

**THE INDEPENDENCE OF THE PARLIAMENT OF UGANDA  
IN IMPLEMENTING ITS LEGISLATIVE ROLE  
SINCE 1995.**

**BOGERE HAMZA  
LLB/14156/62/DU**

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## **DECLARATION.**

Research on and compilation of this project was solely my endeavor, with the help of my supervisor Mr. chima Magnus, who guided me on phrasing the contents to suit the subject matter of the project.

It is not a plagiarized work of any individuals, or institution, but my own Endeavour and origin.

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BOGERE HAMZA

LLB/14156/62/DU

Tel: 0772-384343

**APPROVAL** *My*

This is to satisfy that this work has been under<sup>^</sup> supervision, and that it is now ready for submission as approved by:



Mr. Chima Magnus

Supervisor

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## CHAPTER 1

### GENERAL INTRODUCTION.

#### 1.1 Historical analysis.

Uganda became a British protectorate in 1894 up to 1962, when the governor by then Sir Andrew Cohen, influenced her <sup>attainment</sup> attendance of independence through increasing the number of Indigenous representative in the legislative council (parliament), the governor prepared the people of Uganda for self government in what was known as **Cross Bench Members**,

Whose duty enhanced that they could check on the government and keep it to marks, and voice up the interest of the local people.

On 9<sup>th</sup> October 1962, Uganda was granted her independence by the British with Sir Edward Mutesa as the first president and Dr Milton Obote as the prime Minister.

Post independent Uganda was characterized by political instability, overthrow of government by promenade government officials, which greatly demised the independence of legislature, only to be reinstated by the NRM government in 1995, following Military cease of power in 1986.

Uganda witnessed enactment of a new constitution in September 1995, which became promulgated on October 8, 1995. The constitution reveals the existence and establishment of parliament, as an organ of government with power to make laws on any matter for the peace, order development and good governance.<sup>1</sup>

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<sup>1</sup> Article 79(1) of the constitution of Uganda

## **1.2 Background of the problem.**

Parliamentary autonomy has always been under threat since 1962. The executive being the major barrier to the legislature in her post independence political crisis in the country waved away parliamentary Sovereignty to the office of the president. Before 1995 parliament always served in the interest of the executive against the benefit of the whole nations to consolidate the executive in power.

Although the speaker is the head of parliament Statutory, the office of the president always demised such statutory provisions and the members of parliament were objects in parliamentary sessions, Since they could not object to any Motion as the parliamentary procedure requires but always seconded to interests of the executive.

With the enactment of the 1995 constitutional , which plainly stipulates for the independence of parliament as an organ of government , parliament from such laws solidifies her independence from any external influence mostly the executive, the judicially and the general public.

Parliament has established her independence in various statutory instruments as well be analyzed in chapter 5; from which it bases to freely implement her legislative roles with out <sup>external</sup> foreign interference of any kind.

## **1.3 Thesis statement.**

The legal work on which the parliament of Uganda operates its legislative work, overtly recognizes the autonomy of parliament although Syeregetically works with the executive and the judicially organs of government, she is absolutely independent, and it is this independence that should be realized for good development of the country.



It is not law, when the law makers are not independent and are always under external influence to make laws that benefits the executive *per se*, instead of the whole country. The legislature should enjoy formidable independence in her legislative role to enable through implementation of law which is actually good law.

The executive and the public are number one threats to the independence of parliament, and it is the statutory insight on such independence, that parliament formidably works freely from external interference.

#### 1.4 Hypothesis.

The law on which parliament stands on in implementing her legislative roles, overtly recognizes the independence of parliament. The parliament of Uganda absolutely enjoys independence in its legislative functions to the extent established in the statutory instruments. Parliament of Uganda is independent, from all external influence, the executive and the judiciary *per se*.

#### 1.5 Significant of the study.

The study reveals the independence of the legislature, how It has boosted from the executive and the judiciary to codify the law of Uganda as good law in the whole of East Africa.

In ascertaining what is good law, the study reveals the essence of the autonomy of law in Uganda and why law and order is highly recognized in the country. Through the independence of parliament, laws of Uganda are prestigious in other countries besides the domestic prestige of law in Uganda.

## **1.6 Research methodology.**

A criterion credibility of sources both direct and indirect has been employed in establishing this project. With the aid of materials on how to write a research paper, arrangement of the contents here in is of formal degree to benefit the reader interested in the project.

The project is highly based on Materials in the library, which were of benefit to the development of this work although some direct research was conducted on the location of parliament *per se*.

Contemporary narration is also comprised in the works which was directly conducted from those individuals who are concerned.

I majored on this topic of study because it arouses my interests, and can be sustained for a considerable period.

Various techniques are used, initiating from notes taking, documentations, the Usage or manner of handling references which starts with their numbering and placing the foot notes.

Direct references are also used from dictionaries Encyclopedias News papers and form interest search engines.

## **1.7 Objective of the study.**

- To extract the legal protection of parliamentary sovereignty in the legislative implementation from the statutory instruments.
- To establish how parliament enjoys the independence granted by law in the implementation of her legislative role.
- To reveal the possible threats to the independence of parliament if any.

## 1.8 Literature review.

The independence of parliament is a topic that attracts attention of many scholars in the legal field and other fields of study.

It is generally perceived that for a stable government to exist the independence of the legislative should be adhered to by both the judiciary and the executive. The following literature is of great importance to the study and helpful to the reader. AV Dicey (1885), states that;

*the principles of parliamentary sovereignty means neither more nor less than this namely that parliament thus defined has, under the English constitution the right to make or unmake any law whatever and further, that no person or body is recognized by the law of England as having a right to override or set aside the legislation. A law may, for our present purpose be defined as any rule which will be enforced by the courts the principle then, of parliamentary sovereignty may looked at from its positive side be thus described any Act of parliament, which makes a new law, or repeals or modifies an existing law, will be obeyed by court. The same principle looked at from its negative side may be thus stated: there is no person or body of person who can under the English constitution make rules which override or derogate from an Act of parliament or which (to express the same thing in other words) will be enforced by the courts in contravention of an Act of parliament. (1885, p 39)*

From this description can be deduced three basic rules.

- a) Parliament is the supreme law making body and may enact on any subject matter.
- b) No parliament may be bound by a predecessor or bind a successor.

c) No person or body including a court of law may question the validity of parliament's enactments.

**Thomas Herbs** reveals that the "*obligation of subjects to the sovereign is understood to last as long and no longer than the power lasteth, by which he is able to protect to them*".<sup>2</sup>

**Jean - Jacques Rousseau** provides that "*the sovereign being formed wholly of the individuals who comprise it , neither has nor can have any interest contrary to theirs and consequently the sovereign power need give no guarantee to its subjects*."<sup>3</sup>

It can be deduced that parliament serves there interests of the general public and it can therefore restrain from authority of the executive it the subject matter is controls to public interest.

**John Locke** in book 11, concludes *that if the people , have set limits to the duration of their legislative and ma de this supreme power in any person or assembly on temporally , it is forfeited upon the forfeiture of their rules, or at the determination of the time set, it reverts to the society and the people have a right to act as supreme and continue the legislative in themselves or place it in a new form or new hands as they think good.*" (p.242).<sup>4</sup>

From the above, it can be understood that parliament can exercise powers over that executive, in assertion to any public matter. it reveals that parliament in its legislative work , it should be independent from any body or organ like that of the executive.

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<sup>2</sup> The leviathan,1651

<sup>3</sup> The social contract and discourses, p. 177

<sup>4</sup> An essay concerning the true original extent and end of civil government

## 1.9 Conclusion

Parliament holds supreme power in trust for the people. on this view , the authority of the constitution will be dependent upon its conformity with a higher law, in conducting its legislative roles, Parliament should not serve for the interest of the executive or the judiciary , but should exercise autonomy for the benefit of the whole nation , through fulfilling the needs for he people in whose trusts parliament was a established .

In this study , one should not expect to find any name of any parliament of any sort , the study generalizes personnel in to their office which they hold

## CHAPTER TWO

### PARLIAMENT OF UGANDA

#### 2.1 Introduction

The independences or supremacy of parliament is the dominant characteristics of our political institution<sup>5</sup> parliamentary sovereignty is either the supreme legal authority with in a state or the supreme political authority with in the state <sup>6</sup>.

According to Jean Jacques Rousseau<sup>7</sup> the citizen enter in to contract with the states , surrendering to the stet individuals rights in exchange for the protection of their interest wholly

Indeed for Rousseau , ***“the Sovereign , being formed wholly of the individuals who compose it neither has nor can have any interest its neither has nor can have any enters contrary to their and consequently the sovereign power need give no to its subjects because it is impossible for the body to wish to hurt all its members” (p 177)***

There fore . Parliament, in conducting its work it is only limited to the interest of its member , it can not stand ruling from any out sided elements against the ruling of members of parliament.

In practice, the quorum of parliament is one third of all members of parliament entitled to vote<sup>8</sup>, nothing less or more can subject parliament with out formal consent of members of parliament .

in 1989 February , Uganda embarked on making the constitution with the appointment of the Uganda constitutional commission. on Augusts

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<sup>5</sup> Dicey ,1885 p. 39

<sup>6</sup> The theory of sovereignty restated in laslett 1975, chapter iv

<sup>7</sup> The social contract and discourses 1762

<sup>8</sup> Article 88 of the constitution of uganda

25 , 1995 the process was completed , and in September 1995 , the constitution was enacted and promulgated on October 1995.

Article 1<sup>9</sup> provides that;

*“All power belongs to the people who shall exercise their sovereignty in accordance with this constitution “*

The constitutional grant of power to the people literally implies, parliamentary sovereign power in the affairs of the state, people exercise their power through parliament ( members of parliament) , who stand for the voice of people on the nation level .

To demise the independence of parliament is unconstitutional and is a general threat to the public

Parliament should enjoy absolute autonomy from the government , in conducting here legislative function and roles.

Parliament is established by the constitution<sup>10</sup>, which also states the term of parliament to be five years from the date of its first sitting after a general elections .

## **2.2 Definition**

### **Parliament**

Parliament is the legislative body of a country. Black's law dictionary defines parliament as the supreme legislative body of some nations,

The parliament of Uganda is the supreme body with absolute powers for the enactment and revision of laws , it is parliament that acts as a bridge between the executive and the judiciary for the general benefits of the nation as a whole

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<sup>9</sup> 1995 constitution of Uganda

<sup>10</sup> Article 77

**'Precincts of parliament'**. means the chamber and offices of parliament and the galleries and places provided for the uses or accommodation of stranger, members of the public, and representative of the press , and includes while parliament is sitting , and subject to any exceptions made by the directions of the speakers, the entire building in which the chamber of parliament is situated , and any forecourt, yard, gardens, enclosure or open space adjoining or appertaining to that building and used or provided for the purpose of parliament<sup>11</sup> .

The house is made up of the majority party, the political party which secures the highest number of seats at the election , which forms the government. The official opposition is the party which represents the second largest party in terms of elected member.

In principles the role of the official opposition is to act as a government in waiting, ready at any time to take office should the government seek a dissolution of parliament

### **2.3 location**

The parliament of Uganda is located in Kampala the capital city of the country situated at parliament Avenue

### **2.4 Composition of parliament.**

Parliament consists of members directly elected to represents constituencies , one elected to represents constituencies , one women representative for every district; such numbers of representative of the youth, workers, persons with disabilities and other group as parliament may determines and the vice president and ministers , who if not already elected members of parliament shall be ex- officio

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<sup>11</sup> Section 1 (h) cap 258



members of parliament without the right to vote on any issue requiring a vote in parliament<sup>12</sup>

## **2.5 Departments of parliamentary**

The administration of parliament Act provides for the establishment of departments in the parliamentary service<sup>13</sup> and these include: department of the speaker, department of sergeant at arms, department of the library, research and documentation, department of the official report; department of legislative counsel and department of finance and administration

## **2.6 Personnel of parliament.**

### **The office of the speaker**

The speaker of parliament regulates proceedings of the house, the speaker is a senior member appointed by common agreement of all members, the election of the speaker and deputy speakers is the first task undertaken by parliament following a general election. The speaker acts with political impartiality and controls the business of the House.

### **The leader of the house**

The leader of the House is responsible to the prime minister for the organization of business in the House.

### **The party whips**

The party political control of members of parliament is in the hands of the party whips. The chief whips organizes the details of business of the house.

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<sup>12</sup> Article 78 of the 1995 constitution

<sup>13</sup> Section 24 of cap 257

### **Members of parliament (front and back benches)**

Business in the House is conducted on adversarial lines the adversarial nature is reflected in the lay out of the House . the House is divided in to two sections which face each others separated by the table of the house behind which the speaker sits.

### **2.7 Legislative role of parliament.**

In Representative government (1861) john Stuart Mill wrote of parliament:

*“ Instead of the function of governing for which it is radically with , the proper office of a representative assembly is to watch and control the government, to throw the light of publicity on its acts, to copal a full expedition and justification of all of them which any one considers questionable, and if the men who compose the government abuse their trust of fulfill it in a manner which conflict with the deliberate senses of the nation, to expel them from office and either expressly or virtually appoint their successor”.*

In phrase, parliament exist to represent the view and opinions of the people and to influence, constrain and demand justification for the action of government and to give them legitimacy

On the functions of parliament, the constitution provides that parliament has power to make laws on any matter for the peace, order, development and good governance of Uganda<sup>14</sup>,

No person or body other than parliament shall have power to make provisions having the force of laws in Uganda except under authority conferred by an act of parliament<sup>15</sup>.

It is a constitutional function of parliament to protect the constitution and promote the democratic governance of Uganda<sup>16</sup> 79(2)

Accordingly, the functions of parliament may be summarized as being as

- To provide the personnel of government
- To legitimize government actions
- To subject matters of public policy to scrutiny and influence<sup>17</sup>

## 2.8 Legislative process

In order to effect changes in the law, any proposal must receive the authority of parliament. Parliament legitimizes policy objectives. A mere decision of parliament in the form of a resolution can not change the law of the land.

Legislative proposals fall under two main categories, primary and delegated secondary legislation. Primary refers to act of parliament delegates or secondary legislation refers to legislation drafted by authorized persons or bodies under the authority of a parent statute.

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<sup>14</sup> Article 79(1) 79(1)

<sup>15</sup> ibid

<sup>16</sup> ibid

<sup>17</sup> Norton, 1985 a and sec 1993

In exercise of legislative powers the constitution provides *inter alia* the power of parliament to make laws shall be exercised through bills passed by parliament and assented to by the president<sup>18</sup>.

*A bill passed by parliament shall, as soon as possible, be presented to the president for assent*<sup>19</sup>.

Legislation is subsidiary and gradual, both while still a bill in parliament and at presidential assent, revealing the element of Synergy of parliament and the executive in implementing legislative roles.

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<sup>18</sup> Article 91

<sup>19</sup> *ibid*

## CHAPTER 3:

### INDEPENDENCE OF PARLIAMENT.

#### 3.1 Parliamentary Sovereignty.

Parliament is the Sovereign law making body in Uganda acting as a trusted to the general Public.

In conducting its functions, parliament should be free from interference of the executive, the judiciary and the Public.

On Sovereignty, Dicey stated:

*"The principle of parliamentary Sovereignty means neither more nor less than this; namely; that parliament thus defined has, under the English Constitution, the right to make or unmake any law whatever; and further, that no person or body is recognized by the law of England as having a right to override or set aside the legislation of parliament."*<sup>20</sup>

From this description can be deduced three basic rules.

- Parliament is the supreme law making body and may enact laws on any subject matter;
- No parliaments may be bound by a predecessor or by a successor;
- No person or body including a court of law – may question the validity of parliaments enactments.

#### Parliamentary privilege.

The privileges of parliament are those rules of parliament which offer protection from outside interference which offer from whatever source to the house collectively, and to individual's members. Erskine defines privilege as being.....*the sum of the peculiar rights enjoyed by members of the House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals. Thus privilege, although*

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<sup>20</sup> Dicey, 1885, P.39

*part of the law of the land, is to a certain extent an exemption from the general law. (1997 P.69).*

Parliament privilege provides protection for members of parliament against accusations of defamation from outside parliament, and also protects individual members in the exercise of his or her freedom of speech from the executive.

### **3.2. Elements of independence.**

#### **Functional independence.**

To realize the independence of parliament, in holding her functions, a parliamentary commission is established, by the Administration of parliament Act Cap 257. The commission is composed of the speaker, the leader of Government business, the minister responsible for finance and three members of parliament elected by parliament none of whom shall be minister<sup>21</sup>.

The commission regulates affairs of parliament, without any external influence, which could distort parliamentary functions.

Among the functions of the parliamentary commission, is to appoint, promote and exercise disciplinary control over persons holding public office in Parliament, to maintain proper security, for the members of parliament and facilities within the precincts of parliament, to provide such other staff and facilities as are required to ensure the efficient functioning of parliament<sup>22</sup>.

No one may question the validity of an act of parliament.

*'True it is, that what parliament both, no authority on each can undo'<sup>23</sup>*

It is therefore clear, that parliament of Uganda is independent in its functions, under the umbrella of the parliamentary commission.

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<sup>21</sup> Section 2(2) cap 257

<sup>22</sup> Section 6 ibid

<sup>23</sup> Blackstones commentaries on the laws of England (1765-69) vol 1

### **Personnel independence.**

The principal privilege of an individual member of parliament, are freedom of speech in parliament and freedom of members from arrest in civil matters.

The collective privileges of parliament include the exclusive right to regulate composition and procedure, right of access to the sovereign, and the right to the 'favorable construction' by the Sovereign in relation to its actions, these are formally claimed by the speaker, in the form of a speaker's petition to the executive at the opening of each new parliamentary session.

These are formally claimed by the speaker, in the form of a speaker's petition to the executive at the opening of each new parliamentary session.

The speakers are the presiding officer of the House and ensure that the rules of conduct and order are observed.

### **Disciplinary powers of the speaker.**

The control of debate on the floor of parliament lies with the speaker, who chooses on whom audience is granted. Advance notice of the intention to participate in debate is given and the speaker calls each side (government and opposition) alternating, and respects the rights of minority parties to participate.

It should be noted that no parliament may be bound by its predecessor or bind its successor. This is a clear rule that curtails the personnel independence of parliament.

Having established the office of the speaker as the Supreme office of parliament, members and officers of parliament are protected from external jurisdiction, which might incriminate them in their capacity as members of parliament.

Members of parliament enjoy legal immunity from legal proceedings, for words spoken before or written in a report to parliament or to a committee or by reason of only matter or thing brought by the member in parliament or a committee by petition, bill, and motion or otherwise<sup>24</sup>.

### **Institutional independence.**

Parliament is an institution, although it stands to serve the public, it is independent, with established rules and customs that have to be respected by all occupants.

The parliament (powers and privileges) Act, provides that

*"No process issued by any court in Uganda in the exercise of civil Jurisdiction shall be served or executed with in the precincts of parliament is sitting or through the speaker, the clerk or any officer of parliaments<sup>25</sup>."*

It is a well settled law that prohibits the entitlement of strangers as of right to enter or to remain with in the precincts of parliament<sup>26</sup>.

It is an offence for any person who being a stranger, enters or attempts to enter the precincts of parliament in contravention of any order of the speaker, and is liable on conviction before a court to a fine not exceeding five hundred shillings or to imprisonment for any term not exceeding three months or to both such fine and imprisonment.<sup>27</sup>

Precincts of parliament are statutory protected, from public interference, to enable members of parliament to freely carry out their roles, while with in

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<sup>24</sup> Section 2 cap 258

<sup>25</sup> Section 4 ibid

<sup>26</sup> Section 4 ibid

<sup>27</sup> Section 17 ibid



parliament, which entails the absolute independence of precincts of parliament.

### **Financial independence.**

The minister of finance is among the members of the parliamentary commission<sup>28</sup>. Which simplifies the financial compelled upon by the ministry of finance.

Parliamentary expenditures are catered for, from the consolidated fund, which is an established national fund to carter for all state expenses.

*"The administrative and operational expenses of parliament, including all salaries, allowances, graduates and pensions payable to or in respect of person serving in parliament shall be charged on the consolidated fund<sup>29</sup>."*

It therefore reveals that the financial independence of parliament is directly protected by the ministry of finance, which guarantees all the financial linguists in the day to day implementation of the legislative roles.

Parliament is at prerogative to make annual financial estimates, which are proceeded to the executive for clarification and governmental alterations and modifications<sup>30</sup>. This direct financial link between the parliament and the ministry of finance Is what shatters the financial expenses of parliament, with out defense or any external source, that could take advantage to influence the affairs of parliament source of finance, parliament is able to carry out its functions freely with in the legitimate procedures instead of waiting for a sponsor outside parliament, who could exploit the opportunity for individual interest and gains.

### **Government and opposition.**

It is the government which controls the majority of parliament's time. On 75 percent of sitting days, government business takes priority and it is the

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<sup>28</sup> Section 2 cap 257

<sup>29</sup> Section 20 ibid

<sup>30</sup> Section 19 ibid

government which determine the business to be undertaken (subject to established practices as to opposition Days, set a side for Private Members Bills) from scrutinizing the work of parliament it may be attempting the work of parliament, it may be tempting to underplay the importance of parliament as a whole, and the opposition in parliament with the power of government.

### **The law and Custom of parliament.**

The privileges enjoyed form part of the law and custom of parliament. *lex et consuetude* parliament and as such, it is for parliament to adjudicate on matters of privilege, not the courts. Privileges are embodied in rules of the Houses of parliament. Privileges derive from practice and tradition; they are thus customary in Origin.

### **3.3. Conclusion.**

Parliament comprises of different departments, each independent from the other, but all together form the absolute independence of parliament, work for the general independence of parliament.

## **CHAPTER 4:**

### **PARLIAMENT OF ANOTHER COUNTRY.**

#### **4.1 The Scottish parliament.**

The Scottish parliament was established under section one of the Scotland Act 1998. The 129 seat parliament is based in Edinburgh. The parliament's first task was to elect a presiding officer and two deputies<sup>31</sup>.

The Scottish parliament is unicameral and has a fixed four year term of office, subject of provision made for the holding of extra ordinary general election under section 3.

#### **4.2 The electoral process.**

Members of the Scottish parliament (MsPs) are elected in two different ways. The Majority is elected from individual Constituencies; the remaining Members are selected from party lists drawn up for each of the current European constituencies.

A clerk of parliament and Assistant clerks are appointed by the Scottish parliamentary Corporate Body, comprising the presiding officer and four members of Parliament.

#### **4.3 Parliamentary Committees.**

A parliamentary Bureau is established with the task of proposing the establishment, membership, remit and duration of committees. The Bureau's proposals are subjected to parliamentary approval. A number of Mandatory Committees have been established, which sit for the duration of a parliamentary session.

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<sup>31</sup> Scotland Act 1998, s 19 standing orders provide that persons holding offices of presiding officer or deputy do not represent the same political party

#### **4.4 parliamentary privileges.**

Section 41 provides that for the purpose of the law of defamation, any statement made in proceedings of the parliament and the publication of any statement under the authority of parliament is absolutely privileged.

#### **4.5 Suggested readings.**

H.C Deb Vol 298 Col 1041, 24 July 1997,

Vol 229 Col 456, 31 July 1997,

HI Deb Vol 561 Col 1526, 24 July 1997,

Vol 582 Col 185 31 July 1997.

#### **4.6 Conclusions.**

Credibility is worth to the independence of the parliament of Uganda , in implementing the legislative roles; Precondition for this is that the parliament is perceived independent from all other Organs of the Government ;which can not directly with out subsidy, interfere into the function of parliament.

There are many strategies through which parliament realizes her independence for example the parliamentary commission which is a body corporate<sup>32</sup>, able to restrain any kind of distortion against the independence of parliament

The legal frame work, on which parliament operates is also protective to the independency. The law is exhaustive and with vision of all the possible threats to the full potential of the legislative work, upon which through measures, are established to Penalize Possible Infringers.

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<sup>32</sup> Section 2 (3) cap 257

## CHAPTER 5.

### RESEARCH FINDING AND DATA ANALYSIS.

#### 5.1 Introduction.

A critical analysis is made to the operational independence of the parliament and the legal frame work providing for such independence statutory Instruments are of great importance to the extent to which parliamentary.

Independence is adhered, it is worth noting that they are many statutory acts that comprise parliament, and a Critical study was made to all those statutes, worth consideration to determine how parliamentary Sovereignty is protected. As they are written laws on which parliament stands customs of practice also exists in implementation of the legislative roles silent to public, but active among parliamentarians?

Parliament is comprised of the parliamentary commission, a body corporate which acts as the administration of the whole affairs and business of legislative.

#### **Statutory provision on the independence of parliament**

#### **Chapter 258**

#### **The parliament (powers and privileges) Act**

Members of parliament are immune<sup>33</sup> from legal proceedings, both Civil and Criminal for words spoken before or written in a report to parliament or to a committee or by reason of many matter or thing brought by the member in parliament or a committee by petition, bill, and motion or otherwise<sup>34</sup>.

The Act protects parliamentary sessions from Jurisdiction of courts in any way, which draws a uniform demarcation between parliament and courts of law. Members of parliament are therefore free from any distortion while in precincts

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<sup>33</sup> Section 2 cap 258

<sup>34</sup> ibid

of parliament, any distortion which enables them to exercise their legislative work freely.

Section 4 of the Act reveals that, ***“no process issued by any court Jurisdiction shall be served or executed with in the precincts of parliament, while parliament is sitting or through the speaker the clerk or any officer of parliament.”***

Parliament is therefore accorded independence from courts of law; this section operates to protect members of parliament from court proceedings, while in precincts of parliament.

Precincts of parliament alone according to protection from outside interference without authorization by the Act breach of each results into an offense under **section 17.**

Section 5 well states it that,

***“No stranger shall be entitled as of right to enter or remain with in the precincts of parliament.”***

The law retrains strangers from the precincts of parliament anyhow, despite the fact that parliament is a government organ, serving the general public entry into her precincts; one has to secure authority and follow the established rules and guidelines governing the institutional.

## **Chapter 257.**

### **5.3 The administration of parliament Act.**

Parliament as an institution is run by the parliamentary commission, composed of the speaker, the leader, the leader of government business , the minister responsible for finance and three members of parliament<sup>35</sup>.

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<sup>35</sup> Section 2 of the Act

The parliamentary commission. Guarantees the independence of the parliament, without any influence from the executive and the judiciary, in the daily business the legislature.

Chapter 259.

#### **5.4 The parliament (Remuneration of Members) Act**

Parliamentarians are entitled to salary and gratuity, for the services they procure to the nation, and also to care for the expenses anticipated in their roles as members of parliament. Section 1 provides that;

***“There shall be paid to members of parliament is respect of his her office as a member, or such other office which he or she holds by salary and gratuity.”***

It is from the consolidated fund that members and officers of parliament get paid from. Parliamentarians have fixed salary set by the law and publically recognized to prevent them from temptations from the public in implementing their legislative roles.

Members of Parliament are of prerogative to decide on the amount of their salary depending on the economic spheres of the country. In that they can increase on their salary through a proposal to parliament.

The act settles financial restrains of members of parliament, through providing them with salaries and gratuities for the service they lender to the nation, which enables them to solidify their independence.

#### **5.5 Conclusion.**

Statutory instruments are exhaustive and protective towards parliamentary independence, for all departments of parliament. Clarified provisions are

included not illuminate how external influence is limited not to interfere with the implementation of legislative role.

Parliament have power to make laws on an matter for peace, order, development and good governance of Uganda<sup>36</sup>. Being the legislative arm of government , parliament obtains its independence from the law encompassed in the various statutes of the country, which parliament enacts and interpret , to suit the general role which requires absolute autonomy.

Neither the executive, nor the judiciary has powers over the legislative and it is not legal for parliament to operate under any individual or office, but it should be totally free in implementing its legislative functions.

## **Chapter 6. general conclusion.**

### **6.1 Conclusions.**

Parliament is an independent Organ of government, with absolute power to make laws on any matter for the peace order development and good government of Uganda<sup>37</sup>. Concern has been to establish whether parliament is really independent; and it conducts and implements its legislative roles freely without any external influence. parliamentary independence is built from within in parliament among all the departments that comprise parliament.

Statutory instruments guiding the operation of parliament reveal it that parliament is independent from the executive and the judicially *per se*.

Since the enactment of the constitutional by the National Resistance Government, the independence of the parliament has been not remarkable interference for threat to the autonomy of parliament in conducting and implementing the legislative roles.

The speaker of parliament has always been coming from the ruling party which has also solidified the independence of the parliament from the Military there

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<sup>36</sup> Article 79(1) of the constitution

<sup>37</sup> *ibid*



## **Chapter 6. The separation of powers**

The separation of powers , together with the rule of law and parliamentary sovereignty runs like a thread throughout the constitution of Uganda .it is a doctrine which is fundamental to the organization of the state and to the concept of constitutionalism – in so far as it prescribes the appropriate allocation of powers ,a and the limits of those powers, to differing institutions

The concept has played a major role in the formation of constitutions .the extent to which powers can be and should be ,separate and distinct was a central feature in formulating for example , both the American and the French revolutionary constitutions.

In any state, three essential bodies exist, the executive, the judiciary and the legislature. It is the relationship of these bodies which must be evaluated against the backcloth of the principle. The essence of the doctrine is that there should be ideally a clear demarcation of functions between the legislature executive and judiciary in order that none should have excessive power and that there should be in place a system of checks and balances between the institutions

### **The contemporary doctrine**

The separation of powers doctrine does not insist that there should be three institutions of government each operating in isolation from each other . indeed ,such an arrangement would be unworkable ,particularly under a constitution dominated by the sovereignty of parliament. under such an arrangement ,it is essential that there be a sufficient interplay between each institution of the state, for example it is for the executive for the most part to propose legislation for parliament's approval

Once passed into law ,Acts of parliament are upheld by the judiciary, a complete separation of these institutions could result in legal and constitutional deadlock rather than a pure separation of powers , the concept insists that the primary functions of the state should be allocated clearly and that there should be checks to ensure that no institution encroaches significantly upon the function of the other if hypothetical constitutional arrangements within a state are considered a range of possibilities exists.

- (a) Obsolete power residing in one person or body exercising executive ,legislation and judicial powers . No separation of powers.
- (b) Power being diffused between three separate bodies exercising separate functions with no overlaps in function or personnel. pure separation of powers and
- (c) Powers and personnel being largely but not totally –separated with checks and balances in the system to prevent abuse mixed government and weak separation of powers.

It is to this third category that the constitution of Uganda most clearly subscribes .

## **Defining the institutions**

### **The executive**

The executive may be defined as that branch of the state. which formulates policy and is responsible for its execution .In formal terms the sovereign is the head of the executive . the prime minister ,cabinet and other ministers for the most part , are elected members of parliament by default . in addition the civil service ,local authorities ,police and armed forces constitute the executive in practical terms

### **The legislature**

and in the protection of liberty of the citizen against the executive as Blackstone observed in his

Commentaries:

*..... in this distinct and separate existence of the judicial power in a peculiar body of men ,nominated indeed ,but not removable at pleasures by the crown ,consists one main preservative of the public liberty which cannot subsist long in any state unless the administration of common justice be in some degree separated both from the legislative and from the executive power(vol.1 p 204)it is apparent , however that whilst a high degree of judicial independence is secured under the constitution , there are several aspects of the judicial function which reveal an overlap between the judiciary ,parliament and the executive.*

### **The relationship between executive and legislature; legislature and judiciary**

In light of the doctrine of separation of powers , it is necessary to evaluate the manner in which an extension to which ,separate functions are allocated between the differing bodies and kept separate . this task is most conveniently undertaken by examining the relationship between first the executive and legislature ,secondary , the legislature ,secondary, the legislature and judiciary.

### **The personnel of government**

Parliament provides the personnel of government .ministers of the executive, including the prime minister, must be members of [parliament.

determine whether and in what form amending primary legislation should be enacted by parliament.

### ***Judges as legislators***

One of the most debated aspects of the relationship between the legislature and the judges lies in the question *Do judges make law?*

In constitutional terms, the issue is whether by making law either by virtue of the doctrine of precedents or through the interpretation of statutes – the judges are usurping the legislative function or in other words, violating the separation of powers <sup>44</sup>

In **R VR <sup>45</sup>(1991)**, A COURT OF APPEAL case in which parliament expressly endorsed a judicial decision by incorporating it into statute as occurred with the amendment to the statutory definition of rape following the house of lords decision in the case (supra).in similar case of

### **National provincial Bank V Ainsworth (1965)**<sup>46</sup>

LORD Denning's contribution to developing the law was marked in many areas. his judicial "campaign " to protect the occupational rights of deserted wives through the case (supra).ultimately led to enactment of the ***matrimonial homes Act*** 1967 giving statutory protection to rights of occupation in the matrimonial home. Placed within the context of separation of powers and the position of judges as subordinate to parliament, it can be seen that the courts

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<sup>44</sup> This issue is complex .see for detailed discussion ,slapper and Kelly ,2004  
See also Reid, 1972

<sup>45</sup> 2 WLR 1065 (1991)2 ALL ER 257, CA  
(1992)3 WLR 767 HL

<sup>46</sup> AC 1175

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