

# SOLDIERS' CONSTITUTIONAL RIGHTS AND MILITARY JUSTICE: COMPARISON BETWEEN THE REPUBLIC OF MALDIVES, MALAYSIA AND OTHER JURISDICTIONS

Abdul Majeed Ibrhim\*<sup>1</sup>, Md. Zahidul Islam<sup>2</sup>

<sup>1</sup>PhD Candidate, Ahmad Ibrahim Kulliyah Of Laws, International Islamic University Malaysia (IIUM), P. O. Box 10, 50728 Kuala Lumpur, Malaysia. Email: [abdulmajydh@gmail.com](mailto:abdulmajydh@gmail.com).

<sup>2</sup>Associate Professor and Head, Department of Law, Bangladesh University, 5/B, Beribandh Main Road, Adabar, Mohammadpur, Dhaka – 1207. Email: [zahidulislamiium@yahoo.com/head.law@bu.edu.bd](mailto:zahidulislamiium@yahoo.com/head.law@bu.edu.bd)

\*Corresponding author: [abdulmajydh@gmail.com](mailto:abdulmajydh@gmail.com).

<https://doi.org/10.55327/jaash.v9i3.310>

(Received: 10 July 2023; Accepted: 5 August 2023; Published: 30 September 2023)

---

## **Keywords:**

*Constitutional rights; Rule of Law; Military Justice; Military Ethics; Good governance; National Stability;*

## **ABSTRACT**

In 2008, Maldivians promulgated a revised Constitution. The updated Constitution introduced several democratic reforms, such as the establishment of independent institutions, the protection of human rights, the introduction of a multi-party system, and the strengthening of the rule of law. Mainly fair and transparent hearings and fair administrative action. These reforms have allowed the Maldives to achieve a more open and transparent government. Nevertheless, since 2008 many cases ruled by Maldivian military judicators have been acquitted by the Maldivian civil justice system, which includes trial courts, the high court, and the supreme court. The civil justice system has determined that the military judicators have not followed due process, and thus the cases have been overturned. Additionally, the civil justice

---

---

system has implemented several reforms and safeguards to ensure all citizens have access to a fair trial. This resulted in prejudice against military justice in the army. The primary goal of the military judicator is to maintain good order and discipline in the army, as discipline is the sole of every army. Therefore, this article thoroughly analyzes the unconstitutional limitations on constitutional rights by the Maldivian military judiciaries and the legal implications that follow. It emphasizes the crucial significance of maintaining the rule of law, promoting good governance, ensuring military justice, and preserving national stability. Furthermore, it draws insightful comparisons between Malaysia and other relevant jurisdictions.

---

## INTRODUCTION

The Constitution is a set of rules and principles governing a state. It defines government powers, responsibilities, and citizens' rights. It also provides a framework for the government to operate within and ensures accountability to the people. (Mark Rayn, 2023) According to Montevideo Convention, "The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states" (Nations, 1933). From a critical point of view, if a state fails to establish unified, well, organized armed forces, none of the qualifications can have power over it. This is because a unified, well-organized military helps to ensure that a state can defend itself from external threats and maintain internal stability. Without a strong army, a state could not protect its borders, safeguard its citizens, and ensure that peace and order are held on its borders. Therefore, in the context of stability, a strong army means being a disciplined force. As George Washington stated in 1759, "Discipline is the soul of an army. It makes small numbers formidable, procures success to the weak, and esteem to all." (Ratcliffe, 2017) Disciplined armies can better make unified and accurate decisions in battle. This allows them to be more effective in combat and better outmaneuver their opponents. Furthermore, disciplined armies can better maintain morale and cohesion, which are essential for achieving success in battle. (Arie Subekti, 2023) For this reason, to sustain an independent state and require a disciplined defense force, the armed forces must institute a military justice system. The system's primary role is maintaining good order and discipline within the army. To uphold the rule of law in the military. The system helps set and enforce standards for service members, ensuring they are held accountable for their

actions. It also helps ensure that all service members are treated equally and fairly, regardless of rank or position. Additionally, it helps protect service members' rights by providing due process when accused of a crime or other wrongdoing. (Clode, 2023)

### **HISTORICAL OVERVIEW AND LEGAL FOUNDATION OF MILITARY JUSTICE**

Throughout its history, the Maldivian parliament has amended its constitution 11 times since 1932. The last modification took place in 2008. These amendments have been made to modernize the Maldives government and strengthen its democratic system. They have also been enacted to expand the rights of citizens, ensure economic stability, and promote social justice and equality. (Suood, 2021) Therefore, the last revision (2008) seeks to provide a framework for a functioning democracy that respects the rule of law, protects fundamental rights, and ensures effective governance. It also seeks to promote economic development and social justice.

The Maldives Armed Forces was established on 21st April 1892. (Hassan Ahmed Manik., 2009) In 2008, the first military law was enacted in the Maldives. Therefore, it is evident that the Armed Forces Act 2008 was enacted before promulgating the revised Constitution in 2008. This means the Armed Forces Act is more authoritative than the Constitution. As a result, the military justice framework is not aligned with the revised Constitution of 2008. This means that the army justice framework needs to be consistent with the fundamental rights and freedoms enshrined in the Constitution. These rights include the right to a fair trial, legal representation, and being informed of charges against one. Furthermore, the framework provides inadequate safeguards and remedies for military justice victims.

In every jurisdiction, the legal foundation of the military justice system is the Constitution. (Reiter, 2021) This means that all laws, regulations, and procedures governing military justice must be consistent with the Constitution and other laws of the state. This ensures that service members are guaranteed constitutional rights and that the military justice system is fair and impartial. Nevertheless, in the Maldives, the revised Constitution never addressed military justice. In particular, the Maldivian Army does not have a specific provision to establish a military justice system. This is a primary concern as most countries have a separate military justice system. This ensures that military personnel are held accountable for their actions and treated fairly and equitably. The lack of such a system in the Maldives could lead to military personnel lacking accountability, leading to abuse of power.

In contrast, other jurisdictions establish the military justice system under the Constitution. For instance, in the United States of America, Constitution Article 1, Section 8 provides the authority to develop a military justice system. This authority is further elaborated in the Uniform Code of Military Justice (UCMJ), which provides the legal framework for the military justice system in the United States. The UCMJ defines the roles

and responsibilities of the military justice system and outlines procedures for court-martial, sentencing, and appeals. This legal framework ensures that the military justice system is fair and just, with appropriate due process and safeguards in place to protect the rights of military personnel. (Hofmann, 1993).

To compare to the Malaysian military justice system, the system came into force with the authority of the Federal Constitution 1957 Article 137 and is all structured in the Armed Forces Act 1972. The Malaysian military justice system provides the framework for court martial proceedings, disciplinary regulations for military personnel, and punishments. It is based on the principles of justice, fairness, and equity and sets out the rights and obligations of military personnel and commanders. Moreover, the Malaysian military justice system also provides additional protection for military personnel, as the Malaysian Armed Forces Council monitors the system. Additionally, the system ensures that military personnel's rights are respected and that the rules of natural justice govern judicial proceedings. (Jamal Rodzi Dahari, 2019)

### **ANALYSIS**

Since 2008 many cases ruled by Maldivian military judicators have been acquitted by the Maldivian civil justice system, which includes trial courts, the high court, and the supreme court. The civil justice system has determined that the military judicators have not followed due process, and thus the cases have been overturned. This is because military judicators have been found not to have followed established legal guidelines and procedures. They have also not provided a fair trial to the defendants, which violates their right to due process. As such, the civil justice system has found that the military judicators' rulings were invalid and has overturned them.

The Maldivian constitution guarantees several rights. These rights are mentioned in Chapter Two in articles 16 to 69. These rights include the right to life, freedom of opinion and expression, freedom of assembly and association, and the right to education and healthcare. Other constitutional rights have the right to privacy, the right to work, and the right to a fair trial. Justice rights are discussed in Articles 42 to 60. These legally binding rights ensure that all Maldivians are treated equally and fairly. Articles 42 to 60, in particular, outlines what should be expected from the country's justice system. These rights include the right to a fair trial, the right to be presumed innocent until proven guilty, and the right to legal assistance. (People's Majlis (Parliament House), 2008)

Maldivian Constitution Article 141 (a) states, "The judicial power is vested in the Supreme Court, the High Court, and such Trial Courts as are established by law." This means the Maldivian Military Justice System does not have the independent authority to exercise jurisdiction over military personnel and their actions; instead, they must operate within the existing criminal justice system. Consequently, military personnel must be subject to civil law, with judicial proceedings following the same protocols and procedures as in other civil cases.

### TRIAL COURTS

Several cases of the Maldivian military justice system trialed by the Maldivian civil court have been overturned in the last decade. For instance, in the case *Abdulla Shareef v. Ministry of Defense*, alleged insubordination, misconduct, committing a felony, and Rebellion within the Defence Force. The allegations stem from his refusal to obey the MNDF Chief of Defence Forces' orders. This was in direct contravention of the MNDF's code of conduct. He was demoted and dismissed from the MNDF. He has since been banned from any further involvement in the Maldivian military. After being terminated, he appealed his termination to the Civil Court. The court ruled in his favor and ordered that his termination be reversed. He was reinstated with back pay to his position. The court also ordered that he be compensated for legal fees and other costs incurred during the appeal process. He was also awarded a settlement for any damages or lost wages he suffered due to the wrongful termination. The court's ruling affirmed that the termination was illegal and unjustified. In addition, in reaching its verdict, the court upheld the precedent of procedural and substantive fairness. This means that the court's decision must align with natural justice principles and that any procedure followed must be fair to all parties involved. The court also considers the merits of the case and whether the decision is one that a reasonable person would make in the circumstances. The court concluded that, as long as procedural and substantive fairness were observed, the decision would be respected as fair and just. The court cited the Supreme Court of the Maldives ruling in the *Mohamed Fahmy v Majlis* case. These principles include the right to a fair hearing, the right to counsel, the right to cross-examine witnesses, the right to present evidence, the right to appeal, and the right to a speedy trial. The court has also ruled that the accused can remain silent and not incriminate themselves. These fundamental rights and principles established by the court will ensure that the charged can defend themselves and receive a fair trial. (*Mohamed Fahmee v. Majlis*).

Also, the court referred to *Gasim Ibrahim v. Maldives Police Service* as a crucial case that established a precedent for safeguarding fundamental rights in the Maldives. The concept of due process involves numerous constitutional rights that must be upheld. Ensuring that justice is served and all individuals have equal access to the law is vital. The court upholds several Constitutional rights related to due process, including articles 16, 17, 20, 21, 42, 43, 51, 52. These articles protect against arbitrary arrests, detention, punishments, and the right to a fair public trial. They also guarantee equal protection under the law and freedom from discrimination. (*Gasim Ibrahim v Maldives Police Service*)

To contrast the Malaysian military justice system, in the case *Muhammad Shaifullah Lokman v. Panglima Tentera Darat & Ors* the applicant was arrested on 26 March 2021 by the Royal Military Police Corps ("CSJ") at Wisma Perwira, Markas Staf Stesen Desa Pahlawan, Kern Desa

Pahlawan, Kota Bharu, Keiantan. The CSJ found two transparent plastic bags suspected of being Mitragynine in the applicant's vehicle. CSJ then reported on the problem, calling it "Penyiasatan Kes Memiliki Air Daun Ketum (Mitragynine) Oleh 1160068 Koperal Muhamad Shaifullah Bin Lokman, Rejimen Askar Melayu Diraja" (the "Report"). A dismissal letter was issued by the 2nd Respondent on 22 July 2021 entitled "Kelulusan Pemberhentian Atas Sebab Tata tertib/Saiah Laku, and Other Reasons" (the "Dismissal Letter"). The Applicant received a letter from the 1st Respondent on 13 September 2021 stating that his dismissal took effect on 18 August 2021 and that he must leave Kem Desa Pahlawan, Kota Bahru Keiantan by 30 September 2021. On 13 November 2021, the Applicant and his family left Kem Desa Pahlawan.

The court found that the military justice system had provided *Muhammad Shaifullah Lokman* with all the necessary information about the proceedings. It allowed him to present his case and consider all relevant factors when deciding. The court also found that the decision was rational and aligned with existing laws and regulations. Therefore, the court ruled that *Muhammad Shaifullah Lokman* had been provided sufficient procedural and substantive fairness, and the case was dismissed. By referring to the judicial precedent of these three cases, *Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor*, *Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd*, and *Seruan Gemilang Makmur Sdn Bhd v. Pegawai Kewangan Negeri Pahang*, the court can draw on the interpretations of the relevant laws in the cases to conclude about the current case. This helps ensure that the decision is consistent with past decisions and follows established legal principles. (*Muhammad Shaifullah Lokman v. Panglima Tentera Darat & Ors*).

In the case, *Ibrahim Simad v. Ministry of Defense* the applicant was charged by the Military Police (MP) with misconduct, an offense under section 31 of the Armed Forces Act 2008. The MP found the applicant to have committed an act considered a violation of military rules and regulations. Thus, he was charged with the offense according to the Act provisions. When he appealed the case to a civil court, he argued that the military justice system violated Article 37 of the Constitution (2008), Section 31 of the Armed Forces Act 2008, and Sections 21 and 25 of the Interpretation Act 2011. The court ruled in his favor, citing that the military justice system violated the Constitution and the other laws mentioned. The court ordered the military to review the proceedings and reverse the decision, granting the appellant his citizenship rights. The court argued that the military justice system did not allow the appellant to defend himself properly. It violated his right to due process and fair trial. The court found that the military justice system was inconsistent with the laws cited. It thus ruled in favor of the appellant, ordering the military to review the proceedings and reverse the decision. Specifically, the court found that the military justice system violated the Universal Declaration of Human Rights (UDHR) Convention and the International Covenant on Civil and Political

Rights (ICCPR). It determined that the country's military justice system was not independent or impartial enough. This violates the fair trial right outlined in the UDHR and ICCPR.

To contrast Malaysian Military Justice system the case, *Mohd Alizun Yusof v. Mejar Zamri Wahid & Ors*, In this judicial review application, the Applicant had named six (6) Respondents, but only the 6th Respondent's decision dated 8th April 2014 was granted leave to move the Court to quash the decision. The Applicant was charged before the Court Martial ('CM') together with five (5) others for taking part in a mutiny, an offense under Section 47 (2) of the Arm Forces Act 1972 ('Act 77') ('the First Charge'). Additionally, he was charged with absence without leave under Section 55(a) of Act 77.

The court found that *Mohd Alizun Yusof v. Mejar Zamri Wahid & Ors* was provided with sufficient legal representation, was afforded a fair hearing, and was allowed to appeal the decision. The court also found that the decision made by the military justice system was reasonable and in line with established law. As such, the court agreed that *Mohd Alizun Yusof v. Mejar Zamri Wahid & Ors* had been provided with a fair trial, and therefore dismissed the case. The court ruling reaffirmed the importance of upholding the rule of law and ensuring that all individuals receive fair and equal treatment in any legal proceedings. This ruling also serves as a reminder of the court's power to ensure justice.

Two critical cases were referred to the court to uphold judicial precedent, namely *Capt. Kamarul Azman Jamaluddin v. Lt. Col. Wan Abdul Majid Abdullah & Ors*, and *Kapten Rizal Dollah & 4 Ors v. Pihak Berkuasa Bersidang & 2 Ors*. These cases set a judicial precedent by determining the scope of the court's power to review decisions made by the Armed Forces Council. They also ensure that the findings are reasonable and governed by relevant regulations. They also established the court's jurisdiction in military law matters. As such, these cases established critical legal principles regarding the court's review of Armed Forces Council decisions and the court's jurisdictional authority in military law matters.

Compared to the Maldivian Military Justice System, these cases also established that Malaysian Military Justice is based on the Constitution and recognized by law. The Malaysian Military Justice System is based on the Federal Constitution, which is the supreme law of the land. It is also regulated by the Armed Forces Act 1972 and other relevant laws. This ensures that the military justice system is fair and just and follows international human rights standards. This makes the Malaysian Military Justice System much more robust and reliable in upholding the rule of law than the Maldivian Military Justice System.

In the case, *Ahmed Faththah v. Ministry of Defense*, Ahmed Faththah was charged by the Military Police (MP) with misconduct, an offense under section 31 of the Armed Forces Act 2008. The MP found the applicant to have committed an act considered a violation of military rules and regulations. Thus, he was charged with the offense under the Act. The military police subsequently tried Cpl Ahmed Faththah guilty of the offense.

As a result of the conviction, the applicant was terminated from the service as provided for in the Armed Forces Act 2008. Furthermore, the termination was final and became effective immediately upon conviction.

As a result of his termination from service, he appealed to the Civil Court on the same grounds as *Sfc Ibrahim Simad v. The Ministry of Defense (MoD)* claims that the military justice system violated Article 37 of the Constitution (2008), Section 31 of the Armed Forces Act 2008, and Sections 21 and 25 of the Interpretation Act 2011. He argued that he was denied the right to a fair hearing and that his termination from service was arbitrary and unconstitutional. He also claimed that his rights to due process were violated as provided for in the Constitution. He was not given a hearing nor provided with a valid reason for his termination.

His claim was upheld by the court, stating that the military justice system violated the Constitution and other laws. The court ordered the military to review the proceedings and reverse the decision, restoring citizenship rights to the appellant. According to the court, the appellant could not defend himself properly because of the military justice system. It violated his right to a fair trial and due process. As a result of the court's findings, the military justice system violated the laws cited. Therefore, it ordered the military to review the proceedings and reverse the decision in favor of the appellant. The court strongly emphasized that the military justice system must be held accountable for its lack of respect for the appellant's right to a fair trial and due process, requiring it to remedy the situation by restoring the appellant's citizenship rights.

To compare to the Malaysian military justice system, *Robin Ak Bandang & Ors v. PP*, In this case, the appellants filed an appeal against the Sessions Court judge's decision on 17 June 1998. This decision determined that the Sessions Court had jurisdiction to hear the three appellants for rape under section 376 of the Penal Code. The Armed Forces Act 1972 applies to the three appellants as Armed Forces members. However, no evidence has been produced that the three appellants have been charged with any service offense under Part V of the Armed Forces Act 1972 (sections 38 to 88). No evidence exists that the three appellants were arrested under section 93 of the Armed Forces Act 1972. The provost Marshal was always investigating them. In addition, there is no evidence that the provost Marshal requested that the police take custody of the three appellants for investigation.

Their commanding officer has conducted no investigation into any charge/s against the three appellants under section 95 of the Armed Forces Act 1972. A decision has been made on whether the charges will be dealt with summarily or by court-martial. In sum, there is no evidence that the military authorities have taken any action against the three appellants since their arrest by the police on 29 April 1998 under the Armed Forces Act 1972. Consequently, the appellants have been denied their right to due process and fair trial by military justice laws.

The Armed Forces Act 1972 defines rape as an offence under section 88 of the Armed Forces Act 1972. Even though rape is an offence under



section 88 of the Armed Forces Act 1972, no person may be tried for that offence by court-martial unless he committed it while on active service or outside the Federation (see s. 88(4)). According to section 3 of the Armed Forces Act 1972, "on active service" applies to forces engaged in operations against an enemy, on active duty outside the Federation to preserve life or property or occupied by a foreign military force. A person serving in or with an active-duty force means that person.

Based on procedural and substantive fairness, *Robin*, the court dismissed the *Ak Bandang & Ors v. PP* case. The court agreed that the military justice system provided Robin Ak Bandang & Ors v. PP with sufficient procedural and substantive fairness. Therefore, the case was dismissed by the court. After thoroughly reviewing the evidence, the court found that the military justice system had provided Robin Ak Bandang & Ors v. PP with all the necessary rights and protections, including the right to a fair trial, to ensure a just outcome. The court also determined that the evidence presented did not warrant a guilty verdict and thus dismissed the case.

As a result of these cases, it was established that Malaysian Military Justice is constitutionally based and legally recognized by law. As the supreme law of the land, the Federal Constitution governs the Malaysian Military Justice System. Additionally, it is regulated by the Armed Forces Act 1972 and other relevant laws. Following international human rights standards, the military justice system is fair and just. Therefore, the Malaysian Military Justice System upholds the rule of law much more robustly and reliably than the Maldivian Military Justice System.

### **HIGH COURT**

The high court of the Maldives has taken significant measures to uphold justice and protect constitutional rights. In recent times, a number of cases related to the military's justice system in the Maldives have been overturned because of violations of these rights by the military. This is a positive step towards the nation's and its citizens' progress and prosperity.

The case, *Abdulla Shamal v. Ministry of Defense*, This case involves a dispute between Brigadier General Abdulla Shamal and the Ministry of Defense (MoD). The MoD accused General Shamal of misconduct and subsequently removed him from his position. General Shamal then filed a lawsuit against the MoD, claiming that the MoD had violated his rights and acted unlawfully. The court ruled in favor of General Shamal, ordering the MoD to reinstate him and pay damages for violating his rights. The court also held that the MoD had acted unlawfully and exceeded its authority in removing General Shamal from his position. The court's ruling affirmed General Shamal's claims, confirming that the MoD had abused his rights and exceeded its authority.

During the 2013 Presidential Election, he alleged a rebellion within the Defence Force. He petitioned and promoted within the forces not to accept the second round of the presidential election. He met many officers willing to sign the petition. He argued that the first round of the election was

illegally manipulated and that the second round would be invalid if not annulled. He further argued that the military had a duty to protect the country's people from illegally manipulating the electoral process. He rallied the army to take a stance and fight against injustice by refusing to accept the second round of the election. He stressed that the military was responsible for upholding the electoral process integrity and protecting the country's people.

Maldivian Armed Forces Act 2008, section 33 says, "Every service member who rebels or creates disharmony inside the Defence Force, plans or encourages such acts, or fails to notify or delays in informing the senior leaders of the Defence Force about knowledge of such actions will be prosecuted under this Act." This is intended to ensure that the Maldivian Armed Forces is a disciplined and harmonious organization. Members can trust that their fellow members uphold the same standards of loyalty and service. It also seeks to ensure that any disruption or disunity within the organization is quickly identified and dealt with before it causes further damage.

After investigating his allegations, the Maldives National Defense Force MNDF dismissed him from service under section 31 of the Armed Forces Act 2008. The Act states that anyone can be rejected if found guilty of misconduct. The investigation by MNDF Head Quarter HQ found him guilty of misconduct, and the MNDF removed him from service on 30 November 2013. He appealed for his removal from the Army to the Civil Court. He claimed that Article 68 of the Constitution and judicial precedents regarding due process and natural justice had been violated. His appeal was rejected, and the case was dismissed from Civil Court.

When the Case rejected from Civil Court he appealed to High Court. In his contention, the MNDF military justice system violates the Supreme Court precedent in Mohamed Fahumee v Majlis. It breaks the High Court precedent in Attorney General's Office v State. This is regarding natural justice and due process. These cases established the principles of natural justice and due process that the MNDF military justice system failed to follow. Consequently, the MNDF military justice system should be reformed to ensure that accused persons' rights are respected and upheld. This is a significant ruling, given that natural justice and due process are fundamental principles of justice that must be maintained.

The High Court accepted the appeal and found that his removal from the Service was unconstitutional and violated judicial precedent. They ruled that he had been denied natural justice and due process and was reinstated to his former position. The High Court found that the employer failed to allow the employee to be heard and present his case. In addition, the employer had not followed the applicable legal principles and procedures and had acted in a way that was contrary to established judicial principles.

### **SUPREME COURT**

Over the past decade, the Maldivian military justice system has faced overturned rulings by the Maldivian Supreme Court. In the case, *Abdul*

*Muizz Musthafa v States (MoD) Abdul Muizz Musthafa* was dismissed from the Maldives National Defense Force (MNDF) on 30th November 2013 for mutiny, insubordination, and disgraceful conduct. The Chief of Defense Forces is determined by the Armed Forces Act (2008). Cpt Abdul Muizz Musthafa tried to appeal the decision but failed. His dismissal was finalized. According to MNDF regulations, any MNDF member found guilty of such offenses can be removed from service. So, the decision to dismiss Cpt Musthafa was taken by the rules to maintain the MNDF's integrity and discipline.

He appealed to the Civil Court after being dismissed. But the Civil Court dismissed the case based on Armed Forces Act Section 33 and Constitution Articles 237, 243 (a), 246 (b), MNDF-Rules and Regulations Chapter 1 Section 6. He argued that the dismissal was unlawful and unconstitutional. However, the court ruled that the dismissal was in accordance with the law and the Constitution. Unfortunately, his appeal was rejected. He challenged the Civil Court decision in the High Court. He argued that dismissal violated his constitutional rights. However, the High Court upheld the Civil Court's conclusion.

Section 33 of the Armed Forces Act states that every service member who rebels or creates disharmony within the Defence Force, plans or encourages such acts, or fails to notify senior leaders of the Defence Force about knowledge of such actions will be prosecuted. Article 237 of the Constitution of 2008 states that the security services protect the nation's sovereignty maintain its territorial integrity, defend the constitution, and enforce law and order. According to Section 243 (a), the military's primary objective is to defend and protect the Republic, its territorial integrity, and its Exclusive Economic Zone. Section 246 (b) bans security service members from engaging in partisan political activities or joining unions or political parties.

Based on the principles above, the Civil Court and High Court dismissed Captain Abdul Muizz Musthafa's appeal. When he appealed to the High Court, the additional ground was that the Civil Court ruling violated the Supreme Court's ruling in *Mohamed Fahumee v. Majlis*. It also violated the High Court's ruling in *Attorney General's Office v State* and Article 61 (b) of the Constitution. Under Article 61 (b), "no punishment may be imposed except under a statute, or a regulation made under the authority of a law, which is available to the public and which defines the criminal offense and the punishment for committing it."

When the Civil Court and High Court dismissed his case, he appealed to the Supreme Court. His claim is based on natural justice, due process, and substantial fairness. The Supreme Court accepted the appeal and found that his removal from the Service was unconstitutional and violated judicial precedent. They ruled that he had been denied natural justice and due process and was reinstated to his former position. The Supreme Court found that the military justice system had not followed proper procedure when removing him from the Service, as they had not allowed him to present his case nor provided him with adequate reasons for their decision. This

violated natural justice and due process principles, and thus the Supreme Court reversed the decision.

When examining the military justice system in Malaysia, a notable case arises involving *Capt. Kamarul Azman Jamaluddin v Lt. Col Wan Abdul Majid Abdul Majid Abdulla & Ors*. In this case, *Captain Kamarul Azman Jamaluddin* is a Malaysian army officer. Three charges of forgery and other forms of dishonest conduct were brought against the appellant before a general Court-Martial on 16 February 1976. Each member of the Court-martial and the Judge Advocate took the oath when the Court-martial assembled. At the prescribed time and in the prescribed form, it was administered. The Tuan Guru, employed by the armed forces and attached to the appellant's unit, administered it instead of a Judge Advocate as required by the Rules of Procedure. When the oath was administered, the appellant and his counsel did not object to the Tuan Guru distributing it. The appellant's counsel discharged himself on the fourth day, and the trial was adjourned. Different counsel for the appellant objected to the Court's jurisdiction. This is because the members had yet to be validly sworn in when the trial resumed on 1 March 1976.

In this appeal, the sole question is whether the failure to administer the oath by the person prescribed in the Rules of Procedure rendered the Court-martial improperly constituted and, therefore, without jurisdiction to try the appellant. In answer to that question, the trial Judge (Harun J) ordered a prohibition prohibiting the Court-martial from hearing the charge against the appellant. The Federal Court (*Suffian LP, Gill CJ Malaya, and Raja Azlan Shah FJ*) reversed the learned judge's decision.

Consequently, Capt. Kamarul Azman Jamaluddin appealed the case to the Federal Court, claiming that the court martial violated his fundamental procedural fairness and natural justice rights. Specifically, he claimed that the court-martial proceedings did not give him a fair opportunity to present evidence and cross-examine witnesses. He also claimed that the court martial should have considered the entire evidence before deciding. As a result, Capt. Kamarul Azman Jamaluddin argued that the court martial proceedings were not conducted fairly and impartially. He also argued that all relevant evidence should be considered before voting.

Before concluding this case, the court mentioned: Military officers can be granted the authority to perform any action or exercise any jurisdiction normally given to another person. This allows the military to execute orders and enforce the law more efficiently. According to affidavits before the trial Judge, there is a custom of service whereby a Tuan Guru administers the oath at Courts-Martial. The Lordships are inclined to agree with the learned trial Judge that s. No unwritten tradition of service may alter the written Rules of Procedure materially, except if it applies only to Muslims.

The Lordships believe that the Federal Court might have expressed itself more strongly than they did, near the end of their judgment, when they said "it is hoped" that the oath would be administered personally by the Judge Advocate in the future, for the reasons outlined above. In the Lordships' view, it is imperative that any practice of administering the oath by persons

other than the prescribed person to members of Courts-Martials or witnesses appearing before Courts-Martials be either regularized by amending the Rules of Procedure or discontinued as soon as possible.

The case concluded that the applicant must prove that the court martial decision was incorrect, illegal, irrational, or unjustified by the facts and circumstances. Consequently, the argument that the Respondents could only oppose the judicial review application with an affidavit must be revised. They will need to accept the Applicant's facts. The reasons given above indicate that this application needs to be improved. Costs and allocation payments are dismissed. There was no merit to the application, which is one of the grounds for dismissal. No legal precedents or court rules supported it, and it did not comply with court rules.

### CONCLUSION

Military justice is a unique legal system that is applicable to armed forces personnel, and in certain instances, civilians. The primary objective of military justice is to uphold discipline and order within the armed forces. The structures, regulations, and procedures in military justice can differ significantly from those in civilian justice systems. Military justice functions in a distinct court system with more stringent regulations and protocols to maintain internal discipline and uphold the operational efficiency of the armed forces. This may raise concerns regarding civilian superiority or adherence to global norms, including human rights and equitable trial assurances.

The creation of the military justice system is only permitted under the constitution or the law, as mandated by the principle of the separation of powers. Moreover, they must be an indispensable element of the entire judicial system. For example, the United States Constitution's Article 1, Section 8 grants the power to create a military justice system. In Malaysia, the military justice system was established through the Federal Constitution's Article 137 authority in 1957 and is organized under the Armed Forces Act of 1972. It has been noted since 2008 that cases previously judged by Maldivian military officials have been cleared by the Maldivian civil justice system, which comprises trial courts, the high court, and the supreme court. Despite this, the Maldives National Defense Force has used military justice to limit several constitutional rights.

It is essential to understand that in a constitutional democracy, a constitutional right can only be restricted if it is authorized by law. This principle, known as legality, is the foundation for limitation clauses in modern constitutions and international documents. It requires that any restriction on the right must be "prescribed by law." The rule of law principle states that any limitation on a constitutional right must be supported by a legal norm that can be traced back to the Constitution, either directly or indirectly. If the authority for the restriction cannot be traced back to the Constitution, it is considered unconstitutional. To ensure compliance with the law, the principle of legality is crucial. It serves as a necessary factor for authorization and acts as a legal threshold for

proportionality laws. If the legality requirements are met, further examination of the proportionality issue is necessary.

The legality principle mandates that legal authorization be obtained to limit a constitutional right, which can be traced back to the Constitution itself. This requirement, also known as the "authorization chain," is a formal aspect of the rule-of-law principle. Essentially, it means that any limitation on a constitutional right must have a valid and legal foundation. Apart from the formal requirement, the principle of legality is often understood to necessitate three other conditions. Firstly, in many legal systems, there is a requirement for a general authorization or a "general application" authorization. Secondly, the law must be accessible to all. And finally, the law must be unambiguous. The principle of the rule of law is the cornerstone on which the subsequent requirements are based. These requirements are crucial elements of constitutional democracy and are vital in ensuring that the law governs individuals, not vice versa. Rawls referred to it as "formal justice," while Fuller described it as "the inner morality of the law." The list of these requirements is incomplete and evolves as our comprehension of the law's nature and role in society progresses. To properly understand the requirements, it is crucial to analyze the interpretation of the term "law" as it pertains to the limitation clause. We must delve into the principle of legality and its foundation in the rule of law to comprehensively understand the matter at hand.

The primary goal of military justice is to uphold order and discipline within the armed forces. However, if this objective is not achieved while following legal principles, it can negatively impact the nation's stability.

Based on the findings of this study, the authorities are advised to consider certain recommendations concerning the execution of military justice in the Republic of Maldives.

a) Military justice system can only be created by the constitution or the law, and they must follow the principle of the separation of powers. They should be a part of the overall judicial system. Hence, it is essential to include provisions in the Maldivian Constitution to establish a military justice system;

b) Maldivian military justice system should provide fair trial rights as guaranteed by the ICCPR, specifically Article 14. They should also adhere to other internationally recognized standards and procedures that ensure a fair trial, such as the rules of international humanitarian law;

c) It is recommended that the Maldives National Defense Force (MNDF) creates a Military Court that is aligned with the national judicial framework. This will grant the MNDF the power to enforce laws and regulations that pertain to military personnel, thus promoting discipline and order within the military. Additionally, it will ensure that any criminal activity by military personnel is handled with fairness and consistency;

d) The Military Justice System within the Maldives National Defense Force must be competent, independent, and impartial. By upholding these qualities, the system can ensure that military personnel receive fair and equal treatment equivalent to civilian justice standards. Furthermore, it can

grant the military the freedom and adaptability necessary to fulfill their responsibilities efficiently. Overall, this system would promote accountability for military actions and uphold the principles of justice;

e) It's important for the Maldivian Military Justice System to follow International Humanitarian Law to guarantee the protection of military justice rights, and to ensure that everyone is treated fairly, respectfully, and with dignity under international law;

f) In the Maldivian Military Justice System, there are no prisons or detention centers. As a result, a Military Prison Regime must be in place to ensure the proper administration of military justice. Without such a system, military personnel cannot be effectively disciplined, and the justice system cannot be fully implemented. Additionally, a Military Prison Regime is crucial to safeguard the rights of accused personnel and ensure a fair trial is conducted;

g) It is essential that the Maldivian Military Justice System incorporates the provision of *Habeas Corpus* as a guarantee;

h) The Military Justice Codes must undergo regular systematic evaluation, carried out independently and transparently. This is to ensure that the power of military tribunals is strictly necessary and does not override the authority that belongs to regular civil courts. Hence, it is necessary for the Maldives military justice system to conduct timely reviews.

## REFERENCES

- Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor , 2 MLRA 390 (Court of Appeal, Putrajaya August 08, 2008).
- Ambard v. Attorney-General for Trinidad and Tobago , A.C. 322 (The Supreme Court of Trinidad and Tobago March 02, 1936).
- Andrew Goldsmith, B. W. (2018). *Criminologies of the Military: Militarism, National Security and Justice*. New York : Bloomsbury Hart Publishing.
- Attorney General's Office v State , HC-A 168 (High Court of the Republic of Maldives July 21, 2010).
- Breen, P. D., & Johnson, B. D. (2017). *Military Justice: Case Processing and Sentencing Decisions in America's "Other" Criminal Courts*. . Justice Quarterly, 639-654.
- Brigadier general (BG) Abdulla Shamal v State (MoD), HC-A/ 16 (High Court of the Republic of Maldives December 11, 2018).
- Brigadier General Abdulla Shamal v. Ministry of Defense (MoD),. HC-A 16 (High Court of the Ma December 14, High Court of the Republic of Maldives).
- Capt. Kamarul Azman Jamaluddin v. Lt. Col Wan Abdul Majid Abdul Majid Abdulla & Ors , 1 MLRA 1 (Federal Court, Kuala Lumpur March 21, 1983).
- Capt. Kamarul Azman Jamaluddin v. Lt. Col. Wan Abdul Majid Abdullah & Ors , 1 MLRA 1 (Privy Council March 21, 1983).
- Captain Abdulla Shareef v. Ministry of Defense (MoD) , 41. Cv-C (Civil Court of the Maldives January 02, 2019).
- Captain Ahmed Thiham v Prosecutor General Office (PG Office) , SC 33 (Supreme Court of the Maldives March 25, 2021).
- Contreras, P. (2011). *Independence and impartiality in military justice systems: Comparative international standards*. Estudios Constitucionales., 191-248.

- Cpl Ahmed Faththah v. Ministry of Defense (MoD) , 462 Cv-C (Civil Court of the Maldives January 17, 2019).
- Cpl Shahrab Rashid v. Ministry of Defense (MoD),. 2391 Cv-C (Civil Court of the Maldives July 02, 2019).
- Cpt Abdul Muizz Musthafa v Ministry of Defense (MoD), HC-A 422 (High Court of the Republic of Maldives September 22, 2016).
- Cpt Abdul Muizz Musthafa v States (MoD), SC 31 (Supreme Court of the Maldives March 18, 2021).
- Eleanor T. Morales, J. W. (2022). Restoring Faith in Military Justice . Connecticut Law Review , 77-134.
- Gasim Ibrahim v. Maldives Police Service , SC-A 19 (Supreme Court of the Maldives July 03, 2010).
- Gian Gentile, J. K. (2020). The Evolution of U.S. Military Policy from the Constitution to the Present: The Old Regime: The Army, Militia, and Volunteers from Colonial Times to the Spanish-American War (Volume I). Santa Monica, California : RAND Corporation .
- Hofmann, G. F. (1993). Arming Military Justice, Volume I, The Origins of the United States Court of Military Appeals, 1775-1950. The Journal of Military History, 327-328.
- Hussain, F., Kamal, M. H. M., Halim, A. H., & Bustami, T. A. A. (2016). Privileged Wills In Malaysia: The Sustainability Of Privileged Wills Among Soldiers, Airmen And Sailors. Journal Of Asian And African Social Science And Humanities, 2(3), 61-73.
- Jetmore, L. F. (2015). The Path of the Warrior: An Ethical Guide to Personal & Professional Development in the Field of Criminal Justice. New York : Looseleaf Law Publications, Inc.
- Kapten Rizal Dollah & 4 Ors v. Pihak Berkuasa Bersidang & 2 Ors , 10 MLRH 416 (High Court Malaya, Pulau Pinang August 28, 2009).
- Kastenberg, J. E. (2009). The Blackstone of Military Law: Colonel William Winthrop. Maryland : The Scarecrow Press, Inc.
- Kolonel Dr Faiz Azraai Abdul Aziz v Mahkamah Tentera Divisyen Keempat Infantri Malaysia , 4 MLRA 611 (Federal Court, Putrajaya May 16, 2023).
- Lt Col Wan Abdul Majid Bin Abdullah & Ors v. Captain Kamarul Azman Bin Jamaluddin , 1 MLRA 1 (Privy Council March 21, 1983).
- Lt Kol Yusof Abdul Rahman v. Kol Anuar Md Amin, Yang Dipertua Mahkamah Tentera Pulau Pinang & amp; Anor, 1 MLRA 127 (Court of Appeal, Kuala Lumpur January 14, 1997).
- Majlis Angkatan Tentera Malaysia & Anor v Mejar Fadzil Rashid , 4 MLAR 478 (Court of Appeal, Putrajaya November 3, 2012).
- Malaysia, T. P. (1957, August 31). Federal Constitution . Federal Constitution . Kuala Lumpur, Malaysia : MDC Publishers.
- Malaysia, T. P. (1972, April 28). Laws of Malaysia, Act 77. Armed Forces Act 1972. Kuala Lumpur Federal Territory, Malaysia : MDC Publisher .
- Maldives Transport and Construction Company (MTCC) Plc v. Ahmed Mohammed , HC-A 134 (High Court of the Republic of Maldives June 07, 2011).
- Maldives, P. M. (2006, August 17). Human Rights Commission of the Maldives Law. Human Rights Commission Law . Male', Kaaf Atoll, Maldives : People's Majlis .
- Md Redzuan Alang v Panglima Tentera Laut & Satu Lagi , 2 MLRH 35 (Mahkamah Tinggi Malaya, Kuala Lumpur February 25, 2010).
- Mejar (B) Sawaludin Lamin v. Majlis Angkatan Tentera & Ors , 4 MLRH (High Court Malaya, Kuala Lumpur February 28, 2022).



- Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd , 1 MLRA 325 (Court of Appeal, Putrajaya March 31, 2010).
- Mohamed Fahumee v. Majlis , SC-C 35 (Supreme Court of the Maldives December 11, 2012).
- Mohammed Shamuoon v. Maldives Police Service , HC-A 384 (High Court of the Republic of Maldives. August 24, 2016).
- Mohd Alizun Yusof v. Mejar Zamri Wahid & Ors , MLRHU 1262 (High Court Malaya, Kuala Lumpur November 16, 2015).
- Mohd Alizun Yusof v. Mejar Zamri Wahid & Ors , MLRHU 1262 (High Court Malaya, Kuala Lumpur November 16, 2015).
- Muhammad Shaifullah Lokman v. Panglima Tentera Darat & Ors , MLRHU 2554 (High Court Malaya, Kuala Lumpur December 05, 2022).
- Panglima Tentera Laut Diraja Malaysia & Ors v. Simathari Somenaidu , 2 MLRA 247. (Federal Court, Putrajaya January 10, 2017).
- Pasquale, L. D. (2017). *The Social Justice Warrior Handbook*. Nashville : Post Hill Press .
- Peter Chong Ngen Onn & Ors v. Col Adam Bin Abubakar & Ors , 1 MLRA 657 (Federal Court, Kuala Lumpur February 24, 1976).
- Price, R. (2012). *Rainforest Warriors: Human Rights on Trial*. Philadelphia : University of Pennsylvania Press.
- R. v. Stillman, 2019 SCC 40, [2019] 3 S.C.R. 144 (Supreme Court of Canada July 26, 2019).
- Rant, J. W. (2000). The military justice system and human rights. *The RUSI Journal*, 32-36.
- Robin Ak Bandang & Ors v. PP , 1 MLRH 893. (High Court Malaya, Alor Setar September 26, 1998).
- Seruan Gemilang Makmur Sdn Bhd v. Pegawai Kewangan Negeri Pahange , 2 MLRA 597 (Court of Appeal, Putrajaya March 07, 2016).
- Sfc Ibrahim Simad v. Ministry of Defense (MoD) , 460 Cv-C (Civil Court of the Maldives February 20, 2019).
- Sfc Naushad Adam v Ministry of Defense (MoD), 1364 Cv-C (Civil Court of the Maldives March 24, 2019).
- Shah, N. A. (2016). The Right to a Fair Trial and the Military Justice System in Pakistan. *Journal of International Humanitarian Legal Studies* , 330-362.
- Sherrill, R. (1971). *Military Justice and the Right to Counsel*.by S. Sidney Ulmer; *Military Justice is to Justice as Military Music is to Music*. *Military Affairs*, 28.
- Shiner, P. (2008). The abject failure of British military justice. *Criminal Justice Matters*, 4-5.
- Simathari Somenaidu v. Panglima Tentera Laut Diraja Malaysia & Ors , 5 MLRA 258. (Court of Appeal, Putrajaya June 30, 2015).
- Snyder, J. (2022). *Human Rights for Pragmatists: Social Power in Modern Times*. Oxford : Princeton University Press.
- Suhairi Abu Kassim v. Majlis Angkatan Tentera Malaysia & Anor , MLRHU 772 (High Court Malaya, Kuala Lumpur May 19, 2023).
- United States v. Adam M. Pyron, Master-at-Arms Second Class , 83 M.J. 59 (United States Court of Appeals for the Armed Forces December 07, 2022).
- United States v. David J. Rudometkin, Major, 82 M.J. 396 (United States Court of Appeals for the Armed Forces May 24, 2022).
- United States v. Ethen D. Black, Private First Class, 82 M.J. 447 (United States Court of Appeals for the Armed Forces March 29, 2022).
- United States v. Leahr , 73 M.J. 364 (United States Court of Appeals for the Armed Forces. May 14, 2014).

- United States v. Nicholas R. St. Jean, Specialist , 83 M.J. 109 (United States Court of Appeals for the Armed Forces November 09, 2022).
- United States v. Pedro M. Bess, Hospital Corpsman Second Class Petty Officer , 80 M.J. 1 (United States Court of Appeals for the Armed Forces October 23, 2019).
- United States v. Ryan G. Uribe, Staff Sergeant , 80 M.J. 442 (United States Court of Appeals for the Armed Forces December 1, 2020).
- Wellfired Anthony v. General Raja Mohamed Affandiraja Mohamed Noor Chief of Malaysian Armed Forces & Ors , MLRHU 636. (High Court Sabah & Sarawak, Kuching April 06, 2018).
- Wigmore, J. H. (2010). Some lessons for civilian justice to be learned from military justice. *Journal of Criminal Law and Criminology* (1931-1951), 317-322.
- Zaverucha, A. W. (2005). The Many Faces of Violence || The Neglected Stepchild: Military Justice and Democratic Transition in Chile. *Social Justice*, 115-131.