
Harmonization of Civil Law and *Shariah* in a Small Island Nation: The Republic of Maldives Case Study

Ismail Wisham and Aishath Muneeza,

Abstract: *The Maldives lies as a thin strip of indiscriminate dots stretching from north to south on the Indian Ocean, a small speck in contemplation to the rest of the world. Yet, the country has remained an Islamic state to the larger part of its recorded history. More than half a millennium passed since the bereavement of our Holy Prophet before the then reigning King of Maldives pronounced the country to be an Islamic Kingdom in 1153 AD (548 H). Fourteen hundred years later and the country are yet to establish the country's legislative backbone as one which keeps is par with the ever changing world, while at the same time, preserving the integrity of the laws that were handed down by our Holy Prophet. Nevertheless, it may not be as simple, considering the challenges of harmonizing the Shariah and civil laws in a small island nation, with its adolescent legal system and recent political upheaval, and one which still largely remains dependent on foreign support.*

Moreover, we have to also consider the usual suspects such as the erosion of Islamic morality in a globalised society and the difficulties in codifying the Shariah to begin with. This paper, using the current Constitution and existing legislation, will highlight the legal lacunas in implementing the Shariah and suggest possible solutions that would overhaul the entire legal system for the better in the hopes of harmonizing the existing laws with, at least, the basics of Islam.

Keywords: Maldives, Islam, Harmonization, Case Study, Recommendations

- a. *“The religion of the State of the Maldives is Islam. Islam shall be the one of the basis of all the laws of the Maldives*
- b. *No law contrary to any tenet of Islam shall be enacted in the Maldives”*¹

1. Introduction: Islam in the Republic and its History

The Republic of Maldives is an archipelagic nation consisting of over a thousand small coral islands, the capital of which is measured no bigger than 3 square kilometers. It lies on the world map as a thin strip of small dots arranged from the north to the south a little more than 600 kilometers off the southwest coast of India. The country is best known throughout the world for its pristine white beaches and coral studded seas. However, as Shaheed (2006) points out *“beyond the picture postcard scenery of white sandy beaches and clear blue lagoons, the Maldives is a real country with real people, real hopes and real concerns”*.²

The Maldives remained a Monarchy made particular by its own peculiar traditions throughout its history, the main feature of which was that the Crown never was hereditary. The nation converted itself into a Republic after a referendum in 1953 and has remained one since, save for the brief stint in the 1950s and 1960s where the country saw a reversion to the Monarchy system after the first Republic collapsed under the weight brought about primarily by World War II.

It would not be a mistake to claim that the Maldives and the rest of the planet remained worlds apart, at least

¹ Article 10 of the Constitution of the Republic of Maldives, functional translation.

² Shaheed (2006) Speech by His Excellency Dr. Ahmed Shaheed, Minister of Foreign Affairs of the Republic of Maldives at the Third Session of the Human Rights Council of the United Nations held on 29th November 2006, made available online at <http://www.foreign.gov.mv/v3/?p=speech&view=sep&id=4> last retrieved on 28.09.2009.

until the latter part of the last century. With the last decade, give or take, the nation has been thrust into the global arena, under the flag of a nation which is largely adolescent in terms of the development of its legal system. Being a country which has never been colonized, save for being a British Protectorate¹, the country did not receive the benefits of the imposition, to use the term loosely, of the English (or any other) legal system². Whatever law or justice that was administered came in the form of the *Shariah*, imported by the few religious scholars educated in Arabia, with a hint of the principles of equity and fairness, although the terms were never officially used. Today, as a result of enactment of Legislation to deal specifically with whatever issues arose, whenever it did, there exists a mixture of Legislation based on the *Shariah*, civil law and English common law.

Islam has been and remains an important part of the nation, its culture and its people³. The country's first written Constitution was drafted in 1932 under the Command of the King Al-Sultan Muhammad Shamsudheen Iskandhar, who

¹ This essentially meant that the nation was free to deal in their own internal affairs but the foreign policy was solely at the discretion of the British. The British were concerned over the Japanese influence creeping in from the Pacific and wanted to ascertain the Maldives' position and support, albeit they didn't need it practically speaking. Yet they satisfied their concerns over the possibility of a Japanese occupation opening doors for their bases in the region, and in effect the Japanese military presence. Physical presence of the British was negligible except for their base setup in the south of the country and a few representatives at the Capital.

² Shakoor (2007), Aishath Azima, Attorney General's Office, Republic of Maldives, *Criminal Justice Action Plan (2004-2008)* last retrieved on 14.08.2009 at <http://www.agoffice.gov.mv/Publication/pub7.pdf> at p.4;

³ Until very recently, the qualifications for the post of Chief Justice was not that he/she was a qualified lawyer, but that the office bearer is to be a seasoned Islamic Scholar (see Einfeld, 2005, *Draft Discussion Paper on Strengthening the Maldivian Judicial System*", Sydney, Australia, published by the Attorney General's Office, at 8) A legislative example of how the State and the system recognized Islam as its basic tenant would be the Act on the Oral testimony of Women 1972 (Act 4/72) which stipulates in one short sentence that in all matters other than those stipulated in the Holy Quran, women's testimony is to be regarded equal to that of men, signifying that Religion was not to be compromised even when encouraging emancipation of women.

directed the Parliament to draft a Constitution which incorporates the nation's customary laws and Islam¹. The Constitution of the Republic newly ratified in 2008 states that “*the Maldives is a sovereign, independent, democratic Republic based on the principles of Islam*”². The Oath of Office for the President starts with “*I do swear in the name of Almighty Allah that I will respect the religion of Islam, that I will uphold the Constitution of the Republic of Maldives and the fundamental rights of the Maldivian citizens*”³. On the face of it, the reasonable picture anyone may draw would be that the cluster of self governing islands is a country run primarily on Islam and its tenants. Even since conversion in 1153 A.D.⁴, religion remains steadfast within the system dictating the shape the nation took at any given period in time⁵. Recent accounts show that issues such as that of civil liberties like the freedom of the press and expression in general were allowed within the country as far back as the eighties, to its widest extent, limited only by the contexts of Islamic law and the existing legal framework. The reception

¹ People's *Majlis* (Parliament) (1981); *Dhivehi Rahjjege Qaanoony Hayaath*, Novelty Press, at 39. His Highness issued a letter to the People's *Majlis* in 1932 (1349 H.) to “*To enact all laws to regulate the affairs of the State, favoring to lighten the life of my People at all times, within the limits set by the Religion of Islam, incorporating the customary law of the Sultanate applicable in the present day, keeping in mind the revenue of the State and provided no law betrays the Covenant between the State and the British Emperor*” (Authors' translation)

² Article 2 of the Constitution of the Republic of Maldives, functional translation.

³ Schedule 1 of the Constitution of the Republic of Maldives, functional translation.

⁴ H. C. P. Bell (1922) *Excerpta Maldiviana*, Journal R.A.S. (Ceylon) at p. 293

⁵ Bell (1922) at p. 179 and 165 depicts that even at the time of the Portuguese occupation which lasted for 17 odd years around 1558-1573 there remained “*Mohamettan Kings*”. The tombstone of the national hero Sultan Mohamed Thakurufaanu who led the Maldivian military effort to eradicate the country of Portuguese influence reads, “*Lead O God the Maldivian Race, Along the Prophets way, Ever staunch to Muslim Faith, Until the Judgment day*” According to Bell, this ‘slogan’ remains undiminished in its intense fervor.

of the twentieth century saw large changes in the politico-social and economic aspects of Maldivian life. However, one thing, which had not changed through time, was the nation's adherence to Islam and their homogeneity.¹

“The Maldivian legal system combines traditional Islamic law with aspects of common law. It is generally recognized that the legal system has been struggling to keep abreast with recent socio-economic developments associated with rapid economic development, a boom in tourism, increased international trade and investment, fast population growth and changing living standards and lifestyle.”²

In a discussion of harmonizing civil law and the Shariah in a small island nation, the biggest implication of what it means to be a nation of its size and significance cannot be ignored. Dependency on foreign support and development, in turn, has implications of its own. The Maldives faces numerous challenges in this debate over and beyond the obvious such as the adolescence of the legal system itself. The following discussions will seek to elaborate on these points as far as it owes its relevancy to the Maldives and its small island nation status. To this end, it has to be mentioned here that the biggest drawback in terms of compiling any sort of study on the country is its lack of material or academic (or otherwise) debate which has been reduced in writing, on top of other major setbacks such as the absence of any case law reports in the nation³.

¹ Ellis (1998), Royston, *A Man for All Islands, A Biography of Maumoon Abdul Gayoom, President of the Maldives*, Times Editions, at p. 211-212(2005)

² Einfeld, (The Hon Justice) Marcus, (June 2005), *Draft Discussion Paper on Strengthening the Maldivian Judicial System*”, Sydney, Australia, published by the Attorney General's Office at p. 8

³ The notion of these reports being public document is still alien to the system. Those who wish to obtain a Judgment or a Report has to submit a written request to the respective Courts. The Authors would like to take this opportunity in thanking all those who assisted in the compilation of this Paper including Ms Aishath Liusha Zahir, Director at the Ministry of Foreign Affairs for her contributions on obtaining information on the country's foreign policy and aid dependency and the former Attorney

2. Challenges Faced, No. 1: Dependence on Foreign Support

Similar to other small island developing states, the Maldives relies heavily on foreign developmental assistance. Interest-free or low-interest loans and gifts in the form of infrastructural assistance such as schools, hospitals are all forms of foreign assistance or aid without which a nation such as the Maldives is now commonly regarded to be incapable of developing further. Generally foreign aid is associated with official development assistance; a subset of the official development finances, and normally targeted to the poorest countries.¹ Developmental assistance has positive consequential effects on national economic growth through increased investments and enhanced capacity to import capital goods or technology. However, in some circumstances receipt of developmental assistance results in adverse effects as it occasionally erodes the quality of governance indices, *e.g.* corruption and the rule of law. Knack (2007) argues that “*aid dependence can potentially undermine institutional quality [and] alleviat[e] pressures to reform inefficient policies and institutions*”².

General Ms Aishath Azima Shakoor for her valuable assistance. In addition, the contribution of the Chief Magistrate of the Upper North Province Mr. Mohamed Niyaz has to be highlighted as well. And Lastly, the Authors express their appreciation for the Prosecutor General Mr. Ahmed Muiz who provided much insight into the functioning of the criminal justice system in the country, Chief Judge of the Civil Court Mr. Ali Sameer who was instrumental in obtaining much of the case law material and research used in this Paper regardless of how hard the task may prove, and Senior High Court Justice Mr. Ali Hameed for his invaluable contributions as well

¹ World Bank (1998). “*Assessing Aid: What Works, What Doesn’t and Why.*” Oxford University Press, New York

² Knack, Stephen (2000). “*Aid Dependence and the Quality of Governance: A Cross-Country Empirical Analysis.*” World Bank Policy Research Paper, available for download at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2000/08/26/000094946_00081406502627/Rendered/PDF/multi_page.pdf

It is perhaps a traditionally unspoken fact that developmental assistance does not come “free” for developing states. Donor countries prescribe criterion for the provision of aid and assistance. Such criteria could take many forms one of which is pressure exerted on the recipient country on a particular issue. Some of the legitimate forms of such pressure come from organizations such as the World Bank or IMF who stipulate conditions such as that the granted aid must be used for the given purpose and certain obligations are to be met along the way. Since the 1980s, aid from Western countries has been conditional on recipient countries implementing policies dictated by these two institutions. A flagrant instance to which this analysis is applicable is the United States relationship with Iran, Myanmar and Cuba.

A review of the Maldivian foreign policy between 2004-2007 reveals a similar pattern. To provide a brief background, in 2004 the then President Maumoon Abdul Gayoom’s more than 25 years in office faced instability in the face of growing demands by political opposition to democratize the country. The opposition party had gained support from the major European countries who in turn exerted pressure on the Maldives Government to embrace democratic principles; the fundamental of which was the allowing of operation of political parties¹.

It was during this period that the Maldives acceded to many of the international human rights treaties that obligated states parties to implement the principles and norms contained therein. In this regard, the Maldives acceded to the International Bill of Rights consisting of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). It also ratified the Convention Against Torture Cruel Inhuman and Degrading Treatment or Punishment (CAT) and its Optional Protocol (OPCAT). In 2007, in a big step towards accepting international governance standards, the Maldives ratified the Convention

¹ Although the Maldives Constitution of 1998 contained provisions protecting the fundamental rights and liberties of its citizens, these provisions were qualified limiting their application to subordinate legislation.

Against Corruption. It is a widely held belief in political circles that the “new Maldives” group that came into the Cabinet raised the Maldivian image amongst donor countries as a small state committed to good governance, rule of law and human rights.

Nevertheless, the Maldives is a nation which may not be mistaken to categorize itself as a nation unnervingly aid-dependent¹. For instance, the country, was slated for graduation from the UN list of Least Developed Countries in 2006². Nonetheless, with the huge impact of the 2004’s tsunami, the United Nations deferred graduation for another four years. Presently the Maldives is due to graduate from the list by the end of 2010, and take effect as a Middle Income Country on 1st January 2011. The current administration advocated for the postponement of the graduation in light of the global food, fuel and financial crises, and as such, in his maiden address to the United Nations General Assembly on September 2009, the Maldivian President Mr. Mohamed Nasheed emphasized the matter of graduation and linked it with the obstacles in creating a conducive economic outlook for the nation.³

The implications of this dependency are vast reaching. On the one hand, whilst vast donor assistance packages are provided for some countries, their internal matters seem uninfluenced. An example is the massive US assistance to Middle Eastern countries. On analysis, these cases are based on strategic and geopolitical interests. One school of thought

¹ According to the MMA (2009) (Maldives Monetary Authority, the Central Bank), *Annual Report and Financial Statements, 2008*, at p. 10 “the total external debt stock (disbursed and outstanding) of the country, growing rapidly since 2005, reached US\$969.2 million at the end of the fiscal year for 2008. As a ratio to GDP, total external debt reached 77 percent compared to an average of 38 percent during 1997-2004”. The report is made available online at <http://www.mma.gov.mv/ar/ar08.pdf>, retrieved last on 29.10.2009

² Promotion of the Maldives, and in effect any nation, from the Least Developed Country’s list (LDC) which would mean that we are to face higher interest rates on loans, short grace and repayment periods etc.

³ The Address is made available online at <http://www.presidencymaldives.gov.mv/4/?ref=1,6,2052> last retrieved on 24 October 2009.

would not be so forgiving, branding any form of compromise of its internal policies as foreign policy prostitution. This is especially true when countries are forced to rethink policies over and beyond what can be considered as legitimate democratization. Small island developing states, with their narrow economic base, are forced to rethink policies in reaction to much needed developmental assistance. In these scenarios, with large portions of aid, the donor countries influence the political decision making of the recipient countries. An example of this would be the favorable considerations the donor countries receive from small states in the former's candidatures to the different world agencies and bodies.

Usually, conditions entailing developmental assistance would be the compulsory obligation of establishing 'democratic' principles in a recipient country, where usually 'democratic' would hardly be representative of Islamic values. *Hudud* law (Islamic penal law) which is now largely being considered as violating principles of international human rights are one example where Democracy and Islam may not see eye to eye. On the other hand, these notions tend to forget that democratic principles and universal human rights condemn such punishment when they are arbitrary and capricious. Islamic principles dictate that such cases are to bear the full force of the law, going through rigorous legal framework and process. However, for the Maldives there is one provision in the Constitution which serves itself as encouraging on this note. Article 16(a), which talks of the constitutional guarantee of the people's fundamental rights says that "*[the] Constitution guarantees to all persons, in a manner that is not contrary to any tenet of Islam, the rights and freedoms contained within this Chapter...*" it goes further under clause (b) to say that "*[t]he limitation of a right or freedom specified in this Chapter by a law enacted by the People's Majlis as provided for in this Constitution, and in order to protect and maintain the tenets of Islam, shall not be contrary to article (a)*".

Nevertheless, one may think that recent developments in the political arena can be taken as an illustration to the above discussion. Very recently, the President announced that he discourages the Parliament passing the new

amendments to the Penal Code ¹, imposing *hudud* punishments such as the amputation of the limbs. Whether this is due to external influence can perhaps not be ascertained. Proponents of this view, are of the belief that the country's legal system, as discussed in detail below, is too incapacitated when it comes to enforcing such significant punishments like the amputation of limbs. A more sympathetic view say that enforcement maybe suspended until reforms are made throughout the Judiciary, but still the legislations needs to remain untainted². Of course, the Address met with harsh criticism from the *Adalath* (Justice) Party³, who is the one party within the ruling coalition whose manifesto exclusively is dedicated to the establishment of righteous Islamic values.

3. Challenges Faced, No. 2: Adolescence of the Legal System, and the Judiciary.

“It is widely agreed that judges currently lack adequate legal training. Similarly, the legal profession is relatively young and training in the common law is a comparatively new occurrence amongst legal professionals, with the first common law trained lawyer only commencing practice in the late 1980s...”

The judicial system is in considerable disarray. There is no judicial independence, Judges receive little or no legal training and they have minimal expertise. They are lowly paid, do not have to be lawyers and there is no

¹ The new bill essentially is more of a replacement of the old one that a revision, drafted under the guidance of the eminent Professor Paul Robinson of the University of Pennsylvania.

² Such people cite the example of *Khalifah Umar bin Khattab* in suspending the punishment for *Sariqah* (theft) at time of famine.

³ Adalath Party (2009) Press Release, “*Who shall take the Responsibility of the Impending Bill on the Penal Code*” made available online (in local script) at http://www.adhaalath.org.mv/index.php?option=com_content&task=view&id=526&Itemid=53 last retrieved on 19.10.2009

consistency in their conduct of cases or judgments. There is little respect for and trust in the judiciary.”¹

As it had been mentioned, the Maldives has never been colonized save for being a British Protectorate and the 17 years spent under Portuguese occupation from 1558. This in effect means that the country did not receive the benefits of the imposition of the English (or essentially any other) legal system. Further, the first certifiable and western educated lawyers arrived in the country at about 1985². Even today, half the Judiciary is not educated with basic degrees³. However, almost all of them at least are versed in Islamic *Shariah* from local institutions. There is no Bar regulating the legal profession and the least bit of its hints can be seen in the registration of lawyers policy with the Attorney General’s Chambers. The meager Law Society remains understaffed, under-budgeted and without any solid codes of ethics to enforce.

The country has had an awful record of enacting legislation whenever need for it arises. This results in a bad array and mixture of statutes that are less than equipped to handle contemporary issues. One example would be the under-drafted Evidence Act 1976 which has only 7 sections to dictate evidentiary rules for the whole system. What is encouraging, however, is that the new Bill on the Evidence Act which is now in Parliament accommodates Islamic principles on its standards of evidence, especially on matters which are prescribed in the *Quran* and *hadith* (Prophetic tradition, seen as the second primary source of law in Islam) and those which are unanimously agreed upon by scholars. How far this Bill is passed after its Committee stages remains to be seen.

¹ Einfeld (2005), *supra*, see note. 13, at 23

² Among the first lawyers are the former Minister of Information Hon. Mr. Mohamed Nasheed, former Attorney General Hon. Dr. Hassan Saeed, the former Communications Minister Hon. Dr. Ahmed Jameel, the current Attorney General Hon. Mr. Husnu Al-Suood and the Prosecutor General Hon. Mr. Mohamed Muiz, all of whom graduated with their LL.B from the International Islamic University Malaysia, during the days when its campus used to grace the landscape in Petaling Jaya, Malaysia.

³ There are no official statistics or figures that can be quoted here.

During the last two or three decades, awareness within the country increased as the country opened its doors to the rest of the world and the contrast became more and more apparent. Investors coming in commented on the lack of legislation in the country. Of course they were pointing out framework that would compromise their involvement in the country but this realization prompted much thought as to the rest of the system as well.

Until very recently, the basic lack of an independent judiciary was one of the most important setbacks in the functioning of the legal system¹. *Rule 25 of the Rules of the High Court 2001* stipulates that all appeals from the High Court were to the President of the Republic. This power was conferred on him by Article 39 of the repealed Constitution. Within the last half a decade or so, the political scenario of the country changed and much has been embarked upon now to revise the current standing system, the latest product of which is the new Constitution establishing the Supreme Court as the ultimate apex judicial authority, and abolishing any forms of appeal to the President. Until very recently, the majority, if not all, of the Judges were untrained save for short courses completed from the faculty of *Shariah* and Law at the local university or those conducted in countries such as the Egypt or Saudi Arabia. This creates many problems as there are no common denominators among the Judges, creating a mixture of common, continental and *Shariah* experts.² All in all, the system remains weak and unequipped. During the past couple of years however, graduates from all over the world has started to decorate the bench and the future looks bright. Distant, but bright.

4. Challenges Faced, No. 3: Recent Political Trends and the New Constitution

The country has remained for the greater part of its recent history as a moderate Islamic country, at least that

¹ *Infra*, see note 30 **Error! Reference source not found.****Error! Reference source not found.**, Mr. Suood goes at length to outline the fundamental flaws and aspects of how nondependent the Judiciary was.

² *Ibid* at p.52

was what was represented during the office of the last President which ended on November 11 2008. In recent years, there was an evident surge of religious scholars educated from Arabic universities and Institutions who came in with much gusto and started preaching the products of their learning. This was not met with tolerance by the Government who used the Act to Preserve Religious Unity 1996 (4/96) which makes it an offence to incite religious disunity within the country. Of course this meant that religion emerged as a taboo subject which was to be preached only by Scholars certified by the religious authorities of the country, a measure justified by some as to preserve the religious unity, while condemned by others on basis that it promoted suppression and discouraged freedom of thought. Husnu Al-Suood, the Honorable Attorney General, provides the following account.

“Leading opposition figure and religious scholar (Al-Sheikh) Ibrahim Fareed was arrested on 8th June 2002. Mr. Fareed was held in solitary confinement without any charge for 7 months. This was followed by 2 months and 12 days of house arrest. Thereafter, he was taken back to solitary confinement in Dhoonidhoo [D]etention [C]entre and was kept there in solitary confinement for another 7 months. Mr. Fareed was released in April 2004[...]

After his release, he started participating in public meetings and protest rallies of the democracy movement and voiced his support for a multi-party democracy. Following this, he was arrested again in May 2004. In a statement issued on May 28, 2004, the Maldives’ Ministry of Information accused him of “plots to carry out numerous terrorist activities including blowing up places of entertainment, kidnapping senior Government officials, sabotaging the tourism industry and instigating calls for a violent jihad.” However, when he was produced before the court on August 12, 2004, there was no reference to his being a jihadi terrorist. The charge against him was speaking to people in a manner that would harm the religious unity of the Maldivian people.”¹

¹ Husnu Al-Suood, Attorney General of the Republic of Maldives; sentiments outlined in his Submission presented to the *The International*

Nonetheless, it can be generally accepted that Religion was closely guarded under the label of protecting the religious unity amongst the people.

The new Constitution, ratified last year, was a welcome change in our country regardless of political affiliation or faction. It abolished appeals to the President¹, paved the way for the Supreme Court², and established several independent commissions such as the Civil Service, Judicial Services and Human Rights Commissions on their own solid legal framework. The Constitution also boasts one of the most detailed and lengthy Bill of Rights in comparison to any developed country in the World. But mostly, Islam has been set to be the basis of all the laws of the Maldives according to Article 10 of the Constitution, where subsection (b) stipulates that no law contrary to any tenet of Islam shall be enacted in the Maldives. “*Tenet of Islam*” according to Article 276 means, “*the Holy Qur’an and those principles of Shariah whose provenance is not in dispute from among those found in the Sunna[traditions]of the Noble Prophet, and those principles derived from these two foundations*”.

However, the newly ratified constitution, while a commendable piece of colorable legislation, has a few short comings. For instance Article 274 (interpretation) classifies law as *those statutes enacted by the People’s Majlis and assented to by the President, and those regulations which are authorized by, and which fall within the ambit of, those statutes*³; and has no reference to Islamic law. Some believe that such provisions were necessary to check interpretation so as to eliminate all forms of misuse or misinterpretation,

Commission of Jurists Eminent Panel On Terrorism, Counter-Terrorism And Human Rights, South Asia Sub-Regional Hearing, New Delhi, 27-28 February 2007, retrieved on 4 August 2009 at http://www.msc.com.mv/downloads/mchrd_ICJ_28022007_submission.pdf

¹ Article 7 of the Constitution of the Republic of Maldives, Functional translation

² Article 141 of the Constitution of the Republic of Maldives, Functional translation

³ Article 274 of the Constitution of the Republic of Maldives, Functional translation

prevalent accusations which fueled public outcry for amendments of the Constitution in the first place. This provision alongside Article 45 which states that ‘*everyone has the right not to be arbitrarily detained, arrested or imprisoned except as provided by law enacted by the People’s Majlis*’ posits the Maldivian legal system as a civil law system whereby any applications of societal norms and precedent of the Islamic law is disallowed. This would also mean that if anyone were to be prosecuted on a purely Islamic penal sanction such as *Zina* (fornication and adultery), there would be no basis for such primarily because *Zina* is not recognized in the Maldivian Penal Code as a crime and traditionally prosecutions have relied on Islamic law sources.

The drafting of the constitution also has created other vacuums within the system. To give a very light example, the Constitution prohibits the Government from raising any money in the form of Government revenue without an Act of Parliament authorizing it. This, in effect, criminalized Traffic summons and tickets and the Traffic Police, at least for now, has to resort to towing of the vehicles without issuing any form of summons. Another instance was seen in the case of *State v Hassan Ibrahim*¹, where the accused was caught in possession of counterfeit U.S. Dollars in his wardrobe. He was charged under section 88 of the Penal Code prohibiting any act contrary to Executive Orders and Islamic sanctions, which has been generally regarded as a catch-all-clause designed to give effect to subsidiary penal legislation in the form of Public Orders or Announcements. The Constitution stipulates that no one may be convicted of an offence except under Parliamentary Legislation or subsidiary legislation² and since such an Order prohibiting possession of counterfeit dollars was not in existence, the Charges had to be dropped and Judgment came in line with it. This meant that the drafters of the new Constitution did not foresee or failed to rectify a situation where legislative vacuums have been created and not much thought, at least officially, has been given to parallel or subsequent legislations. Similar situation was seen in the case of *State v Thasleem Zuhury &*

¹ 889-JC-2009

² Article 45 of the Constitution of the Republic, Functional Translation

*Adam Ziyad*¹ where both were charged with possession of dangerous weapons contrary to *Goods Prohibited for Importation Act 1975 (4/75)* namely, fine cut broad swords. However, they were not charged with the importation of the goods as importation cannot be proved, but rather they were charged with possession. The turning point was that the Act also stipulates that Regulations of the Ministry of Defense were to regulate possession of such Arms, and to much discontent, the said regulation was never drafted and never enacted. Thus the Judgment went in favor of the accused.

5. Current Picture

Commercial Muamalat

As a small nation with a lack of natural resources to attain self sufficiency, the majority of our consumption is based on imported goods. Hence the import-export business and trading was the initial requirement for laws regulating commercial transactions. As the nation was dealing with foreign countries, it had to understand and comprehend how they had to comply with legal requirements imposed by the trading nations; and the attaining result was the emerging need to enact laws and regulations. The first such laws, which the situation demanded, were those laws pertaining to import-export.

The first major commercial industry began in 1979 with the introduction of tourism catering to foreign nationals on holiday. With the introduction of tourism, the Foreign Investment Act 1979 (25/79) was enacted. Prior to this commercial transaction was inhibited to wholesaling and retailing at a smaller scale. So the only laws the country followed were those prescribed under the *Shariah*, with its basic concepts such as *ijab*(offer) and *gabul* (acceptance), as there was a general lack of codified laws in the country. As foreign investors began to arrive, a regulatory law pertaining to contractual agreement became imperative. Before this, oral agreements were the only form of agreements regulated through attestation of witnesses. With the increasing

¹ 888-JC-2009

exposure to the outside world via the tourists, an industrial boom occurred. This led to the introduction of fish canning, large scale and long distance fisheries and export of various raw fishery byproducts. As more and more companies were being formed to partake in these industrial activities, it created the need for legislation of company laws regulating the matter.

With the increase in multi party business ventures, law makers in Maldives saw the need to regulate partnerships to protect the local businessmen, as well as foreign investors. So the Partnership Act (9/1996) was enacted. Hence local business flourished. Local retailers and wholesalers supplied goods to all parts of Maldives. However with the limitations in the transportation system and the lack of monitoring and regulation of consumer perishable goods a lot damages were incurred by the locals. Thus, a lot of cases claiming such damages were lodged at the local courts, as well as the Ministry of Trade. Consequently, a Consumer Protection Act (1/1996) was enacted in the same year. Moreover, as major corporations like State Trading Organization (STO), Maldives Transport and Contracting Company (MTCC) and Bank of Maldives Ltd (BML) expanded their securities and equity function, the need for a capital market was created. To fill this lacuna, Maldives Stock Exchange Bureau (MSEB) began the first Maldivian securities trading floor. Hence, legislation to regulate this security floor was enacted in 2006 (Securities Act 2/2006).

Criminal Law and Procedure

Hudud (Islamic penal punishment prescribed in the Holy text) law and its punishment are much respected in this country throughout its history and flogging is a practice much seen, although the same cannot be said of amputation of limbs, *rajam* (stoning to death) or the death penalty. It has to be mentioned here that such offences remained as practice justified by customary law previously. Today it is justified by Article 142 under the new Constitution, which states that Judges are to resort to Islamic *Shariah* wherever the Constitution or law are silent.

None of the *hudud* punishments have been codified to this day. Conventional crimes such as *sariqah* (theft)¹ and *hirabah* (robbery)² are present in our *Qanun-al-Uqubah* (Penal Code) 1981 (Act 1/81) and yet, those offences which are strictly Islamic in nature such as *Qazf* (defamation implicating fornication/adultery on part of a woman) or *Zina* (fornication and adultery) are not, although it has to be mentioned here that prosecution of such offences are carried out. The basis for such offences are provisions such as section 2 of the Penal Code which states that the ambit of the statute is to be enforced, modified only by other legislation enacted by the Parliament and Islamic law. The other basis being used is the underdrafted *Trial Proceedings Regulations 2003 (6 & 6.1)*³ which dictates criminal and civil procedure. The Regulation provides for several Islamic guidelines such as the number of witnesses in cases dictated in the *Quran* or *Sunnah*⁴, mode for filing and evidentiary burden on Charges of *Zina* or *Khalwat* (Immoral sexual acts not amounting to sexual relations)⁵, Retracting confession in cases of *Zina*,⁶ Punishment for *Shurb-al-Khamr* (consumption of alcohol)⁷ etc.

Provisions such as section 150 of the Penal Code outline criminal defamation, however, as the Islamic offence of *Qazf* is defined as *defamation which comes into existence when a person falsely accuses a Muslim of fornication [or adultery] or doubts paternity*⁸, conventional defamation will not suffice nor can it be deemed to be a basis for prosecution. The practice today is that the Charge will outline the specific offence, citing the supporting *Quranic Dalil* (text) or Prophetic tradition) criminalizing the act. In terms of punishment, *Qisas* (Islamic law of retaliation) is

¹ Section 131 - 149 of the *Qanun-al-Uqubah* (Penal Code) 1981 (Act 1/81)

² Section 125 – 130 and also essentially 136 of our *Qanun-al-Uqubah* (Penal Code) 1981 (Act 1/81)

³ Regulation 6/2003

⁴ Ibid, Section 56

⁵ Ibid, Section 213

⁶ Ibid, Section 79

⁷ Ibid, Section 81

⁸ I. Doi (1997), Abdul Rahman, *Shariah: The Islamic Law*, TaHa Publishers Ltd, London, at p. 246

non-existent while traces of sentences involving *Diyat* (compensation for personal injury or death) are present¹ albeit in very few cases. Death sentences are rare but passed, although it has to be mentioned almost on all occasions, the President, in exercising a function bestowed on him by the old Constitution, remits the punishment to life imprisonment².

The Family Act – Model Act

The Family Act 2000³ is model legislation with almost all its matters in line with the *Shariah* principles. This, alongside the nation's practice of fully employing the Islamic principles of *faraidh* (Islamic law of inheritance) in inheritance issues save for when the issue on land is at hand, are the some of the few that the country can say are harmonized with globally recognized principles and the *Shariah*.

The most prominent provision in the Family Act is regarding the duty imposed on the children to provide care for the parents and give adequate maintenance to them. Section 57 of the Act imposes the obligation on children to meet basic needs of their parents. And in the same section it is also stated that “*no person shall treat his parents with cruelty or act in a manner injurious to their integrity*”. According to section 58 of the Act, it is an obligation of every person above 18 years of age to provide basic necessities as mentioned in section 57 of the Act to the parents. According to section 59 of the Act, if the children leaves town, he or she should appoint a reasonably acceptable third party, to take care of the parents during his or her absence. By virtue of section 60, the Court may appoint a child among the children and oblige him or her to pay the maintenance costs of the parents, and also, if the children cannot come to an agreement as to who shall take care of the parent, the Court

¹ Section 76, Trial Proceedings Regulation 2003 (Act 6/03); Section 128 of the *Qanun-al-Uqubah* (Penal Code) 1981 (Act 1/81)

² This discretion is not afforded to the President under the new Constitution. According to Article 115(s), such pardons or reduction in sentence may only be exercised through legislatively bestowed power.

³ Act 4/2000

may choose one amongst them. According to section 61 of the Act, Court has the power to make any Interim Order as it deems fit regarding this matter.

The first part of the Act deals with marriage. In other Muslim countries such as Malaysia¹, there is a part which deals with betrothal and pre-marriage expenses. But under the Maldivian Family Act, betrothal and breach of contract to marry are not part of the Act. Maybe this is because, in Maldives there are no such things as engagement ceremonies. The country has recognized marriage ceremonies and pre-marriage relationships have no legal name nor would legal consequences arise from it. It is treated as an informal quasi-relationship governed by custom, perhaps following the school which purports that *“betrothal is not known to Islam. Only the ceremony called nikah [marriage] is known for uniting husband and wife”*².

The Act expressly states that the provisions of the Act shall apply to all the Maldivians, whether they solemnize the marriage with a local or a foreigner.³ The Act also makes it compulsory to register all marriage solemnized under it.⁴ The marriages solemnized abroad must also be registered in Maldives by applying to register it within two months of the solemnization,⁵ or otherwise face a fine.⁶

Like in Malaysia, and perhaps all Muslim countries of the world, only a Judicial *Mauzum*⁷ have the authority to tie the knot of marriage between the consenting⁸ male and female party who is above 18 years of age.⁹ If the parties are

¹ For example see S.124 of Selangor Administration of Muslim Law Enactment 1952; S.119 of Kedah Administration of Muslim Law Enactment 1962 of Malaysia.

² Tanzir-ur-Rahman, (1978), *Code of Muslim Personal Law*, Vol I, Karachi at P.56.

³ Section 2 of the Family Act 2000 (Act 4/2000).

⁴ Ibid, Section 19.

⁵ Ibid, Section 22

⁶ Ibid, Section 62

⁷ Section 73 of the Family Act 2000 defines it as *“a person appointed by a competent authority to solemnize the marriage”*.

⁸ *According to section 63 of the Family Act, it is an offence to coerce a person to marry”*.

⁹ Ibid, Section 4(a)

below the age of 18, they shall obtain a special permission from the Family Court of Maldives. In granting permission to marry in this kind of situation, the Family court would consider the physical well-being of the person, competence to sustain a livelihood, and reasons to contracting a marriage.¹

As per *Shariah* rulings, in the *majlis* (ceremony or gathering) for the solemnization of marriage, the female and male party must be present; two witnesses to officially witness the marriage must be present with the *wali* (Judicial Guardian) of the female party to the marriage. A marriage contract would only be concluded when the offer made by one party is accepted by the other.² There are some exceptions mentioned in the Act, where the Judicial Guardian may be exempted from physically attending the *Majlis* of *nikah* (marriage ceremony). The two circumstances are: firstly, he has delegated the authority to someone else in writing and secondly, when the he submits proof of his consent to the marriage in writing to the Court.³

The Act expressly prohibits the marriage between persons who are prohibited in Islam from being married.⁴ And also the Act explicitly prohibits the marriage of a married female, whose marriage is still subsisting, to another man.⁵ A female, who is observing the period of *iddah*⁶ following a revocable marriage also cannot enter into marriage contract except with the male who has divorced her.⁷ A female who has been divorced three times by the same husband also cannot marry the divorcing husband unless and until she marries someone else consummate the

¹ Ibid, Section 4(b)

² Ibid, Section 3(a)

³ Ibid, Section 3(b)

⁴ Ibid, Section 5

⁵ Ibid, Section 6(a)

⁶ Under the *Shariah*, Muslim women have to observe a period when she has to remain without marrying someone else after divorce. This is prescribed for in the *Quran*. The period varies according to the situation (from women who are divorced, to those in mourning following their husband's death to those divorced while pregnant) but is normally from three to four months.

⁷ Ibid, Section 6(b)

marriage.¹ If not the offender would be subject to a fine to a amount not exceeding MRF 5,000 (approx. € 294).²

The act recognizes the Islamic principles on polygamy and men cannot marry more than four wives simultaneously. He may also not marry another if one of the four wives is observing her period of *iddah*.³ No Maldivian women may not marry a non-Muslim man unless he converts to Islam.⁴ But the men can marry a Non-Muslim woman provided that she fulfills the conditions imposed by the *Shariah*.⁵

The Act also obligates the male party to give something valuable which must not be prohibited by *Shariah* as a dowry to the female party, who has the right to determine its amount.⁶

A polygamous marriage can only be solemnized in the Maldives with the approval of the Registrar of Marriage of Family Court upon application by the party.⁷ The Registrar would consider the financial capability of the male party to maintain his wives and the number of dependants under him and also whether the reasons for entering into the marriage are in accordance with the principles of the *Shariah* or not.⁸ It is an offence to marry more than one wife without without the consent of the court to which the offender would be subject to a fine not exceeding MRF 5,000 (approx. € 294).⁹ Moreover, under the Act, a male party can only divorce upon application of a divorce to the court.¹⁰ If he divorces his wife outside the court he shall be subject to a fine not exceeding MRF 5,000.00 (approx. € 294) or exile or house detention for a period not exceeding six months.¹¹ When the application for divorce is made, and if the judge

¹ Ibid, Section 6(c)

² Ibid, Section 66

³ Ibid, Section 7

⁴ Ibid, Section 8(a)

⁵ Ibid, Section 8(b)

⁶ Ibid, Section 10.

⁷ Ibid, Section 12(a)

⁸ Ibid, Section 12(b).

⁹ Ibid, Section 65

¹⁰ Ibid, Section 23

¹¹ Ibid, Section 67

finds out that though husbands wants to divorce the wife, the wife has the intention to remain in the marriage, then the judge would first refer the parties to the Conciliation Division for Family Matters.¹

Under the Act, the wife can also make an application to a divorce on four different grounds which are explicitly mentioned in the Act;² firstly, if the husband commits an act which is injurious to the integrity of the wife; secondly, if the husband is cruel towards his wife; thirdly, if the husband forces the wife to commit any act which is prohibited by the religion of Islam; and finally, if the husband abstains from having sexual relations for a period exceeding four months, without a valid reason.³

Raju'ee divorce (divorce conditional that the woman observes her period of *iddah*, mentioned above and is found without child during the period), *Khulu'* divorce (divorce where women may offer a sum in exchange for divorce) and *fasakh* (annulment) are the type of divorces mentioned in the Act⁴ and the Act also says that no husband shall divorce his wife in triple *talaq* (divorce)⁵ by single pronouncement. And even if a husband pronounces a triple *talaq* in one pronouncement, it would be deemed as just one *talaq*.⁶

A marriage can be revived⁷ after the appropriate application and subsequent approval by the court, which pertains in accordance to *Shariah*. However if the woman balks with a valid reason acceptable under *Shariah* then the

¹ Ibid, Section 23(c)

² Section 24(a) of the Family Act 2000 (Act 4/2000).

³ Ibid, Section 24(b)

⁴ Ibid, Sections 26, 27,28

⁵ Muslim men may divorce their wives with the expression of their intention. In other words, if he says 'I divorce you' or anything which amounts to it, the divorce will be deemed as pronounced. Triple *talaq* triggers the prohibition of the same two individuals to get married again unless the woman has married someone else and has consummated the marriage. The Maldives does not recognise triple *talaq*,

⁶ Ibid, Section 29

⁷ Islam allows conciliation between the divorced parties during the *iddah* (explained above) period. This is called *ruju* or revival of marriage. Some writers and Jurists are of the view that this may be one of the reasons the period is prescribed under Islam.

court would not facilitate the revival. Moreover, according to the Act, it is an offence for a person to continue living in conjugal relations with his wife after having divorced his wife and without having revived marriage in accordance with the Act. The divorced wife who lives in conjugal relation with her divorced husband also commits an offence. The offender shall be subjected to a fine not exceeding MRF 1,000.00 (approx. € 55) or exile or house detention for a period not exceeding six months.¹

Grounds for *fasakh* (annulment) recognized under the Act include, if the husband goes missing for more than one year or where the husband has failed to provide payment of maintenance for a period exceeding three consecutive months, and the matter has been filed with the court twice and order for payment of maintenance has been made each time and the husband continues to be in default of each of that order; or if the wife can prove to the court that at the time of the contract of marriage she was ignorant of the fact that her husband suffered from impotence or if the husband gets insane for a period of more than two years or if the husband is inflicted with a incurable disease; or if an event occurs which entitles the wife to apply for annulment. The court would not refer to the Conciliation Division For Family Matters if one or more of these circumstances occur. If the husband goes missing for more than 4 years, upon application to the court, the court can declare him as dead bringing an end to the marriage.²

Divorce must also be registered in the Family Court.³ And if the parties to the divorce did not agree on the matters related to maintenance and children, the court can give any order relating to it.⁴

The Act creates a positive responsibility on part of the husband on providing maintenance to his wife (and essentially the ex-wife upon divorce and until she remarries) and children. The man has also an obligatory duty to provide

¹ Ibid, Section 69

² Ibid, Section 30

³ Ibid, Section 31

⁴ Ibid, Section 32

accommodation to the ex-wife and children during the period of the *iddah*.¹

In dealing with the custody matters, the mother is the first and foremost choice of the court who is entitled to get custody.² If the court thinks that the mother is unfit to take care of children then only will the custody be awarded to someone else.³ If custody of a female child is entrusted on a male, that male shall be a person who is within prohibited degree of marriage in respect of that particular female child.⁴ In the affairs of custody of the children the paramount consideration shall be given to the welfare of the child.⁵ The person to whom the custody of the child has been entrusted must be a Muslim of sound mind, capable of providing compassion and care necessary for upbringing the child and also be free from any vice prohibited by the *Shariah*. Furthermore, the dwelling of this person shall not be a place which will cause physical or immoral harm to the child.⁶ The instance in which the custody of a child may be lost is also mentioned in the Act.⁷

The upbringing of children and the costs of their maintenance is also dealt under the Act. It is stated that if a father with a minor child is established as having no means to finance his/her upbringing then the court shall appoint from a guardian from among the relatives after appropriate discussions with the relatives and pass on the responsibility of upbringing and costs of maintenance. The amount required for maintenance is determined by the court with regards to the basics needs of the children and the financial capability of the appointed caretaker and also in consideration with how much to be shared from the children's estate. Priority is given to those who are willing to take the responsibility of upbringing and cost of maintenance of the child *pro bono*.

¹ Ibid, Section 38

² Ibid, Section 40(a)

³ Ibid, Section 40(b)

⁴ Ibid, Section 40(c)

⁵ Ibid, Section 40(e)

⁶ Ibid, Section 41

⁷ Ibid, Section 42

Under Maldivian family law, the minimum period of attributing legitimacy to a child is six months, according to the Islamic (lunar) calendar, from the date of the marriage.¹ The maximum period of attributing legitimacy to a child shall be one year from the date of divorce or death of the husband.²

6. The Way Forward

In the past the Maldives enacted legislations when the need for that specific legislation arised. This tradition is in dire need of change. Legislations should be thought of before the situation gets out of hand and before a desperate need to make it arises. For example, now the country is in great need of a hire-purchase Act. The price of certain goods like motor cycles, furniture, electronics and other consumer goods has risen to a level where an ordinary person cannot afford to buy them up front. To address this situation, suppliers are now offering hire-purchase schemes. Almost 95% of Maldivians today would have entered into a hire purchase contract. A hire-purchase law is needed to regulate and create a uniform common practice. While following the conventional practices of hire-purchase, it is suggested that the legislature needs to enact a hire-purchase Act which is in line with parallel Islamic concept of *Ijarah* (hire-purchase).

The local Land Act 2002³, addresses issues on *waqaf* land (charitable endowment or a gift of land or property made by a Muslim, intended for religious purposes such as building a mosque). According to section 37 (a) of the Act, any land in Maldives or any fixed assets on such a land can be declared to be a religious endowment only if such declaration does not conflict with government policies on land use, determined subjectively on that particular piece of land. Paragraph (b) of the same section says that land or fixed assets on a land in Malé (capital city), cannot be declared as religious endowments. This maybe because the

¹ Ibid, Section 52(a)

² Ibid, Section 52(b)

³ Act 1/2002

capital is overcrowded with people and land has become a scarce resource of which every piece of it must be utilized to accommodate the needs of the public.

The point that we are concern here is that, although the Land Act mentions *waqaf* land, there is no law to regulate the development of these land. Today, there is a need for a law to preserve and protect *waqaf* properties and a perpetual way to generate income by utilizing *waqaf* properties, as done in most of the countries. The ultimate object of the *waqaf* land is to use these properties for the benefit of the public. That is not only by building Mosques only, but also building *Madrassa* (schools for religious education) or an orphanage or a shelter house to protect women and children, etc. Therefore, there is an imperative need to enact laws to regulate the *waqaf* lands and to develop it, so that it can be sustained for future generations. Today, there is also an immediate need for a commercial code to regulate all the commercial contracts in the Maldives, over and beyond the basic provisions within the Contracts Act. When enacting this, instead of replicating a commercial code of Canada or USA or Australia, it would be a prudent decision to formulate a code which deals with both conventional and Islamic commercial contracts like *salam*⁹⁴ and *istisna*¹.

The Maldives also needs a Takaful and Insurance Act to govern the *takaful* (Islamic principles on Insurance and avoiding interest payments in the process)⁹⁴ companies. The first insurance company in Maldives was established in 1985, in the name of Allied Insurance, as a joint venture Company between State Trading Organization and Commercial Union Assurance Company of the United Kingdom. It was very recently that *takaful* insurance was introduced to the country. The only Takaful operator in the country is Amana Takaful. Though a small nation country, it

¹ Concepts of Islamic finance, *Istisna* deals a contract to supply goods according to exact specifications and a fixed timeline. Payments are made as work on the property is finished. Salam deals with the concept of differed payment or credit schemes Both try to avoid making or receiving interest payments, which is forbidden under Islam. For more see Bakar and Ali (2008) *Essential reading in Islamic finance*, Kuala Lumpur, Cert Publications.

is believed that the nation needs more parties to create competition among the *takaful* operators. To achieve this, the country needs legislations accommodating both *takaful* and conventional insurance.

Another statute which is urgently required would be one to establish and regulate an Islamic Banking system in Maldives. Currently, the country does not have an Islamic bank and there is also no single implicit prohibition of *riba* (interest or usury) in any of the statutes in the country. Legislation which harmonizes Islamic banking with the current conventional banking system is perhaps best advised. The Islamic Corporation for the Development of the Private Sector (ICD) has signed a Memorandum of Understanding with the Republic of the Maldives with the aim of looking into the feasibility of setting up such a bank in 2007. And the ICD had entered into a joint venture with the Maldivian government and establish an Islamic bank in the country by the end of 2007. But unfortunately, results of this project are yet to be seen. The more positive picture has been seen drawn by the nation's Central Bank, the Maldives Monetary Authority who reports that in 2008, an Islamic Finance Unit (IFU) was established within the MMA to facilitate the setting up of the Maldives Islamic Bank.¹ Efforts are already underway and with results impending, the need for the legislation is as well.

Other than speaking about the new laws which is needed to be enacted, there is also the need to cope the laws existing already with the current situation. Harmonizing the *Shariah* and civil concepts of partnership laws by incorporating the Islamic concepts of *Musharakah* (a joint enterprise or partnership structure with profit/loss sharing implications that is used in Islamic finance instead of interest-bearing loans)² and *Mudharabah* (Islamic principles

¹ MMA (2009) *Annual Report and Financial Statements, 2008*, at p.20 made available online at <http://www.mma.gov.mv/ar/ar08.pdf>; last retrieved on 29.10.2009. According to the Report, this project was initiated with grant assistance of US\$4 million from the Islamic Corporation for the Development of the Private Sector (ICD) as investment equity

² *Musharakah* allows each party involved in the venture to share in the profits and risks. Instead of charging interest as a creditor, the financier

in investing in someone else's business) into current practice is not only possible but necessary. Bonds are rarely traded in Maldives and the Securities Act regulates such trade. However the concept of *Sukuk* (Islamic Bonds) is not included in the current Securities Act. Though the need is not imminent, it is essential that concepts in our Securities Act be harmonized to accommodate Islamic Bonds.

It can be stated here that Family law is an area of law in which Islamic and civil law is already harmonized. This is because the values under both civil and Islamic laws are same and no external pressure or influence demands anything otherwise. For example in both Islamic and civil law, the paramount consideration is given to the welfare of the child and for a divorce settlement, both wife and husband can apply. However there are some provisions which can be incorporated to the Islamic Family Act from the conventional family laws and which are important in the modern world. Harmonization should work both ways. For provide another example, the provisions which regulate the adoption are important and provisions as to child abuse and abduction and spousal abuse are also significant.

When enacting the laws suggested above, we have to bear in mind that the civil as well as *Shariah* laws are to be scrutinized and the best parts of both warrant incorporation, without compromising the basic tenants of the subject matter prescribed under Islamic Law. This would supplement the process of harmonization between the *Shariah* and civil law because, as mentioned before, harmonization is a two-way process.

As a nation in transition, the Maldives have seen a rapid change in morality brought about by a sudden exposure into the Western world through the mass media, a change which has become rapidly evident in the last decades, and it has had its fair share of negative effects on the outlook of the country. According to Professor Syed Khalid Rashid (1996), these trends are evident throughout the world due to common denominators such as the erosion of social and sexual morality, the stigma attached to marriage and a subsequent imminent divorce, the "*perverse*

will achieve a return in the form of a portion of the actual profits earned, according to a predetermined ratio.

pleasure of indulging into successive promiscuous relationship, and a Bohemian rejection of marriage as an institution”¹ and the Maldives is no exception save for the fact that such notions became evident very late in the day.

Regardless of all this, the greater picture surrounding the small island nation is not bleak at its minimum. As Mr. Abdulla Shahid, the (former) Minister of Foreign Affairs said in his speech at the launch of the UNDP Human Development Report 2007/2008, *our literacy rates are equal to those in the developed world. We have low maternal and child mortality, declining poverty levels, and significant improvements in public services. Taken together it is clear to see why the Maldives is one of the few developing countries on-course to meet the Millennium Development Goals [of the United Nations].²* Perhaps someday, the nation can achieve the much needed advancements in terms of our incapacitated legal system keeping abreast with the advancements of the country on all other fronts.

Perhaps in conclusion it can be said that the small island nation of the Maldives faces numerous and sometimes overwhelming obstacles in the context of *Islamizing* our laws on the one hand, it can be said that that a good percentage of the laws in the country are already well within the lines of the Shariah. This is true especially owing to the fact that Islamic values on the subject matter may not have been very different to its conventional counterparts. The already solid provisions in the newly ratified constitution serve as an encouragement.

¹ Syed Khalid Rashid, *Cohabitation As A Crime In Malaysia*, [1996]1 CLJ

² Shahid (2007), Statement by His Excellency Mr. Abdulla Shahid, Former Minister of Foreign Affairs at the launch of the UNDP Human Development Report 2007/2008 available online at <http://www.foreign.gov.mv/v3/?p=speech&view=sep&id=27> last retrieved on 21.09.2009

References

Adalath Party (2009). Press Release, *Who shall take the Responsibility of the Impending Bill on the Penal Code*, available online (in local script) at http://www.adhaalath.org.mv/index.php?option=com_content&task=view&id=526&Itemid=53

Bell (1922). H. C. P, *Excerpta Maldiviana*, Journal R.A.S, Ceylon.

Bakar and Ali (Eds.) (2008) *Essential Reading in Islamic Finance*. Kuala Lumpur: Cert Publications

Einfeld (2005), (The Hon Justice) Marcus, *Draft Discussion Paper on Strengthening the Maldivian Judicial System*, Sydney, Australia, published by the Attorney General's Office, Maldives.

Ellis (1998), *Royston, A Man for All Islands, A Biography of Maumoon Abdul Gayoom, President of the Maldives*. New York: Times Editions,

Husnu Al-Suood, the Honorable Attorney General of the Republic of Maldives; *Submission Presented to The International Commission of Jurists Eminent Panel On Terrorism, Counter-Terrorism and Human Rights, South Asia Sub-Regional Hearing*, New Delhi, 27-28 February 2007, retrieved from http://www.msc.com.mv/downloads/mchrd_ICJ_28022007_submission.pdf

Doi, I. (1997). Abdul Rahman, *Shariah: The Islamic Law*. London: TaHa Publishers Ltd.

Knack Stephen (2000). "*Aid Dependence and the Quality of Governance: A Cross-Country Empirical Analysis*." World Bank Policy Research Paper, U.S.A: World Bank.

People's Majlis (1981). *Dhivehi Rahjjege Qaanoony Hayaath*. Maldives: NoveltyPress.

Shaheed (2006). Speech by His Excellency Dr. Ahmed Shaheed, Minister of Foreign Affairs of the Republic of Maldives at the *Third Session of the Human Rights Council of the United Nations* held on 29th November 2006, retrieved from <http://www.foreign.gov.mv/v3/?p=speech&view=sep&id=4>

Ismail Wisham and Aishath Muneeza

Shahid (2007). Statement by His Excellency Mr. Abdulla Shahid, Former Minister of Foreign Affairs at the *Launch of the UNDP Human Development Report 2007/2008* available online at <http://www.foreign.gov.mv/v3/?p=speech&view=sep&id=27>

Shakoor (2007). Aishath Azima, *Criminal Justice Action Plan (2004-2008)* Attorney General's Office, Republic of Maldives. Retrieved from <http://www.agoffice.gov.mv/Publication/pub7.pdf>

Syed Khalid Rashid, *Cohabitation as a Crime in Malaysia*, (1996) *Current Law Journal*

Tanzir-ur-Rahman (1978). *Code of Muslim Personal Law*, vol. I, Karachi.

World Bank (1998). "Assessing Aid: What Works, What Doesn't and Why." New York: Oxford University Press.

MMA (2009). Maldives Monetary Authority, *Annual Report and Financial Statements, 2008*, made available online at <http://www.mma.gov.mv/ar/ar08.pdf>