TRANSPARENCY MALDIVES
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MALDIVES GOVERNANCE UPDATES

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ANCIENT JUDICIARY OF THE MALDIVES

The purpose of this governance update is to provide a very brief introduction to the historical development of the Maldivian Judiciary from the earliest recorded times up until the introduction of the new Constitution in 2008.

Prior to the country embracing Islam in 1153 A.D legal disputes were settled according to customary law (Fooruve Rudin). The King (Radun) was the highest authority on judicial matters and a council of nobles and religious functionaries would have advised him in settling legal disputes that arose between his subjects.

Following the Maldives' conversion to Islam there was an attempt to impose a uniform system of Islamic Sharia across the country – often with visiting Arabic travellers being offered senior judicial posts on the assumption that their superior command of Arabic than locals would have made them more erudite on matters of religious law.

The earliest sources informing us of how legal affairs were conducted during these times and earlier are two Royal Edicts: Isdhoo Loamaafaanu and Dhanbidhoo Loamaafaanu, which were commissioned by the King in the half century following the Maldives' conversion to Islam. These sources inform us that even then the Maldives' had a Chief Judge in the form of an Uthama Pediyaaru who was tasked with overseeing the conduct of justice throughout the land.

Despite the formal imposition of Sharia Law, customary influences from a pre-Islamic past continued to persist in the culture and judicial administration of the country. For instance, the famed Moroccan Traveller, Ibn Batuta, who was offered the position of chief judge by the Sovereign of the time, Queen Rehendi Khadeeja, took particular chagrin that divorced women often stayed in the same place of residence as their former husbands – a practice that he immediately banned.

One of the most comprehensive treatments of how the Maldivian legal system functioned prior to the 20th century can be found in the diaries of Francois Pyrard, a French traveller who was stranded in the Maldives from 1602 to 1604.

According to Pyrard, the Maldivies was divided into 13 administrative provinces (atolls) and each province had a judicial supervisor in the form of a naib. The naib would visit each island in that province in an annual rotation to hear and settle legal disputes. Criminal and Civil cases could only be settled by the naib of that province, hence a person wishing for legal redress had the option of either waiting until the naib arrived on his island or, alternatively, to go and visit whichever island the naib was residing in at that time.

Superior to the naib was an Iss Fandiyaaru (Chief Judge) based in Male' who had the Jurisdiction to summon anyone from throughout the country

and who could appeal the decisions of the naibs. Whilst the Chief Justice usually heard cases at his own residence, cases of especially high importance would be held at Kiyevibeykalunge Ashi (literally the bench of the learned people) in which the chief judge sits with and would be advised by a council of elders in making his judgments.

The aforementioned Chief Judge was traditionally held in very high esteem throughout the society and even the sovereign was expected to defer to his judgements.

The inchoate judicial regime extant in this period can accurately be described as independent.

JUDICIAL REFORM IN THE EARLY 20TH CENTURY

The type of Judicial administration described above survived well into the beginning of the 20th century. However, the opening up of the Maldives to the outside world due to such factors as British colonial interest in Maldives and increased trade with neighboring countries provided the impetus for the Judiciary to be restructured to meet the increasingly complex needs of legal administration in the country.

The establishment of the Mahkamatul Sharuiyya in 1909, marked for the first time in the history of the Maldives, the creation of a formal body solely tasked with regulating judicial affairs throughout the country. It was to be presided over by the Chief Judge, who would be assisted by six other judges including the Bandaaraa Naib (Attorney General).

Initally, the Makhkamat was envisioned as an independent body from the executive whose responsibility it was to dispense and regulate justice throughout the land. The customary independence of judges was given formal articulation in Article 80 of the First Constitution (1932) according to which "Judges are independent unless they have acted in contravention to the law. No one has the power to interfere with judicial proceedings conducted by them."

Nonetheless, in the decades following its establishment the Makhkamat went through several changes in terms of its functions and administration that left the situation confused as to whether or not it was an independent Judicial body or a body that fell under the ambit of Executive authority.

The Public Administration Act 1932 for instance placed the Makhkamaat under the authority of the Ministry of Justice effectively putting it under the supervision of the Government. Though its theoretical independence was restored in the following decades, Executive influence in its administration and functions persisted in reality.

EXECUTIVE CONSOLIDATION UNDER NASIR AND QAYOOM

President Nasir used the powers granted to him in the second Republican Consitution of 1968 to abolish the Makhkamaat, and formally make judicial administration an Executive prerogative, with the Ministry of Justice taking over all the roles that had previously been fulfilled by the Makhkamat.

Executive consolidation over the Judiciary continued and intensified under Maumoon Abdul Qayoom, who became President in 1978.

Qayoom introduced a number of important administrative reforms to the judiciary including the establishment of magistrate courts on all islands (hitherto individuals outside of Male' had to travel to whichever island that the relevant atoll court was located); the establishment of the Criminal Court, Family Court, Juvenile Court and Civil Court in 1997, and the creation of a High Court in 1980, which could appeal the decisions of the lower courts.

Nonetheless, under Qayoom the Presidency was the ultimate arbiter on all matters relating to justice and he could overturn the decisions of the High Courts and provide authoritative interpretations of the Constitition.

JUDICIAL REFORM UNDER THE 2008 CONSTITUTION

Following the implementation of the new Constitution in 2008, which heralded the Maldives' transition to a multi-party democracy with a separation

of powers between the Executive, Legislative and Judicial branches of Government, the Judiciary was formally declared an independent institution.

The Judiciary is now designed as a three-tier system consisting of:

1) The lower courts (which are the magistrate courts found in every island except Male') and superior courts (which are the Male' based courts with specialized jurisdictions: these are the Criminal Court, Family Court, Juvenile Court, the Civil Court and the Drug Court).

2) The High Court, which is an appellate court of first resort with the power to overturn the decisions of the lower and superior courts.

3) The Supreme Court, which is the apex court of the Maldives. Under the 2008 reforms the SC is to be the ultimate authority on justice and the interpretation of law and is not subject to Executive authority or influence in carrying out its functions.

Concomitant to the responsibilities conferred on the courts, under the new Constitution, judges are also expected to possess the qualifications and skills needed to dispense justice within the needs of the current constitutional framework. A Judicial Services Commission was created as an oversight body tasked with ensuring that individual judges are qualified and perform their responsibilities ably and ethically.

Reconciling what was envisioned under the constitution with existing realities remains one of the key challenges in the judicial reform process in the Maldives.