The International Journal of Social Sciences and Humanities Invention 6(02): 5282-5290, 2019
DOI: 10.18535/ijsshi/v6i2.04 **ICV 2015: 45.28**
ISSN: 2349-2031

Research Article

A Comparative Analysis on the Parliament's Role in the Appointment of Justices to the Supreme Court in the USA and the Maldives

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Abstract: **The politics involved in the appointment of Judges to the Supreme Court impacts everyone; the policy-making Executive, the lawmaking Legislature and the people who elected the aforementioned two branches of Government. In Maldives, the parliament plays a huge role in the appointment of Justices to the Supreme Court of Maldives. However, the parliamentary procedure in place regarding providing approval to selected candidates to the highest authority in the judiciary of Maldives seems to lack a vital part of any job interview; the assessing of the candidate's eligibility to take on the responsibilities of the office. Whereas in the United States of America, confirmation hearings are held to not only assess the candidate's eligibility but also to determine the character of the candidate. The main purpose of this article is to entail the role of the parliament in both jurisdictions in the appointment of Justices to the Supreme Court. Therefore, taking a doctrinal approach, this article analyses the constitutional and parliamentary procedures of the United States of America and Maldives regarding the appointment of Justices to the Supreme Court. This article reveals the imperative necessity to reform the constitutional and parliamentary procedures of appointing Justices, to ensure an independent, impartial and effective judiciary in the Maldives.**

Keywords: Parliament, Parliamentary Procedures, Judicial Appointments, Supreme Court, Maldives, United States of America

1. Introduction

The Supreme Court is the highest appellate court in the Maldives as well as the United States of America. The appointment of the justices to the Supreme Court is significant. In the Maldives, as well as the United States, the respective Constitutions of both jurisdictions require the President, i.e. the Executive to nominate a candidate for the position. The differences found in these jurisdictions remain to be minuscule on paper; the President of the United States nominates a candidate and with the advice and approval of the Senate, appoints a Justice to the Supreme Court of the United States, whereas in the Maldives, the President nominates a candidate with the consultation of the Judicial Service Commission and appoints a Justice to the Supreme Court of Maldives after the candidate receives approval from the parliament- the *People's Majlis*.

However, the recent appointment of Justice Brett Kavanaugh to the U.S. Supreme Court, amidst sexual harassment accusations, brought in to perspective the main difference in the appointment of a Justice to the Supreme Court in the Maldives; the confirmation hearing. It should be noted that neither the Constitution of the Republic of Maldives nor the Regulation of the *People's Majlis* hinders the parliament from conducting confirmation hearings to assess the eligibility of the nominated candidate and to assess their character. But the committee reports of the parliament shows that the parliament had been granting its approval to nominated candidates based on the documents forwarded to the parliament by the President's Office after having nominated a candidate.

Compared to the democratic constitutional history of the United States of America, Maldives is merely an infant learning to crawl; the Maldives enacted it's very first democratic Constitution in 2008. Therefore, since 2008, every time the parliament of Maldives had the opportunity to grant consent to nominees to the Supreme Court, the parliament has claimed to be pressed for time and has chosen not to question nominees to the Supreme Court before granting them consent.

Necessarily, the Constitution of the Republic of Maldives does not specifically state that the parliament has to conduct confirmation hearings; determining the procedure through which to provide approval to nominated candidates is left to the discretion of the parliament. Justices to the Supreme Court of Maldives are nominated and appointed because they meet the constitutionally required qualifications. However, when it comes to the highest authority in the judiciary of Maldives, it is only sensible that the representatives of the people should be more vigilant in the process of the appointment of the Justices to the Supreme Court. Confirmation hearings, despite the nominees meeting the required qualifications, provide insight into their eligibility to take on the responsibilities of the office, as well as their views on vital and controversial issues. Furthermore, confirmation hearings provide the people of the country the opportunity to understand and express their concerns regarding a person whose decisions would impact not only the country as a whole but also the ordinary lives of the people.

2. The Scotus And The Supreme Court Of Maldives

The Supreme Court of the United States (SCOTUS) was established by the Constitution of the United States, although it was the enactment of the Judiciary Act in 1789 that shaped the Court. The first assembly of the SCOTUS was held in 1790.[1] The SCOTUS is the highest authority in the judiciary of the United States as well as the final arbiter of the law. The SCOTUS, as the guardian of the Constitution, is entrusted with the responsibility of "ensuring the American people the promise of equal justice under law".[2]

Although comparatively and significantly 'younger' than the SCOTUS, similarly, the Supreme Court of Maldives was established also by the Constitution of the Republic of Maldives in 2008. The Supreme Court of Maldives is also the highest authority in the judiciary of Maldives as well,[3] and throughout the ten years of its establishment, the Supreme Court of Maldives has assumed the role of the 'guardian of the Constitution'.[4]

2.1. Composition Of The Scotus And The Supreme Court Of Maldives

The composition of the SCOTUS is determined by the Congress, the legislative body of the United States. To date, there are nine Justices on the bench of the SCOTUS; 8 Associate Justices and the Chief Justice of the United States.[5]

Similarly, the *People's Majlis*, the legislative body of Maldives, is constitutionally vested with the power to determine the powers, mandates and the composition of the Supreme Court of Maldives.[6] Within the last ten years, the Supreme Court of Maldives has been subjected to amendments to the Judicature Act which determined the composition of the Supreme Court. In 2008, when the Supreme Court was established, five justices were appointed to the bench by the President. And in 2010, with the enactment of the Judicature Act, the composition of the Supreme Court was set to be seven instead of five. The President, therefore, appointed two more Justices to the Supreme Court bench. However, in 2014, the Judicature Act was amended and the composition of the Supreme Court of Maldives was reverted back to five.[7]

3. The Role Of The Executive In Selecting A Nominee

The Constitutions of both countries, USA and Maldives, specifically vests the President, the head of the Executive, with the power to nominate and appoint Justices to the Supreme Court, with the consultation and the consent of the parliaments. The U.S. Constitution specifies that the President "shall nominate and by and with the Advice and Consent of the Senate shall appoint… Judges of the Supreme Court".[8] Despite the process of nominating a potential candidate falls solely on the President of the United States of America as the head of the state, throughout the history of the United States, some Presidents have sought out the advice of Senate party leaders and members of the Senate Judiciary Committee before deciding on a nominee. Seeking the advice of Senate party leaders and members of the Senate Judiciary Committee helps the President to understand possible outcomes of the confirmation hearings in the Senate and therefore nominate a nominee more appealing to the Senate.[9]

Apart from the educational and professional qualifications, there are also other factors that affect the U.S. President's decision on the nomination; the 'ideological interest groups' who spend superfluously to achieve their goal, the media who has the power to sway the people's mind, and the 'partisan polarization of constitutional interpretation'. These factors have made nominations to the SCOTUS a political matter undermining the independence and the legitimacy of the SCOTUS, the Justices and the three branches of government.[10]

Similar to the U.S. Constitution, the Constitution of the Republic of Maldives specifies as the following;

"148. (a) The President as the Head of State shall appoint the Judges of the Supreme Court, after consulting the Judicial Service Commission and confirmation of the appointees by a majority of the members of the *People's Majlis* present and voting."

Although minute, the difference is distinct. While in the context of the U.S. Constitution, there is only the involvement of the Executive in the nomination of Justices to the SCOTUS, in the Maldives there is the constitutionally required involvement of the Executive and the constitutionally established independent institution, Judicial Service Commission (JSC) in the nomination of Justices to the Supreme Court of Maldives.

However, the role of the JSC in providing consultation to the President on the matter of appointing Justices to the Supreme Court is unclear; does the JSC interview potential candidates and provide the President with a list or does the JSC consult the President when the President reveals potential candidates for the nomination? The Constitution of the Republic of

[1] "History and Traditions", Supreme Court of the United States, accessed November 6, 2018, https://www.supremecourt.gov/about/historyandtraditions.aspx

[2] "About the Court", Supreme Court of the United States, accessed November 14, 2018, https://www.supremecourt.gov/about/about.aspx

[3] Constitution of the Republic of Maldives 2008, Article 141 (b)

[4] "*Tha'aaraf*" (Introduction), Supreme Court of Maldives, accessed 6 June 2018, http://supremecourt.gov.mv/mv-history-of-supreme-court.html

[5] "About the Court", Supreme Court of the United States…

[6] Constitution of … Maldives 2008, Articles 145 (a) and 155

[7] "*Tha'aaraf*" (Introduction), Supreme Court of Maldives…

[8] U.S. Constitution, Article II, § 2, Clause 2

[9] Barry J. McMillion, "Supreme Court Appointment Process: President's Selection of a Nominee", Congressional Research Service, June 27, 2018, accessed November 7, 2018, https://fas.org/sgp/crs/misc/R44235.pdf,, 6

[10] Michael A. Livermore, Daniel Rockmore, "Changes to the Appointment Process Could Fix the Supreme Court", USAPP-American Politics and Policy, London School of Economics, May 10, 2017, accessed December 22, 2018, http://blogs.lse.ac.uk/usappblog/2017/05/10/changes-to-the-appointment-process-could-fix-the-supreme-court/, 1

Maldives, the Judicial Service Commission Act and subsequent legislation and regulations do not specify the role played by JSC in the nomination of potential candidates to the Supreme Court of Maldives. Although the Constitutional provision regarding the appointment of Justices to the Supreme Court requires the consultation of the JSC, it does not specify the extent of the consultation. Therefore, with the lack of documentary evidence such as reports published by the JSC, legislation, and regulation regarding the extent and procedures of the role JSC plays in determining a potential candidate for the Supreme Court remain unclear.

On paper, it is clear that in both countries the President is given the power to nominate a potential candidate to the Supreme Court. In the Maldives, while the Constitution of the Republic of Maldives requires the President to consult with JSC, the Constitution does not prevent the President from seeking the advice of party members and other sources. In the United States, the U.S. Constitution does not require the President to consult with any other source; however, it is left to the President's discretion to seek the advice of politicians, parliamentarians, advisors and listen to the public opinions expressed by parliamentarians and other sources.[11]

3.1. Qualifications

The U.S. Constitution is silent when it comes to the qualifications required of Justices of the SCOTUS.[12] Therefore it is left to the discretion of the President to nominate and appoint Justices and the Chief Justice to the SCOTUS if they receive the approval of the Senate. Hence, formally, nominees to the Supreme Court do not have to have experience as a Judge, or be an expert in constitutional law or any law for the matter or even have basic knowledge or training in the field of law. Regardless of the absence of qualifications, throughout the history of the United States, nominees to the SCOTUS have been selected from the field of law. Nominees were either training in the field of law or had professional experience as either lawyers or judges.[13]

However, in the Maldives, the qualifications required of Justices of the Supreme Court are specified in the Constitution of the Republic of Maldives; Article 149 (c) of the Constitution states as follows;

"149. (c) A person appointed to be a Judge of the Supreme Court shall be at least thirty years of age; possess at least seven years of experience as a Judge or practicing lawyer or both as a Judge and a practicing lawyers, and must be educated in Islamic Shari'ah or law."[14]

The Maldives being a 100% Muslim country[15] requires of all judges of all Courts of law to "be a Muslim and a follower of a Sunni school of Islam."[16] The Judges Act further clarifies the educational qualification required of Justices from the Constitution. While the Constitution states that the Judges "must be educated in Islamic Shari'ah or law", it is from the Judges Act that it becomes clear that the minimum educational qualification required of Justices of the Supreme Court is a bachelor's degree in the fields of Islamic Shari'ah, or law, or Islamic Shari'ah and law.[17]

3.2. Political And Ideological Views

Although a Supreme Court Justice's political and ideological views should be considered alarming when it comes to ensuring an independent judiciary, in the United States, the political views and ideological beliefs of a potential candidate are taken into consideration when the President decides on a nominee for the SCOTUS. In other words, the President weighs the benefits his administration would gain by appointing a specific candidate; in nominating a candidate with political and ideological views most compatible with the President, the President is basically ensuring a Justice in the SCOTUS "who will vote to decide cases consistent with the President's policy preferences."[18]

However, quite the reverse is seen in the Maldives. In order to ensure an independent judiciary the Constitution of the Republic of Maldives states that "in the performance of their judicial functions, Judges must apply the Constitution and the law impartially and without fear, favor or prejudice."[19] Consequently, the Judges Act specifies that Judges of Courts of law in the Maldives are not allowed to be members of political parties or to take part in political activities, as well as be elected for or appointed to political positions.[20]

4. Nominating A Chief Justice

The President of the United States of America has the discretion to nominate an Associate Justice of the SCOTUS to the position of the Chief Justice if the position becomes vacant. In this circumstance, the nominated Associate Justice of the SCOTUS must resign from the position, providing the President with the opportunity to nominate another candidate for the vacant position of the Associate Justice. While nominating an Associate Justice to the top position of the Chief Justice has been comparatively a rare occurrence in the history of the United States,[21] it is still legally possible as the President has the discretion to nominate a candidate from outside the sitting bench of the SCOTUS.

Likewise in Maldives, the President has the discretion to

[11] McMillion, "Supreme … Nominee", 6

[12] "FAQs- General Information", Supreme Court of the United States, accessed November 14, 2018, https://www.supremecourt.gov/about/faq_general.aspx

[13] John Paul Jones, "The Supreme Court A Unique Institution", e-Journal- Issues of Democracy 10(2005):1, accessed November 6, 2018, https://usa.usembassy.de/etexts/gov/ijde0405.pdf, 12

[14] Constitution of the Republic of Maldives 2008, Article 149 (c)

[15] Maldives remains a 100% Muslim country by requiring citizens of Maldives to be Muslim. Article 9 (d) of the Constitution of the Republic of Maldives states that, "a non-Muslim may not become a citizen of the Maldives."

[16] Constitution of … Maldives 2008, Article 149 (b) (1)

[17] Judges Act (Act No: 13/2010), Article 15 (c) (1)

[18] McMillion, "Supreme … Nominee", 8

[19] Constitution of … Maldives 2008, Article 142

[20] Judges Act (Act No: 13/2010), Article 15 (f) (1) and (2)

[21] McMillion, "Supreme … Nominee", 4-5

nominate a sitting Justice of the Supreme Court of Maldives or the discretion to nominate a candidate from outside the sitting bench of the Supreme Court of Maldives to the position of the Chief Justice, as long as the nominee meets the qualifications required of a Supreme Court Justice in the Judges Act. However, the Constitution requires the President to consult with the JSC on the matter, before announcing the nomination.[22]

5. The Role Of Parliament In Confirming The Nominee

The intent of the initial drafters of U.S. Constitution for the Senate's constitutional responsibility of advising and approving the nomination has been debated amongst constitutional scholars. And these constitutional scholars have come up with three schools of thought on the matter. The first school of thought believes that the Senate performs an advisory role to the President before the President picks a nominee and then, later on, confirms the nomination when the issue is presented to the Senate Judiciary Committee. The second school of thought, on the contrary, believes that the Senate's role of "advice and consent" only involves the Senate's decision to approve or disapprove of the nomination. And the third school of thought had found a middle ground; they believe that the Senate is constitutionally required to provide the President with advice before the President decides on a nomination, even though the President is not required to take the advice of the Senate into account.[23]

Whereas in the Maldives, it is evident from the Constitution and Regulation of the *People's Majlis*, that the parliament of Maldives does not play a role in the nomination process of a potential candidate to the Supreme Court of Maldives. Therefore, in the Maldives, it may be seen that the parliament abides by the second school of thought of the constitutional scholars. In the Maldives, the parliament's role begins when the President nominates a candidate and submits the issue to the parliament for its confirmation. The parliament only has the authority to decide to grant its consent or withhold it. The Regulation of the *People's Majlis* states;

"171. (a) The matter which requires the advice and consent of the *Majlis* shall be submitted to the *Majlis* in writing by the President.

(b) Upon receipt of the written and signed document by the President, the matter shall be announced to the *Majlis* and sent to the relevant Standing Committee."

Although the role of the parliament begins after the President has announced a nomination, the President has the discretion to discuss the issue with party members and parliamentary leaders, before announcing the nomination.

5.1. Committee Stage

In the United States, even though it is not part of the Senate Judiciary Committee's mandate to advice and to confirm judicial nominees, since its establishment in 1816, the Committee has played an imperative role in the appointment of Justices to the SCOTUS. It was only in 1868 that the Senate determined that all nominations should be deliberated in and confirmed by the Senate Judiciary Committee.[24]

The Senate Judiciary Committee's work, since the late 1960s, begins the moment the President announces his nomination for the SCOTUS. The Committee starts investigating the nominee's background through a questionnaire which the Committee sends to the nominee to answer in writing. One of the main purposes of this questionnaire is to provide members of the Senate Judiciary Committee with detailed information regarding the nominee before the Committee holds a hearing to question the nominee. Therefore, the questionnaire not only helps the members of the Committee to familiarize themselves with the nominee but also helps the members of the Committee prepare questions to ask of the nominee in the Committee meeting. This questionnaire is quite intensive as it asks for detailed disclosure of the nominee's finances, biography, past experiences, what the nominee experienced prior and during the nomination process, interviews (if any) with the Executive's administration amongst other important questions. Since answering this questionnaire takes up a lot of time, the Administration of the Executive power assists the nominee in answering and submitting the completed questionnaire to the Senate Judiciary Committee. [25]

The Senate Judiciary Committee's background investigation of the nominee also reviews the nominees professional past by examining the institutions, offices, etc. that employed or 'retained the services of the nominee', and sometimes 'the nominee's confidential written work' obtained from past employers. Since the nature of some of the documents reviewed in this investigation cannot be released to the public, the Senate Judiciary Committee keeps this part of the background investigation of the nominee confidential.[26]

Furthermore, outside sources also provide the members of the Senate Judiciary Committee with important information regarding the nominee. Outside sources include the FBI, American Bar Association and the public. Members of the Senate Judiciary Committee are provided with a confidential FBI report on the nominee. Members of the Senate Judiciary Committee are not allowed to disclose any information from the FBI report and security procedures are put in place to avoid any such occurrences. The American Association provides the Senate Judiciary Committee, as well as the nominee, the White House, and the Department of Justice with an impartial evaluation of the nominee's qualifications. The evaluation rates the nominee "well qualified", "qualified" or "not qualified" after having evaluated the nominee's professional integrity, capability, and judicial temperament. The Senate Judiciary Committee also takes into account the public's perception of the nominee and the popularity of the nominee among the public.[27]

[22] Constitution of … Maldives 2008, Article 147

[23] McMillion, "Supreme … Nominee", 5-6

[24] Barry J. McMillion, "Supreme Court Appointment Process: Consideration by the Senate Judiciary Committee", Congressional Research Service, August 14, 2018, accessed November 7, 2018, https://fas.org/sgp/crs/misc/R44236.pdf, 1

[25] Ibid., 1-2

[26] Ibid., 2-3

[27] Ibid., 4-7

It is also during these investigations when the nominee pays 'courtesy calls' to members of the Senate. These visits by the nominee provide the members of the Senate opportunity to converse with the nominee individually in person before voting on confirming the nominee to the SCOTUS.[28]

The information gathered from the investigation, the reports and other public records, helps Senate Judiciary Committee members prepare questions to ask the nominee in the confirmation hearing. The nominee is sometimes given an indication in advance regarding the sort of questions to expect in the confirmation hearing by members of the Senate hearing either through media or through direct communication.[29]

Whereas in the Maldives, once the parliament receives the President's nomination, the matter is announced in the parliamentary session and is sent to be reviewed by the relevant standing committee.[30] In the case of appointing a Justice to the Supreme Court of Maldives, the relevant Standing Committee to review the matter is Independent Institutions Committee.

The Independent Institutions Committee has the power to obtain personal, educational and professional information regarding the nominated candidate. Furthermore, during the committee stage the Regulation of the *People's Majlis* states that the Committee has the power and responsibility to question the nominated candidate, to assess their eligibility and competency to take of the duties and responsibilities of office, to assess how much knowledge they have regarding the office and its duties, as well the person's experience in the field and the person's vision for the future development of the field.[31]

5.1.1 Confirmation Hearing

In the United States, since 1955, nominees to Courts have been testifying before the Senate Judiciary Committee in person. Usually, it takes about 44 days on average for the Senate Judiciary Committee to hold the confirmation hearing. Justice Brett Kavanaugh's confirmation hearing took place after about 56 days since President Donald J. Trump announced his nomination. The duration between the announcement of the nomination and the confirmation hearing shows how vigorously the Senate Judiciary Committee prepares before holding the confirmation hearing. One of the main purposes of the confirmation hearing is to assess the nominee's eligibility and capability to take on the responsibilities of the office as well as to assess the nominee's character. The confirmation hearings provide the members of the Senate, those on the fence on how to vote for the nominee, with vital information regarding the nominee as well as allowing the members the opportunity to assess how the nominee handles himself under the scrutiny of the Senate Judiciary Committee and the public. [32]

The Senate Judiciary Committee's confirmation hearing of the nominee begins with the Chair of the Senate Judiciary Committee welcoming the nominee to the hearing and informing the nominee on how the hearing would proceed. The nominee is given an opportunity to make an opening statement before the members of the Senate Judiciary Committee begins questioning the nominee. While it would be safe to assume that the nominee would be asked questions regarding law, constitutional matters, educational and professional background, and experiences, it should also be noted that along with such questions, the nominee is also asked of his opinion on controversial issues, 'the analytical approach' the nominee would use to decide in such issues and cases before him.[33]

When the members of the Senate Judiciary Committee are done with questioning the nominee, the Committee also hears testimony from public witnesses such as the American Bar Association's Standing Committee on the Federal Judiciary and other professional colleagues of the nominee or 'representative of advocacy groups which support or oppose' the nominee. [34]

Although the Senate Judiciary Committee's confirmation hearing meeting is held open to the public, the Committee also holds a closed-door meeting with the nominee to allow members of the Committee to question the nominee regarding the information from the confidential reports the Committee attained or was provided. [35]

Similarly, in the Maldives, the Independent Institutions Committee, as mentioned previously, has the power to question nominated candidates to assess their capability and eligibility to take on the responsibilities of the office. However, it became evident that the Committee was not taking this responsibility seriously, on the numerous occasions it was faced with the responsibility of granting approval to the candidates nominated for the first Supreme Court bench.

In 2010, the President of Maldives nominated 6 candidates to assemble the first Supreme Court bench. The matter was reviewed by the Independent Institutions Committee. But the Committee stated in its report that since the President has had the consultation of JSC before deciding on these nominations, and because the matter was time-sensitive, the Committee does not have the time to question the nominated candidates as required in Article 171 (i) of the Regulation of the *People's Majlis*. Therefore, it was unanimously decided by the Committee not to question the nominated candidates. The Committee also unanimously voted to grant consent to all 6 candidates, stating that it was a special circumstance and because all the nominated candidates met with the qualifications required of them by the Constitution of the Republic of Maldives and Judges Act.[36]

[28] Ibid., 4
[29] Ibid., 8
[30] Regulation of the *People's Majlis*, Article 171 (b)
[31] Ibid., Article 171 (i)
[32] McMillion, "Supreme … Committee", 12-13
[33] Ibid., 12-15
[34] Ibid., 16
[35] Ibid., 16
[36] Independent Institutions Committee, "*Qaanoon Asaaseege 145 vana Maahdhaage Dhashun Furathama Ufahdhaa Supreme Court ge Fandiyaarunge Magaamah Ayyankurumahtakaa Raeesul Jumhooriyyaa Husha-alhuhvaafaivaa Nanfulhuthah Dhiraasaakurumahfahu*

The same 'time-sensitive' and 'special circumstance' reason was also used by the Independent Institutions Committee when the Committee decided not to interview the nominated candidate for the first ever Chief Justice of Maldives.[37]

In 2018, the *People's Majlis* and the Independent Institutions Committee was once again faced with the responsibility granting 'consent' to nominated candidates to the Supreme Court bench and a nominated candidate for Chief Justice. The President nominated two candidates to the Supreme Court bench, to replace two Justices who were removed from office. This time the Independent Institutions Committee decided to not question the nominated candidates because they were already Judges of the High Court and therefore there was no need to question their capability and eligibility to take on the responsibilities of the office of the Supreme Court. Therefore, by a majority vote, the Committee decided to give consent to the two nominated candidates.[38]

In the same way, when reviewing the matter of giving consent to the nominated candidate for Chief Justice, the Independent Institutions Committee stated that the Committee decided not to question the nominated candidate for Chief Justice as required by Article 171 (i) of the Regulation of the *People's Majlis*, since the nominated candidate was already a Justice of the Supreme Court. In this case also, the Committee, by a majority vote, decided to give consent to the nominated candidate for Chief Justice.[39]

Regardless of whether the nominee is a sitting Associate Justice of the Supreme Court or any other Court of law, the United States' Senate Judiciary Committee is seen to be performing their constitutionally mandated function, vigilantly. Whereas in the Maldives, the parliament is seen to be choosing to not perform the procedure of questioning nominees before granting them consent. Parliament is the branch of government that has the responsibility of holding the judiciary accountable. When presented with the opportunity to question sitting Justices and hold them accountable, the parliament of Maldives has chosen to do otherwise.

5.1.2 Committee Report

In the United States, the Senate Judiciary Committee holds a meeting to determine its recommendation to report to the Senate. This meeting is held usually after a week has passed since the end of the hearings held to question the nominee. In the Committee report, the Committee would report whether the Committee finds the nominee favorable or unfavorable or the Committee would decide not to make any recommendations on the nominee. Even though the Committee finds the nominee unfavorable or makes no recommendation regarding the nominee, the nominee would still proceed to the Senate floor, where all the members of the Senate would vote as they please. However, such reports would alert the Senate that members of the Senate Judiciary Committee do have reservations about confirming the nominee for the SCOTUS. Except for a few instances, a nominee with a favorable recommendation from the Senate Judiciary Committee has been confirmed by the Senate.[40]

Since the Senate does not require its Committees to submit printed reports, there have been some instances in which the Senate Judiciary Committee submitted unprinted reports to the Senate regarding its decision on SCOTUS nominees. The Chair of the Senate Judiciary Committee, therefore, submits a 'one-page document' to the Senate entailing the Committee's recommendation on whether or not the nominee should be confirmed. Printed and written reports, however, provide members of the Senate with the Senate Judiciary Committee's review of the nominee, the reasons why the Committee found the nominee favorable, unfavorable or why the Committee chose to make no recommendation at all.[41]

In the Maldives, the Committee reports are sent to the parliament for consideration. In the Committee report, the Committee is required to state whether they voted to grant the consent or withhold the consent of the *Majlis*.[42] When the Committee sends its report after reviewing the matter of giving consent to nominated candidates to the Supreme Court of Maldives, the Speaker of the *People's Majlis* is required to include the report in the parliament's agenda of the earliest

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Minivan Muassasaathakuge Kanthahthakaa Behey Committee in Ninmi gothuge Report", August 10, 2010, accessed December 25, 2018, http://www.majlis.gov.mv/di/download/minivan-muahsasaathakuge-committee-reports/Supreme%20Justices%20Appointemnt%20committee%20report.%2010.08.10-FINAL.pdf

[37] Independent Institutions Committee, "*Qaanoon Asaaseege 147 vana Maahdhaage Dhashun Uhthama Fandiyaaruge Magaamah Ayyankurumahtakaa Raeesul Jumhooriyyaa Husha-halhuhvaafaivaa Nanfulhu Dhiraasaakurevumahfahu Minivan Muassasaathakuge Kanthahthakaa behey Committee in Nimmi gothuge Report*" August 7, 2010, accessed December 25, 2018, http://www.majlis.gov.mv/di/download/minivan-muahsasaathakuge-committee-reports/Chief%20Justice%20committee%20report.pdf

[38] Independent Institutions Committee, "*Dhivehi Raajjeyge Qaanoon Asaaseege 148 vana Maahdhaage (haa) ge Dhashun Supreme Court ge Fandiyaarukamah Ayyankurumahtakaa Rayyithunge Majleehah Husha-helhuvvumah Raeesul Jumhooriyyaa Fonuvvaafaivaa Nanfulhuthah Dhiraasaakurehvumuge Massala Minivan Muassasaathakuge Kanthahthakaa behey Committee in Nimmi gothuge Report*", (Report No.: MMC/2018/R-08), June 27, 2018, accessed December 25, 2018, http://www.majlis.gov.mv/di/download/minivan-muahsasaathakuge-committee-reports/Supreme-court-2-fandiyaru-report.pdf

[39] Independent Institutions Committee, "*Qaanoon Asaaseege 147 vana Maahdhaage Dhashun Uhthama Fandiyaaruge Magaamah Ayyankurumahtakaa Raeesul Jumhooriyyaa Husha-alhuhvaafaivaa Nanfulhu Dhiraasaakurumahfahu Minivan Muassasaathakuge Kanthahthakaa behey Committee in Nimmi gothuge Report*", (Report No.: MMC/2018/R-07) , June 27, 2018, accessed December 25, 2018, http://www.majlis.gov.mv/di/download/minivan-muahsasaathakuge-committee-reports/Uthama-fandiyaazu-Dr.Ahmed-Abdulla-Didi.pdf

[40] McMillion, "Supreme … Committee", 17

[41] Ibid., 20-21

[42] Regulation … *People's Majlis*, Article 171 (d)

possible parliament session.[43] Unlike the United States, the parliament does not investigate the nominated candidates. Furthermore, the nominated candidates do not meet with members of parliament or parliamentary leaders either. If the Independent Institutions Committee decides to not question the nominated candidate as required in Article 171 (i) of the Regulation of the *People's Majlis*, has nothing to do but wait for the parliament's decision.

5.2 Parliamentary Debate And Confirmation Vote

In the United States, when the Senate Judiciary Committee submits the report on the nominee to the Senate, the Executive Clerk schedules the report on the Executive Calendar. The Executive Calendar would show information about the nominee, the previous Justice the nominee would take the office of, how the committee voted for the nominee and the report number if there was a printed report submitted by the Senate Judiciary Committee. Floor debates on SCOTUS nominations, unless otherwise decided by the Senate, have always been held open to the public. Since there are no Senate rules regarding how long floor considerations should last, there is always the possibility of extended debate, or maneuvers such as filibusters to delay the final vote of confirmation.[44]

5.2.1 Parliamentary Debate

In the United States, the Senate majority leader consults with the minority leader and other interested members of the Senate in order to schedule the consideration of a nominee. If there is a 'unanimous consent' among the majority and minority leader as well as other interested parties to schedule the matter, there is also the possibility of determining a time limit for the debate and the time the Senate would vote to confirm the nominee. Debate time is usually determined by the majority and minority leaders of the Senate. Determining a specific debate time and voting time prevents the possibility of a lengthy debate, or a filibuster to delay the vote.[45]

In the Senate debate, Senators expresses their opinion on why the Senate should vote to confirm or not confirm a nominee. Most Senators, in their allotted debate time, speak of the nominee's educational and professional qualifications as well as his character, and whether or not the nominee has the capability, hindsight and judicial temperament to take on the responsibilities of office as a Justice in the SCOTUS.[46]

Much like the members of the Senate Judiciary Committee, it can be seen that the full Senate takes the constitutionally vested responsibility of advising and confirming a nominee to the SCOTUS very seriously. SCOTUS appointments are lifetime appointments and it should not be taken lightly. This becomes apparent in the debate, in which Senators express their concerns regarding the nominee, and tries to get a better understanding of the nominee's judicial philosophy, ideologies, constitutional values, and the nominee's standing on controversial issues. While Senator's do consider the party's position on the matter, it can be seen that they still exercise their constitutionally vested power to assess the nominee.[47]

On the contrary, in the Maldives, a total of 30 minutes is set for the debate on the committee report regarding the matter of giving consent to a nominated candidate for the Supreme Court. Not all members of parliament are given the opportunity to participate in the debate. The Regulation of the *People's Majlis* states that a member from each political party and a member from the independent members would have the opportunity to express their views regarding the matter within the 30 minutes allocated for the debate.[48] Therefore, not many opinions are expressed regarding the matter of appointing nominated candidates to the Supreme Court.

5.2.2 Voting To Confirm The Nomination

In the United States, after the Senate debate on a nominee is over, 'the presiding officer' puts the confirmation of the nominee to a vote. Since 1967, the Senate has held a roll call vote to determine whether to confirm a nominee to SCOTUS. Since the U.S. Constitution requires the House and the Senate to determine a quorum in order to conduct its business, the voting will take place once a quorum is present. A simple majority of Senators present voting is required to confirm a nominee to SCOTUS. [49]

If there are newly discovered issues regarding the nominee after the Senate Judiciary Committee submits its report on the nominee to the Senate, the Senate has the power to delay voting on the issue and order the Senate Judiciary Committee to investigate the new issues or re-investigate the issues the Committee investigated earlier.[50]

After the Senate votes in favor of confirming the nominee to the SCOTUS, the Secretary of the Senate attests and sends the Senate's resolution of confirmation to the White House. The President then signs a 'document called a commission'. After the President signs said document, the nominee takes two oaths of office; a judicial oath and a constitutional oath, and is appointed to the SCOTUS, at last.[51]

Unlike the United States, in the Maldives, votes in the parliament are taken electronically. Similarly to the United States, a simple majority is required to confirm a nominee to the Supreme Court of Maldives. [52]The details of the vote, the number of members of parliament present at the session, the total number of members of parliament who voted and how they voted are published in the website of the *People's Majlis*. The result of the vote of the parliament, the decision to grant or withhold its consent to a nominated candidate for

[43] Ibid., Article 171 (e)
[44] Barry J. McMillion, "Supreme Court Appointment Process: Senate Debate and Confirmation Vote", Congressional Research Service, September 7, 2018, accessed November 7, 2018, https://fas.org/sgp/crs/misc/R44234.pdf, 7-10
[45] Ibid., 8-9
[46] Ibid., 1
[47] Ibid., 4
[48] Regulation … *People's Majlis*, Article 171 (f)
[49] McMillion, "Supreme … Vote", 14-15
[50] Ibid., 21
[51] Ibid., 23
[52] Regulation … *People's Majlis*, Article 171 (g)

parliament is then referred to the President.

In the Maldives, when the Parliament grants its consent to the nominated candidate for the Supreme Court of Maldives, the nominated candidate is then appointed to the Supreme Court of Maldives, after taking the oath of office.[53]

6. Conclusion

While it is apparent how extensive the process of a nominee becoming a Justice of the Supreme Court in the United States is, it is also evident that the process is highly political. Therefore the political process of appointing a Justice to the SCOTUS also portrays the Justice as a political person; therefore there is room for people to question Justice's integrity and independence.

Regardless of how politicized the procedure is in the United States, it is astounding how much preparation the Senate Judiciary Committee goes through just in order to assess the capability, temperament, and character of the nominee. Considering the SCOTUS appointments are lifetime appointments, it makes sense that the members of the Committee dig deep looking for the skeletons, if any, hidden inside the nominee's closet in order to appoint the best of the best to the office.

It is apparent that educational and professional qualifications, while important, are not the only things assessed by the members of the Senate Judiciary Committee. They deliberately ask hard and controversial questions to understand the temperament, judicial temperament, hindsight and the ideologies of the nominee. In other words, the Committee makes sure the nominee has what it takes to take on the responsibilities of the office. However, the questions about the nominee's personal ideologies and political beliefs seem to strip away his independence and his integrity in the eyes of the public, making it close to impossible for people to believe in him to provide them justice, without prejudice or bias.

The fact of the matter is that, in the Maldives, the appointment of a Supreme Court Justice has been rushed in the last ten years and the parliament had failed to effectively perform its constitutionally mandated oversight function. *People's Majlis*, the parliament of Maldives, has seen to be taking a laid back approach when it comes to confirming nominees to the Supreme Court of Maldives. Nominees are not asked to attend Committee meetings, nominees are not asked questions and they are simply confirmed based on what is on the documents sent to the parliament from the President's Office, even though the Regulation of the *People's Majlis* gives the Independent Institutions Committee the power to investigate the nominated candidate and also question the nominee to assess the nominee's eligibility and capability to take on the responsibilities of the Supreme Court. The parliament's lack of interest in effectively performing a constitutionally mandated function to ensure a qualified and eligible nominee is confirmed to the Supreme Court of Maldives is astounding.

In the Maldives, the President announces his nominations to the Supreme Court based on the consultations of JSC. However, neither the Constitution nor the Judicial Service Commission Act specifies the extent of the role of the JSC is in providing its consultation to the President. Whether or not the JSC interviews potential candidates or whether it investigates such candidates is unclear. There are no reports or legislation or regulations specifying the extent of the role of the JSC.

There have been talks of reforming the judicial system in the Maldives for quite some time now. Specifying the extent of the role of the JSC in providing its consultation to the President before the President makes his decision on a nominee is important. Reports on how the JSC provided its consultation, what and who were considered and how they came up with their recommendation is necessary, in order for there to transparency among the institutions of Maldives as well as to ensure that the JSC has exercised its constitutionally mandated responsibility effectively.

In light of the Constitution, it is the parliament which has the power to ensure the reforming of a better and independent judiciary. Parliament has the constitutional mandate of holding the judiciary accountable. Parliament has to take on the responsibility of confirming a nominee to the Supreme Court more seriously, regardless of how pressed for time they are. The procedure of questioning nominees who require parliament's approval were included and accepted by the members of the parliament. Instead of taking on a rubber stamping approach with confirming nominees to the Supreme Court, parliament should take an example from the Senate Judiciary Committee of United States of America to investigate and question the nominee before voting to confirm the nominee to the Supreme Court, in order to grant its consent to the best of the best to be appointed to the highest appellate court in Maldives, the Supreme Court.

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