The Maldivian Legal System

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Layout by:
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In memory of

my parents

Ibrahim Haleem
And
Fathimath Zahira

About the Author

Husnu Al Suood was the sixth child born to Fathimath Zahira and Ibrahim Haleem in 1967 at Meedhoo, Addu. He graduated from the International Islamic University of Malaysia in 1994 with an LLB (Hons.) and later attained his LLM from The University of Queensland, Australia.

With an illustrative career in both public service as well as in private practice, Husnu Al Suood is widely regarded as one of the best legal minds of his generation. In the past, he has served in such distinguished capacities as the Chief Judge of the Civil Court and as the Attorney General of the Maldives. He has also served as the Chairman of the National Law Reform Commission, President of the Clemency Board, Member of the Judicial Services Commission and as a Member of the Human Rights Commission. A founding member of the National Center for Human Rights and Democracy, the Maldives Law Institute and Maldives Bar Association, Mr. Suood is also a principal referee of the Maldives Law Review – the first and only peer reviewed academic journal published in the Maldives.

He also served as an elected Member of the Peoples' Special Majlis, which both drafted and adopted the current Constitution.

Mr. Suood is also a highly regarded author, having published some key academic texts including 'Maldivian Legal System' (Published in 2007 in the Dhivehi language), 'Our Rights Our Nation' (2006) , 'International Human Right (2004) and 'Understanding Maldivian Company Law' (2010) – to name a few.

1.

In 2011, the Government of Maldives recognized his achievements in the field by conferring on him the "National Award of Recognition for Outstanding Services in the Field of Law."

At present, Mr. Suood is a Senior Counsel at the law firm Suood & Anwar LLP and the Dean of the Faculty of Law at Villa College, Maldives.

Preface

Maldivians have lived under a system of law for over two millennia. The origins of the Maldivian legal system finds its roots in a legal system which prevailed in the ancient Buddhist kingdom of Sri Lanka during the first millennium. However, since the Maldives converted to Islam in the 12th century, the development of the legal system has been greatly influenced and shaped by Islamic law.

Until the beginning of the 20th century, the King, Noble Chiefs, and Ministers were responsible for maintaining social unity, law, and order in the archipelago. A *Fandiyaaru,* who was both the Chief Justice, and the chief religious cleric at the royal court, was responsible for resolving disputes among the people in accordance with the local customs and Islamic law.

Although the ancient Maldivian legal system was very simple, it had a well organized and coherent arrangement for dispensing justice as well as regulating law and order. As a result the legal system worked well, and suited to the traditional society. However, due to changes in the political system, and the expansion of the country's economy during the second half of the 20th century, the legal system began to develop into a more formal structure to resolve disputes.

Although the Maldivian legal system has taken long strides in its modernization efforts, it still has many more challenges to overcome. Among the challenges, there is still no systematic method of law reporting, or publication of statutes passed by the parliament. A further difficulty is presented by the absence of law textbooks to guide the students and practitioners. Therefore, this book is designed to cater for the huge need felt by the legal community for such a work. It is aimed at providing law students, legal practitioners and other researchers with an introduction to the Maldivian legal system.

The book is divided into ten chapters incorporating all aspects of the Maldivian legal system.

Chapter 1 makes a thorough investigation of the ancient legal system of the Maldive Islands. This chapter also briefly looks at the ancient political system of the country with a view to understand the background in which the legal system operated and developed over the course of history. As this has not been the subject of any previous study, this chapter will not only benefit law students and legal researchers, but also be of use to those who are interested in studying the ancient kingdom of the Maldive Islands.

Chapter 2 follows the development of the Maldivian legal system during the 20th century. The purpose of this chapter is to explore the factors that triggered the legal system's transformation from an ancient simplicity to a modern complexity.

Chapter 3 explains the sources of Maldivian law from which laws are derived an applied by the courts.

Chapter 4 examines the court system. In this chapter, various courts and their powers are examined in detail.

Chapter 5, 6 and 7 focuses on the actual people who drive the legal system - the judges, prosecutors and the legal profession. As such, these chapters analyze the constitutional role of the judges, judicial service, legal and prosecutorial service of the state and the legal profession.

Chapter 8 traces the development and present status of legal education in the Maldives.

Chapter 9 and 10 provides an outline of the criminal and civil procedure followed by the courts to administer justice.

The law is stated as at 31st December 2013.

Husnu Al Suood

Acknowledgements

This textbook represents a milestone of over a decade of teaching the Maldivian Legal System at numerous institutions. Throughout these years, I have learnt that there are those who write books and those who read them. I have also realized that one need not be limited to one of the two either. My passion lies in both writing and reading books, especially those which I believe contribute to the field I am most passionate about.

First and foremost, I thank Allah Subḥānahu wa ta'āla for blessing me with the time to write this book. I would also like to further express special gratitude to my wife and daughters who constantly assist my work in various ways.

An additional note of thanks is due to Dr. Abdulla Waheed, Mariyam Manal Shihab, Aishath Sheeza and to my daughter Eman, who assisted in the proof reading of my manuscript and made many a valuable suggestion. I also express my gratitude to Mohamed Shahdy, Ismail Wisham and Hamza Latheef who made this publication possible by assisting me in many ways.

I am also grateful to the Faculties of Law at the Maldives National University, College of Islamic Studies, and Villa College, for giving me the opportunity to teach this subject.

Finally, I would like to thank the Maldives Law Institute for being instrumental in the publication of this work.

Husnu Al Suood

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Chapter 1

HISTORY AND BACKGROUND

Part I

Historical Development

'I decided to undertake a journey to the Maldive islands (Dhibat-ul-mahal), about which I had heard a lot of tales. Ten days after embarking at Calicut we reached these islands, which are one of the wonders of the world, and number about two thousand in all. Each hundred or less of them form a circular cluster resembling a ring, this ring having one entrance like a gateway, and only through this entrance can ships reach the islands.'[1] – Ibn Battuta

Early settlers

Many different groups of people from South India and Sri Lanka settled in the Maldives archipelago around 500 BC.[2] Most of the studies on the Maldives and its people are of the opinion that the first settlers in the archipelago were of the same (Aryan) stock as the Singhalese who also settled in Sri Lanka around 500 BC.[3] Some argue that the seafaring people

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[1] H.A.R. Gibb, *The Travels of Ibn Battuta*, (New Delhi: Goodword Books, 2011), 241.

[2] H C.P Bell, *The Maldives Islands: Monograph on the History, Archeology and Epigraphy*, (Colombo: Ceylon Government Press, 1940), 16 -17.

[3] Ibid; see also, Clarence Maloney, 'The Maldives: New Stresses in an Old Nation', *Asian Survey*, Vol. 16, No. 7, (University of California Press, Jul., 1976), 655, http://www.jstor.org/stable/2643164 (Accessed: 27/11/2012 04:39); Xavier Romero-Frias, The *Maldive Islanders, A Study of the Popular Culture of an Ancient Ocean Kingdom*, (Barcelona: Nova Ethnographia Indica, 1999), 25-36; see also, Clarence Maloney, *People of the Maldive Islands*, (Madras: Orient Longman Ltd, 1980), 38; A. Gray, 'The Maldive Islands: With a Vocabulary Taken from François Pyrard de Laval 1602-1607', *Journal*

from Gujarat settled in the Maldives during the Indus valley civilization; while other early settlers might have been from Southeast Asia.[4] A notable scholar has also suggested that a people called the Redin might have settled in the Maldives as early as 1500 B.C,[5] although this theory finds little support among other scholars.[6]

According to the Mahavamsa,[7] the Great Chronicle of Ceylon, Prince Vijaya migrated to Sri Lanka around 500 BC with his compatriots, following their banishment from the Lala country in Bengal.[8] One of the ships that sailed with Prince Vijaya went adrift and arrived at an island called Mahiladipa, the name used for the Maldives at the time. The group of people on the ship that arrived in the Maldives consisted mainly of the womenfolk who were travelling with the Prince.

According to Allama Ahmed Shihabuddin,[9] the first inhabitants of the

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of Royal Asiatic Society of Great Britain & Ireland, New Series, Vol.10, No.2 (Apr., 1878) pp. 173-209, (Cambridge University Press), http://www.jstor.org/stable/25196795 , (Accessed: 27/10/2012 18:13).

[4] Naseema Mohamed, 'Note on the Early History of the Maldives,' *Archipel,* Volume 70, 2005, 7-14, http://www.persee.fr/web/revues/home/prescript/article/arch_0044-8613_2005_num_70_1_3970; See also, Clarence Maloney, 'Where Did the Maldives People Come From?', International Institute for Asian Studies, http://www.iias.nl/iiasn/iiasn5/insouasi/maloney.html (Accessed: 20/01/2013 00:22).

[5] Thor Heyerdahl, *The Maldives Mystery,* (Bethesda, Maryland: Adler & Adler Publishers, Inc., 1986), 305–307. Thor Heyerdahl's theory was based on his archeological findings in the Maldives, pointing to the existence of sun-worshippers in the Maldives who might have lived there before the Buddhist era. Thor Heyerdahl argues that the statues with elongated ears found in the Maldives, were Redin creations representing the chief deity of the Redins.

[6] Xavier Romero-Frias, 'Thor Heyerdahl and the Maldives: A blessing or a curse?', http://www.maldivesroyalfamily.com/maldives_romero_heyerdahl.shtml (Accessed: 20/01/2013). In this article, Xavier Romero-Frias says that Thor Heyerdahl's 'wild speculations are completely misplaced' and wrong.

[7] *The Mahavamsa* (The Great Chronicle of Ceylon), http://mahavamsa.org/mahavamsa/original-version/06-coming-vijaya/ (Accessed: 13/01/2013 13:06).

[8] Ibid.

[9] Allama Ahmed Shihabuddin, *Kitab fi Athaari Meedoo el-Qadimiyyeh*, (1650 – 1687), written in Arabic and translated into Dhivehi by Dhoondeyri Don Maniku son of Chief Justice Ibrahim Majduddin. This is the oldest existing work on Maldivian history written by a Maldivian. The

Maldives, the Dheyvis, came to the Maldives from Kalbanja,[10] before Emperor Asoka's kingdom was established in India (273-232 BC).[11] Dheyvis did not have a king but were led by a religious leader called the *Sawamia:* they worshipped different elements of nature such as the sun, moon, stars.[12] The *Sawamia* had absolute authority over temporal as well as religious matters and resolved all their disputes and conflicts.

According to Allama Ahmed Shihabuddin, Dheyvis settled in the southern part of the Maldives,[13] and later some people from Serendib (Sri Lanka) migrated to Huvadu Atoll. Soon thereafter, a kingdom was established and was called *Dheeva Maari*. The first king was the son of King Brahmaadittiya of Kalinga in India, who was displeased with his son and therefore had his son sent to *Dheeva Maari*.[14] This prince, Sri Soorudasaruna Adeettiya, established the *Aadeetta* (Sun) Dynasty[15] in *Dheeva Maari*. According to Allama Ahmed Shihabuddin, some tribes who came from India populated

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first *Tharikh* chronicler, Hassan Tajuddin, studied under Fonadhoo Katheeb Sirajuddin, who was a student of Ahmed Shihabuddin.

[10] As Ahmed Shihabuddin's orginal work was in Arabic, which was later translated to Divehi and then into English, it is likely that he was also referring to Kalinga, as mentioned in *Mahavamsa,* to be the origin of Prince Vijaya.

[11] Naseema Mohamed, 'Note on the Early History of the Maldives,' *Archipel*, Volume 70, 2005, 7-14, http://www.persee.fr/web/revues/home/prescript/article/arch_0044-8613_2005_num_70_1_3970 ; *See also*, Naseema Mohamed, *Essays on Early Maldives*, (Male, Maldives: National Centre for Linguistic and Historical Research, 2008).

[12] Ibid.

[13] According to Ahmed Shihabuddin, *Dheyvis* first settled in Isduva of Isduvammathi and they named gave the name *duva* to any island, where they started to live and found a settlement.

[14] Read the story of the arrival of Prince Vijaya to Sri Lanka in *Mahavamsa*, together with the narration in *Kitab fi Athaari Meedoo el-Qadimiyyeh* relating to the prince who arrived in the Maldives from Kalinga.

[15] According to Ahmed Shihabuddin, the history of the Kings of *Adeetta vansa* was inscribed on copperplates known as '*Maapanansa*'. When the cousin of King Mahaabarana Adeettiya (1121-1142 AD), Princess Kamanhaaru, was banished to Addu Meedhoo, she took these plates with her. An early 14th century scholar of Addu Meedhoo, Al Muhaddith Hassan stated that he was able to read the whole of the *Maapanansa* copperplates, and that after reading them, he had buried them in the ground. These copperplates have never been found.

the northern atolls of the Maldives.[16]

During the third century AD, the Indian Emperor Asoka undertook a vigorous campaign to spread Buddhism and sent emissaries to many countries in Asia for that purpose. According to Allama Ahmed Shihabuddin, Buddhism penetrated to the Maldives about the same time through some Buddhists who came from a place called *Bairat* in India.[17] At this time the Maldives was known as *Dheeva Mahal*. This would indicate that the conversion to Buddhism took place among the *Dheyvis* at an early stage of Buddhism.[18]

It is impossible to make any general rules about the precise schools of Buddhism that flourished in the Maldives, as the various islands were inhabited by people who arrived from different parts of South Asia, and the various groups of people living in different parts of the country had little communication between them. H.C.P Bell asserted that the ancient Maldivians followed Theravada Buddhism, which was practised in Sri Lanka.[19]

In the 10th century, the Chola Empire became powerful in southern India, and the Maldives did not escape its influence. In the early 11th century, during the early years of the *Soma Vansa* (Lunar Dynasty),[20] two northern atolls of the Maldives came under the Chola Empire. The *Soma Vansa* ruler, King Mahaabarana Adeettiya (1121-1142 AD) ascended the throne after he

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[16] Naseema Mohamed, 'Note on the Early History of the Maldives,' *Archipel,* Volume 70, 2005, 7-14, http://www.persee.fr/web/revues/home/prescript/article/arch_0044-8613_2005_num_70_1_3970 .

[17] Ibid.

[18] Ibid.

[19] First archaeological study of the remains of early cultures on the Maldives began with the work of H.C.P. Bell.

[20] The last queen of the *Adeettiya* dynasty married a prince of the *Soma* dynasty and the formal titles of Maldivian kings until 1968 contained references to *'kula soma ira'* which meant, 'descended from the Moon and the Sun'; see also, Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives*, 113-114.

defeated the Indians who had occupied the two atolls. King Mahaabarana Adeettiya was succeeded by his nephew Sri Sandaneyka Adeettiya *(Bavanaadheettha)*, who converted the Maldives to Islam and was later known as *Dharumavantha Radun*.[21]

The seafaring people who settled in the islands continued with their tradition of travelling and traded with India, Ceylon, Bangladesh, South East Asia, Arabia and East Africa.[22] Arab and Persian traders who travelled to South and East Asia stopped and briefly resided in the Maldives.[23]

Conversion to Islam

In the tenth century, Middle Eastern seafarers began to dominate the Indian Ocean trade routes and the Maldives provided an important link for these seafarers along these trade routes. The abundant supply of cowrie shells, a form of currency that was widely used throughout Asia and parts of the East Africa at that time, may have enhanced their interest in the Maldives.[24] Merchants from Yemen and the Persian Gulf followed the monsoons to the coast of Malabar and from there to the islands of Maldives, Sri Lanka, Java and Sumatra. During their travel to these Asian destinations, Middle Eastern merchants introduced Islam to the places they visited.[25]

Despite its being one of the most significant developments in Maldivian history, historical evidence is extremely limited about the coming of Islam

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[21] Naseema Mohamed, 'Note on the Early History of the Maldives,' *Archipel*, Volume 70, 2005, 7-14, http://www.persee.fr/web/revues/home/prescript/article/arch_0044-8613_2005_num_70_1_3970 .

[22] Xavier Romero-Frias, The *Maldive Islanders*, 11-14.

[23] See for example, H.A.R. Gibb, *The Travels of Ibn Battuta*, 241- 253.

[24] H. C. P Bell, *The Maldives Islands: Monograph on the History, Archeology and Epigraphy*, (Colombo: Ceylon Government Press, 1940), 17.

[25] Ibid, 17; See also, Jamal Malik, *Islam in South Asia: A short history*, (The Netherlands: Martinus Nijhoff Publishers, 2008), 29-59.

to the Maldives.[26] There is considerable debate amongst scholars about the reasons for the Buddhist king to have abandoned Buddhism and embraced Islam.[27] To fill this gap, many scholars turn to an illustrious local legend for an explanation of why King Sri Sandaneyka Adeettiya (Bavanaadheettha) converted.[28] It is clear from *The Book of Ancient Meedhoo History* that the people of the Maldives had started to embrace Islam before the king converted to Islam in 1153 AD, from learning about it through Arab Seafarers and the local people who travelled to Arabia. *The Book of Ancient Meedhoo History* also makes it clear that some Arab travellers had settled in the Maldives and married local women.

Historical anecdotes in *The Book of Ancient Meedhoo History* abundantly depict the manner in which Islam took root in the Maldives. The book describes how the people of Meedhoo had abandoned Buddhism in favour of Islam in 1127, twenty-six years before the king of the Maldives converted to Islam.

> 'Yoosuf Gadir and his family arrived in Meedhoo in October 1125. They stayed in the houses of Elhai Haaru Dhoraaboo and Kalhai Haaru. At that time, the island was Buddhist. Dhoraaboo, the headman of the house where the Gadir family was staying, had travelled to the countries of the world and knew the Arabic and Farsi languages. He had also become a Moslem, converted by Al-Hafiz Amir the son of Yasir Al-Namrizi of Nimrooz (in Persia), although he kept this a secret . . . Yoosuf's work led to the conversion of Chandu Haaru, the son of the island's (female) Buddhist priest, Kalhai Haaru. Chandu Haaru joined Yoosuf's campaign and decided to smash the statues in the temple during the month of Rajab. The people of the island were angry and complained, but Kalhai Haaru kept things under control because his son had led the attack.

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[26] A. Gray, 'The Maldive Islands: With a vocabulary taken from François Pyrard de Laval 1602 – 1607', *Journal of Royal Asiatic Society of Great Britain & Ireland*, New Series, Vol.10, No.2 (Apr., 1878) pp. 173-209, (Cambridge University Press), http://www.jstor.org/stable/25196795 , (Accessed: 27/10/2012 18:13).

[27] Clarence Maloney, *The People of the Maldive Islands*, 101.

[28] Xavier Romero-Frias, *The Maldive Islanders*), 32-36.

> The Kalhai Haaru family was originally from India. Kadu Kumar, a man from Patna in India, married a Meedhoo woman called Kaman Haaru, who was a high level member of the Buddhist religion . . . Two days after the statues were smashed in August 1127, Kalhai Haaru embraced Islam. Because Dhoraaboo interpreted the conversion arguments of Yoosuf Gadir, he was given the title of Abu-el-Lisan. The name he was using before referred to the name of town of the person who had originally converted him to Islam, Yoosuf Al-Namrizi... In 1144, the two Yoosufs set out for Malé and other places. During this journey Yoosuf el-Namrizi (Dhoraaboo) died, and Yoosuf Gadir returned to Meedhoo in July 1166. As the islands embraced Islam, Gan was the last island in Addu atoll to be converted (around 1300).'[29]

By the end of the 12th century, the entire population of the Maldives had been converted to Islam and Buddhist temples and stupas were abandoned and buried beneath the sand. However, despite the introduction of Islamic law, several pre-Islamic traditions remained in place as part of the everyday life of local Muslims.

The well-known Moroccan traveller Ibn Battuta, who visited the Maldives in the middle of the 14th century, states that the inhabitants of all the islands of the Maldives were religious and upright Muslims, and all the islands had beautiful mosques.

> 'The inhabitants of these islands are upright and religious and are men of right beliefs and good intentions. Their diet is consistent with the Islamic law, and their prayers are accepted by the Almighty God. When one man meets another he says to the other, God is my lord, Muhammad my prophet and I am a poor ignoramus.'[30]

Organization of the early State

Over the long period of their history, the Maldivians have developed a unique state system suitable to the islands' geographical formation and the

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[29] Translated into English from Dhivehi by Fareesha Abdulla and Michael O'Shea, http://www.maldivesroyalfamily.com/maldives_meedhoo_history.shtml

[30] H.A.R. Gibb, *The Travels of Ibn Battuta*, (New Delhi: Goodword Books, 2011), 241.

distribution of the population. Cultural and religious unity has given the Maldivian people a strong sense of identity as a distinct nation. The organization of the ancient and medieval Maldivian state and its institutions were heavily influenced by both the traditions of the Buddhist kingdom that lasted for at least a thousand years and the laws and practices of the Muslim kingdom from the 12th century onwards. According to Clarence Maloney, the political system in the Maldives was an adaptation of that prevailing in Sri Lanka, 'modified by the unique geography.'[31] According to Pyrard, the Maldivians were skilled in arms and they lived under a complete system of law and police.[32]

The main functions of the ancient Maldivian state were defending the state against external aggression, collecting taxes and resolving disputes among the people. The king was the ultimate protector of the faith of his subjects, for which he depended on his clergy.[33] The chief cleric in the royal court was also responsible for resolving the disputes among the people. As a matter of tradition, the king had relied on the chief cleric for the legitimacy of his rule.[34] This could have been the reason why the chief justice, who was also the chief cleric, was such a powerful figure in the royal court.[35]

The King

The position of the ancient Maldivian kings was inherited according to the customary order of succession among the members of the royal family.

[31] Clarence Maloney, 'The Maldives: New Stresses in an Old Nation', *Asian Survey*, Vol. 16, No. 7, (University of California Press, Jul., 1976), 659, http://www.jstor.org/stable/2643164 (Accessed: 27/11/2012 04:39); see also, François Pyrard de Laval, *The Voyage of Francois Pyrard of Laval to the East Indies, the Maldives, the Moluccas and Brazil*, (1611), translated into English in 1887 from the third French edition of 1619 by Albert Gray assisted by H.C.P. Bell, Vol. I, Chapters 14 & 15.

[32] François Pyrard de Laval, (1611), Vol. I, Chapter 10.

[33] François Pyrard de Laval, (1611), Chapter 14.

[34] Ibid.

[35] Ibid; see also, *Public Advertiser* (London, England), Friday, November 18, 1791, Issue 17900.

According to Pyrard, the power of the King was absolute throughout his whole realm, and he disposed of all things according to his pleasure.[36] The King was feared and dreaded, and everything depended upon him;[37] he was the dispenser of justice to ensure order and punish crime. When an appeal was made to him by any of his subjects, he gave orders for justice to be done by his judges, lords and officers.[38] All major decisions were taken by the King in consultation with the *Ameerun* (noble chiefs) and the ministers, known as *Furadhaana*.[39] However, the King had the power to veto the decisions and advice given by the councils.

Nobility and the Councils

After the King, the most powerful people in the kingdom were the *Kilege* or *Ameerun,* appointed by the King from among the members of the royal family to be his advisors.[40] These *Ameerun* and *Kilege*, (the noble chiefs of the state) were regarded as the owners of the kingdom.[41] Although these noble chiefs had a lot of power, they were not automatically put in

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[36] Ibid.

[37] Ibid.

[38] François Pyrard de Laval, (1611), 14 &15.

[39] See also, *The Times*, (UK), Tuesday, May 25, 1920, 34.

[40] See for example, the chiefs of state appointed by King Mohamed Thakurufaanu, immediately upon assuming the Maldivian throne in 1573 AD, Hussain Salahuddin, *Boduthakurufaanu Vaahaka*, (Malé, Maldives: Novelty Press, 1998), 231; see also, Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 150.

[41] King Mohamed Thakurufaanul Auzam *(Boduthakurufaanu)* upon assuming office after defeating the Portuguese in 1573, appointed his younger brother and companion Hassan Thakurufaanu as a '*Shareek*' (a joint owner) of the kingdom and conferred on him the title *Rannabandeyri Kilegefaanu,* while Ali Haji, another member of his companions who waged war against the Portuguese, was appointed as the Prime Minister with the title *Dhoshimeynaa Thakurufaanu.* This means that *Rannabandeyri Kilegefaanu* was the most powerful figure in the kingdom after the king, and the Prime Minister was a lesser figure who was responsible for the day-to-day administration of the affairs of the state, See, *Dhivehi Thaareekh*, (Malé, Maldives: Dhivehi Thaareekhaa Sagaafathah Khidhumaiy Kuraa *Majlis*, Office of the President, 1981),13-14.

government positions. At times the noble chiefs acted like a council and the Kings and Queens consulted with the noble chiefs before taking important decisions affecting the kingdom. The King himself, known as *Ras Kilege*, was a member of the Council of chiefs of state. The *Kilege* Council also included lady noble chiefs, such as the Queen, the mother or mother-in-law or a sister or sister-in-law of the king.[42] One of them or all of them, as the case might be, was always included in the Council, which met when matters of great importance and urgency were to be discussed. Since these *Kilege* were the chiefs of state, each *Kilege* was traditionally allocated certain atolls or islands of the country from where he or she would directly draw tax (*vaaru*) or other income.[43]

Grand Vizier

The most powerful official of the realm was the *Kilege* who was appointed by the king as his Grand Vizier.[44] Next to the King, and in his absence, he was the most powerful figure in the government of the state, and without his authority nothing was done.[45] If the King wished to do, observe, or execute anything, he was the first person to be deputed and receive his commands.[46]

The Cabinet

The Ministers (*Furadhaana*) who were subordinate to the *Kilege,* were responsible for the execution of the orders of the King.[47] The Ministers were also the most trusted advisors of the King. The central core of the council of Ministers was a small group made up of senior members of the

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[42] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 150.

[43] François Pyrard de Laval, (1611), Vol. I, Chapter 14 & 15; see also, H.A.R. Gibb, *The Travels of Ibn Battuta*, 245.

[44] Ibid.

[45] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 64.

[46] Ibid.

[47] Ibid.

royal family or the senior citizens of the community respected for their wisdom, character and loyalty to the King or the Queen.[48]

The Ministers assisted the Kings and Queens to carry out important functions of the state[49] and they held office for as long as they enjoyed the royal pleasure. The number of Ministers and their functions varied from time to time, depending on the circumstance and needs and the power and influence of the people appointed to various posts by the King or Queen.[50]

According to Ibn Batuta, the Council of Ministers comprised the following members.[51]

1. *Kilege* - Grand Vizier or King's Lieutenant.

2. *Fandayarkalou* - Chief Justice.

3. *Handeygiri* - Preacher.

4. *Famuladeri* - Chief of the Treasury.

5. *Mafaiy* – Receiver-General of Revenue.

6. *Faashana* - Minister of Police.

7. *Manayec* - Admiral.

8. *Deherd* - General of the Army.

Although Ibn Battuta includes the Chief Justice among the Cabinet of Ministers, his own writings and the writings of subsequent writers confirm that the office of the Chief Justice was an institution that was separate from

[48] Ibid.

[49] See *The Times*, (UK), Tuesday, May 25, 1920, 34.

[50] François Pyrard de Laval, (1611), Vol. I, Chapter 15.

[51] Ibid.

the executive.[52]

Pyrard lists the members of the cabinet as follows:[53]

1. *Kilege* (Grand Vizier)

2. *Faruna*

3. *Handeygiri.*

4. *Velaanaa*.

5. *Dhoshimeyna*.

6. *Maafaiy* (Chancellor).

7. *Karani*.

8. *Mas bandeyri* (Intendant of Finance).

9. *Rannabanderi* (Treasurer).

Christopher (1834) lists the members of the Cabinet as follows:[54]

1. *Dhoshimeyna* (Chief or General of the Army).

2. *Hakuraa*.

3. *Velaanaa.*

4. *Faamuludeyri*

5. *Maafaiy*.

6. *Daharaa*

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[52] Ibid.

[53] Ibid.

[54] Ibid.

According to Mr. Bell (1879), the king had appointed only three ministers:[55]

1. *Handeygiri*, or *Bodu Bandeyri,* (Chief Treasurer of the realm).

2. *Daharaa.*

3. *Miru Baharu*

Among the *Furadhaana,* the most powerful Ministers after the Grand Vizier were the *Faashana* and the *Handeygiri*, who always worked from the King's palace and were always beside the King to give counsel to him on all occasions and in all matters.[56]

Bodu Galu Lomafanu (dated 1356-57 AD) illustrates the manner in which the King or the Queen consulted with the *Furadhaana* (Ministers) before taking important decisions.[57]

> 'Her Majesty, the abolisher of sorcery, chief of the nine gems, in the 16th year of Her reign when seated on the puissant lion-throne at Fura Malé the time-honoured, dwelling in happiness, heard the verbal statement made by Ras Kilage (styled) Kakai Mabarak, viz, 'I possess no Deed of Provision granted by royalty for *Walu Miskit* (on the land) of Hasan Dafiya, built in order to gain religious merit' 50 kingdoms and 20 kingdoms.
>
> When this matter was submitted before the royal feet, Her Majesty (generously) listening to the statement accepted it favourably (with pleased countenance).
>
> Ali Handegiri Kilage, Her Majesty's spouse, the five chiefs (*Furadhaanas*) and the Council, being ordered to inquire into the statement carefully, the grant of the income to the Mosque built by

[55] Ibid.

[56] Ibid.

[57] H. C. P Bell, *The Maldives Islands: Monograph on the History, Archeology and Epigraphy*, (Colombo: Ceylon Government Press, 1940), 182-186.

Kakai Mubarak was agreed to, (for providing the following needs) – *cadjans* and oil for the use of the Mosque; for the feeding of the Malims and Mudims for the performance of the usual prayers and the five calls for prayer; for spreading mats and sweeping the Mosque.

. . . any man who rebels, causes disturbance and commits murder.

Every Muslim (whether king, queen, royal prince, Princess Fattama Devi, Chief Minister, or Council Officials) who is minded to allow this religious benefaction to continue undisturbed, will enter Heaven with the Prophet. Every Muslim (whether king, queen, royal prince, Princess Fattama Devi, Chief Minister, or Council Officials) who tries to harm, or destroy, this religious benefaction without allowing it to stand (as hitherto), will become an enemy to God and the Prophet, will commit sin (such as) setting fire to the Mosque at Mekka and Medina and will go to Hell with all Infidels.

(Her Majesty) the Great Ruler, Svasti Sri Tri Rada Abaranna Maha Rehendi Maha Radun bestowed this benefaction in order that she herself and the kings and queens who followed her may obtain merit before God. The deed of *'hinna'* thus reserved for the Mosque was given out verbally by the Sultana and was written down by Muhammad Famuladeri.

Fatai Kabala, daughter of Midu Famuladeri *vima fanfi vani ara firugu* and wife of Isa Uttama Fadiyaru, states that this *kilage* bought from the family and wife of Fadiyaru Diyanigilla, Island of Huvadummathi (Atoll), and made it *hinna* (as source of income) for the Mosque without giving the share belonging to Alageai.

At the time the *kilage,* sitting with the Council and five *Furadanas* who hold office, decided according to the *Shariat* (Muslim Law) that the property shall be divided into one-hundred and forty-four shares. Amina born to Isa Uttama Fadiyaru by Fatai Kabala, and the said *kabala*, to these two persons, one share, from the mother's side of this *Fadiyaru*, is allotted, namely 51 shares from 144 shares deducting two shares *himiti anavai baa(r)*.

The *Fadiyaru*'s son Ali and the *Fadiyaru'*s wife Amina Kaba two shares from me . . . two shares *vaniba* should be given to the *kilage*.

Kilage Fatirada examining the document (*fat balaigen*) as a *hinna* to this Mosque (*atvidi anigilinavi de luni bayar vani*), Medege Muhammad Government official, *varingati fonidaniai* assigned the

coconut trees of Kani Midu Island (Nilande' Atoll).'

Provinces

The Maldives islands were divided into thirteen atolls or provinces. A chief known as the *naib* led each of these provinces.[58] These *naib*s, or chiefs of provinces, were, according to Pyrard, priests or doctors of the law, who had jurisdiction over all matters of religion, education and the administration of justice. As each of these thirteen atolls or provinces consisted of many islands, a *katib* was appointed to each island as the religious superior of that island, who had under him the priests incumbent (*mudims*) of the mosques.[59] The *naib* gave orders to the *katibs* and *mudims* in his province.[60] These *naibs* were accountable to and received orders from the *Fandiyaaru*, who resided in Malé. The *Fandiyaru* was not only the ecclesiastical superior of the whole kingdom, but also the Chief Justice of the kingdom.[61]

All the islands were divided into separate wards, and each such ward had its headman, called the *muskulhi*, the alderman of the ward.[62] The people of the ward would treat him with great honour and respect. The alderman could do nothing without the counsel and advice of the other elders and councillors of the ward. When there was a task to be executed, he would summon the elders to his house or other place, to consider the possible resolution of the matter.[63]

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[58] François Pyrard de Laval, *The Voyage of Francois Pyrard of Laval to the East Indies, the Maldives, the Moluccas and Brazil*, (1611), Chapter 14; see also, H.A.R. Gibb, *The Travels of Ibn Battuta*, (New Delhi: Goodword Books, 2011), 241.

[59] Ibid.

[60] Ibid.

[61] Ibid; see also, H.A.R. Gibb, *The Travels of Ibn Battuta*, 245.

[62] Ibid.

[63] Ibid.

Tax Collectors

In addition to the *naib*, in each province there was a man appointed and employed by the King to collect and levy his dues and revenues.[64] These people were called *vaaruveri* or *atolhu veri* and they were highly honoured and respected. According to HCP Bell (1887), these collectors of revenue were appointed to an atoll, or part of an atoll, by the King on the recommendation of the *Handeygiri*.[65] They did not necessarily reside in their districts: the majority resided in Malé, and employed subagents or *rashu verin*. The emoluments of the office were considerable, and these posts were frequently held by relations of the King, and by the Ministers themselves. The post could either be held for life or according to the sultan's pleasure, and upon the death of an *atolhu veri* his estate was held liable for any balance due to the treasury.

According to HCP Bell, the *Handeygiri* (preacher in Ibn Batuta's time, a lord privy councillor in Pyrard's time and Chief Treasurer in Bell's time) was a high officer vested with the authority to enforce the payment of revenue when a complaint was made to him by the *atolhu veri.* According to Bell, the *Handeygiri* seems to have ranked above the other two Ministers, and possessed greater influence in the community.[66] A staff of accountants and clerks were also employed to assist him in the revenue duties at Malé.

According to HCP Bell (1887), although in Pyrard's time the *naibs* were superior to the collectors of revenue (*varuverin* or *atolu verin*), later the latter became more powerful and *naibs* became the ecclesiastical and judicial chiefs of the atolls.

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[64] François Pyrard de Laval, (1611), Vol. I, Chapter 15.

[65] Island Chief.

[66] François Pyrard de Laval, (1611), Vol. I, Chapter 10; see also, Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 152.

The Army

Often kings and queens relied on the loyalty of the armed forces to gain and retain power;[67] hence the armed forces played an important role as an institution of state power.[68] According to Ibn Battuta, the Queen's army comprised of about a thousand men recruited from abroad, although a small number of natives were also included.[69] However, according to the *Dhivehi Thaareekh* chronicle, it was King Mohamed Thakurufaanu who established the first standing army of the Maldives in 1573 and they were named the *Hangubeykalun*.[70] Pyrard says that during his stay in the Maldives the King's army consisted of about six hundred soldiers commanded by the six *muskulhin* or elders – known as *bodubeykalun*.[71] The security for the king was provided by a special group of forty people known as *kudhibeykalun* under the command of Maabandeyri Takurufanu.[72]

Foreign interference

The Portuguese were the first Europeans to make an intrusion into the Maldivian archipelago.[73] The golden age of Portuguese exploration and

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[67] *Dhivehi Thaareekh*, (1981), 94-99.

[68] Ibid, 53-77.

[69] H.A.R. Gibb, *The Travels of Ibn Battuta*, 245; see also, Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 149.

[70] Hussain Salahuddin, *Boduthakurufaanu Vaahaka*, 234; *Dhivehi Thaareekh* (1981), 19-20.

[71] François Pyrard de Laval, *The Voyage of Francois Pyrard of Laval to the East Indies, the Maldives, the Moluccas and Brazil*, (1611), Chapter 15; see also, *The Times*, (UK), Tuesday, May 25, 1920, 34.

[72] Ibid.

[73] *General Evening Post* (London, England), November 7, 1786 - November 9, 1786, Issue 8261; Note, this may perhaps be the first article written in a European newspaper about the Maldives; See also, *London Recorder or Sunday Gazette* (London, England), Sunday,

conquest in Asia began with Vasco da Gama's voyage to India in 1497 and continued through the first half of the sixteenth century. The agreement made between the Portuguese and the Maldivian sovereign in 1507 was the first known agreement signed between the Maldives and a foreign country.[74] Despite this agreement, Portugal made several unsuccessful attempts to occupy the Maldives before it succeeded in capturing the Maldives in 1558 with the help of a young Maldivian king who left the Maldives to join the Portuguese missionaries in Goa in India.[75] The Portuguese ruled the islands for 15 years before they were eventually driven away.[76] Portuguese expeditions attempted to invade the Maldives once more in 1624 and 1648.

After the end of the military adventures of the rulers of the Chola Empire in the northern atolls of the Maldives in the 11th century, the Maldives remained safe from the rulers of Southern India until the Malabars from South India began to foray into the Maldives from the beginning of the 17th century.[77] In 1609 the Malabars raided and killed the King of the Maldives, but they were repelled.[78] Forty years later, the Ali Rajah of Cannanore twice attacked the Maldives.[79] In 1650 the Maldivian king Ibrahim Iskandhar invaded the territory of the Rajah of Cannanore and took some of his chiefs hostage.[80] They were later released on payment of a nominal sum of money.[81]

November 12, 1786; Issue 320.

[74] *General Evening Post* (London, England), November 7, 1786 - November 9, 1786, Issue 8261.

[75] *Dhivehi Thaareekh* (1981), 1-3.

[76] Ibid; See also, *Public Advertiser* (London, England), Friday, November 18, 1791, Issue 17900.

[77] *Dhivehi Thaareekh* (1981), 20-36.

[78] Ibid.

[79] Ibid.

[80] Ibid.

[81] Ibid.

By the mid-seventeenth century, the Dutch had driven the Portuguese away from Sri Lanka and had established firm control over Ceylon. Following the Dutch occupation of Ceylon, the Dutch governors in Ceylon had forged a close relationship with the King of the Maldives to secure a continuous supply of cowrie shells from the Maldives; in exchange, the Maldivian kings sought Dutch protection against attacks from South India.[82] Although the Dutch exerted a certain degree of influence over the affairs of the Maldives, they did not involve themselves directly in local affairs.[83]

The Malabars carried out another unsuccessful attempt to invade the Maldives in 1690. However, in 1752 they finally succeeded in capturing the Maldivian capital, Malé.[84] They took the King to Malabar and positioned a group of soldiers to administer the Maldives. The Maldivians defeated and drove out the Malabars four months later.[85] Soon after this incident, the Maldivian rulers also entered into a defence treaty with the French in Pondicherry to safeguard themselves against the attacks from South India. Pursuant to this agreement, French forces had also briefly been stationed in the Maldives.[86]

By the end of the 18th century, Britain had strengthened its naval power in the Indian Ocean. After Britain had established its rule over Ceylon, the British rulers in Sri Lanka inherited the friendly relations that had existed until then between the Maldivian rulers and the Dutch governors in Ceylon.[87] The British interest was also boosted by the Maldives' strategic location in the Indian Ocean as an important link in the maritime routes

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[82] *The Times*, (UK), Tuesday, May 25, 1920, p. 34.

[83] Ibid.

[84] *Dhivehi Thaareekh* (1981), 151-190.

[85] Ibid.

[86] Ibid, 184.

[87] *The Times*, (UK), Tuesday, May 25, 1920, p. 34.

used by the British.[88]

The political rivalry among the powerful families in the latter part of the 19th century, and the disputes between the locals and the Borah merchants in the Maldives offered Britain an excellent opportunity to wield its power in the Maldives through its Governor General in Ceylon. This would lead to the controversial signing of a treaty between the Maldives and Britain in 1887.[89] This treaty, which made the Maldives a British protectorate, also assured protection to the Maldives from foreign aggression, while the Maldives in turn agreed not to collaborate with any other foreign power without British consent.

There is considerable debate among historians about the degree of independence the Maldives enjoyed as a British Protectorate. Although, under the terms of the Agreement of 1887, the Maldives was not treated as a colony, it continued to seek advice from the British Governor General in Ceylon on all important matters affecting the state.[90]

Despite the loss of sovereignty, the Maldives continued with self-rule. The 1887 treaty had not altered the way the Maldives was being governed; nor had it left any mark on its laws or the legal system – both of which were

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[88] *Caledonian Mercury* (Edinburgh, Scotland), Monday, April 13, 1835, Issue 17749; See also, *Preston Chronicle* (Preston, England), Saturday, December 12, 1835; Issue 1215.

[89] Abdul Hakeem Hussain Manik, *Iyye*, (Malé, Maldives: Novelty Printers and Publishers, 1997), 8-10; Ali Hussain, *Remnant Memories of What I saw and Heard*, Part 1, (Malé Maldives: Novelty Printers and Publishers, 2013), 129-134; Mohamed Naseer, *Dhivehi Raajjeyge Mizamaanuge Thaareekhugai Hingi Enme Muhimmu Dhe Haadhisaa: Ingireysinge Himaayathuge Dhashah Dhiun Adhi Bodu Hulhujehun*, (Malé, Maldives: Novelty Printers and Publishers, 2010), 199-238; Mohamed Nasheed, *Dhagandu Dhahanaa 'Iron Armour': Maldives becomes a British protectorate*, 1800-1900' (Malè, Maldives: Lōmāfānu Printers, 1995).

[90] Mohamed Naseer, *Dhivehi Raajjeyge Mizamaanuge Thaareekhugai Hingi Enme Muhimmu Dhe Haadhisaa,* 240 – 257; See also, Mohamed Amin, *Dhivehi Raajjeyge Qaanoon Asaasee ge Hayaath* (The Life of the Constitution of Maldives), (Malé, Maldives: Novelty Press, 2003), 164.

based on Islamic Shari'ah and age-old customs. The Maldives continued to be ruled by hereditary Kings until the first Constitution, adopted in 1932, limited the powers of the monarch.

The first Constitution

The political rivalry between the influential family groups that led to the 1887 Protection Agreement with the British continued into the 20th century and dominated local politics for the best part of the 20th century.[91] The Borah merchants had a near monopoly over local businesses.[92] In the late 1920s, the power of the Prime Minister, who was leading a corrupt and lavish lifestyle, had grown to such an extent that Sultan Mohamed Shamsuddin III found himself completely isolated and feared losing his throne. The powerful Prime Minister Abdul Majeed Rannabandeyri Kilegafaanu acted like a dictator and virtually ruled the country without having to account for his actions. By 1930, the Sultan sought assistance from the British to check the powers of the Prime Minister. To make matters worse, serious questions were raised regarding the suitability and the legal capacity of the Crown Prince Hassan Izzuddin to succeed his father as king.

At about the same time, a movement for political reform began among young leaders who returned to the Maldives after completing their studies in Sri Lanka. The young reformers proposed the introduction of a Constitution to check the powers of the prime minister and to solve the

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[91] Abdul Hakeem Hussain Manik, *Iyye*, (Malé, Maldives: Novelty Printers and Publishers, 1997), 8-10; Ali Hussain, *Remnant Memories of What I Saw and Heard*, Part 1, (Malé Maldives: Novelty Printers and Publishers, 2013), 129-134; Mohamed Naseer, *Dhivehi Raajjeyge Mizamaanuge Thaareekhugai Hingi Enme Muhimmu Dhe Haadhisaa: Ingireysinge Himaayathuge Dhashah Dhiun Adhi Bodu Hulhujehun*, (Malé, Maldives: Novelty Printers and Publishers, 2010), 199-238; Mohamed Nasheed, *Dhagandu Dhahanaa 'Iron Armour': Maldives becomes a British protectorate*, 1800-1900' (Malè, Maldives: Lōmāfānu Printers, 1995).

[92] Ibid.

issue of succession. The British Acting Governor General also believed that the creation of a Constitution would break the political impasse.

The British took great interest in the reform movement in the Maldives and offered assistance in writing a Constitution. In March 1931, Sir Bernard Bourdillon, the Acting British Governor of Ceylon, visited the Maldives at the request of the Maldivian government to assist with the formulation of the Constitution.[93] During his visit to the Maldives, he held discussions with the leading people and scholars and submitted his findings and recommendations to the King. In his recommendations to the King, Sir Bernard Bourdillon suggested that the most appropriate form of government for the Maldives was for the Government to be run by a Council of Ministers, headed by a Prime Minister.[94]

Prime Minister Abdul Majeed considered that the British effort to introduce the Constitution and democracy was premature, as the Maldivian people were not ready for such a transition.[95]

Following the recommendations made by Sir Bernard Bourdillon, on 19th March 1931, King Mohamed Shamsuddin established a Constituent Assembly (*Majlis*) to formulate a Constitution 'appropriate to the Maldives'.[96] The royal decree, which conferred the mandate to the *Majlis*, contained specific instructions from the King to the *Majlis*. The King insisted that the Constitution:[97]

(a) Should not violate Islamic Shari'ah;
(b) Should take into account the longstanding local customs;
(c) Should be within the means available to the state;

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[93] Mohamed Amin, *Dhivehi Raajjeyge Qaanoon Asaasee ge Hayaath* (The Life of the Constitution of Maldives), (Malé, Maldives: Novelty Press, 2003), 3-4.

[94] Ibid.

[95] Ibid, 4-30; See also, Abdul Hakeem Hussain Manik, *Iyye*, (Malé, Maldives: Novelty Printers and Publishers, 1997), 14.

[96] Ibid; 40 – 51.

[97] Ibid.

(d) Should not cause hardship 'to my people';
(e) Should not infringe the Protection Agreement signed between Britain and the Maldives in 1887.

Before beginning to draft the Constitution, the *Majlis* set up two sub-committees: one, to collect and compile the age-old customs, and the other, to translate a draft Constitution provided by the British through the Maldivian Ambassador in Sri Lanka. After the sub-committees had completed their work, a seven-member sub-committee was set up to draft the Constitution. The *Majlis* having completed its task on 12th June 1932, the King ratified the Constitution on 22 December 1932.[98]

The effect of implementing this Constitution was immediate. Organizational and administrative difficulties presented by the new Constitution and resistance to constitutional rule from senior public officials threw the whole government into complete disarray and confusion.[99] Mohamed Amin Didi, who was a member of the drafting committee, stated in his book *Life of the Constitution of Maldives* that the Constitution was not suitable and expressed his disappointment over the drafting committee's refusal to accept Sir Bernard Bourdillon's proposals for constitutional reform. According to Mohamed Amin Didi, the framers had simply disregarded Bourdillon's advice, saying that the system of government he recommended 'was inferior to the stature of Maldives.' Consequently, 'the implementation of the Constitution was not at all practical; and the implementation of the laws passed by the Parliament proved to be more taxing than the Constitution itself.'[100]

The discontent over the Constitution, which began among public officials, soon spilled over to the public and within less than a year after its adoption, people gathered in Gulhakulhey Square and literally tore up the

[98] Ibid.
[99] Ibid, 40 – 43.
[100] Ibid.

Constitution.[101]

In about one and half years after the proclamation of the first Constitution, a new Constitution, based on the principles laid down in the first one, was adopted on 5th July 1934.[102] Following the adoption of the 1934 Constitution, a movement to abolish the Constitution was formed by a group of Ministers who were supported by the Crown Prince Hassan Izzuddin.[103] These Ministers were arrested and banished by the Government led by Prime Minister Mohamed Fareed, but Crown Prince Hassan Izzuddin prevented the Government from arresting some officials of the Palace who formed part of the group conspiring to abolish the Constitution.[104] A mob had gathered outside the palace demanding the surrender of these officials to the police. The Crown Prince and his father, who had been on the throne for 33 years, came out to meet the people who had gathered outside his palace. The King asked the people whether they wanted the King and the Prince or the Constitution. The people in one voice shouted that they wanted the Constitution. The King and the Crown Prince were arrested, tried and found guilty of violating the Constitution.[105]

Following the removal of King Mohamed Shamsuddin III, the Cabinet of Ministers assumed the powers of the King until a new King was elected according to the constitution.[106] After the election of King Hassan Nooraddin as the new King, a new Constitution was drafted and adopted in 1934 in accordance with the advice given by Abdul Majeed Rannabendeyri Kilegefaanu, who returned to the Maldives from Egypt. The 1934 Constitution was amended in July 1936, and a new Constitution was again

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[101] Ibid, 86 – 161.

[102] Ibid.

[103] Ibid; See also, Abdul Hakeem Hussain Manik, *Iyye*, (Malé, Maldives: Novelty Printers and Publishers, 1997), 14.

[104] Ibid.

[105] Ibid.

[106] Ibid, 173 -190

adopted in January 1937.[107]

The Second World War had a dramatic effect on Maldivian political and social life. On 30th January 1940, the People's *Majlis* voted to abolish the constitution, stating that the existing situation did not favour a constitutional rule in the country.[108]

After much debate, a Constitution was again formulated and adopted on 23 April 1942 by Sultan Hassan Nooraddeen II.[109] This fourth Constitution was popularly known as the 'Little Constitution' as it contained just 17 articles.[110]

The 'Little Constitution' was repealed and a new Constitution was adopted on 31st May 1951.[111]

The First Republic

A constitutional referendum was held in 1952 to determine whether the people were in favour of establishing a republic or retaining the monarchy.[112] The people were in favour of a republic, and a new Constitution was adopted.[113] Mohamed Amin was elected as the first President of the Maldives; however, less than a year into his presidency, Mohamed Amin was overthrown by a coup led by his Vice President and

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[107] Ibid.

[108] Ibid.

[109] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 1, (Records of the Government of Maldives), (Malé Maldives: Novelty Printers and Publishers, 2011), 6.

[110] Mohamed Amin, *Dhivehi Raajjeyge Qaanoon Asaasee ge Hayaath*, 173 – 190.

[111] Ibid.

[112] Ibrahim Shihab, 'Dhivehi Raajje Jumhooriyyathakahvee Keevvegentha?' in Dhivehi *Jumhooriyya . . . Marhabaa*, (Malé, Maldives: Novelty Printers and Publishers, 2007), 72-84; see, Abdul Hakeem Hussain Manik, *Iyye*, 25-33.

[113] Ibid; *See also*, *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 8, (Records of the Government of Maldives), (Malé Maldives: Novelty Printers and Publishers, 2011), 770 – 784,

the republic came to end.[114]

In a referendum held in 1954 the Maldivians decided to return to a monarchy.[115] Following this referendum, the People's *Majlis* (parliament) elected Mohamed Fareed Didi as the new King. King Mohamed Fareed proclaimed the seventh Constitution of the Maldives on 7th March 1954.[116]

Dhekunu Gadu Badu[117] and Independence

Since 1835 Britain had shown its interest in using Addu Atoll to build a facility for the British vessels travelling in the Indian Ocean.[118] However, it was only during the Second World War that Britain was permitted to establish a naval base in Addu Atoll for its Eastern Fleet to defend British interests in South and South East Asia.

In 1948, when Ceylon became independent, Britain had to take a decision on the status of the Maldives, which at that point were still part of the responsibility of the British Governor General in Ceylon. Hence, Britain signed a new agreement with the Maldives, providing for the Maldives to remain under the protection of the British Crown, and for the British High Commissioner in Sri Lanka to look after the affairs of the Maldives. Under the 1948 agreement, the Maldives was to conduct its external affairs through, or in accordance with the advice of, the British government, and Britain was to refrain from interfering in the internal affairs of the

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[114] Abdul Hakeem Hussain Manik, *Iyye*, 25-60.

[115] See: *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 11, (Records of the Government of Maldives), (Malé Maldives: Novelty Printers and Publishers, 2011), 1001 - 1004.

[116] Abdul Hakeem Hussain Manik, *Iyye*, 115; *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 11, (Records of the Government of Maldives), (Malé Maldives: Novelty Printers and Publishers, 2011), 1014.

[117] Ibid, 220 – 272.

[118] *Caledonian Mercury* (Edinburgh, Scotland), Monday, April 13, 1835, Issue 17749; See also, *General Evening Post* (London, England), November 7, 1786 - November 9, 1786, Issue 8261.

islands.[119] This agreement also required the Maldivian government to afford British forces such facilities as were necessary for the defence of the islands or the Commonwealth. Pursuant to this agreement, the Maldives stopped paying tribute to the British Government.[120]

By an agreement signed between the Maldivian government and the British in 1957, Gan in Addu Atoll was leased to the British for 100 years from 15th December 1956.[121] This agreement also gave permission for the British to use a portion of Hithadhoo in Addu Atoll as a radio communication centre for the British.[122]

The signing of the 1957 agreement without consent from the People's *Majlis* led to a vote of no confidence against the Prime Minister in the Parliament and his subsequent resignation.[123] Following the resignation of Prime Minister Ibrahim Famuladheyri Kilegefaanu, Ibrahim Nasir was appointed as the Prime Minister with a clear mandate to negotiate the lease of Gan with the British, who had already begun the development of Gan Island without the lease agreement having received approval from the *Majlis* and the Cabinet.[124]

Since the late 1930s, the government had forced the people of the three southern atolls to stop traditional trade with their trading partners in Sri Lanka, India and Bangladesh – causing great economic hardship to the people of these islands. When the British arrived in Addu in 1956, the government of the Maldives attempted to alienate the people of Addu from the British by restricting their employment and preventing any form of

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[119] Abdul Hakeem Hussain Manik, *Iyye*, 34-35.

[120] Ibid.

[121] Article 3 of the Agreement between Her Majesty's Government in the United Kingdom of great Britain and Northern Ireland and the Government of the Maldive Islands; see, Ali Hussain, *Remnant Memories of What I Saw and Heard*, Part 1, (Malé Maldives: Novelty Printers and Publishers, 2013), 100-120; Abdul Hakeem Hussain Manik, *Iyye*, 116-119.

[122] Ibid.

[123] Ali Hussain, *Remnant Memories of What I Saw and Heard* Part 1, 137-186.

[124] Ibid

business/trade transactions with the British – depriving the people of Addu from economically benefiting from the British presence. In order to enforce these prohibitions, the Government had located its officers in Addu and these officials had applied strong measures in these islands to enforce orders from the Government in Malé.[125]

As a result of these hardships, people from the three southern atolls revolted against the government of the Maldives and declared an independent state in 1959. The Maldivian government suspected that the British had instigated the southern revolt as a tactic to secure the lease of Gan.[126]

The negotiations with Britain finally ended in an agreement signed in 1960 for the lease of Gan for 30 years, instead of the original 100-year lease.[127] The British also assisted the government of the Maldives to find a peaceful settlement to the uprising in Addu, while the government of the Maldives used its military forces to put down the uprisings in Huvadhoo and Fuvah Mulaku.[128] The negotiations that began because of the Gan lease agreement and the southern uprising finally expanded to include the bigger issue of independence. The Maldives attained independence from the British on 26th July 1965.[129]

The Second Republic

A year after the end of the southern revolt, a new Constitution was adopted in 1964; only to be repealed in June 1967 to make way for the 9th Constitution of the country.

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[125] Ibid.

[126] Ibid.

[127] Ibid; Abdul Hakeem Hussain Manik, *Iyye*, 119-130.

[128] Ibid; See also, Abdul Hakeem Hussain Manik, *Iyye*, 119-130.

[129] Abdul Hakeem Hussain Manik, *Iyye*, 119-140

In April 1968, Maldivians again voted to decide the fate of the monarchy. The people strongly favoured a republican form of government. Subsequently, a new Constitution was adopted on 11th November 1968, adopting a republican form of government. These changes paved the way for a complete overhaul of the political system, which, according to many authors, laid the foundation for the modern Maldives.[130]

This Constitution, with amendments made in 1970, 1972 and 1975, survived until the end of 1997 when a new Constitution came into force.

The 1968 Constitution established a presidential form of government with a strong executive. For the first seven years, the powers were shared between the President and the Prime Minister. However, due to the differences that occurred between them, the then President, Ibrahim Nasir, declared a state of emergency and banished the Prime Minister; he subsequently amended the Constitution in 1975 to abolish the position of Prime Minister.[131]

The work on drafting a new Constitution to replace the 1968 constitution began in 1980. The Special *Majlis* elected in 1980 took more than 17 years to complete its work. The 11th Constitution of the Maldives was ratified on 7th November 1997, and took effect from 1st January 1998. This Constitution, despite having been 17 years in the making, was heavily criticized for failing to usher in democracy, separation of powers, protection of human rights, rule of law and due process.

President Maumoon Abdul Gayoom, who had remained in office since his initial appointment in 1978, entered into his sixth term of office in 2003 amid unprecedented pressure from the young population, who were calling for Constitutional reform and the establishment of a multi-party democracy. President Gayoom finally yielded to public pressure and established a Constituent Assembly to write a Constitution. The work on a

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[130] Abdul Hakeem Hussain Manik, *Iyye*, 144 – 119.

[131] Abdul Hakeem Hussain Manik, *Iyye*, 140 – 1402.

new Constitution that began in the Peoples' Special *Majlis* in June 2004 was completed in 2008 after four years of political wrangling. The political bickering left little time for serious debate on making the Constitution a viable document for governing the country in a smooth fashion.

Despite the difficult political environment within which the Constitution had been drafted, the 2008 Constitution does contain the necessary ingredients to make the Maldives a fully democratic nation. It provides for separation of powers, a multi-party system, a number of independent commissions, and increased respect for human rights entrenched in a new Bill of Rights.

Part II

Ancient Legal System and Customary Law

Information relating to the administration of justice in the Maldives before the arrival of Islam is scanty. The *Radun*, (the King), the noble chiefs, and the ministers were responsible for maintaining social unity, law and order. The chief religious cleric at the royal court was responsible for resolving disputes among the people in accordance with the local customs.[132]

The earliest sources of Maldivian history that give an idea of the organization of the administration of justice in the ancient period are *Isdhoo Lōmāfānu*[133] and *Dhanbidhoo Lōmāfānu,* which were issued by the king about half a century after the country had formally embraced Islam.

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[132]Mohamed Ismail Didi, *Pyrard ge Galamun Dhivehi Raajje*, Malas 55 (Malé, Maldives: National Centre for Linguistic and Historical Research, 1995), 233; See also, Ali Najeeb, 'Translation of Dhanbidhoo Lōmāfānu', *Dhivehinge Tharika*, (Malé, Maldives: National Center for Linguistic and Historical Research, 2001).

[133] Lōmāfānu are ancient Maldivian royal grants inscribed upon one or more copper plates; see H. C. P Bell, *The Maldives Islands: Monograph on the History, Archeology and Epigraphy*, (Colombo: Ceylon Government Press, 1940), 179 -186.

Isdhoo Lōmāfānu refers to an *Uthu Pediyaaru* (chief judge) and a *Pediyaaru* (judge),[134] while *Dhanbidhoo Lōmāfānu* also mentions an *Uthu Pediyaaru* (chief judge) and a *Sathisiru Pediyaaru* (lower judge).[135] *Isdhoo Lōmāfānu* also mentions a person known as *Dhandanaayaka*, who was responsible for the execution of the verdicts of the judges.[136] These royal edicts show that, even before the arrival of Islam in the Maldives, an organized system for the administration of justice had existed, and that the disputes were resolved in accordance with the local customs, under the watchful eye of the King.

Isdhoo Lōmāfānu orders the demolition of a Buddhist monastery in Isdhoo Island and summons its monks to Malé, because of their disobedience to the orders of the King for them to embrace Islam. The royal decree ordered, *inter alia*, the demolition of the monastery; building a mosque in its place; and granting a plot of land as a *waqf* for the upkeep of the mosque. Isdhoo Lōmāfānu indicates that the entire demolition process of the monastery, trial of the monks and creation of the *waqf* were made through the judges, in accordance with the prevailing customary law.[137]

According to *Dhanbidhoo Lōmāfānu,* an *Uthu Pediyaaru* (chief judge) and a *Sathisiru Pediyaaru* (a lower judge) who were Ministers at the royal court, were responsible for the administration of justice. However, Ibn Buttuta states that during his stay in the Maldives, *Sathisiru Pediyaaru* was an additional judge appointed by the King to hear cases that were appealed to the King and he also sat on *Kiyevenibeykalunge Ashi*[138] together with the

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[134] 2nd side of the 16th plate of Isdhoo Lōmāfānu*, Isdhoo Lōmāfānu, (*Malé, Maldives*:* National Centre for Linguistic and Historical Research, 2001), 28.

[135] Ali Najeeb, 'Translation of Dhanbidhoo Lōmāfānu', *Dhivehinge Tharika*, National Centre for Linguistic and Historical Research, 2001.

[136] Ibid.

[137] *Isdhoo Lōmāfānu*, (Malé, Maldives*:* National Centre for Linguistic and Historical Research, 2001), 28.

[138] *Kiyevenibeykalunge Ashi* was a special chamber within the royal court, where judges sat to adjudicate disputes. This chamber was also often used by judges to give religious lectures.

chief judge to hear appeal cases.[139]

Customary Law

Before the advent of Islam in the Maldives, the Maldivians followed customary law, known as *fooruvvé rudin*. Upon the conversion of the King to Islam in 1153 AD, Islam became the state religion, and the judges began to apply Islamic law together with customary laws to resolve the disputes referred to them. Despite the introduction of Islamic law, judges still continued to apply *fooruvvé rudin*.[140] The translation of the obverse and reverse sides of the 15th plate of *Dhanbidhoo Lōmāfānu,* issued by the King in 1196 AD, reads:

> 'It was ordered to allocate and show to the people the land that belonged to the mosque, in accordance with *fooruvvé rudin*. It was ordered to the toddy-men of the island to annually donate *cadjans* to make the roof of the mosque. After completing *Dhiha roadha* and upon returning from Hajj, King Gadanaadeetha and his relatives gathered us in the mosque and gave a sermon to us. The king stated that he granted this place to the adherents of this religion on behalf of the kings who brought Islam, so that they may benefit from this.'[141]

This royal edict confirms that *fooruvvé rudin* had continued to be in force even after the Maldives embraced Islam. It is believed that *fooruvvé rudin,* inherited from the Buddhist era, was followed for a considerable period of time.[142] For instance, when the Maldivian Queen appointed the famous

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[139] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives*, Malas 32, (National Centre for Linguistic and Historical Research, 1991), 151.

[140] See for example, Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 127.

[141] Ali Najeeb, 'Translation of Dhanbidhoo Lōmāfānu', *Dhivehinge Tharika*, (Malé, Maldives: National Centre for Linguistic and Historical Research, 2001), 60-63.

[142] See also, *Dhivehi Thaareekh*, (Malé, Maldives: Dhivehi Thaareekhaai Sagaafathah Khidhumaiy Kuraa *Majlis*, Office of the President, 1981), 78-79; François Pyrard de Laval, *The Voyage of Francois Pyrard of Laval to the East Indies, the Maldives, the Moluccas and Brazil*, (1611), translated into English in 1887 from the third French edition of 1619 by Albert Gray assisted by H.C.P. Bell, Vol.I,

Moroccan traveller Ibn Battuta as the Chief Judge of the country, he attempted to replace the customary law with Islamic Shari'ah.[143]

> 'When I was appointed, I strove my utmost to establish the Sacred Law. There are no lawsuits there like those in our land. The first bad custom I changed was the practice of divorced wives staying in the houses of their former husbands, for they all do so till they marry another husband.'[144]

Ibn Battuta states that he completely dismantled the custom of keeping divorced wives in the ex-husband's home. About 25 such men were brought before him and *thauzeer* punishment, based on Islamic law, was administered to them along with the local customary punishment of *ganhingun*. They were paraded in the bazaars, and the women were forcibly removed from their houses.[145]

Similarly, Hassan Tajuddin, upon his appointment as the Chief Judge in 1693, had abolished several pre-Islamic customs and practices that were not compatible with Islamic Shari'ah.[146]

Ibn Battuta further states that during his stay in Malé, the judges used to take a tenth of all estates when they divided the property amongst the heirs.[147] Despite the efforts made by Ibn Battuta to abolish this custom, it continued to be in force until this customary law was abolished by the parliament established under the first constitution. A statute passed on 23rd March 1933 stated that it had abolished the 1/12 share taken by the

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Chapters 11 & 12.

[143] H.A.R. Gibb, *The Travels of Ibn Battuta*, (New Delhi: Goodword Books, 2011), 242-252; see also, Xavier Romero-Frias, The *Maldive Islanders*, 25-27; *Dhivehi Thaareekh*, (Malé, Maldives: Dhivehi Thaareekhaai Sagaafathah Khidhumaiy Kuraa *Majlis*, Office of the President, 1981), 43-51.

[144] H.A.R. Gibb, *The Travels of Ibn Battuta*, 250.

[145] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives*, Malas 32, (Malé, Maldives: National Center for Linguistic and Historical Research, 1991), 41.

[146] *Dhivehi Thaareekh*, (Malé, Maldives: Dhivehi Thaareekhaai Sagaafathah Khidhumaiy Kuraa *Majlis*, Office of the President, 1981), 77-78.

[147] H.A.R. Gibb, *The Travels of Ibn Battuta*, 250.

judges from heirs and judgment creditors, as the judges were given a fixed salary by the state.[148]

The Constitutional Assembly appointed by King Mohamed Shamsuddin in 1931 to draft the first Constitution of the Maldives had elected a special committee to write and record the existing customary laws. These customary laws compiled by the committee were later codified and enacted as separate statutes by the legislative assembly that was formed under the first Constitution of the Maldives.[149]

Judges and Courts

During the period that followed immediately after the conversion to Islam, utmost effort was made, whenever possible, to appoint an Arab traveller, who had visited or settled in the Maldives, as a judge.[150] In addition to his duty as a judge, the judge was also the guardian of Islam. He was required to teach the basic tenets of Islam and to create religious awareness among the people.[151]

The well-known Moroccan traveller Ibn Battuta, on visiting the Maldives in 1347, was invited by Queen Rehendi Khadija to stay as the Chief Justice.[152] Ibn Battuta remained in the Maldives as Chief Justice for about fourteen months until he left in 1349.[153] He also made a second visit later on. His account on the Maldives provides a fair understanding of the legal system prevailing in the 14th Century.

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[148] *Kureege Qaanoon thah* (Old Statutes), (Malé, Maldives: Novelty Printers and Publishers, 2008), 4-5.

[149] The first set of legislations passed by the First Legislative Assembly have codified some ancient customs while others have been abrogated, see, *Kureege Qaanoon thah* (Old Statutes), (Malé, Maldives: Novelty Printers and Publishers, 2008).

[150] H.A.R. Gibb, *The Travels of Ibn Battuta*, 245 – 246.

[151] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 177.

[152] H.A.R. Gibb, *The Travels of Ibn Battuta*, 241 – 254.

[153] Ibid.

Ibn Battuta mentions that judges enjoyed a great deal of independence in their work and everyone respected their decisions.[154] According to Ibn Battuta, *Fandiyaaru Kalo's*[155] status was higher than that of all other officials and his decrees had carried equal force to those of the Queen; sometimes *Fandiyaaru Kalo's* decrees were superior to those of the Queen.[156] Ibn Battuta tells how *Fandiyaaru Kalo* was given three uninhabited islands, and the income from those islands belonged to him.[157]

According to Ibn Battuta,[158] legal disputes were usually resolved by the judges at their residences, while important trials took place at *Kiyevenibeykalunge Ashi* (scholars' bench) in *Ethere Koilu* (the Council Hall in the King's palace).[159] He states that in the afternoons of the month of *Ramazan*, religious sermons were given at *Kiyevenibeykalunge Ashi*. During the hearings of cases and during religious sermons, *Radun* would occasionally come and sit among the audience.[160]

The famous French traveller François Pyrard de Laval, who arrived in the Maldives in 1602, provides a more detailed description of the administration of justice in the Maldives than that of Ibn Battuta. In his book, *The Voyage of Francois Pyrard of Laval to the East Indies, the Maldives, the Moluccas and Brazil* (1611)[161], Pyrard states that those who knew the law in these islands were the judges and the function of

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[154] H.A.R. Gibb, *The Travels of Ibn Battuta*, 245; See also, *Dhivehi Thaareekh*, (Malé, Maldives: Dhivehi Thaareekhaai Sagaafathah Khidhumaiy Kuraa *Majlis*, Office of the President, 1981), 21.

[155] Chief Justice.

[156] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives*, Malas 32, (National Center for Linguistic and Historical Research, 1991), 64; *See also*, H.A.R. Gibb, *The Travels of Ibn Battuta*, 245.

[157] Ibid, 65; H.A.R. Gibb, *The Travels of Ibn Battuta*, 245.

[158] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 150-151.

[159] Ibid, 94.

[160] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 153.

[161] François Pyrard de Laval, *The Voyage of Francois Pyrard of Laval to the East Indies, the Maldives, the Moluccas and Brazil*, (1611), translated into English in 1887 from the third French edition of 1619 by Albert Gray assisted by H.C.P. Bell.

dispensing justice was vested in the judges.[162]

According to Pyrard, the Maldive Islands were divided into 13 provinces (atolls), and all these provinces had offered allegiance to the king. A *naib* was appointed for each of these provinces as head of the province and to administer justice.[163] As each province consisted of many islands, in each island there was a *katib* – the religious superior of that island, who had under him the *mudims*[164] of the mosques. All these officials gave instructions to the people about the law. Besides the *naibs*, in each province or atoll, there was a man known as *vaaruveri*, who was appointed and employed by the king to collect and levy his dues and revenues.

In addition to their duties and authority in religion, the *naibs* were also appointed to administer justice.[165] They were the sole judges in the land, in both criminal and civil matters. If someone wanted to go to law, he had to go and find the *naib* or wait until the *naib* visited his island, as each *naib* would go the circuit of the islands within his jurisdiction four times every year and deal with religious as well as judicial matters in the islands, during such visitations.[166]

Over the *naibs* there was a superior, known as *Fandiyaaru*, who resided at Malé, and he was always near the person of the king.[167]

In Malé the *Fandiyaaru* was assisted by the two *khateebs* of Malé Island, and the *naib* in Malé who made his visitation throughout the island of Malé,

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[162] Mohamed Ismail Didi, *Pyrard ge Galamun Dhivehi Raajje*, Malas 55, (Malé, Maldives: National Centre for Linguistic and Historical Research, 1995), 233 – 234.)

[163] According to HCP Bell (1887), around 1887 *naibs* were only the ecclesiastical and judicial chiefs of the atolls. Although, in Pyrard's time *naibs* were superior to the collectors of revenue, known as '*vaaru verin*' or *'atolu verin'*, the latter became superior as time went on.

[164] Prayer leaders.

[165] François Pyrard de Laval, (1611), Vol. I, Chapter 14.

[166] Ibid.

[167] Ibid.

just as each *naib* did in his atoll.[168] He was also assisted by his officers, who carried a long whip for correcting the delinquents.[169] During these visits he made such inquiries as he thought fit, with special regard to all matters of religion and justice.

> 'All he meets without exception he makes to say their creed, and some prayers in Arabic, and then asks them the interpretation of the same in Dhivehi language.' If they know it not, he had them whipped and scourged on the spot by his officers. The women dare not show themselves while he passes along the street, and if he should meet one without her veil, he would have her head shaved.'[170]

If, after pleading before the *naib,* a person was not satisfied with the judgment given by the *naib*, be it in a matter civil or criminal, he would appeal to the *Fandiyaaru*, who decided all matters brought before him, taking the advice of some *naibs* and *katibs*, and of certain personages called *muguri beykalun*.[171] These about four or five elderly people were always at his side to give counsel to the chief judge. The members of the community held these *muguri* in high esteem. Usually, the Chief Justice heard cases at his residence, and it was only in important cases that hearings were held at *Kiyevenibeykalunge Ashi.*[172]

Lieutenant I. A. Young and W. Christopher, who visited the Maldives in 1834, made the following observation in their book, '*Memoirs on the Inhabitants of the Maldive Islands*':

> 'Next to the king, the most esteemed official of the state was the chief judge who was in fact the most respected person in the country. There were two functions entrusted to him - his function as the highest judicial official and his function as the head of Islam in the country. Being the head of Islam, people had a special affection

[168] Ibid.

[169] Ibid.

[170] Ibid.

[171] Ibid.

[172] Ibid.

> and respect for him. People believed that the chief justice was well versed with civil law as much as his knowledge of Islamic Shari'ah. As he knew Arabic he used to teach the meaning of Quran to the people. He had several naibs and Khateebs under him.'[173]

H.C.P Bell, who visited the Maldives in the 1920s, wrote in his monograph:

> 'the influence of the chief justice in all matters of the state was huge. As manifested by its history, chief justices had the capacity to influence on matters such as politics, foreign affairs and internal affairs. Judges had significant power over all officials subordinate to the king and he was well respected and trusted by them. It was because they were highly educated and their conduct was exemplary. Therefore, it was no surprise that when there was no agreement on the successor to the throne, on several occasions the incumbent chief justice was appointed as the king.'[174]

From the very ancient times, a king would only be enthroned after he takes a pledge before the Chief Justice to respect people's rights and to rule justly.[175] During the reign of Sultan Mohamed Ib. Al-Haaj Ali, Chief Justice Hassan Thajuddin agreed to assume the office of Chief Justice only when the king pledged to abide by his judgments.[176]

Appeal to the King

According to Pyrard, where a party to a dispute was not comfortable to go before a *naib*, such a person had the right to make a petition to the king.[177]

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[173] Mohamed Ismail Didi, *Christopher ge Nazarugai Dhivehin*, (Malé, Maldives: National Centre for Linguistic and Historical Research, 1996), 40.

[174] Ibid, 69-70.

[175] Dhivehiraajjeyge Thaareekhah Au Alikameh, (Malé, Maldives: National Centre for Linguistic and Historical Research, 1988), 218-219.

[176] *Dhivehi Thaareekh*, (Malé, Maldives: Dhivehi Thaareekhaai Sagaafathah Khidhumaiy Kuraa *Majlis*, Office of the President, 1981), 77.

[177] François Pyrard de Laval, (1611), Vol. I, Chapter 14.

In such cases, the king would order the case to be heard in his palace by another judge, who had had no role in that case previously.[178] When such cases were heard in the Council Hall of the royal palace, members of the royal family and other nobles would be present in the Council Hall. Where the king himself made a judgement, the decision would be executed by *bodubeykalun* (senior officers) appointed by the king. They were also known as *muskulhibeykalun.*[179]

According to Ibn Batuta,[180] if the *Radun* decided to review a case that had been decided by the Chief Justice, he would appoint a five-member panel consisting of *Uthu Pediyaaru* and *Sethisiru Pediyaru*, or a *naib* and three *bodubeykalun*, to hear the case in the presence of *Radun*. Ibn Battuta states that if a judge requires advice from *Radun*, while a case was being heard in this manner, he would seek advice from *Radun* through the clerk, and *Radun* would offer such advice through the clerk then and there.[181]

Judicial process

According to Ibn Battuta, litigants were ordered to appear before a judge by an official summons issued by the judge.[182] If a party, having received the official summons, failed to appear before the judge, he or she would be punished. Ibn Battuta's writings indicate that when a person was summoned to appear before the judge, he could send a person to speak on

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[178] Ibid.

[179] Elders. According to Pyrard, there were six *muskulhibeykalun* at the palace to carry out the most important functions of the state. According to HCP Bell (1887), they were the *vazeerun* or ministers.

[180] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 150-151.

[181] Ibid.

[182] According to Ibn Battuta he used to send the summons written on paper. However, According to Mohamed Ibrahim Lutfi, the official summons was written on a narrow piece of wood. One side of the piece of wood carried the name of the party and on the other side would be written the date and time that the party was required to appear before the judge. According to Mohamed Ibrahim Lutfi, this practice started during the time of Ibn Battuta. For further reading, see Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives*, Malas 32, (Malé, Maldives: National Centre for Linguistic and Historical Research, August 1991), 163.

his behalf if he chose.[183]

According to Pyrard,[184] legal proceedings begin by a complaint, known as *sakuva,* being made to the *naib*. Legal proceedings would take place at the house of the *naibs,* or in Malé at the house of the *Fandiyaaru*, with his assistants. At times, trials also took place at the king's palace when the case was of grave importance. When someone wished to commence a lawsuit, he applied to the judge or *naib*, who would send one of his sergeants, of whom each judge had a certain number, called *dheyvaani*, to cause the party appealed to appear; and if he was not in the same island, he would be directed by a writ from the *naib* to come to where the *naib* was, provided it was a place within his jurisdiction.[185] If the party was in another island outside his judicial area, the *naib* had no power therein, and in such a case the defendant was served with a writ from the *Fandiyaaru*, who could summon a man from any part of the realm to the King's island where he resided.[186] The writ was delivered to the *khatheeb,* the headman of the island, who in the presence of all his officers delivered it to the person being summoned, with a very harsh warning for him to go. He would not dare to disobey such order, as doing so would make him a person outside the pale of the law. If he failed to go, he would not be admitted to the company of others in the community; he would not be allowed to go to the mosque, or to eat or drink with other members of the community.[187]

If a man, for example some grandee, did not obey, the king would send his *han'gubeykalun* to arrest and bring him to Malé.[188]

> 'And if one likes not to plead before the naib, whether for cause that he is ill-disposed towards him, or that he favours him overmuch, then the plaintiff or the defendant may apply to the king. Where

[183] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 91.

[184] François Pyrard de Laval, (1611), Vol. I, Chapter 14.

[185] Ibid.

[186] Ibid.

[187] Ibid.

[188] Ibid.

> such an appeal was made to the king, he would order that indifferent judges do justice; the case would then be heard at the palace of the king, in the presence of all the nobles of the island.'[189]

According to Pyrard, the parties would plead their own causes.[190] If it was an issue of fact, each could bring three witnesses; and if he had no witnesses, the defendant was believed upon his oath,

> 'which he takes by touching with his hand on the book of their law (Quran), the judge presenting it; and the plaintiff, if he be at all a man of the world, scrupulously observes whether his opponent really touches the book, and at the proper place.'[191]

If the issue was one of law, it was decided in accordance with the law. The judges received nothing for their judgments, and nothing was due, except for the *dheyvaani* or sergeants who received a twelfth part of the judgment debt or penalty.[192] Slaves might not be witnesses, and their word was of no avail as evidence; similarly, the evidence of three women was taken as equivalent to that of one man.[193]

The Case of Abdulla Vazir

The case of Abdulla Vazir, narrated by Ibn Battuta, provides a glimpse of how civil trials were conducted, once a complaint was made to a judge in the 14th century.[194]

> 'When I came out of seclusion Iuthikaaf, in the month of Ramazan, my wife's maternal uncles came with a complaint. According to them, their father had appointed Abdulla Vazir as their trustee. After they had attained the age of majority, Abdulla had not

[189] Ibid.

[190] Ibid.

[191] Ibid.

[192] Ibid.

[193] Ibid.

[194] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 89 – 91.

> returned the property to them, although they were no longer under his legal guardianship. The complainants wanted Abdulla Vazir be brought to the court of justice. When a petition was made, the practice I had adopted was to send a summons written on paper, to the parties. In this instance, when the summons was sent, Abdulla Vazir got angry and had harboured a personal grudge on me, and instead sent another person to respond to the complaint on his behalf.'

Prosecution and punishment for crimes

According to Pyrard:[195]

> 'in the matter of crimes, a man must plead for justice to be done, and he must be a person of capacity to sue, except if it were a crime punishable by the law, otherwise there is no public process in case of crime or injury committed on the person of another - unless, as I say, it is a crime against their law.'

This illustrates that both the state and individuals could file a criminal complaint with a judge seeking justice. In matters of an injury done to any private person, the person injured must be the complainant, otherwise the case was dismissed; nevertheless, if the king willed, he had justice done, without any other party to the cause; but that happened rarely.[196] In the matter of injuries, a prosecutor[197] was not free to hush up the charge; the penalty was exacted when there was proof of heinous wrong.[198]

> 'A wife cannot appeal in the court for the murder of her husband, but only the children or kindred; and if the children are of young age, time is given until they attain the age of sixteen years, to see if they desire to be avenged for the death of their father. In the meantime, the judge condemns him that is suspected of the murder

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[195] François Pyrard de Laval, (1611), Vol. I, Chapter 14.

[196] Ibid; see also, Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 93.

[197] 'Prosecutor' here means the complainant or victim in a criminal case. The double modes of prosecution i.e by the state and by the victims, continued in the Maldives until to the very end of the 20th Century.

[198] François Pyrard de Laval (1611), Vol. I, Chapter 14.

> to support the children of the deceased, and to teach them some art or craft; then, when they come of age, they may demand justice, or release and pardon the murderer; if not, he may be accused at any time thereafter.''[199]

If a man had committed some offence against the law, he had to do public penance. In addition, Maldivians believed that they could never enter Paradise if they failed to pay a fine or do whatever the court had ordered.[200]

The usual penalties were banishment to an island in the south or mutilation, or the scourge, which was the most common.[201]

> 'In cases of great crimes, such as sodomy, incest, and adultery, it is flogging by thick leather straps, as long as the arm and as broad as the four fingers, and as thick as two; of these, five or six are fixed together in a haft of wood. With this, malefactors are chastised, and so cruelly beaten that often they die of it.'[202]

According to Ibn Battuta, the punishment of *ganhingun* was meted out for religious offences.[203] Also, According to Ibn Battuta, a very harsh form of punishment, known as *buree hannegun,* was administered during his time.[204]

Ibn Batuta says[205] that the penalty of mutilation of the limbs was unknown or unpractised before his arrival at the Maldives, and states that when he, as the Chief Justice, had a thief's hand cut off, the bystanders all fainted.[206] According to Christopher (1887), although the offenders' hands were

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[199] Ibid.

[200] Ibid.

[201] Ibid.

[202] Ibid.

[203] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 94, 165.

[204] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 40.

[205] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 40.

[206] See, Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 65.

chopped off in former days, mutilation was no longer applied.[207]

Pyrard tells us that women taken in adultery, besides the prescribed penalty, would have their hair cut off.[208] If the woman had not given her consent, the man was severely flogged.[209] In such cases, the injured husband would be the administrator of the whip.[210] In cases of false witness and perjury, a monetary fine was levied on the guilty party, which was given to the poor.[211] If a wife or a daughter were ravished, the guilty party was punished as an adulterer, and in addition, the offender was obliged to pay monetary compensation to the wife or daughter. A thief who had stolen any article of value had his hand cut off.[212]

Although the law allowed the death penalty for homicide, the judges never passed the death sentence. According to H.C.P. Bell (1887),[213] murderers were punished by flogging and banishment to the southern atolls. According to Pyrard, during his stay in the Maldives he never saw one person condemned to death by the ordinary judges. They would not dare to do so, except by the express command of the king, which was seldom given.[214] According to Pyrard,[215] there was a common saying among the Maldivians, that they could not afford thus to lose their men; and that if everyone who deserved it were put to death, in course of time the islands would be depopulated, and similarly the human race in other parts would not suffice to pay the penalty, and so the world would come to an end.

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[207] Ibid; see also, Mohamed Ismail Didi, *Christopher ge Nazarugai Dhivehin*, 65.

[208] François Pyrard de Laval, (1611), Vol. I, Chapter 14; see also, the punishment for adultery during Ibn Battuta's time, Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 93-94.

[209] Ibid.

[210] Ibid.

[211] Ibid.

[212] Ibid.

[213] Ibid.

[214] Ibid.

[215] Ibid.

However, the king could still send some of his chosen soldiers, and condemn, and put to death those who merited it, or those who had offended him.

Although the processes of justice were in the hands of the judges, and they are the judges, yet the king was the sole arbiter and dispenser of justice; he alone had the power of life and death.[216] Appeal was made to him, and he gave his orders for justice to be done as he wished, as well giving instructions to the judges and *naibs*, and to his lords and officers. Generally, he wielded absolute power throughout his whole realm, and disposed of all things according to his pleasure.[217]

> 'Among other kinds of chastisement, the king makes use of one peculiar to the lot of such as have incurred his displeasure, for he causes them to lie upon their bellies on the ground, their four limbs held by four persons; they then receive some stripes upon the back with a rod or kind of cane, which was called rattan, and comes from Bengal: this takes off the skin, and the weals and scars remain ever after to mark such as have displeased the king.'[218]

Execution of *sent*ence

According to Pyrard, there was no separate institution for the enforcement of judgments or execution of sentences. Sentences were executed by the *dheyvaani* who were officers of the *Fandiyaaruge* or the *naibge*.[219] For those who did not obey the King's orders or those who were to be killed by an order of a King, the decree was enforced by a special group of people appointed by the King, known as *hangubeykalun*.[220]

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[216] Ibid.

[217] Ibid.

[218] Ibid; see also, Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 165, 180.

[219] Ibid.

[220] Ibid.

According to Ibn Battuta,[221] during his time there were no jails (*hurage or ashige*) in the Maldives. But those who committed serious crimes were confined to and held in small wooden chambers intended to store merchandise and each offender was secured by a piece of wood, as was done in Morocco with Christian prisoners. He also stated that those who committed theft were locked to a block of wood. Mohamed Ibrahim Lutfi says that he believes that this could have been either *andhagondi* or *aiygondi.*[222]

Enforcement of *money judg*ment

Where debtors had no means of paying what they owed to their creditor, they were obliged to serve the creditor.[223] They were not treated as slaves, but as natives of the country; they served only their creditors or others who paid the money for their redemption. These bondsmen were called *femuseyri,* meaning 'bondsman on loan', and their servitude lasted until they were acquitted, and their children continued to be in servitude forever if they did not pay.[224]

Sometimes, if they were badly treated, they could get released by binding themselves to another, who paid for them; their only wages would be their food and maintenance, and when they died their master would take all they had; and if that was not enough to satisfy the debt, the children would remain in bond till the whole amount was paid.[225] *'A great number of the*

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[221] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 65; H.A.R. Gibb, *The Travels of Ibn Battuta*, 245.

[222] Ibid, 65.

[223] According to HCP Bell (1887), the custom of debt slavery as mentioned by Ibn Batuta and Pyrard still existed during his visits to the Maldives and was evidently of great antiquity. Bell also states that the same custom, which permits an insolvent debtor to work off his debt as his creditor's servant, had existed in Ceylon until some time after the British occupation; see François Pyrard de Laval, (1611), Vol. I, Chapter 14.

[224] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives,* 184; H.A.R. Gibb, *The Travels of Ibn Battuta*, 244.

[225] H.A.R. Gibb, *The Travels of Ibn Battuta*, 244.

people seek to be the femuseyri *of grandees and men in office, and so to gain support and favour, for while they belong to nobody they were tormented by one another.'*[226]

Recordings of judicial proceedings

According to Pyrard[227], neither the pleadings in criminal cases, nor the indictments, depositions or the judgments were recorded in writing.[228] All proceedings were very prompt and summary. It was the same in civil actions, except in suits over inheritances or immovable property, where *Fandiyaaru* or the *naibs* delivered the judgments in writing.[229] In such cases, they granted writs of possession, sealed with their seal in ink, and this was evidence for posterity that henceforth the person who had won the suit, and his heirs, had undisputed possession of the inheritance or property.[230]

[226] François Pyrard de Laval, (1611), Vol. I, Chapter 14.

[227] Ibid.

[228] See also, H.A.R. Gibb, *The Travels of Ibn Battuta*, 245.

[229] Ibid.

[230] Ibid.

Chapter Two

JUDICIAL REFORM AND REORGANIZATION IN THE TWENTIETH CENTURY

The Maldivian legal system remained remarkably unchanged from the beginning of the Islamic sultanate in 1153 AD right through to the beginning of the 20th century.-[1] Although it was a very simple system, it had very well-organized and coherent arrangements for dispensing justice as well as regulating crime and punishment. The legal system worked well and was suited to the traditional society.[2] However, the arrival and settlement of the Borah merchants in Malé, increase in communication and trade with Ceylon and other neighbouring countries, Maldivians travelling abroad for education and the involvement of the British in the affairs of the Maldives towards the end of the 19th century all resulted in the Maldives slowly starting to open up to the outside world. As a result of the changes that were taking place during this period, certain adjustments in the style of the administration of the state were inevitable.

The establishment of the *Mahkamatul-Sharuiyya* in 1909 sparked the beginning of the transformation of the Maldivian judiciary from a very informal institution into a more formal system.[3] The Chief Justice was appointed as head of the *Mahkamatul-Sharuiyya,* with six other *naibs* appointed to assist him; one of these *naibs* being the *Bandaara Naib* (the Attorney General).[4]

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[1] *Vihivana Qarunuge Thereygai Dhivehi Raajje*, Vol. 3, (Malé, Maldives: Maldives Centre for Linguistic and Historical Research, 2006), 13.

[2] Mohamed Ismail Didi, *Christopher ge Nazarugai Dhivehin*, (Malé, Maldives: Maldives Centre for Linguistic and Historical Research, 1997), 40; see also, *The Times,* (UK), Tuesday, May 25, 1920, p. 34.

[3] *Vihivana Qarunuge Thereygai Dhivehi Raajje*, Vol. 3, (2006), 13.

[4] Ibid.

In 1949, Mohamed Amin Didi[5] aptly described the position of the *Mahkamatul-sharuiyya* as the apex judicial body within the state. He stated that it was an independent body separate from the executive and that the position of the Chief Justice was, in many ways, superior to that of the King. Furthermore, he stated that the functions of the *Mahkamah* should proceed independently and without interference.[6] However, there had been a number of changes in its function and status since it was set up in 1909.

Judiciary under the First Constitution

The first Constitution that was adopted in 1932 had further reiterated the independence of judges that had long existed. Article 80 of the Constitution of 1932 stated: *'Judges are independent unless they have acted in contravention to a law. No one has the power to interfere with the judicial proceedings conducted by them.'*

Although the Constitution had guaranteed the independence of the judges, the steps taken by the government and the subsequent legislations passed by the *Majlis* to create government departments placed the position of the judiciary in total confusion. Hussain Salahuddin, who was the Chief Justice until the adoption of the new Constitution, was made the Minister of Justice (*Vazeerul Haqqaaniyya*) of the newly formed government and the administration of the *Mahkamatul-Sharuiyya* was placed under the mandate of the Ministry of Justice. In the place of the Chief Justice, a head judge, with the title of *Qaalil-Qulaat*, was appointed to the *Mahkamatul-Sharuiyya*.[7] This step had effectively made the *Mahkamatul-Sharuiyya* a division of the Ministry of Justice and the Minister became the

[5] In 1949 Mohamed Amin Didi was the acting Head of State and Government of the Maldives.

[6] *Vihivana Qarunuge Thereygai Dhivehi Raajje*, Vol. 3, (2006), 19; see also, Records of the Government of Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. 7, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 633.

[7] *Vihivana Qarunuge Thereygai Dhivehi Raajje*, Volume 3, (Malé, Maldives: Maldives Centre for Linguistic and Historical Research, 2006), 18.

administrative head of the judiciary.

According to the Public Administration Act of 1932,[8] which was enacted by the newly formed parliament, the Minister of Justice had the following responsibilities:

(a) Administration of justice in the Maldives;
(b) Taking care of all property brought under court administration by an order of the court;
(c) Writing deeds or documents of title relating to *hiba*, *waqaf* and debt;
(d) Advising the government in all matters relating to the administration of justice;
(e) Administration of the *Mahkamatul-Sharuiyya*;
(f) Appointing *naibs* to islands; and
(g) Affixing seals on measuring tools.

According to the Public Administration Act of 1932, judges of the *Mahkamatul-Sharuiyya* should consult with, and seek approval from, the Minister of Justice before deciding serious cases such as murder, *rajam*, *faskh, lian, hajr* and *iflas*. Furthermore, the Act required the judges to consult the Attorney General in all criminal matters, as he was the legal representative of the state. The Public Administration Act of 1932 also required island *naibs* to consult with the officials of the *Mahkamatul-Sharuiyya* in writing if they did not know how to decide a particular case.

Although the Minister of Justice was responsible for the appointment of *naibs* for the islands under the new Public Administration Act of 1932, letters of appointment issued to *naibs* after 1932, stated that they were appointed by the *Mahkamatul-Sharuiyya.*[9]

The position of the Chief Justice was restored in the second Constitution.

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[8] *Ahkaam Aamma, 1932.*

[9] *See*, Husnu Al Suood, *Dhivehiraajjeyge Qaanoonee Nizaam*, (Malé, Maldives: Loamaafaanu Print, 2007), 31-32; see also, pages 33-40 of the Public Administration Act 1937.

Article 70 of the 1937 Constitution stated: '*The power to propagate the tenets of Islam, judicial power, and the responsibility for the administration of justice, shall be vested with the Judge*.'[10] Article 71 of the same Constitution further stated that the King should appoint the Judge, in consultation with the People's *Majlis* (parliament).[11] The Amendments to the Public Administration Act in 1937[12] also saw the abolition of the Ministry of Justice, and its powers in respect of the administration of justice returned to the *Mahkamtul-Sharuiyya*.[13]

Chief Justice and head of the *Mahkamatul-Sharuiyya*

The position of the Chief Justice in relation to the *Mahkamatul-Sharuiyya* was not consistent after 1932. The appointment of the Minister of Justice as the Head of *Mahkamatul-Sharuiyya* in 1932 had undermined and split the traditional role of the Chief Justice as the head of the judiciary, placing the judiciary under the direct control of the executive branch of the government. Although the aim of the Public Administration Act of 1932 was to assign the administrative functions of *Fandiyaaruge* to the Minister of Justice, and appoint the *Qaalil-Qulaat* to conduct judicial functions, the Act had in fact allocated several judicial functions to the Minister as well. However, by subsequent amendment to the Constitution and the Public Administration Act in 1937, *Fandiyaaru Manikufaanu* again became the chief judge of the *Mahkamatul-Sharuiyya* as well as the administrative head of the *Mahkamtul-Sharuiyya* (*Mahkamatul-Sharuiyya ge Veriya*).

Despite the restoration of the administration of the *Mahkamatul-Sharuiyya* to the Chief Justice in 1937, the administration of the *Mahkamatul-Sharuiyya* remained a distinct function under the style of Head of

[10] 1937 Constitution of Maldives reprinted by Novelty Printers and Publishers, 2012.

[11] Ibid.

[12] The amendments came into force on 11th February 1937.

[13] See pages 33-40 of the Public Administration Act 1937.

Mahkamatul-Sharuiyya,[14] until the abolition of the *Mahkamatul-Sharuiyya* in the late 1960s. On certain occasions, the Chief Justice himself was appointed as the administrative head of the judiciary, while on other occasions a separate person was appointed to fulfil this role.[15]

The practice, until the abolition of the *Mahkamatul-Sharuiyya* in the late 1960s, shows that the role taken by the head of the *Mahkamatul-Sharuiyya* or *Mahkamatul-Sharuiyya ge Veriyaa* was similar to the functions assigned to the Minister of Justice under the Public Administration Act of 1932, viz., he acted as the administrative head of the judiciary,[16] while the function of conducting trials was left to the judges or *naibs*. *Mahkamatul-Sharuiyya ge Veriyaa*, who was appointed by the government over the judges or *naibs* of *Mahkamatul-Sharuiyya* on some occasions had direct control over the judges and *naibs*, and acted as the public face of the judiciary. In 1954, *Mahkamatul-Sharuiyya ge Veriyaa* was made a member of the Cabinet of Ministers, while the judges and other *naibs* functioned as the judicial officers of *Mahtamatul-Sharuiyya.*[17]

One way or the other, this arrangement survived until the adoption of the 2008 Constitution, which drew a clear line between the judiciary and the executive branch of the government.

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[14] *Mahkamatul-Sharuiyya ge Veriyaa*.

[15] See for example, Records of the Government of Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. 2, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 130.

[16] The practice also shows that the Administrative Head also had exercised certain judicial functions and made rules relating to the conducting of trials.

[17] Records of the Government of Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. 11, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 1016; Mohamed Jameel Didi was appointed to the Cabinet with the title *Mahkamatul-Sharuiyya ge Veriyaa.* Later, Mohamed Jameel Didi was appointed as the Chief Justice and another person was appointed as *Mahkamatul-Sharuiyya ge Veriyaa;* see also, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. 13, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 1297 wherein the official records of government state that a new Chief Justice was appointed in 1958 together with *Mahkamatul-Sharuiyya ge Veriya*.

The wartime interim government established in 1942 included the Chief Justice as a member of the Cabinet.[18]

Rules of the Mahkamatul-Sharuiyya 1943

Until 1943, the *Mahkamatul-Sharuiyya* had functioned without a set of written rules and therefore it was in need of reform. The People's *Majlis*, having recognized the need for judicial reform, instructed the Minister of Home Affairs to submit a report to the *Majlis*, including its rules of procedure. The first written rules of the *Mahkamatul-Sharuiyya* were set out pursuant to a report passed by the People's *Majlis* in 1943.[19]

The regulations of the *Mahkamatul-Sharuiyya* of 1943 stipulated, among other things, the procedure for submission of cases to the *Mahkamatul-Sharuiyya*, and the rules that judges must follow in those cases.[20] One of the notable changes brought about by these regulations included the abolition of the advisory function assigned to the *Bandaara Naib* in criminal cases. Under these regulations, the *Bandaara Naib* would remain exclusively as the legal representative of the state. Prior to these rules, the *Bandaara Naib* used to provide legal advice and instructions to judges of the *Mahkamatul-Sharuiyya*, as the legal representative of the state in court.[21]

Additionally, these rules provided for the appointment of a commissioner[22] who would report all matters relating to the *Mahkamatul-Sharuiyya* to the Parliament. Sheikh Ibrahim Rushdi was appointed as the Commissioner.

A further package of judicial reforms was passed by the People's *Majlis* in

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[18] Records of the Government of Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. I, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 7.

[19] Ibid, 56-57.

[20] Ibid.

[21] Ibid.

[22] *Mufaathish*

1950 following a proposal submitted to it by Mohamed Amin, who was then the Minister of Home Affairs and the interim head of the government.[23] Under the authority vested in him by the *Majlis,* he brought about several changes to the judiciary. They included the following:[24]

1. Mohamed Naseer Maniku was appointed as the head of the *Mahkamatul-Sharuiyya* (*Mahkamatul-Sharuiyya* ge *veriyaa*). Sheikh Rushdi was appointed as the chief *naib* and three other senior *naibs* were appointed to the *Mahkamatul-Sharuiyya* along with two junior *naibs* and a secretary.[25]
2. *Naibs* were required to wear blue robes at hearings and other official functions.
3. Functions of the *Mahkamatul-Sharuiyya* were divided among several desks, each desk specializing in specific types of cases. An information desk was also set up to provide information to the litigants.
4. On 25 August 1950, the *Bandaara naib ge office* (Attorney General's Office) was established. This was the first time a separate office was created for the Attorney General, who, until then, had carried out his duties from his desk at the *Mahkamatul-Sharuiyya*. Abdul Qayoom, was the Attorney General, when this Office was established.[26]
5. As part of these reforms, the legal profession was formally established. Mohamed Amin formulated a syllabus for those undertaking legal studies and arranged to set an examination for those seeking to become a lawyer. Twenty candidates participated in the first examination, and six candidates passed the examination. Two candidates passed with

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[23] Records of the Government of Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. 7, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 633-637.

[24] Records of the Government of Maldives, *Vihivana Qarunuge Thereygai Dhivehi Raajje*, Vol. 3, (2006), 19 – 21; see also, Records of the Government of Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. 7, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 633-637.

[25] For more details see, Husnu Al-Suood, *Dhivehiraajjeyge Qaanoonee Nizaam*, (Malé, Maldives: Loamaafaanu Print, July 2007), 35

[26] Ibid, p. 35; Records of the Government of Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. 7 & 8, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 700-702.

first class, three candidates with second class and one candidate with third class. These six candidates were admitted as the first trained lawyers of the country on 17th June 1951.[27]

6. Mohamed Amin commenced implementing *hudud* punishments as prescribed in Islamic Shari'ah. On 7th April 1953, two years after the decision was made to implement *hudud* laws, capital punishment was enforced and the first person was executed. On 1st July 1953, sentences passed by the court to amputate the hands of two persons were executed.

Article 29 of the 1953 (Republican Constitution) states that the judicial power of the state is to be vested in *Fandiyaaruge* (*Mahkamatul-Sharuiyya*) of which the Chief Justice is to be the head. The *Mahkamatul-Sharuiyya* shall comprise the Chief Justice and a number of *naibs* (his deputies) determined by law. The Chief Justice and *naibs* were to be appointed by the President of the Republic.

These legal and judicial reforms undertaken by President Mohamed Amin came to an abrupt halt when he was toppled by a coup led by his Vice President on 31 August 1953. It has been argued that the implementation of *hudud* laws had immensely contributed to his downfall.[28] Immediately after the coup of 1953, a Supreme Judicial Council consisting of four members replaced the then Chief Justice Sheikh Abdulla Fahmy Didi (Jalaaluddin).[29] However, after the trials of the persons loyal to the former President, the powers of *Mahkamatul-Sharuiyya* were restored under the supervision of *Mahkamatul-Sharuiyya* ge *veriyaa.* On January 1958, Sheikh Mohamed Jameel Didi was appointed to the position of Chief Justice, five years after the position had been left vacant by the dismissal of Sheikh

[27] Ibid, 36.

[28] See *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 10, (Records of the Government of Maldives), (2013: Malé Maldives: Reprinted by Novelty Printers and Publishers), 923-925; Ibid, 940.

[29] Ibid, 955-956.

Fahmy Didi in 1953.[30] Three days later, on 5th January 1958, Farooq Ismail was appointed as *Mahkamtul-Sharuiyya ge veriya*.[31]

Rules of *Mahkamatul-Sharuiyya* 1955

After the downfall of Mohamed Amin, the *Mahkamatul-Sharuiyya* was restructured in 1955.[32] Under these reforms, the *Mahkamatul-Sharuiyya* was divided into a number of divisions, each division specializing in different types of cases. The jurisdiction of each division, based on the subject matters involved in the cases, was fixed in the new regulations. The new regulations laid down, in great detail, the cases to be heard by the chief justice (*Fandiyaaru manikufaanu*) and the *naibs* of the *Mahkamatul-Sharuiyya.*[33]

Furthermore, the new rules gave power to *avashugé*[34] in each district of Malé to hear certain types of cases, which were until then within the jurisdiction of the *Mahkamatul-Sharuiyya*. Following these rules, a *naib* was appointed to each *avashugé*.[35]

The rules of 1955 also required a *naib* from *Mahkamatul-Sharuiyya* to visit the islands to deal with the backlog of cases and to forward the more complex cases to Malé for trial. The rules also stated that the *naibs* who

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[30] *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. 13, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 1297.

[31] Ibid.

[32] Reforms were formulated and adopted by the senior officials of the *Mahkamatul-Sharuiyya* on 30th August 1955; see *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 12, (Records of the Government of Maldives), (Malé Maldives: Reprinted by Novelty Printers and Publishers, 2011), 1129.

[33] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 12, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1129-1135.

[34] Malé, the capital of Maldives, is divided into four districts or wards and at that time each district in Malé had an *avashuge*, to provide municipal services.

[35] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 12, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1129-1135.

visited the islands would only have jurisdiction to hear the types of cases that were within the jurisdiction of the *naibs* in the *Mahkamatul-Sharuiyya* and *naibs* in *avashugé*.[36] The rules also required that a clerk from the *Mahkamatul-Sharuiyya*, an assistant to the Attorney General, and a *dheyvaani* should accompany the *naibs* on these trips to the islands.

The following are the jurisdictions of each division of the *Mahkamatul-Sharuiyya* under the 1955 regulations:[37]

Division of the Chief Justice

1. Political offences.
2. Land matters.
3. Murder cases.
4. *Zina* cases.
5. *Liwat* cases.
6. *Li'an* cases.
7. *Faskh* cases.
8. *Hajr* and *Iflas* cases.
9. *Miraath.*
10. Cases involving the interest of all citizens of an island or an atoll.
11. Cases of assault and battery, if the case would involve the punishment of *diya* if found guilty.
12. Cases involving *Isthiri, Varitholhi* and *Sihuru.*
13. *Qazf.*
14. Serious cases of theft.
15. Apostasy.
16. Cases involving gold or silver.
17. Cases of defamation, if the case would involve the taking of *dhuro*, if found guilty.
18. Cases relating to *sikka.*

[36] Ibid.

[37] Ibid.

19. Cases relating to ambergris.
20. Cases relating to sighting of moon.

Division of the naibs

1. Cases involving debts, except for debts not involving the citizens of an entire island or atoll.
2. Cases involving breach of law and regulations.
3. Cases relating to the ownership of trees.
4. Cases relating to maintenance of children.
5. Cases relating to commerce.
6. Cases of *Nafaqat.*
7. Cases relating to custody and guardianship.
8. Cases of maritime disputes.
9. Cases involving fasting.
10. Cases involving houses.
11. Cases of fraud for which the punishment of *dhuro* can be imposed.
12. Cases of defamation for which the punishment of *dhuro* cannot be imposed.

Avashuverige

The following types of cases were within the jurisdiction of *avashuverige*.

1. Cases relating to marriage and divorce that did not involve the taking of an oath.
2. Assault and battery for which *dhiya* cannot be imposed.
3. Petty disputes between husband and wife.
4. Petty theft.

Criminal Procedure under the 1955 Rules

According to the 1955 Rules, criminal investigations in Malé were to be conducted by *avashuverige* before the cases were sent to the Attorney

General's Office for prosecution. However, theft cases occurring in Malé should be sent directly to the judicial desk in *avashuverige* for immediate trial.[38]

In all other islands, once the criminal investigations were complete, the atoll chief should send the cases directly to the *naib* for trial. However, the atoll chief should send the following types of cases to the Attorney General for prosecution:[39]

1. Political cases.
2. National security cases.
3. Serious cases of theft.
4. Assault and battery.
5. Cases involving the interest of all the people of an island or atoll.
6. Cases involving an atoll chief.
7. Cases involving gold and silver.
8. Cases involving ambergris.
9. Cases of counterfeit.
10. Murder.

In Malé, cases involving foreign traders were to be submitted to the *Mahkamatul-Sharuiyya* through the Ministry of Foreign Affairs.[40] However, petty cases could be directly submitted to the *Mahkamatul-Sharuiyya*. Where the case did not involve a commercial matter, it should be sent to the Attorney General's Office through the Ministry of Home Affairs; although the Home Ministry might send petty cases directly to the *Mahkamatul-Sharuiyya*.[41]

Maritime disputes and other cases involving ships should be sent to the

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[38] Ibid.

[39] Ibid.

[40] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 15, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1429.

[41] Ibid.

Attorney General's Office through the Customs Department. However, the Customs Department could directly send petty cases to the *Mahkamatul-Sharuiyya*.[42]

Where a political offence was committed, the atoll chief or the *avashu veriya* should report the matter to the Home Minister, who would conduct the criminal investigation. After completion of the criminal investigation by the Home Minister, the case would be sent to the Attorney General's office for prosecution. An assistant to the Attorney General would be present during the investigation conducted by the Home Ministry.[43]

Where an offence relating to public order and safety was committed, the atoll chief or *avashu veriya* should report the matter to the Ministry of Public Safety. Once the investigation was over, the Ministry of Public Safety would send the case for prosecution by the Attorney General. An assistant to the Attorney General should be present during the investigation conducted by the Ministry of Public Safety.[44]

Annual Judicial Conference

Annual conferences of all the *naibs* were held in Malé. The conference was chaired by the Chief Justice and the Attorney General.[45]

Rules of the *Mahkamatul-Sharuiyya* 1962

The regulations for the *Mahkamatul-Sharuiyya* were revised in January 1962.[46] Some notable changes were made to the rules, including the

[42] Ibid.

[43] Ibid.

[44] Ibid.

[45] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 14, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1353.

[46] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 18, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1707.

following:

1. Guidelines and instructions were introduced relating to the format for the submission of cases, such as the requirement for citing the plaintiff and the defendant in the relevant form.[47]
2. Only the Attorney General or persons who were designated by the Attorney General could represent the State in the court, as stated in the Public Administration Act.[48]
3. The following types of cases should be submitted to the court through the Attorney General.[49]
    (a) Political cases.
    (b) National security cases.
    (c) Serious cases of theft.
    (d) Assault and battery cases.
    (e) Murder cases.
    (f) Cases relating to breach of laws and regulations.
    (g) Offences committed in government departments.
    (h) Matters where the State is a party or the State decides to prosecute.

    All other cases were to be submitted directly to the *Mahkamatul-Sharuiyya* by individuals, without having to forward the case to the Attorney General's Office.[50]

4. All judicial proceedings must be conducted in the Dhivehi language, and persons who could not understand Dhivehi must find their own interpreters.[51]
5. The Island *Naib* Office in each island shall have jurisdiction to

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[47] Section 1, Rules relating to submission of cases to the *Mahkamatul-Sharuiyya* 1962 (effective from 11th January 1962).

[48] Section 2, Rules relating to submission of cases to the *Mahkamatul-Sharuiyya* 1962.

[49] Section 3, Rules relating to submission of cases to the *Mahkamatul-Sharuiyya* 1962.

[50] Section 7, Rules relating to submission of cases to the *Mahkamatul-Sharuiyya* 1962.

[51] Section 5, Rules relating to submission of cases to the *Mahkamatul-Sharuiyya* 1962.

conduct trials in all matters except for the types of cases specified in Section 3 of the regulations. Where the Naib Office refuses to hear a case an appeal can be made to the Island Administrative Office or Atoll Administrative Office or directly to the *Mahkamatul-Sharuiyya*.[52]

Reorganization in 1962

On 7th April 1962, the Chief Justice, under powers vested in him by Article 7 of the constitution, restructured the *Mahkamatul-Sharuiyya*,[53] giving more powers to the individual *naibs* of the *Mahkamatul-Sharuiyya* to enable them to carry out their functions more independently. According to the new rules, a *naib* of the *Mahkamatul-Sharuiyya* could decide a case submitted to his desk without having to consult with the Chief Justice or any other person.[54]

The new rules made by the Chief Justice, and the amendment to the *Ahkaam Aamma* (The Public Administration Act), clarified the functions of the *Mahkamatul-Sharuiyya*, the *Mahkamatul-Sharuiyyage Veriyaa,* the Chief Justice, and other *naibs* of the *Mahkamatul-Sharuiyya*.[55] These rules stated that the *Mahkamatul-Sharuiyya* was responsible for the administration of justice in the Maldives and the Chief Justice was appointed by the state for this purpose. The rules and the amendment to the *Ahkaam Aamma* also stated that a head of the *Mahkamatul-Sharuiyya* (*Mahkamatul-Sharuiyya ge veriyaa*) would be appointed, who would be responsible for the administration of the *Mahkamatul-Sharuiyya*. Though a clear demarcation

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[52] Section 6, Rules relating to submission of cases to *Mahkamatul-Sharuiyya* 1962.

[53] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 19, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1880-1881.

[54] Ibid, 1881.

[55] Amendment to *Ahkaam Aamma* 1962, *see, Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 21, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 2078.

was made between the roles of Chief Justice and *Mahkamatul-Sharuiyya ge veriya,* the actual practice showed that *Mahkamatul-Sharuiyya ge veriya* not only carried out administrative functions, but also got himself involved in numerous judicial functions.[56] The *naibs* for Malé and other islands were appointed by the Chief Justice, on behalf of *Mahkamatul-Sharuiyya.*

Under the reforms initiated by the Chief Justice, a Legal Advisory Committee was established within the *Mahkamatul-Sharuiyya*. Where a judge or a *naib* required legal advice regarding a case before him, he could consult with this Committee. Members of this Committee were appointed by the Parliament. The 1962 regulations regarding the *Mahkamatul-Sharuiyya* stated that a member of the royal family, or a person appointed to a post by a *faiykolhu* issued by the king, could not be summoned to the *Mahkamatul-Sharuiyya*, and such a person should, if there was no other alternative, be brought to the Prime Minister's office.[57]

The 1962 rules stated that where a person directly related to the case required a written report of a case decided by the *Mahkamatul-Sharuiyya*, the Head of the *Mahkamatul-Sharuiyya* had the discretion to issue a report to him.[58]

On 30th June 1963, Mr. Ahmed Zaki, the Head of the *Mahkamatul-Sharuiyya* (*Mahkamatul-Sharuiyya ge Veriya)*, issued a circular requiring that a case number should be assigned to each case registered in the *Mahkamatul-Sharuiyya*.

The introduction of appeal

On 13th October 1960, the People's *Majlis* began the task of drafting a Law

[56] Ibid.

[57] Ibid.

[58] Ibid.

of Appeal.[59] Prior to passing this law, an interim arrangement was made to enable litigants to appeal the decisions of the *Mahkamatul-Sharuiyya* through an Appeal Committee of the People's *Majlis*.[60] The Appeal Committee was to consist of three members appointed by the *Majlis* from among the members of the *Majlis*.[61] However, on 27th October 1961, the Parliament approved the appointment of members to the Appeal Committee who were not Members of Parliament.[62] The Law of Appeal was passed by the People's *Majlis* on 13th July 1961.

On 20th August 1961, a circular was issued by the Prime Minister's Office stating that where a person wished to appeal a case decided by the *Mahkamatul-Sharuiyya* before 7th March 1954, it could only be appealed to the Appeal Committee after the matter was first submitted to the People's *Majlis* and approved by the *Majlis* with a ⅔ majority.[63] The secretariat of the Appeal Committee was established under the Prime Minister's Office on 6th August 1961;[64] later, the secretariat was moved to the Home Ministry.

On 10th December 1961, in accordance with a legal opinion given to the government by the Advisory Committee on Law and Shari'ah, the Prime Minister issued a decree in which he instructed the government departments not to act upon Article 7 of the Law of Appeal on the grounds

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[59] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 15, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1407.

[60] Ibid, 1426.

[61] The Appeal Committee consisted of 3 members. The members of the first Appeal Committee were Sheikh Ali Hussain Didi (President), Malim Mohamed Didi and Sheikh Ibrahim Rushdy; see, *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 16, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1563.

[62] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 17, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1637.

[63] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 16, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1584.

[64] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 16, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1578.

that the provision had contradicted Article 72 of the constitution by superseding the authority and powers of the Chief Justice.[65] Article 72 of the constitution also stated that the Chief Justice must be independent and should refrain from political activities.[66] Finally, on 10th December 1961, the Law of Appeal 1961 was repealed by the Parliament on the grounds of inconsistency with Article 72 of the constitution, and a committee headed by the Chief Justice Mohamed Jameel Didi was appointed to draft a new Law of Appeal.[67]

A new law was introduced on 21st July 1962 to implement the right of appeal guaranteed in the Constitution.[68] This law enabled any person who was not satisfied with a decision of the *Mahkamatul-Sharuiyya* to appeal to the Appeal Committee that was established under the Law. On the same day that the Law on Appeal was passed by the Parliament, it also passed amendments to *Ahkaam Aamma* (The Public Administration Act) to streamline the organization of the *Mahkamatul-Sharuiyya* in accordance with the new Appeal Law.[69]

The new Law of Appeal also stated that the Appeal Committee of three members should constitute a separate division within the *Mahkamatul-Sharuiyya*, headed by the Chief Justice.[70] Two additional members were to be appointed by the Chief Justice himself. The decision to accept the case for appeal, and the judgment on appeal, were to be made by the President

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[65] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 17, (Records of the Government of Maldives), (2013: Malé Maldives: Reprinted by Novelty Printers and Publishers), 1682-1683.

[66] Ibid.

[67] Ibid, 1686-1687.

[68] *Isthiunaafaa behey Qaanoon*1962, passed by the Peoples' *Majlis* on 2nd July 1962 and ratified by the King on 21st July 1962; see also, *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 15, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1426.

[69] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 21, (Records of the Government of Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 2076-2078.

[70] Ibid.

of the Appeal Committee, in consultation with the other two members.[71]

The Law of Appeal required a person to give notice of his intention to appeal immediately after the case was decided by the *Mahkamatul-Sharuiyya*:[72] the notice of intention to appeal must be given, within three days from the date of the decision, to the desk that decided his or her case.[73] If the Appeal Committee decided to accept an appeal, it must give notice of its decision to the desk which decided the case and to the parties involved in the case.

The Law also stated that where notice of the intention to appeal was given by any of the litigants, judgment in such a case should not be enforced until the Appeal Committee had given its decision on the case.[74]

The Law of Appeal also stated that the trial judge who originally decided the case could not be summoned before the Appeal Committee.[75] However, the Appeal Committee might obtain written clarifications from the presiding judge.

Reorganization in 1966

The *Mahkamatul-Sharuiyya* underwent another re-structuring on 7th August 1966. Under the new changes, the functions of the *Mahkamatul-Sharuiyya* were divided into 8 divisions and a Dhivehi alphabet letter was assigned to each division to identify the division. The following are the divisions of the *Mahkamatul-Sharuiyya* as organized in 1966:[76]

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[71] Section 11, Law of Appeal 1962.

[72] Section 3, Law of Appeal 1962.

[73] Ibid.

[74] Section 4, Law of Appeal 1962.

[75] Section 13, Law of Appeal 1962.

[76] *Vihivana Qarunuge Thereygai Dhivehi Raajje*, Vol. 3, (Malé, Maldives: Maldives Centre for Linguistic and Historical Research, 2006), 20 - 26.

a. *Mahkamatul-Sharuiyya ge (haa)*

The Chief Justice headed this division. The functions of this division included hearing of appeal cases among others.

b. Mahkamatul-Sharuiyya ge (shaviyani)

The functions of this division were as follows:

(1) Directing all types of cases submitted to the *Mahkamatul-Sharuiyya* to the appropriate division;
(2) Maintaining the registry and other records of cases;
(3) Tracking the backlog of cases pending in all the divisions, and taking action to speed up stagnant cases;
(4) Responding to complaints and queries from the general public regarding the cases;
(5) Recruiting and management of support staff for the *Mahkamatul-Sharuiyya*;
(6) Keeping custody of items retained by the courts pending a decision from a judge and returning the same as ordered by the judge.

c. Mahkamatul-Sharuiyya ge (noonu)

The functions of this division were as follows:

(1) Preparing summonses to be issued to people, in respect of the cases in all divisions;
(2) Arranging service of summonses;
(3) Maintaining files of closed cases;
(4) Preparing and maintaining case reports and delivering them to people who requested for such reports;
(5) Writing the minutes of the *Mahkamatul-Sharuiyya*;
(6) Preparing annual reports;
(7) Maintaining criminal records.

d. *Mahkamatul-Sharuiyya ge (raa)*

This division dealt with all people who were summoned to the court, including those who were summoned from other islands.

e. *Mahkamatul-Sharuiyya ge (baa)*

The functions of this division were as follows:

(1) Collecting judicial fines and maintaining records of fines;
(2) Collecting judgment debts and returning them to the rightful parties;
(3) Managing the financial and budgetary matters of the *Mahkamatul-Sharuiyya*.

f. *Mahkamatul-Sharuiyya ge (lhaviyani)*

This division dealt with the execution of sentences passed by the judges in criminal matters. Once the judge passed the sentence, this division prepared the paperwork to be sent to the Ministry of Home Affairs and handed over the convicts to the Ministry of Home Affairs,[77] which was responsible for the execution of the sentences.

g. *Mahkamatul-Sharuiyya ge (kaafu)*

The functions of this division were as follows:

1. Valuation of property;
2. Procurement of items necessary for the administration of the *Mahkamatul-Sharuiyya;*
3. Procurement for the maintenance and upkeep of mosques;
4. Management of mosques and making arrangements for Friday prayers.

In addition to the above divisions, *Mahkamatul-Sharuiyya ge (haa)* for

[77] Ibid.

which the Chief Justice was responsible, was further subdivided into seven sections, and a *naib* was appointed for each section. The *naib* who was in charge of the respective section was permitted to decide cases without consulting the Chief Justice. The Chief Justice himself was in charge of one of these sections.[78]

In addition to the appeal cases, the Chief Justice conducted trials in the following types of cases:[79]

a. Political cases (offences under Chapter 2 of the Penal Code);
b. Public safety cases;
c. Murder;
d. Offences against the tenets of Islam;
e. Land and property matters;
f. *Waqf* cases;
g. All other cases not falling within the jurisdiction of any other judge.

Cases reviewed by the Chief Justice on appeal were not subject to further appeal.[80]

The *Mahkamatul-Sharuiyya* under siege

Prime Minister Ibrahim Nasir had not only emerged victorious in quelling the Southern Revolt, but also eventually succeeded in attaining independence for the country from the British. He became an instant national hero for his nationalist and anti-colonialist policies. Emboldened by his victory against the British, Ibrahim Nasir began bulldozing through his economic policies with little regard for the rule of law and human rights.[81]

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[78] Ibid.

[79] Ibid.

[80] Ibid.

[81] Abdul Hakeem Hussain Manik, *Iyye*, 155-201.

The relationship between the Prime Minister and the Chief Justice had deteriorated in 1967, due to executive interference in judicial matters.[82] In a letter written to the Prime Minister, the Chief Justice had alleged that, contrary to the constitutional guarantee of judicial independence, the Prime Minister had repeatedly pressed for what he wanted in certain cases. Furthermore, the Chief Justice had requested the Prime Minister to refrain from interfering in judicial matters in future.[83] In response to this letter, Prime Minister Ibrahim Nasir informed the Chief Justice that the government would not interfere in the *Mahkamatul-Sharuiyya*, including administrative matters; however, subsequently, the Prime Minister had stopped all financial support to the *Mahkamatul-Sharuiyya*, stating that 'the Chief Justice should buy pen, papers and desks for the *Mahkamatul-Sharuiyya* and should pay salaries to the administrative staff.' Chief Justice Mohamed Jameel Didi resigned on 13th June 1967, citing executive interference in judicial matters.[84]

Following this resignation, King Mohamed Fareed asked the Prime Minister to nominate a person to carry out the functions of the Chief Justice as stated in Article 66 of the Constitution.[85] Instead of appointing a judge to the post of Chief Justice, on 16th June 1967 the Prime Minister nominated Moosa Fathy, who was serving as a special Undersecretary at the Prime Minister's office, to carry out the functions of the Chief Justice. Thus, the Prime Minister had made use of the fluid provision in Article 66 of the Constitution to tame and control the judiciary to his own advantage by effectively abolishing the post of Chief Justice. Article 66 of the Constitution stated that, 'justice shall be dispensed by persons appointed by the

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[82] Ali Hussain, *Remnant Memories of What I Saw and Heard*, Part 1, (Malé, Maldives: Novelty Printers and Publishers, 2013), 187-191.

[83] Ibid.

[84] Ibid.

[85] *Vihivana Qarunuge Thereygai Dhivehi Raajje*, Vol. 3, (Malé, Maldives: Maldives Cenre for Linguistic and Historical Research, 2006), 41-55.

Government for that purpose.'[86]

Moosa Fathy, who was educated in Egypt in law and Shari'ah, brought about several changes to the *Mahkamatul-Sharuiyya* and its administration by restructuring the existing divisions. The *Mahkamatul-Sharuiyya* was divided into 9 divisions and a *qazi* (judge) was appointed to each division, replacing the traditional title of *naib*[87] with *qazi* to refer to the judges of *Mahkamatul-Sharuiyya.*[88]

Under the new changes, the Head of the *Mahkamatul-Sharuiyya* was responsible for administrative matters, while an undersecretary (*Vakeel*) was appointed to look after the 'day-to-day administrative matters' of *Mahkamatul-Sharuiyya.*[89]

The nine divisions of the *Mahkamatul-Sharuiyya*, according to the new changes, were as follows:[90]

1. *Mahkamatul-Sharuiyya (haa)*

   This division had the jurisdiction to conduct trials in criminal matters relating to breach of law and regulations. Adnan Hussain was appointed as the *qazi* of this division. This division was located in the western room of the *Mahkamatul-Sharuiyya*, which, by this time was located in the Old Bandeyrige Building.

2. *Mahkamatul-Sharuiyya (shaviyani)*

   This division had jurisdiction over both criminal and civil matters, with the power to conduct criminal trials relating to apostasy, the tenets of Islam, property and ownership. Ali Mahir was appointed as the *qazi* of

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[86] Ibid.

[87] '*Naib*' literally means 'deputy', as they worked as deputies of the Chief Justice.

[88] *Vihivana Qarunuge Thereygai Dhivehi Raajje*, Vol. 3, (Malé, Maldives: Maldives Centre for Linguistic and Historical Research, 2006), 41 - 55.

[89] Ibid.

[90] Ibid.

this division and the division was located on the first floor of F. Atoll Shop at Marine Drive next to *Dharu Maarukeytu*.

3. *Mahkamatul-Sharuiyya (noonu)*

   This division had the jurisdiction to conduct criminal trials relating to *Zina, Qazf*, defamation and sexual offences. Mohamed Rashad was appointed as the *qazi* of this division, which was located in the East Wing of the New Bandeyrigey Building.

4. *Mahkamatul-Sharuiyya (raa)*

   This division had jurisdiction over civil matters such as debts, *iflas* and alimony. Sheikh Ahmed Shathir was appointed as the *qazi* of this division, which was located in the South East room of the *Mahkamatul-Sharuiyya*.

5. *Mahkamatul-Sharuiyya (baa)*

   This division had jurisdiction over family law matters such as marriage, divorce and disputes between husband and wife. Moosa Jameel was appointed as the *qazi* of this division, which was located at the North Veranda of the Old Bandeyrigey Building.

6. *Mahkamatul-Sharuiyya (lhaviyani)*

   This division had jurisdiction over cases relating to child custody, inheritance, parentage, *hajr*, and compulsory acquisition of property by the state. Sheikh Abdulla Zuhree was appointed as the *qazi* of this division, which was located in the western wing of the R. Atoll Shop building.

7. *Mahkamatul-Sharuiyya (kaafu)*

   This division had the jurisdiction to conduct criminal trials relating to theft, robbery, fraud, assault and battery. Sheikh Ibrahim Saleem was appointed as the *qazi* of this division, which was located in the eastern

wing of the B. Atoll Shop building.

8. *Mahkamatul-Sharuiyya (alifu)*

   This Division had the jurisdiction to hear cases relating to commercial matters, mortgage and property. Sheikh Mohamed Zuhair was appointed as the *qazi* of this division, which was located at the former *Fandiyaaruge* building.

9. *Mahkamatul-Sharuiyya (vaavu)*

   This division was responsible for the administration of all the divisions of the *Mahkamatul-Sharuiyya*, as well as the maintenance of mosques in Malé and making arrangements for Friday and Eid prayers. This division was located in the west room of the *Mahkamatul-Sharuiyya*.

The new changes were also accompanied by a new set of procedures relating to submission of cases to the *Mahkamatul-Sharuiyya.* The new procedural rules came into force on 13th September 1967.[91] One of the most notable changes brought about by the new rules was the introduction of a form for filing cases, a sample of which was appended to the regulations. This form continued to be used to submit cases to the courts until 1st August 1997.

Abolition of the *Mahkamatul-Sharuiyya*

The Constitution of 1968 abolished the monarchy in favour of a republican form of government for the second time. This change in constitution gave President Ibrahim Nasir, the former Prime Minister, further powers to introduce a complete overhaul of the traditional system of government

[91] For a full text of the regulations, see: Husnu Suood, *Dhivehiraajjeyge Qaanoonee Nizaam*, (2007: Loamaafaanu Print, Malé, Maldives), (ISBN: 99915-2-243-1), 63-66.

that had existed in the Maldives for centuries.[92]

For the first time in the history of the Maldives, the 1968 'Republican Constitution' declared the President to be the Head of Islam. This not only constituted a fundamental departure from the past Constitutions, but also represented a departure from the traditional practice that had existed throughout the known history of the Maldives in which the Chief Justice had always been the leader of Islam in the country. As regards the administration of justice, Article 90 of the 1968 Constitution stated that persons appointed by the President for that purpose should dispense justice.

Immediately after taking office on 11th November 1968, President Ibrahim Nasir abolished the *Mahkamatul-Sharuiyya* and established the Ministry of Justice as its substitute.[93] The functions and personnel of the *Mahkamatul-Sharuiyya* were transferred to the Ministry of Justice.[94] The divisions of the *Mahkamatul-Sharuiyya* became the divisions of the Ministry of Justice.[95] Moosa Fathy was appointed as the Minister of Justice, thereby ending the judiciary that had existed in the Maldives for over a millennium as a separate organ of the state, largely free from executive interference.

On 8th December 1968, the Minister of Justice created 9 divisions under him.[96] A judge of the Ministry of Justice was appointed to head each division. The following were the jurisdictions of each division:[97]

1. Breach of Law and Political Trials Division – This division assumed the functions of *Mahkamatul-Sharuiyya ge (haa).*
2. Property and Ownership Division – This division assumed the

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[92] Abdul Hakeem Hussain Manik, *Iyye*, 155-201.

[93] *Vihivana Qarunuge Thereygai Dhivehi Raajje*, Vol. 3, (Malé, Maldives: Maldives Centre for Linguistic and Historical Research, 2006), 40.

[94] Ibid.

[95] Ibid.

[96] Ibid.

[97] Ibid.

functions of *Mahkamatul-Sharuiyya ge (shaviyani).*

3. Criminal Trials Division – This division assumed the functions of *Mahkamatul-Sharuiyya ge (noonu).*
4. Debts Division – This division assumed the functions of *Mahkamatul-Sharuiyya ge (raa).*
5. Marriage Registrations Division – This division assumed the functions of *Mahkamatul-Sharuiyya ge (baa).*
6. Property Claims Division – This division assumed the functions of *Mahkamatul-Sharuiyya ge (lhaviyani).*
7. Theft Trials Division – This division assumed the functions of *Mahkamatul-Sharuiyya ge (kaafu).*
8. Mercantile Division – This division assumed the functions of *Mahkamatul-Sharuiyya ge (alifu).*
9. Administrative Division – This division assumed the functions of *Mahkamatul-Sharuiyya ge (vaavu).*

Atoll courts

On 20th December 1969, the *naib ge* in all islands were abolished.[98] An atoll court was created in each atoll of the Maldives by a presidential decree.[99] Although they were called courts, they functioned as divisions of the Ministry of Justice.

Gayoom's Presidency and its impact on the judiciary

On November 11, 1978, President Ibrahim Nasir was succeeded by Maumoon Abdul Gayoom as the President of the Maldives, bringing additional dimensions to the judiciary system that had been crafted by

[98] *Vihivana Qarunuge Thereygai Dhivehi Raajje*, Vol. 3, (Malé, Maldives: Maldives Centre for Linguistic and Historical Research, 2006), 32.

[99] Ibid.

Moosa Fathy. Upon taking office, President Gayoom reappointed Moosa Fathy as the Minister of Justice.

On 17th July 1979, the atoll courts were abolished and, by a presidential decree, an island court was established in each inhabited island of the Maldives.[100] These island courts functioned as divisions of the Ministry of Justice. An island court was created in each island so that the people living in each island would have easy access to the court, instead of going to the atoll court located in the capital island of the atoll. Between the abolishment of *naibs* in islands in 1969 and the creation of island courts in 1979, in many instances, people had to travel across the sea to the atoll capital to file a case or to register a marriage.

In 1980, the eight main divisions of the Ministry of Justice were named as courts, and each court was assigned a number, from 1 to 8.[101]

1. Court No.1 assumed the functions of the Breach of Law and Political Trials Division.
2. Court No.2 assumed the functions of the Property and Ownership Division.
3. Court No.3 assumed the functions of the Criminal Trials Division.
4. Court No.4 assumed the functions of the Debts Division.
5. Court No.5 assumed the functions of the Marriage Registrations Division.
6. Court No.6 assumed the functions of the Property Claims Division.
7. Court No.7 assumed the functions of the Theft Trials Division.
8. Court No.8 assumed the functions of the Mercantile Division.

Although these divisions of the Ministry of Justice were renamed as courts, they still functioned as its divisions and the Minister of Justice remained in full control over the decisions of the *qazis*. In each case, the judges were required to seek legal advice from the Minister himself or an official of the

[100] Ibid.

[101] Ibid.

Ministry of Justice before a judgment was given. Similarly, the *qazis* of the island courts were required to send a draft judgment to the Ministry of Justice for its approval before the judgment was given in each case.

The courts of the Ministry of Justice in Malé had the power to conduct trials of matters that fell within their jurisdictions; while the island courts had a lesser jurisdiction in respect of both criminal and civil matters. Cases outside the jurisdiction of the island courts would have to be submitted or transferred to the courts in Malé for trial.

In 1994, the 8 courts of the Ministry of Justice in Malé were restructured. A total of four courts were created by consolidating the jurisdiction of the eight courts: Court No. 1 dealt with family matters; Court No. 2 dealt with commercial cases; Court No. 3 dealt with criminal cases; and Court No. 4 dealt with property matters and summary cases. Each of these courts had about five or six *qazis*.[102]

By a presidential decree issued by President Maumoon Abdul Gayoom, four courts of the Ministry of Justice were abolished on 31 July 1997 to create four lower courts in Malé.[103] They were: the Civil Court; the Criminal Court; the Family Court and the Juvenile Court. A chief judge was appointed to each of these courts to deal with both the administrative and judicial functions of the respective court. Although these courts were not divisions of the Ministry of Justice, the Ministry still retained a major supervisory role over these courts.[104]

High Court of the Maldives

On 6th October 1980, President Maumoon Abdul Gayoom, in accordance

[102] Ibid.

[103] *Haveeru Daily*, 31st July 1997.

[104] See for example the role of the Ministry of Justice in the Rules for Conducting Trials, *Shareeaiy Kurumaabehey Qawaidh 6*, (2003: Ministry of Justice, Malé, Maldives).

with the powers vested in him under Chapter 3 of Law No. 3/68 (Official Business Act), created the High Court of the Maldives, as a government department that would function directly under the office of the President.[105] The reason for establishing the High Court was to conduct the trials of the plotters of an attempted *coup d'état* against the President. Moosa Fathy, who was until then the Minister of Justice, was appointed as the Chief Justice of the High Court. Despite the creation of the High Court, the lower courts remained as divisions of the Ministry of Justice.

The High Court had the power to sit both as an appellate court and as a court of first instance to conduct trials of certain criminal matters designated by the President of the Maldives. The criminal matters which were included within the original jurisdiction of the High Court included: terrorism cases; offences against the state under Chapter 2 of the Penal Code; and cases of unlawful fishing in Maldivian territorial waters by foreign fishing vessels.

The President as the chief judicial authority

Upon the establishment of the High Court in 1980, President Gayoom had issued the Rules of the High Court, wherein he had declared that any person who was not happy with a decision of the High Court could appeal such a decision to the President himself.[106] On appeal, the President could affirm, overrule or ask the High Court to review its decision. In addition to the above, the President also assumed the power of issuing authoritative interpretations of the provisions of the Constitution, laws, regulations and Islamic Shari'ah. These interpretations were binding on the High Court and the lower courts. The Rules of the High Court also stated that the decision made by the President would be the final decision of a case. The President had the discretion to give or not to give the reasons for his decisions to

[105] *Haveeru Daily*, 6th October 1980.

[106] Ibid.

reverse or annul a judgment of the High Court.

On 2nd February 1995, President Gayoom established the Consultative Council on Judicial Matters to advise him on matters affecting the judiciary and to advise him on cases appealed to the President. The Council held its meetings at the office of the President. The Regulations of the Consultative Council stated that the advice given by the Council to the President regarding an appeal case would not be binding upon the President: he might choose to depart from the advice given to him and to arrive at his own decision on a case.

The new Constitution of the Maldives that came into force on 1 January 1998 declared the President to be the head of the judiciary. The 1998 Constitution also stated that the president could appoint and dismiss judges, make rules for the courts and determine the jurisdiction of the courts.

In 2001, a popular movement for reform and democracy began in the Maldives. The reform movement called for separation of powers and the installation of a multiparty democracy. Reform of the judiciary became a primary focus of the reform movement. President Gayoom announced an agenda for reform on 9th May 2004. Soon after, a Special *Majlis* was convened, as per the constitution, to draft and adopt a new Constitution for the country.

It took more than four years for the Special *Majlis* (Constituent Assembly) to come up with a new Constitution. The new Constitution was adopted and ratified on 7th August 2008.

The new constitution set down a clear separation of powers, and introduced a presidential governance system with a multi-party system, an independent judiciary, a parliament with strong oversight powers, a system of local governance, and other independent oversight bodies, such as a Judicial Service Commission, Civil Service Commission, a Human Rights Commission and a Prosecutor General. Following the ratification of

the new Constitution in 2008, a number of laws were enacted to implement the Constitution and to establish a new legal system in the country.

Despite the adoption of the 2008 Constitution and various other laws, transformation of the judiciary into a modern institution still remains one of the greatest challenges facing the Maldivian state.

Chapter 3

SOURCES OF MALDIVIAN LAW

This chapter deals with the sources of law to which the lawyers and judges in the Maldives turn for guidance on applicable rules in a given matter.

Article 142 of the Constitution requires the judges to refer to the Constitution and the laws passed by the *Majlis*, in order to determine an issue before them. Furthermore, it states that in cases where the Constitution or the law passed by the *Majlis* is silent, the judges shall refer to the rules of Islamic Shari'ah in deciding such cases. However, this constitutional provision does not preclude the judges from referring to other sources of law in determining the matters that come before them.

In order to find what the law is in a given area, one should not only look at the Constitution, statutes passed by the *Majlis* and Islamic law; one should also look at the precedents decided by the courts. We must also keep in mind that much of present-day Maldivian legislation is based on the general principles of law recognized by civilized states.

Part I

The Constitution

The Constitution constitutes the 'supreme law of the land' that provides legitimacy to all political actions and decisions within the state. All governmental powers in the state, be it the judiciary, the legislature or the

executive, owe their legal existence to the Constitution. Additionally, the Constitution defines their powers and their relationships with each other and to private citizens. Everything done in accordance with the Constitution is deemed legal and should be accepted as legitimate. Correspondingly, everything which is inconsistent with the Constitution should be regarded as void or unlawful.

The present Constitution of the Maldives, adopted in August 2008, provides the fundamental principles of governance to be followed in the Maldives and defines the division of power, privileges and responsibilities among different organs of government.

Basic features of the Constitution

The basic features of the Constitution of the Maldives that was adopted in 2008 are: (a) the supremacy of the Constitution; (b) presidential and democratic form of government; (c) theocratic character of the Constitution; (d) separation of powers; and (e) enforceability of fundamental rights.

a) The supremacy of the Constitution

The concept of the supremacy of the Constitution confers the highest authority in the legal system on the Constitution. Where there is a written Constitution, it represents a form of law superior to all other laws in the state,[1] and all organs of the state, all citizens, political organizations, other associations and their officials, have an explicit

[1] In the absence of a written Constitution, for example under English law, Parliament is regarded to be supreme, as it has the power to make or unmake any law whatsoever, and no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament; see A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (8th ed, 1915, Indianapolis: Liberty Fund, 1982).

duty to ensure observance of the Constitution and to obey it.[2]

Article 268 of the Constitution of the Maldives establishes the unchallengeable supremacy of the Constitution over any other laws and conduct of the officials of the state. Article 268 states,

> All laws of the Maldives must be enacted in accordance with this Constitution. Any law or part of any law inconsistent with this Constitution is, to the extent of its inconsistency, void and of no force and effect. The obligations imposed by this Constitution must be fulfilled. Any conduct contrary to this Constitution shall be invalid.

Under constitutional supremacy, the Constitution regulates the parliament, the executive and the judiciary. None of these organs can assume any powers contrary to the Constitution[3] and their powers are fettered by the words of the Constitution. This is clearly stated in Article 8 of the Constitution, which states, 'the powers of the State shall be exercised in accordance with this Constitution.'

Any law or conduct which is in conflict with the Constitution may therefore be declared unconstitutional by a court of law[4]. Such a declaration will have the effect of rendering the law or conduct invalid.

In September 2008, the Peoples' *Majlis* enacted a General Elections Law (Law No. 11/2008) to facilitate the first presidential elections to be held under the 2008 Constitution. Section 5 (b) of the General Elections Law restricted voting rights of prisoners who were serving a prison sentence that exceeded a term of 5 years. The Law had barely entered into force when some political parties filed a constitutional complaint with the Supreme Court.[5] The petitioners asked for repeal of Section 5 (b) of the

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[2] *Constitutional Petition in respect of Public Finance Act filed by the Attorney General*, Supreme Court case No. 2010/SC-C/32, decided on 15th September 2012; *See also*,

[3] Articles 5, 6, and 7 of the Constitution.

[4] Articles 143 and 144 of the Constitution; see also, *Mohamed Fahmy Hassan v. State*, Supreme Court Case No. 2012/SC-C/35.

[5] *Jumhooree Party v State (Attorney General)*, case No. 2008/HC-DM/07 (2 October 2008), Supreme Court of the Maldives.

General Elections Law, because it infringed Article 26 of the Constitution. Article 26 reads:

> 26. Unless otherwise provided in this Constitution, every citizen of the Maldives eighteen years of age or older has the right:
>
> a) to vote in elections, and in public referendums, which shall be held by secret ballot;
>
> (b) to run for public office;
>
> (c) to take part in the conduct of public affairs, directly or through freely chosen representatives.

The Supreme Court declared that the restrictions made by Section 5 (b) of the General Elections Law on prisoners' right to vote in general elections constituted a breach of their fundamental rights in Article 26 (a) of the Constitution, and therefore the Supreme Court held Section 5 (b) of the General Elections Law null and void.

The Supreme Court thus repealed a provision enacted by a majority of legislators elected by the people. The judges disregarded majority rule. Yet the judges were not elected by the people, nor did they owe them any responsibility. As they could not be removed through new elections, they could not be called to account. On the contrary, these types of rulings by the court are justified by referring to constitutional supremacy, which keeps the power of the Parliament within the confines of the Constitution.

The Supreme Court also applied the principle of the supremacy of the Constitution when it repealed Section 53 of the Civil Service Act[6] by stating that the provision was inconsistent with Article 30 (a) of the Constitution.[7]

The power of judicial review is regarded as the chief instrument in the system of checks and balances and upholding constitutional supremacy.[8]

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[6] Law No. 5/2007.

[7] Supreme Case No. 2009/SC-A/09 decided on 19th September 2011.

[8] For a detailed understanding of the approach of the Maldivian Supreme Court on judicial review, refer to paragraph 2 of its decision in *Mohamed Naeem v Attorney General*, (Supreme Court case No.

Echoing the role taken by the US Supreme Court as the guardian of the US Constitution,[9] the Maldives Supreme Court also acts as a guardian of constitutional supremacy in the Maldives through judicial review.[10]

The supremacy of the Constitution, however, is not absolute. It may be amended with the support of a special majority of the People's *Majlis*.[11]

b) Presidential and democratic form of government

The Constitution establishes the Maldives as a *'democratic Republic based on the principles of Islam'*,[12] where *'sovereignty resides in the people and all government authority emanates from the citizens'*.[13] The Constitution also adopts a presidential form of government as one of its fundamental features.[14]

The President functions as the head of state and head of government, and is also the Commander-in-chief of the armed forces.[15]

The President and the Vice President are directly elected by the people on one 'presidential ticket' for a fixed term of five years. A candidate has to obtain more than 50% of the votes cast in the presidential election to win the Presidency.[16] No person can serve as President for more than two

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2011/SC-C/30), 16 August 2012; Mohamed *Fahmy Hassan v. State*, Supreme Court Case No. 2012/SC-C/35.

[9] *Marbury v Madison* [1803] 1 Cranch 137.

[10] Supreme Court Order No. 2012/SC-SJ/05 dated 28 November 2012, directing the Parliament to refrain from interfering in any matter pending before a court of law; *Mohamed Fahmy Hassan v. State*, Supreme Court Case No. 2012/SC-C/35, wherein the Supreme Court held that the Court has the power to review a decision of the Parliament where such decision is inconsistent with the Constitution.

[11] Article 261, *Constitution of the Maldives*, 2008.

[12] Ibid, Article 2.

[13] Ibid, Article 4.

[14] On 18th August 2007 Maldivians, by a general referendum, decided to adopt a presidential form of Government as opposed to a parliamentary form of government.

[15] Ibid, Article 106 (b) *Constitution of the Maldives*, 2008.

[16] Ibid, Articles 111 (a) and 112 (a).

terms.[17] The Vice President does not have any decision-making powers of his own: the function of the Vice President is merely to act as a stand-in for the President in case of his impeachment, resignation, death or a serious illness that could hinder the performance of his duties.[18]

The President appoints his ministers, who stay in office at his pleasure.[19] They do not belong to the legislature.[20] They are appointed on the basis of their experience and expertise to assist him in carrying out his functions and the President can remove them from office if he is not happy with them.[21]

The President is independent from the legislature and is not directly responsible to the Parliament. However, the Parliament has the power to impeach the President for reasons stated in Article 100 (a) of the Constitution.[22] This mechanism bears a much greater resemblance to a presidential impeachment under the US Constitution than to the devices which are used in parliamentary systems to sanction the government. Although the ministers work for the President and are responsible to him, at the same time they are also responsible to the Parliament.[23] The Parliament has the power to remove ministers by a simple no-confidence vote – a process similar to such practices in a parliamentary system.[24]

As the previous two Constitutions were heavily criticized for the broad powers of the President, the Constitution of 2008 departs from its two predecessors to make the presidency a weaker institution: the President's actions to be constantly checked by a powerful legislature and a powerful judiciary. As there is no concentration of powers in one person or in a

[17] Ibid, Article 107 (a).

[18] Ibid, Article 117 (a)

[19] Ibid, Article 129.

[20] Ibid, Article 73 (d).

[21] Ibid, Article 137 (a).

[22] Ibid, Article 100.

[23] Ibid, Article 134 (a).

[24] Ibid, Article 101.

single body, there is less possibility for oppression, and there is greater possibility for more democracy and protection of individual rights.

Theocratic character of the Constitution

At the very heart of the Maldivian Constitution is its theocratic character, which coexists with its democratic features. As the religion of Islam is a national trait worthy of constitutional protection, the framers of the Constitution thought it proper to make provisions for the protection and preservation of the religion of its people. Therefore, upholding Islam is a central feature of the Constitution of the Maldives.

Article 2 of the Constitution declares: *'The Maldives is a sovereign, independent, democratic Republic based on the principles of Islam, and is a unitary State, to be known as the Republic of the Maldives.'* Article 10 (a) of the Constitution states that the religion of the State of the Maldives is Islam and it shall be a source of law in the Maldives. Furthermore, Articles 10 (b) and 70 (c) state that no law contrary to any tenet of Islam shall be enacted in the Maldives.

Under the Constitution, every citizen has a duty to preserve and protect the religion of Islam; and a law passed by the Parliament may, in order to protect and preserve the tents of Islam,[25] restrict all rights and freedoms provided for in the Constitution.[26]

No non-Muslim may become a citizen of the Maldives[27] and no person may be elected to the Presidency or the legislative assembly, or be appointed to the Cabinet or the judiciary, unless that person is both a Muslim and a follower of Sunni school of Islam. Moreover, the President or Vice-President may be removed from office for 'direct violation of a tenet of

[25] According to Article 274 of the Constitution, 'tenet of Islam' means the Holy Qur'an and those principles of Shari'ah whose provenance is not in dispute from among those found in the Sunnah of the Noble Prophet, and those principles derived from these two foundations.

[26] Article 16 (b), *Constitution of Maldives*, 2008.

[27] Ibid, Article 9 (d).

Islam'.[28]

Under the Constitution, judges are bound to consider Islamic Shari'ah,[29] in any case where the Constitution or the law is silent; and Article 24 of the Constitution requires the state to strive to inculcate obedience to Islam and instil love for Islam.

The President, Cabinet Ministers, the Chief Justice, Justices of the Supreme Court, Members of the Parliament and members of the independent constitutional commissions and bodies must swear an oath to respect Islam before assuming office.

Separation of powers

The doctrine of separation of powers is a cornerstone of the Maldivian Constitution, which divides the powers of the state into three distinct spheres: the legislative, the judicial and the executive; and each of the three branches has defined powers to check the powers of the other branches. According to the Constitution, the legislative power of the state is vested in the People's *Majlis*;[30] the executive power is vested in the President;[31] and the judicial power is vested in the courts.[32] Article 8 of the Constitution makes it clear that the power accorded to each of these organs should be exercised in accordance with the manner stipulated in the Constitution.

Examination of the provisions of the Constitution indicate that it attempts to achieve the following:

(a) Prevent the same persons from being part of more than one

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[28] Ibid, Article 100 (a).

[29] According to Article 274 of the Constitution, 'Islamic Shari'ah' means, the Holy Qur'an and the ways preferred by the learned people within the community and followers of the Sunnah in relation to criminal, civil, personal and other matters found in the Sunnah.

[30] Article 5, *Constitution of Maldives*, 2008.

[31] Ibid, Article 6.

[32] Ibid, Article 7.

organ of the government: for example, neither the President nor his Cabinet Ministers should sit in the People's *Majlis*;

(b) One organ of government should not control or unduly interfere with the exercise of the functions of another organ; [33]

(c) One organ of government should not exercise the functions of another.

Separation of powers serves the important purpose of preventing concentration of power in one branch of the government and promotes government efficiency.[34] As such, when an organ of the state has crossed its boundary and stepped on the boundary of the other, or when an organ of the state has gone beyond its powers provided in the Constitution, the other organs are bound to use their power to stop such action.

The Attorney General made an application[35] to the Supreme Court of the Maldives on 29th August 2010, to strike down Order 171 (i) of the Standing Orders of the Parliament. In his application, the Attorney General contended that Order 171 (i) of the Standing Orders of the Parliament was in breach of Articles 129 (c), (d) and 130 of the Constitution. In this case the Supreme Court held that since the procedure stipulated in Order 171 (i) exceeded the powers accorded to the Parliament by the Constitution and infringed upon the powers of the President as stipulated in Article 129 (c), (d) and 130 of the Constitution, it would be unconstitutional for the Parliament to act in accordance with the procedure laid down in Order 171

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[33] *See,* Supreme Court Order No. 2012/SC-SJ/05 dated 28 November 2012, directing the Parliament to refrain from interfering in any matter pending before a court of law; *Constitutional Petition in respect of Order No. 171 (i) of the Standing Orders of the Parliament filed by the Attorney General*, Supreme Court case No. Case No. 2010/SC-C/23, Supreme Court of Maldives.

[34] After examining the historical background of separation of powers in *Immigration and Naturalization Service v. Chadha* (1983) 462 US 919 *(1983)* the US Supreme Court concluded that the reason the framers of the Constitution separated the three branches and gave each branch checks over the other two was to prevent any one branch from attaining hegemony.

[35] *Constitutional Petition in respect of Order No. 171 (i) of the Standing Orders of the Parliament filed by the Attorney General*, Supreme Court case No. Case No. 2010/SC-C/23, Supreme Court of Maldives.

(i) of the Standing Orders of the Parliament, when granting consent to the Ministers appointed by the President to his Cabinet. In its judgment, the Supreme Court emphasized that the concept of separation of powers was a keystone of the Constitution and hence, no branch of the government would be allowed to exceed its constitutional powers to step on the domain of the other branches of the government.

Enforceability of fundamental rights

Enforceability of fundamentals rights is another important feature of the 2008 Constitution, which was absent in the previous Constitutions. If there is an encroachment on any of the rights set out in Chapter II of the Constitution, an individual is entitled under the Constitution to seek redress through the courts of law. Article 65 of the Constitution states: 'Anyone whose rights or freedoms, as guaranteed by this Chapter, have been infringed or denied may apply to a court to obtain a just remedy.'

Article 65 of the Constitution has dramatically changed the individual's ability to enforce his or her fundamental rights as guaranteed under the Constitution, as previously the courts had consistently rejected applications to enforce fundamental rights, on the ground of lack of jurisdiction. The jurisdictions of the courts, being determined by the President until the adoption of the 2008 Constitution, had provided no court with jurisdiction to entertain applications arising under the fundamental rights Chapter of the Constitution.

The Constitution also states that:

> 'any law or part of any law contrary to the fundamental rights or freedoms guaranteed by Chapter II of the Constitution shall be void or void to the extent of such inconsistency.'[36]
>
> 'When interpreting and applying the rights and freedoms contained within this Chapter, a court or tribunal shall promote the values that underlie an open and democratic society based on human dignity,

[36] Article 63 of the Constitution, 2008.

> equality and freedom, and shall consider international treaties to which the Maldives is a party.'[37]
>
> 'No provision of the Constitution shall be interpreted or translated in a manner that would grant to the State or any group or person the right to engage in any activity or perform any act aimed at the destruction of the rights and freedoms set out in this Constitution.'[38]
>
> 'No employee of the State shall impose any orders on a person except under authority of a law. Everyone has the right not to obey an unlawful order.'[39]

However, fundamental rights in Chapter II of the Constitution are not absolute. Reasonable restrictions can be imposed in accordance with the procedure and principles laid down in Article 16 of the Constitution.

Interpretation of the Constitution

Two main approaches have been adopted in different jurisdictions when interpreting the provisions of the Constitution. On one side are those who argue that the text of the Constitution should be construed according to its original understanding, that is, the way the text was understood by the people who drafted the Constitution. This argument is justified by saying that the judges are bound by its original understanding; and if there is any need for amending the Constitution due to change of circumstances, it should be done in accordance with the manner provided in the Constitution. On the other side are those who argue that the Constitution is a living document and therefore the rules of interpretation for the Constitution could not be the same as those for other statutes subordinate to it. With this approach, the Constitution is understood to grow and evolve over time as the conditions, needs, and values of the society change. Those who are in favour of this argument say that the Constitution, being the

[37] Ibid, Article 68.

[38] Ibid, Article 69.

[39] Ibid, Article 64.

supreme law of the land, is a living instrument embodying certain fundamental values and principles and therefore has to be construed broadly, liberally and purposively to give effect to such values and principles.

Based on the two approaches adopted by the judges to interpret constitutional provisions, two main questions arise with respect to constitutional interpretation.[40] The first is whether a court should regard the words of the Constitution as an exhaustive expression of the framers' intent; and the second is whether the court can refer to the principles of natural justice and other general principles of law to give meaning to a constitutional provision.

In *Hind v. The Queen* (1977),[41] Lord Diplock advocated a broad approach to constitutional interpretation and pointed out that a written Constitution should be *'construed in the light of its subject matter and of the surrounding circumstances with reference to which it was made'*. He went further to explain that because Westminster-style Constitutions were negotiated and drafted by public lawyers schooled in English common law tradition, a great deal is often necessarily implied. In this case, Lord Diplock also argued that it would be inappropriate to use normal rules of statutory interpretation to interpret a constitutional provision.

In the Malaysian case *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* (1981)[42], Acting Lord President Rajah Azlan Shah held that the Constitution is a living document, its provisions must be construed broadly and not in a pedantic way; that it called for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory

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[40] Kevin Y.L Tan, *An Introduction to Singapore's Constitution*, (Singapore: Talisman Publishing Pte. Ltd, 2005), 13-14.

[41] AC 195 (Privy Council, on appeal from Jamaica)

[42] (1981) 1 MLJ 29

interpretation.

In the Singapore case *Chang Hiang leng Colin & Ors v Public Prosecutor* (1994),[43] the Chief Justice noted that the judgments of other courts, interpreting their own Constitutions, were of little consequence as he felt that the Constitution should primarily be interpreted *'within its own four walls and not in the light of analogies drawn from other countries such as Great Britain, the United States of America or Australia.'*

In an application made to the Supreme Court of the Maldives by the Attorney General on 29th August 2010, to strike down Order 171 (i) of the Standing Orders of the Parliament contending that it was in breach of Articles 129 (c), (d) and 130 of the Constitution, the Supreme Court expressly stated that, while interpreting the relevant provisions of the Constitution, the judges had considered the 'principle of legitimacy' and the 'principle of constitutionality' as applied in other jurisdictions.[44]

In the case of *Social Liberal Party v Elections Commission,*[45] the Supreme Court of the Maldives held that a text in the Constitution should be construed in accordance with the intention of the Constituent Assembly that adopted the Constitution. In this case the Supreme Court held that 'it was not the intention of the Peoples' Majlis to disqualify any individual who has previously held the office of the President of the Republic from contesting for the office of the President under this Constitution, when it adopted Article 107 (a) of the Constitution.' The Supreme Court stated that:

> 'when interpreting a written Constitution, the court must find out the intention of the makers of the Constitution. To do so, the court must first look at the ordinary meaning of the relevant text in question; the ordinary meaning of a text of a Constitution would be what the reasonable men of the time in which it was adopted would have

[43] (1994) 3 SLR 662

[44] Case No. 2010/SC-C/23 of the Supreme Court of the Maldives.

[45] Case No. 2008/SC-C/02 of the Supreme Court of the Maldives.

> regarded it to be the meaning of that text. If the meaning of the text were clear in this manner such would be the intention of the makers of the Constitution. The Court should only resort to other tools of Constitutional interpretation, only where the ordinary meaning of the text is not clear.'

Amendment of the Constitution

Chapter 12 of the Constitution sets out the procedures for the amendment and revision of the Constitution.

Article 261 of the Constitution states that the Constitution may be amended by a Bill passed by a three-quarters majority of the total membership of the People's *Majlis*. Article 262 (a) states that the Bill amending the Constitution passed by the People's *Majlis* shall come into force upon obtaining the written assent of the President. Article 262 (b) states that notwithstanding the provision stated in Article 262 (a), any amendment to the Articles of the Constitution specified therein can only be ratified by the President, after such amendment has been approved by a public referendum. The following are the Articles of the Constitution that require approval from the people in a public referendum, before the President can ratify amendment to such an Article.

1. Any provision contained in Chapter II (Fundamental Rights and Freedoms) of the Constitution;
2. Article 79(a) (Term of *Majlis*);
3. Article 107 (Term of office of the President), and Article 108 (Presidential election);

If the amendment did not receive a majority approval in the public referendum, the Bill passed by the *Majlis* would become null and void.

Part II

Statutes

Statutes – '*Qaanoon,* passed by *Majlis*' – are formal written enactments of the People's *Majlis* and they constitute a primary source of Maldivian law. The statutes of the Maldives are found in the various enactments of the Maldivian legislature since its creation in 1932. The People's *Majlis* possesses the authority to adopt, modify or abolish statutory law.[46]

Although the power of the People's *Majlis* is significant, there are two main limitations to its power; it cannot enact a law that violates a constitutional provision,[47] and it cannot make a law that contravenes the tenets of Islam.[48] If the People's *Majlis* makes a law that contravenes either the Constitution or any tenet of Islam, the judicial branch is empowered to declare such law or any part thereof to be invalid.[49]

History of legislation in the Maldives

The Maldives did not have any written laws prior to the proclamation of the first written Constitution in 1932.[50] The Constitution of 1932 had established the People's *Majlis* and granted it the power to make laws. The first piece of legislation enacted by the People's *Majlis* was called *Ahkaam Aamma* or the Public Administration Act.[51] The purpose of this Act was to create various government departments and to provide their mandate.[52]

Within just nine months after its first sitting on 12th January 1933, the People's *Majlis* passed more than 40 pieces of legislation, covering a wide

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[46] Article 70 (b) (2), *Constitution of the Maldives*, 2008.

[47] Article 268, *Constitution of the Maldives*, 2008.

[48] Articles 10 (b) and 70 (c), *Constitution of the Maldives*, 2008.

[49] Articles 143 and 144, *Constitution of the Maldives*, 2008.

[50] Mohamed Amin, *Life of the Constitution of Maldives*, (Malé, Maldives: 1951), 42 – 51.

[51] Ibid.

[52] Ibid.

range of subject matters that affected the day-to-day life of the people.[53] The introduction of so many laws within such a short span of time caused hardship and confusion among the general public, who were not used to a tightly regulated society.[54] Mohamed Amin, in his book *The Life of the Constitution of Maldives*, wrote:

> Now I will dwell upon the nature of the laws that the Majlis was adopting. There is no need for any debate. Each of the laws was based on a reform, much desired. However, we should admit there is always an appropriate time for enacting such reform. We just cannot afford to implement any law before we have taken measures to address all the difficulties that will arise from such law, to the people who are affected by it. With respect to the 'Act relating to Timber', we have experienced the inevitable bitter result of not addressing such matters, before we have implemented the Act. Also look at the impact of the laws such as 'Act relating to Foreign Traders' and the 'Health Act'. Without prior notice, we started to sell certain types of timber that was freely available to people from time immemorial. I fully admit that the law is valid since it was properly enacted. I would also admit that it may be necessary to enact the measure. However, we failed to give due notice and instructions to the people before we legislated it and implemented it. We failed to make alternative arrangements for the people who were affected by it. As a result it caused widespread dissent and frustration among the people. Therefore, the public sentiments towards the people who were running the government were obviously not that of love or affection.'[55]

The statutes passed by the People's *Majlis* within the first nine months of its life included: Law on the Members of Parliament, Law on Garlic Firecrackers, Law on the Celebration of *Hithivileyrey,* Law on *Sama,* Law on Bicycles, Law on Offences Committed using Bicycles, Law on Banning *Foe,* Law on Import, Law on the Declaration of Bandaara Status for the Island of Dhidhdhoo in Thiladhumathi Atoll, Law relating to Alpaka Cloth, Amendment to the Law on the Units of Measurements used in General Trade, Law on Raising Import Duty, Law on the Items Prohibited to be

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[53] Ibid.

[54] Ibid.

[55] Ibid, 41 (Translation by Maldives Culture website).

Imported into the Maldives, Law on Inspection of Goods by Customs, Law on Postal Stamps, Law on Preserved Fish, Law on *Baara bain Bai Kendun*, Law on Police, Law on the Punishment for Adultery, Law on Learning Quran, Arabic and Thaana Alphabetical Letters, Law on *Furabandaara* Timber, Law on Health, Law on the Punishment for Theft, *Isthiri* and *Varitholhi*, Law on Foreign Traders, Law on Affixing Revenue Stamps on Private Certificates, Law on Distribution of *Havaru*, Law on the Purchase of a Cargo Ship, Law on the Punishments for Offences Committed by Traders, Law on the Customary Rules relating to Debt, Law on the Punishments for the Offence of Assault with a Sharp Object, Law on the Protection of Reputation and Dignity, Law on the Election of Members of Parliament, Law on Traders, Law on Annual and Monthly *Faathihah*, Law on Jury, Law on Isolation of People with Leprosy, Law on Foreign Travel.[56]

The purpose of some of these statutes was to codify the customary laws that had existed prior to the adoption of the first Constitution in 1932. Gradually, statutes passed by *Majlis* replaced all the customary laws that were in existence. Presently, the Constitution expressly prohibits enforcement of any law that is unwritten and unpublished in the government gazette.[57]

Codification of Islamic law and English law

a) Penal Code

The first major effort by the Maldivian Parliament to import foreign law was the enactment of the Penal Code of the Maldives that was adopted by the *Majlis* on 11 July 1961 (27 *Muharram* 1381 AH). This Penal Code contains selected portions of the Sri Lankan Penal Code[58] and excludes

[56] Ibid.

[57] Article 61, *Constitution of the Maldives*, 2008.

[58] The Indian Penal Code of 1860 was adopted in Sri Lanka by the British colonial authorities in Sri

from its purview all criminal offences for which Islamic Shari'ah prescribes punishment[59]. In the case of offences prescribed by Sharia'h, punishments are stipulated in the rules of the court issued by the *Mahkamatul Sharuiyya* and later by the Ministry of Justice.

In 2004, Professor Paul H. Robinson[60] of the University of Pennsylvania was commissioned by the Government of the Maldives to write a new Penal Code and a criminal procedure code for the country. The draft Penal Code, completed in January 2006, was based on the 'existing Maldivian law', which includes the codification of Islamic Shari'ah. In his report he outlined the drafting principles and the many challenges of codifying Islamic Shari'ah.[61]

In his report, Professor Paul H. Robinson stated that in drafting the new Penal Code he had relied primarily on three sources: the existing Maldivian statutes; where there was no applicable Maldivian statute, on the principles of Shari'ah, especially those of the Shafi'i school of Islamic law; and the shared community values as reflected in the views expressed by the many Maldivian judges, prosecutors, private defence lawyers, government officials, and ordinary Maldivians with whom he held discussions.[62]

In his report he stated that the drafting process had been at times very delicate, because these three sources of authority – statutes, Shari'ah, and shared Maldivian community values – were sometimes in conflict,

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Lanka.

[59] Section 2 of the Penal Code.

[60] Professor Paul H. Robinson is one of the world's leading scholars on criminal law.

[61] Paul H. Robinson, *Final Report of the Maldivian Penal Law & Sentencing Codification Project: Text of Draft Code*, (Volume 1), and *Official Commentary* (Volume 2) (January 2006), U of Penn Law School, Public Law Research Paper No. 09-38, available at SSRN: http://ssrn.com/abstract=1522222.

62 Ibid.

forcing a decision as to which to follow.[63] He said that it was not uncommon for the current Maldivian statutes to deviate from strict interpretations of Islamic Shari'ah. For example, current Maldivian law does not punish theft with amputation of the offender's hand or apostasy with the death penalty. Where current Maldivian law deviates from a strict interpretation of Shari'ah, he said, the draft Code follows current Maldivian law.[64]

Family Law Act (Law No. 4/2000)

Until the adoption of the Family Law Act in 2000, the courts, when deciding upon the family law issues, relied upon Islamic law as stipulated in the Qur'an, Sunnah and other sources of Islamic law. However, in matters on which no clear ruling is found in either Qur'an or Sunnah, which are therefore subject to various interpretations or *fatwa*s issued by various jurists, the courts found it extremely difficult to choose which one to follow when deciding such a case. This Act has replaced the old *fiqh* process, where judges referred to Arabic-language jurisprudence books with a more civil law process of applying a code.

The Family Law Act 2000 was largely a translation of the Malaysian Islamic Family Law (Federal Territories) Act 1984.[65] The Islamic Family Law (Federal Territories) Act 1984 is a codification of Islamic family law by Malaysian scholars who had received legal training in the United Kingdom and therefore the procedural aspects of the Act were heavily influenced by the family law of England.

Commercial Law

Until the 1970s the Maldives economy was solely based on fisheries and there were few other economic activities. The courts did not have to deal

63 Ibid.

64 Ibid.

65 Drafting of the Family Law Act was commissioned by the Law Commission of Maldives in 1995.

with complex commercial disputes. If ever there was such a dispute, the judges would resolve it by referring to general Islamic law on transactions. There was no legislation governing commercial law in the country until 1990s.

ith the introduction of tourism in the 1970s, the economy began to grow at an unprecedented speed. Foreign investment in tourism, the opening of foreign banks and insurance companies and increase in international trade and travel all forced the country to quickly adopt commercial laws to facilitate and encourage such commercial activities.

The codification of principles of English law relating to commerce began with the issuing of a presidential decree allowing for the formation of limited liability companies in 1988. This decree contained principles of English law governing limited liability companies.

In 1990, with the help of foreign legal experts, three statutes – the Contract Act, the Sale of Goods Act and the Negotiable Instruments Act – were drafted, and submitted to the Parliament for its approval. These laws were passed by the Parliament and came into force in 1991. These statutes were based on English law with little or no alteration. In 1996, a comprehensive Companies Act and a Partnership Act based on English law were enacted.

Enactment of statutes

Article 5 of the Constitution states that all legislative power in the Maldives is vested in the People's *Majlis.* According to Article 70 of the Constitution,[66] the principal function of the People's *Majlis* is to enact laws, and that is the reason why it is considered to be one of the three important branches of the government.

The legislative process comprises a number of steps. A statute originates in the People's *Majlis* in the form of a Bill. Any Member of the People's *Majlis*

[66] *Constitution of the Maldives*, 2008.

may introduce a Bill at any time.[67] The sponsor's signature must appear on the Bill.[68] A Bill may have an unlimited number of co-sponsoring members. Where the President wants to introduce a bill in the *Majlis*, he may do so through a Member of the *Majlis*.[69]

Once a Bill is submitted to the People's *Majlis,* the Speaker of the *Majlis* will circulate the bill to all the Members and will set a date for the first reading.[70] Most Bills will need to go through the following stages in the *Majlis* before becoming law:

First reading

First reading is the first stage of a Bill's passage through the *Majlis*. During the first reading, the short title of the Bill is read out by the Speaker of the *Majlis.* This is usually a formality and it takes place without debate.[71]

Second reading

During the second reading, the sponsor will introduce the Bill to the *Majlis* and there will follow a preliminary debate on the floor, at the end of which a vote will be taken to see if the *Majlis* is in favour of admitting the Bill to the *Majlis*.[72] If the Bill, at that stage fails to obtain the majority of those Members present, it is defeated and it cannot be initiated in the *Majlis* in that session.[73]

If the Bill is accepted by the *Majlis* it will be referred to a parliamentary committee,[74] either a standing committee or an *ad hoc* committee. Alternatively the committee stage may be taken in the chamber (in which

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[67] Order 71, Standing Orders of the *Majlis*, 2 March 2010.

[68] Ibid, Order 72.

[69] Ibid.

[70] Ibid, Order 73.

[71] Ibid, Order 75.

[72] Ibid.

[73] Ibid, Order 77 (c).

[74] Ibid, Order 78.

case it is called 'Committee of the Whole House').[75] The action taken by committees is an important phase of the legislative process. It is during committee action that the most intense consideration is given to the proposed measures. Each Bill is referred to the committee that has jurisdiction over the area affected by the measure. After the debates and discussions are completed, amendments to the Bill may be offered, and the committee members vote to accept or reject these changes. This process can take place at either the sub-committee level or the full committee level, or at both.

At the conclusion of deliberation, a vote of committee or subcommittee Members is taken to determine what action to take on the measure. If the committee has approved extensive amendments, they may decide to report a new Bill incorporating all the amendments. If the committee votes to report a Bill, the Committee Report is written and the report is submitted to the Chamber.[76]

Third reading

Once the Committee Report is submitted, another discussion of the Bill takes place immediately. The consideration of a Bill at this stage may be simple, if the *Majlis* is in favour of passing the Bill by a simple resolution. However, if the Members have decided to debate the Report and propose amendments to the Bill at this stage, it will become a lengthy process. When amendments are proposed, these are also debated and voted upon.[77]

After all debate is concluded and amendments decided upon, the *Majlis* is ready to vote on final passage. In some cases, a vote to recommit the Bill to committee is also requested. If the attempt to recommit fails, a vote on

[75] Ibid, Order 117.

[76] Ibid, Order 85.

[77] Ibid, Order 80.

final passage is ordered.[78]

Ratification by the President

After the Bill has been passed, it is sent to the President, who may sign the bill into law. He may also let it become law without signature: if the President takes no action on a Bill for 15 days, the bill will automatically become law.[79] If the President is opposed to the Bill, he can 'veto' it and send it back to the *Majlis* for reconsideration.[80] The *Majlis* can attempt to 'override' a presidential veto of a bill and force it into law, but doing so requires the vote of the majority of members of the *Majlis*.[81]

Part III

Delegated Legislation

Delegated legislation or *'Qawaaidhu'* is law made through powers delegated by the legislature to a body or person through an enabling or a parent statute.[82] An Act of Parliament creates the framework of a particular law and gives authority for a body or person to make rules or regulations under the Act to provide more detail to an Act of Parliament.[83] The legislation created by delegated legislation must be made in accordance with the purposes laid down in the Act and within the scope of

[78] Ibid, Order 85.

[79] Article 91 (c), *Constitution of the Maldives*, 2008.

[80] Article 91 (a), *Constitution of the Maldives*, 2008.

[81] Article 91 (b), *Constitution of the Maldives*, 2008.

[82] Article 94 , *Constitution of the Maldives*, 2008.

[83] Ibid.

the Act.[84] Delegated legislation has the same legal standing as the Act of Parliament from which it was created.

Article 94 of the Constitution states:

> The People's Majlis may, pursuant to law and for prescribed purposes, delegate to any person or body power to make orders, and regulations, or other instruments having legislative effect, including the power to:
>
> (a) determine a date on which any law shall come into or cease to have effect;
>
> (b) make any law or part thereof applicable to any area or to any class of persons.

Article 271 of the Constitution states:

> Regulations derive their authority from laws passed by the People's Majlis pursuant to which they are enacted, and are enforceable pursuant to such lawful authority. Any regulations requiring compliance by citizens must only be enacted pursuant to authority granted by a law enacted by the People's Majlis.

Reasons for delegated legislation

There are several reasons why delegated legislation is important.

Firstly, it avoids overloading the limited parliamentary timetable, as delegated legislation can be amended and or made without having to pass an Act through Parliament, which can be time-consuming. Changes can therefore be made to the law without the need to have a new Act of Parliament and it further avoids Parliament having to spend a lot of time on technical matters, such as the clarification of a specific part of the legislation.

Secondly, delegated legislation allows law to be made by those who have

[84] See, Article 274, *Constitution of the Maldives*, 2008.

the relevant expert knowledge. By way of illustration, a local council can make a law to suit the local needs, as the local council will have the knowledge of what is best for the locality, rather than the Parliament.

Thirdly, delegated legislation can deal with an emergency situation as it arises without having to wait for an Act to be passed through Parliament to resolve the particular situation.

Finally, delegated legislation can be used to cover a situation that Parliament had not anticipated at the time it enacted the piece of legislation, which makes it flexible and very useful to law-making. Delegated legislation is therefore able to meet the changing needs of society and also situations which Parliament had not anticipated when it enacted the Act of Parliament.

Criticisms of delegated legislation

Delegated legislation is not without its criticisms. Firstly, it has been suggested that having a subsidiary legislative process in this way lacks democracy, as unelected people make too much delegated legislation. Secondly, delegated legislation is subject to less parliamentary scrutiny than primary legislation. Parliament therefore has a lack of control over delegated legislation and this can lead to inconsistencies in laws. In addition, delegated legislation has the potential to be used in ways which Parliament had not anticipated when it conferred the power through the Act of Parliament.

One further criticism of delegated legislation is the lack of publicity surrounding it. When regulations are made, the public are not normally notified of it, whereas Acts of Parliament are widely publicised. One reason for the lack of publicity surrounding delegated legislation is because of the volume of delegated legislation made and this results in the public not being informed of the changes to delegated legislation.

Parliamentary control of delegated legislation

The definition of the word 'law' in Article 274 of the Constitution states as follows:

> 'law' means those statutes enacted by the People's *Majlis* and assented to by the President, and those regulations which are authorized by, and which fall within the ambit of, those statutes.

From the definition of 'Law' in Article 274 of the Constitution it is clear that no regulation made under an Act of Parliament would be valid if it fell outside the scope of the parent Act that delegated the authority to make the regulation.

This control is placed in relation to delegated legislation to ensure that those who make law under it are doing it in an appropriate manner. Parliament exercises control over delegated legislation in that when the Act of Parliament is created, Parliament stipulates in the Act the parameters with regard to delegated legislation.

Further, there is a permanent committee of Parliament which is empowered to scrutinize delegated legislation.

Judicial control

A piece of delegated legislation can be held by the High Court to be *ultra vires* if such a delegated legislation is inconsistent with an Act of Parliament or the Constitution. An example where a body would have acted *ultra vires* would be if the delegated legislation goes beyond what Parliament intended or where the procedural rules to be followed in relation to the delegated legislation have not been followed. If the Court finds that a piece of delegated legislation is *ultra vires,* then that delegated legislation can be declared void. In the High Court case No. 2008/HC-D/14, the High Court held that Section 7 of *Nu-ufuley Mudhaa Tharikain*

Libigen Bandaara Goatheege Bimun Libumaa Behey Qawaaidhu was invalid, on the ground that the provision had contradicted with Section 15 of the Land Law Act (Law No. 1/2002).

Statutory interpretation

However carefully and well a statute is drafted, its language may still be capable of more than one interpretation in a given situation. There may also be errors or omissions when the statute is drafted; or a statute may be outdated because of developments in the society or change in circumstances.[85] In such situations, in applying the law, courts are required to interpret a particular piece of legislation to find out the intention of the Parliament when passing the law.

Over the years, Maldivian judges, when applying law, have applied various methods to deal with ambiguous words and texts in statutes. In some cases, judges have adhered to the ordinary and natural meaning of the words in a statute, even if that leads to a visible absurdity. These judges insist that they do not have the power to deviate from the language used by the legislature. In other instances, where statutory interpretation leads to an absurd outcome, some judges have attempted to achieve a reasonable and rational result by referring to the purpose of the statute or the law in question. In their effort to ascertain the purpose of the law, they have used different techniques and tools of statutory interpretation commonly used in other jurisdictions and Islamic Shari'ah. These were the two major approaches adopted by the judges in statutory interpretation until the

[85] An example of a change of circumstance can be founded in Law No. 25/75, which states that persons who wish to claim against the estate of a deceased person must submit their claim to a court of the Ministry of Justice. This provision of the law has been outdated by the abolition of the courts of the Ministry of Justice pursuant to the Constitution of 2008. The 'courts of the Ministry of Justice' mentioned in this Law has subsequently been interpreted to mean the independent courts created under the Judicature Act 2010, see for example, the case of *M. Beach Corner, Mohamed Jameel & Others v. Zahir Adam* (High Court case No. 2008/HC-A/296).

enactment of the Interpretation Act of 2011, which sets out some formal statutory rules on statutory interpretation. Following the enactment of the Interpretation Act,[86] statutory construction is conducted by the courts on the basis of both formal statutory rules laid down in the Interpretation Act and various presumptions of Islamic Shari'ah.

The Interpretation Act (Law No. 4/2011) has laid down four main rules of statutory interpretation: the literal rule; the golden rule; the mischief rule; and the purposive approach. Section 8 of the Interpretation Act gives judges the discretion to choose any one of these four rules to determine the meaning of a particular word or phrase in a law. However, where a judge prefers one rule over the other, he or she is required to furnish reasons for choosing a particular rule.

a) The literal rule

This approach involves the treatment of the word or text according to its ordinary and clear meaning,[87] even if the result of doing so leads to an obvious absurdity or gross injustice. This is regarded as a safer approach, as the legislature can subsequently amend the statute where such an interpretation did not carry out its real intention. A frequent criticism of this approach is that judges often overlook the internal as well as external aids and tools available to them to better understand the real intention of the legislature. In some situations, although the language of a statute seem to be 'clear' as to its meaning, the real intention of the legislature behind the text or the word in question may be found from other sources and aids to interpretation.

As the literal approach tends to make judges mere machines, blindly applying law instead of dispensing justice, this approach has not been

[86] Law No. 4/2011, available for download from Government of the Maldives online legislation data base, http://www.mvlaw.gov.mv/pdf/ganoon/chapterI/4-2011.pdf.

[87] Ibid, Section 3.

favoured.

b) The golden rule

This rule allows the court to look at the literal meaning of a word or phrase, but then avoid using a literal interpretation, which would lead to an absurd result.[88] There are two approaches taken while applying the golden rule: the narrow application; and the broad application.

The narrow application

This is used when there are ambiguous words involved in the Act, and this application allows the court to choose the most suitable meaning of the ambiguous word or phrase to avoid an absurd decision from occurring.

The broad application

This application is used when words in an Act have one clear meaning, but that meaning would lead to a repugnant situation.

c) The mischief rule

Under this rule, the judge is allowed to consider the intention of the statute and the historical background of the statute when there is difficulty in the literal interpretation.[89] This rule allows the judge to look into the law before the Act and the mischief it is intending to rectify. Where the statute is to provide a remedy for a particular situation, the same is to be construed in such a manner as to suppress the mischief and to provide a remedy as intended by the statute. The judge must consider why the Act was passed and he should apply that knowledge when giving meaning to a provision of the Act. He should not allow the ordinary meaning of a word used in that Act to defeat the entire purpose of the Act.

In the case of *M. Beach Corner, Mohamed Jameel & Others v. Zahir Adam*

[88] Ibid, Section 5.

[89] Ibid, Section 4.

(High Court case No. 2008/HC-A/296), the court departed from the literal meaning of Law No. 25/75 to avoid a result not desired by the statute.

d) The purposive approach

The purposive approach is similar to the mischief rule, but emphasizes the intention of the legislature rather than any defect in the statute. Using this approach, any reasonable interpretation of a provision that is consistent with the purpose and scope of that legislation must be preferred over any alternative interpretation of that provision that is inconsistent with the purpose and scope of the legislation.

In *Idham Muizzu Adnan v Attorney General*[90] the phrase 'public transport system' in Section 9 (d) of the Land Transport Act was interpreted by the court to reflect the purpose of that Act.

In this case, the Plaintiff claimed in Civil Court that the Ministry of Transport and Communication had no power under the Land Transport Act (Act No. 5/2009) to prohibit the use of a land-based motor vehicle where a certificate of roadworthiness issued to such a vehicle by the Ministry has expired, except in cases where the vehicle in question is used for public transport and at construction sites.

Section 9 (a) of the Land Transport Act states that land-based motor vehicles registered at the Ministry of Transport and Communication must obtain a certificate of roadworthiness from the Ministry within a period prescribed by the Ministry for that purpose. Meanwhile, Section 9 (d) states that roadworthiness certificates will become void if not renewed within the period prescribed under Section 9 (a). Furthermore, where the roadworthiness certificate of a particular vehicle has become void, Section 9 (d) provides: *'it shall be prohibited to drive such vehicles within the public transport system and at construction sites.'*

[90] High Court Case No. 2011/HC-A/294

Applying a literal interpretation to Section 9 (d) of the Land Transport Act, the Civil Court held that the use of a land-based motor vehicle cannot be prohibited where a certificate of roadworthiness has expired, except in cases where the vehicle in question is used for public transport and at construction sites.[91] The Civil Court stated that the phrase 'public transport system' in Section 9 (d) of the Land Transport Act must be taken to mean a system comprising vehicles falling under the category of 'public transport' as defined by Section 67 (b) of the Act. This definition encompasses all vehicles which transport passengers and cargo in return for a price.

On appeal, the High Court disagreed with the Civil Court's interpretation of Section 9 (d) on the basis that it violated the principle found in Section 17 of the Interpretations Act (Act No. 4/2011), which says that a statute must be interpreted in accordance with the purpose for which it was enacted. In its decision, the High Court stated that the purpose of the Land Transport Act and the process contained therein for ensuring roadworthiness of vehicles could not be achieved by a literal interpretation of Section 9 (d). In reaching their decision the High Court judges referred to Sections 5, 6 and 10 of the Land Transport Act. Section 5 defines the Ministry's general mandate to administer the 'public transport system', Section 6 penalizes vehicles used in the 'public transport system' for ignoring traffic signs and Section 10 speaks about the special instances where unregistered vehicles can be used in the 'public transport system'. The High Court stated that in all these sections of the Act, the phrase 'public transport system' has been used to refer to the entire land transport system rather than confining its meaning only to a system which transport passengers and cargo in return for a price.

Therefore, the High Court held that in order to uphold the principle in Section 17 of the Interpretations Act, the phrase 'public transport system' as found in Section 9 (d) of the Land Transport Act, must be interpreted to

[91] Civil Court Case No. 836/Cv-C/2011

mean the entire 'land transport system' as defined by Section 67 (a) of the same Act.

Similarly, in the High Court Case of *Attorney General v Wu Mei Di,*[92] it was argued that the construction of Section 21 (c) and (d) of the Immigration Act by the Civil Court was inconsistent with the purpose of the Act. The High Court referred to Section 17 and 21 of the Interpretation Act and stated that a court should not interpret a text of a law in a manner that would defeat the purpose of the law.

Although the purposive approach is an important tool of interpretation, it is generally accepted that its application is limited. In theory there are two limitations. Firstly, the purposive approach should only be applied where there is ambiguity in the words of the statute. Secondly, it should only be used to employ a meaning that the words of the statute are reasonably capable of bearing. The courts should not use the purposive approach to create a precedent, as the judges are under a constitutional obligation not to contravene the principle of the separation of powers by shifting from interpreting and applying the law to creating the law.

Maintaining the supremacy of the Constitution

When interpreting legislation, adhering to the supremacy of the Constitution is paramount; the spirit, purport and objects of the Bill of Rights in Chapter 2 of the Constitution must be promoted, and any reasonable interpretation that is consistent with the Constitution must be preferred over any alternative interpretation that is inconsistent with the Constitution.[93]

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[92] High Court Case No. 2012/HC-A/256.

[93] In High Court Case No. 2012/HC-A/319 (Jabir Hondaafushi case), the High Court upheld the supremacy of the Constitution while interpreting the language of Order 202 of the Standing Orders

Aids to Interpretation

The Interpretation Act (Law No. 4/2011) outlines some tools that can be employed by a judge both (1) in determining the primary meaning of the statutory words and (2) where there is ambiguity, in pointing the way to the interpretation that is to be preferred. Some of these aids may be found within the statute in question; while others are external to the statute.

a) Internal aids

Other words or sentences in the statute

An examination of the whole of a statute, or at least those parts which deal with the subject matter of the provision to be interpreted, should give some indication of the overall purpose of the legislation. It may show that a particular interpretation of that provision will lead to absurdity when taken in conjunction with another section.[94]

Long title

It became established that the long title should be read as part of the context, 'as the plainest of all the guides to the general objectives of a statute.'[95]

Preamble

When there is a preamble, it generally describes both the mischief to be remedied and the scope of the Act. It is therefore clearly permissible to

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of the People's *Majlis*.

[94] Section 10, Interpretation Act (Law No. 4/2011).

[95] Ibid.

have recourse to it as an aid to construing the enacting provisions.[96]

Short title

There is some question whether the short title should be used to resolve doubt.

Headings, side notes and punctuation

Headings, side-notes and punctuation may be considered as part of the context.[97]

b) External aids

Historical setting

A judge may consider the historical setting of the provision that is being interpreted.[98]

Dictionaries and other literary sources

Dictionaries are commonly consulted as a guide to the meaning of statutory words. Textbooks may also be consulted.[99]

Practice

The practice followed in the past may be a guide to interpretation. For example, the practice of eminent conveyancers where the technical meaning of a word or phrase used in conveyancing is at issue.[100]

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[96] Ibid.

[97] Ibid.

[98] Section 11, Interpretation Act (Law No. 4/2011).

[99] Ibid.

[100] Ibid.

Other statutes in pari materia

Related statutes dealing with the same subject matter as the provision in question may be considered both as part of the context and to resolve ambiguities. A statute may indeed provide expressly that it should be read together with an earlier statute or series of statutes.[101]

Official reports

Legislation may be preceded by a report of the government or a commission or a committee.[102] This kind of material may be considered as evidence of the pre-existing state of the law and the mischief with which the legislation was intended to deal.

Treaties and international conventions.

There is a presumption that the Parliament would not normally legislate in such a way that the State would be in breach of its international obligations.[103]

Parliamentary materials

The Maldivian courts have on several occasions referred to Parliamentary materials for the purpose of the interpretation of statutes.[104]

c) Presumptions

To aid interpretation, there are several presumptions which guide the judiciary in interpreting Acts.[105]

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[101] Ibid.

[102] Ibid.

[103] Ibid.

[104] Ibid.

[105] Section 12, Interpretation Act (Law No. 4/2011).

(i) Presumption against changes in the common law.

(ii) Presumption against infringing the jurisdiction of the courts.

(iii) Presumption against interference with vested rights.

(iv) Strict construction of penal laws in favour of the citizen.

(v) Presumption against retrospective operation.

Part IV

Judicial Decisions

The law is not only found in legislation passed by the People's *Majlis*, but also in cases decided by the courts. Only the decisions of the higher courts are sources of law, as it is these courts that decide on matters of law, whereas lower courts generally decide on matters of fact.

Judges are required to interpret the provisions of the Constitution and Acts of Parliament and regulations if there is a dispute about the meaning or application of the Constitution or the legislation in a case. These interpretations then become part of the law.

While the courts interpret the Constitution and other legislations, they also have an important function in making and applying law that is not found in the legislation or the Constitution. Since a large body of Maldivian law is still not codified, every day judges have to rely on the earlier decisions and practices of the courts in order to resolve the disputes presented before them. For instance, in the case of Maldivian tort law, the entire body of law is made up of judicial decisions over the years. In the absence of statutory law, judge-made laws form a substantial part of the Maldivian law in areas

such as insurance law, banking law, trust law, succession law and procedural laws. Islamic law and local customs – and, more recently, general principles of law – hugely influence these judge-made laws.

The decision in a case, strictly speaking, is the court's actual determination of the dispute between the parties, i.e. the decision *inter partes*. The decision of the case only binds the parties, as it is for them that the court has given the decision to settle their dispute. What binds the courts in future cases with similar facts is not the decision *inter partes*, but the *ratio decidendi* (the reason for the decision), i.e. the legal principle or principles underlying the decision. It is the rule that can be deduced from the application of law to the facts and circumstances of the case which constitutes its *ratio decidendi*.[106]

Under Article 134 (d) of the Constitution of the Maldives (2008), courts in the Maldives are bound by the decisions of the higher courts.[107] They cannot overturn or ignore the decision of a higher court. However, the lower court is only bound by the *ratio decidendi* of the precedent, that is, by the 'reasons for the decision'. If a new case presented to a court involved different facts from that of a preceding case, the court might decide that such differences allowed it to distinguish the new case from the precedent and give a different decision.

Judgment *per incuriam*

Judgment *per incuriam* is a decision of a court that is wrongly decided, because the judge was misinformed of the law or the judge was careless. A judgment *per incuriam* is not binding and has no authority under the principle of *stare decisis* (precedent). This position was clarified in the High

[106] *Union of India v. Dhanwanti Devi* (1996) 6 SCC 44, 51-52, Supreme Court of India.

[107] See also, Mohamed Nasheed v. Prosecutor General, High Court Case No. 2012/HC-A/294, decided on 4th February 2013.

Court case of *Mohamed Nasheed v. Prosecutor General,*[108] where the court agreed that a court is not bound to follow a decision of a higher court as a precedent if such is given *per incuriam*. As a general rule, the only cases in which decisions should be held to have been given *per incuriam* are those decisions made in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned: so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong.

Precedential value of decisions of the same court

Precedent, or *stare decisis,* can operate in two different directions: horizontally, meaning that a panel of the High Court and the Supreme Court is bound by a prior decision given by the same court, even though rendered by a different panel of judges; and vertically, meaning that lower courts are bound by a decision of the higher court. Of course, modern *stare decisis* does not mean that a point of law, once decided, is settled for all time. It does mean that an apt decision will be considered, followed, or overruled by the deciding court, as well as being followed by lower courts in the same judicial system. If the deciding court neither follows nor overrules its own 'on points' decision, it creates a conflict within the jurisdiction.[109] Conflicts, if allowed to persist, lose the benefits of certainty, stability, and predictability of the law, which the doctrine of *stare decisis* is intended to foster.

On several occasions, the High Court of the Maldives has held that it is bound by its previous decisions.[110] As a matter of practice, the Supreme

[108] High Court Case No. 2012/HC-A/294, decided on 4th February 2013.

[109] See, *Re State Bank of India*, High Court case No. 2010/HC-A/131, decided on 16 June 2011.

[110] Case No. 98/HC-A/157, High Court of the Maldives*; Anupama & Ors v Shareefa Haani*, High Court case No. 2013/HC-A/130 decided on 20th August 2013; *Aishath Alya v Ishthiyaq Hussain*, High Court

Court also follows its own previous decisions.[111]

Criticisms

It has been frequently argued that judges, while giving their decisions, do change the established law, and consequently exercise a quasi-legislative function – thus they are in breach of their constitutional role. It has been argued that the role of a judge is merely to render justice between contending parties, and by no means to enact a new law or regulation. The judges are supposed to decide on the basis of some source of law supposedly already in existence – irrespective of where it is to be found or how it is to be applied.

Part V

Islamic Shari'ah

Article 10 (a) of the Constitution states that Islamic law shall be one of the primary sources of the laws of the Maldives. Article 142 of the Constitution sets out the order of priority among the primary sources of Maldivian law. According to Article 142, the judges should first look at the Constitution and the statutes, and where the Constitution and the statutes are silent, they are required to consider Islamic Shari'ah. According to Articles 10 (b)

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case No. 2011/HC-A/270, decided on 31st May 2012.

[111] In the Supreme Court case of *Elections Commission v Hassan Saeed* (Supreme Court case No. 2011/SC-E/28, decided on 28th September 2011), the Supreme Court held that it was bound by its own previous decisions in case No. 2011/SC-E/04 and case No. 2011/SC-E/06; See also, Supreme Court Order No. 2011/SC-SJ/03, dated 2nd March 2011.

and 70 (c) of the Constitution, a statute passed by the Parliament is void if such statute is contrary to any tenet of Islam.

Articles 10 (b) and 70 (c) of the Constitution state that a statutory law is void if it is contradictory to 'a tenet of Islam', not to 'Islamic Shari'ah'. Article 274 of the Constitution goes on to define and distinguish these two terms as follows:

> 'tenet of Islam' means the Holy Qur'an and those principles of Shari'ah whose provenance is not in dispute from among those found in the Sunnah of the Noble Prophet, and those principles derived from these two foundations;
>
> 'Islamic Shari'ah' means the Holy Qur'an and the ways preferred by the learned people within the community and followers of the Sunnah in relation to criminal, civil, personal and other matters found in the Sunnah;

One of the primary aims of the Special *Majlis,* which drafted the Constitution was to discourage direct application of Islamic law by the judges, but to encourage a form of Islamic law in the Maldives as codified and adopted by the Parliament. The purpose of this attempt was to minimize the impact of multiple interpretations of some points of Islamic law and to harmonize such differences of opinion through the statutes. Otherwise, it would be open to each and every judge to adopt a juristic opinion of his own choosing, thereby losing consistency and predictability, which are the features of any good legal system.

In Egypt, a similar provision in the Egyptian Constitution empowers the Egyptian Supreme Constitutional Court to strike down legislation if such legislation is contrary to the principles of Islamic Shari'ah. Hence, the question before the court in such cases would be to determine what constitutes the principles of Shari'ah from which the legislative and the administrative Acts cannot deviate. In other words, the Egyptian Supreme Constitutional Court has to determine the principles of Shari'ah which

possess 'determinate and absolute authority'.[112] In order to deal with such situations, the Egyptian Supreme Court developed a new framework for interpreting the Shari'ah and to distinguish between the 'universally binding principles of Shari'ah' and malleable applications of those principles.[113] The purpose of this interpretive device was to minimize the impact on Islamic law of multiple interpretations on a given issue by different jurists and different schools of jurisprudence.[114]

According to the Egyptian Supreme Constitutional Court, only legislation that contravenes a 'strict, unalterable principle recognized as such by all interpretive schools' is declared unconstitutional and void, while at the same time, *ijtihad* (contemplation or external interpretation) is permitted in cases of textual lacunae, or where the pertinent rules are vague or open-ended.[115] Furthermore, the government has been given broad legislative discretion in policy areas where Shari'ah is found to provide unclear or multiple answers, provided that the legislative outcome does not contravene the general spirit of Shari'ah. This interpretive approach has marked a true shift in the paradigm for legitimizing government policies based upon a moderate, fairly liberal interpretation (*ijtihad*) of Shari'ah.[116]

Similarly, what the Maldivian Constitution in Article 70 (c) has done is to stipulate that a statutory law is void only if it is contradictory to 'a tenet of Islam', but not to 'Islamic Shari'ah' thereby limiting the power of the Courts to hold a law invalid on the ground of inconsistency with Islamic Shari'ah; as the term 'Islamic Shari'ah' is so wide and subject to multiple interpretations on certain issues by different jurists belonging to different

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[112] See Clark B. Lombardi & Nathan J. Brown, Do Constitutions Requiring Adherence to Shari`a Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law, 21 AM. U. INT'L L. REV. 379 (2006).

[113] See Nathan Brown, Islamic Constitutionalism in Theory and Practice, in *Democracy, the Rule of Law and Islam* 496 (Eugene Cortan & Adel Omar Sherif eds. 1999). 82

[114] Ibid.

[115] Ibid.

[116] Ibid.

schools of Islamic thought. Article 274 has defined the 'tenets of Islam' only to include 'the universally accepted, determinate and absolute principles of Shari'ah.' Hence, this approach enables the Maldivian Parliament to legislate in areas where all the jurists are not in agreement; and when legislating the Parliament could prefer to follow a particular interpretation of Islamic Shari'ah over another in a given case. And when it has chosen to follow a particular interpretation, the court would not have the power to strike down the law on the ground of inconsistency with Islamic law, and the interpretation chosen by the legislature will become the law of the land.

Position of Shari'ah as a source of law

As the legislature has no power to enact legislation that contravenes any tenet of Shari'ah, it can be stated that the highest law of the land in the Maldives is Shari'ah. However, when the legislature has passed legislation and such legislation is not in conflict with a tenet of Shari'ah, the law passed by the Parliament is regarded as supreme. For this purpose, Article 142 of the Constitution sets out the order of priority among the primary sources of Maldivian law: the judges should first look at the Constitution and the statutes, and where the Constitution and the statutes are silent, they are then required to consider Islamic Shari'ah.

Article 142 of the Constitution gives ample power to the courts to apply Islamic Shari'ah to fill any gaps in the law. However, the extent to which a court can exercise its discretion to apply Islamic Shari'ah to fill a lacuna in law is subject to debate. Can a court use Islamic Shari'ah to punish an offender for an offence not provided for in the Penal Code?

Section 2 of the Penal Code of the Maldives states:

> 'Except as may be provided in Shari'ah or in any other Law for the time being in force, punishments prescribed in this Law shall be applicable within the jurisdiction specified in section 1 herein.'

Section 15 of the Penal Code of Maldives states:

> 'Except where a Hadd[117] punishment is prescribed in Islamic Shari'ah, every offence mentioned in this Act shall be punishable with the punishment provided in this Law.'

Section 2 of the 1961 Penal Code makes it clear that the Penal Code does not incorporate all the offences punishable in the Maldives and ensures the continuity of the application of Islamic criminal law in respect of the offences which are not expressly stated in the Penal Code itself or in any other statute. It also implies that where an offence or a punishment is prescribed in a statute, such statute would take precedence over Shari'ah and would prevent the direct application of Shari'ah in a given case.

As some offences stipulated in the Penal Code are also offences under Shari'ah, Section 15 of the Penal Code states that where a punishment is provided in the Penal Code for an offence, save for the *Hadd* offences, the punishment for such offence shall be the one that is prescribed in the Penal Code. The punishments for Shari'ah offences for which no punishment is prescribed in the Penal Code are stipulated in the rules of the court and are therefore are not legislated by the Parliament. The adoption of the 2008 Constitution brought a sea-change to the applicability of criminal laws in the country, as it prohibits the recognition of criminal punishments unless such punishments are expressly provided in a statute passed by the Parliament. Article 61 (b) states:

> 'No person may be subjected to any punishment except pursuant to a statute or pursuant to a regulation made under authority of a statute, which has been made available to the public and which defines the criminal offence and the punishment for commission of the offence.'

Article 61 of the 2008 Constitution posed a huge challenge to the prosecution and the courts, as not all the Shari'ah offences have been

[117] *Hadd* or *Hudud* refers to offences created by the Holy Qur'an and for which punishment is prescribed in the Holy Qur'an itself or in the Tradition of the Prophet. There are seven such offences in Islamic Shari'ah.

codified by a statute.

Prosecutor General v. Sulhath Abdulla

Case No. 2009/HC-A/310 (High Court of Maldives)

In this case, the defendant was charged under section 88 (a) of the Penal Code for threatening a doctor and using abusive language at him so as to compel the doctor to prescribe a prescription drug for the defendant. In this case, the trial judge held that at the time of commission of the acts by the defendant there was no legislation in the Maldives that criminalized threatening to use force or making threatening gestures or using threatening language towards another person, and therefore the defendant was not guilty. The trial judge stated that, under Article 61 (b) of the Constitution, the existence of a prohibitory order either in a published statute or a regulation made under a statute is a pre-requisite for convicting a person under Section 88 of the Penal Code.

The Prosecutor General appealed against the verdict given by the Criminal Court in Malé and asked the High Court to reverse the judgment given by the Criminal Court. The Prosecutor General argued in his appeal that although there is no statute, or regulation made under the authority of a statute, that prohibits the threat of use of force, the judge should have considered the General Islamic Shari'ah which prohibits such acts and hence such behaviour is punishable under Section 88 (a) of the Penal Code.

Section 88 (a) of the Penal Code states:

> 'It is an offence to disobey an order issued lawfully within the Shari'ah or law. A person guilty of this offence shall be subjected to a punishment of banishment or imprisonment or house detention not exceeding 6 months or fine not exceeding Maldivian Rufiyaa 150.00'.

The High Court, while reversing the judgment, stated as follows:

> 'As Article 2 of the Constitution ensures that Islamic Shari'ah is a

> primary source of the Maldivian law, and as Article 19 of the Constitution states that a citizen is free to engage in any conduct or activity that is not expressly prohibited by Islamic Shari'ah or by law it is clear that an act can be criminalized in the Maldives either by a statute passed by the Parliament or by Islamic Shari'ah, and therefore, in our mind, we have no doubt that there is no way that an act or a conduct that is prohibited under Islamic Shari'ah can be deemed as permissible in the Maldives and all acts so prohibited under Shari'ah are punishable pursuant to Article 59 (a) of the Constitution.'

Article 59 (a) of the Constitution states:

> 'No person shall be found guilty of any act or omission which did not constitute an offence under Islamic Shari'ah or law at the time committed. Nor shall a more severe penalty be imposed than the one applicable at the time the offence was committed. If the punishment for an offence has been reduced between the time of commission and the time of sentencing, the accused is entitled to the benefit of the lesser punishment.'

> 'Although an open and a fair trial is guaranteed to each individual under Article 42 of the Constitution and Article 61 (b) of the Constitution by requiring that no person should be charged or convicted for an act or an omission that has not been criminalized by a statute or a regulation made under the authority of a statute, we do not believe that these requirements are in conflict with the principles laid down in Article 19 and Article 59 (a) of the Constitution.'

As any act prohibited under Islamic Shari'ah is automatically a criminal offence in the Maldives by virtue of Article 19 and Article 59 of the Constitution, these two provisions of the Constitution require that arrangements be made within the criminal justice system in the Maldives to enable the authorities to charge, try, convict and punish any person who has committed an act that is prohibited under Islamic Shari'ah.

Where a person has been charged for an act that is prohibited under Islamic Shari'ah, but such act has not been specifically prohibited by any statute or by a regulation made under a statute, and although Article 61 (b) of the Constitution prohibits subjecting an individual to any form of punishment except pursuant to a statute or a regulation made under

authority of a statute in which the crime and the punishment in respect of that crime are both clearly defined and such statute or the regulation is made available to the public, in applying Article 142 of the Constitution the judges are obligated to consider Islamic Shari'ah in cases where the Constitution or statutes do not offer a solution to the issue before the court. And when they have such a case before them, under Article 142 of the Constitution the judges are required to find a solution to the case by resorting to the abundant principles of Islamic jurisprudence.

If, as a result of a judgment of the court, an act prohibited by Shari'ah is regarded as permissible in the Maldives, such judgment would be contrary to Articles 2, 10, 19 and 59 of the Constitution. Therefore it is imperative that provisions of the Constitution be interpreted collectively and in the context of other provisions of the Constitution as opposed to being interpreted and applied as individual provisions so as to ensure that adulteration of the basic features of the State and other principles stipulated in the Constitution is not permitted.

Like any statutory prohibition, it is quite clear from the language of Articles 10 and 59 (a) of the Constitution that there is no legal basis to permit an act prohibited in Islamic Shari'ah. Moreover, as Section 88 (a) of the Penal Code makes disobedience to an order lawfully within Shari'ah or law a statutory offence, and punishment for that offence is also stipulated in the Penal Code, the High Court did not believe that the judgment given by the criminal court was within the law and the Constitution. The High Court, while overturning the judgment of the Criminal Court, convicted the defendant and imposed the punishment prescribed in Section 88 (a) of the Penal Code. The judgment given by the High Court, while acknowledging the existing legal impediments to convicting and imposing a punishment for Shari'ah offences in the absence of a statutory enactment, directed the Parliament to remove the existing legal impediments and to prescribe punishments for Shari'ah offences in the new Penal Code that was being considered by the Parliament.

Although the High Court judges were of the opinion that Shari'ah offences are, in principle, punishable even in the absence of a statute as required by Article 61 (b) of the Constitution, paradoxically the judges resorted to Section 88 (a) of the Penal Code to convict and punish the defendant, demonstrating that the court cannot mete out a punishment unless such punishment is prescribed in a statute. Furthermore, the judges also acknowledged the practical difficulties in punishing a person for an act prohibited in Islam unless clear punishment is prescribed in either the Qur'an or Sunnah.[118]

Prosecutor General v. Ahmed Naseer

Case No. 2009/HC-A/113 (High Court of the Maldives)

In this case, the defendant was charged under section 88 (a) of the Penal Code for refusing to give a urine sample to the police after being arrested for possession of heroin. In this case the trial judge held the defendant not guilty, as there was no legislation in the Maldives prohibiting the alleged crime, although the facts were not in dispute in this case. The trial judge stated that under Article 61 (b) of the Constitution, the existence of a prohibitory order either in a published statute or a regulation made under a statute is a pre-requisite for convicting a person under Section 88 of the Penal Code.

Section 88 (a) of the Penal Code states:

> 'It is an offence to disobey an order issued lawfully within the Shari'ah or law. A person guilty of this offence shall be subjected to a punishment of banishment or imprisonment or house detention not exceeding 6 months or fine not exceeding Maldivian Rufiyaa 150.00'.

[118] Although the acts that are permitted and the acts that are prohibited are clear from the sources of Shari'ah, there is no particular set of punishments that are universally applicable under Shari'ah, except for *Hadd* offences for which the Qur'an or Sunnah prescribes punishment. Those offences for which no punishment is prescribed either in Qur'an or Sunnah are known as *Thau'zeer* offences. Therefore, each Islamic state has created its own punishment for *Thau'zeer* offences.

On appeal to the High Court, the Prosecutor General maintained that the alleged crime was a prohibition under Islamic Shari'ah, and therefore, it comes within Section 88 of the Penal Code.

In its judgment the High Court stated that as any act prohibited by a statute or Shari'ah must be regarded as a crime pursuant to Article 59 (a) of the Constitution, there exists no legal basis to let an act prohibited in Islamic Shari'ah go unpunished. Hence, the judges of the High Court stated that they did not believe that the requirements under Article 61 (b) of the Constitution acted as an impediment to convict and penalize a person who has committed an act prohibited under Islamic Shari'ah.

The High Court maintained that it is obligatory under Shari'ah to extend co-operation and assistance to law enforcement officers in the execution of their official duties; to obey the orders of the leaders, unless their call is to commit a sin or a wrongdoing; to refrain from concealing evidence; to testify against one's own self-interest and to be honest while giving evidence – and therefore, those who violated such Shari'ah orders have been punished under Section 88 of the Penal Code for a very long time. Furthermore, as there is no statute altering this legal position relating to Section 88 of the Penal Code, refraining from convicting for conduct under Section 88 of the Penal Code by making sole reference to Article 61 (b) of the Constitution would certainly create disorder and might cause confusion as to the sources of criminalization of behaviour in the Maldives. The High Court held that it is bound by the principles set out by the High Court in its previous judgment in Case No. 2009/HC-A/310 (*Prosecutor General v. Sulhathu Abdulla*) and found the defendant guilty under Section 88 of the Penal Code and punished the defendant to one month's imprisonment.

***Hadd* Offences**

Section 15 of the Penal Code of Maldives states:

> 'Except where a *Hadd* punishment is prescribed in Islamic Shari'ah, every offence mentioned in this Act shall be punishable with the punishment provided in this Law.'

Section 88 of the Penal Code states:

> (a) It is an offence to disobey an order issued lawfully within the Shari'ah or Law. A person guilty of this offence shall be subjected to a punishment of exile or imprisonment or house detention not exceeding 6 months or fine not exceeding Mrf. 150.00.
>
> (b) Where such disobedience resulted in loss or injury to a person's body, property or a sense, the offender shall be subjected to exile or imprisonment not exceeding 1 year or fine not exceeding Mrf. 250.00.
>
> (c) Where such disobedience is likely to cause the death of a person, the offender shall be subjected to exile or imprisonment not exceeding 2 years or a fine not exceeding Mrf. 1,000.00
>
> (d) Where such disobedience resulted in the death of a person, the offender shall be subjected to punishment described by Islamic Law

Prosecutor General v. Mohamed Nabeel

Case No. 585/Cr-C/2010 (Malé Criminal Court)

The defendant was charged under Section 88 of the Penal Code for wilful murder, and the Court found the defendant guilty of wilful murder. The Court in its judgment referred to Section 88 (a) of the Penal Code and stated that murder is an act prohibited under Shari'ah and therefore the offence comes within the statutory offence as contained in Section 88 of the Penal Code. The Court therefore imposed the death penalty as prescribed under Islamic Shari'ah and authorized under Section 88 (d) of the Penal Code.

Part VI

General Principles of Law

General principles of law recognized by civilized nations constitute a source of Maldivian law.[119] General principles of law can be found in all legal systems and do clearly assist the courts where written sources of law fail to provide an answer to questions before them or where there is an ambiguity in written sources. The need for general principles of law recognized by nations is extensive, especially due to the fact that Maldivian statutes do not cover all issues that come before the courts, and as the Maldivian legal system is still in its nascent stage of development.

Neither the Constitution nor any law passed by the Parliament expressly speaks about the general principles of law recognized in other jurisdictions forming a source of law in the Maldives. However, the courts in the absence of a written law on a subject matter before the court, as a matter of practice apply the general principles of law recognized in other jurisdictions in resolving disputes before them. The courts also refer to such principles in the course of statutory interpretation. Once such principles are applied by the High Court and the Supreme Court, they become part of the Maldivian law through the principle of judicial precedents. The principles of equity,[120] good faith[121] and the obligation to

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[119] See, for example, *Mohamed Shareef v. Indian High Commission*, High Court case No. 2011/HC-A/235 decided on 20 August 2013.

[120] See, for example, the High Court case of *Sultans of the Seas Pvt. Ltd., v. Bank of Maldives,* (Case No. 2010/HC-A/56) wherein the High Court applied the common law equitable principle of promissory estoppel by citing cases decided by the courts in England. High Court also noted that the principles of Equity and English common law relating to the concept of promissory estoppel has already been adopted and applied by the Maldivian Supreme Court in Supreme Court case *Sunjin Engineering (Malaysia) Sdn. Bhd v Ahmed Shahid* (2009) (Case No. 2009/SC-A/22); High Court case of *Gazeera Pvt. Ltd., v Ministry of Tourism* (2001/HC-A/202); see also, *Ahmed Naseem v Ismail Naseer* (Civil Court case No. 458/Cv-C-2011), decided on 24 August 2011;

[121] Supreme Court case *Hassan Haleem v. Herng Tiye Heng* (Case No. 2009/SC-A/30), decided on 16th March 2011.

comply with what was agreed upon (*pacta sunt servanda*)[122] tend to be cited by Maldivian judges in reaching their decisions.

In the constitutional law area, principles such as the rule of law, the principle of legality, the principle of constitutionality, the principle of supremacy of the Constitution and several other constitutional and administrative law principles have been borrowed from other jurisdictions and applied by the Supreme Court to interpret the Constitution and other statutes.[123]

The courts also rely upon foreign judgments as a persuasive authority to understand and interpret various statutes that incorporate principles of law borrowed from other jurisdictions.[124] The practice of the Maldivian courts show that the decisions of the countries who follow English common law tradition are more influential than those from other countries. This may not be surprising, as most of the Maldivian statutes are modelled on those of Commonwealth countries and most of the Maldivian lawyers are trained in common law countries.

The practice of the Maldivian courts also show that the decisions of common law countries are particularly influential in the areas of contract, tort, commercial laws, evidence and procedure.[125]

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[122] Ibid.

[123] See for example, Application made to the Supreme Court by the Attorney General to strike down certain amendments to the Public Finance Act, Case No. 2010/SC-C/32, decided on 15th September 2012.

[124] In *State Bank of India v. Guardian Agency*, (High Court case No. 2010/HC-A/248, decided on 11 December 2013), the High Court expressly stated that it has the power to consider foreign judgments, when deciding issues before the court.

[125] See for example the case of *Yamin Abdul Gayoom v. Maldives Police Service*, Civil Court case No. 1143/Cv-C/2010, decided on 16th August 2011, wherein the Civil Court judge applied English common law principle relating to damages for unlawful arrest; in the High Court case of *Fathimath Hussain v. Northern Health Services Corporation Ltd*., (Case No. 2012/HC-A/167, decided on 28 November 2012) the High Court analysed the law of England, Australia, Canada, and New Zealand law on unfair dismissal from employment and principles relating to redundancy and applied those

Part VII

International Treaties

Treaties only become part of domestic law if an enabling Act of Parliament has been passed. The basis of this approach is to be found in the doctrine of separation of powers: the executive is empowered to conclude treaties on the international plane and if treaties could become part of domestic law without an Act of Parliament, the executive, in effect, would be able to bring about a substantial change to domestic law without check by the legislative arm of government.

Article 93 of the Constitution (2008) states:

> a) Treaties entered into by the Executive in the name of the State with foreign states and international organizations shall be approved by the People's *Majlis*, and shall come into force only in accordance with the decision of the People's *Majlis*.
>
> b) Despite the provisions of article (a), citizens shall only be required to act in compliance with treaties ratified by the State as provided for in a law enacted by the People's *Majlis*.

Under Article 93 of the Constitution, a treaty can only become part of Maldivian law when the Parliament passes an Act to enforce that particular treaty. Otherwise, the application of the treaty will not be honoured in the Maldivian courts and will only bind the government as an executive agreement with foreign countries.

Under Article 115 of the Constitution, the President is empowered to enter into general treaties and agreements with foreign states and

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principles in this case.

international organizations, which do not impose any obligations on citizens without seeking approval from the *Majlis*. However, without the approval of the People's *Majlis*, the President cannot enter into and ratify treaties and agreements with foreign states and international organizations, which impose obligations on citizens.

Mohamed Shareef v. Indian High Commission[126]

In this case, the Indian High Commission in the Maldives failed to comply with its contractual duties regarding the rent of the premises of the mission rented by the High Commission from Mr. Mohamed Shareef. The private landlord took the issue to the Civil Court,[127] which in the first instance rejected the claim due to lack of jurisdiction. The Civil Court ruled that the High Commission was entitled to diplomatic immunity, which it had invoked under the Vienna Convention on Diplomatic Relations (VCDR).

On appeal, the High Court of the Maldives ruled in favour of Mr. Mohamed Shareef. In its judgment, the High Court found that 'Maldivians are not required to follow the VCDR as there is no national legislation enforcing the regulations of the Convention.' This decision is based on the Maldivian Constitution, which stipulates in Article 93 that citizens shall only be required to act in compliance with treaties ratified by the State and provided for in laws enacted by the Parliament.

Despite the provisions in Article 93 of the Constitution and in the absence of a law to implement the Termination of Employment Convention (1982) of the International Labour Organization, the High Court, in the case of *Fathimath Hussain v. Northern Health Services Corporation Ltd*.,[128] applied the principles laid down in this Convention to guide itself to arrive at a decision.

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[126] High Court case No. 2011/HC-A/235 decided on 20th August 2013.

[127] 1495/Cv-C/2010, decided on 25th May 2011.

[128] High Case No. 2012/HC-A/167, decided on 28th November 2012.

Fundamental Rights and International Treaties

The authors of the 2008 Constitution paid special attention not to allow the courts and the tribunals to limit the fundamental rights and freedoms enunciated in the 2nd Chapter of the Constitution. In doing so, the Constitution required the courts and the tribunals to refer to and uphold the international treaty obligations of the State, especially those relating to its human rights obligations. Furthermore, the Constitution also imposes an obligation on the courts and tribunals to promote the values that underlie an open and a democratic society when applying and interpreting the fundamental rights and freedoms stipulated in the 2nd Chapter of the Constitution.

Article 68 of the Constitution states:

> When interpreting and applying the rights and freedoms contained within this Chapter, a court or tribunal shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom, and shall consider international treaties to which the Maldives is a party.

In *Yamin Abdul Gayoom v. Maldives Police Service,*[129] the court, after finding that the defendant was in breach of the fundamental rights and freedoms of the plaintiff, held that the plaintiff was entitled to damages. Furthermore, the court held that, despite the fact that there exists no local statute relating to assessing and awarding damages for such breaches, the court is permitted by Article 68 of the Constitution to refer to English law principles relating to assessing and awarding damages for unlawful arrest.

[129] Civil Court case No. 1143/Cv-C/2010, decided on 16th August 2011.

Chapter 4

THE **COURT SYSTEM**

The fundamental role of the courts is to help people resolve disputes fairly and with justice, whether the matter is between individuals or between individuals and the state. In the process, the courts interpret and establish law, set standards, and raise questions that affect all aspects of our life. Although the Maldives had a very simple court system until a few years ago, it has started to grow into a more complex system, with more complex rules. There are several types and levels of courts with different sorts of jurisdictions. This chapter will deal with the structure of the Maldivian court system and various other institutions complementing the work of the courts.

Under Article 141 of the Constitution, the judicial power of the state is vested in the Supreme Court, the High Court, and such trial courts as established by law. Article 141 of the Constitution also states that the Supreme Court shall be the highest authority for the administration of justice in the Maldives and the Chief Justice shall be the highest authority in the Supreme Court.

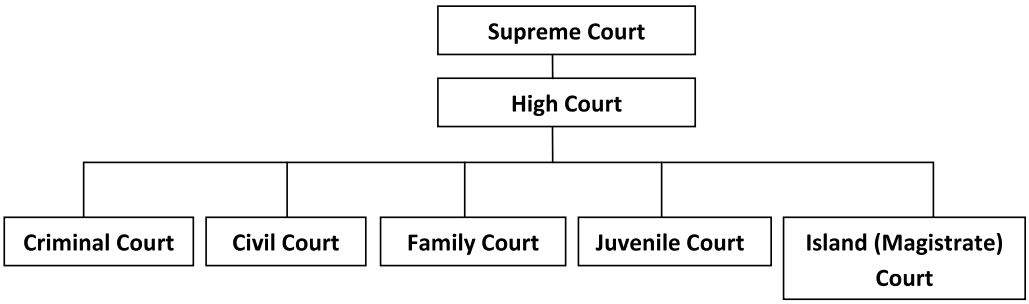
In terms of legal authority, the Maldivian court system is a three-level hierarchy as shown below. Each court is bound by the rulings of the courts above it.[1]

The Supreme Court and the High Court are the higher courts and the courts below the High Court are the inferior or subordinate courts. The higher courts are established under Chapter 7 of the Constitution, whereas the

[1] Article 43 (d), *Constitution* 2008.

subordinate courts are established by and derive their jurisdiction from the Judicature Act 2010.[2] The jurisdictions of the courts are defined both in the Constitution and in the Judicature Act 2010. Subordinate courts are known as subordinate courts because they are generally subjected to the control and supervision of the higher courts.

In addition to the above courts, there are quasi-judicial bodies with specific jurisdiction, such as the Labour Tribunal and Tax Appeal Tribunal, which are created by specific legislations.



Part I

The Supreme Court

The Supreme Court has a very important role to play in the system of Government in the Maldives. The Constitution gives it the power to check, if necessary, the actions of the President and the *Majlis*.[3] It can tell a President that the Constitution or a law passed by the *Majlis* does not allow his actions.[4] It can also tell the *Majlis* that a law it has passed has violated

[2] Article 141 (a), *Constitution* 2008.

[3] See, *Mohamed Fahmy Hassan v. State*, Supreme Court case No. 2012/SC-C/35.

[4] See, Supreme Court Case *Abdul Raheem Abdulla & Others v. Attorney General* (No. 2012/SC-C/27) decided on 10 December 2010) wherein the Supreme Court held that the refusal by the President to ratify the First Amendment to the Public Finance Act passed by the *Majlis* on 26th August 2010 was unconstitutional.

the Constitution and is, therefore, no longer a law.[5]

The Supreme Court fulfils two principal roles: as a constitutional court and as the court of final appeal. It is essentially the final appellate court from decisions of the High Court, with limited original jurisdiction in some specific matters.

Under the 2008 Constitution and the Judicature Act, the Supreme Court is composed of a Chief Justice and six associate justices.[6] It is the highest judicial body of the state, with supervisory authority over the lower courts.[7] The members of the Supreme Court serve during good behaviour until they reach the age of 70 or unless removed by impeachment for any of the grounds provided for by the Constitution.[8]

Article 141 of the Constitution states that all matters adjudicated before the Supreme Court shall be decided upon by a majority of the judges sitting together in session. The Court sits either *en banc* or in panels of three or five members.[9]

Jurisdiction

Jurisdiction defines the power of the court or the judge to hear and decide

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[5] See: *Jumhooree Party v State (Attorney General)*, case No. 2008/HC-DM/07 (2 October 2008), Supreme Court of the Maldives; Supreme Court Order No. 2012/SC-SJ/05 dated 28 November 2012, directed the Parliament to refrain from interfering in any matter pending before a court of law. In the case of *Mohamed Fahmy Hassan v. State*, Supreme Court Case No. 2012/SC-C/35, the Supreme Court held that the Court has the power to review a decision of the Parliament where such decision is inconsistent with the Constitution. See also, the Application made by the Attorney General to strike down sections 8 (b) and 11 (a) of the Political Parties Act on the ground of its inconsistency with Article 30 (a) of the Constitution, Supreme Court case No. 2013/SC-A/11, decided on 1st September 2013.

[6] Section 5, Judicature Act 2010.

[7] See: Writ of Prohibition (No. 2011/SC-SJ/01) issued by the Supreme Court on 23rd January 2011.

[8] Article 154, *Constitution* 2008.

[9] Section 13 (d), Judicature Act 2010.

the case or to make a particular order. The Supreme Court has the following jurisdiction:

a) Exclusive jurisdiction of the Supreme Court

The Supreme Court alone shall have jurisdiction to hear matters which have been specifically prescribed as such in the Constitution or in a law passed by the *Majlis*. They include the following:[10]

i. Applications made under Article 74 of the Constitution, for determination of a person's eligibility to contest general elections or removal from office of a Member of Parliament and disputes regarding the validity of a certain Member's office.[11]
ii. Applications made under Article 113 of the Constitution, for determination of disputes concerning the qualification or disqualification, election, status, of a presidential candidate or running mate or removal of the President by the People's *Majlis*.[12]
iii. Applications made under Article 258 of the Constitution, any issues with regard to the validity in whole or part of the declaration or any law or order made pursuant to a State of Emergency. [13]

b) Original jurisdiction of the Supreme Court

Article 143 (a) of the Constitution states that the Supreme Court and the High Court shall have jurisdiction to enquire into and rule on the constitutional validity of any statute or part thereof enacted by the People's *Majlis*. Furthermore, Article 143 (b) of the Constitution states that, in any matter before them, all courts shall have jurisdiction to determine

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[10] Article 9, Judicature Act 2010.

[11] Article 10 (a), Judicature Act 2010; See also, Supreme Court case *Umar Naseer v. Mohamed Musthafa* (case No. 2009/SC-C/27, decided on 20th February 2012), wherein the Supreme Court ruled to disqualify Mohamed Musthafa from the Thimarafushee seat in the *Majlis* under Article 74 of the Constitution.

[12] Article 10 (b), Judicature Act 2010.

[13] Article 10 (c), Judicature Act 2010.

matters concerning the interpretation and application of any provision of the Constitution. As the Constitution grants jurisdiction to hear constitutional cases to both the High Court and the Supreme Court under Article 143, it is not clear as to the types of constitutional matters that have to be initiated at the High Court and the types of constitutional matters that can be directly submitted to the Supreme Court. This ambiguity is clarified by the Judicature Act 2010, as it contains provisions to clearly state the types of constitutional matters that can be initiated in the Supreme Court without having to submit such matters to the High Court in the first instance. Article 11 of the Judicature Act states that the Supreme Court shall have original jurisdiction over constitutional disputes which bear the following characteristics:[14]

i. Applications relating to a constitutional crisis or where a constitutional body is exceeding the parameters laid down in the Constitution.
ii. Applications over interpretation disputes in relation to two independent institutions or organs of the State.
iii. Applications over constitutional disputes containing public interest considerations.

According to Article 11 (c) of the Judicature Act 2010, the Supreme Court shall hear the matters mentioned above presided over by a panel of a minimum of five justices.

c) Appellate jurisdiction of the Supreme Court

The Supreme Court exercises an appellate jurisdiction from all decisions of the High Court unless an exemption has been made by law.[15] The Supreme

[14] Article 11, Judicature Act 2010.

[15] In the Supreme Court, case of *Mohamed Musthafa v. Ghassan Maumoon & Elections Commission* (Case No. 2009/SC-L/04, decided on 30th June 2009), the Supreme Court held that the Supreme Court has no jurisdiction to hear an appeal from a case determined by the High Court under Sections 64 and 65 of the General Law on Elections (Law No. 11/2008).

Court has jurisdiction to hear applications made by any party privy to a matter decided by the High Court, if the decision, judgment or order of the High Court contravenes the Constitution, or any law or regulation.[16]

d) Advisory jurisdiction of the Supreme Court

The Supreme Court has advisory jurisdiction over applications made by People's *Majlis* for resolution of important questions of law concerning any matter prescribed under any given statute or otherwise on the general operation of law.[17] Matters referred to the Supreme Court for its opinion must be determined by the Supreme Court within a reasonable time-frame. These types of matters shall be heard by a bench of the Supreme Court consisting of at least five justices.

e) Inherent jurisdiction of the Supreme Court

The inherent jurisdiction of the court is the residual source of powers, which the court may invoke as necessary whenever it is just or equitable to do so. The Supreme Court, being the highest judicial authority of the state, exercises full judicial power in all matters concerning the general administration of justice within the state, and enjoys unrestricted and unlimited powers in all matters of substantive law, except insofar as it has been limited in unequivocal terms by statutory enactment.

Article 9 (f) of the Judicature Act states that the Supreme Court has inherent powers granted to it by virtue of it being the highest judicial authority. Article 22 of the Judicature Act enumerates such powers of the Supreme Court. Article 22 (a) of the Judicature Act states that, in any application or a matter pending before the Supreme Court, the Supreme Court has the power to issue all appropriate orders in furtherance of the functions prescribed under the Judicature Act and the Rules of the

[16] Article 12, Judicature Act 2010.

[17] Article 13, Judicature Act 2010.

Supreme Court.

(f) Supervisory jurisdiction of the Supreme Court

The Supreme Court invoked its inherent powers, by virtue of it being the highest judicial authority of the state, to issue the 'Supreme Court Rules Relating to Supervisory Jurisdiction of Higher Courts (Supreme Court and the High Court)' (*Beleniverikamuge ikhthisaas ge dhashun mathee maruhalaa thakuge court thakun alhan jehey fiyavalhu elhumuge Qawaidh).*[18] Neither the Constitution nor the Judicature Act expressly provide for the supervisory jurisdiction of the higher courts over the lower courts and other bodies exercising quasi-judicial functions.

The main purpose of the supervisory jurisdiction of the higher courts over the lower courts is to ensure that an inferior court has acted within its parameters. In exercising this supervisory power, the higher courts do not act as appellate courts to rectify a legal error committed by a lower court or to review or reweigh the evidence. The Supreme Court Rules Relating to Supervisory Jurisdiction of Higher Courts empower the Supreme Court to issue directions or orders or writs in the nature of *habeas corpus, certiorari,* prohibition and *mandamus.*[19]

Writ of *certiorari*

According to the Supreme Court rules, a writ of *certiorari* is issued against an inferior court or any other authority that exercises judicial, quasi-judicial or administrative functions, to transmit to the court the records of proceedings pending before them for scrutiny and to decide the legality and validity of the order passed by them.[20] Through this writ, the court quashes or declares invalid a decision taken by the concerned authority.

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[18] Supreme Court Rules Relating to Supervisory Jurisdiction of Higher Courts, Circular No. 2010/01/SC, issued on 21st March 2010.

[19] Ibid.

[20] Ibid.

Writ of *habeas corpus*

A writ of *habeas corpus* is in the nature of an order directing a person who has detained another to produce the latter before the court in order to examine the legality of the detention and to set him free if there is no legal justification for the detention.

Writ of prohibition

According to the Rules of the Supreme Court, a writ of prohibition is a judicial order issued to a lower court if it exceeds its jurisdiction or it tries to exercise a jurisdiction not vested in it. It is a general remedy for the control of judicial or quasi-judicial decisions affecting the rights of persons.[21]

Abdul Bari Yoosuf v. Judicial Service Commission[22]

This case relates to a petition filed by the Petitioner against the Judicial Service Commission in the Civil Court, challenging the appointment of judges to the High Court. The Supreme Court issued a writ of prohibition, whereby the Civil Court was ordered to forward the case file to the Supreme Court to review if the lower court had jurisdiction to hear the case.

Civil Court case No. 434/MC/2008[23]

In this case the Applicant filed a petition asking the Supreme Court to issue a writ of prohibition, as the High Court refused to stay the judgment of the Civil Court in Civil Court case No. 434/MC/2008, despite the judgment having been appealed to the High Court and the High Court having

[21] Ibid.

[22] Supreme Court Order 2011/SC-SJ/02, dated 23 January 2011.

[23] Supreme Court Order 2011/SC-SJ/04, dated 21 April 2011.

accepted to hear the appeal. The Supreme Court issued a writ of prohibition ordering a stay of judgment pending the outcome of the appeal.

Writ of *mandamus*

The writ of *mandamus* is a judicial remedy in the form of an order from the Supreme Court or the High Court to a court or any other public authority to carry out a 'public duty' entrusted upon them by the Constitution or a statute, or to refrain from doing a specific act which that authority is bound to refrain from doing under the law.[24] The main objective of this writ is to keep the public authorities within the purview of their jurisdiction while performing public duties.

Anti-Corruption Commission v. Department of Immigration[25]

In this case, the High Court had reconstituted the panel of judges hearing the case while the Chief Judge, who was a member of the panel was on leave. The Supreme Court issued a *mandamus* order to dissolve the new panel, as reconstituting a panel of judges without the approval of the Chief Judge was contrary to Section 30 (a) of the Judicature Act 2010.

Re Summons to the Speaker of the Majlis[26]

The Juvenile Court issued a summons directing the Speaker of the *Majlis* to answer a query made by the court with respect to the insurance policies for the judges and staff of the court, as the Speaker of the *Majlis* had repeatedly failed to respond to a letter sent by the court. The Supreme Court issued a *mandamus* order quashing the summons issued by the Juvenile Court to the Speaker, citing that the court had acted *ultra vires* in exercising its powers under the Judicature Act.

[24] Ibid.

[25] Supreme Court Order No. 2012/SC-SJ/03, issued on 25 June 2012.

[26] Supreme Court Order No. 2012/SC-SJ/04, issued on 22 November 2012.

The decisions of the Supreme Court

The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.[27]

Part II

High Court

The High Court of the Maldives is established under Chapter 6 of the Constitution and it is the second court in the hierarchy of courts. The High Court consists of the Chief Judge of the High Court and eight other judges.[28] The High Court essentially acts as an appeal court from the superior courts, the magistrate courts and quasi-judicial bodies, but it also has original jurisdiction in some specific matters that are stipulated by the Constitution and other laws. It also has power to determine the validity of any law having regard to the Constitution. Matters coming before the High Court should be heard and determined by a panel consisting of an odd number of judges, normally three.[29] The High Court is situated in Malé, but it has the discretion to hold its hearings in any part of the country.[30]

[27] Section 20 (c), Judicature Act 2010.

[28] Section 27, Judicature Act 2010.

[29] Section 34, Judicature Act 2010.

[30] Section 35, Judicature Act 2010.

Jurisdiction

The High Court has the following jurisdiction:[31]

a) Original jurisdiction of the High Court

The High Court has the original jurisdiction to hear the following matters, except for those matters that fall under the original jurisdiction of the Supreme Court:[32]

i. Application seeking any law or part thereof to be declared as *ultra vires* the Constitution.[33]
ii. Application seeking any delegated legislation enacted through its parent Act or part thereof to be declared as *ultra vires* the Constitution or any law for the time being in force.

(b) Appellate jurisdiction of the High Court

The High Court has jurisdiction to hear appeals against any order, decision or judgment of a lower court or a tribunal established under an Act of Parliament, unless a law makes an exemption.[34]

(c) Exclusive jurisdiction of the High Court

The Constitution or an Act of Parliament may confer on the High Court exclusive jurisdiction to sit as a court of first instance in certain types of cases.[35] The following are some instances provided by law:

1) Election complaints under section 64 of the General Law on Elections (Law No. 11/2008).[36]

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[31] Section 36, Judicature Act 2010.

[32] Section 37, Judicature Act 2010.

[33] S*ee, Judicial Service Commission v. Abdul Hameed Abdul Kareem & Ors*, High Court case No. 2011/HC-A/218, decided on 29th September 2011.

[34] Section 31, Judicature Act 2010.

[35] Section 36(a), Judicature Act 2010.

[36] See also, Supreme Court case of *Jumhooree Party v Elections Commission*, Case No. 2013/SC-C/42

2) Section 66 (a) of the Decentralized Administration Act (Law No. 7/2010).
3) Sections 25 and 30 of Political Parties Act (Law No. 4/2013).

(d) Supervisory jurisdiction of the High Court

The High Court has supervisory jurisdiction over all subordinate courts and any other body or authority exercising a quasi-judicial function.[37]

Grounds on which appeals may be allowed

Pursuant to Section 43 of the Judicature Act, appeals may be allowed under the following circumstances:

2. Where there is a reason to believe that the decision or ruling is inconsistent with a law; or there are reasons to believe that an error was made in the interpretation or application of the law.

3. Where a procedure preceding a decision or ruling had any of the following defects due to which the procedure which influenced the decision or ruling becomes null and void i.e. where:

    a) The decision is contradictory to a procedural rule.
    b) The judge who made the decision had a legal impediment to sit as a judge in the particular case.
    c) The decision or the ruling lacks the signature of the judge or the adjudicator.
    d) The reasons for the decision or judgment have not been stated.

(decided on 16 September 2013) wherein the Supreme Court entertained an application regarding elections as a constitutional case).

[37] Supreme Court Rules Relating to Supervisory Jurisdiction of Higher Courts, Circular No. 2010/01/SC, issued on 21st March 2010.

Part III

Subordinate Courts

According to Section 52 of the Judicature Act, the subordinate courts are the courts of first instance that are established under Chapter 4 of the Judicature Act and any other trial court established under an Act of Parliament. Under Section 52 of the Judicature Act, the subordinate courts are divided into two tiers, a lower tier and the higher tier, arranged in vertical hierarchy. Courts in the higher tier of the subordinate courts are those courts established as Superior Courts under the Judicature Act and any other court or specialized bench, which is established under any other law, at the same level. Courts in the lower tier of the subordinate courts are the Magistrate Courts established under Chapter 4 of the Judicature Act.

The Superior Courts

The Superior Courts are those courts established under the Judicature Act within the higher tier of the subordinate courts to try matters as the forum of first instance. The following are the four Superior Courts established in Malé city under the Judicature Act:

a) Civil Court.
b) Criminal Court.
c) Family Court.
d) Juvenile Court.
e) Drug Court.
f) Proposed Mercantile Court.

Section 53 of the Judicature Act also states that divisions of the above four Superior Courts established in Malé city may be established in other regions of the Maldives. According to the Judicature Act, such divisions

shall only be created after considering the population and the case-load at the respective region. Furthermore, the Judicature Act states that upon the establishment of divisions of all four Superior Courts in an island (region), the existing magistrate court in such island (region) shall be dissolved.

In the ordinary course of events, trials in the superior courts are conducted before a single judge. However, the Chief Judge of the respective superior court has the discretion to require otherwise and establish panels of uneven numbers of judges, depending upon the nature, type and surrounding circumstances of the case.[38]

Jurisdiction of the Superior Courts

a) Civil Court

The Civil Court has the jurisdiction to hear all matters civil in nature except those which fall under the ambit of family disputes and those subject to territorial limitations laid down in Section 69 of the Judicature Act and exemptions made in any other law. In this regard, matters that fall under the jurisdiction of the Civil Court are:[39]

1. Matters relating to property, land and inheritance.
2. Matters relating to estate disputes, wherein the state treasury has claims.
3. Conveyance without consideration.
4. Gift.
5. Determination of common property.
6. Compensation claims.
7. Matters relating to land and landed property and severing joint ownership of the same.
8. Eviction.

[38] Citation law & practice

[39] Schedule 1, Judicature Act 2010.

9. *Wakaf*.
10. Transfer of property on consideration of another property.
11. Matters in relation to lost and found items.
12. Bankruptcy.
13. Matters regarding contractual disputes or claims of breach between private parties or private parties and the state.
14. Trade-related claims.
15. Matters relating to mortgages and charges.
16. Determination of incapacity to deal with property.
17. Claims related to loans.
18. Matters relating to charging penalties by the courts.
19. Winding-up of companies.
20. Valuation and recovery.
21. Claims for civil damages.
22. Compensation claims against unlawful arrest or arrest without authority.
23. Cases for summary judgment, which according to the court can be heard as such.
24. Matters regarding registration of contracts or mortgages.
25. Registration of Power of Attorney and other such documents.
26. Attestation of documents, except wherein such attestation of document falls within the purview of the functions of another institution.
27. Other civil matters not specified above, and not within the jurisdiction of any other court.

b) Criminal Court

With the exception of juvenile delinquencies committed by children, the Criminal Court has the jurisdiction to adjudicate on all matters relating to criminal offences that do not fall within the jurisdiction of the magistrate

courts and are not exempted by any other law. Cases that fall under the jurisdiction of the Criminal Court are:[40]

1. Murder.
2. Fornication and adultery under Islamic Law.
3. Out-of-wedlock pregnancies and childbirth.
4. Slandering chaste women under Islamic law.
5. Homosexuality.
6. Engagement in immoral activities.
7. Consumption of alcohol.
8. Acts contrary to the basic tenets of Islam, and acts or words tantamount to apostasy.
9. Theft.
10. Assault and battery.
11. Public nuisance.
12. Fraud and misrepresentation.
13. Misappropriation.
14. Embezzlement.
15. Robbery.
16. Criminal negligence over money and property.
17. Drug-related offences.
18. Enforcement of court monetary penalties.
19. *Habeas corpus*.
20. Same sex, of-age cohabitation
21. Consumption of alcohol and alcohol-fumed substances.
22. Food consumption during Ramadan fast.
23. Criminal trespass on land and trespass on property (vehicles and vessels)
24. Criminal reef and general fishing.

[40] Schedule 2, Judicature Act 2010.

25. Extraction of sand, coral and rocks from protected zones.
26. Violation of house arrest.
27. Violation of terms of prison or exile sentence.
28. Importing, possession of and watching pornographic material.
29. Driving without a valid licence and failure to report traffic accidents.
30. Attempted suicide.
31. Compensation claims over any charge prosecuted in the Criminal Court.
32. Determination of paternity in relation to charges in the Criminal Court.
33. All other criminal matters that do not fall within the jurisdiction of another court.

c) Family Court

The Family Court has the jurisdiction to hear all family matters, except those which fall within the jurisdiction of the magistrate courts. In this regard, cases which fall under the jurisdiction of the Family Court include the following:[41]

1. Declaration/presumption of death.
2. Illegitimating a valid wife through expressions.
3. Islamic law of *fasakh* (wife's application for divorce/annulment) and *thafreeq* divorce
4. Domestic violence and spousal misappropriation.
5. Determination of paternity.
6. Guardianship.

[41] Schedule 3, Judicature Act 2010.

7. Determination of paternity.
8. Islamic law on *liyaan* (denial of paternity of child)
9. Solemnization of marriage and all matters therein.
10. Registration of marriages solemnized in a foreign country.
11. Registration of divorce.
12. Divorce disputes.
13. Custody.
14. Maintenance disputes and claims for maintenance.
15. Summary judgment matters which can be expedited under the rules of the court.

d) Juvenile Court

The Juvenile Court has jurisdiction to hear all matters relating to offences committed by persons classified as juveniles under the law, as well as pre-trial arrest and remand relating to offences committed by persons classified as such.[42]

The procedures in the Juvenile Court are the same as the procedures in the Criminal Court. However, as the accused before the court is a child some special provisions apply that must be followed to ensure that the rights of the child are protected at all times. If a person who commits a crime is below the age of 18 years, then the matter will be heard in the Juvenile Court. Children who commit crimes in the company of adults will have their matter heard in the Juvenile Court and the adult will be brought before a court within the relevant criminal jurisdiction.

e) Drug Court

[42] Schedule 4, Judicature Act 2010.

The Drug Court is established under Section 30 of the Narcotic Drugs Act (Law No. 17/2011), as a Superior Court with specific jurisdiction and a specific procedure.

The Drug Court is a means for treating drug-addicted people. Under the Narcotic Drugs Act, eligible drug-addicted persons will be sent to the Drug Court rather than dealing with them through the traditional justice system. This court keeps individuals in treatment long enough for it to be effective, while supervising them closely.

f) Proposed Mercantile Court

At the time of publication of this book, legislation has been proposed to the *Majlis* to establish a Mercantile Court at the level of a superior court. The purpose of proposing to create a Mercantile Court is to have a court with career-judges who are knowledgeable in commercial law matters.

Part IV

Magistrate Courts

The magistrate courts are the lowest in the hierarchy of courts, yet they are very important. There is a magistrate court in each inhabited island in the country, for which reason most people are more familiar with the workings of these courts.

According to Section 63 of the Judicature Act, there should be a magistrate court in each inhabited island of the Maldives, except for those islands where the four divisions of the Superior Courts are situated. Section 64 of the Judicature Act requires a resident magistrate in all islands which have a population of five hundred or more people. If the population of the island is fewer than 500 people, a magistrate of the Judicial Area[43] to which the

[43] Section 67, Judicature Act 2010.

island belongs will be assigned the responsibilities of the magistrate court in that island.[44]

Jurisdiction of the magistrate court

The following matters shall fall within the jurisdiction of the magistrate court:[45]

a) All matters of civil, criminal and familial nature that take place within the judicial area of the respective magistrate court, unless the jurisdiction of the magistrate court is excluded as provided in Schedule 5 of the Judicature Act or by any other statute.
b) All charges against juveniles within the judicial area of the respective magistrate court, unless the jurisdiction of the magistrate court is excluded as provided in Schedule 5 of the Judicature Act or by any other statute.
c) Applications made under Article 43(c) of the Constitution.
d) Applications made under Article 65 of the Constitution.
e) *Habeas corpus*.
f) Compensation claims for unlawful arrest.
g) Applications for bail.
h) Matters which the magistrate court shall expedite under the Rules of Summary Judgment of the court.
i) Registration of contracts, power of attorneys, mortgage.

According to Schedule 5 of the Judicature Act, the following matters are excluded from the jurisdiction of a magistrate court:

a) Charges of intentional murder.
b) All offences under the Narcotics and Psychotropic Substances Act.
c) Charges of theft, conning, misappropriation, fraud,

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[44] Ibid.

[45] Schedule 5, Judicature Act 2010; See also, *Ahmed Khaleel v. Abdul Jaleel Ibrahim*, High Court case No. 2013/HC-A/167, decided on 24th November 2013.

misrepresentation and robbery with the subject matter in excess of MVR 100,000.00 (one hundred thousand).

d) Counterfeiting money and importing such.
e) Terrorism.
f) Offences under Chapter 1 of the Penal Code under the title, *'Offences against the state and public order'.*
g) Rape.
h) Any matter with the subject matter in excess of MVR 5,000,000.00 (five million).

The magistrate court situated in each island shall have the exclusive jurisdiction in respect of the following matters:[46]

a) Matters in relation to the land, buildings, houses and other immovable property situated in the respective island.
b) Inheritance matters for a person ordinarily resident at the respective island.

Amendments to the jurisdiction

The Judicature Act 2010 empowers the Chief Justice to introduce changes to the jurisdiction of the Subordinate Courts, in consultation with the Judicial Council and with the approval of the Judicial Services Commission. Any amendment brought to the jurisdiction of the Subordinate Courts by the Chief Justice shall have the force of law, only after such amendment has been published in the Government Gazette.

Part V

Territorial Jurisdiction of the Subordinate Courts

[46] Schedule 5, Judicature Act 2010.

Subordinate courts have the following territorial jurisdiction in respect of the matters that fall into the jurisdiction of the subordinate courts:[47]

i. If the defendant or one of the defendants has a permanent address within the judicial area where the court is situated.
ii. If the subject matter of the case or a part thereof is situated in the judicial area where the court is situated.
iii. If the defendant is a government institution or a branch thereof in the judicial area where the court is situated.
iv. If the defendant is a company or any other organization and the main office of the same is situated in the judicial area of the court. In cases where the defendant is a branch office of a company or an organization, if such branch is situated in the judicial area.
v. If the permanent address of the deceased is located within the judicial area or if any property belonging to the deceased is located within the judicial area of the court.
vi. In cases or applications for declaration of bankruptcy, the court which passed the judgment was in the judicial area.
vii. In cases dealing with commercial disputes, the court is situated in the judicial area where the permanent or current address of the defendant or respondent is located, or any court mutually agreed to arbitrate between the parties to the dispute is situated in the same judicial area where the transaction or any part thereof took place.
viii. In cases or applications over maintenance the court is situated in the same judicial area where the current address of the plaintiff or applicant or the current address of the defendant or respondent is located.
ix. Where the defendant does not have a particular address in any judicial area to submit a case, the case may be submitted to the court situated in the judicial area where the plaintiff or the applicant is resident.

[47] Section 69, Judicature Act 2010.

x. For prosecution of criminal cases, the court is situated in the same judicial area where the injured or aggrieved party is resident.

xi. The court is situated in the same judicial area where the witnesses of the respective case are resident.

Inter-court conflict of jurisdiction

According to Section 70 of the Judicature Act, the court granted special jurisdiction would have competent jurisdiction in a case of inter-court conflict over jurisdiction between a court with special jurisdiction under this Act and a court with territorial jurisdiction under Section 69 of the Judicature Act.

Haleema Mohamed v. Ministry of Home Affairs[48]

On 18th February 2011, the Appellant applied to the Civil Court to enforce civil court judgment No. 2054/MC/2008, wherein the Civil Court had ordered the Respondent to issue a plot of land from the island of B. Atoll Thulhaadhoo to the Appellant within 45 days from the date of judgment (19th October 2009). The Civil Court dismissed the application on the ground that the Civil Court had no jurisdiction to hear a matter relating to an immovable property situated on another island. Furthermore, the court stated that under Section 69 of the newly enacted Judicature Act 2010, the jurisdiction to hear such cases lay with the magistrate court of the island where the property is situated.

On appeal to the High Court, the Appellant claimed that, as the defendant in the original case was the Ministry of Home Affairs, and as the Ministry of Home Affairs is situated in Malé, the Civil Court had jurisdiction to hear the case under Section 69 (c) of the Act.

[48] High Court case No. 2011/HC-A/253, decided on 18 March 2012.

The High Court, while upholding the decision of the Civil Court, stated that although the original judgment was given against the Ministry of Home Affairs, pursuant to Law No. 7/2002 that came into force after the judgment, it was only the Island Council of B. Atoll Thulhaadhoo which could enforce the judgment at the time of making the present application to the court. As the proper defendant in this case should have been the Island Council of B. Atoll Thulhaadhoo and not the Ministry of Home Affairs, Section 66 of the Judicature Act was not applicable to the present case.

Furthermore, the High Court noted that according to Schedule 5 of the Judicature Act, an island magistrate court has the jurisdiction to hear all matters (both civil and criminal) within its geographical area, unless a law has specifically excluded its jurisdiction in those matters. In this instance, paragraph 3 of Schedule 5 of the Judicature Act specifically states that, irrespective of any provision in any law, all matters relating to the property situated on an island shall be within the exclusive jurisdiction of the magistrate court in that island.

Re Mohamed Hassan Didi[49]

In this case, the Appellant made an application to the High Court seeking to overturn a procedural decision made by G.Dh. Thinadhoo Island magistrate court. In G.Dh Thinadhoo magistrate court, the Appellant argued that pursuant to Section 2 (g) of Schedule 5 of the Judicature Act 2010, the magistrate court did not have the jurisdiction to hear the case as the amount claimed by the Plaintiff as compensation in the defamation case before the Magistrate exceeded 5 million Rufiya. The High Court rejected the application made by the Appellant stating that the claim submitted by the Plaintiff to the magistrate court was a defamation matter, and therefore

[49] High Court case No. 2012/HC-A/33, decided on 27th February 2012.

the amount claimed as compensation could not form the subject matter of the case, since the amount to be awarded as damages by the magistrate is discretionary.

Re Thinadhoo Finivaage[50]

The Civil Court dismissed an application made by the Bank of Maldives to enforce a mortgage of a property named *Finivaage* situated in G.Dh Thinadhoo Island. In applying Section 69 of the Judicature Act, the Civil Court held that the court in Malé did not have jurisdiction to hear the application, on the ground that the defendant had his permanent address in G.Dh Thinadhoo, was resident in that island and the property was also situated in G. Dh. Thinadhoo. Furthermore, the mortgage agreement was registered in the G. Dh Thinadhoo magistrate court.

The Appellant argued that the decision made by the Civil Court was contrary to Section 70 of the Judicature Act, which states that 'in cases where there is conflict of jurisdiction prescribed for a particular court in the Act and the territorial jurisdiction provided for the courts in accordance with Article 69 of this Act, the court which shall adjudicate the matter is the court which has the special jurisdiction over such matters.' Furthermore, the Appellant argued that as there is a conflict of jurisdiction in this case, the court which has special jurisdiction for the purpose of Section 70 of the Act is the Civil Court in Malé.

In this case the High Court, while upholding the decision of the Civil Court, stated that as the subject matter involved in this case was less that Maldivian Rufiyaa 5 million, the jurisdiction of the Magistrate Court was not excluded pursuant to Section 70 of the Judicature Act.

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[50] High Court case No. 2011/HC-A/75, decided on 29 June 2011.

Re Bilaifahee Zuvaanunge Jamiyya[51]

This case related to a claim submitted to the Civil Court by Bilaifahee Island Youth Association under a contract signed between the Association and the Government of the Maldives, represented by the island Administrative Office of Bilaifahee Island. The Civil Court in Malé dismissed the case on the ground of lack of jurisdiction. The Civil Court, while dismissing the case, held the magistrate court in Bilaifahee Island to be the proper court to hear the case. On appeal, the High Court upheld the decision of the Civil Court.

Mohamed Haneef v. Sakeena Hassan[52]

In this case, the Appellant challenged the jurisdiction of the magistrate court in Ihavandhoo Island to hear the case. This case related to a sale and purchase agreement signed between Sakeena Hassan (vendor, who had her permanent address at Ihavandhoo Island) and Mohamed Haneef (purchaser, who had his permanent address at Rasdhoo Island) for the sale of a fishing vessel (the *Saahibaa*). The vendor submitted a claim in Ihavandhoo Island Magistrate Court alleging breach of contract by the purchaser.

In deciding the case, the High Court noted that the Magistrates Court under Schedule 5 of the Judicature Act the Magistrate Court had territorial jurisdiction to hear all civil and criminal matters occurring in the island, unless the jurisdiction of the magistrate court is excluded by a law. Hence, regard must be given to the provisions contained in Section 69 of the Judicature Act to see if the jurisdiction of the Magistrate Court is excluded pursuant to Section 69 of the Judicature Act. In this case, the court found that, as this case relates to a commercial transaction, such matters should

[51] High Court case No. 2011/HC-A/22, decided on 10 July 2011.

[52] High Court case No. 2013/HC-A/27, decided on 28th February 2013.

be submitted (a) to the court in the judicial area where the defendant resides, or (b) to the court agreed in the contract, or (c) to a court in the judicial area where the contract, or a part thereof, is implemented, or (d) to the court where the property, subject to potential enforcement of a judgment, is situated. Accordingly, in this case, the defendant was not resident in the Island of Ihaavandhoo, the vessel was outside the territorial jurisdiction of Ihavandhoo, and the contract was silent as to the court to which disputes arising out of the contract should be submitted. Therefore, the High Court held that the magistrate court in the Island of Ihavandhoo did not have jurisdiction to hear the case.

Part VI

Judicial Areas

To organize the functions of the magistrate courts, Chapter 5 of the Judicature Act created judicial areas or judicial districts, so that the magistrate courts located within a judicial area would be managed under the oversight of a Chief Magistrate appointed to the judicial area. This judicial area would also correspond to the administrative areas created under Schedule 2 of the Constitution. The Chief Magistrate is the highest authority over the administrative arrangement and function of his judicial area. According to the Judicature Act, a resident magistrate would not be present in islands whose population was below 500 people; a visiting magistrate from that judicial area would dispose of the cases in those islands.

The functions of Chief Magistrates in the judicial area shall include the following responsibilities:[53]

a) Dispatching magistrates from amongst the magistrates of his

[53] Section 68 (c), Judicature Act 2010.

judicial area to islands with no resident magistrate for adjudication of matters.

b) Directing and assisting magistrates on procedure and administration.
c) Hearing and determining complaints of delay and other complaints of cases within his/her judicial area.

Part VII

Judicial Council

Chapter 8 of the Judicature Act 2010 established the Judicial Council, mandated to ensure the enactment of rules required under the Judicature Act and the Constitution on a uniform basis in consultation with all the levels of the courts. The purpose of the Council is to achieve uniformity in the practice of all the courts, and to standardize the principal court policies and practice amongst all courts.

Functions of the Judicial Council

The following are the functions of the Judicial Council:

a) Advice and counsel towards the smooth functioning of the courts and the standardization of the rules of procedure in practice at the courts.
b) Compilation of the rules of procedure of the courts and principal court policies and practice in line with the laws for the time being in force and the Constitution.
c) Compilation of the Strategic Plan of the Maldivian judiciary and advice the Chief Justice on the same.
d) Standardization of the forms used as application for adjudication

and all other documents in relation to the court proceedings and advice to the courts on any amendments required for the same.

e) Formulating a principal guideline on the receipt of applications to courts.
f) Formulation of guidelines on scheduling cases and their arrangement and function.
g) Conduct of research into the forms applicable to the issuance of the case report and judgment; arranging for any amendments that are required to be brought therein; and providing counsel on any necessary amendments to the rules.
h) Highlighting any amendment necessary to the rules and court policies, practice and principles on procedure and advising the courts on the same.
i) Formulation of guidelines on steps taken on account of complaints of delay in process.
j) Formulation of guidelines towards the appointment of a substitute in cases of judges relieving themselves from presiding over a matter.
k) Carrying out such function as has been mandated to the Judicial Council under this Act or any other law for the time being in force.
l) Formulation of guidelines on the convening of benches of more than one judge in certain matters by the Chief Judges of Superior Courts.

Composition of the Judicial Council

The Judicial Council consists of the following members.

a) The Chief Justice.
b) A Supreme Court Justice, except the Chief Justice, chosen by the Supreme Court Justices.
c) Chief Judge of the High Court.
d) Chief Judge of the Civil Court
e) Chief Judge of the Criminal Court.

f) Chief Judge of the Family Court.
g) Chief Judge of the Juvenile Court.
h) A magistrate from a northern judicial area and a magistrate from a southern judicial area who are to be appointed jointly by the Chief Justice and the Chief Judge of the High Court. Magistrates who are members of the Judicial Council should be changed every two years.

The sole purpose of establishing the Judicial Council was to create an agency charged with the responsibility for formulating uniform rules and uniform standards in courts throughout the country, and for developing policies for administering and improving the courts. It was thought that where the rules of the courts were formulated by an agency in which all levels of courts were represented, consultation and debate among the three tiers of the judiciary would certainly result in rules and standards acceptable to all courts, leading to a harmonious set of rules among courts at the same level and different levels. It was never intended to interfere with the powers of the Supreme Court as stipulated in the Constitution. At present, there is little uniformity in the procedures adopted by different courts when dealing with similar procedural issues. At times, even the judges in the same court use different procedures in similar situations, creating confusion among the people who come to court for various purposes.

By a bizarre ruling made by the Supreme Court in 2011, it repealed Chapter 8 of the Judicature Act, thereby abolishing the Judicial Council.[54]

Part VIII

General Councils for the Courts

[54] *Haveeru Daily* 13th March 2011; see also, *Haveeru Daily* 10th November 2010.

Chapter 7 of the Judicature Act provides for the establishment of a General Council of Judges for the Supreme Court, the High Court, and the Superior Courts. The General Council of Judges for the respective Court is required to undertake the following functions:

a) Deliberate and determine measures towards improvement of the services provided by the respective Court.
b) Determine the components for the Court's budget before submission of the same.
c) Determine areas in which the court staff needs capacity building.
d) Arrangement of work schedule for when the court is in recess.
e) Make arrangements required to implement a new law or a ruling of the Supreme Court.
f) Determine any and all other matters which are not included herein but are considered as internal matters of the respective court.
g) Establish a court-level Registry for all courts and ensure that measures are in place at court level towards providing administrative support for their smooth functioning and determination of the matters and applications therein.

Sessions of the General Council

The respective General Council at all the respective Courts comprises all the judges that make up the Bench. The Chair for the General Council is the Chief Justice in the case of the Supreme Court, the Chief Judge of the High Court in the case of the High Court, and the Chief Judges at the respective Superior Courts in the case of a Superior Court. The sessions require a quorum of more than half of the judges comprising the Bench of the respective court.

Part IX

Tribunals and Arbitration

Courts are a formal dispute resolution mechanism with strict rules of procedure. Most of the time, a trial judge will deal with all types of cases, and due to the massive backlog of cases the time taken to resolve a case is lengthy. Hence, mechanisms are evolving outside the formal court system for disputes to be resolved more speedily by people who are more specialized in the particular area of law.

Employment Tribunal

The Employment Tribunal was established in 2008 under the Employment Act (2/2008), to settle employment disputes. The Employment Tribunal has jurisdiction to hear all disputes between the employer and employee. They include the following:

(a) Breach of employment contract or Employment Act.
(b) Unfair dismissal.
(c) Redundancy.
(d) Pay and other benefits.
(e) Working time.
(f) Promotion.
(g) Disciplinary action.
(h) Leave.

The overriding objective of the Employment Tribunals is to deal with cases in a 'just' manner. The time limit for bringing a claim is three months from dismissal or three months from the date of occurrence of the act complained of. The decisions of the Employment Tribunal have no binding authority as precedents; however, the practice shows that the Tribunal generally follows its own previous decisions.

The Tribunal consists of members (adjudicators) who are trained in the area of law and lay members. The procedure at an Employment Tribunal

hearing is very similar to that of the Civil Court, although the Tribunal is less formal. A decision of the Tribunal can be appealed to the High Court, where the Tribunal has contravened a law. An appeal must be lodged within sixty days from the date of the decision given by the Tribunal. A decision of the Employment Tribunal can be submitted to the Civil Court for enforcement.

Tax Appeal Tribunal

The primary function of the Tax Appeal Tribunal is to review the decisions made by the Maldives Inland Revenue Authority regarding the payment of tax under various tax laws. Prior to the submission of an application to the Tax Appeal Tribunal, the taxpayer may file his petition to the Commissioner General of Taxation. In the event that the petitioner is dissatisfied with the outcome of his petition, then he may lodge an appeal against such decision at the Tax Appeal Tribunal.

Arbitration

The Maldives enacted its first ever Arbitration Act (Law No. 10/2013) in July 2013. The Maldives has modelled its Arbitration Act on the Model Arbitration Law adopted by UNCITRAL.[55] The Arbitration Act 'lays down the principles for the settlement of commercial disputes arising out of legal relations between two or more parties, in accordance with internationally recognized standards on arbitration.'[56] It also makes legal provision to 'give effect' to the principles of the Convention on the Recognition and Enforcement of Foreign Awards of 1958 (the New York Convention).

The following are some objectives of the Arbitration Act as provided in

[55] Section 2, Arbitration Act 2013.

[56] Section 1, Arbitration Act 2013.

Section 2 of the Act:

a) To provide for legally valid and enforceable means of resolving commercial disputes without recourse to the courts or prior to the commencement of court proceedings;
b) To introduce and give legislative sanction to arbitration as an alternative means of dispute resolution;
c) To introduce and give legislative sanction to the principle of settlement of commercial disputes by the mediation of an independent third party agreed upon by the parties to a dispute;
d) To provide for the role of the courts in arbitral proceedings and to set out the relationship between the courts and arbitration;
e) To provide for speedy resolution of commercial disputes without recourse to the courts, by means of a third party mediator possessing the knowledge and experience related to the dispute and who is appointed by consensus among the parties to the dispute.

The Arbitration Act provides, *inter alia,* for the arbitrability of disputes, the composition of the Arbitral Tribunal, the jurisdiction of the Arbitral Tribunal, the conduct of the arbitration proceedings and recourse against arbitral awards and enforcement.

The Arbitration Act provides that an arbitration agreement shall be in writing.[57] An arbitration agreement can be contained in a signed document or in an exchange of letters, telexes, telegrams or other means of telecommunications which provide a record of the agreement.[58]

Jurisdiction

An Arbitral Tribunal constituted under the Act may rule on its own

[57] Section 13, Arbitration Act 2013.

[58] Sections 13 & 14, Arbitration Act 2013.

jurisdiction in relation to the dispute submitted for arbitration. This may include the power to rule on any objections with respect to the existence or validity of the arbitration agreement which is the subject of the dispute under arbitration, and the power to rule on whether the dispute submitted for arbitration is within the jurisdiction of the Arbitral Tribunal. [59]

Subject matter of arbitration

The Arbitration Act provides that by agreement, any dispute can be determined by arbitration, unless the matter, in respect of which the arbitration agreement is entered into, is contrary to the public policy of the Maldives.[60] Any commercial matter, including an action in tort, if it arises out of or relates to a contract, can be referred to arbitration. However, public policy would not permit matrimonial matters, criminal proceedings, or insolvency matters to be referred to arbitration. Employment contracts also cannot be referred to arbitration. Generally, matters covered by statutory reliefs through statutory tribunals would be non-arbitrable.

Role of the court

One of the fundamental features of the Act is that the role of the court has been minimised. Accordingly, it is provided that any matter before a judicial authority containing an arbitration agreement shall be referred to arbitration[61] Further, no judicial authority shall interfere, except as provided for under the Act.

In relation to arbitration proceedings, parties can approach the court only for two purposes: (a) for the enforcement of any interim measure of

[59] Section 29, Arbitration Act 2013.

[60] Section 69, Arbitration Act 2013.

[61] Section 15, Arbitration Act 2013.

protection or injunction;[62] or (b) if a party is not happy with a procedural ruling made by the Tribunal.[63] A court of law can also be approached to set aside an arbitral award on the grounds stipulated in Section 69 of the Arbitration Act.

Recognition and enforcement of foreign awards

According to Section 72 of the Arbitration Act, an arbitral award made in a foreign country shall be recognized and enforced in the Maldives so long as the award was not made in contravention of the procedures in this Act. A party wishing to enforce an arbitral award made must apply to the High Court for its enforcement. Such an award shall be enforced only in accordance with an enforcement order issued by the Court upon application.[64]

[62] Section 40, Arbitration Act 2013.

[63] Section 30, Arbitration Act 2013

[64] Section 73, Arbitration Act 2013.

Chapter 5

JUDGES AND THE JUDICIAL SERVICE

This chapter deals with the powers, functions, qualification, and methods of appointment of judges. It also discusses the independence of judges, the code of ethics of judges and the administration of the courts.

Part I

Judges

A judge is an official who presides over court proceedings, either alone or as part of a panel of judges. Judges play many roles. They interpret the law, assess the evidence presented, and control how hearings are conducted in their courtrooms. Most important of all, judges are impartial decision-makers in the pursuit of justice. Article 142 of the Constitution states that judges are independent and subject only to the Constitution and the law; and in the performance of their judicial functions, judges must apply the Constitution and the law impartially and without fear, favour or prejudice.

Appointment

Supreme Court

According to the Constitution, the Supreme Court consists of the Chief Justice and an uneven number of Judges as provided by law.[1] The number

[1] Article 145 (a) of the Constitution.

of judges of the Supreme Court is stipulated in Section 16 of the Judges Act, wherein it is stated that the Supreme Court consists of 7 justices, including the Chief Justice.

If a judge or a number of judges are to be appointed to the Supreme Court, the President must request the Judicial Service Commission to send the names of the persons it proposes for the vacant post or posts, within 14 days from the date of such vacancy.

On the request of the President, the Judicial Service Commission must offer the interested applicants to submit their names to the Commission for the vacant post of Judge of the Supreme Court. The President may also submit to the Commission the names of the persons he proposes for the due consideration of the Commission.

After interviewing the qualified applicants for the post or posts of Judge of the Supreme Court, the Judicial Service Commission must send a list to the President of all the qualified applicants along with a separate list of the applicants whom the Commission recommends to appoint for the post.

The President shall select from the list of recommendations from the Judicial Service Commission an equal number of names required for the appointment or names more than the required number, and submit it for the approval of the People's *Majlis*. The President shall also submit to the People's *Majlis* for its information all the names recommended by the Judicial Service Commission. A person shall be appointed as a Judge of the Supreme Court after confirmation of the appointee or appointees, recommended by the President, by a majority of the members of the People's *Majlis* present and voting. The President is required to appoint a Judge of the Supreme Court within seven days of his approval by the People's *Majlis.*

High Court

According to the Constitution, the High Court consists of a number of judges as provided by law. The number of judges of the High Court is stipulated in Section 16 (c) of the Judges Act, wherein it is stated that the Supreme Court consists of nine justices, including the Chief Judge of the High Court.

The judges of the High Court are appointed by the Judicial Service Commission, in accordance with the procedure laid down in the Judges Act.[2] According to Section 18 of the Judges Act, the Judicial Service Commission shall make a public announcement for interested candidates to submit applications to the Commission. After interviewing the applicants, the Judicial Service Commission shall, by a majority of members of the Commission, appoint the most suitable candidate or candidates who are competent, qualified, experienced and possessing high moral character to be the Judge or Judges of the High Court. The Judicial Service Commission should also appoint a judge of the High Court as the Chief Judge from amongst the judges of the High Court.

Superior Courts

Similarly, the judges of the Superior Courts are appointed by the Judicial Service Commission, in accordance with the procedure laid down in the Judges Act.[3] The Judicial Service Commission must make a public announcement for interested candidates to submit applications to the Commission. After interviewing the applicants the Judicial Service Commission shall, by a majority of members of the Commission, appoint the most suitable candidate or candidates who are competent, qualified, experienced, possessing high moral character to be the Judge or Judges of the respective Superior Court.[4] The Judicial Service Commission should also appoint a Chief Judge to each Superior Court from amongst the judges

[3] Article 148 (b) of the Constitution.

[4] Section 18, Judges Act 2010.

of the respective Superior Court.[5] The law requires the Judicial Service Commission to consult with the Judicial Council before the appointment of judges to the Superior Courts.[6]

Magistrate Courts

Magistrates are appointed by the Judicial Service Commission, in accordance with the procedure laid down in the Judges Act.[7] The Judicial Service Commission must make a public announcement for interested candidates to submit applications to the Commission. After interviewing the applicants, the Judicial Service Commission shall, by a majority of members of the Commission, appoint as magistrates the most suitable candidate or candidates who are competent, qualified, experienced, and possessing high moral character.[8] The law requires the Judicial Service Commission to consult with the Judicial Council before the appointment of magistrates.[9] The Judicial Service Commission will also appoint a chief magistrate to each Judicial Area.

Qualifications

Article 49 (a) of the Constitution states that a person appointed as a judge in accordance with the law must possess the educational qualifications, experience and recognized competence necessary to discharge the duties and responsibilities of a judge, and must be of high moral character. Article 149 (b) of the Constitution states that a judge must also possess the following qualifications:-

a) Be a Muslim and a follower of a Sunni school of Islam;

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[5] Section 18, Judges Act 2010.

[6] Section 16 (e), Judges Act 2010.

[7] Article 148 (b) of the Constitution.

[8] Section 18, Judges Act 2010.

[9] Section 16 (e), Judges Act 2010.

b) Be at least 25 years of age (except for the judges of the Supreme Court;
c) Not have been convicted of an offence for which a *hadd* is prescribed in Islam, criminal breach of trust, or bribery;
d) Be of sound mind.

Supreme Court

A person appointed to be a Judge of the Supreme Court shall be at least 30 years of age; must possess at least seven years' experience as a judge or practising lawyer or both as a judge and a practising lawyer, and must be educated in Islamic Shari'ah or law.[10] According to Section 15 of the Judges Act, persons applying for the post of a judge of the Supreme Court must have attained a degree in Islamic Shari'ah or Law or Shari'ah and Law.

High Court

A person appointed to be a judge of the High Court shall be at least 25 years of age; must possess at least five years' experience as a judge or practising lawyer or both as a judge and a practising lawyer, and must be educated in Islamic Shari'ah or law.[11] According to Section 15 of the Judges Act, persons applying for the post of a Judge of the High Court must have attained a degree in Islamic Shari'ah or Law or Shari'ah and Law

Superior Court

A person appointed to be a Judge of a Superior Court, shall be at least 25 years of age; must possess at least two years' experience as a judge or practising lawyer or both as a judge and a practising lawyer, and must be

[10] Article 149 (c) of the Constitution.

[11] Article 149 (c) of the Constitution.

educated in Islamic Shari'ah or law.[12] According to Section 15 of the Judges Act, persons applying for the post of a judge of the Superior Court must have attained a degree in Islamic Shari'ah or Law or Shari'ah and Law.

Magistrate Court

A person appointed to be a Judge of the High Court, shall be at least 25 years of age; must possess at least five years' experience as a judge or practising lawyer or both as a judge and a practising lawyer, and must be educated in Islamic Shari'ah or law.[13] According to Section 15 of the Judges Act, persons applying for the post of a Judge of the High Court must have attained a degree in Islamic Shari'ah or Law or Shari'ah and Law

Removal

According to Section 26 of the Judges Act, the judicial office of a judge will become vacant upon occurrence of any one of the following events:

(a) death of the judge;
(b) resignation of the judge;
(c) the judge reaches 70 years of age;
(d) the judge is removed from office in accordance with the Constitution and law;
(e) the judge has retired at the age of 55 upon request for voluntary retirement;
(f) the judge has moved from the post of judge to another post in accordance with law;
(g) the judge has failed to fulfil any qualification of a judge stipulated in the Judges Act;

[12] Article 149 (c) of the Constitution.

[13] Article 149 (c) of the Constitution.

(h) if the judge was appointed for a particular period of time, he reaches the end of such tenure;
(i) the judge makes himself a candidate for a political position under the Constitution or any law;
(j) the judge did not avail himself of the opportunity to work in any other court, where a court has been abolished due to changes in the Constitution or law.

The Constitution states that a judge or a magistrate cannot be removed from office during good behaviour and so long as the judge or the magistrate comply with judicial ethics.[14] A judge or a magistrate may only be removed from office if the Judicial Service Commission finds that the person is grossly incompetent, or guilty of gross misconduct, and submits to the People's *Majlis* a resolution supporting the removal of the judge, which is then passed by a two-thirds majority of the members of the People's *Majlis* present and voting.[15]

Independence

Once appointed, judges have autonomy to carry out their responsibilities as a judge. Judges must be able to make courageous, even unpopular decisions knowing that no one – a chief justice, another judge, a government official or even the most powerful politician – can fire them or cut their salaries as retaliation. Judicial independence also protects judges who make controversial decisions that spark public outrage.

The concept of judicial independence is enshrined in the Constitution. Article 142 of the Constitution states that 'the Judges are independent, and subject only to the Constitution and the law.' Furthermore, Article 42 (b) of the Constitution states that 'all judicial proceedings in the Maldives shall be

[14] Article 154 (a) of the Constitution.

[15] Article 154 (b), *Constitution of Maldives*, 2008.

conducted with justice, transparency and impartiality.' Additionally, Article 141 (c) of the Constitution states that 'no officials performing public functions, or any other persons, shall interfere with and influence the functions of the courts.' Article 141 (d) mandates all persons or bodies performing public functions, through legislative and other measures, to assist and protect the courts to ensure the independence, eminence, dignity, impartiality, accessibility and effectiveness of the courts.

Article 42 (a) of the Constitution guarantees that 'everyone's civil rights and obligations or of any criminal charge, everyone is entitled to a fair and public hearing within a reasonable time by an independent court or tribunal established by law.'

Code of Conduct

The Constitution states that only a person of high moral character must be appointed as a judge.[16] Each judge must dedicate all his time to the performance of his responsibilities.[17]

Sections 29 of the Judges Act lays down the following standards of conduct that must be adhered to by each judge:

(a) to act according to the Constitution and laws;
(b) not to discriminate against a person based on his race, national origin, colour, sex, age, mental or physical disability, political or other views, property, birth or other status or native island or language;
(c) to discharge the duties of a judge freely, impartially and independently and decide matters in accordance with the Constitution and laws without favour, bias and prejudice;

[16] Article 149 (a), *Constitution of the Maldives*, 2008.

[17] Article 151 *Constitution of Maldives*, 2008.

(d) to make equality and transparency the basis on which they discharge the task of a judge;

(e) not to do any act, or participate in any act, or express any opinion or in any other way raise doubt about the independence, integrity and fairness of the judiciary and not to be biased towards a political party;

(f) not to misuse the powers of a judge or information acquired by the judge in the judge's judicial capacity to advance his own private interest nor to advance the private interest of anyone else;

(g) not to disclose any information acquired in the judicial capacity for any other purpose not related to the judge's judicial duties;

(h) not to become practically involved in running a business, participate in a technical work to gain income, carryout any other work to gain income (other than educational work), not to be an employee of any other employer;

(i) to maintain a high standard of conduct and honour at a socially acceptable level at all times in all his/her acts;

(j) not to participate in any political activity or express political views;

(k) not to respond personally in the media to a comment made by a political person or by the media in relation to an ongoing case in the court; and to answer such media-related issues via a relevant member of staff of the court.

(l) not to participate in the determination of a case in which a person closer than a third degree relative of the judge is involved;

(m) not to participate in the determination of a case in which the judge has actual interest directly or indirectly in the matter or holds any prejudice concerning a party that might deter him/her from properly discharging the duties of a judge;

(n) not to accept any gift from any contender or their lawyer or anyone related to any contender; and not to knowingly permit a family member of the judge or his/her subordinate staff to accept such gifts;

(o) not to speak words of offensive or disrespectful nature while

addressing any person or lawyer attending the court.

Responsibilities

Section 30 of the Judges Act lays down the responsibilities of a judge. They are:

(a) to conduct the court proceedings in a fair, honest and transparent manner according to the Constitution and the prescribed laws;
(b) to maintain the level of techniques of work while respecting all the laws and regulations of the Maldives;
(c) to be patient and responsible while communicating and dealing with lawyers, witnesses, persons of the general public, and with anyone whom the judge meets in an official capacity;
(d) to provide reasonable opportunity for the contenders or their representatives to present evidence and supporting documents and submit statements in relation to the ongoing cases according to the preliminary procedures;
(e) to strive to uphold, preserve and promote the rule of law, and strive to defend the safety, benefit and independence of the public;
(f) to discharge all the legal obligations and duties bestowed upon the judges by the Constitution and laws;
(g) to uphold the ethical standards of a judge while meeting with people in relation to cases, and in an official capacity;
(h) to carry out all the tasks necessary to discharge the duties of a judge under the Constitution and laws.

Part II

Judicial Service Commission

At the time of political transformation in the Maldives between 2004 and 2008, almost no institution was left untouched; the courts and the judiciary were among those which underwent major changes, one of which was to find a new way of appointing judges.

Prior to the adoption of the 2008 Constitution, the President appointed judges to the subordinate courts on the advice of the Minister of Justice and the judges of the High Court were appointed by the President on the advice of the Chief Justice of the High Court. The President also appointed the Chief Justice and himself acted as the final court of appeal. As there was no prior scrutiny by the public or the profession, the result was a Bench that was largely a mirror of the political establishment.

The framers of the new Constitution included provisions for a different way of choosing judges; through a Judicial Service Commission, a body established in the Constitution itself, for which there was also a separate legislation.

The Judicial Service Commission has the following powers:

(a) Power to appoint, promote and transfer judges other than the Chief Justice and the Associate Justices of the Supreme Court.
(b) Power to make recommendations to the President on the appointment of the Chief Justice and Judges of the Supreme Court.
(c) Power to investigate complaints about judges, and to take disciplinary action against them, including recommendations for dismissal;
(d) Power to make rules for recruitment and procedures for the appointment of judges;
(e) Setting out the code of conduct for judges.

The Judicial Service Commission consists of the following nine members:

(a) The Speaker of the Parliament;

(b) A judge of the Supreme Court other than the Chief Justice, elected by the Judges of the Supreme Court;
(c) A judge of the High Court, elected by the Judges of the High Court;
(d) A judge of the Trial Courts, elected by the Judges of the Trial Court;
(e) A member of the People's *Majlis* appointed by it;
(f) A member of the general public appointed by the People's *Majlis*;
(g) A person appointed by the President;
(h) The Attorney General;
(i) A lawyer from among the lawyers licensed to practise in the Maldives, elected by themselves.

A person elected from among the members acts as the Chairman of the Judicial Service Commission.

A majority of the members shall constitute a quorum at a meeting of the Judicial Service Commission, and any decision of the Judicial Service Commission shall be taken by a majority of votes of the members present and voting.

A member of the Judicial Service Commission appointed pursuant to Article 158 (b), (c), (d), (e), (f), (h) or (j) of the Constitution, may be removed from office by the appointer. Members of the Judicial Service Commission appointed by virtue of the office held pursuant to Articles 158 (a), (g), or (i) of the Constitution shall be removed from membership of the Judicial Service Commission upon vacation of the office he holds.

The step-by-step process adopted in the appointment of judges, is that the head of a court will inform the Commission when there is a vacancy. The vacancy is then published and nominations are invited of suitable candidates to fill the slot. Written nominations, together with written letters of consent to nomination from the candidates as well as candidates' CVs and completed questionnaires or application forms, are then sent to the Secretary who circulates them to members of the Commission. A sub-committee meets to sift through the applications, and a shortlist is drawn up which is then submitted to the full Committee for consideration. The

names of those to be interviewed are published only when the Commission has approved the shortlist.

Judicial Service Commission v. Judge Abdulla Mohamed[18]

The Civil Court, in its case No. 2253/Cv-C/2011, held that the decision of the Judicial Service Commission to take disciplinary measures against Judge Abdulla Mohamed was unlawful, as the Commission had failed to provide an opportunity for Judge Abdulla Mohamed to answer the allegations made against him. On appeal, the High Court, after evaluating the procedures laid down in the Judges Act and the Judicial Service Commission Act in respect of taking disciplinary action against judges, upheld the decision of the Civil Court. The High Court also noted that the Judicial Service Commission had failed to follow the due process laid down in the Judges Act and the Judicial Service Commission Act.

Part III

Department of Judicial Administration

The Department of Judicial Administration (DJA) was established on October 1st, 2008, following the ratification of the new Constitution in August 2008. With the judiciary becoming an independent body, the majority of the functions carried out by the former Ministry of Justice was transferred to the newly formed department. In December 2008, the Department of Judicial Administration was brought under the Supreme Court as per its ruling No. 2008/SU-RU/01.

The department's key functions include the construction and maintenance

18 High Court case No. 2013/HC-A/10, decided on 20th November 2013, http://www.highcourt.gov.mv/dhi/mediamanager/2013-10.pdf

of buildings for the judiciary, providing technological assistance to the courts, conducting training programmes, compilation and publication of statistics, and conducting other administrative tasks for the smooth functioning of the judiciary.

Functions of DJA

a) Carry out the administrative work of the judiciary in an efficient and effective manner.
b) Provide training for judges and administrative staff and build competency for work.
c) Organize relevant training programs, seminars, conferences, and workshops to develop the educational qualifications and technical competency of the judges.
d) Organize ways to disseminate information and impart training on amendments to laws and the legal system.
e) Maintain a comprehensive record of all court rulings, and develop a mechanism to provide the public with easy access to the records.
f) Prepare a consolidated budget of the judiciary in consultation with the courts, and submit the budget to the Ministry of Finance and Treasury.
g) Preserve and archive dated documents.
h) Acquire buildings as needed by the judiciary and organize a system to build and maintain such premises.
i) Organize and execute functions related to the media and information technology.
j) Organize judicial delegation visits.
k) Plan and manage the human resource-based work of the staff of the courts of the judiciary.
l) Recruit, dismiss and award promotions to the staff of the judiciary; and organize capacity building programmes for the staff.
m) Establish a staff motivation environment designed to attract and build the impetus for educated professionals to work in the judiciary.

n) Develop a staff performance assessing mechanism.
o) Facilitate educational research for judges and organize a system for the exchange of information amongst them.
p) Provide financial resources to island courts; maintain records of such according to the rules and regulations and internal auditing of financial activities of courts.
q) Maintain and preserve historical records of the judiciary.
r) Organize a system to facilitate the timely and easy dispatch of letters, circulars, and amendments to laws and regulations and other relevant documents to courts.
s) Provide modern technological systems to courts, and facilitate the full and systematic utilization of information technology in the judiciary.
t) Collect, maintain and publish statistical records of the courts.
u) Receive grievances and complaints related to the administrative issues of the courts, and establish a mechanism to address them.
v) Provide information that the judiciary requires to be disseminated to the media.
w) Compile an annual report of the judiciary.
x) Submit the Strategic Plan of the judiciary to the Judicial Council and monitor the implementation of the Strategic Plan.

Chapter 6

THE LEGAL SERVICE

The Attorney General

The Attorney General or *Bandaara Naib* is the chief legal advisor to the government and is therefore the chief law officer of the state and also a member of the Cabinet.[1] The Attorney General is responsible for representing the state in courts of law in all civil matters, defending the public interest and assuring respect for the due process of law.[2] The functions of the Attorney General include legislative drafting and providing legal aid to indigent persons in criminal cases. The Attorney General is *ex officio* the Chairman of the Clemency Board, a member of the Judicial Service Commission, and a member of the National Security Council.

The traditional role of the Attorney General as the prosecutorial authority of the state was abolished by the Constitution of 2008 and the function was assigned to an independent Prosecutor General who is appointed by the President on confirmation by the Parliament.[3]

A historical account

From very ancient times there were *naibs* in the islands of the Maldives, and these *naibs* were responsible for dispensing justice in the islands on behalf of the Chief Justice who was resident in Malé.[4] These *naibs*

[1] Article 133, Constitution of the Maldives, 2008.

[2] Ibid.

[3] Article 220, Constitution of the Maldives, 2008.

[4] François Pyrard de Laval, *The Voyage of Francois Pyrard of Laval to the East Indies, the Maldives,*

(deputies of the Chief Justice) were appointed by the Chief Justice. The Chief Justice used to consult and seek advice from his *naibs* when deciding matters that came before him. One such *naib* was the *Bandaara Naib* whose functions included, among other things, to give advice to the Chief Justice in matters relating to the state and public affairs. The other *naibs* or deputies were commonly known as *Shar'ee Naibs*. It was a customary practice to appoint the *Bandaara Naib* as the Chief Justice when the position of the Chief Justice fell vacant.[5]

One of the first *naibs* who can be traced from the historical recordings is *Al-Naib* Hussain Afeefuddin, who was a younger brother of Al-Qazi Hassan Thaajuddin. He was appointed in the year 1117AH and spent 42 years as a *naib*. When he passed away, his son *Al-Khatheeb* Mohamed Muhibbuddin was appointed as the *Bandaara Naaib* on 4th Rabiul Awwal 1160 AH (1747AD), and was permitted to conduct trials and dispense justice.[6] This is the first *Bandaara Naib* who can be traced from the available historical recordings. When Mohamed Muhibbuddin was appointed to the position of *Bandaara Naib*, the Chief Justice of the country was Al-Qazi Mohamed Shamsuddin, who was a son of the famous Chief Justice Hassan Thaajuddin. When the office of the Chief Justice became vacant in 1166 AH, *Bandaara Naib* Mohamed Muhibbuddin was appointed to the position of Chief Justice.[7]

It is evident from the historical recordings that the functions of the *Bandaara Naib* changed over time during different periods of its evolution.

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the Moluccas and Brazil, (1611), Chapter 14; see also, H.A.R. Gibb, *The Travels of Ibn Battuta*, (New Delhi: Goodword Books, 2011), 241.

[5] When Chief Justice Abdulla Jalaaluddin left for Sri Lanka in 1951 for medical treatment, *Bandaara Naaib* Mohamed Naseer Manik was assigned the functions of the Chief Justice, and Sheikh Mohamed Jameel Didi was appointed to the position of *Bandaara Naib* to replace him.

[6] *Dhivehi Thaareekh,* (Malé, Maldives: National Centre for Linguistic and Historical Research, 1981), 162.

[7] *Dhivehi Thaareekh*, (Malé, Maldives: National Centre for Linguistic and Historical Research, 1981), 170.

At times when the *Bandaara Naib* was permitted to conduct trials and dispense justice, there was also a Chief Justice assisted by other *naibs*. There was also a period in which the *Bandaara Naib* was referred to as *Naibul Umoomy*, indicating that he acted as the chief *naib*. Prior to using *Bandaara Naib* as a common title, this role was referred to by names such as *naib thakurufaanu*, *naibu manikufaanu* or simply *Naib*.

The writings of the late 19th and early 20th centuries show that while the Chief Justice was in charge of the House of Justice, the *Bandaara Naib* was the principal advisor to the Chief Justice relating to law and Shari'ah, and acted as the representative of the state in matters where the state was a party to the proceedings.

The first Constitution, which was promulgated in 1932, did not include the *Bandaara Naaib* in the Council of Ministers, nor did it specifically mention the office of the *Bandaara Naib* among the key institutions of the state. However, the *Ahkaam Aamma* or General Law on the Administration that was enacted by the newly elected *Majlis* had included the *Bandaara Naib* among the Council of Ministers, and the *Bandaara Naib* was appointed along with other members of the first Cabinet of Ministers of the first government under the new Constitution. In 1932, Sheikh Ibrahim Rushdie was appointed as the first *Bandaara Naib* of the first constitutional government.

Article 75 of the first Constitution (1932) states that where an impeachment proceeding has been initiated in the *Majlis* against a member of the Council of Ministers, and where such minister elects to defend the charges against him, the trial would be conducted by a panel consisting of the Prime Minister, the Chief Justice, the *Bandaara Naib*, a senior *naib* and four members of the People's *Majlis*. This was the only instance where the *Bandaara Naib* was mentioned in the first Constitution.

The General Law on the Administration enacted by the first Peoples *Majlis*

in 1932 sets out the mandate of the *Bandaara Naib.*[8] According to this Law, the office of *Bandaara Naib* is independent of the Ministry of *Haqqaaniyya* and the *Mahkamatu-Sharuiyya,* and the *Bandaara Naib* shall represent the state or the government in all proceedings to which the state or the government is a party. Moreover, the General Law on the Administration states that the Chief Justice and the *naibs* of the *Mahkamatu-Sharuiyaa* must seek written advice from the *Bandaara Naib,* before they decide upon cases relating to murder, *Rajam, Faskh, Lia'n, Hajr* or *Iflas*.[9] Morover, it states that the island *naibs* can be appointed by the *Mahkamatul-Sharuiyya*, only when the *Bandaara Naib* was satisfied of their competency to carry out the functions of a *naib*.[10]

In 1943, under the judicial reform initiated by the then Minister of Home Affairs, Mr. Mohamed Amin Didi, the *Bandaara Naib*'s function was restricted to advising the government on legal matters and representing the state in the courts of law.[11] Hence, his function of advising the *naibs* of the *Mahkamatu-Sharuiyya* came to an end. However, the office of the *Bandaara Naib* was situated in the premises of the *Mahakamatu-Sharuiyya* and had no staff to assist in his work.[12]

On August 25th, 1950, the Attorney General's Office was established and Sheikh Gayyoom Ibrahim was appointed as the *Bandaara Naib*.[13] Uz. Ibrahim Shihab was appointed as the Deputy *Bandaara Naib*, while Uz. Mohamed Luthfee and Uz. Hussain Ali Didi were appointed Legal Counsel at the Attorney General's Office.[14]

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[8] Chapter on *Mahkamatul-Sharuiyya*, *Ahkaam Aamma*, 1932 and 1937.

[9] Ibid.

[10] Ibid.

[11] Records of the Government of the Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. I, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 7.

[12] Ibid.

[13] Records of the Government of the Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. 7 & 8, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 700-702.

[14] Ibid.

Under the 1955 Rules of the *Mahkamatu-Sharuiyya*, for the first time, all the investigative authorities were required to directly forward serious criminal cases to the Attorney General's Office for prosecution.[15] Investigating authorities continued to send less serious criminal cases directly to the court. The 1955 Rules of the *Mahkamatu-Sharuiyya* also required an assistant to the Attorney General to be present when the Home Ministry conducted serious criminal investigations.[16]

The Rules of the *Mahkamatu-Sharuiyya* that came into force on 1 January 1962 required all investigating authorities throughout the country to forward all criminal cases to the Attorney General's Office for prosecution.[17]

In 1968, after the country became a Republic, the Attorney General's Office was formally named as such in the English language, and the mandate of the Attorney General's Office was stipulated in Law No. 3/68 (Law on the Official Business of the State). According to this law, the mandate of the Attorney General's Office was conducting prosecutions and representing the state in courts of law in civil litigation.

Under a Presidential Decree issued on 8th April 1978, legal advisory work was added to the mandate of the Attorney General's Office. Pursuant to this decree, no government department could enter into any agreement, until such agreement had been vetted and no objection on the ground of its legality had been issued by the Attorney General's Office. Furthermore, the Attorney General's Office was mandated to scrutinize all the subsidiary legislation created by the executive, and to supervise the regulations relating to criminal investigations.

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[15] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 12, (Records of the Government of the Maldives), (2013: Malé,Maldives: Reprinted by Novelty Printers and Publishers), 1129-1135.

[16] Ibid.

[17] *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 18, (Records of the Government of the Maldives), (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1707.

A letter issued by the President on 11 November 1993 further expanded the work of the Attorney General's Office. Under the new arrangement, the Attorney General was required to vet the Bills passed by the Parliament before such bills were ratified by the President into law. Since the early 1980s, legislative drafting and vetting parliamentary Bills had been assigned to the Attorney General's Office on an *ad hoc* basis by the President's Office. However, with the formation of the first Law Commission, in 1994, under the chairmanship of the Attorney General and with its secretariat based in the Attorney General's Office, the government's legislative drafting became a major function of the Attorney General's Office.

The office of the Attorney General in the Constitution of 2008

Article 133 of the Constitution states that the President shall appoint a person with distinguished education and experience in the legal field, who is also qualified to be a member of the Cabinet, as Attorney General. He or she shall be the legal advisor to the Government.

According to Article 133 of the Constitution, the Attorney General should advise the Government on all legal matters affecting the State. The Attorney General's duties include the performance of all legal duties pertaining to this office, and the discharge of all responsibilities required to be discharged by the Attorney General according to the Constitution and by law.

The Attorney General has the right of audience in all courts of the Maldives, and the State shall be represented in all courts by the Attorney General or by a person delegated by him, except for those matters that fall within the responsibility of the Prosecutor General. The Attorney General also has the authority, with the leave of the court, to appear as a friend of the court in any civil proceedings to which the Government is not a party, wherein the opinion of the Attorney General, the interests of the State or the public

interest dictate this.[18]

The Attorney General also has the power to issue general directives to the Prosecutor General on the conduct of criminal proceedings.[19]

The Prosecutor General

The Prosecutor General and his office are independent from the executive, legislative and judicial branches of the government.[20] Article 220 of the Constitution states:

> a) There shall be an independent and impartial Prosecutor General of the Maldives.
>
> b) The Prosecutor General shall carry out his responsibilities and duties in accordance with the Constitution and any laws passed by the People's *Majlis*.
>
> c) The Prosecutor General is independent and impartial, and he shall not be under the direction or control of any person or authority in carrying out his responsibilities and the exercise of his powers. He shall carry out his responsibilities and exercise his powers without fear, favour or prejudice, subject only to the general policy directives of the Attorney General, and on the basis of fairness, transparency, and accountability.

The Prosecutor General is appointed to office by the President with the consent of Parliament. Both in theory and in practice, the Prosecutor General wields considerable power. The term of the office of the Prosecutor General is five years, and upon the expiry of the term, he may be appointed to a further term in office.

The Prosecutor General can only be impeached from office by the

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[18] The first application made by the Attorney General under the new Constitution, in the case of *Tourism Development Corporation vs. Yacht Tours*, was rejected by the Civil Court; see: *Haveeru Daily* 8th June 2009.

[19] Article 133, Constitution of the Maldives 2008.

[20] Article 220, Constitution of the Maldives 2008.

Parliament on the grounds stipulated in Article 228 (a) of the Constitution.[21]

The following are the powers and responsibilities of the Prosecutor General as stipulated in Article 223 of the Constitution:

a) to supervise the prosecution of all criminal offences in the Maldives;
b) to consider and assess evidence presented by investigating bodies to determine whether charges should be pursued;
c) to institute and conduct criminal proceedings against any person before any court in respect of any alleged offence;
d) to oversee the legality of preliminary inquiries and investigations into alleged criminal activity;
e) to monitor and review the circumstances and conditions under which any person is arrested, detained or otherwise deprived of freedom prior to trial;
f) to order any investigation that he deems desirable into complaints of criminal activity or into any other criminal activity of which he becomes aware;
g) to takeover, review and continue any criminal proceedings instituted by any prosecuting body authorized to initiate prosecutions pursuant to a law enacted by the People's *Majlis*, and at his discretion to discontinue any criminal proceedings at any stage prior to judgment;
h) to review or revert any decision to prosecute or not to prosecute any alleged offender, or to discontinue any prosecution;
i) to appeal any judgment, verdict or decision in a criminal matter;
j) to issue policy directives which shall be observed in the entire prosecutorial process;

[21] As regards the impeachment of the officials of the independent institutions of the state, see *Mohamed Fahmy Hassan v. State*, Supreme Court case No. 2012/SC-C/35, wherein the Supreme Court established criteria for such impeachment and judicial review of such decisions of the Parliament.

k) to uphold constitutional order, the law, and the rights and freedoms of individuals.[22]

View Builders Pvt. Ltd v. Prosecutor General[23]

In this case, the Plaintiff claimed that the decision of the Prosecutor General not to prosecute an alleged offender was contrary to law. The Prosecutor General asked the court to dismiss the case on the ground that the Constitution conferred on him the discretion whether to or not to prosecute a particular offender. The court held that the court had the power to review the decision pursuant to Article 43 (c) of the Constitution, as the decision made by the Prosecutor General was an administrative decision.

Onus Pvt. Ltd v. Prosecutor General[24]

In this case the Prosecutor General exercised his discretion under the Prosecutor General's Act not to prosecute a person who wrote six cheques knowing that he had no funds in his bank account to meet the amounts stated in the cheques. The Plaintiff made an application to the High Court claiming that the Prosecutor General's decision not to prosecute the alleged offender was contrary to the Constitution. The High Court dismissed the application on the ground that the action should be initiated at the Civil Court pursuant to the procedural decision made in Supreme Court case No. 2008/SC-J/03. The Plaintiff appealed the decision of the High Court to the Supreme Court. In this case the Supreme Court noted that this was an application made by the Appellant seeking judicial review of a

[22] See, for example, Civil Court case No. 220/MC/2010 (*Prosecutor General v Attorney General*), decided on 27th August 2010 wherein the Prosecutor General requested an order from the court to release the keys of the Supreme Court building to its staff.

[23] Civil Court case No. 1219/Cv-C/2010 decided on 4th January 2011.

[24] Supreme Court case No. 2012/SC-A/22, decided on 25th March 2013.

decision made by the Prosecutor General; a review of the functions of the prosecutors in other jurisdictions by the Supreme Court reveals that the power to request prosecution is a right of the appropriate authorities of the state in order to protect public order. The nature of the decision made by the Prosecutor General upon such a request from such authority is in the nature of a judicial decision, and the function of the Prosecutor General falls within the judicial functions of the state. Under the Constitution, the Prosecutor General's decision whether or not to prosecute a particular offender must be made independently and without any influence from any person or authority, and these decisions are made by the Prosecutor General on behalf of the State in a judicial capacity in the criminal justice system, and therefore such decisions cannot be deemed an administrative decision that falls within Article 43 (c) of the Constitution. For this reason, the Supreme Court held that the decision made by the Prosecutor General whether or not to prosecute an offender is not subject to judicial review pursuant to Article 43 (c) of the Constitution.

Chapter 7

THE LEGAL PROFESSION

The legal profession plays an important role in the administration of justice, protection of human rights, upholding the rule of law, and the socio-economic development of the Maldives. Therefore, the legal system will not be complete without lawyers who are able to pursue their work freely and independently. The purpose of having an independent and well-trained legal profession is not merely to advance the wellbeing of the lawyers themselves, but to protect the people and their constitutional rights. Assuring the independence of the legal profession means that they also enjoy the same protection accorded to the judiciary.

A historical account

According to Ibn Battuta, when a person was summoned to attend the court, such a person could opt to send another person to the court to speak on his behalf.[1] This illustrates that as early as 1350 AD, there was some form of legal representation available to individuals who chose to use it.

The first legislative recognition of the legal profession came with the adoption of the first written Constitution of the Maldives in 1932. Article 83 of the 1932 Constitution stated that in all types of trials, the parties to the trial were permitted to be represented by a lawyer. Furthermore, the same article stated that any person who was educated in the field of

[1] Mohamed Ibrahim Luthfi, *Ibn Battuta in the Maldives*, Malas 32, (Malé, Maldives: National Centre for Linguistic and Historical Research, August 1991), 163.

Shari'ah and law was qualified as a lawyer. Even though this right was found in the Constitution, legal representation in courts was in fact extremely limited, largely due to the limited awareness of it among the people and the absence of people qualified to act as lawyers at that time.

One important part of the Legal Reform Project implemented by Amir Mohamed Amin Didi in 1950 was to organize and institutionalize the legal profession, as a useful component of the administration of justice in the Maldives.[2] To this end, Mohamed Amin developed a curriculum to be used by the Ministry of Education to offer examinations to persons who want to qualify as a lawyer and be admitted to the legal profession.[3] The first such examination was held in 1951. Six candidates passed: they were Amir Mohamed Amin Didi (First class), Uz. Ibrahim Shihab (First class), Uz. Ahmed Kamil Didi (Second class), Uz. Mohamed Ibrahim Lutfi (Second Class), Uz. Buchaa Hassan Kaleyfaanu (Second Class), and Uz. N.T Hassan Didi (Second Class). These six candidates took their professional oath on 17th June 1951 in the *Mahkamatu-Sharuiyya*. The first trial where the two parties to the trial were represented by lawyers, during the time of Amir Mohamed Amin, was the case of *Kulhudhuffushi Mogul Adam be v. Rugiyya Ali*.[4]

After the Southern Uprising that took place between 1959 and 1963, a Penal Code was enacted to prosecute the people who were involved in the uprising. There was some pressure on the Maldivian government from the British to ensure a fair trial for the people who were arrested and brought to Malé for the purpose of investigation and trial. As part of the government's ostensible efforts to ensure a fair trial, a new regulation was made to permit lawyers in trials.

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[2] Records of the Government of the Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. 7, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 633 – 637.

[3] Records of the Government of the Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. 7 & 8, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 700 - 702.

[4] Ibid.

After President Mohamed Amin Didi was overthrown, legal representation was discontinued in courts until 1st December 1960.[5] A new regulation on permitting lawyers in trials, came into effect on 15th April 1961.[6] The first trial where both parties were represented by lawyers who were licensed under the new regulations was held on 17th October 1962.[7] The case was between Kuda Mohamed Fulhu (Gd. Thinadhoo) and Siththi (Grand-daughter of Kuda Hawwa Fulhu). This was an appeal case, under the Law of Appeal, involving an application made to the court by Kuda Mohamed Fulhu, asking the court to declare that a document issued in favour of Siththi by her grandmother, was null and void.[8] In this trial the applicant was represented by Uz. Mulee Ibrahim Fulhu, while the respondent was represented by Uz. Abdulla Hameed. The appeal judges were Uz. Ibrahim Shihab and An. Malim Mohamed Didi.[9]

After the abolition of the *Mahkamatu-Sharuiyya* in 1968, the newly created Ministry of Justice continued to issue licences to practise law, to those people who passed the law examination conducted by the Ministry of Education. Those who passed these examinations were qualified to be admitted to the roll of lawyers maintained by the Ministry of Justice. Once registered as a lawyer and permitted to practise law, they would carry the title of *Al-Ustaz*.

The Ministry of Justice continued to issue licences to practise law in accordance with the Regulation Relating to the Issuance of Licences to Practice Law that was published in the Rules of the Court,[10] until the new

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[5] Records of the Government of the Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 15, (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1429-1430.

[6] Records of the Government of the Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 16, (2013: Malé, Maldives: Reprinted by Novelty Printers and Publishers), 1507.

[7] Ibid.

[8] *Vihivana Qarunuge Thereygai Dhivehi Raajje*, Volume 3, (Malé, Maldives: Centre for Linguistic and Historical Research, 2006), 36.

[9] Ibid.

[10] Section 231 of the Rules of the Court (5) published by the Ministry of Justice in 1996.

Constitution of the Maldives was ratified in August 2008. Rules of Advocacy in the Courts of the Maldives were published by the Ministry of Justice on 1st December 2002.[11]

According to the Regulation Relating to the Issuance of Licences to Practise Law in the Maldives,[12] persons who met the following conditions were to be permitted to practise law in the Maldives:

a) a Muslim;
b) a Maldivian citizen;
c) having attained a Bachelor of Law degree, or a Certificate of Law, or passed the law examination conducted by the Ministry of Education;
d) being, in the opinion of the Minister of Justice, a person of good conduct and fit to practise law.

The regulations also stated that foreigners might be permitted to act as an advocate in a case, on case-by-case basis, if special permission was granted by the Minister of Justice, provided that such a person was a Muslim. In 1999, the decision was taken by the President of the Maldives to allow foreigners to practise law in the Maldives provided they were married to a Maldivian. Hence, the President's son-in-law became the first foreigner to be permitted to practise law in the Maldives.

2002 Regulations for lawyers practising in the Maldives

The Regulations for Lawyers Practising in the Maldives [13] came into force on 1st December 2002 and relate to lawyers or counsels representing their clients in criminal proceedings and civil proceedings. These regulations stated that they were not applicable to those

[11] Rules of the Court (6) Issued by the Ministry of Justice on 12th June 2003.

[12] Section 231 of the Rules of the Court (5) published by the Ministry of Justice in 1996.

[13] Rules of the Court (6) Issued by the Ministry of Justice on 12th June 2003.

representing the State in either criminal or civil cases.

According to these regulations, only those on the roll of lawyers at the Ministry of Justice could practise as counsels in the courts of law in the Maldives.[14] The legal profession in the Maldives is fused: a legal practitioner who is enrolled in the Maldives practises law as both an advocate and a solicitor.

Section 2 of the Regulations required all lawyers to maintain their conduct in the court as follows:

a) Respect the rules of the court.

b) Rise when the judge enters the court, and stand while speaking.

c) Show full respect to the judge in the court; obey all orders of the judge in the courtroom and any relating to a lawsuit outside the court.

The following acts were prohibited to the lawyers.[15]

a) Obstructing legal proceedings or acting in contempt of court.

b) Speaking in the court without the leave of the judge.

c) Introducing into the court anything except articles of stationery and a bag containing them;

d) Introducing into the court exhibits by way of evidence without the leave of the trial judge.

e) Bringing into the court recording devices, camera, mobile phones, or any electronic device.

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[14] Regulations for Lawyers Practising in the Maldives 2002.

[15] Ibid.

f) Using impolite and rude expressions while speaking in court.

g) Saying anything for or against something without substantial evidence capable of proving or disproving it fairly.

The Regulations also prohibit lawyers from exerting any influence on the court or calling a judge and consulting on a case under trial. The Regulations also prohibit a lawyer from making a statement outside the court relating to an action under trial.

Lawyers are prohibited from rendering any service to a client without first entering into a written contract, setting out the terms of the service. The Regulations make it the responsibility of a lawyer to work carefully and diligently in the interest of his or her client in compliance with the oath. They also prohibit a lawyer from quitting a case without a reasonable cause or without giving sufficient notice to the client. Before a lawyer takes up a case the lawyer is required to make disclosure to the client of any existing or potential conflict of interest.

The Regulations also prohibit lawyers from disclosing information about their clients except under a court order. They also stipulate the manner in which lawyers may levy fees for the services rendered by them.

Lawyers who violate these Regulations will be subject to the disciplinary measures stipulated, which include, among other things, the revocation of the lawyers' licence issued by the Ministry of Justice.

2010 Regulations Relating to Lawyers

After the new Constitution came into force on 7th August 2008, the Ministry of Justice was abolished and the Attorney General became the authority responsible for maintaining the roll of lawyers and regulating the

legal profession. At present there is no statute regulating the legal profession: lawyers are licensed to practise under a regulation issued by the Attorney General on 23rd February 2010.[16]

According to the 23rd February 2010 regulations, a person should satisfy the following conditions to apply for a licence to practice law in the Maldives:

a) be Maldivian, or a foreigner married to a Maldivian and ordinarily resident in the Maldives;
b) be at least 18 years of age;
c) not have been convicted of any offence for which a *hadd* is prescribed in Islam, criminal breach of trust, bribery, rape, fraud or theft;
d) if convicted of any offence other than those stated in (c), five years should have elapsed after serving the sentence;
e) be of sound mind;
f) have attained a Bachelor of Law degree or have completed a law degree which includes the modules set out in Schedule III of the Regulations, from a recognized educational institution.

At present there are 689 registered lawyers in the Maldives.

Advocates of the Supreme Court

Chapter 5 of the Supreme Court Rules 2009[17] stipulates that lawyers who are licensed to practise law in the Maldives would only be permitted to appear before the Supreme Court after being registered as an advocate of the Supreme Court.

[16] http://www.agoffice.gov.mv/pdf/downloads/vakaalathUsool23Feb.pdf (Accessed on 15/11/2013.

[17] The Supreme Court Rules came into force on 19th May 2009, http://supremecourt.gov.mv/mediafolder/q8.pdf (Accessed on 15/11/2013).

In order to be granted permission to appear as an advocate before the Supreme Court, the applicant must satisfy the following conditions:

a) that he/she has a lawyer's practising licence;
b) that he/she has been practising as a lawyer for at least five years;
c) that he/she has not been convicted of an offence for which a *hadd* is prescribed in Islam, criminal breach of trust, bribery, rape, fraud or theft; and that if he/she has been convicted of any other type of offence, that five years have elapsed after serving the sentence;
d) that he/she is a person of good conduct.

Supreme Court Regulations of 3rd June 2012

By a circular, the Supreme Court in 2012 issued Regulations to regulate the legal profession. These Regulations have not been very well received by the legal community, who argue that the profession should be self-regulated by the lawyers themselves. These regulations mainly regulate the following aspects:

a) licensing of advocates by the courts;
b) fees for the services rendered by lawyers;
c) code of ethics of lawyers;
d) disciplinary actions against lawyers;
e) Supreme Court to enforce the code of ethics of lawyers.

According to these Regulations, a lawyer can only appear before a court after he or she has been registered as an advocate of that court. In order to be granted permission to appear as an advocate before the High Court, he or she must have been a practising lawyer for three years. In order to appear before the lower courts, one should have a licence to practise law in the Maldives.

At the time of publication of this book, a Legal Profession Bill has been drafted by the lawyers' community for submission to the Parliament.

Chapter 8

LEGAL EDUCATION

In the Maldives, the education of a lawyer starts at the university or a college. Admission into the legal profession is open to persons who possess a law degree, including degrees obtained through part-time studies, long-distance learning or study as an external student. Foreign-trained graduates who have obtained their LLB degree from universities outside the Maldives are not required to undergo a training programme to introduce the general principles of Maldivian law to foreign-trained students. Furthermore, vocational training is not mandatory for persons seeking to practise law in the Maldives.

Historical account

Ever since Yoosuf Naib Kaleygefaanu brought Islam to Addu Meedhoo in 1125 AD, Addu Meedhoo has been the epicentre of learning, most notably the study of Islamic Shari'ah.[1] This island continued to attract students from all over the country to study Islamic Shari'ah until the early 20th Century and was considered a university town. [2]

Islamic legal scholarship took firm root in in the Maldives at the return of a prominent Maldivian scholar, Jamaluddin, from long residence in Yemen to take responsibility for teaching Islamic law. After training judges in Malé, he took up residence in the island of Vaadhoo in Huvadu Atoll to teach

[1] Bell, H.C.P, *The Maldives Islands, Monograph on the History, Archeology and Epigraphy*, Novelty Printers and Publishers, Maldives, 2002 print, p. 116.

[2] Salaahuddin, Hussain, *Dhivehi Adheebunge Liyuvvunthah,* Vol. 24, Novelty Printers and Publishers, April 2008, p. 11-39.

Islamic law. His most famous disciples were Addu Meedhoo Mohamed Shamsuddin Bodufandiyaaru Thakurufaanu and Huvadhoo Abubakr Fandiyaaru Thakurufaanu. Addu Meedhoo Mohamed Shamsuddin Bodufandiyaaru Takurufaanu established Addu Meedhoo as a centre of learning. Alumni of Addu Meedhoo have been responsible for passing on the tradition of education to the 20th Century Maldives. The following are some of the most famous alumni of Addu Meedhoo:

1. Dhanna Mohamed Thakurufan of Vaadoo
2. Kateeb Thakurufan of Fonadoo
3. Hassan Tajuddine of Hadummati Gan
4. Naib Hussain Afifuddin of Gan
5. Chief Justice Mohamed Muhibbuddin
6. Chief Justice Abdul Hakim
7. Chief Justice Mohamed Shamsuddin
8. Chief Justice Hussain
9. Chief Magistrate Ahmed
10. Chief Magistrate Ibrahim
11. Ali Eduru Thakurufan
12. Ahmed Haji Eduru Kaleyfan
13. Mohamed Jamaluddine Naib Tuttu
14. Chief Justice Ibrahim Majduddin
15. Chief Justice Moosa Badruddin
16. Chief Justice Ismail Bahauddin

17. Al-Allamah Ahmed Shihabuddheen (Bodu Ahmed Naib Thakurufaan).
18. Chief Justice Ali Didi
19. Sheikh Al-Allama Al-Hafiz Ibrahim, Aisaabeegedharu Don Beyya.
20. Sheikh Al-Haj Ibrahim
21. Chief Justice Al-Sheikh Hussain Salahuddin
22. Chief Justice Hussain Afifuddin (Bodufenvalhugey Seedi)

Over the last 400 years, at least eight natives of Addu Meedhoo have filled the post of Chief Justice of the country. Furthermore, Addu Meedhoo has continuously supplied *Qazis* and *naibs* to courts in Malé and other islands of the Maldives over the last four centuries.

One of Addu Meedhoo's most distinguished alumni, Chief Justice Al-Sheikh Hussain Salahuddin, established the first school in Malé under the name *Madharusathul Salahiyya*, at his residence, with 69 students. Due to lack of space, the school was soon relocated and its name was changed to *Madhrasathul Saniyyathul Hukoomathul Mahaldheebiyya* (commonly referred to as *Madhrasathul Saniyya*). Along with this relocation in 1928 Sheikh Husain Salaahuddin became the first Principal of the school. Its teachers also included Sheikh Ibrahim Rushdil Azharee, who became Chief Justice in 1932.

Madhrasathul Saniyya (later *Majeediyya School*) became the centre of learning in the country and remained so until education became available in all the islands of the Maldives in 1980s.

Law examination conducted by the Ministry of Education

In 1950, the Ministry of Education started offering examinations to those candidates wishing to become lawyers. This was an elementary level examination and those who wanted to take the examination were not required to possess any prior educational qualification.[3] Out of the 20 candidates who took the examinations in 1951, only six candidates passed the examinations. Those who passed were qualified to be admitted to the roll of lawyers maintained by the Ministry of Justice, [4] to be registered as a lawyer and permitted to practise law, carrying the title of *Al-Ustaz.*

Introduction of formal judicial training

In 1967, upon recognizing the acute shortage of qualified persons to fill up judicial posts, the Acting Chief Justice Uz. Moosa Fathy commenced a *Qazi* Training Course to train judges.[5] This was a course in basic law and Shari'ah in which basic concepts of transactions in Islamic law, Islamic family law, Islamic law on succession and Islamic criminal law were taught. The Ministry of Justice continued to conduct these courses until 1981.[6]

The *Qazi* Course conducted by the Ministry of Justice was transferred in 1981 to the Institute of Islamic Studies (then, a secondary level Islamic School), which established a *Qazi* Course based on Islamic law.[7] With the transfer of the course to the Institute of Islamic Studies, the duration of the course was extended from nine months to two years. This course had some legal subjects such as property law, contract law, family law, and

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[3] Records of the Government of the Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hingigoiy*, Vol. 16, (Malé, Maldives: Reprinted by Novelty Printers and Publishers, 2013), 1502.

[4] Records of the Government of the Maldives, *Dhivehi Raajjeyge Ekieki Kankan Hin'gi Goiy*, Vol. 7 & 8, (2013: Reprinted by Novelty Printers and Publishers, Malé, Maldives), 700-702.

[5] *Vihivana Qarunuge Thereygai Dhivehi Raajje*, Volume 3, (Malé, Maldives: Centre for Linguistic and Historical Research, 2006), 36.

[6] Ibid.

[7] Ibid.

succession. This course was still specifically designed to train judges. Those who passed this course were awarded the 'Certificate of Adjudication'.[8] Possession of this Certificate was a pre-requisite for all judicial appointments.

Muhaamee Course

In 1988, a new course known as the *Muhaamee* Course was introduced by the Institute of Islamic Studies, to train lawyers.[9] The duration of the course was two years. Those who had grade 7 level education or had passed the secretary level examination conducted by the Ministry of Education were eligible to participate in this course.

Shari'ah and Law Diploma Course

In 1995, the Government realized the need for a higher level of training for judges and lawyers to keep abreast with the rapid socio-economic development that was taking place in the country. For this purpose, the *Qazi* and *Muhaamee* courses conducted by the Institute of Islamic Studies were replaced by a three-year diploma course for students who wished to become judges or lawyers.[10] In this Diploma Course, 'law was taught as a professional discipline rather than merely as a collection of rules to be memorized.'[11] This new programme fundamentally changed the manner in which law and Shari'ah were taught in the country. However, there were no full-time law professors; the lecturers were part-time and included the President, the Chief Justice, the Attorney General, and the staff at the

[8] Ibid.

[9] Report of the Asian Development Bank, Technical Assistance to the Republic of Maldives for Strengthening Legal Education and Judicial Training, (TAR-MLD 32270) December 1999, 2.

[10] Ibid.

[11] Ibid.

Attorney General's Office. Twenty-eight students were enrolled in this course and 25 graduated in 1998. A second diploma course commenced in February 1999.[12]

Institute of Shari'ah and Law/Faculty of Shari'ah and Law of Maldives College of Higher Education

As part of the Government's objectives and priorities in the Fifth National Development Plan (1997-2000), the Government established the Institute of Shari'ah and Law in August 1999, with technical assistance received from the Asian Development Bank.[13] The Institute later became part of the Maldives College of Higher Education. With technical assistance from the Asian Development Bank, two international consultants[14] and two domestic consultants were recruited to establish the Faculty of Shari'ah and Law. In August 2000, the Institute was repositioned as the Faculty of Shari'ah and Law of the Maldives College of Higher Education.

Initially, the Faculty of Shari'ah and Law of the Maldives College of Higher Education (MCHE) was launched with the following programmes:

1. Certificate of Law
2. Diploma of Law
3. Higher Diploma of Law.
4. Certificate in Justice Studies.

After about two years, the Faculty began to offer Bachelor of Laws programmes.

On 15th February 2011, the Maldives College of Higher Education attained

[12] Ibid.

[13] Ibid.

[14] Dr. Zaid Muhammad, a law lecturer from International Islamic University Malaysia, and Professor Dr. Muhaimim Ayus, former Dean of Ahmed Ibrahim Kuliyyah of Laws of the International Islamic University, Malaysia.

the status of a University under a statute passed by the Parliament, and the Faculty of Shari'ah and Law of MCHE became the Faculty of Shari'ah and Law of the Maldives National University.

Faculty of Shari'ah and Law of the Maldives National University (MNU)

The Faculty of Shari'ah and Law (FSL) in its short history of thirteen years has passed many milestones to achieve the objectives envisaged when it was set up. FSL commenced its first major programme with the introduction of a two-year Advanced Diploma in Shari'ah and Law (ADSL) in 2001. The ADSL was equivalent to the first two years of a standard LLB programme and the final third year of the LLB was introduced in 2004. Since then a batch of LLB degree students have graduated from FSL. The LLB offered in FSL is recognized by leading universities in the UK, US, Singapore, Australia and Malaysia.

The following are the courses presently offered by the Faculty of Shari'ah and Law at the Maldives National University:

Bachelor of Laws (LLB)

Course duration: 4 years (8 semesters) or 5 years (10 semesters) part-time. Admission requirements:

A. 3 passes at GCE O/L or equivalent and a minimum of 2 passes at GCE A/L or equivalent; or
B. 2 passes at GCE O/L or equivalent and a minimum of 3 passes at GCE A/L or equivalent; or
C. A diploma from a recognized institution of higher learning; or
D. 3 passes at GCE O/L or equivalent and at least 3 years of working experience with any law enforcement agency or law firm; or, O/L passes or its equivalent and 3 years' work experience in any law enforcement agency or firm and Pass in Dhivehi and Islam at SSC,

and score of 550 in TOEFL or score of 6.0 in IELTS or 'C' pass in O/L English or pass in MNU English Entrance Test; or

E. Pass in the University Foundation Studies Level 2.

Diploma in Shari'ah & Law

Duration**:** 2.5 years (5 semesters). Admission requirements:

A. 3 passes at GCE OL/SSC; or
B. Completed first year of Shahadhah Thaanawee (Higher Secondary Certificate in Arabic Medium); or
C. Completed a course approved by MAB at Advanced Certificate level or equivalent and should be 22-36 years old.

Advanced Certificate in Shari'ah & Law

Duration**:** 1 year (2 semesters). Admission requirements:

A. 3 passes at GCE OL/SSC and at least 'E' grade in both English and Dhivehi; or
B. Mature age entrants (above 21 years + a pass in any GCE OL/SSC subject or further education after general education) with experience in the relevant field and at least 'E' grade in both English and Dhivehi.

Graduate Certificate in Law

Course Duration: 0.5 years (1 semester). Admission requirements:

A. Degree or Advanced Diploma in Shari'ah from any overseas institution of higher learning;
B. Proficiency in English language, pass in Dhivehi Language at SSC level or equivalent or pass a special examination administered by FSL.

Graduate Certificate in Shari`ah

Course Duration: 0.5 years (1 semester). Admission requirements:

(i) Degree or Advanced Diploma in Law from any overseas institution of higher learning;

(ii) Proficiency in English language, pass in Dhivehi Language at SSC level or equivalent or pass a special examination administered by FSL.

Kulliyyathul Dhiraasathil Islamiyya

The Institute of Islamic Studies was founded in 1980 to provide Islamic education in Arabic language for children from primary to secondary level. In February 2004, this school was upgraded to conduct tertiary level courses and was renamed as *Kulliyathul Dhiraasathil Islamiyya* (College of Islamic Studies).

The Diploma of Shari'ah and Law programme conducted by the Institute from 1995 was upgraded to an Advanced Diploma Course in 2004 and in 2006 the course was upgraded to a Bachelor of Laws programme.

Bachelor of Laws (LLB)

Course Duration: 4 years (8 semesters). Admission requirements:

(i) Passed the Foundation Programme of the Faculty; or

(ii) 3 O/L and 2 A/L passes or its equivalent or 2 O/L and 3 A/L passes or its equivalent; or

(iii) Diploma from a recognized institution of higher learning or 3 O/L passes or equivalent and 3 years' work experience in any law enforcement agency or firm AND pass in Dhivehi and Islam at SSC AND score of 550 in TOEFL or score of 6.0 in IELTS or 'C' pass in O/L English or pass in English Entrance Test or pass in College Foundation Studies Level 2.

Faculty of Law, Villa College

In 2013, the largest private higher education provider, Villa College, established a Faculty of Law in cooperation with the Maldives Law Institute. At the time of publication of this book, the Faculty has begun to conduct Foundation in Law and Certificate level law courses in Addu Meedhoo. The faculty has arranged to begin University of London LLB degree programmes from 2014 in Addu Meedhoo.

Mandhu College

Private higher education provider Mandhu College began its LLB programme in 2013.

Course Name: *Bachelor of Laws*

Duration : 6 Semesters (3 Years). Entry requirements:

2 Passes in GCE A Level; or Foundation Course for Degree Level Studies or Diploma in Arts (Legal Studies)

The Maldives Law Institute

In 2011, The Maldives Law Institute (MLI) was established by a group of prominent lawyers to fill the gaps in the development of the Maldivian legal system. The aim was to improve and strengthen the legal system by conducting legal research, publication of research journals and conducting continuing legal education programmes for legal practitioners, judges, legal academics and law enforcement officers.

The Maldives Law Institute, in collaboration with Villa College, has established a law school in Addu Atoll. On the 22nd of June 2013, the campus commenced the operations of its brand new educational facilities. The first courses to be offered included a Foundation in Law as an entry

route for students wishing to pursue a law degree, as well as a Certificate in Criminal Investigation to help participants understand the duties and responsibilities of a criminal investigator coupled with a basic outline of the laws governing investigative practices, procedures and operations.

MLI continues to publish the *Maldives Law Review*, which is a peer reviewed law quarterly journal and is also the first of its kind in the Maldives. The editorial team consists of highly experienced lawyers and there is a highly esteemed panel of referees. The *Maldives Law Review* offers immense value and use to legal practitioners and law students.

Judicial Training

Judicial training is a very important part of an efficient system of justice, as it helps to enhance the competency of the judiciary. At a time when Maldivian society is increasingly becoming litigious and judicial intervention to resolve complex and sensitive issues is becoming a frequent occurrence, the need for judicial training is greater than ever. At the time of publishing this book, work is under way to establish a Judicial Training Centre.[15]

[15] Strategic Plan 2010-2014, compiled and published by the Department of Judicial Administration.

Chapter 9

CIVIL PROCEDURE

Civil procedure consists of the rules by which courts conduct civil trials. Civil trials concern the judicial resolution of claims by one individual or group against another and are to be distinguished from criminal trials in which the state prosecutes an individual for violation of criminal law. This chapter briefly outlines the manner in which civil lawsuits are filed, pursued, and tried at the Civil Court in Malé, though reference will be made to the procedure of some other courts. There is no codified source of civil law in the Maldives; the civil procedure rules are therefore derived from various regulations, statutes and decisions of the courts.

Commencement of proceedings and jurisdiction

Civil actions in the Maldives may be commenced either in the Civil Court or a magistrate court, depending on the value of the subject matter, the area of the law or the subject matter involved, as certain matters are within the exclusive jurisdiction of a particular court.[1]

A civil action should be initiated at a forum which has jurisdiction to hear the case. Whether a particular subordinate court has jurisdiction to hear a particular dispute is largely dependent on two factors: the size and the nature of the claim, and the judicial area in which the court is located.

According to Section 70 of the Judicature Act, in cases of inter-court conflict over jurisdiction between a court with special jurisdiction under Schedule 5 of the Judicature Act and a court with territorial jurisdiction

[1] See: *Ahmed Khaleel v. Abdul Jaleel Ibrahim*, High Court case No. 2013/HC-A/167, decided on 24th November 2013.

under Section 69 of the Judicature Act, the court granted special jurisdiction would have the competent jurisdiction.

Haleema Mohamed v. Ministry of Home Affairs[2]

On 18th February 2011, the Appellant applied to the Civil Court to enforce civil court judgment No. 2054/MC/2008, wherein the Civil Court had ordered the Respondent to issue a plot of land from the island of B. Atoll Thulhaadhoo to the Appellant within 45 days from the date of judgment (19th October 2009). The Civil Court dismissed the application on the ground that the Civil Court had no jurisdiction to hear a matter relating to an immovable property situated on another island. Furthermore, the court stated that under Section 69 of the newly enacted Judicature Act 2010, the jurisdiction to hear such cases lay with the magistrate court of the island where the property was situated.

On appeal to the High Court, the Appellant claimed that, as the defendant in the original case was the Ministry of Home Affairs, and as the Ministry of Home Affairs is situated in Malé, the Civil Court had jurisdiction to hear the case under Section 69 (c) of the Act.

The High Court, while upholding the decision of the Civil Court stated,

> 'although the judgment was given against the Ministry of Home Affairs in the original judgment, pursuant to Law No. 7/2002 that came into force after the judgment, it is only the Island Council of B. Atoll Thulhaadhoo who can enforce the judgment at the time of making the present application to the court. As the proper defendant in this case should have been the Island Council of B. Atoll Thulhaadhoo and not the Ministry of Home Affairs, Section 66 of the Judicature Act is not applicable to the present case.'

Furthermore, the High Court noted,

[2] High Court case No. 2011/HC-A/253, decided on 18th March 2012.

> 'according to Schedule 5 of the Judicature Act, an Island Magistrate court has the jurisdiction to hear all matters (both civil and criminal) within its geographical area, unless a law has specifically excluded its jurisdiction in those matters. In this instance, paragraph 3 of Schedule 5 of the Judicature Act specifically states that, irrespective of any provision in any law, all matters relating to the property situated on an island shall be within the exclusive jurisdiction of the Magistrate Court in that island.'

Re Mohamed Hassan Didi[3]

In this case, the Appellant made an application to the High Court seeking to overturn a procedural decision made by G.Dh. Thinadhoo Island Magistrate Court. The Appellant argued that pursuant to Section 2 (g) of Schedule 5 of the Judicature Act 2010, the magistrate court did not have the jurisdiction to hear the case as the amount claimed by the Plaintiff as compensation in the defamation case before the Magistrate exceeded 5 million Rufiya. The High Court rejected the application made by the Appellant by stating that the claim submitted by the Plaintiff to the Magistrate court 'is a defamation matter, and therefore the amount claimed as compensation cannot form the subject matter of the case, since the amount to be awarded as damages by the magistrate is discretionary.'

Re Thinadhoo Finivaage[4]

The Civil Court dismissed an application made by Bank of Maldives to enforce a mortgage of a property named *Finivaage* situated in G.Dh Thinadhoo Island. Pursuant to Section 69 of the Judicature Act, the Civil Court held that the court in Malé did not have jurisdiction to hear the application on the ground that the defendant had his permanent address in G.Dh Thinadhoo, was resident in that island and the property was also situated in G. Dh. Thinadhoo. Furthermore, the mortgage agreement was registered in G. Dh Thinadhoo Magistrate Court.

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[3] High Court case No. 2012/HC-A/33, decided on 27th February 2012.

[4] High Court case No. 2011/HC-A/75, decided on 29th June 2011.

The Appellant argued that the decision made by the Civil Court was contrary to Section 70 of the Judicature Act which states that 'in cases where there is conflict of jurisdiction prescribed for a particular court in the Act and the territorial jurisdiction provided for the courts is in accordance with Article 69 of this Act, the court which shall adjudicate the matter is the court which has the special jurisdiction over such matters.' Furthermore, the Appellant argued that as there was a conflict of jurisdiction in this case, the court which had special jurisdiction for the purpose of Section 70 of the Act was the Civil Court in Malé.

In this case the High Court, while upholding the decision of the Civil Court, stated that as the subject matter involved in this case was less than Maldivian Rufiyaa 5 million, the jurisdiction of the Magistrate Court was not excluded pursuant to Section 70 of the Judicature Act.

Re Bilaifahee Zuvaanunge Jamiyya[5]

This case relates to a claim submitted to the Civil Court by Bilaifahee Island Youth Association under a contract signed between the Association and the Government of the Maldives, represented by the Island Administrative Office of Bilaifahee Island. The Civil Court in Malé dismissed the case on the ground of lack of jurisdiction. The Civil Court, while dismissing the case held the Magistrate Court in Bilaifahee Island to be the proper court to hear the case. On appeal, the High Court upheld the decision of the Civil Court.

Mohamed Haneef v. Sakeena Hassan[6]

In this case, the Appellant challenged the jurisdiction of the Magistrate Court in Ihavandhoo Island to hear the case. This case relates to a sale and purchase agreement signed between Sakeena Hassan (the vendor, who had her permanent address at Ihavandhoo Island) and Mohamed Haneef (the

[5] High Court case No. 2011/HC-A/22, decided on 10th July 2011.

[6] High Court case No. 2013/HC-A/27, decided on 28th February 2013.

purchaser, who had his permanent address at Rasdhoo Island) for the sale of a fishing vessel (the *Saahibaa*). The Vendor filed a claim in Ihavandhoo Island Magistrate Court alleging breach of contract by the Purchaser.

In deciding the case, the High Court noted that under Schedule 5 of the Judicature Act the Magistrate Court had the territorial jurisdiction to hear all civil and criminal matters occurring in the island, unless the jurisdiction of the court was excluded by a law. Hence, regard must be had to Section 69 of the Judicature Act to see if the jurisdiction of the Magistrate Court was excluded pursuant to Section 69 of the Judicature Act. In this case, the court found that as this case related to a commercial transaction, such matters should be submitted (a) to the court in the Judicial Area where the defendant resided, or (b) to the court agreed in the contract, or (c) to a court in the Judicial Area where the contract, or a part thereof was implemented, or (d) to the court where the property, subject to potential enforcement of a judgment, was situated. Accordingly, in this case, the defendant was not resident in the island of Ihaavandhoo, the vessel was outside the territorial jurisdiction of Ihavandhoo, and the contract did not indicate the court to which disputes arising out of the contract should be submitted. Therefore, the High Court held that the Magistrate Court in the island of Ihavandhoo did not have jurisdiction to hear the case.

Parties

There may be any number of plaintiffs or defendants to an action and the names of the parties must appear at the head of the forms. An action may also be commenced against the state. If an action is commenced against the government, the Attorney General should be cited as the defendant. If there is a specific government department against which the case is filed, the claimant must also indicate such government department.

Claims against companies and other legal entities must be made against the company or such legal entity. Where an action is to be filed by a

company, an association or an individual, the rules are very similar, except for the fact that a person duly appointed by the board of directors or the executive committee must represent such legal entities. If an inappropriate party is included in an action, an application may be made to strike out such party. For example, in the case of *Mohamed Mubashir v Haleema Ali*[7] the High Court held that Haleema Ali should have claimed against Glorious Sports Club, instead of claiming against Mohamed Mubashir who was its Vice President.

Partners in a firm may sue and be sued in the firm's name. A group of persons who have a common interest in a matter or have a common grievance can give a power of attorney to a member of that group to represent them in court.

The next of kin or the legal guardian must represent mental patients and infants. An action against a deceased person must be brought against the known heirs,[8] while an heir or all heirs of the deceased can initiate an action on behalf of a deceased person.

Consolidation of matters

Where two or more causes or matters are pending in the court, the court has the power to order their consolidation on such terms as it thinks fit. The courts also do not require a party to join separate claims against the same opponent. However, the claimants are generally required to put any asserted claim entirely before the court. The purpose of requiring the claimant to put his entire claim or case in a given action is to prevent a subsequent claim based on the same subject matter or facts.[9] Similarly, the

[7] High Court case No. 2009/HC-A/114.

[8] *Ibrahim Abdul Kareem v Mohamed Najeeb* (High Court case No. 2010/HC-A/156): the High Court directed the appellant to refile the appeal against the heirs of the deceased.

[9] See: *Ahmed Shimaau v. Ibrahim Waheed Ali*, High Court case No. 2012/HC-A/215, decided on 5th September 2013.

defendant is also required to put forward any claim that he or she has against any opposing party, if it arises out of the same transaction or occurrence that is the subject matter of the opposing party's claim. In the case of *State v. Shareefa Hani*,[10] the High Court directed the Civil Court to consolidate case No. 267/Cv-C/2013 and case No. 365/Cv-C/2013 pending before the Civil Court, as both the cases were based on the same facts. The High Court also noted that the consolidation of the two actions would avoid the possibility of two conflicting judgments based on the same facts.

Summons

Once an appropriate form is submitted and court fees are paid, the court will summon the parties for the first hearing. The summons do not give details of the claim; it simply mentions the general nature of the claim, the parties to the claim, the date, and the time of the hearing.[11] Personal service is effected by an officer of the court, whenever it is possible, on the parties to the claim and their lawyers.[12] Where personal service is not possible, a copy of the summons may be left with an adult of the family living at the address.[13] If the party is a company or an organization, the summons will be delivered to its registered office.[14] If a party refuses or purposely avoids service, the court may paste the summons on the door of the residence or premises of the party refusing to take delivery of the summons or the court may order the police to produce the person to the court.[15] If the officer of the court was unable to deliver the summons on the defendant because the defendant was not living at the address given to the

[10] High Court case No. 2013/HC-A/117, decided on 30th September 2013.

[11] Section 2, Regulations Governing Court Summons*, Shareeaiy kurumaa beheygothun hedhifaivaa Qawaaidh (Rules of the Court) (6.1)* 2006*.*

[12] Ibid, Section 10 (a).

[13] Ibid, Section 10 (c).

[14] Ibid, Section 26.

[15] Ibid, Sections 10 (d), 17.

court by the plaintiff, the court would then inform the plaintiff of the same. The court would dismiss the action if the plaintiff failed to find and inform the defendant's correct address to the court within 7 days. However, if the defendant appeared in court for the first hearing, and failed to appear for the subsequent hearings, the court could take either of the following actions to force his appearance:

(a) make a public announcement informing him to appear in court; or
(b) issue a court order directing the police to bring him to the court.

Should a party fail to appear in court despite any one of these measures, the court has the power to issue a judgment in the absence of the party who failed to appear in court.[16]

Re State Bank of India[17]

In this case, the Appellant had filed a claim (Case No.47/MC/2010) at the Civil Court against the defendant to recover unpaid loans with interest in the amount of US$3,553,231.83. While attempting to serve the summons on the defendant, the Civil Court found that the defendant did not reside at the address given in the claim form submitted by the Appellant. The court then asked the Appellant to ascertain the correct address and inform the court in writing within a period of seven days, failing which the claim would be dismissed. The court later dismissed the claim after the Appellant failed to respond within the given period. The Appellant appealed the Civil Court's decision to the High Court.

The majority of the High Court bench upheld the Civil Court's ruling. The High Court held that the provisions in Section 28 of the Regulations Governing Court Summons allowing judgment in default of appearance

[16] Ibid, Section 28; see also, *Maredium Services Pvt. Ltd. v B. Thulhaadhoo Council*, High Court case No. 2013/HC-A/31, decided on 29th September 2013.

[17] High Court case No. 2010/HC-A/131, decided on 16th June 2011.

would not apply, as the circumstances provided therein did not arise in this case. According to the High Court judgment, the second limb of Section 28, which permits the court to give a judgment *in absentia*, would only arise where a respondent moves to an address after he had successfully been served with a summons and had appeared before the court at least once. Therefore, the majority of the High Court bench held that the necessary procedural requirements were not fulfilled to allow trial *in absentia* in the case before them.

Where the plaintiff fails to appear in court, without a reasonable cause, on the date and time stated in the summons, the actions filed by the plaintiff may be dismissed by the court or it may issue a judgment based on the evidence submitted to it.[18]

There are international treaties that deal with lawsuits initiated in one country that require service of process in another.[19] However, the Maldives is not a party to any such treaty. According to Sections 19 and 20 of the Regulations Governing Court Summons (2006), Maldivian courts can only issue a summons to be served in a foreign country where the party in question is a Maldivian who is residing abroad. Such service is effected either by registered post or through Maldivian embassies.

The claim form

An action at the Civil Court must be filed using the appropriate form designated by the court for that particular type of action. There are several forms by which an action may be initiated. The following are some examples of the types of actions for which there are separate forms:

- Contentious matters

[18] Ibid, Section 28.

[19] For example, the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters.

- Land matters
- Defamation
- *Hiba*/Gift
- Inheritance
- Division of property
- Ownership of property

The complaint or the claim form prepared by the plaintiff must set out a summary of the claim and the basic facts upon which the claim is based, showing that the plaintiff is entitled to the relief that he is asking from the court, which he must state clearly. The claim form should be submitted to the court together with all the evidence the plaintiff has in his possession to support his claim. Where the plaintiff intends to summon any witnesses to testify in court, a list of the witnesses must be listed in the claim form. The claim form may be amended with leave of the court.

First hearing

In the first hearing the plaintiff will read out the statement of claim he has submitted to the court. During this hearing, a copy of the statement of claim submitted to the court by the plaintiff and copies of all documents submitted in support of the plaintiff's claim will be handed over to the defendant. Thereafter the defendant is normally given 10 days to file a reply together with the evidence in support of his defence. In this hearing either party may make applications, such as applications for interim orders, objections to jurisdiction of the court, or other procedural objections.

Defence and counterclaim

The defendant must file his defence within the period allowed by the court. This happens usually on the date of the next hearing. Although the plaintiff

has sued the defendant, the defendant may include any counterclaims with his defence; however, the counterclaim must have some connection to the subject matter of the original claim made by the plaintiff. Accordingly, the defendant can raise his claim and plead it in the same document as his defence.[20] The counterclaim puts the defendant in the position of the plaintiff in respect of the counterclaim. A counterclaim must be distinguished from a set-off.

Third party interveners

A party who has a direct interest in a matter between the plaintiff and the defendant may make an application to the court to join either as a defendant or as a plaintiff in the case to protect his own interests.

In the Civil Court case of *Ali Faiz v. Aishath Nami* (639/Cv-C/2011), Mohamed Mahin, the Defendant's husband, made an application to join the action as a third party intervener. In a procedural decision, the court refused to allow Mohamed Mahin's application on the ground that he could not establish his own interest in the case, separate from his wife's interest; and what he had pleaded in his application was essentially the same as that stated by his wife in her defence.

Adding third parties by court

In *Re Ibrahim Qasim*[21] the Supreme Court directed the courts to include a party as a defendant where such party's decision was being challenged in the court. In the High Court case of *Mundoo Island Council v Ahmed*

[20] See: *Ahmed Shimaau v. Ibrahim Waheed Ali*, High Court case No. 2012/HC-A/215, decided on 5th September 2013.

[21] Supreme Court Case No. 2009/SC-A/17.

Thoufeeq[22] the court overturned the decision of the Magistrate Court on the ground that the Island Council was not made a party to the action when it ruled on the validity of an agreement signed by the Council.

Procedural objections (*Ijuraaee Iuthiraz*)

Applications for procedural decisions (*Ijuraaee Ninmun*) are usually made in the first hearing. However, they can be raised at any stage of the trial, both orally and in writing. Even if an objection or an application is made orally, the parties are entitled to a decision in writing. These decisions can be appealed to the High Court.[23]

In most procedural points, objections and applications, the defendants request the court to strike out the action altogether. This is a very aggressive act on the part of a litigant and if successful it can result in the opponents' action being struck out or dismissed by the court. The following are the usual grounds for dismissing an action:

1. If the claim is scandalous, frivolous or vexatious.
2. If the court has no jurisdiction.
3. If the claim is an abuse of the process of the court.[24]
4. If the claimant has not gone through a process required by a law, regulation, or by a contract.[25]

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[22] High Court case No. 2012/HC-A/104.

[23] *World Link Travel Pvt. Ltd v. Ministry of Tourism*, Supreme Court case No. 2011/SC-A/32.

[24] In *Fathimath Ibrahim v. Ministry of Tourism*, (Civil Court case No. 2076/Cv-C/2012) the Civil Court refused to hear an application for an interim order made by the Plaintiff on the ground of abuse of the process of the court.

[25] In the case of *Dhivehi Rayyithuge Party v. Umar Naseer*, (2011/HC-A/165) the High Court held that the party applying to the court for a remedy must first exhaust the internal remedies available to him. Furthermore, in the Civil Court case *Villa Shipping and Trade Pvt. Ltd v. Ministry of Tourism* (Case No. 2547/Cv-C/2011, decided on 24th October 2012) the case was dismissed on the ground that the plaintiff had failed to exhaust the dispute resolution procedure stipulated in the agreement signed between the parties.

5. For want of prosecution.

Interim Orders and Injunctions

Applications for interim orders must be made on a designated form. Generally, such applications are heard *inter-parte*. However, in some instances the court may issue interim orders without having a hearing at all or may conduct an *ex parte* hearing.[26]

Rule No. 295 of the Rules of the Court[27] describes the circumstances in which a court may issue an interim order. It provides as follows:

> 1. The Court, on advice of the Chief Judge, shall issue temporary orders and measures requested by parties to a claim provided such application is submitted by a party to the claim.
>
> 2. The Order or measure enumerated under subsection (1) herein may continue to remain in force until such time as may be directed by the Court and is limited only by such time as when the final Judgment conclusive in the matter is issued. In matters where enforcement is a foreseeable and probable difficulty, the Court, on advice of the Chief Judge, may also extend the provisions of the temporary measure or order beyond Judgment until such time as the Judgment may be enforced.
>
> 3. The Order or measure under subsection (1) herein may only be granted where the Court is satisfied that acting otherwise is to the detriment of a party involved.
>
> 4. (a) The Civil Court may award temporary or preventive relief against:
>
> i. the defendant or respondent absconding the jurisdiction.
>
> ii. the defendant or respondent attempting to move the subject matter out of the jurisdiction of the court.

[26] In *Maldives Police Service v Maldivian Democratic Party*, High Court Case No. 2012/HC-A/170 relating to Usfasgandu area, the High Court held that it is lawful to issue interim orders *ex parte*; see also, *Maafushi Council v. State,* High Court case No. 2011/HC-A/53.

[27] *Shareaiy kurumaa beheygothun hedhifaivaa Qawaaidh (6.1), 2003*.

iii. the defendant or respondent attempting to tamper so as to devalue or lessen the subject matter.

iv. apparent reasons to believe the final and conclusive judgment to be frustrated.

v. the potential loss that may befall any party.

(b) The Court shall have discretion to order a bond to be placed as surety against the party applying for temporary relief enumerated under subsection (1) herein. The party upon whom a temporary order is issued may also apply to have the order lifted after placing a bond as surety against his actions.

5. (a) Either party to a claim may petition the Court to remove a moveable or immoveable property from anyone's possession and place it under the charge of a Court determined special Custodian until such time a final and conclusive Judgment may be reached by the Court provided there are reasons to believe that continued possession on part of such party may mean loss or damage to such property.

(b) In determining the special Court appointed Custodian under subsection (a) herein, the Court shall have due regard to the consensus of the parties and shall determine on the volition of the Court only if such consensus cannot be reached.

6. (a) In engaging the special Court appointed Custodian; the Court shall outline to him his duties, powers, rights, prerogatives and duration of his engagement. The Custodian so appointed shall employ a special degree of care upon the property so entrusted and shall diligently attend to its affairs. The Custodian shall produce to the Court proper accounts of all income and expenditure relevant to the property so entrusted. No substantive measure may be taken by the Custodian upon the property unless with the permission of the Court except in cases of general administrative matters.

(b) Any party applying for temporary relief under these Regulations shall do so in writing outlining the need and basis for such an Order. Upon application and upon satisfaction of the Court that all proper procedures have been met and provided the Court feels is just and equitable to do so, the Court shall issue the temporary Order immediately. Such Order shall have its basis and duration included therein as well.

The High Court has applied section 295 of the Rules of Court (2003) in several cases.[28]

Zahir Adam v Guraidhoo Island Council[29]

The case involves an application for enforcement of the Supreme Court's decision issued earlier[30] which had declared that Mr. Zahir Adam enjoyed no rights to the land in question where he had been running a Boat Yard, and asked him to vacate it. The Island Council applied to the island's Magistrate Court, which decided that the respondent's property at the Yard was not to be cleared and that the respondent was temporarily restrained from removing anything unless and until the arrears had been cleared. Mr. Zahir Adam maintained all the while that the arrears were a matter still in dispute and that without a proper judgment as to the lawfulness of the imposed charges, there was no legal duty upon him to pay the demanded figure. In overturning the Court Order, the High Court observed the necessary law that triggers a party's rights to temporary relief pending judgment in a civil matter.

> 'It can be established that even if a Judge has discretion in ordering temporary relief in cases where unfair prejudice befalls a party if such relief is not granted pending decision of the matter applied for, this discretion is triggered as a preventive measure only if there is reasonable evidence suggesting:
>
> i. a risk of the respondent absconding;
> ii. the respondent was attempting to destroy, waste-off or move money or property out of the jurisdiction of the Court;
> iii. any act that may amount to a material frustration of claim; or
> iv. lack of interim measure may mean irreparable damages to the applicant'.

[28] High Court case No. 2010/HCA/245; See also, *Ministry of Tourism Arts and Culture v. Gazeera Pvt. Ltd* (High Court case No. 2011/HC-A/91) decided on 9th February 2011.

[29] High Court case No. 2010/HCA/245.

[30] Ibid.

Nexbis Ltd. v Anti-Corruption Commission[31]

The Anti-Corruption Commission (ACC) had issued a directive upon the Department of Immigration and Emigration on 24th January 2010 under which the Department was required to cease all efforts under the *Maldives Immigration Border Control Systems* (MIBCS) project undertaken by MIBCS pursuant to the Concession Agreement signed between the Government and the Petitioner. The directive also required a re-tender in line with the revised guidelines issued by the National Planning Council or the Cabinet of Ministers. When the Department failed to comply, the ACC sought the Court's intervention in the matter. The Civil Court dismissed the claim on several grounds that the directive was both *ultra vires* and premature.[32] The Commission filed the appeal and asked for an interim order temporarily restraining the respondent from carrying out any works in furtherance of the MIBCS project until the High Court awarded its final judgment. The Court obliged on 16th July 2012 with it Order No.: (OTHR)95-B2/94/2012/1, and the Third Party Intervener at both the Civil Court and the High Court, *Nexbis Ltd., Australia* sought the appeal of the same, in turn, at the Supreme Court. In this case where the applicant, in support for its arguments, heavily relied on the principles laid down in the well-known and leading case *American Cyanamid* [1975] AC 396, the judgment of the unanimous bench of the Supreme Court highlighted that:

> 'While it can be ascertained that the Order (in question) was intended by the High Court as temporary relief against irreparable loss until such time as a permanent order and eventual judicial endorsement can be attained in the High Court matter no.: 105/HC-A/2012, the discretionary prerogative of the Court in such matters of temporary relief is never an explicit power and there are general conditions to fulfil before such temporary injunctions may be granted by a Court. They are:
>
> a) There is a clear possibility of a compromise of the applicant's

[31] Supreme Court case No. 21/SC-A/2011, decided on 27th August 2012.

[32] *Anti-Corruption Commission v Department of Immigration & Emigration,* Civil Court case No. 2158/Cv-C/2011.

material right or lawful privilege (*fumis boni juris* - presumption of sufficient legal basis). It can only be established that there is such a legal rule that protects such material right or lawful privilege in addition to the satisfaction of the Court that there exists sufficient facts that forms the basis of such possibility.

b) There is a risk posed by the possibility of the time taken to complete the trial (*periculum in mora*). This means that the time taken ordinarily for such proceedings would mean irreparable harm or loss to the applicant.

c) The applicant fulfils the *locus standi* necessary.'

Since the Supreme Court has laid down the guidelines for interim orders in *Nexbis Ltd. v Anti-Corruption Commission*, legal practitioners now refer to these guidelines in order to decide whether or not a court is likely to grant an interim injunction to restrain a potential defendant from the matters of which the client is complaining.[33]

The decisions of the courts also make it clear that an interim order would not be granted if the relief sought by the interim order and the final judgment of the case are identical.[34] Furthermore, the Civil Court would also not grant an interim order where the damages are an adequate remedy.[35] In *Ministry of Tourism v. Gazeera Pvt. Ltd.;*[36] the High Court held that the court has power to issue an interim order 'against a third party who is not a party to the litigation.' The party upon whom a temporary order is issued may also apply to have the order lifted after placing a bond

[33] Ismail Wisham, 'Vaguthee Amuru, - The law on Civil Temporary Relief in the Maldives', *Maldives Law Review,* [2013] 2 MLR, 31.

[34] See for example, *Nexbis Ltd. v. Anti-Corruption Commission*, Supreme Court case No. 21/SC-A/2011, decided on 27th August 2012.

[35] See, Civil Court interim order decision No. BCR-8/2012/02 in *Maldives Tourism Development Corporation Ltd. v. Ministry of Tourism*, in Civil Court case No. 2490/Cv-C/2010; Civil Court interim order decision in *Fathmath Naseera v Village Construction,* Civil Court case No. 2196/Cv-C/2012.

[36] High Court case No. 2011/HC-A/91, decided on 12th June 2011.

as surety against his actions.[37]

Res judicata

The important doctrine of *res judicata* has two main branches:

a) A party generally may not re-litigate a claim decided by a valid and final judgment.
b) A party generally may not re-litigate any issue actually litigated and determined if the determination was essential to a valid and final judgment. If the two actions were on the same claim, direct estoppel applies. If the two actions were on different claims, collateral estoppel applies.

Res judicata should be distinguished from

a) *stare decisis*;
b) law of the case;
c) former recovery;
d) estoppel; and
e) election of remedies.

Certain non-parties to an action in certain circumstances may also be subjected to the same rules of *res judicata* as are the former parties. The basis for this treatment is because some sort of representational relationship may exist between the former party and the non-party.

Anupama & Ors v. Sharifa Hani[38]

(Appeal of Decision on Procedural Issue)

37 *Martin Antony Morris v. Asia Pacific Super Yachts Pvt. Ltd*., High Court case No. 134/HC-A/2013.

38 High Court case No. 2013/HC-A/130, decided on 20th August 2013.

The Appellants were the doctors at the public India Gandhi Memorial Hospital (IGMH) responsible for the care of the Respondent, Sharifa Hani, when she was admitted to give birth. A complication during delivery had caused a condition called shoulder dystocia in Hani's baby, after which the child was decapitated. Hani had claimed at the Civil Court (Case No. 267/Cv-C/2013) against the Appellant doctors for negligence. At the same time she was already pursuing a claim at the Civil Court against the Ministry for Health upon the same facts and arguments and asking for the same amount in damages (Case No. 365/Cv-C/2013). During the first hearing, the Appellants raised a procedural issue asking the court to dismiss the suit against them. The Appellants referred to the doctrine of *res judicata* established in Supreme Court Order No. 2011/SC-SJ/03 arguing that it should be applied to preclude the case against them on the basis that a case based on the same facts, and asking for the same remedy, was being pursued by the Respondents against the Ministry of Health. Reference was also made to an earlier decision of the Civil Court (Case No. 822/Cv-C/2012, wherein the court refused to allow the pursuit of two concurrent and parallel actions arising out of the same transaction, although both actions was pursued against different parties) asking for it to be applied to the case at hand. However, the Civil Court dismissed the procedural issue upon the following grounds;

1. That the High Court set down conditions for the application of the doctrine of *res judicata* in the earlier decision of case No. 2012/HC-A/305 which were not met.

2. That it is an established principle of law which is also found in the Interpretations Act (No. 4/2011) for judges at the same court to differ when deciding cases of a similar nature given that reasons for the differing judgments are provided.

The Appellants then appealed the Civil Court decision on the procedural issue to the High Court. The Appellants submitted the following arguments on appeal:

> That the Civil Court's decision on the procedural issue contradicted previous rulings of the court with regard to preclusion of a claim

> which is based on the same subject matter and facts and seeks the same remedy as sought in a case already before the same court. The Appellant argued that the new claim should be precluded on the basis that the final findings and judgments of both the claims might contradict each other, especially as the two actions were being heard by two different judges of the same court simultaneously. Alternatively, the court should have ordered the consolidation of the two actions.
>
> That the Civil Court's decision contradicted Supreme Court Order No. 2011/SC-SJ/03 which bars a judge from considering a case if a decision made therein would contradict the ruling made by a judge at the same court (or same level court) in a case involving the same subject-matter, facts and remedy sought.

The High Court upheld the Civil Court's decision and allowed the case against the Appellants to proceed in the lower court. With reference to the conditions set down in its earlier ruling in case No. 2012/HC-A/305, the High Court decided that the doctrine of *res judicata* would not apply to the procedural issue on appeal. The High Court's earlier decision in its case No. 2012/HC-A/305 sets out that the principle of *res judicata* will only apply if the following conditions are met*;*

1. The facts upon which the issues that were raised or could have been raised in the later suit form the subject matter of a previous suit decided by a court of law.

2. The parties to the later suit were the same parties to the previous one.

3. The court had reached a final decision in the previous suit.

The High Court found that the above conditions were not met with regard to the present claims in 267/Cv-C/2013 and 365/Cv-C/2013, because the parties against whom they were brought and the negligence of which they were accused were not the same. The suit in 365/Cv-C/2013 alleged that the doctors in charge of taking care of Hani at the time of the delivery of her baby had breached the standard of care, resulting in the death of the baby due to shoulder dystocia and its decapitation. The claim also alleged that the doctors in charge of Hani's care and the hospital had been

negligent in caring for her post-delivery. On this basis Hani had brought the second claim (267/Cv-C/2013) against the Ministry of Health accusing negligence on their part for failure to set down adequate procedures and protocols for the provision of health services. The claim further mentioned an inquiry carried out by the Human Rights Commission, which found the Ministry liable in that respect.

Therefore, in this case, the High Court ruled that the Appellant had failed to prove circumstances requiring the application of the doctrine of *res judicata* as set down in Supreme Court Order 2011/SC-SCJ/03.

Trial

Civil proceedings begin when a claimant files a claim form. Before the claim form is processed by the court, the registrar of the court will vet the claim form. The registrar would usually check the form to see whether the claim is submitted in the correct form, all the necessary information is given, and the court has jurisdiction to hear the case. Any decision of the registrar may be appealed to the High Court. Once the claim form is submitted to the court and court fees are paid, the plaintiff and the defendant are summoned to the court for the first hearing. During the hearing, the plaintiff or his/her lawyer reads out the claim form. After the claim form is read before the judge who has been assigned to conduct the trial, the judge would usually ask the defendant to respond to the claim, at which time the defendant would usually ask for time to prepare and submit a written defence to the claim made by the plaintiff. It is rarely that a defendant would choose to orally submit his defence, unless he or she does not want to contest the claim. If the defendant does not wish to contest the claim the plaintiff or the defendant may ask the judge to give a judgment.

If the defendant chooses to defend by submitting a written defence, the judge would order the defendant to submit the written defence during the next hearing. Usually the judge would fix the date for the next hearing

before the conclusion of the first hearing. The second hearing usually takes place within 14 days from the date of the first hearing, unless there are applications relating to procedural issues or interim measures made either by the plaintiff or the defendant. If there is such an application the judge would have the second hearing at an early date, depending on the urgency of the application made, to deal with such an application.

Unless the plaintiff or the defendant has filed an application or a motion in the first hearing, the defendant would submit his or her reply to the plaintiff's claim, in the second hearing. The defendant or his/her lawyer would read out the defendant's reply. The plaintiff would then be asked to submit his/her written reply to the defendant's reply. These exchanges of written submissions would continue until the parties have exhausted their arguments. These written exchanges may also be accompanied by any documents in support of the party's arguments. During these exchanges of written submissions, a party could request the judge to compel the other party to produce any document or evidence in such party's possession. The judge would then decide to summon witnesses. First, the witnesses for the plaintiff would be asked to testify. These witnesses may be cross-examined by the opposing counsel. The judge may choose to examine the witnesses and may also clarify evidence from the parties.

After the witnesses have been called, the judge would direct the parties to summarise their arguments. The trial would end with both parties' counsels summing up the evidence and making submissions on the relevant law.

Judgment may be given immediately after the trial or, in cases that are more complicated, it will be reserved until a later date when the judge has reflected on the issues.

The burden and standard of proof

The principle of burden of proof is associated with the Latin maxim

'*semper necessitas probandi incumbit ei qui agit'*, which means: 'the necessity of proof always lies with the person who lays charges.'[39] In civil law cases, the burden of proof requires a plaintiff to convince a judge of the plaintiff's entitlement to the relief sought. This means that the plaintiff must prove each element of the claim, or cause of action, in order to recover.

In civil cases, the required standard of proof is known as the 'balance of probabilities.' In simple terms, the balance of probabilities will be met if a person can successfully establish that the claim he is making is more probable than not. This can be contrasted with the standard of proof in criminal cases, which is 'beyond reasonable doubt', meaning that the prosecution must bring evidence of such a standard that there would be no reasonable doubt in the mind of a reasonable person that the accused is guilty.

Judgment

Civil judgment is the final order of a court in a civil lawsuit. A civil judgment may include a declaration of rights and responsibilities, a finding that one party owes money to the other, or could be many other things depending on the facts and circumstances of the case. A valid judgment resolves all the contested issues and terminates the lawsuit.[40] It states who wins the case and what remedies the winner is awarded. Civil remedies include money damages, injunctive relief, or both. Judgment should be in writing and must clearly show that all the issues have been adjudicated. In *M. Beach Corner, Mohamed Jameel & Others v. Zahir Adam*[41]

[39] See: *Ahmed Nashid v. Mohamed Musthafa*, Supreme Court case No. 2010/SC-A/02, decided on 6th July 2011; *Mohamed Shafeeq v. Maldives Customs Service,* Civil Court case No. 541/Cv-C/2010, decided on 11th August 2011;

[40] See: *State Bank of India v. Guardian Agency*, High Court case No. 2010/HC-A/248, decided on 11th December 2013.

[41] High Court case No. 2008/HC-A/296.

the High Court held that the court had no power to give a judgment on a matter not specifically sued for by the Plaintiff.[42] In the High Court case of *Hussain Fayaz v Housing Development Corporation Ltd*.[43] the court discussed at length the manner in which a judgment should be written.

Statute of Limitation

In some civil matters, if claimants do not exercise their rights within a certain period stipulated in a law, they will be barred from bringing a claim to the court. For example, parties who wish to claim against the estate of a deceased person must do so within 60 days from the date of his death.[44]

Costs

Maldivian courts do not award costs of litigation, including legal fees, in the absence of agreement between the parties about the costs prior to the court proceedings.[45]

Appeal

A party may file an appeal within 14 days from the pronouncement of the judgment.

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[42] See also: *State Bank of India v. Guardian Agency*, High Court case No. 2010/HC-A/248, decided on 11th December 2013.

[43] High Court case No. 2011/HC-A/81, decided on 30th January 2012.

[44] Law No. 25/75 (Law relating to claims on the estate of the deceased persons). This statute has been generally interpreted by the court in a very strict manner. However, in the case of *Mohamed Jameel & Others v. Zahir Adam*, (High Court case No. 2008/HC-A/296) the High Court gave a more liberal interpretation to Law No. 25/75.

[45] See: *Mohamed Adam v. Ibrahim Rasheed*, Civil Court case No. 577/Cv-C/2011, decided on 19th September 2011.

In *Mohamed Saeed v Attorney General* (High Court case No. 2012/HC-DM/01), the High Court dismissed the case on the ground that the petitioner had made oral submissions to the court, which had contradicted his written application.

Enforcement of Judgments

Once a party to the litigation has the judgment order, it can be enforced. If the party against whom the judgment was made has failed to comply with the judgment, the other party can apply to the court to have the judgment enforced. There are two different forms: one for making application to enforce a money judgment, and another form for making an application to enforce a declaratory judgment or a non-money judgment. Where an appeal is lodged against a decision of the lower court on a civil matter, the High Court would grant a staying order to suspend the enforcement of the lower court judgment until the High Court has decided on the appeal case.[46]

Enforcement of non-money judgments

The application has to be made in the appropriate form. The application should be submitted together with a copy of the judgment. Once the application is filed, the court will summon the parties for an enforcement hearing. If the party is found to have violated the order of the court, the court has the following options to enforce the judgment:

a) impose a fine.
b) imprison the offender to a term not exceeding 6 months or banish him for a term not exceeding 6 months.
c) order the police to execute the judgment.

[46] Supreme Court's *Mandamus* Order No. 2011/SC-SJ/04, dated 21st April 2011.

Enforcement of money judgments

If a judgment debtor fails to satisfy a judgment debt, then the judgment creditor can apply to the court to have the judgment enforced. Where the judgment debt is a secured debt, the court would enforce the judgment by ordering the sale of the property. Where the judgment consists of an unsecured debt, the court will take steps according to the Regulations Governing the Enforcement of Unsecured Judgment Debts 2006. Enforcement procedures differ depending on whether the judgment debtor is a natural person or a corporate entity.

Enforcement against a natural person

Upon application the court will, after considering the interests of the creditor and the financial position of the judgment debtor, take either of the following actions:[47]

a) order sale of the debtor's assets forthwith towards satisfying the debt and declare the debtor a bankrupt person; or

b) order the debtor to comply with the judgment and impose a penalty under Section 2 of the Regulations.

The penalties that the court can impose under Section 2 increase in severity depending on the number of times a creditor has initiated proceedings due to the debtor defaulting on the judgment debt. They are;[48]

i. upon the first application, one month's house arrest;

ii. upon the second application, two months' imprisonment or two to three months' banishment; and

iii. upon the third application, two to four months' imprisonment or

[47] Section 3.

[48] Section 2.

three to six months' banishment.

If the court imposes a penalty as above, the next proceeding can only be brought at the end of a specific time period after the debtor serves his penalty. A second application to the court can be made one month after, a third can be made two months after and the fourth and final application can be made only three months after.[49]

If proceedings are brought for a fourth consecutive time, the only available remedy is to sell the judgment debtor's assets and declare the debtor a bankrupt person. Where a judgment debtor is adjudged a bankrupt, the judgment creditor can bring no further action to the court for recovery of the debt regardless of whether the debtor's liquidated assets can satisfy the debt or not. [50]

Enforcement against a natural person under detention

If the judgment debtor against whom a judgment creditor wishes to enforce a judgment is under detention, the court will follow either of the following courses after considering whether the debtor's financial position allows him to settle the debt while remaining in detention:[51]

a) If his financial position so allows, the court must order liquidation of his assets towards satisfaction of the debt; or

b) If he lacks the financial capacity, the court can suspend the recovery action for a period of six months after the release of the judgment debtor from prison.

Enforcement against a company

Enforcement proceedings against a company formed under the Companies Act 1996 will progress in two stages. Following a first action the court may

[49] Section 11

[50] Section 4

[51] Section 12

either:[52]

a) order the judgment debtor to comply with the judgment and impose penalties under Section 88 (a) of the Penal Code (i.e impose a fine);[53] or

b) order the company to be wound up and liquidate its assets towards satisfaction of the debt.

If the judgment creditor brings further action after the debtor fails to comply with an order made under a) above, the court can take final action under Sections 18, 74, 80 and/or 91 of the Companies Act to liquidate the assets of the company.[54]

If a suitable person does not appear in court to represent the company at any stage, the court may order a director or directors of the board to represent the company. The court can also order the passports of such directors to be impounded.[55]

Interim relief

Under Section 2 of the Regulations, upon the first application made by a judgment creditor for the enforcement of a judgment debt, the court can make the following orders:[56]

a) An order to impound the judgment debtor's passport to restrict his travel abroad;

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[52] Section 13; see also, *Chaman Enterprises Pvt. Ltd. v. Bank of Maldives*, High Court case No. 2009/HC-A/245, decided on 17th October 2012.

[53] *Mohamed Hassan Kaleyfaanu v. Unimax Pvt. Ltd*., Civil Court Case No. 1879/Cv-C/2012, decided on 28th November 2012.

[54] Ibid

[55] See, *Re Aishath Shihab,* High Court case No. 2013/HC-A/250, decided on 22nd August 2013.

[56] Section 10

b) An order to search or freeze the bank accounts held by the judgment debtor;

c) An order for the sale of property held by the judgment debtor or payment of rent due from the lease of such property towards satisfying the debt directly to the judgment creditor;

d) An order rescinding the lease, sale, gift, mortgage or bequest of property owned by the judgment debtor if such transaction was entered into six months prior to the initiation of judgment debt enforcement proceedings;

e) An order for the sale of property owned by the judgment debtor, his spouse or his child if the court is satisfied that such property was acquired using the loan which forms the judgment debt;

f) An order to publish information pertaining to the judgment debtor; and/or

g) An order upon the judgment debtor's employer to pay wages due to the judgment debtor towards satisfaction of the judgment debt.

Out of court settlement

If, during proceedings, the parties reach agreement outside of court for the settlement of a judgment debt the court will uphold that agreement and order repayment in accordance with its terms. However, if the judgment debtor fails to pay in accordance with the agreement, the judgment creditor can initiate fresh proceedings for enforcement of the judgment debt.[57]

Suspension of enforcement proceedings due to debtor's financial incapacity

If the court finds that the debtor is able to pay only part of the judgment debt due to his financial position, then the court may recover the amount

[57] Section 7

and suspend further enforcement proceedings for a maximum period of 1 month.[58]

[58] Section 8

Chapter 10

CRIMINAL PROCEDURE

Criminal procedure consists of rules governing the processes and proceedings through which the state enforces substantive criminal law. It guides the police in the detection and investigation of crime and the detention of suspects and provides directions to defence attorneys, prosecutors, and judges in the prosecution and punishment of offenders and in the appeal of verdicts.

There is no Act of Parliament or code of criminal procedure in the Maldives. The general rules of criminal procedure are found in a patchwork of regulations made by the Ministry of Justice before 2008 and subsequent regulations made by the Supreme Court and principles laid down in cases decided by the courts. Apart from these general rules of criminal procedure, there are distinct rules of criminal procedures in the Narcotics Drug Act 2011 (Law No. 17/2011), and the Law on Special Criminal Procedures Relating to Sexual Abuse of Children (Law No. 12/2009). A comprehensive Bill on criminal procedure has been pending before the Parliament since 2010.

Article 44 of the Constitution states that the application of the criminal law or criminal procedure, including the conduct of investigations, criminal proceedings and enforcement of sentences, should only extend to the accused person and it should not affect the legal rights or obligations of any other person.

Commencement of a Criminal Action

Criminal investigations are conducted in the Maldives by a number of law enforcement agencies. The largest and the principal law enforcement

agency in the Maldives is the Maldives Police Service (MPS). Investigation of crimes of a special nature may also be initiated by agencies created by a law for that purpose, such as Anti-Corruption Commission, Maldives Customs Service and Department of Immigration and Emigration.

A criminal action can be initiated either by a complaint by the offended party, a witness, or a police officer or by information received by an investigative authority, or as directed by the Prosecutor General under Article 223 (f) of the Constitution. Any member of the public has the right to lodge a complaint or a report regarding the commission of a crime. When such a report is lodged, the MPS or the concerned law enforcement agency is duty bound to act upon such a report. Once a case lodged by an individual is concluded, the MPS or the concerned law enforcement agency must inform the individual of the outcome of its investigation and the course of action taken by the law enforcement agency regarding such report or complaint. There is no requirement for the investigative agencies to report the status of an ongoing investigation to the Prosecutor General's Office.

Police Powers

The Maldives Police Service is entrusted with the responsibility of maintenance of public order and the prevention and detection of crimes in the country.[1] The general powers of the police are set out in the Police Act 2008.[2] Under the Police Act 2008, the police have, subject to law, the power to seize, arrest, search and detain individuals and investigate any offences and find, locate and preserve any relevant evidence. Police officers also have the power to interview any person who may be able to assist the investigation. The police may also compel the attendance of any person who appears to be acquainted with the circumstances of a case under

[1] Article 244, Constitution of the Maldives, 2008.

[2] Sections 6, 7 and 8, of the Police Act (Law No. 5/2008).

investigation, and interview them and record their statements.

Arrest, search, seizure and interrogation

Searches and seizures

The term 'searches and seizures' includes examination of persons or places for the discovery of property stolen or otherwise unlawfully obtained or held, or of evidence of the commission of crime, and taking such property or evidence into legal custody for presentation before the court.

Article 47 (a) of the Constitution[3] says that 'no person shall be subject to search or seizure unless there is a reasonable cause'. Article 47 (b) of the Constitution says that 'residential property shall be inviolable, and shall not be entered without the consent of the resident, except to prevent immediate and serious harm to life or property, or under the express authorization of an order of the Court'

Article 47 (a) makes it clear that the police cannot stop and search a person unless there is a reasonable cause. If the police have reason to believe that a person has in his possession stolen goods, drugs, an offensive weapon or any article made or adapted for use in committing certain offences, it may be a reasonable cause to stop and search an individual.

The police cannot search a dwelling without a search warrant issued by a court of competent jurisdiction, except to prevent immediate and serious harm to life or property. Although the police are not required by a law to obtain a search warrant to search places and property other than a dwelling, the police as a general rule conduct such searches under a warrant issued by a court. The rules relating to issuance of search warrants are found in the regulation made by the Supreme Court relating to search

[3] Article 47, Constitution of the Maldives, 2008.

warrants.[4]

Arrest

To arrest a person is to restrain him of his liberty by some lawful authority. Article 45 of the Constitution states that everyone has the right not to be arbitrarily detained, arrested or imprisoned except as provided by a law enacted by the Parliament.[5] According to Article 46 of the Constitution, a person cannot be arrested for an offence unless:

(a) the arresting officer observes the offence being committed; or
(b) the arresting officer has reasonable and probable grounds or evidence to believe the person has committed an offence or is about to commit an offence; or
(c) the arresting officer is under the authority of an arrest warrant issued by the court.

This Article makes it clear that the general rule for arresting a person is, where time permits, the arrest of a suspect under the authority of an arrest warrant issued by a court. An arresting officer can, however, arrest a person without a warrant while the crime is being committed or if the arresting officer has reasonable and probable grounds or evidence to believe that the suspect has committed an offence or is about to commit an offence.

The judicial interpretation of Article 46 of the Constitution is that the police should always arrest persons under the authority of an arrest warrant issued by the court, except where the suspect is arrested from the 'crime scene.'

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[4] Rules Relating to Search Warrants issued by the Supreme Court, http://supremecourt.gov.mv/mediafolder/q6.pdf , (The Regulation is undated), (Accessed on 21st November 2013).

[5] See for example, *Re Mohamed Hassan Didi*, High Court case No. 2011/HC—A/244, decided on 23rd October 2011.

Qasim Ibrahim v Maldives Police Service[6]

The Appellant, who was a Member of Parliament, was summoned to the police station. Upon his arrival at the police station, the police arrested him on suspicion of an alleged conspiracy to overthrow the government. Following the arrest of the Appellant by the Maldives Police Service, the Appellant was produced before a Criminal Court judge within 24 hours of his arrest. The Criminal Court judge granted an order to detain the suspect at his residence for three days. The Maldives Police Service appealed the decision to the High Court, with a request to the High Court to grant an order to transfer the Appellant to police detention. The High Court made an order for the detention of the Appellant for 15 days for potential interference with witnesses. The Appellant appealed the case to the Supreme Court.

The Appellant's appeal to the Supreme Court centred around three points: (a) that Article 49 of the Constitution does not allow the detention of a suspect for the purpose of investigation, (b) that the High Court cannot grant a relief or make an order which was not sought by the party who lodged the appeal, and (c) that the arrest was unlawful.

The Supreme Court released the Appellant, stating that the police failed to satisfy the Court as to the existence of any reason, stated in Article 49 of the Constitution, for keeping the Appellant on remand. The Supreme Court held that there was no reason or evidence to believe that there was any potential of interference with witnesses by the Appellant as claimed by the police. Furthermore, the Supreme Court, in its judgment, laid down guidelines for the arrest of a suspect without a warrant and points to be considered by a judge before making a remand order.

An arrest warrant may only be issued in respect of an offence known to law, and is obtained by depositing the facts of the alleged offence to the

[6] Supreme Court case No. 2010/SC-A/19 decided on 11th July 2010.

judge.

Arrest of a judge

No judge or magistrate, whatever his or her rank or designation may be, is above the law or Constitution and he or she must face the penal consequences of their actions. A judge or a magistrate is liable to prosecution for an offence like any other person, but in view of the paramount necessity of preserving the independence of the judiciary, certain additional safeguards are laid down in such cases. To this end, certain procedures are laid down in the Judges Act.

According to Section 12 of the Judges Act, except where a judge is caught committing a criminal offence, a judge shall only be arrested on a court order issued by a court superior to the court where the said judge is based. On the request of the investigating authority, the Prosecutor General must make the request for such a court order. Where the judge whose arrest was required is a judge of the Supreme Court, such a judge can only be arrested under an order granted by the majority of the judges of the Supreme Court.

Procedure following arrest

After notice of an alleged offence comes to the attention of an investigating authority, the authority has an obligation to conduct and conclude the investigation promptly.[7] However, no statutory guideline has been laid down about the length of time for completion of criminal investigations.

Immediately after the detention of a person, the detainee must be informed of the reasons for his arrest, that he has the right to remain silent and that he has the right to have access to legal counsel.[8] The detainee should also be given the reason for arrest in writing within 24 hours of his arrest.

[7] Article 50, Constitution of the Maldives, 2008.

[8] Article 48, Constitution of the Maldives, 2008.

Furthermore, the detainee should also be allowed a telephone call to contact family or a friend or a lawyer immediately after the arrest.[9]

Within 24 hours of arrest, the detainee should be brought before a judge, who has power to determine the validity of his or her detention.[10] The judge has the power to release the person with or without conditions, or to order the continued detention of the suspect as provided in Article 49 of the Constitution.

The following are some rights and remedies of an arrested person.

(a) The right not to be subjected to inhumane or degrading treatment or torture.[11]
(b) The right not to be subjected to more force than necessary on being arrested.
(c) The right not to be subjected to unnecessary restraint.
(d) The right to be informed of the grounds of arrest; the right to remain silent; the right to seek the assistance of a lawyer.
(e) The right to communicate with a relative, friend or a lawyer.
(f) The right not to give a statement to the police until he or she has consulted with a lawyer.
(g) The right to challenge the lawfulness of his or her arrest in a court of law.[12]
(h) The right to be presented before a judge within 24 hours of arrest.

Remand

Article 49 of the Constitution states that 'no person shall be detained in

[9] Ibid.

[10] Ibid.

[11] Article 54, Constitution of the Maldives, 2008.

[12] See for example, *Re Hassan Mohamed*, High Court case No. 2011/HC-A/255, decided on 29th May 2012.

custody prior to sentencing, unless the danger of the accused absconding or not appearing at the trial, the protection of the public, or potential interference with witnesses or evidence dictate otherwise.' The release may be subject to conditions of bail or other assurances to appear as required by the court.[13]

The remand hearing must be conducted in an open court. The Supreme Court has laid down rules relating remand hearings.[14] According to the rules relating to remand hearings issued by the Supreme Court, request for remand must be made by a form containing the information stipulated in the regulations. The regulations state that a request for a remand order must be made by the officer investigating the case; before presenting the reasons for the remand order, this investigating officer must take an oath as specified in the regulations. The judge should only grant a remand order where he is satisfied of the existence of any circumstance or reason stipulated in Article 49 of the Constitution. If the judge finds that there is no reason to issue a remand order, the suspect must be released without any condition or on bail, or with such conditions so determined by the judge to ensure his or her cooperation to the investigating officer or to ensure his or her appearance before the court.[15] According to these rules, if a person is not satisfied with a remand order, the said order may be appealed to the High Court within 48 hours.[16]

Interrogation

The police may question anyone detained at a police station. Suspects have rights and safeguards to protect them while in custody or during

[13] Article 49, Constitution of the Maldives, 2008.

[14] Rules Relating to Remand Hearing issued by the Supreme Court (The Regulation is undated), http://supremecourt.gov.mv/mediafolder/q7.pdf (Accessed on 21st November 2013).

[15] Ibid.

[16] Ibid.

interrogation. The following are some of the safeguards provided in the Constitution:

(a) The suspect has the right to remain silent, except to establish identity, and to be informed of this right;
(b) No confession shall be admissible in evidence unless made in court by an accused who is in a sound state of mind;
(c) No statement or evidence must be obtained from any source by compulsion or by unlawful means and such statement or evidence is inadmissible in evidence.
(d) Suspects have the right to have a lawyer present at any interview.

All interviews must be tape recorded; in some areas the police also video record interviews. If the suspect is under 18 years old or is mentally disabled, then there must be a parent present at the interview.

Once the investigations into the allegations are complete, the relevant investigation papers are sent to the Prosecutor General's Office.

Complaints against the police

If the police act in a way which does not comply with the law or the codes of practice, a complaint may be lodged against the MPS or an individual police officer.[17]

Prosecution

The decision to prosecute

Based on evidence collected by the police or any investigating authority, the Prosecutor General makes a determination as to whether a crime has

[17] Police Act (Law No. 5/2008).

occurred and acts appropriately. If the Prosecutor General is satisfied that sufficient evidence exists to prosecute, one of the prosecutors proceeds to draft the charge to be filed at the relevant court.

The Prosecutor General has absolute power to review or revert any decision to prosecute or not to prosecute any alleged offender, or to discontinue any prosecution, and to appeal any judgment, verdict or decision in a criminal matter.[18]

Onus Pvt. Ltd v. Prosecutor General[19]

In this case the Prosecutor General exercised his discretion under the Prosecutor General's Act not to prosecute a person who wrote six cheques knowing that he had no funds in his bank account to meet the amounts stated in the cheques. The Plaintiff made an application to the High Court claiming that the Prosecutor General's decision not to prosecute the alleged offender was contrary to the Constitution. The High Court dismissed the application on the ground that the action should be initiated at the Civil Court pursuant to the procedural decision made in Supreme Court case No. 2008/SC-J/03. The Plaintiff appealed the decision of the High Court to the Supreme Court. In this case the Supreme Court noted that this was an application made by the Appellant seeking judicial review of a decision made by the Prosecutor General. The Supreme Court noted that the nature of decisions made by the Prosecutor General whether or not to prosecute an offender falls within the judicial functions of the state. Under the Constitution, the Prosecutor General's decision whether or not to prosecute a particular offender must be made independently and without any influence from any person or authority, and these decisions are made by the Prosecutor General on behalf of the state in a judicial capacity in the criminal justice system, and therefore such decisions cannot be deemed as an administrative decision falling within Article 43 (c) of the Constitution.

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[18] Article 223, Constitution of the Maldives, 2008.

[19] Supreme Court case No. 2012/SC-A/22, decided on 25th March 2013.

Therefore, the Supreme Court held that the decision made by the Prosecutor General whether to prosecute or not to prosecute an offender was not subject to judicial review pursuant to Article 43 (c) of the Constitution.

Time

There is no time limit on the commencement of a prosecution for an offence. However, the Constitution requires the Prosecutor General to lay down the charges as quickly as possible after the completion of the investigations.[20] Furthermore, Article 43 of the Constitution provides that, in the determination of any charge against him or her, everyone is entitled to a fair and public hearing within a reasonable time.

Jurisdiction

The courts accept cases relating to offences committed within their jurisdiction. All subordinate courts possessing criminal jurisdiction have the power to conduct trials of crimes that take place within the judicial area of the respective court, unless the jurisdiction of the court is excluded pursuant to Schedule 5 of the Judicature Act or by any other statute. If the offence is one which can be tried by the court as provided in Schedule 5 of the Judicature Act, it should be filed at:[21]

a) the court situated in the same judicial area where the injured or aggrieved party is resident; or
b) the court situated at the same judicial area where the witnesses of the case are resident; or
c) the court situated at the same judicial area where the offence or part of it was committed.

[20] Article 50, Constitution of the Maldives, 2008.

[21] Section 69, Judicature Act 2010.

The charge

A charge is a written statement of complaint against an accused person in a court of law, known as *Dhauwaage Seeghaa*. The purpose of the charge is to inform the accused person of the nature and particulars of the offence with which he or she is charged. A charge is usually written in a form known as a charge sheet. Once the charge is drafted, the Prosecutor General files the charge at the appropriate court, together with the evidence to prove the allegation made in the charge.

The charge or statement of offence specifies the offence briefly and cites the section of the law the accused person is believed to have contravened. Where a section of a statute creates the offence and a different section provides for the penalty, both sections are mentioned in the charge. Where there is a section of the law enhancing the penalty, then that section is also mentioned in the charge.

The particulars of the offence should be made sufficiently clear to enable the court and the accused person to understand the nature of the offence with which the accused person is charged. It is also necessary for the particulars of the offence to be worded in a way that leaves no doubt that it is the same offence named in the statement of the offence that the accused person is alleged to have committed. Hence, the charge must state the time, date and place of the alleged crime. The description of the offence also enables the judge to know what facts need to be proven beyond reasonable doubt by the prosecution in the trial.

The general rule is there has to be a charge for each offence committed, and each charge must be tried separately. However, joinder of charges is permissible in certain circumstances.

The prosecution, at any time before the judgment, may amend the charge or charges.

Trial and sentencing

Rights of the accused charged with an offence

According to Article 51 of the Constitution, everyone charged with an offence has the following rights:

a) to be informed without delay of the specific offence in a language understood by the accused;
b) to be tried within a reasonable time;
c) not to be compelled to testify;
d) to have an interpreter provided by the state where he or she does not speak the language in which the proceedings are conducted, or is deaf or mute;
e) to have adequate time and facilities for the preparation of his or her defence and to communicate with and instruct legal counsel of his or her own choosing;[22]
f) to be tried in person, and to defend himself or herself through legal counsel of his or her own choosing;
g) to examine the witnesses against him or her and to obtain the attendance and examination of witnesses;
h) to be presumed innocent until proven guilty beyond a reasonable doubt.

Attendance

The attendance of the accused and the witnesses are compelled by summons or warrant of arrest issued by the court. If the accused is not in police custody or prison, a summons must be served on the accused personally. If the person is not at their residence, the summons may be

[22] See for example, *Adm Haleem v. Prosecutor General*, Supreme Court case No. 2011/HC-A/31, decided on 30th November 2011.

served by leaving a copy for him or her with some adult member of his or her family. If the accused is in police custody, the summons is served on the police to produce the accused before the court. If the accused is in prison, the summons is served on the Department of Penitentiary and Rehabilitation Services. If an accused person fails to appear in court, then the judge can grant a warrant for his arrest.

Legal representation

The Constitution guarantees a defendant the right to assistance of counsel during trial. If a defendant cannot afford an attorney in a serious criminal case, the government is required to provide the defendant with an attorney.[23] Such defendants receive legal representation from the Attorney General's Office. The Constitution provides that an accused shall have access to counsel at every stage of the proceedings, beginning with the defendant's initial appearance. If a defendant demands the presence of counsel during police interrogation, police must stop the interrogation until the defendant's counsel is present.

Trial procedure

Once the charges are filed in the relevant court, the accused has the right to receive a copy of all the documents submitted to the court, unless any document is a classified document which the prosecution does not want to disclose to the accused. During the first hearing the prosecution reads out the charge to the accused, and the accused is normally asked by the judge if he or she understands the charge or charges made against him or her. After the charge is explained to the accused, the accused is given an opportunity to plead guilty or to deny the charge. If the accused chooses to remain

[23] Article 53 (b), Constitution of the Maldives, 2008.

silent, such silence will be taken as a plea of 'not guilty'. The prosecution and the defence team can also use the first hearing to file motions or applications before the judge. These motions usually concern whether the court has jurisdiction to conduct the trial, whether the court should exclude certain evidence, whether certain individuals can testify, or whether the judge should dismiss all charges for lack of evidence or improper filing of a charge. There is no requirement for the notice of a defence of alibi to be made to the court before the trial.

After these preliminary stages, the accused stands trial. Both sides offer opening statements. The prosecution presents its list of witnesses and evidence first. Then the defence presents its list of witnesses and evidence. The judge is not obliged to summon all the witnesses in the list of witnesses submitted by the prosecution and the defence.

The prosecution will then proceed to lead evidence and call witnesses. After questioning by the prosecution, the defence has a chance to cross-examine each witness and the prosecution may then re-examine any matters arising from the defence's cross-examination. The judge may also question witnesses to clarify evidence. After the prosecution rests, the defence will then proceed to lead evidence and call its witnesses. After questioning by the defence, the prosecution has a chance to cross examine the witness and the defence may then re-examine any matters arising from the prosecution's cross-examination.

After the defence presents its witnesses and evidence, the defence is given an opportunity to summarize its case, and then the prosecution offers the final closing argument. After the closing arguments, the judge passes a judgment. If the defendant is found guilty the sentence is passed in the same hearing.

Appeal

Any judgment or order made by a court in a criminal case can be appealed

to the High Court within 90 days from the date of judgment. Pursuant to Section 43 of the Judicature Act, appeals may be allowed under the following circumstances.

i. Where there is a reason to believe that the decision or ruling is inconsistent with a law; or there are reasons to believe that an error was made in the interpretation or application of the law.
ii. Where a procedure preceding a decision or ruling had any of the following defects, due to which the procedure which influenced the decision or ruling became null and void:
    a) Contradiction of a procedural rule.
    b) The judge who made the decision had a legal impediment to sit as a judge in the particular case.
    c) The decision or the ruling lacked the signature of the judge or the adjudicator.
    d) The reasons for the decision or judgment were not stated.

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