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EDITOR'S PICK

ISLAMIC UNIVERSITY OF MALDIVES

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Introduction to IUMJOL Vol.1 Issue. 1

بسم الله الرحمن الرحيم

In the name of Allah, the Most Gracious, the Most Merciful.

It is with great pride and a deep sense of responsibility that I present the inaugural issue of the IUM Journal of Laws (IUMJOL). This publication marks a significant step in advancing legal scholarship, fostering critical discourse, and addressing contemporary challenges through both Shari'ah and conventional legal perspectives.

IUMJOL aims to serve as a platform for rigorous research, innovative legal thinking, and meaningful dialogue. With a focus on comparative legal studies, Shari'ah principles, and interdisciplinary research, the journal bridges theoretical insights and practical solutions. Its bilingual approach in English and Dhivehi ensures inclusivity and broader accessibility.

Every contribution published here has undergone a rigorous peer-review process, reflecting our commitment to academic excellence and integrity. This issue brings together scholarly articles, case analyses, and reviews that offer valuable insights and address pressing legal issues.

I extend my sincere gratitude to the Vice Chancellor, Dr Ali Zahir, and Deputy Vice Chancellor, Dr Visal Moosa, for their unwavering support. Special thanks also to our Managing Editor, Al-Ustaz Ikram Abdul Sattar, and the entire editorial team for their dedication.

To our contributors, reviewers, and readers, thank you for your trust and engagement. May this journal inspire further research, inform policy, and contribute meaningfully to the evolving landscape of Shari'ah and legal studies.

Dr Mohamed Affan Shafy
Editor-in-Chief
IUM Journal of Laws (IUMJOL)
Islamic University of Maldives

Forword by the Vice Chancellor of Islamic University of Maldives

بسم الله الرحمن الرحيم

الحمد لله رب العالمين , والصلاة والسلام على المبعوث رحمة للعالمين، نبينا محمد وعلى آله وصحبه أجمعين.

The launch of the *IUM Journal of Laws (IUMJOL)* marks a proud and significant milestone for the Islamic University of Maldives. This inaugural represents not just the beginning of a scholarly publication but also a bold step towards establishing a platform dedicated to advancing legal research and discourse both nationally and internationally.

The establishment of IUMJOL reflects a commitment to fostering a culture of academic excellence, critical inquiry, and meaningful discourse in both Shari'ah and legal studies. At a time when the complexities of law and governance are ever-increasing, the role of rigorous, peer-reviewed legal research cannot be overstated. This journal aspires to serve as a platform for scholars, researchers, and practitioners to share knowledge, challenge existing paradigms, and propose innovative legal solutions to contemporary issues.

The purpose of IUMJOL aligns with the vision of Kulliyyah of Shari'ah & Law (KSL) to actively contribute to the research landscape of the Islamic University of Maldives and fill the significant gap in academic legal publications within the country. The journal aims to provide an essential platform for publishing high-quality legal and Shari'ah research, including comparative studies, case analyses, and critiques of legal principles, fostering academic dialogue at both national and international levels. It will also encourage interdisciplinary studies, bridging Shari'ah and law to address modern challenges effectively.

In addition to its academic goals, IUMJOL seeks to inspire the next generation of legal scholars and practitioners by creating opportunities for meaningful contributions to the field. By adopting a bilingual approach with publications in both English and Dhivehi, the journal ensures inclusivity and broad accessibility, enabling a diverse readership to engage with valuable research insights.

As we embark on this promising journey, the success of IUMJOL will depend on the collective efforts of dedicated researchers, contributors, reviewers, and the editorial team. Their commitment and passion for academic excellence will undoubtedly drive this journal towards becoming a reputable source of legal knowledge and research.

I extend my heartfelt gratitude to the team of KSL and everyone who played a role in bringing this vision to life. May this journal serve as a beacon of knowledge, innovation, and progress in the realms of Shari'ah and legal studies.

Dr. Ali Zahir
Vice Chancellor
Islamic University of Maldives

Message from the Deputy Vice Chancellor of Islamic University of Maldives

It is with great honour and anticipation that we mark the publication of the inaugural issue of the IUM Journal of Laws (IUMJOL). This occasion not only marks the achievement of a shared vision and commitment, but it also marks the start of a long-term commitment to furthering legal scholarship and encouraging critical discourse both inside and outside of the academic community.

It has never been more important for the law to serve as a beacon of justice and a tool for maintaining order in a world that is changing quickly. The IUMJOL aspires to be a pillar of critical thinking, in-depth analysis, and creative viewpoints on today's legal issues. In order to ensure its relevance to academia, the legal profession, and society at large, this journal seeks to bridge theoretical insights with practical implications through contributions from researchers, practitioners, and policymakers around the world.

The first issue establishes a standard for the calibre and breadth of scholarship we aim to maintain. It represents a common goal of creating a forum where many viewpoints and ideas can come together to boldly, creatively, and clearly address urgent legal issues.

We would like to express our appreciation to the readers, editorial team, and contributors who have helped us reach this milestone as we set out on this adventure. Together, we will shape IUMJOL into a journal that inspires the transformative potential of law in service to mankind while also documenting the development of legal thought.

May this first issue serve as the cornerstone of a legacy that values impact and excellence.

Dr Visal Moosa
Deputy Vice Chancellor Research and Innovation
Islamic University of Maldives

General Overview and Journal Vision

1. Introduction:

IUM Journal of Laws (IUMJOL) is a double-blinded peer-reviewed academic journal published by Kulliyyah of Shairah at the Islamic University of Maldives. The journal is published once a year in both Dhivehi and the English language to allow local and international intellectuals of legal scholarship to disseminate their scholarship. This journal aims to expand legal scholarship by providing an academic platform for scholars and academicians to share and exchange knowledge.

2. Scope and Aim:

IUM Law Journal (IUMLJ) /IUM Journal of Law (IUMJOL) covers a variety of topics in Law and Shariah. The journal aims to publish research papers on law reform, discussions on legal doctrines, academic analysis on case reports, issues relating to the application of law in practice, and comparative legal analysis of different laws and legal systems. Additionally, the journal accepts high-quality original manuscripts of international law, research on Islamic law, and Fiqh of classical and contemporary issues.

3. Ethical Standards:

All articles published in IUMJOL shall meet the highest ethical standards. Therefore, authors are required to maintain high standards of ethical behavior when preparing their manuscripts for publication. Articles that do not meet IUMJOL's ethical standards will be rejected.

4. Copyright Protection:

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In addition to the following members of the editorial board, members of the local advisory committee and international advisory committee sit-in the IUMJOL's editorial board.

Editorial Board

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The manuscript submitted **must be original** and must not have been published or submitted for publication in another journal. The length of the manuscript must be **between 6000 and 10000 words**. The Similarity Index (SI) must be a minimum 20% by Turnitin screening. All manuscripts should be accompanied by an abstract and a list of references.

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2. To ensure the double-blind peer review, the second page of the manuscript will have a full title (removing all identifying information about the authors), an abstract, and keywords.
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All illustrations, figures, and tables are captioned and placed within the text at the appropriate points rather than at the end.

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English Section

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Strengthening Environmental Legislation in Sierra Leone: Addressing Environmental Crimes and Promoting Sustainable Development

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Abstract

Sierra Leone faces an environmental crisis due to inadequate legislation leading to environmental crimes such as illegal mining, timber logging, and waste dumping. These challenges have detrimental effects on the environment, public health, and sustainable development. The current legal framework, including the Mines and Minerals Act of 2009 and the Environmental Protection Agency Act of 2008, falls short of addressing these issues effectively. This study emphasizes the urgent need to strengthen environmental legislation in Sierra Leone. Through library studies and content analyses of international conventions, statutes, and legislations, the study suggests that a strong legal framework can be developed to mitigate environmental degradation, health crisis, and deteriorating living conditions. Robust enforcement mechanisms and institutional transparency are crucial to investigate and prosecute environmental crimes. The consequences of the regulatory gap are profound, with mining companies operating without accountability, leading to environmental degradation and community displacement. Improper waste disposal worsens health issues. Lack of transparency in political institutions undermines enforcement, leaving affected communities with diminished quality of life and uncertain resettlement status. Prioritizing strengthening environmental legislation will safeguard communities, preserve natural resources, and foster a healthier and sustainable future. Efforts must include effective investigation and prosecution of environmental crimes, transparency, and public participation. Sierra Leone can overcome the environmental crisis and progress towards sustainable development by establishing a more robust and accountable legal and regulatory framework.

Keywords: Strengthen, environmental legislation, crises, environmental crimes, Sierra Leone

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1. INTRODUCTION

Environmental crime encompasses various illegal activities that intentionally degrade or harm ecological and biological systems for personal or business gain.[1] This includes acts like illegal mining, hazardous waste trade, wildlife trafficking, and illegal logging.[2] Such crimes are often associated with bribery, forgery, and smuggling and are frequently linked to organized criminal syndicates engaged in other illicit activities.[3] Environmental crimes have become highly profitable enterprises, attracting these organized groups due to their substantial financial rewards.[4] According to the World Bank, estimates suggest that global wildlife crime alone is valued in the billions of dollars annually, while illegal logging costs developing countries around $15 billion in lost revenue and taxes.[5]

The unsustainable and illegal exploitation of the natural environment does not only destroy the environment but affect human health as well. Globally, human-produced toxic pollution causes premature death of an estimated 8-9 million people yearly.[6] According to the World Health Organisation 2023, 52% of deaths from stroke and ischaemic heart disease are caused by air pollution in Sierra Leone.[7] Environmental crime shares similarities with other major crimes, as it affects both society and the ecosystem.[8] Water pollution results in more than two million human deaths every year, with a disproportionate amount of mortality occurring in

[1] R White, 'Environmental Crime and Problem-Solving Courts' (2013) 59(3) Crime, Law and Social Change 267–278
[2] MH Marzbali, A Abdullah, N Abd Razak and MJM Tilaki, 'The Influence of Crime Prevention Through Environmental Design on Victimisation and Fear of Crime' (2012) 32(2) Journal of Environmental Psychology 79–88
[3] N Shover and AS Routhe, 'Environmental Crime' (2005) 32 Crime and Justice 321–371
[4] D Krott, 'The Ecocide–International Environmental Crime Nexus: When Can an International Environmental Crime Be Called "Ecocide"?' (2021) [NA]
[5] DP van Uhm and RCC Nijman, 'The Convergence of Environmental Crime with Other Serious Crimes: Subtypes within the Environmental Crime Continuum' (2022) 19(4) European Journal of Criminology 542–561
[6] R Fuller, K Sandilya and D Hanrahan, Pollution and Health Metrics (Global Alliance on Health and Pollution 2019) https://gahp.net/wp-content/uploads/2019/12/PollutionandHealthMetrics-final12_18_2019.pdf accessed [NA]
[7] Sierra Leone and Injuries Poverty, 'NCDI' (2020) [NA]
[8] N Etemi, M Halili and A Dalipi, 'The Rise of Environmental Crime, a Growing Threat to Our Future' [NA]

developing countries.[9] About 92% of these premature deaths occur in low and middle-income countries, particularly in countries with limited environmental policy regulations and enforcement capacity— conditions that extractive industries such as mining have demonstrably exploited regularly.[10]

Sierra Leone has grappled with addressing the environmental disaster caused by the mining industry, with many citizens viewing mineral mining as more harmful than advantageous. Continued mining operations have led to the pollution of the Pampana River, which is relied upon by approximately 120,000 people for essential daily activities, including drinking water and other necessities.[11]

Environmental crime has largely been overlooked or given insufficient attention in Sierra Leone.[12] Between the year 2013-2018, there were no reported seizures of illegally trafficked wildlife by Sierra Leone, however, contraband originating in or passing through Sierra Leone continues to be intercepted by law enforcement officials in other countries. This indicates a significant gap in the capacity of Sierra Leone's wildlife authorities to deter, detect, and prosecute wildlife crime.[13] In the year 2014, dead seahorses were discovered in the luggage of a passenger who had arrived from Sierra Leone at an airport in France while in transit to China. Also, in March 2016, a specially trained canine unit from the African Wildlife Foundation successfully detected a shipment of 500 kg of pangolin scales being transported from Sierra Leone to Thailand.[14]

Furthermore, over the past few decades, Sierra Leone has witnessed a significant rise in the exploitation of its natural resources, leading to the destruction of communities, loss of biodiversity, land degradation, and reduced agricultural potential, thus posing threats to food security and causing animal extinctions.[15] Artisanal mining, in particular, has significantly compromised the integrity of major rivers in the country, rendering them polluted and unfit for human use. The continuous pollution and contamination of rivers further harm local fish stocks, impacting food availability and nutrition.[16] The mining activities conducted without proper land reclamation or rehabilitation planning have severely impacted the environment, health, and livelihoods of local communities.[17] By conducting library research and analysing relevant acts, legislation, and statutes, this paper highlights the need for enhanced environmental legislation. Moving forward, this paper delves into the laws governing environmental crimes.

2. Overview of the Sierra Leone Environment

Sierra Leone is endowed with a significant number of mineral resources such as bauxite, gold, diamonds, and rutile forest, among others. Despite the significance of these resources, a large school of thought believes that the exploitation of these resources has been unsustainable and is causing irreparable damage to the ecosystem and human health.[18] For instance, the exploitation of diamonds in Sierra Leone dates back to the 1930s, and since then, it has played a major role in the political and economic spheres of the nation, but not without adverse environmental effects.[19] Studies have proven that a clear relationship exists between human insecurity and environmental degradation in Sierra Leone.[20] Understanding the environmental, social, and economic consequences of environmental abuse in Sierra Leone is critical to combat future environmental dilapidation.[21]

In a similar vein, environmental sustainability is crucial during mining (large- and small-scale), and it has been the greatest culprit of environmental degradation in Sierra Leone since 1930, followed by shifting agriculture. The Food and Agriculture Organization (FAO) warns that in as much as the government increases its emphasis on economic

[9] RA Marcantonio, SP Field, PB Sesay and GA Lamberti, 'Identifying Human Health Risks from Precious Metal Mining in Sierra Leone' (2021) 21 Regional Environmental Change 1–12

[10] UNDP and UNEP, Managing Mining for Sustainable Development (UN Development Programme and UN Environmental Programme 2018) https://www.undp.org/content/undp/en/home/librarypage/poverty-reduction/Managing-Mining-for-SD.html accessed [NA]

[11] RA Marcantonio, SP Field, PB Sesay and GA Lamberti, 'Identifying Human Health Risks from Precious Metal Mining in Sierra Leone' (2021) 21 Regional Environmental Change 1–12

[12] T Wyatt, 'Mapping the Links between Conflict and Illegal Logging' in Environmental Crime and Social Conflict (Routledge 2016) 57–72

[13] C Haenlein and ML Rowan Smith (eds), Poaching, Wildlife Trafficking and Security in Africa: Myths and Realities (Taylor & Francis 2017)

[14] Understanding Threats to West African Biodiversity and Linkages to Wildlife Trafficking: Sierra Leone Field Assessment Report (September 2018) [no publisher or URL provided]

[15] N Engwicht and C Ankenbrand, 'Natural Resource Sector Reform and Human Security in Post-Conflict Societies: Insights from Diamond Mining in Sierra Leone' (2021) 8(4) The Extractive Industries and Society 100988.

[16] R Maconachie, 'Dispossession, Exploitation or Employment? Youth Livelihoods and Extractive Industry Investment in Sierra Leone' (2014) 62 Futures 75–82

[17] 'Sierra Leone: Environment – Impacts of Illegal Mining Activities: Threat to Water Security, Human Health, and Potential National Public Health Emergency' (AllAfrica, 9 August 2022) https://allafrica.com/stories/202208090226.html accessed

[18] LK Zulu and S Wilson, 'Whose Minerals, Whose Development? Rhetoric and Reality in Post-Conflict Sierra Leone' (2012) 43(5) Development and Change 1103–1131

[19] SA Wilson, 'Diamond Exploitation in Sierra Leone 1930 to 2010: A Resource Curse?' (2013) 78(6) GeoJournal 997–1012

[20] K Lubovich and E Suthers, Improving Environmental Security in Sierra Leone: The Importance of Land Reclamation (Foundation for Environmental Security and Sustainability 2007)

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growth, it will require sound environmental policies, together with sustainable management, to prevent uncontrolled

environmental damage, mostly caused by mining and agriculture.[22] There is virtually no doubt that

natural resources such as bauxite, diamond, gold, and iron ore, among other deposits, can greatly

contribute to the economic growth and development in regions where they are found. [23]

The unwise and unsustainable exploitation of the natural environment in Sierra Leone is a course of concern. So far, several essential elements of the environment have been affected and directly affecting public health. Poor water quality is a major threat to public health and aquatic life in Serra Leone. The main source of this problem appears to be poorly managed and unregulated waste disposal, as well as uncontrolled mining operations. Most disease outbreaks are either water-related or waterborne.[24] Additionally, typhoid fever is very common among citizens. Sewage ends up in those water sources through surface runoff and base flow, introducing pathogens that cause the disease.[25]

Furthermore, there have been recurring instances of waterborne disease outbreaks stemming from inadequate sanitation in Sierra Leone. The Ministry of Health and Sanitation (MoHS) and the World Health Organization (WHO) have documented cholera outbreaks since 1970, when 293 cases were reported.[26] These occurrences are particularly common during the rainy season, with the most severe outbreak taking place in 2012. During this period, a staggering 22,885 cases, resulting in 298 fatalities, were recorded. In response, President Koroma declared a state of public health emergency, and international partners collaborated with the Government of Sierra Leone (GoSL) to address the outbreak effectively.[27] These disease outbreaks are a result of unsatisfactory sanitation conditions and behaviours leading to contamination of water sources. According to a WHO report from 2013, in 2010, only 55% of Sierra Leone's population had access to improved water sources, while a mere 13% had access to adequate sanitation facilities. The same report highlights that outbreaks related to poor sanitation tend to surge during the rainy season, coinciding with elevated surface runoff.[28]

Numerous other environmental devastations have occurred, yet many of these incidents have gone unreported or properly regulated, highlighting the prevalence of unnoticed and unregulated environmental crimes in Sierra Leone. Despite being home to a rich variety of wildlife, including 1,500 plant species, 170 mammal species, and 274 bird types, the country faces significant challenges. It boasts abundant fish stocks and valuable timber resources, integral to both formal and informal trade routes connecting West Africa and global markets. However, Sierra Leone struggles with controlling trade due to approximately 50 unauthorized border crossings.[29]

Between 2000 and 2016, the most trafficked species were African Grey Parrots (21%) and chimpanzees (15%).[30] Sierra Leone was also implicated in seizures of illegal marine wildlife, like shipments of dried sea horses intercepted in Belgium in 2017, intended for Asian markets. Customs, the Environmental Crime Unit, and the Forestry Division lack adequate staff to combat wildlife crime effectively. Insufficient resources hinder Customs' ability to staff all border crossings, some of which are only monitored by untrained national police and army personnel. Additionally, there is a lack of wildlife-specific detection equipment, and existing resources like scanners and canine units at major ports are not utilized for wildlife crime detection.[31] Crucially, wildlife crime does not receive equal priority across Sierra Leone's enforcement agencies, leading to a lack of interagency coordination at the national level. This absence of a cohesive approach underscores the challenges in addressing wildlife crime comprehensively in Sierra Leone.

Furthermore, illegal logging is considered a lucrative business for many private sectors and unlicensed individuals in Sierra Leone. Deforestation represents an environmental issue that is recognized by a variety of different governmental actors, but any solutions to any agreed issue are ultimately realized through a myriad of power struggles, operating in the context of bureaucratic corruption and political opportunism.[32] An undercover report carried out by Al Jazeera English also unravels connivance by key government

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[23] AK Mensah and others, 'Environmental Impacts of Mining: A Study of Mining Communities in Ghana' (2015) 3(3) Applied Ecology and Environmental Sciences 81–94

[24] AS Mansaray, J Aamodt and BM Koroma, 'Water Pollution Laws in Sierra Leone—A Review with Examples from the UK and USA' (2018) 9(11) Natural Resources 361–388

[25] World Health Organization, WHO Report on the Global Tobacco Epidemic 2015: Raising Taxes on Tobacco (WHO 2015)

[26] R Kahn and others, 'Incubation Periods Impact the Spatial Predictability of Cholera and Ebola Outbreaks in Sierra Leone' (2020) 117(9) Proceedings of the National Academy of Sciences 5067–5073

[27] M Gelormini and others, 'Coverage Survey and Lessons Learned from a Pre-Emptive Cholera Vaccination Campaign in Urban and Rural Communities Affected by Landslides and Floods in Freetown Sierra Leone' (2023) 41(14) Vaccine 2397–2403

[28] Ibid.

[29] A Fichtelberg, 'Resource Wars, Environmental Crime, and the Laws of War: Updating War Crimes in a Resource Scarce World' in Environmental Crime and Social Conflict (Routledge 2016) 177–196

[30] Ibid

[31] Ibid.

[32] PG Munro, 'Deforestation: Constructing Problems and Solutions on Sierra Leone's Freetown Peninsula' (2009) 16(1) Journal of Political Ecology 104–122

figures in Sierra Leone on illegal timber trading activities.[33] A 2017 report from Transparency International EU and Global Witness highlighted that corruption serves as a major catalyst for illegal logging and is the key facilitator of the illicit timber trade. Corruption permeates every stage of the timber industry, including timber harvesting, transportation, processing, manufacturing, exporting, importing, and sales.[34]

Overall, environmental crimes in Sierra Leone stem from a variety of contributing factors, both legal and non-legal. In this paper, we specifically examine key laws targeting major environmental crimes in the country.

3. Related Environmental Laws

Regulating environmental crimes in Sierra Leone involves a complex framework of legislation and institutions. Sierra Leone is aware of the dangers and attacks on the environment and thereby has established several key regulatory bodies, including the Environmental Protection Agency (EPA-SL), National Protection Area Authority (NPAA), and National Commission on Environment and Forestry (NaCEF), aimed at governing environmental activities.[35] The cornerstone legislation in this regard is the EPA-SL Act of 2008, amended in 2011, which granted regulatory power to the EPA-SL, especially concerning mining activities.[36] Under Section 23 of this Act, mining companies, both small and large-scale, are mandated to obtain an Environmental Impact Assessment (EIA) License, monitored quarterly to ensure adherence to environmental standards.[37] Moreover, the National Protection Area Authority Act of 2012 has fortified Sierra Leone's environmental regulations by imposing penalties, including fines and imprisonment, for violations such as burning vegetation, cutting timber, and introducing domestic animals within protected areas.

The Mines and Minerals Act of 2009 repealed the Mines and Minerals Act of 1994 and the Commission for the Management of Strategic Resources, National Reconstruction and Development Act of 1999, addressing water quality issues related to mining activities.[38] It emphasizes the preservation of freshwater dams and the associated waters upon cessation of operations or termination of a mineral right. The Act prohibits dredging without a permit and imposes fines for violations.[39] Section 132 of the Mines and Mineral Act places a duty on mineral rights holders to minimize and manage environmental impacts, but its enforcement by the National Minerals Agency (NMA) has been inadequate.[40] Moreover, subsection 2 specifies that all mineral rights holders in the country must adhere to environmental protection laws. Section 134 addresses monitoring, particularly concerning industrial waste activities, by mandating mining companies to periodically submit an Environmental Management Program Report.[41]

Enforcing environmental protection laws in Sierra Leone has historically been challenging due to the absence of strong legal and government frameworks necessary to mitigate the harmful environmental effects of mining activities. For many years, this situation remained unchanged.[42] The institutional capacity of departments responsible for environmental protection is questionable in regard to their effectiveness, enforcement and monitoring.[43] Existing environmental laws are often outdated and insufficient to address the current issues, necessitating further action.[44] The failure of existing policies, especially in the mining sector, to prioritize environmental and social concerns is attributed to the lack of specificity in mining legislation, unclear responsibilities of various ministries, inadequate monitoring, and weak implementation of laws and regulations.[45]

Apart from that, Sierra Leone inherently lacks the essential legislative framework required for the full implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).[46] Additionally, the country faces challenges due to the insufficient capacity of

[33] EA Jackson, 'FLEGT Mandate: Its Applicability and Effectiveness in Sierra Leone' (2015) 4(3) Journal of Applied Thought [pages not provided]

[34] M Fayiah, 'Uncertainties and Trends in the Forest Policy Framework in Sierra Leone: An Overview of Forest Sustainability Challenges in the Post-Independence Era' (2021) 23(2) International Forestry Review 139–150

[35] Ibid.

[36] PT Mabey, W Li, AJ Sundufu and A H Lashari, 'Environmental Impacts: Local Perspectives of Selected Mining Edge Communities in Sierra Leone' (2020) 12(14) Sustainability 5525

[37] R Maconachie and F Conteh, 'Artisanal Mining Policy Reforms, Informality and Challenges to the Sustainable Development Goals in Sierra Leone' (2021) 116 Environmental Science & Policy 38–46

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[40] T Mebratu-Tsegaye, P Toledano and S Thomashausen, 'A Review of Sierra Leone's Mines and Minerals Act' (2020) https://ssrn.com/abstract=3726420 accessed

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[42] AM Conteh, 'The Legal Environmental Protection Responsibility of Extractive Industries on Attendant Waste: An Analysis of International and Sierra Leone Law' [unpublished or no date provided]

[43] ibid

[44] Ibid.

[45] B Biagini, R Bierbaum, M Stults, S Dobardzic and SM McNeeley, 'A Typology of Adaptation Actions: A Global Look at Climate Adaptation Actions Financed Through the Global Environment Facility' (2014) 25 Global Environmental Change 97–108

[46] African Carnivores Initiative (ACI), CMS, Convention on the Conservation of Migratory Species of Wild Animals: Convention

government enforcement agencies responsible for combating wildlife crime. Sierra Leone is categorized as a Category 3 country under the CITES National Legislation Project, indicating that its existing legislative structure does not meet the necessary criteria for CITES implementation.

The core environmental laws in Sierra Leone, namely the Forestry Act, Fisheries Regulations, and Wildlife Conservation Act, do not align entirely with CITES regulatory standards, thus providing a weak foundation for enforcement measures.[47] Complicating matters further, Sierra Leone lacks clear guidelines for issuing permits. This complexity is exacerbated by unclear and, in some cases, overlapping jurisdictions among key wildlife authorities such as Customs, Police, National Protected Areas Authority, Forestry Division, and the Environmental Crime Unit.

Moreover, the penalties for wildlife crime in Sierra Leone are inadequate as deterrents. Offenses carry a maximum fine of 100 Leones, equivalent to less than one US dollar, or a maximum imprisonment term of six months.[48] These penalties fall significantly below the United Nations Convention against Transnational Organized Crime (UNTOC) definition of 'serious crime', which entails offenses punishable by imprisonment for at least four years or a more severe penalty. Furthermore, there is a lack of awareness within Sierra Leone's judiciary regarding wildlife crime, impeding the successful prosecution and conviction of offenders.[49]

Enhancing the capacity of law enforcement agencies is essential for improving regulations. Government officials at various levels, including customs, police, and forestry and wildlife officers, lack a fundamental understanding of CITES requirements and the identification of wildlife species. This knowledge gap is particularly concerning at major entry and exit points like Freetown Seaport and Lungi International Airport, where only a handful of officials have received training on CITES or species identification.[50] This knowledge gap is particularly concerning at major entry and exit points like Freetown Seaport and Lungi International Airport, where only a handful of officials have received training on CITES or species identification.[51]

Enforcing environmental laws in Sierra Leone faces several significant hurdles. One challenge is the lack of modern technology, as highlighted by Ijaiya and Joseph.[52] Additionally, there is a weak judicial response to green culture, as pointed out by Fagbohun.[53]The existence of ineffective supra-national adjudicatory institutions for global environmental issues promotes the cross-border movement of waste and toxic chemicals.[54] Poor political approaches further compound the challenges.[55]

Another noteworthy issue is that a large portion of international multilateral environmental treaties, of which Sierra Leone is a signatory, have yet to be domesticated. This failure to incorporate these treaties into domestic law adds another layer of complexity to Sierra Leone's legal framework for environmental governance.[56] The absence of a thorough evaluation of forest policies in Sierra Leone is remarkably surprising, especially considering that these policies, whether intentionally or unintentionally, have significantly exacerbated the depletion of forest resources.[57] Despite being initially devised for commendable purposes such as industrial growth, enhanced agricultural production, job creation, poverty alleviation, and regional development, these objectives have largely gone unmet. Instead, forest policies have become synonymous with enabling potential users to exploit forests without adequate regulation.[58]

One glaring issue lies in the government's practice of selling timber at undervalued rates, leading to a loss of public revenue and the undermining of the value of non-timber products. This approach has inadvertently encouraged rapid, exploitative, and wasteful logging, triggering conflicts among various groups, individuals, and conflicting social and private interests.[59]

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[47] JN Nakamura and B Kuemlangan, Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora Through National Fisheries Legal Frameworks: A Study and a Guide, vol 4 (Food & Agriculture Org 2020)

[48] C Ankenbrand, Z Welter and N Engwicht, 'Formalization as a Tool for Environmental Peacebuilding? Artisanal and Small-Scale Mining in Liberia and Sierra Leone' (2021) 97(1) International Affairs 35–55

[49] Ibid.

[50] M Fayiah, 'Uncertainties and Trends in the Forest Policy Framework in Sierra Leone: An Overview of Forest Sustainability Challenges in the Post-Independence Era' (2021) 23(2) International Forestry Review 139–150

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[57] M Fayiah, 'Uncertainties and Trends in the Forest Policy Framework in Sierra Leone: An Overview of Forest Sustainability Challenges in the Post-Independence Era' (2021) 23(2) International Forestry Review 139–150

[58] EA Jackson, 'Political Economy of Forest Ecology in Sierra Leone: A Focus on the Western Area Peninsular Forest (WAPFoR)' (2018) 9(1) Postmodern Openings 63–90

[59] Ibid.

Therefore, the problem of forest depletion in Sierra Leone is not just a matter of scarce resources; it is equally a policy and institutional challenge. While the situation is grave, there is still an opportunity for intervention. However, unless there is a significant improvement in forest policies and their effective implementation, Sierra Leone's environment will continue to degrade, making its development efforts unsustainable.[60]

Across the globe, the predominant approach for addressing environmental issues involves implementing relevant regulations. Yet, the Sierra Leon experience with environmental policies has revealed that the conventional command-and-control system has not yielded the intended economic and environmental outcomes.

The above illustrates the government's endeavours to promote environmental planning and protection in Serra Leone since the early 1990s through policy and legislation. However, despite the existence of environmental laws, paradoxically, environmental issues in Sierra Leone have escalated due to laws and poor implementation, as well as enforcement. [61]

The sustenance of Sierra Leone population hinges on efforts to restore natural resources, ensuring the continued availability of livelihood sources. Therefore, political leaders must demonstrate unwavering commitment, understanding that neglecting environmental protection jeopardizes the nation's ability to fulfil people's aspirations. The repercussions of government inaction in the political, social, legal and economic spheres would be exceedingly detrimental for the nation.[62] According to a study by Bruce and Ken in 2012, the economic well-being of a state is intricately linked to maintaining a healthy environment and ensuring the sustainable management of natural resources and primary industries. This involves overseeing high-risk aspects of their utilization, safeguarding economically significant sectors, aligning with community expectations, and preserving the environment. In regulatory scenarios, individuals tend to fall into different categories: some willingly comply, some do not, and some comply only if they witness others facing consequences for noncompliance.[63]

Enhancing community engagement is crucial, going beyond the current approach. When entering mining agreements, it is vital to involve not just traditional leaders but also diverse community groups, incorporating their voices and suggestions. Authorities must reevaluate existing mining agreements, ensuring they are more advantageous for the host community.[64] An example of this proactive approach can be seen in Tanzania, where the central government led the review of mining agreements, leading to increased benefits for both the national and local communities. Other countries in Sub-Saharan Africa, including Ghana and South Africa, are also leaning towards reevaluating mining agreements with the aim of securing improved socioeconomic advantages.[65] The absence of participation from community groups and communication gaps significantly influenced how respondents evaluated the effectiveness of the mining company.[66]

After determining that the current environmental governance structure in Sierra Leone is insufficient for achieving sustainable environmental management, especially considering the country's political and socio-economic context, the following suggestions are proposed for policy consideration. These recommendations aim to enhance the quality of governance, paving the way for the achievement of a sustainable environment in Sierra Leone, a goal that has proven elusive thus far.

This article brings to light the insufficiencies in Sierra Leone's environmental legislation, paralleled by the instances of pollution, deforestation, and mining regulations. A notable concern with these narrowly defined laws is their detachment from contemporary developments and the evolving realities of our time. Consequently, this paper advocates for a comprehensive review and reformulation of such legislation, aiming to enhance their adaptability and resonance with sustainable development.

To enhance the effectiveness of the related environmental laws, it is essential to harmonize roles and functions, review sanctions, and ensure institutional independence. Emphasizing these recommendations is crucial to strengthen EPA-SL services. A constructive step entails the establishment of a governmental committee tasked with

[60] MI Bakarr and I Abu-Bakarr, 'A Framework for Application of the Landscape Approach to Forest Conservation and Restoration in Sierra Leone' (2022) 5 Frontiers in Forests and Global Change 887365

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[65] SA Wilson, 'Measuring the Effectiveness of Corporate Social Responsibility Initiatives in Diamond Mining Areas of Sierra Leone' (2022) 77 Resources Policy 102651

[66] A Dresse, JO Nielsen and I Fischhendler, 'From Corporate Social Responsibility to Environmental Peacebuilding: The Case of Bauxite Mining in Guinea' (2021) 74 Resources Policy 102290

reassessing the national environmental legal framework. This effort should especially account for emerging environmental challenges, encompassing activities that currently lack regulation and demand incorporation into state governance. For this committee's efficacy, a composition featuring not only officials from pertinent government bodies and technical experts but also representation from civil society organizations active in the environmental sphere and interested members of the public who can influence the final decision is essential. By facilitating robust involvement from relevant stakeholders, this approach will contribute to the development of more effective and widely embraced environmental laws. These regulations will be better aligned with societal values, fostering increased public compliance and nurturing a culture of environmental responsibility.

The issue of limited public access to environmental information, particularly regarding environmental laws, has been identified as a concern. Recognizing the link between widespread environmental unawareness and the resulting harm, it becomes imperative for the government to uphold its obligations outlined in the EPA earnestly. This responsibility involves ensuring that the general public has adequate access to environmental information, specifically directly related environmental laws. Extensive education is essential, a practice many regions have rightfully embraced.[67] The people of Sierra Leone must unite before their natural heritage is irrevocably lost. Preserving ecological balance should be a fundamental focus of national policies; otherwise, the opportunity for meaningful action might slip away.

The right to live in a healthy environment is a fundamental natural right, that several countries such as India uphold.[68] Also, while dealing with biodiversity, the following must be considered: (i) social justice and equity, (ii) rights of future generations, and (iii) rights of animals and other non-human living creatures.[69] Furthermore, collaboration with pertinent civil society organizations can enable a gradual and comprehensive approach to addressing language barriers for different ethnicities in the country, who may find it difficult to understand the English manuals. This involves initiating a progressive program to translate the laws from English into local languages, making them more comprehensible and inclusive for a broader segment of the population.

Moreover, the analysis conducted above has illuminated incongruent legal strategies employed to address analogous environmental challenges—such as the imposition of varying penalties for identical transgressions through different statutes, and the assignment of identical responsibilities to diverse public entities via separate legislation. These disparities hold the potential to undermine the efficacy of Sierra Leone's environmental legal framework.

In light of these observations, it becomes imperative to undertake a comprehensive review of pertinent environmental laws, ensuring a consistent application of penalties and methodologies in response to similar offenses. Clarity must also be established regarding the specific public entity endowed with regulatory authority in distinct situations. Furthermore, it is worth contemplating the integration of certain elements from different regulatory systems, or the inclusion of provisions in newer regulations that supersede comparable yet possibly obsolete clauses in older ones. These actions collectively work towards presenting a lucid and coherent rendition of the law to both its enforcers and the general populace. Ultimately, this approach can significantly bolster the effectiveness of compliance and enforcement measures.

In relation to the status and efficacy of Sierra Leone's environmental institutions, a notable challenge was identified concerning the insufficiency of adequate human and material resources. Given the paramount importance of the environment in ensuring human well-being and progress, the government must prioritize environmental concerns and extend essential financial and technical support to the relevant agencies to enable their effectiveness. It is recommended that a portion of fines collected from those violating environmental laws should be directly channelled toward equipping these environmental agencies. This allocation should be conducted through a transparent process. This approach could potentially incentivize officials within these agencies to enforce the law more diligently. In contrast, the current practice of depositing fines into a general government account for unrelated purposes hinders progress toward a healthier environment and a robust enforcement mechanism.

The government should prioritize the appointment of proficient environmental experts based on merit, rather than favouring political associates, to lead and collaborate with various environmental agencies. This strategic move is pivotal in ensuring the optimal functioning of these agencies.

Additionally, an analysis revealed that the effectiveness of environmental governance in Sierra Leone's environmental laws was constrained by inadequate implementation of the subsidiarity principle. Integrating the principle of subsidiarity into state environmental laws and governance systems and subsequently executing it diligently could significantly contribute to achieving environmental sustainability. This integration would distribute responsibilities more equitably, freeing up resources at the state level to tackle broader environmental issues, while local government councils address smaller-scale matters within their jurisdictions. Such an approach could enhance the overall effectiveness and

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[68] A D'amato and SK Chopra, 'Whales: Their Emerging Right to Life' in International Legal Personality (2017) 393–434

[69] LL Thurman and others, 'Applying Assessments of Adaptive Capacity to Inform Natural-Resource Management in a Changing Climate' (2022) 36(2) Conservation Biology e13838

efficiency of environmental governance by equitably sharing the responsibilities across all levels of government.

Lastly, a deficiency in public transparency and accountability within Sierra Leone's environmental institutions was identified as a potential hindrance to their capacity for delivering effective environmental governance—a cornerstone of environmental sustainability. Addressing this shortfall necessitates improved compliance with environmental laws and its affiliated institutions. This involves establishing an up-to-date website where the public can track the activities of relevant agencies and access pertinent environmental information, including reports, financial records, contracts, and agreements.

Considering these factors, greed and wastefulness are increasingly becoming the standard in consumption habits, as the nation assigns monetary worth to every resource. It's disheartening to observe that a natural resource, especially biodiversity, is considered 'significant' only when it holds an economic value, regardless of how indigenous communities perceive its value.[70] Adherence to these measures will significantly enhance transparency and accountability within the environmental sector, ultimately fostering a healthier environment for the state. Correspondingly, in accordance with the tenets of Principle 10 of the Rio Declaration,[71] markedly improved avenues for public participation and access to justice in environmental matters are pivotal for advancing governance and bolstering the sustainability of Sierra Leone's environment.

4. Conclusion

This paper has revealed that Sierra Leone is confronted with a significant environmental crime problem that has been largely ignored or downplayed despite the existence of legal provisions. The exploitation of natural resources, particularly through mining and illegal logging, has resulted in biodiversity loss, land degradation, and threats to food security and public health. This has also led to the pollution of rivers, water shortages, and contamination of water sources, negatively impacting local communities. The paper further revealed the inadequacies of the existing laws surrounding environmental protection in the country. It is against this backdrop that the call for the enhancement of the existing laws and introduce policy reforms with stricter enforcement mechanisms. Achieving effective environmental regulation and protection requires the involvement of multiple stakeholders, including government agencies, law enforcement, and non-governmental organizations. All in all, tackling the environmental degradation in Sierra Leone necessitates a multifaceted approach. This includes implementing legal reforms, strengthening institutions, fostering public participation, and collaborating internationally. Also, the rights of local communities should be harmoniously integrated into the conservation strategy. The local communities, particularly in rural areas, are often in a better position to take on the responsibility for the sustainable management of forest resources. Besides there are no specific laws with respect for indigenous people as far as environmental conservation is concerned. By addressing the point out challenges and implementing effective measures, Sierra Leone can better protect its environment, mitigate the impacts of climate change, and promote sustainable development for the well-being of present and future generations.

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Piracy, Armed Robbery at Sea, and Hirabah: An Islamic Law Perspective

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Abstract

This paper addresses two major issues. First, it evaluates *Hiraba*h as one of the *hudud* crimes in Islamic criminal law. *Hirabah* is an act of violence that transgress the rights of a person. The victim in this act is not limited to the victims who are the subject of violence but to public in general. The act of *hirabah* has made the public to live in fear, if not for a long time but perhaps for some time. *Hirabah* is not limited to armed robbery such as bank robbery, but it can be extended to the sea such as piracy. It can also occur on the air such as hijacking an airplane. In other words, the crime of hirabah is wide, in terms of place, time and act. The keyword for the act of hirabah is fear. The discussion on the requirements or elements to constitute *hirabah*, the conditions of the *Muharib* (the person who commits hirabah), exceptional cases, punishments as well as juristic views on issues related to this crime will be discussed. This paper also analyses if the extent of two crimes, piracy and armed robbery at sea, are to be categorised as *Hirabah.* The paper concludes by recommending policies and mechanisms to overcome *hiraba*h.

Keywords: Hirabah-Piracy-Armed Robbery- Islamic Law

ކަނޑުފޭރުމާއި، ހަތިޔާރު އަޅައިގެން ކަނޑުފޭރުން އަދި ހިރާބާ: އިސްލާމީ ޝަރުޢީ ނަޒަރަކުން

ރަމީޒާ ވަން މުހައްމަދު އަދި މުހައްމަދު ފިރްދައުސް އަހްމަދު މުޚްލިސް

އެބްސްޓްރެކްޓް

މި ކަރުދާހުގައި މައިގަނޑު ދެ މައްސަލައަކަށް އަލިއަޅުވާލެވިފައިވާނެއެވެ. އެންމެ ފުރަތަމަ ހިރާބާއަކީ އިސްލާމީ ޝަރީޢަތުގެ ޙައްދުގެ ކުށްތަކުގެ ތެރޭގައި ހިމެނޭ ފޭރުމުގެ ކުށެވެ. ހިރާބާއަކީ މީހެއްގެ ޙައްޤުތަކަށް އަރައިގަންނަ އަނިޔާވެރި އަމަލެކެވެ. މިއީ ބާރުގެ ބޭނުންކުރެވިގެން އެހެން މީހުންގެ ޙައްޤުތަކަށް އަރައިގަތުމުގެ އަމަލެކެވެ. މި ކުށުގެ އަމަލަކީ އެކަމަކު އަމާޒުކުރެވިފައިވާ މީހާގެ އިތުރުން އާއްމު އެހެން ފަރާތްތަކަށްވެސް އަސަރުކުރާ ހިންގުމެއް ކުށުގެ އަމަލެކެވެ. ހިރާބާގެ ކުށުގެ އަމަލުގެ ސަބަބުން އާއްމުންގެ ތެރޭގައި ބިރުވެރިކަން ފެތުރިގެން ދެއެވެ. ހިރާބާއަކީ ހަތިޔާރު ބޭނުންކޮށްގެން ބޭންކު ފަދަ ތަންތަން ފޭރުން އެކަނިއެއް ނޫނެވެ. އެހެން ނަމަވެސް ކަނޑުމަތީގައި ހިނގާ ފޭރުމުގެ އަމަލުތަކާއި ވައިގެތެރޭގައި ހިނގާ ވައިފޭރުމުގެ އަމަލުތަކެއްވެސް ހިރާބާގެ ތެރޭގައި ހިމެނެއެވެ. އެހެން ގޮތަކުން ބުނާނަމަ ހިރާބާގެ ކުށަކީ ތަނާއި ވަގުތާއި އަމަލުގެ ގޮތުން ބޮޑު ދާއިރާއެއްގައި ހިނގާ ކުށެކެވެ. ހިރާބާ ނުވަތަ ފޭރުމުގެ މައިގަނޑު ބިރުވެރިކަމުގެ މައްސަލައެވެ. މި ދިރާސާގައި ހިރާބާގެ ޝަރުޠުތަކާއި، މުޙާރިބުގެ ޙާލަތާއި، އިސްތިސްނާ ޙާލަތްތަކާއި، ފިޤުހު އިލްމުވެރިންގެ ނަޒަރުގައި މިކަރުދާހުގައި ބަޙުސްކުރެވިފައިވާނެއެވެ. ހަމައެފަދައިން ކަނޑުފޭރުމާއި، ހަތިޔާރުގެ ބޭނުންކޮށްގެން ކަނޑުފޭރުމުގެ ކުށަކީ ހިރާބާގެ ތެރޭގައި ހިމެނޭނެ ކުށްތަކެއްތޯ ބަލައި ތަޙުލީލުކުރެވިފައިވާނެއެވެ. ދިރާސާ ނިންމާލެވިފައިވަނީ ހިރާބާގެ މައްސަލަ ހައްލުކުރުމަށް ކުރެވިދާނެ ސިޔާސަތުތައް އެކުލަވާލުމާއި ގޮތްތައް ހުށަހަޅައިގެންނެވެ.

މުހިއްމު ބަސްތައް: ހިރާބާ؛ ފޭރުން؛ ހަތިޔާރުބޭނުންކޮށްގެން ފޭރުން؛ އިސްލާމީ ޤާނޫނު.

1. INTRODUCTION

Shariah is sent by Allah through Prophet Muhammad SAW to mankind. Shari'ah is comprehensive, contemporary, and flexible to be applied to all, Muslims and non-Muslims alike. The objectives of Shari'ah are to protect individuals living in the world and to ensure that their rights are protected with proper administration, rights mechanism, and legal measures so that *Maslahah*, peace, and justice prevail in society. As time passes, it becomes more important and more challenging for Muslim scholars to continue researching and promoting the timeless aspects of Islamic law, especially Islamic criminal law, so that its applicability in every facet of life can be understood, appreciated, and applied in this modern world. Shari'ah contains various kinds of laws such as family law, evidence, and procedural laws, and criminal laws. Islamic criminal law with fixed crimes and punishment, which is called *Hudud* crimes and hudud punishments. Islamic criminal law together with its Islamic punishments are to provide security and protection to every individual in a society. Islamic punishments, to a certain extent, have been proven to curb the number of crimes happening in one's country. In Islamic criminal law, one of the *hudud* crimes which provide a few punishments is *hirabah*, a crime expressly mentioned in the Quran. Some scholars consider *hirabah* to mean highway robbery and to others it means wider than robbery, that may lead to chaos and destruction of one's country as well its surrounding which include the air and water. The other unique point that exists in the crime of *hirabah* is the aspect of forgiving the *Muharib* (the persons who committed the *Hirabah*) and exempt them from receiving the *hadd* punishments due to the voluntary submission to the authority.

1.1 MEANING

Hirabah can be translated in English as an act of terrorism.[72] According to Muhammad Hashim Kamali, *hirabah* is also considered to be the nearest legal concept to terrorism.[73] Hirabah also can be interpreted as any acts of terror.[74] In the Quran, the act of *hirabah* is literally interpreted as making war or waging war.[75] Generally speaking, *hirabah* is a form of violence which terrorises the victims and public at large and leaves them in the state of fear and insecurity. The impact of *hirabah* eventually leads to the destruction or mischief to the earth. The word *Fasad* (destruction or corruption) is used in the Qur'an to indicate the impact of *hirabah* in terms of security, economy and political instability to one's country.

Classical Muslim scholars have given various definitions of *Hirabah*. Some would say that is a major theft (*Sariqah Kubra*) as opposed to the crime *sariqah*, which entails amputation of the hand. Some would interpret it as highway robbery or brigandage as what happened in the era of the Prophet SAW prior to the revelation of Surah al-Maidah verses 33 to 34. Some jurists see *hirabah* as the act of using armed force, in deserts or otherwise far from habitation, for the purpose of taking property.[76] According to Abd al Barr, a Maliki jurist defines a *Muharib* as anyone who disturbs free passage in the streets and renders them unsafe to travel, striving to spread corruption in the land by taking money, killing people or violating what Allah has made it unlawful is guilty of *hirabah*, be he a Muslim or a Non-Muslim, free or slave and whether he actually realises his goal of taking money or killing or not.[77] According to Imam al Nawawi, a Shafei jurist, whoever brandishes a weapon and terrorises a street inside or outside a city must be pursued by the authorities because if they were left unmolested, their power will increase and through their killing and taking of money, corruption will spread.[78]

It is interesting to note that *hirabah* to a certain extent can be seen from a non-criminal aspect that covers any spreading of gross corruption on earth such as the poisoning of drinking water. food, climate change, wreaking great havoc by arson or flood or great criminal damage to the peace and society or economy of a state.[79] These situations are considered as aggravating circumstances that could lead to the destruction of one's country in terms of economy, society and eventually peace and justice in the country and community.

2.1 INJUNCTION FROM THE QURAN & HADITH

The principal reference to *hirabah* in the Quran is found is Surah al Maidah verse 33 to 34. The verse reads as follows:

Surah al Maidah verse 33-34

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[72] Hameedullah Mohd Asri and Muhd Khalil Ruslan, 'The Crime of Hirabah: Approach, Justification & Significance' (2020) 28(3) Jurnal Syaiah 410; Sherman A Jackson, 'Domestic Terrorism in the Islamic Legal Tradition' (2001) 91 The Muslim World 293, 295.

[73] Muhammad Hashim Kamali, 'Terrorism, Banditry and Hirabah: Advancing Shariah New Perspectives' (2017) 8(1) Islamic Civilisational Renewal 11.

[74] Frank E Vogel, 'The Trial of Terrorism under Classical Islamic Law' (2002) 43 Harvard International Law Journal 53, 58.

[75] Abdullah Yusuf Ali, The Holy Quran: Text and Commentaries [no publication details provided].

[76] Vogel (n 3) 58.

[77] Cited in Jackson (n 1) 295.

[78] Ibid

[79] Muhammad Ata al Sid, Islamic Criminal Law: The Hudud (Al Basheer Publications 1996) 62.

The punishment of those who wage war against Allah and His Apostle and strive with might and main for mischief through the land is: execution or crucifixion of the cutting off of hands and feet from opposite sides or exile from the land: that is their disgrace in this world and a heavy punishment is theirs in the Hereafter. Except for those who repent before they fall into your power: in that case know that Allah is Oft Forgiving Most Merciful

In one hadith reported by Anas Bin Malik, some people belonging to the tribe of uraynah came to Allah's messenger in Madinah and found the climate in Madinah unsuitable. So, Allah messenger said to them if you so like you may go to camels of sadaqah and drink their milk and urine. They did so and were recovered. They then fell upon the Prophet SAW. This news reached the Allah's Messenger, and he sent (people) on their track. They were finally (brought) and handed over to the Prophet SAW. He (the Prophet SAW) got their hands and feet cut off. The Prophet SAW also put out their eyes and thrown them on the stony ground until they died.[80]

The above hadith is subject to the interpretation of the jurist in terms of who is Urayniyyun, whether they are Muslims, Non-Muslims, or apostates. Regardless of who is the group of people where the verse was addressed to, the most important significance of the verse (surah al Maidah: 33-34) is the expressive provision on the crime of hirabah and its exceptional case to the Muharib.

These two evidences are among the authorities from the Quran and hadith on the crime of hirabah as well its punishments. These two texts are the proof that *hirabah* is one of the hudud crimes since the crime and punishments are fixed and mentioned in the Quran or in the hadith. Or may be both. For example, the crime of adultery and theft the punishments are mentioned in both Quran and Hadith.

3. PUNISHMENT FOR MUHARIB

As known, controversies and debates over both the concept and execution of Islamic criminal law, particularly *hudud*, have raged for years. This occurred due to stereotypes claiming that the punishments are inhuman, cruel, and irrelevant to be adopted. In fact, the severity of the Islamic penal system is aimed at discouraging criminal behaviour. If the criminal knows the anguish and pains, he will bring to himself, he or she may abstain from committing the crime.[81] As far as the crime of *hirabah* is concerned, Allah SWT has mentioned its punishment in verse 33 of Surah al-Maidah, which can be translated as,

The punishment of those who wage war against Allah and His Messenger and strive with might and for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in Hereafter.

Unlike other *hudud* crimes, *al-Qur'an* prescribes four punishments against the person liable for *hirabah*: amputation of hand and foot, execution, crucifixion and banishment.[82] In fact, *hirabah* is a crime that consist of one or a combination of several acts including threatening the road without taking property or committing murder, taking property, committing murder or taking property together with committing murder. As a result, the punishment of this type of crime will depend on which type of illegal act that has been committed before. The punishments in al-Maidah 33 are not prescribed for any crime, but a set of punishments for the crime of *hirabah*. Selection of punishment depends upon seriousness and gravity of crime as other factors.[83] The *shariah* court is at liberty to determine the ratio decidendi to suit the crime.[84] Table 5 shows the difference of opinions from several schools of thoughts pertaining to the punishment of *hirabah*.

TABLE 5: PUNISHMENT OF HIRABAH VIEWED BY SELECTED SCHOOLS OF THOUGHTS[85]

[80] Cited in Nik Rahim Nik Wajis, 'The Crime of Hiraba in Islamic Law' (PhD thesis, Glasgow Caledonian University 1996) 62; Sahih Muslim, trans Abdul Hamid Siddiqi (Sheikh Muhammad Ashraf) 893.

[81] Etim E Okon, 'Hudud Punishments in Islamic Criminal Law' (2014) 10 European Scientific Journal 227.

[82] Muhammad Hameedullah Md Asri and Md Khalil Ruslan, 'The Crime of Hirabah: Approach, Justification and Significance' (2020) 28(3) Jurnal Syariah 383, 384 https://doi.org/10.22452/js.vol28no3.3 accessed [date].

[83] Ibid p. 401.

[84] Okon (n 10) 234.

[85] Hendun Abd Rahman Shah and Suraiya Osman, 'The Universality of Hadd Punishment with Special Reference to Piracy and Hirabah' (2017) 3 Malaysian Journal of Syariah and Law 14–15 https://doi.org/10.33102/mjsl.v3i1.3 accessed [date].

Schools of thoughts/ Offences	Hanafi	Maliki	Syafi'i	Hanbali
Threatening the road	Expelled (an nafyu)	The Ruler to choose the appropriate punishment i.e discretion of the Ruler	Ta'zir or be expelled	Expelled (an nafyu)
Taking the property	Cutting off hands and feet from opposite sides	Discretion of the Ruler but should not choose expelled	Cutting off hands and feet from opposite sides	Cutting off hands and feet from opposite sides
Murder	Be killed as been prescribed under hadd punishment	The Ruler must choose either to kill the offender without crucify or to punish the offender with both	Be killed as been prescribed under hadd punishment	Be killed as been prescribed under hadd punishment
Committed murder together with theft	The Ruler may choose either to cut off the hands and feet on alternate sides and impose death penalty and be crucified after that or not to cut the hands and feet but impose death penalty straight away for that offence	The Ruler may choose either kill or crucify first followed by kill	Death penalty and crucify	Death penalty and crucify

3.1 MAIN ELEMENTS OF HIRABAH

There are four main elements that characterise the act of *hirabah.* The first element is that the act was made publicly,[86] which means it happened in front of the victim. As opposed to the crime of theft (*sariqah*) where it happened secretly, without the knowledge and consent of the victim. The victim was not aware that his property was taken away until he realised it later. On the other hand, in the crime of hirabah. The victim was aware that he was being terrorised since the incident happened before him.

As a result of the act that was made publicly, here comes the second element that is the element of fear. Since it happened in front of the victim, it instilled fear in the victim since the victim has witnessed that he is now the subject of hirabah. The third element is the use of force. There must be use of force by the *Muharib* to the victims. The use of force is not limited to the use of weapons. According to Imam Malik, the use of force is not limited to dangerous weapon, but it can be any kind of force including being threatened with his physical power could warrant to use of force.[87] This is the reason why some jurist classified rape as one type of hirabah because of the use of physical force to the rape victim.[88]

The next element, which was discussed by the jurists, is on the issue of place where the hirabah crime has occurred. Some jurist opined that the place of hirabah is in a desert given the fact that the case of hirabah that happened in the era of the Prophet SAW took place in a desert. Some jurists opined that it could happen at any place as long as there is no possibility to seek help[89] One may say that regardless of the place, the most significant aspect here the difficulty for the victim to seek for help, whether it happened in a building, air or water.

Another issue which was discussed among the jurists is the gender of Muharib. Majority of the jurists are of the opinion that the Muharib can be male or female. However, Imam Abu Hanifah and imam Al Shaybani hold that female Muharib is not entitled for the had punishment under hirabah due to the incapability (perhaps at that time) to use physical power and spread fear to the victims and public at large.[90]

4. PIRACY AND ARMED ROBBERY IN SOUTHEAST ASIA

Piracy and armed robbery need to be defined for a proper understanding of the act. The definitions are given below.

4.1 Definition of Piracy and Armed Robbery

4.1.1 Statutory Definition

Piracy has a long history and has re-emerged as a security threat in the contemporary period.[91] According to Article 101 of the United Nations Convention on Law of the Sea (UNCLOS), piracy has been defined as-

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas against another ship or aircraft or against persons or property on board such ship or aircraft.

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.

(b) any act of voluntary participation in the operation of a ship or of an aircraft, with knowledge of the facts making it pirate ship or aircraft.

(c) any act inciting or of intentionally facilitating an act described in subparagraph (a) or (b)

The International Maritime Organisation (IMO) and the International Maritime Bureau (IMB) are the two main

[86] Muhammad Hashim Kamali, 'Terrorism, Banditry and Hirabah: Advancing New Shariah Perspectives' (2017) 8(1) Islam and Civilisational Renewal 17.
[87] Ibid, Nik Rahim Nik Wajis 63.
[88] Azman Mohd Noor, 'Punishment for Rape in Islamic Law' (2009) 5 MLJ cxiv 1–9.
[89] Hameedullah (n 11) 386–87.
[90] Kamali (n 15) 17–18.
[91] Carolin Liss, Assessing Contemporary Maritime Piracy in Southeast Asia: Trends, Hotspots and Responses (Peace Research Institute Frankfurt (PRIF) 2014) 2 https://www.hsfk.de/fileadmin/HSFK/hsfk_downloads/prif125.pdf accessed [date].

organisations which are concerned with the issue of piracy.[92] As a body under the United Nation, IMO, despite adopting the definition of piracy prescribed under UNCLOS, also define armed robbery in Resolution A.1025 (26) "Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships" as

(i) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea;

(ii) any act of inciting or of intentionally facilitating an act described above

Thus, it can be simplified here that the obvious distinguishing factor between both piracy and armed robbery of ships is where the crimes have occurred. Piracy refers to illegal acts of violence committed on international water i.e high seas and areas beyond the jurisdiction of any state, meanwhile, the term 'armed robbery' is applicable if the crime occurred on internal water.

4.2 International Legal Framework on Piracy and Statistics

At the international level, anti-piracy measures have been addressed by international conventions and the 1982 UNCLOS gave each state the right to govern piracy under their national legislation.[93] In the context of Malaysia, the Courts of Judicature Act of 1964 and the Penal Code shall be used as the pertinent local laws since there is no such specific Act that addresses the crime of piracy in Malaysia in detail. According to the ICC-IMB Piracy and Armed Robbery Against Ships Report 2021, there have been 132 reported incidents of piracy, including 115 vessel boarded incidents, 11 attempted attacks, five fired at incidents, and one vessel hijacked incident. Table 1 shows the comparison of the type of incidents occurring at the global level from 2017 to 2021. It can be seen that the hijack cases are less in 2019-2021.from table 1. Table 2 on the other hand provides data about the different kinds of arms that were used in incidents from 2017 to 2021. This shows that the nature of piracy is the use of armed force. As far as maritime piracy is concerned, the world has historically paid less attention to Southeast Asia than it has to Somalia, which has caused significant economic damage. The World Bank estimates that over 179 ships were taken hostage by Somali pirates, who received between US$335 million and US$413 million in ransom. However, after the publication of the 2013 IMB piracy statistics which showed that Southeast Asia was again the most pirate-prone region and a spate of attacks on tankers in 2014, piracy in Southeast Asia were back in the news.[94] Southeast Asia, which consists of eleven countries and is seen in Map 1 below, has been identified by international organisations as one of the world's "hotspots" for issues related to piracy. At present, there are two kinds of maritime pirates in Southeast Asia.[95] Opportunistic Sea robbers are the first category; they are unorganised, ill-equipped groups of persons and commit crime within small, local areas. Their attacks are not well thought out, and their motivates are short-term gains. Cash and items that are simple to carry are the most sought-after loot. The second type of piracy, on the other hand, consists of sophisticated, well-organised pirate groups that meticulously plan their attacks by using advanced technologies to target the cargo ships.

TABLE 1: COMPARISON OF THE TYPE OF INCIDENTS, 2017-2021

CATEGORY	2017	2018	2019	2020	2021
Attempted	22	34	17	20	11
Boarded	136	143	130	161	115
Fired upon	16	18	11	11	5
Hijack	6	6	4	3	1
Total	**180**	**201**	**162**	**195**	**132**

Source: ICC-IMB Piracy and Armed Robbery Against Ships Report 2021

[92] A Amri, 'Combating Maritime Piracy in Southeast Asia from International and Regional Legal Perspectives: Challenges and Prospects' (Paper presented at the Southeast Asia Rising! Proceedings of the 5th International Conference on Southeast Asia, Kuala Lumpur, Indonesia, 11–13 December 2013).

[93] Ibid

[94] Liss (n 20) 12.

[95] Lukasz Stach, 'Neverending Story? Problem of Maritime Piracy in Southeast Asia' (2017) 7(12) International Journal of Social Science and Humanity 724 https://doi.org/10.18178/ijssh.2017.7.12.915 accessed [date].

TABLE 2: TYPES OF ARMS USED DURING INCIDENTS, 2017-2021

CATEGORY	2017	2018	2019	2020	2021
Guns	52	56	47	69	34
Knives	44	36	36	46	38
Not stated	80	104	74	76	56
Other weapons	4	5	5	4	4
Total	**180**	**201**	**162**	**195**	**132**

Source: ICC-IMB Piracy and Armed Robbery Against Ships Report 2021

Based on Table 1, the data reported each year displays a varied pattern, with an upward and downward tendency over the course of five years. The decrease in number however does not affect the percentage of the piratical act committed in Southeast Asian waters.[96] According to IMO, piracy reports in 2000 and 2001, summarily, the largest number of attacks had occurred in the Malacca Straits and in the Indonesian waters.[97] The incident totals per region from January to December 2021 are further displayed in Chart A. Southeast Asia has reported 56 out of 132 attacks in 2021. The detailed figure of both acts and attempted incidents of piracy and armed robbery against ships in this region has been presented in Table 3 below.

CHART A: TOTAL INCIDENTS PER REGION, JANUARY-DECEMBER 2021

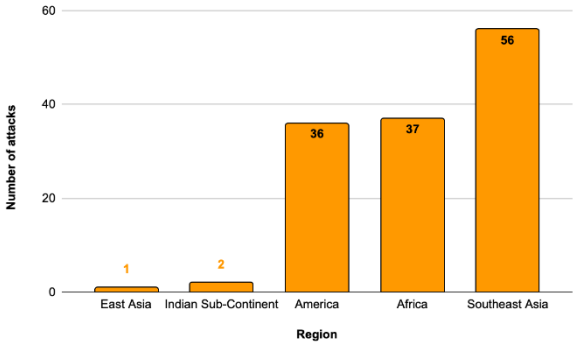

TABLE 3: ACTS AND ATTEMPTED INCIDENTS OF PIRACY AND ARMED ROBBERY AGAINST SHIPS IN SOUTHEAST ASIA, 2017-2021

LOCATIONS	2017	2018	2019	2020	2021
Indonesia	43	36	25	26	9
Malacca Strait	0	0	0	0	1
Malaysia	7	11	11	4	2
Philippines	22	10	5	8	9
Singapore Straits	4	3	13	23	35
Thailand	0	0	0	1	0
Total	**76**	**60**	**54**	**62**	**56**

Source: ICC-IMB Piracy and Armed Robbery Against Ships Report 2021

Map 1

Country	CPI Rank	Index score
Cambodia	157/180	23/100
Indonesia	96/180	38/100
Laos	128/180	30/100
Timor-Leste	82/180	41/100
Malaysia	62/180	48/100
Myanmar	140/180	28/100
Philippines	117/180	33/100
Singapore	4/180	85/100
Thailand	110/180	35/100
Vietnam	87/180	39/100

4.3 Factors that Lead Southeast Asia to Become Piracy-prone

There are several reasons that lead the Southeast Asia region to be subjected to maritime piracy and among them is the geographical factor. Huge (and difficult to control effectively) territory, thousands of islands (sometimes with rugged coastlines), many rivers, bays, caves and straits, with land often covered by a dense jungle, is a convenient place for

[96] Amri (n 21).

[97] Ibid.

piracy. Pirates may not only hide themselves easily somewhere on the coastline, but also be more likely to escape successfully.[98] The challenge for the authorities to effectively monitor each area is shown in some ways by the fact that this region is made up of thousands of islands. Furthermore, Southeast Asia is home to six of the top 25 busiest ports in the world, including Tanjung Priok in Indonesia, Tanjung Pelepas and Port Kelang in Malaysia, Singapore, Manila in the Philippines, and Laem Chabang in Thailand. Second, it is also important to acknowledge that state corruption contributed to piracy. Nearly every Southeast Asian nation suffers from a serious corruption problem and this somehow will affect the security force, in which it weakens the state's ability to curb maritime piracy and armed robbery. Table 4 below shows the corruption perception index in Southeast Asia. The table makes it evident that only Singapore is ranked above the global average and that the majority of Southeast Asian nations struggle with substantial corruption problems.

TABLE 4: CORRUPTION PERCEPTION INDEX IN SOUTHEAST ASIA COUNTRIES 2021

Country	CPI Rank	Index score
Cambodia	157/180	23/100
Indonesia	96/180	38/100
Laos	128/180	30/100
Timor-Leste	82/180	41/100
Malaysia	62/180	48/100
Myanmar	140/180	28/100
Philippines	117/180	33/100
Singapore	4/180	85/100
Thailand	110/180	35/100
Vietnam	87/180	39/100

Source: Corruption Perception Index 2021

The presence of major ports in Southeast Asia, combined with the region's strategic location, would further contribute to the third reason why this area attracts maritime piracy, which is its maritime traffic. According to the Review of Maritime Transport 2021 by the United Nations Conference on Trade and Development (UNCTAD), Asia continued to be the world's greatest supplier of seafarers, indicating its dominance in international maritime trade. Every kind of ship, from tiny fishing boats to supertankers, may be found in this region.[99] This affirmed the idea that organised gangs and opportunistic marine robbers both find this area to be advantageous.

4.4 Impacts of Piracy and Armed Robbery

The international community has come to recognise piracy and armed robbery at sea as a serious danger because of the significant negative effects it has on the economies, environments, and political stability of the affected nations. Regarding economic issues, piracy will make foreign ships reluctant to stay at specific ports because doing so will prolong their route and increase the probability that they will be subject to piracy attacks. As a result, the nation won't be able to collect its customs duty. Furthermore, costs of goods to the customer may have increased due to the losses directly incurred by the attack.[100] This happened because of the fact that once piracy occurs, the shipping company would have to pay for any damage or pay the ransom sought by the pirates, which may force the company to raise the prices of the goods for the customers. In addition, maritime piracy can result in environmental problems including oil spills and water contamination. The attacks that could lead to the consequences could be in the form of taking over ships laden with chemicals without competent seamen, intentionally mishandling the ship or also with the goal to scuttle the ship into an ocean oil rig.[101] The quality of the ocean's water will be impacted by the oil spill, endangering the lives of marine life and plants. In addition to physical harms, humans were also victims of adverse economic consequences by environmental disasters.[102] This happened because of the oil spill, which will result in the fishermen losing profit. Additionally, maritime violence like piracy and armed robberies at sea will impact how the governments' political relations are with one another. Foreign investors, especially shipping companies, will be affected by this potential threat to lose confidence in the maritime administration of a particular nation and opt out of using the usual sea routes. When a country's efforts in combating piracy is seen not to have resulted in a decrease trend, other countries would have the perception that the enforcement is corrupted, in the sense that the enforcement agencies are having some kind of collaboration with the pirates.[103]

4.5 ANALYSIS

Based on the foregoing discussion, it is justified to say that piracy and armed robbery at sea are categorised under hirabah in Islamic criminal law. The existence of two significant elements of Hirabah that is the use of force and the act of terrorising the victims and other people in these two crimes. As a matter of fact, these two crimes are the same thing in

[98] Ibid.
[99] Stach (n 24) 727.
[100] Nurulizwan Zubir, 'Maritime Violence: Implications to Malaysia' (2012) 5(1) Arena Hukum 49 https://doi.org/10.21776/ub.arenahukum.2012.00501.6 accessed [date].
[101] Ibid p. 50.
[102] Ibid
[103] Ibid p. 51.

Islamic law. However in International law, piracy and armed robbery are different due to the where the crime occurred either at international sea or internal (local jurisdiction) sea.

In piracy and armed robbery at sea there was use of force such knives. guns and other weapons. The motive and the criminal intention of these two crimes is to take the property from the victims.

The impact of piracy and armed robbery at sea to one's country , for example in Somalia, is the global economic development as well as efficiency loss due to the rerouting of shipping networks which would be otherwise uneconomical.[104] In South east Asia, negative impacts of maritime piracy is the disruption of the global economy and imposes considerable cost on international commerce and tax payers, thus inhibiting international trade.[105]

The element of place which was discussed by some jurists can be ruled out as one of the fundamental elements to constitute hirabah. The impacts of piracy and armed robbery at sea or at any place that could affect the community at large in terms of their safety, peace and harmony is significant to a nation regardless of where those crimes took place.

In terms of the punishment for Muharib, the authority may choose the opinions of some jurists who opined that the punishment to be inflicted to the muharib based on the nature of the criminal act done. How serious the crime would be to the victim and public at large, such as robbing and killing the victims then the punishment would be death penalty. Perhaps, the authority decides to choose the opinion of Imam Malik where the punishment for the muharib is left to the discretionary power of the court

5. CONCLUSION

Both acts of piracy and armed robbery are recognised as serious threats to the international community since they will have a big influence on many important sectors around the world. Southeast Asia is prone to piracy due to a number of factors ranging from the wide income gap among its coastal states to its busy, narrow shipping, all of which makes ships travelling through the region a target for attack.[106] In proposing ideas to combat this issue, it is important to emphasise that complete eradication of maritime piracy in Southeast Asia seems impossible at the moment.[107] This is so because a variety of factors have made this area favoured with pirate gangs. To ensure the security of this area, all nations in Southeast Asia must work together and make full commitments. The relevant nations must come to an agreement on an appropriate legal framework. Arms race and security dilemma should be set aside.[108] The governments are also urged to address the issues of corruption and poverty since uncertain economic revenues and a serious worldwide economic crisis brought on by the Covid-19 pandemic will likely encourage individuals to engage in unlawful activities like piracy. Last but not least, the maritime agencies as well as ship owner companies need to follow the provided security procedures as well as regularly reviewing the current security strategies. The ship crews are supposed to be well trained in understanding the various types of possible threats at sea and carry out a voyage specific threat and risk assessment prior to entering the region.[109]

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[106] Thư Nguyễn Hoàng Anh, 'Stemming the Tide of Piracy in Southeast Asia' (9 June 2022) The Interpreter https://www.lowyinstitute.org/the-interpreter/stemming-tide-piracy-southeast-asia accessed [date].

[107] Stach (n 24) 727.

[108] Amri (n 21).

[109] 'Piracy and Armed Robbery at Sea' (Gard, March 2022) https://www.gard.no/web/content/piracy-and-armed-robbery-at-sea accessed [date].

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The Perplexities of Law, Culture and Religion Towards the Prohibition of Female Circumcision in Nigeria

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Abstract

In whatever name called female circumcision is prohibited by international human rights law, and most particular by all United Nations system. The International legal regime has absolutely elaborated provision toward effective prohibition of female circumcision. Nigeria has signed and ratified almost all human rights instruments and acceded to all commitment towards eradicating this global malaise. Towards this end Nigeria has enacted violence against person (prohibition) Act, 2015 with a view of eliminating the practice of female circumcision. Thus, in spite of the promulgation of the VAPP Act 2015 the practice of female circumcision persisted unabated largely due to traditional and cultural factors on one hand and due to religious connotation of the practice on the other hand. The perplexities are the triple application side by side of enacted legislations, Islamic law and native law and customs of over 250 ethnic groups in Nigeria. Therefore, the legal prohibition is drastically ineffective and inadequate due to other factors, which includes the non-inclusion of the adherents of the practice in sourcing and developing the legal prohibition. Consequently, Nigeria has failed to meet its due diligence obligations. This paper therefore adopts doctrinal research methodology in reaching its conclusions and had administer some interview according to purposive sampling model to some identified respondents to dig and obtained some silent but insightful information. The paper found among other things that people are largely unaware of the prohibition of female circumcision, and there is no national legislation toward its prohibition.

Keywords: Law, Culture, Religion, Prohibition, Female circumcision

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ކޮންމެ ނަމެއްގައި އެކަން ކުރެވުނު ކަމުގައިވިޔަސް އަންހެން ހިތާނުކުރުމަކީ ބައިނަލްއަޤްވާމީ އިންސާނީ ހައްޤުތަކާބެހޭ ޤާނޫނުން އަދި ވަކިން ހާއްސަކޮށް އދ. ޤާނޫނީ ނިޒާމުގެ ތެރެއިން މަނާކޮށްފައިވާ ކަމެކެވެ. ބައިނަލްއަޤްވާމީ ޤާނޫނީ އުސޫލުތަކުގެ ތެރެއިން ވަރަށްމަތީ ދަރަޖައަކަށް ތަފްސީލުކޮށް އަންހެނުން

ޚިތާނުކުރުން މަނާކޮށްފައިވެއެވެ. ނައިޖީރިއާއިންވެސް އިންސާނީ ޙައްޤުތަކާ ބެހޭ މައިގަނޑު ޤަރާރާ އެއްބަސްވުމުގައި ސޮއިކޮށް ބައިވެރިވެތާން، މިބަލިމަޅުކަން ދުނިޔެއިން ނައްތާލުމަށް މަސައްކަތްކުރުމަށް ވަޢުދުވެ އެއްބަސްވެފައެވެ. މިކަން ހާސިލުކުރުމުގެ ގޮތުން ނައިޖީރިއާގައިވެސް ވައިލެންސް އެގެއިންސްޓް ޕާސަން (ޕްރޮހިބިޝަން) އެކްޓް 2015، ނަމުގައި ޤާނޫނެއް ފާސްކޮށް، އަންހެނުން ޚިތާނުކުރުން މުޅިން ފުހެލުމުގެ މަސައްކަތް ފަށާފައެވެ. މިގޮތުން ވީއޭޕީޕީ އެކްޓް 2015 ފާސްކުރި ނަމަވެސް އަންހެނުން ޚިތާނުކުރުމުގެ ޢަމަލު ހުއްޓުވުމެއްނެތި، އެއްކަލަވެސް ސަގާފަތާއި އާދަކާދައިގެ ބޭރުއިން އެކަން ކުރަމުން ގެންދައީ، އަނެއް ކާޑުން ދީނާ ގުޅުވައިގެން އެއަދަދު ހިނގަމުން ގެންދަނީއެވެ. މިޤާނޫނު ތަންފީޛުކުރުމުގައި ދިމާވާ ދަތިތަކާއި އުނދަގޫތަކަށް ބަޔާރުވު، ނައިޖީރިއާގެ (ފެޑެރަލް) ޤާނޫނާއި، އިސްލާމީ ޤާނޫނުތަކާއި، ނާޝިލް ލޯ، ނުވަތަ އެކަށީގެ ހިސާބުތަކުގެ މިހުން ޢަމަލުކޮށް، އެމީހުންގެ އަމިއްލަ ޤާނޫނުތަކާއި، ނައިޖީރިއާގެ ޙަރްއިލުމްތަކުގެ ގޮތުގައި މިހި ތަރުމު 250 އަށްވުރެ ގިނަ ނަސްލުތަކަށް ނިސްބަތްވާމީހުންގެ އާދަކާދައަށް އެކުއެކި އެއްފަރާތާ ޢަމަލުކުރަން ޖެހުން ހިމެނެއެވެ. އެހެންކަމުން ޤާނޫނީގޮތުން މިކަން މަނާކުރިކަމުގައިވިޔަސް، ތަފާތު އެކިއެކި ސަގާފަތްތަކާއި ހެދި އެފަދަ ޤާނޫނުތައް ހިންގާ ތަންފީޛުކުރުމުގައި ވަރަށް ގިނަ ދަތިތަކެއް ކުރިމަތިވެއެވެ. އާގެ ތަރަގައި އެހެނިހެން ސަގާފަތްތަކާއި، އާދަކާދަތަކަށް ފާޅުގައިވެސް ގުޅުވާގޮތުގައި ރިޢާޔަތް ނުކުރުން ހިމެނެއެވެ. އެހެންކަމުން މިފަދަ ކަންކަމުގައި ސަގާފަތާއި ދީނާއި ޤާނޫނާއި ދެމެދު ފިޔަވަޅުތަކެއް އެޅުމުގައި ނައިޖީރިއާވެސް ނުކުޅެދިފައެވެ. މިދިރާސާގެ ނިންމުންތަކަށް ވާސިލުވުމަށްޓަކައި ޑޮކްޓްރިނަލް ރިސާޗް މެތަޑޮލޮޖީގެ އުސޫލުތަކަށް ގެންގޮސްފައިވާއެވެ. އަދި މީގެ އިތުރުން ޕްރައިމަރީ ސޯސް ޕްރޮސީޑިންގެ މަޢުލޫމާތު ބިނާކޮށް ބައެއް ފަރާތްތަކާއި އިންޓަވިއުކޮށް ދިރިއުޅުމުގެ ގައިޑްލައިނާއި ބަހަރިގެ ނުކެރިއްވާފައެވެ. މިދިރާސާއިން ފާހަގަކުރެވިފައިވާ ކަންތަކުގެ ތެރޭގައި އަންހެނުން ޚިތާނުކުރުން ޤާނޫނީ ގޮތުން މަނާކޮށްފައިވާކަން ވަރަށް ހެޔޮރަޙްމަތެއްކަން ނާރަކާން ހުޅުވިގެން ގޮސްފައިވާއެވެ.

ގުޅުވާބަސްތައް: ޤާނޫނު، ސަގާފަތް، ދީން، މަނާކުރުން، އަންހެނުން ޚިތާނުކުރުން

1. INTRODUCTION

The prevalence of female circumcision in Nigeria cannot be downplayed because plethora of studies and reports have creditably established a worrisome dimension of the practice in across all geo-political zones and respective states in Nigeria. According to UNICEF the menace of female circumcision is of universal practice and that globally there are over 200 million women age 15 to 49 that are circumcised largely based on cultural reasons or religious.[110] The report maintained that the practice is sample from 30 different countries in the world where female circumcision is endemic. These countries include Somalia, Djibouti, Sudan, Iraq, Yemen, Guinea, Cameroun, Saudi Arabia, Indonesia, Malaysia, Columbia among others.[111] Thus in Nigeria there are about 19.5 million women and girls that are circumcised, but the practice is declining largely due to intensive international campaign against it and equally domestic efforts from respective countries.[112]

However, the prevalence of the practice is high in the southern Nigeria than the north, and one in every four women or girls in Nigeria is circumcised.[113]It is noted that 82 percent of Nigerian girls were circumcised at the age of 5 years, this clearly suggest that in Nigeria the practice is observed while at the infant stage, from 0 – 5 years. The survey maintained that the mothers whom were educated are less incline to the practice, it is very rampant amongst the traditionalist or people in the rural area and more likely not educated.[114] The most prevalent tribe that indulge in the practice is Yoruba tribe with over 55 percent of its women being circumcised. This is the cultural tribe that constituted the entire south-west geo-political zone, the highest practice of female circumcision is from the following states: Osun state has 77 percent of its women are circumcised while Ebgonyi state has 74 and Ekiti state has 72 percent respectively, while

[110] UNICEF, 'Unicef data on female genital mutilation' (February 2018) https://www.data.unicef.org/topic/child-protection/female-genital-mutilation accessed 10 September 2019.
[111] Ibid, 'Unicef data on female genital mutilation'.
[112] Op cit, 'Unicef data on female genital mutilation', note 1.
[113] Nigeria Demographic and Health Survey 2013, National Population Commission, Abuja, Nigeria (2014) 345.
[114] Ibid, p, 345 – 356.

Katsina state is the lowest with only one percent of its women cut.[115]

Although, the three major tribes in Nigeria are Hausa, Yoruba and Igbo, but there are in Nigeria other tribes that have numerical strength in which the practice of female circumcision is highly entrenched in their tradition, one of such tribe are the Shuwa Arab of Borno state. They are approximately about 2 million people and basically nomadic and herders. They are predominantly Muslims, and cultural orientation is increasingly Arabic because they are from the Arabs extraction, simple geographical circumstances make them Nigerians. The most essential cultural system for socialism of the women and girls in the shuwa cultural society is the female circumcision, and they perceived it through religious dimension, they practice it with passion almost 98 percent of its women and girls are duly circumcised.[116] Their cultural persuasion is vibrant, bold and imminently patriarchal and thus the practice of female circumcision is essentially a means to controlling women sexuality, but it has a ritualistic undertone.[117]

There are quite a number of factors that which supports and perpetuates the practice of female circumcision, but the origin is still obscure, even though some reliable account is worthy to note.

2. ORIGIN OF FEMALE CIRCUMCISION

Although it is quite difficult to trace the period when female circumcision started or its origin, but some scholars opined that it can be traced from period of the ancient Egypt. This is so due to its pharaonic belief attached to the concept of bi-sexuality of the gods, which same attributes is reflected in each individual human being.[118] This mythology is divinely inspired and claimed that each individual had both soul of male and female in him/her, the male soul in the female is located at the clitoris, while the female soul of the male is located at the prepuce of the penis. Thus in order to engender healthy gender development the male soul must be excise from the female and the female soul also excise from the male, and this is done principally by circumcision.[119]

According to historians this practice could be traced to 800 years BC from ancient Egypt that it is one cultural practice that is observed with passion and zeal. Whenever their girls reached fourteen or begin to have menstrual flow they promptly circumcised the girl, as a mark of significant cultural practice.[120] Furthermore according to Wikipedia between 1813 to 1825 doctors were performing female circumcision as a medical remedy in Europe.[121] Also in the united states of America a surgeon in New Orleans was said to have perform this procedure for a different reason, which is connected to the practice of medicine.[122] Thus it is obvious that female circumcision was a universal practice but different regions perform the procedure for different reasons, while to some is cultural others opined that it is a medical therapy[123] to remedy some biological or psychological defects.

It is quite significant to note that female circumcision is prevalent in the regions that defined it as an essential cultural practice.

3. WHAT IS FEMALE CIRCUMCISION

Although, female circumcision was not defined, but female genital mutilation was jointly defined by international institutions which includes the world

[115] Op, cit, note 2, P, 351.
[116] Umar MA, 'Violence against women: Towards formulating an enforceable legal regime in Nigeria' (unpublished thesis, International Islamic University, Malaysia, 2018).
[117] Ibid, at P, 78
[118] Assaad MB, 'Female circumcision in Egypt: Social implications, current research and prospects for change' (1980) 11 Studies in Family Planning 3–16.
[119] Boyle EH, Songora F and Foss G, 'International discourse and local politics: Anti-female-genital-cutting law in Egypt, Tanzania and the United States' (2016) 48 Social Problems 524–544.
[120] Ibid, 526.
[121] Allen PL, The Wages of Sin: Sex and Disease Past and Present (1st edn, University of Chicago Press 2002) 112–143.
[122] Ibid, 128.
[123] World Health Organisation, 'Factsheet details on female genital mutilation' (Geneva, March 2019) https://www.who.int/news-room/fact-sheet/details/female-genital-mutilation accessed 18 September 2019.

health organisation (WHO), united nations international children emergency fund (UNICEF) among others.[124] There are quite a number of terms that were proposed to be used to describe female circumcision which includes excision, purification, ritual passage, female genital cutting, among others. But all were rejected for not being comprehensive, certain and appropriate in both meaning, effect or implication. Thus, female genital mutilation was widely used by the United Nation system since 1997 but was officially adopted in 2008 by all UN agencies. Therefore, according to Susan Raafat[125] 'FGM' was first coined by the famous feminist campaigner Fran Hosken in 1979, and this major breakthrough is underscored by therapeutic reasons which explained that the procedure is against acceptable medical practice.[126]

Thus, female genital mutilation (FGM) is defined as the world health organisation (WHO) as any procedure perform which involves the partial or substantial removal of external female genitalia or inflicted an injury on the female genital organ whether for traditional purposes or for any non-medical reasons.[127] Conversely term 'FGM' was adopted in Africa by the inter-African committee on traditional practices (IAP) since 2005 and declared as harmful traditional practices and abhorring category of violence against women in Africa.[128] This study will hereinafter referred to female circumcision with FGM interchangeably, but this will be done carefully so as not to offend those that practice it as cultural expression or traditional identity.

The global concerted efforts to stem the tide of the FGM menace was first at the world health assembly at Geneva in 1994 under the auspices of the world health organisation, participating states resolved that FGM is harmful traditional practice and state parties are obligated to eradicate it through the promulgation of domestic policies and programmes.[129] Nigeria was prominently participated at the 47th world health assembly and undertook the obligation to eradicate this FGM absolutely and completely[130]. The procedure is mostly performed by traditional circumcisers who were usually birth attendants and in the related services. There is no health benefit accrued for the performance of FGM, in fact there is serious adverse health consequences and implications which may lead to death as a result of FGM.[131]

4. TYPE OF FEMALE CIRCUMCISION/MUTILATION

There are four major known type and procedure of performing female circumcision and they all adversely affect the health being of the woman or girl. The four different types are practiced in Nigeria some severe while others are less severe but still have its adverse dimensions.[132] The first type is popularly called 'clitoridectomy' is the partial or total removal of the clitoris and in very rare cases the removal of fold of the skin surrounding the clitoris. The second type is called 'excision' or 'Sunnah'[133] which involved a partial or total removal of the clitoris and the inner fold of the vulva with or without removal of the outer fold or skin of the vulva. Accordingly, the type three form

[124] World Health Organisation, 'Factsheet details on female genital mutilation' (Geneva, March 2019) https://www.who.int/news-room/fact-sheet/details/female-genital-mutilation accessed 18 September 2019.
[125] Raafat Y, 'Controversial term "Female genital mutilation"' <www.28toomany.org/fgm-controversial> accessed 18 September 2019.
[126] www.endviolencenow.org/female-genital-mutilation/un-women accessed on 18/09/19
[127] Op, cit, note 16.
[128] 'Declaration: on the Terminology FGM' (6th IAC General Assembly, 4–7 2005, Bamako/Mali) (The Bamako declaration).
[129] World Health Organisation, 'WHA47.10, 47th World Health Assembly: Resolutions and Decisions' (Geneva, 1994) 10.
[130] Okeke TC, Anyaehie USB and Ezenyeaku CCK, 'An overview of female genital mutilation in Nigeria' (2012) 2 Annals of Medical and Health Sciences Research 70–73.
[131] Ibid.
[132] Op cit, T.C. Okeke et al.
[133] Op cit, Boyle EH, Songora F and Foss G, 526. The term 'Sunnah' used to make reference to type two is borrowed from Islam meaning the traditions of the Holy Prophet Muhammad (SAW), but neither of the scholars make reference to Islam permitting female circumcision or specifically the practice of type two as explained herein above.

of female circumcision is often called 'Infibulation' and its involve a severe procedure of narrowing of the vaginal opening through the creation of a covering seal. The seal is form by cutting and repositioning of the inner skin or outer skin of the vulva, through stitching with or without excision of the clitoris. While type four involves piercing, incising, cauterizing and pricking the female genital area, or any other harmful procedure to female genitalia for non-medical purpose.[134]

However, the most extreme form of female circumcision will be followed by stitching or sewing together of the raw vulva so that a small opening will be preserved for the purposes of passage of urine and menstrual fluid.[135] Consequently time will come when de-infibulation may be necessary required that is when a woman is infibulated and there is need for smooth sexual intercourse or to facilitate child birth.[136] Therefore, those women that were cut by infibulation suffer two injuries at the first time when it was super imposed on them and secondly when they were about to deliver a child.

5. RATIONALE FOR FEMALE CIRCUMCISION/FGM

The practice of female circumcision is deeply rooted in culture and some traditional belief.[137] Thus frequently the proponents of female circumcision are obscenely disturbed when phrase female genital mutilation is used to refer to female circumcision, largely due to the fact that it is their cultural expression and traditional identity. This sentiment as expressed by the proponent should be carefully and wisely addressed in order to achieve holistic eradication of FGM. The influence and significance of culture and traditional belief in the lives of the people should be imminently respected, preserve and promoted.

Thus, the Supreme court held in the case of *Ojiogu Vs. Ojiogu*[138] that a custom is way of life of the people and based on their belief, therefore, it cannot be said to be repugnant to natural justice, equity and good conscience especially if the people professed it and agreed to be bound by its application. Therefore, government must involve the inhabitants of this cultural practice in order to get it totally eradicated. An honest woman was quoted to have said that people are resistant to stop the practice and female circumcision persisted due to their believe in it as significant cultural orientation.

"Female children are still being subjected to this mutilation, people will say it openly that don't do it, they do it, they are still doing it…… and they are still in favour of it because they believe that the female ones will become promiscuous."[139]

This sentiment as ventilated above is largely held by many tribes and ethnic groups in Nigeria which the national demographic surveys usually do not include in its report because they are minority. But the minorities put together are in the majority, for example, the Edo people in the south-south Nigeria believe the religio-cultural significance of female circumcision. These superstitious believes includes, an uncircumcised female is filthy, unclean and a taboo, because babies die during delivery when contact is made with the clitoris.[140] Certainly there is still no empirical nor scientific evidence to justify this myth it was just superstitious believe that was transmitted from generations to generations, sadly majority of the adherents of this practice were increasingly presented mild and severe obstetrics complications.[141] More worrisome is that the women whom were the victims of this patriarchal tradition justify the practice and insist that their

[134] Op cit, note 15.
[135] Boyle EH, Songora F and Foss G, 'International discourse and local politics: Anti-female-genital-cutting law in Egypt, Tanzania and the United States' (2016) 48 Social Problems 527.
[136] Op, cit note 15
[137] Olomojobi Y, Human Rights on Gender, Sex and the Law in Nigeria (Princeton Publishing Company 2015) 81–82.
[138] (2009) 9 North Western Law Review (pt. 1198) 1, S.C
[139] Op cit, Olomojobi Y, 82.
[140] Osifo DO and Evbuonwan I, 'Female genital mutilation among the Edo people: The complications and patterns of presentation at a paediatric surgery unit, Benin city' (2009) 13 African Journal of Reproductive Health 17–26, 22.
[141] Ibid, 23.

daughters must be circumcised,[142] at which period the daughters might be too young or in case of women might be illiterate to negotiate their basic human rights.

The rationale for the observance of this practices varies from society to society and ethnic community to ethnic community, but increasingly in Nigeria reasons for the persistence of the practice include protection of the girls not to delve in to promiscuity, retention of virginity, conservation of girls fertility and control woman's sexual functions in competing with man, among others.[143] FGM also connotes cleanliness because non-circumcision of females will mean the woman retains impurities in her body. Paradoxically traditional circumcisers who indulge in the practice as trade or business are persistently engaged in the practice secretly and performing it underground.[144] Therefore it is noted with concern that the religio-cultural dimension of the practice and the myth or superstitious believe, the traditional circumcisers who make fortune or eke out a living out of it, are some of the reasons why the practice persisted despite impactful international and domestic outcry against it.

Conversely it was reported that Network against female genital mutilation,[145] 73 traditional circumcisers were promised soft loan to start a new business in order to stop FGM, they accordingly obliged and surrender their tools to the district commissioner. Unfortunately, the promised could not be fulfil they threaten to resume their trade and ultimately resumed.[146] This has challenge the potency of statutory prohibition alone, whether it is capable of eradicating the practice without the corresponding support and involvement of the inhabitants that profess it as their paramount traditional practice. In other words, unless inclusive strategic eradication programme must be sourced and developed by government FGM will persistently exist and continue unabated.

Although, many scholars have suggested for "medicalisation" or "clinicalisation" of the female circumcision as risk reduction strategy.[147] But the world health organisation (WHO) have since 1982 issued proclamation declaring it unethical for any health official to perform female circumcision either in the hospital or any other health establishment.[148] Similarly the international federation of gynaecology and obstetrics have in 1994 passed a resolution obligating all medical doctors not to perform female circumcision.

However, there are historical account which revealed that ancient medical and scientific therapeutic and clinical management includes female circumcision in the treatment and control of some specific ailments, for example, the treatment of insanity, nymphomania and masturbation.[149] Erstwhile, it was also revealed that in 1866 in UK the then president of the medical society Isaac Baker Brown was the first to opined that for the treatment of masturbation or abnormal irritation the cutting of the clitoris is the only solution.[150] Even though, majority of medical practitioners at that time mounted stiff opposition to this perception and openly condemn the proponents as quackery, which lead to expulsion from certified medical practitioners.[151] Therefore scientific medical proof has consistently oppose the practice of female circumcision.

6. FEMALE GENITAL COSMETIC SURGERIES

This involves multiple but different procedures performed largely for non – therapeutic reason, the commonest and popular procedure includes vulvo-

[142] Op cit, Osifo DO and Evbuonwan I, 22.
[143] Op cit, Olomojobi Y, 82.
[144] Op cit, Osifo DO and Evbuonwan I, 25.
[145] A non-governmental organisation (NGO) domiciled in Tanzania attempts to discourage the practice FGM by offering incentives to the traditional circumcisers but for some unforeseen circumstances failed.
[146] Boyle EH, Songora F and Foss G, 'International discourse and local politics: Anti-female-genital-cutting law in Egypt, Tanzania and the United States' (2016) 48 Social Problems 527.
[147] Shell-Duncan B, 'The medicalization of female "circumcision": harm reduction or promotion of a dangerous practice?' (2001) 52 Social Science and Medicine 1013–1028.
[148] World Health Organisation, Female Circumcision: Statement of WHO Position and Activities (World Health Organisation 1982).
[149] Rodriguez SB, Female Circumcision and Clitoridectomy in the United States: History of a Medical Treatment (University of Rochester 2014) 149.University of Rochester, (2014) p, 149
[150] Op cit, Allen PL, 98.
[151] Ibid, Rodriguez SB, 148.

plasty or labio-plasty otherwise referred to as vaginal rejuvenation, labia minora hypertrophy or clitoral hypertrophy.[152] The basis of this surgical procedure is to enhance the image of the female genitalia to reflect the most influenced image and advertisement by the playboy magazines, or other social media outlets, often on video streaming website, You Tube page of famous photographer Nick Karras.[153] Among others. Western styled women are very much concerned about the attractiveness and appearance of their vagina seek to achieve idealised female body particularly with the appearance of their genitalia similar to those of the female super stars in the entertainment industry. There are also claimed of enhance sexual relations and the desire to achieve organism as some of the reason of labio-plasty, while to others is the apparent need to satisfy their sex or intimate partner with the kind of genital image of his taste, especially among those involved in oral sex activity.[154] Thus there are other outstanding claims which underscored the purpose of these surgeries it also include clitoral hood reduction, G-spot amplification and hymenoplasty, ultimately the objective of labio-plasty includes the following:

Reduction in the hypertrophic

Preservation of the introitus which means vaginal entrance

Minimal invasiveness

Maintenance of neurovascular supply, among others.[155]

However, non – therapeutic labiaplasty is accessed inappropriately for cosmetic reasons rather than clinical indications, sometimes due to inconvenience in physical exercises, protruding clitoral or labia tissues which make them uneasy at the beach or swimming pool, or uneasy while on bicycle. Women in modern western societies want petite and non-protruding clitoral hood.[156] Interestingly Zambian women are culturally conditioned to prefer elongated clitoral hood because is a sign of good Zambian woman who is ready for marriage. As such Zambian women used weight or pulling strategy with a view to elongating the clitoris as it will increase sexual pleasure.[157] There are quiet several different techniques use in conducting clinical surgeries of labia-plasty, they are about eleven techniques that were identified. But broadly speaking these different categories of techniques are group into three main techniques they as follows:

Edge resection this involves the removing of the excess tissue of labia minora by resecting the most protruding part and re-design it in either 'W' or 'S' shape or to even curve it, but necessarily the excess tissues are flatly removed and no protruding of the genitalia.[158] The Edge resection is virtually the most popular performed surgery.

Wedge resection this involves various modification techniques with a view of preserving the shape of the vagina and to prevent loss of function and sensation. It is otherwise called wedge reduction technique because the labia cannot be removed too much, thus it allows for conveniences while wearing underwear, no dryness or vaginal introitus.[159]

Central resection techniques otherwise called central reduction method seek to modify the genitalia into triangle shape or bicycle helmet shape by preserving the original texture, maintaining the contours and pigmentation of the labia edge. Usually, the inner and outer surface of labia minora are sutured separately without touching the erectile tissue between them.[160]

[152] Vulvoplasty Report 2014 (MBS Review, Australian Government Department of Health)
[153] Ozer M et al, 'Labioplasty: Motivations, Techniques and Ethics' https://www.researchgate.net/publications/322963990 accessed 25 April 2021.
[154] 'Labiaplasty with stable labia minora retraction – butterfly-like-approach' http://www.journal.iww.com/prsgo/fulltext/2020/04000/labiaplasty.aspx accessed 28 April 2021.
[155] Op cit, Vulvoplasty Report 2014.
[156] Michael A, 'Protruding Labia Minora: Abnormal or Just Uncool' (2011) 32 Journal of Psychosom, Obstetrics, Gynecology 154–156.
[157] Mubanga PG, 'Zambian Women in South Africa: Insight into Health Experiences of Labia Elongation' (2015) 52 Journal of Sex Research 857–867.
[158] Op cit, Ozer M et al, 'Labioplasty: Motivations, Techniques and Ethics'.
[159] Ibid, Ozer M et al, 'Labioplasty: Motivations, Techniques and Ethics'.
[160] Ibid.

However, whatever technique or method adopted it still involved the reduction or modification of the female genitalia by pricking, excision, cutting of the excess labia tissue. The outcome of these surgeries is largely less complication or not at all, because those complications reported resolved themselves without the need for revision of procedure. This conclusion was reached due to increase in the number of women seeking labio-plasty services in the western highly developed societies.[161] It was noted with deep concerned that normal anatomic variations is used as the excuse necessitating medical intervention, thus exposes otherwise healthy women to unnecessary cosmetics surgery.[162] They are essentially worried with genital self-image based on deceptive marketing and industry generated diagnosis and biological conditions that are largely untrue. Therefore, the women seeking such services are largely victims of patriarchal advertisement.

Meanwhile, according to world health organization the prohibition of FGM is fundamentally underscored by the principle of human rights, which include rights of women and the girl-child, right to health and bodily integrity and right to non-discrimination based on sex. Thus, the world health organisation noted with dismay that some practices such as female genital cosmetic surgery and hymen repair, which are legally accepted in may western countries and generally considered FGM, actually falls within the definition of FGM.[163]

7. INTERNATIONAL LEGAL PROHIBITION OF FEMALE CIRCUMCISION/FGM

The international community have proposed and proclaimed a number of reforms towards ensuring human rights to all without discrimination based on sex. These reforms are centred around the promotion and preservation of women's human rights and the eradication of violence against women in all ramifications. Essentially, violence that is rooted in culture, tradition and religion, and reference was made to harmful traditional practices. Therefore, since 1993 the global acceptable minimum is the eradication of any conflict between women's rights and harmful customary practices, cultural prejudices and religion extremism. Conversely, all existing laws should be repealed to eliminate traditional and cultural practices which discriminate and causes harm to women and girl-child.[164] This commitment was reiterated in 1995 when the world converged in China and emphatically maintained that any harmful traditional, customary and modern practices which violates the rights of women should be prohibited and eliminated, particularly FGM should be eradicated.[165]

Thus, the famous women's right treaty has obligated governments of respective states that are signatories to the convention to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.[166] Nigeria has signed and ratified this convention, thus she is obligated to repealed all laws, stereotypes, practices and prejudices which impair women's well-being and enjoyment of human rights. Interestingly the definition of discrimination by the convention has scoped FGM in prominent detail. It provides that any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and

[161] 'Elective Female Genital Cosmetics Surgery', The American College of Obstetrician and Gynecologist (ACOG), clinical committee opinion, No. 795 (January 2020).
[162] Ibid.
[163] World Health Organisation, Eliminating Female Genital Mutilation: An Interagency Statement (WHO, Department of Reproductive Health and Research, Geneva 2008) 8–10.
[164] Vienna Declaration and Programme of Action of the World Conference on Human Rights 1993, S II (B) (3) para 38 & 49.
[165] Beijing Declaration and Platform for Action: Fourth World Conference on Women (1995) paras 39, 107, 113, 124, 232, 224 & 277.
[166] Convention on the Elimination of Discrimination against Women (CEDAW), Art 2.

fundamental freedoms in the political, economic, social, cultural, civil or any other field.[167]

Therefore, the perplexities of FGM is too much too many, but broadly speaking it means different things to different people or region. It is opined that it is all about women's sexuality, in which the society seek to control women's sexuality by reducing their sexual fulfilment.[168] It is believed that when the erectile part of the female genitalia is cut it will prevent her from being promiscuous. Furthermore, it is about social pressure, thus in a community where women circumcision is the norm it will create an environment in which the practice of female circumcision is a pre-requisite for social acceptance, and non-observing the practice is deemed a taboo. It is also said to be cultural and traditional practices, because the society which professes the practice of FGM maintain their custom and preserve and promote their cultural expression and identity through persistence of the practice.

Meanwhile, the main perplexity is that it is religious, whether viewed through cultural or traditional lens it is a cultural practice that is binding and assumed the status of native law and custom of the people. But it is said to be practice by the orthodox religion of the Jews, Islam and Christianity.[169] To a large extent it could be true of Islam, due to remarkable identification of one form and method of female circumcision called *'SUNNI CUT*' this suggested that its foundation is in Islam. Accordingly, in a purposive interview one of the respondents claimed that it is Islamic and narrated that during the life time of the prophet Muhammed an old woman who is identified as the circumciser was brought to the Holy Prophet and he said don't cut too deep but cut little of the clitoris.[170] Thus based on this he said the people of Shuwa Arabs extraction embraced the practice as part of the religious recommendatory practice in Islam.

Although, the practice of FGM is not restricted to girl-child other elderly women could be victim of this heinous but endemic practice. Most particularly to the girl-child it is pathetic due to the absent of informed consent before the procedure is accordingly perform. The girl-child subjected to FGM is exposed to health hazards and bodily injuries due to inflicting severe pain as a result of the procedure. This is tantamount to violation of the convention against torture,[171] which Nigeria has signed on 28th July 1988 and ratified for national implementation on 28th June 2001. According to the convention i.e, UNCAT torture is defined as "Torture" to mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or third party information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[172] It does not include pain or suffering arising only from. Inherent in or incidental to lawful sanctions.

Meanwhile, the international community have dedicated a convention to address the overwhelming challenges militating against the rights of children around the world. The convention particularly emphasised that no child shall be subjected to torture or other cruel, inhuman or degrading punishment.[173] Accordingly, the child convention imposed on state parties the obligation to take all effective and appropriate measure with a view to abolishing traditional practices prejudicial

[167] Art 1 of CEDAW.
[168] Alade EA, Women's Rights and the Nigerian Customary Law with Global Perspectives (Obafemi Owolowo University Press 2018) 155.
[169] Ibid, 155.
[170] Idris AGG, interview by author, Mashamari ward, off Bama Road, Jere Local Government Area, Borno State, 24 March 2021.
[171] United Nations Convention against Cruel Torture and Inhuman or Degrading Treatment or Punishment (UNCAT 1984).
[172] Art 1, UNCAT 1984.
[173] Art 37(a) of the United Nations Convention on the Rights of the Child (1989) (child convention).

to health of children.[174] It was opined that FGM is equally violation of right to life as enshrined in the famous bills of rights of the United Nations.[175] The civil and political rights covenant interprets provision on right to life as obligating governments to adopt 'positive measure' to preserve life.[176] FGM can be seen to violate right to life in the rare cases in which death occurred as a result from the wrongful and quackery procedure. Thus, the right to physical integrity, while often associated with the right to freedom from torture, encompasses a number of broader human rights' principles, including the inherent dignity of the person, the right to liberty and security of the person and the right to privacy. Therefore, acts of violence that threatens a person's safety, such as FGM, violates a person's right to physical integrity.[177]

There are quite a number of regional instruments that focused attention on human rights and proclaimed the prohibition of FGM, these African treaties were more specific due to the fact that the cultural practice of FGM is deeply rooted in African culture and tradition. The African states and governments were required to take all appropriate measures towards the elimination of harmful social and cultural practices that are inimical to the welfare, dignity and normal growth and development of the child, most particularly those cultural practices that are prejudicial to the health and life of the child, and those that are discriminatory to child on ground of sex.[178] In the same vein the African protocol on women's rights has explicitly prohibits the cultural practice and call on state parties to prohibits and condemn it through the prohibition of all harmful practices which negatively affect the human rights of women and which are contrary to all international standards.[179] Accordingly harmful practices is defined to mean all behaviour, attitudes and practices which negatively affect the fundamental rights of women and girls, such as their rights to life, health, dignity, education and physical integrity.[180]

Furthermore, the Maputo protocol has emphatically obligated the state parties to prohibit with the promulgation of domestic legislations backed by sanctions all forms of FGM scarification, medicalization and para-medicalization of FGM with a view of eradicating the practice.[181] Conversely due to the fact that FGM involves invasive procedure on otherwise healthy tissues without therapeutic necessity, and which likely may result in to severe physical and mental injuries, it is therefore a flagrant violation of right to health as recognised and imposed on the state parties to recognise the right of everyone without any form of discrimination to the highest attainable standard of physical and mental health.[182]

Therefore, the physical and mental health of women and girls are of paramount consideration and governments of respective countries are urged to initiate policies that will mainstream the health needs of women and girls due to their vulnerability to traditional practices such as FGM.[183] Although, argument may be converse that right to health as elaborated by the plethora of international treaties, instruments and convention is equally elaborated under the 1999 constitution of Nigeria.[184] This right is conceived as objective and purpose of government and that government must direct it policy toward planning and provision of sufficient medical and health facilities for all persons.

8. DOMESTIC LEGAL PROHIBITION OF FEMALE CIRCUMCISION/FGM

[174] Art 24 (3) of the child convention 1989.
[175] International Covenant on Civil and Political Rights (ICCPR) 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and The United Nations Charter 1948.
[176] Op cit, Alade EA, 156.
[177] Ibid, 157.
[178] African Charter on the Rights and Welfare of the Child 1990 (ACRWC), Art 21(1)(a & b).
[179] Protocol on African Charter on Human and People's Rights on the Rights of Women in Africa 2003 (Maputo Protocol), Art 5.
[180] Ibid, Art 1(g) of the Maputo Protocol, 2003.
[181] Ibid, Art 5(b) of the Maputo Protocol, 2003.
[182] International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, Art 12(1).
[183] General Recommendation No.24 of the CEDAW Committee, 20th session, 1999.
[184] Constitution of the Federal Republic of Nigeria 1999, S 17, Part II, Fundamental Objectives and Directive Principles of State.

Although, there is no national legislation prohibiting the practice of FGM, this is largely due to Nigeria's unique federal arrangement which stipulates that such issues of FGM is within the concurrent legislative list, whereof both the federal government and federating units can legislate on it. Therefore, the federal government had in 2015 passed in to law a women specific legislation with the objective and purpose of eliminating violence against women in Nigeria.[185] This legislation has elaborated provision which criminalises the practice of female circumcision and female genital mutilation with adequate corresponding punishment in the following categories of persons.

Any person who either perform or commission another to perform is liable on conviction to 4 years imprisonment or fine of N200,000 only or both

Any person who attempts to perform this criminal act is equally liable on conviction to 2 years imprisonment or N100,000 only fine or to both

Any person who incites, abets, aids or encourage and support another person to commit this prohibited conduct is liable on conviction to 2 years imprisonment or to N100,000 only fine or to both.[186]

However, this elaborate provision is fulfilling and aligned itself to the global acceptable minimum towards eradication of this endemic malaise, yet the legislation is not of national application. The jurisdiction of VAPP, Act 2015 is limited to the Federal capital territory, Abuja[187] and all respective states are enjoined to domesticate same within their legislative competence in other to enthroned national coverage and application. Sadly, there are about 13 states so far that have legislated legal prohibition on FGM in Nigeria.[188] This is the only dedicated legislation which seek to eradicated FGM in Nigeria, but there elaborated constitutional provision that no person shall be subjected to any form of torture, inhuman and degrading treatment or punishment.[189] The constitutional provision is huge commitment toward the elimination of FGM practice, but the constitution is often contain a solemn declaration without corresponding punishment. Therefore, the constitutional elaboration can be described as barking without biting.

Erstwhile, federal ministry of health has source and developed a policy guideline reiterating the remarkable commitment of government in eradicating FGM, by expressing concern and raising awareness on the dangers of FGM to women and girl-child. This worthy document identified and defined harmful traditional practices against reproductive health to include FGM and group circumcision among other endemic malaise.[190] The document also identified 'Zurgu' cut, 'Angurya' cut and 'Gishiri' cut, as the prevailing types of FGM in Nigeria, and maintained that religion and culture are the fulcrum which persistently reinforce the FGM practice and undermine the effort of government in eradicating it.[191] The document ultimately emphasised government's undertaking to subscribed to the policy declaration; to wit formulation and enforcement of legal instruments aimed at supporting the elimination of FGM practices through intensified public awareness and health care providers.[192]

Certainly, Nigeria has domesticated the child's rights convention and enacted the child's rights Act,[193] which sadly, has limited jurisdictional application. The application of the Act is restricted to Abuja and respective states government were urge to consider and domesticate same in their

[185] Violence Against Persons (Prohibition) Act 2015 (VAPP 2015).
[186] Constitution of the Federal Republic of Nigeria 1999, S 6, VAPP Act 2015.
[187] Constitution of the Federal Republic of Nigeria 1999, S 47, VAPP Act 2015.
[188] Nnamdi US, 'FGM in Nigeria: Combative Legislation and the Issues Impact on the Economic Growth of Women' (June 2019) <www.impakter.com/female-genital-mutilation-in-nigeria-legislation> accessed 20 April 2021.
[189] Constitution of the Federal Republic of Nigeria 1999, S 34 (as amended).
[190] National Reproductive Health Policy and Strategy to Achieve Quality Reproductive and Sexual Health for All Nigerians, Federal Ministry of Health, Abuja, Nigeria (2001) 1.2.2.
[191] Ibid.
[192] Policy Declaration, National Reproductive Health Policy, 2.2 (2.7).
[193] Child's Rights Act 2003, Laws of the Federation of Nigeria.

territorial jurisdiction. However, some states have since heed to this call while others due religious and cultural reason are yet to domesticate it nor enact their unique legislation on child's rights. Consequently, the Act prohibited any for of torture against a child or inhuman and degrading punishment or treatment.[194]

9. DUE DILIGENCE OBLIGATION FRAMEWORK

The due diligence obligation principle is a normative component of 5Ps which implicates the state as bearing responsibility towards prevention and responding to human rights violations committed by state and non-state actors or private individuals. These 5Ps are prevention, protection, prosecution, punishment and provide remedy/compensation.[195] The origin of due diligence principle might be traced from the CEDAW committee general comments, where it elaborated that states may be responsible for private acts if they failed to act with due diligence to prevent the violation of human rights or to investigate and punish acts of violence.[196]

In the same vein the UN declaration on elimination of violence against women reiterated that the states should exercise due diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the states or private persons.[197] Although Nigeria has promulgated a legislation but has not contain the magnitude of the endemic malaise due to its limited territorial jurisdiction. Thus, Nigeria has failed to discharge it international obligation of eliminating violence against women most especially FGM.

Paradoxically while government claimed to have enacted legal prohibition adherents of the FGM practice are largely unaware of the prohibition, and government did not operate an inclusive and participatory process while sourcing and developing the legal framework for the prohibition of FGM. There should be effective and efficient campaign for awareness raising on the associated dangers and health consequences of the FGM practice.

10. FINDINGS

This paper ultimately found that there is prevalence of the FGM practice in Nigeria and the practice is largely cultural and religious. The adherents of the practice spread across different cultural divide, they are in almost all cultural and traditional societies. Nigeria has signed and ratified international instruments prohibiting FGM practice and yet there is no national legislation prohibiting this endemic practice, but government demonstrated commitment in eradicating FGM by promulgating VAPP Act 2015 this is in addition to Child's rights Act 2003 and National reproductive health policy 2001. The legal prohibition of FGM practice is largely due to its associated health consequences and violation of human rights of women and the girl-child. The FGM practice persisted due cultural and religious undertones and to a large extend lack of adequate awareness of the prohibition and health consequences.

Nigerian government did not involve and call for the participation of the adherents of the practice in sourcing and developing the legal framework for the prohibition of FGM. It became crystal clear that there is FGM practice that is Islamic because Sunni cut is one type of FGM practice, and this paper also found one prophetic tradition that gave tacit approval for the practice. Accordingly, the paper found that genital cosmetic surgery is FGM, but it is largely found in the western developed societies. Finally, FGM practice is violence against women and girl-child and Nigeria has failed in its due diligence obligations.

[194] Constitution of the Federal Republic of Nigeria 1999, S 11, Child's Rights Act 2003.

[195] Goldsheid J and Liebowitz DJ, 'Due Diligence and Gender Violence: Parsing Its Power and Its Peril' (2015) 48 Cornell International Law Journal 305.

[196] General Recommendation No.19, CEDAW Committee, 19, U.N. Doc. A/47/38 (1992).

[197] Art 4, United Nations Declaration on Elimination of Violence against Women 1993.

11. CONCLUSION

The ambivalence of the plural interpretation and the purpose and or aim of the practice of FGM there is still the legal prohibition by the international human rights regime. The traced the normative purpose of the practice, the meaning and types of FGM and the platform upon which the practice stand and persisted. The World health organisation is the global health as the global health regulator is absolute in its prohibition of the FGM practice and clearly stand against medicalisation of it. The United Nations system has condemned the practice and urged the respective state government to initiate domestic policy and enact legislation to eradicate the practice.

Thus, in African cultural societies and Nigeria in particular the practice FGM persisted because of its traditional and religious undertones, but in the western developed society women are largely dissatisfied with genital image seek labio-plasty, they are largely influence by the internet and social media which encouraged them to seek genital cosmetic surgeries, which ultimately is FGM, according to world health organisation. Ironically, respective governments in Europe prohibited FGM but permitted labio-plasty, whereas in Nigeria government only demonstrated commitment to eradicating it.

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Integrating Environmental, Social, and Governance (ESG) Considerations into Legal Education

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Abstract

The changing nature of the legal profession has started to recognise the importance of Environmental, Social and Governance (ESG) considerations. The concept of ESG encompasses a broad range of issues, from Environmental sustainability, social justice and corporate governance and ethics. These concerns are taking a central place in the legal practice field. The growing need for lawyers and professionals with knowledge and skills to navigate in these complex areas has started to change the legal education landscape as well. As a result, the inclusion of ESG concepts in legal education has been a shift recently seen in the legal education sector. This doctrinal research aims to explore how legal education providers are adopting ESG into their curriculum and the considering adoption of ESG and its implications demanding a complete re-evaluation of curricular content, pedagogical approaches and overall objectives for Islamic University of Maldives in training future legal professionals.

Keywords: Environmental, Social, and Governance (ESG), Legal education, Curriculum development, Sustainability, Islamic University of Maldives

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ޤާނޫނީ ދާއިރާއަށް އަންނަމުންދާ ބަދަލުތަކާއި އެކު މިދާއިރާގައި ތިމާވެއްޓާއި، އިޖުތިމާޢީ އަދި ހިންގުމުގެ ދާއިރާ ނުވަތަ އީއެސްޖީގެ މުހިއްމުކަން ވަނީ ވަޒަންކުރެވެންފެށިފައެވެ. އީއެސްޖީ ޚުދުރަގޭގައި ބިނާވެގެންވަނީ ވަރަށް ފުޅާ ދާއިރާތަކެއްގައި ހިމެނޭ މައްސަލަތަކަކަށެވެ. މިގޮތުން ތިމާވެއްޓާއި ގުޅުންހުރި މައްސަލަތަކުން ފެށިގެން ދެމެހެއްޓުން ޖަމާޢަތުގެ ތިމާވެށީގެ ކުންފުނިތަކުގެ ރިޔާސަތުކުރުމާއި، އަޚުލާޤީ އިންސާފު ފާހަގަކުރުމާއި އަދި މިގޮ އިތުރުން އިތުރު ގޮތުން ކަންކަން ހިންގުމާއި އަކަންކަމާއި ގެއް ނިޒާމުތަށް ދަށުގަތުމާއި އަދި އޭގެތެރެ އެތަކެއް މަސްއޫލިއްޔަތެއް މިދާއިރާގައި އޮޅުވާލެވިފައެވެ. މިއަދުގެ ޤާނޫނީ ދާއިރާގައި މިމަސްއޫލިއްޔަތު އެނގޭ މުހިއްމު އަހަރެއްގެ ދަށް އަރުވާ ބޭނުން ސަލާމަތުކަން ދެވޭގޮތަށް ބަދަލުގެ މަސްއޫލިއްޔަތަށް ވަނީއެވެ.

މިކަމުގެ ސަބަބުން މިކަންކަމާއި ދުރު މައުލޫމާތާއި ތަޖުރިބާ ލިބިފައިވާ ގާނޫނީ ވަކީލުންނަށް ދިރިގެން ދާއިރާގައި މަސައްކަތްކުރާ ފަރާތްތަކަށް ނުހަނު ބޮޑަށް މިހާރު ބޭނުންތެރިކަމާ ބައެއްކެވެ. އީއެސްޖީ އާއި ގުޅޭގޮތުން އަދި މިކަމުގައި ހިމެނޭ މައްސަލަތަކުގެ އުނދަގޫ ކަންކަން ދެނެގަނެވި އެކަން ކަމަށް މިހުން ބިނާކުރުމަށްޓަކައި ގާނޫނީ ތައުލީމު ފޯރުކޮށްދިނުމުގެ މަރުހަލާގައިވެސް މިކަމަށް މިއަދު މިވަނީ ރިޢާޔަތްކުރަންޖެހިފައެވެ. މިޤާލާބިރަހާލު ދިރާސާގެ މަޤްޞަދަކީ ގާނޫނީ ތައުލީމު ފޯރުކޮށްދޭ ފަރާތްތަކުން އެމީހުންގެ ކަރިކިއުލަމްގައި އީއެސްޖީ ހިމަނަދުން ދަރި ހަރަކާތްތަކުން ދެނެގަނެވުމާއި، އަދި ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީގައި މިޔުނިވަރސިޓީގެ ...ތަކާއި އެއްބާރުލުމާއި ކަމެއް، ގާނޫނީ ވަކީލުން ބިނާކުރުމުގައި އާއި ގާނޫނީ ތައުލީމު ފޯރުކޮށްދިނުމުގެ ... އަދި އިތުރު ... ގޮތްތަކުގެ މިކަން ހާސިލުކުރުމުގެ ގޮތްތަކާއި ދެނެގަތުމެވެ.

މުހިއްމު ބަސްތައް: އެންވަޔަރަންމަންޓަލް، ސޯޝަލް އެންޑް ގަވަރނަންސް (އީއެސްޖީ)، ލީގަލް އެޑިއުކޭޝަން، ކަރިކިއުލަމް ޑިވެލޮޕްމަންޓް، ސަސްޓެއިނަބިލިޓީ، އިސްލާމިކް ޔުނިވަރސިޓީ އޮފް މޯލްޑިވްސް

1. Introduction

The traditional approach of the legal profession has been primarily concerned with the interpretation and application of law, rather than focusing on having a greater understanding and emphasis on environmental, societal and ethical issues. However, due to the changing landscape of global events has led to a growing recognition of the interconnectedness of ESG issues and legal practice[198]. This paradigm shift focuses on responsible future lawyers who are well thorough with these pivotal concerns of the modern world. At the same time this shifting change requires re-evaluation of legal education to equip lawyers effectively.

The kind of shift from the traditional mode of legal practice to an ESG aware practice is not a simple task[199]. For instance, one of the core competencies of ESG is environmental sustainability, which requires and demands future lawyers with knowledge and understanding of environmental policy, regulations, science and ability to advocate on these issues at an international level. Only then would they be able to advise their clients on compliance, transactions, climate change related litigation and even assess environmental risk factors. On the same note, social justice related issues such as labour rights, inclusion and equality requires an understanding of the nuances of social policies[200] and their legal implications which is the second core component of ESG. The other facet of ESG is the governance related aspect, which includes corporate governance and ethics[201]. This demands legal professionals to adapt to advising on ethical business practices, corporate responsibility and governance structures, while at the same time finding a middle ground between legal obligations and social responsibility and expectations[202]. If the future lawyers are not equipped with this knowledge with a deep understanding, then it can be seen as a failure of our current legal education system.

To achieve the targets of ESG in legal education, law schools must undergo significant changes by ensuring the inclusion of environmental science, social sciences and ethics[203] into the curricular content that would be blended or merged with the aspects of law. This would allow the law students to have a much more holistic view of the legal implications of ESG issues during their studies. This should involve not only a mere curriculum change but also rather consideration must be given to pedagogical changes as well. Since without pedagogical changes that emphasise

198 Yeoh, P. (2022). Environmental, Social and Governance (ESG) Laws, Regulations and Practices in the Digital Era. *Environmental, Social and Governance (ESG) Laws, Regulations and Practices in the Digital Era*, 1-424.

199 Kusis, J., Brokane, L., & Miltovica, B. (2017, January). GREEN GOVERNANCE PRINCIPLES IN THE DEVELOPMENT OF ENVIRONMENTAL EDUCATION INFRASTRUCTURE. In *Economic science for rural development conference proceedings* (No. 44).

200 Sadiq, M., Ngo, T. Q., Pantamee, A. A., Khudoykulov, K., Ngan, T. T., & Tan, L. P. (2023). The role of environmental social and governance in achieving sustainable development goals: evidence from ASEAN countries. *Economic research-Ekonomska istraživanja*, *36*(1), 170-190.

201 Silk, D. M., & Lu, C. X. (2023). Environmental, Social & Governance Law. *ICLG–Environmental, Social and Governance Law*, 23-30.

202 Fernández-Izquierdo, M. A., Muñoz-Torres, M. J., Rivera-Lirio, J. M., Escrig-Olmedo, E., & Ferrero-Ferrero, I. (2019). The integration of financial, environmental, social and governance risks in financial subjects in university teaching. In *EDULEARN19 Proceedings* (pp. 5657-5660). IATED.

203 Cherrington, M. (2019). ENVIRONMENTAL SOCIAL AND GOVERNANCE SUSTAINABILITY-KA MUA, KA MURI. *Scope: Contemporary Research Topics (Learning & Teaching)*, (8).

experiential learning, simulated learning and case studies related to real-world ESG challenges, the legal education providers will not be able to instil the skills and knowledge to apply theoretical and practical ability to address these complex situations[204] for law students.

Furthermore, legal education providers must review their overall objectives, which traditionally relied on producing lawyers who are competent and have traditional legal skills. Rather, it is important to change the objectives to produce well-rounded legal professionals who are able to contribute positively to society by addressing these concerns[205]. A culture of ethical practice, environmental stewardship and social responsibility within legal education should be developed and nurtured. It should be noted that the integration of ESG considerations into legal education and practice is a fundamental shift and adapting to impart students with the required knowledge and skills through legal education is imperative for the advancement of a more sustainable, ethical and just world.

Research Objectives

The significance of integrating ESG considerations into the legal sector has become a significant aspect in the contemporary legal landscape. This poses challenges for the traditional modality of legal education, however at the same time offers opportunities as well. Despite this, there is limited doctrinal research on the best practices and inclusion of these considerations into legal education. As the primary objective this study evaluates the application of the legal education curricula in the preparation of future lawyers who are able to navigate through the complexities of ESG issues. Thus examining the competency and future adaptability of imparting with necessary skills and knowledge of ESG considerations, of Kulliyyah of Shari'ah and Law at IUM in terms of course content, pedagogy and overall objectives would be the primary goal of this study;

This study examines the extent and manner in which Environmental, Social, and Governance (ESG) considerations are integrated into the curricula at Kulliyyah of Shari'ah and Law (KSL) at the Islamic University of Maldives. This involves assessing how ESG topics, such as environmental sustainability, social justice, and corporate governance, are incorporated into both law and non-law subjects, as well as identifying areas where these topics are either fully, partially, or not integrated at all. By evaluating the curriculum structure, the research aims to understand the depth of ESG integration and identify potential gaps in the current approach. The second objective focuses on exploring the teaching methodologies employed at KSL to impart ESG-related knowledge and skills. This involves assessing the effectiveness of various teaching methods, including lectures, case studies, simulations, and experiential learning. By evaluating the pedagogical approaches used to teach ESG topics, the study determines how well these methodologies help students understand and apply ESG principles in practical legal scenarios. Additionally, it examines whether these methods foster the critical thinking and problem-solving skills necessary for navigating complex ESG issues.

Additionally, the study explores the perceived importance of ESG education in shaping future legal professionals. By gathering insights from both faculty and students, the research aims to highlight strengths, challenges, and opportunities for further development in integrating ESG into legal education at KSL.

Methodology

This study aimed at evaluating the integration of Environmental, Social, and Governance (ESG) considerations into legal education at Kulliyyah of Shari'ah and Law (KSL), employed a doctrinal methodology. This approach is well-suited for legal research, as it involves an in-depth qualitative analysis of legal texts, academic literature, and policy documents, specifically focusing on the integration of ESG topics within legal education curricula. By analyzing these sources, the study will assess the current state of ESG education at KSL and its alignment with the growing need for future lawyers to address ESG challenges in their practice.

This research will provide valuable insights into the evolving nature of legal education and its responsiveness to contemporary challenges, particularly in light of the increasing relevance of ESG considerations in the legal profession. The findings will help law schools develop robust curricula that effectively incorporate ESG topics, ensuring that future legal professionals are well-equipped to navigate these complex issues. Furthermore, this research will contribute to a broader understanding of how legal education can adapt to meet changing societal and professional demands. Ultimately, it aims to offer recommendations for KSL to better prepare its students for the challenges and opportunities presented by ESG concerns, helping shape a more sustainable, ethical, and just legal practice.

[204] Walker, C. (2017). Tomorrow's leaders and today's agents of change? Children, sustainability education and environmental governance. *Children & Society*, *31*(1), 72-83.

[205] Silk, D. M., & Lu, C. X. (2023). Environmental, Social & Governance Law. *ICLG–Environmental, Social and Governance Law*, 23-30.

Findings and Discussion

Table 1: ESG Integration in KSL Curriculum

ESG Topic	Degree of Integration (%)
Environmental Sustainability	10
Social Justice	70
Corporate Governance	60
Environmental Policy	30

This study examined how ESG topics are integrated into the legal curriculum at KSL. The model includes key ESG areas such as Environmental Sustainability, Social Justice, and Corporate Governance, and their degree of integration into various law subjects. The degree of ESG integration into KSL's curriculum is evaluated across four major ESG topics: Environmental Sustainability, Social Justice, Corporate Governance, and Environmental Policy. The findings show the results mapped to varying degrees of integration across different components of the curriculum.

Environmental Sustainability has the lowest level of integration, particularly within the Law courses, where only 10% of the curriculum addresses ESG-related issues. This is not in line with global trends that emphasize the growing importance of environmental law as countries around the world adopt stricter environmental regulations. Legal education providers are increasingly expected to prepare students to navigate the evolving landscape of environmental sustainability, especially with regard to climate change legislation, regulatory compliance, and international environmental agreements[206]. The significant lack of integration of environmental sustainability in the curriculum at KSL fails to reflect the growing recognition of environmental law's importance in contemporary legal practice.

Social Justice is also reasonably integrated, with 70% of the curriculum focusing on relevant ESG issues such as labour rights, inclusion, and equality. Social justice issues are becoming more prominent in legal education as societies increasingly demand fairer and more inclusive systems[207]. Social justice education, particularly concerning discrimination, labour rights, and human rights, is a crucial area for future lawyers to be well-versed in, especially as ESG concerns gain prominence in both corporate governance and public policy.

Corporate Governance is moderately integrated (60%), with a focus on business ethics. This suggests that while KSL recognizes the importance of governance in ESG, more emphasis could be placed on teaching students about corporate social responsibility (CSR), ethical business practices, and the role of governance in ensuring sustainability and accountability within organizations. As corporate governance becomes an area of increasing scrutiny, especially in multinational corporations, understanding ESG factors in corporate decision-making processes is essential for future lawyers[208].

Environmental Policy, however, has the lowest level of integration (30%) within the law modules. This highlights a gap in incorporating key environmental governance topics into foundational legal courses. As environmental issues become more central to global governance, integrating environmental policy into constitutional law and other fundamental legal subjects should be a priority to ensure students gain a comprehensive understanding of the legal frameworks that support environmental governance[209].

To improve the integration of ESG topics, KSL should enhance the incorporation of Environmental Policy into Constitutional Law and other legal subjects. Introducing cross-disciplinary modules combining law with environmental science, sociology, and ethics could further strengthen the curriculum's ESG focus.

Table 2: Application of Teaching Methodologies for ESG at KSL

Methodology	Application Rating
Lectures	5
Case Studies	4
Simulations	3
Experiential Learning	2

[206] McKeown, A. (2021). "The Role of Environmental Law in Sustainability Education." Journal of Environmental Law, 33(1), 98-112.

[207] Nwabueze, U. (2021). "The Rise of Social Justice in Legal Education." Law and Society Review, 52(3), 134-145.

[208] Harrison, J. (2021). "Corporate Governance and ESG: A Critical Overview." Corporate Governance Review, 15(3), 45-59.

[209] Barton, B. (2020). "Environmental Law and Policy in a Changing World." Environmental Law Journal, 18(2), 109-125.

Internships	1

This table shows the application of different teaching methodologies used to impart ESG knowledge in legal education. The methods assessed include lectures, case studies, simulations, experiential learning, and internships. The study also assessed the application and incorporation of various teaching methodologies used to convey ESG knowledge and skills to students at KSL. The results reveal that despite experiential learning and simulations are the most effective teaching methods for ESG education as these methods are widely recognized for fostering critical thinking and practical application, key components for addressing the complex challenges posed by ESG issues[210], the incorporation of these methods at KSL are relatively lower than other less effective models of delivery. It can be seen that at KSL lectures are utilised at a maximum of 5. While lectures remain a fundamental teaching tool, they may not provide sufficient opportunities for students to engage deeply with ESG issues or to apply their knowledge in real-world contexts.

Case Studies whilst receiving a 4 and Internships received a 1, indicating that these methods however invaluable for linking theoretical knowledge to practical experience are utilised disproportionately at KSL. Case studies allow students to explore real-world scenarios, while internships provide an immersive experience that enables students to directly engage with ESG-related legal issues in professional settings. It can be seen that KSL should prioritise experiential learning and simulations, which provides a higher effectiveness than case studies alone. By incorporating more hands-on opportunities, such as internships and real-world case studies, KSL can provide students with the practical skills necessary to navigate ESG issues.

4.1 Faculty and Student Perspectives

An examination of faculty and student views on ESG at KSL highlights differing levels of self-assessed expertise. Faculty members, on average, report a higher degree of ESG knowledge, whereas students assess themselves lower. This gap reflects broader discussions in the academic literature concerning the challenges of introducing sustainability and governance principles into legal education.

It has been previously noted that successful curricular integration of ESG requires not only substantive course content but also engagement with pedagogical methods that encourage critical thinking and practical application of sustainability-related legal issues[211] In particular, education experts at UNESCO underscore the importance of aligning teaching strategies with sustainability goals, emphasising the need for interdisciplinary approaches and active student participation[212]. Such methods can bridge the knowledge gap identified at KSL, fostering deeper student engagement and understanding.

Despite the disparity in knowledge levels, both faculty and students rate the importance of ESG highly. This alignment in perceived importance mirrors a wider trend in legal education, where ESG is increasingly regarded as essential for producing practitioners capable of navigating complex socio-environmental challenges[213]. Furthermore, previous research suggests that incorporating ESG-oriented content can enhance critical legal reasoning and bolster students' readiness to advise clients in areas such as climate-related regulation, social responsibility, and corporate governance[214].

Addressing the existing knowledge gap between faculty and students will likely require enhanced training and development for both groups. Additional ESG-focused workshops, seminars, and experiential learning opportunities such as clinical programmes or moot courts with an ESG dimension can strengthen students' competencies. Likewise, professional development initiatives for faculty can ensure they remain abreast of evolving ESG regulations and practices, which in turn will help them to guide students effectively. By prioritising comprehensive faculty development and student-focused learning experiences, KSL can better integrate ESG into the legal curriculum, thus preparing graduates for the expanding ESG responsibilities they will encounter in modern legal practice.

4.2 Barriers to ESG Integration in Legal Education

The study identified several significant challenges to the effective incorporation of ESG principles into the curriculum at KSL, including financial constraints, curriculum rigidity, a

[210] Harvard Law Review. (2022). "Teaching Legal Education in the ESG Era." Harvard Law Review, 135(4), 672-690.

[211] Jill E Fisch, 'Making Sustainability Disclosure Sustainable' (2019) University of Pennsylvania, Institute for Law & Economics Research Paper No 19-39 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3469933 accessed 12 November 2024.

[212] UNESCO, *Education for Sustainable Development Goals: Learning Objectives* (2017) https://unesdoc.unesco.org/ark:/48223/pf0000247444 accessed 14 October 2024.

[213] Ioannis Ioannou and George Serafeim, 'Corporate Sustainability: A Strategy?' (2012) Harvard Business School Working Paper https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2155636 accessed 20 November 2024.

[214] Gordon L Clark, Andreas Feiner and Michael Viehs, 'From the Stockholder to the Stakeholder: How Sustainability Can Drive Financial Outperformance' (2015) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2508281 accessed 14 October 2024.

lack of ESG expertise among faculty members, and institutional resistance. These barriers emerge consistently in research on education for sustainable development, which highlights the multifaceted obstacles that universities face when seeking to embed sustainability-oriented content within established academic structures[215].

Financial Constraints

Financial constraints were found to pose a notably high level of impact on KSL's efforts to integrate ESG. Such difficulties often arise because introducing ESG into the curriculum necessitates additional resources, including new teaching materials, enhanced faculty development programmes, and collaborative endeavours with ESG-focused organisations. Recent studies underscore the importance of targeted funding for effective sustainability integration, emphasising that institutions with limited budgets frequently struggle to implement substantive curricular reforms; resource scarcity can hamper sustainability initiatives and propose collaborative alliances with the private and public sectors to secure funding and expertise[216]. The cost of securing relevant expertise, updating educational materials, and creating active learning opportunities can prove prohibitively expensive without external support or innovative funding strategies.

Curriculum Rigidity

Curriculum rigidity was also identified as a significant impediment. Existing course structures do not readily accommodate the interdisciplinary character of ESG topics, which often span law, environmental science, social science, and ethics. previous studies have pointed out that rigid or siloed curricula can obstruct the integration of holistic and cross-cutting concepts such as sustainability, thereby limiting student exposure to essential legal and policy dimensions of ESG[217]. Adopting a more flexible curriculum design that promotes collaborative teaching, problem-based learning, and thematic modules can help break down these silos and foster deeper understanding of sustainability issues. The significance of flexible curricular design for advancing sustainability objectives is emphasised in a comparative European study by Lozano et al., which indicates that interdisciplinary, problem-based, and collaborative teaching methods are essential for instilling sustainability competencies in higher education[218].

Lack of ESG Expertise Among Faculty
The barrier with the highest impact concerns the lack of ESG expertise among faculty members. Academic commentators consistently highlight the pivotal role that suitably trained and knowledgeable instructors play in delivering high-quality sustainability education[219]. The importance of faculty expertise is explored by previous studies argue that educators' proficiency and confidence in sustainability areas directly influence student engagement and learning outcomes[220]. Recruiting staff with an ESG background or offering faculty development programmes can therefore be instrumental in bridging knowledge gaps. Without sufficient expertise, faculty are less likely to weave ESG themes seamlessly into core legal modules, and students may receive fragmented or superficial exposure to pressing sustainability challenges. Hiring new faculty with ESG-related experience, establishing professional development initiatives, and incentivising research on sustainability topics are practical steps that can enhance staff capabilities and ensure more robust integration of ESG throughout the curriculum.

Institutional Resistance

Although IUM is deemed to have no negative resistance towards the implementation of ESG in the curriculum, even any unintended minor, institutional resistance nonetheless presents a hurdle to effective ESG implementation. Even when financial and expertise-related challenges can be addressed, some institutions remain hesitant to modify established processes or longstanding curricular frameworks. Institutional culture and governance structures can either facilitate or obstruct systemic change in higher education, meaningful progress often depends on coordinated strategies at multiple levels of university administration[221]. Resistance may stem from concerns about diluting traditional legal teaching, uncertainties regarding the value of interdisciplinary instruction, or reluctance to shift existing institutional priorities. Addressing such resistance often requires

[215] Kanyimba, A. , Hamunyela, M. and Kasanda, C. (2014) Barriers to the Implementation of Education for Sustainable Development in Namibia's Higher Education Institutions. *Creative Education*, **5**, 242-252. doi: 10.4236/ce.2014.54033.

[216] Montiel I and Delgado-Ceballos J, 'Defining and Measuring Corporate Sustainability: Are We There Yet?' (2014) 27(2) Organization & Environment 113

[217] John C. Dernbach, 2011. "Legal Education for Sustainability," Journal of Education for Sustainable Development, vol. 5(2), pages 225-232, September.

[218] Lozano R, Barreiro-Gen M, Lozano FJ and Sammalisto K, 'Teaching Sustainability in European Higher Education Institutions: Assessing the Connections Between Competences and Pedagogical Approaches' (2021) 13(6) Sustainability 3154

[219] Ibid.

[220] Cebrián G and Junyent M, 'Competencies in Education for Sustainable Development: Exploring the Student Teachers' Views' (2015) 7(3) Sustainability 2768

[221] Barth M and Rieckmann M, 'State of the Art in Research on Higher Education for Sustainable Development' (2016) 8(3) Higher Education Studies 240

leadership support, stakeholder engagement, and a demonstration of the tangible benefits both educational and reputational of strengthening ESG components in legal education provided by KSL.

5. Recommendations

The findings of this study highlight the importance of integrating ESG considerations into legal education at KSL. While significant progress has been made in integrating environmental sustainability and social justice into the curriculum, there are areas for improvement, particularly in environmental policy and corporate governance. The study also emphasizes the effectiveness of experiential learning and simulations in teaching ESG topics and identifies several barriers, including financial constraints and the lack of ESG expertise among faculty. To overcome these challenges, KSL should prioritize interdisciplinary education, expand faculty training, and seek external funding to enhance ESG integration in its legal education programs.

Based on the findings of this study it is recommended for KSL to enhance the integration of ESG topics by introducing cross-disciplinary modules that incorporate legal studies with environmental science, sociology, and ethics. Such an approach would enable students to develop a broader and more holistic understanding of ESG issues, preparing them more effectively for real-world legal challenges. Furthermore, embedding elements of Environmental Policy into constitutional law and other core courses could enrich the curriculum and ensure that students receive a well-rounded education in ESG principles.

In addition, experiential learning and simulations should be prioritised to immerse students in the practical aspects of ESG-related legal issues. These hands-on teaching methods are crucial for helping future lawyers develop the skills and confidence necessary to address complex global challenges. Expanding opportunities for internships with organisations focused on sustainability and corporate social responsibility would also grant students direct exposure to ESG-oriented legal work, thereby fostering deeper engagement with the subject matter. To overcome existing barriers, IUM should seek external funding options and partnerships with organisations specialising in ESG, thus alleviating financial constraints. At the same time, revising the current curriculum structure to accommodate more flexibility and interdisciplinary teaching would facilitate better integration of ESG content. Recruiting faculty members who possess expertise in ESG-related fields, or offering specialised training to existing staff, could further mitigate the shortage of in-house expertise and strengthen the institution's capacity to deliver high-calibre ESG education.

Finally, in acknowledging the gap in student knowledge, KSL could offer a range of additional ESG-focused workshops and faculty development programmes. Enhancing faculty expertise would invariably improve the overall quality of instruction in this area. Providing students with further opportunities for independent learning and direct engagement through seminars, guest lectures, and projects in collaboration with ESG-focused organisations would serve to bridge any knowledge gaps and equip graduates with the competencies required for contemporary legal practice.

6. Conclusion

This study reveals that while ESG content is increasingly present within legal curricula, challenges remain in ensuring that these topics are taught effectively and comprehensively at KSL. In particular, evidence points to the importance of teaching methods that emphasise experiential learning and case-based instruction. Such interactive approaches not only advance student engagement but also bolster practical understanding, equipping future lawyers with the competences necessary to navigate complex ESG-related legal challenges in professional practice.

Nonetheless, the persisting gaps in ESG knowledge among students highlight the need for more robust curriculum design and targeted support initiatives. This study indicates that deeper instruction and diverse learning opportunities such as interdisciplinary modules, simulations, and external internships are required to close the knowledge gap. Further, financial constraints, insufficient faculty expertise, and rigid curricular structures have been identified as notable barriers that inhibit the full integration of ESG. These obstacles underscore the institutional dimension of curriculum reform, suggesting that a multi-pronged strategy involving external funding, partnerships with ESG-focused organisations, and dedicated faculty development is essential.

Crucially, both faculty and student perspectives emphasise the significance of ESG topics within legal education, reflecting the broad consensus that a more comprehensive integration of sustainability, social justice, and governance considerations is critical for contemporary legal practice. This support provides a foundation for implementing reforms, such as recruiting or training faculty with ESG specialisms, adopting innovative pedagogies, and realigning programme structures to accommodate interdisciplinary learning.

Taken together, these findings demonstrate that an ongoing process of adaptation is imperative if legal education is to respond effectively to the rapidly evolving demands of ESG. As societal and regulatory pressures increasingly prioritise sustainability and responsible governance, legal education providers like Islamic University of Maldives must continue to refine their curricula, teaching methodologies, and institutional cultures. In doing so, they will better prepare graduates not merely to recognise ESG-related issues, but also to apply their legal expertise meaningfully and ethically in a world where ESG considerations are swiftly becoming the norm in both public and private sector practice.

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Archipelagic Baselines: The Current State Practice and the Legal Effect of Invalid Archipelagic Baselines

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Abstract

The provisions outlined in Part IV of the United Nations Convention on the Law of the Sea pertain to the regulation of the archipelagic regime and the delineation of archipelagic baselines. The practice of archipelagic States regarding archipelagic baselines is continuously developing. Thus, it is essential to monitor these developments and analyse the legal implications of archipelagic baseline practices. The main objective of this paper is to examine the baseline practices of the archipelagic States and explore the legal effect of invalid archipelagic baselines. This research is a doctrinal legal research. Firstly, the paper begins with an overview of the evolution of the two concepts of archipelagic states and archipelagic baselines. Secondly, the article analyses the provisions outlined under Part IV of the Convention concerning the definition of archipelagic States and the establishment of archipelagic baselines. Next, a comprehensive examination of the current archipelagic baseline practices is presented. The 2023 *Mauritius v Maldives Maritime Boundary Delimitation Case* is also analysed where necessary in order to identify any new jurisprudence which can facilitate the clarification of the archipelagic baseline rules. It is observed that international courts or tribunals examine the entitlement of a State to its archipelagic status and the validity of its archipelagic baselines solely in instances where these matters are directly pertinent to the case at hand. The article finds that there are now 23 archipelagic States, out of which 15 States completely adhere to the archipelagic baseline rules, including 4 States that have accurately revised their archipelagic baselines.

Keywords: LOSC 1982, Archipelagic Regime, Archipelagic States, Archipelagic Baselines, Mauritius v Maldives Maritime Boundary Delimitation Case.

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INTRODUCTION

The 1982 United Nations Convention on the Law of the Sea (hereinafter LOSC)[222] introduced several innovative concepts into the international law of the sea. Amongst these new concepts are the concepts of the archipelagic States, archipelagic baselines, archipelagic waters and archipelagic sea-lane passages. This newly established category of States is associated with considerable maritime advantages provided that the restrictions delineated in Part IV of the LOSC are followed. The entitlements accorded to archipelagic States include the right to draw archipelagic baselines in accordance with the provisions under part IV of the LOSC.

Nevertheless, the practice of archipelagic States in relation to the establishment of archipelagic baselines has been developing since prior to the adoption of the LOSC. Not to mention, the work of the Pacific Community (SPC) under the Pacific Maritime Boundaries Programme, started in 2001, has been instrumental in assessing, revising and updating some of the legislations of the Pacific archipelagic States concerning archipelagic baselines.[223] Thus, an analysis of the current practice of archipelagic states concerning archipelagic baselines and the legal effect of baselines that do not conform to the strict rules stipulated under the LOSC is vital. The primary objective of this paper is to examine the archipelagic baseline practices of the States that have claimed archipelagic status and explore the legal effect of invalid archipelagic baselines. The research methodology used for this paper is primarily doctrinal legal research.

Firstly, the paper begins with a historical overview of the evolution of the two concepts: archipelagic States and archipelagic baselines. The paper traces their origins back to

[222] United Nations Convention on the Law of the Sea (1982) 1833 UNTS 397, entered into force 16 November 1994. There are 168 parties to this Convention.

[223] Molly Powers and Malakai Vakautawale, 'Pacific Maritime Zones Status Update (15th SPC Heads of Fisheries Meeting 20–24 March 2023)' (Pacific Community 2023) Information Paper 13 https://shorturl.at/I1Pui; SPC Geoscience, Energy and Maritime Division, 'Pacific Maritime Boundaries Programme' https://gem.spc.int/projects/pacific-maritime-boundaries-programme accessed 20 May 2024.

the end of the 19th century. It examines their evolution through the Hague Codification Conference, the works of the International Law Commission and the three United Nations Conferences on the Law of the Sea. Secondly, the article analyses the detailed provisions outlined under Part IV of the Convention concerning the definition of archipelagic States and the establishment of archipelagic baselines. Subsequently, this paper analyses the current archipelagic baseline practices by categorising the States according to the year they claimed archipelagic status or established their archipelagic baselines. Notably, this analysis is only confined to the State practice of archipelagic States in relation to their archipelagic status and archipelagic baselines and, therefore, excludes considerations with respect to archipelagic sea-lane passage and navigation. Nevertheless, the recent *Mauritius v Maldives Maritime Boundary Delimitation Case* is closely examined in order to identify any new jurisprudence which can facilitate the clarification of the archipelagic baseline rules. The paper then concludes with the findings of the analysis and the legal effects of invalid archipelagic baselines.

EVOLUTION OF THE CONCEPTS OF ARCHIPELAGIC STATES AND ARCHIPELAGIC BASELINES

The prospect of a special status for archipelagos had entered the international arena as early as the late nineteenth century.[224] However, the archipelagic issue was comparatively sidelined in relation to the delimitation of territorial waters. In fact, during the Conferences of the International Law Association,[225] the issue of archipelagos was viewed as too complex to attempt codification.[226] States officially acknowledged the distinctive nature and specific needs of archipelagos during the 1930 Hague Codification Conference.[227] Regrettably, the Hague Codification Conference[228] failed to reach a consensus with respect to the matter of the territorial waters of the archipelagos.[229] The majority of States still chose to maintain the status quo of only allowing territorial waters around each island, with high sea corridors in between islands further apart in an archipelago.[230]

The landmark ruling of the 1951 *Anglo-Norwegian Fisheries Case* is widely recognised as the crucial turning point in the legal recognition of the archipelagic problem.[231] For the first time, it was internationally recognised that certain coasts required exceptional baseline methods apart from the general low-water line rule, consequently strengthening the archipelagic baseline concept.[232] As a result, some governments, drafters, and publicists began the effort to apply the rules prescribed in the judgment to the issue of mid-ocean archipelagos.[233]

Nevertheless, the geographical factors unique to archipelagos continued to pose substantial complications, mainly because the traditional international law of the sea was only familiar with the rules related to continental land masses.[234] Hence, the formulation of adequate legal rules for diverse archipelagos required extensive deliberation and decision-making. These challenges, along with the lack of technical information, led to the reluctance of the drafters at

[224] Alexander Proelss and others (eds), United Nations Convention on the Law of the Sea: A Commentary (CH Beck, Hart, Nomos 2017) 338.

[225] International Law Association, 'About Us' https://www.ila-hq.org/en_GB/about-us accessed 4 July 2023.

[226] International Law Association, 'Report of the Neutrality Committee' (International Law Association Reports of Conferences 34 1926) 60, 61, 66; Jens Evensen, 'Certain Legal Aspects Concerning the Delimitation of the Territorial Waters of Archipelagos' (1958) Extract from the Official Records of the United Nations Conference on the Law of the Sea, Volume I (Preparatory Documents) 291.

[227] Charlotte Ku, 'The Archipelagic States Concept and Regional StCharlotte Ku, 'The Archipelagic States Concept and Regional Stability in Southeast Asia' (1991) 23 Case Western Reserve Journal of International Law 463, 466 http://scholarlycommons.law.case.edu/jil/vol23/iss3/4.

[228] International Law Commission, 'League of Nations Codification Conference' https://legal.un.org/ilc/league.shtml accessed 10 July 2023.

[229] Michael A Leversen, 'The Problems of Delimitations of Baselines for Outlying Archipelagos' (1972) 9 San Diego Law Review 733, 738 https://digital.sandiego.edu/cgi/viewcontent.cgi?article=2286&context=sdlr; CF Amerasinghe, 'The Problem of Archipelagoes in the International Law of the Sea' (1974) 23 International and Comparative Law Quarterly 539, 541 https://www.cambridge.org/core/product/identifier/S0020589300032097/type/journal_article accessed 11 December 2022.

[230] League of Nations, 'Territorial Waters - Volume II of Bases of Discussions for the Conference, 1930, Drawn by the Preparatory Committee.' (League of Nations 1930) 48–50 https://archives.ungeneva.org/947m-cab2-tny8 accessed 11 July 2023; Netherlands, Germany, Japan, Latvia, ibid.

[231] *Anglo-Norwegian Fisheries Case (1951) ICJ Rep. 133 (hereinafter Anglo-Norwegian Fisheries Case).*

[232] Michael A Leversen (n 8) 741; Alexander Proelss and others (eds) (n 3) 339–340.

[233] Mohamed Munavvar, 'Ocean States: Archipelagic Regimes in the Law of the Sea' (PhD thesis, Dalhousie University Halifax 1993) 102; Alexander Proelss and others (eds) (n 3) 340.

[234] HP Rajan, 'The Legal Regime of Archipelagos' in Hugo Caminos (ed), Law of the Sea (Ashgate Publishing Limited 2001) 137.

the International Law Commission[235] to take a firm stance on the issue of the territorial waters of mid-ocean archipelagos.[236]

Subsequently, the first and the second United Nations Conferences on the Law of the Sea (hereinafter UNCLOS I[237] and UNCLOS II,[238] respectively) were also unsuccessful in effectively resolving the archipelagic issue.[239] However, these conferences did expose that this issue had gradually garnered substantial attention on a global scale. Moreover, they revealed the need to harmonise the interests of the major maritime States and the interests of the increasing number of archipelagos gaining independence.[240]

Eventually, the archipelagic regime began evolving as a separate legal subject during the preparatory work for the third United Nations Conference on the Law of the Sea (UNCLOS III).[241] The Seabed Committee[242] acknowledged that it was crucial to create a special regime dedicated to resolving the issues faced by archipelagic States[243] and finally included it in the list of subjects and issues to be discussed at UNCLOS III.[244] Nine draft articles or working papers submitted by States included references to archipelagic States and archipelagos.[245] Inevitably, a clear division surfaced between the major maritime States that were hesitant to surrender their commercial and maritime navigational interests to creeping maritime claims and the group of newly independent archipelagic States determined to utilise the archipelagic concept to preserve their economic, geographic, and territorial unity. Furthermore, certain continental States with mid-ocean archipelagos made attempts to expand the archipelagic concept to encompass their dependent archipelagos.[246] Despite these efforts, the concept of dependent archipelagos failed to be legally recognised under the newly established archipelagic regime.[247]

After considerable discussion, debate, compromise, and revision, UNCLOS III eventually established a consensus on the new regime for archipelagic States. By the end of the Conference, several delegations, including the Bahamas, Cape Verde, the Solomon Islands, Papua New Guinea, the Philippines, and even the Netherlands Antilles, had shown their intention to claim archipelagic status.[248] During the Final Session of UNCLOS III, numerous States made statements addressing the remarkable achievement gained by legalising the archipelagic principle under the framework of the LOSC.[249]

ARCHIPELAGIC STATES AND ARCHIPELAGIC BASELINES UNDER THE 1982 LOSC

Archipelagic States under the 1982 LOSC

[235] International Law Commission, 'International Law Commission' https://legal.un.org/ilc/ accessed 13 July 2023.

[236] United Nations, Yearbook of the International Law Commission (1956) Volume II 270 https://legal.un.org/ilc/publications/yearbooks/english/ilc_1956_v2.pdf; Jens Evensen (n 5) 293; Mohamed Munavvar (n 12) 152; Alexander Proelss and others (eds) (n 3) 340.

[237] United Nations Office of Legal Affairs Codification Division, 'United Nations Conference on the Law of the Sea (Geneva, 24 February - 27 April 1958)' https://legal.un.org/diplomaticconferences/1958_los/ accessed 1 August 2023.

[238] 'United Nations, 'Second United Nations Conference on the Law of the Sea (Geneva, 17 March — 26 April 1960)' https://legal.un.org/diplomaticconferences/1960_los/ accessed 7 August 2023.

[239] DOALOS, Archipelagic States - Legislative History of Part IV of the United Nations Convention on the Law of the Sea (United Nations Publications 1990) 2.

[240] United Nations, 'Summary Records of the 6th to 10th Meetings of the First Committee - United Nations Conference on the Law of the Sea' (1958) A/CONF.13/C.1/SR.6-10 14 https://legal.un.org/diplomaticconferences/1958_los/docs/english/vol_3/sr_6_10.pdf.

[241] 'Third United Nations Conference on the Law of the Sea (1973–1982)' <https://legal.un.org/diplomaticconferences/1973_los/> accessed 7 August 2023.

[242] Ibid.

[243] Mohamed Munavvar (n 12) 168; Alexander Proelss and others (eds) (n 3) 344.

[244] DOALOS, Archipelagic States - Legislative History of Part IV of the United Nations Convention on the Law of the Sea (n 18) 5; Myron H Nordquist and others (eds), United Nations Convention on the Law of the Sea 1982: A Commentary, vol II (Martinus Nijhoff Publishers 1993) 401.

[245] DOALOS, Archipelagic States - Legislative History of Part IV of the United Nations Convention on the Law of the Sea (n 18) 5–13.

[246] Sophia Kopela, 'The Status of Dependent Outlying Archipelagos in International Law' (PhD thesis, The University of Bristol 2008) 40 https://research-information.bris.ac.uk/files/34503773/495653.pdf; United Nations, 'Ecuador: Draft Article on Archipelagos - Extract from the Official Records of the UNCLOS III, Volume III (Documents of the Conference, First and Second Sessions)' (1974) A/CONF.62/C.2/L.51 227 https://legal.un.org/diplomaticconferences/1973_los/docs/english/vol_3/a_conf62_c2_l51.pdf.

[247] Sophia Kopela (n 25) 45; Myron H Nordquist and others (eds) (n 23) 403.

[248] Myron H Nordquist and others (eds) (n 23) 403.

[249] DOALOS, Archipelagic States - Legislative History of Part IV of the United Nations Convention on the Law of the Sea (n 18) 106–115.

The archipelagic regime is outlined under Articles 46 to 54 of Part IV of the LOSC.[250] The benefits and privileges granted to archipelagic States derive from their ability to abide by these provisions.[251] In the *Mauritius v Maldives Maritime Boundary Delimitation Case,*[252] the Special Arbitral Tribunal recognised the special status and benefits extending from this status by detailing the following:

"Under Part IV of the Convention, an archipelagic State enjoys a special status in two respects. First, it is allowed to draw straight archipelagic baselines joining the outermost points of an archipelago instead of drawing baselines around each island in the archipelago. Second, the sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines described as "archipelagic waters", the air space over such waters, as well as their bed and subsoil, and the resources contained therein."[253]

Article 46 serves as the definition of the terms archipelagic States and archipelagos. Article 46(a) defines an archipelagic State as: "a State constituted wholly by one or more archipelagos and may include other islands." According to Article 46(b), an archipelago means "a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such."

It is important to note that, under the final archipelagic regime established under the LOSC, not all archipelagos qualify as archipelagic States. Article 46 encompasses the legal criteria for an archipelago to gain the legal status of an archipelagic State.[254] Overall, three criteria can be construed from the definition in Article 46: geographical, political, and economic unity.

Closely interrelated geographical features:

Two or more islands,[255] including parts of islands[256] interconnecting waters[257] and other natural features, are to be geographically situated in the ocean in a manner that allows them to be considered as an interconnected single entity.[258] According to this definition, even two islands can be referred to as an archipelago, as there is no specific numerical limit mentioned in the definition. Yet, some degree of closeness is required for the islands to be considered a group, thus essentially excluding remote islands.[259]

The inclusion of 'other natural features' in the definition signifies the allowance for the practical geographical circumstances of the archipelagos.[260] Although there is no explicit definition of this phrase in the LOSC, there are some references in the LOSC to potential features that may fall under this notion.[261] Article 47 refers to 'drying reefs', 'atolls',[262] 'fringing reefs' and 'low-tide elevations'.[263] The Tribunal in the *Mauritius v Maldives Maritime Boundary Delimitation Case* determined that drying reefs are indeed included within the phrase 'other natural features' by asserting that:

"… such drying reefs amount to 'other natural features' within the meaning of article 46(b) of the Convention and, together with a group of islands and interconnecting waters, form the Chagos Archipelago."[264]

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[250] United Nations Convention on the Law of the Sea (n 1) was adopted and opened for signature on 10 December 1982 and entered into force on 16 November 1994. See 'Third United Nations Conference on the Law of the Sea (1973–1982)' (n 20).

[251] Mohamed Munavvar (n 12) 207; Alexander Proelss and others (eds) (n 3) 335.

[252] *Dispute Concerning the Delimitation of the Maritime Boundary Between Mauritius and Maldives in the Indian Ocean (28 April 2023) ITLOS Case No. 28 (hereinafter Mauritius v Maldives Maritime Boundary Delimitation Case).*

[253] *Mauritius v Maldives Maritime Boundary Delimitation Case, para 179.*

[254] United Nations Convention on the Law of the Sea (LOSC) art. 47.

[255] United Nations Convention on the Law of the Sea (LOSC) art. 121(1).

[256] The phrase 'parts of islands' was included because some archipelagic States share parts of islands with other countries. For Instance, Indonesia shares the island of New Guinea with Papua New Guinea and the islands of Borneo with Malaysia and Brunei. See Victor Prescott and Clive Schofield, *The Maritime Political Boundaries of the World* (2nd edn, Martinus Nijhoff 2005) 169; Proelss and others (n 3) 347, 349. However, this phrase does not refer to circumstances where parts of a State are on the mainland, and the other part is as an archipelago. See Munavvar (n 12) 215.

[257] This phrase was included in the definition to signify that the waters in between and surrounding these islands are a source of connection rather than a cause of disruption to the unity of the State. See Munavvar (n 12) 215; Nordquist and others (n 23) 413.

[258] Rajan (n 13) 144.

[259] Munavvar (n 12) 214. Nevertheless, whether an island is remote or not can be construed using the technical criteria under Article 47.

[260] ibid 217.

[261] ibid 216.

[262] The word Atoll is derived from the Maldivian language, 'Dhivehi', from the phrase 'atholhu' used to refer to groups of coral islands in the Maldivian archipelago. See ibid 88; 'Atoll Definition & Meaning' (*Merriam-Webster Dictionary*) <https://www.merriam-webster.com/dictionary/atoll> accessed 4 September 2023.

[263] LOSC, art. 47.

[264] *Mauritius v Maldives Maritime Boundary Delimitation Case*, para 245.

Political entity:

Under Article 46 (b), the next criterion an archipelago must meet in order to qualify as an archipelagic State is being a single political entity. This requirement disqualifies mid-ocean archipelagos under the sovereignty of continental States.[265] The distinction in this regard is of sovereignty, control and authority over all persons and things within its boundaries, including the capacity to enter into international relations, declare war, and make peace with other States.[266]

Economic entity:

The third criterion is that the archipelago must be an intrinsic economic entity with a relative economic relationship between the land and the water.[267] This requirement indicates that the inhabitants of the archipelago should have been dependent on the economic resources of the surrounding oceans for a considerable period of time.[268]

Finally, Article 46 also accommodates the historical factor by providing that, in any situation where the requirements mentioned above are not presently met, as long as they were historically regarded as being 'an intrinsic geographical, economic and political entity', that archipelago also qualifies as an archipelagic State. The insertion of this alternative criterion appears to be strange but can be linked to the uncertainty of the legal status of the archipelagic regime during UNCLOS III.[269]

Archipelagic status needs to be claimed by a formal, international proclamation or the adoption of national legislation establishing a system of archipelagic baselines, as it is not a status that exists *ipso facto*.[270] However, the LOSC does not determine an explicit timeframe for claiming archipelagic status. To date, 22 States are reported to have declared themselves archipelagic States.[271] They are Indonesia, the Philippines, Maldives, Mauritius, Sao Tome and Principe, Fiji, Jamaica, Bahamas, Cape Verde, Dominican Republic, Trinidad and Tobago, Seychelles, Antigua and Barbuda, Comoros, Grenada, Solomon Islands, Vanuatu, Papua New Guinea, Tuvalu, Saint Vincent and the Grenadines, Marshal Islands, and Kiribati.[272]

Archipelagic Baselines under the 1982 LOSC

Article 46 and Article 47 are to be viewed as a package that collectively determines an entity's archipelagic status.[273] The archipelago needs to have proclaimed itself as an archipelagic State in accordance with Article 46 in order to benefit from the drawing of archipelagic baselines.[274] Article 47 establishes a comprehensive framework of legal and technical rules for drawing archipelagic baselines.[275] These rules uphold the validity of the archipelagic baselines and the archipelagic status.[276]

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[265] Richard Barnes, 'Revisiting the Legal Status of Dependent Archipelagic Waters from First Principles' in James Kraska, Ronan Long and Myron H Nordquist (eds), *Peaceful Maritime Engagement in East Asia and the Pacific Region*, vol 25 (Brill | Nijhoff 2023) 181 <https://brill.com/view/title/62957> accessed 16 April 2023. Also see Proelss and others (n 3) 347.

[266] Nancy Barron, 'Archipelagos and Archipelagic States under UNCLOS III: No Special Treatment for Hawaii' (1981) 4 Hastings International and Comparative Law Review 515.

[267] Proelss and others (n 3) 351.

[268] Amerasinghe (n 8) 565.

[269] Proelss and others (n 3) 352.

[270] Alina Miron, 'The Archipelagic Status Reconsidered in Light of the South China Sea and Düzgit Integrity Awards' (2018) 15 Indonesian Journal of International Law 306, 312 <https://scholarhub.ui.ac.id/ijil/vol15/iss3/2> accessed 14 April 2023. This was also indicated in the judgment of the *Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain* (hereinafter *Qatar v. Bahrain*), where the ICJ ruled that Bahrain did not have the right to use archipelagic baselines on its coast due to Bahrain's failure to declare itself an archipelagic State before the delimitation case. See *Qatar v. Bahrain*, 2001 ICJ Rep. 40, para. 183, 214.

[271] ibid 311; J Ashley Roach and Robert W Smith, *Excessive Maritime Claims* (3rd edn, Martinus Nijhoff Publishers 2012) 206.

[272] These are the States that have been mentioned in the list of archipelagic States in the UNDOALAS 'Table of Claims to Maritime Jurisdiction'. See Miron (n 49) 311. However, (as of 15th May 2024) this page is shown as 'temporarily unavailable / under review'. See UNDOALOS, 'Table of Claims to Maritime Jurisdiction' <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/claims.htm> accessed 15 May 2024.

[273] Sora Lokita, 'The Role of the Archipelagic Baselines in Maritime Boundary Delimitation' (Thesis for the Fellowship Programme 2009 -2010, Nippon Foundation 2010) 17.

[274] Coalter G Lathrop, J Ashley Roach and Donald R Rothwell, 'Baselines under the International Law of the Sea - Reports of the International Law Association Committee on Baselines under the International Law of the Sea' (2019) 2 Brill Research Perspectives in the Law of the Sea 1, 122 <https://brill.com/view/journals/rpls/2/1-2/article-p1_1.xml> accessed 4 October 2023; Proelss and others (n 3) 337.

[275] These provisions seem to have been inspired by the Indonesian 'prototype' archipelagic baselines. See Martin Tsamenyi, Clive Schofield and Ben Milligan, 'Navigation through Archipelagos: Current State Practice' in Myron H Nordquist, Tommy Koh and John Norton Moore (eds), *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention*, vol 13 (Brill | Nijhoff 2009) 420. See also JRV Prescott, *The Maritime Political Boundaries of the World* (1st edn, Methuen 1985) 163.

[276] Tsamenyi, Schofield and Milligan (n 54) 6; Nordquist and others (n 23) 401.

According to Article 47, six essential requirements provide the objective standard for drawing archipelagic baselines.[277] First, the baselines should be drawn connecting the outermost points of the outermost islands and drying reefs, and the main islands of the archipelago must be included.[278] Second, the baselines should not depart to any appreciable extent from the general configuration of the archipelago.[279] Third, the enclosed area of water within the baselines should be at least as large as the area of enclosed land, including atolls. However, the enclosed area of water should not be more than nine times larger than the enclosed land area. This means that the ratio of water to land should be between 1:1 and 9:1.[280] Fourth, only 3% of the total number of baseline segments are allowed to exceed 125 nm. The rest of the segments are to be below 100 nm in length.[281] Fifth, according to Article 47(5), the archipelagic baselines should not cut off the territorial sea of a neighbouring State from the high seas or an exclusive economic zone (hereinafter EEZ).[282] Last but not least, the baselines should not be drawn to and from low-tide elevations. The exceptions to this rule are if the low tide elevation is situated wholly or partly within the territorial sea of the nearest island or if a lighthouse or a similar installation has been built on the feature.[283] All of these requirements are to be met for the successful formation of valid archipelagic baseline systems.

The remaining provisions under Article 47 relate to protecting the traditional and treaty-based rights and interests of the immediate neighbouring States.[284] Along with the requirements concerning the publication of the relevant charts and coordinates demonstrating the archipelagic baselines.[285]

Practically speaking, the utilisation of these requirements may vary based on distinct geographical circumstances or divergent interpretations.[286] For instance, the phrase 'main islands' under Article 47(1) and the phrases: 'appreciable extent' and 'general configuration of the archipelago' under Article 47(3) may be subject to varying interpretations.[287] The main islands might include the most densely inhabited, the largest, the most historically or culturally significant, or the most economically productive islands.[288] The confusion with regard to this varying interpretation is evident from the *Mauritius v Maldives Maritime Boundary Delimitation Case*. In this case, Maldives submitted that the archipelagic baselines claimed by Mauritius depart to an appreciable extent from the general configuration of the Chagos Archipelago because Mauritius excludes the Great Chagos Bank and Nelson's Island from its archipelagic baselines. According to the Maldives, they are core features of the Chagos Archipelago. Conversely, Mauritius maintained that Nelson's Island was excluded as they did not regard it as a 'main island' by virtue of its small size and lack of recorded human habitation and hence does not result in Mauritius' archipelagic baselines departing to any appreciable extent from the general configuration of the archipelago.[289] Similarly, the requirement that only 3% of the total number of baseline segments are allowed to exceed 125 nm in length can be bypassed by altering the total number of baseline segments.[290]

Part IV also provides for the delineation of separate archipelagic baseline systems around distinct archipelagos under the sovereignty of a State. However, each of these baseline systems needs to meet the criteria specified under Article 47. They can also exclude some islands from the archipelagic baseline system to which normal and straight baselines can be applied.[291] Furthermore, a rock under Article 121(3), being a naturally formed area of land that is permanently above water at high tide, is considered to be an island for the purpose of generating baselines. Therefore,

[277] Nordquist and others (n 23) 418.

[278] LOSC, art. 47(1).

[279] LOSC, art. 47(3).

[280] LOSC, art. 47(1).

[281] LOSC, art. 47(2).

[282] LOSC, art. 47(5).

[283] LOSC, art. 47(4).

[284] LOSC, art.47(6), See Nordquist and others (n 23) 418.

[285] LOSC, art. 47(8), (9).

[286] Tsamenyi, Schofield and Milligan (n 54) 6; Kevin Baumert and Brian Melchior, 'The Practice of Archipelagic States: A Study of Studies' (2015) 46 Ocean Development and International Law 60, 75.

[287] Tsamenyi, Schofield and Milligan (n 54) 7.

[288] UNDOALOS, *The Law of the Sea. Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea.* (United Nations Publications 1989) 37; Lathrop, Roach and Rothwell (n 53) 123.

[289] *Mauritius v Maldives Maritime Boundary Delimitation Case*, para 160.

[290] Munavvar (n 12) 255; Tsamenyi, Schofield and Milligan (n 54) 421; Fedelyn A Santos, 'Beating the Deadline: Archipelagic State Compliance under UNCLOS Article 47' (Dissertation for the Degree of Master of Science in Maritime Affairs, World Maritime University 2008) 26 <https://commons.wmu.se/all_dissertations/165>; Yoshifumi Tanaka, *The International Law of the Sea* (4th edn, Cambridge University Press 2023) 142.

[291] *The Law of the Sea. Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea.* (n 67) 38.

archipelagic states can also use rocks as basepoints, provided that the other requirements under Article 47 are fulfilled.[292]

Article 48 of the LOSC stipulates how to measure the maritime zones of an archipelagic State and states that: "The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from archipelagic baselines drawn in accordance with article 47."[293] This provision upholds that archipelagic baselines have the same function as normal and straight baselines.[294] Overall, the provisions under Part IV are now viewed as part of customary international law, which makes them binding on all States,[295] including States that are not parties to LOSC.[296]

STATE PRACTICE RELATED TO ARCHIPELAGIC STATUS AND ARCHIPELAGIC BASELINES

The development of the State practice related to archipelagic States began prior to the adoption of the LOSC in 1982. The literature on the state practice of archipelagic States has been steadily developing with the growing number of States that claim archipelagic status.[297] To date, 22 States are known to have claimed archipelagic status.[298] The Limits of the Seas Series conducted by the United States also includes 22 individual studies on archipelagic States.[299] Nonetheless, the analysis of the State practice of archipelagic States remains crucial as their practice continues to evolve.[300]

The following analysis of the State practice of archipelagic States with regard to their archipelagic State proclamations and the establishment of their archipelagic baselines is demonstrated by classifying the archipelagic States into three categories. They are

States that claimed archipelagic status and enacted legislation concerning archipelagic baselines prior to the entry into force of the LOSC,

States that enacted legislation establishing archipelagic baselines without a prior proclamation of archipelagic status,

States that claimed archipelagic status but enacted legislation concerning archipelagic baselines years after the LOSC entered into force.

The distinct case concerning Palau's archipelagic status is also investigated. During the analysis, the invalidity of some of the archipelagic baselines established by the archipelagic States is discussed in detail. It is important to note that this paper is only concerned with the State practice of archipelagic States in relation to their archipelagic status and archipelagic baselines. Thus, the practice of archipelagic States in relation to archipelagic sea-lane passage and navigation will not be included in this analysis.

States that Claimed Archipelagic Status and Enacted Legislation Concerning Archipelagic Baselines Prior to the Entry into Force of the LOSC

There are twelve States that claimed archipelagic status and established their archipelagic baselines before the LOSC even came into force on 16th November 1994. These

[292] The use of rocks as basepoints can be observed from the State practice of the Bahamas, Grenada, Jamaica, Mauritius, Papua New Guinea, and Trinidad and Tobago. See Lathrop, Roach and Rothwell (n 53) 108, 109.

[293] LOSC, art. 48.

[294] Nordquist and others (n 23) 434. See also *Mauritius v Maldives Maritime Boundary Delimitation Case*, para 186.

[295] Robin R Churchill, Alan V Lowe and Amy Sander, *The Law of the Sea* (4th edn, Manchester University Press 2022) 190.

[296] Baumert and Melchior (n 65) 61.

[297] In Mohamed Munavvar's thesis, he analysed 9 Archipelagic States which had claimed archipelagic status at the time, though he predicted that 25 to 35 States could potentially meet the archipelagic definition under LOSC. The States that had claimed archipelagic Status at the time were Antigua and Barbuda, Cape Verde, Fiji, Indonesia, Papua New Guinea, Philippines, Sao Tome and Principe, Solomon Islands and Vanuatu. See Munavvar (n 12) 245; John RV Prescott, 'Straight and Archipelagic Baselines' in Gerald Henry Blake (ed), *Maritime Boundaries and Ocean Resources* (Rowman & Littlefield 1987) 46 <https://books.google.com.my/books?id=Uv8WwsnlLhsC&printsec=frontcover#v=onepage&q&f=false>. Sophia Kopela, Martin Tsamenyi, Clive Schofield, Ben Milligan and Lokita Sora's analysis of archipelagic States does not include Grenada and Mauritius. Kevin Baumert and Brian Melchior's 2015 research on the practice of archipelagic States excludes Kiribati and the Marshall Islands. See Kopela (n 25); Tsamenyi, Schofield and Milligan (n 54); Lokita (n 52); Baumert and Melchior (n 65). More recent assessments of archipelagic state practice can be found in Lathrop, Roach and Rothwell (n 53); Miron (n 49).

[298] Lathrop, Roach and Rothwell (n 53) 102; Proelss and others (n 3) 335.

[299] United States Department of State, Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs in the Department of State, 'Limits in the Seas' <https://www.state.gov/limits-in-the-seas/> accessed 13 December 2022. See No. 98 Sao Tome and Principe (1983), No. 101 Fiji (1984), No. 125 Jamaica (2004), No. 126 Maldives (2005), No. 128 The Bahamas (2014), No. 129 Cabo Verde (2014), No.130 Dominican Republic (2014), No.131 Trinidad and Tobago (2014), No. 132 Seychelles (2014), No. 133 Antigua and Barbuda (2014), No.134 Comoros (2014), No.135 Grenada (2014), No.136 Solomon Island (2014), No.137 Vanuatu (2014), No.138 Papua New Guinea (2014), No.139 Tuvalu (2014), No. 140 Mauritius (2014), No. 141 Indonesia (2014), No. 142 Philippines (2014), No. 144 Saint Vincent and the Grenadines (2019), No. 145 Marshal Islands (2020), No. 146 Kiribati (2020).

[300] Baumert and Melchior (n 65) 75.

States are Indonesia, the Philippines, Dominican Republic, Fiji, Papua New Guinea, Solomon Islands, Sao Tome and Principe, Vanuatu, Antigua and Barbuda, Trinidad and Tobago, Cape Verde and Grenada. Some of the archipelagic baselines constructed by these States were incompliant with the LOSC provisions and thus received protests from other States. Subsequently, some archipelagic States have revised their archipelagic baselines, while some archipelagic baselines of States still require further revision.

Indonesia

The archipelagic State proclamations began when Indonesia and the Philippines declared themselves as archipelagic States through domestic legislation in 1960 and 1961, respectively.[301] Afterwards, both States revised their archipelagic baselines with new legislation.[302] Indonesia's current archipelagic baselines are specified under Government Regulation No. 37 of 2008, which was a revision of Government Regulation No. 38 of 2002.[303] The revised Indonesian archipelagic baselines are consistent with Article 47 of the LOSC.[304]

The Philippines

The Philippines archipelagic baselines have gone through two legislative revisions. The current archipelagic baselines are defined under Republic Act No. 9522,[305] enacted on 10th March 2009, which was an Act to amend certain provisions of Republic Act No. 3046 of 17th June 1961,[306] as amended by Republic Act No. 5446 of 18th September 1968.[307] The Philippines archipelagic baselines are composed of 101 segments, 3 of which exceed 100 nm but do not exceed 125 nm. Likewise, the water-to-land ratio is within the LOSC criteria.[308] Therefore, the revised Philippines archipelagic baselines are in accordance with Article 47 of the LOSC.[309] Previously, the 1961 Philippines baseline system had a segment which exceeded the 125 nm limit.[310]

Apart from the baselines, the domestic law on the Philippine archipelagic regime was scrutinised due to the provision stipulated under the Constitution of the Republic[311] that referred to the waters enclosed by the Philippine baselines as internal waters instead of archipelagic waters.[312] This provision, in essence, excludes the right of innocent passage and archipelagic sea lane passage through these waters.[313] A 2011 decision of the Philippines Supreme Court also noted this inconsistency with the LOSC. It ruled that the Philippines did have sovereignty over the enclosed waters within the baselines, provided that the sovereignty is exercised subject to international rules and principles, including the rules on navigation.[314] Subsequently, a Bill named 'An Act Declaring the Maritime Zones under the Jurisdiction of the Republic of

[301] Indonesia adopted Act No. 4 concerning Indonesian Waters in 1960, and the Philippines adopted Republic Act No. 3046, 'An Act to Define the Baselines of the Territorial Sea of the Philippines' in 1961. See DOALOS, *Practice of Archipelagic States* (United Nations Publications 1992) 45–53, 75–83.

[302] Lokita (n 52) 22.

[303] The List of Geographical Coordinates of Points of the Indonesian Archipelagic Baselines based on Government Regulation of the Republic of Indonesia No. 38 of 2002, as amended by the Government Regulation of the Republic of Indonesia No. 37 of 2008, available at < http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/idn_mzn67_2009.pdf.>

[304] United States Department of State, 'Limits in the Seas No. 141 - Indonesia: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 11.

[305] Republic Act 2009 (Act 9522) available at < https://lawphil.net/statutes/repacts/ra2009/ra_9522_2009.html>

[306] Republic Act 1961 (Act 3046) available at < https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1961_Act.pdf>

[307] Republic Act 1968 (Act 5446) available at < https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1968_Act.pdf>

[308] United States Department of State, 'Limits in the Seas No. 142 - Philippines: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 3.

[309] ibid 4.

[310] Tsamenyi, Schofield and Milligan (n 54) 442.

[311] The Constitution of the Republic of the Philippines 1987, available at < https://www.officialgazette.gov.ph/constitutions/1987-constitution/>

[312] Article 1 of the Constitution of the Republic of the Philippines 1987 states: "… The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines."

[313] Tsamenyi, Schofield and Milligan (n 54) 442; 'Limits in the Seas No. 142 - Philippines: Archipelagic and Other Maritime Claims and Boundaries' (n 87) 4; Baumert and Melchior (n 65) 71.

[314] Prof. Merlin M. Magallona, et.al. v. Hon. Eduardo Ermita, in his capacity as Executive Secretary, et al. G.R. No. 187167, 16 July 2011, en banc (Carpio, J.) available at <https://lawphil.net/judjuris/juri2011/aug2011/gr_187167_2011.html>

the Philippines' was prepared by the Philippine Congress with the aim of clarifying the geographical extent of the Philippines' maritime zones.[315] Under Section 4 of this Act, the internal waters of the Philippines refer to (a) the waters on the landward side of the archipelagic baselines not forming part of archipelagic waters under Section 5 of this Act and delineated in accordance with Article 50 of the LOSC, and (b) the waters on the landward side of the baselines of the territorial sea of territories outside of the archipelagic baselines, drawn in accordance with Article 8 of the LOSC.[316] Meanwhile, the archipelagic waters of the Philippines refer to the waters on the landward side of the archipelagic baselines except as provided for under Section 4 of this Act. According to this Act, the Philippines exercises sovereignty and jurisdiction over its archipelagic waters and airspace, as well as its seabed and subsoil, in accordance with the LOSC and other existing laws and treaties. The proposed provisions under this Bill appear to be more in line with the LOSC. Both Houses of the Philippines Senate passed the bill on 19th March 2024.[317]

Dominican Republic

The archipelagic status of the Dominican Republic is uncertain. The Dominican Republic has also revised its former legislation, Act No. 186 of 13th September 1967,[318] with Act 66-07 of 22nd May 2007.[319] Nevertheless, according to the analysis of the United States in the Limits in the Seas Series, even the amended archipelagic baseline system fails to comply with the requirements mentioned under the LOSC.[320] It was previously predicted that the Dominican Republic would not be able to meet the water-to-land requirement due to the size of its main island.[321] In order to sidestep the water-to-land ratio and increase the enclosed maritime area, the Dominican Republic has now placed basepoints on three low-tide elevations which have no lighthouses or similar installations and exceed the breadth of the territorial sea from the nearest island.[322] This way of low-tide elevation use as basepoint is contrary to Article 47(4). Hence, the archipelagic status of the Dominican Republic has been protested by the United States, the United Kingdom and Japan.[323]

Some commentators hold a different opinion and consider that drying reefs under Article 47(1) are not subject to the conditions stipulated under Article 47(4). According to this theory, archipelagic States can thus draw baselines from drying reefs even though they are not situated within the 12 nm limit.[324] The Special Chamber of the ITLOS considered this issue during the *Mauritius v Maldives Maritime Boundary Delimitation Case* when Mauritius argued that Article 47(4) did not apply to the drawing of its archipelagic baselines on Bleinheim Reef, which can also be categorised as a drying reef under 47(1).[325] Conversely, Maldives maintained the opposite. The Tribunal's decision pronounced that the inclusion of the term 'drying reef', as opposed to 'low-tide-elevation' under Article 47(1), did not necessarily mean that Article 47(4) was not applicable to Article 47(1).[326] The ITLOS specified that:

"The use of the different terms in paragraphs 1 and 4 may be understood to mean that paragraph 1 permits only drying

[315] '19th Congress - House Bill No. 7819 - Senate of the Philippines' (*Senate of the Philippines*) <https://legacy.senate.gov.ph/lis/bill_res.aspx?congress=19&q=HBN-7819> accessed 27 April 2024.

[316] An Act Declaring the Maritime Zones under the Jurisdiction of the Republic of the Philippines (House Bill No. 7819), available at < https://legacy.senate.gov.ph/lisdata/4190338159!.pdf>

[317] '19th Congress - House Bill No. 7819 - Senate of the Philippines' (n 94).

[318] Act No. 186 of 13 September 1967 on the Territorial Sea, Contiguous Zone, Exclusive Economic Zone and Continental Shelf available at < https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DOM_1967_Act.pdf>

[319] Act 66-07 of 22 May 2007 (Proclaiming Archipelagic Status of the Dominican Republic and containing the lists of Geographical Coordinates of Points for Drawing the Archipelagic Baselines and the Outer Limits of the Exclusive Economic Zone) available at < https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DOM_2007_Act_frombulletin65.pdf>

[320] United States Department of State, 'Limits in the Seas No. 130 - Dominican Republic, Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 3.

[321] Tsamenyi, Schofield and Milligan (n 54) 440; Lokita (n 52) 23.

[322] 'Limits in the Seas No. 130 - Dominican Republic, Archipelagic and Other Maritime Claims and Boundaries' (n 99) 3.

[323] Roach and Smith (n 50) 24; 'Limits in the Seas No. 130 - Dominican Republic, Archipelagic and Other Maritime Claims and Boundaries' (n 99) 2; Miron (n 49) 318; Baumert and Melchior (n 65) 61; Lathrop, Roach and Rothwell (n 53) 104.

[324] See Sophia Kopela, '2007 Archipelagic Legislation of the Dominican Republic: An Assessment' (2009) 24 The International Journal of Marine and Coastal Law 501, 510–515 <https://brill.com> accessed 21 September 2023; Prescott and Schofield (n 35) 170; Ricardo Paredes, 'Analysis of the Legitimacy of the Declaration of the Dominican Republic as an Archipelagic State and Its Legality under the United Nations Convention on the Law of the Sea (UNCLOS) and the International Law' (Thesis for the Fellowship Programme 2017-2018, Nippon Foundation 2018) 45–49.

[325] *Mauritius v Maldives Maritime Boundary Delimitation Case*, para 220.

[326] ibid para 224.

reefs, not all low-tide elevations, to be eligible for drawing straight archipelagic baselines, but that such drying reefs are subject to the requirements of paragraph 4, as every drying reef is also a low-tide elevation."[327]

The Tribunal also maintained that the structure of Article 47 reinforced this view because Paragraph 1 outlines the general provision for drawing archipelagic baselines, while the subsequent paragraphs detailed the specific requirements.[328] Consequently, ITLOS found that the requirements under Article 47(4) regarding low-tide elevations should also apply in the drawing of archipelagic baselines in accordance with Article 47(1).[329] Therefore, this new jurisprudence also reveals the inaccuracy of the archipelagic baselines drawn by the Dominican Republic and adds to the doubts regarding the entitlement of the Dominican Republic to its archipelagic status.

Papua New Guinea

Papua New Guinea claimed archipelagic status through The National Seas Act of 7th February 1977.[330] Later on, the official archipelagic baselines were established under 'The Declaration of the Baselines by Method of Coordinates of Base Points for Purposes of the Location of Archipelagic Baselines', which was issued on 25th July 2002.[331] The archipelagic baselines of Papua New Guinea under that Declaration were not consistent with LOSC.[332] The starting and ending points of its archipelagic baseline system did not connect with the island of New Guinea, making the baseline system contrary to Article 47(1), which requires that 'the outermost points of the outermost islands and drying reefs of the archipelago' are joined. Besides this error, one baseline segment was 174.78 nm. This length was longer than the maximum allowable limit of 125 nm specified under Article 47(2).[333] These basepoints have since been reviewed,[334] and the updated archipelagic baselines of Papua New Guinea are now defined under The Maritime Zones Act of 2015.[335] The revised archipelagic baselines are now in accordance with the LOSC.[336]

Solomon Islands

The Solomon Islands proclaimed archipelagic status on 21st December 1978 via The Delimitation of Maritime Waters Act No. 32.[337] The coordinates of the Solomon Islands archipelagic baselines were publicised under The Legal Notice No. 41 of 1979: Declaration of Archipelagic Baselines.[338] According to the Limits in the Seas study, one of the five archipelagic baseline systems of the Solomon Islands did not conform to the water-to-land ratio under Article 47(1).[339] The rest of the baseline systems of the Solomon Islands are consistent with Article 47.[340]

The remaining archipelagic States that had claimed archipelagic status and designated archipelagic baselines before the LOSC entered into force are Cape Verde, SaoTome and Principe, Fiji, Vanuatu, Antigua and Barbuda, Trinidad and Tobago and Grenada. The archipelagic baselines of Cape

[327] *Mauritius v Maldives Maritime Boundary Delimitation Case*, para 224.

[328] ibid para 223.

[329] ibid para 229.

[330] National Seas Act 1977 (Act 7) available at < https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PNG_1977_Act7.pdf> An interim delimitation of archipelagic waters was conducted under Schedule 2 of this Act in 1977.

[331] Declaration of the Baselines by Method of Coordinates of Base Points for Purposes of the Location of Archipelagic Baselines 2002 available at < https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PNG_2002_Declaration.pdf>

[332] United States Department of State, 'Limits in the Seas No. 138 - Papua New Guinea: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 3; Baumert and Melchior (n 65) 63, 65.

[333] 'Limits in the Seas No. 138 - Papua New Guinea: Archipelagic and Other Maritime Claims and Boundaries' (n 111) 3.

[334] 'Papua New Guinea-Pacific Maritime Boundaries Dashboard' (*Pacific Data Hub*) <https://pacificdata.org/dashboard/maritime-boundaries/papua-new-guinea> accessed 27 September 2023.

[335] Maritime Zones Act 2015 (Act 47) available at <http://www.paclii.org/pg/legis/num_act/mza2015175.pdf >

[336] Malakai Vakautawale (Maritime Boundaries Advisor for the Geoscience, Energy and Maritime Division of Pacific Community, personal communication during the CIL-ANCORS Workshop on Maritime Boundary Delimitation held from 27th to 28th February 2024.

[337] Delimitation of Marine Waters Act, 1978 (Act 32) available at < http://www.paclii.org/sb/legis/consol_act/domwa293/>

[338] Legal Notice No. 41 of 1979: Declaration of Archipelagic Baselines available at < https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/SLB_1979_Notice.pdf>

[339] United States Department of State, 'Limits in the Seas No. 136 - Solomon Islands: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 3.

[340] ibid 4.

Verde,[341] Sao Tome and Principe,[342] Fiji,[343] Vanuatu,[344] Antigua and Barbuda,[345] Trinidad and Tobago[346] and Grenada[347] are all reported to be valid under Article 47.

States that Enacted Legislation Establishing Archipelagic Baselines without a prior Proclamation of Archipelagic Status

Unlike the other States, some of the current archipelagic states established their archipelagic baselines

[341] In 1977, Cape Verde proclaimed archipelagic baselines with the Decree-Law No. 126/77, available at <https://faolex.fao.org/docs/pdf/cvi8269E.pdf>. However, this Law was deemed inconsistent with Article 47 and, therefore, was revised by Law No. 60/IV/92 of December 21, 1992, available at < https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CPV_1992_Law.pdf> The Limits in the Seas analysis of Cape Verde is based on the later Law and claims that apart from failing to specify the geodetic datum for the coordinates as required in Article 47(8), the Cape Verde archipelagic baselines are now consistent with LOSC. See United States Department of State, 'Limits in the Seas No. 129 - Cabo Verde - Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 3.

[342] Sao Tome and Principe established straight baselines and claimed sovereignty over the enclosed archipelagic waters within the straight baselines through Decree-Law No. 14/78 (Repealed by Decree-Law No. 148/82), available at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC004349/>. Limits in the Seas analysis on Sao Tome and Principe conducted in 1982 was based on Decree-Law No. 14/78, see United States Department of State, 'Limits in the Seas No. 98 - Archipelagic Straight Baselines: Sao Tome and Principe' (Office of the Geographer Bureau of Intelligence and Research 1982) 2. This Law was repealed by Law No. 1/98 on the Delimitation of the Territorial Sea and the Exclusive Economic Zone of 1998, available at < https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/STP_1998_Law.pdf>. It appears that the geographical coordinates have not been changed. See Baumert and Melchior (n 65) 76.

[343] Fiji established itself as an archipelagic state by the Marine Spaces Act 1977 (Act 18) as amended by the Marine Spaces (Amendment) Act 1978 (Act 15) available at <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/FJI_1978_Act.pdf> Subsequently Fiji published the geographical coordinates of its archipelagic baselines via the Legal Notice No. 117 of 1981 titled the Marine Spaces (Archipelagic Baseline and Exclusive Economic Zone) Order, see DOALOS, 'Law of the Sea Bulletin - No. 66' (United Nations 2008) 67 <https://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin66e.pdf> accessed 17 October 2023. For the validity of Fiji's archipelagic baselines, see United States Department of State, 'Limits in the Seas No. 101 - Fiji's Maritime Claims' (Office of the Geographer Bureau of Intelligence and Research 1984) 3.

[344] Vanuatu first established its archipelagic baselines via The Maritime Zones Act 1981 (Act 23), available at: <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/VUT_1981_Act.pdf> The Limits in the Seas analysis of Vanuatu was based on Vanuatu's Maritime Zones Act [CAP 138], Amendments of the Schedule, Order No. 81 of 2009, available at < https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/vut_mzn78_2010.pdf> Mathew Island and Hunter Island's sovereignty is disputed between France and Vanuatu; however, as Vanuatu draws normal baselines around them, the archipelagic baselines are not affected by this dispute. United States Department of State, 'Limits in the Seas No. 137 - Vanuatu: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 2.

[345] Antigua and Barbuda established archipelagic baselines via Maritime Areas Act 1982 (Act 18), available at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ATG_1982_18.pdf> also at DOALOS (n 80) 1. For the validity of its archipelagic baselines, see United States Department of State, 'Limits in the Seas No. 133 - Antigua and Barbuda: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 2.

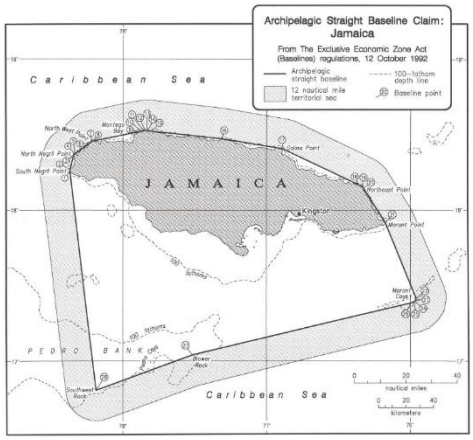
[346] Trinidad and Tobago declared archipelagic status through Archipelagic Waters and Exclusive Economic Zone Act 1986 (No. 24) available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TTO_1986_Act.pdf> and established its archipelagic baselines via Archipelagic Baseline of Trinidad and Tobago Order, 1988 (Notice No. 206) available at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TTO_1988_Order.pdf> For the validity of its archipelagic baselines, see United States Department of State, 'Limits in the Seas No. 131 - Trinidad and Tobago: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 3.

[347] Grenada claimed archipelagic status via The Grenada Territorial Seas and Maritime Boundaries Act 1989 (Act 25) available at <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/grd_act_25_1989.pdf> Subsequently, the Grenada Territorial Sea and Maritime Boundaries (Archipelagic Baselines) Order of 1992 set forth coordinates for Grenada's archipelagic baselines and bay closing lines. See DOALOS, 'Law of the Sea Bulletin - No. 71' (United Nations 2010) 36 <https://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin71e.pdf> accessed 17 October 2023. For the validity of Grenada's archipelagic baselines, see United States Department of State, 'Limits in the Seas No. 135 - Grenada: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 2.

without a prior proclamation or declaration of archipelagic status via national legislation. They are Jamaica, the Maldives and Mauritius.

Jamaica

Jamaica appears to have first established its archipelagic baselines, followed by an official proclamation four years later. In 1992, Jamaica enacted the Exclusive Economic Zone Act (Baselines) Regulations,[348] which specified the geographical coordinates of the basepoints to be joined by archipelagic baselines. In 1996, Jamaica officially declared its archipelagic status through the Maritime Areas Act of 28th November 1996.[349] At first glance, Jamaica does not resemble an archipelagic State. However, while drawing its archipelagic baselines, Jamaica connected its rocks and cays located to its south, successfully establishing a valid archipelagic baseline system. This baseline system is also within the permissible range of water-to-land ratio under the LOSC.[350]



("Limits in the Seas No. 125 - Jamaica's Maritime Claims and Boundaries", p 7)

Maldives

The initial attempt to clarify the geographical extent of the Maldivian maritime zones was considered quite unusual and deviated from the evolving straight baseline principles of the time.[351] The 1964 Constitution of the Maldives defined the territory of the Maldivian Monarchy as archipelagos, including the seas and airspace connected to these archipelagos, which were situated within a rectangle created using meridians and parallels.[352] Subsequently, the Maldives enacted the Maldivian Exclusive Economic Zone Law 1976 (Law 30/76)[353] on 27th November 1976. The coordinates defined in this Act appeared to surround the Maldivian archipelago in the shape of a rectangle. They claimed the enclosed waters within the coordinates as waters exclusive for the Maldivian economic use.

The Maldivian Exclusive Economic Zone Law of 1976 was repealed and replaced by the Maritime Zones of Maldives Act 1996 (Act 6/96).[354] This Act finally established the archipelagic baselines of the Maldives using appropriate basepoints as required for an archipelagic State under Article 47 of the LOSC. However, the Maldivian archipelagic baselines are reported to be inconsistent with Article 47(2) because three baseline segments exceed the 100 nm limit. The Maldivian archipelagic baseline system is composed of 37 segments. Thus, as per Article 47(2), only one segment of the Maldivian baseline segments would be allowed to exceed the limit.[355] According to the 'Counter-Memorial of the Republic of Maldives' submitted to the Tribunal, the Maldivian

[348] The Exclusive Economic Zone Act (Baselines) Regulations 1992, available at <https://faolex.fao.org/docs/pdf/jam22356.pdf>

[349] The Maritime Areas Act 1996 (Act 25) available at <https://faolex.fao.org/docs/pdf/jam7862.pdf>

[350] United States Department of State, 'Limits in the Seas No. 125 - Jamaica's Maritime Claims and Boundaries' (Office of Oceans Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2004) 4.

[351] Munavvar (n 12) 256; Lokita (n 52) 24; Prescott (n 54) 161; Roach and Smith (n 50) 123.

[352] The 1964 Constitution of the Maldives, available at < https://mvlaw.gov.mv/dv/legislations/231/consolidations/728>

[353] The Maldivian Exclusive Economic Zone Law 1976 (Law 30/76) available at <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/MDV_1976_Law30.pdf>

[354] The Maritime Zones of Maldives Act 1996 (Act 6/96) available at <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/MDV_1996_Act.pdf> Even prior to 1996, Maldives viewed itself as an archipelago; see Article 1 of the 1964 Constitution of the Maldives, available at <https://mvlaw.gov.mv/dv/legislations/231/consolidations/728> and Article 1 of the 1968 Constitution of the Republic of Maldives, available at <https://mvlaw.gov.mv/dv/legislations/232/consolidations/729>. However, no specific declaration of archipelagic status was announced before the enactment of the official archipelagic baselines in 1996 under the Maritime Zones of Maldives Act 1996 (Act No. 6/96). Afterwards, Article 2 of the 1998 Constitution of the Republic of Maldives, available at <https://www.refworld.org/docid/3ae6b59618.html> and Article 3 of the 2008 Constitution of the Republic of Maldives, available at <https://faolex.fao.org/docs/pdf/mdv136135.pdf > explicitly referred to the archipelagic baselines of Maldives in defining the Maldivian territory.

[355] United States Department of State, 'Limits in the Seas No. 126 - Maldives Maritime Claims and Boundaries' (Office of Oceans Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2005) 3; Baumert and Melchior (n 65) 65; Lathrop, Roach and Rothwell (n 53) 104.

government is considering the revision of the Maldivian archipelagic baselines by 'inserting two new base points to the north-west and east of the Maldives'. [356]

Mauritius

Throughout UNCLOS III, Mauritius was one of the leading advocates for the archipelagic concept and submitted proposals together with Indonesia, the Philippines and Fiji.[357] Yet, Mauritius claimed archipelagic status only on 28th February 2005 under the Maritime Zones Act 2005.[358] Mauritius enacted its archipelagic baselines in August of the same year under its Maritime Zones (Baselines and Delineating Lines) Regulations 2005.[359] Mauritius archipelagic baselines include two systems: one around Saint Brandon and the second around Chagos Archipelago.[360] Both of these archipelagic baseline systems were considered consistent with Article 47 according to the US Limits of the Seas analysis.[361]

Nevertheless, in light of the recent judgment of the *Mauritius v Maldives Maritime Boundary Delimitation Case,* the published archipelagic baselines of Mauritius surrounding the Chagos archipelago seem to be in need of a review. In the proceedings before the Tribunal, Mauritius asserted that the Blenheim Reef encompassed multiple parts or patches that were connected through an underwater structure and, thus, should be considered as a single low-tide elevation.[362] However, the Tribunal declared that:

"Article 13, paragraph 1, of the Convention, defines a low-tide elevation as "a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide." The Special Chamber considers that Mauritius' argument relating to "underwater structure" is not in conformity with the definition of a low-tide elevation. There is nothing in this definition that indicates that separate "parts" or "patches" exposed at low tide, connected through an "underwater structure", constitute a single low-tide elevation."[363]

The Tribunal held that Blenheim Reef did consist of a number of low-tide elevations, many of which were situated beyond 12 nm of the nearest island, Île Takamaka.[364] Therefore, the Tribunal established that 'the 200 nm limit of Mauritius must be measured from a low-tide elevation of Blenheim Reef that is situated wholly or partly within 12 nm of Île Takamaka'.[365] Consequently, it is safe to conclude that the archipelagic baseline system established around the Chagos Archipelago needs to be revised in compliance with Article 47(7).

States that Claimed Archipelagic Status but Enacted Legislation Concerning Archipelagic Baselines Years After the Entry into Force of the LOSC

Some States opted to claim archipelagic status via national legislation in advance and enacted the legislation establishing official archipelagic baselines years later.[366] They are the

[356] Republic of the Maldives, 'Counter-Memorial of the Republic of Maldives - Volume 1 - Dispute Concerning the Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean' (Republic of the Maldives 2021) 17 <https://www.itlos.org/fileadmin/itlos/documents/cases/28/Merits_Pleadings/C28_Counter_memorial_of_Maldives.pdf>.

[357] See, for instance, *Archipelagic States - Legislative History of Part IV of the United Nations Convention on the Law of the Sea* (n 18) 11–13.

[358] The Maritime Zones Act 2005 (Act 2) available at < https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/82676/90732/F101858%202086/MUS82676>

[359] Maritime Zones (Baselines and Delineating Lines) Regulations 2005, available at < https://faolex.fao.org/docs/pdf/mat62133.pdf>

[360] United States Department of State, 'Limits in the Seas No. 140 - Mauritius: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 4.

[361] United States, in its Limits in the Seas Series, did protest the archipelagic baseline around the Chagos archipelagos by virtue of the sovereignty dispute between Mauritius and the United Kingdom over the archipelagos. See ibid 5. Negotiations over the handover of Chagos to Mauritius is ongoing, however the practical resolution of this dispute still remains uncertain. See 'Human Rights Watch Letter to Lord David Cameron' (*Human Rights Watch*, 25 January 2024) <https://www.hrw.org/news/2024/01/25/human-rights-watch-letter-lord-david-cameron> accessed 22 May 2024.

[362] *Mauritius v Maldives Maritime Boundary Delimitation Case*, para 215.

[363] ibid para 216.

[364] ibid para 219.

[365] ibid para 229.

[366] Miron (n 49) 313.

Bahamas,[367] Seychelles,[368] Comoros,[369] Tuvalu,[370] Kiribati,[371] Saint Vincent and the Grenadines[372] and the Marshal Islands.[373] These States were only symbolically regarded as archipelagic States before they established their archipelagic baselines via legislation. Similarly, they could only utilise the baseline methods stipulated under Articles 4 and 7 of the LOSC until proper archipelagic baselines were established and published by these States.[374] This meant that they only had territorial waters and EEZs around each island and lacked the advantages of archipelagic waters.

Four of these State's archipelagic baselines are in accordance with the provisions under Article 47. They are the

[367] Bahamas declared archipelagic status in 1993 via Archipelagic Waters and Maritime Jurisdiction Act 1993 (Act 37), available at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/BHS_1993_37.pdf> and established archipelagic baselines in 2008 under The Archipelagic Waters and Maritime Jurisdiction (Archipelagic Baselines) Order, 2008, available at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/bhs_mzn65_2008.pdf>

[368] Seychelles declared archipelagic status in 1999 under the Maritime Zones Act, 1999 (Act 2), available at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/SYC_1999_Act2.pdf> This Act was amended by the Maritime Zones Act 2009 (Act 5), available at <https://faolex.fao.org/docs/pdf/sey158827.pdf> Seychelles established the coordinates of its normal and archipelagic baselines in 2008 set forth under Seychelles' Maritime Zones (Baselines) Order, 2008 available at <https://faolex.fao.org/docs/pdf/sey139170.pdf >

[369] Comoros declared archipelagic status in 1982 under Law No. 82-005 Relating to the Delimitation of the Maritime Zones of the Islamic Federal Republic of the Comoros of 6 May 1982, available at <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/COM_1982_Law.pdf> Comoros established its archipelagic baselines in 2010 under Comoros Presidential Decree Establishing the limits of the Territorial Sea of the Union of The Comoros, Decree No. 10-092/PR of August 13, 2010, available at <https://faolex.fao.org/docs/pdf/com158709.pdf>

[370] Tuvalu declared archipelagic status in 1983 under Marine Zones (Declaration) Act 1983, available at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TUV_1983_Act.pdf > This Act was repealed in 2012 by the Maritime Zones Act 2012, available at <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/tuv_maritime_zones_act_2012_1.pdf> Pursuant to this Act, Tuvalu designated the coordinates of its archipelagic baselines in 2012 under Declaration of Archipelagic Baselines 2012 (LN No. 7), available at <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/tuv_declaration_archipelagic_baselines2012_1.pdf >

[371] Kiribati claimed the archipelagic status via Marine Zones (Declaration) Act, 1983 (Act 7), available at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/KIR_1983_Act.pdf> This Act was repealed by the Maritime Zones (Declaration) Act, 2011, available at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/KIR_2011_Act.pdf> The archipelagic baselines of Kiribati were established in 2014 under The Baselines around the Archipelagos of Kiribati Regulations 2014, available at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/KIR_2014_archipel_baselines_regulations.pdf>

[372] Saint Vincent and the Grenadines declared archipelagic status in 1983 under Maritime Areas Act 1983 (Act 15), available at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/VCT_1983_Act.pdf> Pursuant to this Act, the coordinates for its archipelagic baselines and bay closing lines were established in 2014 under Government Notice No. 60 of 2014, entitled Archipelagic Closing Lines and Baselines of Saint Vincent and the Grenadines, available at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/VCT_2014_147_Gazette.pdf>

[373] Marshall Islands claimed archipelagic status under Marine Zones (Declaration) Act 1984, available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MHL_1984_Act.pdf> This Act was revoked by The Republic of the Marshall Islands Maritime Zones Declaration Act 2016, available at <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/mhl_mzn120_2016_1.pdf> The coordinates for the archipelagic baselines of the Marshall Islands were established in 2016 under the Baselines and Maritime Zones Outer Limits Declaration 2016, available at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/mhl_mzn120_2016_2.pdf>

[374] Tsamenyi, Schofield and Milligan (n 54) 452; Lokita (n 52) 26.

Bahamas,[375] Tuvalu,[376] Kiribati,[377] Saint Vincent and the Grenadines.[378] Meanwhile, as described below, the rest of the three States are reported to have some deficiencies in their archipelagic baselines.

Seychelles

Seychelles has established four archipelagic baseline systems. Overall, there are two issues with the archipelagic baselines designated by Seychelles. Firstly, according to the US Limits of the Seas study, only one group (Group 4) fits the water-to-land ratio required under Article 47(1). Groups 2 and 3 can qualify if the underwater banks they are located on are viewed as "part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau", as stated under Article 47(7). However, Group 1 does not appear to fit this criterion and consequently cannot benefit from this Article when calculating the water-to-land ratio.[379] The second issue is that in all four baseline systems, Seychelles has positioned basepoints on open waters where there are neither islands, drying reefs or low-tide elevations.[380] Such basepoint placements clearly deviate from the Article 47 requirements.

Comoros

Comoros used a submerged feature called the Banc Vailheu as part of its archipelagic baselines. The US, in their Limits in the Seas Series, emphasises that it is neither an island nor a drying reef or low-tide elevation, as there are no land or drying reefs near this completely submerged feature.[381] This placement of basepoints for archipelagic baselines is inconsistent with Article 47(1). Additionally, the location of this basepoint, more than 10 nm from the closest point on the island of Grand Comore, results in the departure of the baseline from the general configuration of the archipelago to an appreciable extent, which is in violation of Article 47(3).[382] Apart from the use of this submerged feature as a base point, Comoros also enclosed the island of Mayotte into its archipelago while drawing its archipelagic baselines. Mayotte is administered as an overseas department and region of France, but the sovereignty of Mayotte is contested between Comoros and France. France has protested the 13 base points used to enclose Mayotte, maintaining that these archipelagic baselines would imply that Mayotte is under the sovereignty of Comoros, which is 'not compatible with the status of Mayotte and is without legal effect'.[383] Afterwards, France

[375] United States Department of State, 'Limits in the Seas No. 128 - The Bahamas: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 3.

[376] United States Department of State, 'Limits in the Seas No. 139 - Tuvalu: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 3. A noteworthy and inspiring inclusion in the recent Constitution of Tuvalu 2023 is the provision addressing the geographical impacts of climate change on the statehood and territory of Tuvalu. Article 2(1) of the 2023 Constitution of Tuvalu declares that: "The State of Tuvalu within its historical, cultural, and legal framework shall remain in perpetuity in the future, notwithstanding the impacts of climate change or other causes resulting in loss to the physical territory of Tuvalu." Whereas Article 2(3) states that: "The baseline coordinates declared by Schedule 6 shall remain unchanged, notwithstanding any regression of the low water mark or changes in geographical features of coasts or islands, due to sea-level rise or other causes, until and unless otherwise prescribed by an Act of Parliament." See Constitution of Tuvalu 2023, available at <https://www.tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0001/ConstitutionofTuvalu_2.pdf>

[377] United States Department of State, 'Limits in the Seas No. 146 - Republic of Kiribati: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2020) 4.

[378] United States Department of State, 'Limits in the Seas No. 144 - Saint Vincent and the Grenadines: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2019) 3.

[379] United States Department of State, 'Limits in the Seas No. 132 - Seychelles: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 3; Lathrop, Roach and Rothwell (n 53) 103.

[380] 'Limits in the Seas No. 132 - Seychelles: Archipelagic and Other Maritime Claims and Boundaries' (n 160) 4; Lathrop, Roach and Rothwell (n 53) 103.

[381] United States Department of State, 'Limits in the Seas No. 134 - Comoros: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2014) 2 <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn82_2011_fra_re_com_e.pdf>; Lathrop, Roach and Rothwell (n 53) 104.

[382] Baumert and Melchior (n 65) 77.

[383] Permanent Mission of France to the United Nations, 'Note Verbale No. 961 to the United Nations' (*Division for Ocean Affairs and the Law of the Sea*, 4 February 2012) <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn82_2011_fra_re_com_e.pdf> accessed 10 October 2023.

published their own straight baselines around Mayotte in 2013.[384]

Marshall Islands

The Marshall Islands claimed archipelagic status in 1984, but the coordinates for their archipelagic baselines were established in 2016.[385] The archipelagic baselines established by the Marshall Islands comprise two archipelagic baseline systems, one of which exceeds the water-to-land ratio set forth in Article 47(1). Therefore, this baseline system is inconsistent with the LOSC.[386]

Special Case of Palau

Palau claimed archipelagic status in 1981 via Palau's Constitution of 1981 and also demarcated its straight archipelagic baselines under Article 1 (Section 1) of the Constitution. [387] However, the literature review on the practice of archipelagic States reveals that previous studies have not included Palau in the lists of archipelagic States. The United Nations Division of Ocean Affairs and Law of the Sea (UNDOLAS) list of archipelagic States had not included Palau as having claimed archipelagic status as well.[388]

Palau's 1981 Constitution was written during the same time the LOSC and the related archipelagic baseline regulations were developing. Regrettably, the baselines finalised under the Palau Constitution were not consistent with the final archipelagic state regime established under Part IV of the LOSC.[389] On May 1, 2020, Palau held a referendum in which voters chose to remove the section in the Constitution relating to straight archipelagic baselines.[390] This amendment aimed to create a separate legislation concerning the archipelagic baselines rather than strictly fixing them in their Constitutional document, which makes it harder to revise the baselines if required.[391]

Currently, Palau is in the process of updating its archipelagic baselines via domestic legislation in accordance with the LOSC.[392] Therefore, Palau's archipelagic baselines are under development. Nonetheless, Palau can be classified as a symbolic archipelagic State depending on its proclamation of 1981, making the total number of archipelagic states 23.

LEGAL EFFECT OF INVALID ARCHIPELAGIC BASELINES

According to the LOSC, it is essential for a State to establish its archipelagic baselines in compliance with Article 47 in order to be recognised as an archipelagic State. If the archipelagic baselines are not valid, the State may not be able to benefit from its archipelagic status and enjoy the rights and advantages associated with it. Hence, States that protest against invalid archipelagic baselines have the option of refusing to recognise the rights and entitlements derived from Part IV of the LOSC for that particular archipelagic State.[393] For instance, sovereignty over their claimed archipelagic waters.

Additionally, the LOSC enable States to utilise the dispute settlement mechanisms outlined under Part XV of the LOSC in cases of conflict vis-à-vis a provision of the Convention. This would include the archipelagic baseline requirements stipulated under Part IV of the LOSC.[394] However, to date, no State has filed a case against an archipelagic State purely on the grounds of the invalidity of its archipelagic baselines.

Up until now, the analysis of the archipelagic baselines made by international courts and tribunals has only been conducted within the context of other significant disputes between the parties involved.[395] For instance, the *Qatar v.*

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[384] Decree No. 2013-1177, of Dec. 17, 2013, Concerning the Baselines for Measuring the Breadth of the Territorial Sea of the Department of Mayotte, available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/fra_mzn101_2014.pdf.

[385] See (n 152)

[386] United Nations, 'Limits in the Seas No. 145 - Republic of the Marshall Islands: Archipelagic and Other Maritime Claims and Boundaries' (Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State 2020) 4.

[387] Palau's Constitution of 1981 with Amendments through 1992, available at < https://faolex.fao.org/docs/pdf/pau132833.pdf>

[388] Ted L McDorman and Clive Schofield, 'Federated States of Micronesia - Palau (Report Number 5-31)' in DA Colson and R.W. Smith (eds), *International Maritime Boundaries*, vol VI (Brill, Nijhoff 2011) 4353 <https://referenceworks.brill.com/display/entries/MBOO/IMBO-Book-5_45.xml?rskey=sm9wkH&result=1>.

[389] Island Times Staff, 'Evolving Law of the Sea Mandates Flexibility; Reasoning for the Change' (*Island Times*, 14 April 2020) <https://islandtimes.org/evolving-law-of-the-sea-mandates-flexibilityreasoning-for-the-change/> accessed 20 November 2023.

[390] Leilani Reklai, 'National Referendum on Nat'l Boundary Passed by All States' (*Island Times*, 5 May 2020) <https://islandtimes.org/national-referendum-on-natl-boundary-passed-by-all-states/> accessed 20 November 2023.

[391] 'Evolving Law of the Sea Mandates Flexibility; Reasoning for the Change' (n 173).

[392] Powers and Vakautawale (n 2) 4.

[393] Lathrop, Roach and Rothwell (n 53) 104.

[394] ibid.

[395] ibid 113.

Bahrain Case, *the South China Sea Arbitration*,[396] the *Barbados v. Trinidad and Tobago Delimitation Case*,[397] and the *Mauritius v Maldives Maritime Boundary Delimitation Case*.

In the *Mauritius v Maldives Maritime Boundary Delimitation Case*, the Tribunal did not analyse the legality of Mauritius's and Maldives' archipelagic baselines, even though both States submitted objections in their written submissions to the Tribunal regarding the validity of the other State's archipelagic baselines.[398] The Tribunal did not find the need to determine whether these States were legally entitled to utilise archipelagic baselines or not. Thus, the Tribunal did not address the legality of their respective archipelagic baselines. The Tribunal merely relied upon their respective archipelagic claims and proceeded with the maritime delimitation, treating them as archipelagic States under the LOSC.

The only instance where the Tribunal assessed the validity of an archipelagic basepoint was when the Tribunal examined the basepoint placed by Mauritius on Blenheim Reef. This assessment was necessary in order to determine the 200 nm limit of Mauritius and the overlap between the Mauritius EEZ and the outer continental shelf (hereinafter OCS) claimed by Maldives. The Tribunal explained that:

"The Special Chamber observes at the outset that, since it decides not to place any base points on Blenheim Reef, the question of how to draw Mauritius' straight archipelagic baselines is not directly relevant to the construction of the provisional equidistance line. However, this question still matters in two respects. First, it is relevant for drawing the 200 nm limit of Mauritius, as such limit is to be measured from archipelagic baselines in accordance with article 48 of the Convention. Second, it is also relevant for the purpose of identifying the precise area of overlap between Mauritius' claim to the exclusive economic zone and the Maldives' claim to the continental shelf beyond 200 nm."[399]

On the other hand, in *the Qatar v Bahrain* Case, the ICJ ruled against Bahrain vis-à-vis its claimed '*de facto* archipelagic status'.[400] The final maritime delimitation, in this case, was concluded without reference to the effects of archipelagic status on the maritime delimitation at all. In fact, the Court affirmed that:

"The fact that a State considers itself a multiple-island State or a *de facto* archipelagic State does not allow it to deviate from the normal rules for the determination of baselines unless the relevant conditions are met."[401]

Therefore, it seems to indicate that, as long as a State has officially declared itself an archipelagic State, its archipelagic status will not come into question unless it directly impacts the case being decided. Courts or Tribunals only analyse the entitlement of a State to the archipelagic status and the validity of its archipelagic baselines if it is directly relevant to the issue which the Court or Tribunal is dealing with.

In practice, States tend to prefer diplomatic dispute resolution rather than resorting to judicial means, as stipulated under Part XV of the LOSC. This tendency can also be observed regarding baseline disagreements.[402] It is important to highlight that some diplomatic protests may not be publicly accessible and might be resolved using 'bilateral exchanges at a diplomatic or Ministerial level'.[403]

FINDINGS FROM THE ANALYSIS OF STATE PRACTICE

[396] *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, PCA Case No. 2013-19, Award (UNCLOS Annex VII Arb. Trib. July 12, 2016).

[397] *Delimitation of the Exclusive Economic Zone and the Continental Shelf between Barbados and the Republic of Trinidad and Tobago* (2006). 45 ILM 800.

[398] Republic of Mauritius, 'Memorial of Mauritius - Volume 1 - Dispute Concerning the Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean' (Republic of Mauritius 2021) 19 <https://www.itlos.org/fileadmin/itlos/documents/cases/28/Merits_Pleadings/C28_Memorial_of_Mauritius.pdf>; 'Counter-Memorial of the Republic of Maldives - Volume 1 - Dispute Concerning the Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean' (n 135) 19.

[399] *Mauritius v Maldives Maritime Boundary Delimitation Case*, para 213.

[400] *Qatar v. Bahrain*, para. 183 and 214.

[401] ibid para. 183 and 213.

[402] See, for instance, France's protest of the archipelagic baselines drawn by Comoros around Mayotte. See 'Note Verbale No. 961 to the United Nations' (n 166). Timor Leste protested two segments of the Indonesian Archipelagic Baselines. See Permanent Mission of the Democratic Republic of Timor-Lester to the United Nations, 'Note No. NV/MIS/85/2012 to the United Nations' (6 February 2012) <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn67_2009_tls.pdf> accessed 20 November 2023. The UK in 2009 protested the inclusion of the Chagos Archipelago within the archipelagic baselines of Mauritius. See United Kingdom Mission, 'Note No: 26/09' (19 March 2009) <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn63_2008_gbr.pdf> accessed 20 November 2023. The US, even though it is not a party to LOSC, is very proactive in submitting diplomatic protests to invalid baselines. The US also routinely undertakes operational assertions using government vessels to claim freedom of navigation in disputed seas. See Lathrop, Roach and Rothwell (n 53) 113.

[403] Lathrop, Roach and Rothwell (n 53) 113.

The following findings can be derived from this review of the practice of archipelagic States with regard to their claims of archipelagic status and the drawing of their archipelagic baselines.

As of date, 23 States (including Palau) have claimed archipelagic status. This number may continue to increase as other States, such as Bahrain[404] or Tonga,[405] decide to claim archipelagic status officially in the future.[406] Some States claimed archipelagic status and established their archipelagic baselines within a few years; meanwhile, some States took longer to establish their archipelagic baselines even though they had claimed archipelagic status years prior. Nevertheless, within the last two decades, all the States that have claimed archipelagic status so far (with the exception of Palau) have managed to legislate their archipelagic baselines. 13 States[407] established their archipelagic baselines before the LOSC entered into force. This fact adds to the notion that the archipelagic regime had gained recognition as an international custom.

Five States[408] have created more than one archipelagic baseline system within their archipelago. This practice is not contrary to the provision under Part IV.[409] Some archipelagic States, namely: Fiji,[410] Vanuatu,[411] the Marshall Islands,[412] the Philippines,[413] Mauritius,[414] and Comoros,[415] have unresolved sovereignty disputes over territories with their neighbours.

As demonstrated above, 15 archipelagic baselines formed by the archipelagic States conform to the provisions under Article 47. As per this analysis, the archipelagic baselines that still require some revisions belong to the Dominican Republic, the Solomon Islands, Mauritius, the Maldives, Comoros, the Marshall Islands and Seychelles. The *Mauritius v Maldives Maritime Boundary Delimitation Case* has also facilitated the analysis of the validity of archipelagic baselines, particularly in relation to the Dominican Republic and Mauritius archipelagic baselines.

Some of the archipelagic States that had established archipelagic baselines in variation with the LOSC provisions have revised their archipelagic baselines to conform to the LOSC. They are Cape Verde, Indonesia, the Philippines, Papua New Guinea and the Dominican Republic (although the Dominican Republic's baselines are still invalid by virtue of Article 47). Likewise, it has been reported that Maldives is also attempting to make some revisions.

Meanwhile, States that do not recognise an archipelagic state's archipelagic Status have the option to utilise diplomatic or adjudicative dispute settlement methods described in the LOSC. Nevertheless, it should be noted that, apart from a few

[404] Bahrain had argued that it had *de facto* archipelagic status during the *Qatar v Bahrain Case*. See *Qatar v. Bahrain*, para. 183 and 214. However, Qatar has not officially claimed archipelagic status to date (as of May 2024).

[405] Tonga is reported to have aspired to become an archipelagic State during UNCLOS III, see Munavvar (n 12) 179. Tonga could be able to draw legitimate archipelagic baselines and claim archipelagic waters. See Roach and Smith (n 50) 208.

[406] Lokita (n 52) 71; Proelss and others (n 3) 338.

[407] They are: Indonesia, the Philippines, Dominican Republic, Fiji, Papua New Guinea, Solomon Islands, Sao Tome and Principe, Vanuatu, Antigua & Barbuda, Trinidad and Tobago, Cape Verde, Grenada and Jamaica.

[408] They are: the Solomon Islands, Mauritius, Seychelles, Kiribati and the Marshall Islands.

[409] Lathrop, Roach and Rothwell (n 53) 123.

[410] Tonga claims sovereignty over two submerged atoll reefs situated inside Fiji's EEZ called Minerva Reefs. See Michael Field, 'Fiji, Tonga War over Minerva Reef' (*Stuff*, 15 May 2011) <https://www.stuff.co.nz/world/south-pacific/5008060/Fiji-Tonga-war-over-Minerva-Reef> accessed 3 November 2023.

[411] Vanuatu and France contest the sovereignty of Matthew and Hunter Islands, which are located to the south of Vanuatu's main islands but outside Vanuatu's claimed archipelagic baselines. See 'Limits in the Seas No. 137 - Vanuatu: Archipelagic and Other Maritime Claims and Boundaries' (n 123) 2.

[412] The United States and the Marshall Islands both claim sovereignty over Wake Island, located in the North Pacific Ocean. See 'Wake Island' (*The World Factbook*) <https://www.cia.gov/the-world-factbook/countries/wake-island/> accessed 3 November 2023.

[413] The Philippines has several unresolved territory disputes with its neighbours. For instance, the dispute over the Spratly Islands with China and the other claimants and the dispute over the Sabah Region with Malaysia. See 'What Is the South China Sea Dispute?' (*BBC News*, 13 June 2011) <https://www.bbc.com/news/world-asia-pacific-13748349> accessed 3 November 2023; 'Malaysia–Philippines Land Boundary' (*Sovereign Limits*) <https://sovereignlimits.com/boundaries/malaysia-philippines-land> accessed 3 November 2023.

[414] Mauritius claims sovereignty over Tromelin Island, which is the fifth district of the French Southern and Antarctic Lands, a French Overseas Territory. See Pierre-Emmanuel Dupont, 'The South China Sea Moves to the Indian Ocean: Conflicting Claims Over the Tromelin Islet and Its Maritime Entitlements' (*EJIL: Talk!*, 8 February 2017) <https://www.ejiltalk.org/the-south-china-sea-moves-to-the-indian-ocean-conflicting-claims-over-the-tromelin-islet-and-its-maritime-entitlements/> accessed 3 November 2023.

[415] The sovereignty of the island of Mayotte is contested between the Comoros and France, which is a French overseas department. See Ministère de l'Europe et des Affaires étrangères, 'The Union of the Comoros and Mayotte' (*France Diplomacy - Ministry for Europe and Foreign Affairs*) <https://www.diplomatie.gouv.fr/en/country-files/regional-strategies/indo-pacific/the-indo-pacific-a-priority-for-france/france-in-the-south-west-indian-ocean/article/the-union-of-the-comoros-and-mayotte> accessed 3 November 2023.

countries such as the US, States have not taken any active measures to protest against invalid archipelagic baselines. Diplomatic protests have only been made by neighbouring States or States that are directly affected by invalid archipelagic baselines.

Mohamed Munavvar highlighted in his thesis, prepared in 1993, that the feasibility of the formula for archipelagic baselines under Article 47 depended mainly on the archipelagic States themselves.[416] Based on the current state practice of archipelagic States in terms of establishing archipelagic baselines, it is apparent that archipelagic States have adhered more to the strict requirements stipulated under Article 47 compared to the States that have conformed to the rules under Article 7 in relation to straight baselines.[417] The majority of archipelagic States meet the water-to-land ratio requirement and the maximum 125 nm baseline rule.[418] Additionally, the conventional rules related to archipelagic States and archipelagic baselines are alleged to be part of customary international law.[419] Therefore, based on the current State practice, it appears safe to say that the Article 47 technical formula has been effective in legalising the archipelagic regime in practice.

CONCLUSION

The establishment of the archipelagic regime under the framework of a multilateral treaty marked a momentous milestone in the codification of international law. It is the legal materialisation of decades of painstaking consideration given to the issues faced by archipelagos in securing their maritime rights due to their unique geographical peculiarities. It was undoubtedly the result of extraordinary diplomatic efforts by a handful of States that secured benefits for all the potential archipelagic States. This fact enhances the vitality of adherence to the provisions of Part IV of the LOSC in proclaiming archipelagic status, drawing archipelagic baselines, and the ensuing delimitation of maritime boundaries.

According to the above analysis of the State practice of archipelagic States with regard to their archipelagic baselines, all the States that have claimed archipelagic status so far, with the exception of Palau, have now enacted legislation in order to establish their archipelagic baselines. 15 of the 23 archipelagic States conform to the Article 47 provisions, including 4 States that have successfully revised their archipelagic baselines. Meanwhile, 7 States require more revision in order to comply with the Article 47 provisions entirely. In fact, a close examination of the 2023 *Mauritius v Maldives Maritime Boundary Delimitation* case revealed that the Dominican Republic and the Mauritius archipelagic baselines with respect to the Chagos Archipelago are still in need of revision due to their dependence on low-tide elevations outside the 12nm range from the nearest island.

With respect to invalid archipelagic baselines, other States have the right to employ the peaceful settlement mechanism under the LOSC if they wish to protest such practices. This includes diplomatic and adjudicative means of dispute settlement. However, State practice indicates that States usually prefer handling such disputes by simply sending diplomatic notes. Moreover, based on past international jurisprudence concerning archipelagic baselines, a court or tribunal analyses the validity of an archipelagic baseline only up to the extent it directly relates to the issue being heard.

The unilateral delineation of baselines is the first step in delimiting a State's maritime boundaries and establishing its maritime entitlements. Therefore, the drawing of baselines, including archipelagic baselines, needs to be completed with precision, accuracy and compliance with the prescribed baseline regulations under the LOSC.

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[416] Munavvar (n 12) 268.

[417] Prescott and Schofield (n 35) 181.

[418] Lathrop, Roach and Rothwell (n 53) 103, 104.

[419] Baumert and Melchior (n 65) 61; Miron (n 49) 311.

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Introduction of the First Written Constitution to the Maldives: A Historical Appraisal

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Abstract

The Maldives holds a distinguished position as one of the earliest nations in the Muslim world and South Asia to adopt a written constitution. Understanding the genesis and evolution of its first written constitution is crucial for comprehending the broader legal history of the nation. This study aims to explore the historical development of the first written constitution, the motivations behind its creation, and its unique constitutional features. One of the major achievements of this constitution was the establishment of a democratic foundation harmonized with Islamic Sharia, transitioning the Maldives from an absolute hereditary monarchy to an elected monarchy. This transition from an absolute hereditary monarchy to an elected monarchy marked the beginning of the future democracy in the Maldives. One of the key constitutional limitations introduced was the curtailment of the king's absolute power, mandating that he adhere to the constitution and to the rule of law. Despite the short survival of the first constitution, its profound influence paved the way for the continuity of constitutional governance in the Maldives. This enduring legacy is reflected in the series of constitutions adopted between 1932 and 2008, highlighting the transformative and lasting impact of the Maldives' first written constitution.

Keywords: First Constitution of the Maldives; Constitutional History of the Maldives; Constitutional Law; Early Constitutions of the Muslim World; Islamic Constitutionalism; Islamic Sharia.

ލިޔެވިފައިވާ ޤާނޫނުއަސާސީއެއް ދިވެހިރާއްޖެއަށް ތައާރަފުވުން: ތާރީޚީ ނަޒަރަކުން ބަލައިލުން

އިކްރާމް އަބްދުލްސައްތާރު

އެބްސްޓްރެކްޓް

އިސްލާމީ ޤައުމުތަކުގެ ނިސްބަތުން އަދި ދެކުނު އޭޝިއާގެ ޤައުމުތަކަށްބަލާއިރު ދިވެހިރާއްޖެއަކީ ލިޔެވިފައިވާ ޤާނޫނު އަސާސީއެއް އެންމެ ފުރަތަމަ ލިޔެވުނު ޤައުމުތަކުގެ ތެރޭގައި ހިމެނޭ ޤައުމެކެވެ. ރާއްޖޭގައި ފުރަތަމަ ލިޔެވިގެންދިޔަ ޤާނޫނުއަސާސީ އުފެދުނު ދިވެހިރާއްޖޭގެ ޤާނޫނީ ތާރީޚު ދެނެގަތުމަށް މުހިއްމުކަމެކެވެ. މިދިރާސާ އަމާޒުކޮށްފައިވަނީ ދިވެހިރާއްޖޭގައި ލިޔެވުނު ފުރަތަމަ ޤާނޫނު އަސާސީ ތާރީޚީ ގޮތުން އުފެދުނު އައިގޮތާއި، އެފަދަ ޤާނޫނު އަސާސީއެއް އުފެއްދުމުގެ ބޭނުން އައިގޮތާއި، ތާރީޚީ ނަޒަރަކުން އަލިއަޅުވާލުމުގެ މައްސަލަތަކެވެ. އަދި މިޤާނޫނުއަސާސީގެ މައިގަނޑު ސިފަތަކާއި، މިޤާނޫނު އަސާސީގައި އެކުލެވޭ އަމިއްލަވަންތަ ދުސްތޫރީ ހާއްސަ ސިފަތަކުގެ މައްޗަށެވެ. ފުރަތަމަ ޤާނޫނުއަސާސީގެ އެންމެބޮޑު އެއް ކާމިޔާބީއަކީ އިސްލާމީ ޝަރީޢަތާއި އެއްގޮތަށް ޑިމޮކްރެޓިކް ބިންގަލެއް އެޅުމާއި، މުޠުލަޤު ވާރުތަވާ ރަސްކަމުން އިންތިޚާބީ ރަސްކަމަކަށް ބަދަލުކޮށް ފެށުން ދިޔުމެވެ. މިޤާނޫނުއަސާސީގެ ސަބަބުން ވެރިޔާގެ ރަސްކަލުންގެ އިންތިޚާބު ދިވެހިރާއްޖޭގެ ވެރިކަމުގެ ނިޒާމު ބަދަލުވެގެންދިޔައީ

ދިއުމަކީ، ދިވެހިރާއްޖެއަށް މުސްތަޤްބަލުގައި ޖުމްހޫރީ ނިޒާމަކުން ވެރިކުރުމުގެ އުސޫލު އެއްސަރަޙައްދެވެ. މި ޤާނޫނުއަސާސީގައި ކަނޑައެޅިގެންދިޔަ
އުސޫލު މުހިންމު ދުސްތޫރީ އުޅެ އަސާސަކީ ދުސްތޫރީ ސިޔާދަތުގެ ޤާނޫނު އަސާސީގައި ކަނޑައެޅި، ރަޢިއްޔަތުންނާއި ޤާނޫނުއަސާސީގެ ބަރަހަލުގެ ބޭރުގައި
ގައިދަކުރުވުން ދިއުމެވެ. ދިވެހިރާއްޖޭގެ ފުރަތަމަ ޤާނޫނުއަސާސީ ކުރުމުގެދިރުމާއިގެ ބޭރުގައި އުވިގެން ދިޔަނަމަވެސް އެޤާނޫނުއަސާސީގެ އަސަރު
މިއަދާއިހަމައަށް ދެމިގެން ހިނގައިދިޔައެވެ. ދިވެހިރާއްޖޭގައި 1932 އިން 2008 އާއި ދެމެދު ގުދުރަތުގެއިތުރުން ޢަމަލުކުރުވުނު
ޤާނޫނުއަސާސީތަކުން، ރާއްޖޭގައި ފުރަތަމަ ލިޔުމުންދެވުނު ޤާނޫނުއަސާސީގެ ދައުރު ހަމަވެގެން ދިޔައެވެ.

ކީވޯޑްސް: ދިވެހިރާއްޖޭގައި ފުރަތަމަ ލިޔުމުން ޤާނޫނުއަސާސީ؛ ދިވެހިރާއްޖޭގެ ދުސްތޫރީ ތާރީޚް؛ ދުސްތޫރީ ޤާނޫނު؛ އިސްލާމީ ދިނިޔާގެ
ފުރަތަމަ ޤާނޫނުއަސާސީތައް؛ އިސްލާމީ ދުސްތޫރީއުސޫލު؛ އިސްލާމީ ޝަރީޢާ.

1. Introduction

The Constitution stands as the foundational legal document of a nation, shaping its government, protecting individual rights, and providing a framework for exercising political power.[420] As a dynamic and evolving entity, the circumstances for the introduction of a written constitution, its character, and its attributes have been subject to extensive scholarly exploration.

The Maldives, historically a sultanate, experienced a significant shift in its political structure with the introduction of its first written constitution in 1932. This marked a decisive moment in the history of the Maldives, transitioning from an absolute hereditary monarchy to a modern constitutional state.[421] Understanding the introduction, characteristics, and attributes of this foundational document is crucial for comprehending the roots of modern Maldivian governance and its subsequent political and legal developments. The scarcity of reliable literature on this subject urges the need for researchers to contribute to the historical development of constitutional studies in the Maldives. Thus, this research seeks a comprehensive understanding of the characteristics, attributes, and formulation process of the first Constitution of the Maldives. It involves exploring the motivations behind its creation, the critical features embedded within the document, and its implications for the governance and society of the Maldives during the first constitutional era.

This research employed a qualitative doctrinal research methodology through an in-depth analysis of historical documents, legal texts, and relevant literature related to the formulation of the first constitution of the Maldives. The qualitative analysis of the aforesaid data provides a refined understanding of the motivations behind the creation of the very first constitution, its key provisions, and its implications on the governance and society of the Maldives.

One of the crucial aspects of the political developments of the Maldives in contemporary history was the formulation of its first written constitution. This research is significant in resolving the historical roots of the Maldivian constitutional framework. Understanding the attributes of the first constitution will contribute to a deeper comprehension of the nation's political evolution and lay the foundation for further research in Maldivian constitutional studies.

2. Notion of a written constitution

The introduction of a written constitution legitimizes radical political changes in a country. For instance, when there is a need to change the governing system, reform the judicial institutions, shift from an absolute monarchy to a democratic system, or limit the powers of the rulers. Different constitutions of different jurisdictions cater to different ends, and the Maldives case has its own significance.

On 19 March 1931, the Maldivian King As-Sultan Muhammad Shamsudin III ordered the draft of a written constitution for the Maldives.[422] It is also relevant to emphasize the motivation behind the royal decree that ordered the formulation of a written constitution. The Maldives have been governed by an unwritten constitution for centuries based on religion, customs, and conventions. The notion of the introduction of a written constitution was not the will of the Maldivian King[423] nor that of Prince Abdul Majeed Ranna

[420] Gordon S Wood, *The Creation of the American Republic, 1776-1787* (UNC Press Books 2011).

[421] Mohamed Amin Didi, *Dhivehiraajjeyge Gaanoonu Asaasee Hayai (Constitutional Life of Maldives)* (Novelty Press 2005).

[422] Constitution of the Maldives 1932 pt Prologue.

[423] King As-Sultan Muhammad Shamsuddin III and his son, Prince Hassan Izzuddin, were convicted of treason for orchestrating a coup d'état against their own government and attempting to abolish the second Constitution of the Maldives that the King himself had promulgated. Consequently, King Shamsuddin III was deposed from office and sentenced to lifelong banishment. For further reference, see Dhivehiraajjeyge Qanunu Asaseege Hayai (The Life of the Constitution of the Maldives, The People's Majlis, 1981).

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

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

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

The three leading key figures in the introduction of a written constitution to the Maldives worth mentioning here include Prince Mohamed Farid Didi, Prince Hassan Farid Didi, and Mr. Mohamed Amin Didi. These youths, along with the other political elites and religious scholars in Male', played a significant role in materializing the new constitution.

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

3. The Drafting Committee

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

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

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

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

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

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

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

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

[427] Didi (n 2).

[428] Constitution of the Maldives 1932.

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

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

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

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

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

The committee members' robust efforts completed the drafting process on 22nd Muharram 1350 (09th June 1931). The draft was then submitted to the Constitutional Majlis on the 23rd of Muharram (10th June 1931). After several working sessions of deliberation on the drafted constitution, the final sitting of the Constitutional Assembly was held on 7th Safar 1351 H. (12th June 1932). The constitution was presented to As-Sultan Muhammad Shamsudin Iskandar C.M.G. Ibnu As-Sultan Ibrahim Nooradin Iskandar, the King of Maldives, on the 29th of Muharram 1350 (16th June 1931) for ascension. The first written Constitution of the Maldives came into force on 22nd December 1932, on 23rd Sha'aban 1350.[431]

4. Sources of law

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

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

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

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

Islamic Sharia
Customs and conventions of the Maldives
The bilateral agreements with foreign nations[435]

In addition to the above-stated sources, the drafting committee also referred to the British, Egyptian,[436] and Turkish constitutions[437] to incorporate their constitutional norms and values.

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

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

[431] Constitution of the Maldives 1932.

[432] Didi (n 2).

[433] ibid.

[434] Constitution of the Maldives 1932.

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

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

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

5. Characteristics of the first constitution

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

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

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

5.1 Islamic attributes

Since Islam was introduced into the Maldives in 1153 C.E., Islamic Sharia has played a significant role in the Maldivian Judiciary.[441] The ancient customary legal system in the Maldives was harmonized with Islamic Sharia. Since then, the Maldivian judiciary has operated according to Islamic law. When the first written constitution was introduced in the Maldives, Islamic Sharia became a major source of law in the contemporary Maldivian judiciary. In the royal order for the drafting of the first written constitution, His Highness As-Sultan Mohamed Shamsudin III stressed adhering to Islamic principles while drafting the first constitution of the Maldives. Examining the basic document demonstrates Islamic features not only in its constitutional provisions but also in its layout, style of writing, and arrangement of provisions.

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

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

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

'قال الله تعالى : لِلَّهِ الأَمْرُ مِن قَبْلُ وَمِن بَعْد[444]

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

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

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

[439] L Ali Khan, 'The Qur'an and the Constitution' (2010) 85 Tul. L. Rev. 161 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/tulr85&section=7&casa_token=3pgv8xdsxU4AAAAA:tP8V5n19EREIHn6rn9oui8lUgHa4P8-PKGT6bkm1UbSZrWSMvOzTNScloJS9oENbBxio9I8> accessed 13 September 2024.

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

[441] Harry Charles Purvis Bell, *The Máldive Islands: Monograph on the History. Archæology, and Epigraphy.* (The Ceylon Government Press 1940).

[442] *The Holy Quran*, v 42:38.

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

[444] *The Holy Quran* (n 23) v 30:4.

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

[446] Constitution of the Maldives 1932.

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

The declaration of state religion was an old constitutional norm amongst Islamic countries. Iran and Afghanistan pioneered introducing Islamic supremacy and repugnancy clauses for the first time,[447] despite the Tunisian constitution recognizing Islamic law in 1861 and later the Turkish Ottoman constitution providing Islam in its constitution in 1876.[448] Iran's constitution adopted Islamic provisions and incorporated them into Qanuni Assaasi Iran 1906 through Article 2 of the Iranian supplementary constitution in 1907. Afghanistan adopted Islam as the state religion in its first constitution in 1923.[449]

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

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

It is a well-established principle that the ruler, also known as the Imam of the Islamic state, must be a Muslim. Non-Muslims are not allowed to hold the highest office in the Islamic state. Further, the constitution provides that he must also follow the Sunni teachings of Islam. This is an important principle to protect the homogeneity of the Maldivian Sunni Muslim society. The same conditions are provided for the qualifications of the members of the parliament.[453] Further, regarding the right to education, the constitution stipulates that citizens must learn to recite the holy Quran, read and write Dhivehi and Arabic.[454]

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

6. Doctrine of constitutionalism

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

[447] Dawood I Ahmed and Tom Ginsburg, 'Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions' (2013) 54 Va. J. Int'l L. 615 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/vajint54&section=25&casa_token=BBgBEELPYKIAAAAA:rakDx5fZkLPYJC565adelOBAahSqjazlwbR3wi9QAH-isLOCPwcBemGnj77mQGRSpRki7Xg> accessed 13 September 2024.

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

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

[450] Constitution of the Maldives 1934 art 75.

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

[452] ibid 54 (2).

[453] ibid 56.

[454] ibid 14.

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

[456] Robert G Hazo, 'Montesquieu and the Separation of Powers' (1968) 54 ABAJ 665 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/abaj54&section=172&casa_token=U3xwnFlzcOMAAAAA:dAk0EB3oOi2x-mnHlb51EVJfK02Rq8iosk41svDCMGYglyEDj05t9LbulXuaIjBvMGlcoAQ> accessed 13 September 2024.

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

[458] Constitution of the Maldives 1932 art 4.

limited government, a contemporary need of the then Maldives,[459] which was historically based on the absolute power of the King. The Constitution further introduces the executive branch, the legislative power[460] and the judiciary as separate state organs.[461]

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

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

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

The Constitution defined the King as the ruler and sovereign of the state.[464] This basic document not only outlines the conditions and procedure for his election[465] but also provides the framework for his potential removal from office.[466] This constitutional structure is a fundamental attribute of a limited government, standing in stark contrast to an absolute monarchy. The power of the King, the prime minister and the cabinet is strictly circumscribed within the tenets of the Constitution, which explicitly limits the powers of the King. The provision states:

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

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

7. Check and balance mechanism in the constitutio

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

8. Constitutional Supremacy

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

[459] Didi (n 2).

[460] Constitution of the Maldives 1932 art 23.

[461] ibid 43.

[462] Didi (n 2).

[463] Constitution of the Maldives 1932.

[464] ibid Article 27.

[465] ibid Article 26.

[466] ibid Articles 54 & 55.

[467] ibid Article 42.

[468] ibid Article 43.

[469] ibid 26.

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

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

9. Judicial independence

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

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

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

10. Rights of the people

Another remarkable attribute of the 1932 Constitution is its Bill of Rights. The Constitution recognizes the rights of the people, safeguarding their lives, property, and dignity. Freedom of expression,[477] freedom of the press, the constitutional obligation to education, freedom to protest[478] and the freedom to participate in any activity, including political activities, are some enduring attributions of the First Constitution.

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

11. Abolition of the first constitution

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

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

[471] Constitution of the Maldives 1932.

[472] ibid Article 80-84.

[473] ibid Article 80.

[474] Constitution of the Maldives 1934 art 75.

[475] Constitution of the Maldives 1932 art 43.

[476] Constitution of the Republic of Maldives 2008 ch 5.

[477] Constitution of the Maldives 1932 art 12.

[478] ibid 13–16.

[479] ibid 5–7.

[480] ibid 11.

[481] ibid 9 & 10.

[482] ibid 22.

[483] Didi (n 2).

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

Since ancient times, the lifestyle of Maldivians has been attached to un-written customary laws or *'Aadat* and the people were not prepared for such a drastic transition. The sudden abolition of long-standing customary practices and the overhaul of the entire legal system overnight really shook the capital city of the Kingdom and caused chaos and anger among the public. In addition, the incitement of the political opponents added the firewood to the burning fire by creating fear among the public in numerous ways. A series of protests in the streets of Male' for nearly two weeks finally reached its boiling point. The people in '*Gulhakuley Fasgandu'* (the main public square in Male') literally tore down the Constitution on the evening of the 20th Rajab 1352, 9th November 1933.[485] This incident ended the era of the first written Constitution, giving it to life for just ten months and seventeen days. The same day, the Constitution was officially abolished, the cabinet dissolved, and the parliament was suspended.[486]

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

12. The impact of the first written constitution

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

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

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

13. Conclusion

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

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

[484] ibid.

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

[486] The Peoples Majlis (n 11).

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

[488] Shakir (n 65).

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

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Adapting Legal Education for the Digital Era: Exploring Hybrid Learning and Remote Work at the Islamic University of Maldives

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Abstract

The transition towards hybrid and remote learning models in legal education, accelerated by the COVID-19 pandemic, has presented both opportunities and challenges. This paper explores the experiences of educators, students and administrators at the Islamic University of Maldives (IUM). It aims to identify key challenges, opportunities, and strategic recommendations for optimising hybrid and remote learning within the context of legal education. By qualitatively analysing data gathered from multiple sources, this paper highlights the importance of technological infrastructure, professional development, and student engagement in ensuring the success of these learning models. This research is crucial in guiding IUM in navigating the shift towards hybrid and remote learning in the provision of legal education. It aims to provide actionable insights for educators and administrators to optimise these models for legal education. Furthermore, the study's findings will contribute to the broader discourse on the future of higher education in the digital age. The transition to hybrid learning and remote work is not merely a temporary response to global events but a significant shift in the educational landscape. This research seeks to provide a comprehensive understanding of this shift and to offer strategic guidance for IUM to effectively embrace this new era of legal education.

Keywords: Hybrid Education, Islamic University of Maldives, Legal Education, Remote Work

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ކޮވިޑް-19 ގެ ބަލިމަޑުކަމާއި ގުޅިގެން ގާނޫނީ ތައުލީމުގެ ހައިބްރިޑް އަދި ރިމޯޓް ލަރނިން މޮޑެލްތަކަށް ކުއްލިއަކަށް ބަދަލުވާންޖެހުމާއި މި ބަދަލުތަކުގެ ސަބަބުން އިތުރު އުނގެނުމާއި ފޯރުކޮށްދިނުމަށް އައު ފުރުސަތުތަކާއި އަދި ހަމަ އުނދަގޫ އާއި އެއްވަރަށް ޗެލެންޖުތަކެއް ވެސް ވަނީ ކުރިމަތިވެފަ އެވެ. މިކަންކަން އިތުރަށް ދެނެގަތުމަށްޓަކައި މި ކަރުދާހުގައި ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީގެ (އައިޔޫއެމް)ގެ އުނގަންނައިދޭ ފަރާތްތަކާއި ދަރިވަރުންނާއި ހިންގުންތެރިންގެ ތަޖުރިބާ ތައް ދިރާސާކޮށްފައިވެ އެވެ. އަދި ގާނޫނީ ތައުލީމުގެ ރޫހުން ހައިބްރިޑް އަދި ރިމޯޓް ލަރނިންގެ އުސޫލު އެކަށީގެންވާ ގޮތެއްގައި ފޯރުކޮށްދިނުމުގައި ކުރިމަތިވާ ކަންކަން ދެނެގަތުމާއި ފުރުސަތުތަކާއި ސްޓްރެޓީޖިކް ގޮތުން

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ކީވޯޑްސް: ހައިބްރިޑް އެޑިއުކޭޝަން، އިސްލާމިކް ޔުނިވަރސިޓީ އޮފް މޯލްޑިވްސް، ލީގަލް އެޑިއުކޭޝަން، ރިމޯޓް ވޯކް

Introduction and Background

The increasing prevalence in educational technologies and market demands as well as the ever-evolving landscape of tertiary education compels to adapt to the trends and learning methodologies required for a modern-day law student. These changes pose challenges as well as opportunities for law schools since re-evaluation of traditional pedagogical approaches, institutional policies and technological infrastructure is required for the effective delivery[489] of legal education. This research aims to address issues related to integration of hybrid learning and remote work in IUM.

Legal education, traditionally delivered in an interactive nature often characterised by Socratic dialogues, professional close mentorship and moot court session; is not in the cusp of an unprecedented technological transition, accelerated by the COVID-19 pandemic[490]. The shift from traditional mode of legal education to hybrid and online learning models require immense understanding from any institution focused on delivering legal education[491]. The revision, removal and inclusion of technological paradigms, infrastructure, institutional policies and pedagogical changes is a challenging issue faced by many institutions. However, these challenges should be faced to ensure the effective implementation, equitable delivery of legal education.

An instant deviation from the traditional learning pedagogical approaches in legal education to adoption and adapting to hybrid learning environments where digital tools are effectively and primarily used instead of in-person interactions of the traditional method, gives an opportunity which could be beneficial for both educators and students[492]. For instance, where asynchronous learning materials such as video recordings[493], E-books, mobile interactive quizzes and other digital learning resources will be a positive supplement to live sessions either delivered on-campus or online. The possibilities of incorporating these models are endless and has the potential to be beneficial for students despite their learning habits and capabilities[494]. With the inclusion of a pedagogy that incorporates technology, no longer it would be impossible to participate in a virtual moot court competition conducted anywhere in the world nor, a student would be held back from understanding a particular issue upon the conclusion of the days' lecture as open 24/7 dissemination of information and continuous discussion would instil a cohesive yearn for learning among students[495]. However, it is important to note that this pedagogical shift would also require lecturers to be well versed in the technology as well as adapting to virtual platforms and to the pedagogical means of conducting lessons for effective teaching and learning[496].

To support the new mode of teaching and learning the teaching environment should be upgraded with the required technological infrastructure. There should be a harmonised balance between hardware and software for the facilitation of online learning[497]. These would include hardware, subscription or availability of online discussion forums, availability of assignment submission, video conferencing and information sharing mechanism. At the same time security issues related to the implementation of these technologies

[489] F Sulman, L Yuliati, S Kusairi and A Hidayat, 'Hybrid Learning Model: Its Impact on Mastery of Concepts and Self-Regulation in Newton's Second Law Material' (2022) 5(1) Kasuari: Physics Education Journal (KPEJ) 65–74..

[490] A Raes, 'Exploring Student and Teacher Experiences in Hybrid Learning Environments: Does Presence Matter?' (2022) 4(1) Postdigital Science and Education 138–159.

[491] S Wang and others, 'An Evaluation of a First-of-Its-Kind Hybrid Law Degree Program' (2022) 34 Journal of Computing in Higher Education 517–544 https://doi.org/10.1007/s12528-022-09308-3.

[492] I Zulfa, S Kusairi, E Latifah and MNR Jauhariyah, 'Analysis of Student's Conceptual Understanding on the Work and Energy of Online Hybrid Learning' (2019) Journal of Physics: Conference Series vol 1171, no 1, 012045 (IOP Publishing).

[493] Wang and others (n 3).

[494] H Hapke, A Lee-Post and T Dean, '3-in-1 Hybrid Learning Environment' (2021) 31(2) Marketing Education Review 154–161..

[495] Wang and others (n 3).

[496] Raes (n 2).

[497] Wang and others (n 3).

should be given a high priority since sensitive legal documents and other personal information of students and faculty staff would be shared using this digital medium[498].

Equity and accessibility are something that should be addressed when shifting to hybrid and online models of legal education. For this reason, ensuring equal digital representation, learning opportunities and accessibility for all students is an important factor[499]. This would mean regardless of the socio-economic status and background of the student; everyone should be able to benefit from this platform[500]. It has to be noted that this may involve providing technology acquisition assistance, creating resources for students and faculty staff who are differently abled[501] as well as offering support for those who require additional literacy with regards to the digital shift[502].

The other notable factor to consider would be the revision of institutional policies to reflect the realities of digital and hybrid learning[503]. The main policies required for revision would be the attendance policies, assignment and examination formats, class participation and discussion as well as policies related to modes of content delivery[504]. The maintenance of integrity of assessments in a virtual environment by adopting new tools for monitoring student activities and overall calibrating the view of the nature of assessment themselves is vital to maintain the quality[505] of legal education provided by the institution.

Apart from the internal policy that needs to be revised. The input from the external stakeholders such as the accreditation body as well as collaboration with legal practitioners[506] would provide insights into the changing nature of the legal profession in a digital world which would ensure the new hybrid programs would be up to par with the required educational standards as well as enrich the curriculum with the latest information in the legal field where technology could be used at an advantage[507].

The transition from traditional to hybrid and online teaching methods in law schools is a significant evolution in legal education. It may have been necessitated by the COVID-19 pandemic; however, this shift is an inevitable factor we should have faced sooner rather than later due to the exponential growth in technological advancements in every possible facet of life. However, changing the modality and paradigm of teaching requires a careful and holistic approach which would have to ensure pedagogical innovation would not be hindered or held back. Keeping in mind that the initial delivery of legal education through digital means would be faced with unprecedented challenges, but with careful consideration these challenges could be overcome, and we would be able to capitalise on the opportunities to provide a more dynamic, inclusive and effective learning environment for legal education.

Objectives of the Study

The transition to hybrid and remote learning in legal education presents both opportunities and challenges. A primary concern is the need for a comprehensive understanding and assessment of the impact of these learning models at institutions like the Islamic University of Maldives (IUM).

Adoption of Hybrid and Remote Learning Models

Evaluating the extent and manner in which IUM's faculties have adopted hybrid and remote learning models is crucial. Research indicates that blended learning, which combines traditional face-to-face instruction with online components, has been increasingly utilized in higher education to enhance teaching and learning quality[508]. However, challenges persist in sustaining and scaling these practices across courses and programs within institutions[509]. A proposed framework suggests that institutional strategic planning is essential for

[498] Wang and others (n 3).

[499] MM Alexander, JE Lynch, T Rabinovich and PG Knutel, 'Snapshot of a Hybrid Learning Environment' (2014) 15(1) Quarterly Review of Distance Education.

[500] BH Chen and HH Chiou, 'Learning Style, Sense of Community and Learning Effectiveness in Hybrid Learning Environment' (2014) 22(4) Interactive Learning Environments 485–496.

[501] Ibid.

[502] Raes (n 2).

[503] D Bennett, E Knight and J Rowley, 'The Role of Hybrid Learning Spaces in Enhancing Higher Education Students' Employability' (2020) 51(4) British Journal of Educational Technology 1188–1202..

[504] D Griffin and others, 'Best Practices for Sustainable Inter-Institutional Hybrid Learning at CHARM European University' (2022) 12(11) Education Sciences 797.

[505] Ibid.

[506] L Johnston-Walsh and A Lintal, 'Tele-Lawyering and The Virtual Learning Experience: Finding the Silver Lining for Remote Hybrid Externships & Law Clinics after the Pandemic' (2020) 54 Akron L Rev 735

[507] X Bai and MB Smith, 'Promoting Hybrid Learning through a Sharable eLearning Approach' (2010) 14(3) Journal of Asynchronous Learning Networks 13–24.

[508] CP Lim, T Wang and CR Graham, 'Driving, Sustaining and Scaling Up Blended Learning Practices in Higher Education Institutions: A Proposed Framework' (2019) 1 Innovation and Education Article 1 https://doi.org/10.1186/s42862-019-0002-0.

[509] Ibid.

driving, sustaining, and scaling up blended learning practices in higher education[510].

Challenges Faced by Students and Faculty

Exploring the challenges faced by students and faculty in the new learning environment is vital. Studies have shown that while blended learning approaches can enhance student engagement and experience, they also create significant influences on students' awareness of the teaching mode and learning background[511]. Additionally, research on students' experiences with remote learning during the COVID-19 pandemic utilized thematic analysis to explore their perceptions and challenges[512]. This underscores the necessity for continuous professional development for educators to effectively utilize digital tools and adapt their teaching methods to the digital environment[513].

Institutional Policies and Infrastructure

Examining the changes in institutional policies and infrastructure to support hybrid and remote learning is essential. A study on blended learning adoption and implementation in higher education suggests that there is a need for more institutional adoption research to guide how higher education institutions shape policies as they transition from the traditional face-to-face delivery model to fully blended universities[514]. The study adopts a grounded theory methodology to investigate institutional blended learning adoption initiatives, highlighting the importance of institutional support in the successful implementation of blended learning models[515].

Significance of the Research

This research is crucial in guiding IUM in navigating the shift towards hybrid and remote learning in the provision of legal education. It aims to provide actionable insights for educators and administrators to optimize these models for legal education. Furthermore, the study's findings will contribute to the broader discourse on the future of higher education in the digital age. The transition to hybrid learning and remote work is not merely a temporary response to global events but a significant shift in the educational landscape. This research seeks to provide a comprehensive understanding of this shift and to offer strategic guidance for IUM to effectively embrace this new era of legal education.

Methodology and Data Analysis

The research on hybrid and remote learning in legal education employed a mixed-methods approach, integrating both quantitative and qualitative data collection and analysis. Quantitative data were gathered through surveys and structured interviews with students, educators, and administrators. These instruments aimed to capture experiences, challenges, and preferences regarding hybrid and remote learning models. Metrics such as years of experience for educators, satisfaction levels for students, and strategic challenges for administrators were included. Qualitative data, including open-ended comments, were collected to provide further context to the quantitative results and to capture the more subjective experiences of the stakeholders.

The analysis of this data was conducted through both statistical and thematic approaches. Quantitative data were analysed using descriptive statistics to identify common trends, such as preferred learning environments of students and challenges faced by educators in adapting to hybrid teaching. For instance, satisfaction levels and engagement issues were compared across different demographics, allowing for insights into specific challenges faced by younger students or educators with fewer years of experience. Meanwhile, qualitative responses were coded and analysed thematically to identify recurring issues, such as the need for improved technological infrastructure and more frequent professional development for educators.

This mixed-methods approach aligns with studies in legal education that have utilized similar methodologies. For example, an evaluation of a hybrid law degree program employed both quantitative and qualitative methods to assess student outcomes and the program's impact on access to legal education[516]. Additionally, research on students' experiences with remote learning during the COVID-19 pandemic utilized thematic analysis to explore their perceptions and challenges[517].

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[510] Ibid.

[511] J Poon, 'Blended Learning: An Institutional Approach for Enhancing Students' Learning Experiences' (2014) 51(4) Educational Media International 271–284 https://doi.org/10.1080/09523987.2014.971847.

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[513] E Perry and S Boodt, 'Supporting the Professional Development of "Hybrid" Teacher Educators in the Further Education Sector' (2019) 11(3) Teaching in Lifelong Learning 60–71 https://doi.org/10.11120/tile.2019.00019.

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[515] Ibid.

[516] Wang and others (n 3).

[517] Nguyen and others (n 24).

Findings and Discussions

Table 1: Educator Data

Years of Experience	Courses Taught	Challenges in Hybrid/Remote Teaching	Opportunities Identified	Preferred Teaching Model
10	Contract Law, Criminal Law	Student engagement	Flexible scheduling	Hybrid
5	Property Law, Torts	Technical issues	Increased accessibility	Remote
5	Constitutional Law	Adapting materials for online format	Use of diverse teaching tools	Hybrid

The experiences of educators at IUM with hybrid and remote learning models reveal the challenges and opportunities inherent in these teaching modalities. The table illustrates how educators with varying years of experience face different challenges, with some struggling to maintain student engagement, others dealing with technical issues, and a few encountering difficulties in adapting materials to online formats. These issues reflect broader concerns in legal education, where maintaining engagement and effectively utilizing technology are critical hurdles. Educators with varying years of experience have encountered specific challenges in adapting to hybrid and remote teaching environments. For instance, an educator with 10 years of experience teaching Contract and Criminal Law noted difficulties in maintaining student engagement. Similarly, a colleague with 5 years of experience teaching Property Law and Torts faced technical issues, while another educator teaching Constitutional Law struggled with adapting materials for online formats. These challenges are consistent with broader findings in legal education, where maintaining student engagement and effectively utilizing technology are common hurdles[518].

Despite these challenges, educators have identified several opportunities within the hybrid and remote models, such as flexible scheduling and the use of diverse teaching tools. The flexibility offered by hybrid learning can enhance accessibility for both students and faculty, fostering an adaptable learning environment. Furthermore, educators' preferences for hybrid or remote teaching underscore the diversity of teaching models in legal education, with some preferring in-person interaction while others appreciate the recorded lectures provided by hybrid setups. These opportunities align with research suggesting that hybrid teaching can offer increased accessibility and the potential for innovative pedagogical approaches[519].

There is a significant need for increased training on technology. Educators require more professional development to enhance their proficiency with digital tools, ensuring that they can engage students effectively and deliver quality content in a remote or hybrid setting. Preferences regarding teaching models vary among educators. Some favor hybrid models, while others prefer remote or in-person instruction. For example, one educator expressed a preference for hybrid teaching, citing positive feedback on recorded lectures, while another preferred in-person interaction. These preferences reflect broader debates in legal education about the effectiveness and desirability of different teaching modalities[520].

Educators have also emphasized the need for more training on technology to effectively navigate hybrid and remote teaching environments. This underscores the importance of professional development in equipping educators with the necessary skills to adapt to evolving teaching landscapes[521]. The integration of hybrid and remote learning models in legal education offers both opportunities and challenges, as highlighted by the experiences of educators at the Islamic University of Maldives (IUM).

Table 2: Law Students

ID	Programme	Year of Study	Hybrid/Remote Learning Challenges	Preferred Learning Environment	Satisfaction Level (1-10)	Suggestions for Improvement
S001	LLB	2	Internet connectivity	Hybrid	7	More interactive sessions
S002	MCL	1	Lack of hands-on experience	Remote	6	Regular feedback and support
S003	LLB	3	Difficulty concentrating	In-person	8	Flexible deadlines

The experiences of law students at the Islamic University of Maldives (IUM) with hybrid and remote learning models reveal both challenges and opportunities that are consistent with broader trends in legal education. Law students at IUM have faced a variety of challenges in adapting to hybrid and remote learning environments, which is consistent with broader trends in legal education. The students' struggles include technical issues like internet connectivity, difficulty with concentration in online classes, and a lack of hands-on

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[519] A Raes and others, 'Designing Synchronous Hybrid Learning Spaces: Challenges and Opportunities' in Hybrid-Flexible Course Design (Springer 2020) 123–138 https://doi.org/10.1007/978-3-030-88520-5_9.

[520] A Thanaraj and others, Teaching Legal Education in the Digital Age (Routledge 2022) https://doi.org/10.4324/9780429351082.

[521] Perry and Boodt (n 25).

experience, especially in a field like law where practical learning is essential. These challenges highlight the need for improved infrastructure, particularly reliable internet access and more interactive learning opportunities. Students have reported specific challenges in adapting to hybrid and remote learning environments. For example, one student in the LLB program experienced difficulties with internet connectivity, which is a common issue in online education[522]. Another student pursuing a Master of Comparative Law (MCL) noted a lack of hands-on experience, highlighting the importance of practical learning in legal education[523]. Additionally, a third-year LLB student found it challenging to concentrate during online classes, a concern that has been observed in studies on online learning environments[524].

Preferences regarding learning environments vary among students. The LLB student with internet connectivity issues preferred the hybrid model, which combines in-person and online instruction, possibly to mitigate connectivity problems. The MCL student favored remote learning, despite the lack of hands-on experience, indicating a preference for the flexibility it offers. Conversely, the LLB student who struggled with concentration preferred in-person learning, suggesting that face-to-face interaction enhances their focus and engagement. Satisfaction levels among students ranged from 6 to 8 out of 10. The LLB student suggested more interactive sessions to enhance engagement, a recommendation supported by research emphasizing the importance of active learning strategies in online education[525]. The MCL student requested regular feedback and support, highlighting the need for continuous communication between students and instructors in remote learning settings[526]. The LLB student who preferred in-person learning proposed flexible deadlines, acknowledging the challenges of online learning environments[527].

Despite these challenges, students have expressed varying preferences for learning environments, with some preferring hybrid learning to mitigate connectivity issues, others favouring remote learning for its flexibility, and a few advocating for in-person learning to enhance focus and engagement. The fact that students' satisfaction levels range from 6 to 8 out of 10 suggests that while the hybrid and remote models have some benefits, there is still room for improvement in addressing their concerns. Students' suggestions for improvement, such as more interactive sessions, regular feedback, and flexible deadlines, echo research on the importance of active learning in remote education. Incorporating these suggestions into future strategies could help improve student satisfaction and engagement.

The findings from IUM law students align with broader research on hybrid and remote learning in legal education. Studies have identified that while online learning offers flexibility, it also presents challenges such as technical issues, reduced engagement, and difficulties in maintaining concentration[528]. To address these challenges, it is essential to incorporate interactive elements, provide regular feedback, and offer flexible learning options to accommodate diverse student needs[529]. Furthermore, ensuring equitable access to technology and resources is crucial for the success of hybrid and remote learning models[530].

Table 3: Administrators

ID	Role	Years in Role	Strategic Challenges	Technological Needs Identified	Future Plans for Hybrid/Remote Learning	Additional Comments
A001	Curriculum Developer	7	Integrating technology	Advanced LMS, reliable internet	Expand hybrid model	Need professional development
A002	Educational Technologist	4	Staff training	User-friendly platforms	Enhance remote learning infrastructure	More fundi required resources
A003	Programme Coordinator	10	Coordinating hybrid schedules	Collaborative tools	Increase hybrid course offerings	Positive outlo on hyb education

The integration of hybrid and remote learning models in legal education presents both opportunities and challenges, as highlighted by the experiences of administrators at the Islamic University of Maldives (IUM). Administrators at IUM play a key role in implementing hybrid and remote learning models, and their perspectives highlight the strategic challenges involved in integrating these approaches. The difficulties identified include the integration of technology into the curriculum, the need for more comprehensive staff training, and the coordination of hybrid schedules to ensure smooth course delivery. The administrators have also emphasized specific technological needs, such as advanced Learning Management Systems (LMS) and reliable internet infrastructure. These requirements reflect broader trends in higher education, where the effective integration of technology is essential for the success of blended learning.

[522] Raes and others (n 31).
[523] Thanaraj and others (n 32).
[524] Secker and others (n 30).
[525] Raes and others (n 31).
[526] Thanaraj and others (n 32).
[527] Secker and others (n 30).
[528] I Lomonosova and I Valentinovna, 'Role of Administrators in Blended Learning in Higher Education Institutions' (2018) 9(2) Pakistan Journal of Distance and Online Learning 29–50 https://eric.ed.gov/?id=EJ1413986.
[529] Thanaraj and others (n 32).
[530] Secker and others (n 30).

Furthermore, the future plans outlined by administrators to expand hybrid learning and enhance remote learning infrastructure align with the broader movement towards more flexible and adaptable learning environments. Administrators have identified several strategic challenges in implementing hybrid and remote learning. A Curriculum Developer with seven years of experience noted difficulties in integrating technology effectively into the curriculum. Similarly, an Educational Technologist with four years in the role emphasized the need for comprehensive staff training to adapt to new teaching modalities. These challenges are consistent with findings in higher education, where administrators play a crucial role in implementing and supporting blended learning, ensuring its success[531].

To address these challenges, administrators have identified specific technological needs. The Curriculum Developer requires an advanced Learning Management System (LMS) and reliable internet infrastructure to support hybrid learning. The Educational Technologist seeks user-friendly platforms to facilitate teaching and learning processes. These needs align with research indicating that effective implementation of blended learning necessitates appropriate technological tools and infrastructure[532]. Looking ahead, administrators plan to expand the hybrid learning model and enhance remote learning infrastructure. The Curriculum Developer aims to broaden the hybrid model's reach, while the Educational Technologist focuses on improving remote learning capabilities. These plans are in line with trends in higher education, where institutions are increasingly adopting hybrid and remote learning models to offer flexible learning options and prepare students for evolving work environments[533].

The need for professional development and additional funding is a recurring theme. For hybrid and remote learning models to succeed, continuous investment in staff training and infrastructure is necessary. Administrators have also highlighted the need for professional development and additional funding. The Curriculum Developer emphasizes the importance of ongoing training for educators to effectively utilize new technologies. The Educational Technologist points out the necessity for more resources to support the expansion of hybrid and remote learning. These considerations are crucial, as research underscores the importance of professional development and adequate funding in successfully implementing blended learning strategies[534].

Table 4: Expert Opinion

ID	Area of Expertise	Years of Experience	Best Practices in Hybrid/Remote Education	Emerging Trends Identified	Recommendations for IUM	Addition Insights
X001	Legal Education	20	Interactive online tools	AI in education	Invest in training and tech	Need regular feedback mechanis
X002	Educational Technology	15	Adaptive learning technologies	Virtual reality in learning	Pilot innovative solutions	Emphasis accessibi and inclusivit
X003	Curriculum Developmen t	18	Blended learning models	Data-driven decision making	Foster a culture of innovation	Importan of ong evaluatio

External experts in legal education and educational technology provide invaluable insights into the evolving landscape of hybrid and remote learning. These experts stress the importance of integrating interactive online tools, adaptive learning technologies, and virtual reality into the learning experience. The use of AI in education is also highlighted as a promising tool for enhancing engagement and personalization in legal education.

Experts also recommend that IUM focus on fostering a culture of innovation and embracing new technologies. Implementing pilot programs for innovative solutions and focusing on accessibility and inclusivity are key strategies for ensuring that hybrid learning models meet the diverse needs of all students. The experts further emphasize the importance of regular feedback mechanisms, adaptive learning models, and data-driven decision-making to improve the effectiveness of hybrid and remote learning. These insights suggest that IUM should continue exploring cutting-edge technologies and continuously evaluate the effectiveness of its hybrid learning models.

[531] Lomonosova and Valentinovna (n 40).
[532] Raes and others (n 31).
[533] Thanaraj and others (n 32).
[534] Lomonosova and Valentinovna (n 40)..

Table 6: Available Facilities

Facility ID	Facility Name	Purpose	Technological Support Available	Challenges Identified	Potential Improvements
F001	Hybrid Learning Classroom	Supports hybrid classes with live streaming	High-speed internet, interactive displays	Occasional connectivity issues	Invest in m reliable inter infrastructure
F002	Remote Learning Hub	Offers students access to remote learning tools	Video conferencing software, laptops	Limited number of devices available	Increase dev availability students
F003	Legal Research Library	Provides access to legal resources	Digital databases, eBooks, online journals	Limited training on digital resource use	Offer digi resource traini for students
F004	Technology Training Lab	Trains educators in using hybrid learning tools,	Computers, LMS, interactive software,	Lack of ongoing training	Introduce regular te training sessio
F005	Study and Collaboration Space	Facilitates group discussions and projects	Smartboards, collaborative tools	Limited space for group work	Expand space introduce booking syste
F006	Virtual Classroom Studio	For recording and broadcasting lectures	Recording equipment, green screens	Difficulties in recording high-quality content	Upgrade aud visual equipm
F007	Administrative Support Centre	Provides tech support for hybrid/remote issues	IT support desk, troubleshooting services	Delays in response time	Increase staff improve response time

The table showcases the facilities at IUM that play a crucial role in supporting the institution's shift towards hybrid and remote learning, with a focus on legal education. Each facility is designed to address specific needs for both educators and students in this new learning environment. The Hybrid Learning Classroom allows for live-streamed classes with interactive displays and high-speed internet, enabling a seamless blend of in-person and online learning. However, connectivity issues sometimes disrupt this process, indicating a need for enhanced internet infrastructure to ensure reliable access for all users. Improving the network's reliability could significantly boost the learning experience, especially for real-time interactions during hybrid classes.

The remote learning facilities should be able to provide students with essential tools such as laptops and video conferencing software to participate in remote learning. While this facility is vital for students who cannot attend in-person sessions, the limited availability of devices hampers its effectiveness. Expanding the inventory of laptops and other remote learning tools would allow more students to benefit from it, reducing barriers to accessing online education. Additionally, ensuring that the software provided is user-friendly and fully integrated with the institution's learning management systems would enhance the overall remote learning experience.

The Library's legal research facility is another key facility, offering digital access to some legal databases, eBooks, and online journals. However, despite these limited yet available resources, many students struggle with navigating the digital systems, highlighting a need for improved training. Offering workshops and tutorials on how to effectively use the library's digital resources could enhance student engagement and make the facility more valuable. Similarly, the Computer Lab could be utilised to train students and educators in the use of digital teaching and learning tools as an essential resource. However, the lack of ongoing and regular training sessions means that educators may not always be up to date with the latest tools and technologies. Increasing the frequency of these training sessions would ensure that educators are better equipped to deliver high-quality hybrid and remote lessons.

The physical classrooms and the virtual classroom softwares further support IUM's hybrid learning model. The physical classrooms are not equipped with smartboards and collaborative tools to facilitate group discussions and project work. Also, the space is limited, often leading to overcrowding and making it difficult for students to book time for group work. Expanding such a space or introducing a more efficient booking system could alleviate these issues. The virtual classroom software allows lecturers to record and broadcast lessons with high-quality recording equipment, but some challenges persist in maintaining audio-visual quality, particularly for those aiming to deliver professional-level content. Upgrading the software and related equipment would ensure higher quality recordings and improve the overall learning experience for students accessing recorded lectures.

Finally, the IT department provides essential technical support to staff and students navigating hybrid and remote learning. While they offer troubleshooting services and an IT support desk, there are delays in response time due to limited staff capacity. Increasing the number of support staff would reduce waiting times and ensure quicker resolutions to technical issues, thereby enhancing the overall efficiency of IUM's hybrid learning model.

While IUM's facilities are geared to be aligned with the needs of hybrid and remote learning, there is significant room for improvement. Enhancing internet infrastructure, increasing device availability, providing more frequent training for both students and staff, expanding collaborative spaces, and upgrading recording technology are key areas of focus. Implementing these recommendations would help ensure that IUM remains at the forefront of legal education in the digital age, providing a more seamless, effective, and accessible learning environment for all.

The facilities at IUM play a critical role in supporting hybrid and remote learning, with resources like the Hybrid Learning Classroom, Remote Learning Hub, and Legal Research Library providing essential tools for both students and educators. The availability of high-speed internet, interactive displays, and digital resources supports hybrid and remote learning, but there are notable challenges related to connectivity, device availability, and lack of ongoing training.

The Hybrid Learning Classroom faces occasional connectivity issues, highlighting the need for more reliable internet infrastructure. The Remote Learning Hub has a limited number of devices, which restricts access for students who cannot attend in person. Expanding the availability of devices and ensuring better integration with learning management systems would improve the remote learning experience.

The Legal Research Library's digital resources are underutilized by students who lack proper training in using them. Offering workshops and tutorials would significantly enhance the value of these resources. Similarly, the Technology Training Lab could benefit from more regular training sessions to ensure that educators remain up to date with the latest tools and technologies.

Improvements to physical spaces, such as expanding the Study and Collaboration Space or implementing a booking system, could help alleviate overcrowding and promote more collaborative learning. Additionally, upgrading the recording equipment in the Virtual Classroom Studio would ensure better-quality lecture recordings.

Discussion

The transition to hybrid and remote learning in legal education has introduced both opportunities and challenges, as evidenced by recent data. On the one hand, these models offer greater flexibility for students, enabling them to access learning materials and engage with the course at their own pace, which is particularly beneficial for those with time constraints or geographical limitations. However, the shift has also revealed significant challenges, including technical difficulties such as connectivity issues, which hinder students' ability to fully participate in learning activities. Additionally, many educators have struggled to adapt their teaching methods to the digital environment, highlighting a gap in digital literacy and pedagogical skills. As a result, there is a growing recognition of the need for continuous professional development for educators and investment in technological infrastructure to ensure equitable access to learning resources for all students. These findings underscore the complexity of successfully integrating hybrid and remote learning models into legal education, particularly when it comes to maintaining engagement, ensuring accessibility, and preparing educators to navigate the evolving educational landscape.

Active student engagement is crucial for the success of hybrid learning models. However, many students face connectivity issues and a lack of hands-on experiences, which are particularly challenging in practical fields like law. Research indicates that online learning environments can often result in lower engagement compared to traditional in-person settings. To maintain student engagement in hybrid learning environments, incorporating interactive elements such as live discussions and real-time feedback is essential. While some students reported improved academic performance due to the flexibility of online learning, others highlighted challenges like decreased engagement and isolation.

The shift to hybrid and remote learning necessitates continuous professional development for educators. Legal education, traditionally reliant on direct classroom interaction, requires educators to adjust their teaching methods and enhance their technological proficiency. The rapid transition during the COVID-19 pandemic exposed gaps in many educators' abilities to effectively utilize digital tools. This underscores the need for institutions to invest in ongoing training and support to ensure educators can deliver high-quality education in digital formats. The success of a professional development program aimed at supporting educators in the Further Education sector, emphasizing the importance of such initiatives[535].

The findings also underscore the role of infrastructure in supporting hybrid and remote learning models. Many students and educators reported issues with internet connectivity and access to technological resources, hindering the learning experience. Equitable access to digital tools is crucial for the success of hybrid education models. As institutions continue to adopt hybrid models, addressing these infrastructural challenges by investing in reliable internet access and ensuring all students have the necessary resources to participate fully in remote learning is critical. The Open University Law School's approach to blended learning, which combines asynchronous and synchronous methods, aims to enhance the student experience by creating a sense of community and support[536]. As IUM and other institutions continue to adopt hybrid models, it will be critical to address these infrastructural challenges by investing in reliable internet access and ensuring that all students have the necessary resources to participate fully in remote learning.

Recommendations

To optimise hybrid and remote learning at IUM, several strategic recommendations can be made. First, educators should be provided with enhanced training and support to better navigate the challenges of online and hybrid teaching.

[535] Perry and Boodt (n 25).

[536] The Open University Law School, 'Enhancing Distance Learning Student Experience by Creating a Feeling of Community' (2024) Scholarship and Innovation Blog https://www5.open.ac.uk/scholarship-and-innovation/scilab/blog/enhancing-distance-learning-student-experience.

This includes upskilling in the use of technology and engagement strategies to ensure that course materials are effectively adapted for digital environments. Furthermore, addressing students' connectivity issues is crucial, and this can be achieved by investing in reliable technological infrastructure, making sure that students, particularly those in remote areas, have access to the necessary resources for seamless learning.

Additionally, fostering increased interaction and feedback within the learning process is essential. This can involve creating more interactive sessions, offering regular feedback, and providing opportunities for hands-on learning, which will help maintain student engagement and fill the gaps left by traditional in-person experiences. Lastly, IUM should continue exploring the potential of advanced technologies like artificial intelligence and virtual reality to enhance the learning experience. These innovations, if accessible and inclusive, can revolutionise legal education and ensure that the institution remains at the forefront of digital learning.

Conclusion

The transition to hybrid and remote learning models at the Islamic University of Maldives (IUM) represents a pivotal moment in the evolution of legal education. While these models present significant challenges—particularly in terms of student engagement, technological adaptation, and infrastructure—they also offer unique opportunities to enhance accessibility, flexibility, and the use of innovative teaching tools. The experiences of educators, students, administrators, and external experts highlighted in this study suggest that with the right investments in technology, professional development, and support systems, IUM can optimise its hybrid and remote learning strategies. To achieve this, it is essential to address existing barriers such as connectivity issues, the need for more interactive learning environments, and the importance of continuous training for educators. Additionally, leveraging emerging technologies such as AI and virtual reality could further enrich the learning experience and position IUM at the forefront of modern legal education. The recommendations outlined in this report provide a roadmap for IUM to refine and expand its hybrid and remote learning models, ensuring that they not only meet the immediate needs of students and faculty but also anticipate the future demands of legal education in an increasingly digital world. By embracing innovation, fostering continuous improvement, and focusing on inclusivity, IUM can successfully navigate the shift to a more flexible and dynamic educational landscape.

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Protection of labor rights of private sector employees in Maldives

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Abstract

The rights of private sector employees began to be acknowledged with the enactment of the 2008 Constitution and the Employment Act of 2008. Despite the existence of employment laws and regulatory bodies, it is not uncommon for private sector employees to raise complaints about the infringement of their rights. This research aims to identify some key rights that private sector employees are entitled to and the extent to which they are protected by relevant legislation. This will ultimately help to determine the steps necessary to ensure the protection of the rights of private sector employees. This research was conducted through qualitative methods and data was collected mainly through documents and interviews. This research focuses on the right to fair wages, freedom from discrimination, fair working hours, safe working conditions and adequate accommodation. It was discovered that private sector employees, especially migrant workers, are more vulnerable to being exploited. Hence, private sector employees cannot fully enjoy basic labor rights they are entitled to.

Keywords: Labor Rights, Private Sector Employees, Protection of Labor Rights, Migrant Workers, Maldives Employment Act 2008

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ކީވޯޑްސް: މަސައްކަތްތެރިންގެ ހައްޤުތައް، ޕްރައިވެޓް ސެކްޓަރގެ މުވައްޒަފުން، މަސައްކަތްތެރިންގެ ހައްޤުތައް ރައްކާތެރިކުރުން، ބިދޭސީ މަސައްކަތްތެރިން، ވަޒީފާއާބެހޭ ޤާނޫނު 2008

Introduction

The protection of labor rights refers to the rights, workers are entitled to, and the enforcement of such rights. All employees in Maldives fall under the purview of the Maldives Employment Act,[537] including private sector employees. This statute elaborates the rights and liabilities of employees and the employers, methods of redress where a workplace injury takes places, work hours, minimum wage, and other issues that fall within the ambit of employment.[538] This research focuses on the rights of private sector employees amongst the employed population of Maldives including migrant workers and laborers working in the private sector.

Labor rights have gained global prominence through the efforts of human rights institutions and advocacy organizations like the International Labour Organization (ILO), which asserts that their enforcement strengthens economic resilience by preventing exploitation and reducing labor disputes.[539] Labor rights protection is indispensable for addressing modern labor market inequalities, reducing exploitation, and fostering inclusive growth. It is a crucial element for building resilient economies that prioritize human dignity alongside economic progress.[540]

Effective labor rights safeguard workers by ensuring fair wages, safe working conditions, and job security, thereby enhancing both their well-being and productivity.[541] Furthermore, robust labor protections help address critical issues like income inequality, precarious employment, and social exclusion.[542] These rights empower workers to demand equitable treatment and access to social protection, which are fundamental to sustainable economic growth.[543] Cultural and institutional factors further complicate labor rights enforcement. In some regions, prioritization of rapid economic growth over labor protections leads to weak legal frameworks and enforcement mechanisms, perpetuating worker exploitation.[544] This dynamic was evident in the Maldivian tourism industry during the 1970s and 1980s, when the tourism sector was being established. Due to poor living conditions and a lack of security and protection for employees in tourist resorts, many locals refused to join the tourism industry, resulting in an influx of a large number of expatriate

[537] Law No. 2/2008, Employment Act.

[538] Gurpreet Singh, 'Labour Law : The History and the Present' (*iPleaders*, 30 May 2021) <https://blog.ipleaders.in/labour-law-history-present/> accessed 23 April 2023.

[539] Oleh Lohinov and others, 'Regulatory Peculiarities of the Maritime Labor Convention in the System of International Legal Protection of Seafarers' Rights' (2024) 21 Journal of Maritime Research 31.

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[541] Wenshuo Han and others, 'The Impact of Digital Economic Development and Government Intervention on China's Pension Insurance Fund Income: Moderated Chain Mediation Effects' (2024) 13 Social Sciences 672.

[542] Swatantra Pratap Singh, Pooja Barthwal and Anjay Singh Bisht, 'Decent Work and Economic Growth: A Sociological Perspective.' in Mousmi Goel, Nirmesh Sharma and Varsha Gupta (eds), *UNDP: Sustaining Actions and Reforms* (RED'SHINE PUBLICATION PVT LTD 2024).

[543] Francesca Maffei, 'The Need for Evolving Legal Frameworks for Digital Workers' [2023] *DiFree News letter* <www.difree-project.it/wp-content/uploads/2024/12/DiFree-News-4.pdf> accessed 29 November 2024.

[544] Samina Ali and Muhammad Zubair Khan, 'A Comprehensive Analysis of Unfair Labor Practices in Pakistan from the Perspective of National and International Law' (2024) 3 Pakistan Research Journal of Social Sciences.

workers into the country.[545] Until the mid-90s, there was no proper regulatory mechanism to protect the rights of employees in the Maldives.

espite the rights of workers were briefly outlined in the earlier constitutions of the Maldives, these rights were limited to certain context, *inter alia* include the right to work, the right to freedom from forced labor, and the right to a pension.[546] Workers' rights were outlined in more detail with the enactment of the government employees' regulation in 1994. This regulation covered issues such as hiring, promotions, termination of government employees, wages, allowances, and other benefits given to government employees. The first employment regulations regarding the private sector were also established in 1994. These regulations set down minimum standards which must be included in an employee agreement.[547] While there was no significant improvement in labor legislation, the ratification of the Maldives Civil Service Act in 2007 established the Civil Service Commission to oversee the enforcement of rights and duties of civil servants.[548] The 2008 Constitution also brought about a notable change in the horizon of labor laws. It set down more extensive rights of workers, including freedom from forced labor, the right to strike, the right to safe conditions of work and fair wages.[549] The biggest milestone in protecting labor rights was achieved with the enactment of the Employment Act in 2008, which set down the rights and duties of workers comprehensively.[550]

The promulgation of the 2008 Constitution and the enactment Employment Act of 2008 established labor rights for private sector employees as well. Despite the existence of labor laws and regulatory bodies to oversee the enforcement of labor rights, workers still complain about the deprivation of basic rights[551] such as access to food, shelter, and inadequate pay.[552] Such complaints raise the question of the extent of enforcement of those legislations. This research, therefore, will identify some key rights that private sector employees in the Maldives are entitled to and the extent to which they are protected. This will ultimately help to determine the steps necessary to ensure the protection of rights of private sector employees. It focuses on all employees who fall within the ambit of the private sector, including workers in the tourism industry and migrant workers.

Research Methodology

Qualitative research design is utilized, as it is considered the most feasible methodology for this study. A thematic documentary analysis approach is employed to scrutinize information from secondary sources, such as articles and reports, on the current state of the private sector workforce. In addition to analyzing statutes and by-laws related to labor rights, interviews with private sector employees are conducted to gain insights into their experiences.

Rights of Private sector employees

Private sector employees are legally entitled to many labor rights. These rights are mainly laid down in the Constitution, and they are reinforced in the Employment Act and regulations. Regardless of the existence of these labor rights, there are questions as to whether private sector employees are fully afforded basic rights such as adequate pay, freedom from discrimination, fair working hours, safe working conditions and adequate accommodation.

(a) The right to fair wages

The right to fair wages for all workers is a constitutionally protected right,[553] and the Employment Act[554] elaborates this right with a recent amendment to establish a minimum wage.[555] For government employees, the right to adequate pay is enforced within the regulatory framework of the Civil Service Commission in that civil servants can raise issues regarding their pay with the Commission, and the punctuality in payment is ensured as salaries are managed by the Ministry of Finance.

[545] Aishath Shakeela and Chris Cooper, 'Human Resource Issues in a Small Island Setting: The Case of the Maldivian Tourism Industry' (2009) 34 Tourism Recreation Research 67.

[546] Constitution of the Maldives 1932. Also see all subsequent Constitutions of the Maldives

[547] Human Rights Commission of the Maldives, 'Rapid Assessment of the Employment Situation in the Maldives' (Human Rights Commission of the Maldives 2009).

[548] Act No. 5/2007, The Maldivian Civil Service Act.

[549] Constitution of the Republic of Maldives 2008.

[550] Act No 2/2008 ،The Employment Act.

[551] 'Afcons Muvazzafunnah Kaan Nudhy, Musaara Nudhey Kamuge Thuhumathu! - Vaguthu' <https://vaguthu.mv/news/832045/> accessed 23 April 2023.

[552] raajje.mv, 'Tourism dhaairaga masakkai kuraa muvazzafunge haqquthah hoadhai dhinumah majlis memberun govaalaifi' <https://raajje.mv/45861> accessed 23 April 2023.

[553] Constitution of the Republic of Maldives 2008 ch II.

[554] Employment Act.

[555] Minimum Wage Order 2021.

The wages of private sector employees are not regulated through such a framework, and the pay depends on the policies of private companies, and punctuality and consistency of salaries depends on the supervisors and human resource departments of workplaces. This lack of supervision of private workplaces by authorities leaves employees vulnerable to being exploited by inadequate pay and remuneration. Private sector employees are sometimes not paid on time, or they are paid inadequately for the work they do. For instance, Maldivian employees often file issues over wages in the Employment Tribunal,[556] sometimes regarding non-payment of commissions and decrease in salaries and benefits contrary to the Employment Act.[557] Private sector employees were also the most affected by the delay of the government in establishing a minimum wage.[558] Many workers were not paid adequately during the two period, and this exacerbated during Covid-19 where some workers were placed on unpaid leave and foreign workers were deported without being paid their wages.[559] Foreign workers are particularly exploited as they have less access to regulatory authorities. For instance, 49 foreign workers employed by Jaah Investments filed their case with the Employment Tribunal over unpaid wages.[560] Despite filing complaints with the police, the Labor Relations Authority, and the Human Rights Commission, no significant action was taken. Moreover, the minimum wage order excluded expatriate workers despite migrants consisting about 1/3rd of the Maldivian workforce.[561] Being excluded from the minimum wage meant that the wages received by migrant workers would have been insufficient for the work they do and vulnerable to exploitation.[562]

(b) The right to freedom from discrimination

The freedom to be protected from discrimination based on gender, race, nationality, and disabilities is one of the most remarkable labor rights.[563] Regardless of this constitutionally protected labour right, private sector employees are often excluded due to their nationality or disabilities and harassed due to their gender. While employees often face such issues, there are no mechanisms in place to report these problems and they are commonly met with inaction from supervisors.

The Maldivian workforce composes of many lower-skilled migrant workers from India and Bangladesh, many of whom are undocumented. Their undocumented status often exposes them to exploitation. A large portion of lower skilled, foreign, undocumented workers reveals the system issues of discrimination in the Maldivian workforce[564] and recently, some foreign workers complained of the discrimination they faced based on their nationality.[565] Workers also complain about feeling excluded due to the ableist nature of workplaces. An employee with an illness shared their experience of being excluded from their team and feeling isolated due to their inability to participate in team lunches due to a health condition where they had dietary restrictions and had to urinate frequently. They reported that there was no procedure to share their grievances with their superior workers nor did they attempt to address their difficulties.[566]

Gender based discrimination is the most prevalent type of discrimination in workplaces, where women are met with condescending attitudes, exclusion, and sometimes harassment from other workers and supervisors. A female employee shared her experience of being excluded from meetings early in her employment, while her male counterparts were called into the meeting. While this situation has changed since then and she is included in such meetings, she shared how she felt excluded earlier in her employment.[567]

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[556] *Aishath Maasha vs Strader Private Limited, 146/VTR/2019*; *Ali Thameem vs Rainbow Enterprises Private Limited, 5/VTR/2019*.

[557] *Hawwa Huzma vs Ondhigo Private Limited, 193/VTR/2019*.

[558] Minimum Wage Order 2021.

[559] 'COVID-19: Over 11,000 Resort Employees Placed on Unpaid Leave' <https://avas.mv/en/80534> accessed 23 April 2023; Human Rights Watch, 'Maldives: Events of 2020', *World Report 2021* (2020) <https://www.hrw.org/world-report/2021/country-chapters/maldives> accessed 23 April 2023.

[560] Lamya Abdulla, '49 Migrant Workers File Case with Employment Tribunal over Unpaid Wages' *The Edition* <https://edition.mv/news/26716%202> accessed 23 April 2023.

[561] Human Rights Watch (n 23).

[562] 'Expatriate Workers with No Rights | Maldives Financial Review' (22 September 2022) <https://mfr.mv/industry/expatriate-workers-with-no-rights>.

[563] Employment Act, Law No. 2/2008 s 4; Constitution of the Republic of Maldives 2008 art 37.

[564] 'Expatriate Workers with No Rights | Maldives Financial Review' (n 26).

[565] Abdulla (n 24).

[566] Interview with Participant 03, Employee working in the private sector (Male', Maldives, 17 April 2023

[567] Interview with Participant 01, Employee working in the private sector (Male', Maldives, 13 April 2023)

Another female employee also shared her experience of being patronized by male supervisors where their behavior suggested that she was less capable of understanding office procedures compared to her male counterparts.[568] Several private sector employees also share their experiences with sexual harassment. A 2013 report by the Human Rights Commission of the Maldives showed that over a fifth of the women surveyed had been sexually harassed in their workplace. Sexual harassment in workplaces are not isolated events; it is part of the discrimination women face in the workplace. For instance, in July 2013, the CEO of the Sun Media Group, was charged with criminal offences for bringing girls into his office and having sexual relations with them after offering them jobs; and in November 2014, the former editor of V-news was arrested for assaulting a female colleague. While the harassment against women is widespread, many employees cannot report these incidents due to the lack of a proper framework and regulatory body within workplaces. Employees are more reluctant to report such incidents where the perpetrators are their superiors, for the fear of being terminated, ostracized, or subjected to further harassment.[569]

(c) The right to fair working hours

The Employment Act places a cap on the maximum number of working hours (48 hours) and the maximum number of consecutive workdays (six days).[570] This is also a constitutionally protected labor right.[571] The working hours are fixed for government employees from 8 to 2 (6 hours), and overtime is also fixed and regulated by the Civil Service Commission and respective government offices. While government employees work beyond the designated hours, they are usually given leave on public holidays, and they are given an overtime. However, private sector employers have the liberty of establishing their own working hours and overtime. Subsequently, employees are often made to work longer hours without overtime pay or inadequate overtime pay. The lack of a regulatory framework and varying policies within private companies result in unfair working hours and compensation for private sector employees.

A private sector employee shared their experience with how workers in her office must come to work even on their designated off days, albeit having worked six consecutive days.[572] Another employee shared how managers often ask employees in their workplace to do work after official working hours during events without overtime. She also shared that employees are often made to work during public holidays, even on labor day, without additional wages although it is an established labor right.[573] Another employee shared that the managers refused to establish official working hours during Ramadan to avoid calculating overtime, as a result of which one employee was forced to work long after the Iftar time and did not get the opportunity to go home and break their fast.[574]

(d) The right to safe working conditions

Employers must establish a safe workplace for their employees. Where employees are made to operate machinery, employers must obtain the necessary protective gear, tools and train their employees to operate the machinery safely. This is a critical labor right protected through the Constitution and the Employment Act. While workers must be provided with just and safe working conditions, the reality is anything but. The Public Interest Law Centre in a recent infographic video reported that work site safety issues are at an alarming level in the Maldives, where workers are at risk of being injured in several ways (falling, objects falling on them, sustaining injuries during heavy lifting etc.).[575] It is not only private sector employees who are exposed to dangerous working conditions. Government employees also endure unsafe working conditions where workers have met with accidents, and one worker consequently passed away;[576] however, these conditions are somewhat regulated and monitored by the government after such accidents. Private sector workers are more vulnerable due to the absence of a solid framework and a parent body to regulate working conditions.

Construction workers are often exposed to worksite accidents. In one incident, a worker at Thaa Atoll Dhiyamigili Island boatyard had his toes severed after an iron sheet fell on

[568] Interview with Participant 02, Employee working in the private sector (Male', Maldives, 13 April 2023)

[569] 'Workplace Sexual Harassment in the Maldives: The Struggle for Justice' (6 November 2017) <https://maldivesindependent.com/society/workplace-sexual-harassment-in-the-maldives-the-struggle-for-justice-133995> accessed 23 April 2023.

[570] Employment Act, Law No. 2/2008 s 32.

[571] Constitution of the Republic of Maldives 2008 art 37.

[572] Interview with Participant 02.

[573] Interview with Participant 01.

[574] Interview with Participant 04, Employee working in the private sector (Male', Maldives, 5 April 2023)

[575] Public Interest Law Centre, 'Work Site Safety Issues Are at an Alarming Level in the Maldives' (2023) <https://www.facebook.com/watch/?v=815332063039012> accessed 23 April 2023.

[576] Avas, 'Man Injured in Port Accident Passes Away' (16 January 2021) <https://avas.mv/en/94203> accessed 25 April 2023.

his feet.[577] Migrant workers are perhaps more vulnerable to such accidents. Many migrant workers are often made to lift heavy objects on their head without protective equipment, and following workplace incidents they have less access to healthcare. In one incident, a Bangladeshi worker was killed after he was hit by a falling stone in a construction site. New worker safety regulations were enacted in 2022 following this incident, where it was mandatory for employers to provide workers with safety equipment in construction sites.[578] However, these regulations are seldom monitored and enforced by relevant authorities such as the Labor Relations Authority and the Construction Ministry. Work safety is also unfortunately not only confined to worksites involving heavy labor. An employee who worked in an office space shared that her workplace was unhygienic due a rat infestation. She also shared that she constantly got ill due to the accumulation of dust in her working space.[579] Amid unsafe working conditions, The Public Interest Law Center has advocated for an Occupational Safety and Health Act to protect the rights of laborers working in dangerous conditions.[580] While a bill was drafted and sent to the Parliament in 2022; it was passed by the Parliament and ratified after a yearlong delay.[581]

(e) The right to adequate accommodation

Accommodation rights are a point of contention for workers. Accommodation is mostly provided for migrant workers. All foreign employees employed by the government are paid accommodation allowances while Maldivian workers usually do not get accommodation quarters or allowances. Many local workers have expressed displeasure regarding the discrepancy in the treatment between local workers and migrant workers especially by the government. When Maldivian workers migrate to the capital Male' from other islands and are forced to pay a steep rent to work in Male', most of their income are paid to rent.

Nevertheless, migrant workers undeniably consist of about 1/3rd of the Maldivian workforce, and they usually carry out heavy labor in construction and other companies that require hard labor. These companies are usually in the private sector without a proper oversight framework. These workers are indubitably a significant part of the workforce and thus are entitled to accommodation given that many workers come from foreign countries, are often exploited by agents.[582] Migrant workers, especially those who work as laborers, are more vulnerable to unfair labor practices due a lack of access to regulatory authorities.

A recent amendment to the Employment Act and regulations made under the Employment Act established certain standards for providing accommodation quarters for migrant workers such as proper shelter, ventilation, lighting, clean sleeping arrangements, and access to bathrooms.[583]

However, the accommodation quarters provided to migrant workers often fall short of the legally established standards. Labor quarters in Male' are often congested, and during the worst waves of Covid-19, the severe congestion in accommodation quarters caused extreme difficulties in social distancing. Consequently, already vulnerable workers were at risk of exposure to the virus.[584] In another incident, Afcons[585] employees who worked on the *Thilamale' Bridge Project* protested their poor living conditions due to the subsequent damage caused when a fire broke out in their labor quarters.[586] An employee in the Human Resource Department of another construction company also shared the substandard living conditions of their main labor quarters citing that "no human should live there." She reported that the living quarters were

577 'Iron Sheet Falls on Worker's Feet, Severing Toes' (*WorksafeMaldives*, 29 September 2022) <https://worksafemaldives.com/iron-sheet-falls-on-workers-feet-severing-toes/> accessed 23 April 2023.

578 'Worker Killed in Construction Accident' (*WorksafeMaldives*, 29 September 2022) <https://worksafemaldives.com/worker-killed-in-construction-accident/> accessed 23 April 2023.

579 Interview with Participant 02.

580 Public Interest Law Centre (n 39).

581 Massakathuge maahauluge salaamathaai siyyhee rakkatheri kamuge bill; The President's Office, 'The President Ratifies the Occupational Safety and Health Act' (2 January 2024) <https://presidency.gov.mv/Press/Article/29534> accessed 25 April 2024.

582 'Expatriate Workers with No Rights | Maldives Financial Review' (n 26).

583 Regulation on Employees Accommodation Standards, Regulation, R-15/2021.

584 'Maldives: Migrants Arrested for Protesting Abuses | Human Rights Watch' (24 July 2020) <https://www.hrw.org/news/2020/07/24/maldives-migrants-arrested-protesting-abuses> accessed 23 April 2023.

585 AFCONS Infrastructure is an Indian Construction company based in the Maldives, which is working on the Thilamale' Bridge project in the Maldives.

586 Ahmed Aidhu, ' އެފްކޮންސްގެ މުވައްޒަފުން ގުޅޭ ފަޅުގައި ހަމަނުޖެހުން ހިނގަނީ (Bridge Ge Massakaiyy Kuraa Afcons Ge Muvazzafun Gulhee Falhugai Hama Nujehun Hinganee)' <https://adhadhu.com/article/32326> accessed 23 April 2023.

congested, and the workers were forced to sleep on floor mats due to the sheer number of workers, although employers are required to provide beds for workers under the accommodation regulation. She also shared the unhygienic state of the living quarters where the place was infested with rats, and it had unclean bathrooms. It also did not have separate rooms for cooking.[587]

It is worth noting that the accommodation provided for staff working in the tourism industry, particularly in tourist resorts, is of a good standard. Most resorts offer air-conditioned rooms, private bathrooms, and other necessary amenities. In fact, many resorts began providing high-quality staff accommodations even before the current legal framework for staff housing was enacted. Currently, over 170 tourist resorts in the Maldives provide fairly a good quality accommodation and meals for all employees. These provisions are essential, as each resort is situated on a separate, uninhabited island, isolated from the local population.

However, it is important to clarify that workers in the resort construction industry are not provided with such facilities, as they are typically employed and managed by construction companies rather than resort management.

Recommendations

To enhance labor rights protection and improve working conditions, several key measures must be taken. First, regulatory bodies and other relevant parties should raise awareness about the constitutional and legal rights of workers to ensure employees understand their entitlements. Additionally, organizations such as the Labor Relations Authority, the Ministry of Economic Development, and the Ministry of Construction must more closely monitor the working conditions in the private sector, especially labor sectors under a clear legal mandate. Enacting specific mandates for regulatory bodies to oversee labor conditions will ensure consistent and effective oversight.

Increasing the budget for regulatory bodies is also crucial to enabling them to address labor rights infringements promptly and efficiently. Furthermore, these bodies must practice impartiality and avoid discrimination, especially when migrant workers seek their assistance. Such measures will foster trust and ensure equitable enforcement of labor rights.

Private sector employers must also take responsibility by establishing proper systems and procedures for employees to report grievances related to wages, discrimination, working hours, working conditions, and labor quarters. In addition, private companies should establish independent departments dedicated to human resource management to ensure proper handling of labor-related matters.

Employers must implement standardized working hours, allocate appropriate pay for overtime, and compensate employees for work performed on public holidays. It is also essential for employers to ensure that working conditions align with the standards set by the Employment Act and related regulations. Finally, employers should provide training for foreign workers (laborers) on maintaining labor quarters to promote cleanliness and hygiene, fostering a safe and comfortable living environment for all employees.

Conclusion

Many private sector employees are not entirely familiar with their labor rights. Consequently, employers exploit their workers due to the lack of this knowledge and often follow the Employment Act to the extent of their convenience. They make employment guidelines contrary to the Employment Act, especially in terms of pay, working hours and overtime. Although the Employment Tribunal has done a better job in securing the rights of private sector employees in recent years, regulatory authorities such as the Labor Relations Authority, the Economic Ministry, and the Ministry of Construction often fall short in their duty of monitoring labor conditions. They do not take the necessary action when knowledge of employee abuse surface or when such complaints are made. Subsequently, many employers are not penalized for such abuses. Migrant workers are especially dismissed when they seek the assistance of regulatory authorities. They are considered a threat while they attempt to acquire the rights they are constitutionally and legally entitled to. Thus, private sector employees are still unable to fully enjoy their labor rights; and migrant workers are particularly exploited with regards to pay and accommodation, especially those working in the labor sector.

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Dhivehi Section

Codifying Li’an Laws in the Maldives: A Legal Imperative

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Abstract

In the Maldivian courts, matters pertaining to personal law are primarily adjudicated based on Islamic Sharia. However, the absence of a codified law on Li’an presents significant challenges for both complainants and judges. Li’an, a concept within Islamic Sharia, addresses disputes related to the paternity of a child and falls under Islamic personal law. Currently, the Maldives lacks clear legal standards and procedures for handling such cases, leading to confusion and inconsistencies in their adjudication. This study aims to examine the status of Li’an under Islamic Sharia and emphasize the pressing need for a codified law governing such cases in the Maldives. Using a qualitative methodology, the research explores the principles of Li’an under Islamic jurisprudence and evaluates the current practices of relevant authorities in the Maldives. The study also identifies key issues that need to be addressed to ensure fair and consistent adjudication of Li’an cases. Primary data for this research was gathered from Islamic primary sources, scholarly literature, and interviews with relevant legal authorities. The analysis reveals a critical gap in the legal framework and signifies the urgency of codifying a law on Li’an to ensure clarity, fairness, and uniformity in its application.

Keywords: Li’an in Islamic Sharia; Law Relating to Li’an; Family Law; Children of Slave Women; Lineage of Children from Li’an; Islamic Personal Law.

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އަބްދުލްމުޢީދު ޙަސަން

އެބްސްޓްރެކްޓް

ދިވެހިރާއްޖޭގެ ކޯޓުތަކުގައި ވަކިން ޚާއްޞަކޮށް އަޙްވާލު ޝަޚްޞިއްޔާއާ ގުޅޭ މައްސަލަތަކުގައި، ދިވެހިރާއްޖޭގައި ޝަރީޢަތްކުރަނީ އިސްލާމީ ޝަރީޢަތާ އެއްގޮތަށް ކަމުގައި ވީ ނަމަވެސް، ލިޢާން ކުރުމާބެހޭ ޤާނޫނެއް ދިވެހިރާއްޖޭގައި ފާސްކުރެވިފައި ނުވެއެވެ. ލިޢާންކުރުމުގެ މައްސަލަތަކަކީ އަޙްވާލު ޝަޚްޞިއްޔާގެ މައްސަލަތަކެކެވެ. އެ މައްސަލަތަކަށް ބެލުމުގައި ޤާނޫނީ މިންގަނޑެއް ނެތުމުން، މައްސަލަ ހުށަހަޅާފަރާތާއި މައްސަލަ ބަލާ ފަރާތްތަކަށް ދަތިތަކާއި ކުރިމަތިވާކަން ފާހަގަކުރެވެއެވެ. އެހެނީ ލިޢާންކުރުމުގެ މައްސަލަތައް ހުށަހެޅުމުގެ ޤާނޫނީ އިޖުރާއާތެއް ސާފުކޮށް އެނގެން ނެތުމުން، އެ ފަދަ މައްސަލަތައް ހުށަހަޅައިގެން ކުރިއަށް ގެންދާނެ ގޮތެއް، ސާފެއް ނޫނެވެ. މި ދިރާސާގެ މަޤްޞަދަކީ، އިސްލާމީ ޝަރީޢަތުގައި ލިޢާންކުރުން އޮތް ގޮތް ދިރާސާކޮށް، ދިވެހިރާއްޖޭގައި ލިޢާންކުރުމުގެ ޤާނޫނެއް ކޯޑުފައިކުރުމުގެ މުހިންމުކަން ބަޔާންކުރުމެވެ. ކޮލިޓޭޓިވް މެތަޑޮލޮޖީގެ މަގުން ކުރެވިފައިވާ މި ދިރާސާގައި ވާނީ، އިސްލާމީ ޝަރީޢަތުގައި ލިޢާންކުރުން އޮތް ގޮތުގެ މައުލޫމާތު ބަޔާންކޮށްފައެވެ. އަދި ދިވެހިރާއްޖޭގެ ކަމާބެހޭ ފަރާތްތަކުން، ލިޢާންކުރުމުގައި އަމަލުކުރާ ގޮތަކީ ބަލައި، އެ ކަމުގައި ހުރި މައްސަލަތައް ފާހަގަކޮށްފައެވެ. މި

ދިރާސާއަށް މަޢުލޫމާތު އެއްކުރުމުގައި ވަނީ، އިސްލާމީ ޝަރީޢަތުގެ ބުނިޔާދީ މަސްދަރުތަކުންނާއި، ކަމާބެހޭ އިސް ފުޤަހާއުންގެ ފޮތްތަކުންނެވެ. ޤަވާޢިދުތަކުން މަޢުލޫމާތުތައް ތަރުތީބުކުރުމުން އެނގިގެން ދިޔައީ، ޖިނާޔަތުގެ ބާރު މައްސަލަތަކުގައި އިންސާފުވެރިކަން އެއްގޮތަކަށް ހަމަތަކުން ކޯޓުތަކުގައި ދިވެހިރާއްޖޭގައި ޖިނާޔަތުގެ ޤާނޫނުގެ ބާބުތަކުގެ ތެރެއިން ބެލެވޭ ކަމުގައެވެ.

މުހިންމު ބަސްތައް: އިސްލާމީ ޝަރީޢަތުގައި ޖިނާޔަތުގެ؛ ޖިނާޔަތުގެ ގޮތް ޤާނޫނު؛ އަދުލުއިންސާފުގެ ދަރަޖަ؛ އިތުބާރުކުރާ ޤާނޫނު؛ ޖިނާޔަތުގެ ދަރަޖަ ނަތީޖާ

ތަޢާރުފު

އިސްލާމީ ފިޤުހުގައި ޖިނާޔަތުގެ މައްސަލައަކީ، އަދުލުވެރި ޝަރުޢީ ނިޒާމުގެ ތެރޭގައި ހިމެނިގެންވާ މުހިއްމު ބައެކެވެ. އަދި މިއީ އިސްލާމީ ޝަރީޢަތުގައި ކިރިމީ ޤުރުއާނުގެ ނައްޞުން އެކަމުގެ ޝަރުޢީ ހުކުމްތައް އައިސްފައިވާ މުހިއްމު ބައެއް ކަމުގައިވެ. މިއީ، އިސްލާމީ ޝަރީޢަތުގައި ޖިނާޔަތްތަކާބެހޭ ގޮތުން ޖިނާޔަތު ދިރާސާ މަޢުލޫމާތެކެވެ.

އިސްލާމީ ފިޤުހުގައި ވަނީ، ޖާހިލީ ޒަމާނާބެހޭ، ކާފިރު ދަރުމަތަކުން ބަދަލުކުރުމަށް ތަފާތު ފަހަރު ބޭނުންކުރެވުނު ގަވާއިދުތަކެވެ. އެ ކަމަށް ޝަރުޢީ އިސްލާމީ ޝަރީޢަތުގައި ވަނީ، ޤިޞާޞް ހައްދުތަކާއި ހިނގާ ކަންތައް އަދި ކަންތަކުގެ ހުކުމްތައް ބަޔާންކުރެވިފައެވެ. މިގޮތުން ކިޔަނީ ދަށުން ޖިނާޔަތްތައް ކަނޑައެޅޭނެ ގޮތް ކަނޑައެޅިފައިވާ ގޮތުގައި، ޤިޞާޞް ހައްދު ކަނޑައެޅޭ ޝަރުޢީ ހުކުމްތައް ހިމެނެއެވެ. އިސްތިޤާމަތާއި އަމަން މިނިވަންކަމާއި ހިމާޔަތް ޖިނާޔަތުގެ.

ޖިނާޔަތުގެ ދަރަޖައިގެ މުޤައްރިރު ނަތީޖާ ގެނުވާ ގޮތުގެ ކަމެކެވެ. ޖިނާޔަތުގެ މަޢުލޫމާތު، މިހާރު ކުރިން ހުރިހާ ބަޔަކު ޤާނޫނު ކަމަކަށް ނިސްބަތް، އިހުގައި އެ ފަދަ މަޢުލޫމާތު ކުރިން ހުރިހާ، ޖިނާޔަތުގައި ވެއެވެ. މިހާރު އެ ފަދަ މަޢުލޫމާތު، ހުރިހާ ކަމެއް ޖިނާޔަތުގެ ކުރިއަށް ގެންދެވޭ، ކުރިން ޖިނާޔަތުގެ ޤަވާޢިދު ވަސީލަތްތައް ފަހިވެފައިވާ ކަމަށް، ފަރުދީ ކުރީގެ ހިނގާފައިވާ ބަދަލުތަކެއް ގެނެވުން، އިޖްތިހާދު މުހިއްމު ދިފާޢުވެއެވެ. ޖިނާޔަތުގެ، ދަރިންނަށް މުޅި މުޖުތަމަޢަށް އެކަމުގެ އަސަރު ކުރަން ކަމެވެ. މި ދިރާސާ މަޖުމޫޢުގެ މަޤްޞަދަކީ، އިސްލާމީ

ޝަރީޢަތުގައި ޖިނާޔަތުގެ ގޮތް ތަފާތު ދަރަޖައިގެ ޖިނާޔަތްތަކުގެ ދަރަޖަތަކުގެ ތަފާސް ދަރަޖަތަކާއި ޤާނޫނުގެ ޖިނާޔަތުގެ ތަފްސީލީ ބަޔާންތައް ދިރާސާކުރުމެވެ.

ދަރަޖައިގެ ޖިނާޔަތުގެ ދަރަޖަތަކުގެ ޤާނޫނުގެ ކުރިއަށް ކުރެވުނު ދިރާސާއެއްގެ ދިރާސާކުރާ ބެލެވެއެވެ. އެހެން ދަރަޖައިގެ ޤާނޫނު، އިސްލާމީ ޝަރީޢަތުގެ ދަރަޖަތަކުގެ ޖިނާޔަތް، ގަބޫލުކުރާ މަޤްޞަދަކީ، އަދި ޖިނާޔަތުގެ ދަރަޖަތައް މަޢުލޫމާތު، ދަރަޖަ ކުރިން ފުރުޞަތުގެ ހިނގާ ކަމެއް ޖިނާޔަތުގެ ހިމެނޭ، އެ ފަދަ މަޢުލޫމާތުގައި ކުރިން ހިމެނޭ އިސްލާމީ ޝަރީޢަތުގެ ޤަވާޢިދުތަކުގެ ދަށުން ނިސްބަތްކުރާ ކަންތައް ދިރާސާ ކުރެވިފައިވާ ބައެކެވެ. މި ދިރާސާ ކުރިއަށް ގެންދިޔަ ކުރިއަށް ގެންދެވުނު ގޮތް ކަމުގައިވާތީ، އިސްލާމީ ޝަރީޢަތުގެ މަސްދަރުތަކާއި، ދަރަޖައިގެ ގޮތްތަކެއްގެ ޖިނާޔަތުގެ ދަރަޖަތަކުގެ ހިމެނިފައިވެއެވެ. އަދި މި ދިރާސާގެ ހުރިހާ ބައެއްގައި ޖިނާޔަތާ އިތުރު ޖިނާޔަތުގެ މަޢުލޫމާތު މަސްދަރުތަކުގެ ދިރާސާ މުޅިން ޖިނާޔަތުގެ ބަޔާންކުރެވިފައިވެއެވެ.

ޖިނާޔަތުގެ ތަޢާރީފު

ޖިނާޔަތުގެ ބަސް މާނައަކީ، ގެއްލުމެއް ދިނުމެވެ. އިބްނު ފާރިސް، ލުޣަތުގެ ބަސް ބަޔާންކޮށްފައިވާ ގޮތުގައި، އެއީ މީހަކު ކުރާ ކަމެއްގެ ސަބަބުން ގެއްލުމެއް ލިބުމެވެ. ޖިނާޔަތުގެ ޝަރުޢީ މާނައަކީ، ޝަރީޢަތުގެ ނަހީކުރެވިފައިވާ ކަމެއް ކުރުމެވެ.

ލަޢުނަތަކީ، ހުރަސްކަނޑާލުމާއި މާތް اللهُ ގެ ރަޙުމަތުން ދުރުކުރުމެވެ، އެއީ އެއްލައިބާލުމެވެ. ފިޤުހުވެރިންގެ އިސްތިލާޙުގައި ލިޢާނުގެ އެތައް ތަޢުރީފެއް ވެއެވެ.[588] ތިރީގައި މިވަނީ، ހަތަރު މަޛުހަބުގައި ލިޢާނުގެ ތަޢުރީފެވެ. ޙަނަފީ މަޛުހަބުގައި ލިޢާނަކީ (ދޮގު ފިރިހެނުންކުރާ ކަސަމް މިހާރު) ލަޢުނަތާއި ކާފާ ގުޅިގެން ހިމެނޭއިރުން، ހުވައިހުއްޓަސް ދީ ކަނޑައަޅާ ހުކުމަށް ހުރެވޭ ހެކިބަސްތަކެވެ. ފިރިމީހާގެ ނިސްބަތުން އެއީ ޤަޛްފު ގެ ޙައްދުގެ މަޤާމުގައި ކަމުގައިވާ ކަމެކެވެ. އަނބިމީހާގެ ނިސްބަތުން އެއީ ޒިނާގެ ޙައްދުގެ މަޤާމުގައި ކަމުގައިވާ ކަމެކެވެ.[589] ޝާފިޢީ މަޛުހަބުގައި ލިޢާނަކީ، ދޮގަ ފިރިންގެ ޒަވާޖު ޙައްޤުގެ ތަންމަޅި ދުޅާނުލައިން ފިރިމީހާގެ އަބުރު ނަގާފައިވާ އަންހެނަކަށް ޒިނޭގެ ތުހުމަތުކުރުމުން ބޭނުމި، ނުވަތަ ދަރި ނަފީކުރުމުން މަޖުބޫރުވާ ޙާލަތްތަކުގައި އެ ކަން ކުރުމުން ބޭނުމި ކަނޑައެޅިފައިވާ ވަކި ބަސްތަކަކަށެވެ. އެއީ އާންމުން ލިޢާނުގެ ކަމުގައި ބޭނުންކުރާ ކަމެކެވެ.[590] ޙަނބަލީ މަޛުހަބުގައި ލިޢާނަކީ (ދޮގަ ފިރިންނުކުރާ ކަސަމް މިހާރު) ލަޢުނަތާއި ކާފާ ގުޅިގެން ހިމެނޭއިރުން، ހުވައިހުއްޓަސް ނަގާ ހެކިބަސްތަކެވެ. ފިރިމީހާގެ ނިސްބަތުން އެއީ ޤަޛްފު ގެ ޙައްދުގެ މަޤާމުގައި ކަމުގައިވާ ކަމެކެވެ. އަނބިމީހާގެ ނިސްބަތުން އެއީ ޒިނާގެ ޙައްދުގެ މަޤާމުގައި ކަމުގައިވާ ކަމެކެވެ.[591] މާލިކީ މަޛުހަބުގައި ލިޢާނަކީ، ފިރިމީހާ އެމީހާގެ އަނބިމީހާ ޒިނާކުރިކަމަށް ހުކުމްކުރުމެވެ. ނުވަތަ އަނބިމީހާގެ ބަނޑުގައިވާ އެމީހާގެ ދަރިއެއްކަން ނަފީކުރުމެވެ. އަދި އަނބިމީހާ ފިރިމީހާގެ ބަސް ދޮގުކުރުމަށް ހުވާކުރުމެވެ.[592]

މި ތަޢުރީފުތަކުގައި ފިޤުހުވެރިންގެ އިޚްތިލާފު ތަފާތުވެފައި ވިޔަސް، އެއީ ދެމީ އެއްގޮތް ތަޢުރީފުތަކެކެވެ. ލިޢާނުކުރުމުގެ ޙަޤީޤީ މާނަ، އެއީ ދޮގު ހުވައިކުރުމަށް ހުކުމުގައި ހިމެނުމެވެ. ފަހަރު، އިސްލާމީ ޝަރީޢަތުގައި ހިމެނޭ ބައެއް ކަމެއް ނަފީކުރުމަކީ ހުކުމްކުރުމަށް ދީ ކަނޑައަޅާފައިވާ ކަމެކެވެ. އެހެން ކަހަލަ އަނބިމީހާ، މާތް اللهُ ގެ ރަޙުމަތުން ދުރުކުރެއްވުމަށް ޤަބޫލުކުރަނީއެވެ. ލިޢާނުކުރުމުގައި ދޮގަ ފިރިންނުކުރާ އެކަކީ ދޮގުވެރިއެއް ކަމުގައި ނުވެވިއްޖެނަމަ މުސްތަޙިއްޤުކަމުގެ ކަމެވެ. މިހެންވެ، އެ ދެ މީހުންގެ ތެރެއިން އެކަކީ މާތް اللهُ ރަޙުމަތުން ދުރުކުރެއްވުމާ މިހާއެ ކަމުގައި، ނުވަތަ އަނެކަކީ އެކަކާމެދުގެ ކާފަރުކުރެއްވުމާ މިހާއެ ކަމުގައި ވެސްދެވެ.[593]

ލިޢާނުކުރުން ޝަރުޢުކުރެއްވިކަމުގެ ދަލީލު

އަނބިމީހާ ޒިނާކުރިކަން ފިރިމީހާ ބުނުމުން، އަނބިމީހާ އެ ކަމުން އިންކާރުކުރެއްވުމުން ނުވަތަ، އަދި ފިރިމީހާ އަނބިމީހާ ޒިނާކުރިކަން ބުނެ ބުނުމުން އެކަށީގެން ހެކިންނުވެވިއްޖެނަމަ، މި ޙާލަތުގައި އެ ދެ މީހުން ލިޢާނުކުރުން، މާތް اللهُ ވަޙީ ޝަރުޢުކުރެއްވި ކަމެވެ.

އިބްނު ޢައްބާސްގެ ރިވާޔަތުން ރިވާވެފައިވާ ޙަދީޘް ބަސްފުޅުގައި ވެއެވެ. (أنَّ هِلَالَ بنَ أُمَيَّةَ قذفَ امرأتَهُ عندَ النَّبيِّ صلَّى اللَّهُ علَيهِ وسلَّمَ بشريكِ بنِ السَّحماءِ فقالَ رسولُ اللَّهِ صلَّى اللَّهُ علَيهِ

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[588] ވިޒާރަތުލް އައުޤާފު ވައްޝުއޫނުލް އިސްލާމިއްޔާ، އަލްމައުސޫޢަތުލް ފިޤްހިއްޔާ (ވިޒާރަތުލް އައުޤާފު ވައްޝުއޫނުލް އިސްލާމިއްޔާ 1983) މައުސޫޢާތުޝާމިލާ < https://shamela.ws/book/11430> 21 އިން ޑިސެމްބަރ 2024 ގައި.

[589] އިބްނުއްހުމާމް ކަމާލުއްދީން މުޙައްމަދު ބިން، އަލްފަތުޙުލް ޤަދީރު ޝަރަޙް އަލްހިދާޔާ (ދާރުލްކުތުބިލްޢިލްމިއްޔާ 2003).

[590] ޝަމްސުއްދީން މުޙައްމަދު ބިން އަލްޚަޠީބު، މުޣްނީ އަލްމުޙްތާޖު އިލާ މަޢުރިފަތި މަޢާނީ އަލްފާޡިލް މިންހާޖު (ދާރުލްކުތުބިލްޢިލްމިއްޔާ 1994).

[591] އިބްނު ޤުދާމާ އަލްމަޤްދިސީ، އަލްމުޣްނީ އަލްޙަނބަލީ. (މަކްތަބަތުލް ޤާހިރާ 1999).

[592] އަބޫބަކުރު ބިން މުޙައްމަދު އިބްނު ޢަބްދުއްރަޙްމާން، ތަޚްރީޖުގެ މުދައްވަނާ ފީ އިޚްތިޞާރުލް މުދައްވަނާ (ދާރުލް ބަޔާން 2004).

[593] އަލްމުޣްނީ މުޙްތަޞަރު ޚަލީލު ފީ ފިޤްހު ލިއިމާމު މާލިކު (މަޖްމަޢުލް މަލިކު ފަހުދު ލިޠިބާޢަތު މުޞްޙަފު އައްޝަރީފު 1424).

وسلَّمَ البَيِّنةَ وإلَّا حدٌّ في ظَهْرِكَ، قالَ فقالَ هِلالٌ: يا رسولَ اللَّهِ إذا رأى أحدُنا رجلًا علَى امرأتِهِ أَيلتمِسُ البَيِّنةَ؟ فجعلَ رسولُ اللَّهِ صلَّى اللَّهُ علَيهِ وسلَّمَ يقولُ: البَيِّنةَ وإلَّا فحدٌّ في ظَهْرِكَ).[594] މާނައީ، "ހަމަކަށަވަރުން، ކީރިތި ނަބިއްޔާ ޞައްލަﷲ ޢަލައިހި ވަސައްލަމާގެ އަރިއަހުގައި، ހިލާލް ބިން އުމައްޔާ، އޭނާގެ އަނބިމީހާއާ ޝަރީކް ބިން ސަޙްމާއު (شَرِيك بْن سَحْمَاء)[595] ޒިނޭކުރި ކަމަށް ބުނެ ތުހުމަތުކުރިއެވެ. ދެން، ﷲ ގެ ރަސޫލާ ޞައްލަﷲ ޢަލައިހި ވަސައްލަމަ ބަޔާންކުރެއްވިއެވެ. "ހެކި ގެންނާށެވެ! ނުނަމަ ތިބާގެ ބުރަކަށިގައި ޙައްދުޖެހޭނެއެވެ." ހިލާލު ދެންނެވިއެވެ. ﷲ ގެ ރަސޫލާއެވެ! ތިމަންމެންގެ ތެރެއިން މީހެއްގެ އަނބިމީހާގެ ގައިމަތީގައި ފިރިހެނަކު ފެނުމާ އެކު ފެނުނަސް ހެކި ގެނައުމަށް އިލްތިމާސްކުރަންވީތޯއެވެ؟ ދެން، ﷲ ގެ ރަސޫލާ ޞައްލަﷲ ޢަލައިހި ވަސައްލަމަ ބަޔާންކުރައްވަމުން ގެންދެވިއެވެ. "ހެކި ގެންނާށެވެ! ނުނަމަ ތިބާގެ ބުރަކަށިގައި ޙައްދުޖެހޭނެއެވެ."

ޤުރުއާނު ސޫރަތުނޫރުގައިވާ ލިޢާނުކުރުމާބެހޭ އާޔަތްތައް ބާވައިލެއްވީ މި ހާދިސާއާ ގުޅިގެންނެވެ. އެ އާޔަތްތައް ތިރީގައި މިވަނީއެވެ. وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ ۙ إِنَّهُ لَمِنَ الصَّادِقِينَ (6) وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِن كَانَ مِنَ الْكَاذِبِينَ (7) وَيَدْرَأُ عَنْهَا الْعَذَابَ أَن تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ ۙ إِنَّهُ لَمِنَ الْكَاذِبِينَ (8) وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِن كَانَ مِنَ الصَّادِقِينَ (9)[596] މާނައީ: އަދި އެއުރެންގެ އަނބިންނަށް ތުހުމަތުކޮށް ދޭނެ ހެކިވެރިން އެއުރެންނަކީ ފިޔަވައިގެން ނުވާ ހާލު، އެއުރެންގެ އަނބިންނަށް ތުހުމަތުކުރާ މީހުން (ދަންނާށެވެ!) ދެން، އެއިން ކޮންމެ މީހަކު، ﷲ ގަންދީ ހަތަރު ހުވައިން ހުވާކުރުން ހުށަހެޅުމެވެ. ހަމަކަށަވަރުން، އޭނާއީ ތެދުވެރިންގެ ތެރެއިންވާ މީހަކު ކަމަށެވެ.(6) އަދި ފަސްވަނަ ހުވާކުރުން ހުށަހެޅުމެވެ. އޭނާއީ ދޮގުވެރިންގެ ތެރެއިންވާ މީހަކު ކަމުގައިވާނަމަ، ހަމަކަށަވަރުން، ﷲ ގެ ލަޢުނަތް އޭނާގެ މައްޗަށް ހުރިކަމަށެވެ. (7) ހަމަކަށަވަރުން އޭނާއީ ދޮގުވެރިންގެ ތެރެއިންވާ މީހެއް ކަމަށް ﷲ ގަންދީ އެކަނބުލޭގެ ހަތަރު ހުވައިން ހުވާކުރުމުން، އެކަނބުލޭގެ ކިބައިން އުޤޫބާތް (އަދަބު: ޙައްދުޖެހުން) ކެނޑިދާނެއެވެ. (8) އަދި ފަސްވަނަ ހުވާކުރުން ހުށަހެޅުމެވެ. އޭނާއީ ތެދުވެރިން މީހުންގެ ތެރެއިންވާ މީހަކު ކަމުގައިވާނަމަ، ހަމަކަށަވަރުން، ﷲ ގެ ކޯފާ އެކަނބުލޭގެ މައްޗަށް ހުރިކަމަށެވެ. (9)"[597]

ބިދާޔަތުލް މުޖްތަހިދު (بداية المجتهد) އަށް، ބަލާ ޖުމްލަގައި ބުނެއެވެ. "ލިޢާނުކުރުމަކީ، ކީރިތި ޤުރުއާނާއި، ޙަދީޘް ސުންނަތާއި، ޤިޔާސުކުރުމާއި، ދަންނަބޭކަލުންގެ އިޖުމާޢުން ސާބިތުވެފައިވާ ކަމެކެވެ".[598] ބައްޔާނަށްފަހު ޙާލަތްތަކަށް، އޭގެ ތަފްޞީލުތަކުގައި އެކަށީ ލިޢާނުކުރާ ގޮތް ބަޔާންކުރައްވާފައެވެ. އެހެންކަމުން މި ދިރާސާ މަޖްމޫނުގައި ލިޢާނުކުރާ ގޮތުގެ މައްސަލަ އަލިއަޅުވައިލައި ނަގާފައެވެ.

ލިޢާނުކުރުން ޞައްޙަވުމުގެ ޝަރުޠުތައް:

ލިޢާނުކުރުން ޞައްޙަވުމުގެ ޝަރުޠުތައް، ތިރީގައި މަޖުމޫޢުތަކެއްގެ ދަށުގައި ތަފާތުކޮށް ހުށަހަޅާކުރެވިފައެވެ. ތިރީގައި މިވަނީ، (الفقه الميسر في ضوء الكتاب والسنة) ގައި ވާ ޝަރުޠުތަކެވެ.

1. ދެމަފިރިންނަކީ ތަކުލީފުލިބިގެންވާ ދެމީހުން ކަމުގައިވުން.[599]

594 އަލްބުޚާރީ، 'ޞަޙީޙުލްބުޚާރީ'، ޙަދީޘް ނަންބަރު 5307'، އަލްމަކްތަބަތުއްޝާމިލާ، އަލްއިޞްދާރު ސާނީ، މައުލޫމާތު ނެގީ <https://dorar.net/h/hp48LWtr?sims=1> އިން 20 ޑިސެމްބަރ 2024 ގައި.

595 ޝަރީކް ބިން ސަޙްމާއަކީ ތުހުމަތުކުރި އަލްޢަޖްލާނީ (العجلانيّ) ކަމަށް (المختصر) ގައި (المزنيّ) ބަޔާންކުރައްވާފައިވާ ކަމަށް، (الشامل) ގައި އިބްނުއްޞައްބާޣު (ابن الصَّباغ) ވިދާޅުވެފައި ވެއެވެ.

596 ސޫރަތުއްނޫރު: 6-9

597 ކީރިތި ޤުރުއާނުގެ ދިވެހި ތަރުޖަމާ، ރައީސުލްޖުމްހޫރިއްޔާގެ އޮފީސް.

598 އައްސައްޔިދު ސާބިޤް. ފިޤްހުއްސުންނާ، ވޮލިއުމް: 2، (ދާރުލްފަތްޙި ލިއްޠިބާޢަތި ވައްނަޝްރި 2011).

599 ތަކުލީފުލިބިގެންވުމަކީ، ބާލިޣުވުމާއި ބުއްދި ސަލާމަތުން ހުރުމެވެ.

2. ފިރިމީހާ އޭނާގެ އަނބިމީހާ ޒިނޭކުރިކަމަށް ބުނެ ދަޢުވާކުރުން.[600]
3. ފިރިމީހާ އަނބިމީހާއަށް ދަޢުވާކުރުމުން، އަނބިމީހާ ފިރިމީހާގެ ދަޢުވާކުރުން ދޮގުކުރުމާއި، ލިޢާންކޮށް ނިމެންދެން އޭނާ އެކަން ދޮގުކުރުންމަތީ ދެމިހުރުން.
4. ޙާކިމުގެ ނިޔާކަނޑައެޅުމަކާނުލާ ލިޢާންކުރުން ތަންފީޛުނުކުރުން.

މިއިން ޝަރުޠެއް އުނިވެއްޖެނަމަ، ލިޢާންކުރުން ސައްޙައެއް ނުވާނެއެވެ.[601]

ލިޢާންކުރުމުގެ ނަތީޖާ

ލިޢާންކުރުމުން ޙާޞިލުވާ ޝަރުޢީ ނަތީޖާތަކަކީ ފަހެއެވެ. އެއީ:

1. ފިރިމީހާގެ ލިބައިން ޤަޛުފުގެ ޙައްދު ކެނޑުން.
2. އަނބިމީހާގެ ލިބައިން ޒިނާގެ ޙައްދު ކެނޑުން.
3. ފިރިމީހާގެ ލިބައިން ދަރިފުޅުގެ ނަސަބު ނަފީވުމާއި، އެ ދަރި މީހާގެ ގޮތުގައި ވާރުތަވުން ނަފީވުމާއި، ދަރިފުޅު މައިމީހާގެ އުނގަށް ލެއްވުމާއި، މައިމީހާއާއި ދަރިއާ ދެމެދުގައި ވާރުތަވުން ދެމިއޮތުން.
4. އަނބިމީހާއަށާއި ދަރިފުޅަށް ހަރަދުކުރުން، ފިރިމީހާގެ ލިބައިން ކެނޑުން.[602]
5. ދެމަފިރިންގެ ކާވެނި ރޫޅުން: ޙަނަފީ މަޛުހަބު ފިޔަވައި އެހެން މަޛުހަބުތަކުގައި އެއީ، ކާވެނި ފަސްޚުކުރުމެކެވެ. ޙަނަފީ މަޛުހަބުގައި އެއީ، ބާއިން ވަރިއެކެވެ.
6. ޙަނަފީ މަޛުހަބު ފިޔަވައި އެހެން މަޛުހަބުތަކުގައި، ލިޢާންކުރުމަށްފަހު އެ ދެ މީހުންގެ ކާވެނިކުރުން އަބަދަށް ޙަރާމްވެއެވެ.[603]

ލިޢާންކުރުން ޝަރުޢުކުރެއްވުމުގެ ޙިކުމަތް:

ލިޢާންކުރުން ފިރިމީހާއަށް ޝަރުޢުކުރެއްވުމުގެ ޙިކުމަތަކީ، އަނބިމީހާ ޒިނޭކުރުމުގެ ތުހުމަތުން ފިރިމީހާގެ އަބުރު ޙިމާޔަތްކޮށްދިނުމާއި، ފިރިމީހާގެ ދަރިއެއް ނޫން ދަރިއެއް އޭނާއަށް ނިސްބަތްކުރުމުގެ މަގު ބަންދުކުރެއްވުމެވެ.

އަނބިމީހާ ޒިނޭކުރިކަމަށް އިޢުތިރާފުވާ ޙާލަތުގައި، އެ ކަނބުލޭގެ އެކަން ހެކިކަމުގެ ހެކި ދެއްކުމަކީ ޢާންމު ގޮތެއްގައި ނާމުމްކިން ކަމެކެވެ. އަދި އެ ކަނބުލޭގެ ޒިނޭކުރި ކަމަށް ފިރިމީހާ ބުނުމަކީ ނުފޫޒު ކަމެކެވެ. އެހެންކަމުން މި މައްސަލައަށް އިސްލާމީ ޝަރީޢަތުގައި ގެންނަވައިދެއްވާފައިވާ ޙައްލަކީ، ލިޢާންކުރުމެވެ. އެއީ އެ ދެ މީހުންކުރެ ކޮންމެ މީހަކު ހުވާކުރުމާ ނުބައިކަމެއްވާ ކަށަވަރުކުރުމެވެ. ލިޢާންކުރުމުން ފިރިމީހާގެ ލިބައިން ޤަޛުފުގެ ޙައްދު ނެތިގެންދެއެވެ. އަދި އަނބިމީހާގެ ލިބައިން ޒިނާގެ ޙައްދު ނެތިގެންދެއެވެ.

ފިރިމީހާ، ހުވާކުރުމުން އެއްކިބާވެގެންވާނަމަ، އޭނާގެ މައްޗަށް ޤަޛުފުގެ ޙައްދު ވާޖިބުވެއެވެ. އަނބިމީހާ، ހުވާކުރުމުން އެއްކިބާވެގެންވާނަމަ، އޭނާގެ މައްޗަށް ޒިނާގެ ޙައްދު ވާޖިބުވެއެވެ.[604]

ލިޢާންކުރުމާ ގުޅިފައިވާ ބައެއް މައްސަލަ:

[600] އެކަމުގައި އޭނާ ބޭނުންކުރާނެ ބަސްތަކުގެ މިސާލަކީ، "އޭ! ޒިނޭކާރާ އަންހެނާ!" ނުވަތަ "މިބާ ޒިނޭކުރިކަން އަހުރެން ދެކެފީން" ނުވަތަ "މިބާ ވަނީ ޒިނޭކޮށްފައި" މިފަދަ ބަސްތަކެވެ.

[601] އަލްފިޤްހުލް މުޔައްސަރު (ނ 6).

[602] ނަފަޤާތު ނަސަބާ ގުޅިފައިވާ ބައެއް ޙުކުމްތައް ދެމިއޮވެއެވެ. އެއިން ބައެއް ޙުކުމްތަކުގެ މައްސަލަ މި ދިރާސާގެ މައުޟޫޢުގައި އަލިއަޅުވާލާފައިވާ ފަދައިން ވާނެއެވެ.

[603] އަލްފިޤްހުލް މުޔައްސަރު (ނ 6).

[604] ކުރީގެ ބަޔާނާ.

ޖިނާޔަތްކުރުމަކީ ކަބައިކަން ބަޔާންކުރުމުގެ ފަރާތުން، ދެން މި އަދިއަށްވަޑައިގެން، ޖިނާޔަތްކުރުމާ ގުޅިގެންވާ ބައެއް މައްސަލަތަކުގެ މައްޗަށެވެ.

ށ. ތަންފީޛުކުރާތަން:

ފުޤަހާ އިލްމުވެރިން ދެކެވަޑައިގަންނަވާ ގޮތުގައި، ޖިނާޔަތްކުރުން އަންގާ އެކަށޭނަ ތަނަކީ، މިސްކިތެވެ. އެއީ، މިސްކިތްތަކުގެ ހުރުމަތްތަކައި މިސްކިތަށް ދުވަދާ މަތިވެރި މަޤާމު، އިޙްތިރާމްކުރުމަށްޓަކައެވެ.

"ޖިނާޔަތްކާރީން ކޮންތާކު؟" މި ސުވާލުގެ ޖަވާބުގައި އިމާމު ޝާފިޢީގެ ޤައުލު ވިދާޅުވެފައި ވެއެވެ. "ޖިނާޔަތްކާރާ ކޮންމެ ފަރާތަކުން ހުރިހާ ދުވަހެއްގައި އެ ކަން ކުރާނީ، ކޮންމެ ފަރާތެއްގެ މިސްކިތުގެ ބޭރުގައެވެ. އަނބިމީހާ ބަލިވެފައިވާނަމަ، އޭނާ ހުއްޓުމަށް މިސްކިތުން ބޭރުވެއެވެ. ފަހަރުމީހާ ހުއްޓުމަށް މިސްކިތުގެ އެތެރޭގައެވެ."

އިބްނު ޤުދާމާ ވިދާޅުވެފައި ވެއެވެ. "ތަނަކީ އިސްލާމީ އެ ތަން ހައިބަތްތެރިކަމުގެ މަކާނެވެ ވެއެވެ. ފަހަރު، ޖިނާޔަތްކާރާ ދުލަބާރިން ވަނީ މަސްތާގައި ނަމަ، ކައިބަޔޫއްﷲ ގެފުޅުގެ ރަސޫލާ ގޮތްދޫކުރާ ދުލުދުރުގައި އެ ކަން ކުރުމެވެ. ފަހަރު، އެއީ މި ބިންމަތީގައިވާ އެންމެ ޝަރަފުވެރި މާތް ތަނެވެ. އެ ދު މީހުން ވަނީ މަދީނާގައި ނަމަ، އެ ކަން ކުރާނީ، ނަބަވީ މިސްކިތުގެ ބޭރުގައި ނަބިއްޔާ ސައްލަﷲ ޢަލައިހި ވަސައްލަމްގެ މިންބަރުތަކުގެ ކައިރިއަށެވެ. އެ ދު މީހުން ވަނީ، ބައިތުލްމަޤްދިސްގައި ނަމަ، އެ ކަން ކުރާނީ، މާތްވެގެންވާ ހިލަތަކުގެ ކައިރިއަށެވެ. އެހެނިހެން ސަރަޙައްދުތަކާއި ބަންދުވެތަކުގައި އެ ކަން ކުރާނީ، ޤާނޫނީ މިސްކިތްތަކުގެ ކައިރިއަށެވެ."[605]

ނ. އަދަބުއަންހެނާގެ ދަރަޖަ:

އަދު އަންހެނާ ސާރިޤުގާ އެއްދާންކުރުމުން، އެ ކަނބަލުގެ އަތް އަންނާނީ ތަންމަތުގެ ކަމުގައި ވާނެއެވެ. ސާރިޤުގާ އެ ކަނބަލުގެ އެއްދާންކުރި ކަމަކީ، އިޖުމާޢުވެފައިވާ ކަމެކެވެ، އެކަމާ ދާރާއެއް ކަމުގައި ވެފައި ވިޔަސް، އެ ކަނޑާ ވަނީ އަނގާގެ ދާރާއެއް ކަމުގައެވެ. އެ ކަނބަލުގެ އެއްޗެއް ފިޔަވައިހުރި އެއްދާންކުރި ތަނެއްގައި ވިޔަސް، ސާރިޤުގާ އަތްކަނޑާނެއެވެ. އެއްނަފުސު ފާޅުގައި ވެއެވެ. "ކަތިލުކުރުމުން އަންހެނާކު އަނގާގެ ފާޅުދިޔާ ތަންމަތެއްގައި ކަމުގައި ފާޅުއެވެ".[606]

އަލްޤާސިމް އަބޫޢަބްދުﷲ ވިދާޅުވެފައި ވެއެވެ. "ތިމަންގެ އަދިއަހުގައި ތަންތަނާއި، ޖިނާޔަތާއި އެއްކޮށް އެއްބަސްވާނެއެވެ. އޭރުން، ޢާނމު ބަދަލުގައި މީހުން އެއްދާންކުރަނީ، ޖިނާޔަތާ އެއްބައިވާ މަތިވެރިކަމެވެ. ... ސާރިޤުގާ އަނގާގެ އަދު އަންހެނާ އެއްދާންކުރިއަށް، އެ ކަން ކުރުމަކީ ތަކާ ތަންމަތުގައިކަން ފާޅުއެވެ. އެ އަދު އަންހެނާގެ ބައިވެން ދުވަހާ ދަރި ނިސްބަތްކުރުމާ، އެ ތަންމަތީގައި އެ ކަނބަލުގެ އަތް އެއްދާންކުރި ވިޔަނަވެ. އެއީ، ސާރިޤުގާއެވެ. އާދާ އެ ކަނބަލުގެ ތަންމަތުގައި އެއްދާންކުރުމުން، އެހެން ވިޔަކަން ދަރި ނިސްބަތްވެގެންވާ، އާދައަށް އެ ދަރި ނިސްބަތްވެފައިން ވާ އަދުގާއަން ބޭނެވެ." ބަޔާން މަޛްހަބުގެ އިޖުމާޢުން ފާޅުވެފައިވާ، ތަންމަތާއި، ފާޅުވާ ކަމަށެވެ. ނަމަވެސް އެ އިޖުމާޢުގެ ބަސްފުޅު ބަޔާ ޤަބޫލު ސާފުއް ނުކުރެވެ.[607]

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[605] އިބްނު އާދިލް ޔާސިރު، 'އަލްޖިނާއީ ބައިނައްޝަރީޢާއި ޤާނޫނުގެ ވަޒީފާ އިސްލާމީ ފިޤުހު އަތްޖާނިބު ފިޤުހީ ސިޔާސީ ދަޢުވާ' 2008 3 މަޖައްލަތުލްމުފަކްކިރު 121-131. <http://fdsp.univ-biskra.dz/images/revues/mf/r3/mf3a8.pdf> މައުލޫމާތު ނެގީ 10 ޑިސެމްބަރު 2024 ގައި.

[606] ނޫރުއްދީން މުއްލާ އަލީ އަލްޤާރީ، މިރްޤާތުލްމަފާތީޙް ޝަރަޙް މިޝްކާތުލް މަޞާބީޙް، ވޮލިއުމް 6، (އެޗް.ބީ ޢަބްދުއްރަޙްމާން) (ދާރުލްކުތުބު އިލްމިއްޔާ 2001).

[607] އަބޫބަކްރު ކާސާނީ އަލްޙަނަފީ، އަލްބަދާއިޢު ޞަނާއިޢު ފީ ތަރްތީބު ޝަރާއިޢު، ވޮލިއުމް 7. (ދާރުލްކުތުބު އިލްމިއްޔާ 1999).

އަޙްނާފުންނާ ވިދާޅުވެފައިވަނީ، އަޅުއަންހެނާ (ސުރިއްޔާގެ) ތުހުމަތުއްކަލާނު ވާނީ، ސުރިއްޔާ އެ ކަނބަލުންގެ އަށްދާނަކުރުމަށްވުރެ ވިޔަތުމުން ކަމަށެވެ.[608]

އިމާމު މާލިކު ވިދާޅުވެފައިވަނީ، އަޅުއަންހެނާއާ އަށްދާނަކުރި ކަމަށް ސުރިއްޔާ އިޤްރާރުވުމުން އެ ކަނބަލުގެއަކީ އޭނާގެ ތުހުމަތުއްކަލާނު ވާނެ ކަމަށެވެ.

އިމާމުގެ އިލްމުވެރިން ވިދާޅުވެފައިވަނީ، ސުރިއްޔާ އަށްދާނަކުރިތަސް އަޅުއަންހެނާ ތުހުމަތުއްކަލާނު ނުވާނެ ކަމަށެވެ. މާލިކަ، އެ ކަނބަލުގެ ތުހުމަތުއްކަލާނު ވެސް، އެ ކަނބަލުގެ ވިހާ ދަރިއަކީ، ސުރިއްޔާގެ ދަރިއެއް ކަމަށް އޭނާ ބުނުމުންނެވެ.

އިލްމުވެރިންގެ އިޖުމާޢުގައި ވެސް، އަޅުއަންހެނުންނާއި، ސުރިއްޔާއާ ދެމެދުގައި ލިޢާންކުރުމެއް ނެތް ކަމަށެވެ.[609]

ނ. އަޅުންނާއި ޒިންމީންނާއި ބައްދަލުވުން:

އަޅުންނާއި ޒިންމީންނާއި، އެ ބަޔަކުގެ ގައިގައި ޙައްދުގެ ބައްދަލު ޖެހިފައިވާ މީހުން، ލިޢާންކުރުމުގެ އަހުލުވެރިންގެ ތެރޭގައި ހިމެނޭތޯ ދެ ރިވާޔަތެއް ވެއެވެ. އެއް ރިވާޔަތުގައި ވަނީ، އެ މީހުންނަކީ ލިޢާންކުރުމުގެ އަހުލުވެރިންގެ ތެރޭގައި ހިމެނޭ ބަޔަކު ކަމަށެވެ. އަނެއް ރިވާޔަތުގައި ވަނީ، އެ މީހުންނަކީ ލިޢާންކުރުމުގެ އަހުލުވެރިންގެ ތެރޭގައި ނުހިމެނޭ ބަޔަކު ކަމަށެވެ. މި ރިވާޔަތުގައި ވަނީ، އެ މީހުން ޙައްދުކުރަންޖެހެ، ހެކި ބައްދަލުކުރަނީ ނަމަ، އެ މީހުންގެ ގައިގައި ޙައްދު ޖަލްދުޖެހުން ކަމަށެވެ.

ދެވަނަ ރިވާޔަތުގެ އިލްމުވެރިންގެ ދަލީލުތަކެއް، އައްދާރަޤުޠްނީ ރިވާކުރައްވާފައިވާ ބައިހަޤީ ބަސްފުޅެވެ.

(أَرْبَعَةٌ لَيْسَ بَيْنَهُمْ لِعَانٌ، لَيْسَ بَيْنَ الْحُرِّ وَالأَمَةِ لِعَانٌ، وَلَيْسَ بَيْنَ الْحُرَّةِ وَالْعَبْدِ لِعَانٌ، وَلَيْسَ بَيْنَ الْمُسْلِمِ وَالْيَهُودِيَّةِ لِعَانٌ، وَلَيْسَ بَيْنَ الْمُسْلِمِ وَالنَّصْرَانِيَّةِ لِعَانٌ) ރިވާކުރެއްވީ: އައްދާރަޤުޠްނީ.

މާނައީ، "ހަތަރު ބަޔަކު ދެމެދުގައި ލިޢާންކުރުމެއް ނުހިނގާނޭ ހަތަރު މީހެކެވެ. މިނިވަންފިރިހެނާއި އަޅުއަންހެނާއާ ދެމެދުގައި ލިޢާންކުރުމެއް ނެތެވެ. އަޅުފިރިހެނާއި މިނިވަން އަންހެނާއާ ދެމެދުގައި ލިޢާންކުރުމެއް ނެތެވެ. މުސްލިމު ފިރިހެނާއި ޔަހޫދީ އަންހެނާއާ ދެމެދުގައި ލިޢާންކުރުމެއް ނެތެވެ. މުސްލިމު ފިރިހެނާއި ނަޞްރާނީ އަންހެނާއާ ދެމެދުގައި ލިޢާންކުރުމެއް ނެތެވެ."

މި ފަދަ ދެވަނަ ރިވާޔަތް، އަންނަނިވި ބައިހަޤީ ބަސްފުޅެވެ.

(أَرْبَعٌ مِنَ النِّسَاءِ لاَ مُلاَعَنَةَ بَيْنَهُنَّ النَّصْرَانِيَّةُ تَحْتَ الْمُسْلِمِ، وَالْيَهُودِيَّةُ تَحْتَ الْمُسْلِمِ، وَالْحُرَّةُ تَحْتَ الْمَمْلُوكِ، وَالْمَمْلُوكَةُ تَحْتَ الْحُرِّ) ރިވާކުރެއްވީ: އައްދާރަޤުޠްނީ.

މާނައީ، "ހަތަރު އަންހެނުން ދެމެދުގައި ލިޢާންކުރުމެއް ނެތް ހަތަރު އަންހެނުން ވެއެވެ. (އެއީ) މުސްލިމެއްގެ ބެލުމުގެ ދަށުގައިވާ ނަޞްރާނީ އަންހެނާއި، މުސްލިމެއްގެ ބެލުމުގެ ދަށުގައިވާ ޔަހޫދީ އަންހެނާއި، އަޅު ފިރިހެނެއްގެ ބެލުމުގެ ދަށުގައިވާ މިނިވަން އަންހެނާއި، މިނިވަނެއްގެ ބެލުމުގެ ދަށުގައިވާ އަޅުއަންހެނާއެވެ."

މި ދެ ބައިހަޤީ ބަސްފުޅު ރިވާކުރެއްވި ރާވީންގެ ތެރޭގައި އިތުބާރު ނުކުރެވޭ ފަރާތްތަކެއް، ދޮގުހަދާ ބަދުނާމީ ފަރާތްތަކެއް ހިމެނޭ، މި ދެ ބައިހަޤީ ބަސްފުޅަކީ ޟަޢީފް ޙަދީޘެއް ކަމަށް އިލްމުވެރިން ވިދާޅުވެފައި ވެއެވެ.[610]

[608] އަލްމުޣްނީ މުޢުތަޞަރު (ނ 6).

[609] ކުރީގެ ބަޔާން.

[610] މުޙައްމަދު ބިން އަޙްމަދު އަލްމަޤްދިސީ، ތަންޤީޙުއްތަޙްޤީޤު ފީ އަޙާދީޘިއްތަޢްލީޤު، ފަލިއްރާސް، (ދާރު އަސްސަލަފިއްޔަތު 2007).

ރ. ލިޢާނުކުރުމާއި ދެމަފިރިން ވަކިވުން:

ލިޢާނުކުރުމުން ދެމަފިރިން ވަކިވާނީ، ލިޢާނުކޮށް ނިމުމަށްފަހު، ޤާޟީ، އެ ދެމަފިރިން ވަކިކުރުމުންނެވެ. ޙަނަފީ މަޛްހަބާއި، ޙަންބަލީ މަޛްހަބުގެ އެއް ރައުޔުގައި ވެއެވެ. ދެމަފިރިން ވަކިވާނީ، ލިޢާނުކޮށް ނިމުމުން، އެ ދެމަފިރިން ވަކިވެއްޖެ ކަމަށް ޤާޟީ ޙުކުމްކުރުމުން ކަމަށެވެ. އަދި ލިޢާނުކުރުމަށްފަހު އެ ދެމަފިރިން ވަކިވެއްޖެ ކަމަށް ޤާޟީ ޙުކުމް ނުކުރިނަމަވެސް، އެ ދެމަފިރިންގެ ދެމެދުގައި، ޝާފިޢީމަޛްހަބާއި ވަކި ފަހަރު ތާއަބަދަށް ޙަރާމްވާ ގޮތުގައި ކައިވެނީގެ ގުޅުން ދާއިމީގޮތުން ކަނޑާލެވޭނެއެވެ.

ލިޢާނުކުރުމަށްފަހު، ދެމަފިރިން ދުރުކުރުމަށް ޙުކުމްކުރުމުގެ ކުރިން، ދެމަފިރިންކުރެ އެކަކު މަރުވެއްޖެ ނަމަ، މަރުވި މީހާގެ ވާރިސުން ދިރިހުރި މީހާއަށް ވާރުތަވާނެއެވެ. ލިޢާނުކުރުމަށްފަހު، ދެމަފިރިން ދުރުކުރުމަށް ޙުކުމްކުރުމުގެ ކުރިން ފިރިމީހާ އަނބިމީހާ ވަރިކޮށްފިނަމަ، އެ ވަރި ޞައްޙަވާނެއެވެ.

ފިރިމީހާ އޭނާގެ އަނބިމީހާއާއި ޤަޛަފުކުރުމަށްފަހު، އޭނާގެ ބަސް ދޮގުކުރިނަމަ، ކާވެނި އާކުރުމަކާ ނުލައި، އަނބިމީހާ އޭނާއާއި ސަލާމަތްވާނެއެވެ.

މާލިކީ މަޛްހަބާއި، ޝާފިޢީ މަޛްހަބާއި، ޙަންބަލީ މަޛްހަބުގައި ލިޢާނުކުރުމާއެކު، (ދެމަފިރިންގެ ކާވެނި ރޫޙު) ދެމަފިރިން ދުރުކުރެވެއެވެ. މި ތިން މަޛްހަބުގައި، ދެމަފިރިން ދުރުކުރުން ބިނާވެފައިވަނީ، ޤާޟީ އެ ކަމަށް ޙުކުމްކުރުމުގެ މައްޗަށް ނޫނެވެ.

ޝާފިޢީ މަޛްހަބުގެ އިމާމުވެރިން ވިދާޅުވެފައިވަނީ "ދެމަފިރިން ދުރުވުން ބިނާވެފައިވަނީ، ފިރިމީހާގެ ލިޢާނުގެ މައްޗަށެވެ. އަނބިމީހާ ލިޢާނުގެ ބަސް ނުބުނަނިކޮށްގައި ވިޔަސް، ފިރިމީހާގެ ލިޢާނުގެ ބަސް ބުނެފި ނަމަ، ދެމަފިރިން ދުރުވާނެއެވެ.[611]

އިމާމު އަބޫޙަނީފާ ވިދާޅުވެފައިވަނީ، "މިހާރު އެކަމާ އަނބިމީހާގެ މައްޗަށް ލިޢާނުކުރުމުގެ ބަސް ބުނުމަށްފަހު، އެކަމާ ބުނި ބަސް ދޫކޮށްލިޔަސް، އެކަމާ އަނބިމީހާ އެކަމަކަށް ރައްދުކުރެވޭނެއެވެ."

އެހެން މަޛްހަބުތަކުގެ ރައުޔު، އިމާމު އަބޫޙަނީފާގެ ރައުޔާ ޚިލާފުވެއެވެ. އިބްނު ޢުމަރުގެ އަރިހުން ރިވާވެފައިވާ ޙަދީޘް ބަސްފުޅުގައިވަނީ (لاَ سَبِيلَ لَكَ عَلَيْهَا) މިހެންނެވެ. ރިވާކުރެއްވީ: އަލްބުޚާރީ.

މާނައަކީ، "ތިބާއަށް އެ ކަނބަލުންގެ މައްޗަށް ހިންގޭނެ ބާރެއް ނުވެއެވެ."

ލިޢާނުކުރާ ފިރިމީހާ އަމިއްލައަށް އޭނާގެ އަމިއްލަ ބަސް ދޮގުކުރިއަސް، ދޮގުނުކުރިއަސް އެ ދެމަފިރިން ދުރުކުރެވޭނީ ކަމަށް މި ބަޔާންވެގެން އިސްލާމީ ފިޤްހުގެ ފޮތްތަކުގައި ވެއެވެ.[612]

ރ. ލިޢާނު ދަރީގެ ނަސަބު:

ލިޢާނުކުރި އަނބިމީހާގެ ބަނޑުގެ އުފަންވި ދަރީގެ ނަސަބު ބަފައިފުޅުގެ ފަރާތުން ކަނޑާނެއެވެ. އޭނާގެ ނަސަބު ސާބިތުވެ ގުޅިފައިވާ، އޭނާގެ މައިފުޅުގެ ނަސަބާއެވެ. އޭނާ މަރުވެއްޖެ ނަމަ، އޭނާގެ ތަރިކަ ވާރުތަވާނީ، އޭނާގެ މަންމައަށެވެ. އޭނާގެ މަންމަގެ ވާރި އޭނާގެ ބައްޕާގެ މަޤާމުގައިވެއެވެ. އަދި އޭނާގެ މަންމައަށް، އޭނާގެ ވާރުތަވެރިޔާއެވެ. އޭނާގެ މަންމަގެ ވާރުތަވެރިން، އޭނާގެ ވާރުތަވެރިންނެވެ.

ލިޢާންކުރި ދަރީގެ ބަފައިފުޅުގެ ނަސަބު ކަނޑައިލެވި ވަކިކަމާ، ލިޢާނުކުރި މީހާ އެއީ އޭނާގެ ދަރިއެއް ކަމަށް އިޤުރާރުވެއްޖެ ނަމަ، ދަރީގެ ނަސަބު ސާބިތުވާނެއެވެ. އެއަށްފަހު ދުވަހަކުވެސް އޭނާގެ ނަސަބު އެ ދަރި ވަކިކޮށް ނުވާނެއެވެ. އަދި، ނަސަބަށް

[611] ފިޤްހުލް އަދިއްލާ (ނ 1).

[612] މުޙައްމަދު ބިން އަޙްމަދު އަލްމަރްޤަދީ. (2007). ... (Vol. 4). ބައިރޫތު: ދާރު އަލްކުތުބިލްޢިލްމިއްޔާ.

އިޤްރާރުވުމަށްފަހު، އެ އިޤްރާރު އަނބުރާ ނެގެންދެވޭ ކަމަށް ބަލާއެވެ. އެއްމާބަނޑު ދެބައިންގެ ތުހުމަތިން އެކަހި އާންމުގެ ދަރިއެއް ކަމަށް ލިޢާންކުރި މީހާ އިޤްރާރުވެއްޖެނަމަ، އަނބުރާ ވެސް އޭނާގެ ނަސަބާ ގުޅޭނެއެވެ. އެއީ، އެއްމާބަނޑު ދެބޭން ކަމުގައިވާ ކަމަށްޓަކައެވެ.

ލިޢާންކުރުމަށްފަހު ލިޢާންކުރި މީހާ ހެދި ދަރިއެއް ކަމަށް ފާސިލުގެ ކުރިމަތިވެގެން އޭނާ އިޤްރާރުވެއްޖެނަމަ، އޭނާގެ ގައިގައި ޤަޛުފުގެ ޙައްދު ޖެހޭނެއެވެ. އަދި ލިޢާން ދަރިއާ ނަސަބު އޭނާއާ ގުޅޭނެއެވެ. އެހެންކަމުން އޭނާގެ އެ އިޤްރާރު ދޮގުކުރިޔަސް، އެތަކެއް ޒާމިނު ނުކުރެވޭނެއެވެ. ނަސަބު ސާބިތުވާ އިޤްރާރު އަނބުރާ ގެންދިއުމަކީ ޤަބޫލު ކުރެއްވޭކަމުގައި ފާހަގަކޮށްފައެވެ.[613]

ހ. ލިޢާން ދަރިގެ ނަސަބާގުޅޭ ބައެއް ޙުކުމްތައް:

ލިޢާން ދަރިގެ ނަސަބު ބަފައިފުޅުން ކަނޑާ ހިނދު، އެ ދަރި މީހާގެ ދުވުދުގައި ވާރުތަވުމާއި ނަފަޤާގެ ގޮތުން ކަނޑެއެވެ. ޙަނަފީ މަޛްހަބުގެ އިލްމުވެރިންގެ ތެރެއިން އަލްޙަޞްކަފީ (الحَصْكَفي) ވިދާޅުވެފައި ވަނީ، ލިޢާން ދަރިގެ ބަފައިފުޅުގެ ނަސަބު ކަނޑުމަށްފަހު، ދެ ހުކުމްތައް ފިޔަވައި އެހެން ހުރިހައި ހުކުމްތައް ދެމިއޮންނާނެ ކަމަށެވެ، އެއީ، ޝަހާދަތު ވާރުތަވުމާއި ނަފަޤާގެ ހުކުމް ކަމަށެވެ.

އިބްނު އާބިދީން ވިދާޅުވެފައިވަނީ، ހިބައާއި، ޒަކާތާއި، ކައްފާރާތާއި، ޤިޞާޞާއި، އެހެން މީހެއްގެ ނަސަބާ ނިސްބަތްވުމުގައި، ލިޢާން ދަރިއާއި ލިޢާންކުރި މީހާއާ ދުރުދުގައި ނަސަބުގެ ގޮތުން ދެމިއޮންނާނެ ކަމެކެވެ. ... ލިޢާން ދަރިގެ ލިބިހެން ދަރިއަކާ، ލިޢާންކުރި މީހާ އެހެން މީހަކާ އިނދެގެން ލިބިވައިވާ އަންހެން ދަރިއަކާ ކާވެނި ހަރާމްވާނެއެވެ.[614]

ށ. ލިޢާން ދަރިއާއި އާންމުގެ މަސްލަހަތު ޙިމާޔަތްކުރުން:

ލިޢާން ދަރިއާއި، އާންމުގެ މަސްލަހަތު ޙިމާޔަތްކުރުން ހުއްޓުމެއް ނުވާނެއެވެ. އެ ދަރިމައިންނަށް ޙިމާޔަތްކޮށްދިނުމަކީ މީހާގެ މަސްލަހަތު ޙިމާޔަތް ކުރުން ވާޖިބުވާ ކަމެކެވެ. އެހެނީ، އެ ދަރިމައިންނަށް ޙިމާޔަތްކުރުން ވެސް ލިޢާންކުރުމުގެ ސަބަބުން ނަގައިލައެވެ. އިސްލާމީ އުންމަތުގެ އިލްމުވެރިންގެ ޖުމްހޫރުގެ ރައުޔަކީ މިއީއެވެ.

އިމާމު އަބޫޙަނީފާ ވިދާޅުވެފައި ވެއެވެ. "(ބަފައިފުޅުގެ) ނަސަބު ނަފީކުރުމުގައި ދަރިއާއި ނުވާނަމަ، އެ ކަނބަލުންގެ ޙިމާޔަތްކުރާ މީހާގެ މަސްލަހަތު ޙިމާޔަތް ބައްޓަން ހިމާޔަތްކުރެވޭނެއެވެ. ނަސަބު ނަފީކުރުމުގައި ދަރިއާއި ވާނަމަ، އެ ކަނބަލުންގެ ޙިމާޔަތްކުރާ މީހާގެ މަސްލަހަތު ޙިމާޔަތް ނުކުރެވޭނެއެވެ." އެއީ، އެ ކަނބަލުންގެ ދަރިގެ ނަސަބު ފިރިމީހާ ނަފީކުރުމުގެ ސަބަބުން، އެ ދަރިގެ ނިސްބަތުން އެ ކަނބަލުންގެ މަސްލަހަތު ޖެހޭގެ ޙުކުމް އޮންނާނީއެވެ، އެ ކަމުގެ ސަބަބުން ޙިމާޔަތް ޙަމަ ނުހިފާނެއެވެ.[615]

ނ. އާއިލާއާބެހޭ ޤާނޫނު:

ޤާނޫނު ނަންބަރު 4/2000، އާއިލާއާބެހޭ ޤާނޫނު[616] ގެ 54 ވަނަ މާއްދާ ވަނީ، "ނަސަބު ސާބިތުކުރުން" މި ސުރުޚީގެ ދަށުގައެވެ. އެ މާއްދާގައި ވެއެވެ. "ލިޔެކިޔުމަށް، ވަކި ކުއްޖަކީ އާންމުގެ ޝަރުޢީ ދަރިއަކު ކަމުގައި ޝަރީޢަތް މެދުވެރިކޮށް ސާބިތުކުރަން ބޭނުންވާއިރު ހިނދެއްގައި، އެކަން ޝަރީޢަތަށް ހުށަހެޅިދާނެއެވެ. އަދި އެފަދައިން، ނަސަބު ސާބިތުކުރުމަށް އެދޭ މައްސަލަތަކުގައި ނަސަބު

[613] ފިޤްހުލް އަދިއްލާ (ސ 1).

[614] އަލްމުޣްނީ މުޙައްސަރު (ސ 6).

[615] އިބްނު ޤައްޔިމް އަލްޖައުޒިއްޔާ، ޒާދުލްމަޢާދު ފީ ހަދީ ޚައިރިލް އިބާދި (މުއައްސަސަތުއް ރިސާލާ 1998).

[616] ޤާނޫނު ނަންބަރު: 4/2000، އާއިލާއާބެހޭ ޤާނޫނު.

ސާބިތުކުރެވޭނީ، މި ޤާނޫނުގެ ދަށުން ހަދާ ގަވާއިދުގައި ބަޔާން ކޮށްފައިވާ ކަންކަމާ ގުޅޭގޮތުން ކޯޓަށް ގަބޫލުކުރެވޭ މިންވަރަށް ހުރި ދެއްކުމުންނެވެ."[617] މި މާއްދާގައި، ނަސަބު ނަފީކުރުމުގެ ވާހަކައެއް ނެތަސް ފާހަގަކުރެވެއެވެ.

ނ. އާއިލާއާބެހޭ ގަވާއިދު:

ގަވާއިދު ނަންބަރު: 2022/R-99، އާއިލާއާބެހޭ ގަވާއިދު[618] 71 ވަނަ މާއްދާގެ ސުރުޚީއަކީ "ނަސަބު ސާބިތުކުރުން" އެވެ. އެ މާއްދާ ބުނާ ގޮތުގައި ނަސަބު ސާބިތުކުރެވޭނީ، ދެ ފިރިހެނުންގެ ހެކިބަހުންނާއި، އިޤްރާރުންނާއި، ގިނަ އަދަދެއްގެ މީހުން އެކަމަށް އިއްތިފާޤުވުމުންނާއި، އިތުރު ސައިންޓިފިކް ހެކިތަކުންނެވެ. އެ ސައިންޓިފިކް ޓެސްޓްގައި ހިމެނެއެވެ.

1. ނަސަބު ސާބިތުކުރުމަށް ކުއްޖާއަކީ ޝަރުޢީ އަދި ޤާނޫނީ ހަމަތަކުގެ މަތިން އާންމުގެ މަސްލަހަތާއި ބައްޕަ ކައިވެނިކުރުމަށްފަހު ވިހެއިފައިވާ ކުއްޖެއް ކަމުގައިވުން؛
2. އެ ކުއްޖާ ވިހެއިފައި ވަނީ ޝަރުޢީ ހަމަތަކުގެ މަތިން ދަރި ލިބޭނެ މުއްދަތުގެ ތެރޭގައި ކަމުގައިވުން.

އާއިލާއާބެހޭ ގަވާއިދު[619] 72 ވަނަ މާއްދާގެ ސުރުޚީއަކީ "އިސްތިލްޙާޤު ތިމާ ދަރިއަކު ކަމުގައި އެއްބަސްވެ ފޮނުވުމާ ބަލައިގަތުން" އެވެ.

އެ މާއްދާގެ (ހ) ގައި ވަނީ، "އެ ކުއްޖެއްގެ ނަސަބު ނަފީކުރަން ބޭނުންވާނަމަ، ކުއްޖާ ވިހާ ތާރީހުން ފެށިގެން 1 (އެކެއް) މަސްދުވަހުގެ ތެރޭގައި ކޯޓަށް ހުށަހަޅަންވާނެއެވެ."

އެ މާއްދާގެ (ށ) ގައި ވަނީ، "މި މާއްދާގެ (ހ) ގައި ބަޔާންކޮށްފައިވާ މުއްދަތު ފާއިތުވުމަށްފަހު ކުއްޖާގެ ނަސަބު ނަފީކުރުމުގެ މައްސަލައެއް ކޯޓަށް ހުށަހެޅޭނީ، ކުއްޖާގެ މަންމަ އެ ކުއްޖާ ވިހައިފައި ވާނީ، އެ ކުއްޖާގެ ނަސަބު ނަފީކުރުމަށް މިހާރު ކައިވެނިކުރިތާ 6 (ހައެއް) މަސްދުވަހުގެ ކުރިން ނުވަތަ ވަރިކުރިތާ 1 (އެކެއް) އަހަރު ދުވަހުގެ ފަހުންކަމަށް އެނގޭ ލިޔުންތަކާއެކު ކޯޓަށް ހުށަހަޅައިފިނަމައެވެ."

ރ. ކޯޓަށް ހުށަހެޅޭ މައްސަލަތައް:

ޖިނާއީ ކުށްތަކާބެހޭ ގޮތުން ކޯޓަށް ހުށަހެޅޭ މައްސަލަތަކުގެ ތަފާސްހިސާބު ދެންނެވުމަށް ބަލައި ފެމިލީ ކޯޓުގެ އަހަރީ ރިޕޯޓާ[620] އިންޓަވިއުކުރެވުނެވެ. އެ އިންޓަވިއުގައި އާންމު ވިދާޅުވި، ނަސަބު ސާބިތުކުރުމާއި ނަސަބު ނަފީކުރުމާ ބެހޭ ގޮތުން މިހާރު ޤާނޫނާއި ގަވާއިދުގައި ކަނޑައެޅިފައިވާ މިންވަރަކީ، އާއިލާއާބެހޭ ޤާނޫނާއި އާއިލާއާބެހޭ ގަވާއިދު ގައި ކަނޑައެޅިފައިވާ މިންވަރު އެކަނި ކަމަކެވެ. އަދި ފެމިލީ ކޯޓަށް ހުށަހެޅޭ މައްސަލަތަކުގައި، ޖިނާއީ ކުށުގެ ބާރުމެއް ނުއެކުލެވޭ ކަމަށެވެ. އެކަން އެހެން ގޮތަކަށް ދެއްކުމަށް ބޭނުންވިޔަސް، ޖިނާއީ ކުރުމުގެ އިޖުރާއާތު އެންމެ ގޮތް ބާރުމުއްސަނދުން ނާސިރުގެ ކަމެވެ. އެހެނީ، ޖިނާއީ ކުރުމުގެ މައްސަލައެއް ކޯޓަށް ކުރިއަށް ގެންދެވޭ، އެ މައްސަލައެއް ފެމިލީ ކޯޓަށް ޖިނާއީ ސަރަޙައްދު ހުށަހެޅޭ ކޯޓުން އިޖުރާއާތުތަކުން ފޭނުގައި ކަމެވެ. އާންމު ވިދާޅުވާ ގޮތުގައި އެ އިޖުރާއާތު ނުކުރެވޭ ކަމެވެ. ޝަރީޢަތަށް ބާރަށް ހުށަހެޅުމުގެ ކަނޑައެޅުން ކަމެވެ. މައްސަލަ އިޖުރާއާތުތަކުގެ މަރުޙަލާތަކުން ގެންދިއުމަކީ އެ މީހުން ކުރާ ކަމެއް ނޫނެވެ.

ފެމިލީ ކޯޓުގެ އޮފިސަރާ[621] ވިދާޅުވި ގޮތުގައި، ދިވެހިރާއްޖޭގައި ޖިނާއީ ކުރުމުގެ ބާރުމީ ނިޒާމު ދުވަސް ސަބަބަކީ، އެކަން ކުރުން ކުރެވޭނެ ގޮތް ފަހިވެފައިވާ ކަމެވެ. އެހެންކަމުން، ދަރިފުޅު

617 މި މާއްދާގައި އިބާރާ ކުރެވެ ވެއެވެ. އެއީ "އަދި އުފަންވުން، ނަސަބު ސާބިތުކުރުން އެދޭ މައްސަލަތަކުގައި" މި އިބާރާތުގައިވާ "އުފަންވުން" އެވެ. ރަނގަޅު ގޮތަކީ "އުފަންވުން" ކަމަށް ބެލެވެއެވެ.

618 ގަވާއިދު ނަންބަރު: 2022/R-99، އާއިލާއާބެހޭ ގަވާއިދު.

619 ކުރީގެ ހަވާލާ.

620 ދިރާސާވެރިޔާ 9 ޑިސެމްބަރ 2024 ވަނަ ދުވަހު ފެމިލީ ކޯޓުގެ އޮފިސަރަކާ ކުރި އިންޓަވިއު.

621 ކުރީގެ ހަވާލާ.

ވިޔުނުމުގެ ކުރިން ބަޔާއި މިހުން އެބޮޑުކަންވެއެވެ. އެ ކަމުގެ ނަތީޖާއަކީ، ޖިނާޔަތްކުރުމުގެ ޖިނާވަތްސާ ހަމަހަމަ މައްސަލަ ވާސިލްވުނުވެއެވެ. ޓޭނަންބައުމްދިރާ 14 ވަރަކަށް އަހަރުދުވަހުގެ ކުދިކަމުގައި، ފުލުވި ކޮޅަށް ހަރަކާތްތަކުގައި ޖިނާޔަތްކުރުމުގެ އެންމެ މައްސަލަތަކެވެ. އެ މައްސަލަތަކުގައި ޝާމިލްވާ ކުއްޖާގެ އުމުރަކީ 5-4 އަހަރެވެ. އެ ކުއްޖާގެ ބައްޕަ، އެ ކުއްޖާއަކީ އޭނާގެ ދަރިއެއް ނޫން ކަމަށް ބުނެ، ޖިނާޔަތްކަން އުފެދި ގޮތުގެ މައްސަލައެއްގައި ކަމަށް އެ ކުއްޖާގެ މަންމަ ބުނެފައި ވެއެވެ. އެ ކުއްޖާގެ މަންމަ ބުނާ ގޮތުގައި، އެ ކުއްޖާގެ ބައްޕައަކީ މާލާ މީހެކެވެ. އޭނާ ކުރިން އިސްތިހާދަން އުޅުނީ މާލާ އަންހެނެކެވެ. އެ ދެ މީހުންނަށް ދަރިން ލިބުނުފަހުން އެ ދެ މީހުން ވަރިވެއެވެ. ދެން އޭނާއާ ކާވެނިކުރުމަށް ދަރިފުޅު ލިބުނެވެ. އޭނާއަކީ ރާއްޖޭބޮޑުގެ ރަށެއްގެ އަންހެނެކެވެ. ދަރިފުޅު ލިބުނުފަހުން، ކުއްޖާގެ ބައްޕަ، އޭނާ ވަރިކުރިއެވެ. އަދި ކުރީގެ އަންބިމީހާ ކާވެނިކުރިއެވެ. އެއަންނަހުރު، ގޮތި ބައްޕަގެ އިޖުރާއާތް ކުރިއަން ގެންދާއިރު، ދުވަސް ބަސްދީގެ ދަރިފުޅުގަން ގޮތިން ދޫން ޖެހިފަދިނީ، ޖިނާޔަތްކުރުމުގެ މައްސަލަ ހުށަހެޅިއެވެ. އޭރު އެ ކުއްޖާގެ އުމުރަކީ 4-5 އަހަރެވެ. އެހެންކަމުން، އެއީ ޖިނާޔަތްތަކުން މައްސަލައެއް ކަމުގައި ނުވާނީ، ކާބަފައިން އެ މައްސަލަ ކުރިއަށްގެންގޮސް ނުދެއްވާތީއެވެ.

ޚުލާޞާއި ހުށަހެޅުން:

ތިރީގައި މި ބަޔާންކުރެވުނީ، މި ދިރާސާ މަޤްޞަދުގެ އަލީގައި ހޯދުނު ޚުލާޞާ ދިރާސާއިގެ ނަތީޖާގައި ޖިނާޔަތްކުރުމާބެހޭ ގޮތުންނެއް ކުޑަކުދިން ކުރުމުގައި ހުށަހަޅާ ހުށަހެޅުންތަކެވެ.

ޖިނާގެ ބަލަދު މާނައަކީ، ފަސްސަރުދާޒްމާއި، ދުރަކަށްދުރުވެ. ޖިނާއި ނޭދެފައިވާ ފަސާދަތަކެއްވެއެވެ. ފަސާދައިކުރުމަކީ، ހުރިކަންތަކާއި މާތް الله ގެ ހަޔާތަކަށް ދުރައްކުރިވެ، އެއީ އިސްލާމީ ގިނަހުރިހާގެ އިސްލާމީ ޝަރީޢަތުގައި ޖިނާޔަތުގެ އަސާސް ބައެއް ވެއެވެ. ޖިނާޔަތްތަކުގައި ދޭތެރޭގައި އެކަމަށް ދޫކޮށްލެވޭ ކަމުގައި ނަފްސާނީ ގޮތުން، އެ ދީ މީހުންގެ ޖެހިލުން އެކަމަށް މާތް الله ހަރާމްކުރެއް

ފަރުވާފައިވާ ދިޔައީ ކަމުގައި ނުވަތަ އަންނަނި އެކަމާނުގެ ކާފަރުވާފައިވާ ދިޔައީ ކަމުގައި ވާނެއެވެ.

ޖިނާޔަތްތަކުން ސަލާމަތްކުރުމުގެ ޝަރުޢީ މަޤާޞިދު ފިޤުހީ މަޤާޞިދުތަކުގެ މުދަލުގައި ބަރާބަރެވެ. ޖިނާޔަތްތަކުން ރައްކާތެރިވާ ޝަރުޢީ ނަތީޖާ ބަޔާންކުރުމުގެ ބޮޑުކަމި، ފިރިހެނުންގެ ދިރުޅިން ޒުވާނުގެ ހަމްޖެހި ކަސްދުކުރުމައި، އަނބިހެނުންގެ ދިރުޅިން ޖިންސުގެ ހަމްޖެހި ކަސްދު ހިފެހެއްޓުމެވެ. ހަނދާ މަޤާޞިދު ފިޤުހީ ފެނުން މަޤާޞިދުތަކުގައި، ޖިނާޔަތްތަކުން މަނާކުރުމަށް އެ ދީ މީހުންގެ ކާފިރުން އަދަދުން ހަރަކާތް ބޮޑުވެ. ޖިނާޔަތްތަކުން ފިރިހެނުންނާއި ސިޔާސީ ފިކުރީ ގޮތުން ސިފަކުރެވޭ، އެ ކަމުގެ ގޮތްތަކުގެ ބޭނުން ފިރިހެނުންނާއި، ފިރިހެނުން ޖިނާޔަތްތަކުގެ ނަތީޖާތަކަށް ދާއިރާތަކުގެ ފިޤުހީ ނަތީޖާ ގޮތަކީ ދިރާސާ ކަރުދާސްތަކުގައި ބަޔާންކުރެވޭ.

ފިޤުހީ އިޖުތިހާދުން ދަލީލުގެ ބަޔާންކުރުމުގެ ގޮތްތަކުގައި، ޖިނާޔަތްކުރުމަށް ސަބަބުތަކެއް، މިސާލަކަށް ޖިނާއީ ފިކުރުތަކުގެ އަސްލުތައް ބަލައި ޖިނާޔަތްތަކުގެ ސަބަބު ބަޔާންކުރަމެވެ. ޖިނާޔަތްތަކުން ފިރިހެނުން ދޫކޮށް، ފާރަވެރިވުން ހުރެ، ފިރިހެނުންގެ ދިރުޅިން ބޮޑު ނަފްސާނީ ޖިނާޔަތުގެ ސަބަބު، ބަލިކަށި ފިރިހެނުގެ ކޮޅުލެވޭ ވެއެވެ. ފިރިހެނުގެ މީހުން ނަފްސާނީ ސިޔާސީ ގޮތުން ސިފަކުރެވޭ، ފިރިހެނުގެ ޖިނާޔަތްތަކުގެ ސަބަބު ބަޔާންކުރެވޭ. ޖިނާޔަތް ކުރުމުގެ ނަފްސާނީ ބަލިކަށި ފިރިހެނުން ފާރަވެރިވުން ހުރެ، ބަލިކަށި ފިރިހެނުންގެ ނަތީޖާތަކުގެ ފިޤުހީ ނަތީޖާ ވެއެވެ. ޖިނާޔަތް ކުރިއާއި، އެކަމުގެ މަންމައަށް ދެކެވޭ ނުރައްކާތެރިކަމެއް ސިފަކުރެވެއެވެ.

މި ދިރާސާގެ ހުށަހެޅުމަކީ، ދިރާސީ ނަތީޖާގައި ޖިނާޔަތްކުރުމުގެ ގޮތުންނެއް ކުޑަކުދިންނަށް، އިސްލާމީ ޝަރުޢީގައި ވާ މިފަދަ ކަންކަމުގެ މަސައްކަތް ދިރާސާކުރުމެވެ.

ނިންމުން:

ދިރާސާގައި ޖިނާޔަތްކުރުމަށް ދޫކޮށް ކުޑަކުދިން ކަމަށްވުމުގެ ސިފަކުރަނީ، ދިރާސާގެ ގޮތުން މަސައްކަތްކުރަން ބަލައިލާ، ކަންބޮޑުވާނެކަށް ކަމެކެވެ. ގޮތުން މަސައްކަތްކުރެވޭ ބައެއް ގޮތް ދިރާސާގައި

ހެދިފައިވާ ޤާނޫނާއި ޤަވާއިދުތަކުގައި، ޤިޔާސްކުރުމާބެހޭ ކަންކަން، ޤާނޫނީ ނަޒަރުން ނުވަތަ ޝަރުޢީ ހަމަތަކުގެމަތިން ބަޙުސްކުރެވިފައެއް ނެތެވެ. މީގެ މާނައަކީ ޤިޔާސްކުރުމުގެ މައްސަލައެއް ބެލުމުގެ ޤާނޫނީ ބަރަހަނާއެއް ވެސް ނެތެވެ. އެހެންކަމުން، ޤިޔާސްކުރުމުގެ މައްސަލައެއް ހުށަހަޅައިގެން ކޯޓަށް ގެންދެވޭނަމަ ޤާނޫނީ އިޖްތިހާދު، ސާފުކޮށް އެނގޭކަށް ނެތެވެ. މި ކަމުގެ ސަބަބުން، ޤިޔާސްކުރުމުގެ މައްސަލައެއް ހުށަހެޅުމަކަށް ވެސް ހުށަހަޅާފައެއްނުވެއެވެ. ދިވެހިރާއްޖޭގެ ކަމާބެހޭ ކޯޓުތަކަށް ހުށަހަޅާ މައްސަލަތަކަށް ބަލާއިރު، ޤިޔާސްކުރުމުގެ މައްސަލަތައް ނެތީ ނުބެލެވުނުއެވެ. އެހެންކަމުން، އިސްލާމީ ޝަރީޢަތުގައި ޤިޔާސް ބަޔާންކުރައްވާފައިވާ، ޤިޔާސްކުރުމުގެ މައްސަލަތައް، ޤާނޫނީ އިމުގެ ތެރެއިން ބެލުން، ޤާނޫނުން ކޯޓުތަކުން މުހިންމު ކަމެއް ކަމުގައި ދެކެވޭކަމެވެ.

ޙަވާލާ ލިސްޓް:

ހ. އަސާސީ މަސްދަރުތައް:

ދިވެހި ޤާނޫނު

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Importance of Reevaluating the Minimum Age of Criminal Responsibility for Children in the Maldives

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Abstract

Juvenile delinquency in the Maldives has emerged as a critical national concern, necessitating urgent intervention. In recent years, minors have increasingly engaged in criminal activities without fear of legal consequences, as they are shielded by existing laws that place them beyond the reach of justice. The nature and severity of offences committed by these youths suggest that their actions more closely resemble those of adults than children, raising significant questions about the adequacy of the current minimum age of criminal responsibility. This study explores the adequacy of the existing age threshold for criminal liability in the Maldives, focusing on assessing its effectiveness and identifying the need for reform. This research utilizes qualitative doctrinal legal research methodology by analysing primary legal sources, data from the State authorities, and relevant secondary literature to uncover critical gaps and deficiencies in the juvenile justice system in the Maldives. The findings indicate that lowering the minimum age of criminal responsibility could be a necessary step to address the growing juvenile delinquency issue, ensuring a more just and effective response to delinquent children.

Keywords: Juvenile delinquency; Juvenile Justice Act; Minimum Age of Criminal Responsibility; Legal Reform; Juvenile Rehabilitation.

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އިކްރާމް އަބްދުލްސައްތާރު

އެބްސްޓްރެކްޓް

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އުމުރުފުރާއަކީ އެންމެ ރަނގަޅަށް ކަނޑައެޅިފައިވާ އުމުރެއްކަމާއިމެދު މިހާރު ވަރަށްގިނަ ބަހުސްތަކާ ސުވާލު އުފެދިއްޖެއެވެ. މިދިރާސާގެ މަޤްސަދަކީ ކުޑަކުދިން ޖިނާއީކުށުގެ ޒިންމާ ނަގަންޖެހޭ ހަމަޢުމުރުގެ ގޮތުގައި ޤާނޫނުގައި ކަނޑައަޅާފައިވާ އުމުރުފުރާގެ އަސަރުތަކާއި ދިރާސާކޮށް އެއުމުރުފުރާއަށް ބަދަލު ގެންނަންޖެހޭކަން ދެނެގަތުމެވެ. ކޮލިޓޭޓިވް ޑޮކްޓްރިނަލް މެތަޑް މަންހަޖުގެ މައްޗަށް ކުރިއަށްގެންދެވުނު މިދިރާސާގައި ޤާނޫނުތަކުގެ އިތުރުން ދައުލަތްތަކުގެ ކޭސްތަކާއި ދިރާސާތަކުން އެއްކޮށްފައިވާ މުޢާހަދާތަކާއި އެހެނިހެން މަޢުލޫމާތު މަސްދަރުތަކުން އެއްކުރެވިފައިވާ މަޢުލޫމާތުތައް ތަޙުލީލުކުރުމުން ދުނިޔޭގެ ކުޑަކުދިންގެ އަދުލުގެ ޤާނޫނީ ހަމަތަކުގައި ބޭނުން މައްސަލަތަކެއް ފާހަގަކުރެވިފައިވެއެވެ. ހެއްސަވެރިކަމުގައި މިގޮތުން އަންނަ ބަދަލުތަކާ ކުޑަކުދިން ޖިނާއީ ކުށުގެ ޒިންމާވާނެ އުމުރުފުރާ މިހާރުވުރެ ދަށްކުރަންޖެހޭކަން އެނގިގެންދިޔައެވެ.

މުހިއްމު ބަސްތައް: ކުށްކުރާ ކުޑަކުދިން، ކުޑަކުދިންގެ އަދުލުގެ ޤާނޫނު، ޖިނާއީ ޖިނާއަތުގެ ހަމަޢުމުރުފުރާ، ޤާނޫނު އިސްލާހުކުރުން، ރިހެބިލިޓޭޝަނާއި ފަރުވާ.

ތަޢާރަފު

ކުޑަކުދިންނަކީ ކޮންމެ މުޖުތަމަޢަކަށްވެސް ހާއްސަ އިލްތިފާތު ދޭންޖެހޭ ބައެކެވެ. ހާއްސަ އަޅާލުމަކާއި އޭގެތެރޭގައި އެކުދިންނަށް ލިބިދޭންޖެހޭ ބައެކެވެ. މިއަޅާލުމާ އޭގެތެރޭގައި ކުއްލި ބެލެހެއްޓުމާ ފުރާފުރާގައި، ތަޞައްރުފު ފުދުންތެރިކަން ބޭރުކުރުމުގެ ފަރާތްތަކުން ހުރިހާ ދާއިރާއަކުން ޚާއްސަ އެކުދިންނަށް ލިބިދޭންޖެހޭ އިޖުތިމާޢީ އަދި އަސާސީ ޙައްޤުތަކެވެ.[622] ކުޑަކުދިންނަށް އަޅައިލުމުގެ އެންމެއިސް މަޤްޞަދަކީ އެކުދިން ހެޔޮގޮތުގައި ތަރުބިއްޔަތުކުރުން އެކުދިންގެ މުސްތަޤުބަލު ކާމިޔާބުކުރުވުމެވެ. ޤައުމަށް ބޭނުންތެރި ކާމިޔާބު ފަރުދެއް ބިނާކުރުމަށް ނަސީހަތްތެރިކަމާއި ސާފުޒާނީ އެންމެހާ ސުލޫކުތަކުން ކުޑަކުދިން ދުރުކުރުން ތަރުޙީބުކުރެވެއެވެ. ކުޑަކުދިންގެ މުސްތަޤުބަލުގެ މިސްރާބު ކަނޑައަޅާ ޤައުމުގެ މުސްތަޤުބަލު ބިނާވެގެންވަނީ އަސާސީ ކޮލަމެވެ. ޤައުމުގެ ތަރައްޤީގެ ތަސްދީޤާއި ތަމައްދުނުގެ ރޫޙުގެން ކުރިއަރައިގެންފައިވަނީ އެޤައުމުގެ ކުދިންތަކުގެ ކުޑަކުދިން ހެޔޮއަޚްލާޤުގައި ތަރުބިއްޔަތުކުރުން، އަސްލުވެ ރަނގަޅު މަސްއޫލިއްޔަތަކީ ޖަމާޢަތްތަކުގެ ގޮތުގައި އުފެއްދުމަށް އިންސާނިއްޔަތުން ނިކުމެގެންނުވެސް. ޙައްޤުތަކާ ޖަމާޢަތަކާއި ބިނާކުރުމަށް ކުރުގޮތުގައި ކުޑަކުދިން ވަސީލަތަކީ އެންމެ ހަމަ ދަރުމަ ބަރުދަށްކަމެކެވެ. އެހެންކަމުން ކުޑަކުދިންގެ އަޚްލާޤު ސުލޫކު ހަމަޖެހިގެން ބައްޓަން ކުރުމަށް މަސްދަރުތަކާ، މުދައްރިސުންގެ އިރުޝާދުތަކާ މަސްއޫލިއްޔަތެވެ.[623] އަދި ޙަޤީޤަތުގައި ފަރުދުންނާއި ސަރުކާރުން އެހީތެރިކަމުގައި އެއްބާރުލުން ދިނުންވެއެވެ. އެގޮތުން ކަންކަން ކުރުމުގެ ފުރުޞަތު ސަރުކާރުގެ ސިޔާސަތުތަކުގެ ތެރެއިންނާއި ފާރިސީ ނިޒާމުގެ ތެރެއިން ކަމާއި ގުޅުންހުރި އެންމެހައި ފަރާތްތަކަށް ތަރުބިއްޔަތު ކުރުމުގެ ފުރުޞަތު ދެވެންވާނެ.

622 'ކޮންވެންޝަން އޮން ދަ ރައިޓްސް އޮފް ދަ ޗައިލްޑް - އޯއެޗްސީއެޗްއާރު' <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> accessed 18 December 2024

623 އުސްމަނޯވާ ޝާއްޔެން، 'ދަ ރޯލް އޮފް ޓީޗަރސް އިން ދަ ޑިވެލޮޕްމަންޓް އޮފް ސްޓޫޑެންޓްސް' (2021) 11 އެކަޑެމިކާ: އެން އިންޓަރނޭޝަނަލް މަލްޓިޑިސިޕްލިނަރީ ރިސާޗް ޖާނަލް 1995 <https://www.indianjournals.com/ijor.aspx?target=ijor:aca&volume=11&issue=10&article=304> accessed 18 December 2024

ދިވެހިރާއްޖޭގައި ކުޑަކުދިން ކުށްކުރުމުގެ މައްސަލަ މިހާރު މިއުޅޭ ވަރަށް ބޮޑު ކާރިސާއެއްގެ ގޮތުގައި ބަދަލުވެގެން ދަރަޖައަށް ނުރައްކާވެފައެވެ. ދިވެހިރާއްޖޭގެ ކުށުގެ ވެރިޔާ ހާލަތުން ބަލާއިރު ރާއްޖޭގައި ކުޑަކުދިން ކުށްކުރުމުގެ މިންވަރު ބޮޑުވަމުންދަނީ ހިސާބަށް ވައްތަރަށް ގޯސްވެއްޖެވެ.[624] ޖުވެނައިލް ޖަސްޓިސް ޑިޕާޓްމަންޓުން ނެރެމުންގެންދާ ކުޑަކުދިން ކުށްކުރުމުގެ މިންވަރު ބަލާލުމުން ރިޕޯޓުގައި ހުރަހަގައިވިޔަފާރިއިވާ ޒިޔާރާ ކުޑަކުދިންގެ ބަޔާންކުރާ ރިޕޯޓުގައި ބަލައިލުމުން ކުޑަކުދިން ބައިވެރިވެފައިވާ ކުށްތަކުގެ އަސްލަށް ބަލައިލާއިރު މިމައްސަލައަކީ އަޅުގަނޑުމެން ދެކޭގޮތުގައި މިހާރު ބޮޑުވެފައިވާ މައްސަލައެއް ކަމުގައި ދެކެވެއެވެ.[625] ކޮންމެ އަހަރަކު ބަދަލުވާ ވަރަކަށް ކުޑަކުދިން ކުށްކުރުމުގެ ހާލަތު ބޮޑުވަމުން އަންނަކަމީ ޖުވެނައިލް ޖަސްޓިސް ޑިޕާޓްމަންޓުގެ ތަފާސްހިސާބުން ވެސް ދައްކައިދެއެވެ.

މިދިރާސާގެ މަޤްޞަދަކީ ދިވެހިރާއްޖޭގައި ކުޑަކުދިން ޖިނާއީ ކުށްތަކުގައި ބައިވެރިވުމާއި ނުފޫޒުގެ މަސައްކަތް ރިޕޯޓުތަކުން، ރާއްޖޭގެ ޖުވެނައިލް ސިޔާސަތުގައި ކުޑަކުދިންނަށް ޖުވެނައިލް ޖަސްޓިސް ދިނުމުގައި ބަހައްޓަމުންދާ ކުޑަކުދިންގެ ނިޒާމެއް ހިމާޔަތްކުރުމަށް ޤާނޫނީ މަސައްކަތް ކުރެވޭ ގޮތްތަކާއި، ކުޑަކުދިން ކުށްތަކާއި ގުޅުނު ކުށްތަކާއި ވޯޓުވާ ގޮތްތަކާއި ދިމާވާ ހާލަތުގައި ޤާނޫނު ނަންބަރު 18/2019، ކުޑަކުދިންގެ ޙައްޤުތަކަށް ހިމާޔަތްދޭ ޤާނޫނު ގެ މިޒާން...

ނަޝާޢިރު ފައިދާ ކުޑަކުދިން ކުށްކުރާ ސަބަބުތަކާއި، ކުޑަކުދިން ކުށްކުރުމަށް ހިތްވަރުދޭ ސަބަބުތައް ޖަމާޢަތާ ދެމެހެއްޓުމަށް ބޮޑު ނުރައްކަލެއް އުފެއްދުމުގެ ޝަރުޢީ ހުކުމް ކަނޑައަޅަން ފިޔަވަޅު ނިދާނުން ތަކެތި ލިޔެކިޔުމަށް ކުރަމުންދާ މަސައްކަތްތަކުގެ ބުރަ ހިންގައިލާނަން އެބަހުއްޓެވެ.[626]

ޖުވެނައިލް ސަރުކާރުގެ ސިޔާސަތުގެ ތެރެއިން މިކަންކަމަށް އެކަށީގެންވާ ޖުވެނައިލް ނިޒާމެއް ޤާއިމްވެއެވެ. މައިން ބަލަހައްޓާ ފަރާތްތަކުން ދަރިންގެ ތަރުބިއްޔަތު މިކަމުގައި އިސްނަގައި ޚިޔާލުތަކާއި ޤާނޫނުގެ.[627] ހާމިދު އަޙްމަދު އަދި މުޙައްމަދު ނަޝްބާކަޒީމް ގޮތުގެ ދިރާސާއެއްގައި ބަޔާންކުރާގޮތުގައި ކުޑަކުދިންގެ ތަރުބިއްޔަތުގައި މައިންބަފައިން އަދާކުރާ ދައުރު ވަރަށް ބޮޑެވެ.[628] ކުޑަކުދިންގެ ތަރުބިއްޔަތުގައި ތަރުބިއްޔަތުގައި ސޯޝަލް-މީޑިއާގެ ދައުރު ބެލެނިވެރިން ކުރެހެމުން މަސައްކަތްތަކުގެ ނަތީޖާ ރަނގަޅުކަމުން

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[624] ޖަޢިމާ ނަޝީދު އަޙްމަދު، 'އަމިއްލަ ތަރުބިއްޔަތު ފުރުސަތު ނެތި ޖުވެނައިލް ޖަސްޓިސް' 165 (2017) އިންޓަރނޭޝަނަލް ސިކިއުރިޓީ ސަރވިސް ޕްރޮޖެކްޓް ޕޮލިސީ

[625] ޑިޕާޓްމަންޓް އޮފް ޖުވެނައިލް ޖަސްޓިސް، ޖުވެނައިލް ޖަސްޓިސް ރިޕޯޓް 2022' (މިނިސްޓްރީ އޮފް ހޯމް އެފެއާޒް 2022) <https://www·gov·mv/en/organisations/department-of-juvenile-justice> accessed 12 December 2024·

[626] 'Rate of Juvenile Offenders Increasing Rapidly' <https://psmnews·mv/en/134920> accessed 18 December 2024·

[627] އަޙްމަދު ޒީ، އަދި އަލްފިއަރ އައި، ' ފެމިލީ ބޭސްޑް ކެރެކްޓަރ އެޑިއުކޭޝަން: ދަ ރޯލް އޮފް ޕެރެންޓިންގ އިން ދަ ބޭސިކް ކެރެކްޓަރ އެޑިއުކޭޝަން ޓު އިމްޕްރޫވް ޗިލްޑްރަން' (2022) 2 ޖޭޕީއީ: ޖާނަލް އޮފް ޕްރައިމަރީ އެޑިއުކޭޝަން <https://ejournal·uinfasbengkulu·ac·id/index·php/jpe/article/view/3681> accessed 10 December 2024·

[628] ހާމިދު އަޙްމަދު އަދި މުޙައްމަދު ނަޝްބާކަޒީމް، 'ރޯލް އޮފް ޕެރެންޓްސް އިން ރިލިޖަސް އެންޑް ސޯޝަލް އެޑިއުކޭޝަން އޮފް ޗިލްޑްރަން' (2018) 5 އިންޓަރނޭޝަނަލް ޖާނަލް އޮފް މަލްޓިކަލްޗަރަލް އެންޑް މަލްޓިރިލިޖަސް އަންޑަސްޓޭންޑިންގ 180 <https://ijmmu·com/index·php/ijmmu/article/view/347> accessed 10 December 2024·

މަރިޔަމް ސްޓޮރެޖިރިޑިންގާ، ހަސަން ޒާހަން އަދި ލިއުލް ފެމިލީރިސްގެ ދިރާސާގައި ފާހަގަ ކޮށްފައިވެއެވެ.[629] ޗުރިއާ އުޅޭމީ އަދި އިންޓަރ އަލްވިއުރާ ސިޔާސަތުގެ ތެރޭގައި ދިފާޢު ޕްރޮފެޝަނަލިޒަމާއި، އަސްލާމީ ރިވެލީ ސިޔާސީއަސްކަރިއްޔާ ތަދުވުރުކާމައި އާގާތޮރިކަމައި ޖިންސާދުރުކަންފަދަ ކަންކަމާ ޤާއިދީ ތަރުބިއްޔަތުގެ ތެރެއިން ދަރިންގެ ގައިގައި އަނގަތުނަ ކަށަކުވޭ.[630] ރަނގަޅު ތަރުބިއްޔަތާއި ޤާނޫނުތަކުގެ ގުޅުމާއިފީސް މިމައްސަލައިގައި ފާހަގަ ކުރަންޖެހޭ މުހިއްމު ގުޅުމުކުވޭ. ކުރުގެ ވިދިން ކުޑަކުދިން ދަރުކުމަށް ބަރުއަގާރަދު ޤާނޫނުތަކާއި ނަތީޖާކި ކުރުގެ ވެއްޖެތް ދިނަކުދިންތަކާއި ވެއްޖެގެން ހިނގައިދާނެ ކަމުކުވޭ. އެހެން ކަމުން ރަނގަޅާ ޤާނޫނުތަކާއި ނަތީޖާކި އާގެ ނުބައިއަސަރު ކުރުގެވިރީގައި ދަރުމިތާޅާ އެންމެދުންނަން ނާދިރުވާ ގޮތްއެގައި ކުރާކަމުއެކަމުގައި ލޫޅިއަން ޝަރުޢީގަންހައުޅު އާނާގެ ދިރާސާގައި ފާހަގަކޮށްފައިވެއެވެ.[631] ސިވިލް އަދި ސިޔާސީ އަދި ޢާލާމީ މުޢާހަދާ ބަޔާން ކުރާގޮތުގައި އެކަށީގެންވާ ގޮތަށް އަދަބުތަކާއި ކަނޑައެޅުމަށާ ޤާނޫނުއް އަޅުވަލި ކުރުގެ ވެރިގައި ބަރަކާތްތެރިވާ ކުޑަކުދިންނަށް އަދަބުގެ ބިރުދަށްކައިގެން ކުރުގެ ވެއްޖެއި އެކުދިން ދަރުކުރުމަށް އެދިގެންދިޔަ ބަދަލުކުރެވިފައެވެ.[632] ދިފާރުގެ ކުރިޔާދުގެ (2000 އިން 2010އާ ދެމެދުގެ) އަހަރުތަކުގައި ދިނިޔާގެ ގިނަގައުމުތަކުގައި ކުޑަކުދިންކުރާ ޖިސްމާނީކުރުގެ އުފުލަންޖެހޭ ޢުމުރުފުރާ މަތިކުރުމުގެ އާއިލާތައް ހިނގައިގެން ދިޔަކަމަށް ނިވެ ހާރިޖެ ބާރުންކޮށްފައިވަނީ،[633] މީގެއިތުރުކަން ވަކިވާތަކުރުމެން ތަމަސް ކުރުވުރުޖ ފާހަގަކޮށްފައިވަނީ "މިހާރު ދުރަކުރައި ބައިނަލް އަޤްވާމީ ދުނިޔޭގައި ކުޑަކުދިން ޖިސްމާނީކުރުގެ ޖިންސާނަގަސްޖެހޭ އުމުރުފުރާ 12 އަހަރަށް ދައްކުރަންޖެހޭކަމަށް ގިނަބައިތަކު ފާބަލުކުރާކަމަށެވެ."[634] މިހުރިހާ ކަމެއް މިހެން ހުރުމާއިއެކު، އެކަށީގެންވާ ހަރުދަނާ ޤާނޫނުތަކާއި ވަޒީފާ އައުމަށް ދިވެހިރާއްޖޭގެ ނާރަގަތް ރިއާޔަތްކުރައިދު ވަރަށް މުހިންމު ކަމުކުވޭ. އަދި ރާއްޖޭގެ ޤާނޫނުތަކަށް ބަލާއިރު އުމުރުން އަނގަރަ އަހަރުން ދަރުގެ ކުދިންނަށް ޤާނޫނީގޮތުން ކުރުގެ ވެރިގައި ދޫކުރައިވާ ހިމާޔަތުގެ ސަމާއިޖު ވައިދަނޑުވެން ހުއްޓުވުމި ޤާނޫނުގައި މިހާރު ކަނޑައަޅާވައިވާ ޖިނާއީ ކުރުގެ ޖިންސާނަގަސްޖެހޭ އުމުރުފުރާ މިހާރުއްޓި ތިންގަޔޮނވުރު ދަރުކުރޭ، ޤާނޫނުތަކަށް އިތުރު އަވަސް ހަރުދަނާ ބަދަލުތަކާއި ގެނެސްގެންނެވެ. އަހާރަ އަހަރުން ދަރުގެ ކުޑަކުދިންގެ ގޮތުގައިވިޔަސް، ކުދިންކުރާ ކުރުމެއް އެކުދިންގެ މައްޗަށް ސާބިތުވެއްޖެ އަދަބުތައް ތަންފީޒުކުރުމުގައި ޤާނޫނުން ދިރިހައިވާ ދުލޮކަކީ ކުރުކުރާ ކުޑަކުދިން ކުރުގެ ވެރިގައި ދަރުމިތުޅުމަން ނިޒާމުގެ ތެރެއިން ހިއްވަރު ދިނުމަށްކަމުކުވޭ. އެންމެ އާދައިގެ ކުދިކުދި ކުރުތަކާކުރަނިވިރިގެން މިހިނގާދުރުންވަރު ބޭޓީ ޖަރީމާތައް ހިންގާ ކުދިންގެ މައްސަލަ ކުރު ސާބިތުވެއްޖެ، ބުރުމް ތަންފީޒު ކުރުމާގެ ޖުމްލަ ޤާނޫނުގައި ކަނޑައެޅިފައިވާ އުސޫލުތަކާ، ހަޔާތުގައި ކުޑަކުދިން ތަރުބިއްޔަތު ކުރުމަށް، ޤާނޫނީނިޒާމުގެ ތެރޭގައި ހުރި ބޭރޮތި ގެންދަހުކުރަކުރުވޭ. ވަކިންހާއްސަކޮށް ބައްޔެއްކަނޑަ އަދަބުތައް ދިނުން ޤާނޫނީ ނިޒާމުގެ ތެރެއިން ދުވެން

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[629] މަރިޔަމް ސްޓޮރޖޮރިޖިންގެ، ހަސަން ލީޑާން، އަދި ފެމިލީރިސް ޖޭކަބްސް، 'ޕެރެންޓިންގ ސްޓައިލް ޗޯއިސް ކޮރެޕްޝަން ލިޔުމް ޕެރެންޓިންގް އެން އިންޓަރޑިސިޕްލިނަރީ: އަ ރިވިއު އޮފް ދަ އެމްޕިރިކަލް ލިޓަރޭޗަރ' 2019 71 އެޖުކޭޝަނަލް ރިވިއު 650 <https://doi·org/10·1080/00131911·2018·1459478> accessed 10 December 2024·

[630] (ސ 6) އުޅޭމީ އަދި އަލްވިއުރާ

[631] ލިލިއަން އީ ޝަރުޢީގަންހައުޅު، "ދަ ޖުވެނައިލް" 8 އާރކ. ލޯ.ރިވިއު <https://heinonline·org/hol-cgi-(1953)380 bin/get_pdf·cgi?handle=hein·journals/arklr8&section=39> accessed 10 December 2024·

[632] ސައިމަން އައިސެންގަރ އަދި ޖޯޒެފް ޖީކް ޖޯކްސްޓްރާ، 'ކްރިމިނަލައިޒިން ޑެލިންކުއަންސީ: ދަ ޖުވެނައިލް ޖަސްޓިސް ސިސްޓަމް އިން ދަ ނެދަލޭންޑްސް' ކްރައިމް އެންޑް ޖަސްޓިސް (1988) 22 ވޮ އެންޑް ޖަސްޓިސް ރިވިއު 521 <https://www·jstor·org/stable/3053628> 10 December 2024·

[633] ނިކޯލާ ޕަޓެލް، ކުރައިމް އެންޑް ޕަނިޝްމަންޓް އިން ދަ ސޯޝަލް ކޮންޓެކްސްޓް (ސ.ދ 2008)·

[634] ތޮމަސް ކުރުވުރުޖް، "ކްރިމިނަލް ލޯ ރިފޯމް: ޗައިލްޑް އިން ދަ ޖަސްޓިސް ސިސްޓަމް ..." އިން ..." ، ދުރުރަދުވަން ޖާރނަލް އޮފް ކްރިމިނަލް ލޯ ... (2009) 17 ނަންބަރު 267-291

އިސްލާހުތަކަކީ ގެނުވުނު ޢަމަލުން ޤާނޫނަށް[635] ހުއްޓައިލުމަށްޓަކައި ކުރުގެފުރިގައި ބަރަކާތްތެރިވާ ކުޑަކުދިން އިހުސާންތެރި ނުރައްކާތެރި ފައްތަރަކަށް ވެއްޖެގެންދިޔަކަށެވެ. ނަމޫނާއަކީ މިހުންގެތުން ފަދަ އެންމެބޮޑެތި ކުށްތައް ކުރިކުރުމުގައިވެސް އެކަމަށް ކަނޑައެޅިފައިވާ އަދަބު އުކުރިންގެ މައްޗަށް ތަންފީޛުވެގެން ނުދާނޭކަމުގެ ޙަޤީޤަތަކަށް ކުށްވެރިންނަށް ލިބިގެން ދިއުމެވެ.

ދިރާސާގެ މަންހަޖު

މިދިރާސާއަކީ ކޮލިޓޭޓިވް ޑޮކްޓްރިނަލް މަންހަޖުގެ މައްޗަށް ފަރުމާކޮށްގެން ކުރިއަށްގެންގޮސްފައިވާ ދިރާސާއެކެވެ. އެގޮތުން މިދިރާސާގައި ކުޑަކުދިން ކުށްކުރުމުގެ ދާއިރާގައި ވިޔަފާރިވާ ޤާނޫނީ ފިޔަވަޅުތަކާއި، ޓްރީޓީތަކާއި އިޖްތިހާދުތައް މީހުން ހަދާފައިވާ އެހެނިހެން އިލްމީ ދިރާސާތައް ތަފްޞީލީ ނަޒަރަކުން ތަޙުލީލު ކުރެވިފައިވާނެއެވެ. މިދިރާސާގައި ބޭނުންކޮށްފައިވާ އަސާސީ މަސްދަރުތަކަކީ ދިވެހިރާއްޖޭގެ ޤާނޫނުއަސާސީއާއި ބެލެނި ޢުޤޫބާތު ޤާނޫނާއި ކާމިޔާބު ދިރާސާގެ މަސްދަރުތަކުގެ ކުޑަކުދިންގެ ޤާނޫނުތަކާއި، މަޢުލޫމާތު ހޯދުމުގައި ދިރާސާގައި ލައިބްރަރީ ރިސާރޗް ކޮށްފައިވާ ޤާނޫނީ ދިރާސާތަކުގެ ދާއިރާތަކުގެ ތަފާތު މަޢުލޫމާތު ތަޙުލީލުކުރުމުގައި ކޮލިޓޭޓިވް ޑޮކްޓްރިނަލް ގޮތަށް ދިރާސާކޮށް، ކަމާބެހޭ ދިރާސާތަކުގެ ނަތީޖާތަކާއި އެއްކުރެވިފައިވާ މަޢުލޫމާތު ބިނާކޮށް ދިރާސާގެ ނަތީޖާ ހޯދުމަށް މަސައްކަތް ކުރެވިފައިވާނެއެވެ.

ދިވެހިރާއްޖޭގައި ޤާނޫނީގޮތުން ކުޑަކުދިން

ދިވެހިރާއްޖޭގެ ޤާނޫނު އަސާސީއާއި، ޤާނޫނުތަކާއި ޤަވާޢިދުތަކާއި، އަދި ތަފާތު ޖިނާއީ ހާލަތުތަކުގައި ޤާނޫނުތަކުގައި ޖިނާއީ ކުދިންނާމެދުގެ ހަދު އުމުރުގެ ގޮތުގައި، ހަމަ އުމުރުފުރާތަކެއް ކަނޑައަޅާފައި މީގެކުރިން އިސްލާހުކުރެވުމަށް 2019 ވަނަ އަހަރު ފާސްކުރެވުނު ކުޑަކުދިންނާބެހޭ ހައްޤު ޤާނޫނުގައި[636] މިކަންކަން ވަކިން ބަޔާންކޮށްފައިވެއެވެ. އެއްގޮތްވާކަން ވަރަށް ކުޑަވެއެވެ. ގައިބާކަން ޤާނޫނު ނަންބަރު 18/2019، ކުޑަކުދިންގެ އަދުލުގެ ޤާނޫނަށް މިދިރާސާގައި ފާހަގަކުރާ މަސްވަރާ ގުޅުވާން ޤާނޫނުތަކެވެ. ޤާނޫނީގޮތުން ކުޑަކުދިންގެ އުމުރުފުރާ އެންމެ ފުރަތަމަ ހައްދެއްގައި ކަނޑައެޅިގެން ދިޔައީ ޤާނޫނު ނަންބަރު 9/91، ކުޑަކުދިންގެ ހައްޤުތައް ރައްކާތެރިކަމާބެހޭ ޤާނޫނު ވުޖޫދަށް އައުމާއި ގުޅިގެންނެވެ. މިޤާނޫނުގެ 30 ވަނަ މާއްދާގައި ކުޑަކުދިންނަކީ އުމުރުން 18 އަހަރުން ދަށުގެ ކުދިންކަމަށް ބަޔާންކޮށްފައިވެއެވެ. 2014 ވަނަ އަހަރު ފާސްކުރެވުނު ޤާނޫނު ނަންބަރު 9/2014، ޤާނޫނު ޢުޤޫބާތުގައިވެސް ކުދިންގެ ޖިނާއާ ގުޅޭގޮތުން ކުޑަކުދިންގެ ތަޞައްވުރު ކުރެވިފައިވެއެވެ. އެގޮތުން ދިވެހިރާއްޖޭގެ ޤާނޫނު ޢުޤޫބާތުގެ 17 ވަނަ މާއްދާގައި އުމުރުން 18 އަހަރު ނުފުރޭ ކޮންމެ ކުއްޖަކީ ކުޑަކުއްޖެއްކަމުގައި ކަނޑައަޅާފައި އޮވެއެވެ. އަދި ޤާނޫނު ނަންބަރު 19/2019، ކުޑަކުދިންގެ ހައްޤުތައް ރައްކާތެރިކުރުމުގެ ޤާނޫނުގެ 133 ވަނަ މާއްދާއާއި 18/2019، ކުޑަކުދިންގެ އަދުލުގެ ޤާނޫނުގެ 118 ވަނަ މާއްދާގައިވެސް އުމުރުން 18 އަހަރުން ދަށުގެ ކޮންމެ ކުއްޖަކީ ކުޑަކުއްޖެއްކަމުގައި ބަޔާންކޮށްފައި އޮވެއެވެ.

[635] މާއްދާ 74-1 (ނ). ޤާނޫނު ނަންބަރު 18/2019، ކުޑަކުދިންގެ އަދުލުގެ ޤާނޫނު.

[636] ޤާނޫނު ނަންބަރު 19/2019 ކުޑަކުދިންގެ ހައްޤުތައް ރައްކާތެރިކުރުމުގެ ޤާނޫނުގެ 133 ވަނަ މާއްދާއާއި ޤާނޫނު ނަންބަރު 18/2019 ކުޑަކުދިންގެއަދުލުގެ ޤާނޫނު.

އިސްލާމީ ފިޤުހުގައި ކުޅަދާނިންނަކީ ކޮބާ؟

އިސްލާމީ ޝަރީޢަތުގައި ކުޅަދާނިންނަކީ ބާލިޣުންވާ ކުދިންކަމަށް ކަނޑައަޅާފައި އޮތީސް،[637] ކުޅަދާނިން ތަކާތު ބައިތަކަށް ބައިކުރެވިފައި ކުއްޖާގެ ބުދުތަން ރިޝްދުތަކުން އިލްމުވެރިން ފިޤުހު ކުޅަދާނިން ކުޑަކަރައިޖެކުރައްވާ.[638] އެގޮތުން ތަކާތު ބުދުތަކުތަކުގައި ތިބީ ކުޅަދާނިންގެ އަހުލިއްޔަތު އަދި ޖިނާއީކަންކަމުގައި ފިޤަޤީތަކާއި ހުރައްވާ.[639] ގޮތްސަގުތަކުގައި ޖިނާއީ ޖިނާއީ ކުޅަދާނިންނަކީ ރައްދުކުރުމުގައި ފިޤުހު އިލްމުވެރިން މިކަޅަށް ރިއާޔަތްކުރައްވާ.

އިސްލާމީ ޝަރީޢަތުގައި ޖިނާއީ ޖިނާއީ ޖިނާއީގޮތުން ކަނޑައެޅިފައިވަނީ ހަމައެކަނި ބާލިޣުވާ އުމުރުގެ މައްސަލަ އެކަނި ރިޢާޔަތް ކުރެވިގެންނެއް ނޫނެވެ. އޭގެ ބަދަލުގައި ކުއްޖާގެ ބުއްދި ފުރިހަމަވެފައިވާ މިންވަރުގެ މައްސަލަ ގެއްލުނު ސަލާމަތުކަމެއް ދެނެގަނެވޭ. ކުއްޖާ ކުއްޖާއަކީ ބާލިޣުވާއިރު، އޭނާއަށް ކުރެވޭ ކުށުގެ ޒިންމާއަށް ބަލައިގެން ޖަވާބުދާރީކުރެވޭ ފަރާތްތަކެއް ބުއްދިގެ ފުރިހަމަކަމާ ގުޅިގެންނެވެ. އެއާ ގުޅިގެން ބާރަށްތަކުގައި ކުއްޖާއަކީ ބާލިޣުވުމާ ކުއްޖާއަކަށްވުމުގައިވެސް، އޭނާގެ މައްސަލަ ޖިނާއީ ރައްދުކުރެވޭނެ ހުކުމް ނުކުރެވޭ. ބެލެވޭ އިލްމުވެރިން ފުރަގަހަށް ޖަހަފައިވާ ކުއްޖާ ބާލިޣު ނުވިކަމުގައިވިޔަސް އެކުއްޖާއަކީ މުރާހިޤު[640] ކުޅަދާނިންކަމަށް ހިސާބު ކުއްޖާއަކަށްވާނަމަ، ބައްދަލު އަދަބުތައް ނިޔާވާ ނުވާނެއެވެ.

ކުޅަދާނިންނަކީ އެކަނިވެރި ޤާނޫނީ ކުއްޖާއަކާއި ބާލިޣު ކުދިނާ ތަފާތު ކުއްޖާކަމަށް ވިޔަސް ކުޅަދާނިން އެކަމުގެ އަދަބުގެ ޒިންމާ ނުވުވާނެ ވެސް އަދަބުގައި ހުރިހާ ތަފާތު.[641]

އިސްލާމީ ޝަރީޢަތުގައި ކުޅަދާނިން ކުރާ ކުށްތަކަށް ޖިނާއީ ޒިންމާ ކަނޑައެޅިފައި އޮންނަނީ ކުއްޖާ ބާލިޣުވުމަށްފަހުގައި، ބުއްދީގެ ގޮތުން ތަރައްޤީ ވެފައިވާ މިންވަރުގެ ބޭސްލައިން ހުރެގެން. ތަފާތު މުޖުތަމަޢުތަކުގައި މިކަމުގައި ތަފާތު މިންގަނޑުތަކެއް ކަނޑައަޅާފައިވާތީ ބާލިޣުވުމުގެ ޢުމުރު ކުއްޖާގެ ބާލިޣު ވުމުގެ އުމުރު ކުޑަވީ 15 އަހަރުކަމަށް ފިޤުހު ވެރިން ކަނޑައަޅާފައިވެއެވެ. ހަނަފީ މަޛުހަބުގެ އިލްމުވެރިން ދުނިޔޭގެ ހުރިހާ 12 އަހަރު ވުމުގެ ކުރިން ބާލިޣުވާކަމަށް ކަނޑައަޅާފައިވާކަމެވެ. މާލިކީންނާއި ޝާފިޢީންގެ ރައުޔަކީ ކުއްޖާގެ އުމުރުން 9 އަހަރު ނުވަނީސް، ކުއްޖާ ބާލިޣުވުމުގެ ކަނޑައަޅާފައިވާކަމެވެ. އަދި ހަންބަލީން ބުނުމުގައިވަނީ އުމުރުން 10 އަހަރު ނުވަނީސް ކުޅަދާނަ ބާލިޣުވުމުގެ ކަނޑައަޅާފައިވާކަމެވެ. އަދި ހަމައެފަދައިން ހަނަފީންނާއި، ހަންބަލީންނާއި، ޝާފިޢީންނާއި، ޝީޢައިން ދެކެނީ ކުއްޖާގެ އުމުރުން 15 އަހަރުވުމުން ކުއްޖާ ބާލިޣުވުމުގެ ކަނޑައަޅާފައިވާކަމެވެ.[642]

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[637] މުޙައްމަދު ބިން ޢީސާ އަލް ތިރުމިޛީ ޖާމިޢު ތިރުމިޛީ، ...ގެ އަރިހުން ރިވާކުރައްވައި، ޖާމިޢު ތިރުމިޛީގެ ... 1423 ނަންބަރު ޙަދީޘް ... ބަލާލާ: ސުނަން ތިރުމިޛީ. ...:14، ބާބު:1، (އިނގިރޭސި ތަރުޖަމާ: ވޮލިއުމް 3، ...:15، ... 1423، ... 1423. މައުލޫމާތު ނެގި: 2023/12/12 ގައި <https://sunnah.com/tirmidhi:1423> އިން.

[638] ... (1961) 23؛ ... "... އިސްލާމީ ..." ... (2006) 10 : 1-29.

[639] އިސްލާމީ ...

[640] ...

[641] ... "... އިސްލާމީ ..." (2016) މައުލޫމާތު ނެގި: https://seahipaj.org/journals-ci/dec-2016/IJILPS/full/IJILPS-D-3-2016.pdf

[642] ... "..." ... 8 (2017). ޑީ.އޯ.އައި: http://dx.doi.org/10.2139/ssrn.3418167

އުސޫލު ބިނާވެފައި އޮންނަނީ ކީރިތިވާ ނަބިއްޔާގެ ބަސްފުޅުގެ މައްޗަށެވެ. އެކަލޭގެފާނު ޙަދީޘްފުޅު ކުރައްވާފައިވާ ބަސްފުޅުގެ މާނައިގައި އޮންނަނީ "ތިންބަޔަކުގެ ކިބައިންވަނީ ޤަލަމު އުފުއްލެވިގެންނެވެ. އެއީ ނިދާފައި އޮންނަމީހާ ނިދިން ހޭލުމަށްދާންދެންނާއި، ކުޑަކުއްޖާ ބާލިޣުވުމަށްދާންދެންނާއި، މޮޔަވެފައިވާ މީހާގެ މޮޔަކަން ފިލައިފުމަށް ދާންދެންނެވެ."[643] މާތް ނަބިއްޔާގެ މިބަސްފުޅުގެ މައްޗަށް ބަލާއިރު ބާލިޣުނުވާ ކުޑަކުދިންގެ މައްޗަށް އެއްވެސް ޖަވާބުދާރީއެއް ނެތެވެ. އެހެންކަމުން ބާލިޣުނުވާ ކުޑަކުދިން ކުރާ ކުށުގެ ޒިންމާދާރީގެ އެއްވެސް ޒިންމާއެއް އެމީހުން ނަގާކަށް ނުޖެހޭނެއެވެ. މުކައްލަފުވުމުގެ ޝަރުޠާ ކުޑަކުއްޖަކަށް ލިބިގެންވަނީ ބާލިޣުވުމާއިއެކު، ބުއްދި ފުރިހަމަވެފައިވާ މުކައްލަފުވުމުގެ ދަރަޖައަށް އެކުއްޖަކު ވާސިލުވުމުންނެވެ. އެހިސާބުން ވާސިލުވުމާއި ކުއްޖާގެ ފުލުމަކާގެ ޒިންމާ އޭނާ ނަގަންޖެހޭނެއެވެ. އަދި އާންމުކޮށް ކުށްތަކަކަށް ކަނޑައެޅިފައިވާ އުޤޫބާތްތަކެއް އާންމުން ލިބޭނެއެވެ.

ކުޑަކުދިން ކުރާ ޖިނާއީކުށުގައި ދިފާޢުކުރާ ކޮމަންލޯގެ އުސޫލު:

ބަހާނުވެރިހަ އިސްލާމީ ޝަރީޢަތުގެ އުސޫލާ ދުރުދުއްޓަސްކޮ އުސޫލުތަކަށް ކޮމަންލޯ ޤާނޫނީ ނިޒާމު އޮންނަ ޤައުމުތަކުގައި ކުޑަކުދިންގެ ޖިނާއީ މަސްއޫލިއްޔަތު ބެލުމުގައި ކޮމަންލޯ ކޯޑުތަކުން އަމަލުކުރަމުން ގެންދެއެވެ. ކޮމަންލޯގެ މިޤާއިދާއަކީ ރިބަޓަބަލް ޕްރިޒަމްޝަން އޮފް ޑޮލި އިންކެޕެކްސްއެވެ. ކުޑަކުދިންގެ ޖިނާއީ މަސްއޫލިއްޔަތުގައި މިޤާއިދާ ތަޠުބީޤުކުރާއިރު ކޮމަންލޯ ޤާނޫނު އުސޫލަކީ، ޖިނާއީ ކުރުގެ ޖިނާއީ މަސްއޫލިއްޔަތު އުމުރުފުރާ ކުއްޖާގެ ކިބައިގައި ހަމަވެފައިވިނަމަވެސް، ކުޑަކުއްޖާގެ ވިސްނުމުގެ ޤާބިލުކަމާއި، ތަޖުރިބާ ނުލިބުމުގެ ސަބަބުން އަސްލުގައި ކުށްކުރާ ކުއްޖާގެ ގޮތުގައި ކަށަވަރު ބެލުމެވެ. އެހެންކަމުން ދައުލަތާ ފަރާތުން ކުރީ

ކުށްކުރުވިފައިވާކަން ސާބިތުކުރަންޖެހެއެވެ. އެކަން ސާބިތު ކުރަނީ ހަމައެކަނި އާންމުކޮ ކުރާ އަމަލު ނުވަތަ އޮމިޝަން ހިޔަ ސާބިތު ކުރިދީގެންނެއް ނުވެއެވެ. އޭގެ ބަދަލުގައި ކުރާ އަމަލު ކުރާފަރާތުގެ ހިތުގައިވެސް، އޭނާގެ ވިސްނުމާއި ބުއްދި ފުރިހަމަވެފައިވާކަން ސާބިތު ކުރަންޖެހޭނެއެވެ. އެގޮތުން ކުޑަކުއްޖާ ކުރި ކުރާ އަމަލުކުރިކަމާއި، އެއަމަލުކުރާ ނުބައިކަމާއި އާއި ނަތީޖާ އާންމުން ދަނގޭކަން ވިސްނޭކަން ފުރިހަމަކޮށްދޭން ކޮށްގައި ސާބިތުކުރަންޖެހެއެވެ.

އިސްލާމީ ޝަރީޢަތުގައި ކުޑަކުދިން ޖިނާއީ ޖިނާމަސަކަތްޖެހޭ ހަމަޢުމުރު މުޤައްރަރުގެ ޤާނޫނީނިޒާމު އިޤްތިޞާދީ ޤައުމުތަކުގައިވެސް ޝަރީޢާ ކްރިމިނަލް އެކްސްޕާޓްގެ ޤާނޫނުތަކުގައި އުމުރުފުރާ ކަނޑައެޅުމުގައި އެކި ސަޤާފަތްތަކުގައި ހިޔާލުތަކެއް ތަފާތު އުމުރުފުރާތަކާއި ކަނޑައެޅުމުގައި ވާދަ ފުދާރުގެ ކުރިފައިވެއެވެ.[644] މުޖުތަމަޢުގެ ތަފާތު ސަޤާފަތްތަކުގައި އުމުރުފުރާގެ ތަފާތުތަކާ ވަދެވެއިން، ފުދޭ ރަހަ ފޮނުވިފައިގެ ސަޤާފަތް ފިޤްހުތަކުގައިވެސް އުމުރު ކަނޑައެޅުމުގައި ތަފާތުތަކެއްވެއެވެ. މިސާލަކަށް ކްރިމިނަލް ޖަސްޓިސް ކޯޑުގައި ކުށްކުރާ ކުޑަކުދިން ނުވަތަ ހަނގު އަމިއްލަ ބަލިގަ ގޮތުގައި އުމުރުން 18 އަހަރާއި 21 އަހަރު ކަނޑައެޅޭގައި ވާއިރު، ޝަރީޢާ ކްރިމިނަލް ޕްރޮސީޖަރ އެކްޓުމަތަކިމުގައި ކުށްކުރާ ކުޑަކުދިންނަކީ 10 އަހަރާއި 16 އަހަރު ކަމުގައި ކަނޑައެޅިފައިވެއެވެ.[645] ފިޤުހު އިލްމުވެރިންގެ ދެމެދުގައި، ޝަރުޢީ ގޮތުން ކަނޑައެޅިފައިވާ މިންގަނޑު، ތަފާތު މަޒްހަބުތަކުގައި ތަފާތުކޮށް ބެލިކަމުގައި ވިސްނަވެސް އިސްލާމީ ހުކުމްތަކުގެ ދުވަސްވަރުގައި، ދައުލަތުގެ ރަސްމީ މަޒްހަބުގެ ގޮތުގައި ކަނޑަވެސް އެއް މަޒްހަބަކަށް އަހަދުވެސް ހުކުމްތަކުގެ ފަރާތުން ތަބާވެފައިވާކަން ތާރީހުން އެނގެން އޮވެއެވެ. މިގޭ ބޭނުމަކީ ޢަދުލު އިންސާފު ތަފާތުކުރުމުގެ އޮނިގަނޑު ދެމެހުމުގައި ހަމަހަމަކަން ޤާއިމު

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[643] ދަ ބުކް އޮފް ޙުދޫދު، ސުނަން.ތާމް
https://sunnah·com/tirmidhi:1423

[644] ވަފާ ބިންތި ދާވޫދު އަދި އަނިތާ އަބްދުއްރަޙީމް، "ދި އޭޖް އޮފް ކްރިމިނަލް ރެސްޕޮންސިބިލިޓީ އޮފް ދަ ޖުވެނައިލްސް އިން މަލޭޝިއާ އެންޑް އިސްލާމިކް ލޯ"، އޭޝިއަން ސޯޝަލް ސައިންސް 10، ނަންބަރު 10 (2014): 95·

[645] ކުރީގެ ހަވާލާ.

ކުރުމުގެ.[646] އެހެންކަމުން ފެށިގެން ދައުލަތްތަކުގެ އިތުރުން މިފަދަ ކަންކަން އެއްމިންގަނޑެއްގައި ހިފެހެއްޓުން ވަރަށް މުހިންމެވެ.

ޖިނާއީ ކުށުގެ ޖިންސާ ނުވުމުގެ ހައްދު އުޤޫބާ ޤާނޫނުތަކުގެ ޤާނޫނުއަސާސީގައި ބަޔާންކޮށްފައިވާ ކުށުގެ ޖިންސާ ނަގަންޖެހޭ 7 އަހަރުގައި 12 އަހަރާ ދެމެދުގެ ބަނޑުދު އުމުރުފުރާގައިވާ ކުދިންކަމުގައެވެ.[647] ޤާނޫނާ ޚިލާފުވާ އިންޑިއާގެ ގިނަ ޤާނޫނުތަކެއް އެގޮތުން ބަލައިގަތުމުގައިވާ ޤާނޫނާގެ ޤާނޫނު ޕީނަލްކޯޑުގައިވެސް އިންޑިއާގެ ޤާނޫނު ޕީނަލްކޯޑުގެ ނަކަލުކޮށްފައެވެ. މިޤާނޫނު ޕީނަލްކޯޑުގައިވެސް މުދައްސަރުގައި އަންހެނުން ޢުމުރު އިންކާރުކުރެވޭ ޖުރިމީ މަސްއޫލިއްޔަތުގެ އުމުރެވެ. އެގޮތުން ކުރުގެ އަހަރެއް ހިނގާ ކުއްލިޔާ އެހިނދު އަހަރުން ނުކުތުމަށް ކުރިކޮށްފައިވާ ބަނޑުދު ނުދަރުނަށް އަދި ބާލިޣުނުވާ ކުއްޖެއްކަމުގައި ވާނަމަ އަހަރާ ކުރިން ނިންމާފައިވާ ކުށުގެ ޖިނާ އެއްވެސް ޤާނޫނީ ކުށަކަށް ނުހިމެނެއެވެ.[648] ޤާނޫނާގެ ކުޑަކުދިންގެ ޤާނޫނު ނިޒާމުގައި ކުޑަކުދިންނަކީ އުމުރުން 18 އަހަރުން ދަށުގެ ކުދިންކަމުގައި ކަނޑައަޅާފައި އޮތުމުގައިވިޔަސް،[649] ޖިނާއީ ކުށުގެ ޝަރުޢީ ޤާނޫނާގެ ތަފާތު ސުލްޠާނުކަމުގައިވެސް ތަފާތުކަން ފާހަގަ ކުރެވެއެވެ.[650] ޤާނޫނާގެ ދަށުން އެޑިއުކޭޝަނުގައި (ބައްދަލު ކުރުމުގެ ބައިގަނޑު ޤާނޫނުތަކުގައި) ކުއްޖާ ބަލިޣުވުމުން ޖިނާއީ ޖިނާ ނަގަންޖެހޭނަކަން ބައިގަނޑު ވެއެވެ. އަނެއްކާ ކުދިން ބަލިޣުވިކަމަށް ކަސްޓަމަރީ ގައިގެ އަހަރުގެ ފުރުމުންކަމަށް ޤާނޫނާގެ ޝަރީޢަތް ކުރުން ކަސްޓަމަރީގައިވެއެވެ.[651] އަދި ފިރިހެން ކުދިން ބާލިޣުވުމުގެ ކަމަށް

ކަސްޓަމަރީ އިސްލާމީވުން ކަމަށްވެސް ކަސްޓަމަރީގައިވެއެވެ.[652] މިއީ ޖިސްމާނީގޮތުން ބާލިޣުވުމުގެ ކަމަށް ހުރިހާ ފިޤުހު އިލްމުވެރިންވެސް ކަސްޓަމަރީގައި މިންގަނޑެވެ.

އިސްލާމީޤާނޫނު ކުރުވުން ފަރުދުތަކަށް ބަލާއިރު ކޮޅަށް ކުރުވިގައިވާ ޤާނޫނީ މުއްދަތެއް އެނގެ ފިޔަވަމަ ފާސްކުރުވުނީ އިންޑިއާގައި 1860 ވަނަ އަހަރެވެ. ޤާނޫނާގެ ޤާނޫނީ މުއްދަތުގައި އަދި އިސްލާމީ ދަރަޖަގެ ދަރުގައިވާ ވަރަށް ގިނަ ފައިދާތަކެއްގެ ޤާނޫނީ މުއްދަތުތަކުގައި ޖިނާއީ ޖިނާނަގަންޖެހޭ އުމުރުފުރާ ކަސްޓަމަރީގައިވެސް އިނގިރޭސިންގެ އިސްލާމީދަރަޖަގެ ދުވަސްވަރު އިނގިރޭސި ދައުލަތުގެ ފަރުމަތުން ފަސްކޮށްފައިވާ އިންޑިއާގެ ޤާނޫނީމުއްދަތުގައި ކަސްޓަމަރީގައިވާގޮތަށް ބެލެވެނީ.[653] އިޙްސާނުގައި ކުޑަކުދިން ޖިނާއީ ކުށުގެ މަސްއޫލިއްޔަތާ އުފުލަނޖެހޭ އުމުރުގެ ގޮތުގައި ޝަރުޢީ ނިޒާމުގައި އުމުރު ކަސްޓަމަރީގައިވެސް ކުޑަކުދިން ބާލިޣާ އުމުރު ކަސްޓަމަރުގެ އުސޫލުގެ މަޝްހޫރު ރިޕޯޓުތަކެއްގެ ނިސްބަތެވެ. އެގޮތުން އަންހެން ކުދިން ބޮޑުވެގެން ހޭ ފުރުމުން ނުވަތަ ހިޖުރީ ގޮތުން 9 އަހަރު ފުރުން އަދި ފިރިހެން ކުދިން އިސްލާމީގޮތުން ނުވަތަ ހިޖުރީ ގޮތުން 15 އަހަރު ފުރުން އެއީ ބާލިޣުވުން ކަމުގައި ކަސްޓަމަރީގައިވެއެވެ.[654] އިޙްސާނުގެ ޤާނޫނީމުއްދަތުގައި ކަސްޓަމަރީގައިވާ ގޮތުން ކުރުކޮށްފައިވާ ކުޑަކުދިން ޖިނާއީ ދަރަޖައިގެ، އެކުށެއް ކުޑަކުދިން ޖެހިޖެހުން ޤާނޫނީ ނިޒާމުގެ ބަދަލުގައި ކަނަވަރު ކުރާނަމަ ޖެހޭނެއެވެ. އިޙްސާނުގައި ޖިނާއީކުށުގެ ފުރިހަމަ ޖިނާ ނަގަންޖެހޭ ކުއްޖާ ބާލިޣާ އުމުރު ފުރަހަމަވުމަށް، ތަސްއުރުފުޅު ބެޖިހަކަން ނުވަތަ މުކައްލަފުކަމާ ހިސާބުންނެވެ.

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[646] މުޙައްމަދު ހާޝިމްކަމާލީ، "ދަ ސްޓޭޓް އޮފް ގައިވާރިސްޓީ އެންޑް އިސްލާމް (ޑިރެކްޓިވް ޕްރިންސިޕަލްސް) އިން ޝަރީޢާ"، އިސްލާމިކް ސްޓަޑީޒް 3، ނަންބަރު 3 (1998):315 -337.

[647] ޤާނޫނާގެ ޤާނޫނީ މުއްދަތުގެ 82 އަދި 83 ވަނަ މާއްދާ.

[648] ބަލުދީ ޓީސް، އިސްލާމިކް ކްރިމިނަލް ލޯ،

[649] މާއްދާ: 2 (ބީ)، ޗައިލްޑް ޖަސްޓިސް ސިސްޓަމް އެޑިނަންސް (ޤާނޫނާ).

[650] މުޙަސަރާ ބަތޫރިން، "ދި އޭޖް އޮފް ކްރިމިނަލް ރެސްޕޮންސިބިލިޓީ އެންޑް އިޓްސް އިމްޕެކްޓް އޮން ޖުވިނައިލް ޖަސްޓިސް"، ޤާނޫނާ ލޯ

ރިވިއު، ވޮލިއުމް 8 (2017). ޑީ.އޯ.އައި: http://dx·doi·org/10·2139/ssrn·3418167

[651] ފައްޒުލް އިލާހީ ވ. ދަ ސްޓޭޓް، PLD 1987 SC 5

[652] ޢަބްދުލް ޖައްބާރު ވ. ދަ ސްޓޭޓް، PLD 1991 SC 172

[653] ސެކްޝަން 82، ޕީނަލް ކޯޑް އޮފް އިންޑިއާ 1860·

[654] މުޙައްމަދު ރަޝީދު އަހްމަދުމަރަން އަދި ޖަމީލާ ބަކްރުބާ، "ދި އޭޖް އޮފް ކްރިމިނަލް ރިސްޕޮންސިބިލިޓީ: ސަމް އޮފް އިސްލާމިކް ވިއުސް"، އިންޓަރނޭޝަނަލް ޖާނަލް އޮފް ޕީޕަލް އެންޑް ރިލިޖަން 3، ނަންބަރު 4·1 (2015) ·777-787

އެހެންކަމުން ބާލިޣުންނާ ކުޑަކުދިން ބާލިޣުވެ ތަސައްރަފު ފުދިފައިވާ ބޭނުމަކަށް ވުޒާއިފަކަށް، ޖިނާއީ ކުށުގެ ޒިންމާ އެކުދިން ނަގާކަށް ނުޖެހޭނެއެވެ.[655]

ކުށުގެ ޒިންމާ ނަގަންޖެހޭ ހަދު އުމުރު ދިވެހިރާއްޖޭގައިވާ ގާނޫނުތަކުގެ ބައެއް ފެއްޓުމަށް

ދުނިޔޭގެ ވަރަށްގިނަ ޤައުމުތަކެއްގައި ޖިނާއީ ޒިންމާނަގަންޖެހޭ އުމުރުފުރާ މަތިކޮށްފައިވިޔަސް، މިފަދަ ކަންކަމުގައި އެހެން ސަރަހައްދުތަކުގެ ހާލަތާ ނިސްބަތުން އެފްރިކާ ބައްރުގެ ޤައުމުތަކަށް ކަނޑައެޅޭ ކުރަންވީގޮތް ބޭނުންދީނުމުގައި އެންމެ އަވަހު ނުވާ ދިޔައުމު ކަމަންނާ އިންޓަރނޭޝަނަލް ކޮމިޓީ، އެފްރިކާގައި މިމައްސަލަ އޮތީގޮތު ބާރަފުޅަށް ވަރަށް ދުރުންތާ ކަމެއްކަމެވެ.

ޖަވާނުންނާއި ކުޑަކުދިން ކުށުކުރުމުން އެފްރިކާގައި އިންތިޒާމުން އިޝްތިރާކު ކުރެވެން ޤައުމީ ފުރޮކްރާމުގައި އެފްރިކާގައި އެންމެ ފުރަތަމަ ހިންގުނު އެންމެ ދުރުސްތު އެއް ޕްރޮގްރާމް 1970 ގެ އަހަރުތަކުގެ ތެރޭގައި އެފްރިކާގެ ސައުތު އެފްރިކާގައި ޖިނާއީ ކުށުގެ ޒިންމާ އުފުލަންޖެހޭ އުމުރުފުރާ ދަށްކުރެވުނެވެ. މިސާލަކަށް ނައިޖީރިއާ ސިޓީގައި ބޭއްވި ކޮންފަރެންސް ކުޑަކުދިންގެ ޖިނާއީ ޒިންމާ ނަގަންޖެހޭ އުމުރު 16 އަހަރުން 14 އަހަރަށް ދަށްކުރުމާއިއެކު، ކުޑަކުދިންނަށް ދެމުންގެންދިޔަ އަދަބުތަކާ ބޭރުކުރުމަށް ހިފެހެއްޓެވެ.[656] އަދި މިހާރު ނައިޖީރިއާގައި އެއުމުރުވަނީ 12 އަހަރަށް ދަށްކޮށްފައެވެ.[657]

ބޭޒިލިޔަރިފާތަކުގެ ގޮތުގައިބެލުވޭ، މިހެން ވެރިކަންފަދަ އެންމެބޭޒީ ކުރުމަށް އިނގިރޭސިވިލާތުގައި ކުޑަކުދިން ކުރުން އިސްތިޤާމަތް އިތުރުވެ ހައްދުންނަށްޓަކައި ހިނގައިދާންކަމުގެ ބެރުވެރިކަން 1990ގެ މުދުތުތަކުގައި އެފްދިގެން ދިޔައެވެ. މިމައްސަލަ ހައްލުކުރުމަށް އިނގިރޭސިވިލާތުގައި ޖިނާއީކުށުގެ ޒިންމާނަގުމުގެ ހަދުއުމުރު[658] ކަމުގައި ކުރިންކަނޑައަޅާފައިވާ 10 އަހަރާއި 13 އަހަރުގެ އުމުރުފުރާ އުވާލުމަށް އިނގިރޭސި ސަރުކާރުން އެޤައުމުގެ ޕާލަމެންޓަށް މަޝްވަރާއަށް ހުށަހެޅިއެވެ. އަދި އިނގިރޭސިވިލާތުގެ ކުރައިމް އެންޑް ޑިސްއޯޑަރ އެކްޓަން 1998 ވަނަ އަހަރު ގެނެވުނު އިސްލާހާއިއެކު ކުޑަކުދިންގެ ޖިނާއީ ޒިންމާނަގަމުގެ ހަދުއުމުރު ދުވުން އުވާލިއެވެ. ޖިނާއީ ދައުވާތަކުގައި ޒަމާނުއްސުރެ އެދެއުމުގައި ޢަމަލުކުރަމުންގެންދިޔަ ކޮމަންލޯގެ މަބްދައު ދިފާޢީ ގާއިދާއެއްކަމަށްވާ "ރިބަޓަބަލް ޕްރިޒަމްޕްޝަން އޮފް ޑޮލީ އިންކަޕެކްސް" ތަޢުލީމީ ކުދިން ބަނދުކޮށްފައިވާ އުމުރުފުރާ ކަމުގައިވާ 10 އަހަރާއި 13 އަހަރާއިދެމެދުގެ ކުދިންނަން ދެވިފައިވާ އިސްތިސްނާތަށް މި ބަދަލާއި ގެނެސް އުވިގެން ދިޔައެވެ. އިނގިރޭސިވިލާތުގެ ޤާނޫނީ ނިޒާމުގެ ތެރެއިން ކުއްލިގޮތް ހަމަ އުމުރުގެ ކުއްޖަކާއި ދޭހަވާގޮތުން ޖިނާއީ ދަޢުވާއެއް މިހާރު ކުރެވިދާނެއެވެ.[659] ވިދިވިދިގެން ދިޔަ މުއްދަތުތަކުގައި އިނގިރޭސިވިލާތުގައި ވެރިކަންކުރި ޓޯރީޕާޓީގެ ތަފާތުސަރުކާރުތަކުން ކުށުގެ ޒިންމާނަގަންޖެހޭ އުމުރުފުރާ މަތިކުރަންޖެހޭ ސަބަބުތަކަކާއި މިކަމުގައި އެއްވެސް "އެކްސެޕްޝަން"އެއް ނުވަތަ ބަދަލެއް ދިޔުކަން ނެތިކަމަށްބުން އިސްލާހު ކުރުވުން ފެނުނުކަމާ ބަދަލު އުވާލުމަށް

[655] ކުރައިޓޭރިއާ ތޮރެންސިފް، ބައިލޯޖީ އެގްޒިކިއުޝަން އިން އިޔާން އެންޑް އިބްސަ ޕޮލިސީ އަންޑަރ އިސްލާމިކް ލޯ (އޮކްސް.ޔޫ ބާރކިން 2009)

[656] ޖޯޒެފް ބޮޒަސްޓަރިން، "އެޑޮލެސެންސް އެންޑް ކްރިމިނަލް ރެސްޕޮންސިބިލިޓީ"، އިންޓަނޭޝަނަލް ޖާރނަލް އޮފް އެޕްލައިޑް ފިލޮސަފީ، 2، ނަންބަރު 4، (ޖޫން 1985) 1-17، ޑީ.އޯ.އައި: https://doi·org/10·5840/ijap19852414

[657] ނޭޝަނަލް ޖުވެނައިލް ޖަސްޓިސް ނެޓްވޯރކް، ބޮރޑް: ޗާރޓްރިން ދަ.އެސް. މިނިމަމް އޭޖް އޮފް ޖުރިސްޑިކްޝަން، ޖުވެނައިލް ޖަސްޓިސް އެންޑް ކޮމިއުނިޓީ. މައުލޫމާތު ނެގި 2023/12/13 ގައި: https://www·njjn·org/our-work/raising-the-minimum-age-for-prosecuting-children އިންނެވެ.

[658] ދަ ޗިލްޑްރަން އެންޑް ޔަންގް ޕާސަންސް އެކްޓް 1963 ގެ 16 ވަނަ މާއްދާގައިވާގޮތުން އިނގިރޭސިވިލާތާއި ވޭލްސްގައި ޖިނާއީކުށުގެ ޒިންމާ ނަގަންޖެހޭ އެންމެ ހަދު އުމުރުކަމުގައި ކަނޑައަޅާފައިވަނީ އުމުރުން 10 އަހަރެވެ.

[659] ބެރީ ގޮލްޑްސަން، އަންޑަސްޓޭން، އަންޑަސްޓޭން އެންޑް ހޯމްފޯލް ދި ވައިޓަރ ސްޓަޑީޒް: ގޮވަރމެންޓް ޓު ރިއާޖިން ދަ މިނިމަމް އޭޖް އޮފް ކްރިމިނަލް ރެސްޕޮންސިބިލިޓީ އިން އިންގްލަންޑް އެންޑް ވޭލްސް"، ޔޫތު ޖަސްޓިސް 13، ނަންބަރު 2 (2013):111-130·

ދެކެވިފައެވެ.[660] އެހެންކަމުން މުޅި ދުނިޔޭގައިވެސް ޖިނާއީ ކުށުގެ ޒިންމާދާރުވުމުގެ އުމުރު ހަމަޖެހިފައިވާ ގޮތް ތަފާތުވެ އިނގިރޭސިވިލާތެވެ.[661]

އަދި، ގެ ކުޑަކުދިންގެ ހައްޤުތައް ރައްކާތެރިކުރުމާއިބެހޭ ބައިނަލް އަޤްވާމީ މުޢާހަދާ 1990 ގައި ތަސްދީޤުކުރުމާއި ގުޅިގެން އިނގިރޭސިވިލާތުގެ ދުނިޔޭގެ ކަންތައްތަކުގައި، ވަކިން ޚާއްޞަކޮށް ދުނިޔޭގެ ކުޑަކުދިންގެ (2000 އިން 2010އާ ދެމެދުގެ) އަހަރުތަކުގައި ދުނިޔޭގެ ގިނަގައުމުތަކުގައި ކުޑަކުދިން ޖިނާއީ ޒިންމާ އުފުލަންޖެހޭ އުމުރު މަތިކުރުމުގެ އުސޫލުތަކެއް ހިނގައިގެންދެވެ.[662] އެހެން ނަމަވެސް ޔޫރަޕުގެ ބައެއް ޤައުމުތަކާއި އެމެރިކާގައި ޖިނާއީ ޒިންމާ އުފުލަންޖެހޭ އުމުރު ހަމަ އުފުލުމުގެ ކުރިމަތިލައި އެއްވަރު ނިސްބަތުން ޕޮލިސީތަކުގައި ޤާނޫނީ ބައިނަލްއަޤްވާމީ ދިރާސާތަކުގައި ކުޑަކުދިންގެ ޖިނާއީ ޒިންމާދާރުވުމުގެ އުމުރުގެ 12 އަހަރަކަށް ދަށްކުރުމަށްޓަކައި ދިމާވާ ދަތިތަކާ ބެހޭގޮތުން ބައެއް ފިޔަވަޅުތައް ފާހަގަ ކުރެއެވެ.[663]

އެމެރިކާއަކީ ކުޑަކުދިންގެ މައްސަލަ އެންމެގިނައިން ޖިނާއީ ދާއިރާތަކަށް އެރުވޭއެވެ. 2022 ވަނައަހަރުގެ އޮކްޓޯބަރ މަހާއި ހަމައަށް އެމެރިކާގެ 24 ސްޓޭޓެއްގައި ޖިނާއީ ޒިންމާދާރުވުމުގެ ހައްދެއް ޤާނޫނުގައި ކަނޑައަޅާފައެއް ނުވެއެވެ. މިހެން އޮތުމުން މިސްޓޭޓްތަކުގައި ހިތަށްއެރި ކުޑަކުއްޖެއްގެ މައްޗަށްވެސް ޖިނާއީ ދަޢުވާކޮށް އަދަބު ދެވިދާނެއެވެ. ޖިނާއީ ޒިންމާދާރުވުމުގެ ހަދު އުމުރުގެ ގޮތުގައި ވޮޝިންގްޓަންގައި އުމުރުން 8 އަހަރު ކަނޑައަޅާފައިވާއިރު، ނޯތްކެރޮލައިނާގައި ކަނޑައަޅާފައިވަނީ އެންމެ 7 އަހަރެވެ. އަދި އެމެރިކާގެ ސްޓޭޓް ސްޓޭޓެއްގައި ޖިނާއީ ޒިންމާދާރުވުމުގެ ހަދުއުމުރަކީ 10 އަހަރު ކަމަށް ކަނޑައަޅާފައިވާއިރު، 11 އަހަރު 12 އަހަރު އަދި 13 އަހަރު އެއީ ޖިނާއީކުށުގެ ޒިންމާދާރުވުމުގެ ހަދު ފަރާތްތަކުގައި ބައެއް އެހެން ސްޓޭޓްތަކުގައި ކަނޑައަޅާފައިވެއެވެ.[664]

ޑެންމާކުގައި 2010 ވަނަ އަހަރު ކުޑަކުދިން ކުށުގެ ޒިންމާދާރުވުމުގެ ހަދުއުމުރު 15 އަހަރުން 14 އަހަރަށް ދަށްކުރިއެވެ. ތަފާތު ގޮތްތައް ޕާލިމެންޓާ ގުޅިގެން 2012 ވަނަ އަހަރުވެސް 15 އަހަރަށް އަރުވަން މަތިކުރެވިފައެވެ. ހަމަގައިމު އަދި ފިންލޭންޑާއި ޑެންމާކުގައިވެސް މިއުމުރު 14 އަހަރުން 12 އަހަރަށް ދަށްކޮށްފައެވެ.[665] އޮސްޓްރޭލިއާގައި ފުރިހަމައަށް މިއުމުރުފުރާ ކަނޑައަޅާފައި އޮންނަނީ އިނގިރޭސިވިލާތުގައި އޮންނަނީ 10 އަހަރުން 14 އަހަރާއި ދެމެދުގެ ގޮތުގައެވެ.[666] އެހެން ނަމަވެސް 2023 ވަނަ އަހަރު އޮސްޓްރޭލިއާގައި އިސްލާހުކުރެވުނު ޖަސްޓިސް (އޭޖް

[660] ޖިމް ބަޓްލަރ، "ކްރިމިނަލައިޒިން ޗިލްޑްރަން ތު ތާ ވުޑް ކުރަލިޓީ: ދި އޭޖް އޮފް ކްރިމިނަލް ރެސްޕޮންސިބިލިޓީ އިން އިންގްލޭންޑް އެންޑް ވޭލްސް"، ނޭޝަނަލް އެސޯސިއޭޝަން ފޯ ޔޫތް ޖަސްޓިސް ކްރިއޭޓިން ފިއުޗަރ (2012).

[661] ބެރީ ގޯލްޑްސަން، އަންސޭފް، އަންޖަސްޓް އެންޑް ހާމްފުލް ޓު ވައިޑަރ ސޮސައިޓީ: ގްރައުންޑްސް ފޯ ރެއިޒިން ދަ މިނިމަމް އޭޖް އޮފް ކްރިމިނަލް ރެސްޕޮންސިބިލިޓީ އިން އިންގްލޭންޑް އެންޑް ވޭލްސް"، ޔޫތް ޖަސްޓިސް 13، ނަންބަރު 2 (2013):111-130.

[662] ނީލް ހޭޒަލް، ކްރޮސް ނޭޝަނަލް ކޮމްޕެރިސަން އޮފް ޔޫތް ޖަސްޓިސް (ޔ.ޖ 2008).

[663] ތޮމަސް ކްރޮފްޓްސް، "ކެޗިންގ އަޕް ވިތް ޔޫރަޕް: ޓޭކިން ދި އޭޖް އޮފް ކްރިމިނަލް ރެސްޕޮންސިބިލިޓީ ސީރިއަސްލީ އިން އިންގްލޭންޑް"، ޔޫރަޕިއަން ޖާނަލް އޮފް ކްރައިމް، ކްރިމިނަލް ލޯ އެންޑް ކްރިމިނަލް ޖަސްޓިސް. (2009) 17 ނަންބަރު 267-291

[664] ނޭޝަނަލް ޖުވެނައިލް ޖަސްޓިސް ނެޓްވޯކް، ބްރީފް: ރޭޒިން ދަ.އޭޖް. މިނިމަމް އޭޖް އޮފް ޖުރިސްޑިކްޝަން، ޕްރޮސިކިއުޝަން އެންޑް ކޮމިޓްމަންޓް. މައުލޫމާތު ނެގި 2023/12/13 ގައި: https://www.njjn.org/our-work/raising-the-minimum-age-for-prosecuting-children އިންނެވެ.

[665] ޗައިލްޑް ރައިޓްސް އިންޓަރނޭޝަނަލް ނެޓްވޯކް، 'ސްޓޭޓްސް ލޯވަރިން ދި އޭޖް އޮފް ކްރިމިނަލް ރެސްޕޮންސިބިލިޓީ' <https://archive.crin.org/en/home/what-we-do/policy/stop-making-children-criminals/states-lowering-age-criminal-responsibility.html> accessed 15 December 2024.

[666] ޔޫތް ޖަސްޓިސް ސުޕަރވިޝަން އިން އޮސްޓްރޭލިއާ 2024' (އޮސްޓްރޭލިއަން އިންސްޓިޓިއުޓް އޮފް ހެލްތް އެންޑް ވެލްފެއަރ) https://www.aihw.gov.au/getmedia/db6b39a2-58d4-4572-

އޮފް ކްރިމިނަލް ރެސްޕޮންސިބިލިޓީ) ލެޖިސްލޭޝަން އެމެންޑްމަންޓް އެކްޓް 2023 ގައިވާ ގޮތުން 1 ޖުލައި 2025 ވަނަ ދުވަހުންފެށިގެން އޮސްޓްރޭލިއާގެ ކުޑަކުދިން ކުށުގެ ޒިންމާ ނަގަންޖެހޭ އުމުރުފުރާ 10 އަހަރުން 12 އަހަރަށް މަތިކުރެވޭނެއެވެ. ބާރަ އަހަރަށް މަތިކުރުމުގައިވެސް ޕީނަލްކޯޑުތަކުގެ ތުހުމަތު ކުރާ ފަރާތްތަކުގެ މަސްލަހަތު ދަށުވާގޮތަށް އަދަބުދޭކަށްނުވާނެއެވެ.[667]

އިސްވެ ދެންނެވިފައިވާ ފަދައިން އިންޑިއާގެ ޕީނަލް ކޯޑުގެ ދުސްތޫރުގައި ކުޑަކުދިން ޖިނާއީ ކުށުގެ ޒިންމާ ނަގަންޖެހޭ އުމުރުގެ ގޮތުގައި ކަނޑައަޅާފައި އޮންނަނީ 7 އަހަރުން ފެށިގެން 12 އަހަރާއި ދެމެދުގެ އުމުރު ފުރާ ގޮތުގައެވެ.[668] މިއީ ކޮންމެސަބަބަކާ ޖޭލު އިންސާފުވެރިކަމާ ގުޅިގެން ހަމަޖެހިފައިވާ ގާނޫނުގައި އަދުލުވެރިކަމާއި އެއްގޮތްވެ. އިންޑިއާގެ ޖުވެނައިލް ޖަސްޓިސް (ކެއަރ އެންޑް ޕްރޮޓެކްޝަން އޮފް ޗިލްޑްރަން) އެކްޓް 2015 ގައި ކުޑަކުދިންނަކީ ކަނޑައަޅާފައިވަނީ އުމުރުން 18 ނުފުރާ ކުދިންނެވެ. 2021 ވަނަ އަހަރު މިޤާނޫނަށް ގެނެވުނު އިސްލާހުގައި ކުޑަކުދިން ކުށުގެ ޒިންމާ ނަގަންޖެހޭ އުމުރުފުރާއަށް ބަދަލުތަކެއް ގެނެސްފައިވެއެވެ. އެގޮތުން ނަމަވެސް އަނިޔާވެރި ބާރުލާ ކުށްތަކުގެ ބަދަލުގައި ކުށްކޮށްފިނަމަ އުމުރުން 16 އަހަރުން ފެށިގެން މަތީގެ ކުދިންނަށް ބޮޑުމީހުންގެ މައްސަލަ ދިރާސާކުރާ ޝަރީޢަތުގައި ދިރާސާ ކުރެވޭނެގޮތަށް އެޤާނޫނުގައި ކަނޑައަޅާފައިވެއެވެ.[669]

ދިވެހިރާއްޖޭގެ ކުޑަކުދިންގެ ކުށުގެ ޒިންމާގެ ބާރުގެ ޤާނޫނީ ގޮތުން އޮތްގޮތް:

"ނުރައްކާތެރި ހަމައެކަނި ހިފެހެއްޓުން ކޮމޭ ދުވަސް މާލޭގެ މަގުމަތީގައި މާރާމާރީ ހިންގުމުން އުޅޭނީ ސަރަހައްދު ޝައްކުވެރި ކުރާ އުމުރު ހަމަވާ ވަރުގެ ކުޑަކުދިންނެވެ. މަސްތުވާތަކެތީގެ ބޭނުމުގެ ވިޔަފާރިއަށް ވެސް ބޭނުން ކުރަނީ އެ ކުދިންނެވެ...... ދަރިވަރުން މާލޭގައި ހިނގައިދިޔަ ބޭބީ މާރާމާރީތަކުގައި 15 އަހަރުން ދަށުގެ ކުދިން ބައިވެރިވެއެވެ. މިދިޔަ އަހަރު މި އުމުރުގެ ކުދިންތަކެއް ބޮޑު ހަތިޔާރު އެކު މާލޭގައި މާރާމާރީ ހިންގި އެވެ. މިއިން ކުއްޖަކު އަތުލައިގަންނަވަސް، ހައްޔަރަށް ނުކުރެވެއެވެ. އެއީ އެ އުމުރުގެ ކުދިން ޖިނާއީ ކުށުގެ މަސްއޫލިއްޔަތު އުފުލަން ނުޖެހޭތީ "ގާނޫނުގެ ދިރު އަތް" އޮތީ ބަނދުވެފައެވެ."[670]

މަތީގައިއެވާ އިބްރާހީމްގެ މިހާރު ނޫހުގެ ލިޔުންތެރިއަކު ކުޑަކުދިންގެ އަދުލުގެ ގާނޫނުގައި ދިރާސާކުރުމުގެ ކުރިން ކުރިއަށް ގެންދަވާ ކުށްތަކާބެހޭ ގާނޫނުގެ ޓެސްޓެއް ދަށުގައި ދިރާސާ ކުރެވޭ ކުޑަކުދިންގެ އަދުލުގެ ގާނޫނަށް އެބަޔަކު ގާނޫނީ ފުރުސަތު ދީފައިވާ ހާލަތްތަކާއި ކުޑަކުދިންގެ ބޭނުންތައް ގަބޫލުކުރުމަށް ދަރަޖަތަކެއް ބަލަހައްޓާ މަރުޙަލާއެއް އެބަދުއްވާ ކުޑަކުދިންގެ ހައްޤުތަކާއި ގާނޫނުގެ ދަށުން "ގާނޫނީ ދިރުވެހިވެރިކަން" ނެތެވެ. މިގާނޫނުގެ އަސާސީ އުސޫލުތަކުގެ ތެރެއިން ބޭނުންކުރާ ކުޑަކުދިން ހިފެހެއްޓުމާއި ކުށްތަކުގެ ގާނޫނީ އެއްގޮތް ހަމައެއް މިގާނޫނަކުން ނެތެވެ. ފުލުހުންނަށް ބާރު "ދަރިކަލާ ތިމަން ނަހަދާ ގެއަށްދާނޭ" ބުނެފައި ބަލަހައްޓާފައެވެ. ކިޔަށް އަނިޔާވެރި ބުރިސާއްޔާގެ ތެރެއިން ވެސް އެކަށީގެންވާ ފުލުހުން ބަރުގެ ބޭނުން ކުރުމެއް، ހައްޔަރު ކުރުމެއް، ތަރުތީބު ކުރުމެއް، ޝަރީޢަތްތަކުގެ އަދި އަދަބެއް ދިނުމެއްވެސް ނެތެވެ.

2012 ވަނަ އަހަރުގެ ފެބްރުއަރީމަހުގެ ފުރުސަތު މަރާލެވުނު އިބްރާހީމް މާރާމާރީގައި ބައިވެރިވުން ދަރިވަރުން މަރުގެ

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[669] އަންޝުކާ ޖަވިޔާލް، 'ޖުވެނައިލް ޖަސްޓިސް އެންޑް އިޓްސް ވޭކް' ދަ ޓައިމްސް އޮފް އިންޑިއާ https://timesofindia.indiatimes.com/readersblog/legal-travel/juvenile-justice-and-its-wake-36428/> accessed 15 December 2024.

[670] މުޢިއްޒު އިބްރާހީމް، 'ބޭބީ ކުށްތަކުގައި 15 އަހަރުންވާ ކުދިން: ގާނޫނުގެ އަތް ބަނދުވެފައި!' މިހާރު

beb8-fa16a0a88c88/youth-detention-population-in-australia-2024.pdf?v=20241213011832&inline=true>.

[667] ޖަސްޓިސް (އޭޖް އޮފް ކްރިމިނަލް ރެސްޕޮންސިބިލިޓީ) ލެޖިސްލޭޝަން އެމެންޑްމަންޓް އެކްޓް 2023 (އޮސްޓްރޭލިއާ).

[668] އިންޑިއަން ޕީނަލް ކޯޑް، ސެކްޝަން 83.

ބުނެވެ. އިއްވާފައިވާ ދަރިފުޅުންނަކީ އާދެ އުމުރުން އަހަރު ނުފުރޭ ކުޖޭ ދަރިކަރިންނެވެ. އަދި އުމުރުންގެ މައްސަލަ ގެސްޓުހައުސްގައި މީހަކު ފެނިގަތުމުގެކުރި ސާބިތުވާ އުމުރުންގެ ހިބައިން ޒިނާކުރިކަމައި މަރުގެ އަދަބު ދިނުމަށް ޖުވެނައިލް ކޯޓުން ބުނެވެ ކުރިއެވެ.[671]

މިހާރުގެ އިސްލާމިކް ޔުނިވަރސިޓީގެ އިރުން އޮންނަ ފޮޓޯނީ ޒާތް ތެރޭގައި ހަމަ އަހަރުގެ ވެއިމަހު މަރާލެވުނު އުމުރުން 14 އަހަރުގެ ކުއްޖެއަކިފުސް ގާނޫނު މަރާމާރީއަކާ ގުޅިގެން މަރާލެވުނު ކުޖެކުއްޖެކެވެ.[672] 29 މާރިޗް 2015 ގައި މާލޭގައި ތޮޅުއުއްޅަކުން ބަޔާލިއި ކުޖެކުއްޖަކު މަރުލި މައްސަލައިގައި ދަރުވާކަރި މީހުންގެ ތެރެއިން ގަސްތުގައި މީހަކު މެރިކަމުގެ ކުށް އުމުރުން 18 އަހަރު ނުފުރޭ ކުޖެކުއްޖެއްގެ މައްސަލަ ސާބިތުވާ އާދާގެ މައްސަލަ މަރުގެ ބުނެވެ އިއްވުނެވެ.[673] 2016 ވަނަ އަހަރު ޖޫން މަހު ފެށުން ހަމަލާދި އުމުރުން 14 އަހަރުގެ ކުޖެ ދަރުއްޖަކު މަރާލެވުނެވެ.[674] 2018 ވަނަ އަހަރު ދަރުމަވަންތަ ސޯހާނުގެ އުމުރުން 14 އަހަރުގެ ކުއްޖެއްގެ އަރިހަށްބަން ވެލިއަކުން ބަމަލާދި ޖަހުމަޅަލާރި މައްސަލައިފުސް ގޮސްގާއި ގުޅުއިގެން އެހެން ގޮސްގަކަށް ނިސްބަތް ކުރިން ތަކުން ހިންގާފައިވާ ޖަރީމާއެކެވެ.[675] 2022 ވަނަ އަހަރުގެ ޖޫންމަހުގެ ތެރޭގައި އައްޑޫގެ ދި ގޮސްގެއްގެ ދަރުދަރުގައި ހިނގި ހަމަނޑުހަމަލާ ގުޅިގެން އުމުރުން 21 އަހަރުގެ ޒުވާނާ މަރުލި މައްސަލައިގައި 18 އަހަރުންދަރުގެ ހަތަރު ކުއްޖަކު ބައިވެރިވެ އެކުދިންގެ މައްސަލަ ދަރުވާ ކުރެވުނެވެ. އެގޮތުން ތޮށް އެއްކޮށް ބޭނުންކުރުމުގެން ގަސްތުގައި މީހަކު މެރުމުގެ ކުށުގެ ދަރުވާ އެއްކުއްޖަކުގެ މައްސަލަ ކޯޓަށްފޮނުވައިރު، ދެން ތިން ކުދިންގެ މައްސަލަ ތޮށުއެއްކޮށް ބޭނުންކުރުމުގެން ގަސްތުގައި މީހަކު މެރުމުގައި އެހީތެރިވުމުގެ ކުށުގެ ދަރުވާކޮށްފައިވެއެވެ.[676] މިހިސާބުތަކުން ދޭހަވަނީ ދިވެހިރާއްޖޭގެ ކުޑަކުދިން ކުށުގެ ފޮރިގައި ބައިތިލަވުމާ މިންވަރު. މިކަހަލަ ހާދިސާގެ "ބޮޑު ކުރިއަރުން"ގެ ގޮތުގައި ބޯފަތި ކުޑަކުދިން ކުރަނި ކުށްތަކުގެ ކުދިކުދި ކުށްތަކުގެ ވާހަކަ އެއް ނޫނެވެ. އެބައިވެސް އަބަދުވެ. އެހެން ނަމަވެސް މިދަރުކަން ދުނިޔޭގައި އިންސާނުން ކޮށްއުޅޭ އެންމެ އަނިޔާވެރިކަން ބޮޑު، ޖަރީމާކަމަށްވާ މީހުން މެރުމާ މާރާމާރީގައި ކުޑަކުދިން ހަމައިކަމާއިއްކަ ރައްޖޭގެ އިލާކަށްކުރުމުގެކަމުގައި ހެދިފެދިފެ އެޅޭ އުކުމުގެ ވަރަކަށެވެ.

މާލޭގެ ގޮސްގުރުބާނާއްޖަހާ ދެކުގޮތުން 2012 ވަނަ އަހަރު ހަމަވާ ދިރާސާއެއްގައި ބެންޖެހިވަސް އާދު މާލޭގައި 20 އާއި 30 އާއި ދެމެދުގެ ޢުމުރުގަކަށް ގޮސްގުޅިތަ ބަރާބާރޯކަމުން ގޮސްދާކަމާއި ގިނައަދަދެއްގެ ކުޑަކުދިން އެގޮސްގުޅިކަހަލިއި ބަރާބަރުކަރަކަމަށް.[677] ގޮސްގުޅިތަ ހުއްޖަތުމާއި ދެކުގޮތުން، އެއްގުޅިކަށްތަކުގައި ޖަމަލު ނުކުރެވޭ ފަރާތްތަކަކުން އެކުލަވާލާފައިވާ "ވާވަފައިވާ" ޖޯސުއް ހަދުން

671 މުޙައްމަދު އިބްރާހީމް، 'ދަރިފުޅުގެ ގާތިލަކު މަރަށް ކުރި ހުކުމަށް ތާއީދުކޮށްދެނީ ދައުލަތުން ސުޕްރީމް ކޯޓުގައި އެދިފި' (މިހާރު 6 August 2018) <https://mihaaru·com/news/40222> accessed 18 December 2024·

672 މުޙައްމަދު އިބްރާހީމް، 'އަލީރަސް މަރުލި މީހާ މަރަށް ހުކުމްކުރަނީ، އަންނަ 3 މިހުން ސަފާމަދަބޮޅަޖީ" މިހާރު <https://mihaaru·com/news/6239> accessed 18 December 2024·

673 ޝިފާމަތު އަހުމަދު ޝަރީފް، 'ދަރިން ހުކުމް ކުރިއަސް ޖޫރީ ޤާދީ ގޮތުން މަރުގެ އަދަބު ނުދެވޭނީ އަދުލުކަރަން އަޅުއަރާކުރާތީ' ދައުރު <http://dhauru·com/post/news/23183> accessed 18 December 2024·

674 'މާރާމާރި، ބަދަލުހިފުން، 14 އަހަރުގެ ދި ކުއްޖަކު މަރު!؟' މިހާރު <https://mihaaru·com/news/903> accessed 14 December 2024·

675 އަހުމަދު ސާއިލް އަލީ، 'ދަރިވަރަކު ވެލިން ހަމަލާދީފި ފަސް މީހުންގެ ގޮސްފިޔަދޭ' މިހާރު <https://mihaaru·com/news/29632> accessed 18 December 2024·

676 ނަޖާހް މަސްޢޫދު، 'ޒަޔާނުގެ މަރުގެ މައްސަލައިގެ ޝަރީޢަތް މާދަމާ ފަށަނީ' މިހާރު Najaah Masood Mihaaru, 'Zayaan ge maruge massalaige shareeai maadhamaa fashanee' (*Mihaaru*, 18 February 2023) <https://mihaaru·com/news/118274> accessed 18 December 2024·

677 އައިޝަތު އަލީ ނާޒް، 'ތުރެލި ސޮސައިޓީ އެސެސްމަންޓް އޮފް ގޮސްގުޅު އިން މާލެ' (ދި އޭޝިއާ ފައުންޑޭޝަން 2012)

ފިޔަވަޅު[678] އެއްވެސް އިތުރު ކަމެއް ފާއިތުވެދިޔަ 12 އަހަރު ތެރޭގައި ސަރުކާރުގެ ފަރާތުން މިމައްސަލައިގައި ކޯންފެއިންސާއިރު، މިއަދަށް މިހާރު 2024 ވަނަ އަހަރު ނިމޭއިރު އިތުރުވެގެންދާނީ ކިހާމިންވަރަކަށްކަން އަންދާޒާކުރަންވެސް ނޭނގެއެވެ. އަދި މިހާރުވެސް ގަދައަށް ހަރަކާތްތެރިވާ އަށް ގޭންގަކަށް ފުލުހުން ފާހަގަކުރަމުންގެންދާކަމާއި، ގޭންގްތަކުގައި ގިނައަދަދެއްގެ ކުޑަކުދިން ހަރަކާތްތެރިވާކަމަށް، ތަޙުޤީޤީ އެޖެންސީތަކުގައި ތަފާތު ގޭންގްތަކަށް ނިސްބަތްވާ ހަތަރު ސަތޭކައެއްހާ ކުޑަކުދިން ތިބިކަމަށް ފުލުހުން ބުނެފައިވެއެވެ.[679]

2023 ވަނަ އަހަރު އެކަނިވެސް ތަފާތު އެކިއެކި ކުށްތަކުގެ ތުހުމަތުގައި 130 ކުޑަކުދިން ފުލުހުންގެ ބެލުމުގެ ދަށަށް ގެންދިޔުންކަމަށް ފުލުހުން ހާމަކޮށްފައިވެއެވެ.[680] 2023 ވަނަ އަހަރުގެ ޖެނުއަރީއިން ނޮވެމްބަރުގެ ނިޔަލަށް 347 ކުޑަކުދިން ހައްޖަވައި ސުވާލު ކުރުވިފައިވާކަމާއި 1 ޑިސެމްބަރ 2024 އާއި ހަމައަށް މިސަރުކާރުގެ (ރައީސް ޑރ. މުޢިއްޒުގެ) ވެރިކަމުގައި ފާއިތުވީ 52 ހަފްތާގައި އެކިއެކި ކުށްތަކުގެ ތުހުމަތުގައި 2315 ކުޑަކުދިން ހައްޖަވައި ސުވާލު ކުރުވިފައިވާކަމަށް ފުލުހުން ހާމަކޮށްފައިވެއެވެ.[681] މިކަންކަމުން ކުށުގެފޯރިގައި ނުވަތަ ކުށްތަކަށް ހުރަހެޅުމުގެ ނުރައްކަލުގައި ކުޑަކުދިން އުޅުމުންގެންދާ މިންވަރު ތަސައްވުރު ކުރެވެއެވެ. ގިނަ އަދަދެއްގެ ކުޑަކުދިން ގޭންގްތަކުގައި ހަރަކާތްތެރިވާ މިންވަރާއި، ހާއްސަކޮށް ވާރދާރުތަކާއި، މަސްތުވާ ތަކެތީގެ ވިޔަފާރިގެ ތެރޭގައި އުޅުމުންދާކަން ހާމަވެއެވެ. ޤާނޫނުން ކުޑަކުދިންނަށް ލިބިދީފައިވާ ހިމާޔަތްތަކުގެ ނިޔަލްގައި ތިބޭގޮތް އެކުދިންނަށްއާ ބޭނުމަށް ޖަރީމާތައް ގޭންގުތަކުން ހިންގަމުން ގެންދެއެވެ. ވަރަށް ގިނަފަހަރު މަސްތުވާތަކެތީގެ ވިޔަފާރިގެ މުޢާމަލާތްތަކާއި، މީހުން މެރުމުގެ ބޭޒީ ކުށްތަކާއި ހަމަލާދިނުމުގައި ކުޑަކުދިން ބައިވެރިވާ މިންވަރަކީ ކަމުގެ ހުރިހާ ފަރާތަކުން ދެކޭ ކަމެކެވެ. އަދި މިކަންކަމުން އެގޮތަށް ކުދިންގެ ފުރާނަތަކާއި ދިރިއުޅުމަށް އޮތް ނުރައްކާ އެނިގެން ދެއެވެ. މިއީ މާދަމާ ޤައުމު އެބައިމީހުގެ އަތްމަތިއަކަށް ދޫކުރާނެ ތަޢުލީމީ ދިރުމުން ކުޑަކުދިންނާއި ޒުވާނުންގެ މިއަދުގެ ބާރުތަކެވެ.

ދިވެހިރާއްޖޭގެ ކުޑަކުދިންގެ ޤާނޫނީ ނިޒާމު މިހާރުއްޔާ، ކުށްކުރާކުދިންގައި ކުޑަކުދިން ބޭނުންކުރާ ފަރާތްތަކަށް ފަހިގޮތްހެދިފައި ހުކުމްތަކަށް ދާކަށެވެ. އެހެން އުމުރުން 15 އަހަރުވަންދެން ކުޑަކުއްޖަކު ކުރާ އެއްވެސް ކުށަކީ އެކަމާއި ގުޅިގެން ސުވާލުއްވެސް ކުރެވޭނެ ކަމެއްނޫނެވެ. ޖުވެނައިލް ޖަސްޓިސް ޤާނޫނުން ސާބިތުކުރެވިފައިވާ އުސޫލުގެ އަސާސީ ދަރަޖަކަމާއި ބަލާއިރު ކުޑަކުދިން ގެއްލާ ކުށްކުރުވައިގެން 2022 ވަނަ އަހަރު 52 މައްސަލައެއްގައި އެކިމީހުންގެ މައްޗަށް ދަޢުވާކުރައްވާފައިވެއެވެ. އަދި ތަފާތު އެކިއެކި ކުށްތަކާއިގުޅޭގޮތުން ހަމަ އެއަހަރު 16 ކުޑަކުދިންގެ މައްޗަށް ދަޢުވާކުރައްވާފައިވާއިރު، 2021 ވަނަ އަހަރު 18 ކުދިން އަދި 2023

[678] މުޢިއްޒު އިބްރާހިމް، 'ގޭންގް ކުށްތަކުގެ ގާނޫނު އޮތީ ބޭނުން ކުރެވޭ ގޮތަކަށް ނޫން: ޕީޖީ' މިހާރު Muizzu Ibrahim Mihaaru, 'Gang kuhthakuge gaanoon othy beynun kurevey gothakah noon: PG' (*Mihaaru*, 26 February 2023) <https://mihaaru·com/news/118601> accessed 13 December 2024·

(ޕީޖީ އޮފީހުން ބޭއްވި ނޫސްވެރިންގެ ބައްދަލުވުމުގައި ޕީޖީ ޝަމީމް ވިދާޅުވި 2010 ވަނަ އަހަރު ފާސްކުރި ގޭންގް ކުށްތަކާއި ހުއްޓުވުމުގެ ގާނޫނު ލިޔުމުގައި އޮތީ އެކަށީގެންވާ ގޮތަކަށް ނޫން ކަމަށެވެ. އެ ގާނޫނުގެ ދަށުން ދައުވާ ކުރެވުނީ އެންމެ މައްސަލައަކަށް ކަމަށާއި އޭގެ ނަތީޖާ ރަނގަޅު ނޫން ކަމަށް އޭނާ ވިދާޅުވި އެވެ.)

[679] 'އެއިޓް ގޭންގްސް ހައިލީ އެކްޓިވް އިން މާލެ ރިޕޯޓް: މޯސްޓް މެމްބަރސް މައިނަރސް' ސަން އޮންލައިން އިންޓަނޭޝަނަލް <https://en·sun·mv/90505> accessed 18 December 2024·

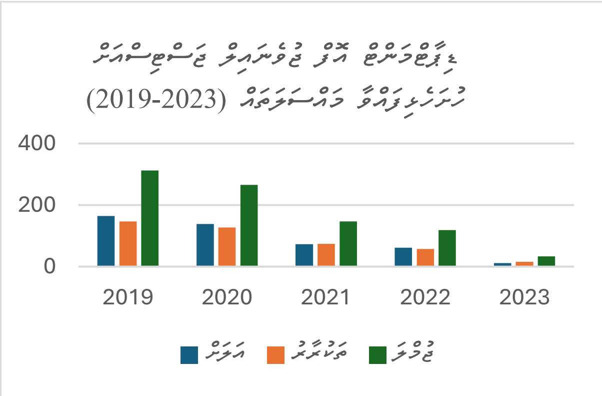
[680] އާސިމާ ނިޒާރު، 'ކުށްކުރާ ކުދިން ހުއްޓުވަން ބާރުގެ ބޭނުން ނުކުރެވޭތީ ފުލުހުން ކަންބޮޑުވެއްޖެ' މިހާރު 'Kuhkuraa Kudhin Huttuvan Baaru Ge Beynun Nukureveythee Fuluhun Kanbodu Vejje | Mihaaru' <https://mihaaru·com/news/132158> accessed 18 December 2024·

[681] ޝާނިޔާ ޝަރީފް، 'ގޭންގު ކުށްތަކުގެ މައްސަލައިގައި މި އަހަރު 50 މީހުން ހައްޔަރުކޮށް، 65 މީހުންނަށް ދައުވާކޮށްފި' ސަން <https://sun·mv/199725> accessed 18 December 2024·

ވަނަ އަހަރު 1 ކުއްޖެއްގެ މައްޗަށް ދަޢުވާ ކޮށްފައިވެއެވެ.[682][683] ޖުވެނައިލް ކޯޓުގެ ޑޭޓާއިން ފަސްއަހަރުދުވަހުގެ ތަފާސްހިސާބަށް ބަލާއިރު 2019 ވަނަ އަހަރުން 2023 ވަނަ އަހަރުގެ ނިޔަލަށް ޖުމްލަ 78 ކުޑަކުދިންނާ ދޭތެރޭގައި[684] ޖުމްލަ 112 މައްސަލައެއްގައި ޖިނާއީ ދަޢުވާ ކުރެވިފައިވެއެވެ.[685] އެބާރީ ޖިންސީ އޮޑިޔަން ޚާއްޞަކޮށް ހިޔުމަން ރައިޓްސް ކޮމިޝަން، ޖިނާއީ މައްސަލަތަކުގައި އަދިއްލަ ހަރުދަނާ ޚާއްޞަ ވަކިން ރެކޯޑުތަކެއް ޚާއްޞަކޮށް ކުރާނެހާ ދައުލަތެއް ވަކިވެން ހަމަޖެހިފައިވާ ޖިނާއީ ކޯޓުތަކުގެ ޢުމުރުން އެއްވެސް 2021 ވަނަ އަހަރު އެންމެ ގިނައިން ވަކިވެން ހަމަޖެހިފައިވަނީ އެކިއެކި މައްސަލަތަކުގައި ދަޢުވާކުރެވިފައިވާ ކުޑަކުދިންނަށެވެ. އެބާރީ ޖިންސީ އޮޑިޔަން ޖުމްލަ 228 މިހާރަށް ވަކިވެން ހަމަޖެހިފައިވާ އިތުރު 127 ކުޑަކުދިންނަށް 2021 ވަނަ އަހަރު ދިނުމަށް ހަމަޖެހިފައިވެއެވެ.[686] މިއީ ޤާނޫނީ ވަކިވެން ކޯޓުގެ ފަރަވަސްކަން ނެތްމިހުންގެ ތެރެއިން ހަމައެކަނި 15 އަހަރާއި 18 އަހަރާއި ދެމެދުގެ އުމުރުފުރާގެ ކުދިންނެވެ. އެއްއަހަރަކަށް ބަލާއިރު މިއިއްޖެކުދިން ކުށްތަކުގެ ބަދަލުގެ ކުޑަކުދިންގެ ކުރިމައްޗަށް ޕްރޮބަޝަން ނިސްބަތަށް ބަލާއިރު އެކަމުގެ ބާރުކަން ހާމަކާރަދާ ހަރުދަކެވެ.

ޑިޕާޓްމަންޓް އޮފް ޖުވެނައިލް ޖަސްޓިސްއިން ޝާއިޢުކުރުމުގެ ގޮތުގައި ރިޕޯޓުތަކުގެ ތެރެއިން ވާއިލް ފަސް އަހަރުގެ ހިސާބުތަކަށް ބަލާއިރު 18 އަހަރުން ދަށުގެ ކުދިންގެ ތެރެއިން ޤާނޫނާހިލާފު ކުށްތައްކުރާކަމަށް ޖުމްލަ 876 މައްސަލަ ހުށަހެޅިފައިވާކަމަށް އެޑިޕާޓްމަންޓުން ޝާއިޢު

ކޮށްފައިވާ ތަފާސްހިސާބުތަކަށް ބަލާއިރު މިންވަރު ބޮޑުތަކެއްގައި 2023 ވަނަ އަހަރުން ހިމަނާފައިވާ އެއަހަރުގެ ފުރަތަމަ ހަމަސްދުވަހު އެޑިޕާޓްމަންޓަށް ހުށަހެޅިފައިވާ މައްސަލަތަކަށް އެކަނިހިމަނައިގެންނެވެ.[687]



މައުލޫމާތު: ޑިޕާޓްމަންޓް އޮފް ޖުވެނައިލް ޖަސްޓިސް (ޖީ.އޯ.ވީ)ގެ ވެބްސައިޓް[688]

2019 ވަނަ އަހަރު ޚާއްޞާ ހުށަހެޅުމުން ޖުމްލަ 312 މައްސަލައެއް އެޑިޕާޓްމަންޓަށް ހުށަހެޅިފައިވާއިރު އެއީ 2018 ވަނަ އަހަރާއި އަޅާ ބަލާއިރު 11.9 އިންސައްތަ މަތީ ބަދަލެއްކަން ފާހަގަ ކޮށްފައިވެއެވެ. އެހެން ނަމަވެސް ކުރީ އަހަރާއި އަޅާބަލާއިރު 2019 ވަނަ އަހަރު ކުރިމަތި ތަކުރާރުކުރާ ކުދިންގެ ބަދަލު އިތުރުކަމުން އެފަރާތުން ފާހަގަކޮށްފައިވެއެވެ.[689] 2020 ވަނަ އަހަރުގެ

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[682] ޖުޑީޝަލް އެކަޑަމީ ޖެނެރަލްގެ އޮފީސް، އަހަރީ ރިޕޯޓް 2021، 2022 އަދި 2023

[683] އަހަރީ ރިޕޯޓް 2021، 2022 އަދި 2023' (ޖުޑީޝަލް އެކަޑަމީ ޖެނެރަލްގެ އޮފީސް،).

[684] ' 2023 ވަނަ އަހަރުގެ ތަފާސް ހިސާބު' (Juvenile Court of the Maldives) <https://juvenilecourt·gov·mv/statistics·php> accessed 18 December 2024·

[685] ކުރީގެ ހަވާލާ

[686] އެޓާރނީ ޖެނެރަލްގެ އޮފީސް، ރިޕޯޓް (17 ނޮވެމްބަރ 2018 އިން 16 ނޮވެމްބަރ 2023) (2023) ' <https://www·agoffice·gov·mv/dhi/#/Media/Annual%20Reports/989>·

[687] 2023 ވަނަ އަހަރުގެ މުޅިއަހަރުގެ ރިޕޯޓް އަދި ނުނެރެވިއެވެ.

[688] ޑިޕާޓްމަންޓް އޮފް ޖުވެނައިލް ޖަސްޓިސް (GOV·MV) ' <https://www·gov·mv/dv/organisations/department-of-juvenile-justice> accessed 14 December 2024·

[689] ޖަސްޓިސްޑިޕާޓްމަންޓް އޮފް ޖުވެނައިލް، މިޑިއާ ރިޕޯޓް 2019 ' (GOV·MV, 2 March 2022)

ރިޕޯޓުތަކަށް ބަލާއިރު ޖުމްލަ 265 ކުއްޖެއްގެ މައްސަލަ އެޖެންސީތަކުން ހުށަހަޅައިފައިވެއެވެ. އޭގެ ތެރެއިން ކުށްތަކުރާރުކޮށްގެން 127 ކުއްޖެއްގެ މައްސަލައާއި، އަލުން ކުށްކޮށްގެން 138 ކުއްޖެއްގެ މައްސަލަ ހުށަހަޅައިފައިވެއެވެ.[690] 2021 ވަނަ އަހަރުގެ ނިޔަލަށް ޤާނޫނާ ޚިލާފުވުމުން 147 ކުއްޖެއްގެ މައްސަލަ އެޖެންސީތަކުން ހުށަހަޅައިފައިވާއިރު، ކުށްތަކުރާރު ކޮށްގެން 74 ކުއްޖެއްގެ މައްސަލަ ހުށަހެޅި، އަލުން 73 ކުއްޖެއްގެ މައްސަލަ ހުށަހަޅައިފައިވެއެވެ.[691] 2022 ވަނަ އަހަރުގެ ނިޔަލަށް ޤާނޫނާ ޚިލާފުވުމުން ޖުމްލަ 119 ކުއްޖެއްގެ މައްސަލަ އެޖެންސީތަކުން ހުށަހަޅައިފައިވެއެވެ. އޭގެ ކުށްތަކުރާރު ކޮށްގެން 40 ކުއްޖެއްގެ މައްސަލަ ހުށަހެޅި، އަލުން 62 މައްސަލަ ހުށަހަޅައިފައިވެއެވެ.[692] 2023 ވަނަ އަހަރުގެ ޖެނުއަރީމަހުން ޖޫން މަހުގެ ނިޔަލަށް ޤާނޫނާ ޚިލާފުވުމުން 33 ކުއްޖެއްގެ މައްސަލަ އެޖެންސީތަކުން ހުށަހަޅައިފައިވާއިރު، ކުށްތަކުރާރު ކޮށްގެން 12 ކުއްޖެއްގެ މައްސަލަ ހުށަހެޅި، އަލުން 16 މައްސަލަ ހުށަހަޅައިފައިވެއެވެ.[693]

2024 ވަނަ އަހަރުގެ ނޮވެމްބަރުމަހު ފުލުހުންގެ މުއައްސަސާގެ ފަރާތުން ބޭއްވި ނިއުސް ބްރީފިންގައި ކުޑަކުދިންނާގުޅޭ މައްސަލަތަކާ ބެހޭގޮތުން އެމުއައްސަސާގެ ފުލިހީ އިންޗާ ޗައިލްޑް ޕްރޮޓެކްޝަން ޑިޕާޓްމަންޓްގެ ހެޑް އަބްދުﷲ ނަސީރު ވިދާޅުވެފައިވާގޮތުން 2023 ވަނަ އަހަރު ނިމުނުއިރު ކުޑަކުދިން ކުށްކުރައިވާ 134 ކުދިންގެ ތަޙުޤީޤަށް ހުށަހަޅައިފައިވެއެވެ. އަދި 2024 ވަނަ އަހަރުގެ ފެބްރުއަރީ މަހާއި ހަމައެކަނި ކުޑަކުދިން ކުށްކޮށްގެން 12 މައްސަލައެއް ތަޙުޤީޤަށް ހުށަހަޅައިފައިވެއެވެ. އަދި 2024 ވަނަ އަހަރުގެ ނޮވެމްބަރު މަހާއި ހަމައެކަނި 130 ކުއްޖަކު ތަފާތު އެކިއެކި ކުށުގެ ތުހުމަތުގައި ބަންދު ކުރެވިފައިވާކަމަށް ބުނެފައިވެއެވެ. މިގޮތުން ޑްރަގާއި، މާރާމާރީގެ އިތުރުން، ކުށްކުރާ ކުޑަކުދިންގެ ތެރޭގައި ސޯޝަލްމީޑިއާގެ ތަފާތު ޕްލެޓްފޯމް ތަކުގެތެރެއިން ބަލިކަށިބަލިކުރުމުގެ މައްސަލަތަކެއް އިތުރުވަމުން އަންނަކަމަށްވެސް އެފަރާތުން ފާހަގަ ކުރައިފައިވެއެވެ.[694] ކުށްގެފިހިގައި ކުޑަކުދިން އެގޮތުންގެންދާ މިންވަރަށް ބަލާއިރު މިމައްސަލަ މިހާރު މިއަދީ ކަނޑައެޅޭ ދަރަޖައަކަށް މައްޗަށް ގޮސްފައިވެއެވެ. ދައުލަތުގެ އިސްވެރިންނާ ސިޔާސަތު ކަނޑައަޅާ ފަރާތްތަކާއި ޤާނޫނާއި ޤަވާއިދުތައް ހެދުމުގެ ޒިންމާ އެދިފައިވާ ފަރާތްތަކުން މިމައްސަލައާމެދު ސީރިއަސްކޮށް ބަލަންޖެހޭ ހިސާބަށް ގޮސްފައިވެއެވެ.

ކުޑަކުދިންގެ ޢަދުލުގެ ޤާނޫނީ ނިޒާމުގައި ހުރި ގޮންޖެހުންތައް:

ޤައުމީ ޤާނޫނީ ނިޒާމު މިހާރު އޮތީ ކުޑަކުދިން ކުށްކުރުމަށް ހުރި، އަދި ބައިނަލްއަޤުވާމީ ފެންވަރުގެ ދަރަޖައެއް ދައުލަތުގެ ނިޒާމުގެތެރެއިން ހޯދައިދިނުމަށް. ޤައުމީ ޤާނޫނުތަކަށް ބަދަލުގެނެސް 15 އަހަރުންގެ ދަށުގެ ކުދިން ކުށް އެއްވެސް ކުށެއްގެ ޒިންމާ އެއްވެސް ގޮތަކުން އެކުދިން އުފުލާކަށް ނުޖެހޭނެއެވެ. ޤާނޫނީ ނިޒާމުގައި ހުރި މިފަދަ ބަދަލު ބާރަށްދާކަށް ފައިދާ ކުށްފުރިންނާއި، ކުދިންގެ ފިކުރުގައި

<https://www·gov·mv/dv/publications/media-report-2019--1> accessed 13 December 2024·

[690] ޖަސްޓިސް ޑިޕާޓްމަންޓް އޮފް ޖުވެނައިލް، 'މީޑިއާ ރިޕޯޓް 2020' (*GOV·MV*, 2 March 2022) <https://www·gov·mv/dv/publications/media-report-2020> accessed 13 December 2024·

[691] ޖަސްޓިސް ޑިޕާޓްމަންޓް އޮފް ޖުވެނައިލް، 'ޖުވެނައިލް ޖަސްޓިސް ރިޕޯޓް 2021' (*GOV·MV*, 26 February 2023) <https://www·gov·mv/dv/publications/juvenile-justice-report-2021-1> accessed 13 December 2024·

[692] ޖަސްޓިސް ޑިޕާޓްމަންޓް އޮފް ޖުވެނައިލް، 'ޖުވެނައިލް ޖަސްޓިސް ރިޕޯޓް 2022' (*GOV·MV*, 21 November 2023) <https://www·gov·mv/dv/publications/juvenile-justice-report-2022> accessed 13 December 2024·

[693] ޖަސްޓިސް ޑިޕާޓްމަންޓް އޮފް ޖުވެނައިލް، 'ޖުވެނައިލް ޖަސްޓިސް ރިޕޯޓް (01 ޖަނަވަރީ 2023-30 ޖޫން 2023 އަށް)' (*GOV·MV*, 17 March 2024) <https://www·gov·mv/dv/publications/juvenile-justice-report-01st-january-2023-30th-june-2023> accessed 13 December 2024·

[694] ޕީއެސްއެމްނިއުސް (ނ 6)

ހަރަކާތްތެރިވާ ގޮސްގުޅޭކަން ދަނީ އިންތިޒާމަށް ނަގަމުންނެވެ. މިކަމުގައި ޚާއްޞަ ނުރައްކާތެރި އިންޒާރު ތަންފީޛު އިދާރާތަކުން ހޯއްދަވާފައި ވުޖޫދުގެ ފާރަވެރި ދަނީ ތަކުރާރުކޮށް ދަމުންނެވެ. ބޭނުމީ ޒަރީޢާތަށް ހިންގާ ގޮސްދަކުން ގާނޫނީ ހާލަތުގައި ކުށްކުރުމުގައި ކުރިއަށްނެރު "ދުނިޔަވީގައި" ބައިވެރިބާވައި ތިބާތަކުން ޖިނާއީން ފުންނަރި އާދަޔަ އަހަރުން ދަރުގެ ކުޑަކުދިންނެވެ. މިގޮ ތޮރުގައި ހޯއްސަވާކަން 15 އަހަރުންދަރުގެ ކުދިން ޖިނާކަން ފާހަގަ ކުރެވެއެވެ. އެގޮތުން އެކުދިންނަކީ ގާނޫނުގެ އަތްނުފޯރާ ފަރާތްތަކެއް، ގާނޫނުގެ ބޭނުންހުރި ތޮރުގައި ރަޖިސްޓަރީކުރެވިފައިވާ ބައެއްކަމެވެ. މަޢުލޫމާތު ފާހަގަ ކުރެވުނު ރިޕޯޓުތަކުން ބައިލައްވައި، ކުޑަކުދިން އެކުގެ ޖިނާއީ ޝަކުވާ ކުށްތަކުގެ ތޮރުގައި މަސްތުވާތަކެތީގެ އެއްބަޔާ މަޢުލޫމާތު، މާރާމާރީގެ މަޢުލޫމާތު ހިފެހެއްޓުން. ހޯއްސަވާކަން ނުރައްކާތެރި މާރާމާރީގެ މަޢުލޫމާތުގައި ކުޑަކުދިން ބައިވެރިވާ މިންވަރު ކަންބޮޑުވާ ދަރަޖައަކަށް ގޮސްފައިވާ ކަމުގެ ވަކިން ހޯއްސަވާކަން މިހުން ގެރުންގުޅު މައުސޫލުގައި ކުޑަކުދިން ހަރަކާތްތެރިވާ މިންވަރަށް ބައްޓަން މިމައުސޫލު މިއުޅޭ އެކިތަކުރާރުސަބަބު ގޮސްފައިވާ ދަންނަވާލަނީއެވެ.

ކުޑަކުދިންގެ އަދުލުގެ ގާނޫނުގައި ހާމަކަން ފުންނާންހުރި ބޭނުމީ ބަނގަޅުވެފައިވާ ތޮރުގައި، ކުރިމަތިވެރިކަމެއްވާ، ގޮތުގެ ތަކުރާރު ގޮތުގެން ބޭނުމީ ޒަރީޢާތަށް ހިންގުމުގައި ހަރަކާތްތެރިވާ ކުޑަކުދިން ހުއްޓުވައި، ހިފައި ހައްޔަރު ކުރުމުގައި ބޭނުމީ ދަރިވަރެއް ހުރިކަން ފުލުހުންގެ ވަރަކަށްކަން ހަމަވެއެވެ.[695] އަދަދު އެކަށަވާލަފުށު ކުޑަކުދިންގެ އަދުލުގެ ގާނޫނުގައި އޮންނަގޮތުން ކުޑަކުދިން ހައްޔަރު ކުރުމާއި ތަހުޤީޤުކުރުމާއި ޝަރީޢަތް ކުރުމާއި އަދި ދިނުމުގައި ގޮސްގެންދާނެ ހާއްސަ އުސޫލުތަކެއްވޭ ކަނޑައަޅާފައެވެ. އެގޮތުން ކަމުން ބޭނުމީ ކުރަމުންދާ ބައިވެރިވާ ކުޑަކުދިން، ކުރައްވާ ސިފަވުން ހައްޔަރު ކުރުމުގައިވެސް ބޭނުމީ ގަވާއިދުތަކެއް ގާނޫނުން ކުރިމަތިކުރައްވައެވެ. ކުޑަކުދިންގެ އަދުލުގެ ގާނޫނުގައި ވަގުތީން ކުރުކުރުމުގެ ބޮޑުއިން ކުއްޖާ ފުނޑުނިރަމު އެންމެ ބޭނުމީ ޖެހޭ ކުއްޖެއް ކުރުމަށް ކަމުގެއިވެއްސަ އެފަދަ ކުއްޖަކު ހައްޔަރު ކުރުމަކީ އެންމެ އެހެން ގޮތެއް ނެތިގެން ކުރާ އެންމެ ފަހުގެ ކަމަކަށް ހަދާންޖެހޭނެ ކަމަށް ބަޔާންކުރައްވައެވެ.[696] ކިޔަންމުޖެހޭ އަދި އަނިޔާވެރި ބަދަލުތައް ހިންގިކަމުގައިވިޔަސް ހައްޔަރު ކުރުމަކީ ގާނޫނުގައިވާ ގޮތުން އެއްވެސް ވާކަމެއް ނޫނެވެ.[697] އެގޮތުން ނަމަވެސް ފުލުހުން ފާހަގަ ކުރައްވާފައި އެފަދަ ސިޔާސަތަށް ފުލުހުން ޒާބިތުވާއިރު ޖިނާފަހަރަށް ކުޑަކުދިންގައި ޝަރީޢަތުގެ ފުރުޞަތު 18 އަހަރު ކުރިއާ ނުފޯރި، 17 އަހަރާ 18 އަހަރާ ދެމެދުގައި ތިބޭ ބޭނުމީ މީހުން ބަންދު ހިފެހެއްޓުމުގައި ވަގުތުގެ ފަރާތަށް، ހަދާސަކުގެ ގޮތުން ވެސް އަދި އެ މީހުންގެ ވިސްނުމާ ޖިސްމު ހުރިހަ ގޮތުން ވެސް ބޭނުމީ މީހުންނާ އެއްވަރަށް މަސައްކަތްކުރާ ކުޑަކުދިންގެ ގޮތުގައި އެކުލަވާފައިވާ ބަލާ އުމުރުގެ މީހުންނެވެ.[698]

ކަންމީހުން ގޮތުގައި، އާދައިގެ އަހަރު ހަމަވުމާއި ހިތައްލާ ނުރައްކާތެރި ކުށްތަކުގެ ތެރެއިން ކުޑަކުދިންނަށް ކުރެވޭ ކުށްތައް، ފުލުހުންގެ އަމިއްލަ ނަޒަރުން ދިރާސާކުރި ނަތީޖާ ހެއްދެވި ކުރުވާލާ ކަނޑައެޅިފައި ބާރު ވެސް ކުރުމަށް ބޭނުންކުރާ ބާރުގެ ހާމަކަމެވެ.

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[695] މުޢިއްޒު އިބްރާހިމް، 'ކުޑަކުދިންގެ އަދުލުގެ ގާނޫނު އިސްލާހު ނުކުރާތީ މިނިސްޓަރު އިހްސާންގެ ކަނބޮޑުވުން' މިހާރު Muizzu Ibrahim Mihaaru, 'Kuda kudhin ge adhuluge gaanoon islaahu nukuraathy minister Ihsaan kanboduvun faalhu kuravvaifi' (*Mihaaru*, 22 January 2024) <https://mihaaru·com/news/130176> accessed 14 December 2024·

[696] ،ކުޑަކުދިންގެ އަދުލުގެ ގާނޫނު s MV Laws' - ސޮލްޝަން <https://mvlaw·gov·mv/dv/legislations/140/consolidations/977> accessed 14 December 2024·

[697] ibid Section 31 (haa)·

[698] އާސިމާ ނިޒާރު، 'ކުށްކުރާ ކުދިން ހުއްޓުވަން ބާރުގެ ބޭނުން ނުކުރެވޭ، ފުލުހުން ކަނބޮޑުވެއްޖެ' މިހާރު <https://mihaaru·com/news/132158> accessed 18 December 2024·

އެއްވެސް ޕާޓީއެއްގައި ބޭނުން ކުރުން ޤާނޫނު މަނާކުރެއްވެ.[699] ތޫނު ހަތިޔާރު ބޭނުންކޮށްގެން މާރާމާރީ ހިންގާ ޕާޓީތަކުގައިވެސް އަދި އެންދުރުވެސް އުފައްދަ ބާޠިލު ޖަރީމާތަކުގައި ކުޑަކުދިން ހަރަކާތްތެރިވާއިރުވެސް، "ކުޑަކުދިންނާ" ދެކޮޅަށް ފުރުޞަތު އެއްވެސް ހިނދެއްގައި އެއްގޮތަކަށްވެސް ބޭނުން ކުރުން މުޅިން މަނާކަމާބެހޭ ޖިސްމާނީ ކުޑަކުދިންގެ ޙައްޤުތަކުގެ ޤާނޫނުގެ 48 ވަނަ މާއްދާގެ (ށ) ބަޔާން ކޮށްފައިވެއެވެ. އެއީ ތިރީގައި:

(1) ވަޅިއާއި ބަޑި؛

(2) ބިޔު ނުވަތަ ދަގަނޑު ނުވަތަ ލޮނު ނުވަތަ ހިމިހިރާ؛

(3) ޗާބުކު ނުވަތަ އެފަދަ އެއްޗެއް؛

(4) ޕެޕަރ ސްޕްރޭ ނުވަތަ އެފަދަ އެއްޗެއް؛

(5) ސްޓްރެއިޓް ޖެކެޓް؛

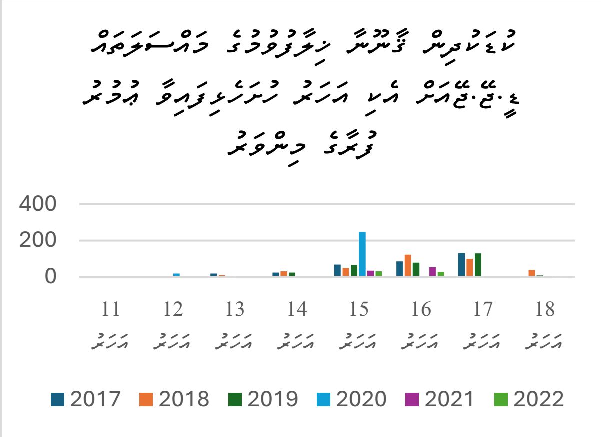
(6) ތަޅު އިލެކްޓްރިކް އާލާތްތައް. ހިމެނެއެވެ.

ކުށުގެ ތެރޭގައި ހަރަކާތްތެރިވާ ކުޑަކުދިން ހުއްޓުވުމުގައި ފުލުހުންނަށް މިހާރުވެސް ދަތިތަކެއް ޤާނޫނުގެ ތެރެއިން ކުރިމަތި ކޮށްފައިވާއިރު، ތަޖުރިބާއި ތަޢުލީމުގެ ދާއިރާގައި މަސައްކަތްކުރާ ފަރާތްތަކަށް ހުއްދަ ސްކޫލުތަކުގެ ޗެކިންގަނަށް އިތުރު ގެންދިއުމަށް ކުރިމަތިވެއެވެ. އެއީ ތިރީގައި ނިޒާމުގެ ތިރީގައިހުރި މައްސަލަތަކުގެ ސަބަބުން އަދާހަށްކުރުމުން ދަނޑުދަނޑުއްޓާ ބަލަހައްޓާ ކުރާކަމުގެ ބާރުތަކުގެ ގޮތުގައި ހުރެއެވެ. އެގޮތުން ކުރެވޭ ކަންތައްތަކާ ދިމާވާ ކުރިމަތިލާ މުޅި އެކަމުގެ ފިޔަވަޅުތަކާގައި ކުރިއެރުވުމަށް އިސްލާހުކޮށް ފެންނަ މަސައްކަތް ފުރުޞަތު ހަމަޖެހިފައި ކުރިއަށް ގެންދެވޭ. މިހެން މިކަން އޮތުމުން ސްކޫލުތަކުގެ ޗެކިންގ އެފަދަ ކުދިންނާ މުޢާމަލާތްކުރުން ވަރަށް ދަތިކަމެވެ.

އަލަށް އެކުލަވާލެވުނު ކުޑަކުދިންގެ ޙައްޤުތަކުގެ ޤާނޫނުން، ޤާނޫނު ހިންގުމުގެ ނިޒާމަށްވެސް ބޮޑެތި ބަދަލެއް ކުރިމަތިވެއެވެ. ޤާނޫނުގައި ކުށްކުރާ ކުދިން އިސްލާހުކުރުމާއި، އަދިން މުޖުތަމަޢުން ނުރައްކާގެ ވާހަކަ ދިނައިން ދައްކާފައި ހުއްޓަސް، ޤާނޫނުން ޚާއްޞަކޮށް ދައްކުވަރުން ކުރަން ކަނޑައަޅާފައިވާ ކަންތައްތަކާ ފިޔަވަޅު ނުލުން ގޮތް ކަންތައްތަކެވެ. ބޭރު ބަދަލުތަކެވެ. ޤާނޫނު ފުސްލަކުރުވުމާ ފަސްއަހަރު ފާއިތުވި ދިރިއުޅުމުގެ ކުޑަކުދިންގެ އިސްލާހީ މަސައްކަތްތައް ހިންގުމަށް ޤާއިމު ކުރަންޖެހޭ ކަމަށް ޤާނޫނުގައި ކަނޑައަޅާފައިވާ އެއްވެސް މަރުކަޒެއް މިހާތަނަށް ޤާއިމުވެފައިނުވާކަމީ މިކަމުގެ ގޮތުގައި. އެހެންކަމުން އެއްވެސް ފުރުޞަތެއް އަދި އަދަބެއްވެސް ދިނުމަކީ ނުވަތަ ކުރުގެ ވެރިގައި ދާއިމީ ބޭރުގެ ކުރިމަތިލާނެ ގޮތުގައި މުޖުތަމަޢު ބަލައިގަންނަ ކުޑަކުދިންނަކީ ނިޒާމުގެ ދާއިރާކުރުގެ ސަރަޙައްދުން ކުރެވިދާގެ ގޮތުގައި މުޖުތަމަޢުގެ ތެރޭގައި ދެވިފައެވެ. ޖިނާޢީ ޢަދުލު އެކުލަވާ ޖަލުތަކަށް ކުދިން ފޮނުވުމުގެ ހަރަކާތްތެރިވާ ކުދިންނަށް ނުވަތަ ކުއްލިއަކަށް ގެންގޮސް ފިޔަވަޅު ނުލުމަށް ދެވޭ ޤާނޫނީ ޙައްޤުތަކާއި ވަކިވެ އިނާޔަތް ދިނުމަށް އެދޭ ގޮތުގައި ކުޑަކުދިންނަށް ހުށަހެޅޭ ފުރުޞަތު ފަދަ ކަންތައް މިންވަރަށް ފިޔަވަޅު ނުލެވި ބާކީ ވެއެވެ.

ކުޑަކުދިން ޖިނާއީ ކުށުގެ ޖިނާއީ ޒިންމާދާރުވުމުގެ މުއްދަތު ކުރުން: ކުށްކުރާ ކުޑަކުދިންނާއި ކުރެވޭ ނުރައްކާތެރި ހަރަކާތްތަކާ ކުޑަކުދިން އިސްލާހުކުރުން އަސާސީ މުޖުތަމަޢުގެ ނުރުހުމުގެ ޖިނާއީ ކަންކަމުގެ މައިގަނޑު މަސްއޫލިއްޔަތު ޤާނޫނުން ޙަވާލުކޮށްފައިވާ ޖިނާއީ ޒިންމާދާރުވުމުގެ ޢުމުރު ޖިނާއީ ޒިންމާ ސަބަބުން (ޖ.ޤ.ޤ) އަހަރެވެ. އެ ޒިންމާދާރުވުމުގެ ކޮންމެ އަހަރަކު ދުވަހަށް ނުރުހުމުގެ ޖިނާއީ ޒިންމާ ބަލައިގަތުން ޤާނޫނާ ހަމަޖެހޭ ކުރިމަތިލާނެ ކުރިން އެންމެ ދުވަހު 13 އަހަރާއި 17 އަހަރާއި ދެމެދުގެ ޢުމުރުފުރާގެ ކުދިންނެވެ.

699، ކުޑަކުދިންގެ ޙައްޤުތަކުގެ ޤާނޫނު s (n 75) 'MV Laws - ސެކްޝަން 84 (ށ).



މައުލޫމާތު: ޑިޕާޓްމަންޓް އޮފް ޖުވެނައިލް ޖަސްޓިސް (ޑީ.ޖޭ.ޖޭ)ގެ ވެބްސައިޓް[700]

ކުޑަކުދިން ފާޙިޝާއި ހިލާފުވުމުގެ ސަބަބުން ޑީ.ޖޭ.ޖޭއަށް ހުށަހެޅިފައިވާ މައްސަލަތައްކަން ބަލާއިރު އެންމެ ގިނަ އުމުރުފުރާކަށް 2017 އިން 2022 އަށް މައްސަލަތައް ހުށަހެޅިފައިހުރީ 15 އަހަރާއި 17 އަހަރާއި ދެމެދުގެ އުމުރުފުރާގެ ކުދިންނެވެ. އޭގެން ނަމަވެސް 12 އަހަރުން 14 އަހަރާއި ދެމެދުގެ އުމުރުފުރާގެ ކުދިންގެ މައްސަލަތައް 2017 އިން 2019 އަށް ހުށަހަޅާފައިވާކަން ފާހަގަ ކުރެވެއެވެ. އަދި މިމުއްދަތުގައި އުމުރުން 14 އަހަރުގެ ކުދިންގެ މައްސަލަތައް އެކަށީގެންވާ މިންވަރަކަށް ހުށަހެޅިފައިވާކަން ފާހަގަ ކުރެވެއެވެ. 2019 ވަނަ އަހަރު ކުޑަކުދިންގެ އަދުލުގެ ޤާނޫނު ފާސްކުރުމުން ހިސާބުން އުމުރުން 15 އަހަރުން ދަށުގެ ކުދިންގެ މައްސަލަތައް ޑިޕާޓްމަންޓް އޮފް ޖުވެނައިލް ޖަސްޓިސްގެ ރިޕޯޓްތަކުގައި ފެންނަންނެތްކަން ފާހަގަ ކުރެވެއެވެ. އެގޮތުން އެކަން ދުރުވެރިވެފައިވާ މައިގަނޑު ސަބަބަކަށްވަނީ ބެލެވިފައި ޖިނާއީ ޖިނާއާ ނަގަންޖެހޭ އުމުރުފުރާ އެގޮތުން ދަރުކުރުމާއި، 15 އަހަރުން ދަށުގެ ކުދިންގެ މައްސަލަތައް ތަންފީޛު އިދާރާތަކުން ބަލާކު ކުރުން ހުއްޓާލާފައިވާތީއެވެ. އުމުރުން 15 އަހަރުން ދަށުގެ ކުދިންގެ ޖިނާއީ ކުށުގެ މައްސަލަތައްތަކުގެ ފާޙިޝާ ބަރު ފުލުހުންގެ ކިބައިން މިހާރު ވަނީ ނިގުޅައިގަނެވިފައެވެ. އެހެންކަމުން އުމުރު ފުރާގެ ކުދިންގެ ކުށުގެ ޝަކުވާތައް ރަސްމީ ސިފައެއްގައި މިހާރު ރިޕޯޓުތަކުން އާއްމުކޮށް ފެންނަކަން ނެތެވެ.

ޖިނާއީ މައްސަލަތައްތަކުގެ ތަޙުޤީޤު އުމުރުން 14 އަހަރުގެ ކުއްޖެއްގެ ފޯނު ބެލި ފާސްކުރުމުގެ އަމުރަކަށް އެދި ޕްރޮސިކިއުޓް ކޯޓަށް ހުށަހެޅުން މައްސަލަތަކުގައި އެއަމުރު އެކޯޓުން ދޫނުކުރުމުން އެމައްސަލަ ދިވެހިރާއްޖޭގެ ހައިކޯޓުގައި އިސްތިއުނާފުކުރުމުން، ހައިކޯޓުން ނިންމާފައިވަނީ ޤާނޫނުގައި ކަނޑައަޅާފައިވާ ގޮތުގެމަތިން އުމުރުން 15 އަހަރު ނުފުރޭ ކުދިންގެ ޖިނާއީ ޒިންމާ އުފުލޭން ނުޖެހޭނެކަމަށާއި، އެހެން ކަމުން 15 އަހަރުން ދަށުގެ އުމުރުފުރާގެ ކުއްޖެއްގެ ފޯނު ބަލައި ފާސްކުރުމުގެ ހުއްދަ ކޯޓުން ދޫކުރުން ނުހުންނާނެ ކަމަށެވެ.[701]

ކުޑަކުދިންގެ ޖިނާއީކުށުގެ ޢިންސާފުގެ އުމުރުފުރާ މަޖިލީހުން ފާސްކުރުމާ އެކުލެވިފައިވާ ސިޔާސީ ހާލަތުތަކާ ގުޅިގެން:

ޤާނޫނު ނަންބަރު 18/2019، ކުޑަކުދިންގެ އަދުލުގެ ޤާނޫނު ފާސްކުރީ 19 ވަނަ ރައްޔިތުންގެ މަޖިލީހުންނެވެ. އެއީ ރައީސް އިބްރާހީމް މުޙައްމަދު ޞާލިޙުގެ ވެރިކަމުގައި، އޭރު ވެރިކަންކުރި މޯލްޑިވިއަން ޑިމޮކްރެޓިކް ޕާޓީ (އެމް.ޑީ.ޕީ)ގެ ބޮޑު އަޣްލަބިއްޔަތެއް އޮތް މަޖިލީހަކުން 2019 ވަނަ އަހަރެވެ. 2023 ވަނަ އަހަރުގެ ރިޔާސީ އިންތިޚާބު އެމް.ޑީ.ޕީއަށް ނާކާމިޔާބުވެ، ޑރ. މުޙައްމަދު މުޢިއްޒު ވެރިކަމަށް ވަޑައިގެންފައިވާ ކަންކުރުންތަކަށް، ދިޔަމާއި ބޮޑުވި މައްސަލަތައް ޙައްލުކުރަން މަސައްކަތް ފެށިގެން ދިޔައީ ފަހުގެ ދުވަސްތަކުގައެވެ. ހާލަތަށް ކުރުކޮށް ކުޑަކުދިންގެ މައްސަލައަށް ބަލާއިރު ޙައްލެއް ހޯދުމުގައި ސަރުކާރުން އިސްނަގައިގެން މަސައްކަތް ފެށުނުކަމަށް އިޢުލާންކުރިއެވެ. އެގޮތުން 2024 ވަނަ އަހަރުގެ ޖެނުއަރީމަހު ބޭއްވުނު ޖުވެނައިލް ޖަސްޓިސް ސިމްޕޯޒިއަމް ހުޅުވުމުގެ ރަސްމިއްޔާތުގައި ހޯމް މިނިސްޓަރު އަލީ އިހުސާން

[700] 'ޑިޕާޓްމަންޓް އޮފް ޖުވެނައިލް ޖަސްޓިސް' (n 67).

[701] 'Police Cannot Search Phones of Children under 15: High Court' (*The Edition*) <https://edition.mv/news/37483> accessed 14 December 2024.

ކުޑަކުދިންގެ ޙައްޤުގެ ޤާނޫނު އެކުލަވާލެވިފައިވާގޮތުން ކަންބޮޑުވުން ފާޅުކުރައްވާ ވާހަކަފުޅު ދެއްކެވިއެވެ. އަދި ކުޑަކުދިންގެ ޙައްޤުގެ ޤާނޫނަކީ ޙަޤީޤަތުގައި މުޖުތަމަޢު ގާނޫނުއަސާސީގެ ދަށުން ކުރިހަމަ ކުދިންނަށް އެ ގާނޫނުގެ ދަށުން ހުއްޓުވާފައިވާ ޖިނާއީ ކޯޑު ޤާނޫނަކަށް ބަދަލު ނުކުރެވޭނެ ކަމަށާއި، އެގާނޫނުން އަމާޒު ކުރަނީ ކުޑަކުދިން ޖިނާއީ ޒިންމާ ނުކުރުވުމަށް ކަމަށް ވިދާޅުވިއެވެ.[702] އަދި 2024 ވަނަ އަހަރުގެ އޭޕްރީލްމަހު، ކުޑަކުދިން ޖިނާއީ ޒިންމާ ނަގަންޖެހޭ ގުޅުން 15 އަހަރުން 12 އަހަރަށް ދަށްކުރުމަށް ސަރުކާރުން ނިންމާފައިވާކަމަށް ހޯމް މިނިސްޓަރު ސަލާމަތީ މިނިސްޓަރު އަލީ އިހުސާން ކުރެއްވިއެވެ. ރައްޔިތުން ޖިނާއީ ކުށްތަކަށް ހުރަހެޅުމަށް 12-14 އަހަރާ ދުވުމުގެ 200 އެއްހާ ކުޑަކުދިން ބޭނުކުރާ، ކުދިގެ ފިޔަވަހި އުސޫލުން ސަލާމަތީ ކުރުމަށް ކަމަށް ގޮތުގައި މިބައިވެރިވުން ގެންގުޅެމުންދާ މިނިސްޓަރު ވިދާޅުވިއެވެ.[703] ސަރުކާރުގެ މިނިންމުމަށް ކުރީގެ ސަރުކާރުގެ ބައެއް

އިސްވެރިޔާއާއި ތިމާވެށި ބަދަލުން ފާޑުވިދާޅުވާން ފެށިއެވެ. މިގޮތުން ނުނިންމޭ. ރައީސް އިބްރާހިމް މުޙައްމަދު ޞާލިޙު އެއްކަލަ ކުރައްވާފައި ކުރީގެ ފްރީޑަމް ސޮލިޑެރިޓީ ޖަންކްޝަން ޕާޓީއެއް ދަނީ ޝަރީޢަތުގެ ސަރުކާރުގެ މިހަމަނުކުރާ ދީނާގުޅޭ ގޮތުގެ ބަދަލުތަކެވެ. ކޮމިޔުނިސްޓު ޕާޓީގެ ކުރިމަތިލާ ޖަވާބުދާރީވުމަށް ކޮމިއުނިސްޓު ޕާޓީގެ ޖީލުކަމާއި، ކުދިގެ ޖިނާއީ އުމުރުގެ މިންވަރު ކުޑަކުރުމަށް ދިވެހިރާއްޖޭގެ ދެކޮޅަށް ކުރުކުރުމަށް ބަލަހައްޓާ ސިއްރުގެ ނިކަމެތިކަން ބޮޑުވާނެކަމަށް ފާހަގަކުރެއްވި ކުދިން ކުރިމަތިލާ ނުރައްކާތެރިކަމުން ދިފާޢުކުރުމަށް ކުޑަކުދިން އަމާޒަކަށް ލުއިކަމެއް އަދި، އެކުދިންނަށް ބޮޑުކުރާ އަނިޔާތަކާއި

ގާނޫނުގެ ރަމްގެ ސަރުކާރުން ވިއްކޮށްދާ ހިތްވަރުދޭ ފަރާތަކުގޮތުން އަދި އަނިޔާވެރިކަމުގެ އަސަރު ރައްޔިތުން ގާނޫނީ ގޮތުން އަމާޒުކުރުމަށް ކަނޑައެޅިގެން ދަނީ ވެރިންގެ ސިޔާސަތާ ދެކޮޅަށް ގޮސް ސަރުކާރުން ގާނޫނަށް އޮތް ރޭވުމަށް ގޮތެއް ކަމުގައި ބަޔާން ކުރުމެވެ.[704] ޝަރީޢަތް ބާރުއަދި ކުރިޔަށް ގެނދާ، ކުރިސަރުކާރުގެ ކޮމިޝަނަރ އަލީ ޒާހިރު މުޙައްމަދު ހަމަހެޅިފައިވާ ޖިނާއީ ޒިންމާ ނަގަން ޖެހޭ އުމުރުގެ ދަރުމަކުރުން ދަށްކުރުމަކީ އޮރިޔާއާއި ހަމަނުވާ ފޯރިކޮށްދީ ފާހަގަކުރެއްވިއެވެ.[705] ކުޑަކުދިންގެ ޙައްޤުގެ ގާނޫނު ފުރަތަމަ ސިޔާސީ ގަވާއިދު ދަނޑިވަޅުގެ މަޖިލީހުގެ ޓްރާންސްޕޮލާކޯގެ ކުރިޔަށް ޖަވާބުދާރީވުމަށް އެކަމާ ގުޅޭ ދިރާސާތަކަށް ބަލާފައިވާ ޖެހޭން މުޖުތަމަޢުގެ ސަރުކާރުގެ ތަޢުލީމް ގެތެރޭގެ ފުރަތަމަ ހިއްސާކުރެވުނު ސަރުކާރުގެ ވިސްނުމުގައި ކުޑަކުދިން ޖިނާއީ ޒިންމާ ނަގަންޖެހޭ އުމުރު ދަށްކުރުމަކީ ފަހަކަށް ޖެހުމެކެވެ. އަދިހެން އެއީ ކުޑަކުދިންގެ ބައްޓަމުގެ ކުރިއެރުމަށް ހުރަސްއަޅާ މުޙައްމަދު ބިނާކުރާ ކަމަށް ސިފަކޮށްލަދޭ ކަމަކަށް ވިދާޅުވެފައިވެއެވެ.[706]

ކުޑަކުދިން ކުށުގެ ޖިނާއީ ޒިންމާ އުފުލުމަށް ދަށްކުރުމަށް ކުރިއެރުމުގެ ސަރުކާރުން ހުށަހަޅާފައިވާ ހުށަހެޅުމަށް ކުރިއަށް ކުރެވޭ ބަދަލު ސަރުކާރުގެ ނިންމުމަށް ރަސްމީ ގޮތުން ދަށްކުރާ ގޮތަށް ބަލާއިރު ފުރަސަތުވާ ކަމަކަށް އެކަމާ ދޭކޮޅު ސަރުކާރު، ސިއްހީ ފަރާތްތަކުގެ އިދާރާގެ ރާއްޖޭގައި ދިރާސާކުރުމަށް ވާނުވަތަ ކުއްލި ބަދަލުތަކާއި ގާނޫނު އެކުލަވާލުމަށް އުނިކަމެއް. އެމްޑީއެން ގާނޫނު ފުލުހުންގެ ފުލުސް ބަޔާން ދެކެނީ ފިޔަވަޅުއަޅަން ފާހަގަކުރެއްވީ، ގާނޫނުގައި ކަނޑައަޅާ ބަޔާންކުރެވިފައިވާ

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[702] އިބްރާހިމް (ނ 74)

[703] އާސިމާ ނިޒާރު، 'ކުޑަކުދިން ޖިނާއީ ކުށަށް ޒިންމާވާންޖެހޭ އުމުރު 12 އަހަރަށް ދަށްކުރަނީ' <https://mihaaru·com/news/132799> accessed 14 December 2024·

[704] އައިޝަތު ނުޒުހާ، 'ކުށުކުރާ ކޮންމެ ކުއްޖަކު ޖަލަށްލާ ނަމަ އުފެދޭނީ ކުށްވެރިންގެ ޖީލެއް: ޕީޖީ' މިހާރު Aishath Nuzuha Mihaaru, 'Kuh kuraa konme kujjaku jalah laa nama ufedheynee kuvveringe jeeleh: PG' (*Mihaaru*, 7 April 2024) <https://mihaaru·com/news/132815> accessed 14 December 2024·

[705] ކުޑަކުދިން ކުށް ކުރުމުން ކުށުގެ ޒިންމާ ނެގުން، ކޮމިއުނިސްޓު ޕާޓީ އިން ދެ ސަރުކާރު: ހަމަޖެހޭ (އެޑިޝަން) ' <https://edition·mv/communist_party/32780> accessed 14 December 2024·

[706] ޖިނާއީ މަސްއޫލު، ވަކި ކޮމިޓީއެއް ދަ މިނިވަން ކުށްވެރިކުރުމުގެ ޙައްޤު ނެގި ހަމަޖެހިފައިވާ ގޮތަށް ދިވެހިރާއްޖޭގައި ޖިނާއީ ރޭގެ ބަދަލުތަކެވެ (މޯލްޑިވްސް ޕޮލިސީ ތިންކް ޓޭންކް، 19 ނޮވެމްބަރު 2024) <https://maldivespolicythinktank·com/why-lowering-the-minimum-age-of-criminal-responsibility-in-the-maldives-is-a-step-backward/> accessed 14 December 2024·

ކަންކަން އެބޭފުޅުން ނިސްބަތްވެވަޑައިގަންނަވާ ސަރުކާރުން ތަންފީޒުކުރުމުގައި ނުކުޅެދިފައިވާތީއެވެ. ކުރުކޮށް ކޯޓުތަކުން ޤަވާއިދުތަކާއި ރިހެބިލިޓޭޝަނާއި ރިއިންޓެގްރޭޝަން ޕްރޮގްރާމްތަކާ ހިންގައިގެން ކަންކަން އިސްލާހުކުރުމަށް އެބޭފުޅުން ބަންދުކުރެވިފައިވާއިރު، ފިރިކަމުގެ ޤަސްދަކަށް ހާމަވެގެން ދިރިއުޅުން އެއިން އެއްވެސް ކަމެއް ނުކުރުމި، އަދި ކުޅަދާނަކުރުގެ މާބަރުން ނުރުހުމަށް އަސާސް އިޖްތިމާޢީ އިސްލާހީ ސިޔާސަތެއް ނުނެރުމުން ބަޔަކު އެފަދަ ގޮތަކަށް ވަރަކަ ދެއްކުމުން، އެވާހަކަތަކުގައި ސިޔާސީ ކުލަލަދީ ހުރިކަން ފާހަގަވެއެވެ. ރާއްޖޭގެ ކުރީގެ ޙުކޫމަތްތަކުން، ކުޑަކުދިން ބޭނުމި ކުށްކުރާކުދިންގެ ބަރަޔާތްތަކާ މެދު ފިކުރުކުރަން، އަދި އެފަދަ ކުދިންނާއިމެދު އެއްވެސް ޢިނާޔަތެއް ދިނުމަށް ޤާނޫނީ ތަރުތީބަކާ އެއްވެސް އިންތިޒާމެއް ނުހަދައެވެ. ޤާނޫނުގައި އިޤްތިސާދީ ވަޞީލަތް މަދުކަމުން ޖުވެނައިލް ކޯޓަކުން ފަސް އަހަރަށް ވުރެ ދިގު މުއްދަތަކަށް ކުދިން ބަންދުކުރެވޭނެ ނިޒާމެއް ހަމައެކަނި ޤާނޫނުގައި ކަނޑައެޅިފައި ހުރިއިރުވެސް، ދެން ކުރެވޭ އެއްވެސް ސިޔާސީ ކަމަކީ ދިރިއުޅުމާ ގުޅޭ ގޮތުން ފިޔަވަޅު އެޅުން.

ރާއްޖޭގެ ޤާނޫނީ ނިޒާމުގައި "ބޯސްޓަލް ޓްރެއިނިންގ"އަކީ ތަފާތު ވިސްނުން، ރާއްޖޭގެ ޤާނޫނީ ނިޒާމުގައި ކުރިން އިސްތިޢުމާލުކުރެވިފައިވާ ޤާނޫނީ ތަރުތީބަކީ، ޙުކޫމަތުގެ ދުސްތޫރީ ބައެއްގެ ހައިސިއްޔަތުން ރާއްޖޭގެ ޤާނޫނީ ނިޒާމުގެ ތެރެއިން ފިޔަވަޅު އަޅާ ބޭނުންކުރެވިފައިވާ ކަނޑައެޅިގެންވާ ޤާނޫނެވެ. ރާއްޖޭގެ ޤާނޫނީ ނިޒާމުގައި، ދިވެހިންގެ ސަޤާފަތާއި، ޙައްޤުތަކާ އިޖްތިމާޢީ ހަޔާތުގެ ބޭނުންތެރިކަމާއި ދިމާވެދާނެ ކޮންމެ ކަމެއް ޙައްލުކުރުމުގައި ރިޢާޔަތް ކުރެވޭނެ ގޮތަކަށް ތަނުގެ ސިޔާސަތެއް ޤާނޫނުގެ އަސާސް ކަމަށް ދިރިއުޅުމުގެ މަގުފަހިކޮށް ދޭން ނުކުޅެދިފައިވާ ވާހަކަ ފާހަގަކުރެވެއެވެ.

ރާއްޖޭގެ އަދުލުގެ ޤާނޫނުގައި ކުޑަކުދިންގެ މައްސަލަ ބެލުމަށް، ދިވެހިރާއްޖޭގެ ޤާނޫނުއަސާސީއާއި ޤާނޫނުތަކުގެ ތެރެއިން ކުޑަކުދިންގެ ޙައްޤުތަކާއި ގުޅޭގޮތުން ސިޔާސީ ގޮތުން ނިންމާ ޖުވެނައިލް ޖަސްޓިސް އަދި ޤާނޫނުތަކުގައި ހުރި ޤާނޫނީ ބަދަލުތަކަށް ކުރީގެ ޤާނޫނުތަކުގައި ބަލާފައިވާ ގޮތް ދިރާސާކުރުމަށް ފުރުޞަތު ފަހިވާ ގޮތަކަށް ކުޑަކުދިންގެ އިޖްތިމާޢީ ރިހެބިލިޓޭޝަން ބަލަހައްޓާ މުވައްސަސާއަކާ ޙަވާލުކުރެވެއެވެ.

ދިވެހިރާއްޖޭގެ ޖިނާއީ ޤާނޫނު ވުޖޫދަށް އައިފަހުން، ޚާއްޞަ ކޮށް ކުޑަކުދިންގެ ޙައްޤުތައް ހިމާޔަތްކުރުމުގެ ޤާނޫނު (ޤާނޫނު ނަންބަރު 2019/18) ފާސްކުރުމާއެކު، ކުޑަކުދިންގެ ޤާނޫނީ ނިޒާމަށް ބޮޑެތި ބަދަލުތަކެއް ގެނެސްފައިވެއެވެ. ހަމައެކަނި ރާއްޖޭގެ ޤާނޫނީ ނިޒާމަށް ގެނެސްދިން ބަދަލުތަކުގެ ތެރެއިން، ކުޑަކުދިން ކުށްކުރާ ޢުމުރު ހަމައެކަނި ފަރުދީ ޙައްޤުތަކަށް އިސްކަންދޭ މަދަނީ ޙަޔާތެއް ކުރިއަށްގެންދިއުމުގެ ފުރުޞަތު ކުޑަކުދިންނަށް ދިނުމަށް ޤާނޫނުގައި ކަނޑައަޅާފައިވާ ކަމަކީ ފާހަގަކުރެވޭ ވާހަކައެކެވެ.

ހަމައެހެންމެ، ޖިނާއީ ޖަވާބުދާރީވުމުގެ ޢުމުރު 15 އަހަރު ކަމަށް ކަނޑައަޅާފައިވާ ރާއްޖޭގެ ޖިނާއީ ޤާނޫނުގައި ޖިނާއީ ޖަވާބުދާރީ ނުވާ ޢުމުރު ކަނޑައަޅާފައިވެއެވެ. އެގޮތުން އުމުރުން ދިހަ އަހަރު ނުފުރޭ ކުދިން ޖިނާއީ ޖަވާބުދާރީވާކަށް ނުޖެހޭކަމާއި، ޖިނާއީ ޖަވާބުދާރީ ނުވާ ޢުމުރުގައި ކުރާ ކަމަކަށް ކުދިން ޖަވާބުދާރީ ނުވާނެކަމަށް ޤާނޫނުގައި ބުނެފައިވެއެވެ. އެގޮތުން ކުޑަކުދިން ބޮޑުވެގެން ދިޔުމަށް އަހަރެއް ކުރިން ކުށެއްކޮށްފިނަމަ، ޤާނޫނީ ގޮތުން ޖަވާބުދާރީ ނުވާ ޢުމުރު ވަނީ 9 އަހަރާއި 12 އަހަރާ ދެމެދު ކަނޑައަޅާފައެވެ. އެގޮތުން ބަލާއިރު ޤާނޫނީ ޖަވާބުދާރީ ނުވާ ޢުމުރު 9 އަހަރާއި 18

އަހަރާއި ދެމެދުގެ އުމުރު ފުރާތަކުގައި ކަނޑައެޅިދާނެއެވެ. ނުވަތަ އެންމެ ދަށްއުމުރަކީ 12 އަހަރުކަމުގައިވެސް ކަނޑައެޅިދާނެއެވެ. އެފަދަ ބާލިޣުވުމުގައި 18 އަހަރުން ދަށުގެ ކުދިންނާއިމެދު ބަލަހައްޓަންޖެހޭނީ ކުޑަކުއްޖާގެ މަޞްލަޙަތު ބަލާ ގޮތުގައި ޤާނޫނުގައި ބަޔާންކުރާ ގޮތަށެވެ. ހަމައެފަދައިން މިއުމުރު ފުރާގެ ކުދިން ޖިނާއީ ކުށުގެ ނަތީޖާގެ ޢުޤޫބާތުގައި ކުރާ ކުށް ހަމައެއް ބަލަހައްޓާނެ ގޮތަކީ އިސްލާމީ ޝަރީޢަތާއި ޤާނޫނުގައި ބަޔާންކުރާ ގޮތަށެވެ. ކުޑަކުދިން ކާވެނިކުރުމުގެ ހުކުމެއް ދިނުމުގައި ހަމަ ކަނޑައަޅާނެ މަޢުލޫމާތު ނުހިމެނޭ ގޮތަށެވެ. އަދި ދެ ފަރާތުގެ ރުހުމާއެކު ކާވެނިކުރަނީ ކުޑަކުއްޖާގެ މަޞްލަޙަތު ބަލައިގެން ކަމަށް ޤާނޫނުގައި ބަޔާންކޮށްފައިވާނެއެވެ. ދެފަރާތުގެ ބަލަދުވެރިޔާ ކުޑަކުއްޖެއްކަމުގައިވާނަމަ، ކުޑަކުދިންގެ ޙައްޤުތަކުގެ ބާރުތަކާ އެއްގޮތަށް ހުކުމްކުރަން ޖެހޭ ޤާނޫނުގެ ދަށުން ކުޑަކުއްޖާގެ ޙައްޤު ކުރިއަށްގެންދާނެއެވެ. ޢާއިލާ ޤާނޫނުގައި ބުނެފައިވާ ގޮތުން ކުޑަކުއްޖާ މަޞްލަޙަތު ކާވެނިކޮށްދިނުމުގެ ޤާނޫނީ ހުއްދަ ދޭ ބަލަދުވެރިޔާއަކީ ކުޑަކުއްޖާގެ ބައްޕައެވެ. އަދި ބަޔަކު ކުޑަކުދިން ހިމާޔަތްކުރަންޖެހޭ ބާރާއި ޙައްޤުތަކެއް ހުރެއެވެ.

ނިންމުން

ކަންކުރާ ކުޑަކުދިންނާ ގުޅުންހުރި ދައުލަތުގެ ހުރިހާ މުއައްސަސާތަކާއި ހިސާބުތަކުގެ ބެލެހެއްޓުމުގެ ފަރާތްތަކުގައި ކުޑަކުދިން ކާވެނިކުރުމުގެ ހާލަތު މިންވަރާ އިންސާފުކުރުމަށް ކަށަވަރުކޮށްދޭ ކަމަށް އެއްބަސްވެފައިވެއެވެ. އަދި ކުދިންގެ ފުރިހަމަ ކުޑަކުދިން ހިމާޔަތްކުރުމުގެ ޤާނޫނު ހެދުމަށް ކަނޑައަޅާ ޤާނޫނީ ބާރު ދިނުމަށްވުރެ މުހިންމު އެއްވެސް ކަމެއް ނެތެވެ. ކުޑަކުދިން އެކަށީގެންވާ ދަށް އުމުރު ކާވެނިކުރުމުގެ ސަލާމަތާ އަދި ހިއްސާދާރުންގެ ކަންތައްތަކުގައި ހިމެނޭ ޤާނޫނުތަކަކީ ބޭނުން ބަލައިދޭ ފަރާތްތަކެއް ކަމުގައި ބެލޭގޮތުން ކުޑަކުދިން އަދި ޤާނޫނީ ކަންތައްތަކުގެ ރިޢާޔަތްކުރުމަށް ފުރުސަތު ލިބިގެންވެއެވެ. ކުޑަކުދިން ކާވެނިކުރުމުގެ މަސްއޫލިއްޔަތުތަކާ ކުޑަކުދިން ހިމާޔަތްކުރުމުގެ ޤާނޫނީ ނިޒާމުގެ ޙައްޤުތައް ބޭނުންކުރާ ޤާނޫނުތަކަކީ ދެފަރާތުގެ ދަރަޖައެވެ. ޤާނޫނުގެ ރޫޙުގައި ކުދިންގެ ފުރާގައި މިކަމުގެ ކުޑަކުދިން ޤާނޫނުގެ އެއްބަސްވުން "ޙައްޤުތައް" ކުރިމަތިވެއެވެ. އެކަން ކުރިއަށް ޖިނާއީ ކުޑަކުދި ކުދިން ކުރުގެ ޖިނާއީ ޢަދަދު ކަމުގެ ޢުޤޫބާތް މިޒާޖުގެ ރުހުން ނެތުމުގެ ދައުލަތްތަކުގައިވެއެވެ. އެގޮތުން މިޒާޖު 15 އަހަރު ކުރުގައި ކަނޑައަޅާފައިވާ ޖިނާއީ ކުރުގެ ޖިނާއީ ކަނޑައަޅާ ހެޔޮއުމުރު 12 އަހަރަށް ދައުލަތުގެ ނިޔަލަށް އެންމެ އަދުވާ މިޒާޖުގެ ބާލިޣުވުން ބަލާއިރު މަސްއޫލިއްޔަތު އަދަދު ފުރާވާއިރުކުރުމުގައި ޙަޤީޤަތުގައިވެއެވެ.

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Legal Challenges in Police Investigations of Internet Fraud: Barriers and Solutions

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Abstract

This study investigates the legal challenges faced by the Maldives Police Service in investigating internet fraud cases, aiming to identify key issues and propose potential remedies. The widespread use of the Internet for various purposes has also facilitated the rise of internet-based crimes, including fraud. These crimes, many of which were previously non-existent, have prompted legislators worldwide to develop new laws to address the evolving nature of criminal activity in the digital age. However, this shift has created significant challenges for both lawmakers and law enforcement agencies in keeping pace with the rapid growth of cybercrime. Internet fraud has become a growing concern in the Maldives, mirroring a global trend where online scams and frauds are increasingly prevalent. This research primarily focuses on the legal obstacles that hinder effective investigations by the Maldives Police Service (MPS) in tackling internet-based fraud. This research employs qualitative doctrinal legal research methods to analyze the current legal framework and highlight gaps that hinder law enforcement efforts. The findings suggest that urgent revisions to existing laws and further development of police investigative capacity are critical to effectively combat internet fraud in the Maldives. The findings suggest reforms aimed at improving the legal infrastructure and capabilities of the Maldives Police Service in addressing this pressing issue.

Keywords: Cybercrime; Internet fraud; Online deception; Digital crimes; Investigative challenges; Cybercrime legislation; Cybersecurity.

އިންޓަރނެޓް ދޮގުވެރިކޮށް ހިންގާ މަކަރާއި ހީލަތުގެ މައްސަލަތައް ތަހުގީގުކުރުމުގައި ފުލުހުންނަށް ކުރިމަތިވާ ގާނޫނީ ގޮތުން ދިމާވާ ގޮންޖެހުންތައް: ހުރަސްތަކާއި ހައްލުތައް

އަލީ ޝައްމޫން

އެބްސްޓްރެކްޓް

މި ދިރާސާއަކީ އިންޓަރނެޓް ދޮގުވެރިކޮށް ހިންގާ މަކަރާއި ހީލަތުގެ މައްސަލަތައް ތަހުގީގު ކުރުމުގައި ދިވެހި ފުލުހުންގެ ހިދުމަތަށް ކުރިމަތިވާ ގާނޫނީ ގޮތުން ދިމާވާ ގޮންޖެހުންތަކާއި ކަންބޮޑުވާ ބައިތައް ދެނެގަނެ، އެގޮންޖެހުންތައް ހައްލުކުރުމަށް ކުރެވިދާނެ ކަންތައްތައް ދެނެގަތުމަށް ކުރެވުނު ދިރާސާއެކެވެ. އިންޓަރނެޓް ބޭނުންކުރުން ފުޅާވެ، ބޭނުންތައް ގިނަވުމާއެކު، ބޭނުންކުރާ ބައެއް މީހުން ދޮގުވެރިކޮށް ހިންގާ އިންޓަރނެޓް ކުށްތައް އިތުރުވެފައިވާއިރު، އެކުށްތަކަކީ ކުރިން ނުހުރި ކަހަލަ ކުށްތަކަކަށްވާތީ ބޭނުންތަކާ ގުޅޭ ގާނޫނުތައް ހެދުމަށް ދުނިޔޭގެ ޤައުމުތަކުން ހަރަކާތްތެރިވެމުން އަންނައިރު، މި ދިރާސާގައި ...

އޭރު ނުވެސް ޤާނޫނުތަކާއި ތަސްދީޤުކުރަން އޮތީ ޤައުމުތަކަށް މަޖުބޫރުވެއެވެ. އެހެންކަމުން އިންޓަރނޭޝަނަލް ޑޮކިއުމެންޓް ހިއުމަން ރައިޓްސް އެއްގޮތަށް ޤާނޫނުތަކަށް ބަދަލުތަކެއްވެސް ގެނަސް ޖެހުނު އެކަމުގައި ޤާނޫނު ހަދާފައިވަނީ ޤާނޫނު ތަސްދީޤުކުރާ ފަރާތްތަކަށް ގާނޫނުއަސާސީއާއި ދިމާވާން ފެށުނެވެ. އިންޓަރނޭޝަނަލް ބޭނުންކުރުން ގެނައުމުގެ ސަރަހައްދު ދުނިޔޭގެ ޖިންސުވެރިކަމުގައި އިންޓަރނޭޝަނަލް ސްޓޭޓްތަކުގެ ހިމާޔަތް ގެތެރޭ އިންޓަރނޭޝަނަލް ފުރުޞަތު ހިއުމަން ރައިޓްސް ޤާނޫނުތަކުގެ އިޞްލާޙުތަކުގެ މިހާރު މިވަނީ މަގުފަހިވެފައެވެ. އިންޓަރނޭޝަނަލް ފުރުޞަތު ތަރައްޤީ ބޮޑުވެފައިވާ ޤާނޫނުތަކުގެ ހިންގައިދޭ މަސައްކަތުގެ މިހާރު ފިޔަވަޅު އަޅާފައިވާ އަދި މުޅި ދުނިޔެއަށްފެތޭ އެއިން ސަރުކާރުތަކުގެ އަތް ވަރުގަދަވެއެވެ. އިންޓަރނޭޝަނަލް ފުރުޞަތު ހިއުމަން މަސައްކަތުގެ މަސްއޫލިއްޔަތު ޝަރީޢަތް ޤާނޫނުތަކުގައި ފިޔަވަޅު ފުރިހަމަކުރުމުގެ ހުށަހަޅަމުން ޤާނޫނީ ހަމަތަކާ ޝަރުޢީ ހުކުމްތަކުގެ ދެމެދުގައި މަގުބޫލު ކަމަކަށް ވެގެން ދިޔުމަށް ހުރިހާ ފަރާތެއް ދާއިރާތަކުގެ ތަޢާރަފުކުރުމާ ގުޅުވާލެވޭ ގާނޫނީ ހައިސިއްޔަތުގެ ބޭނުންކުރެވޭ ޤާނޫނީ ސަފުހާތަކުގެ ބަދަލުތަކެއް ގެނެވިފައިވާނެއެވެ. އެއްކަލަ ރަޙްމަތާއި މަޤާމު ލިބިގަތުމުގެ ސަރުކާރުތަކުގެ ޤާނޫނުތައް އަމަލުކުރުމަށް ތަސްދީޤުކުރުމުގެ އަދި ދެމެހެއްޓުމަށް ޝަރީޢަތްތަކުގެ އިޖުތިހާދު ގާނޫނީ ފުރުޞަތު ޝަރީޢަތުގެ ބޭނުންތަކަށް މަސައްކަތްކުރެވެނީއެވެ.

މުހިއްމު ބަސްތައް: ސަރުކާރު ޤާނޫނު؛ އެންމެހައި މަސައްކަތް ރިޢާޔަތް؛ އިންޓަރނޭޝަނަލް ފުރުޞަތު ހިއުމަން ރައިޓްސް؛ ޝަރީޢަތާ އިޖުތިހާދުތަކުގެ ދާއިރާ ޤާނޫނުތައް؛ ސަރުކާރުގެ ޤާނޫނު ޤާނޫނު.

ތަޢާރަފު

1990 ގެ އަހަރުތަކުގެ ތެރޭގައި ޖުމްހޫރިއްޔާ ދިވެހިރާއްޖެއަށް އިންޓަރނޭޝަނަލް ތަޢާރަފު ވެމުންދާ މިއަދާހަމައަށްވެސް ހިނގައިގެން އިންޓަރނޭޝަނަލް ފުރުޞަތުތަކުގެ ދާއިރާ، ބޭނުންތައް ހުށަހަޅުއްވައި ގެނެވުނުކަމަށް ޤާނޫނީ ގޮތުން ފާހަގަކޮށްފައެވެ. އިންޓަރނޭޝަނަލް ފުރުޞަތު ހިއުމަން ރައިޓްސް، ޖެނެރަލް އެސެމްބްލީގެ ޤާނޫނީ މަޤާމު ލިބިދިނުމާ ގުޅޭ ޤަރާރުތައް ފާސްކުރިއެވެ.[707] އެމީރުން، ސަރުކާރު ރިޢާޔަތް ސިޔާސީ ގުޅުމާއި ގުޅުންހުރި ޤާނޫނީ، ވައްތަރުގެ ދިފާޢުގެ އިމްތިޔާޒު، މަސްލަހަތުތަކުގެ ގުޅުންހުރި މަސައްކަތްތަކާއި ޤާނޫނުގެ ދާއިރާ ހިމާޔަތް އެހެނިހެން ވިޔަފާރި ދާއިރާތަކުގައި ގުޅުންހުރި ޤާނޫނުތަކާއި ގުޅުންހުރި ކަމާގުޅޭ ހިނގާދިޔަ ގުޅުންތަކުގެ އިންޓަރނޭޝަނަލް ޤާނޫނުތަކާ ހިމެނެއެވެ. ޤާނޫނު ފަރާތުން އިންޓަރނޭޝަނަލް ފުރުޞަތުތަކުގެ ދުނިޔޭގެ ފެންވަރުގައި ޤާނޫނުތައް ކުރިއަރާ ދާއިރާގައި ގާނޫނީ އަޅާލާފައިވެއެވެ.

މި ދިރާސާއަކީ އިންޓަރނޭޝަނަލް ފުރުޞަތު ހިއުމަން މަސައްކަތް ރިޢާޔަތްގެ މަސައްކަތްތަކުގެ ތަފާސްހިސާބު ޤާނޫނުގައި ދިރާސާ ފުރުޞަތުގެ ހިފެހެއްޓުމަށް ޤާނޫނީ ޝަރީޢަތާއި ގުޅޭ ތަރައްޤީތަކާ ކުރިއަށް ގެނައުމުގެ ޤާނޫނުތަކުގެ ބަދަލު ގޮތުގައި، އެދާއިރާގެ ޤާނޫނު ޤާނޫނީ ފުރުޞަތު ތަސައްވުރު ބަދަލުތައް ގެނައުމާއި ގުޅޭ ބޭނުންކުރެވޭ ހައި ދިރާސާކުރެވެއެވެ. މި ދިރާސާއަކީ ޤާނޫނީ ދާއިރާގެ ބޭނުންތަކުގެ ދަށުން ތަޢާރަފުކުރަމުން ސަރުކާރުގެ މަސައްކަތް ޤާނޫނީ ދިރާސާކުރެވެއެވެ. އިންޓަރނޭޝަނަލް ފުރުޞަތު ހިއުމަން ޤާނޫނުތަކާ ގުޅޭ

[707] ވަހީދު، ޙާމިދު. "ދިވެހިރާއްޖޭގެ ސަރުކާރު ޤާނޫނީ އިން ދަ ގްލޯބަލް: ޑިވެލޮޕްމަންޓް އެންޑް ކޮންސޮލިޑޭޝަން: އަދިއްލާހުއްމަ ކުރިޔާ، 23، ޖ.415.

ދިވެހިރާއްޖެއަށް ދިމާވެފައިވާ ބޮޑު މައްސަލަތަކަށްވެފައި، މި ފަދަކުށްތަކުގެ ޝިކާރައަކަށްވާ ފަރާތްތަކަށް ލިބޭ ގެއްލުންތަކުގެ ތެރޭގައި ބޮޑެތި އަދަދުތަކަކުން މާލީ ގެއްލުންތަކެއް ލިބެމުންދާކަން ފާހަގަކުރެވެއެވެ. މި ދިރާސާއަށް ބޭނުންވާ މައުލޫމާތު ހޯދުމަށްޓަކައި މައުލޫމާތު އެއްކޮށްފައިވަނީ ދިރާސާގެ މައުޟޫޢާއި ގުޅުންހުރި ޤާނޫނުތަކާއި ޤަވާއިދުތަކާއި، އުސޫލުތަކާއި، ކޮމެންޓްރީގެ ފޮތްތަކުންނާއި އަދި މި މައުޟޫޢާއި ގުޅުންހުރި އިލްމީ ލިޔުންތަކުން މުރާޖަޢާކޮށްގެންނެވެ.

އިންޑިއާއި ބަންގްލާދޭޝް މިޔަންމާރ އާއްމުވެފައިވާ މިފަދަ ޤައުމުތަކުގައި މިބާވަތުގެ ކުށްތަކަކީ އާއްމުކަމަށް މައްސަލަތަކަކަށްވެއްޖެއެވެ. އެހެންނަމަވެސް މިހާރު ރާއްޖޭގައިހުރި ޚާއްސަކޮށް ވެރިގަދަކަން، ތަކްނޮލޮޖީ އިދާރާތަކުން ކުށްކުރާ މީހުންނަށްވުރެ އެއް ފިޔަވަޅު ކުރިއަށް ދާ ކުށްތަކުގައި އާންމުންނާއި އަދި މިކަމުގެ ޝިކާރައަކަށްވާ އެހެން ފަރާތްތަކުން ހޭލުންތެރި ކުރުވައިގެން ނުހުއްޓޭނެ ކަމުގައި ދިމާވާ ގޮންޖެހުންތައް ކުރިމަތިވާ ނުކުރެވޭނެއެވެ.

މަސައްކަތް ހިފެހެއްޓި ހަމަ އެއް ބާވަތެއްގެ ކަމެއް ނޫނެވެ. އެހެންނަމަވެސް އިންޓަރނެޓް ދުނިޔޭގެ މަސައްކަތް ހިފެހެއްޓި ހަމަ ބާވަތުގެ ކަމެއް މިއުޅޭ ކުށްތަކުގެ ނަތީޖާއެއްކަމުން ބަދަލުވަމުން ދިޔަ އަންނަ އަދު ބާވަތުގެ ކުށްއެއްކަން ފާހަގަކުރެވިފައެވެ. އެހެންކަމުން އިންޓަރނެޓާއި އާ ވަސީލަތްތަކުގެ ބޭނުންތަކުން ޖިނާއީ ކުށްތައް ހިންގަމުންގެންދެއެވެ. އެހެންކަމުން، ބިރުދެއްކުމާއި، ބްލެކްމެއިލްކުރުމާއި އިންސާނު ދިރުމާއި އެކި ގޮތްގޮތުން މަކަރާއި ހީލަތްހަދައިގެން މީހުން އަތުން ފައިސާ ހޯދުމާއި، އަދި މަސްތުވާތަކެތި އެހެނިހެން ޖިނާއީ ބޮޑެތި ކުށްތަކެއް ކުރުން މިހާރު މިވަނީ އާންމުވެފައެވެ.[708] އެންމެ އާދައިގެ ކުށްތަކުން ފެށިގެން ބޮޑެތި ޖަރީމާތައް އިންޓަރނެޓް ދުނިޔެއިން ހިންގަމުންދެއެވެ. މިސާލަކަށް ދަންނަވާނަމަ، ފިހާރައަކުން ވިޔަފާރިކުރުމަށްފަހު ފައިސާ ބޭންކަށް ފޮނުވާ ކުރެޑިޓްކާޑު ސަލާމަތުން ސިޔާސަތު ފޮނުވުން ފަދަ މައްސަލަތަކުން ފިހާރަގެން، ބޮޑެތި ސިޔާސަތުތަކާއި ހިންގައި މަކަރާއި ހީލަތުން މިއުޅެނީ ދުވަހާ ހުރިހާ، އިންޓަރނެޓްގެ ޖަރީމާއިން ކުޑަކުދިންނާއި ވަގަލި ދަށްކަމާއި އުޅަދުން ގެއްލުމާ ކުރުމާއި، ކުށްކުރާ ގެއްލުންތަކަށް ރޫކާރު ކާޑުގެން ބޮޑެތި ޖަރީމާތައް ހިންގުން ހިމެނެއެވެ.[709] މިފަދަ ޖިނާއީ މައްސަލަތަކަށް ބަލައި ޓެކްނޮލޮޖީ ފަރާތަކީ ދިވެހި ޤާނޫނުގެ ހުށަހެޅުމެވެ. އެހެންކަމުން، މިފަދަ މައްސަލަތަކަށް ޓެކްނޮލޮޖީ ކުރިއެރުމާއި މައްސަލަތަކާއި ދައުލަތުގެ ފުލުހުން ގާނޫނީ ހަމަތައް ކުރިއަށްގެންދިއުމެވެ.

ސައިބަރ ކްރައިމް ނުވަތަ އިންޓަރނެޓް ދުނިޔޭގައި ހިންގާ ކުށްތަކެއް

އިންޓަރނެޓް ދުނިޔޭގައި ހިންގާ ކުށްތައް މާނަކުރުމުގައި ސައިބަރ މިބަހުގެ މާނަ ދެނެގަތުން މުހިންމެވެ. ސައިބަރ އަކީ ކޮމްޕިއުޓަރ އާއި ގުޅުންހުރި ކަންތައްތަކެވެ. އަދި މިބާވަތުގައި ކޮމްޕިއުޓަރަކީ އިންޓަރނެޓާއި ގުޅިފައިވާ އެއްޗެއްކަމަށްވެފައި، ހަމަ އެކަނި ކޮމްޕިއުޓަރން އާދޭ ފުރިހަމަ ބޭނުން ނުކުރެވޭތީވެ، އިންޓަރނެޓް ތެރޭގައި ހިންގާކަންކަމަކީ ސައިބަރ ސްޕޭސްއެވެ.[710] ސައިބަރކްރައިމް އަކީ ބޮޑެތި ޖަރީމާއަކަށް ބަދަލުވެފައި އަންނަވަރަކަށް

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[708] ދިލިޕް ރާޖް، އެމް. "ސައިބަރ އޮސްޓްރޭލިއާ ސައިބަރ ކްރިމިނޮލޮޖީ އިންޓަރނޭޝަނަލް: އޭގެ އިންޓަރނޭޝަނަލް ޕާރސްޕެކްޓިވް." އޮސްޓްރޭލިއަން ޖާރނަލް ރިވިއު 2015 (2012): 161-190

[709] "ކްރައިމް ސްޓެޓިސްޓިކްސް، Q4, 2023" (2023) މޯލްޑިވްސް ޕޮލިސް ސަރވިސް < https://www·police·gov·mv/uploads/Crime_Stats_Q4_2023_04dd158579·pdf> މައުލޫމާތު ނެގީ: 15 ޖުލައި 2024

[710] ޗިކް، ތޮމަސް ޖޭ.، ޖޭ ކޮރިބިން، ލިން ހަމް-ކޮރިބިން، ޖެނިފަރ ކޮލިގާރޑް، އަދި ގެރެގް ލިމާރ. "ޖެންޑަރިންގެ ސައިބަރކްރައިމް ކޮރިކްޝަން އިންޓަރނެޓް އިން ޖަސްޓިސްއިން ނަ ޕްރޮފެޝަނަލް އެން ސޮސައިޓީ ކޮމްޕިއުޓަރ ކްރިމިނަލް ޖަސްޓިސް އެޑިކޭޝަން" ޖާރނަލް އޮފް ކްރިމިނަލް ޖަސްޓިސް 5 (2010): 6-11

ސައިބަރ ކްރައިމް ގެ މާނަޔަކަށްވެސް ބަދަލު އަންނަން ފަށާފައިވާ ފުޅާވަމުން އަންނަ މަފްހޫމެކެވެ. އަދި މިފަދަ ކުށްތައް މާނަކުރުމުގައި ކުރަންޖެހޭ އެކި މާނަ ކުރުންތައް މީގެތެރޭގައި ހިމެނެމުންދެއެވެ. އެގޮތުން، ސައިބަރކްރައިމްގައި އާންމުކޮށް ކޮމްޕިއުޓަރު ބޭނުންކުރެވިފައިވާތީ އެއީ ކޮމްޕިއުޓަރ މެދުވެރިކޮށް ހިންގާކުށްކަމުގައި މާނަކުރެވިދާނެއެވެ.[711]

އިންޓަރނެޓް ފްރޯޑް ނުވަތަ އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ މަކަރާއި ހީލަތުގެ ކުށަކީ، އާންމުކޮށް މާލީ ފައިދާއަށްޓަކައި، އޮންލައިން ޕްލެޓްފޯމްތަކާއި ޑިޖިޓަލް މުވާސަލާތީ ވަސީލަތްތަކާއި އުސޫލުތަކެއް ބޭނުންކޮށްގެން ފަރުދުންނަށް ނުވަތަ ޖަމާއަތްތަކަށް މަކަރާއި ހީލަތްހަދައި އޮޅުވާލުމަށް ބޭނުންކުރާ ކަހަލަ ޖަރީމާއެކެވެ.[712] މަކަރާއި ހީލަތުން އިންޓަނެޓަށް ވަދެ ނިކުމެވުމުގެ ފުރުޞަތުކަމާއި، އެތަންތަނުގައި ފިލައި އުޅުން ނުވަތަ ކާކުކަން ނޭނގޭ އުޅުން ފުރުޞަތުވެ މި ޖަރީމާތައް ފުޅާ ދާއިރާއެއްގައި ބޭނުންކުރެވޭ، ދުނިޔޭގެ އެކި ކަންކަމުތަކުގައި ސިޔާސީ ހަރަކާތްތަކާ މީހުންނަށް އަމާޒުކުރެވިގެން، އެމީހުންނަށް އޮޅުވާލައިގެން މަކަރުވެރިންނަށް ފުރުޞަތުވެގެންދާކަމަށްވެއެވެ.[713] އެގޮތުން ސައިބަރކްރައިމްގެ ކުރަކި އިމެއިލް، ސޯޝަލް މީޑިއާ، ވެބްސައިޓް، އޮންލައިން މާކެޓްޕްލޭސް، އަދި އެހެނިހެން ޑިޖިޓަލް މުވާސަލާތީ ޗެނަލްތަކުން މަކަރުވެރިން ކުރިމަތިލާ ކަމެއްކަމަށްވެއެވެ.[714] އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ މަކަރާއި ހީލަތުގެ ކުށްތައް ހިންގުމަށްޓަކައި އިންޓަނެޓާއި ޓެކްނޮލޮޖީ ބޭނުންކުރެއެވެ. އަދި އިންޓަރނެޓް މެދުވެރިކޮށް މަކަރާއި ހީލަތުން އޮޅުވާލައިގެން ފައިސާއާއި ޚާއްޞަ މަޢުލޫމާތު ނުވަތަ އެހެނިހެން އަގުހުރި މުދާ އޮޅުވައިގަތުން ހިމެނެއެވެ.[715]

އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ ކުށްތަކުގެ ކެޓަގަރީތައް

އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ ކުށްތައް 3 ކެޓަގަރީއަކަށް ބެހިގެން ދެއެވެ. އެއީ؛

1. ކޮމްޕިއުޓަރު އެއީ ކުށުގެ އަމާޒަކަށް ވުން ނޫނީ ވިކްޓިމަކަށްވުން، މިސާލަކަށް ނެޓްވޯކް ގެ އެކްސެސް ހޯދުމަށް،[716]
2. ކޮމްޕިއުޓަރު އެއީ ކުށްކުރުމަށް ބޭނުންކުރާ ހަތިޔާރަކަށް ހެދުން، މިސާލަކަށް ޗޭސް އެޓޭކް،[717]
3. ކޮމްޕިއުޓަރު އެއީ ކުށްކުރުމަށް ބޭނުންކުރާ އާލާތަކަށް ވުން، މިސާލަކަށް ފޯނުން ހިލާފު ހޯދާ ޗެޓް ރައުގާކުރުން.[718]

މި ތިން ބާވަތުގެ ތަފާތުއިން ބާވަތެއް ބޭނުންކުރެއްވުން ކުށެއް ކުރިއަށްދުގައި ވިސްނަމުވެސް، މިގާ އިންޓަރނެޓް ހިމެނޭކަން ފާހަގަކުރަން ޖެހެއެވެ. އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ ކުށްތަކުގެ ވައްތަރުތައް ވަރަށް ގިނައެވެ. އެގޮތުން، ބާރުގެބޭގެ ނެޓްވޯކްގެ އެކްސެސް ހޯދުން ނުވަތަ އެކާ ބޭނުންކުރާ އެޕްލިކޭޝަންތަކުގެ އެކްސެސް ހޯދުން ނުވަތަ އެކާ

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[711] އަނީ، ތަމްރީނާ. "ސައިބަރ ކްރައިމް އެންޑް ނޭޝަނަލް ސެކިއުރިޓީ: ދަ ރޯލް އޮފް ދަ ޕީނަލް އެންޑް ޕްރޮސީޖަރަލް ލޯ." ލޯ އެންޑް ސެކިއުރިޓީ އިން ނައިޖީރިއާ (2011)، 200-202

[712] ފެޑަރަލް ޓްރޭޑް ކޮމިޝަން، "އިންޓަނެޓް ފްރޯޑް" (ފެޑަރަލް ޓްރޭޑް ކޮމިޝަން) <https://www·ftc·gov/news-events/topics/internetfraud> އެކްސެސްކުރި: 17 ޖުލައި 2024

[713] ކުރީގެ ހަވާލާ

[714] ހަރަސް ޖީ ގެ ޤާސް، ޖެނެސަލަރ ސީ އަދި ޖުއީލް އާ، 'ފިޝިންގ ސްކޭމްސް ދެންގަން އެކަމުން ދުރުހެލިވާން ގޮތް' (ކޮންސިއުމަރ އެފެއަރސް، 23 އޭޕްރިލް 2024) <https://consumer·ftc·gov/articles/how-recognize-and-avoid-phishing -scams> އެކްސެސްވީ: 10 ޖުލައި 2024

[715] ފެޑަރަލް ޓްރޭޑް ކޮމިޝަން، "އިންޓަނެޓް ފްރޯޑް" (ފެޑަރަލް ޓްރޭޑް ކޮމިޝަން) <https://www·ftc·gov/news-events/topics/internetfraud> އެކްސެސްކުރި: 17 ޖުލައި 2024

[716] ބެއުޒަރސް، ކްރިސްޓޮފަރ. "ބޯޑަރސް ދަ ގޭޓް ސިޓިޒަން ޓު: އިންފޮމޭޝަން އެންޑް ސައިބަރ ސެކިއުރިޓީ" (2023)

[717] ކުރީގެ ހަވާލާ

[718] ކުރީގެ ހަވާލާ

އަތުން މަކަރާއިހީލަތުން ފައިސާ ހޯދުމަށް ގިނަ އުކުޅުތަކެއް ބޭނުންކުރެއެވެ.[719]

ދުނިޔެއަށް އިންޓަރނެޓް ތައާރަފުވުމާއި ގުޅިގެން ހުރިހާ ކަމެއްފަދައިން އިންޓަރނެޓުން ކުރުމަށް މީހުންނަށް މަޖުބޫރުވެއްޖެއެވެ. އެގޮތުން، "ފިޝިންގ" އާއި ޓްރޮޖަން ސޮފްޓްވެއާއި، ސްޕައި ސޮފްޓްވެއާއި، އައިޑެންޓިޓީ ތެފްޓާއި، ސޯޝަލް އިންޖިނިއަރިންގ ހިމެނެއެވެ.[720] މިހުރިހާ ވައްތަރުތަކަށްވެސް އިންޓަރނެޓް މެދުވެރިކޮށް މަކަރާއިހީލަތްހެދުމުގައި ކުށްކުރާ ފަރާތްތަކުން ބޭނުންކުރާ އުކުޅުތަކެވެ.

އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ މަކަރާއި ހީލަތުގެ ސިފަތައް

މިފަދަ ކުށްތައް ހިންގަނީ އިންޓަރނެޓް މެދުވެރިކޮށް ކަމަށްވުމުން މީހާގެ އަސްލު އައިޑެންޓިޓީ ނުވަތަ މީހާގެ އަސްލު ހާމަނުކޮށް ހުރުމުގެ ފުރުޞަތު ކުށްކުރާ ފަރާތްތަކަށް ލިބިދެއެވެ. މިހެންވުމުން، އިންޓަރނެޓްގެ ސަބަބުން މަކަރުވެރިން އެމީހުންގެ އަސްލު ހާމަނުކޮށް ފިލައި ތިބެ، ޝިކާރައަކަށްވާ މީހުންނާއި ގާނޫނު ތަންފީޒުކުރާ ފަރާތްތަކަށް އޮޅުވާލަން ފަސޭހަވެގެން ދެއެވެ.[721] މިއީ ދިރާސާކުރާއިރުގައި އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ މަކަރާއި ހީލަތުގެ ކުށްތަކުގައި ހާސްވާ އެއް ސިފައެވެ.

އިންޓަރނެޓަކީ މުޅި ދުނިޔޭގެ އެންމެހާ ކަންކަމުގެ ތެރެއިން ބޮޑެތި ބޭނުންތެރި ވަސީލަތެއް ކަމަށްވުމާއި ވުމުން، އެކަށީ އަންގައިދޭ އިންސާނީ ގުޅުންތަކާއި ތަފާތު ފަރާތްތައް ބަރުމާއި ދުނިޔޭގެ ތަކެތި ގަތުމާއި ވިއްކުމާއި ބޭނުން، ޚިދުމަތް ގަނެވިއްކުމުގެ ހިދުމަތްތަކުގައި ތާރީޚީގޮތުން ބޮޑެތި ފޯރުކޮށްދޭ ޚިދުމަތްތަކުގެ ތެރޭގައި އަދި އިނގިރޭސި ބަހުން ފަލާހުގައި ބެނެފިޓްކުރުމަށް ފުރުޞަތު ދީފައިވެއެވެ. އިންޓަރނެޓް މެދުވެރިކޮށް ޑިޖިޓަލް އިންވެސްޓްމަންޓްތަކުގައި ކުށްތަކުގެ ފުރުޞަތު މިހެނެވެ. އިންޓަރނެޓް ވަރަށް ފަސޭހަ ވަސީލަތަކަށް ވުމުން ވެސް، އިނާޔަތް ތަކެއް ފަރާތްތަކުގެ ސަބަބުން އިންޓަރނެޓް ބޭނުންކުރާ މަކަރާއި ހީލަތުގެ އުކުޅުތައް ކުރިއަރާފައިވެއެވެ.[722]

އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ ދިނަ ކުށްތަކަކީ އެއްވަރެއް ހިންގުމަކީ ދިނަ ވަގުތުތަކެއް ނަގާކަމެއް ނޫނެވެ. ތިލް އެއްވަރު ކާމިޔާބުން އެ ކަމެއް އިތުރަށް ކުރިއަށް ދިއުމުގެ ނިޔަތް އެ އިރާދަގެ ބާރުގަދަ ފުރިހަމަ ވެގެން ދެއެވެ. އަދި ދިނަ ފަހަރަށް ޝަކާވަތް ކުރާ މީހުންނަށް އޭގެ ދެރަވެގެން އެތައް ހާލުގައި ކުރިމަތިވާ ޚިދުމަތްތަކުގެ އަމިއްލަ ހިދުމަތް ބޭނުން ކުރެއެވެ. އަދި އެ އިރާދަ އޮތްފަރާތް ދިނަތަކުންތަކުގެ ހިންގުމުގެ އިރުތާގައި އޮފީހަށް ވާގި ނިކުމެ ބާރުވެރިކަމެއް ލާލައިވެއެވެ.[723] މިއީ ދިރާސާކުރާއިރުގައި އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ މަކަރާއި ހީލަތުގެ ކުށްތަކުގައި އޮންނަ ދިނަ ވަގުތުތަކެކެވެ.

އިންޓަރނެޓް މެދުވެރިކޮށް މަކަރާއި ހީލަތްހެދުމަށް ބޭނުންކުރާ އުކުޅުތައް

އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ ކުށްތަކުގައި ކޮމްޕިއުޓަރ ގެ މަދަދުގައި ހިންގާ ބޮޑެތި އިންސާނުގެ ފަރާތުން ވާއިރުމާލު ބޮޑުވެ. އެގޮތުން، ކުށްކުރާ ފަރާތްތަކުން، ސޯޝަލް އިންޖިނިއަރިން

[719] ޖުބައިރު، ޔޫސުފު ކާމިލް، މުހައްމަދު ނަޒުރީ، އަދި އަދީބު އިބްރާހީމް ކުރިސްޓާ ހަސަން ބަހައުއްދީން. "އިންޓަރނެޓް ސްކޭމްސް: ޓެކްނޯލޮޖީ ދަ ފޯން އަދިބ އާދަ ދަ އިންޓަރނެޓް". އިންޓަރނޭޝަނަލް ޖާނަލް އޮފް ކޮމްޕިއުޓަރ ސައިންސް އިޝޫސް (އައިޖޭސީއެސްއައި)، ވޮލިއުމް 2، ނަންބަރު 4، (އިންޓަރނޭޝަނަލް ސެޕްޓެމްބަރ 2011): 559-565

[720] ކުރީގެ ހަވާލާ

[721] ކުރީގެ ހަވާލާ

[722] 'ފްރޯޑް ސެކްޝަން (އޮފްއާރޓީ)' (ކްރިމިނަލް ޑިވިޝަން | ފްރޯޑް ސެކްޝަން (އޮފްއާރޓީ) | އޮފިސަރގެ ޑިޕާޓްމަންޓް އޮފް ޖަސްޓިސް، 17 އޭޕްރީލް 2024) <https://www.justice.gov/criminal/criminal-fraud> އެކްސެސްކުރި: 7 ޖޫން 2024

[723] ކުރީގެ ހަވާލާ

ބޭނުންކުރެވޭން މިހެންގެ ވިސްނުމާއި ކުޅި، އެތިހުނަރަށް ޓެކްނޯލޮޖީއާގެން ކުރުކުރާ ފަރާތްތަކަށް ފިނޭޝަލް އަމިއްލަރަށް އުފެދިދެއެވެ.[724] އާންމު ބޭނުމަކަށް އަދި ވިޔަފާރީގެ ބޭނުމަކަށް ބޭނުންކުރުން އާންމުވެފައިވާ ސޯޝަލް ނެޓްވޯކިންގ ޕްލެޓްފޯމްސް ތަކަކީ ކުރުކުރާމީހުންގެ ޝިކާރައަކަށްވެފައިވާ ކުރުކުރުމުގެ އެއް އުސޫލެވެ. އެގޮތުން، ކުރުގެ ޝިކާރައަކަށްވެފައިވާ ފަރާތުގެ ހަޤީންތަކާއި އިތުބާރު ހޯދުމަށްފަހު އެކަމުގެ ނާޖާއިޒު ފައިދާ ނަގުމާއި، ފިނޭންސް ލިބޭނެ ބޭނުންކުރެވޭން މަކަރާހީލަތުގެ ކުށްތައް ހިނގުން ހިނގައެވެ. އަދިއިތުރު އެނގޭ ގަދަރުން ރައްކާތެރިކަމާ ސިވިލްސާޖަމާޢަތުގެ ހުރިހާ ކުރުޤާނޫނު، ސަރުކާރު ކުރަމުން ކުރުތަކުގެ ދާއިރާއިން އެއްވެސް ކުރުކުރުމުގެ ބާވަތަކީ ކުރުގެ.[725] މީގެ އިތުރުން، ޝިކާރައަކަށްވާ މީހާގެ އާއިލާ މީހުންގެ ނުވަތަ ރަށްޓެހިން ކުރުތަކުގެ ޖާގަތައް ބޭނުންކުރެވޭން އޮންލައިން ޕްރޮފައިލް އެއް ހަދައިގެން ޝިކާރައަކަށްވާ މީހާ އާއި ވާހަކަ ދައްކައިގެން ޓެކްނޮލޮޖީގެން މަކަރާ ހީލަތުން ޑޮލަރު ނަގާ އަދަދަށް ހިންގަނީއެވެ. ނުވަތަ ކަސްޓަމަރ ސަރވިސްގެ އޮފިސަރުންކަމަށް ބުނެ ކަސްޓަމަރ ސަރވިސްގައި ޝިކާރައަކަށްވާ ފަރާތުގެ ފޯނަށް ގުޅާ ހިފަހައްޓާ ފައިސާ ޖަމާކުރުމަށް ބުނެ ޓެކްނޮލޮޖީގެން މަކަރާއި ހީލަތުން ޑޮލަރު ނަގާ އަދަދު ހިންގައެވެ. އަދި އިންޓަރނެޓް ފްރޯޑް ހިންގާ މަކަރާއި ހީލަތުގެ ކުރުތައް މި ދިން ބާވަތަކަށް ނުވަތަ ދިން ބާވަތުގެ ދޮރުގައި ހުރި ބާވަތަކަށް ކުރިމަތިވެސް ގޮތަކުން ފެންނަށެވެ.[726] ދިވެހިރާއްޖޭގައި އިންޓަރނެޓް ފްރޯޑް ހިންގާ މަކަރާއި ހީލަތުގެ ކުރުތަކުގައި މިއުޅޭ ބޭނުންކުރާކަން ވަނީ ފާހަގަކުރެވިފައެވެ.

މަޢުލޫމާތު ނުވަތަ ފައިސާ ވަގަށް ނެގުމަށް ނުރައްކާތެރި ސޮފްޓްވެއަރ (މެލްވެއާ)، ސައިބަރާނުން ފިޝިންގ އީމެއިލް، ނުވަތަ ކޮމްޕިއުޓަރއެޖެ ވެފައިވާ އަސްލު ފިޝިންގ ވެބްސައިޓް ބޭނުންކުރެވޭ ވެބްސައިޓް އާންމު އެއް އުސޫލެވެ. އަދި މިއުޅުންތެރި އިންޓަރނެޓްގާއި ބެންކިންގުގެ ވަސީލަތްތަކުގެ ބޭނުންކުރުމުގައި މިފަދަ މަކަރާއި ހީލަތުގެ އަދަދުތަކުގެ ހިންގުން ހިންގައެވެ. އަދި އިންޓަރނެޓް ފްރޯޑް ހިންގާ މަކަރާއި ހީލަތުގެ ކުރުތައް މި ދިން ބާވަތަކަށް ނުވަތަ ދިން ބާވަތުގެ ދޮރުގައި ހުރި ބާވަތަކަށް ކުރިމަތިވެސް ގޮތަކުން ފެންނަށެވެ.[727]

އިންޓަރނެޓް ފްރޯޑް ހިންގާ މަކަރާއި ހީލަތުގެ ކުށްތަކުގެ ތަފްސީލު

އިންޓަރނެޓް ފްރޯޑް ހިންގާ މަކަރާހީލަތުގެ ކުށްތައް ކަމަށް ބޭނުމުގައި އެވަރި، މާލީ ފައިދާއަށްޓަކައި ފަރުދުން ނުވަތަ ޖަމާޢަތްތަކުން ޓެކްނޮލޮޖީގެން އިންޓަރނެޓް ފްރޯޑް ހިންގާ އެކިއެކި ސްކީމްތަކެވެ. ޓެކްނޮލޮޖީގެ ކުރިއެރުމާއި އިންޓަރނެޓް ބޭނުންކުރުން އިތުރުވުމުން މަކަރާއި ހީލަތުގެ ކުށްތަކުގެ އަދަދު އިތުރުވެ، ދުނިޔޭގެ ފުށުތަކުގައި އެއް ބައި ކާނުބޭފުޅުން ފެނިފައިވެއެވެ.[728] އެގޮތުން ތިރީގައި މިވަނީ އާންމު އިންޓަރނެޓް ފްރޯޑް ހިންގާ މަކަރާއި ހީލަތުގެ ކުށްތަކާއި އޭގެ ހުލާސާ ތަފްސީލުތަކެވެ.

ފިޝިންގ

ފިޝިންގ އަކީ ކުށްވެރިން ސައިބަރދޫން އީމެއިލް، ވެބްސައިޓް ނުވަތަ މެސެޖު ބޭނުންކުރުން ވަކިވަކި ފަރުދުންނަށް ޓެކްނޮލޮޖީގެން

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[724] އަބްރަހަމް، ޝާރީ، އެންޑް އިންޑް ޝައްބާ ޗައުދަރީ-ސޯމާނީ. "އޯވަރވިއު އޮފް ސޯޝަލް އިންޖިނިއަރިންގ މެލްވެއަރ: ޓްރެންޑްސް، ޗެލެންޖަސް، އެންޑް ރިކޮމެންޑޭޝަންސް". ބިހޭވިއަރަލް އިން ސައިންސަސް 32، ނަންބަރު 3 (2010): 183-196

[725] ރާބިޢާއު، ކައުލަރު، ބިރްވް ބާރ، އަބްދުއްރަހީމް ޢުމައިރު އަލްޖަރީ އަދި އަލްއުބައިދު ބަދްރަސްޝިދު. "އޯވަރވިއު އޮފް ސޯޝަލް އިންޖިނިއަރިންގ އެޓޭކްސް އޮން ސޯޝަލް ނެޓްވޯކްސް." ޕްރޮސީޑިއާ ކޮމްޕިއުޓަރ ސައިންސް 198 (2022): 656-661

[726] ކުރީގެ ހަވާލާ

[727] ކުރީގެ ހަވާލާ

[728] ފެޑެރަލް ބިއުރޯ އޮފް އިންވެސްޓިގޭޝަން، 'އިންޓަރނެޓް ފްރޯޑް' (ފެޑެރަލް ބިއުރޯ އޮފް އިންވެސްޓިގޭޝަން) https://www·fbi·gov/scams-and-safety/common-scams-and-crimes/internet-fraud އެކްސެސްކޮށް: 11 ޖުލައި 2024

ޓްރެކިންގް، ޕާސްވޯޑު، އަދި ކްރެޑިޓް ކާޑު ނަންބަރު ފަދަ ނާޒުކު ޗާޓް އަދި މާލީ މައުލޫމާތު ހޯދުމެވެ. ފިޝިންގ ޢަމަލުގެ ބޮޑުންނަށްޓަކައިގެން ހިންގާ މަކަރާ ހީލަތްތަކުގެ ކުންފުނިތަކުގެ ތެރޭގައި ބޭރު މާލީ ގެއްލުންތަކާއި، އައިޑެންޓިޓީ ވަގަށް ނެގުމާއި، އަމިއްލަ އަދި ކޯޕަރޭޓް ސެކިއުރިޓީއާ ހެކްކުރުން ހިމެނެއެވެ، ވަގަށް ނަގާ މައުލޫމާތު ގިނައިން ބޭނުންކުރަނީ އިތުރު މަކަރާއި ހީލަތްތަކަށް ހޯދުމަށް ނުވަތަ ވިއްކައިލުމަށެވެ.[729] މި ބާވަތުގެ ކުށް ދިފާޢުކުރުމުގައި ހިންގާ ގޮތުގެ އާންމު މިސާލަކީ ސިޔާސީ ހަރަކާތްތަކާ ގުޅޭ ފަރާތުގެ ފޯނަން ނުވަތަ އެސްއެމްއެސް މެސެޖްގެ ޓެކްސްޓްއިން މުއައްސަސާއެއްގެ ނަމުގައި މެސެޖް ނުވަތަ މެއިލްތައް އޭގައިވާ ލިންކަށް ފިޓަން ބުނުމެވެ. އަދި މި ލިންކަށް ފިޓުމުން އޭގައި އޮފިޝަލް ފޯމެއް އޮޅުވާލާ ޕާސްވޯޑު ނުވަތަ ބޭންކުގެ މައުލޫމާތު އެންޓަރ ކުރަން ހުށަހަޅައެވެ. އަދި މިފަދަ އެމައުލޫމާތު އެންޓަރ ކުރުމުން އެ މައުލޫމާތު ކުރިއަށްގެންދާ އަޕްލޯޑުކުރަން ދެއެވެ. އެހެންކަމުން މިއީ ވަރަށް ނުރައްކާތެރި ބާވަތުގެ ކުށެކެވެ. ސަބަބަކީ ފިނޭންޝަލް ވާހަކަ ދެކެވޭ އަސްލުގައި ރައްކާތެރިކަމަކީ އަންނަކަމެއް، ނުވަތަ އާއިލާގެ މީހަކު ކަމުގައި، ނުވަތަ ޕްރޮފެޝަނަލް ކަމެއް ނިސްބަތްވެއެވެ. އަދި މިއީ ދިފާޢުކުރުމުގައި ވަރަށް އާންމުކޮށް ހިނގަމުންދާ ކުށްއެކެން ފާހަގަވެއެވެ.

ބިޒްނަސް އީމެއިލް ކޮމްޕްރޮމައިޒް

ބިޒްނަސް އީމެއިލް ކޮމްޕްރޮމައިޒް (ބީއީސީ) އަކީ ވިޔަފާރީގެ އީމެއިލްތަކާ ގުޅުން ހުރި އިމްބާރާއި ބާރު ބޭނުންކޮށްގެން ހިންގާ ސަޕްލައިގެ މުޢާމަލާތްތަކަށް އަމާޒުކޮށްގެން ހުރި ނަގަ މުއާމަލާތްތަކުގެ ހިންގުމަށް ނުވަތަ ނާޖާއިޒު މައުލޫމާތު ވަގަށް ނެގުމަށް، ވިޔަފާރި އީމެއިލް އެކައުންޓްތަކަށް ވަދެ ނުވަތަ ސްޕޫފް ކުރާ މަކަރާއި ހީލަތުގެ ޖަމާޢަތްތަކެވެ.[730] އެބަޔަކުންނަށް އީމެއިލް އެކައުންޓްތަކަށް އެކްސެސް ލިބޭނީ ފިޝިންގ މެލްވެއަރސް، ސޯޝަލް އިންޖިނިއަރިންގ ނުވަތަ ޕާސްވާޑެއްގެން ލޮގިން ކްރެޑެންޝަލްސް ކޮމްޕްރޮމައިޒްކުރުމުން، ނުވަތަ ނަބައި އޮތެންޓިކޭޝަން ނުވަތަ ލިންކް ޕާސްވޯޑް ރިކަވަރީ ނުލާ ދޫކުރުން ބޭނުންކޮށްގެންނެވެ. ބީއީސީ އީމެއިލް ކޮމްޕްރޮމައިޒް ކެމްޕެއިންތަކުގައި މިބާވަތުގެ ކުށްތައް ދިފާޢުކުރުމުގައި ޖަމާޢަތް ހިންގަނީ ރިސްކެއް ދާއިރާގައި ބޭއްވި ފައިސާއެއް ފަދަ ބޭއްވި ވިޔަފާރި ހިންގާ ފަރާތްތަކެއްގެ އަދާކުރާ ބަޔަކުން ފަރާތްތަކަށް ފޮނުވައިލާ މަކަރުހީލަތް ހަދައިގެންނެވެ.[731]

ސަޕްލައިޗެއިން އިންވޮއިސް ސްކާމް (ސަޕްލައިޗެއިން ސްކީމް ފްރޯޑްވައިގެން)

ސަޕްލައިޗެއިން އިންވޮއިސް ސްކާމް އަކީ ވިޔަފާރި ކުރުމަށްފަހު ސަޕްލަ ޗެއިން އިންވޮއިސް ނުވަތަ ސަޕްލައިޗެއިން ސްކީމް ފްރޯޑްވެއެވެ. އެގޮތުން ފިނޭންސް ވިޔަފާރިކުރަން އެކަކުގެ އެއްބާރު ނަގުދުކޮށްފަ ކުންފުނިތަ އަދިއެކަން ސަޕްލައިޗެއިން ސްކީމް ފްރޯޑްއެވެ. ނުވަތަ އިންޑިވިޖުއަލް އެކައުންޓަށް ވިޔަފާރި ކުރި މުދަލުގެ އަގު ފިނޭންސްގެ އެކައުންޓް ނަންބަރު ފަދަ މައުލޫމާތު އެހެން ފަރާތަކަށް ފްރޯޑްވައިގެން ސަޕްލައިޗެއިން ސްކީމް ހަދުމެވެ.

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[729] ފެޑެރަލް ޓްރޭޑް ކޮމިޝަން، 'ފިޝިންގ ސްކޭމްސް ދެނެގަނެ އެކަމުން ދުރުހެލިވާނެ ގޮތް' (އޮގަސްޓް، 2024) https://www·consumer·ftc·gov/articles/how-recognize-and-avoid-phishing-scams 8 ޖުލައި 2024

[730] 12 ބިލިއަން ޑޮލަރުގެ ސްކޭމް' (އޮކްޓޫބަރު، 2023) https://www·fbi·gov/news/stories/business-email-compromise-on-the-rise އެކްސެސްކުރީ: 8 ޖުލައި 2024

[731] ނާޒިމް، 'ކޮންފިޔުޝަންގެ އެކައުންޓުން 1·9 މިލިއަން ނަގި ބީޖީ ސްކޭމްއެއް، 158 މިހަކު ބައިވެރިވޭ!' މިހާރު (11 ޖުލައި 2024) <https://mihaaru·com/news/135580> އެކްސެސްކުރީ: 21 އޮގަސްޓް 2024

ރެންބަލް އެންޑް ލޮޓަރީ ސްކޭމް (އެޑްވާންސް ފީ ފްރޯޑް ނުވަތަ ގިނަ އަދަދެއްގެ ފައިސާ ލިބިފައިވާކަމަށް ބުނެ)

ރެންބަލް ސްކޭމްތަކަކީ ގޭގެ ފޯރިން ނުވަތަ ޖެކްޕޮޓް ވުޒާރާތަކުގެ ގޮތުގައި ހެދިގެން ކުންފުނިން އަލުވާލައިގެން ކުއްޔަށް ނުދޭތޯ، ނޯޓް، ނުވަތަ އެހެން މިހާކަށް ނިސްބަތްވާ ޖެކްޕޮޓަކަށް ޑިޕޮސިޓް ނުވަތަ ކުޑި ދައްކަމަށް މަކާރާއި ހިލަތުން އަލުވާލައިގެން ޝިކާރައަކަށްވާ ފަރާތްތަކުން މަޖުބޫރުކުރުވެން ފައިސާ ހޯދައެވެ. އަދި މިފަދައިން ޝިކާރައަކަށްވާ ފަރާތްތަކަކީ ކުންމެވެސް ގޮތަކުން އެކަމަށް ބޭނުންޖެހި ނުވަތަ ސަރުކާރުގެ ގޮތުގައި ޝިކާރައަށް ޝިކާރަވާ ފަރާތްތަކަށް ގޮތަކީ މިނަ ފަހުން ވެރިޔާ ފަރާތްތަކެވެ.[732] މިބާވަތުގެ ކުށަށް އަންދާޒާ ހިންގާފި ސަރުކާރުން ބިޔަޕާރިކުރުގެ މަސްތުވާތަކަށް ކުރިއަށް ގެންދާ ދުވަސްވަރުގައެވެ. އަންދާޒާ ފަރާތް ލިސްބަކުން ނުވަތަ އެއްޗެއްސެއް ގޮތަކުން މިފަދަ ސައިޓުތަކުގައި ބައިވެރިވުމަށް ފަރާތްތަކާއި އަދި ބައިވެރި ނުވާ ފަރާތްތަކަށް ގުޅައިގެން ފޯމް ނުވަތަ އެޑްވާންސް ލިބިފައިވާކަމަށް ބުނެ މަކާރާ ހިލަތުން އަލުވާލައިގެން ފައިސާ ހޯދުމާއި ޗީޓިންގ އާއި އިންޓަރނެޓް ބޭންކިންގެ އަދި ސޯޝަލް މީޑިއާ އެކައުންޓްސްތަކުގެ އެކްސެސް ހޯދައިގެން އޮޅުވާ މަކާރާހިލަތުގެ އަމަލުތައް ހިންގައެވެ.[733]

ބޭންކުން ކަމަށް ބުނެ ގުޅައިގެން އޮޅުވައިލުން

ބޭންކުން ކަމަށް ބުނެ ގުޅައިގެން ޝިކާރައަކަށްވާ ފަރާތްތަކުގެ އިންޓަރނެޓް ބޭންކިން މައުލޫމާތުތައް ކުރުވިން ހޯދައެވެ. އެގޮތުން ކާވައިސީ އަޕްޑޭޓް ކުރުމަށް ނުވަތަ ހޯދާ އޯޓީޕީ ކޯޑު ބޭނުންވާ ކަމަށް ބުނެ ބުނެދީ ކުރުމަށްކަމަށް ބުނެ ނުވަތަ އެކައުންޓް މަކާރުވެރި އޮޅުވާލުމުގެ އަމަލެއް ހިންގައި ޝިކާރައަކަށްވާ ފަރާތްތަކުގެ ބޭންކު އެކައުންޓުތަކުން ގިނަ އަދަދެއްގެ ފައިސާ ވަގަށް ނަގައެވެ.[734]

އައިޑެންޓިޓީ ތެފްޓް

އައިޑެންޓިޓީ ވަގަށް ނެގުމުގައި ހިމެނޭ، މީހެއްގެ ފޮޓޯއާއި، މީހެއްގެ ނަމާއި، ސޯޝަލް ސެކިއުރިޓީ ނަންބަރާއި، ކްރެޑިޓް ކާޑު ވަކިސްވާއި، ބޭންކު އެކައުންޓްގެ މައުލޫމާތު ފަދަ ޒާތީ މައުލޫމާތު ހޯދާ ނުޙައްގު ބޭނުންކުރާ ފަރާތްތަކަށް ހިފާ ނުވަތަ އެނގިހުރެ ޙަރާމްތަކުގެ ހިންގުމެވެ. ކުރެވިދާނެ މި މައުލޫމާތު ހޯދައި ޖިނާއީ އިޖުރާތަކާއި، ސްޓޮކް ފްރޯޑްތަކާއި، ޔުނިވަރސަލް ކްރެޑިޓް ބެނިފިޓްތަކާއި، ޓެކްސް ރިފަންޑްސް ފަދަ ދެއިން ނުވަތަ ވިޔަފާރިއުންގޮތަކުން ވަގަށް ނެގުމާއި، ސޯޝަލް އިންޝުއަރެންސް ބެނެފިޓްސް ދޮގުކުރެވޭނެއެވެ. ވަގަށް ނަގާފައިވާ މައުލޫމާތު ބޭނުންކޮށް، މާލީ އެކައުންޓްތަކަށް ވަނުމާއި، ކްރެޑިޓް ކާޑު އެދުމާއި، އަލުވާލައިގެން ބޯކް ރިޓަރން ހުށަހެޅުމާއި، ނުވަތަ ޝިކާރައަކަށް ވެފައިވާ މީހާގެ އައިޑެންޓިޓީގެ ދަށުން އެހެން ހިންގާކަށްތައް ހިންގުމަށް ބޭނުންކުރެއެވެ.[735]

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[732] ނޯޓަން، 'އެވޮއިޑިންގ ލޮޓަރީ އެންޑް ސްވީޕްސްޓޭކްސް ސްކޭމްސް' (ނޯޓަން، 2024) https://us.norton.com/blog/lottery-scams އެކްސެސްކުރެވުނު: 8 ޖުލައި 2024

[733] ޢާލިމް، 'ފޭކް ލިބުނު ކަމަށް ބުނެ މީހުންގެ އެކައުންޓުން ދަ ލައްކަ ރުފިޔާ ނަގައިފި' އަވަސް (9 February 2024) <https://avas.mv/139239> އެކްސެސްކުރީ: 21 އޮގަސްޓު 2024

[734] ބީއެމްއެލްގެ ނަމުގައި ގުޅައިގެން 60،000 އަށް ވުރެ ގިނަ ރުފިޔާ ހޮޑި މަސައްކަތެއް!' މިހާރު (13 June 2021) <https://mihaaru.com/people/92840> މައުލޫމާތު ނެގި: 21 އޮގަސްޓު 2024

[735] ފެޑެރަލް ޓްރޭޑް ކޮމިޝަން، 'އައިޑެންޓިޓީ ތެފްޓް ދެނެގަނެ އެކަމުން ދުރުހެލިވާނެ ގޮތް' (އެފްޓީސީ، 2024) https://www.ftc.gov/identity-theft އެކްސެސްކުރެވުނު: 8 July 2024

އިންވެސްޓްމަންޓް ފްރޯޑް

މިފަދަ ސްކޭމްތަކުގައި ޕިރަމިޑް އެން ޕޮންޒީ ސްކީމް، ކްރިޕްޓޯ ކަރަންސީ އަދި ފޮރެކްސް އެކައުންޓްތަކާ ގުޅޭ ޓްރޭޑިންގ ޕްލެޓްފޯމްތައް ބޮޑު ސިޔާރަތަކާ މިހުނަށް މަކަރާއި ހިލަތާއި އޮޅުވާލުމުގެ އުކުޅުތަކެއް ބޭނުންކޮށްގެން މި ފަދަ ސްކީމްތަކަކީ އިންވެސްޓްމަންޓް ކުރުމަށް ލޯބިޖަހައްސައެވެ. އެމީހުން ކޮންބައްޓަކާ ފަރަނީ ނުދޫވާ ފެން ކޮށްތަކާއި ޕްލޭނެއް ނަމަވެސް ސްކޭމްތަކުން ވަރަށް ކުޑަ މުއްދަތެއްގެ ތެރޭގައި އިޚްތިޔާރުގެ ބުނެދިނުމަކީ އިންވެސްޓްމަންޓް ފައިދާތަކާ ގުޅޭ ގޮތުން ދޭ ހިތްވަރެއް ސްކީމްތަކުން ފައިދާވާނެ ބޮޑެތި ފައިދާތައް ލިބިދޭނެކަމަށެވެ.[736] މިގޮތުން ދިވެހިރާއްޖޭގައި ހިނގި އެންމެ މަޝްހޫރު އެއް ކޭސްއަކީ ފާނީ ރައްޔިތުންގެ މަޖިލީހުގެ ފުރަތަމަ ރައީސްގެ ކުރިގެ މެންބަރު އަލީ ހުސެން ފައުމީ ހިންގި "ކޮންޓް ފޮރެކްސް" ސްކޭމްއެވެ.[737] މިސްކޭމްގެ ސަބަބުން މި އިންވެސްޓްމަންޓް/ފޮރެކްސް ސްކޭމްގައި ބައިވެރިވި ފަރާތްތަކަކަށް ގިނަ އަދަދަކަށް ގެއްލުންވެ މިއަދާހަމައަށްވެސް އެ ގެއްލުންގެ ފުރިހަމަ ބަދަލު އެކަމުގައި ބައިވެރިވި ފަރާތްތަކަށް ނުލިބޭކަން، ކަމާބެހޭ އިދާރާތަކުން ޝާއިޢުކޮށްފައިވާ މައުލޫމާތު ތަކުން އެނގެއެވެ.

އޮކްޝަން އެންޑް ރިޓޭލް ފްރޯޑް

ނިލާމާއި އޮންލައިން މާކެޓްތަކުގައި ސްކޭމަރުން ފައިސާ ދެއްކުމަށް ފަހު ގުދުރަތީ ނުކުތް، އޮންލައިން މުއާމަލާތްތަކުގެ އިތުބާރާއި ނަފްސާނީ މަސައްކަތު ބަލިކަށިކަމުން އަމަލުތައް ހިންގައެވެ. މިގޮ އިތުރުން ޝިޕިންގް ބެލުން ފަދަ ބޭނުމެއް ދެއްކުމަށް ބޭއްބިލްސްގެ ތަކެއް ކަމަންޏާ އަދި

ބޭނުމަށް ކުރުވަނީ ސަލާމަތް ސްކޭމެއް ބޭއްވެ ކުރިމަތިލާ ބިޑްތައް ބޭނުންކޮށްގެން ސަރަހައްދު ތަކުގެ ކުރިއަށް ފައިސާ ދެއްކުމަށްފަހު ޕްރޮޑަކްޓް ނުދީ، އެބައި ނަމަވެސް ރޭޓިންގތައް އިތުރުކޮށް، އެއަށް ފަހު ބިޑުންތަކަށް ކުރިމަތިލާ ބޭނުމަށް ސްކޭމްގެ ޕްރެކްޓިސް ހިނގައެވެ.

ރޮމޭންސް ސްކޭމް (ސައިބަރނެޓް އެކުއްސުތަކުގައި ހަދައިގެން ނުވަތަ ހަކުރުވައިގެ ލޯބި ބޭނުންކޮށްގެން)

އޮންލައިން ޑޭޓިން ސްކޭމްގެ ނަމުން ވެސް ނަންދެވިފައިވާ ރޮމޭންސް ސްކޭމްތަކުގައި މަކަރުވެރިން ޑޭޓިން ސައިޓްތަކާއި ސޯޝަލް މީޑިއާ ޕްލެޓްފޯމްތަކުގައި ސައިބަރނެޓް ޕްރޮފައިލް އުފައްދައި ސައިކޯ ނުކުތާ ސޯޝަލްއިންޖިނިއަރިންގ ވެފައިވާ މީހުންނާ މަކަރުވެރި ގުޅުންތަކެއް އުފައްދައި، އެންމެ ފަހުން ފައިސާ ނުވަތަ ޚާއްސަ މައުލޫމާތު ފޮނުވައެވެ. ސްކޭމަރުން ވަގަށް ނަމާއި ފޮޓޯތަކާއި ޒާތީ ތަފްސީލުތައް ބޭނުންކޮށްގެން ޝައުގުވެރި އަދި ގާބިލްކަމުގެ ޕްރޮފައިލްތައް އުފައްދައިދީ، ޑޭޓިން ސައިޓްތަކާއި ސޯޝަލް މީޑިއާ ނުވަތަ އީމެއިލް މެދުވެރިކޮށް ހަމަޖެހޭ ގޮތުން ނާޒުކު ފަރާތްތަކަށް އަމާޒުކޮށްގެންނެވެ.[739] ރޮމޭންސްސްކޭމްއަކީ ދިވެހިރާއްޖޭގައި އާންމުކޮށް ހިނގާ ކަމެކެވެ. މިގޮތުން މީހުންގެ އިތުބާރު ހޯދައިގެން ގުޅުން ބަދަހިކޮށް ސައިބަރނެޓް އެކުއްސުތަކުގައި ބޭނުންކޮށް

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[736] ފެޑެރަލް ޓްރޭޑް ކޮމިޝަން، 'އިންވެސްޓްމަންޓް ސްކޭމްސް' (އޮފީޝަލް، 2024) https://www.ftc.gov/investment-scams 8 ޖުލައި 2024

[737] އަހުމަދު ސައީދު، 'އިންވެސްޓް ކުރި ފަރާތްތަކުގެ ފައިސާ "ގެއްލިއްޖެ": ކޮންޓްރެކްޓް' އަދަދު (5 July 2022) <https://adhadhu.com/article/26501>އެކްސެސްކުރި: 21 އޮގަސްޓް 2024

[738] ކުރީގެ ހަވާލާ

[739] އެފްބީއައި، 'ރޮމޭންސް ސްކޭމްސް' (އޮފީޝަލް، 2023) https://www.fbi.gov/scams-and-safety/common-scams-and-crimes/romance-scams 8 ޖުލައި 2024

ފައިސާއަށްއެދުމާއި، ވަކި ހިސާބަކުން ގެއްލުމާއި، ނުވަތަ ބޮޑުކޮށްލައިފި ކޮށްގެން އިތުރު ކުށަކަށް ކުރެއްވޭ.[740]

އިންޓަރނެޓް ގުދުވެރިޔާން ހިންގާ މަކަރާއި ހީލަތްތަކުގެ މައްސަލަތަކަށް ތަޙުޤީޤުކުރުމުގައި ގާނޫނީ ގޮތުން ފުރުޞަތުން ދިމާވާ ގޮންޖެހުންތަކާއި އެއަށް ހުށަހަޅާ ހައްލު

އިންޓަރނެޓް ގުދުވެރިޔާން ހިންގާ މަކަރާއި ހީލަތްތަކުގެ މައްސަލަތަކަށް ތަޙުޤީޤުކުރުމުގައި ފުރުޞަތުން ގާނޫނީ ގޮތުން ދިމާވާ ގޮންޖެހުންތައް މިދިރާސާގެ އަޅުގަނޑު ހޯދި އެކަމަށް ދިރާސާގެ އަޅުގަނޑު ހައްލު ހޯދައިދިނުމަކީ މިދިރާސާގެ އެންމެ މައިގަނޑު އެއް މަޤްޞަދެވެ. އެގޮތުން ތިރީގައި މިވަނީ ދިވެހި ފުލުހުންގެ ޒާތީ ތަޖުރިބާ މިފަދަ މުއައްސަސާތަކުން ތަޙުޤީޤުކުރުމުގައި ދިމާވާ ގޮންޖެހުންތަކާއި އަދި މިދިރާސާގެ އަޅުގަނޑު ހުށަހަޅާފައިވާ ހައްލުތަކެވެ.

މުއައްސަސާތަކުން ލިބޭ އެއްބާރުލުން އިތުރުކުރުމާއި ގާނޫނުތައް ހަރުދަނާކުރުން

އިންޓަރނެޓް ގުދުވެރިޔާން ހިންގާ މަކަރާއި ހީލަތްތަކުގެ މައްސަލަތަކަށް ތަޙުޤީޤުކުރުމުގައި ދިމާވާ ގޮންޖެހުންތަކަށް ފާހަގަކޮށްފައިވާ މުއައްސަސާތަކުން ލިބޭ އެއްބާރުލުން ކުޑަވުމާއި، ދިވެހިރާއްޖޭގައި މިކަމާއިގުޅޭގޮތުން ހުރިހާ ގާނޫނުތަކުގައި ހުރި ގޮންޖެހުންތައް ހިމެނެއެވެ.[741] މިކަން ހައްލުކުރުމަށްޓަކައި އެއް މުވައްސަސާ އަނެއް މުވައްސަސާއާއި އޮންނަ ގުޅުން ބަދަހިވުމަކީ ވަރަށް މުހިއްމުކަމެކެވެ. އަދި ހުރިހާ ގާނޫނުތަކަށް އިސްލާހުގެނެސް ހަރުދަނާކުރުމަކީވެސް މުހިއްމުކަމެކެވެ.

ޚާއްޞަ ޓާސްކް ފޯސް އެއް އެކުލަވާލުން

އެއްމުވައްސަސާ އަނެއް މުވައްސަސާއާއި ދޭމެދު އޮންނަ ގުޅުން ރަނގަޅުކުރުމަށް މައުލޫމާތު ހިއްސާ ކުރުމުގެ އިންތިޒާމެއް ހަމަ ޖެހިފައި އޮތުމަކީ ވަރަށް މުހިންމު ކަމެކެވެ. މިގޮތުން މައުލޫމާތު ހިއްސާ ކުރުމުގެ ގޮތުން ޓާސްކް ފޯސް އެއް ހެދިފައި އޮތުމުން؛ އިންޓަރނެޓް ގުދުވެރިޔާން ހިންގާ މަކަރާއި ހީލަތްތަކުގެ ކުށްތައް ހިންގުމުގެ ކުރިން ދެނެގަތުމާއި، އެފަދަކަންތައް ހިންގުމުގެ ކުރިން އެކަން ހުއްޓުވުމުގެ ގޮތުން މަޝްވަރާ އޭޖެންސީ ހަރަކާތްތަކާއި ހިންގުމާއި، މިފަދަ ކުށްތަކުގެ ހިންގުމުން ފުރަތަމަ ތަޙުޤީޤުތަކުގެ ކޮންބައެއްކަމާއި، އަދި އެއަށްފަހު ޖާބި ކަށަވަރުކުރާ ގޮތާއި، ޓެކް ކަންތައްތަކުން ގޮތާއި އަދި ތަޙުޤީޤު ހިންގުމަށް ޒަރޫރީ އިންތިޒާމު ވެގެން ދަންނައެވެ. އެގޮތުން ބަލާއިރު ކުރިބައިގައި މިފަދަކަންތައް ފަހަރުކުރުމާއި، އެންމެން ހަރުދަނާ ތަޙުޤީޤުކުރުމަކީ ޚާއްޞަ ޓީމެއް ބޭނުންވާކަމެއް ހިނގުމާއި ބޭރުގެ ހަރަކާތް ގޮތުން މައުލޫމާތު ކުރިމަތިވުމާއި ކުރުމަށް ބޭނުންވާ މައުލޫމާތު ހޯދުމުގެ އިންތިޒާމު ހަމަޖެއްސުން ހިމެނެއެވެ.

ގާނޫނު ނަންބަރު: 24/2010، ދިވެހިރާއްޖޭގެ ބޭންކިންގ ގާނޫނު ހަރުދަނާ ކުރުން

ދިވެހިރާއްޖޭގައި ހިންގާ މަކަރާއި ހީލަތްތަކުގެ މައްސަލަތަކަށް ތަޙުޤީޤުކުރުމަށްޓަކައި ބޭންކުތަކާ މައުލޫމާތު ހޯދުންކުރުމުގައި އެންމެ ކައިރިން ހަރަކާތްތެރިވާ އެއް މުއައްސަސާއަކީ ދިވެހިރާއްޖޭގެ ބޭންކުތަކެވެ.[742] އެހެންކަމުން، ބޭންކިންގ ގާނޫނަށް ތިރީގައި މިވާ އިސްލާހުތައް ގެންނަމުން ދިއުން.

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[740] ހަމްދާނާއިޝަތު ހަސަން، ""ޕްރޮމޯޝަން ސްކީމް" ބަލަން ސަރަހައްދުން ފޯރުކުރުން އޮޑިޓަރ' މިނޫސް (16 August 2023) <https://www·minoos·mv/9330> ބަލާލެވުނު: 21 އޮގަސްޓް 2024

[741] ސްޓޭޓް އެންޑް އިންޓަރނޭޝަނަލް ކޯޓް، ބޭންކް އޮފް މޯލްޑިވްސްގެ ކަސްޓަމަރުންގެ އެކައުންޓްތަކުން އެ އެކައުންޓްތަކުގެ ފައި ފަރާތްތަކަށް ނަގާ ފައިސާ ކަސްޓަމަރުގެ މައްސަލަ ކޯޓުން ދިރާސާކޮށް ނިންމުމުގެ ރިޕޯޓް، ރިޕޯޓް

[742] ސްޓޭޓް އެންޑް އިންޓަރނޭޝަނަލް ކޯޓް، ބޭންކް އޮފް މޯލްޑިވްސްގެ ކަސްޓަމަރުންގެ އެކައުންޓްތަކުން އެ އެކައުންޓްތަކުގެ ފައި ފަރާތްތަކަށް ނަގާ ފައިސާ ކަސްޓަމަރުގެ މައްސަލަ ކޯޓުން ދިރާސާކޮށް ނިންމުމުގެ ރިޕޯޓް، ރިޕޯޓް ނަންބަރު: M19/SOE/2023/01، ކޯޓް އެންޑް ރިސަރޗް ސެކްޝަން، ރައްޔިތުންގެ މަޖިލީހުގެ އިދާރާ

1. މަކަރާއި ހީލަތުން ފައިސާ ޖަމާވާ އެކައުންޓުތަކަށް ޖަމާވާ ފައިސާ ޖަމާކުރި އެކައުންޓުތަކުގެ ވެރިފަރާތަށް ނުފޫނާ އެފައިސާ އެހެން އެކައުންޓުތަކަށް ޓްރާންސްފަރ ކުރާ ފަރާތްތަކާއި އާޚިރުގެ ބެނެފިޝަރީން ނުވަތަ އަސްލުވެސް ގޮތަކަށް އެފައިސަ ނުގެއްލި ހުރެއް ކަމަށް ކަނޑައެޅުން.
2. މަކަރާއި ހީލަތުގެ މައްސަލަތައް ބަލަން ހުރަހަކަށްވާއި އަދި ތަޙުޤީޤުކުރުމުގެ އެކައުންޓާއި މައްސަލަ ހުރަހަކާ އެކައުންޓު ފްރީޒްކުރުން ޤާނޫނުން ކަނޑައަޅާ ވަގުތު ދުވަސްތަކުގެ ތެރޭގައި އެ ފައިސާ އާއި މުދާ ގެއްލުން ކަނޑައަޅައިފިނަމަ ފައިސާ ހޯދުމަށްޓަކައި ބައެއްބޭނުން ގެއްލިގެން ޤާނޫނަކުން އިސްލާހު ގެނައުން.
3. މި ޤާނޫނުގެ ދަށުން އިންޓަރނޭޝަނަލް ކޯޕަރޭޝަން ހިންގާ މަކަރާއި ހީލަތުގެ މައްސަލަތަކާ ގުޅޭ ތަޙުޤީޤުތަކަށް ހަރުދަނާ، އެ ޤަވާއިދުގެ ދަށުން ފުރުޞަތުގެ ނުވަތަ އެއްވެސް ބޭރުފުށު އިދާރާތަކާ މަޢުލޫމާތު ހިއްސާކުރުމަށް އެކަށީގެންވާ މުޢާހަދާތައް ކަނޑައެޅުން.

ޤާނޫނު ނަންބަރު: 43/2015، ދިވެހިރާއްޖޭގެ ޖިނާއީ ޕްރޮސީޖަރގެ ޤާނޫނު ހަރުދަނާ ކުރުން

ދިވެހިރާއްޖޭގައި ހިނގާ މަކަރާއި ހީލަތުގެ މައްސަލަތައް ތަޙުޤީޤުކުރުމަށް ފުރުޞަތު މައުލޫމާތު ހޯދި ތަފާސް މުއައްސަސާތައް ކަމުގައި ފުރަކަށްތިބި ޖިނާއީ ޕްރޮސީޖަރ ހިންގުމަށް ފުރުޞަތު ހުރި ގޮތަށްވެއެވެ.[743] އެހެންކަމުން ޖިނާއީ ޕްރޮސީޖަރ ޤާނޫނަށް ބޭނުމީ މިފަދަ އިސްލާހުތައް ގެނެސްދޭން ފެންނެވެ.

ޤާނޫނު ނަންބަރު: 2013/14، ޕްރިވެންޝަން އޮފް ޓްރެފިކިން އެކްޓް ހަރުދަނާ ކުރުން

ދިވެހިރާއްޖޭގައި ހިނގާ މަކަރާއި ހީލަތުގެ މައްސަލަތައް ތަޙުޤީޤުކުރުމަށް ދިމާވާ ގޮންޖެހުންތައް ޓެކްނިކަލް ފަރާތްތަކުގެ މުއައްސަސާތައް ގޮތުގައި ފިނޭންޝަލްއިންޓެލިޖެންސް ދިވެހިރާއްޖޭގެ ކަރަންސީ ސަރވިސްތައް. އެހެންކަމުން މިދާއިރާއިން ދިމާވާ ގޮންޖެހުންތައް ހައްލުކުރުމަށް ޕްރިވެންޝަން އެންޑް ޕްރޮފިޓް ޤާނޫނަށް ތިރީގައިމިވާ އިސްލާހުތައް ގެނަސްދޭން ފެނެއެވެ.

1. ޕްރިވެންޝަން އޮފް ސްކޫލްސްގެ އިންޓަރނެޓް ދުވަހުގައި ޕްރޮފިޓް ކަމުގައި މި ޤާނޫނުގެ ދަށުން ޤަވާއިދުން އެކުލަވާލައި ޕްރިޖެ ސުޕަރވައިސަރީ ފީސް އެއް ކަޑައަޅަން ގެންދިއުން މުހިންމެވެ.
1. އެމިރިކާގެ ނަންބަރުތަކުގައި ނަގާފައިވާ މޮބައިލް ނަންބަރާއި ބޭންކްއެކައުންޓްގެން، ނުވަތަ އައިޕީއެޑްރެސް ބޭންކްއެކައުންޓްގެން ކުރާ ކޮންމެތަކެއް އެ މީހާ ޓެލެނާ ނަގަން ޖެހެން.
2. މި ޤާނޫނުގެ ދަށުން އިންޓަރނޭޝަނަލް ކޯޕަރޭޝަން ހިންގާ މަކަރާއި ހީލަތުގެ މައްސަލަތަކާ ގުޅޭ ތަޙުޤީޤުތަކަށް ހަރުދަނާ، އެ ޤަވާއިދުގެ ދަށުން ބޭރުފުށު ޤައުމުތަކާ މަޢުލޫމާތު ހިއްސާކުރުމަށް އެއްބަސްވާ މުޢާހަދާތައް ކަނޑައެޅުން.
3. އަދި މި ޤަވާއިދުގެ ދަށުން، ރައްޔިތުންގެ ޖާތީގައި ކަނޑައަޅާ އެންމެހާ ސަރވިސް ޕްރޮވައިޑަރުންގެ އެ ޖާތީ ރައްޔިތުންގެ ސޯޝަލްމީޑިއާ، ރައްޔިތު ނުހަނު ފަރާތްތަކަށް ފިޔަވަޅުއަޅަންޖެހޭ ޤަވާއިދު ހެދުން.

ނަންބަރު: M19/SOE/2023/01، ކޮމިޓީ އެންޑް ރިސަރޗް ސެކްޝަން، ރައްޔިތުންގެ މަޖިލީހުގެ އިދާރާ

[743] ސްޓޭޓް އެންޑް ޕްރައިވެސީ ކޮމިޓީ، ބޭންކް އޮފް މޯލްޑިވްސްގެ ކަސްޓަމަރުންގެ އެކައުންޓުތަކުން އެ އެކައުންޓުތަކުގެ ވެރި ފަރާތްތަކަށް ނޭނގި

ފައިސާ ކަނޑައެޅުމާ މައްސަލަ ކޮމިޓީން ދިރާސާކޮށް ނިންމިގޮތުގެ ރިޕޯޓް، ރިޕޯޓް ނަންބަރު: M19/SOE/2023/01، ކޮމިޓީ އެންޑް ރިސަރޗް ސެކްޝަން، ރައްޔިތުންގެ މަޖިލީހުގެ އިދާރާ

2. މަޠުލޫބުން މަހަކު އެއްފަހަރު ފްރިޖަން ގޮޅިތަކެއް ބަލައިފާސްކޮށް ޤާނޫނާއި ޤަވާއިދާ ހިލާފު އެއްޗެއް ހުރިތޯ ބަލައި ފަސްކުރެވޭފަރާތުން އިންތިޚާބުކުރެވޭ ކަމުގައި ހަމަޖެއްސުން.

3. ހުކުމް ތަންފީޛުކުރާ ފައިދާގެ ފަރާތުން ޤާނޫނާއި ޤަވާއިދާ ހިލާފު އެއްޗެއް ފެންނައިރު ކުރުމުގެ ތަރުތީބެއް ކުރުވުމުން އެއީ ޖިނާއީ ބޮޑުކުށެއްކަމަށް ކަނޑައަޅައި ޤާނޫނު އިސްލާހުކުރުން.

މިފަދައިން ޤާނޫނުތަކަށް އިސްލާހުގެނެސް ގަވާއިދުތައް ހެދުމުން އިންޓަރނެޓް ޚިދުމަތްދޭ ފަރާތްތަކުގެ ބިލްތަކުގެ ގޮތުން ގެނެވޭ މަސްއޫލިއްޔަތު ތަރައްޤީކުރަން ތުރާ ފަސޭހަކަމެއް ލިބިގެން ދާނެއެވެ. މިގޮތުން އިޖުރާތު މި ތުރާ ފަސޭހަކަމެއް ލިބި ތަރައްޤީ މިހާރަށް ވުރެ ބޮޑު ސްޓޭޓަސްއެއް ކުރެވިދާނެ ކުރެވިޔަސްކަން އަދާބު ދިނުމުން އަވަސްވެގެން ދިއުމުގެ ސަބަބުން މިފަދަ ކުރެވުނު ހިނގާފައި މަޤްލޫބުން ދަންނަވަން ޖެހޭ ޙާލަތުތަކެއް.

7.3.1 ޕްރޮކިއުމަންޓް ތަރައްޤީ ކުރުމަށް ޑިޖިޓަލް މުއްދަތު އިސްލާހުކުރުން

މި ޤާނޫނުގައި ތަރައްޤީކުރުމަށް ޑިޖިޓަލް މުއްދަތު އާއި އެކަށީގެންވާ މުއްދަތުއްޖެ ބަލައި ތަރައްޤީކުރުމަށް އެކަށީގެންވާ މުއްދަތެއް ކަނޑައަޅަންވާނެއެވެ. އިންޓަރނެޓް މުދުވެރިކޮށް ހިންގާ މަސައްކަތް ބިޑްތަކުގެ މަސައްކަތެއްގެ ތަރައްޤީކުރަން ބޭނުންވާ ޑިޖިޓަލް ސޮފްޓް ވެރިޝަން ދުވަސްވަރާއި އެހެނިހެން ގާނޫނީ ހުއްދަތައް ދުވަސްވަރުގައި އަވަސް ޕްރޮސެސްތަކެއް ހިންގުން ގާނޫނީ މުއްދަތުތައް ތަރައްޤީކުރުމަށްވެސް މި ޤާނޫނުގެ ދަށުން ސައިބަރ ކްރައިމް އަދި ޖާތީ ކްރައިމް ޕްރޮސެސް ޤާނޫނު ސައިބަރ ސިކިއުރިޓީ ބޭނުންކޮށްގެން ހިންގާ ދިރާސާ އަށް ޖަރީމާ ތަރައްޤީ ކުރެވިދާނެއެވެ. މި ޤާނޫނުގެ ދަށުން ނިޔާ ކުރެވޭ ގޮތަށް ޤާނޫނު ހިންގާނަމަ ތަރައްޤީކުރެވިދާނެއެވެ. މިގޮތުން ބޭނުންވާ ސިޔާސަތުތަކާއި ޕްރޮސެޖަރ ސިޔާސަތު ތަންފީޛުކުރުމަށް ލާޒިމު ތަރައްޤީ އަދި މިންވަރުގެ ޤާނޫނު މަސްއޫލިއްޔަތާއި ޕްރޮސީޖަރތަކެއް ގާނޫނީ ވަޒީފާތައް ޕްރޮސެސް އަވަސް ތަރުތީބުކުރަނީ ހިމެނޭގޮތަށް ކުރުމަށް ޖެހިގެން ދާނެއެވެ. މިފަދައިން ސިޔާސަތުތައް ބައްޓަންކުރުމުން ޑިޖިޓަލް މުއްދަތު ތަރައްޤީ ޕްރޮސެސްތަކުގެ ފަސޭހަތަކާއި ވެގެންދާނެއެވެ.

ޑިޖިޓަލް ހިނގާތަކުގެ ސަލާމަތާއި ގުޅޭ ޤާނޫނުތައް

މި ޤާނޫނުގެ ދަށުން ޑިޖިޓަލް ހިނގާ ކުރުމަށް ސަލާމަތް ގައިޑްލައިންތަކާއި ނަމަވެ ޕްރޮސީޖަރތަކެއް ފަރާތްތަކެއް ގައިޑްލައިން ހިމެނޭ ކަމުގައި ވެދާނެއެވެ. އެގޮތުން، ޑިޖިޓަލް ހިނގާ އެއްކުރުމާއި، ރެކޯޑްކުރުމާއި، ސަލާމަތްކުރުމާއި ޤާނޫނީ ގައިޑްލައިންތައް އެކުލަވާލެވިދާނެއެވެ. މިގޮތަށް ސަލާމަތް ނަމަވެ ޤާނޫނު ފަސޭހަކަ

އިންޓަރނެޓް ޚިދުމަތްދޭ ފަރާތްތަކުގެ މަސްއޫލިއްޔަތާއި ގުޅޭ ޤާނޫނީ އެކުލަވާލުން

އިންޓަރނެޓް ޚިދުމަތްދޭ ފަރާތްތައް މަސްއޫލިއްޔަތު ގެނައުމަށް ހުރި ޤާނޫނީ (ސައިބަރ ލޯ) ނުބައިކަމާ އިންޓަރނެޓް ޚިދުމަތްދޭ ފަރާތްތަކުގެ މަސްއޫލިއްޔަތު ގެނައުމަށް ތަފާތު ގާނޫނު ބޭނުންވެއެވެ.[744] މި ޤާނޫނުގެ ދަށުން ގެނެވޭ ކުރުވުމުގެ ސަބަބުން ލިބޭ ޤާނޫނީ އެކުލަވާލުމާ ހިނގަނީ ބޭނުންވެއެވެ. ޢިލްމީ ގޮތުން، ފަރާތްތަކުގެ ޚިދުމަތް ގާނޫނީ ހިމާޔަތް، މިފަދަ ޤާނޫނީ އިޖުރާއާތުގައި އެކުލަވާލެވުމަށް ސަލާމަތް ފަރާތް ބައިވެއެވެ.

744 ވަހީދާ، ޚާލިދު. "ލީގަލް ރެސްޕޮންސް ޓު ސައިބަރ ކްރައިމްސް އިން ދަ މޯލްޑިވްސް: ޗެލެންޖަސް އެންޑް ޕްރޮސްޕެކްޓްސް." އައިޔޫއެމް ލޯ ޖާނަލް 23 (2015): 415

ޖެހިބަލާ ހުކުމްތަކާއި ޤާބިލުކަން ކަނޑައެޅުމާއި، އަދި ހުކުމްތަކުގެ ނަޒާހަތްތެރިކަމުގެ މިންގަނޑުތައް ކަނޑައެޅުން ހިމެނެންވާނެއެވެ.

އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ މަކަރާއި ހީލަތްތަކުގެ ޢަމަލުތަކަކީ ކުށެއް ކަމަށް ކަނޑައެޅުން

އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ މަކަރާއި ހީލަތްތަކުގެ ކުށްތަކަށް ޤާނޫނުކުރުން އެއީ ކުށެއްކަމަށް ޝަރުޢީ ކުށް މާނަކުރުމާއި ސަރުކާރު އިޤްތިޞާދީ ބައިނަލްއަޤްވާމީ ޝަރުޢީތަކާއި ތަބާނުވާކުރަނީ ދިމާވާ ގޮތަށް ބަޔާންކުރެވެއެވެ.[745] އެހެންކަމުން މި ފަރުދުން އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ މަކަރާއި ހީލަތްތަކަކީ މާނަކުރުމާއި ކުށްތަކަށް ކަނޑައެޅުމާއި އެކަށީ ކުރާ މިންވަރު އަދަބު ކަނޑައެޅުމުން ދިފާޢު ދޭނެ ފަރާތްތަކާއި، ދަޢުވާކުރުމަށް ފުރުޞަތު ދޭނެކަމެވެ. ކުރިއަށް ގެންދިޔުމުގެ މަސްޢޫލިއްޔަތު އެއްބަޔަކު ތަޢާރަފުވާ އެކުލަވާލައިގެން ޖަރީމާގެ އެއްގޮތަށް ފާލަނީ ބަދަލުކުރުވުން އެއްބަސްވުމާއި ކަމުގެ ނުވާތީ، އެކަމުގެ ރައްދުދޭން ފާރަވެރިކަމާއި ބަޔާން ކުރާނެ މާއްދާއިން ދަށުން ވާނީ ފާހަގަކުރެވިފައި ވެއެވެ.

ކޮރަޕްޝަނާއި ޖަރީމާ ހިންގުމަށް އިންޓަރނެޓް ބޭނުން ކުރުމުން ކުރިމަތިވާ

ބަޔަކު ޤާނޫނީ ބައިނަލްއަޤްވާމީ އެއްބާރުލުން ހޯދުމަށްޓަކައި މި ފަރާތް އެކުލަވާލައި ބައިނަލްއަޤްވާމީ ގޮތުން ހިމާޔަތާ މުޢާހަދާތަކުގައި ބައިވެރިވުމަށް މުހިއްމުކަމެވެ.[746] އެގޮތުން މައުލޫމާތު ޓެކްނޮލޮޖީ އެސޯސިއޭޝަން ޖަރީމާ (އެމް.އައި.ޓީ) ބަލާ އެކި ޤަވާޢިދުތަކާއި، ދިވެހި ސަރުކާރު ޤާނޫނު ހެދުމާއި ފާސްކުރުމާ ހަވާލުކޮށް ފިޔަވަޅުތަކާއި ނަހަމަ ގޮތުގައި އިސްތިޢުމާލުކުރުމާ ބެހޭ ކަންކަމުގައި މަޢުލޫމާތު ފޯރުކޮށްދިނުމުގައި މުހިއްމު ދައުރެއް އަދާކުރެއެވެ.

ފުލުހުންނަށް ދޭ ތަމްރީނާއި ވަސީލަތްތަކާއި އިމްތިޔާޒުން

ފުލުހުންނަށް ދޭ ތަމްރީނާ ވަސީލަތްތަކާއި މަޢުލޫމާތު ހުށަހަޅާ އިދާރާތަކުގެ ސިފައިން ވަރުގަދަ މަސްއޫލިއްޔަތުތަކާއި ބޭނުންކުރުމަށް ޓެކްނޮލޮޖީ ބަޔާންކުރެވިއްޖެއެވެ.[747] އެހެންކަމުން، ތަޙްޤީޤު ކުރާ އެދާރާތަކުގެ އިމްތިޔާޒު ތަޙްޤީޤުގައި ބޭނުންކުރާ ފުލުހުންނަށް މިފަދަ މަޢުލޫމާތު ހޯދުމުގެ ފުރުޞަތު ލިބިދީ ރައްކާތެރިކުރުމާއި ތަޙްޤީޤުކުރާ ފަރާތްތަކާ ބެހޭ ފޯރުކޮށްދިނުން އަދި ތަޙްޤީޤު ކުރިއަށް ގެންދާ ކަމުގެ ނޯޓް ކުރާ ތަޙްޤީޤުތަކާއި އެކުލަވާލާ ތަޙްޤީޤުތައް ހަރުދަނާ ކުރުމާއި ވަސީލަތްތަކާއި އަދި މިފަދަ ތަޙްޤީޤުތަކަށް ހިންގަމުން ގެންދާ ތަމްރީނާއި ވަސީލަތްތައް ތަޙްޤީޤުކުރާ ދުނިޔޭގެ ފުލުހުންގެ އެކަމުގައި ހުރިހާ ވަސީލަތްތަކާއި ބޭނުންކުރާ ތަކެތި ބެލުމުގެ ޝަރުޢީ ތަޙްޤީޤުތަކާއި ރައްކާތެރިކަން

[745] އަނީ، ވަޙީދާ. "ސައިބަރ ކްރައިމް އެންޑް ނޭޝަނަލް ސެކިއުރިޓީ: ދަ ރޯލް އޮފް ދަ ޕީނަލް އެންޑ ޕްރޮސީޖަރަލް ލޯ." ލޯ އެންޑް ސެކިއުރިޓީ އިން ނައިޖީރިއާ (2011)، 200-202

[746] ބައުޒޯރުސް، ކެރިސްޓޮފަރ. "ބިރިޖިންގ ދަ ގެޕް ބިޓްވީން ލޯ އެންޑް ޓެކްނޮލޮޖީ އެންޑް ސައިބަރ ސެކިއުރިޓީ" (2023)

[747] އޮރެއެގްބުނަމް، އިކެންގާ ކޭ.އީ. "ނައިޖީރިއާގެ ފުލުހުންނާއި ސައިބަރ ކްރައިމް ތަޙްޤީޤުގެ މައްސަލަތައް: އެކަނިވެރިވާ ތަޙްޤީޤާއި ބޮޑުބުރަ." ނައިޖީރިއާ އެޑްޖު 18 (2015): 1.

ޤަބޫލުކުރެވެއެވެ. އެގޮތުން ބައިނަލް އަޤުވާމީގޮތުންނާއި އެހެން ޤައުމުތަކުން ހިންގާ ތަޖުރިބާތަކުގައި ދިނަ ދިނައިން ބައިވެރިކުރުވުމާއި، އެފަރާތްތަކުން ގެންގުޅޭ އަދި ބޭކަށްތިޖެހޭތީ މި ތަބްލީޣުކުރުމުގައި ބޭނުންކުރެވޭނެ އިންތިޒާމްތައް ހަމަޖެއްސުން ހިމެނެއެވެ.

ރައްޔިތުން މިފަދަ ކުށްތަކަކަށް އެކަށީގެންވާ މިންވަރަށް އަހުލުވެރިކުރުވުން

އިންޓަރނެޓް ޖުރުމުތަކާ ހިންގާ މަކަރާއި ހީލަތުގެ މައްސަލަތައް މަދުކުރުމަށްޓަކައި އެކަމަށް ހާއްސަކުރެވޭ ރިޢާޔަތް ވަރަށް މުހިންމުކަމެކެވެ. އެގޮތުން، ސައިބަރ ތަކެތިތަކާއި، ކާޑްޖެހުމާއި، މުޢާމަލާތްތަކާއި، އަދިއަލަ ކަންތައްތަކާއި، އަދި އެހެނިހެން އިދާރާތަކާއި އަދިއަލަ ފަރާތްތަކުން ހިމެނޭހެން މަހާރާ އޮތްފަރާތް ނުވަތަ ޓީނޭޖަރުން އެއްމެ އޮފިސަރުން ސަސްޕެންސްގެ ނަގައިދިނުމަށް އެގޮތަށް ސަލާމަތުން މިފަދަ މަޢުލޫމާތު މަޢުލޫމާތުގެ މިފަދަ މަޢުލޫމާތު ތަޢުލީމީ ޕްރޮގްރާމްތަކާއި އެމަސްއޫލިއްޔަތު ކެމްޕެއިންތައް ފަށައިގަތުމަށް ހިމެނޭ މިފަދަ މަޢުލޫމާތު ފުރަތަމަ ކުރިއެރުމަށް ރަނގަޅު ގޮތެއް ދިނުމެވެ. ދުވަސްވަމުން އައުން ފިޔަވަހި ފައިދާ ދޭ ދަރިވަރުންގެ ސަޅި ޓެކްނޮލޮޖީ ކަނޑައެޅުމާއި، މިފަދަ ކަމެއް އެގޮތުން ފަރާތްތަކަށް ފުރުސަތު ދިނުމެވެ. އަދި ސައިބަރ ޖަރީމާގެ ހާލަތްތަކުން ދުރުވެ ރަނގަޅު ގަވާއިދުތަކެއް ހަރަދުކުރުމާ ސަލާމަތުގައި ޤާނޫނު ތަޢުލީމް ދިނުމަށް ހުރިހާ ފަރާތެއް ހިސްސާކުރުމަށް ދަތިވެ ދުވަސްވަރު ދިމާވާ މަސައްކަތް ކުރިއަށް ގެންދެވޭނެ. މި ފަރާތްތަކުގެ ތަނުން ގެނައުމުން ތަނަށް ޚިޔާނާތްތެރިވާ ބަޔަކު ލިބެނީ ސިފައަކަށް ރަށްތަކުގެ ކަނޑާއެޅުން.

ހިންގަމުންދާ ޖަރީމާއިން ތަޢުލީމާއި، ޓީވީތަކާއި، ދުނިޔޭގެ މީޑިއާގައި ޙަޤީޤަތަށް ޓެކްނޮލޮޖީ ފަރާތްތަކާ ހަމައެކަނި ތަރައްޤީ ވުމުގެ ހާލަތްތަކުގައި، އެކުއްޔަށް ގެންދިޔަ ގޮތުން ތަފާތު ސިފަތަކުގެ ޤާނޫނީ ރޭވުމަށް ފުރުސަތު ގެނެސްދެވޭ ގޮތުގެ ރާއްޖެއަށް ނުރައްކާ ހަމަޖެއްސުމުގައި ޚާއްޞަ ސަރުކާރާއި ޢިލްމީ ބަޔަކު އެމެރިކާ ސިފައިން އެއްވެސް ޤައުމެއް ތަކުރާރުކޮށް ހިނގާނެ.

ނިންމުން

އިންޓަރނެޓް ޖުރުމުތަކާ ބެހޭގޮތުން ކަނޑައެޅުން ޤާނޫނީ ގޮތުން ތަރައްޤީ ކޮށް ފަރާތްތަކުން ތަޢާރަފްކޮށް ދިރާސާގެ މިފަދަ ކަނޑައަޅުއްވަން ލޭބަރ ގޮތަށް މުސާރަ ސިއްރު ގަބޫލުކުރަން ފައިސާ ޚިދުމަތްތަކާއި ޓެކްނޮލޮޖީ ރައްޔިތުން ފަރާތުން ވެރިކަމުގައި ރިޢާޔަތްކޮށް ޤާނޫނީ ނިޒާމާއި ޖިނާއީ އުސޫލުތަކުން ހިމެނޭ ގޮތުގެ ތަރައްޤީ ތަކުގެ ކޮންމެވެސް ބަޔަކަށް ސަލާމަތުގެ އެސޮސިއޭޓްސް ޤާނޫނު މަސައްކަތް ސަރުކާރާއި، އަދި ސިސްޓަމްގައި ޤާނޫނު ކުރިއަށް ގެންދެވިފައި ހިނގާފަ އާއި އެއްބާރުލުން ސަލާމަތީ މިންގަނޑުތަކަށް ހިމެނޭ ގޮތުން ތަފާތު ގޮތްގޮތަށް ހިމެނޭ ސިފައަކަށް ގެއްލުމަކަށް ބަދަލުކުރެވެއެވެ. އަދި ސަލާމަތީ ރައްކާތެރިކަމާއި ޚިދުމަތްތަކުގެ ޤާނޫނީ ޤަވާއިދުތައް ނަގައިދޭ ރަނގަޅު މެދުވެރިކަމެކެވެ. އެއީ ޤާނޫނީ ބަލަހައްޓާ ގޮތެއް ދޭ ސިޔާސަތު ނިޒާމް ސަލާމަތީ އަދި ސަރުކާރާ، ރައްކާތެރިކަމާއި، އިންތިޒާމް ސަރުކާރާއި، ޒިންމާދާރު އެއްސަށް ކުޅިވަރު އެއްބާރުލުން ދޭ ސިއްރު ސަރުކާރާ ޤާނޫނީ ތަޢުލީމީ ކަންކަމުގައި.

ބައިވެރިވާ އެހެންފަރާތްތަކާއި ގުޅުންހުރި ޤާނޫނުތައް އިސްލާހުކޮށް ހަރުދަނާ ކުރަންޖެހޭނެއެވެ. އިންޓަރނެޓް މެދުވެރިކޮށް ހިންގާ މަކަރާއި ހީލަތުގެ މައްސަލަތައް ތަޙުޤީޤުކުރުމުގައި ދިވެހި ފުލުހުންނަށް ޤާނޫނީ ގޮތުން ދިމާވާ ގޮންޖެހުންތަކަކީ ދިނަގޮންޖެހުންތަކެއް ކަމުގައިވިޔަސް މިދިރާސާގައި ފާހަގަކޮށްފައިވާ ކަންކަމީ އެގޮންޖެހުންތައް މަދުކުރުމަށް ހަރުދަނާ ފިޔަވަޅުތަކެއް އެޅިގެންދާނެ ހުރަހެއްނެތްކަމެވެ.

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އައި.ޔޫ.އެމް ޖާނަލް އޮފް ރިސާޗްގެ ލިޔުންތެރިންގެ އިރުޝާދު

ތައާރަފު

އައި.ޔޫ.އެމް ޖާނަލް އޮފް ރިސާޗް (އައި.ޔޫ.އެމް ޖޭއާރ)އަކީ ޝަރީޢަތާއި ޤާނޫނުގެ ރޮނގުން އިލްމީ ދިރާސާތައް ދިވެހިބަހާއި އިނގިރޭސިބަހުން ޝާއިޢުކުރަމުންގެންދާ ޑަބަލް ބްލައިންޑް ޕިއަރ ރިވިއުޑް ދިރާސީ މަޖައްލާއެކެވެ. އައި.ޔޫ.އެމް ޖާނަލް އޮފް ރިސާޗްގައި ޝާއިޢުކުރާ ލިޔުންތައް ލިޔެވިދާނީ އިނގިރޭސިބަހުން ނުވަތަ ދިވެހިބަހުން ބައިނަލްއަޤްވާމީ އުސޫލާ އެއްގޮތަށެވެ.

މެނުސްކްރިޕްޓް

އައި.ޔޫ.އެމް ޖާނަލް އޮފް ރިސާޗްގައި ޝާއިޢުކުރާ ކޮންމެ ލިޔުމެއް އޮންނަންވާނީ (ދިވެހިބަހުން ލިޔެފައިވާނަމަ 4000 އާއި 8000 އާއި ދެމެދު، އަދި އިނގިރޭސިބަހުން ލިޔެފައިވާނަމަ 5000 އާއި 10000 އާއި ދެމެދުގެ) އަދަދެއްގެ ލަފްޒު ހިމެނޭ، ޓޭބަލްއިން އިން ރެފަރެންސްތަކާއި 20 (ވިހި) އިންސައިކްލޮޕީޑިއާ ސިފަތަކަށް ބޭނުން ކުރެވިފައިވާ، އެހެން އެއްވެސް މަޖައްލާއެއްގައި ޝާއިޢުކޮށްފައިނުވާ، އަދި އެހެން މަޖައްލާއެއްގައި ޝާއިޢުކުރުމަށް ހުށަހަޅާފައިނުވާ، ލިޔުން ނިސްބަތްވާ ލިޔުންތެރިޔާގެ އޮރިޖިނަލް އަދި އަމިއްލަ ލިޔުމެއްގެ ގޮތުގައެވެ. ކޮންމެ މެނުސްކްރިޕްޓެއްގެ އެބްސްޓްރެކްޓެއް ހުށަހަޅާ ލިޔުމުގައި އޮންނަންވާނެއެވެ.

މެނުސްކްރިޕްޓްގެ ސަބްމިޝަން ހުށަހެޅުން

މެނުސްކްރިޕްޓް ހުށަހަޅާނީ އައި.ޔޫ.އެމް ޖާނަލް އޮފް ރިސާޗްގެ ވެބްސައިޓް މެދުވެރިކޮށް މި **jol.ium.edu.mv** ލިންކަށެވެ. ކޮންމެ ލިޔުމެއްގެ ޕީ.ޑީ.އެފް އަދި މައިކްރޮސޮފްޓް ވޯޑް ފޯމެޓް ތައްޔާރުކޮށްފައިވާ ދެ ސޮފްޓް ކޮޕީ ހުށަހަޅަންވާނެއެވެ. އެއާއެކު މެނުސްކްރިޕްޓްއާ ގުޅޭ ކަވަރ ލެޓަރެއް ހުށަހަޅަންވާނެއެވެ.

މެނުސްކްރިޕްޓް ފޯމެޓް ކުރުން

އައި.ޔޫ.އެމް ޖާނަލް އޮފް ރިސާޗްގައި ޝާއިޢުކުރާ ހުރިހާ ލިޔުންތައް އޮންނަންވާނީ އައި.ޔޫ.އެމް ޖާނަލް އޮފް ރިސާޗްގެ މެނުސްކްރިޕްޓް ޓެމްޕްލޭޓްގައިވާ ގޮތަށް ފޯމެޓް ކޮށްފައެވެ.

މެނުސްކްރިޕްޓްގެ ލިޔުން އޮންނަންވާނީ ތިރީގައިއެވާ ތަރުތީބުން ކޮށްފައެވެ.

1. ފުރަތަމަ ސަފްހާއަކީ ޓައިޓަލް ޕޭޖެވެ. މި ސަފްހާގައި ދިރާސާގެ މައުޟޫޢު އިތުރުން މުއައްލިފުންގެ ލިޔުންތެރިންގެ ފުރިހަމަނަން، ލިޔުންތެރިޔާ ނިސްބަތްވާ މުއައްސަސާ، އަދި އީމެއިލް އެޑްރެސް ހިމެނަންވާނެއެވެ. އެއްލިޔުންތެރިއަކަށްވުރެ ގިނަ މީހުން ބައިވެރިވެގެން ލިޔެފައިވާ ލިޔުމެއްނަމަ، އިތުރަށް ބައިވެރިވެފައިވާ ލިޔުންތެރިންގެ ފުރިހަމަ ނަމާއި، އެފަރާތްތަކެއް ނިސްބަތްވާ މުއައްސަސާ އަދި އެފަރާތްތަކުގެ އީމެއިލް އެޑްރެސް ހިމެނަންވާނެއެވެ.
2. ޑަބަލް ބްލައިންޑް ޕިއަރ ރިވިއު ކުރުމަށްޓަކައި ދެވަނަ ސަފްހާގައި ހިމެނަންވާނީ މައުޟޫޢު އަދި އެބްސްޓްރެކްޓެވެ. މި ސަފްހާގައި ލިޔުންތެރިޔާގެ އެއްވެސް މައުލޫމާތެއް ހިމަނައިގެންނުވާނެއެވެ.
3. ލިޔުމުގެ ތައާރަފުން ފެށިގެން ލިޔުމުގެ ބާކީ ހުރިހާ ބައެއް ހިމެނުމަކީ ތިންވަނަ ސަފްހާއިން ފެށިގެންނެވެ.

4. ދިވެހި ބަހުގެ ތަރުޖަމާ ކުރުމުގައި، ތަރުޖަމާ ކުރެވޭ ބަސް ދެ ގޮތަކަށް ބަލައި ގެންނަންވާ ގޮތް ދެ ގޮތަށް ބަލައި ގެންނަންވާ ގޮތް ތަފާތު ކުރުން.

ލ. ދިވެހި ބަހުގެ ތަރުޖަމާ ކުރެވޭ ބަސް ދެ ގޮތަށް ބަލައި ގެންނަންވާ ގޮތް ތަފާތު ކުރުން.

ދިވެހި ބަހުގެ ތަރުޖަމާ ކުރެވޭ ބަސް ދެ ގޮތަށް ބަލައި ގެންނަންވާ ގޮތް ތަފާތު ކުރުން. ތަރުޖަމާ ކުރެވޭ ބަސް ދެ ގޮތަށް ބަލައި ގެންނަންވާ ގޮތް ތަފާތު ކުރުން، ލިޔެވިދާނެ ގޮތާ ގުޅިގެން ދިވެހި ބަހުގެ ލިޔުންތަކުގައި ބޭނުންކުރާ ގޮތް ތަފާތު ކުރުން.

ތަކުރާރުކުރަންޖެހޭ ދިވެހި ބަސް ތަރުޖަމާ ކުރުމުގައި ލިޔެވިދާނެ ގޮތް (ب)ގެ ދަށުން ބަޔާންކުރެވިފައި ވާ ގޮތަށް ތަރުޖަމާ ކުރަންވާނެ ގޮތް ބަލައި ގެންނަންވާ ގޮތް ތަފާތު ކުރުން.

ތަރުޖަމާ ކުރެވޭ ބަސް ދެ ގޮތަށް ބަލައި ގެންނަންވާ ގޮތް ތަފާތު ކުރުމުގައި، ލިޔެވިދާނެ ގޮތާ ގުޅިގެން ދިވެހި ބަހުގެ ލިޔުންތަކުގައި ބޭނުންކުރާ ގޮތް ތަފާތު ކުރުން.

ދ. ދިވެހި ބަހުގެ ތަރުޖަމާ ކުރެވޭ ބަސް ދެ ގޮތަށް ބަލައި ގެންނަންވާ ގޮތް ތަފާތު ކުރުމުގައި ބޭނުންކުރާ ފޮންޓް ސައިޒް ތަފާތު ކުރުން.

1- ސުރުހީ: ފޮންޓް ސައިޒް 16، ބޮޑުކޮށް، ބޯލްޑްކޮށް، ސެންޓަރ ކުރުން.

2- ފުރަތަމަ ދަރަޖަ ބައިތަކުގެ ސުރުހީ: ފޮންޓް ސައިޒް 14، ބޮޑުކޮށް، ބޯލްޑްކޮށް، ގޯތި ފަރާތަށް ބަހައްޓާ ގޮތް.

3- ދެވަނަ ދަރަޖަ ބައިތަކުގެ ސުރުހީ: ފޮންޓް ސައިޒް 14، ކުޑަކޮށް، ބޯލްޑްކޮށް، ގޯތި ފަރާތަށް ބަހައްޓާ ގޮތުގައި ބަހައްޓާ ގޮތާ ދެމެދު ޓެބް ތަނަކަށް ދޫ ކުރުން.

4- ތިންވަނަ ދަރަޖަ ބައިތަކުގެ ސުރުހީ: ފޮންޓް ސައިޒް 14، ކުޑަކޮށް، ބޯލްޑްކޮށް، ގޯތި ފަރާތަށް ބަހައްޓާ ގޮތުގައި ބަހައްޓާ ގޮތާ ދެމެދު ދެ ޓެބް ތަނަކަށް ދޫ ކުރުން.

ر. ދިވެހި ބަހުގެ ތަރުޖަމާ ކުރެވޭ ބަސް ދެ ގޮތަށް ބަލައި ގެންނަންވާ ގޮތް ތަފާތު ކުރުމުގައި ބޭނުންކުރާ ފޮންޓް ސައިޒް ތަފާތު ކުރުން.

1- Main Title: 14-point font, upper case, bold, centered.

2- First level heading: 12-point font, upper case, bold, left aligned.

3- Second level heading: 12-point font, lower case, bold, left aligned with one TAB indentation.

4- Third level heading: 12-point font, lower case, bold, italicized, left aligned with two TAB indentations.

ބ. ލިޔުންތައް:

ކުރިން ދިވެހި ބަހުގެ 250 ބަހަށް ވުރެ ދިގު ލިޔުމެއް ލިޔުންތައް ހުށަހަޅާ ހާލަތުގައި، ލިޔުންތައް ހުށަހަޅާ ގޮތާ ގުޅިގެން ލިޔުންތަކުގެ ސާރަ، ލިޔުންތަކުގެ ދަށުގައި ހިމެނޭ ބައިތަކުގެ ލިސްޓް، ލިޔުންތަކުގެ ތަފާތު ބައިތަކުގެ ލިސްޓް، ލިޔުންތަކުގެ ބައިތަކުގެ ލިސްޓް، ލިޔުންތަކުގެ ބައިތަކުގެ ލިސްޓް ތަފާތު ކުރުން. ލިޔުންތަކުގެ ބައިތަކުގެ ލިސްޓް ތަފާތު ކުރުމުގައި، ލިޔުންތަކުގެ ބައިތަކުގެ ލިސްޓް ތަފާތު ކުރުން 11 ވަނަ ސުންގަޑި ފުރުމުގެ ކުރިން ހުށަހަޅާ ގޮތާ ގުޅިގެން ލިޔުންތަކުގެ ބައިތަކުގެ ލިސްޓް ތަފާތު ކުރުން 11 ވަނަ ދުވަހު ހިމެނޭ ގޮތަށް ބަލައި ގެންނަންވާ ގޮތް ތަފާތު ކުރުން.

އެބްސްޓްރެކްޓްގެ ތަރުޖަމާ:

ދިވެހިބަހުން ލިޔެފައިވާ މެނުސްކްރިޕްޓްގައި ދިވެހިބަހުން ލިޔެފައިވާ އެބްސްޓްރެކްޓެއް އާއި އިނގިރޭސި ތަރުޖަމާ އަދި އިނގިރޭސިބަހުން ލިޔެފައިވާ މެނުސްކްރިޕްޓްގައި އިނގިރޭސިބަހުން ލިޔެފައިވާ އެބްސްޓްރެކްޓެއް އާއި ދިވެހިތަރުޖަމާ ހިމަނަންވާނެއެވެ.

ކީވޯޑްސް: ކޮންމެ އެބްސްޓްރެކްޓެއް ނިންމާލަންވާނީ 3 އާއި 6 ދެމެދުގެ އަދަދެއްގެ ކީވޯޑްސް ހިމަނައިގެންނެވެ.

ސައިޓޭޝަން އަދި ރިފަރެންސް:

އައި.ޔޫ.އެމް ޖާނަލް އޮފް ލޯސްގައި ޝާއިޢުކުރުމަށް ހުށަހަޅާ ކޮންމެ މެނުސްކްރިޕްޓެއް އޮކްސްފޯޑް ސްޓޭންޑަރޑް ފޯ ދަ ސައިޓޭޝަން އޮފް ލީގަލް އޮތޯރިޓީސް (އޮސްކޯލާ) ފޯމެޓާއި ފޮލޯކޮށްގެން ހުށަހަޅަންވާނެއެވެ. ކޮންމެ މެނުސްކްރިޕްޓެއް ނިމުމުން އެންޑުނޯޓުގައި ބިބްލިއޮގްރަފީ ހިމަނަންވާނެއެވެ. ހުރިހާ ބަލާލެވުނު ފޮތްތަކާއި ލިޔެކިޔުންތައް ހިމެނޭގޮތަށް ބިބްލިއޮގްރަފީ ތައްޔާރުކޮށް ހިމަނަންވާނެއެވެ. ސައިޓޭޝަން ހުށަހެޅުމުގައި ސޯސްތަކުގެ މަޢުލޫމާތު ފުރިހަމައަށް ހިމަނަންވާނެއެވެ. އެގޮތުން ސަފްޙާ ނަންބަރާއި އަހަރު ފަދަ މަޢުލޫމާތު ދޭންވާނެއެވެ. ސޯސް ހޯދިދާނެ ގޮތް ވަކިވަކިން ހިމަނާފައި ހުރުމަކީ ބޭނުންތެރި ކަމެކެވެ. ޤާނޫނާއި ޤަވާޢިދާއި ޝަރީޢަތުގެ ނިންމުންތަކާއި އެހެނިހެން ޙަވާލާތައް 10 ސައިޒުގެ ފުޓްނޯޓުގައި ސިޓޭޝަން ކުރަންވާނެއެވެ. ބަލާލެވުނު ހުރިހާ އެންމެހާ މެނުސްކްރިޕްޓްގެ ފުޓްނޯޓް ސައިޓޭޝަންތައް އެއްގޮތްވާންވާނެއެވެ.

ކޮޕީރައިޓްގެ ޙައްޤު:

ހ. އައި.ޔޫ.އެމް ޖާނަލް އޮފް ލޯސްގައި ޝާއިޢުކުރާ ކޮންމެ ލިޔުމެއްގެ ކޮޕީރައިޓްގެ ޙައްޤުވެރި ފަރާތަކީ ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީގެ ކުއްލިއްޔާ އޮފް ޝަރީޢާ އެންޑް ލޯ އެވެ.

ށ. އައި.ޔޫ.އެމް ޖާނަލް އޮފް ލޯސްއިން މަޖައްލާގައި ޝާއިޢުކުރާ ކޮންމެ ލިޔުމެއްގެ ކޮޕީރައިޓް ރައްކާތެރިކުރުމަށްޓަކައި، ލިޔުންތެރިން އެފަރާތްތަކުގެ ލިޔުންތައް ޖާނަލްގައި ޝާއިޢުކުރުމުގެ ކުރިން، ލިޔުމުގެ ކޮޕީރައިޓް ޙައްޤު ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީގެ ކުއްލިއްޔާ އޮފް ޝަރީޢާ އެންޑް ލޯ އަށް ދޭންވާނެއެވެ.

ނ. އައި.ޔޫ.އެމް ޖާނަލް އޮފް ލޯސްގައި ޝާއިޢުކޮށްފައިވާ އެއްވެސް ލިޔުމެއް، ލިޔުންތެރިޔާ އަލުން ބޭނުންކުރަން ބޭނުންވެއްޖެނަމަ ލިޔުމުގެ ކޮޕީރައިޓް ޙައްޤުވެރި ފަރާތުގެ ލިޔުމުން ހުއްދަ ހޯދަންވާނެއެވެ. އައި.ޔޫ.އެމް ޖާނަލް އޮފް ލޯސްއަށް ބަލާލާފައިވާގޮތުން އެހެން ލިޔުމެއްގައި، ލިޔުމުގެ ބައެއް ނުވަތަ ތަރުޖަމާކޮށްގެން ބޭނުންކުރުން މީގެ ތެރޭގައި ހިމެނެއެވެ.

ކޮޕީރައިޓް ޓްރާންސްފަރގެ އިޤުރާރު:

އައި.ޔޫ.އެމް ޖާނަލް އޮފް ލޯސްގައި ޝާއިޢުކުރުމަށް ފޮނުވާ މެނުސްކްރިޕްޓްތައް ޝާއިޢުކުރުމުގެ ކުރިން ޝަރުޠުތަކާއި އެއްގޮތަށް ކޮޕީރައިޓް އިޤުރާރުގައި ލިޔުންތެރިޔާ ސޮއިކުރުމަށްފަހު ޖާނަލްގެ އެޑިޓަރަށް ފޮނުވަންވާނެއެވެ.

އިޤުރާރު:

(މެނުސްކްރިޕްޓްގެ މައުޟޫޢު މެނުސްކްރިޕްޓްގެ ރިފަރެންސް ނަންބަރު ޖެހުމަށް) މައުޟޫޢު ލިޔެފައިވާ މެނުސްކްރިޕްޓް އައި.ޔޫ.އެމް. ޖާނަލް އޮފް ލޯސް (އައި.ޔޫ.އެމް.ޖޭ.އޯ.އެލް) ގައި ޝާއިޢުކުރާ ހިނދު، މި މެނުސްކްރިޕްޓް ލިޔެފައިވާ މައުޟޫޢާއި، އެބްސްޓްރެކްޓާއި، މެނުސްކްރިޕްޓްގައި

އުކުޅުވިގެންނާ އެންމެހައި ބައިވަރު އައި.ޔޫ.އެމް.ޖޭ.އޯ.އެލް. އަދާއި މިޔުނިވަރސިޓީގެ ޕަބްލިޝަރުގެ ބައިސިއްޓަރުން ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީގެ ކުއްލިއްޔާ އޮފް ޝަރީޢާ އެންޑް ލޯ، އެފެއާޒުން ޝާއިޢުކުރަން ފެންނަ ކޮންމެ ގޮތަކަށް ޝާއިޢުކުރުމުގެ އެންމެހައި ބައެއްޗެއް ހާއްސަ ގޮތުން އަމުރުން ދިރާސާވެ. މި ޔުނިވަރސިޓީގެ ޝާއިޢުކުރުމަށް މިފޮނުވަނީ، މިއިދާރާގެ އަމިއްލަ އޮރިޖިނަލް މަސައްކަތެއްކަމުގައި، މިޔުނިވަރސިޓީއާ މީގެ ކުރިން އެއްވެސް ގޮތަކަށް ޝާއިޢު ކުރެވިފައިނުވާ އަދި ޝާއިޢުކުރުމަށް އެއްވެސްފަރާތަކަށްދީފައިނުވާ އޮރިޖިނަލް އަދި މިއުއްމުގައި ހިމެނޭ މަޢުލޫމާތުގެ ތެރެއިން އެއްވެސް އިޤްތިބާސްކޮށްފައިވާނަމަ، ޤުރުއާން، ޙަދީޘް، ދަފްތަރު، ބަރަދަރު، ނަމަވެސް އެންމެހާ އިޤްތިބާސްތައް ރިފަރެންސްކޮށްފައި ހުރުމާއި، ޝާއިޢުކުރުމުގެ ހައްޤުތައް ލިބިގެންވަނީ ކޮންމެހެން މިޔުނިވަރސިޓީއަށް. އަދި އޮތޯރިޓީން ދޭ ބަދަލުން ޝާއިޢުކުރުމަށް ނިންމިއްޖެނަމަ، ދިވެހި ޤާނޫނުގެ ދަށުން، އަދި ލިޔުމުގެ ހައްޤުތަކާއި ޔުނިވަރސިޓީގެ ބަޔާނުގެ ޝާއިޢުކުރުމުގެ އައި.ޔޫ.އެމް.ޖޭ.އޯ.އެލް. އަދި ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީގެ ކުއްލިއްޔާ އޮފް ޝަރީޢާ އެންޑް ލޯ ގެ ޤާނޫނު ފަދަ ގޮތް ގައުމީ ގަވާއިދު ބަރަދު ޔުނިވަރސިޓީގެ ފަރާތުން އަދާކުރުމުގެ ޒިންމާ އަދާކުރުން އެއްބަސްވަމެވެ.

ޔުނިވަރސިޓީގެ ބަޔާން

އައި.ޔޫ.އެމް.ޖޭ.އޯ.އެލް ގެ ޖާމިއާ އަށް ޕޯސްޓުގައި ޝާއިޢުކުރާ ޔުނިވަރސިޓީގެ ބަޔާނުގެ އެޑިޓަރުންނަށް ބޭނުން ރިވިއުކުރުމަށް، ލިޔުމުގެ މައްސަލަ ގެޓޯރިޓީގެ މުސްތަޤުބަލު ދަރަޖަގެ ފަރާތުން ގަބޫލުކުރާ ކޮޕީރައިޓް-ޕޮލިސީއާ ގުޅިގެން ޚިދުމަތްދޭ އެފަރާތްތަކުން ލިޔުން ޝާއިޢުކުރާ ފަރާތަކުން އެޑިޓަރުން ބޭނުން ދަށުގެ މައްޗަށް ބިނާކޮށްގެންނެވެ.

ޝާއިޢުނުކުރާ އަނބުރާ ރައްދުކުރުމާ ގުޅޭގޮތުން

މަޖައްލާގެ އެޑިޓަރުންގެ އުސޫލަކީ، މިއުސޫލުގައި ބަޔާންކޮށްފައިވާ ކަންކަމަށް އެއްވެސް މިންވަރަކަށް ރިޢާޔަތް ނުކުރާނަމަ ލިޔުންތައް (ރިވިއުގެ ފުރުޞަތުދިނުމަށް) ބަލައި ނުގަނެ އަނބުރާ ރައްދުކުރެވޭނެއެވެ.

ތިމާގެތެރިކަމުގެ ބެލުމާ ގުޅުންހުރި ތަކެތި

ތިމާގެތެރިކަމުގެ ބެލުމާ ގުޅުންހުރި ތަކެތި ހިންގުމުގައި ތިމާގެ ކުރިމަގުގައި ދެކޭ ކަންކަމާ ގުޅުންހުރި ތަކެތި ތިރީގައި ބަލައި ބަލާ ގޮތް ދައްކާ ގޮތަށް ✓ ގުރައި ދީފައިވާ ތަނުގައި ލަވަ ކުރަންވާނެ.

#	ތަކެތި	✓ ގުރައި ދީފައިވާ ތަން
1.	ދިވެހިރާއްޖެ ފުރަތަމަ ކުއްލި ތިމާގެ ތަރުތީބުގައި ހިމެނޭ ތިމާގެ ބަދަލުތަކާ ގުޅުންހުރި ތަކެތި ތިރީގައި ބަލައި ބަލާ ގޮތް ދައްކާ ގޮތަށް ލަވަ ކުރަންވާނެ.	
2.	ތިމާގެތެރިކަމުގެ ކާބަފައިންގެ ބައިވެރިވުމުގެ ތެރެއިން ތިމާގެ ބަދަލުތަކާ ގުޅުންހުރި ތަކެތި ތިރީގައި ބަލައި ބަލާ ގޮތް ދައްކާ ގޮތަށް ލަވަ ކުރަންވާނެ.	
3.	ތިމާގެ ފަރާތުން ދެއްކުމަށް ކަނޑައެޅިފައިވާ ތަކެތި ތަކުރާރުވާ ގޮތަށް ތިރީގައި ބަލައި ބަލާ ގޮތް ދައްކާ ގޮތަށް ލަވަ ކުރަންވާނެ.	
4.	ދާންވެގެންވާ ތަކެތި ހޯދުމުގައި ކަނޑައެޅިފައިވާ ގަވާއިދާ ގުޅުންހުރި ތަކެތި ތިރީގައި ބަލައި ބަލާ ގޮތް ދައްކާ ގޮތަށް ލަވަ ކުރަންވާނެ.	

ތިމާގެތެރިކަމުގެ ތެދުވެރިކަން:

ތިމާގެ ދާންވެގެންވާ ތަކެތި ހޯދުމުގައި ކުރިން ހުންނަ ތަކެތި (ތިމާގެ، ތިމާގެ ތެދުވެރިކަން، ފުވަށްދާ، ބަދަލުތަކާ، ދާއިރާ ހިންގުމުގައި ތިމާގެ ކުރިމަގުގައި ހުންނަ) ދާންވާ ގޮތް ހޯދުމަށް ފާހަގަ ކުރަންވާނެ ތަކެތި ތިރީގައި ބަލައި ބަލާ ގޮތް ދައްކާ ގޮތަށް ލަވަ ކުރަންވާނެ. ތަ.ބ.ގ.ތ. ގެ ތިމާގެ ތެދުވެރިކަން ހޯދުމުގައި ކުރިން ހުންނަ ތަކެތި ތިރީގައި ބަލައި ބަލާ ގޮތް ދައްކާ ގޮތަށް ލަވަ ކުރަންވާނެ.

ތ ؋ ؍ ؎ ؏ ؐ ؑ ؒ

ؓ ؔ ؕ ؖ ؗ ؘ ؙ ؚ ؛	؜ ؝ ؞ ؟ ؠ ء آ أ ؤ
إ ئ ا ب ة ت ث ج	ح خ د ذ ر ز س ش
ص ض ط ظ ع غ ـ ف	ق ك ل م ن ه و ى
ي ً ٌ ٍ َ ُ ِ ّ	ٰ ٱ ٲ ٳ ٴ ٵ ٶ ٷ

ٸ ٹ ٺ ٻ ټ ٽ پ ٿ	ڀ ځ ڂ ڃ ڄ څ چ ڇ
ڈ ډ ڊ ڋ ڌ ڍ ڎ ڏ	ڐ ڑ ڒ ړ ڔ ڕ ږ ڗ
ژ ڙ ښ ڛ ڜ ڝ ڞ ڟ	ڠ ڡ ڢ ڣ ڤ ڥ ڦ ڧ
ڨ ک ڪ ګ ڬ ڭ ڮ گ	ڰ ڱ ڲ ڳ ڴ ڵ ڶ ڷ

ڸ ڹ ں ڻ ڼ ڽ ھ ڿ	ۀ ہ ۂ ۃ ۄ ۅ ۆ ۇ
ۈ ۉ ۊ ۋ ی ۍ ێ ۏ	ې ۑ ے ۓ ە ۔ ۖ ۗ
ۘ ۙ ۚ ۛ ۜ ۝ ۞ ۟	۠ ۡ ۢ ۣ ۤ ۥ ۦ ۧ
ۨ ۩ ۪ ۫ ۬ ۭ ۮ ۯ	۰ ۱ ۲ ۳ ۴ ۵ ۶ ۷

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۸ ۹ ۺ ۻ ۼ ۽ ۾ ۿ	܀ ܁ ܂ ܃ ܄ ܅ ܆ ܇
܈ ܉ ܊ ܋ ܌ ܍ ܎ ܏	ܐ ܑ ܒ ܓ ܔ ܕ ܖ ܗ
ܘ ܙ ܚ ܛ ܜ ܝ ܞ ܟ	ܠ ܡ ܢ ܣ ܤ ܥ ܦ ܧ
ܨ ܩ ܪ ܫ ܬ ܭ ܮ ܯ	ܰ ܱ ܲ ܳ ܴ ܵ ܶ ܷ

؋ ؍ ؎ ؏ ؐ ؑ ؒ ؓ	ؔ ؕ ؖ ؗ ؘ ؙ ؚ ؛
؜ ؝ ؞ ؟ ؠ ء آ أ	ؤ إ ئ ا ب ة ت ث
ج ح خ د ذ ر ز س	ش ص ض ط ظ ع غ ـ
ف ق ك ل م ن ه و	ى ي ً ٌ ٍ َ ُ ِ
ّ ٰ ٱ ٲ ٳ ٴ ٵ ٶ	ٷ ٸ ٹ ٺ ٻ ټ ٽ پ
ٿ ڀ ځ ڂ ڃ ڄ څ چ	ڇ ڈ ډ ڊ ڋ ڌ ڍ ڎ
ڏ ڐ ڑ ڒ ړ ڔ ڕ ږ	ڗ ژ ڙ ښ ڛ ڜ ڝ ڞ
ڟ ڠ ڡ ڢ ڣ ڤ ڥ ڦ	ڧ ڨ ک ڪ ګ ڬ ڭ ڮ
گ ڰ ڱ ڲ ڳ ڴ ڵ ڶ	ڷ ڸ ڹ ں ڻ ڼ ڽ ھ
ڿ ۀ ہ ۂ ۃ ۄ ۅ ۆ	ۇ ۈ ۉ ۊ ۋ ی ۍ ێ
ۏ ې ۑ ے ۓ ە ۔ ۖ	ۗ ۘ ۙ ۚ ۛ ۜ ۝ ۞
۟ ۠ ۡ ۢ ۣ ۤ ۥ ۦ	ۧ ۨ ۩ ۪ ۫ ۬ ۭ ۮ
ۯ ۰ ۱ ۲ ۳ ۴ ۵ ۶	۷ ۸ ۹ ۺ ۻ ۼ ۽ ۾
ۿ ܀ ܁ ܂ ܃ ܄ ܅ ܆	܇ ܈ ܉ ܊ ܋ ܌ ܍ ܎
܏ ܐ ܑ ܒ ܓ ܔ ܕ ܖ	ܗ ܘ ܙ ܚ ܛ ܜ ܝ ܞ
ܟ ܠ ܡ ܢ ܣ ܤ ܥ ܦ	ܧ ܨ ܩ ܪ ܫ ܬ ܭ ܮ
ܯ ܰ ܱ ܲ ܳ ܴ ܵ ܶ	ܷ

ތަކުރާރުކޮށްފި ތަނެއް ނެތްނަމަ

ގޮތެއްކަމަށް

ކުށްވެރިކަމާ ގުޅުންހުރި ހެއްކެއް ކަ

ފިލޮސޮފަރުގެ ހުށަހެޅުން

ތަކުރާރުކޮށްފި ތަނެއް ބުނަމުންދާ ގޮތަށް

ގޮތެއްކަމަށް

ކުށްވެރިކަމާ ގުޅުންހުރި ހެއްކެއް ކަ

ފިލޮސޮފަރުގެ ހުށަހެޅުން

ފާނޫނުތަކުގެ ވަކިކަންކަން:

ހ. ސަބަބުގެ ތަނެއް

ތަކުރާރުކޮށްފި ތަނެއް

ކަންކަމާ ގުޅުންހުރި ހެއްކެއް

ހ. ތަކުރާރުކޮށް ބަލައިގަނެފި ތަނެއް

ގޮތެއްކަމަށް

ކުށްވެރިކަމާ ގުޅުންހުރި ހެއްކެއް ކަ

ފިލޮސޮފަރުގެ ހުށަހެޅުން

ހ. ވަޒީފާ ދީގެން

ތަކުރާރުކޮށްފި ތަނެއް

ދެ ފަރާތުގެ ދެމެދުގައި ހުރި ހަމަޖެހުމެއް ނެތުން

ކުށްވެރިކަމާ ގުޅުންހުރި ހެއްކެއް ކަ

ފިލޮސޮފަރުގެ ހުށަހެޅުން

ހ. ﷲ ދެމުންދާ ގޮތަށް

ގޮތެއްކަމަށް

ކުށްވެރިކަމާ ގުޅުންހުރި ހެއްކެއް ކަ

ފިލޮސޮފަރުގެ ހުށަހެޅުން

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ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީގެ ޑެޕިއުޓީ ވައިސް ޗާންސެލަރ ރިސަރޗް އެންޑް އިންޓަނޭޝަނަލް ޑރ. ވިސާމް މޫސާގެ މެސެޖް

އައިޔޫއެމް ޖާނަލް އޮފް ލޯ (އައިޔޫއެމްޖޭއެލް) ގެ އިފްތިތާހީ އަދަދު ޝާއިޢުކޮށްދިނުން އަޅުގަނޑުމެން ފާހަގަކުރަނީ ވަރަށް ފަޚުރުވެރި އަދި އިންތިޒާރުގެ ފުރި ނަތީޖާއެއްގެ ގޮތުގައެވެ. މި ޖާނަލަކީ ހަމައެކަނި އަޅުގަނޑުމެންގެ ދާއިރާގައި އޮތް ތަޢުލީމީ ހަރަކާތެއް އޮންލައިން ހާސިލުކުރުމެއް ނޫން ކަމަކާއި، ޤާނޫނީ އިލްމީ ކުރިއެރުވުމާއި، މުޖުތަމަޢުގެ އެކުވެރިންނާއި އަދި ބައިނަލްއަޤްވާމީ އަސާސީ އެއްބާރުލުން ބިނާކުރުމަށް ޤާނޫނީ ދިރާސާތަކަށް ހިއްވަރުދިނުމަށް ދިވެހިރާއްޖޭން މުޅިއުމު ވަސީލަތެއް ފޯރު ވެސް މުހާސަރާތަކެވެ.

ހަލުވިކަމާއި ބަދަލުވަމުންދާ މިއަދުގެ ދުނިޔޭގައި އިންސާފުގެ ދަންމަގުތަކުގެ ގޮތުގައި އަދި އިޖުތިމާޢީ ހަމަޖެހުން ދެމެހެއްޓުމަށް ބޭނުންކުރާ ވަސީލަތްތަކުގެ ގޮތުގައި ޤާނޫނުތަކުގެ ބޭނުން ދެމެހެއްޓުމުގެ މުހިއްމުކަން މިއަދު ވަނީ މިހާރު ވަރަށް ބޮޑުވެފައެވެ. މިފަދަ ދެމެހެއްޓެނިވި އައިޔޫއެމްޖޭއެލް އިން އުންމީދުކުރަނީ ޤާނޫނީ ދާއިރާގެ ޢިލްމީ ބަހުސްތަކަށް ޖާގަ ދޭ ޢިލްމީ ދިރާސާތަކާއި، ކިޔުންތެރިންނަށް ޚިދުމަތާއި، އިލްމީ ތަފާސްހިސާބާއި، ފަންނީ ޖާނަލެއްގެ މިސާލުތަކާއި ބަޙުސް ކުރުމެވެ. އަދި އިލްމީ ޚިޔާލުގެ ތަރުތީބުކުރުމާއި، ދުނިޔޭ ތަރުތީބާއި، ޤާނޫނީ ތަރުތީބުގައި މުޖުތަމަޢު ގޮތްތަކަށް ދެމެހެއްޓެނިވި ދާއިރާތައް އެކުލަވާލުމާއި، ޤާނޫނީ ތަރުތީބުގައި މުޢާމަލާތްތަކާއި ޚިދުމަތްތަކާއި، މިފަދަ ސިޔާސަތު ކަނޑައަޅުއްވާ ޚިދުމަތްތަކުގެ ޚާއްޞަ ސަރަޙައްދުތަކުގެ ތަރުތީބު އެކި ނަޒަރިއްޔާތުތަކާއި ތަފާތު މިސާލުތަކުގެ ގޮތުގައެވެ.

މިޖާނަލްގެ ފުރަތަމަ އަދަދުން ފެނިގެން އަޅުގަނޑުމެން ދަރަހައްޓަން އަމާޒު ހިފެހެއްޓި އިލްމީ ދިރާސާކުރުމުގެ މަތީ މިންގަނޑު ފުރިހަމަކުރުމަށް އެކުގައި ޤާނޫނީ ޝަރުޢީ ޤާނޫނާއި، ޢިލްމީ ތަޙްޤީޤުތަކާއި، ފުރިހަމަ ތަޖުރިބާތަކާއި، ޤާނޫނީ ޚިދުމަތްތަކުގެ ދަށުން ފައިދާކުރެވޭ މިންގަނޑުތަކާއި، މަޝްވަރާ މުއައްސަސާތައް ކުރިއަށް ގެންދިޔުމަށް އެކުލަވާލާ މުޢާމަލާތްތަކާއި، ދަޢުވާ ތަޙްޤީޤު ކުރުމުގެ ދާއިރާތަކުގެ ޙަޤީޤަތްތަކެވެ. މިޖާނަލްގެ ދިރާސާތަކަށް ޖާގަދީ މެމްބަރުންނާއި ފާހަގަކުރަނީ، ޝަރުޢީ ޤާނޫނީ ތަޢުލީމު ދިނުމަށް ޤައުމީ ތަރައްޤީގެ ބައިވެރިކަމެވެ. ޤާނޫނީ ދާއިރާއަށް ހުޅުވާލެވޭ ފުރުޞަތުތަކާއި، ހިއްސާދާރުން އެކުލަވާލުމަށް މުޅި ދާއިރާއިން ޝަރީޢަތް ދިރާސާކުރާ ޢިލްމީ ތަޙްޤީޤުތަކެވެ. މިހެން ޤާނޫނީ ފަރާތްތަކަށް ދިނުމަށް ގޮތް ފަހިކޮށްދިނުމަށް ދޭ ޙިއްސާ ފަދަ ސިޔާސަތު ފުރިހަމަކުރުމަށް ދެމެހެއްޓުމަށް ވަކިވަކި ދެކޮޅުގެ ސަރަޙައްދުތަކަށް ޢިލްމީ ހިލޭ މަޢުލޫމާތު ބޭނުންކުރުމަށް ދަރަހައްޓާ މިސާލުތަކުގެ ގޮތުގައި ޤާނޫނީ ޢިލްމީ ކުރިއެރުން ބަދަލުކުރުމަށް ޢިލްމީ ދިރާސާ ދެމެހެއްޓުމުގައި ދަރަހައްޓާ ބިންގާއެއް ކަމުގައި ވާނެކަމަށް ހަމަ ޔަގީނެވެ.

ޑރ. ވިސާމް މޫސާ
ޑެޕިއުޓީ ވައިސް ޗާންސެލަރ ރިސަރޗް އެންޑް އިންޓަނޭޝަނަލް
ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީ

ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީގެ ވައިސް ޗާންސެލަރ ޑރ. އަލީ ޒާހިރުގެ އިސްތިބަސް

بسم الله الرحمن الرحيم

الحمد لله رب العالمين , والصلاة والسلام على المبعوث رحمة للعالمين، نبينا محمد وعلى آله وصحبه أجمعين.

އައިޔޫއެމް ޖާނަލް އޮފް ރިސާޗް (އައިޔޫއެމްޖާނަލް) ޝާއިޢުކުރެވެން ދިއުމަކީ ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީ އަށް ހާސިލުވެފައިވާ ވަރަށްބޮޑު ކާމިޔާބީއެކެވެ. މި ޖާނަލަކީ ހަމައެކަނި އިލްމީ ޕްރޮފެސަރުންގެ ދިރާސާތަކެއް ނޫން ކަމަށާއި ނަމަވެސް، ފެއްދޭ ދިރާސާތަކާއި ބަހުސްތައް ހިމެނޭ ޖާނަލެއް ކަމުގައި ދެކެމެވެ. ބައިނަލްއަޤްވާމީ ގޮތުން ފާސްކުރެވޭ ދިރާސާތަކާއި އިލްމީ ލިޔުންތައް ކުރިއެރުވުމަށް ހުރިހާ ފުރުޞަތުތައް ހޯދައިދިނުމަށް އެދިގެންދިޔަ ނަމަ ވަރަށް ފުރިހަމަ ފެހިމަގެއް ކަމުގައި ދެކެމެވެ.

އައިޔޫއެމްޖާނަލް ޝާއިޢުވެގެން ދިޔުމަށް ޓީމެއްގެ ގޮތުގައި ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީގެ ފެކަލްޓީ ޝަރީޢާ އަދި ގާނޫނު ދާއިރާއި ގުޅުން ހުރި އެންމެ މަތީ ފެންވަރުގެ އިލްމީ ދިރާސާތަކާއި ދިރާސާތަކުގެ ތެރެއިން އެބައިގެ ދިރާސާތައް އިސްކަމެއް. އައިޔޫއެމްޖާނަލަކީ، ޝަރީޢަތާއި ގާނޫނީ ދިރާސާތަކުގެ އެއްގޮތް ފެންވަރު ދަރަޖައެއްގެ ދިރާސާތަކާއި، ކުރިޔަކުރު އިސްލާމިކްފައިނޭންސް، އިލްމީ ދިރާސާތަކުގެ ސަގާފީއެއް އާލާކުރުމަށް އެތަނަކީ ގެނެވުނު އަހަރެއް ފަށައިދިނެވެ. ވަކިން ޚާއްޞަކޮށް ގާނޫނީ ދާއިރާގައި ދިރާސާ ކުރަމުން އިލްމުވެރިންނާ ބަޔަކު އިތުރު ދަސްކޮށްދޭ ގޮތަކަށް ހިންގުމުގައި ދޭން ގާނޫނީ ފަރާތްތަކާއި، ހެޔޮ ދަރަނި ސްކޮލަރޝިޕާއި، ޕްރިޓް ތިރީ ކެނޑިޔަށް ބަލައިގެން ދަރިވަރުން ގާނޫނީ ދިރާސާތަކުގެ ދާއިރާ މެދުވެރިކޮށް ފުރުޞަތު ދެވިގެން މަސައްކަތަކީ ދިރާސާ ކުރުމުގެ ތެރެއިން ދަރާސާ ކުރަން ފަށައިދޭނެއެވެ.

މި ޖާނަލްގެ ސަރަޙައްދު އެންމެހާ ލިޔުންތަކެއް ޝަރީޢާ އަދި ގާނޫނީ ދާއިރާގެ ފުރިހަމަ ތަރުޖަމާކުރުމުގައި މަސައްކަތްކުރެވުނު ބޭފުޅުންނަށް، ދިރާސާވެރިންނަށް، ގާނޫނީ ދާއިރާގައި މަސައްކަތްކުރެވުނު ފަރާތްތަކަށް އެދިގެން ފައިދާކުރެވޭނެ. އެހެން، މިދާއިރާގެ އިތުރު ކުރިއެރުން ހާސިލުކުރުމާއި، ޙާލަތު މަސައްކަތަކީ ގާނޫނީ ޒަމާން އަދި ހައްލުކުރުން ހުރިހާލުގެ ފިޤުހީ ފިކުރުގެ ޒަމާނީ މިޒާޖުގައި ވެއްޖެން ވަގުތުކަމެވެ.

އައިޔޫއެމްޖާނަލްގެ މަޤްސަދުތަކުގެ ތެރޭގައި ދިވެހިރާއްޖޭގެ ތެރޭގައި ދިވެހި ދާއިރާގައި ޔުނިވަރސިޓީގެ ދިރާސާ މަސައްކަތްތަކުގެ ހިއްސާކުރާ، ރާއްޖޭގައި ގާނޫނީ ފަރާތްތަކަށް ގާނޫނީ ދާއިރާއި އަދި ގާނޫނީ ޝާއިޢުކުރުމުގައި ހުރި ބޭނުން ހަވާލާދީ ފިޤްހީ ގޮތުގައި މިއުނިވަރސިޓީގެ ކުލައިބަޔާ އޮތް ޝަރީޢާ އަދި ބާރުވެރި ގޮތުގެ (ކޮއަސްޓެޑް) ތަރުޖަމާކުރެވޭ ފިކުރީ ގޮތުގައި ހިމެނޭ އެހެން ދިރާސާތަކުގެ ޤަވާޢިދުތަކެވެ. މި ޖާނަލްގެ އަސާސް މަޤްސަދަކީ ގާނޫނީ އަދި ބައިނަލްއަޤްވާމީ ފެންވަރުގައި ގާނޫނީ ދާއިރާއާއި، މުޤާރަނާތަކާއި، ކޯސް އެންޑްރިސަރޗްތަކުގެ މަރުކަޒު ބައިނަލްއަޤްވާމީ ފެންވަރު ހޯދުމަށް އިލްމީ ދަރަޖަ ދިރާސާ ދިވެހި ބަހުން ދިރާސާ ކުރެވޭ ގާނޫނީ އަދި ޝަރީޢާ ގާނޫނީ ޝާއިޢުކުރެވޭ ދިރާސާތަކުގެ ބައިނަލްއަޤްވާމީ ފެންވަރުގެ ދިރާސާތައް ފެނިގެންދާނެ. އަދި ދިވެހިރާއްޖޭގެ އިންޖިނިއަރިންގް ދިރާސާތަކާއި ހިއްސާކުރުން، އިސްލާމީ ޝަރީޢަތާއި ގާނޫނީގެ ޝަރުޠު އަސާސީ ދިރާސާތަކުގެ ތަރުޖަމާކުރުމަށް ހުރިކަމެވެ.

އައިޔޫއެމްޖޯލްގެ އަމާޒުތަކުގެ އިތުރުން ކުރިއަށްއޮތް ޖީލުގެ ގާނޫނީ ދަރިވަރުންނާއި ގާނޫނީ ދާއިރާގައި މަސައްކަތްކުރައްވާ ފަރާތްތަކަށް މިދާއިރާއަށް ޝައުގުވެރިކުރުވުން ތަހުގީގީ އިލްމީ މަސައްކަތްތައް ކުރުމުގެ ފުރުސަތުތައް އުފެއްދުން ހިމެނިގެންވެއެވެ. އިންޑެކްސް އަދި ދިވެހި ބަހުން މިޖަރނަލްގައި ދިރާސާތައް ޝާއިއުކުރުމަކީ ކަނޑައަޅާފައިވުމުން، މިޖަރނަލް ފުޅާ ދާއިރާއެއްގައި، ތަފާތު އެކި ވިސްނުންތަކާއި ޗާޕުކުރުމަށް ކިޔުންތެރިންނަށް އަގުހުރި އިލްމީ ވަސީލަތަކަށް ވާނެއެވެ.

އަޅުގަނޑުމެން، މި އުއްމީދު ކުރަމުން ނިކުންނަވަރު، އައިޔޫއެމްޖޯލްގެ ކާމިޔާބު ބިނާކުރުމުގައި އޮންލައިން، ދިރާސާވެރިންނާއި، ކޮންޓްރިބިއުޓަރުންނާއި، ރިވިއުކުރާ ފަރާތްތަކާއި، އެޑިޓޯރިއަލް ބޯޑުގެ ގުޅިގެން ކުރެވުނު މަސައްކަތުގެ ނަތީޖާއެކެވެ. އުއްމީދުން ފުރިހަމަ ހަރުދަނާ މަސައްކަތެއްގެ ގޮތުގައި މިމަސައްކަތްކުރުމުގެ ޝައުގުވެރިކަން ހުރިހާ ޝައުގުވެރިކަމާއި މި ޖަރނަލް އަދި ޝަރުއީ އަދި ގާނޫނީ އިލްމާއި ދިރާސާގެ އަގުހުރި މަސްދަރަކަށް ވެގެންދާނެކަމެވެ.

މުގައްދިމާގައި، މި ތަޢާރުފުގައި ދިރާސާތައް އާޓިކަލްތަކުގައި އަދާކުރި ތާރީޚާއި އިންޑެކްސް ބައިވެރިންނަށް އެކުލެވޭ ހިތްވަރު އަޒުން ޝުކުރު އަދާކުރަމެވެ. މި މަޖައްލާއަކީ ޝަރީޢަތާއި ގާނޫނީ ދިރާސާތަކުގެ އިލްމާއި، އަކަޑެމިކްތަކާއި، ކުރިއަރުވުމުގެ ދަނޑިވަޅެއް ގޮތުގައި ޖައްވާނެއެވެ.

ޑރ. އަލީ ޒާހިރު
ވައިސް ޗާންސެލަރު
ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީ

އައިޔޫއެމްޖޯލްގެ 1 ވަނަ ވޮލިއުމްގެ 1 ވަނަ އަދަދުގެ ތަޢާރަފު

بسم الله الرحمن الرحيم

އައިޔޫއެމް ޖަރނަލް އޮފް ލޯސް (އައިޔޫއެމްޖޯލް)ގެ ފުރަތަމަ އަދަދު ޝާއިޢުވެގެން ދިޔަ ބޭފުޅުންނާއި ހަމައަށް ގެނެސްދިނުމުގެ ފުރުޞަތު ލިބިގެންދިއުމަކީ އަޅުގަނޑުގެ ވަރަށް ބޮޑު ޝުކުރާއެކުގެ އިޙްތިރާމް ނުހަނު ފަހުރާއި އާއި އަޅުގަނޑަށް ލިބިގެންދިޔަ ކަމެކެވެ. އަޅުގަނޑުގެ ނަޒަރުގައި، މިމަޖައްލާ ޝާއިޢުވެގެން ދިޔުމަކީ ޝަރުޢީ އަދި ޤާނޫނީ ދާއިރާގެ އިލްމުވެރިއެއްގެތެރޭގައި، ޤާނޫނީ ދާއިރާގެ މުހިއްމު އެކި ކަންކަމާމެދު ބަހުސްތަކެއް ކުރުމާއި، ޝަރުޢީ އަދި ޤާނޫނީ ގޮތުން ދިރާސާކުރާ އަދި ދިރާސާކުރަން ބޭނުންވާ އައު މަޢުލޫމާތު ދިރާސާގެ ނަތީޖާ ބަހުސްކޮށް ބަޔާންކުރާނެ އެންމެ ރަނގަޅު ފަރާގެ އިލްމީ ޕްލެޓްފޯމަކަށް ވެގެންދާނެ ކަމަށް އަޅުގަނޑު ޔަޤީންކުރަމެވެ.

އާދެ! އައިޔޫއެމްޖޯލްގެ މައިގަނޑު އަމާޒުތަކަކީ މިމަޖައްލާއަކީ ޝަރުޢީ އަދި ޤާނޫނީ ދާއިރާއިން ދިރާސާކުރާ ދިވެހިރާއްޖޭގެ އަދި ބައިނަލްއަޤުވާމީ މުޖުތަމަޢުގެ އެކި އެކި ފެންވަރުތަކުގެ ދިރާސާތައް ކުރާ އެންމެ ފުރިހަމަ ތަރުތީބު ދިރާސާކުރާ ބައިވެރިވުމާއި، ދިރާސާ ކުރުމުގެ ހިތްވަރު ލިބިގެންދިއުމާއި، ފުރުޞަތު އެންމެ ފުޅާ ދާއިރާއަކަށް ދިރާސާތަކާއި މައުލޫމާތު ފެތުރުމުގެ ވަސީލަތް ގެނެސްދިނުމާއި، އިލްމީ ދިރާސާތައް ފުރުސަތުދިނުމުގެ ގޮތުން އެކި މަޖައްލާ، އެންމެ މަތީ މިންގަނޑަކަށް އެކުލަވާލުމާއި އެކު ޤަވާޢިދުތަކާއި ފުރުސަތުދީފައިވާ ވަޒީފާތައް ދަރިވަރުންގެ އަދި ތަޢުލީމީ ދާއިރާގެ ބަޔަކަށް ޖަމާކުރެވޭނެ ގޮތް ހަމަޖައްސައިދިނުމެވެ. މިމަޖައްލާ ޝާއިޢުކުރުމަކީ މިކަމުގައި އަދި ލިޔުންތަކާއި ދިރާސާތަކުގެ ބޭނުމަށް ޓެކްނިކަލް ގޮތުން ހުރި ދަތިތަކާއި ފަހިކަމަކީ ފުރުސަތުތަކަށް ލިބިގެންދާނެ ފައިދާއެވެ. އަދި މިމަޖައްލާ މިފަދަ މަސައްކަތެއްކަމުގައި ބައްލަވާލެއްވުމަކީ ތަޢުލީމީ އެކުލަވާލުމެވެ. ޝާއިޢުކުރެވޭ ދިރާސާތައް ޖަމާކުރެވޭނެ ޤާނޫނީ އަދި ޝަރުޢީ ދިރާސާތަކާއި، ކާކު އަމަލުކުރާނެ ބައިވެރިވުމާއި، ޝަރުޢީ އަދި ޤާނޫނީ އެކިއެކި ކަންކަމާއި ގުޅޭ ބަހުސްތަކެވެ.

މިފުރުސަތުގައި، މިޖަރނަލް ޝާއިޢުވެގެން ދިޔުމުގެ މިއުމާލިއު މުޙާސަބާކުރުގައި، އަޅުގަނޑުމެންނަށް މިމަސައްކަތުގައި އެންމެ ބޮޑު އެހީތެރިކަމާ އެއްބާރުލުންދެއްވި ދާއިރާގެ ފަރާތްތަކުގެ ނަމުގައި އިދާރާއާއި ބޭފުޅުން ޝުކުރު ދަންނަވަމެވެ. މިގޮތުން ވަކިން ޚާއްޞަކޮށް ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީގެ ވައިސް ޗާންސެލަރ ޑރ. އަލީ ޒާހިރު، ޑެޕިއުޓީ ވައިސް ޗާންސެލަރ އިސްމާޢީލް އެންޑް ޑރ. ވިސާލް ދާއޫދު ނަސީރު ފާހަގަކޮށްލަމެވެ. އަދި ހަމައެއާއެކު މިޖަރނަލްގެ ޖާމިއާގެ ރިވިއުކުރުމުގެ ހަރުދަނާކަމަށް އެއްބާރުލުންދެއްވި އެންމެހައި ޤާނޫނީ އަދި ޝަރުޢީ މަސައްކަތްތެރިން، އެހީތެރިވެދެއްވި ޚިދުމަތްތެރިންނާއި ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީގެ ކުލިއްޔާ އޮފް ޝަރީޢާ އެންޑް ލޯ ގެ ޑީން ޑރ. ޢަބްދުﷲ ޝަރީފް އަދި ނިޒާމް ޙަސަން އައިޔޫއެމްޖޯލްގެ ޑެޕިއުޓީ އެޑިޓަރ އިން ޗީފް އިލްޔާސް ޢަބްދުﷲ ޝާކިރު އެޑިޓަރ ޝުކުރު ދަންނަވަމެވެ. އަދި އަޅުގަނޑުގެ ޝުކުރުގައި، މިޖަރނަލަށް ލިޔުއްވި ދިރާސާ ކުރައްވާ ޚާއްޞަ ފަރާތްތަކާއި، ރިވިއުކުރުމުގައި ފަރާތްތަކުގެ އެހީތެރިކަން، މިމަޖައްލާ ރަނގަޅު ފަރާތްތަކުގެ ޝުކުރުދަންނަވަމެވެ.

އަޅުގަނޑުގެ ދުޢާ އަކީ މިޖަރނަލަކީ ދިރާސާކުރާ ބޭފުޅުންގެ ހިސާބު ދިރާސާ އާލާކުރުމުގެ އެންމެ ގަދަ ދަރަޖައިން އަދި ޝަރުޢީ އަދި ޤާނޫނީ ދާއިރާގެ އެންމެ ރަނގަޅު ޖަރނަލެއް ކަމުގައި ވެގެންދިއުމާއި، ފުރުސަތު ލިބިގެން ދިއުމެވެ. މުސްތަޤްބަލުގައި ޤާނޫނީ ދިރާސާތަކުގެ މަސައްކަތްތަކުގެ ވަރުގަދަ ދިޔުމެވެ.

ޑރ. މުޙައްމަދު ޢައްފާން ޝާފިޢީ

އެޑިޓަރ އިން ޗީފް

އައިޔޫއެމް ޖަރނަލް އޮފް ލޯސް (އައިޔޫއެމްޖޯލް)

ދިވެހިރާއްޖޭގެ އިސްލާމީ ޔުނިވަރސިޓީ

IUM JOURNAL of LAWS

ދަރިވަންތަ ގަވާއިދު

ވޮލިއުމ 1 ނަމްބަރ 1 ޖެނުއަރީ 2024

ލޯގޯ ތިރީގައި

ތިލްލަ ކުރިއަށް ގެންދާ ދިވެހި ބަސް ބަލާ ލިޔުންތެރިންގެ ބައިވެރިވުން
ހަސަންމުދާ ރަޝީދު
ތިލަ ކުރިއަށް ގެންދާ ދިވެހި ބަސް ބަލާ ލިޔުންތެރިންގެ ބައިވެރިވުން
ހަސަންމުދާ ރަޝީދު

ދިވެހި ބަހުގެ ދުވަހުގެ ބަދަލުގައި ދިވެހި ބަހުގެ ދުވަހު ކަމަށްވާ ސެޕްޓެމްބަރ 14 ގެ ތާރީޚު ކަނޑައެޅުމުގެ ތަހުލީލު: ހަނާ ބަންދުގެ ދަށުން
ހަނާ ބަންދު
ފާތިމަތު ނާދިރާ ސަބުރީ

ތިލަ ކުރިއަށް ގެންދާ ދިވެހި ބަސް ބަލާ ލިޔުންތެރިންގެ ބައިވެރިވުން ދެ ދަރަޖައިގެ ދަރިވަރުންގެ ދަށުން
ހިލްމަދު ހަސަންމަޢުރޫފް
ތިލަ ކުރިއަށް ގެންދާ ދިވެހި ބަސް ބަލާ ލިޔުންތެރިންގެ ބައިވެރިވުން
ހަސަންމުދާ ރަޝީދު

ISLAMIC UNIVERSITY OF MALDIVES
جامعة المالديف الإسلامية
ތިލަ ކުރިއަށް ގެންދާ ދިވެހި ބަސް ބަލާ ލިޔުންތެރިންގެ ބައިވެރިވުން