

CONSTITUTIONALISM AND GOOD GOVERNANCE IN NIGERIA: STEPS FOR EFFECTIVE APPLICATION*

Abstract

Nigeria's constitutionalism and its translation to good governance are more theoretical than practical. Several government policies evidently run against the tenets of rule of law, due process and public accountability in governance. Despite flowery constitutional provisions espousing democracy and accountability, Nigeria continues to struggle with a low adherence to the rule of law. The country faces significant challenges in achieving true constitutionalism and good governance due to corruption, institutional weakness, human rights violations, etc. This paper employed doctrinal methodology to evaluate the effectiveness of constitutionalism framework in promoting good governance. The paper found that there is an inseparable connection between constitutionalism and good governance while rule of law is respected. Strong adherence to rule of law is recommended thereto fostering sustainable development through genuine constitutionalism. The paper however will be a basis for further studies for strengthening government institutions.

Keywords: Constitutionalism, Policies, Good Governance, Nigeria

1. Introduction

Nigeria's journey to constitutionalism has been complex and marked by long periods of military rule¹ that have challenged the supremacy of its written constitution.² In order to have good governance and for the rule of law to be respected, constitutionalism then becomes a cornerstone. Nigeria having had a protracted period of military rule and its after effect, the concept of constitutionalism has become alien in the style of governance. The foundation of constitutionalism is the existence of a legitimate constitution. Nigeria's current written constitution is a product of a military government decree,³ and this questions the legality of the constitutionalism practiced in Nigeria. This is so because the Nigerian Constitution tells a lie against itself when it proclaims in its preamble⁴ as being the "firm and solemn" resolution of the Nigerian people when in reality the same was foisted on the people and not being a product of the collective will of the people as required by the principles of constitutional autochthony.⁵ A constitution that is made by the people or their elected representative void of any external influence is regarded as autochthonous.⁶ This basic flaw in the Nigerian constitution arguably deprives it of the core principle of constitutionalism and its ripple effect manifests in various forms *vis-a-vis* factors that militate against constitutionalism in Nigeria. There is a nexus between constitutionalism and good governance. It can be said that good governance is a product or by-product of constitutionalism given that constitutionalism in simple language is absence of authoritarianism or tyranny and the corollary is the presence of rule of law. Good governance is when the state's capacity and capabilities are strengthened, the civil societies are mobilized and the private sector is further reenergized. Good governance is equal to accountability and transparency and it is participatory and consensus-oriented and responsive.

2. The Nature of Constitutionalism

Constitutionalism is a system of political arrangement that is founded and governed by a supreme law, that can only be amended by the will of the people or through their constituent representatives, in which the practice of the rule of law, separation of powers, checks and balances and good governance are observed, and the rights and development of the citizens are paramount.⁷ Constitutionalism is the doctrine which governs the legitimacy of government action.⁸ Constitutionalism is the principle that government powers should be limited, typically defined by a constitution that establishes the framework for governance.⁹ Nwabueze¹⁰ on constitutionalism posits that constitutionalism recognises the need for government but insists upon a limitation being placed upon its powers. It connotes in essence therefore a limitation on government, it is the antithesis of arbitrary rule; its opposite is despotic government. Constitutionalism, in the context of law is a doctrine that a government's authority is determined by a body of laws or a constitution¹¹ which is the supreme law of the land. It seeks to

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¹Nigeria was under military rule for approximately a period of 33 years, from the first *coup d'état* on 15th January, 1966 to the return of civilian rule on 29th May, 1999, with a brief civilian interregnum in the second Republic from 1979 to 1983

²A written constitution is a set of fundamental principles for governing a nation formally codified and compiled into a single cohesive document or a collection of documents. It outlines the structure of government, the powers of its various organs, institutions or branches and duties of both the government and citizens.

³Decree No. 24 of the Constitution of the Federal Republic of Nigeria (Promulgation) Decree, 1999 signed on 5th May, 1999.

⁴The Preamble of the CFRN, 1999 falsely asserts that the people of Nigeria are the makers of the Constitution.

⁵Constitutional autochthony among other things refers to the process of constitution making by the people in the exercise of their sovereignty.

⁶T Osipitan, *An Autochthonous Constitution for Nigeria: Myth or Reality?* A paper delivered at the University of Lagos Inaugural lecture series, (Lagos: University of Lagos Press, 2004), p. 7

⁷O Oyewo, 'Constitutionalism and the Oversight Functions of the Legislature In Nigeria', Draft paper presented at The African Network of Constitutional Law Conference on Fostering Constitutionalism in Africa held in Nairobi, Kenya.

⁸H Barnett, *Constitutional and Administrative Law*, 13th ed. (London: Routledge Publishers, 2019), p. 5

⁹<<https://ebsco.com/research-starters/history/constitutionalism>> accessed 26 August, 2025

¹⁰B O Nwabueze, *Constitutionalism in the Emergent States*, (London: Hurst & Co. Publishers Ltd., 1973), p. 1

¹¹R Bellamy, *Constitutionalism*, published online on <Britannica.com/topic/constitutionalism> accessed 26 August, 2025

prevent arbitrary government by designing mechanisms¹² that determine who can rule, how, and for what purposes. The practice of conducting a government in conformity with the spirit and letters of a constitution, which is the supreme law of the land, is one of the fundamental principles of constitutionalism. This implies that the constitution alone must serve as the source of all powers for all individuals and authorities.¹³ The same should be the beacon or light that guides the exercise of all statutory powers inclusive of making policies.

The essence of constitutionalism is the control of power by distributing it among state organs,¹⁴ subjecting them to reciprocal controls and cooperation in formulating the will of the state. Constitutionalism recognizes that democratic and accountable government must be coupled with observance of or compliance with constitutional limits on the exercise of power of government. In simple terms, constitutionalism is a system of government which seeks to fight against impunity and authoritarianism in government.¹⁵ It is the antithesis of arbitrary rule.¹⁶ However, the point should be made that the fact that a country has a constitution should not be equated with the existence of constitutionalism nor does it automatically make it a constitutional government or a true practitioner of constitutionalism.¹⁷ If a county practices constitutionalism, it will be evident from the constitutional provisions and how such is carried out.¹⁸ The doctrine of constitutionalism suggests, at least, the following:

- a. That the exercise of power should be within the legal limit conferred by Parliament on those with power- the concept of *ultra vires*- and that those who exercise power are accountable to law.
- b. That the exercise of power – irrespective of legal authority – must conform to the notion of respect for the individual and the individual citizen’s rights;
- c. That the powers conferred on institutions within a state- whether legislative, executive or judicial- be sufficiently dispersed between the various institutions so as to avoid the abuse of power; and
- d. That the government, in formulating policy, and the Legislature, in legitimating that policy, are accountable to the electorate on whose trust power is held.¹⁹

The minimum core elements of constitutionalism include: entrenched and protected fundamental rights and freedoms; the doctrine of separation of powers; the independent judiciary; the supremacy of the constitution; and judicial review of the constitutionality of laws and actions of government; civilian control of the police and the armed forces (military); control of the alteration and amendment of the constitution; and the existence of strong democratic institutions to promote good government and governance, and to hold the government accountable.²⁰

Constitutionalism and good governance are overlapping spheres. Where there is constitutionalism, you find good governance because constitutionalism means the absence of tyranny or arbitrariness and impliedly rule according to law which necessarily translates to good governance. Thus good governance in law refers to a system of management for public institutions that is transparent, accountable, and adheres to the rule of law and human rights, ensuring that public resources are managed fairly and free from corruption and abuse.²¹ Good governance is intrinsically linked to the rule of law; it is the process by which institutions uphold legal principles, ensuring that power is exercised according to known laws rather than arbitrary discretion. Governance refers to all processes of governing, the institutions, processes and practices through which issues of common concern are decided upon and regulated.²² Good governance relates to the political and institutional processes and outcomes that are necessary to achieve the goals of development. The true test of 'good' governance is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights.

¹² These mechanisms are generically termed as ‘checks and balances’ designed to ensure accountability in the exercise of statutory powers and in public governance; Ss. 4 (8), 5 (4) (a) & (b), 231 (1) & (2) CFRN, 1999 etc.

¹³ S 1 CFRN, 1999

¹⁴ Distribution of powers among organs of the State is encapsulated in the principle of separation of powers; Ss. 4, 5 and 6 of the CFRN, 1999

¹⁵ O E Nwebo, *Critical Constitutional Issues in Nigeria* (Owerri: Ee-Heh Versatile Publishers Ltd. 2011), p. 19

¹⁶ C H Mcllwain, *Constitutionalism: Ancient and Modern*, (Ithaca: New York Cornell University Press, 1947), pp. 21 - 22

¹⁷ This caveat is necessary as it is usually misunderstood that constitutionalism refers to following the law of a particular constitution. If this literal meaning is to be reckoned with, then it means autocratic governments may claim that they are constitutional governments simply because they have a constitution that they are working with. Even states that are democratic may not necessarily be practicing constitutionalism.

¹⁸ K Urhibo, ‘The Prospective Nexus between Constitutionalism, the Rule of Law and Democratic Good Governance: The Nigerian Experience’, *Beijing Law Review*, 14, pp. 584-605.

¹⁹ H Barnett, *Constitutional and Administrative Law*, op. cit., p. 5

²⁰ L Henkin, *Elements of Constitutionalism*, 60, op. cit, pp. 11 - 12

²¹ <https://www.google.com/search?q=what+is+good+governance+in+law&oq=what+is+good+governance+in+law&gs_lcrp> accessed 26 August, 2025

²² [ohchr.org/en/good-governance/about/good-governance](https://www.ohchr.org/en/good-governance/about/good-governance)> accessed 26 August, 2025; United Nations Human Rights, Office of the High Commissioner

3. Wither Legal Constitutionalism in Nigeria?

Legal constitutionalism connotes an entrenched, rights-based, and justiciable²³ constitution that supports stable and accountable government, obliging legislatures and executives to operate according to the established rules and procedures.²⁴ Above all it prevents their sacrificing individual rights to administrative convenience, popular prejudices, or short-term gains. The concept of legal constitutionalism aims to prevent democratic governments from falling below their self-professed standards of showing all equal concern and respect. So, a legal constitution is seen as a corrective to-even a foundation for- a working political constitution though it remains a moot point whether it performs its appointed task effectively or legitimately.

The above scenario raises the issue of the non-justiciability of Chapter II of the Constitution of the Federal Republic of Nigeria (CFRN), 1999.²⁵ Much as the CFRN, 1999 is a legal document, can it be said to meet the principles of constitutionalism and good governance (which demands accountability) in view of section 6 (6) (c) of the same which makes the entire Chapter II of the CFRN, 1999²⁶ non-justiciable? The provisions of section 6 (6) (c) is in contradistinction and a total departure from the provisions of Section 13 of self-same constitution which mandates all organs of government, and of all authorities and persons, exercising legislative, executive and judicial powers to conform to, observe and apply the provisions of Chapter II. Section 13 CFRN, 1999 therefore creates responsibility without liability in the event of a breach by the Government. A government that cannot be liable for its failure to carry out its constitutional obligations cannot be said to bear any responsibility. Though the Constitution is legal such provision negates the spirit and letters of constitutionalism and good governance. Such government cannot be accountable to the people who are the ultimate sovereign in a democracy. It appears as nothing but a constitutional fraud against the touted “sovereignty” or “sovereign power” purportedly vested in the people by section 14 (2) (a). Therefore, section 14 (2) (a) which vests sovereignty on the people in view of section 6 (6) (c) becomes rather cosmetic and academic. This provision further negates and nullifies the claim in the preamble of the Constitution which asserts that same was made by the people for themselves.²⁷ It is clearly not conceivable that a people will come together to defraud themselves and create room for their government to be irresponsible and unaccountable.

Constitutional Legitimacy

The inevitable issue of the legitimacy of the Constitution of the Federal Republic of Nigeria avails the opportunity for a legal appraisal of the concept of constitutionalism and good governance in Nigeria. There would be no discourse on constitutionalism without a reference to the legitimacy of the constitution. The question arises whether the 1999 Constitution of Nigeria is a legal product of a democratic process? Constitutions are legitimate only if they represent the commonweal of the people they govern. A legitimate constitution must evolve from the voluntary will of the people. Therefore, constitution enactment by an undemocratic government or through an undemocratic process, does not bestow same with the character of legitimacy. The stereotyped phrase in almost all the preambles of successive Constitutions of Nigeria that “we the people of the Federal Republic of Nigeria ...” does not, and cannot clothe them with legitimacy, for it is the Constitution that enables and legitimizes government and not otherwise. Legitimacy of constitutions hinges on the fact that they are representative (or expressive) of the people they govern. There is a unanimity that constitutions should express the distinctive will, identity, character and the values of the nation they govern.²⁸ Representativeness of constitutions is considered a prerequisite for their legitimacy.²⁹ The Nigerian constitution obviously purports to be representational with the wordings of the preamble though in fact it is quite the opposite given the fact it is not a democratic constitution.³⁰ Usually, representativeness is realized by using real or hypothetical consent. Constitutions often require public acceptance in the form of referenda or elections of representatives that indicate the willingness of the people to be bound by the constitution. The referenda showing the will and or consent of the people is lacking in connection with the Nigerian constitution.

Legitimacy means lawful or lawfulness.³¹ It refers to something that is legal because it meets the specific requirements of the law.³² A constitution is legitimate if it represents the consent or collective will of the people it governs.³³ A very

²³That is, liable to trial in a court of justice

²⁴<https://britannica.com/topic/constitutionalism/political-and-legal--constitutionalism-compared> accessed 26 August, 2025; section 4 and 5 of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 clearly delineates the powers of the legislature and executive, respectively

²⁵S. 6 (6) (c) CFRN, 1999

²⁶Ss. 13 – 24 of the CFRN, 1999 captioned Fundamental Objectives and Directive Principles of State Policy

²⁷The Preamble of the CFRN, 1999

²⁸ L David, *Imposed Constitutions and Romantic Constitutions*, in Albert, Richard, Contiades, Xenophon and Fotiadou, Alkmene (eds.), *The Law and Legitimacy of Imposed Constitutions* (Routledge, London, 2019) 38 Google Scholar; V C Jackson, *Constitutional Engagement in a Transnational Era* (Oxford University Press, Oxford, 2010) p. 155 Google Scholar (characterizing constitutions as forms of national self-expression).

²⁹The concept of ‘representativeness’ can be construed in many ways. See, for example, J Rubinfeld, *Freedom and Time: A Theory of Constitutional Self-Government* (Yale University Press, New Haven, CT, 2001) Cross Ref Google Scholar; M W McConell, *Textualism and the Dead Hand of the Past* (1998) 66 George Washington Law Review 1127 Google Scholar.

³⁰The Constitution of the Federal Republic of Nigeria, 1999 was promulgated under Decree No. 24 on 15th May, 1999 under the military regime of the then Head of State and Commander-in-Chief, Gen. Abdulsalam Abubakar

³¹Bryan A. Garner, *Black's Law Dictionary*, 7th ed. (St. Paul, Minn., 1999), p. 912

³²<<https://www.vocabulary.com>> accessed 28 August, 2025

³³A Harel and A Shinar, *Two Concepts of Constitutional Legitimacy*, Global Constitutionalism, Vol. 12, Issue 1, March, 2023, (Cambridge University Press, 2022), pp. 80 - 104

important aspect of constitution making among other things is the issue of legal power. It therefore follows that any process by which an existing legislative body be it elected or otherwise, without prior popular mandate for the purpose of enacting a constitution purports to make a constitution, cannot be a reflection of the popular will of the people. Its mandate is limited to law making and the limit of the existing constitution.³⁴ Any attempt by government to assume the right of the people amounts to usurpation and the outcome will be *ultra vires*. The 1999 Constitution has the imprint of authoritarianism written all over it, with no consideration to the genuine desires of the Nigerian people. It is given that constitutionalism is not a product or by-product of tyranny or autocratic government. There was not even the civility of a Constituent Assembly, let alone a referendum, thereby making the “We the people” in the preamble a lie and fraud. It is an illegitimate document and will remain so notwithstanding the number of amendments or alterations.³⁵

In conclusion, the constitution is integral to the effective functioning of the legal system- as the foundation upon which all subsequent legal institutions derive their power from; it represents the bridge between legality and legitimacy.³⁶ The constitution serves to limit the power of the state and the majority, protecting the rights of individuals and minority groups according to the principles enshrined within. It is trite that the legal enforcement characteristic enjoyed by the law is what lends it the force that compels adherence.³⁷ When this force is however removed from any law, it renders such a law supine and prostrate. The import and purport therefore is that government’s compliance with the principles of constitutionalism and good governance depends on political will and the accountability of elected officials rather than legal mandates.³⁸

Good Governance

Good governance in simple terms is the responsible conduct of public affairs and management of public resources.³⁹ It is given that the observance of democratic principles translates to good governance. The United Nations Development Programme (UNDP) defines good governance as “a commitment and the capability to effectively address the allocation and management of resources to respond to collective problems”⁴⁰ and defined Governance as “the exercise of economic, political, and administrative authority to manage a country’s affairs at all levels; it comprises mechanisms, processes, and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences”.⁴¹ Good governance as noted by the European Commission is asserted to be the transparent and accountable management of a country’s resources for its fair, equitable, sustainable economic, social growth and development.⁴² According to the African Development Bank (ADB), good governance involves energizing the private sector, mobilizing civil societies in addition to enhancing the ability and competency of a state.⁴³ Effective democratic governance is described in the Human Development Report of 2004 as the set of principles and core values that gives poor people the ability to participate in decision-making, while protecting them from the arbitrary and unjust measures taken by the government and other forces.⁴⁴ This entails making sure that appointed or elected public officials exercising statutory powers do so in accordance with prescribed or laid down procedures such that they can be held accountable for their actions or omissions. This is where the principle of checks and balances, due process, rule of law and separation of powers come in. The report highlights the following essential elements of democratic governance thus:

- 1) A system of representation that includes effective political parties and interest groups;
- 2) A voting process that ensures universal suffrage in free and fair elections;
- 3) A check and balance system built on the principle of separation of power, with an independent judicial and legislative arms of government;
- 4) A vibrant civil society that can oversee public policies and private businesses and providing alternative forms of political participation;
- 5) A free, unbiased and independent media.

Thus, governance is further stated as the process by which authority is used to judiciously utilize a country’s social and economic resources for growth and development.⁴⁵ Three crucial elements that can be used as a yardstick to measure an effective good governance are the structure of a political system; the process through which power is used to maximise the economic and; social resources of any country and the capacity of the government to create, formulate and implement

³⁴ B O Nwabueze *op. cit.* cited in E I Amah, *Nigeria: The Search for Autochthonous Constitution*, Beijing Law Review, 2017, p. 151 and published on <<http://www.scirp.org/journal/bir>>

³⁵ The CFRN, 1999 have undergone five alterations between 2011 - 2023

³⁶ F Hayek, *The Constitution of Liberty, op. cit.*, cited by Nsongurua Udombana, *Constitutional Restructuring in Nigeria: An Impact Assessment*, *op. cit.*

³⁷ O M Atoyebi, SAN, An Examination of Chapter II of the CFRN, 1999

³⁸ E Okon, ‘The Environmental Perspective in the 1999 Nigerian Constitution’, *Environmental Law Review*, 2003, pp. 256 - 278

³⁹ Urhibo K, ‘The Prospective Nexus between Constitutionalism, the Rule of Law and Democratic Good Governance: The Nigerian Experience’, *Beijing Law Review*, 14, pp. 584 – 605

⁴⁰ United Nations Development Programme (UNDP), Definitions of Governance from UNDP

⁴¹ Ibid

⁴² European Commission (2003). Standard Eurobarometer.

<<http://europa.eu.int/comm/publicopinion/>> accessed 10 September, 2025

⁴³ African Development Bank

⁴⁴ The United Nations Educational, Scientific and Cultural Organization, (2004), on Good Governance.

⁴⁵ K Urhibo, *op. cit.*, p. 601

policies.⁴⁶ Sharma⁴⁷ opines that the term “governance” encompasses all aspects of the way a country is governed, good governance has several characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective, efficient, equitable, and inclusive and follows the rule of law. At a minimum, good governance requires fair legal frameworks that are enforced impartially by an independent judiciary and its decisions and enforcement are transparent or carried out in a manner that follows established rules and regulations. In conclusion, Diamond⁴⁸ posits that there are different aspects of good governance. One is the interest and welfare of the general public by the government. Here, the training of state officials in their different disciplines is required for the policies and rules to operate effectively to which, it will better serve the overall interest of the public. The second aspect is commitment and dedication to the interest of the public which must emanate from dedicated and charismatic leadership.

Indices of Good Governance

There are certain indices that are recognized as universal in measuring and determining good governance. The Organization for Economic Cooperation and Development (OECD), posits that participation, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and respect for the rule of law are the eight elements that make up good governance.⁴⁹ Similarly, the UNDP, states that the following are some examples of how effective good governance is defined in societal terms: (i) Participation, (ii) Rule of law, (iii) Transparency, (iv) Responsiveness, (v) Consensus orientation, (vi) Equity, (vii) Effectiveness and Efficiency, and (viii) Accountability.

According to the Centre of Expertise for Multilevel Governance⁵⁰ the following mark or characterize good governance *vis-à-vis* public governance.⁵¹ They are as follows:

Democratic Participation of the Electorate: This entails the fair conduct of elections, representation and participation. Democratic participation ensures regular, free, and fair elections conducted without fraud and adhering to election rules and guidelines.⁵² Participation by the people either directly or through elected or legitimate representatives is a mandatory requirement for good governance. The people are an integral part of governance. Participation by the people comes in various forms- voting at elections of public office holders, voting through a referendum on government policies, participating in public debates and hearings and in decision-making *et al.* Participation is inclusive, ensuring balanced representation of all genders and fostering the involvement of vulnerable and less privileged groups. All voices are heard, and decisions are made in a way that reflects the will of the majority while safeguarding the rights and legitimate interests of the minority. The government must be answerable to the people because sovereignty belongs to them.⁵³

Observance of Human Rights: Human rights, rooted in fairness, dignity, equality, and respect, are upheld in accordance with the Constitution of the Federal Republic of Nigeria, 1999⁵⁴ and international standards or best practices, including the African Charter on Human and Peoples’ Rights, 1981 and Universal Declaration of Humans Rights, 1948 among others. Equality and inclusion are actively fostered, combating discrimination and hate while respecting diversity in all forms.⁵⁵

Rule of Law: The rule of law ensures legal certainty and fairness, guaranteeing that all individuals are treated with dignity, equality, and proportionality. Laws are enacted through transparent, accountable, and democratic processes, with the separation of powers⁵⁶ and judicial independence upheld nationwide. Measures are in place to ensure equality before the law, prevent discrimination, and safeguard against arbitrariness or abuse of power by public authorities.

Independent Judiciary/Judicial Review: The third arm of government is the judiciary.⁵⁷ It is the arm of government in charge of interpreting the law, more especially constitutional provisions. According to the idea of separation of power, the judiciary is the only arm of government empowered by law to carry out this statutory responsibility. Thus, this crucial arm of government must be independent in order for constitutionalism to exist in its actual reality. The idea of judicial review is an extension of the aforementioned. Through this procedure, any decision taken by the other arms of government can be brought before the court for review. It is crucial to preserving the rights and liberties of citizens and as such, it must be provided for in a constitution.

⁴⁶Committee of Experts on Public Administration, Definition of Basic Concepts and Terminologies in Governance and Public Administration (E/C. 16/2006/4) (New York, 2006), p. 20

⁴⁷S D Sharma, Democracy, Good Governance and Economic Development, *Taiwan Journal of Democracy*, 3, 2007, p 3.

⁴⁸L Diamond, Moving up out of Poverty: What Does Democracy Have to Do with It. CDDRL Working Papers, 2003 <<https://doi.org/10.1037/e597202012-019>> accessed 10 September, 2025

⁴⁹The United Nations Educational, Scientific and Cultural Organization, (2004) on *Good Governance*

⁵⁰It is an affiliate of the Council of Europe

⁵¹<<https://coe.int/en/web/centre-of-expertise-for-multilevel-governance/12-principles-25565951>> accessed 26 August, 2025

⁵² For example, the Electoral Act, 2022 and the CFRN, 1999

⁵³ S 14 (2) (a) CFRN, 1999

⁵⁴Ss. 33 – 43 CFRN, 1999

⁵⁵ S. 42 (1) Ibid

⁵⁶Ss. 4, 5 and 6 of the CFRN, 1999

⁵⁷ S 6 *ibid*

Public Ethics: The highest standards of public ethics are upheld, fostering trust in government, public institutions, and officials by ensuring they serve the public above individual interests.⁵⁸ A comprehensive ethics framework is established, including strategies, laws, regulations, codes of conduct, and guidance that prioritize ethical practices in policy and decision-making processes. Clear procedures address complaints and grievances related to ethical breaches and conflicts of interest, both during and after public service.⁵⁹ Measures are implemented to ensuring accountability and integrity in public institutions.

Accountability: Accountability demands that the government, public institutions, and officials take responsibility for their actions and decisions, accepting appropriate consequences for any misconduct or omissions. A clear accountability framework defines the responsibilities and obligations of public officials. Decisions are transparently reported, explained, and open to scrutiny, with the possibility of questioning or sanctions where necessary including corrective measures and commensurate remedies put in place for misconduct. The indices of good governance as listed herein are not exhaustive.

4. The Nexus between Constitutionalism and Good Governance

The road to democracy and constitutionalism is built on a constitutional legal framework which enables the government to control the governed. Constitutionalism consequently indicates that the authority of the government and its leaders should be well-defined and limited by the dictates and confines of the body of fundamental rules, regulations and laws of the land known as the constitution which coincidentally is the *fons et origo* or the *grundnorm* of the land.⁶⁰ The foundation of good governance is the constitution and it serves as the primary source of legitimacy, power and authority. The main component of effective governance is adhering to the statutory provisions of the constitution, particularly those statutory provisions that addresses the concept of separation of power,⁶¹ the rule of law and adhering to due process. The constitution must be created by the people⁶² and it must belong to the people or else, its legitimacy and foundation for successful administrations to dwell upon will constantly be in doubt or being questioned. Therefore, constitutionalism and good governance can only be effective when they are constrained by the law and law is applied equally to all citizens, when there are qualified independent institutions to enforce the law in a free, fair and equitable manner. Clear-cut rules and regulations about what is permitted under the constitution are necessary for an effective government in a well-functioning system.

Where there is constitutionalism, there is the rule of law and this includes the legislative process of law making, the judiciary, law enforcement and correctional systems of inmates, as well as the independence of the judiciary devoid of corruption. The legitimacy of the government is also important, and this can be done by promoting popular participation in government and decision making processes including but not limited to constitution making processes. Democracy and good governance are impossible without a functional legitimate government in place, just as good governance is impossible when there is prebendalism, piracy, lethargy and ineptitude. Consequently, the necessity for restructuring becomes inevitable so as to give everyone a sense of belonging as a motivating factor for participating in the nation-building process. Thus, on the basis of Nigeria's corporate existence, a restructuring that incorporates the right to self-determination should also be considered by the Nigerian government.

5. Factors Militating Against Constitutionalism and Good Governance

Numerous factors militate against constitutionalism and democratic good governance in Nigeria. These factors will be succinctly considered hereunder thus:

Corruption: Nigeria has struggled with corruption with every succeeding government. Corruption is a crippling factor that draws back against good governance. Corrupt practices interfere with the smooth administration and execution of government policies that serve the interest of the governed.

Weak Legislature: The legislature rather than being and function as a separate arm of the government in the spirit of separation of powers, has appeared in our view a mere appendage of the executive arm and a rubber stamp, thereby defeating the essence of checks and balances. This is due to the fact that principal officers have become vulnerable to manipulation, external control and blackmail.

Disobedience of Court Orders by the Executive: Respect for the rule of law is essential to maintaining the sanctity of the law. In *Governor of Lagos State v. Ojukwu*⁶³ the Supreme Court asserted that the effect of disobeying court orders would lead to the replacement of the rule of law with anarchy. The trend is still prevalent under Nigeria's democratic dispensation.

Poverty: There is no doubt that poverty and impoverishment are at a high level in Nigeria. The government has not done enough to alleviate the suffering of the people. The government has rather resorted to blame the opposition parties and imaginary enemies.

⁵⁸ For example, the Code of Conduct Bureau ensures that public office holders declare their assets

⁵⁹ For example, the Public Complaints Commission (Ombudsman)

⁶⁰ S 1 (1) CFRN, 1999

⁶¹ See generally sections 4, 5 and 6 *ibid*

⁶² This is where the concept of constitutional autochthony comes in or is applicable.

⁶³ [1986] 1 NWLR (Pt. 18) 621

Lack of Due Regard for Fundamental Human Right: Another significant challenge to Nigeria's constitutionalism is the lack of due regard for fundamental human right of citizens in Nigeria as enshrined in the Constitution.⁶⁴ This is due to the government's display of a complete and total lack of due regards for fundamental human rights of citizens at all levels. This is characterized by arbitrary arrests and detention, barring or stifling peaceful protests, unlawful or extra-judicial killing of citizens.⁶⁵

Weak Judiciary: The judiciary appears to be in total disarray as the courts appears to be engaged in a rivalry of supremacy as a result of conflicting court orders emanating from the courts. The courts appear now to be pawn in the hands of desperate politicians. This is particularly seen in pre-election and election petition matters where courts of co-ordinate jurisdictions make contradictory orders on the same subject matter. It questions the authenticity and justifiability of legal justice in Nigerian courts⁶⁶ and concern over the consistent and persistent somersaults of judicial officers in the temple of justice.⁶⁷ Anarchy is inevitable in any society, where there is the misapplication of law which automatically results in a miscarriage of justice.

Weak Press: A weak and compromised press is unreliable. Investigative journalism is no longer practiced by journalists. This has the attendant consequences of weakening the press, thereby preventing the press from serving as the watchdog in the society. When a government gains control by deceit, it hardly ever respects constitutional restrictions on its authority. The list is endless. From absence of credible elections to lack of accountability, transparency and good governance, Nigeria has more issues to grapple with in governance.

Majority of academic writers believe that the government has not met its obligations in the aforementioned areas of accountability, transparency and good governance. The major challenge preventing Nigeria from achieving that exalted level of excellent good governance has been and is still corruption.⁶⁸

6. Conclusion

Constitutionalism and good governance in Nigeria seem quite far-fetched. It is ironic that following the return of civil rule and seemingly democracy governance, governance has not really improved. This is partly because the Constitution of the Federal Republic of Nigeria, 1999 not being a product of the collective will of the people cannot serve as a foundation for the practice and sustainability of constitutionalism and good governance. The Constitution though has undergone alterations but this does not and has not cured the fundamental defect of its lack of legitimacy. It is a fact that the structure of the Nigerian Constitution is more unitary than federal hence it concentrates so much powers at the centre. This has caused unbridled abuse of powers by elected and appointed public officials in violation of constitutional provisions and due process. This does not create an atmosphere for constitutionalism and good governance to thrive. This work however will form the basis for further studies in relation to steps to strengthening government institutions which ultimately will lead to improved constitutionalism and governance in Nigeria.

⁶⁴Chapter IV of the CFRN, 1999 provides for fundamental rights of citizens. See also Section 46 (1) CFRN, 1999

⁶⁵A OYekini, Remand Proceedings and the Right to Personal Liberty in Nigeria: Revisiting Supreme Court Decision in Lufadejuv Johnson [2007] 8 NWLR (Pt. 1037) 535 at 562 (SC); LASULAW Journal, Vol. 2-3, p. 7.

⁶⁶Deborah Musa, *Judiciary Faces Integrity Crisis Over Conflicting Judgments*, Punch Newspaper, 14th June, 2024

⁶⁷F Oluwasanmi, *Judicial Anarchy: A Threat to Democracy*, Sun Newspapers, 30th August, 2016
<https://sunnewsonline.com/judicial-anarchy-a-threat-to-democracy> accessed 12th September, 2025

⁶⁸D A Ijalaiye, 'Democratic Governance in Nigeria: A Critical Appraisal' in *Law, Politics and Development: The Challenges of an Emerging Mega City: Essays in Honour of Babatunde Raji Fashola, SAN*, (University of Lagos Press, 2010), p. 5