute weekly instructions to Members of Parliament, highlighting the importance of attendance and the party's voting position on each legislative matter. The three-line whip is the strictest directive, requiring attendance and categorizing any vote against the party line as a serious breach of party discipline.

Importantly, the repercussions of contravening a three-line whip are political rather than constitutional. An MP who votes contrary to the party line may encounter the revocation of the party whip (thus removing them from the parliamentary party), deselection by their constituency party, or reduced opportunities for ministerial promotion. However, they retain their parliamentary seat.

The differentiation between party discipline and constitutional disqualification is essential: British MPs maintain the legal prerogative to vote in accordance with their conscience, even when such an exercise incurs political repercussions. This framework supports the Burkean view of the Member of Parliament as a representative exercising independent judgment, while providing parties with sufficient disciplinary measures to maintain cohesion on essential matters.

The UK system also acknowledges free votes or conscience votes on matters where party directives are not mandated. Issues of considerable moral significance such as abortion, assisted dying, and same-sex marriage—have traditionally been resolved through free votes, permitting MPs to vote according to personal convictions rather than party directives. This approach acknowledges that certain issues transcend political concerns and encompass fundamental moral and ethical considerations. Article 70, conversely, permits no exceptions, compelling MPs to prioritize party discipline over personal conviction, even on matters unanticipated by the framers and devoid of any public mandate.

The Indian model, instituted by the Constitution (Fifty-Second Amendment) Act, 1985 and encapsulated in the Tenth Schedule, exemplifies a more nuanced approach to anti-defection law. The Tenth Schedule mandates disqualification for individual defections, however it has a significant exception for mergers, which pertains to group defections involving one-third or more of a legislative party's members. This exemption sought to distinguish between opportunistic individual defections, which the law aims to deter, and genuine realignments of political forces, which democratic institutions ought to welcome.

The merger exemption has sparked significant controversy and unforeseen repercussions. Political players have exploited the clause to enable wholesale defections, so subverting anti-defection objectives. In many state-level legislative contexts, a faction comprising one-third or more of the ruling party's legislators has defected to the opposition, claiming immunity under the merger exception. This technique has been employed to usurp state administrations, despite the anti-defection law's ostensible aim of preserving governmental stability.

The Supreme Court of India, in cases like Kihoto Hollohan v. Zachillhu (1992), has clarified that the merger exception applies exclusively to genuine organizational mergers of political parties, not to simple legislative defections.

The Indian experience offers valuable insights for Bangladesh. It demonstrates that even altruistic exceptions can be exploited in ways that undermine legislative objectives. It also illustrates the judiciary's role in interpreting anti-defection laws to prevent abuse while preserving legitimate political realignments. In Bangladesh, the Indian precedent suggests that any modification to Article 70 must carefully delineate exceptions to prevent the merger loophole from becoming a substitute pathway to the instability that anti-defection measures seek to address.

1.6 Research Gap

In spite of the significant academic interest, there are significant gaps in the literature. There is a lack of integration between the implications of the basic structure doctrine on anti-defection provisions and the existing scholarship. The similarities in the texts have been unduly highlighted through comparative analysis and the differences have been overlooked. Reform proposals have not been very effective in addressing the institutional complementarities that need successful reform. This chapter fills these gaps by methodical use of the fundamental doctrine of structure to article 70 analysis and progress of integrated reform framework.

2. THEORETICAL FRAMEWORK

2.1 Parliamentary Sovereignty and Constitutional Supremacy

This discussion is grounded on two fundamental doctrines: parliamentary sovereignty and constitutional supremacy. Classical Diceyan sovereignty asserts that Parliament possesses the authority to create or abolish any law without restriction. Article 7(2) asserts that the Constitution is the paramount law of the Republic. In Bangladesh, parliamentary sovereignty is constrained by constitutional limitations, including fundamental rights and the basic structure doctrine.

Article 70 presents a distinct challenge: it is not the legislative authority of Parliament concerning foreign entities that is constrained, but rather the internal voting independence of the constituent members of Parliament. This internal constraint transforms Parliament into an aggregative entity rather than a deliberative body that articulates party positions. The theoretical question is whether this constraint is constitutionally valid or if it fundamentally alters the structure of Parliament, rendering it an unconstitutional amendment.

2.2 The Basic Structure Doctrine in Bangladesh

The Basic Structure Doctrine, articulated by the Indian Supreme Court in Kesavananda Bharati v. State of Kerala (1973) and subsequently upheld by the Bangladesh Supreme Court in Anwar Hossain Chowdhury v. Bangladesh (1989), posits that the Parliament's amending authority cannot obliterate the fundamental structure of the Constitution of the respective nation. The Appellate Division identifies several essential structural provisions: the supremacy of the Constitution, democracy and republican governance, separation of powers, judicial independence, and fundamental rights (Ahmed, 2023).

In Anwar Hossain (2024), Just. Badrul Haider Chowdhury noted that an inconsistent amending a law is untenable and unconstitutional. Ahmed (2023) asserts that the basic structure doctrine provided the theoretical foundation for the judicial review of constitutional amendments in Bangladesh until the enactment of Article 7B, which established codified unamendability in 2011.

The application of the basic structure doctrine to Article 70 necessitates an examination of whether the anti-defection clause affects the basic features set forth in the constitution. Democracy and republican governance assert that sovereign authority must be wielded by representative institutions that are really responsible to the populace. When Article 70 transforms Parliament into a ratifying body, with the outcomes of its votes determined by extra-parliamentary party leadership, it constitutes a fundamental violation of democratic governance. Functional difference among the legislative, executive, and judicial branches is essential for the separation of powers.

Article 70 diminishes parliamentary autonomy in favor of executive authority by permitting the Prime Minister to effectively participate in the majority party of the House of Parliament and vote through the anti-defection mechanism.

2.3 The Delegate-Trustee Dichotomy

Democratic representation theory draws the distinction between the delegate (representatives as channels of constituency preferences) and the trustee (representatives acting under independent judgment to promote the welfare of the constituency) paradigms. Article 70 does not explicitly follow either of the models, but implicitly follows a party-mandate model whereby those elected are representatives of the political party that nominated them (Nira & Faiaz, 2026).

The model is theoretically justified, in cases where party manifestos are detailed enough and voters mainly choose party representatives based on party affiliation. However, the constituency-based studies indicate that aspects such as candidate personality, the history of local development can sporadically affect electoral results in Bangladesh which goes against the factual assumptions of the party-mandate model. The lack of intra-party democracy further increases the theoretical deficiencies. In case the voting by the party line of the members of Parliament is done not through consultations among members of the party, but as a unilateral decision of the chairperson, the argument that party line voting embodies democratic mandates is circular (Hasan, 2024).

2.4 Application to Article 70 Analysis

This model presents three analytical propositions. First, the absolutist interpretation of Article 70 undermines the framework by rejecting legislative discourse and deliberative democracy. Second, a comparative analysis demonstrates that democratic stability and legislative independence may coexist, as evidenced by the UK model. Third, the reform must be implemented in both the constitutional language and the internal politics of the political party; comprehensive reform, including the recission of Article 70 and other institutional adjustments, is necessary for substantial democratic restoration.

3. FINDINGS

3.1 Constitutional Incompatibility of Article 70

The analysis reveals a basic incompatibility of Article 70 with several sections of the constitution. The initial article (Article 39(1)) guarantees the right to freedom of thought and conscience; yet, the subsequent clause (Article 70(b)) compels Members of Parliament to subordinate their conscience to party directions under the threat of membership revocation. Article 7 confers sovereignty upon the populace, however Article 70 allocates actual sovereignty to the unelected party leadership. Article 11 establishes democracy as a fundamental principle of the state, however Article 70 undermines substantive deliberation within parliament (Nira & Faiaz, 2026).

The High Court Division's reluctance to invalidate Article 70 reflects concerns regarding judicial overreach rather than a fundamental constitutional alignment. The basic structure concept, however, legitimizes the jurisprudential foundation for judicial action when constitutional revisions or clauses undermine the essential characteristics of democracy. Justice Chowdhury observed that Article 7 includes provisions for amending the law and that such law can in no case be valid, should it be inconsistent with the Constitution (Hasan, 2024).

3.2 Comparative Insights and Alternative Models

Comparative insights can be really beneficial. The United Kingdom demonstrates that political stability does not necessitate legal constraints on the parliamentary voting process; rather, political limits and a sense of duty among parties are adequate to maintain discipline. A more restrictive approach is shown in the Tenth Schedule of India, which constrains the instances of confidence motions and defections to one-third of a legislative group. Article 63A of Pakistan has been modified through court interpretation to recognize justifiable dissent under certain instances (PRS Legislative Research, 2025).

Bangladesh's decision is only comparative with respect to comparable jurisdiction. A consensus on reform is developing, as seen by the July National Charter (suspended on October 17, 2025), which proposes that Members of Parliament be permitted to vote independently on all matters except for budgetary and confidence votes (Mustafa, 2026).

Nira and Faiaz (2026) advocate for the total removal of Article 70(b) to restore parliamentary sovereignty, legislative independence, and genuine democratic accountability.

3.3 Political Dynamics and Reform Feasibility

Rational institutional self-interest is seen in political party resistance to wholesome reforms. Party leadership is advantaged by the absolute power over how the parliament would vote, dissent amongst the parties is eliminated and the executive power is consolidated. The idea of selective reform in BNP: to allow voting freedom on all other issues only than money bills, constitutional amendments, votes of confidence, and state security, is an incremental advance and still leaves the executive in charge of issues considered as existentially important (Mustafa, 2026).

Nonetheless, the CRC proposal of total Article 70 elimination implies that it is increasingly being understood that biased reform only sustains executive hegemony and generates fictitious independence in the legislature. The inclusion of reform commissions by attorney general Asaduzzaman underlines their significance to realign constitutional institutions that are purportedly wrecked during the 15-year rule of toppled Prime Minister Sheikh Hasina (New Age, 2024).

3.4 Institutional Complementarities for Successful Reform

Analysis of the seven articles indicates that Article 70 reform requires adjustments through institutional reforms. The High Court Division could suggest secret voting techniques to address the independence of bipartisan MPs on crucial social concerns (Nira & Faiaz, 2026). Enhancing legislative oversight capacity, particularly through opposition leadership in standing panels like the Public Accounts Committee, would be beneficial (Mustafa, 2026). The demand would necessitate the implementation of anti-defection procedures due to underlying pathologies, which may be addressed by reforms in intra-party democracy, including transparent candidate selection and deliberative internal politics. Adjustments to the electoral system, such as the aspect of proportional representation, would minimize elements of winner-take-all that incentivize floor-crossing.

CONCLUSION

Article 70 of the Constitution of Bangladesh presents a paradox: a clause intended to ensure governmental stability has, in fact, undermined democracy by eroding the legislature and parliament, which are essential to democratic governance. The discussion indicates that the absolutist interpretation of Article 70 contravenes several key constitutional principles, specifically the liberty of conscience as articulated in Article 39(1), the popular will of the populace under Article 7, and the democratic governance structure outlined in Article 11. Comparative analysis suggests that established democracies maintain governmental stability without institutionalizing political allegiance, and a more moderate form of anti-defection policy has been adopted by neighboring jurisdictions.

The contemporary reform period, initiated by the mass uprising in July-August 2024 and recommendations of the CRC, presents an untapped potential to amend the constitution. Political opposition to comprehensive reform, however, represents a danger of reinforcing executive dominance, by selective reforms that maintain dominance over those issues that are deemed to hold existential importance whilst fostering illusionary legislative autonomy.

Recommendations

Based on the preceding analysis, the following recommendations are put forth:

- Semi-amendment lacks the potency to restore parliamentary democracy. Article 70(b) must be entirely abrogated to restore MPs' freedom to vote according to their conscience and the interests of their constituents. The UK's approach demonstrates that party discipline may be maintained through political conventions and elections without forcing the constitution.
- In case total repeal is not politically viable, the anti-defection provisions need to be applied in case of confidence motions and money bills only. A judicious and calculated strategy, grounded in the BNP's proposal and some stipulations of the Tenth Schedule of India, would facilitate governmental stability without reinstating parliamentary authority over quotidian matters.

- In instances of significant public or national interest, a provision for secret voting should be implemented to protect the Member of Parliament from party retribution, while enabling constituents to cast their votes in alignment with their interests without constraint. The results of voting must be disclosed to ensure voter accountability.
- Members of the opposition should be appointed as chairpersons of standing committees, particularly the Public Accounts Committee, in accordance with their representation in Parliament. This would augment the legislative authority of checks and establish countervailing power centers not limited by the executive.
- A legal statute mandating transparent candidate selection methods and deliberate procedures inside parties would address the inherent issues associated with the origins of anti-defection demands. They are expected to conduct regular internal elections and maintain transparent administration within their political parties.
- Amendments to constitutional provisions should require majority agreement from both houses of parliament (once the upper chamber is constituted) and, in the case of amendments to fundamental rights or essential structural provisions, must undergo referendum approval. This would render unilateral alterations to constitutional fundamentals by parliamentary supermajorities unfeasible.

All these recommendations would help restore the parliamentary sovereignty, the autonomy of Parliament, and true democratic accountability in Bangladesh. Without comprehensive reform, Article 70 will remain subversion of the fundamental characteristics of constitutional democracy, continuing executive hegemony and parliamentary servitude that is not in line with the core promises of the Constitution to popular sovereignty and representative democracy.

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