Constitutionalism in the First Constitution of the Maldives

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Abstract

The Maldives saw the promulgation of her first Constitution in 1932. A key question relating to that constitution is whether it meaningfully guaranteed the supremacy of the basic law or a *government of law* instead of a *government of men*. To answer it, this article explores, on the one hand, the concept of *constitutionalism* as a normative politico-legal doctrine that guarantees *rule of law* over political powers, the practice of *constitutional judicial review* as the main legal and judicial tool of enforcing and upholding *constitutionalism*, and the *independent judiciary* as the key platform for conducting *constitutional review* to uphold *constitutionalism*. On the other hand, it analyses relevant provisions in the Constitution of 1932 to see whether it enshrined the principle of *constitutionalism*, whether it provided for a mechanism of *constitutional judicial review*, and whether it established an *independent judiciary* which could function as an efficacious venue for upholding *constitutionalism* and ensuring a *government of law*.

Keywords: Constitution of Maldives 1932; Constitutional judicial review; Judicial independence; Constitutionalism; Maldivian Judiciary

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ކީވޯޑްސް: ދިވެހިރާއްޖޭގެ ޤާނޫނުއަސާސީ 1932؛ ދުސްތޫރީ މުރާޖަޢާ؛ ވަކިވަކި ބާރުތަކުގެ މިނިވަންކަން؛ ދުސްތޫރީ ވެރިކަން؛ ދިވެހިރާއްޖޭގެ ޤަޟާއީ އިންސާފުގެ ނިޒާމު.

Introduction

The Republic of Maldives had six constitutions before 2008,[1] each of them marking a milestone in the country's politico-legal evolution and her journey on the path of *Rechtsstaat* and *rule of law*.[2] The first of them—the very first Constitution of the country, promulgated in 1932—was in more than one respect the most important one. It had a lasting impact on both the form and the substance of all the six constitutions that came after it.

A key question in the historical and analytical study of first Constitution of the Maldives is to ask whether it adhered to or conformed with the philosophy of *constitutionalism*. Was it, as per the categorization of constitutions by scholars such as Sartori, a *garantiste* one which meaningfully provided for the limitation of political power, guaranteeing a *government of law* instead of a *government of men* for the Maldivian people, or should it be described as a *nominal* or *façade* constitution which failed to do so? [3]

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[1] After the first Constitution of 1932, which saw two amendments, one announced on 5th July 1934 and the second coming on 28th January 1937, the second Constitution was promulgated on 23rd April 1942 (had one amendment, announced on 31st May 1951); the third on 1st January 1953 (no amendments); the fourth on 7th March 1954 (First Amendment on 4th June 1964, and Second Amendment on 10th July 1967); the fifth on 11th November 1968 (First Amendment on 26th April 1970, Second Amendment on 1st August 1975, and Third Amendment on 21st April 1975); and the sixth promulgated on 27th November 1997 (no amendments during its period of operation spanning ten years, seven months and six days). The current Constitution, promulgated on 7th August 2008, is the Seventh Constitution of the Maldives. The current one provides, at least in theory, for co-equality of the judicial branch in accord with the doctrine of *trias politica*, for the independence of judiciary, and for strong-form constitutional judicial review, while enshrining all the substantive and fundamental values of *constitutionalism* in its various provisions.

[2] The German term *Rechtsstaat* and the English concept of *rule of law* are commonly understood to mean the same thing: law being the highest power in a community, and that understanding is not really erroneous. However, *Rechtsstaat* is perhaps an idea more oriented towards the political order, its "basic tenet … (being) that the government ought to be closely regulated by law". See Glenn Schram, "Ideology and Politics: The Rechtsstaat Idea in West Germany," *The Journal of Politics* 33, no. 1 (1971): 134, https://www.jstor.org/stable/2128536. On the other hand, *rule of law* is a more general concept meaning that law must be the supreme thing that regulates the community, in politics but also in other aspects of communal life. On the similarity and distinction between what these two terms denote and connote, see Nick W. Barber, "The Rechtsstaat and the Rule of Law," *The University of Toronto Law Journal* 53, no. 4 (2003), https://www.jstor.org/stable/3650895.

[3] Giovanni Sartori explains what he calls *nominal constitutions* and *façade constitutions* in the following terms: "I call "nominal" the constitutions (which are) … fully applied and activated, but its ontological reality is nothing but the formalization of the existing location of political power for the exclusive benefit of the actual power holders … Nominal constitutions are therefore "nominal" in the very simple sense that they bear the "name" constitution. (They) … do not restrain the exercise of political power in a given polity. Actually, nominal constitutions do not really pretend to be "real constitutions." They frankly describe a system of limitless, unchecked power. They are not a dead letter. It is only that this letter is irrelevant to the *telos* of constitutionalism. … The façade constitutions are different from the nominal ones in that they take the appearance of "true constitutions." What makes them untrue is that they are disregarded (at least in their essential *garantiste* features). Actually, they are "trap-constitutions." As far as the techniques of liberty and the rights of the power addressees are concerned, they are a dead letter." According to his view, a constitution which is truly and effectively framed to attain the "*telos … of*

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To answer this question, we need to examine the 1932 Constitution closely and pursue, in our investigation, three main lines of inquiry: *firstly*, we must see whether it truly enshrined and embodied the doctrine of *constitutionalism* — whether it meaningfully provided for the binding of the Government with the shackles of its controlling and restricting norms; *secondly*, we have to examine whether it provided for a mechanism of *constitutional judicial review* (CJR) to enforce its principles and rules upon and against the Government; *thirdly*, we ought to see whether it set up and empowered a truly *independent judiciary* which could carry out that enforcement. Why these three things, one might ask; and the answer is not very complicated. They — a supreme basic law embodying and establishing *constitutionalism*, an effective mechanism of *constitutional judicial review*, and an *independent judiciary* — are the necessary constitutional and legal foundations upon which political power can be held in check and subjected to the *rule of law*.[4] They are the building blocks of *constitutionalism.* Without any of them, there is no *constitutionalism*; if any of them is missing, there can be no real restraining, restricting, or limiting of political power by the law; they are necessary if a State is to have a *government of law and not of men*.

In the following sections, we will briefly look at the doctrines of *constitutionalism*, the concept of CJR, and the *independence of judiciary* to elaborate on what is stated in the above paragraph, to establish the major premise of the argument of this article, and to provide a conceptual basis for the analysis of the 1932 Constitution to see if it indeed conformed with the philosophy of *constitutionalism*.

Constitutionalism: The End

If government is to be restrained and restricted by a supreme law, the people framing a constitution for a state must first have *the belief* that it is how things must be. There should be the conviction that the ruler cannot be a *leviathan*[5] enjoying, whether *de facto* or *de jure* or both, all-encompassing and unlimited sovereign powers of government. This belief and conviction must then be translated into supreme law through enshrining and entrenching it in the constitution framed for the governance of the state.[6] This is how *constitutionalism* is born in any state.

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constitutionalism" is a *garantiste* constitution. In his understanding, such a constitution would constitute "a fundamental law, or a fundamental set of principles, and a correlative institutional arrangement, which would restrict arbitrary power and ensure a "limited government." As for the guarantees such a constitution would include, he observes that "certain techniques of allocation of power, a bill of rights, the rule of law, judicial review," among other things must be guaranteed. See Giovanni Sartori, "Constitutionalism: A Preliminary Discussion," *The American Political Science Review* 56, no. 4 (1962): 861 & 855. https://www.jstor.org/stable/1952788.

[4] See *infra*, Notes 32, 33, 34, and 35 and the corresponding passages quoted from Mauro Cappelletti.

[5] See Thomas Hobbes, *Leviathan or The Matter, Form and Power of a Commonwealth Ecclesiastical and Civil*, (Oxford Clarendon Press, 1909): First published in 1651 (publisher unknown). Hobbes famously proposed the idea that once the society, under a *social contract*, creates a sovereign government, that government then has all sovereign powers of making laws, enforcing them, and adjudicating on all disputes in such a way that the government – or monarch – cannot be held accountable to a law. This idea was principally based on the European traditional practice of absolute monarchy and the Christian idea that kings held power by a divine right which could not be challenged and undermined by any human authority except the ultimate authority of the Vicar of Christ—the Pope himself. History has shown that such absolute and untrammelled power in the hands of the leader or government—even the so-called "democratically elected" governments—is sooner or later used in terrible forms and ways to oppress the people; from the absolutism and despotism of Caligula and Tiberius of Rome to Hitler of Germany and Mussolini of Italy, from Abu Ali al-Mansur al-Hakim of Fatimid Egypt to Abdul Fattah al-Sisi of modern Egypt, from King Leopold II of Belgium to the neo-liberal, neo-con, capitalist, and hegemonic governments of modern USA and Britain, the truth that is clearly seen is that when rules and governments sit above Just, Equitable, and Good law, people suffer in terrible ways under the dictates of the whimsical and capricious arbitrariness of those in power.

[6] Nwabueze, one of the leading constitutional jurists of Africa, stated that three questions must be asked in examining whether *constitutionalism* has been enshrined in a constitution. Of those three, the first question—which is the one relevant to the point

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An ordinary dictionary of the English language would explain the primary meaning of the word '*constitutionalism*' in more or less the following terms: it carries the notion of believing in or adhering to the normative value that political power should be established by, given legitimacy by, and used strictly in accord with, and controlled and limited by a written and supreme law to which all officials and institutions of Government are subject to, subservient to, and accountable to. *Constitutionalism*, then, is a moral doctrine based on the fundamental ideas of *justice* and *right reason*; it is also a manifestation or a form of the general doctrines of *Rechtsstaat* and *rule of law* which seek to arrange a community, including all its communal affairs as well as the lives of its individual members, within the confines of the law. It is about subjecting the ruler, or rulers, or the government, or political powers, to a law that is *higher* than them; it is about *establishing a government of law* instead of a *government of men*. This higher law or supreme law is typically called a *constitution*—hence, the term *constitutionalism*.[7] McIlwain gives the classic definition of this significant term in the following words: "constitutionalism has one essential quality: it is a legal limitation on government; it is the antithesis of arbitrary rule; its opposite is despotic government, the government of will instead of law. … the most ancient, the most persistent, and the most lasting of the essentials of true constitutionalism … (is) the limitation of government by law."[8] This definition by McIlvain as well as what other well-known scholars have said on the concept,[9] make it clear that there is a consensus among Western jurists that the traditional and central idea of *constitutionalism* is the limitation of government within the bounds of a supreme basic law which sets out how government is formed and how it must work. By establishing *rule of law* over politics and by ensuring that all political authorities and officials act in accordance with pre-determined rules, *constitutionalism* seeks to, as McIlvain says in his definition itself, remove arbitrariness from government.[10] In today's world, the idea or doctrine of *constitutionalism* is almost unanimously accepted as a politico-legal ideal to

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being made here—is to ask how or in what form the restraints on the political powers of the State are imposed; whether the rules limiting government are legal rules embodied in a written and supreme constitution, or just factual limitations imposed by ordinary law or convention and usage. … In answering this question, he says that the restraints limiting government must come from a supreme constitution which is unalterable by the ordinary legislature. See Benjamin O. Nwabueze, *Constitutionalism in the Emergent States*, (Fairleigh Dickinson University Press, 1973), 4-10.

[7] On this point—the idea that the Constitution as the basic and supreme law of the land is a law higher than all political powers and that the Government is subservient to it in every way—Thomas Paine wrote memorably and eloquently. "A constitution is a thing antecedent to a government, and a government is only the creature of a constitution. The Constitution of a country is not the act of its Government, but the of the people constituting a Government. … and Government without a Constitution is power without right. … the continual use of the word 'constitution' in the English parliament shows there is none; and that the whole is merely a form of government without a constitution, and constituting itself with what power it pleases. If there were a Constitution it certainly could be referred to; and the debate on any constitutional point would terminate by producing the Constitution. One member says this is constitution, and another says that is constitution – today it is one thing, tomorrow it is something else – while the maintaining of the debate proves there is none." See Thomas Paine, *Rights of Man*, (Wordsworth, 1996), 36, 41, & 91-92.

[8] Charles H. McIlwain, *Constitutionalism: Ancient and Modern*, (Cornell University, 1947), 21-22.

[9] See, for example, Alexander Stanley De Smith, "Constitutionalism in the Commonwealth Today", *Malayan Law Review* 5 (1962): 205, https://www.jstor.org/stable/24861712.; Sartori, "Constitutionalism: A Preliminary Discussion," 861.; Richard S. Kay, "American Constitutionalism," In *Constitutionalism: Philosophical Foundations*, ed. Larry Alexander, (Cambridge University Press, 1998), 16.; Larry Alexander, *Constitutionalism: Philosophical Foundations*, (Cambridge University Press, 1998), 4; Wilfrid J. Waluchow, *A Common Law Theory of Judicial Review*, (Cambridge University Press, 2007), 21.; Dieter Grim, *Constitutionalism: Past, Present, and Future*, (Oxford University Press, 2016), 6-11.; Nick W. Barber, *The Principles of Constitutionalism*, (Oxford University Press, 2018), 2.

[10] Nwabueze explains what 'arbitrariness' is as follows: "Arbitrary rule is government conducted not according to pre-determined rules, but according to the momentary whims and caprices of the rulers; and an arbitrary government is no less so because it happens to be benevolent, since all unfettered power is by its very nature autocratic." Nwabueze, *Constitutionalism in the Emergent States*, 1.

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which every state must conform.[11] In its nature, it is an end in itself, although it seeks to realize ends even more fundamental and crucial for every member of the society.

Although the concept of *constitutionalism* entered academic discourse as simply the idea of shackling and holding to account political power or government, and has retained that basic idea as its core, it has grown and become mature to include many secondary concepts and principles which complement and strengthen the original and fundamental concept. This can be seen from a reading of works by leading modern scholars,[12] who, while having differing ideas of what completes *constitutionalism* as a doctrine, suggest in general that constituent principles and tools such as *popular sovereignty*, *supremacy and primacy of the constitution*, *independence of the judiciary*, *separation of powers*, *protection of fundamental rights and liberties*, *constitutional and civil control of military and police*, in addition to the necessary *general substantive* and *general procedural* limits on government, must be there in the constitutional design and framework for *constitutionalism* to exist.[13] The term has also being used to carrying

[11] Waluchow, *A Common Law Theory*, 21.: "… the fact of the matter is that most states not only grant government powers, but they also limit them in a variety of ways. In other words, most states embrace constitutionally limited government."

[12] See Barber, *The Principles of Constitutionalism*, 2-3, who writes: "Perhaps constitutionalism binds the state to the rule of law and popular sovereignty, or to the separation of powers, or to the separation of powers and, also, to human rights. ... In addition to a commitment to some or all of these principles, it seems that these principles constrain the state in a particular type of way: through law, and, more specifically, through their application by judges. Constitutionalism requires judges to possess and exercise the capacity to strike down acts of the state that run against these principles. On some accounts of constitutionalism, strong- form judicial review— where the courts possess the power to declare acts of the legislature to be unconstitutional— is a necessary feature of the doctrine. Constitutionalism requires the legal realm to limit and regulate the political. Relatedly, a connection is sometimes drawn between constitutionalism and entrenchment: not only do judges enforce these principles against state bodies but constitutionalism also requires that the capacity of the legislature to override judicial decisions, or to amend the constitution to alter the scope of judicial power, is constrained. The strictures of constitutionalism, it seems, apply to the legislature as well as to the executive." Also, see Andrea Buratti, *Western Constitutionalism: History, Institutions, Comparative Law*, (Springer, 2016), 2: "Since its origins, constitutionalism has striven to achieve the goal of limiting political power through the acquisition of three legal tools: (i) the adoption of a written constitution, prescriptive toward the institutions of the state and suitable to act as paramount law upon its acts; (ii) the separation of powers of the state; (iii) the legal protection of a wide range of individual rights." See also, Kesiena Urhibo, "The Prospective Nexus between Constitutionalism, the Rule of Law and Democratic Good Governance: The Nigerian Experience," *Beijing Law Review* 14, no. 2, (2023), 584-605, doi: 10.4236/blr.2023.142030, which gives a list of "indices of constitutionalism from various works as follows: 1) government according to constitution; 2) representative/democratic government; 3) separation of powers; 4) respect for human rights; 5) independent judiciary/judicial review; 6) control of the police/military by the constitution.

[13] Especially important is the doctrine of *supremacy* or *primacy of the Constitution*, for there cannot, as common sense alone can tell us, be any subjection of political power or Government to the law unless and until the basic law has been framed by a source higher than the Government and that basic law stays above the Government. This "higher law" position of the fundamental law of the polity – the Constitution – is the meaning, essentially, of the doctrine of the *supremacy* or *primacy of the Constitution*. This axiomatic principle has been accepted by scholars in general, and one example has already been given above – what Nwabueze stated on the matter (See Note 6 above). The meaning of *supremacy of the Constitution* has been explained lucidly by Jutta Limbach, former President of the German Constitutional Court and one of the most well-known constitutional jurists of modern Europe. He says that the "concept of the supremacy of the constitution confers the highest authority in a legal system on the constitution. Stating this principle does not mean just giving a rank order of legal norms. The point is not solely a conflict of norms of differing dignity. The principle of the supremacy of the constitution also concerns the institutional structure of the organs of State. The scope of the principle becomes clear if we reformulate it: the supremacy of the constitution means the lower ranking of statute; and that at the same time implies the lower ranking of the legislator." He goes on to say that there are "three traits that primarily characterise the principle of supremacy of the constitution." He gives them in the following words: "1. The possibility of distinguishing between constitutional and other laws; 2) the legislator's being bound by the constitutional law, which presupposes special procedures for amending constitutional law; and 3. An institution with the authority in the event of conflict to check the constitutionality of governmental legal acts." See Jutta

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other related meanings. However, for this work we will just focus on the primary meaning, or the main idea of *constitutionalism* as McIlvain, Corwin, de Smith, Sartori and others have explained it, instead of discussing those related meanings and what constitutes the core values of *constitutionalism* and what the necessary tools which must accompany it are.

The question as to *how* the doctrine of *constitutionalism* can be embodied in a constitution, however, must be addressed. It has been argued that the very fact of the existence of a *written constitution* as the basic law of the polity should mean *constitutionalism* is there in principle or in theory, irrespective of whether there are express or definitive provisions in the constitution enshrining the precepts and principles of *constitutionalism*. That would be true if the constitution in question has been established in accord with what scholars such as Thomas Paine have said[14] about a constitution being by definition and of necessity an instrument of controlling and limiting a government and a constitution which fails to do not being a constitution in truth. The view that a truly *garantiste* constitution framed on the basis of *republicanism*, by a people who are truly the *locus of sovereignty* in the polity, would be a basis for *constitutionalism* by the mere fact that it exists, was held by the United States Supreme Court itself, in the case of *Marbury v. Madison*.[15] However, if a constitution has been granted or put in place by a powerful

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Limbach, "The Concept of the Supremacy of the Constitution," *The Modern Law Review* 64., no. 1 (2001): 3, https://www.jstor.org/stable/1097135.

[14] See *supra*, Note 8.

[15] Several passages from the Court's judgment contain this view of the Court, and some of them are as follows: "That the people have an original right to establish for their future government such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it nor ought it to be frequently repeated. The principles, therefore, so established are deemed fundamental. And as the authority from which they proceed, is supreme, and can seldom act, they are designed to be permanent. … This original and supreme will organizes the government and assigns to different departments their respective powers. It may either stop here or establish certain limits not to be transcended by those departments. … The Government of the United States is of the latter description. The powers of the Legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. It is a proposition too plain to be contested that the Constitution controls any legislative act repugnant to it, or that the Legislature may alter the Constitution by an ordinary act. … Between these alternatives there is no middle ground. The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. … If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written Constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable. … Certainly, all those who have framed written Constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the Legislature repugnant to the Constitution is void. … This theory is essentially attached to a written Constitution, and is consequently to be considered by this Court as one of the fundamental principles of our society. … So, if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. ... If, then, the Courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the Legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply. ... Those, then, who controvert the principle that the Constitution is to be considered in court as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law. ... This doctrine would subvert the very foundation of all written Constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that, if the Legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the Legislature a practical and real omnipotence with the

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sovereign who sits and continues to sit above the law, such as an absolute monarch or a despotic and authoritarian government, this is not necessarily the case. In such case, the constitution prescribed by those in power may just be a *façade* which does not have the genuine status of a *supreme law* or a *nominal* one which merely describes the power structure as it is. A constitution which an ordinary legislature or the ordinary institutions of the Government can amend and change is no different—it cannot truly uphold *constitutionalism*. In other words, there can be "constitutions without constitutionalism" as Nwabueze, Casper, Chen and many other jurists have observed.[16]

Hence, to establish whether a constitution enshrines the *doctrine of constitutionalism*, we must *first* examine whether it is a truly *republican* and *garantiste* constitution, originating from the general will and consent of people who are genuinely the *locus of sovereignty* in the polity and who use their sovereign powers to create a government under the *rule of law*. If a constitution passes this criterion, we may conclude that it upholds *constitutionalism*. *Second*, we may go on further to see if the constitution includes express and definitive provisions which enshrine and embody the *doctrine of constitutionalism*. If it does, there can then be no debate that that constitution upholds *constitutionalism*. It is this two-tier test that we will employ, in Section VI below, to examine whether the Maldivian Constitution of 1932 adhered to *constitutionalism* to provide the first foundation for establishing a *government of law and not of men* in the country.

Constitutional Judicial Review: the Means

Mere profession of the postulates of *constitutionalism* in a constitution, mere inclusion of the principles and precepts of *constitutionalism* in a constitution and prescribing a constitutional obligation for political officials and institutions to honour them is not sufficient. For *constitutionalism* to be truly enforceable, the constitution must provide tools and instruments and prescribe processes and procedures through which those provisions ensuring *constitutionalism* may implemented. CJR has been almost universally accepted as the best such mechanism. It is pointing out this fact

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same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure." See the judgment of *Marbury v. Madison*, 5 U.S. 137 (1803). Also, see Section VII for a brief explanation of how the United States Supreme Court justified the practice of *constitutional judicial review* in this case.

[16] Nwabueze put the point in the following terms: "That there is a formal written constitution according to whose provisions a government is conducted is not necessarily conclusive evidence that the government is a constitutional one. Again, the determining factor is: Does the constitution impose limitations upon the powers of the government? There are indeed many countries in the world today with written constitutions but without constitutionalism. Normally, a constitution is a formal document having the force of law, by which a society organizes a government for itself, defines and limits its powers, and prescribes the relations of its various organs inter se, and with the citizen. But a constitution may also be used for other purposes than as restraint upon government. It may consist to a large extent of nothing but lofty declarations of objectives and a description of the organs of government in terms that import no enforceable legal restraints. Far from imposing a brake upon government, such a constitution may indeed facilitate or even legitimize the assumption of dictatorial powers by the government. … The Soviet government provides perhaps the most glaring example of arbitrary power, and yet the Soviet Union has a constitution of 146 articles which, somewhat in the fashion of the democratic constitutions of the Western countries, contains a guarantee of individual rights as well as procedures for the exercise of governmental functions, indeed a full paraphernalia of a seemingly regularized system of restraints. Yet all this seems to be nothing but a façade." See Nwabueze, *Constitutionalism in the Emergent States*, 2. Casper states that "… constitutionalism does not refer to having a constitution but to structural and substantive limitations on government …" Gerhard Casper, "Constitutionalism," *University of Chicago Law Occasional Paper*, no. 22 (1987): 16. See also Albert H. Y. Chen, "The Achievement of Constitutionalism in Asia: Moving Beyond 'Constitutions without Constitutionalism," In *Constitutionalism in Asia in the Early Twenty-First Century*, ed. Albert H. Y. Chen, (Cambridge University Press, 2014), 1. In addition, Sartori's explanation of *garantiste*, façade, and nominal constitutions also shows that not all constitutions are there to truly uphold rule of law and constitutionalism (See *supra*, Note 4).

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that Chen and Maduro made the following remarks: "In the early twenty-first century, a well-developed system of constitutional review is now generally accepted as an essential or desirable feature of a liberal constitutional democracy."[17]

To look at basic terminology, the term '*judicial review*' was first used, or at least brought into common parlance in the legal academia, during the first decade of the twentieth century by Corwin[18] in the USA. He introduced the term and used it as early as 1909,[19] defining it as "the power of a court to pass upon the validity of the acts of a legislature in relation to a "higher law" which is regarded as binding on both."[20] The new term soon became common, not just in the USA, but also in the United Kingdom. However, as Tushnet notes,[21] it gained a different meaning on the eastern side of the Atlantic. He writes: "The term "judicial review" … (means) In US usage … the judicial practice of determining whether a statute is consistent with the Constitution; (while) in British usage it refers to the judicial practice of determining whether administrative action is consistent with statutory authorization." This difference which Tushnet is pointing out is what distinguishes the two types of the wider concept of *judicial review* from each other: the newer practice of *constitutional judicial review* (CJR) developed in the USA which Corwin is describing in the definition given, and the traditional British common law practice of *administrative judicial review*[22] (ADR). CJR and ADR are two different things, both conceptually and functionally, even though they share a lot with each other and have at times being described with the same term. It is thus that Black's Law Dictionary includes the two notions as two distinct meanings of the same term *judicial review*. As this article is focusing on CJR alone, we will not discuss Black's explanation of the term with reference to the practice of ADR, but will look at how it defines

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[17] Albert H. Y. Chen and Miguel P. Maduro, "The Judiciary and Constitutional Review," In *Routledge Handbook of Constitutional Law*, ed. Mark Tushnet et el, (Routledge, 2013), 191.

[18] Keith E. Whittington, "Reconsidering the History of Judicial Review", *Constitutional Commentary* 35, no. 1 (2020): 1, https://heinonline.org/HOL/Page?handle=hein.journals/ccum35&id=4. Also, see Mary S. Bilder, "Idea or Practice?: A Brief Historiography of Judicial Review," *The Journal of Policy History* 20, no. 1 (2008): 14, http://ssrn.com/abstract=1134831.

[19] Corwin used the term in such works as *The Growth of Judicial Power*, the work of which he started in 1909. He also used the term in 1914. See Edward S. Corwin, *The Doctrine of Judicial Review*: *Its Legal and Historical Basis and Other Essays*, (Princeton University Press, 1914).

[20] Edward S. Corwin, "Judicial Review in Action," *University of Pennsylvania Law Review* 74, no. 7 (1926), 639, https://www.jstor.org/stable/3313984.

[21] Mark Tushnet, *Advanced Introduction to Comparative Constitutional Law*, (Edward Elgar Publishing Limited, 2014), 6.

[22] As a common law country, the United States also inherited the British practice of *administrative judicial review*, and the practice exists in the country as a parallel system of judicial review. The British common law practice of *administrative judicial review*, commonly referred simply as *judicial review* in English law and scholarly works of English law, is a process or a procedure whereby the exercise of executive power or administrative and adjudicatory actions and decisions taken by ministers, government departments, local authorities, tribunals and state agencies, including delegated legislation, are judicially checked for lawfulness – that is, for conformity with legislation made by Parliament – or legality on the basis of one or another of three grounds: "error of law, lack of due process, and improper exercise of discretionary power". Traditionally, these three grounds were known to be illegality, irrationality, and procedural impropriety, as observed by Lord Diplock in the landmark case of *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, 410 (HL). One of the main purposes of the process is to hold the government accountable to the law. (See Timothy Endicott, *Administrative Law*, (Oxford University Press, 2011), 39.; Neil Parpworth, *Constitutional & Administrative Law*, (Oxford University Press, 2012), 251.; Hilaire Barnett, *Constitutional & Administrative Law*, (Routledge, 2013), 562.; and Lisa Webley and Harriet Samuels, *Public Law: Text, Cases, and Materials*, (Oxford University Press, 2012), 414.) In this process, "the role of the judiciary is both to determine what the legal rules are that apply and to decide on the facts whether the rules have been breached." (See Anthony W. Bradley and Keith D. Ewing, *Constitutional and Administrative Law*, (Pearson Education Limited, 2007), 725). As is clear, the difference between *administrative judicial review* and *constitutional judicial review* is that in case of the former, Courts check administrative and executive actions and decisions for conformity with *primary legislation* made by the ordinary legislature, while in case of the latter, Courts check actions of both Executive and Legislature, as well as any other independent state bodies, for conformity with the written Constitution.

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the term in relation to CJR. The definition goes as follows: "1. A court's power to review the actions of other branches or levels of government; esp., the court's power to invalidate legislative and executive actions as being unconstitutional. 2. The constitutional doctrine providing for this power."[23]

CJR is a tool, an instrument, a mechanism, or a means established by a supreme constitution to empower a judicial institution to enforce its principles and rules, and to enforce its supremacy and primacy over and upon all political power and the exercise of such power. If we look at it in operation, it is a type of adjudication in which a competent court – usually a specialized *constitutional court* or a generalist superior court[24] – judicially evaluates actions, decisions, or policies of the government or individual state institutions and agencies for comport with a written constitution which is deemed supreme and limiting political powers in accordance with the idea of *constitutionalism*. The outcome of this adjudication would be the court declaring either that the law, act, policy, or decision being reviewed is *unconstitutional* and therefore null and void, or that it is in conformity with the constitution and therefore legitimate and valid. The purpose, obviously, is to prevent government institutions and officials from violating the constitution, and holding any violators duly accountable where any breach has taken place. As for the question of what can be reviewed through CJR, *primary legislation* enacted by the Legislature, *subordinate legislation* made by the Executive, decrees and proclamations by the Head of State or Head of Government, resolutions passed by the Legislature or the Cabinet, ministerial decisions, government policies, local government actions and decisions, actions and decisions of institutions and law enforcement officers such as police are common examples.

Many scholars have given definitions to the doctrine of CJR, and we may look at a few of them here: *Firstly*, Corwin's definition, already given above, says that "(Constitutional) Judicial Review is the power of a court to pass

[23] Bryan A. Garner, *Black's Law Dictionary*, (West, 2009), 924.

[24] Courts exercising the power of CJR are typically categorized as either American model generalist courts, or as European model *constitutional courts*, or as hybrid courts which combine some features from both these two models. In the American model, it is the ordinary courts of the ordinary judicial branch of the State – the *Ordre Judiciaire* – which practice the power of CJR. This is the case in the USA, where all federal and state courts, from the US Supreme Court to state lower courts, can exercise CJR in principle. In the European model, courts of the ordinary *Order Judiciaire* are not empowered, not even permitted, to do CJR, but a fourth organ of the State—distinct and apart from the Legislature, the Executive, and the Judiciary—is created and empowered to perform that function. That organ is a special court, or a *constitutional court*, which has no jurisdiction other than hearing CJR cases. The European model was proposed in theory by Hans Kelsen, the notable European jurist of the early twentieth century, and put into practice for the first time in Austria, where a Kelsenian *Constitutional Court*, specializing in constitutional review and placed outside the normal judiciary and the ordinary governmental system, was created in 1920. (See Tom Ginsburg, "The Global Spread of Constitutional Review," In *The Oxford Handbook of Law and Politics*, ed. Keith E. Whittington, R. Daniel Kelemen, and Gregory A. Caldeira, (Oxford University Press, 2008), 85.) Czechoslovakia also established a *Constitutional Court* in the same year. (See David Deener, "Judicial Review in Modern Constitutional Systems," *The American Political Science Review* 46, no. 4 (1952): 1086, https://www.jstor.org/stable/1952114.). The model found its ultimate and quintessential form, as many believe, in the German Constitutional Court established by the Bonn Constitution – *Basic Law* or the *Grundgesetz* of the German Federation – in 1949. It is notable that there is a common misunderstanding, which needs to be avoided, regarding the distinction between a *constitutional court* and an ordinary court which is placed in the ordinary *Ordre Judiciaire* and hears CJR cases together with ordinary civil and criminal cases; many seem to think that any court exercising CJR jurisdiction can be characterized or described as a *constitutional court*. This misunderstanding can be seen from Suood's description of the Supreme Court of the Maldives as "a constitutional court," (See Husnu Al Suood, *The Maldivian Legal System*, (Maldives Law Institute: 2014), 156.) a description which constitutional theory and scholarly practice do not warrant. A *constitutional court* does not sit in the ordinary judicial branch of the State; it is placed outside the three ordinary organs of the State, and is strictly specialized in hearing constitutional review cases. The Maldivian Supreme Court, therefore, is not, and cannot be described hence, as a *constitutional court*. It is, rather, a generalist Apex Court heading the Maldivian *Ordre Judiciaire*, similar to, in this context, to the United States Supreme Court which hears constitutional judicial review cases together with civil and criminal cases.

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upon the validity of the acts of a legislature in relation to a "*higher law*" which is regarded as binding on both."[25] *Secondly*, Hartmann's description goes as follows: "The notion of judicial review can be understood broadly as judges keeping government action in check, although American jurisprudence usually defines it more narrowly. Judges have the power to stay or rescind the actions of all three branches of government. They review the executive branch if, for instance, a citizen challenges an administrative order in court. They review the judicial branch itself when a party appeals the verdict. Likewise, they review the legislative branch if the issue of this litigation is the validity of the statute upon which the initial verdict rests. … As a common analogy puts it, the notion of review implies that a yardstick exists with which the object under review can be measured. In other words, judicial review presupposes a hierarchy of norms. In reviewing legislation, the yardstick is usually a constitution. The constitution – the authority that creates the branches of government and confers certain powers upon them – also sets the framework wherein parliament is supposed to make its laws. Insofar as a law does not comply with the "paramount law", it cannot prescribe or proscribe anything. This is how United States constitutionalism usually interprets the notion of judicial review."[26] *Thirdly*, Whittington et el define it as follows: "Constitutional review is about a court's power to strike down statutory enactments or legislation and administrative actions and decisions for being incompatible with a constitution."[27]

These definitions assert what has been stated above: that the function of CJR is to uphold a fundamental law higher than the government that is to bind all political power in the State, to limit political power within its bounds, or to establish a '*government of law and not of men*'—that is, a government that rules and governs strictly in accord with the *supreme law* and other laws which are made under it, and not according to the whims and caprices or the arbitrary decisions and actions of those who happen to hold positions of power in the Government. In fact, in a *garantiste* constitution predicated on the idea of *republicanism* and framed on the foundation of *rule of law*, CJR is not just *a* tool of upholding and protecting *constitutionalism*: it is *the main* mechanism for it. CJR gives life to the idea of the constitution being the supreme law that binds and controls political authority. Stating this point, celebrated constitutional scholar and jurist Mauro Cappelletti calls CJR "a central element of … modern constitutionalism".[28]

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[25] See *supra*, Note 21.

[26] Bernd J. Hartmann, "The Arrival of Judicial Review in Germany under the Weimar Constitution of 1919," *BYU Journal of Public Law* 18, no. 1, (2003): 108-109, https://heinonline.org/HOL/Page?handle=hein.journals/byujpl18&id=113.

[27] Keith E. Whittington, R. Daniel Kelemen, and Gregory A. Caldeira (eds.), *The Oxford Handbook of Law and Politics*, (Oxford University Press, 2008), 81.

[28] Mauro Cappelletti, "The Expanding Role of Judicial Review in Modern Societies," *Revista Juridica* 58, no. 1 (1989): 11. https://heinonline.org/HOL/Page?handle=hein.journals/rjupurco58&id=11. The point is put forth by Cappelletti in the following passages: "… The first step was the written constitution, primarily conceived as a codification of individual and social values. Here we find the necessarily vague terms of these values being transformed into positive law in an attempt to give legal significance and positive meaning to meta-legal ideals. … The second step was to give a rigid character to modern constitutions, conferring a relative immutability on the superior law and the values it enshrines. This rigidity was in marked contrast to such nineteenth century constitutions as Italy's *Statuto Albertino*, which the legislature could change at any time by ordinary statute. … The final step was to provide a means for guaranteeing government's obedience to the constitution, separate from the legislative power itself and embodied in the active work of the judges or, in some systems, of a special constitutional court. This active work of the judiciary makes the necessarily vague terms of constitutional provisions more concrete and gives them practical application. Through this work the static terms of the constitution become alive, adapting themselves to the conditions of everyday life. It is in this way that the values embodied in the Higher Law become practical realities. Hence this framework of modem constitutions and judicial review synthesizes the ineffective and abstract ideals of natural law with the concrete provisions of positive law. …" See Mauro Cappelletti, "Judicial Review in Comparative Perspective," *California Law Review* 58, no. 5 (1970): 1018-1019, https://heinonline.org/HOL/Page?handle=hein.journals/calr58&id=1043. Another passage from Cappelletti makes the point clearer: "… it involves a serious attempt to make *effective* the provisions of the constitution.

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Independent Judiciary: the Venue

The third foundation of *constitutionalism* is an *independent judiciary*: a judiciary which has constitutional legitimacy and power to impartially, authoritatively and effectively enforce the Constitution—the *supreme law*—upon political powers of the State. Such a judiciary is given the status of an independent branch of the state co-equal to the political organs, and given *de jure* capacity and authority to enforce the norms of the Constitution upon political officials and institutions, by the constitution itself. Only on the basis of such *de jure* independence of the judiciary can *de facto* independence of the courts can truly come about.

Those who write a constitution can include in it promises guaranteeing the *rule of law* on paper. But a constitution cannot enforce itself; a panoply of grand words and solemn promises written on a piece of paper about government by and under the law cannot by themselves ensure that a people or a nation actually gets it; words do not rise up from the pages of a document to shackle unruly political forces. Promises and guarantees of *constitutionalism* must be enforced, hence, through a robust, responsible, and faithful human agency which fulfills the task in question—and it is almost universally accepted in today's world that an *independent judiciary* is the one best suited for the task. States throughout the world, have entrusted the role and responsibility of enforcing the supreme law or the constitution, of being the *guardian of the constitution*, and of implementing and upholding *rule of law* and *constitutionalism* to an *independent judiciary* because both *a priori* and *a posteriori* reflections and observations show that it is the best option.

The questions as to *what is an independent judiciary*, or *how such a judiciary is the best venue for enforcing constitutionalism*, are crucial questions which need to be addressed; but we will not address them here, for it will be a discussion too lengthy. For now, let us just substantiate our argument that an *independent judiciary* is a necessary foundation and the proper venue for enforcing *constitutionalism*, which is almost an axiomatic truth which does not need to be proved, with some statements from leading scholars in this field.

One such statement comes from Stephenson: "an independent judiciary with the power to constrain the executive and legislative branches is commonly thought to be the foundation of government under the rule of law".[29] Another is from Nwabueze who explains how only a judiciary which is *independent* can be key to *constitutionalism* at some length, concluding with the following sentence: "Only if its independence is constitutionally guaranteed, would the judiciary be able effectively to discharge, without fear or favour, its heavy responsibility of acting as the sentinel of constitutionalism …"[30] Finally, the significant point that it is only a *judicial* mechanism of constitutional review, in the form of an *independent judiciary*, which could effectively ensure *constitutionalism* was made strongly by Cappelletti, on the basis of both *a posteriori* and *a priori* reasoning. He also expressed the opinion, as argued above in Sections II and III, that a *supreme constitution* and a robust mechanism of CJR are both necessary for *constitutionalism*. A government that is limited and restrained by a "higher law … subtracted from the whims of both temporary Parliamentary majorities and the will of the ruler of the day",[31] he says, is enabled by a constitution that is not simply a "guideline of political, moral, or philosophical nature, but as real law, itself *positive and binding*

To this end, machinery was necessary. Judicial review is such machinery. Judicial review is the institutionalized attempt to guarantee the enforcement of the constitution, of its rights, duties, and processes …" See Cappelletti, "The Expanding Role," 11-12. He goes on to say that "(Constitutional) review of legislation is necessary if one wants to have a serious chance of making a constitution effective as an enforceable law superior to, and binding upon, he political branches." Ibid, 13.

[29] Matthew C. Stephenson, "When the Devil Turns …": The Political Foundations of Independent Judicial Review," *The Journal of Legal Studies* 32, no. 1, (The Chicago University Press, 2003): 59, https://doi.org/10.1086/342038.

[30] Nwabueze, *Constitutionalism in the Emergent States*, 17-18.

[31] Cappelletti, "The Expanding Role," 11.

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law but of a superior, more permanent nature than ordinary positive legislation."[32] He goes on: "In other words, it involves a serious attempt to make *effective* the provisions of the constitution. To this end, a machinery was necessary. Judicial review is such machinery. Judicial review is the institutionalized attempt to guarantee the enforcement of the constitution, of its rights, duties, and processes; it is the instrument to solve those "conflict of law" which are the inevitable consequences of pluralism of the sources of law; …"[33] He continues to argue that it is the judiciary which is best suited to provide this system of *constitutional review*. "Different, that is, nonjudicial kinds of machinery have also been tried as instruments for enforcing constitutions. The French Constitutions of 1799 and 1852, for instance, entrusted the role of controlling the constitutionality of legislation to the Senate, and most constitutions of the Socialist countries, as Professor Nikolic indicates, entrust this role to the "corps représentatif" itself, that is, the Supreme Soviet of popular assembly and/or their "presidiums". … Of course, unlike the courts, whose very nature demands a high degree of independence, and thus of nonaccountability, "political" bodies can be, or can be thought to be, accountable to the people: the issue of democratic legitimacy could be easily avoided by entrusting the function of control to such bodies. Comparative analysis, however, demonstrate that the solution of the use of political rather than judicial machinery for the enforcement of the constitution has always proved a failure. As for France, it is well-known that the *Sénat* … of the Constitutions of 1799 and 1852 was totally unsuccessful. And as for the Socialist countries, Professor Nikolic has no hesitation to say that … (the system of political bodies charged with enforcing the Constitution through constitutional review) … has not proved effective, and that this very "inefficacité" was the main reason which brought Yugoslavia, Czechoslovakia and Poland to adopt, or try to adopt, a system of judicial rather than political review. Indeed, common sense itself suggests that a system intended to control the constitutionality of the activities of the political branches cannot be efficient if it is merely a control "from within"; to be efficient, it must be entrusted to organs *independent* from those branches. It should also be remembered that one vital *raison d'être* of the judicial review is to protect certain fundamental rights of individuals and minorities even against majoritarian will; hence no effective system of review can be entrusted to the electorate or to persons and organs dependent from, and strictly accountable to, the will of the majority. … These reflections explain why even systems of judicial review are doomed to become totally ineffective, as the reporters Nwabueze, Carpizo and Fix Zamudio reiterate, if the judges to whom that task is entrusted are deprived of a sufficient degree of independence from the political power."[34]

First Constitution of the Maldives – An Introduction

The first constitution of the Maldives came in the year 1932, while the country was still a monarchy[35] and was under

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[32] Ibid.
[33] Ibid.
[34] Ibid, 11-13.
[35] By 1932, the Maldives had had a very long history as an independent monarchy—losing her sovereignty and independence to foreign powers only a few times and only temporarily, partially, and briefly. According to researchers of the history of the country, the Maldivian monarchy has records going as far back as 362 AC. (See Naseema Muhammad, *Heritage of the Maldivian People*, (Centre for Dhivehi Language and History, 2002), 31-32; Also, see Muhammad I. Lutfi, *Abridged History of the Maldives*, (Centre for Dhivehi Language and History, 2011), 25.) The Monarchy, which had lasted at least for some sixteen centuries, was first abolished on 1st of January 1953 in accord with a public referendum taken months before, in April 1952. (See Muhammad Amin et el, *Welcome ... Maldivian Republic*, (Maṭbaʿatul Ḥukūmah, 1953), 7 & 79.; Also, see Ahmed Shaathir et el, *The Legal Life of the Maldives*, (People's Majlis, 1981), 120-121. The *First Republic* was promulgated on that date, although it was a short-lived one, violently overthrown only some months later in August 1953 (See Shaathir et el, *The Legal Life of the Maldives*, 121.) with the restoration of the monarchy. The monarchy continued for fifteen more years, before it was abandoned for good with the promulgation of the *Second Republic* of the Maldives in November 1968 (See Shaathir et el, *The Legal Life of the Maldives*, 122.)

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British domination as a "protected State".[36] The venture of the new Constitution was led by the powerful Prime Minister Sumuww al-Amir Abdul Majeed Rannabandeyri Kilegefaanu, his brother Abdul Hamid Didi who was the Representative of the Maldivian Government in British Ceylon, and a group of powerful elders, dignitaries and young reformers. The British administration in Ceylon played a key role in the affair. The reigning monarch, Sultan Shamsuddin Iskandar III was not keen on the idea of a written basic law restricting his powers, but went along with the constitution movement for reasons which are not relevant for discussion here.[37] The Constitution was promulgated on the 22nd of December 1932.[38] It had ninety-two Articles in eight main sections. The sections dealt with the basic description of the State, citizenship, fundamental rights of the people, the structure of Government, qualifications of the monarch, basic rules on the procedure for accession to the throne, the basic organs of Government, and ministries of the Government.

We will now conduct an analysis of the Constitution in order to see whether it enshrined and entrenched the doctrine of *constitutionalism*, whether it provided for the establishment of a system of CJR, and whether it provided for an *independent judiciary* which could function as an efficacious venue for upholding the norms of the Constitution to limit and restrain political power and hold them accountable to the supreme law. The discussion of these points in Sections VI, VII, and VIII would form the second premise of our argument leading to the conclusion in Section X.

Doctrine of Constitutionalism in the 1932 Constitution

As stated in Section II, the mere fact of the existence of a *written constitution* as the basic law of the polity may be a basis for *constitutionalism*, irrespective of whether there are explicit provisions in the constitution enshrining its principles and precepts. But that would be the case, as already stated, only if the constitution in question is a *garantiste* one, framed in accord with the idea of *republicanism*. It must be a constitution which, as Thomas Paine stated,[39] the people as the true *locus of sovereignty* have written for their polity to constitute their government to serve them in accord with the basic law they have promulgated, as a genuine exercise of their sovereign and *general will*.[40]

Was the 1932 Constitution of the Maldives such a *garantiste* constitution, established by and through the sovereign power and general will of the people? An analysis of the facts of history relating to how and why the Constitution came into existence, as well as what can be construed from the text of the Constitution itself, leads us to a position where it is hard to answer *yes* to this question. As the general consensus goes,[41] and as indicated above in Section V, our first Constitution came about as a direct result of a power struggle between the reigning Sultan, Shamsuddin

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[36] See Naseema Muhammad, *Independent Maldives*, (Academy of the Dhivehi Language, 2013), 85. Also, see "The Second Schedule of the British Protectorates, Protected States and Protected Persons Order in Council," 1949/140, dated 28th January 1949. Note that the instrument refers to the Maldives as "The Maldive Islands", which was the official English name of the country before 1969. It was changed to "Maldives" upon declaration of the Second Republic on 11th November 1968. A couple of months later, Official Announcement No. 1/69 of the Ministry of External Affairs dated 21st January 1969 stated that the complete form of the English name would be "Republic of Maldives".
[37] For brief but helpful discussions on how the First Constitution was framed and introduced, see Suood, *The Maldivian Legal System*, 26-40.; and Shamsul Falaah, "Towards a Maldivian Nation-State: The Constitutions of 1932 and 1968," In *Constitutional Foundings in South Asia*, ed. Kevin Y. L. Tan & Ridwanul Hoque, (Hart Publishing, 2021), 199.
[38] Shaathir et el, *The Legal Life of the Maldives*, 11 & 81.
[39] See *supra*, Note 7.
[40] For an understanding of the concept of *general will*, as the term is used here, refer to Jean Jacques, *The Social Contract and Discourses*, trans. G. D. H. Cole (Dutton Publishing, 1955).
[41] See Suood, *The Maldivian Legal System*; Falaah, "Towards a Maldivian," 199.; and Ahmed Maajid, "Nineteen Thirty-Two and Beyond: An Overview of the Maldivian Journey on the Path of Written Constitutions", *CLJU(A) xcviii*, [2025].

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Iskandar III, on one side, and his Prime Minister Amir Abdul Majeed and those who supported the latter on the other. It was not a product of a *republican* awakening of the people or a mature belief that *sovereignty* and the rights to form and conduct Government resided in the people; rather, it was the result of strong discontentment among the ruling class leaders about the Sultan having undivided and unchecked power. It came through primarily an attempt at emasculating the Sultan. Nonetheless, it would be untrue to say that there was no idea at all of subjecting the Government to the *rule of law* in some way, as can be seen from several provisions of the Constitution, which are discussed in the following passages. Here it may be noted that the Constitution of 1932 was, in this respect, not very dissimilar to the Magna Carta of medieval England which was formed on the basis of some ideas of limiting the powers of the King but was really focused on sharing power between the hitherto authoritarian and despotic King and disgruntled nobles of the realm who insisted on having a share of power and some say in matters of government. It must also be observed that the idea of subjecting the Rulers and the people to a higher law—*constitutionalism*—cannot have been a strange or incomprehensible one to the Maldivians; being an Islamic nation, the Maldivians were very familiar with the principles of the ultimate supremacy of the higher Divine Law over the rulers, both the rulers and the ruled being equally subject to Divine prescriptions of justice, and government being a sacred trust.[42]

Perusing the text of the 1932 Constitution to examine if it enshrined the *doctrine of constitutionalism*, the first thing we notice is that its Preamble appears in the form of a Royal Decree introducing and promulgating the Constitution, and not as a statement from a people who, being the *locus of sovereignty* in the State, were constituting a government through the exercise of their sovereign powers and *general will*. As such, the Preamble arguably did not carry any ideas of *republicanism* and *constitutionalism*. It read as follows: “Being in a state of humble supplication to Almighty Allah for Help, I, Sultan Muhammad Shamsuddin Iskandar the son of Sultan Ibrahim Nooruddin Iskandar, the Sultan of the Maldive Islands, accept and ordain the Constitution written below for the Maldives and decree its implementation in the governance of the State, upon the ways of promoting unity and harmony, of governing with equal and impartial justice for all citizens, of participation by the citizens in the affairs of government, of approving for the people freedom and security, of ensuring for all the people of the Maldives happiness and peace and harmony, and of easing matters for the kings who would succeed me on this Throne and also for the people of this land”.[43] Conspicuously as well as significantly, this Preamble sounds like a decree upon a group of inferiors by a Superior, rather than a *supreme constitution* limiting the powers of that Superior and his Government.

While it is hard to argue that the 1932 Constitution was a *republican* constitution written with the objective of subjecting government to the superior authority of the law, it nonetheless contained, as aforementioned, provisions which, taken at face value, embodied or carried the fundamental idea of *constitutionalism* — the idea of the *supremacy* or *primacy of the constitution* and subservience of the Government to the *supreme law* provided in and

[42] It should be noted here that the Magna Carta of medieval England also had its origin in Islamic legal and political thought and practice. It came about as a direct result of the experiences and enlightenment of English Barons and army which accompanied Richard the Lionheart in the Third Crusades. Richard and his army spent some ten years in the Holy Land of Palestine, engaged in a long war against Sultan Salahuddin Ayyubi, from who the English and other Europeans learned a lot including the values of accountable government under the higher power of the Law to which the Rulers and the ruled are equally subject to. It was those English Barons who returned to England later, demanded and forced Richard’s nephew King John to issue the Royal Covenant that has become known as the Magna Carta. As such, while Western academia, in its Eurocentric and supremacist view, does not acknowledge it, the birth of Constitutionalism in the West may well lie in Islam.
[43] Constitution of 1932, Preamble.

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by the constitution.[44] While it reformed or re-established the Governmental system of the Maldives,[45] which had existed for centuries but had no legally recognized and fixed structure, into four basic organs — 1) the Monarch, 2) the Council of Ministers, 3) the Legislative Council, and 4) People's Majlis — there were some provisions which stipulated that this Government, including the Sultan, would be under the authority of the Constitution and bound to obey and honour it. They are Articles 23, 35, 42, 54(3), and 92, which are given below.

Article 23

"All Powers of Governance of the State begin with and from the people. Those Powers shall be implemented in Governance through the arrangements provided below: -

(1) His Majesty the Sultan.

(2) Council of Ministers.

(3) Legislative Council.

(4) People's Majlis."[46]

Article 35

"If a matter which is not addressed in the Constitution is presented before the State, needing urgent and expeditious addressing with any delay of action being inappropriate or impractical, during a period when the Legislative Council has been dissolved for general elections, the Sultan shall have the right to address

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44 If this fundamental precept and principle of constitutionalism is missing in any given constitution, it does not matter whether the other ideas or tools of *constitutionalism* (See Note 11 and the corresponding explanation) are present or not in the provisions of that constitution. Without the conceptual and institutional supremacy and primacy of the Constitution over *all* political powerholders, including the Legislature, the Executive, and the Judiciary, and the Monarch if there is one, and also without the hierarchical supremacy and primacy of the Constitution over all forms of State legislation, there cannot be *constitutionalism*.

45 Although there is no specific and express statement saying so, the Government established under the 1932 Constitution was a unitary Government, with all powers vested in the Organs of the State and the departments within those organs established as one central Government. In fact, the Constitution does not have a single provision stating how the atolls and individual islands of the country would be governed, leaving us with the presumption that the age-long customary and conventional system of governance in atolls and islands would be left as it was. Notably, the People's Majlis, provided for in Article 23 is a body representative of all the people including inhabitants of the atolls. Under Article 59, the People's Majlis would consist of 47 members, of whom 43 were elected by the inhabitants of the atolls to represent the atolls. The People's Majlis was assigned with some important functions, which are given below. (See *infra*, Note 47.) There is one more important point to note in relation to the People's Majlis. The original Dhivehi name, given in Article 23, is "Rayyithunge Majlis," in the same manner the Council of Ministers and the Legislative Council are named in the Constitution—as "Vazeerunge Majlis" and "Qaanoonu Hadhaa Majlis". As such, a translation true to the text of the provision would be "People's Council", just as we have translated "Vazeerunge Majlis" as "Council of Ministers" and "Qaanoonu Hadhaa Majlis" as "Legislative Council". However, the "Rayyithunge Majlis", which would later, with the amendment of the 1932 Constitution in 1934, become the legislative branch of the State and remain so permanently, (with the 1934 Amendment of the 1932 Constitution, the Legislative Council was taken out of the constitutional design and the Rayyithunge Majlis would replace it as the law-making organ of the State) has conventionally been called "People's Majlis" in English. To adhere to this convention and to avoid a confusion that the "People's Council" of the 1932 Constitution and the "People's Majlis" of the later constitutions are two different things, I have opted to translate "Rayyithunge Majlis" in Article 23 as "People's Majlis".

46 Constitution of 1932, Article 23. Note that the Judiciary is not listed as an organ of a basic component of the State. This point will be addressed in the following pages, in Section VII.

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the matter by writing and issuing Decrees through the Council of Ministers, in a way that does not contravene the Constitution."[47]

Article 42

"The Sultan has the Power to conduct the Government only within the limitations determined in the Law. He shall conduct no matter whatsoever of Governance in contravention to the Constitution."[48]

Article 54(3)

"The reasons which shall render the deposition of a Sultan mandatory are:

(1) (The Sultan) losing completely one of the necessary characteristics and qualifications of the Sultan.

(2) (The Sultan) being involved in and convicted upon adjudication of a crime for which the Religion, in the Shariah, has prescribed a *ḥadd* punishment.

(3) (The Sultan) opposing one of the principles and rules of the Constitution and abolishing it by personal action or decision."[49]

Article 92

"No law shall be made in contravention to the Constitution."[50]

Under these provisions, sovereign powers of the State begin with the people;[51] the Sultan's Decrees on matters not addressed by the Constitution must not be in violation to the Constitution; the Sultan's power to conduct the affairs and all matters of Government in comport and conformity with the Constitution; the deposition of the Sultan is mandatory if he commits any breach or violation of any of the rules and principles laid down in the Constitution; and no law can be made in contravention to the Constitution. To these provisions, we may add a few others—those which require the Monarch and high-level officials of Government to pledge to honour, abide by, and uphold the Constitution at all times. Under Article 85, the members of the Legislative Council are required to take such an oath

[47] Ibid, Article 35.

[48] Ibid, Article 42.

[49] Ibid, Article 54. (In the First Amendment of the 1932 Constitution, announced in 1934, this provision was in Article 50, and in the version promulgated as the Second Amendment, in 1937, the provision was numbered Article 49).

[50] Ibid, Article 92. The Article, in full, reads as follows: ""No law shall be made in contravention to the Constitution. If there arises a need to amend an Article in the Constituion, or a need to add an article to the Constitution or repeal an article therein, or a need to make a law on one of the matters mentioned in Article 30, such amendment or enactment or repeal can be effectuated by an Act, which has been passed by two-thirds majority of a Special Council comprising of the members of the People's Majlis, the members of the Legislative Council, (religious) scholars and nobles in Malé at the time sitting in the Presence of the Sultan, and which has then been Decreed for implementation by the Sultan."

[51] It is interesting to note that the Constitution does not say that the power shall remain with the people – the idea may be that the power, through the Constitution, has been transferred to the Monarch and his Government, in somewhat a Hobbesian arrangement. Nowhere does the Constitution state that the power is held by the Monarch and his Government as a trust. As such, it is not really clear that the Constitution took the people as the *locus of sovereignty*.

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before they can, having been elected, assume office and start performing their responsibilities as members.[52] The reigning Sultan, at the time of the promulgation of the Constitution, was required by Article 51[53] to take an Oath before the Legislative Council stating his submission to the authority of the Constitution and acceptance of his obligation to obey it. Article 26 obliges new Sultans to pledge allegiance and obedience to the Constitution.[54] Under Article 86,[55] Members of the Council of Ministers are also required to swear to obey, honour, and uphold the Constitution before taking up their governmental responsibilities.[56]

What should we make of these provisions? They certainly appear to categorically establish the doctrine of *supremacy of the constitution* in the Maldives. For a comparative consideration, one could look at the United States Constitution, which has been taken as a *supreme law above all the organs of the State* based on just one indirect and ambiguous provision.[57] The *supremacy provisions* of the Maldivian Constitution of 1932 given above are more in terms of number, far clearer, and far more definitive. Should we take them as genuine, meaningful, and effective provisions guaranteeing *constitutionalism* and *rule of law* over government? However tempted one might be to do

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[52] Constitution of 1932, Article 85. The Oath in full reads as follows: "I swear by the Lord Almighty Allah, to remain upon the way of obedience to the Constitution of the Maldives, and of protecting the Rights of the People, in good will, loyalty, fealty, and sincerity to the nation of the Maldives, the Sultan of the Maldives, and to the State of the Maldives."

[53] Ibid, Article 51. The Oath, in full, reads as follows: – "I swear by the Lord Almighty Allah to honour the Constitution, to honour the Laws of the Maldives, to protect and uphold the sovereign autonomy of the Maldives, and to protect the State."

[54] Ibid, Article 26. The Oath, in full, is as follows: "I swear by the Lord Almighty Allah to honour the Religion of Islam, the Constitution of the Maldives, and the Rights of the People, and to not dishonour or commit treachery against any of these things."

[55] Ibid, Article 86. Under this provision, Members of the Council of Ministers take the same Oath as taken by Members of the Legislative Council (See *supra* Note 44), with an additional phrase stating the pledge to perform his ministerial responsibilities faithfully and sincerely.

[56] Interestingly, the members of the People's Majlis are not required by the Constitution to take an Oath before they assume office. The reason is not clear; It may be argued that this was the case because the framers saw People's Majlis not as a co-equal branch of the State having the same status and significance as the other branches. Such an argument may be supported by the fact that the Constitution, in laying down the procedure for the election of the Monarch by a Special Council consisting of the Council of Ministers, the Legislative Council, and the Nobles, Scholars, and Leading Members of the Society in Malé the capital, in Article 26, leaves out the People's Majlis from the process. The process of deposing the Sultan is also carried out, under Article 55, without any role for the People's Majlis. However, some significant roles are assigned to the People's Majlis, giving strong grounds to argue that the Council has no less a standing than the other organs of the State in the constitutional design. The functions prescribed for the Council are as follows: 1) being part of the Special Council passing any laws on matters enumerated in Article 30, in pursuance to Article 30 and 92; 2) deciding whether to pass a Bill which, although passed by the Legislative Council, has been rejected assent by the Sultan and has then been failed to get two-thirds approval by the Legislative Council. Under Article 32, such a Bill would become law only if it is subsequently passed by the People's Majlis by a two-thirds majority; 3) voting on Bills proposing increase of tax rates or levying new taxes, as such Bills, under Article 40, needs approval from both the Legislative Council and the People's Majlis; 4) electing members to the Legislative Council, under Article 60. In addition, the People's Majlis has the power, under Article 82, to pass a no-confidence motion against the Council of Ministers. Where the Council passes such a motion, the Sultan is mandated to dissolve the Council of Ministers and reconstitute it, under the same provision. In conclusion, therefore, the argument that the Constitution treats People's Majlis to be of any less importance compared to the other organs of the State is also weak.

[57] The said provision is Article VI of the United States Constitution, which has come to be known as the Supremacy Clause. The relevant part of the Article reads as follows: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." It was mainly based on this provision, that the United States Supreme Court, in its decision in the case of *Marbury v. Madison*, judicially affirmed the supremacy and primacy of the Constitution above all federal Governmental powers and came up with the doctrine of *constitutional judicial review* in the United States. See below, Section VII, for a discussion of how it was done in the famous judgment penned by John Marshall, the first Chief Justice of the USA.

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so, there are at least four reasons, in my view, which together provide a very strong basis for the argument that those provisions in the Maldivian Constitution did not really ensure *constitutionalism*.

1. *Firstly*, what the Preamble of the 1932 Constitution and the context it gave to the provisions that followed it has already been highlighted. The Preamble did not characterize or present the Constitution as one which the people of the country, being the *locus of sovereignty*, set out and acquired for themselves in order to establish a government under and restricted by their sovereign power and *general will* embodied in the Constitution. Rather, the Preamble quite clearly delivers a *granted constitution*, gifted by a Sovereign Superior – the Sultan – who ordained it for the benefit of his subjects—meaning that all the limits on his power in that Constitution were self-authored and self-imposed. It will be a strong argument to say that such a constitution truly limiting the Sovereign Superior who ordains it is an incoherent and irrational idea — a Sovereign Superior can set aside or revoke and annul the restrictions he has prescribed upon himself as legitimately as he has prescribed them. Hence, a constitution truly establishing *constitutionalism* must come from the people, on the basis of *republicanism*,[58] as Thomas Paine and others have stated.[59]

Indeed, the truly republican constitutions of the world framed on the basis of the idea of *constitutionalism* and limiting political power come with the statement, whether explicit or implicit, and whether in a Preamble or in the articles of the constitution, that they are set up by the people who constitute the *locus of sovereignty*, as a constituent act for their nation and their government. The United States Constitution, adopted in 1787 and put into operation in 1789, is a good example.[60] The first constitution of the French Republic, adopted in 1791, after the French Revolution, is another example.[61] In more modern times, the 1949 Bonn Constitution of the Federal Republic of Germany,[62] and the 1949 Constitution of the Republic of India[63] do the same. On the other hand, the Preamble of our first Constitution resembles that of the French Constitution of 1814, which came with the Bourbon restoration when the Monarch granted a constitutional charter in his capacity as the Sovereign Superior, to his subjects. The preamble of that Constitution read, in a similar vein to the Maldivian one: “We have, willingly and by virtue of the free exercise of our royal authority, consented to and consent to, have conceded and granted the Constitutional

[58] When we say that a constitution is set out or established by the people of a nation, it obviously does not mean that all the individual members are actively and directly taking part in the writing of the Constitution. If a constituent assembly or constitutional convention of the representatives of the people, in a way that the people are genuinely represented, carry out the task for and on behalf of the people, such a constitution is deemed to have been established by the people.

[59] See *supra*, Note 8.

[60] Constitution of the United States of America, 1789, The Preamble. It reads as follows: “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

[61] Constitution of the French Republic, 1791, The Preamble. The opening paragraph is phrased in the following terms: “The National Assembly, wishing to establish the French Constitution upon the principles it has just recognized and declared, abolishes irrevocably the institutions which were injurious to liberty and equality of rights.”

[62] Constitution of the Federal Republic of Germany, 1949, The Preamble. It reads as follows: “Conscious of their responsibility before God and man, Inspired by the determination to promote world peace as an equal partner in a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law. Germans … have achieved the unity and freedom of Germany in free self-determination. This Basic Law thus applies to the entire German people.”

[63] Constitutional Charter of France, 1814, The Preamble. It reads as follows: “WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

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Charter to our subjects, both for us and for our successors, and forever." These words, it may be argued, do not show real *constitutionalism*. A constitution given thus, it can be contested, is in essence and substance no more than a royal decree, irrespective of its form.

2. *Secondly*, the Sultan as Head of State and the Head of Government,[64] enjoyed a wide range of powers which made it very difficult for any system of checks and balances incorporated into the Constitution to hold him accountable—whether such system was legal or political in character—to work in practice. The Sultan was the head of the executive,[65] the highest authority of legislation,[66] and the highest authority of establishing justice,[67] meaning that there was no true separation of powers in the constitutional design—the apparent separation of powers in Article 23 and complementary provisions was arguably form rather than substance.

The Sultan had power, by Articles 89[68] and 91,[69] to appoint all members of the Legislative Council for the first five years from the date of promulgation of the Constitution. Even after the first five years, he would still, under the general rule coming into operation following that period, under Articles 56,[70] have the power to appoint 7 out of the 28 members of the Legislative Council, while the remaining members were to be elected. In addition, the Sultan was vested with the power to appoint the Prime Minister[71] who would serve as the Speaker of the Legislative Council[72] and also as figurehead of the Council of Ministers,[73] the Ministers (members of the Council of Ministers)[74] constituting the Executive, all ambassadors,[75] and all officials of the State.[76] It was also "It is His Majesty the Sultan's authority and command that would be executed in … removing persons from all state positions".[77] Even though the Constitution retained the traditional position of the Prime Minister in the governmental system it adopted, his powers were greatly diminished and limited, to say the least, reflecting strongly the central position the Sultan

[64] There is a Prime Minister who performs the function of the Speaker of the Legislative Council (Article 58) and is a member of the Council of Ministers (Articles 65 and 90). However, the Prime Minister does not enjoy any significant powers in the running of the State, and is not assigned, as explained *infra* in Note 67, any substantive role in his capacity as a member of the Council of Ministers. He seems to be merely the figurehead of the Council and the First Member of the Council (Article 90), whatever that would mean. Article 27 clearly states that "His Majesty the Sultan shall be the Highest Authority in running all the affairs of the State". Article 28 reads as follows: "His Majesty the Sultan shall have the Powers of Assenting to and Implementing Laws." Article 49 says that "It is through the Ministers that His Majesty the Sultan shall conduct any affair of the State which he conducts". While the Constitution does not distinguish between the two capacities of *head of state* and *head of government*, these provision, read together with other relevant provisions, leaves us with the only plausible conclusion that the Sultan was both the Head of State and the Head of Government under the 1932 Constitution.
[65] Constitution of 1932, Article 27 and 28 (See *supra*, Note 55).
[66] Ibid, Articles 28 (See *supra*, Notes 65 and 66) and 36. Article 36 reads as follows: "The Authority to make any Law shall be vested in His Majesty the Sultan, together with the Legislative Council."
[67] See Section VIII below.
[68] Constitution of 1932, Article 89.
[69] Ibid, Article 91.
[70] Ibid, Article 56.
[71] Ibid, Articles 65, 82, and 89.
[72] Ibid, Article 58.
[73] Ibid, Article 90.
[74] Ibid, Articles 46, 50, 65, 72, 73, 89, and 91.
[75] Ibid, Article 50.
[76] Ibid, Article 46.
[77] Ibid.

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was given.[78]

Further powers of the Sultan included the "power to issue Interim Orders to deal with emergencies and sudden dangers facing the country;[79] the power to block legislation unless a proposed piece of legislation is passed by a two-thirds majority of the Legislative Council, or passed by a simple majority of the Legislative Council and subsequently approved also by a two-thirds majority of the People's Majlis, which convenes once every year[80]—a threshold not at all easy to pass; the absolute and unshared powers of commanding the armed forces, declaring war, and making peace;[81] and the power to sign treaties.[82] Of these powers, the latitude given to the Sultan to block legislation is especially noteworthy. As has been already mentioned, the Constitution is quite clear that the role of the Sultan in legislation is not symbolical or formal as is the case, for instance, in the United Kingdom.[83] Article 36 of the Constitution is phrased in a way that is leaves no doubt that this is the position. The Sultan has formidable powers to block legislation as stated above, and when his role and authority in legislation comes with his power, under Articles 89 and 91, to appoint members of the Legislative Council for the first five years of the new constitutional order, and his power to appoint the Speaker of the Legislative Council, it is impossible to see how the process of legislation can be independent of the influence of the Sultan .

3. *Thirdly*, although there is a provision for deposing the Sultan in the situation where he "opposes one of the principles and rules of the Constitution and abolishes it by personal action or decision",[84] the process of doing it under this provision does not seem to be well set out and very likely to be effective in practice. The said process is laid down in Article 55, which stipulates that it is the Council of Ministers who would initiate the procedure for deposing the Sultan. The Council of Ministers would convene a Special Council for the purpose, consisting of itself, the Legislative Council, the nobles of Malé, religious scholars residing in Malé, and community leaders of Malé.[85]

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[78] The Constitution does not even have a dedicated provision stipulating the functions of the Prime Minister, instead giving him specific and very limited roles in provisions here and there in different sections. Those roles are, in the order of articles in which they are stipulated: 1) reading out the Royal Address of the Sultan before the Legislative Council in the inaugurating meeting of its term (Article 44); 2) making nominations and advising the Sultan on appointing and removing members to the Council of Ministers (Articles 50, 65, 72, & 89); 3) function as speaker of the Legislative Council (Article 58); 4) being a member of the Council of Ministers (Articles 65 and 90), although the Constitution does not state anything expressly what his position and role in the Council of Ministers is, other than being its figurehead; 5) signing the Decrees issued by the Council of Ministers, together with the Minister having authority over the matter by way of jurisdiction (Article 66); 6) being a member of the special adjudicatory committee established under Article 75 to hear criminal charges against a Minister or the Sultan (Article 75); and 7) holding and safekeeping one of the three keys to the treasury saferoom at the Ministry of Finance and opening it when ordered by the Sultan and in the latter's presence (Article 79).

[79] Constitution of 1932, Article 47.

[80] Under Article 28, a proposed legislation passed by the Legislative Council becomes law when the Sultan assents to it; Article 29 gives the Sultan the power to send back a Bill passed by the Legislative Council for reconsideration; Under Article 32, if the Legislative Council, having reconsidered a Bill returned by the Sultan under Article 29, passes the Bill by a two-thirds majority, the Sultan must then give it assent; Under the same Article (Article 32), if the Bill fails to garner two-thirds votes in the Legislative Council, it shall be parked to be submitted to the People's Majlis which is convened once every year, and if it is approved by the People's Majlis by a two-thirds majority by the People's Majlis, the Sultan is obliged to give it assent.

[81] Constitution of 1932, Article 48.

[82] Ibid.

[83] See *infra*, Note 95.

[84] Constitution of 1932, Article 54(3). See Section VI above.

[85] Ibid, Article 55. The provision itself does not detail the composition of the Special Council deliberating the matter of deposing the Sultan, but stipulates that its composition would be the same as the Special Council convened to elect a Sultan under Article 26. As such, we refer to the latter provision to see who would sit in the Special Council in the procedure to depose the Sultan.

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Article 55 continues to state that once this Special Council passes the motion to depose the Sultan by a two-thirds majority, the decision would then be presented for approval and consent by the armed forces, all the people of Malé, and any people from the atolls present in Malé at the time. Such consent is, under the provision, mandatory for the process of deposing the Sultan to become complete and the decision of deposition enforceable.

One thing we need to note about this process of deposing the Sultan under Article 55 is that it is not a process of CJR; in other words, it is not a judicial process or procedure. Rather, it is a political process. It is in fact a mechanism of *political constitutionalism*, and cannot be characterized as *legal constitutionalism*. Another thing is about the efficacy and suitability of a political process—run by political bodies rather than any judicial body—being employed to address a clear violation of the constitution, which is the basic law—after all, "it is emphatically the province and duty of the Judicial Department to say what the law is"[86] and thus decide whether or not it has been breached. However, we shall not pursue discussions on the distinction between the two forms of *constitutionalism* and what it may mean in the scheme of things under the 1932 Constitution, or the question of whether prescribing a political process to judge whether the Sultan had breached the Constitution was the suitable, for it would be too long a discussion, which is not really necessary for the issue we are addressing in this article.

That said, a number of significant points need to be highlighted, in brief and without going into all the details, in order to see how challenging and possibly problematic, or even chaotic, the process of deposing the Sultan under Article 55 could become. *Firstly*, there is remarkable ambiguity in Article 55. While a decision to depose the Sultan by the Article 55 Special Council needs the "consent of the armed forces, all the people of Malé, and any people from the atolls present in Malé at the time" it is not at all clear who would be eligible to be counted into this general body of people. For example, how old must someone be in order to be eligible? What would happen if some eligible people refuse to take part in the process? Answers to such questions are simply not there. Another ambiguity is seen in the fact that the provision does not specify the vote percentage required for consent of the armed forces and the people to materialize. Would it be a simple majority of those who bother to attend and have their say? Would it be an absolute majority of all eligible persons? Would it be a two-thirds majority? Again, none of these questions are answered in Article 55 or any other provision. With these ambiguities, the Article was bound to create a lot of problems if and when it was called into action. *Secondly*, the Council of Ministers which, under Article 55, had the power to initiate the process of deposing the Sultan, was under the direct and immediate control of the Sultan, whose executive it was. It is, as explained above, the Sultan who appoints members of the Council of Ministers, and has the power to remove them from office. Would the Council then be in a position of sufficient discretion and independence to initiate the process of deposing the Sultan? If they attempt to commence the process, wouldn't the Sultan be able to upset it through the use of his power to remove members of the Council? *Thirdly*, at least for the first five years of the new constitutional order, it is the Sultan, as mentioned above, who appoints the Legislative Council, which is part of the Article 55 Special Council to depose the Sultan. With the Sultan having the power to remove members of the Legislative Council[87] during the first five years of the life of this body, it would be too much of a stretch of imagination to believe that the body would be independent and effective in dealing with a motion to

[86] See *Marbury v. Madison*, 5 U.S. 137 (1803). See Sections II and VII for further discussions of how the judgment of this case relates to *constitutionalism* and CJR.

[87] The Constitution does not give the Sultan this power in any specific statement, so the matter is not beyond debate. However, the fact that it, by virtue of Articles 89 and 91, empowers the Sultan to "appoint members to the Legislative Council for/during the first five years" and gives the Sultan the power "to remove persons from all public offices" in Article 46 means that the Sultan would have the power to remove members of the Legislative Council during the first five years of the new constitutional order.

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depose the Sultan. *Fourthly*, the protection given to the Sultan by Article 68,[88] operating together with Article 49,[89] means that the chance of the Sultan being held responsible for a breach of the Constitution could be very narrow. Article 68 lays down that even for the decrees that come out bearing the Sultan's Seal, the Minister through whose department it is promulgated would be the one responsible. This provision is reinforced by Article 49, which says that it is through the Ministers that the Sultan would conduct the functions of government. If this is the case, the Sultan would, it seems, have a wide latitude to dodge responsibility for any violation of the Constitution under Article 54(3) by pointing fingers at the Minister through whom his decision in question comes out and is implemented.

One could counter this point by highlighting the fact that a Sultan was indeed removed at one time under the Constitution and arguing that it is proof that the constitutional process of deposition of the Sultan was effective and practical. However, the deposition of Sultan Shamsuddin Iskandar III, the Monarch who had promulgated the 1932 Constitution, by the Special Council provided for the purpose in the Constitution, on 2nd October 1934, was hardly a legal or political process conducted under the Constitution or in conformity with the Constitution. Although the official narrative holds that it was done under and in accord with the relevant provisions of the Constitution,[90] details in the pages of history bring out the picture of a violent revolution that stopped just short of bloodshed. There was no clear and credible allegation that the Sultan had violated the Constitution. The affair began when several people loyal to the Sultan were arrested on charges of "trying to overthrown the Constitution" in collusion with the Sultan. The capital city was rocked by protests against the Sultan and in support of the Ministers leading the revolution, aided and abetted by the military. It was a political affair which was never controlled or guided by the Constitution or the law; it was not a process of *constitutional review* to hold the Sultan accountable to the Constitution under its provisions discussed above; it was, quite clearly, a revolution ill-disguised and orchestrated successfully by the people who had power and popular support and could use it to oust the Sultan.[91]

4. *Fourthly*, as discussed below in Sections VII and VIII, the Constitution did not establish any mechanisms for enforcing the *supremacy provisions* it stipulates in Articles 23, 35, 42, 54(3), and 92, except the mechanism of *political constitutionalism* through the process of deposing the Sultan. In other words, there were no legal or judicial system to uphold those provisions in order to hold political powers accountable and subservient to the Constitution in practice. From this vantage point, those articles look little more than just empty promises. There seems to be a glaring contrariety between what was promised in the words of the *supremacy provisions* and what was designed into the mechanism of enforcement in practice.

Back to the question, what should we make of those provisions which seem to embody the *supremacy of the Constitution* and appear to guarantee *constitutionalism*? First of all, they must be credited for sowing the ideas of *legal* and *political constitutionalism* in the Maldives. There is no denying that they are the beginning of the Maldivian journey towards imposing limits on government through the instrument of the supreme and fundamental law. If the 1932 Constitution was a "constitution without constitutionalism" it at least took a historical step in establishing *government of law* in place of *government of men* in the future; if it cannot be described as the tree of *constitutionalism* which gave the nation the shade of *rule of law* over politics and government, it at least sowed the seed. Yet, it may be going too far to say that it, in itself, meaningfully guaranteed *constitutionalism*.

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[88] Constitution of 1932, Article 68.
[89] Ibid, Article 49.
[90] The task of assessing that narrative and determining whether it is true or not is not within the scope of this Article.
[91] For an account of how the whole affair unfolded, see Muhammad Amin, *The Life of the Maldivian Constitution*, (Maṭbaʿatul Ḥukūmah, 1951), 154-160.

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CJR Enabling Provisions in the 1932 Constitution

Any use of power by a state organ, official, or institution must be predicated on the constitution if such use is to be legitimate. Legitimate state power originates in or is conferred only by the constitution and any "assumed power (by a state authority without constitutional basis) is usurpation".[92] The powers of the judicial branch is no exception; the authority of the judiciary to exercise CJR must also come from the Constitution.

There are two ways in which a constitution can be the basis of CJR by the courts.

First, as is the case with the *doctrine of constitutionalism*, it has been argued that a judiciary's power to do *constitutional review* of the policies and actions of state authorities can come from the mere fact of the existence of a supreme constitution which the Judiciary is obliged to enforce. This was the opinion of the United States Supreme Court in its judgment in the case of *Marbury v. Madison*. It has already been stated above, in Section II, that the judgment took the view that a truly *garantiste* constitution framed on the basis of *republicanism*, by a people who are truly the *locus of sovereignty* in the polity, would be a basis for *constitutionalism* by the mere fact that it exists. As part of the same argument, the famous judgment authored and read out by Chief Justice John Marshall on behalf of a unanimous Court stated: "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. … So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, for that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. this is the very essence of judicial duty. … If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply. …"[93] These passages clearly show a jurisprudential justification of the practice of CJR to uphold a constitution on the basis that the Constitution exists as a *supreme law* above the legislature and the laws coming from that legislature. The Court was not relying on any specific enabling or empowering provisions for its review of the Judiciary Act 1801. That being said, we must observe that such justification of CJR by a judiciary or an apex court can only be legitimate and justifiable if at least two conditions are met. *First*, the constitution in the polity must have true supremacy and primacy over all political powers and institutions—it must be a truly *republican* constitution which establishes *rule of law* over political power. *Second*, the Constitution must, as the constituent instrument set up by the people who hold true sovereign powers, directly create and empower an *independent judiciary* as a co-equal branch of the State on the same level as the Legislature and the Executive. Where the judiciary is simply a delegated power from the legislature such as is the case in the United Kingdom, it makes no jurisprudential or rational sense for the Courts to use the mere fact of the existence of a fundamental law to challenge the acts of the Legislature which grants the judges their powers and is hence superior to them.[94] On the basis of these observations, we may conclude that it is

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[92] Paine, *Rights of Man*, 141.
[93] *Marbury v. Madison*, 5 U.S. 137 (1803).
[94] In the United Kingdom of Great Britain and Northern Ireland, the Monarch holds the Sovereign Powers of Legislation in theory, but it is exercised in accordance with the *doctrine of parliamentary sovereignty*, in that Parliament in actuality is the ultimate and unchallengeable authority of legislation and it is against conventional convention for the Monarch to refuse to give assent to a Bill passed by Parliament. For a comprehensive discussion of the doctrine, see Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy*, (University Press, 1999), and Jeffrey Goldsworthy, *Parliamentary Sovereignty: Contemporary Debates*, (Cambridge University Press, 2010). Where *doctrine of parliamentary sovereignty* or *parliamentary supremacy* exists, the powers of the Courts is considered as delegated by the sovereign Parliament, instead of being directly granted by the people through a *supreme constitution*. In other words, where there is *constitutional supremacy*,

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quite clearly impossible that Maldivian courts could have used the mere fact of the existence of the 1932 Constitution as basis for establishing a system of CJR: it was not, as stated in Section VI above, really a *supreme constitution*, and it did not, as stated below in Section VIII, establish an independent and co-equal judiciary in the State.

The *second*, and in modern constitutions the typical, modality of establishing CJR in a constitutional system is to include enabling provisions in the constitution itself. These are provisions in the constitution which directly or indirectly empower the Judiciary to conduct CJR. When we look at the provisions in constitutions which enable or provide for systems or mechanisms or CJR, we see that they may be categorized into at least three distinct categories: *firstly*, there are provisions which may be described as *General CJR Provisions*; *secondly*, there is a category which can be labelled as *Special CJR Provisions*; and *thirdly* there are provisions which we may call *Constitutional Supremacy Clauses*.

As for *General CJR Provisions*, these are provisions in a constitution which expressly grant Courts a general power to practice CJR. The power they confer upon the Court is *express* in the sense that they are clear and definite in stating that the Courts or a specified Court would have the power to review actions, decisions, and policies of the other organs of the State and any state institutions for comport with the principles and rules of the constitution. It is *general* because the power conferred is not limited to a certain process or procedure, a particular dispute, or a specific class of issues and disputes, but as a general power to judicially uphold all of the provisions of the constitution, covering in general all acts and decisions of state organs and institutions, though there may be very limited and special issues not amenable to CJR. Such provisions may give the power of CJR to all the Courts of the *order judiciaire* or the ordinary judiciary, to one or more superior Courts of the *order judiciaire*, or to a *constitutional court*[95] which lies outside the *order judiciaire*. Examples of this kind of *General CJR Provisions* include Article 94 of the Bonn Constitution — the "Basic Law" or the *Grundgesetz* of the German Federation — read as a whole.[96]

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people transfer the powers of legislation, execution, and adjudication to the three organs of the state via the constitution directly; each organ acquiring the power directly from the people and not as a delegated power from another organ. Where there is *parliamentary sovereignty*, all powers of legislation, execution, and adjudication and establishing justice are entrusted to Parliament by the people, and it is Parliament which then delegates the executive powers to the State Executive organ, and judicial powers to the State Judiciary: in this scenario, it does not make rational or legal sense, as stated here, for the Executive or Judiciary to legally or judicially challenge the decisions of Parliament which is superior to both of them.

[95] See *supra*, Note 20.

[96] Constitution of the German Federation 1949. The Article Reads as follows: "(1) The Federal Constitutional Court shall rule: 1. on the interpretation of this Basic Law in the event of disputes concerning the extent of the rights and duties of a supreme federal body or of other parties vested with rights of their own by this Basic Law or by the rules of procedure of a supreme federal body; 2. in the event of disagreements or doubts concerning the formal or substantive compatibility of federal law or *Land* law with this Basic Law or the compatibility of *Land* law with other federal law on application of the Federal Government, of a *Land* government or of one fourth of the Members of the Bundestag; 2a. in the event of disagreements as to whether a law meets the conditions set out in paragraph (2) of Article 72, on application of the Bundesrat or of the government or legislature of a *Land*; 3. in the event of disagreements concerning the rights and duties of the Federation and the *Länder*, especially in the execution of federal law by the *Länder* and in the exercise of federal oversight; 4. on other disputes involving public law between the Federation and the *Länder*, between different *Länder* or within a *Land*, unless there is recourse to another court; 4a. on constitutional complaints, which may be filed by any person alleging that one of his basic rights or one of his rights under paragraph (4) of Article 20 or under Article 33, 38, 101, 103 or 104 has been infringed by public authority; 4b. on constitutional complaints filed by municipalities or associations of municipalities on the ground that their right to self-government under Article 28 has been infringed by a law; in the case of infringement by a *Land* law, however, only if the law cannot be challenged in the constitutional court of the *Land*; 4c. on constitutional complaints filed by associations concerning their non-recognition as political parties for an election to the Bundestag; 5. in the other instances provided for in this Basic Law. (2) At the request of the Bundesrat, a *Land* government or the parliamentary assembly of a *Land*, the Federal Constitutional Court shall also rule whether, in cases falling under paragraph (4) of Article 72, the need for a regulation by federal law does

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Though it might come as a surprise to some, the there are no *General CJR Provisions* in the constitutions of the USA and India, where strong-form CJR systems have become a key component of the constitutional system. As for the 1932 Maldivian Constitution, it did not have any *General CJR Provisions* either. The only provision in it which provided for *constitutional review*, as abovementioned in Section VI, was Article 55 which prescribed a procedure of political review and not CJR.

Secondly, there are what we may call *Special CJR Provisions*. These provisions do not confer general powers of CJR upon the Courts in any way and are not *constitutional supremacy clauses*, making them distinct from provisions which fall within the two other categories. When exercising CJR in these cases, the Courts are simply fulfilling a specific judicial function prescribed in relation to a specified case or matter—meaning that even without the general power of CJR, the Court could conduct review in these scenarios. Provisions which fall within this category may be upholding a particular provision of the constitution, or may be fulfilling a specific checks and balance function in relation to a specific matter. Due to the diversity of provisions of this type in terms of their content, it is especially difficult to give a define them. However, they may be divided into two main classes. *One* class include provisions which explicitly empower a specific court or the judiciary in general to conduct CJR, but in a certain case, in relation to a certain matter, or in relation to a specific dispute or a specific class of disputes. A very good example of such provisions is those which empower courts to do CJR to protect an entrenched Bill of Rights, as Articles 13(2),[97] 32(1),[98] and 32(2)[99] of the Indian Constitution do. Provisions assigning a Court the role of adjudicating upon disputes between the Legislature and the Executive, or between the federal or central government and provincial or local government are a second class of these provisions.[100] Provisions which belong to this category may be, for

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not exist any longer or whether, in the cases referred to in the first sentence of paragraph (2) of Article 125a, federal law could no longer be enacted. The Court's determination that the need has ceased to exist or that federal law could no longer be enacted supersedes the enactment of a federal law under paragraph (4) of Article 72 or the second sentence of paragraph (2) of Article 125a. A request under the first sentence is admissible only if a bill falling under paragraph (4) of Article 72 or the second sentence of paragraph (2) of Article 125a has been rejected by the German Bundestag or if it has not been considered and determined upon within one year or if a similar bill has been rejected by the Bundesrat. (3) The Federal Constitutional Court shall also decide on such other cases as are assigned to it by a federal law. (4) The decisions of the Federal Constitutional Court shall be binding upon the constitutional organs of the Federation and of the *Länder*, as well as on all courts and those with public authority. A federal law shall specify in which instances its decisions shall have the force of law."

[97] Constitution of the Republic of India, Article 13(2). The provision reads as follows: "The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

[98] Ibid, Article 32(1). The provision reads as follows: "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed."

[99] Ibid, Article 32(2). The provision reads as follows: ""The Supreme Court shall have power to issue directions or orders or writs, including writes in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part."

[100] The current Maldivian Constitution contain a handful of such provisions. See Constitution of the Republic of Maldives. Article 16(c) which empowers the Supreme Court of the Maldives and the High Court of the Maldives to review legislation for any alleged restrictions on fundamental rights and liberties in contravention to the norms of Article 16; Article 65 which empowers Courts to review all cases of alleged violations of the Bill of Rights (Chapter Two) section of the Constitution; Article 74 which empowers the Supreme Court of the Maldives to do CJR upon any dispute relating to the matters of whether a person is qualified to contest in People's Majlis elections, or whether a Member of People's Majlis has lost constitutional legitimacy to remain as a Member, or whether a People's Majlis seat has become vacant; Article 95 which empowers the Supreme Court to give advisory opinions upon submissions for such advise by People's Majlis; Article 113 which empowers SCM to exercise the power of CJR to review the process of impeachment against President and Vice President conducted by People's Majlis; Article 172(a) which empowers the High Court of the Maldives and the Supreme Court of the Maldives to do CJR in cases of complaints and grievances relating to elections and public referenda; and Article 258 which empowers the Supreme Court of the Maldives to do CJR where there is a claim regarding the validity of a declaration of the state of emergency

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convenience, labelled as *explicit special provisions*. Then there is the *second* class, which include provisions which do not expressly empower judges to do CJR and do not make a clear or easily recognizable confer of CJR powers on judges, but prescribe upon a specific court or the courts in general a judicial role of such nature that it is impossible for the Court to perform that role without exercising the power of CJR. A constitutional provision providing for ultimate and authoritative judicial interpretation of the Constitution by an apex court is a good example. Provisions of this class may be described as *implicit special provisions*. Looking at our 1932 Constitution for *Special CJR Provisions* turns out to be a futile exercise as well, for there were no such provisions in it.

The *third* type of CJR provisions are *Constitutional Supremacy Clauses*. Such clauses expressly embody the *doctrine of the supremacy and the primacy of the constitution*. They are general provisions which state in clear and definitive terms that the constitution, as an expression of the sovereign will of the people, is the supreme and highest power in the land to which all political power is strictly subject and subservient to; they declare that all government bodies and officials are legitimised and shall function in strict adherence and observance of the Constitution; they set out categorically that constitutional norms—whether general principles or specific rules—have primacy over all other types of legal rules; they declare that any policy, law, action, or procedure that does not conform to th norms of the Constitution are invalid. *Constitutional Supremacy Clauses* are common in modern constitutions, as they are the cornerstone of *constitutionalism*. One example is the various provisions declaring *constitutional supremacy* in the German Constitution: Kommers states, observing that all legislative, executive, and judicial powers of the German Federation are placed under the Constitution, that "… several of its provisions make clear, it controls the entire German legal order, in which respect Articles 1, 19, 20, and 79 are particularly relevant."[101] The most famous *Constitutional Supremacy Clause* in modern constitutions may be Article IV, Clause 2, of the US Constitution.[102] We have mentioned above that the United States Supreme Court used the mere existence of a supreme Constitution in the State as basis for founding its practice of CJR in the landmark decision of *Marbury*. However, that was not the only basis used by the US Supreme Court in that case. The Court relied on the *Supremacy Clause* of the Constitution as well, in the following passages: "It is also not entirely unworthy of observation that, in declaring what shall be the supreme law of the land, the Constitution itself is first mentioned, and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank. ... Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument."[103] Looking at our First Constitution, it is interesting to note that it included, as has been explained above in Section VI, several provisions—notably Articles 42 and 92—which stated that the Constitution was supreme and above the political powers of the executive, the legislature, and the judiciary vested in the Sultan and the other organs of the State. The question that immediately comes to mind is whether Maldivian judges could have legitimately built a system of CJR on the basis of these provisions, the way the US Supreme Court did on the basis of, *inter alia*, the *Supremacy Clause* of the US Constitution, or the way the Indian Supreme Court referred to the *doctrine of the supremacy of the Constitution* in the case of *Kesavananda*

by the President, a claim against the constitutional validity of a law enacted by People's Majlis in connection with that declaration, or regarding the constitutionality of any order issued by a state authority in connection with that declaration.

[101] Donald P. Kommers, "German Constitutionalism: A Prolegomenon," *German Law Journal* 20, no. 4 (May 2019): 539, doi: 10. 101 7/gj.2019.46.

[102] Constitution of the United States, Article IV, Clause 2. The provision reads as follows: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

[103] See *Marbury v Madison* (1803), 5 U.S. 137.

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Bharati[104] as a predicate for its exercise of the power of CJR. The answer seems to be an emphatic no, for, as explained elsewhere, words in a constitution guaranteeing supremacy for itself cannot be effective unless that constitution sets up an *independent* judiciary having the necessary status and authority to effectively enforce that supremacy, and the 1932 Constitution of the Maldives simply did not establish such a judiciary, as clearly explained below in Section VIII.

1932 Constitution and the Independence of Judiciary

One very remarkable feature of the Constitution of 1932 was that it did not establish a judiciary or court system as a branch, let alone as a *co-equal branch*, of the State. As aforementioned, the Constitution recognizes four powers or organs of the State: namely, (1) His Majesty the Sultan; (2) Council of Ministers; (3) Legislative Council; and (4) People's Majlis."[105] In fact, the Constitution did not provide any visible form of court structure or mechanism for the judicial function. While there was no mention of "judiciary" or an equivalent term in its pages, the only appearance of the word "court"[106] in its provisions was in Article 75, where it is stipulated that a criminal hearing[107] against a Minister, the Prime Minister, or the Sultan shall be heard by a Committee in which "a senior adjudicating official of the Court" would also feature as one of many members. The word "judge" does not appear at all in the constitution, which uses instead a phrase whose literal translation would be "those who adjudicate in cases of/upon disputes".[108] The name "Chief Justice" is conspicuous only by its complete absence from the constitutional text, despite the fact that the Maldives had a pre-constitutional history and tradition spanning for centuries of having a powerful and important state official leading the system of enforcing judicial justice called "the Chief Justice".[109]
If the Constitution of 1932 did not establish a co-equal judicial branch of the State, the question is as to how the

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[104] *Kesavananda Bharati v State of Kerala & Anr.* (1973) A.I.R. S.C. 1461 (F.B.). In this case, the Indian Supreme Court held that it had the power to set aside any laws made by the Indian Union Legislature for contravention with any of the *basic features* of the Constitution, stating that the supremacy of the Constitution over political powers was one of those basic features. The following passages are of significance: "The basic structure of the Constitution is not a vague concept and the apprehensions expressed on behalf of the respondents that neither the citizen nor the Parliament would be able to understand it are unfounded. If the historical background, the Preamble, the entire scheme of the Constitution, the relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the Constitutional structure. … 1. The supremacy of the Constitution."

[105] Constitution of 1932, Article 23. See *supra*, Note 47.

[106] The Dhivehi term used in the text of the Constitution is "*Fan'diyaaruge*." While this term may at times be translated also as "Judiciary," it is used to mean the "Court" in Article 75 of the Constitution. Historically and traditionally, "*fan'diyaaru*" is the Dhivehi term for "judge", while "*ge*" means 'house'; hence, "*fan'diyaaruge*" comes from the idea of *the place where the fandiyaaru sits to adjudicate upon disputes*. It could be the private residence or house of the judge, and it could be an official building where the judge sits to adjudicate.

[107] The provision on this hearing, Article 75, begins in a phrasing which suggests that it is stipulating an impeachment hearing. However, the following Article (Article 76), which adds to what is said in Article 75, makes it clear, in the opinion of this writer, that it is just a special form of criminal trial conducted to hear a criminal accusation against a Minister, the Prime Minister or the Sultan, and which concludes with the pronouncement of a punishment under the Penal Code.

[108] This phrase appears in three Articles: Article 80, 81, and 82 of the Constitution and are discussed in the coming paragraphs of this Section.

[109] The traditional name for Chief Justice in the Maldives was "Bodu Fan'diyaaru" or "Uththama Fan'diyaaru", which had come from an older, proto-Dhivehi term "Uthu Padiyaaru". The "Bodu Fandiyaaru" had been a significant official of the Maldivian State throughout her history, with the position carrying weighty religious significance and conventionally being occupied by the seniormost, or one of the seniormost, religious scholars of the country. The First Constitution's failure to provide for the position of the Chief Justice of the State is an issue which merits discussion, with the possibility that the framers saw the "Minister of Justice" (*Vazeerul Haqqaaniyyaa* in the original Dhivehi text) in Article 90 as a replacement of the traditional "Bodu Fan'diyaaru" or Chief Justice; but that discussion is not within the scope of this article.

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Government it designed performed the necessary state function of adjudicating upon and resolving legal disputes. We get the answer by carefully reading provisions such as Article 43, Article 90, Article 49, Article 46, Article 64, Article 65, Article 67, Article 73, Article 81, and Article 82. What these provisions definitively show is that the courts of law were to be part of the Executive, functioning under and subservient to political officials. They were to exist and function in the name of the Sultan and under his authority,[110] under the administrative oversight of a Minister of the Sultan's Executive—the Council of Ministers. That Minister was, as stipulated in Article 90, the "Minister of Justice"[111] who would head a Department of the Executive in which all judges were to work as mere employees. As explained elsewhere, the Sultan was the head of Executive or Government,[112] with the power to appoint the Prime Minister and all the Ministers,[113] and arguably also with the power to remove them.[114] The Sultan also, quite clearly, had the power to appoint and remove the judges at his own will and discretion,[115] with no security of tenure for judges. The Executive was to run in accord with his policies and under his authority. It is plain, then, that the judicial function of the State under the 1932 Constitution was firmly within and under the control of the political powers. The framers of the Constitution evidently saw no need or reason to set up an autonomous *judicial organ* of the State and took the judicial function as a component of the Executive.

That being the case, there is very little space to even begin talking about the *independence of judiciary* under the1932 Constitution. However, there were two provisions in the Constitution which draws our attention: Article 43 and Article 80. The former states that "The Sultan would not interfere in any law concerning adjudication in disputes; however, affairs of adjudication in disputes shall be conducted in the name of the Sultan and under his command."[116] The latter reads as follows: "Those who adjudicate upon disputes shall be independent in the process of adjudication unless and until they do not violate the law; no one shall interfere the processes of adjudication they conduct."[117] These provisions ostensibly give judges at least substantive or decisional independence. However, for at least two reasons, they were unlikely to be effective, to say the least. *Firstly*, the judges, as explained in the paragraph above, were within the Executive and under the full administrative authority of the King and his Ministers, with no security of tenure and subject to removal by the Sultan at will.[118] It is a fool's hope to believe that judges under such circumstances can be independent and impartial. *Secondly*, the main provision supposedly guaranteeing judges independence in adjudicating — Article 80 — contains an interesting statement: that judges would be independent in the process of adjudication "unless and until they do not violate the law". How can judges adjudicate independently when the very provision purporting to guarantee their judicial independence also says that that independence would be there as long as they *do not violate the law*. What would happen if there arises a situation where the Sultan, or the Council of Ministers, or the Legislative Council, or People's Majlis, or anyone else, claimed that a judge had violated a law in making a judicial decision? Who had the authority of final interpretation of the

[110] Constitution of 1932, Article 43.
[111] Ibid, Article 90(3).
[112] See *supra*, Notes 65 & 66.
[113] See *supra*, Notes 72 & 75.
[114] Constitution of 1932, Article 46. The provision reads as follows: "It is His Majesty the Sultan's authority and command that would be executed in appointing and commissioning persons to all positions of the State and in removing them."
[115] Ibid.
[116] Ibid, Article 43.
[117] Ibid, Article 80.
[118] In fact, it is a testament to the subservient position judges were placed in in relation to the senior officials of the Government that the Constitution provided for an *ad hoc* judicial body, in Articles 74, 75, 76, and 77, which was to include one "senior adjudicating official of the Court", to hear any criminal cases brought under the penal laws against a Minister, the Prime Minister, or the Sultan. Ordinary judges — "those who adjudicate upon disputes" — were not allowed to hear such cases even though they were clearly and evidently ordinary criminal trials and not impeachment proceedings.

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law and deciding that a judge had or had not violated the law? The Constitution was silent on this point, but whoever might have had the final say in such a situation, and whoever might have had the final authority of interpreting the law in such situations, the wordings of Article 80 suggests that it was not the judges. The question of somebody else judging judges to see if they had acted in accordance with the law is one point of objection. Another is as to who would assess a judge when he is accused of having acted in contravention to the law, and what would happen to the judge in such a case. The Constitution did not give any answers to these questions, and one can assume that such a judge would be "removed from office" by the Sultan under Article 46. He could perhaps be even put on trial for violating the law! What else can one make of this, except to say that judges had to rule in ways that would please the Sultan if they did not want to come under fire through Article 46?

The foregoing discussion leads us to only one rationally tenable conclusion: the 1932 Constitution did not guarantee *judicial independence*. It lacked the third constitutional and legal foundation necessary for *constitutionalism*.

The Amendments

The first Amendment to the 1932 Constitution, in 1934, brought two notable changes in its provisions relating to the judges and judiciary. *Firstly*, as it merged the Legislative Council and People's Majlis, created originally as two separate bodies of the State Governance system, to form a single entity called "People's Majlis", it included "a judge" as a member of that Majlis, chosen and appointed by the Monarch.[119] *Secondly*, a number of articles were inserted[120] to provide for an office that can be seen as that of the "Chief Justice", although this name was still not used. Yet, judges were not given the status of a separate branch of the State, and the seniormost judge — the *Chief Justice*, if one can use that term, — was under the Prime Minister, working as head of the "Ministry of Sharīʿah Affairs".[121] As such, the 1934 amendment brought no noteworthy changes in relation to the status, independence, and powers of the judges in the scheme of constitutional affairs. The Second Amendment to the Constitution, coming in 1937, made no further changes in relation to judges or the judicial function of the State.

Conclusion

If we look at this article as an exercise of deductive reasoning in the form of a syllogism — the major premise being that a constitution can be held to uphold *constitutionalism* if it provides for the supremacy and primacy of the constitution over all political powers, for an efficacious system of *constitutional judicial review* of all forms and kinds of governmental and political actions and decisions, and an *independent judiciary* which is co-equal and is constitutionally empowered to effectively and decisively enforce the system of *constitutional judicial review*, and the minor premise being the Maldivian Constitution of 1932 did not provide for all these three foundations of *constitutionalism* — then the logical conclusion would be that that Constitution did not ensure or uphold

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[119] Constitution of 1932 as amended in 1934, Article 52, 1934.

[120] Ibid, Article 72 (The authority to uphold the tenets of Islam in the Maldives, to administer justice amongst the people, to implement and execute prescribed and discretionary punishments of Islamic Shariah, and observing all affairs of the Shariah shall be a Judge"; Article 73 states that "the Judge shall be chosen and appointed by the Keerithi Mahaaradhun with the advice of the People's Majlis". Article 74 stipulates the qualifications and requirements of the Judge.

[121] Ibid, Article 74(5) – Enumerating the qualifications of "the Judge", it says that he shall have the capacity of conducting and observing the affairs of Shariah, upholding the rulings, and run all the affairs of the Ministry of Sharʿiyyah". Here, the name "Ministry of Sharʿiyyah" is a translation of the name "Maḥkamah al-Sharʿiyyah", which is difficult to be translated, as in a Maldivian context of the time, the term "Sharʿiyyah" included not merely or only adjudication, but it was a term carrying a much wider meaning upholding the rules of Islamic Sharīʿah, including the leading of affairs of prayer, fasting, hajj, and ultimately also adjudicating in disputes in accord with basically the Sharīʿah".

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constitutionalism. We got our 1932 Constitution as the first autochthonous constitution of South Asia, and it surely laid the foundation for the birth of *constitutionalism* in the future: but it did not itself guarantee *constitutionalism* for the Maldivian people and the State. It was not a *garantiste* constitution; it did not limit Government and subject Government to the supremacy of the Constitution. It was perhaps just a *nominal* constitution describing the existing power structure—a structure in which the Sultan had almost absolute power. The only change it brought might be to provide for legitimate power sharing by the Sultan's nobles.

References

List of Cases

Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374 (HL).

Kesavananda Bharati v State of Kerala AIR 1973 SC 1461 (FB).

Marbury v Madison 5 US (1 Cranch) 137 (1803).

List of Legislation

Constitution of the Federal Republic of Germany.
Constitution of the Monarchy of France of 1814.
Constitution of the Republic of France 1791.
Constitution of the Republic of India.
Constitution of the Republic of Maldives 1932.
Constitution of the Republic of Maldives 1932, as amended in 1934.
Constitution of the Republic of Maldives 1932, as amended in 1937.
Constitution of the United States of America.

Secondary Sources

Bradley AW and Ewing KD, *Constitutional and Administrative Law* (Pearson Education Limited 2007).
Buratti A, *Western Constitutionalism: History, Institutions, Comparative Law* (Springer 2016).
Chen AHY, 'The Achievement of Constitutionalism in Asia: Moving Beyond "Constitutions without Constitutionalism"' in Albert HY Chen (ed), *Constitutionalism in Asia in the Early Twenty-First Century* (Cambridge University Press 2014).
Chen AHY and Maduro MP, 'The Judiciary and Constitutional Review' in Mark Tushnet and others (eds), *Routledge Handbook of Constitutional Law* (Routledge 2013).
De Smith AS, 'Constitutionalism in the Commonwealth Today' (1962) 5 *Malayan Law Review* 1.
Garner BA, *Black's Law Dictionary* (West 2009).
Hartmann BJ, 'The Arrival of Judicial Review in Germany under the Weimar Constitution of 1919' (2003) 18(1) *BYU Journal of Public Law* 113.
Maajid A, 'Nineteen Thirty-Two and Beyond: An Overview of the Maldivian Journey on the Path of Written Constitutions' (2025) xcviii *CLJU(A)*.
Nwabueze BO, *Constitutionalism in the Emergent States* (Fairleigh Dickinson University Press 1973).
Shaathir A *et al*, *The Legal Life of the Maldives* (People's Majlis 1981).
Alexander L, *Constitutionalism: Philosophical Foundations* (Cambridge University Press 1998).

Amin M, *The Life of the Maldivian Constitution* (Maṭbaʿatul Ḥukūmah 1951).

© 2025 IUMJOL

Amin M *et al*, *Welcome … Maldivian Republic* (Maṭbaʿatul Ḥukūmah 1953).

Barber NW, *The Principles of Constitutionalism* (Oxford University Press 2018).

Barber NW, 'The Rechtsstaat and the Rule of Law' (2003) 53(4) *University of Toronto Law Journal* 443.

Barnett H, *Constitutional and Administrative Law* (Routledge 2013).

Bilder MS, 'Idea or Practice?: A Brief Historiography of Judicial Review' (2008) 20(1) *Journal of Policy History* 1.

Cappelletti M, 'Judicial Review in Comparative Perspective' (1970) 58(5) *California Law Review* 1017.

Cappelletti M, 'The Expanding Role of Judicial Review in Modern Societies' (1989) 58(1) *Revista Juridica* 1.

Casper G, 'Constitutionalism' (1987) University of Chicago Law Occasional Paper No 22.

Corwin ES, *The Doctrine of Judicial Review: Its Legal and Historical Basis and Other Essays* (Princeton University Press 1914).

Corwin ES, 'Judicial Review in Action' (1926) 74(7) *University of Pennsylvania Law Review* 639.

Deener D, 'Judicial Review in Modern Constitutional Systems' (1952) 46(4) *American Political Science Review* 1079.

Endicott T, *Administrative Law* (Oxford University Press 2011).

Falaah S, 'Towards a Maldivian Nation-State: The Constitutions of 1932 and 1968' in Kevin YL Tan and Ridwanul Hoque (eds), *Constitutional Foundings in South Asia* (Hart Publishing 2021).

Ginsburg T, 'The Global Spread of Constitutional Review' in Keith E Whittington, R Daniel Kelemen and Gregory A Caldeira (eds), *The Oxford Handbook of Law and Politics* (Oxford University Press 2008).

Goldsworthy J, *Parliamentary Sovereignty: Contemporary Debates* (Cambridge University Press 2010).

Goldsworthy J, *The Sovereignty of Parliament: History and Philosophy* (Oxford University Press 1999).

Grimm D, *Constitutionalism: Past, Present, and Future* (Oxford University Press 2016).

Hobbes T, *Leviathan or The Matter, Form and Power of a Commonwealth Ecclesiastical and Civil* (Oxford Clarendon Press 1909) (first published 1651).

Jacques J-J, *The Social Contract and Discourses* (trans GDH Cole, Dutton Publishing 1955).

Kay RS, 'American Constitutionalism' in Larry Alexander (ed), *Constitutionalism: Philosophical Foundations* (Cambridge University Press 1998).

Kommers DP, 'German Constitutionalism: A Prolegomenon' (2019) 20(4) *German Law Journal* 539.

Limbach J, 'The Concept of the Supremacy of the Constitution' (2001) 64(1) *Modern Law Review* 1.

Lutfi MI, *Abridged History of the Maldives* (Centre for Dhivehi Language and History 2011).

McIlwain CH, *Constitutionalism: Ancient and Modern* (Cornell University Press 1947).

Muhammad N, *Heritage of the Maldivian People* (Centre for Dhivehi Language and History 2002).

 © 2025 IUMJOL

Muhammad N, *Independent Maldives* (Academy of the Dhivehi Language 2013).

Parpworth N, *Constitutional and Administrative Law* (Oxford University Press 2012).

Paine T, *Rights of Man* (Wordsworth 1996).

Samuels H, *Public Law: Text, Cases, and Materials* (Oxford University Press 2012).

Sartori G, 'Constitutionalism: A Preliminary Discussion' (1962) 56(4) *American Political Science Review* 853.

Schram G, 'Ideology and Politics: The Rechtsstaat Idea in West Germany' (1971) 33(1) *Journal of Politics* 123.

Stephenson MC, '"When the Devil Turns …": The Political Foundations of Independent Judicial Review' (2003) 32(1) *Journal of Legal Studies* 59.

Tushnet M, *Advanced Introduction to Comparative Constitutional Law* (Edward Elgar 2014).

Urhibo K, 'The Prospective Nexus between Constitutionalism, the Rule of Law and Democratic Good Governance: The Nigerian Experience' (2023) 14(2) *Beijing Law Review* 1.

Waluchow WJ, *A Common Law Theory of Judicial Review* (Cambridge University Press 2007).

Whittington KE, 'Reconsidering the History of Judicial Review' (2020) 35(1) *Constitutional Commentary* 1.

Whittington KE, Kelemen RD and Caldeira GA (eds), *The Oxford Handbook of Law and Politics* (Oxford University Press 2008).

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