

Bandeyri Kileygefaanu,⁴²⁴ the long-serving prime minister of His Highness the King. They both indeed opposed the idea of a written constitution, naturally, because the main purpose of a written constitution is to limit the powers of the rulers, i.e. to introduce a limited government.

Some contemporary historians have argued that the main objective of the reforms was to divert the Throne to the Athree-ge family (The Family of the Prime Minister and the ruling aristocrats.⁴²⁵). There were, indeed, more competent, educated, and qualified individuals in the Athree-ge family compared to the only son of the incumbent King. Most leading figures at the time in Male' were deeply concerned about Prince Hassan Izzudin's becoming King after Sultan Shamsudin, given his incompetency in royal duties and lack of political maturity. Some educated and influential youths were concerned with the future of the Maldivian government, and the only way forward to reform the governing system was to introduce a written constitution that would abolish the old customary laws in the country. Hence, introducing a written constitution is the only legitimate way to prevent Crown Prince Hassan Izzudin from becoming a successor to Sultan Shamsudins' Throne. In addition to these perceptions, the desired reforms include inter-alia, limiting and distributing the state powers, ensuring the establishment of the rule of law, and the introduction of a limited government. The constitution was also intended to introduce a parliament where citizens are represented and heard in the legislative process. The new constitution inserted additional criteria of the peoples' consent, previously absent in the unwritten constitution of the Maldives, as an eligible criterion for the ascending King. One significant reform brought by the new constitution was changing the absolute hereditary monarchy to an elected hereditary monarchy. This radical change to the Maldivian governing system led the Maldives to become a presidential form of democratic government in the future.

A group of young and educated Maldivians, along with a few nobles, initiated crafting the first Maldivian constitution. Their efforts revolutionized the country's ancient political order, which had been rooted in the culture and political ideals of the Maldivians for centuries. On 19 March 1931, the first constitutional council was constituted by a royal decree of His Majesty As-Sultan Muhammad Shamsudin Iskandar III.⁴²⁶

The three leading key figures in the introduction of a written constitution to the Maldives worth mentioning here

include Prince Mohamed Farid Didi, Prince Hassan Farid Didi, and Mr. Mohamed Amin Didi. These youths, along with the other political elites and religious scholars in Male', played a significant role in materializing the new constitution.

All leading government figures and those actively involved in the reform activities persuaded the King of the urgency of reforms and the significance of having a written constitution. In fact, there were robust deliberations and preparations amongst the politicians even before the royal order to draft the new constitution.⁴²⁷

3. The Drafting Committee

When King As-Sultan Mohamed Shamsudin III decreed the drafting of the first written constitution, a drafting committee with twelve members was formed to carry out the task. The first constitutional drafting committee contained 14 members including religious scholars, academicians, and wise and noble people in Male. This committee gathered for the first time on 19th March 1931 at the royal palace.⁴²⁸

The committee president was Al-Ameeru al-Haj Abdul Majeed Rannabandeyri kilegefaanu (the Prime minister); the deputy president was Prince Ali; the secretary was Al Qadi Hussain Salahudin (The Chief justice); the Deputy Secretary was Mr. Hussain Hilmee Didi. The Sultan's royal order provided the primary guideline for the drafting of the constitution and set out the sources for the first written constitution of the Maldives. These sources include Islam or Sharia principles, ancient but relevant customary norms, and international agreements,⁴²⁹ that the Maldives was bound to abide by.

The first session of the constitutional council was held on 2nd Dhulqadah 1349 (22nd March 1931). This was a preliminary session to decide the agenda and schedules and solve other critical preliminary issues, such as the rules of the Majlis and other relevant operational policies. It was agreed to hold general sessions every Sunday, Tuesday, and Thursday. It was also agreed to have two sessions each day: the first session from 7:00 to 10:30 and the second from 14:00 to 16:30.

The constitutional Majlis also decided to form two sub-committees.

1- The first subcommittee is to evaluate and study the ancient customs of Maldives and

⁴²⁴ Prime Minister Abdul Majeed was initially appointed as the President of the first Constitution drafting committee. However, he chose not to participate in the drafting process and ultimately resigned in protest against the very concept of introducing a written Constitution.

⁴²⁵ This includes Prince Mohamed Farid Didi, Prince Hassan Farid Didi and Amin Didi.

⁴²⁶ Husnu Al-Suood, *The Maldivian Legal System* (Maldives Law Institute 2014).

⁴²⁷ Didi (n 2).

⁴²⁸ Constitution of the Maldives 1932.

⁴²⁹ This includes the British- Maldives Protectorate agreement signed in 1889.

2- The second subcommittee will study and translate some foreign literature and constitutional documents collected by the Maldives mission in Ceylon. They include relevant materials on the British, Egyptian, and Turkish constitutions.

After thorough research and deliberation on these two areas, the constitution-drafting process commenced on 7th Muharram 1350 (25th May 1931). The Majlis formed a third committee for the task of drafting the constitution. This committee consists of the following members:

Prince Ahmed Dhoshimeyna Kilegefaanu
 Sheikh Hussain Salahudin, the Chief justice
 Prince Mohamed Farid Didi
 Ahmed Kamil Didi
 Ibrahim Ali Didi
 Sheikh Ibrahim Rushdi
 Hussain Hilmy Didi

Committee meetings are usually held on days when there are no Majlis sittings. It is also important to note here that the Maldivian government sought technical assistance from the British authorities in Ceylon. The Ceylon government appointed Sir Bernard Henry Bordelon as an envoy of the British Governor General in Ceylon for this task. According to Mohamed Amin Didi, the majority committee refused to incorporate the suggestions provided by the British envoy, claiming that his opinions were not fitting for inclusion in the Maldivian constitution as they were unsuitable for the stature of the Maldivian state.⁴³⁰

The committee members' robust efforts completed the drafting process on 22nd Muharram 1350 (09th June 1931). The draft was then submitted to the Constitutional Majlis on the 23rd of Muharram (10th June 1931). After several working sessions of deliberation on the drafted constitution, the final sitting of the Constitutional Assembly was held on 7th Safar 1351 H. (12th June 1932). The constitution was presented to As-Sultan Muhammad Shamsudin Iskandar C.M.G. Ibnu As-Sultan Ibrahim Nooradin Iskandar, the King of Maldives, on the 29th of Muharram 1350 (16th June 1931) for ascension.

⁴³⁰ The Peoples Majlis, *Dhivehiraajjeyge Gaanoonu Asaasee Hayai (Constitutional Life of Maldives)* (The Peoples Majlis 1981).

⁴³¹ Constitution of the Maldives 1932.

⁴³² Didi (n 2).

⁴³³ *ibid.*

⁴³⁴ Constitution of the Maldives 1932.

⁴³⁵ This specifically referred to the colonial agreement with the British signed in 1886.

The first written Constitution of the Maldives came into force on 22nd December 1932, on 23rd Sha'aban 1350.⁴³¹

4. Sources of law

The 1932 Constitution was entirely based on Islamic Sharia and the customs of the Maldives. According to the first constitution, Sharia and the customary practice of the Maldives are the main sources of law.⁴³² In addition, the British constitution, the Ottoman-Turkish constitution and the constitution of Egypt were used as references. Hence, shadows of British constitutional principles and Ottoman-Turkish and Egyptian constitutional characteristics were implanted into the first Maldivian constitution.⁴³³

King As-Sultan Mohamed Shamsudin's royal edict revealed the sources to be referred to in the making of the first written constitution of the Maldives. The royal decree, as stated in the first constitution, provides the following:

“without violating the tenets of Islam, the customary norms of the people of Maldives, and the agreements with the British and in favour of my subjects, I command you to formulate a constitution that would ease the governance of this country.”⁴³⁴

The sources of law may be derived from the royal decree of his highness the Sultan, include the following:

Islamic Sharia
 Customs and conventions of the Maldives
 The bilateral agreements with foreign nations⁴³⁵

In addition to the above-stated sources, the drafting committee also referred to the British, Egyptian,⁴³⁶ and Turkish constitutions⁴³⁷ to incorporate their constitutional norms and values.

The analysis of the first written constitution of the Maldives indeed displays a comprehensive mixture of all the mentioned sources. The novel constitution vividly displays the Islamic attributes, customary norms and conventions, and some attributes of the above-stated constitutions.

⁴³⁶ The first Egyptian Constitution, promulgated in 1924, served as a model for the Maldivian Constitution of 1932, which adopted several of its key features.

⁴³⁷ The first Ottoman Constitution came into force in 1887. After abolishing the Ottoman Caliphate in 1924, the Turkish Republic enacted a new constitution designed to align with the principles of the newly established secular republic. The analysis of the Maldivian historical documents does not specify whether the second subcommittee reviewed the early Ottoman Constitution, or the Turkish Constitution tailored for the 1924 Turkish Republic. However, the first Maldivian Constitution demonstrated the attributes of all constitutions, as mentioned earlier, to a notable extent.

5. Characteristics of the first constitution

The Constitutional features are deeply rooted in philosophical principles that modelled the political thoughts of a country for centuries.⁴³⁸ The Constitution of a country demonstrates the ideological philosophy and the consciousness of the people of the nation.⁴³⁹ The first Maldivian Constitution characterized the foundation of philosophical principles that shaped the political arena of the then Maldives.

Understanding the characteristics of the first written Constitution of the Maldives requires a journey into its historical origins and an exploration of the intellectual and political climate that shaped its drafting. It could be best viewed if we reverse our journey back to the Maldives in the 1920s. Some of the characteristics of the new Constitution indeed reflects the rapid unweaving of socio-political circumstances in the capital Male', especially tensions amongst the aristocrats. The attributes and characteristics of a constitution define the contemporary polity of the country. The examination of the novel constitution of the Maldives displays its unique constitutional features.

The first written Constitution of the Maldives is multifaceted, including its structural design, the entrenchment of Islamic principles, the Bill of Rights, the principles of constitutionalism, and the mechanisms for amendments. The separation of powers is another significant attribute in the new constitution, central to preventing the concentration of power in any one branch of government,⁴⁴⁰ particularly in the royal courts. These fundamental attributes of the first written constitution continued until the last constitution, which had more advanced constitutional features.

5.1 Islamic attributes

Since Islam was introduced into the Maldives in 1153 C.E., Islamic Sharia has played a significant role in the Maldivian Judiciary.⁴⁴¹ The ancient customary legal system in the Maldives was harmonized with Islamic Sharia. Since then, the

Maldivian judiciary has operated according to Islamic law. When the first written constitution was introduced in the Maldives, Islamic Sharia became a major source of law in the contemporary Maldivian judiciary. In the royal order for the drafting of the first written constitution, His Highness As-Sultan Mohamed Shamsudin III stressed adhering to Islamic principles while drafting the first constitution of the Maldives. Examining the basic document demonstrates Islamic features not only in its constitutional provisions but also in its layout, style of writing, and arrangement of provisions.

The constitution begins with a glorious verse of the holy Quran. On the top of the title page of the Constitution, even before the title "*The Constitution of Maldives*," it begins by presenting a Quranic verse of Surah al-Shura,⁴⁴² قال الله تعالى: وَأَمْرُهُمْ شُورَى بَيْنَهُمْ meaning that Allah says: "and whose affair is [determined by] consultation among themselves."⁴⁴³ It is customary in the Maldives to begin every official document with a Quranic verse, the glorification of Allah, and salutation to the Prophet Muhammad (peace and blessings be upon him).

The first page of the document contained the royal order of the King for the drafting of the first constitution of the Maldives. Before the beginning of the order, Allah's name, "Al-Ghaniyyu", is inscribed on top of the page; it states هُوَ الْغَنِيُّ and the meaning is that "He (GOD) is the Self-Sufficient, The Wealthy". The Sultan's statement begins with glorifying God, the Almighty, and saluting the Prophet Muhammad, peace be upon him as per Islamic customs.

The constitution contained a preamble and 92 constitutional provisions. The Constitution included with verse 4 of Surah Al Rum of the Holy Quran, which states:

قال الله تعالى: لِلَّهِ الْأَمْرُ مِنْ قَبْلُ وَمِنْ بَعْدُ⁴⁴⁴

The meaning is 'Allah says: "To Allah belongs the command before and after."⁴⁴⁵

Article 2 of the Constitution declared that "the Official religion of the state is the religion of Islam, the official language is Dhivehi, and the capital of the Maldives is Male."⁴⁴⁶ Since then, all the Maldivian Constitutions have

⁴³⁸ Akhil Reed Amar, *America's Unwritten Constitution: The Precedents and Principles We Live By* (Hachette UK 2012).

⁴³⁹ L Ali Khan, 'The Qur'an and the Constitution' (2010) 85 Tul. L. Rev. 161 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/tulr85§ion=7&cas_token=3pgv8xdxU4AAAAA:tP8V5n19EREIHn6rn9oui8lUgHa4P8-PKGT6bkm1UbSZrWSMvOzTNScloJS9oENbBxio9I8> accessed 13 September 2024.

⁴⁴⁰ David Brian Robertson, *The Constitution and America's Destiny* (Cambridge University Press 2005).

⁴⁴¹ Harry Charles Purvis Bell, *The Maldivian Islands: Monograph on the History, Archaeology, and Epigraphy*. (The Ceylon Government Press 1940).

⁴⁴² *The Holy Quran*, v 42:38.

⁴⁴³ 'Ash-Shura [42:38] - Tanzil Quran Navigator' <<https://tanzil.net/#42:38>> accessed 13 September 2024.

⁴⁴⁴ *The Holy Quran* (n 23) v 30:4.

⁴⁴⁵ 'Ar-Rum [30:4] - Tanzil Quran Navigator' <<https://tanzil.net/#30:4>> accessed 13 September 2024.

⁴⁴⁶ Constitution of the Maldives 1932.

recognised Islam as the official religion of the country, and the same statement has continued in all subsequent constitutions.

The declaration of state religion was an old constitutional norm amongst Islamic countries. Iran and Afghanistan pioneered introducing Islamic supremacy and repugnancy clauses for the first time,⁴⁴⁷ despite the Tunisian constitution recognizing Islamic law in 1861 and later the Turkish Ottoman constitution providing Islam in its constitution in 1876.⁴⁴⁸ Iran's constitution adopted Islamic provisions and incorporated them into Qanuni Assaasi Iran 1906 through Article 2 of the Iranian supplementary constitution in 1907. Afghanistan adopted Islam as the state religion in its first constitution in 1923.⁴⁴⁹

In addition to the declaration of Islam as the state religion, Islamic Sharia was the governing law in the Judicial institutions in the Maldives. The second constitution of the Maldives in 1934, specifically provided Shafi'e juristic school for the judges to decide matters.⁴⁵⁰

Islamic Sharia was set as the primary constitutional criterion for qualifying almost all state positions, including the King as head of state. Article 25 of the first written constitution stipulates the attributes of the Kings. It states that the King must be a male Sunni Muslim who had not been punished with *hadd* punishment according to Islamic criminal laws.⁴⁵¹ The King is removed from the throne if he is found guilty of Hadd offences proscribed under Islamic Sharia.⁴⁵²

It is a well-established principle that the ruler, also known as the Imam of the Islamic state, must be a Muslim. Non-Muslims are not allowed to hold the highest office in the Islamic state. Further, the constitution provides that he must

also follow the Sunni teachings of Islam. This is an important principle to protect the homogeneity of the Maldivian Sunni Muslim society. The same conditions are provided for the qualifications of the members of the parliament.⁴⁵³ Further, regarding the right to education, the constitution stipulates that citizens must learn to recite the holy Quran, read and write Dhivehi and Arabic.⁴⁵⁴

These constitutional provisions, along with many other articles in the first constitution of the Maldives, present a comprehensive Islamic political system for the Maldives that would advance Islamicity in subsequent Maldivian constitutions.

6. Doctrine of constitutionalism

The doctrine of constitutionalism is a popular constitutional attribute displayed in the constitutions of all democratic nations. A simple definition of constitutionalism could be the constitutional recognition of the rule of law and separation of powers to avoid the arbitrary exercise of power by the state authorities. The principles of constitutionalism were first developed by two famous political philosophers of 17th-century Europe.⁴⁵⁵ English political philosopher Thomas Hobbs' social contract theory and French philosopher Montesquieu's theory of separation of powers,⁴⁵⁶ invented the fundamentals of constitutionalism. The application of the doctrine was later expanded by English jurist John Locke,⁴⁵⁷ as we see in the modern democratic constitutions today. The doctrine of constitutionalism was clearly displayed in the first Constitution of the Maldives. It provides the principles of the rule of law,⁴⁵⁸ the separation of power and the ideals for a

⁴⁴⁷ Dawood I Ahmed and Tom Ginsburg, 'Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions' (2013) 54 Va. J. Int'l L. 615 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/vajint54§ion=25&casa_token=BBgBEELPYKIAAAAA:rakDx5fZkLPYJC565adelOBAahSjzlwR3wi9QAH-isLOCPwcBemGnj77mQGRSpRki7Xg> accessed 13 September 2024.

⁴⁴⁸ JAM Caldwell, *Dustūr: A Survey of the Constitutions of the Arab and Muslim States* (Brill 1966).

⁴⁴⁹ Hannibal Travis, 'Freedom or Theocracy?: Constitutionalism in Afghanistan and Iraq' (2005) 3 Nw. Univ. J. Int'l Hum. Rts. 1 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jihr3§ion=6> accessed 13 September 2024.

⁴⁵⁰ Constitution of the Maldives 1934 art 75.

⁴⁵¹ Constitution of the Maldives 1932 art 25 (1),(2) & (3).

⁴⁵² *ibid* 54 (2).

⁴⁵³ *ibid* 56.

⁴⁵⁴ *ibid* 14.

⁴⁵⁵ Maurice John Crawley Vile, *Constitutionalism and the Separation of Powers* (Liberty Fund 2012).

⁴⁵⁶ Robert G Hazo, 'Montesquieu and the Separation of Powers' (1968) 54 ABAJ 665 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/abaj54§ion=172&casa_token=U3xwnFlzcOMAAAAA:dAk0EB3oOi2x-mnHlb51EVJfK02Rq8iosk41svDCMGYglyEDj05t9LbulXu alJBvMGlcoAQ> accessed 13 September 2024.

⁴⁵⁷ John Michael V Sasan, 'The Social Contract Theories of Thomas Hobbes and John Locke: Comparative Analysis' (2021) 9 Shanlax International Journal of Arts Science and Humanities. 34 <10.34293/sijash.v9i1.4042.>.

⁴⁵⁸ Constitution of the Maldives 1932 art 4.

limited government, a contemporary need of the then Maldives,⁴⁵⁹ which was historically based on the absolute power of the King. The Constitution further introduces the executive branch, the legislative power⁴⁶⁰ and the judiciary as separate state organs.⁴⁶¹

Although the first Maldives constitution did not meet the standards of Montesquieu's theory of separation of powers or the French Constitution, it laid the foundation for the limited government and separation of powers that exist today. Surprisingly, for its time, this Constitution granted more freedom than the people of the Maldives had expected. Even Mohamed Ameen Didi, a prominent liberal democrat and member of the Constitutional Majlis, found the level of liberty excessive, given the socio-political consciousness of the masses, providing a balanced view of its impact.⁴⁶²

Another fundamental element of constitutionalism is the will and the power of the people through a representative government and their unchallenged constitutional rights. The first written Constitution of the Maldives characterizes the features of the representative government by defining the state organs. Article 23 begins by providing the power of the people; it provides that "all powers of the state emanate from the people."⁴⁶³ The provision further illustrates the order and hierarchy of the state powers as follows:

- 1- His Highness the King
- 2- The Cabinet
- 3- The parliament, which consists of two houses, i.e., the legislative assembly and the Peoples' Assembly

The Constitution defined the King as the ruler and sovereign of the state.⁴⁶⁴ This basic document not only outlines the conditions and procedure for his election⁴⁶⁵ but also provides the framework for his potential removal from office.⁴⁶⁶ This constitutional structure is a fundamental attribute of a limited government, standing in stark contrast to an absolute monarchy. The power of the King, the prime minister and the cabinet is strictly circumscribed within the tenets of the Constitution, which explicitly limits the powers of the King. The provision states:

"The power of the King is vested within the limits provided in the Constitution. No action should be taken in violation of the Constitution."⁴⁶⁷

Furthermore, the Constitution explicitly prohibits the King from interfering with the judicial institutions and their decisions.⁴⁶⁸ The King's commitment to the Constitution and the nation is further emphasized by the requirement that he must take an oath in the name of Allah before the legislative assembly. This oath, taken in the presence of the legislative assembly, binds him to respect the country's Constitution and laws, protect its sovereignty, and safeguard the nation.⁴⁶⁹

7. Check and balance mechanism in the constitution

The 1932 Constitution provides a check-and-balance mechanism, where one organ of the state is always vigilant of the other, ensuring one power does not override the other.⁴⁷⁰ In most democracies, the parliament is entrusted with the responsibility of watching the operation of all other state institutions. Articles 67-69 provide that the cabinet ministers are answerable to the legislative assembly. Article 75 states that the Majlis is responsible for questioning the cabinet ministers, conducting inquiries, and investigating any such acts that may lead to the violation of laws. Article 76 provides the proceedings for the motion of no confidence of cabinet ministers, while Article 55 states the procedures for the motion of no confidence of the king and the procedures of removal from his office.

8. Constitutional Supremacy

The Constitutional supremacy clause is another significant principle related to the check and balance mechanism in the first Constitution of the Maldives. Constitutional supremacy is indeed the declaration enshrined in the Constitution that establishes the Constitution as the highest law of the land while setting limitations on the state authorities through its provisions. Article 79 contains constitutional supremacy and repugnancy provisions worth mentioning here. The provision states that "no law shall be enacted in violation of the

⁴⁵⁹ Didi (n 2).

⁴⁶⁰ Constitution of the Maldives 1932 art 23.

⁴⁶¹ *ibid* 43.

⁴⁶² Didi (n 2).

⁴⁶³ Constitution of the Maldives 1932.

⁴⁶⁴ *ibid* Article 27.

⁴⁶⁵ *ibid* Article 26.

⁴⁶⁶ *ibid* Articles 54 & 55.

⁴⁶⁷ *ibid* Article 42.

⁴⁶⁸ *ibid* Article 43.

⁴⁶⁹ *ibid* 26.

⁴⁷⁰ It is important to recognize that the concept of a checks-and-balances mechanism, as enshrined in the first constitution, cannot be directly equated with those in contemporary modern democracies. Nevertheless, the principles articulated were tailored to the context of their time and were applied in accordance with the societal norms and governance frameworks of the Maldives during that era. (See. Mohamed Amin Didi, Qaanoonu Asaasege Hayai)

constitution.⁴⁷¹ As previously mentioned, the constitutional limitation provided in the first Constitution is never too much to repeat. They include articles 42 and 43 of the first written Constitution of the Maldives, a remarkable constitutional limitation that dismantled the age-old absolute supreme authority of the King. Such limitations demonstrate the enduring supremacy of a written constitution.

9. Judicial independence

The principle of separation of power can only be completed under constitutionalism if the judicial institution is liberated from interference from other state powers, especially the executive authority. The first written constitution, holds a significant place in history as it laid the foundation for introducing an independent judiciary.⁴⁷² In order to achieve this, the 1932 constitution provides that judges are independent and that others are prohibited from interfering with judicial authority as long as their conduct is according to the law.⁴⁷³

The development of the Maldivian judiciary has been a journey of several significant steps. The institution of the judiciary was further refined under the second constitution in 1934, a significant evolution of the Maldivian judiciary. Subsequent constitutions of the Maldives continued this refinement. The 1934 Constitution precisely demands the judiciary to follow Islamic Sharia and apply juristic rules of the Shafi'e school of thought.⁴⁷⁴

As the head of state, the Sultan was traditionally associated with the administration of justice, but the constitution aimed to separate this role from the executive authority, ensuring an independent judiciary. The 1932 constitution explicitly prohibited the King from interfering with the judiciary.⁴⁷⁵ The introduction of this provision is a massive step towards an independent judiciary, which led us to formulate the current impartial judicial regime in the Maldives in the 2008 Constitution.⁴⁷⁶

10. Rights of the people

⁴⁷¹ Constitution of the Maldives 1932.

⁴⁷² *ibid* Article 80-84.

⁴⁷³ *ibid* Article 80.

⁴⁷⁴ Constitution of the Maldives 1934 art 75.

⁴⁷⁵ Constitution of the Maldives 1932 art 43.

⁴⁷⁶ Constitution of the Republic of Maldives 2008 ch 5.

⁴⁷⁷ Constitution of the Maldives 1932 art 12.

Another remarkable attribute of the 1932 Constitution is its Bill of Rights. The Constitution recognizes the rights of the people, safeguarding their lives, property, and dignity. Freedom of expression,⁴⁷⁷ freedom of the press, the constitutional obligation to education, freedom to protest⁴⁷⁸ and the freedom to participate in any activity, including political activities, are some enduring attributions of the First Constitution.

The rights section is provided in articles 4 to 22 of the Constitution. The Constitution also prohibits arbitrary arrests, torture, banishment and deportation to a foreign country.⁴⁷⁹ Article 11 protects citizens' personal communications, including telephone calls, telegrams, and letters, from being intercepted by state authorities.⁴⁸⁰ One of the significant rights guaranteed in the Constitution is the protection of the sanctities of private properties, the Constitution prohibits the seizure and confiscation of people's entire property as a punishment for any form of wrong at any time.⁴⁸¹ Another significant right guaranteed in the Constitution is the right to pension. The Constitution provides that "every public servant shall receive a pension of two-thirds of his salary if he has served for twenty-five consecutive years."⁴⁸² The first Constitution granted reasonable rights to citizens in an era when most people were ignorant of their rights and the government's duties toward them.

11. Abolition of the first constitution

The new Constitution introduced a new system for the Maldivian society, where ancient customary norms were accepted as the law of the land in force for centuries. The introduction of newly granted constitutional rights, the constitutionalized governing system, the newly formed parliament, and the rapid introduction of the newly enacted laws indeed caused a significant level of confusion and uncertainty among the public.⁴⁸³

The character and attributes of the first Maldivian Constitution continue to be scrutinized in the context of contemporary challenges at the time. Among the numerous reasons for the abolition of the short-lived Constitution as

⁴⁷⁸ *ibid* 13–16.

⁴⁷⁹ *ibid* 5–7.

⁴⁸⁰ *ibid* 11.

⁴⁸¹ *ibid* 9 & 10.

⁴⁸² *ibid* 22.

⁴⁸³ Didi (n 2).

described by Mohamed Amin Didi, the hardship caused by newly enacted laws as one of the reasons for initiating a protest against the government, which subsequently led to the abolition of the Constitution. The enactment of some forty brand-new statutes in just over eight months created a massive burden and intolerable hardship on people.⁴⁸⁴

Since ancient times, the lifestyle of Maldivians has been attached to un-written customary laws or 'Aadat and the people were not prepared for such a drastic transition. The sudden abolition of long-standing customary practices and the overhaul of the entire legal system overnight really shook the capital city of the Kingdom and caused chaos and anger among the public. In addition, the incitement of the political opponents added the firewood to the burning fire by creating fear among the public in numerous ways. A series of protests in the streets of Male' for nearly two weeks finally reached its boiling point. The people in 'Gulhakuley Fasgandu' (the main public square in Male') literally tore down the Constitution on the evening of the 20th Rajab 1352, 9th November 1933.⁴⁸⁵ This incident ended the era of the first written Constitution, giving it to life for just ten months and seventeen days. The same day, the Constitution was officially abolished, the cabinet dissolved, and the parliament was suspended.⁴⁸⁶

The analysis of the incidents that took place during the era of the first Constitution shows that the fundamental reason to cease the Constitution was not the Constitution itself. However, the main contributing factor to the demise of the first written Constitution of the Maldives was the rapid and unprecedented number of laws passed by virtue of this Constitution.

12. The impact of the first written constitution

The abolition of the first written constitution does not bar constitutional rule in the Maldives. On the contrary, the first written constitution had a tremendous impact on Maldives' politics, and the spirit of the written constitution never died in the Maldives. The roots of the first written constitution were well-struck in the Maldivian soil to the extent that the people felt the emptiness of the constitution within a few months. Therefore, to fill the constitutional vacuum within the state, efforts were made to revive the deceased constitution. Subsequently, a total of eleven constitutions were passed in just over seven decades.

⁴⁸⁴ *ibid.*

⁴⁸⁵ Ahmed Shakir, *Adl Insaafai Qaanoonu Asaasee (Justice and Constitution)* (Maldives National Centre for Linguistic and Historical Research 2006).

⁴⁸⁶ The Peoples Majlis (n 11).

Despite its short lifespan, the 1932 Constitution played a critical role in shaping the Maldivian society and the political sphere in Male'. Its most significant contribution was laying the groundwork for democracy, a concept that would become functional almost a century after its initial establishment. This pioneering document also revolutionized the Maldives' unwritten constitutional norms and centuries-old traditional system of governance. The absolute hereditary monarchical system switched to an elected monarchy, which later evolved into a presidential system. The presidential form of governing system in the Maldives reverted to an elected monarchy not long after, which was permanently abolished in 1968. This paved the way for the introduction of the second presidential republic through constitutional amendments.

The abolition of the short-lived Constitution does not cause the death of the constitutional ideals in the Maldives. In fact, it opened doors for a better, more adaptable constitution for the future Maldivian society, which had been followed in the subsequent constitutions. Constitutionalist, like Jack Balkin, correctly suggest that the character of the Constitution is dynamic and adaptable. He argues that the document's enduring strength lies in its capacity to evolve and respond to changing societal values.⁴⁸⁷ To this end, the second Maldivian Constitution in 1934 came into force with more dynamic and adaptable features. Many scholars contend that the latter is an amendment to the first Constitution, addressing the inclusion of the demands of the people and resolving the contemporary issues of the state.⁴⁸⁸

13. Conclusion

The introduction of the first written Constitution of the Maldives and an examination of its characteristics reveal a rich tapestry interwoven with historical, philosophical, and contemporary elements. Its constitutional ideas of governance, the upholding of religious values, and features such as the separation of powers, checks-and-balances mechanisms, and the bill of rights collectively highlight its enduring significance.

Exploring the first written Constitution of the Maldives revealed significant historical values in its character and unique Islamic and local features. As the cornerstone of democratic reform in the Maldives, the first Constitution introduced a remarkable advancement: the establishment of a representative legislature. The elected parliament was a novel idea contrary to the old-age traditional governance system.

⁴⁸⁷ Jack M Balkin, *Living Originalism* (Harvard University Press 2011) <<https://www.jstor.org/stable/j.ctt24hh8x>> accessed 13 September 2024.

⁴⁸⁸ Shakir (n 65).

Despite the short lifespan of the first Constitution, its abolition did not mark the end of constitutional ideals in the Maldives. The subsequent constitutions demonstrate the revival of its constitutional spirit, which defined the state of the Maldives and set a trajectory for the future.

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