

Maldives Constitution of 2008: What Makes It Stand Out from its Predecessors?

Husnu Al Suood*

Abstract: *This article provides a comprehensive evaluation of the Maldives' inability to establish a democratic and durable constitution, despite numerous attempts over the years. The Maldives has faced significant challenges in transitioning from autocratic rule to a stable democratic system. Drawing upon extensive research and analysis of historical events, political dynamics, and various constitution-building efforts, this article seeks to identify key reasons behind the failure to achieve a democratic and durable constitution in the Maldives. The analysis begins by delving into the historical context of the introduction of the first Constitution of Maldives in 1932. It then examines the series of political and constitutional changes that have shaped the country's path towards democracy. Moreover, the article explores the challenges faced in the formulation and implementation of the various constitutions. Factors such as: (a) a lack of opportunity for people's participation; (b) extensive control and power exercised by the political leaders over constitutional processes; (c) a lack of competent and an independent judiciary; (d) the literacy levels of the people; and, the economic conditions have hindered progress towards a durable constitution. Furthermore, issues of corruption and weak governance have also undermined the establishment of a democratic framework. By critically examining these factors, this article concludes that the failure of the Maldives to achieve a legitimate, democratic, and durable constitution can be largely attributed to the manner of its constitution-making.*

I. Introduction

This article evaluates why the Maldives failed to achieve a democratic and durable constitution despite its long history of constitution-building work. Since the Maldives adopted its first constitution in 1932, it has adopted seven constitutions - the constitution adopted in 2008 remains in force today. Each of these constitutions went through several rounds of amendments. In this article, I will first examine the key features of all previous constitutions and compare them with the current constitution. Secondly, I will argue that the current constitution (2008 Constitution) is significantly different from its predecessors and therefore has the potential to lay the foundation of

* Justice of the Supreme Court of the Maldives. The author was a member of the Constituent Assembly that drafted and adopted the 2008 Constitution of the Maldives.

a functional democracy in the Maldives. I will also argue that the difference between the current constitution and its predecessors results primarily from the different circumstances and the manner in which they were made. Finally, I conclude that the Maldives' failure to achieve a democratic and viable constitution results mainly from the methods employed to write and adopt its constitutions.

It is argued that the current constitution stands out from its predecessors primarily because all previous constitutions came either as devices to settle the political disputes between the ruling elites or as vehicles to drive the political and personal agendas of the leaders who were behind making them. For example, the events that led to the formation of the first constitution in 1932 was the political tug-of-war between King Mohammad Shamsuddin III, who was on the throne from the beginning of the century, and his long-time prime minister and his political arch-rival Abdul Majeed.¹ The idea of a constitution was set in motion by the Acting British Governor General in Ceylon,² after he consulted with government officials, foreign-educated elites, and religious scholars to resolve the feud between the two parties and find a solution to the controversy surrounding the crown prince and his succession to the throne.³ King Shamsuddin III, who was reigning for more than 30 years with absolute power, ultimately agreed to relinquish all his powers to the institutions created under the constitution and become a symbolic figurehead to save his throne. The king hoped that his son, crown prince Hassan Izzudin, would be able to succeed him within the new legal framework established by the constitution. The king's actions and events that followed immediately after the promulgation of the constitution demonstrated that there were personal reasons behind his decision to give a constitution to the people.⁴ Similarly, the circumstances that led to the making of the constitutions of 1942, 1953, 1954, 1968, and 1998 and several rounds of amendments that followed were motivated by the desire to achieve the personal goals of the political leaders or to consolidate their grip on power.

¹ Ibrahim Shihab, preface in Mohamed Ismail Didi, *Motor Boatge Gadubadu*, (Male, Maldives: Novelty Press, Reprint 2003), 4-9

² Mohamed Amin, '*Qaanoon Asaaseege Hayaath*', (Male', Maldives: Maldivian Government printer, 1951), p 3-4; Husnu Al Suood, *Maldivian Constitutional History, Part 1 & 2*, (2018), https://www.academia.edu/45004665/Constitutional_History_Part_1_and_2

³ Ibid.

⁴ Shihab, preface in Mohamed Ismail Didi, *Motor Boatge Gadubadu*, 4 - 9.

Contrary to the previous constitutions, the constitution-building process that led to the adoption of the 2008 Constitution was relentlessly pressured and driven by the public's desire for democracy and human rights.⁵ The public uprising against the 25-year dictatorship forced the government to give in and convene a constituent assembly to write a democratic constitution as demanded by the people.⁶ The rejection of President Gayoom's proposals submitted to the constituent assembly for their approval was a testimony of the enormous public pressure on the constituent assembly to open up the country for a new democratic era and human rights. The efforts by President Gayoom to take control of the constitution-making process through his close relatives were denied by the activism of the democracy movement.⁷ As such, the 2008 Constitution was written in remarkably different circumstances than its predecessors. Unlike its predecessors, the 2008 constitution was not a noble gift from a 'benevolent' leader who knew what was suitable for the country and its citizens. Instead, the 2008 constitution resulted from a long and arduous struggle by its people for democracy, human rights, and the rule of law.

Part II of this article will briefly discuss the concept of democracy and identify the core elements of a functional democracy on which scholars have a significant consensus. These elements will be used in other parts of the article to assess the extent to which they were incorporated into previous constitutions and compare them with the 2008 Constitution. Part III will explore the main features of the seven constitutions of the Maldives from 1932 to 2008, while Part IV will critically analyse the leading causes that made the 2008 Constitution different from its predecessors. Finally, this article concludes that the 2008 Constitution contains the vital components of legitimacy and other necessary elements of democracy to make it a more democratic and durable document than its predecessors.

II. Functional Democracy

Before examining the democratic qualities of the constitutions from 1932 to 2008, I will briefly discuss the concept of democracy and identify some core components of democracy about which there is significant consensus. Most widely employed

⁵ Mohamed Abdulla Shafeeq, *Divehiraajje Democracy ah kuri Dhathuru*, (Male', Maldives: Novelty Printers and Publishers, 2011), 33 - 69.

⁶ Ibid.

⁷ Ibid, 75-87.

definitions of democracy focus on the procedures of governance, while some people focus on its outcomes.⁸ The procedural definition of electoral democracy is often accepted as a minimum measure of a democratic system.⁹

The idea that democracy is a form of governance based on some degree of popular sovereignty and collective decision-making remains largely uncontested.¹⁰ In a democracy, popular sovereignty is the source of legitimacy for the exercise of governmental authority. This means that governmental authority originates from and remains with the people whose consent is necessary to limit their freedom in favour of the common interest.¹¹ Exercise of governmental power is only legitimate if there is consent of the people, and such consent is expressed through fair and free voting.

The primary purpose of democracy is first to check on the powers of those who hold the government power and secondly to provide a fair electoral process for replacing the people in positions of authority in a peaceful and orderly manner. However, an election may not be effective without universal suffrage and a mechanism for competition among challengers for positions of authority who offer ways and means of satisfying the electorate's demands.¹² For a democracy to function effectively, the role of the constitution is vital. Democracy being the basic value of constitutionalism, the constitution imposes (a) limits on the powers given to the people in authority to make decisions and (b) requires them to act within the framework provided in the constitution. Unless the powers of the people who hold governmental positions are not defined and limited by the constitution, and effective constitutional mechanisms do not check such limitations, the democratic system can be used to prey on others. Additionally, by exercising fundamental rights and freedoms guaranteed in the constitution, the people continuously play an essential role in checking the abuse of

⁸ Dalton, Russell J, Shin, Doh Chull & Jou, Willy, *Popular Conceptions of the Meaning of Democracy: Democratic Understanding in Unlikely Places*, (CDS Center for the Study of Democracy, 2007), p.2. <https://escholarship.org/content/qt2j74b860/qt2j74b860.pdf>

⁹ Ibid.

¹⁰ Landman, Todd. "Developing democracy: Concepts, measures, and empirical relationships." *Background paper prepared for the Ministry of Foreign Affairs of Sweden* (2007), 2.

¹¹ Rainer Arnold, *The Concept of Democracy in the Jurisprudence of the Federal Constitutional Court*, in Rainer Arnold & Ingrida Danėlienė, (Eds), *The Concept of Democracy as Developed by Constitutional Justice*, XXII International Congress on European and Comparative Constitutional Law, Vilnius, 4–5 October 2019, 11.

¹² Richard W. Krouse, *Polyarchy & Participation: The Changing Democratic Theory of Robert Dahl*, *Polity*, Vol.14, No. 3, (Spring, 1982), pp. 441-463 <http://www.jstor.org/stable/3234535>

governmental power. As such, democracy has been described as a continuing process.¹³

Robert Dahl, who established the plural theory of democracy, contrasts modern democratic systems with the classical democracy of Ancient Greece, using the term '*polyarchy*' to refer to rule by the many as distinct from rule by all citizens.¹⁴ Dahl identified eight criteria in defining democracy: the right to vote; the right to be elected; the right of political leaders to compete for support and votes; elections that are free and fair; of association; freedom of expression; alternative sources of information; and institutions that depend on votes and other expressions of preference. Dahl equates democracy with the institutions and processes of democratic government.¹⁵ According to him, if citizens can participate equally in free and fair elections, and if elections direct the actions of government, then that forms the main ingredient of democracy.¹⁶

In contrast to defining democracy in terms of its institutions and procedures, people might focus on its outcomes. In part, this is implicit in much of the democratic theory literature. For instance, Dahl's discussion of electoral democracy presumes the existence of freedom of speech, assembly, and other rights essential to make electoral competition meaningful.¹⁷

United Nations General Assembly Resolution No. A/RES/59/201¹⁸ declared that the essential elements of democracy include, among other things, respect for human rights and fundamental freedoms, freedom of association and peaceful assembly and of expression and opinion, and the right to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic free elections by universal and equal suffrage and by secret ballot guaranteeing the free expression of the will of the people, as well as a pluralistic system of political parties and organizations, respect for the rule of law, the separation of powers, the independence of the judiciary, transparency, and accountability in public administration, and free, independent and pluralistic media. According to this

¹³ Arnold, *The Concept of Democracy in the Jurisprudence of the Federal Constitutional Court*, 14.

¹⁴ Krouse, *Polyarchy & Participation: The Changing Democratic Theory of Robert Dahl*, 442.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Adopted in the 74th Plenary Meeting on 20th December 2004.

Resolution, a functional democracy should have these features, institutions, and practices, without which the concept of democracy cannot be realized.

III. Basic features of the constitutions

A. Form of Government

1932 Constitution

The 1932 Constitution was drafted with technical assistance from the Acting British Governor General in Ceylon. A draft proposal¹⁹ provided by the British was one of the bases of the 1932 Constitution.²⁰ Ibrahim Shihab argues that although the Acting British Governor General in Ceylon was seen as playing a pivotal role in making the constitution, the real driving force behind the constitution was the Maldivian Ambassador in Ceylon, Abdul Hameed Afandy.²¹ According to Mohamed Amin, who was a member of the First Constituent Assembly and later the first president of Maldives, wrote in his book, *Dhivehi Rajjeyge Qaanoon Asaaseege Hayaath* that the principles and concepts derived from the British and the Egyptian constitutions were the basis of the 1932 Constitution.²² Consequently, British and Egyptian influence on the philosophy of the state, government system, and fundamental rights and freedoms stated in the constitution is evident. Falah argues that in addition to the British and Egyptian influence, the constitution-makers had also drawn inspiration from the constitution-making process that was taking place in Ceylon during that period.²³ This bolsters the argument that Ambassador Abdul Hameed Afandy was the real force behind the birth of the first constitution, which was vehemently opposed by his brother Abdul Majeed, the prime minister then.²⁴

Article 1 of the 1932 Constitution stated that the Maldives had no power to conduct foreign relations with states other than the British as per the 'Protection Agreement'

¹⁹ The materials in the English language were sent by the Maldivian Ambassador Abdul Hameed Afandy, according to Mohamed Amin. See, Amin, *Dhivehiraajjeyge Qaanoonasaaseege Hayaath*, 9.

²⁰ Amin, *Dhivehiraajjeyge Qaanoonasaaseege Hayaath*, 3-4; Suood, *Maldivian Constitutional History*. https://www.academia.edu/45004665/Constitutional_History_Part_1_and_2

²¹ Shihab, Preface to *Motor Boatge Gadubadu*, 4-9.

²² Amin, *Dhivehiraajjeyge Qaanoonasaaseege Hayaath*, 15.

²³ Shamsul Falah, "Towards A Maldivian Nation-State: The Constitutions of 1932 and 1968," in Kevin YL Tan and Ridwanul Hoque, *Constitutional Foundings in South Asia* (Bloomsbury Publishing, 2021), 206-07

²⁴ Shihab, Preface to *Motor Boatge Gadubadu*, 4-9.

signed between Britain and the Maldivian king in 1887. The same Article further stated that the Maldives had complete autonomy in conducting its internal affairs. Article 24 stated that the Maldivian state had no power to enact a law contrary to the 1887 Protection Agreement. Although people had no role in the constitution-making process, Article 23 of the 1932 constitution stated that the power to make the constitution emanates from the people. Contrary to the declaration in Article 23, the constitution's preamble stated that the constitution was 'decreed' by the king rather than 'we, the people of the Maldives, adopt' the constitution. Article 2 of the 1932 constitution declared that Islam as the state's official religion.

The revolutionary change that occurred by the 1932 Constitution ended the absolute monarchy in the Maldives and established a Westminster-style government in the Maldives. The monarch was made a ceremonial figurehead and was to be elected by a two-thirds majority of a Special Council comprising both houses of the parliament, cabinet ministers, and elites of Male' - the capital city.²⁵ All state powers hitherto vested with the monarch were transferred to (a) the cabinet of ministers headed by the prime minister²⁶; (b) both houses of the parliament;²⁷ and (c) the judiciary consisting of independent judges.²⁸ According to the constitution, the monarch would choose the prime minister from among the members of the parliament, and the prime minister would select cabinet ministers from among the members of the parliament. The Parliament, the prime minister, cabinet ministers, and judges were to carry out their official functions in the monarch's name. Under the 1932 Constitution, only men over 25 could vote in elections.²⁹ The people did not elect members of the first parliament; the king randomly chose and appointed a person from among the Male' nobility to represent each constituency.³⁰ This illustrates: (a) that the first step under the first constitution was misdirected; and (b) lack of awareness among the officials about the supremacy of the constitution.

A list of fundamental rights and freedoms was enumerated in the Constitution. The following rights and freedoms were included in the Constitution:

²⁵ Article 26

²⁶ Articles 64 and 65

²⁷ Articles 56 and 59

²⁸ Articles 80, 81 and 82

²⁹ Article 63.

³⁰ Mohamed Ismail Didi was appointed by the King to represent Meemu atoll in the first parliament. See, Shihab, Preface to *Motor Boatge Gadubadu*, 4-9.

- a) Equality in the enjoyment of civil and political rights.
- b) Protection against arbitrary arrest.
- c) Protection against arbitrary punishment.
- d) Protection against inhumane and degrading treatment under any circumstance.
- e) No person shall be exiled from the Maldives, and no one shall be banished to any part of the Maldives except in accordance with the law.
- f) All dwellings are protected, and no one shall enter such dwellings except in accordance with the law.
- g) Protection of private property. No person's property shall be confiscated unless it is for a public purpose and just compensation is paid in accordance with the law.
- h) The entire property of a person shall not be forfeited for an offense committed by such person.
- i) All forms of private communications and correspondence are protected.
- j) Everyone is entitled to freedom of expression.
- k) Everyone is entitled to the freedom to import reading newspapers and books and publish the same, per law.
- l) Everyone is entitled to acquire knowledge and educate others in accordance with the law.
- m) Everyone has the freedom to assemble peacefully in accordance with the law.
- n) Everyone has the freedom to form associations and societies in accordance with the law.
- o) The state shall not levy a tax or a charge which people cannot bear or make people do laborious work.
- p) Everyone has the right to travel out of the country except for political offenders and persons who can't afford foreign travel.
- q) Every citizen has permission to appeal to the leaders if they are aggrieved.
- r) Every state employee is entitled to a pension after serving the state for 25 years.

Although these constitutional rights reflect the spirit of the Magna Carta and British constitutional tradition, an avenue for seeking a satisfactory remedy for violating these constitutional rights was non-existent, as the judiciary needed to have the power to entertain applications for their enforcement. The only remedy available for persons whose fundamental rights and freedoms have been violated was to appeal to the

political leaders. In practice, such appeals were made to the king, cabinet ministers, members of the parliament, and administrators of the atolls.

Although the primary reason for the British Governor General's suggestion of making a constitution was to find a workable formula to end the feud between the king and the prime minister by sharing power through the constitution, the feud nonetheless persisted. Less than a year after the adoption of the constitution, a revolt triggered the king's downfall, banishing constitutionalists and former prime minister Abdul Majeed becoming de facto head of the country.³¹ The king and his son, crown prince Hassan Izzuddin, were tried and found guilty of violating the Constitution. The constitution was amended in 1934 to bring the changes chosen by the former prime minister Abdul Majeed,³² who was appointed by the new king Hassan Noordin II to undertake the task. No substantial amendments were made except for the changes brought to the parliament and cabinet composition.³³ The new king appointed Mohamed Fareed, the eldest son of former prime minister Abdul Majeed as the prime minister.

In 1937, a few additional amendments were made to the 1932 Constitution before it was suspended by the parliament in 1940 after the 2nd World War broke out. According to Abdul Hakeem Hussain Manik, following the suspension of the constitution, Hassan Fareed, the second son of former prime minister Abdul Majeed, ruled the country within the general framework of the suspended constitution till he was killed when Japanese naval forces torpedoed the ship he was travelling on in the Indian Ocean.³⁴

To summarise, this constitution, though it declared that the people were sovereign, provided no room for them to exercise their sovereignty directly or indirectly. Instead, it was a document drawn by Male' elites for Male' elites, not for the entire population.

1942 Short Constitution

In April 1942, the king proposed a new constitution to the constituent assembly known as the 'short constitution' because it contained just 17 Articles which the king thought was suitable for the country due to the prevailing circumstances. The Bill of Rights was removed from the 1942 Constitution. An article stated that '*everyone is equal*

³¹ Shihab, Preface to *Motor Boatge Gadubadu*, 4-9.

³² The preamble of the Amended Constitution of 1934.

³³ Amin, *Dhivehiraajjeyge Qaanoonsaaseege Hayaath*, 146.

³⁴ Abdul Hakeem Hussain Manik, *Iyye*, (Male', Maldives: Novelty Press, 1997), 27-33.

*with respect to their enjoyment of civil and political rights.*³⁵ According to this constitution, the parliament comprised 33 members – 27 elected and six nominated by the king. This constitution made both the king and the prime minister heads of state to be elected by the parliament to their respective posts in a similar procedure, and the minister of home affairs was made the head of government.³⁶ The constitution was again amended in 1944 to pave the way to elect former prime minister Abdul Majeed to the throne. This period of constitutional uncertainty and confusion was aptly described by Mohamed Amin as follows:

'during that period, the constitution was like "Moosa Kutty's banana bunch" . . . at times it existed. . . and sometimes it didn't . . . when it is found again it was not in the previous shape . . . the country was in total confusion with no head of state or government for six years after the simultaneous resignation of the king and the prime minister'.³⁷

1953 Republican Constitution

The king-elect Abdul Majeed, living in Egypt, never came to the Maldives to ascend the throne. In his absence, his nephew Mohamed Amin was acting as the head of government in his capacity as the minister of home affairs under the special administrative structure set out in the 1942 Constitution and subsequent amendments made to it.³⁸ After the death of King-elect Abdul Majeed, Mohamed Amin refused to take the title of king, which was proposed to him by the parliament.³⁹ Instead, he converted the country to a republic and became the president of the country. In an essay written and published by President Amin, he explained why the monarchy was abolished and established a republican form of government. He stated that he refused to ascend the throne, as his nature didn't suit him for a ceremonial job a monarch was supposed to perform.⁴⁰ He stated that the political elites at that time wanted his leadership irrespective of the style of government.⁴¹ According to Ibrahim Shihab,

³⁵ Article 3

³⁶ Articles 4, 5 and 10

³⁷ Amin, *Dhivehiraajjeyge Qaanoonsaaseege Hayaath*, 197-98; Mohamed Amin, "Raskamakun Jumhooriyathakah," *Dhivehi Jumhooriyya . . . Marhaba*, (Male', Maldives: Government Print House, 1953), 65; See also, Manik, *Iyye*, 27-33

³⁸ Abdul Hakeem Hussain Manik, *Iyye*, (Male', Maldives: Novelty Press, 1997), 27 – 29.

³⁹ Mohamed Amin, "Raskamakun Jumhooriyathakah," *Dhivehi Jumhooriyya . . . Marhaba*, (1953: Male', Maldives, Government Print House), 65.

⁴⁰ Amin, *Raskamakun Jumhooriyathakah*, 70.

⁴¹ *Ibid*, 65

people were happy as long as Mohamed Amin was at the helm, and it didn't matter whether he took the title of king or president.⁴² In 1950, the parliament voted to abolish the monarchy and establish a republic. A public referendum subsequently approved the decision of the parliament. Though it was stated that it was a public referendum, people living outside the capital city of Male' were denied the opportunity to vote.⁴³ The new constitution, which came into force on 1st January 1953, created a presidential system of government, and the people elected Mohamed Amin as the first president of the Republic – styled as *Waliyul Amr*. Although this was the first time women were allowed to vote in the Maldives,⁴⁴ democracy was made a mockery as people living outside the capital city of Male' were not allowed to vote, both in the referendum on the system government and in the presidential election.⁴⁵

Mohamed Amin established the first political party in the Maldives, and he was the leader of the party - *Dhivehi Rayyithunge Muthagaddim Party* (Peoples Progress Party).⁴⁶ The membership of the party comprised only of Male' elites.

The new 'Republican Constitution' comprising 30 articles provided for a president to be elected through a direct public vote, a judiciary appointed by the president, and a bicameral legislature – an 18-member Senate and a 47-member House of Representatives.⁴⁷ The new constitution also limited the presidential term to five years. All citizens above age 21, irrespective of gender, were eligible to vote in the parliamentary elections. Women were elected to the parliament for the first time in Maldivian history.

According to Article 11, the President would be the head of state, and a prime minister would head the government. However, under Article 16 of the Constitution, the Parliament may appoint the President as the prime minister, in which case he would automatically become a member of parliament. If that happens, the president becomes a member of the parliament but cannot vote.⁴⁸ In the case of President Mohamed Amin,

⁴² Ibrahim Shihab, “*Divehiraajje Jumhooriyyathakah badhalupee keevvegentha?*”, *Dhivehi Jumhooriyya . . . Marhaba*, (Male', Maldives: Government Print House, 1953), 72; Manik, “*Iyye*, 27.

⁴³ Shihab, *Divehiraajje Jumhooriyyathakah badhalupee keevvegentha?*, 80.

⁴⁴ *Ibid.*, 80-82.

⁴⁵ Manik, *Iyye*, 27-33.

⁴⁶ Mohamed Amin, *Rayyithunge Muthagaddim Party*, *Dhivehi Jumhooriyya . . . Marhaba*, (Male', Maldives: Government Print House, 1953), 230.

⁴⁷ Articles 17 and 18.

⁴⁸ Article 16 (b).

the parliament appointed him as the prime minister. President Amin, in addition to being the prime minister, also headed five other government ministries: defence, home affairs, foreign affairs, finance, and health.⁴⁹ The cabinet members were accountable to the parliament.⁵⁰ Under Article 22 of the Constitution, the president was given the power to dissolve the parliament at any time, at his discretion. The Constitution established an independent judiciary, and the chief justice and other judges and magistrates were to be appointed by the President.⁵¹

Despite the constitution being celebrated by Mohamed Amin as the 'most democratic and progressive constitution,' the failure to include the Bill of Rights in the constitution marred his so-called '*Thahuzeeb*' and '*Thamahdhun*' that he promised to the people before and after the public referendum to abolish the monarchy.⁵²

Within just nine months. President Mohamed Amin was overthrown in a coup d'etat led by his vice President. Some writers have argued that the implementation of *hudud* laws had immensely contributed to his downfall,⁵³ while some other writers argue that his progressive political ideas, including women in senior government positions, opening up schools for girls, and encouraging women's participation in sports and social activities, led to his downfall.⁵⁴

1954 Constitution

After the overthrow of President Ameen, the 1953 Constitution was renounced by the new regime. In 1954 a new constitution was written, and a constitutional monarchy was restored. The Constitution also restored the Bill of Rights, removed from the 1942 and 1953 Constitutions. According to this constitution, the electorate, comprising only men, was to elect a parliament of 54 members - six representing the King, 46 elected by the people, and two elected by the business community.⁵⁵ According to the 1954 Constitution, only males above the age of 25 years can stand for elections.⁵⁶

⁴⁹ Amin, *Rayyithunge Muthaqaddam Party*, 239.

⁵⁰ Article 15.

⁵¹ Article 29.

⁵² Manik, *Iyye*, 27-33.

⁵³ Ibrahim Shihab, *Adhakeethoa eve*, Haqeeqee Minivan Dhuvahuge Khaassa number, Sarukaaruge Khabaru, (Male, Maldives: Government Print House, 1954), 2; Ahmed Kamil Didi, "*1372H vana Aharu Hajjmahuge 11 vana Dhuvahu vi Inqilaabun Libenvee baeh Ibrath*", Haqeeqee Minivan Dhuvahuge Khaassa number, Sarukaaruge Khabaru, (Male, Maldives: Government Print House, 1954), 7; See also, Manik, *Iyye*, 27-33.

⁵⁴ *Ibid.*

⁵⁵ Article 54.

⁵⁶ Article 52.

According to the constitution, the prime minister would be appointed by the king, on the parliament's advice, from among the members of the parliament.

The king would appoint the chief justice on the advice of the parliament. The chief justice is responsible for the administration of justice and acts as the head of Islamic affairs of the state.⁵⁷ According to the constitution, judges were independent, and justice was to be administered in accordance with Islamic law, as stated in *Shafi Mazhab*.⁵⁸ Everyone has the right to appeal any decision of *Mahkamahul-Sharuiyya*, in accordance with the law. Furthermore, everyone has the right to be represented by a lawyer in all legal proceedings.⁵⁹

According to the Constitution, the Parliament did not have the power to make laws contrary to the Constitution. The Constitution can only be amended by a 2/3 majority of a special constituent assembly to be elected by the people for that purpose.⁶⁰

After the promulgation of the 1954 Constitution, and in the years leading up to the independence from the British in 1965, the country was gripped by a wave of nationalism headed by Ibrahim Nasir. His popularity began from his opposition to Prime Minister Ibrahim Didi's proposal to lease a portion of Addu Atoll to the British for 100 years. In December 1957, the opposition to the lease finally resulted in a no-confidence vote against the prime minister in the parliament and the subsequent appointment of Ibrahim Nasir as the prime minister. In June 1964, the Constitution was amended to unilaterally declare the Maldives fully independent. This amendment also gave women the right to vote in elections.⁶¹ However, women were ineligible to stand for elections or become cabinet members.⁶² The constitution made cabinet ministers responsible to the parliament and could be removed if a cabinet member loses the confidence of the parliament.⁶³

⁵⁷ Articles 72 and 73.

⁵⁸ Article 75.

⁵⁹ Article 77.

⁶⁰ Articles 83 and 84.

⁶¹ Article 50.

⁶² Articles 48 and 55.

⁶³ Articles 58 and 59.

An agreement was signed between the United Kingdom and the Government of Maldives in July 1965, whereby the Maldives became a fully independent nation and joined the United Nations during the same year. By joining the United Nations, the Maldives subscribed to the principles of the UN Charter.

The 1954 Constitution was amended in 1967 to abolish the independent judiciary. This amendment was targeted against the chief justice because Prime Minister Ibrahim Nasir was unhappy with the court's judgments, as he thought they impeded his economic and social policies.⁶⁴ Before the amendment was made, the chief justice was forced to resign as all financial resources to the judiciary from the government were stopped by the government under orders from the prime minister. The new amendment stated that persons appointed by the President should administer justice.⁶⁵

1968 Constitution

A new constitution was adopted in 1968. Under the new constitution, the monarchy was abolished, and the Maldives was again declared a republic. According to Abdul Hakeem Hussain Manik, the monarchy was abolished by the no-nonsense independence leader and Prime Minister Ibrahim Nasir, who was in office since December 1957, to become the head of state and cement his position as the supreme leader with absolute authority.⁶⁶

The draft of the constitution was written by a committee of four persons hand-picked by prime minister Ibrahim Nasir, and the committee was headed by his special advisor, who was later appointed to his cabinet as the minister of justice. The constituent assembly approved the draft constitution without a debate. According to Umar Easa, an elected constituent assembly member, President Nasir's security forces raided his house. They seized the 60-page document consisting of comments he had written on the draft constitution to be submitted to the constituent assembly for their consideration.⁶⁷ He was also arrested and banished to a remote island, for four years, without a trial, for writing his opinion on the draft articles of the constitution. Several years after the end of Nasir's regime Umar Easa published parts of his comments on

⁶⁴ Suood, *Maldivian Legal System*, (Male', Maldives: Maldives Law Institute, 2014), 88.

⁶⁵ Article 66.

⁶⁶ Manik, *Iyye*, 194.

⁶⁷ Umar Easa, *Alhuganduge Reendhoo Foijy*, Dhivehi Adheebunge Dhuvasvee Liyunthah, Vol. 36, (Male', Maldives: Novelty Printers & Publishers, 2009), 43-77

various articles of the draft constitution.⁶⁸ In his 60-page commentary on the draft constitution, he raised concerns that the proposed system of government would end up with all governmental power in the hands of the President. Therefore, he recommended the separation of powers, the establishment of an independent judiciary, and a mechanism for enforcing the fundamental rights set out in the constitution.⁶⁹ He was also concerned about the president being the head of Islam, as the president may not be an Islamic scholar.⁷⁰

According to this constitution, the president was to be elected by the parliament in a secret ballot. The 'mysterious' secret ballot in the parliament takes place without a nomination process; therefore, in theory, each member of the parliament was entitled to write any name on the ballot paper. No debate or discussion on a presidential candidate or campaign was allowed before the secret ballot. A public referendum then confirmed the president-elect. Umar Easa vigorously criticised the mode of election of the president in his 60-page commentary, where he stated: (a) that in theory, the process of electing a presidential candidate can go on indefinitely as there is no way of knowing who to vote for; (b) in a country such as Maldives where public literacy was so low when the parliament selected a presidential candidate, the public would be influenced to vote for the candidate chosen by their representatives in the parliament; and (c) the incumbent would have all the resources to make the parliament chose him.⁷¹ Under the 1968 Constitution, the parliament comprised 48 members: Forty members elected by the people and eight members appointed by the President.⁷² Therefore, the incumbent president would have the advantage of having his members in the parliament vote for him in the presidential candidate's election. Umar Easa argued that the process of electing a president stated in the draft constitution deprived the public of participating and voting in a free and fair election to elect a president.⁷³ Under this constitution, Prime Minister Ibrahim Nasir was elected president in 1968 and re-elected in 1973.

The 1968 Constitution was amended in 1972 to allow the president to share executive power with a prime minister. However, the arrangement failed, and the prime

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Article 62 of the 1968 Constitution.

⁷³ Ibid.

minister was banished in 1975. The constitution was again amended in 1975 to abolish the prime minister's office.

Article 2 of the 1968 Constitution declared the Maldives a 'fully independent Islamic state.' Article 20 stated that 'all powers of the government emanate from the citizens' and such powers shall be exercised by (a) the president, (b) the cabinet, and (c) the parliament. Though a woman could not be elected as the president of the country, women were allowed to become cabinet ministers and could stand for election to the parliament. All citizens above the age of 21 were eligible to vote.⁷⁴

According to Article 85 of the 1968 Constitution, the administration of justice was to be carried out by persons appointed by the President. In 1969, immediately upon assuming office, President Ibrahim Nasir transferred judicial management directly to the newly created Ministry of Justice and established all trial courts and judges reporting to that ministry.⁷⁵ In 1978, President Nasir refused his nomination by the parliament for the presidency. He was succeeded by Maumoon Abdul Gayoom, who ruled the Maldives until he lost the country's first multi-party presidential election held in 2008.

Upon assuming office as president, President Gayoom appointed himself as the head of the judiciary and declared himself the final court of appeal.⁷⁶ This was precisely what Umar Easa predicted regarding the administration of justice in his 60-page commentary that saw him banished by President Nasir to a mosquito-infested remote island.⁷⁷

In 1980, in a further setback to judicial independence, the "High Court of the Maldives" was established under the President's Office, allowing the President to overturn the decisions of the High Court.⁷⁸

⁷⁴ Article 67 of the 1968 Constitution.

⁷⁵ Suood, *Maldivian Legal System*, 90.

⁷⁶ Suood, *Maldivian Legal System*, 94.

⁷⁷ Easa, *Alhuganduge Reendhoo Foiy*, 43-77.

⁷⁸ *Ibid.*

1998 Constitution

Soon after Maumoon Abdul Gayoom was elected president in 1978, a special constituent assembly was elected to write a new constitution. It took 17 years for the constituent assembly to finish the task. The work of the constituent assembly was eased off due to a lack of interest from President Gayoom to replace the 1968 Constitution. A few years into his presidency, he found it useful and convenient to rule the country with the 1968 Constitution, as all governmental powers were vested in the hands of the President.

However, after a long slumber, the work of rewriting the constitution gained momentum in 1994 when President Gayoom hastened to complete it after he got nearly dislodged from power in the 1993 presidential ballot in the parliament by his powerful and wealthy brother-in-law who surprised him by covertly convincing almost half of the members of the parliament to write his name on the ballot paper. Consequently, rewriting the constitution was rushed to remove the uncertainty of the secret presidential ballot system in the parliament in time for the next presidential election in 1998. The 1998 constitution allowed multiple candidates to nominate themselves and contest in the presidential secret ballot in the parliament. All candidates vying for the presidency are announced before the secret vote is taken in the parliament. According to the 1998 Constitution, the candidate who received the majority of the secret vote would go to a public referendum to be confirmed by the people. However, the candidates were not permitted to campaign for support from the members of the parliament.

The 1998 Constitution states that it establishes the Maldives as a '*democratic Republic based on the principles of Islam*,'⁷⁹ and '*all state power emanates from the citizens*'⁸⁰ and the said state power is distributed among (a) the executive, (b) legislative, and (c) judicial branch of the government.

The President functions as the head of state, head of government, the Commander-in-chief of the armed forces, head of police, and the head of Islam.⁸¹ The 1998 constitution also, for the first time, stated that atoll chiefs appointed by the President would administer the country's administrative regions (atolls). Article 39 of the 1998

⁷⁹ Article 1, 1998 Constitution.

⁸⁰ Ibid, Article 4.

⁸¹ Article 106 (b) 2008 Constitution.

Constitution made the President head of the judiciary, and the President acted as the final court of appeal.⁸² All judges were appointed by the president and served at his pleasure.

According to Articles 42 (a) and 68, the President appoints the speaker, the deputy speaker, and the Secretary General of the Parliament. The president also issues the standing orders of the parliament. Further, the President can issue presidential decrees with the force of law.⁸³ The President may also make laws while the parliament is not in session.⁸⁴ According to Article 72 of the Constitution, the parliament should inform the President before the start of each term of the parliament, and the parliament cannot convene a meeting of the parliament between the terms without express approval from the President.

2008 Constitution

The torture and killing of a prisoner in Maafushi Prison on 19 September 2003 and the subsequent shooting of inmates in prison on 20 September 2003 by the National Security Service sparked mass demonstrations in the capital city. This incident re-energized the democracy movement that began in 2001. On 12th and 13th August 2004, the country saw the largest mass demonstrations calling for the resignation of President Gayoom. More than 280 democracy activists were jailed, and their fundamental rights in the constitution were suspended by the emergency decrees issued by the president.

President Gayoom called for constitutional reform in the face of growing public opposition to his rule. He asked people to submit proposals for reform to his office and requested public debate regarding constitutional reform in cafes, street corners, and all public spaces. This sparked a series of public debates labelled as “Freedom Debates” all across the country. As the debates that began in school halls finally spilled over to the streets, Gayoom began cracking down on these debates and arresting the activists. The following were the key demands raised by democracy activists in Freedom Debates:

(a) Separation of powers

⁸² Suood, *The Maldivian Legal System*, 97.

⁸³ Article 42 (e).

⁸⁴ Article 90.

- (b) Protection of human rights
- (c) Accountability of public officials
- (d) Decentralized administration of atolls and islands by elected officials
- (e) Free and fair elections

A constitutional assembly was convened in 2004 to discuss and adopt a draft constitution written by President Gayoom. The Assembly rejected Gayoom's draft and engaged three foreign experts to draft a new constitution and advise the assembly. Following the call to submit proposals for constitutional reform, the President received several proposals from the public. These proposals were forwarded to the constituent assembly for their consideration.

The constitutional assembly also forced resident Gayoom's brother-in-law to resign from the chairmanship of the assembly to distance itself from President Gayoom's influence. The constituent assembly also held a public referendum on the system of government, asking the public to choose between a presidential and parliamentary form of government.

As the previous two constitutions were heavily criticized for the broad powers of the President, the Constitution of 2008 departs from its two immediate predecessors to make the presidency a weaker institution. Under the constitution, the president's actions must be constantly checked by a powerful legislature and judiciary. As there is no concentration of powers in one person or a single body, there is less possibility for oppression and a greater possibility for more democracy and protection of human rights.

The 2008 Constitution established a 'multi-party democracy' in which 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.⁸⁵ Each person can serve as president for up to two consecutive terms.⁸⁶ 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

⁸⁵ Ibid, Articles 111 (a) and 112 (a).

⁸⁶ Ibid, Article 107 (a).

stand-in for the President in case of his impeachment, resignation, death, or a severe illness that could hinder the performance of his duties.⁸⁷

The president appoints his ministers, who stay in office at their pleasure.⁸⁸ Cabinet ministers do not belong to the legislature.⁸⁹ They are appointed based on their experience and expertise, and the president can remove them from office.⁹⁰

The president is independent of the legislature and is not directly responsible to the parliament. However, the parliament can impeach the president for reasons stated in Article 100 (a) of the Constitution.⁹¹ This mechanism bears a much more remarkable resemblance to a presidential impeachment under the US Constitution than to the devices 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.⁹² The parliament can remove ministers by a no-confidence vote – a process similar to such practices in a parliamentary system.⁹³

Chapter II of the constitution contains the most detailed Bill of Rights ever written into the constitution of the Maldives. Furthermore, the constitution gives the right to the people to seek remedies for violating their fundamental rights and freedoms. Anyone can challenge the constitutionality of any statute or an act of any official or organ of the government before the courts of law.

The Constitution has also created independent commissions and other oversight bodies, such as the Judicial Services Commission, Civil Service Commission, Elections Commission, Anti-Corruption Commission, Prosecutor General, and Auditor General. Therefore, compared to the previous constitutions, people believed that they played a significant role in constitution-making and that the document represented their needs and aspirations for the first time in its constitutional history.

⁸⁷ Ibid, Article 117 (a)

⁸⁸ Ibid, Article 129.

⁸⁹ Ibid, Article 73 (d).

⁹⁰ Ibid, Article 137 (a).

⁹¹ Ibid, Article 100.

⁹² Ibid, Article 134 (a).

⁹³ Ibid, Article 101.

B. 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.⁹⁴ All organs and institutions of the state, their officials, and citizens have an explicit duty to ensure and obey the constitution.⁹⁵ Under the constitutional supremacy, the constitution regulates the parliament, the executive, and the judiciary. None of these organs can assume any powers contrary to the constitution and their powers are fettered by the words of the constitution.⁹⁶ The concept of the supremacy of the constitution was explicitly stated in all previous constitutions.⁹⁷ Article 268 of the 2008 Constitution establishes the 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.

In *Mohamed Haleem & Asad Shareef v Yaqoob Abdulla*⁹⁸ the Supreme Court held that it is a fundamental duty of the courts to uphold the supremacy of the constitution while interpreting the provisions of the Constitution (para 73). The Supreme Court stated that it is also bound to uphold the supremacy of the Constitution and therefore has no power to interpret the constitution in a manner that would add, omit, or modify any provision in the constitution. In this case, the Supreme Court overruled its previous decision in 2017/SC-C/17, where the Supreme Court had exercised its powers to disqualify certain members of the parliament on the ground of floor-crossing, which is not stated among the grounds of disqualification of the members of parliament enumerated in Article 73 (d) of the Constitution. The Supreme Court, in *Mohamed*

⁹⁴ In the absence of a written constitution, for example, under English law, the 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., (Indianapolis: Liberty Fund, 1982).

⁹⁵ *Constitutional Petition regarding Public Finance Act filed by the Attorney General*, Maldives Supreme Court case No. 2010/SC-C/32, decided on 15th September 2012.

⁹⁶ Articles 5, 6, and 7 of the Constitution.

⁹⁷ Articles 92 and 42 of the 1932 Constitution, Article 86 of the 1968 Constitution, and Article 148 of the 1998 Constitution state that no law can be made contrary to the constitution.

⁹⁸ Maldives Supreme Court case No. 2020/SC-C/78 and 2020/SC-C/79.

Haleem & Asad Shareef v Yaqoob Abdulla, held that its previous decision was contrary to Article 268 of the Constitution.

The supremacy of the constitution, however, is not absolute. The constitution may be amended with the support of a special majority of the parliament.⁹⁹ Further, the theocratic nature of the constitution, which will be discussed below, may also pose challenges to the supremacy of the constitution.

Judicial Review

Compared to the previous constitutions, one key feature introduced by the 2008 Constitution is the power of judicial review. Any law or conduct that conflicts with the constitution may be declared unconstitutional by a court of law.¹⁰⁰ Such a declaration will have the effect of rendering the law or conduct invalid. Although the previous constitutions stated that the constitution was the supreme law of the land, there was no constitutional mechanism to check authorities and officials from side-stepping the constitution. The following are some cases in which the courts have struck down statutes passed by the Parliament on the ground that they conflicted with the 2008 Constitution.

In September 2008, the Parliament enacted a General Elections Law (Act No. 11/2008) to facilitate the first presidential elections under the 2008 Constitution. Section 5 (b) of the General Elections Law restricted the voting rights of prisoners serving a 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.¹⁰¹ The petitioners asked to repeal Section 5 (b) of the 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.*

⁹⁹ Article 261, *Constitution of the Maldives*, 2008.

¹⁰⁰ Articles 143 and 144 of the Constitution; see also, Maldives Supreme Court cases, *Dr. Mohamed Jameel Ahmed v State* [2021] SC 72; *Mohamed Fahmy Hassan v. State*, Supreme Court Case No. 2012/SC-C/35.

¹⁰¹ Maldives Supreme Court case, *Jumhooree Party v State (Attorney General)* 2008/HC-DM/07.

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 also applied the principle of the supremacy of the Constitution when it repealed Section 53 of the Civil Service Act,¹⁰² by stating that the provision was inconsistent with Article 30 (a) of the Constitution.¹⁰³

The power of judicial review is regarded as the chief instrument in the system of checks and balances and upholding constitutional supremacy.¹⁰⁴ Echoing the role taken by the US Supreme Court as the guardian of the US Constitution,¹⁰⁵ the Maldives Supreme Court also acts as a guardian of constitutional supremacy in the Maldives through judicial review.¹⁰⁶

C. The theocratic character of the Constitution

According to the traditional definition, theocracy is the exercise of political power by the clergy or leaders claiming to be acting on behalf of the divinity.¹⁰⁷ In the present day, hardly any state may qualify as a theocracy according to the traditional definition. Even the few states that invoke religion and strict religious codes today fall short of the traditional definition.¹⁰⁸

It is admitted that although a religion occupies a prominent position in the public life of a country, it doesn't make such a state a theocracy. However, in the modern context,

¹⁰² Law No. 5/2007.

¹⁰³ Maldives Supreme Case No. 2009/SC-A/09.

¹⁰⁴ For a detailed understanding of the approach of the Maldivian Supreme Court on judicial review, refer to Supreme Court cases, *Dr. Mohamed Jameel Ahmed v State* [2021] SC 72; *Mohamed Naeem v Attorney General* 2011/SC-C/30; *Mohamed Fahmy Hassan v. State*, 2012/SC-C/35.

¹⁰⁵ *Marbury v Madison* [1803] 1 Cranch 137.

¹⁰⁶ Maldives 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; also, *Mohamed Fahmy Hassan v. State*, 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.

¹⁰⁷ Mario Ferrero, "The Rise and Demise of Theocracy: Theory and Some Evidence," *Public Choice*, Vol. 156, No. 3/4 (September 2013), 723-50.

¹⁰⁸ *Ibid.*

the exhibition of some or all of the following characteristics can have some semblance of a theocracy:¹⁰⁹

- a) The supremacy of religious laws over the constitution of the state.
- b) The entire political system is designed to reflect the supremacy of God and divine teaching or revelation.
- c) Privileging one particular religious belief system and such a position is enshrined in the constitution.
- d) Displaying a lack of tolerance for other religious groups.
- e) Creating barriers to the development of minority religious groups.

Maldivian political history demonstrates that politics and religion were inextricably linked and Islam embedded within the system of government. Even before the monarch embraced Islam in 1153 AD, the monarchs were believed to have derived legitimacy from divine sources. The chief cleric acted as the principal advisor to the monarch and had a prominent role in the palace. Additionally, the chief cleric was responsible for administering justice within the kingdom. Consent from the chief cleric was sought on all critical decisions taken by the monarch.¹¹⁰ Since the Maldives embraced Islam, Islamic law has been the primary source of law.¹¹¹

In 1932, when the king issued the mandate to the constituent assembly which drafted the first constitution, the king had specific instructions given to the assembly that the constitution should not contradict the religion of Islam. Article 2 of the 1932 constitution stated that Islam should be the religion of the state. Article 3 of the 1932 constitution did not limit citizenship to Muslims. Anyone born within the Maldives or abroad to a Maldivian citizen would be a Maldivian citizen, irrespective of religion. According to the 1932 Constitution, the king and the members of the parliament should be Sunni Muslims, and conviction for a *hudud* offence was grounds for their disqualification from holding office..

¹⁰⁹ See, Milan Zafirovski, "The residue of theocracy in contemporary democracies: A comparative study," *International Social Science Journal*. 2021; 71: 319 – 353. <https://doi.org/10.1111/issj.12293>;

¹¹⁰ Mohamed Ismail Didi, *Christopher ge Nazarugai Dhivehin*, (Malé, Maldives: National Centre for Linguistic and Historical Research, 1996), 40 -70.

¹¹¹ H.A.R. Gibb, *The Travels of Ibn Battuta*, (New Delhi: Goodword Books, 2011), 242-252; see also, Xavier Romero-Frias, *The Maldivian Islanders, A Study of the Popular Culture of an Ancient Ocean Kingdom*, (Barcelona: Nova Ethnographia Indica, 1999), 25-36; *Dhivehi Thaareekh*, (Malé, Maldives: Dhivehi Thaareekhaai Sagaafathah Khidhumaiy Kuraa Majlis, Office of the President, 1981), 43-51.

Under the 1954 Constitution, the chief justice was to be responsible for the administration of justice and act as the head of Islamic affairs of the state.¹¹² According to the constitution, justice was to be administered in accordance with Islamic law, as stated in *Shafi Mazhab*.¹¹³

Article 2 of the 1968 Constitution declared the Maldives a 'fully independent Islamic state.' The 1998 Constitution states that it establishes the Maldives as a '*democratic Republic based on the principles of Islam*.'¹¹⁴ The 1998 Constitution accords equal status to statutes passed by the parliament and Islamic Shariah by defining "law" as statutes passed by the Parliament and the Islamic Shariah. According to Article 43 of the 1998 Constitution, the president can only function within the limits of the Constitution and Islamic Shariah. According to the 1968 and 1998 Constitutions, the President was the head and chief propagator of Islam.

Maldives began a new era of Islamic revivalism as President Maumoon Abdul Gayoom, a religious scholar in his own right, assumed the presidency, and his colleagues from university student days in Egypt were appointed to key cabinet posts. President Gayoom's 30 years in power saw: (a) the arrival of hundreds of scholars studied in Egypt, Saudi Arabia, Pakistan, and other Muslim countries; (b) the opening of Arabic medium schools, (c) the modification of school curricula to include Arabic language and Islamic subjects, (d) conducting of regular preaching sessions personally by the President, contributing to the revival of Islam in the country. As a result of this new religious awareness, the country's general perspectives on Islam and its culture have shifted significantly. Consequently, the 2008 Constitution exhibits a stronger theocratic character than its predecessors.

Article 2 of the 2008 Constitution declares that '*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. The court can strike down a law passed by the parliament on the ground of its nonconformity with any tenet of Islam.

¹¹² Articles 72 and 73.

¹¹³ Article 75.

¹¹⁴ Article 1, 1998 Constitution.

The constitution states that citizens are free to engage in activities “not expressly prohibited” by Sharia or statutes. Hence, under Maldivian law, propagation of any religion other than Islam and publicly practicing any religious ritual other than Islam is a criminal offense. The Penal Code permits the administration of *Hudud* punishments provided in Islamic Shariah. Under the Constitution, every citizen has a duty to preserve and protect the religion of Islam; and a law passed by the Parliament may protect and preserve the tenets of Islam;¹¹⁵ restrict rights and freedoms provided for in the Constitution.¹¹⁶ The constitution states individuals have a right to freedom of thought and expression, but only in a manner “not contrary to the tenets of Islam.”

Under the 2008 Constitution, Non-Muslims cannot become a citizen of the Maldives¹¹⁷ 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 the Sunni school of Islam. Moreover, the President or Vice-President may be removed from office for 'violating a tenet of Islam.'¹¹⁸ Under the Constitution, judges are bound to consider Islamic Shari'ah,¹¹⁹ in cases where the Constitution or the law passed by the parliament is silent, Article 24 of the Constitution requires the state to strive to teach the Islamic faith and instil love for Islam.

The President, the Cabinet of Ministers, 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.

As the Constitution of Maldives states that the Maldives is a democracy founded upon the principles of Islam, it combines elements of both a theocracy and a democracy.

D. Separation of powers

According to the separation of powers doctrine, governmental power is divided between different organs of the state to guard against the centralisation of power,

¹¹⁵ 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.

¹¹⁶ Article 16 (b), Constitution of Maldives, 2008.

¹¹⁷ Ibid, Article 9 (d).

¹¹⁸ Ibid, Article 100 (a).

¹¹⁹ 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 concerning criminal, civil, personal, and other matters found in the Sunnah.

which may lead to abuses of power. The objective is to separate the functions of the three branches of government – the executive, the legislature, and the judiciary – so that no single branch can operate alone, assume complete state control, and amass centralised power. Although each branch performs many different responsibilities, each branch also has a ‘watchdog’ function in relation to the other. The watchdog function of each branch helps to ensure that governmental power is exercised in a manner that is accountable to the general public and in accordance with the constitution.

According to the first constitution, which was adopted in 1932, governmental powers were divided among (a) the cabinet of ministers headed by the prime minister;¹²⁰ (b) both houses of the parliament;¹²¹ and (c) the judiciary consisting of independent judges.¹²² The responsibility of each organ of the state was demarcated. However, these demarcations disappeared from the 1942 Constitution and in the 1953 Constitution. The 1954 Constitution restored the original constitution of 1932, bringing back a system of government where governmental powers were separated. This constitution also brought an era of democracy - with a relatively more robust parliament and an independent judiciary that held the executive branch accountable. However, this short brush with democracy ended abruptly with the adoption of the 1968 Constitution and the declaration of the Second Republic. Under the 1968 Constitution, the country was thrown into a full-fledged dictatorship with all state powers vested in the hands of the president. The trend continued with more vigour in the 1998 Constitution.

Contrary to its predecessors, the doctrine of separation of powers is a cornerstone of the 2008 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*;¹²³ the executive power is vested in the President;¹²⁴ and the judicial power is vested in the courts.¹²⁵ 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

¹²⁰ Articles 64 and 65.

¹²¹ Articles 56 and 59.

¹²² Articles 80, 81 and 82.

¹²³ Article 5, *Constitution of Maldives*, 2008.

¹²⁴ *Ibid*, Article 6.

¹²⁵ *Ibid*, Article 7.

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

- (a) prevent the same persons from being part of more than one organ of the government: for example, neither the President nor his Cabinet Ministers should sit in the People's *Majlis*;
- (b) an organ of government should not control or unduly interfere with the exercise of the functions of another organ;¹²⁶
- (c) an organ of government should not exercise the functions of another.

Separation of powers serves the important purpose of preventing the concentration of power in one branch of the government and promotes government efficiency.¹²⁷ 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 applied to the Supreme Court of the Maldives on 29th August 2010 to strike down Order 171 (i) of the Standing Orders of the Parliament.¹²⁸ 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 (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. Hence, no branch of the government would be allowed to step into the domain of the other branches of the government.

¹²⁶ 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.

¹²⁷ After examining the historical background of the 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.

¹²⁸ *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.

Judicial independence

Before the adoption of the 2008 Constitution, the Ministry of Justice had been responsible for the administration of the courts. However, Article 156 of the new constitution stipulates that the courts have "the inherent power to protect and regulate their process, in accordance with law and the interests of justice."

Article 141 of the Constitution states that the judicial power is vested in the Supreme Court, the High Court, and such Trial Courts as established by law, and the Supreme Court shall be the highest authority for the administration of justice in the Maldives. Article 141 of the Constitution also states that no officials performing public functions, or any other persons, shall interfere with and influence the functions of the courts. Further, the same Article states that persons or bodies performing public functions through legislative and other measures must assist and protect the courts to ensure the independence, eminence, dignity, impartiality, accessibility, and effectiveness of the courts.

Article 141 of the Constitution states that judges are independent and subject only to the constitution and the law. When deciding matters on which the constitution or the law is silent, judges must consider Islamic Shari'ah. In performing their judicial functions, judges must apply the constitution and the law impartially and without fear, favour or prejudice.

Following the adoption of the 2008 Constitution, the former responsibilities of the Ministry of Justice for court administration were transferred to a new Department of Judicial Administration (DJA), which reports to the Judicial Service Commission. The Department of Judicial Administration provides administrative support for the budget, equipment, physical infrastructure, staff, statistics, supplies, technology, and other needs.

In its capacity as the nation's highest judicial authority and as recognized in the constitution, the Supreme Court possesses the inherent power to regulate the administration of the judicial system. In the exercise of this power, the Supreme Court prescribes rules to guide the lower courts. These rules are issued by the Supreme through Practice Directions.

The 2008 Constitution establishes the Judicial Service Commission (JSC) as "an independent and impartial institution" with ten members. The constitution empowers JSC to "appoint, promote and transfer judges" other than members of the Supreme Court and to recommend Supreme Court appointments to the President. The President must consult with the JSC on appointments to the Supreme Court, and a majority vote of the Parliament must also confirm those appointments. JSC is also responsible for investigating complaints about the judges and taking disciplinary action, including findings of gross incompetence or gross misconduct in recommendations to the Parliament for the removal of judges from the bench.

E. Enforceability of fundamental rights

Although the country was governed by written constitutions since 1932, fundamental rights and freedoms set out were nothing more than hollow promises written on paper. The enforceability of fundamental rights is another essential feature of the 2008 Constitution, which was absent in 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 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 their 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 2008 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.'*¹²⁹

¹²⁹ Article 63 of the Constitution, 2008.

*'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.'*¹³⁰

*'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.'*¹³¹

*'No state employee shall impose any orders on a person except under the authority of law. Everyone has the right not to obey an unlawful order.'*¹³²

However, fundamental rights in Chapter II of the Constitution are not absolute. Therefore, reasonable restrictions can be imposed by an Act of parliament in accordance with the procedure and principles laid down in Article 16 of the Constitution.

F. Decentralized administration

Before the 1998 Constitution, nothing was mentioned in any constitution relating to the administration of the atolls (administrative regions) of the Maldives. Historically, the administration of the atolls took place without much control from the king residing in Male' – the capital island. So long as fixed taxes and rates were regularly paid, the king was not involved. Each atoll had a king's representative known as the tax collector. Over time, the title of the tax collector changed to atoll chief. The atoll chief became the chief administrator of each atoll.¹³³

The 1998 Constitution, for the first time, stated that in each atoll, there should be an atoll chief who the President appoints, and the atoll chief is responsible for administering the atoll in accordance with the manner directed by the President or as directed by him or through the members of his cabinet.¹³⁴ Article 111 of the 1998 Constitution states that the President can remove an atoll chief at any time and at his discretion.

¹³⁰ Ibid, Article 68.

¹³¹ Ibid, Article 69.

¹³² Ibid, Article 64.

¹³³ Suood, Maldivian Legal System, 34-37

¹³⁴ Articles 106 and 109.

Contrary to the 1998 Constitution, the 2008 Constitution devotes an entire chapter to the decentralised administration of the atolls. The drafting of Chapter 8, along with Article 42 of the Constitution, was driven by several factors: (a) concerns of the island communities living in the atolls regarding the management of the natural resources within their islands and atolls; (b) continuation of discriminatory practices against the island communities; (c) the lack of consultation with the local communities in the administration of their islands and atolls.

Chapter 8 of the Constitution states that councils elected by the people should administer the atolls and all islands of the atolls.¹³⁵ The Constitution also states that all members of councils shall be democratically elected by their respective communities by secret ballot.¹³⁶

Article 232 of the 2008 Constitution states that the councils have the following mandate:

- a) provide democratic and accountable governance;
- b) foster the social and economic well-being and development of the community;
- c) establish a safe, healthy, and ecologically diverse environment;
- d) achieve such other objects as prescribed by statute.

Article 234 states that local authorities shall be provided with an annual budget from the treasury as provided in law and shall also have authority, under the statute, to raise funds. Article 235 states that local authorities shall be empowered to own property and to incur liabilities, subject to any limitations prescribed by statute. Article 233 states that the councils have the power to make bylaws that are not contrary to the statutes and regulations made under the statutes.

IV. Legitimacy and people participation

Constitution building often begins following a conflict, self-determination, revolution, or sudden political change. In such events, the country turns a new page in the nation's life and decides to start from a clean slate. Such moments in the life of the nation are

¹³⁵ Article 230.

¹³⁶ Article 231.

'constitutional moments' in its history. In such moments, the constitution originates from the people's aspirations, and everyone, or at least the majority, is excited to have attained something for them and their children. It is argued that to achieve a democratic and durable constitution, the concept of the constitution should originate directly from the people, and their desires and aspirations must be included in the document. Furthermore, public participation in constitution-making is necessary to achieve a democratic and durable constitution. However, factors such as the literacy rate, legal awareness, and economic well-being may affect the durability of democracy and the constitution.

People – the starting point

Democracy fundamentally relates to the sovereignty of the people, and therefore people should be the starting point for discussing the constitution. When the constitution is imposed by the political leadership or the constitution-making process is controlled or dominated, or unfairly influenced by a person or a group of people, constitutions lack legitimacy and moral authority, and such constitutions are likely to have a short life. Constitution-making in the Maldives illustrates that where the constitution-making process was controlled and not transparent, such constitutions only last for as long as the dominant force remains in power.

Maldives constitution making history shows that successive constitutions have been imposed on the people, rather than the desire originated from the people. For example, when King Shamsuddin decided to make the first constitution of the Maldives in 1932, instead of electing a constituent assembly, the king appointed a consultative council comprising only the royal elites of the capital island of Male', even though there were scholars and community leaders all across the country. Hence, the general public was excluded from the constitution-making process. Once the king's consultative council drafted the constitution, the king decreed the constitution to the people.

Similarly, regarding the constitutions of 1942, 1953, and 1954, most people were unrepresented in constituent assemblies that drafted the constitution. Additionally, the constituent assemblies that drafted the 1968 and 1998 constitutions were entirely controlled by the incumbent leader. This shows that the constitutions were imposed on the people.

People participation

People participation here means inclusion of all sections of the population – the majority, minorities, men, and women. A legitimate, democratic, and durable constitution is achieved when people meaningfully participate in the constitution-making process. Except for the 2008 Constitution, the people did not get an opportunity to participate and express their desires and aspirations regarding the shape and contents of the constitution.

In the case of the 2008 Constitutions, the constitution-making process began with the demands made for constitutional reform by the people in the form of street demonstrations and freedom debates, and submissions of hundreds of written constitutional reform proposals from the general public to the president, who then took the initiative to convene a constitutional assembly. As all the sessions of the constituent assembly were telecast live on television, the people were kept continuously engaged in and informed of the process. The process of keeping the public continuously engaged in the process retained pressure on the government to compromise on various matters where there was a deadlock between reform-minded members and the members supporting the incumbent president who had the majority in the assembly. Engaging and informing the public by telecasting the debates live on television ensured the conclusion of the process in a manner that all different parties were satisfied with the process. It also contributed to the quality of the process and prevented the government from manipulating it.

Efficient legal framework and a capable judiciary

A constitution does not have a life of its own without an efficient legal system. It is argued that the lack of a proper legal system was a significant reason for the failure to establish a democracy and a durable constitution in the Maldives. When the first constitution of Maldives was introduced in 1932, the legal and judicial system was ill-equipped, and there was no legal infrastructure to deal with issues arising from implementing a constitution and the newly created legislation. Prior to the 1932 constitution and the creation of the first parliament, the country had no history of written laws. Prior to that the laws applied by the courts only consisted of basic Islamic and customary laws that were not written down. Apart from enforcing religious laws and dealing with inheritance matters, the courts had no business. The administration of justice was carried out informally, mainly at the residences of the magistrates. There

was no institutional effort to train lawyers and judges till the end of the 20th Century. Hence, the Bill of Rights bearing the hallmarks of the Magna Carta had no value to the people, though it was incorporated into the various constitutions since 1932.

Until the creation of the supreme court under the 2008 constitution, the judiciary only existed in name and had neither the capacity nor independence required to defend the constitution.

Literacy rate and economic wellbeing

Meaningful participation by the people can be achieved when the conditions of the society are conducive to the functioning of a democratic constitution. The country's first constitution can be described as a ground-breaking and progressive one. Still, it collapsed within a year of its adoption due to bitter political disputes, resistance to change, and a lack of knowledge about the role of the parliament and a system of written laws. According to Mohamed Amin, "it was not at all suitable to the existing conditions of the country." By this, he meant that the members of the parliament were not only clueless about their role as legislators but also lacked knowledge about public finance, the economic and social condition of the country. As a result, severe hardships were caused to the public by the harsh laws they passed in their excitement as members of the first-ever legislative assembly. Within a few months, political factions who were opposed to making the constitution and the elites who were bitter about losing their power following the adoption of the constitution,¹³⁷ used the situation to their advantage and convinced the public that law-making by the parliament was terrible for the people and blamed the constitution for all their troubles, including the sudden increase in the cost of living as the parliament suddenly passed a myriad of laws regulating the businesses that were never regulated until then.

The Maldives also saw the country's constitution suspended after the 2nd World War broke out. It is unclear whether politicians exploited the situation to suspend the constitution or there was a genuine need to take such radical action, as there was no head of state in such a time of great need and action.

¹³⁷ Shihab, Preface to *Motor Boatge Gadubadu*, 4-9.

V. Conclusion

Despite the long history of constitution-making and periodic struggles to attain democracy, Maldivians have not been able to ensure the survival of democracy or have a durable constitution. I have argued above that the process used for the constitution-making plays a vital role in achieving a legitimate, democratic, and durable constitution.

After examining the various constitution-making processes that the country has undertaken and comparing all the constitutions to date, it is concluded that the failure of the Maldives to achieve a legitimate, democratic, and durable constitution can be largely attributed to the manner of its constitution-making. Instead of consulting with the people, methods used have been such that they were imposed on the people, causing a lack of legitimacy and moral authority. A legitimate, democratic, and durable constitution can be achieved only if the process incorporates the people's wishes into the constitution. There should be no room for the incumbent leader to manipulate the process, and the effort should be undertaken by an independent constituent assembly elected by the people for that purpose, giving consent and mandate from the people. The people should also be allowed to approve or disapprove the draft constitution.

As such, the 2008 constitution launched a new era of democracy, with an explicit set of rights of the people, a clear separation of powers, and a structure of checks and balances.

Bibliography

Amin, Mohamed. "Raskamakun Jumhooriyathakah." *Dhivehi Jumhooriyya . . . Marhaba*. Male', Maldives: Government Print House, 1953.

Amin, Mohamed. "Rayyithunge Muthaqaddam Party." *Dhivehi Jumhooriyya . . . Marhaba*. Male', Maldives: Government Print House, 1953.

Amin, Mohamed. *Dhivehi Rajjeyge QanunAsaaseege Hayath, Maldivian Constitutional History*. Male', Maldives: Government printer, 1951.

Arnold, Rainer. "The Concept of Democracy in the Jurisprudence of the Federal Constitutional Court." In Rainer Arnold & Ingrida Danėlienė, (Eds), *The Concept of Democracy as Developed by Constitutional Justice*, XXII International Congress on European and Comparative Constitutional Law, Vilnius, 2019.

Dalton, Russell J, Shin, Doh Chull & Jou, Willy. *Popular Conceptions of the Meaning of Democracy: Democratic Understanding in Unlikely Places*. CDS Center for the Study of Democracy, 2007.

Dhivehi Thaareekhaa Sagaafathah Khidhumaiy Kuraa Majlis. *Dhivehi Thaareekh*. Malé, Maldives: National Center for Historical Research, 1981.

Dicey, A.V. *Introduction to the Study of the Law of the Constitution*. Indianapolis: Liberty Fund, 1982.

Didi, Ahmed Kamil. "1372H vana Aharu Hajjmahuge 11 vana Dhuvahu vi Inqilaabun Libenvee baeh Ibrath." *Haqeeqee Minivoan Dhuvahuge Khaassa number, Sarukaaruge Khabaru*. Male, Maldives: Government Print House, 1954.

Didi, Mohamed Ismail. *Christopher ge Nazarugai Dhivehin*. Malé, Maldives: National Centre for Linguistic and Historical Research, 1996.

Easa, Umar. "Alhuganduge Reendhoo Foiy." *Dhivehi Adheebunge Dhuvasvee Liyunthah*, Vol. 36. Male', Maldives: Novelty Printers & Publishers, 2009.

Falah, Shamsul. "Towards A Maldivian Nation-State: The Constitutions of 1932 and 1968," in Kevin YL Tan and Ridwanul Hoque, *Constitutional Foundings in South Asia*. Bloomsbury Publishing, 2021,

Ferrero, M. "The Rise and Demise of Theocracy: Theory and Some Evidence." *Public Choice*, Vol. 156, No. 3/4, (September 2013).

Gibb, H.A.R. *The Travels of Ibn Battuta*. New Delhi: Goodword Books, 2011.

<https://escholarship.org/content/qt2j74b860/qt2j74b860.pdf>

https://www.academia.edu/45004665/Constitutional_History_Part_1_and_2

Krouse, Richard W. *Polyarchy & Participation: The Changing Democratic Theory of Robert Dahl*, Polity, Vol.14, No. 3, (Spring, 1982),
<http://www.jstor.org/stable/3234535>

Landman, Todd. "Developing democracy: Concepts, measures, and empirical relationships." *Background paper prepared for the Ministry of Foreign Affairs of Sweden*, 2007.

Manik, Abdul Hakeem Hussain. *Iyye. Male'*, Maldives: Novelty Press, 1997.

Romero-Frias, Xavier. *The Maldivian Islanders, A Study of the Popular Culture of an Ancient Ocean Kingdom*. Barcelona: Nova Ethnographia Indica, 1999.

Shafeeq, Mohamed Abdulla. *Divehiraajje Democracy ah Kuri Dhathuru*. Male', Maldives: Novelty Printers and Publishers, 2011.

Shihab, Ibrahim. "Adhakeethoa eve." *Haqeeqee Minivan Dhuvahuge Khaassa number, Sarukaaruge Khabaru*. Male, Maldives: Government Print House 1954.

Shihab, Ibrahim. "Divehiraajje Jumhooriyyathakah badhaluvee keevvegentha?" *Dhivehi Jumhooriyya . . . Marhaba*. Male', Maldives: Government Print House, 1953.

Shihab, Ibrahim. Preface to Mohamed Ismail Didi's, *Motor Boatge Gadubadu*, Male', Maldives: Novelty Press, Reprint 2003.

Suood, Husnu Al. *Maldivian Constitutional History, Part 1 & 2*. 2018.

Suood, Husnu Al. *Maldivian Legal System*. Male', Maldives: Maldives Law Institute, 2014.

Zafirovski, M. "The residue of theocracy in contemporary democracies: A comparative study." *International Social Science Journal*. (August 2021):
<https://doi.org/10.1111/issj.12293>;

Cases

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.

Dr. Mohamed Jameel Ahmed v State [2021] SC 72.

Immigration and Naturalization Service v. Chadha (1983) 462 US 919 (1983).

Jumhooree Party v State (Attorney General), case No. 2008/HC-DM/07 (2 October 2008).

Marbury v Madison [1803] 1 Cranch 137.

Mohamed Fahmy Hassan v. State, Supreme Court Case No. 2012/SC-C/35.

Mohamed Haleem & Asad Shareef v Yaqoob Abdulla, Supreme Court case No. 2020/SC-C/78 and 2020/SC-C/79.

Mohamed Naeem v Attorney General, (Supreme Court case No. 2011/SC-C/30), 16 August 2012

Petition in respect of Public Finance Act filed by the Attorney General, Supreme Court case No. 2010/SC-C/32,

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

Supreme Court case No. 2020/SC-C/78 and 2020/SC-C/79

Supreme Court Order No. 2012/SC-SJ/05 dated 28 November 2012,