LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

(ISSN: 2583-7753)

Volume 1 | Issue 4

2024

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CONSTITUTIONALISM TOWARD SAFEGUARDING AGAINST 'ILLIBERAL DEMOCRACY' IN UGANDA: A CONSTITUTIONAL PERSPECTIVE

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I. ABSTRACT

This study aims to discuss constitutionalism as a tool for protecting Uganda from 'illiberal democracy'. The study examines constitutionalism and its principles on the fate of democracy in Uganda. It offers a valuable constitutional perspective on illiberal democracy while giving insightful viewpoints on how constitutionalism can protect and strengthen democratic systems. Through an evaluation of the strengths and weaknesses of Uganda's constitution, this paper seeks to contribute information regarding whether constitutionalism can be a viable approach to limiting government authority in instances where states engage in illiberal democratic practices. The study employs a qualitative research design to explore constitutionalism in Uganda and especially its prevention of 'illiberal democracy.' This approach involves the content analysis of judicial opinions as the legal doctrinal research is combined with the applied law methods. This will give a clear and thorough understanding of primary sources, for example, the 1995 Uganda constitution and secondary sources, including research literature and documentary reviews.

The findings reveal that illiberal democracy is not committed to the idea of ''checks and balance'' and, in particular, it maintains four fundamental principles: 1) the limits of governmental power; 2) adherence to the law; 3) protection of individual rights; and 4) preservation of democratic principles and approaches to interpreting the Constitution and is often a threat to constitutionalism. Consequently, the study recommends that changes should be called for through the way in which the Constitution is restored back to its 1995 status or that of the original version, as that would potentially reduce the presidential powers and strengthen provisions such as those regarding age and term limits. In addition, these reforms are in place to create a system conscious

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of Enlightenment ideas within society. By creating independent institutions to oversee government actions, constitutionalism can ensure that democratic principles are safeguarded against illiberal democracy.

II. KEYWORDS

Constitutionalism, Constitutional amendments, Constitutional supremacy, Illiberal democracy, The 1995 Constitution, The Rule of Law, Separation of Powers, Fundamental rights and freedoms

III. INTRODUCTION

Contemporary democratic society would be inconceivable without the constitutionalism philosophy, which makes a foundation for it.[2] It implies that the powers of the state are limited and defined by a set of rules and that the government is accountable to a higher authority, such as a constitution or a set of laws. This principle is essential for protecting individual rights and freedoms and ensuring that the government exercises its powers legitimately and accountable. Democracy has evolved into a broad idea, a trendy buzzword. Without question, democracy is the most discussed and contentious subject in political science. "No word is more open to a wide spectrum of tendentiousness," Nwabueze explains.[3] The first issue, as with constitutionalism, is the concept of democracy. Robert Dahl[4] is quoted as having said that.

''Every proponent of democracy of whom I am aware involves the concept of majorities.'' It's not democracy in the sense that majority opinions must be incorporated in a constitution, but liberal democratic ideals that temper majority views for minority protection. Under such systems, the concept of democracy has come under threat from various quarters, with the rise of illiberal democracy presenting significant challenges to democratic systems worldwide. In response to these challenges, many have turned to

[2] Golia, Angelo Jr, and Gunther Teubner. "Societal Constitutionalism: Background, Theory, Debates." ICL Journal 15, no. 4 (2021): 357-411.
[3] Ibrahim, Baba Isaac. "The African Charter on Democracy, Election and Governance and Constitutionalism in Nigeria." Wukari International Studies Journal 6, no. 2 (2022): 11-11.
[4] Dahl, Robert A. On democracy. Yale university press, 2020.

constitutionalism as a means of safeguarding democracy and ensuring its continued viability.

However, there are more worries about the decline of constitutionalism and the influence of "illiberal democracy" in some countries like Uganda. Illiberal democracy is a political system with several interpretations and criticisms. It is characterized as a democratic government with autocratic streaks. Liberal critics contend that illiberal democracies are inconsistent with principles like the rule of law, personal freedoms, and minority rights.[5] Illiberal democracy sees individual rights and liberties, the rule of law is not respected, and the government can act with impunity. This can lead to the abuse of power and the suppression of opposition, undermining the very foundations of democracy. Additionally, concerns exist that constitutionalism principles found in the 1995 Constitution of the Republic of Uganda are not fully implemented, resulting in "illiberal democracy." Consequently, constitutionalism is a vital safeguard against any abuses.

This research examines the conceptual aspect of constitutionalism, especially ensuring the supremacy of the Constitution, limiting the power of government through separation of powers, and Protecting fundamental rights and freedoms and its role in safeguarding democracy and protection against ''the illiberal democracy.'' It further examines how constitutionalism can be strengthened and considers the challenges and opportunities in this context. This growth in illiberal constitutionalism has raised important questions on the future of representative democracies. Is the ideological gap between liberal and illiberal constitutionalism reduced to a fight for fundamental constitutionalism principles?

The paradox is that the current leadership launched a five-year war in 1980 that killed over 500,000 people under the guise of battling autocracy and dictatorship during Obote's regime. Instead of establishing a constitutional democracy, Ugandans created a problem for any constitutional lawyer. Is this an instance of "elective dictatorship" or "illiberal

[5] Kauth, Jasper Theodor, and Desmond King. "Illiberalism." European Journal of Sociology/Archives Européennes de Sociologie 61, no. 3 (2020): 365-405.

democracy"? Therefore, the study focuses on constitutionalism's contribution to democratic structures in defending them from the dangers of "illiberal democracy." The study concentrates on the legal principles which are central to democracy; these include the supremacy of the Constitution, separation of powers and the protection of people's rights as being the key elements that can safeguard democracy and prevent the emergence of autocratic tendencies in democracies. The study also attempts to analyze issues and possibilities of constitutional improvement, particularly in Uganda, when constitutionalism is draining off. Moreover, in the end, the study aims to contribute to the growing awareness of how constitutionalism acts as a beacon of steady democracy in the presence of despotism.

IV. METHODOLOGY

The study design used is qualitative research characterized by examining the principle of constitutionalism in Uganda on protection against illiberal democracy. The methodology comprises the content analysis through doctrinal and applied legal research methods. The design qualitative research approach facilitates research that delves deeper into the subject to understand the complexity of constitutionalism and illiberalism in Uganda. The analysis used content analysis to study the documents and their interpretation. The primary source for this study is the 1995 Constitution of the Republic of Uganda. The analysis reveals the issues of paramount importance to constitutionalism, namely its protection against liberal democracy disintegration.

Doctrinal and Applied Legal Research methods involve the analysis of legal principles and their application to the particular facts of legal situations. The study is divided into three main methods to see how constitutionalism can be applied as a safeguard against illiberal democracy. A review of the documents comprised of primary and secondary sources. Primary sources include legal documents like the Constitution, while secondary sources include relevant literature and documentary reviews. The study seeks to investigate the role of constitutionalism in preventing illiberal democracy and demonstrating why, among other things, democratic practices must be maintained, such

as safeguarding constitutional supremacy, observing the rule of law and protecting fundamental rights and freedoms.

V. CONSTITUTIONALISM AND ITS PRINCIPLES THEREOF.

Constitutionalism as a core tenet in democratic societies is examined from every angle, illuminating its pivotal influence on modern democracies.[6] It stresses the need to limit governmental authority, preserve individual liberties, and sustain democratic values.[7] To safeguard against illiberal democracy and guarantee that the government is answerable to a higher authority, such as a constitution or a body of laws, the research stresses the significance of constitutionalism. Preserving democratic principles, protecting individual rights, limiting government authority, and adhering to the rule of law are all emphasized. However, to safeguard the ideal of constitutionalism, the article delves into restricting governmental authority via a written constitution and the rule of law.

Constitutionalism stands as a basic foundation of democratic nations. In this perspective, a constitution is a body of laws that limits and determines the reach of state power, and the government is answerable to that authority. This guiding concept is central to legitimate government accountability for its acts and individual rights and freedoms.[8] The constitutions take different forms, from written to unwritten, democratic to autocratic, flexible to rigid. Though constitutions are significant, they should not be the only focus; merely providing them on paper does not lead to constitutionalism. Instead, seek a constitution that does more than pay lip service to constitutionalism. In comparison, it should foster a democratic culture and commitment to the rule of law by fully internalizing the pillars of constitutionalism.[9] Constitutionalism entails some key tenets such as the supremacy of the law, the Rule of law, separation of powers,

[6] Pallavi, Eshita. "Concept of Constitutionalism." Supremo Amicus 29 (2022): 327.
[7] Bellamy, Richard, and Dario Castiglione. "Constitutionalism and democracy–political theory and the American Constitution." British Journal of Political Science 27, no. 4 (1997): 595-618.
[8] Barber, Nicholas William. The principles of constitutionalism. Oxford University Press, 2018.
[9] Waluchow, Wil, and Dimitrios Kyritsis. "Constitutionalism." (2001).

sovereignty of the people, and the protection of fundamental rights and freedoms as discussed below;

A. PRINCIPLES OF CONSTITUTIONALISM

It should be noted that constitutionalism principles mostly revolve around restricting government capabilities and ensuring durable law, which lies down on guaranteeing human rights and promoting separation of powers. Constitutionalism describes democracy as relying upon the constitution as the ultimate understanding, sourcing its rule of governance with principles and rules that should be followed in exercising state authority.

- **Rule of Law**

The concept is that every person and institution, including the state itself, in some way derive their power from an implicit model of authority over which they are accountable. Constitutionalism is the rule of law, which signifies that any person or organization, including the government, has to act within the limits of the law and be liable for their actions.[10] The application of this principle stresses that through law and procedures, no man can be above the law in exercising government powers. The rule of law encompasses several key elements, such as exploring the concept of equality before the law; all laws and legal practices apply to all people, regardless of their social status or position; proceedings of the law must ensure that justice prevails. These procedures must be carried out openly, according to existing legal processes. This also provides that the people involved are given a fair trial and treated fairly; the government's exercise of power is limited by juridical norms, which prevent arbitrariness and ensure control; it should be confirmed that people have access to justice and legal redress through unbiased judicial systems.

Therefore, the rule of law is a valuable tool in preventing authoritarianism, arbitrariness and abuse of power. It creates responsibility, reliability and a society that respects the

[10] Bingham, Lord. "The rule of law." The Cambridge Law Journal 66, no. 1 (2007): 67-85.

rights of an individual. This tenet is central to constitutionalism and underpins the function of democratic institutions under the rule of law.

- **Separation of Powers**

The separation of powers concerning the distribution and allocation among different branches (such as the executive-legislative or judicious seats) so that a single branch becomes a manageable power.[11] The division of powers is one of the most essential characteristics of government since it divides three branches: legislative, executive, and judicial. The Legislative Branch is adjudged with the role of making laws, which often is done by the parliament;[12] the Executive Branch is responsible for formulating policies as well as law enforcement, and the president in countries like Uganda has executive authority;[13] the Judicial branch interprets the law, resolves conflicts and is regarded as guardians of the constitution.[14] The judiciary, composed of courts and judges, administers justice relatively under the rule of law. However, Benjamin Odoki,[15] the then chief justice of Uganda, uses the analogy of three cooking stones beneath a pot to show how separated powers are interrelated regarding his discourse on the separation of powers. Each stone is essential in its own right; however, they must act together to get the desired effect. This comparison demonstrates how the various constituents must work together rather than function as individual entities. It shows the lack of independence in branches, implying a balance between them. He asserted that these three branches of government could not work independently and required a system of checks, thus the doctrine of checks and balances.

Systematic checks and balances are among the fundamental principles that make up the separation of powers, allowing no one branch to dominate at a cost to another. A dynamic interplay between the branches of government ensures that there is always a balance of

[11] Krause, Sharon. "The spirit of separate powers in Montesquieu." The Review of Politics 62, no. 2 (2000): 231-265.
[12] Uganda's Constitution of 1995, chapter six (revised 2018) by Act 1
[13] Uganda's Constitution of 1995 chapter seven (revised 2018) by Act 1
[14] Uganda's Constitution of 1995 chapter eight (revised 2018) by Act 1
[15] Odoki, Benjamin J. "The Challenges ofConstitution-making and Implementation in Uganda." (2001).

powers to eliminate the possibility of one branch gaining too much authority or misusing its mandate. This system provides accountability as well as protection of individuals' rights. The separation of powers is necessary for democratic government because it ensures that each branch operates separately with no interference in running the affairs of other branches.

- **Protection of Individual Rights**

The acknowledgement and guardedness of fundamental human rights and freedoms are usually vested in a bill of rights or other kindred provisions for the Constitution.[16] Its goal is to protect people from government abuses and capriciousness, essential protection. Constitutions usually provide fundamental rights such as freedom of speech, dynamics of assembly, religious belief and privacy. They also create the right to equal treatment, equal protection under the law, and remedies against discrimination. The recognition of fundamental rights restricts the ability of the government to interfere with individual freedoms and assures that the state's actions comply with constitutional guarantees.

The review of the constitutionality of laws and government actions is, therefore, a key role played by courts in guaranteeing fundamental rights besides providing remedies. People can take legal action and challenge breaches of their basic rights through independent judicial procedures. The idea of constitutionalism gives a particular emphasis on the protection of fundamental rights and freedoms. This does not only guarantee individual freedom but also respect for dignity and equality before the law. The principle emphasizes the critical importance of the government to honour and protect the rights of every individual in a society.

- **Constitutional Supremacy:**

The doctrine that the constitution is higher than all law and, therefore, any law or governmental act against it must yield to its decrees.[17] The Constitution is at the apex of

[16] Uganda's Constitution of 1995 Chapter 4 (revised 2018) by Act 1
[17] Uganda's Constitution of 1995, Art 2 (revised 2018) by Act 1

the legal system; every other law must bow to its authority. This ensures that the fundamental principles and rights enshrined in the constitution remain inviolable upon any possible attempt of violation by legislation or governmental initiatives. Courts have jurisdictions to assess laws and government acts for their compliance with the Constitution. If a law is deemed unconstitutional, it may be nullified or declared. Usually, the procedure of amending a constitution differs from the general legislative rules. The constitution is unique and demands a rigorous standard for any changes.

The constitution is vital in protecting against bad governance, ensuring that the fundamental doctrine and morals on which a society's rule of law and politics are based are preserved.[18] The study emphasizes the importance of constitutional observance and highlights that its terms should bind all people and institutions without any reservations. It highlights the significance of ensuring that all state power is exercised in accordance with articles contained in this constitution. This principle is central to constitutionalism and provides the basis for lawful government, which protects individuals' rights. These elements are also crucial for the principle of constitutionalism that seeks to encourage responsible governing styles, responsiveness, and individual liberties in society.

All in all, the stipulation of the constitution, as well as the implementation of the concepts of constitutionalism, seem to be champions influential so that the democratic character can be preserved, the rights of individual people can be defended, ordinary people can counter governmental powers, and the laws of the land can be observed. The core focal point of constitutionalism, which lies upon a written document and following legal principles, can enable the creation of a framework that maintains accountability and protects and promotes individual people's rights. Constitutions are fundamental in stating the boundaries of state power and securing the officials working according to the principles of the government. They are manifested as pronounced, mainly as the written or as the unwritten, and these are the factors that contribute a lot to the prevailing

[18] Kochenov, Dimitry. "Rule of law as a tool to claim supremacy." (2020).

democratic culture and the rule of law. Constitution as such, even though it may be present, is not sufficient. A constitutional framework must ensure and support the constitutional beliefs that generate democratic values by emphasizing essential principles of the rule of law, separation of power, popular sovereignty, and safeguarding all fundamental rights and freedoms.

Constitutionalism is the basis for democracy by ensuring societies stay protected against the risks of authoritarianism and abuses of power. It plays a vital role in protecting fundamental civil liberties and is the ultimate foundation of a thriving democracy. Constitutionalism builds modern democracy as it protects citizen rights, reserves to the people the powers of the government and sets limits to the authorities. Through this limitation, the power is distributed evenly, and centralization of power among the few is avoided; hence, a strict rule of law is favored. Constitutionalism is a fundamentally important source of power in democratic countries as it provides the architecture on which tyranny, abuse of power, and infringement on the rights of the people can be restrained. Changing political regimes shows the need to preserve the government's accountability principle to a higher authority (the constitution or a set of laws), which would prevent the emergence of illiberal democracy.

VI. ILLIBERAL DEMOCRACY AND ITS CHARACTERISTIC

According to Walkerz,[19] constitutionalism is not a standalone concept but is closely tied to democracy. Constitutionalism has always been specific to certain political communities rather than a universal concept. Additionally, creating a constitutional system requires a clear, concrete act of constitution-making, which is a fundamentally democratic process. Therefore, constitutionalism depends on democracy for its very existence. Richard Bellamy[20] quotes Abraham Lincoln's definition of democracy in his

[19] Walker, Neil. "Taking constitutionalism beyond the state." Political Studies 56, no. 3 (2008): 519-543.
[20] Bellamy, Richard. "3.1 The inevitability of a democratic deficit." Key controversies in European integration (2021): 37.

book "The Inevitability of a Democratic Deficit as "a government of the people, by the people, for the people.'' The term "a government of the people, by the people, for the people" is often used to describe a system with its authority held by the citizens. It emphasizes the importance of holding the government responsible for the things that are done for its people. This idea has been praised by many as the pillar of democratic action. As a result, the success of a country's democracy is determined by the people who own it.

Illiberal democracy is a form of democracy in which basic constitutional principles like protecting civil liberties and the rule of law are threatened or undermined.[21] This can take the form of authoritarian leaders suppressing opposition or dissent or the erosion of checks and balances within the political system. Illiberal democracy can also involve the manipulation of elections or the suppression of minority groups. Fareed Zakaria[22] popularized 'illiberal democracy' in his book ''The Future of Freedom.'' He used it to describe countries such as India, Turkey, and Russia, which had held elections and had democratic institutions but did not uphold the basic tenets of democracy, such as freedom of speech, assembly and association.

According to Smilova,[23] illiberal democracies that limit citizens' rights are spreading worldwide. Even though in the West, civil liberties and liberal democracy are in tandem, elsewhere, they are becoming separate. Zakaria argues there are possibilities of centralized regimes, lost independence, ethnic tension and wars where democratic states do not practice constitutional liberalism. As Zakaria puts it, the United States and other nations should support the growth of liberal democracies that value free and fair elections by gradually encouraging liberalization. He suggests that the World Trade Organization, Federal Reserve System, and independent judiciary can promote democracy and limit

[21]Wagrandl, Ulrich. "A Theory of Illiberal Democracy." In Routledge Handbook of Illiberalism, pp. 94-117. Routledge, 2021.
[22] Fareed Zakaria, "The Rise of Illiberal Democracy," Foreign Affairs 76 (November–December 1997): 22–43.
[23] Smilova, Ruzha. "The ideational core of democratic illiberalism." In Routledge Handbook of Illiberalism, pp. 177-202. Routledge, 2021.

individual destructive power because illiberal regimes may use regulations, economic pressure, imprisonment, or violence to silence critics to maintain power. Zakaria believes true democracy requires constitutional liberalism. When a constitution is not accompanied by constitutionalism, one of the primary outcomes is illiberal democracy. Sajó, András[24] expounds on the emergence of illiberal democracies and how these regimes utilize constitutions and public will to defend their acts. Illiberal democracies are formal democracies that do not maintain liberal norms, including the rule of law, human rights, and minority rights protection. He further asserts that to win support, these governments may employ populist language and appeal to conservative or nationalist impulses, but in the end, they erode democratic institutions and values. It is crucial to be aware of these tendencies and to defend liberal democracy and its ideals aggressively[25].

In recent years, there has been a rise in what is known as "illiberal democracy," or the erosion of liberal principles like human rights and the rule of law in democratic societies.[26] However, according to Minister Viktor Orbán[27], illiberal democracy does not imply a rejection of liberal democracy but rather a refusal to incorporate it into state organization. Singapore, Russia, Turkey, and China, he claims, are "successful" nations that are neither liberal democracies nor any other type of democracy, and India is the world's largest illiberal democracy.[28] Under Rodrigo Duterte and Bongbong Marcos, the Philippines has been called an "illiberal democracy" and a "global illiberal stronghold" since 2016. The Republican Party has been chastised for becoming more illiberal during former President Donald Trump's presidency.

[24] Sajó, András Ruling by Cheating: Governance in Illiberal Democracy. Cambridge University Press, 2021.
[25]Blokker, Paul. "Populism and illiberalism." In Routledge handbook of illiberalism, pp. 261-279. Routledge, 2021.
[26] Zielonka, Jan, and Jacques Rupnik. "From revolution to 'counter-revolution': Democracy in Central and Eastern Europe 30 years on." In Hybridisation of Political Order and Contemporary Revisionism, pp. 143-169. Routledge, 2022.
[27] Grzebalska, Weronika, and Andrea Pető. "The gendered modus operandi of the illiberal transformation in Hungary and Poland." In Women's Studies International Forum, vol. 68, pp. 164-172. Pergamon, 2018.
[28] Fareed Zakaria, "The Rise of Illiberal Democracy," Foreign Affairs 76 (November–December 1997): 22–43.

González,[29] in his article, argues that Venezuela's democracy is undemocratic, and for the leader to maintain control, the government is accused of suppressing opposition and manipulating elections. Further, constitutionalism doesn't protect the rights of people in Turkey, where the government of Recep Tayyip has attacked civil liberties, human rights, and media freedoms. Pirro and the two others highlighted that in other countries like Hungary and Poland, governments have taken steps to compromise the impartiality and autonomy of the judiciary, suppress dissent, and restrict the freedom of the press. Significant efforts have been made to alter the Constitution through many amendments that fundamentally changed its structure.[30] Illiberal democracies range from almost liberal to virtually dictatorships. According to Warburton, [31] free, fair, and competitive elections signify a liberal democracy. Still, Freedom House's annual civil liberties and political rights ratings may label a system illiberal.

Pérez[32] developed comparisons to hybrid regimes in his research on shared characteristics between illiberal democracies and their rise to power, referring to Rocha Menocal, Fritz and Rakner. The authors argue that, due to the 'democratic optimism' which defined the post-Soviet 1990s period, illiberal hybrid governments gained power. The Western powers were overly optimistic, believing that democratization would occur independently without envisaging any other outcome. Nevertheless, hybrid regimes have developed to respond to incomplete democratization in certain countries that accept illiberal values.

Meanwhile, Daniel A,[33] in agreement with Lee Kuan Yew's hybrid democracy Singapore at the time, argued that while liberal democracies value human rights, illiberal

[29]González, Ybiskay. "'Democracy under Threat': The Foundation of the Opposition in Venezuela." Bulletin of Latin American Research 40, no. 1 (2021): 69-83.
[30] Landau, David. "Populist constitutions." U. Chi. L. Rev. 85 (2018): 521.
[31] Warburton, Eve, and Edward Aspinall. "Explaining Indonesia's democratic regression." Contemporary Southeast Asia 41, no. 2 (2019): 255-285.
[32] Pérez, Alejandro Esteso. "illiberalism, revolution and the 2016 Macedonian elections." Intersections. East European Journal of Society and Politics 7, no. 4 (2021): 32-51.
[33] Daniel Bell, David Brown, Kanishka Jayasuriya, and David Martin Jones, Towards Illiberal Democracy in Pacific Asia (London: Macmillan, 1995), 17

democracies prioritize economic growth and efficient government instead of personal freedoms. He further argues that East Asians still steeped in Confucian ideas and practices are unlikely to be persuaded by standard Western justifications, for example, democracy is an optimum system of governance for independent citizens," as Kevin noted.[34] They see the fact that democratic administrations "protect and nurture social lives" as a stronger argument in favour of democracy. According to Sungmoon Kim,[35] liberal democratic institutions have no place in East Asian societies.

Scholars like Steven and Lucan[36] argue that ''Illiberal democracy'' is problematic because it implies that these regimes were fundamentally democratic but have erred. They prefer "competitive authoritarianism" to describe non-democratic nations that hold elections but lack opposition parties and independent media. These nations, including Yugoslavia under Miloevi, Zimbabwe, and post-Soviet Russia, tend toward authoritarianism instead of democracy. They further believe that the term "illiberal democracy" is deceptive and "muddies the waters" because it implies that these regimes are deviant democracies. They argue that it is more accurate to refer to these regimes as competitive authoritarianism, as this removes the positive connotation of democracy from nations with imperfect or still-developing democratic systems.

Highlighted trends shed light on the democratic decline and weakening of liberal democracy in most countries like Uganda. The diverse and ever-changing structure of governance along with constitutionalism can also be demonstrated through the anti-democratic authoritarian states that have arisen in countries like China, Egypt, and Venezuela, as well as how liberal constitutions are being substituted by illiberal ones, which was seen during Hungary's transition from 2012. Whether these changes promote the stability of democratic institutions and individual rights largely depends on how they

[34] Pham, Kevin D. "Phan Chu Trinh's Democratic Confucianism." The Review of Politics 81, no. 4 (2019): 597-620.
[35] Sung Moon Kim, Confucian Democracy in East Asia: Theory and Practice (New York: Cambridge University Press, 2014), 10.
[36] Levitsky, Steven, and Lucan Way. Revolution and Dictatorship: The Violent Origins of Durable Authoritarianism. Princeton University Press, 2022.

are in dynamic political contexts. The rise of illiberalism in democracies shows how complex the idea of "unfinished constitutionalism" is to deal with. However, maintaining and adapting the Constitution may not be enough to preserve democratic values and practices. The future of constitutional liberal democracy may depend on political leaders, resistance from the people, and political parties and coalitions. Curbing illiberal democracy relies on democratic institutions and civil society's ability to resist and overcome retrogression.

VII. ANALYSIS OF THE 1995 CONSTITUTION OF UGANDA AND ILLIBERAL DEMOCRACY

Following turbulent political and civil unrest in Uganda, the constitution was promulgated to provide stable governance with guaranteed citizen rights. The importance of the analysis based on the 1995 Constitution Uganda for illiberal democracy is that it reflects how far liberal democratic principles have been nurtured and sustained in striving to prevent institutional erosion. This involves studying how the Constitution allows for power separation, checks and balances, individual rights protection, and accountability mechanisms. Separation of Powers: Analyzing the degree to which the constitution establishes a verifiable division of powers between the three organs of government: Judiciary, legislature and executive. Studies include evaluating constitutional provisions protecting fundamental rights and freedoms, such as free speech, assembly, and association, and offering safeguards against arbitrary detention, jailing or torture. Analyzing the Constitution through checks and balances ensures no single branch of government dominates the others through parliamentary oversight over executive control bureaucracy, independence, and judicial review actions by legislative branches.

The 1995 Constitution of Uganda has received criticisms based on its effects in promoting illiberal democracy. While some scholars have raised eyebrows concerning democracy, others argue that it has been used to foster dictatorial tendencies. The leadership of the National Resistance Movement (NRM), which has been in power since 1986, was

democratized to strengthen its control.[37] They put into place a no-party political system, which has led to questions about the validity of democracy in Uganda. Assessments of the Constitution's influence on democracy centre around participation and support, causing disputes about its democratic nature born during the creation process.

The current Constitution was adopted by Uganda in 1995. In the past 28 years since its promulgation in 1995, the constitution has been amended five times by Parliament through acts of Parliament. The Constitution, which started with 216 Articles, has evolved into over 295 Articles. A whopping 79 articles were added. Some people have complained about amendments, saying they sacrifice constitutionalism's fundamental elements. Consequently, since constitutionalism is widespread on the African continent, this paper assesses how Uganda's Constitution reflects the basic tenets of constitutionalism. It is said that a constitution has value only if it embodies the core principles of constitutionalism and does not remain mere words on a written paper.

The political system of Uganda has shifted significantly, whereby the executive president now wields an imbalanced level of influence under a semi-presidential government.[38] The amendments, particularly the Constitutional Amendment Act of 2017 and the Constitutional Amendment Act of No. 11 of 2005, that is, the removal of age and term limit, respectively, affected the peaceful transition of power and ushered in an era of authoritarianism.[39] The problem of power imbalance in the political system includes the concentration of power within the executive branch. By clearly showing the concentration of power, the modifications increased the president's powers. Relatively, the constitution also concentrated power in the appointing authority of the president; for

[37] Makara, Sabiti, Lise Rakner, and Lars Svåsand. "Turnaround: The national resistance movement and the reintroduction of a multiparty system in Uganda." International political science review 30, no. 2 (2009): 185-204.
[38] Ojambo, Robert. "The 1995 Constitution as a Tool for Dictatorship in Uganda: An African Dilemma of Constitutionalism." In Democracy and Africanness: Contemporary Issues in Africa's Democratization and Governance, pp. 3-19. Cham: Springer International Publishing, 2022.
[39] Makara, Sabiti. "Presidential Term Limits in Uganda: Do Elections Provide an Avenue for Alternate Power Succession?" The Politics of Challenging Presidential Term Limits in Africa (2020): 105-137.

example, the president substantially reinforces his influence over prominent public offices such as judicial appointments.

Additionally, the analysis in this paper reveals the tremendous effect that the executive has on the legislature, mainly through two amendments. As a result, the parliament became simply a rubber stamp for the executive, thus reducing legislators' independence and increasing executive powers in legislation. As a result, the legislature was regarded as the creature of executive authority. This move weakened the autonomy of legislative power, rendering it ineffective when engaging executive power and lawmaking.[40] The problems of constitutionalism in Uganda address issues concerning the impact of the constitution on democracy and possibly compromising fundamental principles of constitutionalism through modification and corruption of liberal democratic conceptions. Nevertheless, courts have significantly contributed to checking on the legality or illegality of the law and the executive bodies' quality of legislation through judicial reviews. The issue now is: under what criteria do courts have jurisdiction to judge whether or not any particular law is constitutional? With courts being able to think, courts become a check on the unconstitutionality of laws and acts by executives. In the landmark case of *Marbury v. Madison,*[41] the American states made it a point to solidify the doctrine of judicial review. It stated that Congress could not pass a law expanding the Supreme Court's original jurisdiction because the Constitution controls Congress's power.

Therefore, the courts must determine if a law or an executive action infringes on the Constitution; an applicable law or action may be declared unconstitutional in case of a conflict.[42] Bwire, Migai and Agnes[43] elaborate that courts guard the government against usurping its constitutional powers. Besides, the judicial review could be limited when the

[40] Sekindi, Fred. "A critical analysis of the legal construction of the presidency in post 1995 Uganda." PhD diss., 2015.
[41] 5 U.S. 137 (1803)
[42] Aboelazm Karem Sayed, "The Role of Judicial Review on the Acts of Sovereignty in Egypt", *Central European Management Journal* 31, no. 1 (2023): 495.
[43] Bwire, Buluma, Migai Akech, and Agnes Meroka-Mutua. "A Conceptual Framework for Assessing the Performance of Kenyan Courts Undertaking Judicial Review of Legislative Action." *Strathmore LJ* 6 (2022): 107.

Constitution lacks a bill of rights.[44] In a nutshell, the court looks at the inconsistency between the law and the constitution. Then, it states that the act is ambiguous or unconstitutional and, as such, annuls the entirety or part of the act.

VI. CONCLUSION

In conclusion, constitutionalism is defined primarily by its four major principles: the rule of law, fundamental rights and freedoms, separation of powers, the protection of individual rights, and the supremacy of the Constitution. Based on this, the spirit of constitutionalism is the best and most effective way to safeguard democracy and its absence results in illiberal democracy and outright autocracy. Constitutionalism, espoused by the doctrine of the rule of law and separation of powers, fundamental rights protection and supremacy of the constitution, can be reinforced in Uganda to create an inclusive framework that upholds democratic principles yet prevents erosion of individual freedom and institutional checks and balances. This constitutional perspective provides a way towards ensuring that governance in Uganda is based on the principles of accountability, justice and respect for human rights. Significantly, the term 'illiberal democracy' challenges the limitations of government, as mentioned by different scholars. Against the tension between constitutionalism and illiberal tendencies, this study underscores the importance of continuous constitutional reforms, strengthening institutions and commitment to liberal democratic principles to support a more potent form of democratic governance. Adopting constitutionalism can help Uganda establish a democratic society based on the rule of law and fundamental freedom, which, in turn, would assist in promoting an equitable and just nation.

In accordance with the study results, it becomes evident that the state should reinforce specific constitutional clauses and institutional systems to address the dangers of illiberal democracy. Chapter Seven of the 1995 Constitution of the Republic of Uganda authorizes the executive, with the President possessing a majority of the powers, such as appointing

[44] Halmai Gábor, "Populism, authoritarianism and constitutionalism", *German Law Journal 20*, no. 3 (2019): 313

authority. The powers to appoint should be decreased. Although other establishments, like parliament or commissions, limit these powers, there is a need for a thorough revision to strike a balance between executive authority and checks and balances.

Additionally, Articles 105 Clause 2 and 102 B of the 1995 Constitution of the Republic of Uganda removed the presidential term and age should be amended to reinstate those terms. Stringent restrictions should be provided; a president who has served two four-year terms cannot be considered for the same position. On the other hand, independent institutions like the judiciary, legislature and other state institutions guarantee the rule of law, division of powers, and protection of the rights of individuals. The government and the people should uphold liberal democratic principles such as accountability, justice, and fair treatment.

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