CHAPTER-III

THE NATURE OF POST-COLONIAL POLITICAL SYSTEM
This chapter analyses the nature of post-colonial Maldivian political system. It focuses on the constitutional development in Maldives. The backgrounds of the 1968 Constitution and the 1998 Constitution of the country have also been analysed. The powers and functions of the Executive, Legislature and Judiciary under the 1968 and 1998 constitutions have also been discussed extensively. This chapter also highlights the Fundamental Rights and Fundamental Duties of the Maldives citizens. Analysis of the Maldives Public Service Commission and its contribution to the government has been given. Finally, the chapter also makes a critical review and an assessment of the nature and functions of the political system in Maldives. Since independence, the country has had two constitutions. The first one was 1968 Constitution, which has been replaced by the second one that came into force on January 1, 1998.¹

The 1968 Constitutional Provisions

According to the 1968 Constitution of Maldives, only one candidate was permitted to contest for the post of President.² The 1968 Constitution states that the post of President is powerful and any law or legislation adopted by the Parliament has to have the Presidential consent. The President has the power to grant amnesty to offenders, and also the power to confer titles and other awards. He has the power to nominate a certain number of members to the legislature and members of judiciary. Under the 1968 Constitution, there were 48 members of the People’s Majlis who were elected from 20 atolls. The Island-Chief and Atoll-Chief were appointed by the Home Ministry, which was under the control of the President’s Office. The Home Ministry has the power to control the local administration. In fact, the President has the power to give guidance, and directions through the Ministry of Home Affairs. Fundamental Rights and Duties of citizens of Maldives were guaranteed by the Constitution.

Under the 1968 Constitution, Maldives' administration of justice was not separated. The judicial power was vested in the President rather than in the judiciary. Since the beginning, it was the President who determined the number of courts to be established at different places rather than by the Judiciary. It was prevalent in the Maldives in accordance with the Islamic law; there were no secular laws in Maldives. The diffusion of functions has occurred because members of the People’s Majlis were also allowed to hold government positions. The major reason for such an enmeshing of legislative and bureaucratic functions was due to lack of adequate number of qualified manpower. The 1968 Constitution mentioned that there was no specific term of office for the President; one person could have ruled the country for unlimited terms.

**The 1998 Constitutional Provisions**

Under the 1998 Constitution, a multi-candidate contest is permitted for the post of President. Even the administration of justice has not been separated from the executive and legislature. According to the 1998 Constitution, members of the People’s Majlis has been increased from 48 to 50. The number of inhabited natural atolls have also increased from 26 to 27. The Atoll-Chief and Island-Chief of these atolls are appointed by the Ministry of Atoll Affairs.

Under both the constitutions there is no specific terms mentioned for the post of the President. But according to the new amendment that has been proposed, specific term for the post of the President is given. President Gayoom himself has suggested that the President’s tenure should be limited to two five-year term, and that women should be allowed to contest for the Presidency. On this matter, the Majlis also can make laws for the country. Both the 1968 and 1998 constitutions more or less have differences as well as similarities in terms of provisions mentioned. In order to change the constitutional provisions, the amendment of the constitution of Maldives is required.3

3. Ibid.
According to the Article 34 of the 1998 Constitution, the eligibility condition for the post of President are: A person shall be qualified to be elected as President if he (a) is a of Sunni Muslim; (b) is a citizen of the Maldives whose parents and grandparents are Maldivian citizens; (c) has attained thirty-five years of age; (d) is of sound mind; (e) is capable of discharging the duties and responsibilities of the office of the President; (f) has not been convicted of any offence; (g) is not a citizen of a foreign country; and (h) is not married to a foreign national.

The amendment of the 1968 Constitution first took place in 1975. The main amendment of the 1968 was that the elected Atoll Committees were abolished and the atoll chief became an appointee of the Home Ministry under the President. The Ministries of External Affairs, Finance, and Communication were abolished and converted into departments controlled by the President’s Office. The concentration of power in the hands of the atoll supreme was thus total and complete.

The Maldivian government, in February 2004, made an initiative to amend the 1998 constitution. The President appointed another eight people to serve the council; the People’s Special Majlis also included members of the People Majlis and the council of Ministers. The People’s Special Majlis has been empowered to amend the constitution. At the same time, President Gayoom has invited members of the public to send him proposals for constitutional reforms on June 2, 2005.

The President of Maldives (The Executive)
The President of Maldives is a real Executive. The President controls the entire constitutional machinery, including the legislature and judiciary. Under the 1968 Constitution, the President of Maldives is the Head of the State and Head of the Government. The powers of State were vested in the President. The President is so powerful that he can assign to himself any ministry of his own choice in the State. He appoints the Prime Minister and the Cabinet of Ministers.
The amended 1968 Constitution does not mention the Office of the Prime Minister. It gives power to the President to nominate eight Majlis members and also empowers him to appoint Vice-President. Understanding the background of the 1968 Constitution is important to understand the constitutional amendments introduced in 1975, which allow more concentration of authority in the hands of the President.

In the 1998 Constitution, the President holds more power because he is the Head of the State. The President is the Commander-in-Chief of armed forces and the police. The legislative power is vested in the People’s Special Majlis but the President enjoys all powers including Legislative and Judiciary.

The Majlis is elected every five years. In 1998, the Majlis consisted of 50 members—2 elected from Male and 2 from each of the 20 atolls, and 8 are nominated by the President. According to the 1998 Constitution, the Atoll-Chief and Island-Chief are appointed by the President through the Ministry of Atoll-Affairs. There are three political parties in Maldives. There are both continuity and change evidenced in the institutional structures and processes of the 1968 and 1998 constitutions of Maldives.4

However, even after independence, the regime structure under the Maldivian constitution has still reflected a considerable degree of continuity. Also, stability and orderliness have been the hallmark of its political system, with only two persons occupying the office of the President so far: Ibrahim Nasir (1968-1978) and Maumoon Abdul Gayoom (since 1978).

The President is nominated by the People’s Majlis and confirmed by a public referendum. According to Article 34 of the 1998 Constitution, the President is to be first nominated by the People’s Majlis, the unicameral legislature, and subsequently seeks the popular verdict through a referendum

for five years tenure. The provision for the nomination of the President by the People’s Majlis for anyone contesting the Presidential election has been incorporated in the Constitution to emphasize that he should be acceptable to the Parliament before he secures popular confirmation in the form of a referendum. The provision in the present Constitution involves the entire nation in the electoral process.

The presidential election may have been orderly and remarkably consensus-oriented; however, the President holds the supreme authority; he is the Commander-in-Chief of the armed forces and protector of Islam in the Maldives. He can appoint Cabinet Ministers who should be members of the Parliament.  

**Powers and Functions of the President**

The President is powerful in Maldives. He enjoys the executive power. He has the power to appoint and remove the Cabinet Ministers, Chief Justice of High Court, Speaker and Deputy Speaker of the People’s Majlis, Attorney-General, Atoll-Chiefs, Judges, Auditor-General, and also Commissioner of the Election. The President presides over meetings of the Cabinet Ministers and appoints the Vice-President. The President of Maldives makes a statement and declares the policies of the government at the opening session of the People’s Majlis every year. The President holds Public referendum on major important issues.

The Chief Executive promulgates decrees, directives, and regulations as may be required from time to time. He ensures the proper execution of policies of the government and compliance with the provisions of the constitutions and law.

Being the Head of State, nobody can challenge him or his power. The President receives and recognizes the Ambassadors of Foreign countries on behalf of the country. The President also sends representatives with special

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privileges to foreign States. In fact, the President controls the constitutional machinery, including the legislature and judiciary. In the event of such agreements requiring ratification by the government, they will not come into force unless the President has ratified the same on the advice of the Cabinet of Ministers.

All international agreements come to be effective only if the President gives his consent. The President also has the power to grant amnesty to offenders, to confer titles, and other awards. In the event of any emergency confronting the state, he has the discretion of proclaiming temporary orders which do not contravene the Constitution. The President has also the right to issue a proclamation of emergency. In such cases, the promulgation has the power to take orders of all measures expedient of protecting national security and also public sectors of the country. Such measures may even include the suspension of Fundamental Rights and Laws. According to the 1998 constitution, a proclamation of emergency may be extended, if approved by the People’s Majlis for a period determined by the People’s Majlis.⁶

Resignation of the President
The 1998 Constitution states that the President can resign from the Office by forwarding his letter of resignation to the Speaker of the People’s Majlis, specifying the reason. However, the President continues to hold office until the Speaker of the People’s Majlis submits within three days the said letter of resignation to the Majlis. The President then has to be notified in writing the acceptance of the said resignation by the People’s Majlis. Such provisions are there but no President has resigned from the office so far. Even constitutional provisions are there for impeachment of a President but it has been difficult to put this provision into practice.


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Considering after existent political system so far, there is a need for a change in the system; and for that constitutional reform is needed. One of the first reforms needed is the presence of the political parties. Opposition political parties have important roles to play in multiparty democracy; if at all the Maldivian leadership allows the formulation of political parties from the very beginning. Maldivian Parliament has recently allowed political parties in the country.

**Removal from the Office of the President**

According to the Maldives Constitution, the President may be removed from Office in case of any allegation against the President. The rules against which a President may be removed are dealt with in the sub-clauses 2(a) and 2(b) of Article 477 of the 1998 Constitution.

To explicate the provisions more, it is true that in Maldives constitutional provision allows the removal of the President from the Office but practically no President has been removed from the Office. There are three grounds on which the President may be removed from the Office: firstly, Maldivian Constitution is more supreme than the President; secondly, on the event of the President becoming permanently incapable of discharging the functions; finally, if the President intentionally violates the constitutional provisions. On such conditions, members of the Majlis (2/3 members) can pass the motion against the President and thus can be removed from office.

The President may be removed based on the following grounds:

(a) The President becomes disqualified under the provisions of the constitution for the office of the President.

(b) The President becomes permanently incapacitated to discharge the functions of the office by reason of mental or physical infirmity.

(c) If the President violates the Constitution intentionally, then he or she has to forgo the office as the Chief Executive, as written in the
Constitution. If the President violates rules of the Constitution, then he or she has to be removed from the office.

Floating the constitution in itself is an offence according to Islam. In Maldives, religion is more supreme than the President. Everyone has to respect Islam, even the President of the country. He should not violate the religion, otherwise on that very ground he can be removed. However, provisions are there in the country that a motion from the People’s Majlis be addressed to the Speaker of the Majlis. A motion to remove the President from the Office may only be considered in the People’s Majlis when one-third of the members of the Majlis have passed it, and two-thirds of the Majlis have resolved to consider it.⁷

If the office of the President becomes vacant by reasons of death, resignation, or removal from the office, the Speaker of the People’s Majlis discharges the function as Acting President. The Speaker generally continues to discharge such functions until a three-member council is elected by secret ballot of the People’s Majlis to administer the State.⁸ Even the President could appoint a Vice-President so that he or she may discharge the duties and responsibilities of the President.

The Cabinet of Ministers

Article 54 of the Maldives 1998 Constitution states that there shall be Cabinet of Ministers appointed and presided over by the President. The executive power is vested in the Cabinet of Ministers. The Cabinet of Ministers consists of the Vice-President, Ministries charged with responsibility for the Ministers and the Attorney-General.

So, nothing in this Article restricts the President from directly taking charge of a Ministry, as he deems fit without appointing a Minister. This is

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a unique system where cabinet of Minister has to obey the highest authority of the country.9

The Powers and Functions of the Cabinet Ministers

The political system of Maldives is highly centralized. It has a Presidential form of government where the President is the absolute powerful. Article 58 of the 1998 Constitution states that the Cabinet Ministers should discharge the functions assigned by the President. The function of the Cabinet of Ministers is to assist the President. First important function of the Cabinet Ministers is to assist the President in formulating government policy on important national and international matters of concern. Secondly, the Cabinet of Ministers assist the President in the formulation of annual budget of the State and government bills to be submitted to the People’s Majlis. It is a unique system where the Cabinet Ministers enjoy executive power. Thirdly, the Cabinet Ministers advise the President on the ratification of international treaties and agreements signed by the government of the Maldives with foreign governments, which require ratification by the State. Finally, the Cabinet Minister advise the President of Maldives on the development of the country. The President has his own choice of whatever policies best before good of the country. The President has the discretionary power to follow these policies.10

According to the Article 59 of the 1998 Constitution, every Minister has to discharge his or her duties with loyalty and to the best of its ability. Every minister has to be responsible for the functions assigned to him or her and also has to be accountable to the President. Any Minister whose negligence causes loss or damage to the State should accept the

9 Ibid.
responsibility thereof. Discharge of Ministerial functions and responsibilities, and accountability to the President are expected.

The Attorney-General

Article 60 of the 1998 Constitution states that there shall be an Attorney-General of the country appointed by the President. He has represent the State in all courts tribunals, whenever required by the Chief Executive of the Maldives. The Attorney-General discharges the functions assigned to him by the President with loyalty and to best of his ability. Whenever required by the President, the Attorney-General has to give legal advice.

Resignation and Removal of Ministers and Attorney-General

Ministers as well as Attorney-General may resign from the Office, with resignation written in hand and addressed to the President. However, such Ministers and the Attorney-General can continue to hold Office until the time the President notifies him of the acceptance of the resignation. The President can remove any Minister or the Attorney-General from Office. In the event of a vote of no-confidence against a member of the Cabinet passed by the People’s Majlis, such a member has to resign from Office and has to inform the President about the resignation.\textsuperscript{11}

Dissolution of the Cabinet Ministers

According to the 1998 Constitution the President may dissolve the Cabinet Ministers if, in his opinion, they are unable to discharge their functions effectively. Upon the dissolution of the Cabinet Ministers, the President informs the People’s Majlis of the dissolution. The President can also appoint new Cabinet Ministers as soon as possible.\textsuperscript{12}

The Legislature (Parliament)


\textsuperscript{12} Ibid.
The Legislative power, except the enactment of the Constitution, is vested in the People’s Majlis; but the President of the country controls the legislature, as overarching powers are vested in the President under the Constitution. The President functions in a highly centralized government structure, under which political dissent is considered as an offence. Although the government has restored Parliamentary privileges, the Legislature has not become autonomous of the Executive. This is because power is fundamentally tilted towards the Executive under the Constitution. There are no similarities between the Indian Parliament and the Maldivian Majlis. In India, the real Executive is the Prime Minister and the Council of Ministers, but in the Maldives the real Executive is vested in the President and the Cabinet of Ministers.

The People’s Majlis
Article 63 of the 1998 Constitution states that there shall be a People’s Majlis of the country, elected in accordance with the Constitution and law. A person qualifies to be a member of the People’s Majlis if he or she is a Muslim; is a citizen of the Maldives; has attained twenty-five years of age; is of sound mind; is capable of reading and writing Arabic and Dhivehi script and numerals; he or she has not been convicted in the past five years. Lastly, he or she should not be a foreign national.

Maldives Legislature (the People’s Majlis) consists of 50 members: 42 members are directly elected from each atoll (including Male) and 8 members are nominated by the President. The term of the People’s Majlis is five years from the date on which the first meeting of the People’s Majlis was held after its election. Upon the dissolution of the People’s Majlis on the expiration of its term, the first meeting of the newly elected People’s Majlis is held. A person elected or nominated as a member of the People’s Majlis assumes membership after taking oath before the President.\(^\text{13}\)

The Powers and Functions of the People's Majlis

In a year there are three regular sessions of the People's Majlis. The dates for the commencement and conclusion of these three sessions are determined by the Speaker. The Speaker determines the sessions because he or she administers all affairs of the People's Majlis and also presides over the sittings of a regular session of the Majlis. The Speaker of the People's Majlis generally informs the President before convening and concluding any session of the People's Majlis. However, in addition to the sittings of the regular sessions of the People's Majlis, an extraordinary sitting of the People's Majlis is also held when directed by the President of Maldives.

The People's Majlis elects the President by a secret ballot and nominates him for endorsement by the people in a national referendum. Once a person becomes a member of the Majlis, he or she has the right to vote in the Majlis. All matters proposed for discussed in the People's Majlis are passed by a simple majority. As the People's Majlis have 50 members, 26 votes constitute a simple majority which 34 votes a two-third majority.

According to Article 81 of the 1998 Constitution, a Bill passed by the People's Majlis becomes a law and is implemented on being assented by the President. The validity of a decision of the People's Majlis on any matter which is not inconsistent with the provisions of the Maldives Constitution is considered final. It will not be questioned by any court or tribunal, or any other such authority.

The People's Majlis can remove any Minister through the no-confidence motion. A motion expressing want of confidence in a member of the Cabinet Ministers may be moved in the People's Majlis. The reason for such a motion is debated in the People's Majlis upon the submission of such matter to People's Majlis, together with a written statement from the

concerned member of the Cabinet. The member of the Cabinet, against whom the motion is passed, is given a notice of fourteen days concerning the said motion. He or She is considered to be in want of confidence if the motion is supported by majority of the Majlis. The concerned member has the right to defend himself in the Majlis against the motion expressing the want of confidence in him.

The People’s Majlis holds an important authority over the very ownership of any part of the territory of the country. No part of the territory of the Maldives can be leased or otherwise given possession to a foreign national without the approval of the People’s Majlis. Another important power of the People’s Majlis is the passing of Bills. Each financial year, the Minister of Finance and Treasury submits the proposed State Budget for the approval of the People’s Majlis. The People’s Majlis estimates the expenditure and income of the State for the year and the expenditure and income of the State for the preceding year, and the Budget so proposed is passed by the People’s Majlis. No supplementary or excess funds are added to an already-passed Budget unless it has been submitted to and passed by the People’s Majlis.

The Speaker of the People’s Majlis

According to Article 68 (1) of the 1998 Constitution, the Speaker of the People’s Majlis can be appointed and removed from Office by the President. The President controls the entire constitutional machinery, including the legislature and judiciary. In accordance with Article 65 of the Constitution, any vacancy of the post of Speaker should be filled up within seven days of such vacancy. He or she should have a minimum qualification required for the Office of Minister. He or she should have the competence to discharge

the functions of the Speaker. The Speaker of the People’s Majlis assumes Office upon taking oath before the President.

The Powers and Functions of the Speaker of the People’s Majlis

Article 72 of the 1998 Constitution states that the Speaker administers all affairs of the People’s Majlis. The Speaker of the People’s Majlis discharges the functions as acting-President (if the post of the President is vacant) and summons the People’s Majlis. The Speaker carries out all matters relating to the election of the Council of Ministers. The Speaker of the People’s Majlis is one of the most responsible persons in the Maldives government. The Speaker is the presiding officer of the Majlis. The Speaker presides over the sitting of the regular sessions of the Majlis. An extraordinary sitting of the Majlis convened whenever directed by the President. The speaker submits to the President all matters passed by the People’s Majlis. The Speaker is the constitutional Head of the People’s Majlis.17

The Speaker of the Majlis may resign from Office, addressing the resignation written in hand to the President. He can even continue to hold Office until the President notifies him of the acceptance of the resignation. It is unlike the procedure in the Indian system where the Speaker of the Lok Sabha gives his resignation letter addressed to the Deputy Speaker of the Lok Sabha.

The Deputy Speaker of the People's Majlis

Article 70 (1) of the 1998 Constitution states that the Deputy Speaker can be appointed and removed from Office by the President. The Deputy Speaker is appointed by the People’s Majlis seven days prior to the date on which the first meeting of the newly elected People’s Majlis is held in the event of any vacancy. Within seven days of such vacancy in the House, the Deputy Speaker is appointed from among the members of the house. In the opinion

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of the President, he or she should be competent to discharge the duties of the Deputy Speaker. Then, Deputy Speaker of the People’s Majlis assumes office upon taking oath before the President.

According to the Constitution, it has clearly been mentioned that the Deputy Speaker is to assist the Speaker in discharge of the function referred to him. In the event of any vacancy in the Office of the Speaker, or when the Speaker is unable to perform his function, the Deputy Speaker may temporarily discharge the function of the Speaker. The Speaker is not a member of the People’s Majlis but the Speaker should have qualifications required of a Minister; however the Deputy Speaker is appointed from among the members of the People’s Majlis.18

The Deputy Speaker, like the Speaker, may resign from the Office by writing the resignation in hand; addressed to the President. The Deputy Speaker of the People’s Majlis can also continue to hold office until the time the President notifies him of the acceptance of the resignation letter to the Speaker of the People’s Majlis.

The People’s Special Majlis

According to Article 92 of the 1998 Constitution, the power to make and to amend the Constitution of the Maldives is vested in the People’s Special Majlis. In fact, the members of the Cabinet Ministers, members of the People’s Majlis, members elected from Male and the atolls, and lastly eight members appointed by the President consist the People’s Special Majlis. The People’s Special Majlis is convened as decided by the President and draws conclusion of the business, and the agenda is also discovered by writing in the hand of the President.

The level of qualification for the membership of People’s Majlis is applicable even for the People’s Special Majlis.

The Powers and Functions of the People's Special Majlis

The People's Special Majlis enjoys important powers. Any article or provision of the Constitution may be amended only by a law passed by a majority of votes in the People's Special Majlis, and after being assented by the President. The Amendment of the Article of provision has been referred to in Article 101 of the Constitution and passed by the People's Special Majlis; it is presented to the President within seven days from the date of passing. Hence, any Bill returned to the People's Special Majlis for reconsideration in accordance with clause (1) of 102 Article is passed by a two-third majority of the People's Special Majlis. In case it is not passed by a two-third majority of the People's Special Majlis, it becomes void. Finally, "a Bill passed by the People's Special Majlis becomes law and enter into force upon being assented by the President and thus such law is published in the Government Gazette."\(^\text{19}\)

This is called the law-making procedure of the Maldivian legislature. In accordance with Article 103 of the provisions of the 1998 Constitution, the validity of a decision of the People's Special Majlis will not be questioned by any court. But, the President of the Maldives can take decision regarding the validity of a decision of the People's Special Majlis.

President and Vice-President of the People's Special Majlis

Article 97 of the 1998 Constitution states that a President and a Vice-President of the People's Special Majlis shall be elected from among its members at the first sitting of the People's Special Majlis. When the Office of the President or that of the Vice-President of the People's Special Majlis becomes vacant prior to the dissolution of the People's Special Majlis, a new member shall be elected to fill such vacancy.\(^\text{20}\)


\(^{20}\) Ibid.
The Speaker of the People's Majlis presides over the first sitting of the People's Special Majlis until the President of the People's Special Majlis is elected. The President and the Vice-President of the People's Special Majlis assume office upon taking oath before the President. The President of the People's Special Majlis administers all affairs of the Majlis, convenes sittings of the Majlis for discharging the duties assigned to the Majlis, and presides over such sittings and submits to the President all matters passed by the Majlis within seven days of their approval. The Vice-President of the People's Majlis assists the President of the People's Special Majlis in the discharge of functions conferred upon him. In the event of any vacancy in the Office of the President the Vice-President temporarily discharges the functions of the President.

The Judiciary

Article 112(1) of the 1998 Constitution deals with the administration of Justice. The Judicial system is undertaken in accordance with the Islamic law. The Chief Justice and other Judges of the High Court are appointed by the President. All courts, with the exception of the High Court, are under the control of the Ministry of Justice. There are four courts in Male and 200 island courts, one in every inhabited island. In January 1999, the Government had declared that the island court in each atoll's capital would oversee the administration of Justice in that atoll.

The High Court

The High Court consists of the Chief Justice and other Judges. The number of judges may be determined by the President. The Chief Justice and other Judges of the High Court are appointed by the President. There are minimum qualifications required to be the Chief Justice or Judges of the High Court. A person, in the opinion of the President, should have the necessary educational qualification and competence to discharge the duties and responsibilities of the Chief Justice or a Judge of the High Court. Apart from
these, other qualifications are also required. A person should have attained thirty years of age; he or she must be of sound mind; he or she should not have been convicted of any offence which is prescribed in Islam, or convicted of criminal breach or of bribery; and he or she must not be a foreign national.

All appeals from the court of Maldives are according to the regulation promulgated by the President. The High Court hears cases determined by the President, to be filed with the High Court among the proceedings instituted by the State. The President controls the Judiciary, and the higher authority of the Judiciary is the President and not any court or even High Court of the country. Maldives administration of justice is pyramidal in structure. Inhabited islands courts form the lowest administrative justice unit and the High Court forms the apex structure. The Ministry of Justice is responsible to the President.21

The Island Courts (Other Courts)

In Maldivian Judicial system, the island courts are under the control of the Ministry of Justice. The judges of the courts are appointed by the President of the Maldives. There are four courts in Male and 200 island courts, one in every inhabited island. The President can increase or decrease the number of courts.

However, there are minimum qualifications required for appointment of Judges to such island courts. At first, he or she must be a Muslim and must be a citizen of Maldives.

Minister of Justice is assigned by the President to issue directives and orders concerning the administration of courts and the conduct of Judges in Maldives. The Ministry of Justice thus has the authority to control the island courts, except for the High Court of the country. There is a difference between the High Court and other courts (island courts). The
President is directly responsible in the functioning of the High Court, it gives directives and orders concerning the administration. But for the island courts, the Ministry of Justice issue directives and orders. The Atoll-Chief and the Island-Chief are responsible for the smooth functioning of these island courts.

**Resignation of Judges of the High Court and other Island Courts**

Article 116 of the 1998 Constitution states that a Judge of a court may resign from office by addressing his resignation letter to the President. Till the President notifies him or her of the acceptance of the resignation the Judge can continue the Office. There are same provisions for the High Court and other courts of the country. The President may, at his discretion, remove a Judge of any court from Office, as he is the supreme authority of the administration of Justice.

**The Relationship between Executive, Legislature and Judiciary**

Separation of powers is an established constitutional principle. In order to prevent the accumulation of too much power in one person or one decision-making body, there must be some separation of the three branches of the Maldives constitution: the Executive, the Legislature and the Judiciary. Without the separation of these three powers, absolute power will be vested in one individual, which could lead to inefficiency, corruption, and authoritarianism.

Article 4 of Maldives 1998 Constitution sets out the working of the Government. Article 1 states the powers of the State of Maldives shall be vested in the citizens. The said powers, for purposes of governing the State.

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shall comprise the following: (a) The Executive; (b) the Legislature; and (c) the Judiciary. Article 2 of the 1998 Constitution states that the executive power is vested in the President and the Cabinet Ministers. The legislative power is vested in the People’s Majlis and People’s Special Majlis, and the power of administering justice is vested in the President and the courts of Maldives. Thus, it can be seen from Article 4 that the Maldivian Government does not operate on a strict separation of powers. The functions of government are clearly divided, but the organs of the State overlap. There is a supposed separation of the Executive and Legislative branches, but Article 4(2) clearly states that the President occupies dual responsibilities, as Head of the Executive and the Judiciary.23

The Cabinet Ministers are appointed by the President, although it is notable that Article 55(2) of the Constitution allows him to take direct charge of any ministerial department without appointing a Minister. Currently there are 20 Ministers, and President Gayoom is in control of the Ministry of Finance and Treasury, and jointly in charge of the Ministry of Defence and National Security.24

Article 39 states that the President shall be the highest authority of administering justice in the country. Independence of the Judiciary is essential to ensure that those facing charges do so in the absence of the possibility of political bias. A body that is part of both the Executive and Judiciary will be responsible for the formulation of policy and then interpreting that policy in the courts. There is no check on the executive authority.

There is no independent system of Judicial review in Maldives. A recent investigation of the death of an inmate at the Maafushi was undertaken by the Presidential Commission, whose members were all appointed by the President. Parts of the report were not even made public due to lack of an effective separation of powers. Even if such a separation

23. Restoring power to President Gayoom. Hindu, (Madras), 5 Nov., 1998
between the Executive and the Legislature theoretically exists, the influence of one over the other seeks to undermine the separation.  

**Fundamental Rights of the Citizens**

Articles 13 to 28 of the 1998 Constitution state that Fundamental Rights are the soul of the country’s citizens. There are 16 Fundamental Rights for its citizens in Maldives which, have been guaranteed by the Constitution.

Article 13 states the equality of citizens before the Law. It means that Maldivian citizens are equal before and under the law and are entitled to equal protection of the law. Article 14 (1) and (11) mentions about Revocation and Renunciation of citizenship, so that no Maldivian shall be deprived of citizenship, except as may be provided by law. Article 15 states the right to be treated in accordance with law and the right to appeal against oppressive treatment. Article 16 (1) and (2) talk about the presumption of innocence and the right of the accused to defend himself. Prohibition of punishment under retrospective legislation is given under Article 17(1) and (2) (3). Article 18 of the Constitution states the inviolability of residential dwelling and premises Article 19 states the freedom of education. Article 20 states that inviolability of letters, message, and other means of communication will not be intercepted for its citizens. Freedom of movement, according to Article-21, is a Fundamental Right which guarantees freedom for every Maldivian citizen to return to Maldives irrespective of where he may be. Unless prohibited by law, a Maldivian citizen has the right to leave Maldives and travel within the country any time. Right to acquire and hold property is another Fundamental Right (Article-22). Every citizen shall have the right to acquire, hold, and dispose of property in accordance with law. Article 23 mentions the protection of property right in the country. Article 24 states the Right to Work, permitting every citizen the right to practice any occupation, provided that

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such occupation is not prohibited by law. Freedom of Expression under Article 15 is a Fundamental Right for all citizens. Every citizen of the country shall have the freedom to express his or her conscience and thoughts orally or in writing or in other means, unless prohibited by law in the interest of protecting the sovereignty of Maldives, and in maintaining public order and protecting the basic tenets of Islam.  

Freedom of Assembly (Article-26) allows citizens to assemble peacefully and in a manner that does not contravene the law. Freedom of Association (Article-26) is an important Fundamental Right in Maldives for its citizens. Persons shall be free to form societies and associations, unless prohibited by the law in the interest of safeguarding national security and stability. Finally, Right of Pension is the last Fundamental Right (Article-28). It states that every Maldives citizen engaged in employment shall have the right of pension in accordance with law.  

Fundamental Rights are very essential for the citizens overall growth and development. Although Fundamental Rights have been written in the Constitution, they have not been practically guaranteed by the State. There is a long history of denial of basic human rights to its citizens by the State. The Maldivian government has sustained this repression. The President Gayoom calls the political system a ‘model of democracy’. This version of democracy has no concept of Maldivian freedom. The Freedom of expression and assembly for political association have been denied to the people.  

**Fundamental Duties of the Citizens**

There are three important Fundamental Duties of the Maldives citizens. Article 29 of the 1998 Constitution states that every citizen of the country

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27. Ibid  
has to be loyal to the State, and obedience to the constitution. The primary
duty of every citizen is to honour the freedom and rights of others. It is the
duty of every citizen to protect and uphold the country’s Constitution.
Fundamental Rights and Fundamental Duties go hand in hand. Without
Fundamental Duties, Fundamental Rights are meaningless; both are
complementary to each other.

Secondly, Article 30 mentions the protection of the Constitution,
upholding the law, and honouring the rights of others. Finally, Article 13
(1) and (2) mention the violation of laws, regulations, and principles
inconsistent with Fundamental Rights. Where any law, regulation, or any
principle having the force of law is inconsistent with the Fundamental
Rights, such a law, regulation or principle shall, to the extent of its
inconsistency, is considered void. Also, the Fundamental Rights shall
not, temporarily or otherwise, be denied save in accordance with the 1998
Constitution of Maldives.

There was no constitutional provision of forming a political party
until 2004, and at the same time it does not guarantee anyone the full right
to do so. The right to freedom of expression was very much restricted
because of the overarching power of the President. Thus citizens have to
follow the constitutional provisions, which are compulsory for every citizen
of Maldives.29

Public Service and Other Institutions

Maldives Civil Service is a political term which is very new to the country
and in most cases not understood by many. There is no Civil Service in
Maldives in a true sense, but it is a kind of Public Service which include
elected, appointed, and employed personnel, including the Head of the
Government, Ministers, Directors, and even messenger boys. They all get

gov.mv/download/constitutions.pdf.
pensions for 20 years of their undisrupted service to the State and for not retiring from service.

There are Public Servants in the Majlis (Legislature) holding post in Public Service at the same time in a Ministry or Department without a Departmental or Ministerial responsibility. There is no independent Civil Service Commission, and everyone is employed in the administration of the State by the Public Service Division of the President's Office.

Political parties were interested without regulating Public Servants joining political parties in Maldives. It has become a system where public servants become Ministers without being elected or endorsed for by the Majlis. These have led to the weakening of the tradition of political impartiality that existed in the public service and erected a chaotic political public service; a system which is quite contrary to the public interest, and a highly politicized public service system. Political factors have become crucial for the appointment and promotion of Public Servants in the post-party era.

It has now become vital to establish a Civil Service Tribunal with an already independent Civil Service Commission to deal with the ongoing malpractices of Public Service by the Public Service Department of President's Office of Maldives.30

Critical Review and Assessment of the Nature and Functions of the Political System in Maldives

The nature and function of the existing political system in Maldives is highly centralized. The President is not only the real Executive but also controls all the powers including Legislative and Judicial. In Maldives, judiciary system is not independent and ordinary citizens do not have any effective recourse to seek the help of law against any unjust penalization.31 It means, the highest authority is not the court but the President of Maldives.

31 Ibid.
Hence, many factors are responsible for the spread of political discontent among a section of the political elite. These are: "The concentration of political and economic forces in Male due to which the atolls are getting increasingly marginalized in the contest for power. Secondly, the narrow base of the decision-making structure in the country; lastly, the presence of an oligarchic streak in democratic political system."32

The killings of three prisoners by the National Security Service and the injuring of a dozen more in Maldives in early September 2003 exposed the functioning of the political system. NSS personnel function under the President's Command. The totalitarian government that has sustained this repression has concealed itself behind the veil of a model of democracy. This version of democracy upholds no individual freedom; assembly or political association has been denied to the people. It was this veil which was finally lifted on September 20, 2003.33

In their efforts to decentralised the system, Maldivians are confronted with many problems in the hands of the central government. There are demerits in the centralized political system. There is no local self-government for the atolls and islands in the country. People are denied of opportunities to govern themselves on local level. The government has not been giving importance to the uninhabited islands and 200 inhabited islands of the country.34

The Maldivian leadership has not taken the step to strengthen the democratic political system.35 Other political institutions are equally weak because of the underdeveloped political culture. Maldivian leadership's promise for a better democracy during the election time has never been fulfilled. Even President Gayoom had declared that his new term would have

32. A. V. Varghese, "Situation in the Maldives: A Period of Big Challenges", The Deccan Herald (Banglore), 29 June 1990.
34. Reported in the Asia 1994 Year Book, No. 9, p. 170.
the system work for a better democracy. He stood for the decentralization of
the political power, but apparently is yet to be implemented.

On June 2, 2005, Maldivian Parliament voted for a multi-party
democracy for the first time in the tiny atoll-nation. The parliament
unanimously approved a resolution to allow political parties seek
recognition and contest elections, ending the no-party system in the nation.
The motion was moved on the basis of a request by President Gayoom to
review its earlier decision not to allow political parties in the country.

Although political parties in Maldives had been previously banned,
there had been no official proscription on political activity so far. President
Gayoom himself proposed a number of radical reforms in the 1998
Constitution’s constitutional reforms. He has suggested that the President’s
tenure should be limited to two five-year terms, and women should be
allowed to stand for the Presidency. According to the 1998 constitutional
reforms, the President would also lose the right to nominate eight members
of the People’s Majlis. The People’s Majlis would become independent of
the Executive, and the post of Prime Minister would be created. The
Judiciary would be restructured; a Supreme Court would be created as the
highest court of appeal, which the President would appoint on the advice of
the People’s Majlis. The proposals have been discussed by the People’s
Majlis, and the People Majlis voted for these proposals. It is yet not clear
whether the present government will implement this proposed amendment
practically or not.

**Conclusion**
The above discussion and analyses make it amply clear that the political
system and governance in Maldives is different from other countries in
South Asia. The post-colonial Maldivian political system requires more
democratic restructuring. A new approach and mind-set are necessary for
the work ahead. Recently proposed constitutional reforms by the President
are yet to be implemented. Maldives needs proper constitutional reforms for the betterment of its political system. If these suggestions are implemented by the Maldivian leadership, then the country is bound to develop in every front.