

JUDICIAL SERVICE COMMISSION ACT

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Introduction and Title

1. a) This is the Act which determines the responsibilities, powers, mandate, qualifications and ethical standards of members of the “Judicial Service Commission” established under the Constitution of the Republic of Maldives.

b) This Act shall be cited the “Judicial Service Commission Act”.

Establishing the Office of the .

Judicial Service Commission

2. a) On the date of enactment of this Act, an office of the Judicial Service Commission shall be established in the name of “Judicial Service Commission”, to undertake the duties and responsibilities conferred on to the Judicial Service Commission under this Act.

(b) The Judicial Service Commission is an independent legal entity with a separate seal, possessing the power to sue and sued against and make undertakings in its own capacity.

Composition of the Commission

3. The Judicial Service Commission shall consist of the following members.
 1. The Speaker of the People's Majlis;
 2. A Judge of the Supreme Court, other than the Chief Justice, elected by the Supreme Court;
 3. A Judge of the High Court, elected by the Judges of the High Court;
 4. A Judge of the Lower Courts, elected by the Judges of the Lower Courts;
 5. A member of the People's Majlis, elected by the People's Majlis;
 6. A member of the general public, appointed by the People's Majlis;
 7. The President of the Civil Service Commission;
 8. A person appointed by the President;
 9. The Attorney General;
 10. A lawyer elected from among the lawyers licensed to practice in the Maldives.

The Appointment of a Member of the General Public, by the People's Majlis

4. a) The appointment of a member of the general public by the People's Majlis as stipulated in Article 3 (6) of this Act shall be carried out in accordance with the procedures of the People's Majlis.
- b) The member of general public appointed by the People's Majlis, in accordance with (a) of this Article, shall be chosen among the respondents to a public announcement.

Qualifications of Members

5. Members of the Commission stated in Article 3 (6) (8) and (10) of this Act, shall possess the following qualifications during their tenure of office.
 - a) Must be a Muslim;
 - b) Must be a citizen of the Maldives;
 - c) Must have attained 25 years of age;
 - d) Must not be convicted of fraud, bribery or an offence for which a *Hadd* is prescribed in Shariah;
 - e) Must not be a person holding an elected office or a political position under the Constitution or any Law of the Republic of Maldives;

- f) Must not be a member of a political party, nor engaged in the activities of a political party;
- g) Must be of sound mind.

Term of Office of Members

- 6. The term of office of members appointed to the Commission are as follows.
 - a) A member appointed pursuant to (2) (3) (4) (5) (6) (8) and (10) of Article 3 of this Act, holds office for a term of five (5) years and is not eligible for reappointment to the Commission.
 - b) A member appointed by virtue of office held, pursuant to (1) (7) and (9) of Article 3 of this Act, remains a member of the Commission only as long as that office is held.

Appointment of the President and Vice

President of the Commission

- 7. The President and Vice President of the Commission shall be appointed from among the members of the Commission by the members of the Commission. The President and the People's Majlis shall be informed of the appointment of the President and Vice President of the Commission, within 48

(forty eight) hours of the appointments.

Responsibilities of the President of the Commission

8. The President of the Commission shall preside over the meetings of the Commission and assign the work of the Commission to its members.

Responsibilities of the Vice President of the Commission

9. The Vice President of the Commission shall temporarily perform the responsibilities of the President of the Commission, should the President of the Commission be unable to undertake the responsibilities, or declines to do so, or if the office of the President falls vacant. The Vice President of the Commission shall also perform duties assigned by the President of the Commission.

Vacancy of Post

10. a) The post of a member of the Commission shall be deemed vacant in the following circumstances.

1. End of tenure;
2. Resignation;

3. Being dismissed as per Article 14 of this Act;
4. Contesting for a political position elected under the Constitution or a Law;
5. Death;
6. The loss of a quality stipulated under this Act, for members of the Commission appointed pursuant to (6) (8) and (10) of Article 3 of this Act.

b) The post of the President or Vice President of the Commission shall be deemed vacant under the same circumstances in which a member's post becomes vacant, or if the President or the Vice President resigns from the post.

Filling a Vacancy

11. a) If the post of a member appointed to the Commission pursuant to Article 3 (2) (3) (4) (5) (6) (8) and (10) becomes vacant, the party responsible for the appointment shall appoint another member to the post within 30 (thirty) days.

b) If the post of a member appointed by virtue of the office held, pursuant to Article (1) (7) and (9) becomes vacant, the post will be considered filled when a new person is appointed to the office.

**Members Discharge Their
Responsibilities**

12. The responsibilities of the members of the Commission are as follows.

- a) Attend meetings of the Commission.
- b) Undertake responsibilities assigned by the Commission.
- c) Maintain confidentiality of information considered classified by the Commission.

Assumption of Office by Members

13. The members of the Commission shall assume office upon taking, before a Judge, the following oath, and signing the Agreement of Oath.

“I (name of the person)....., do swear in the name of Allah that I will respect the religion of Islam, that I will uphold the Constitution of the Republic of Maldives, that I will bear true faith and allegiance to the Maldives, that I will uphold the fundamental rights of the Maldivian citizens, and will discharge the duties and responsibilities of the membership of the Judicial Service Commission honestly and faithfully in accordance with the

Constitution and Laws of the Republic of Maldives”.

Removal from Office

- 14.** a) A member of the Commission appointed pursuant to Article 3 (2) (3) (4) (5) (6) (8) and (10) may be removed from office by the appointer.
- b) A member appointed by virtue of the office held, pursuant to Article 3 (1) (7) and (9) shall be removed from membership upon vacation of the office he holds.

Resignation

- 15.** a) A member of the Commission may resign from office, with the exception of members appointed pursuant to Article 3 (1) (7) and (9) of this Act.
- b) A member of the Commission who may resign from office under (a) of this Article, may do so by writing the resignation addressed to the President, and the office shall become vacant when the letter is received by the President.
- c) Should the President of the Commission wishes to resign, he/she may submit the resignation in writing to the Commission and shall be relieved from the post. Similarly, should the Vice President wish to resign

from the post, he/she may submit the resignation in writing to the President of the Commission and the office shall become vacant when the letter is received by the President of the Commission.

Salary and Allowances

16. a) A member of the Commission who is not a member of the Executive, the Judiciary, the People's Majlis, or an independent institution, shall be paid such salary and allowances as may be determined by the People's Majlis. Such salary and allowances paid to members shall not be reduced during their tenures.

b) The Commission shall decide on the salary and allowances of the staff of the Commission in consultation with the Ministry of Finance and Treasury.

Members Code of Ethics

17. a) Every member of the Commission shall act on the following, when discharging the responsibilities and exercising the powers of the members of the Commission during the tenure of membership.

1. In the performance of functions, act in

- accordance with the Constitution and the Laws;
2. Promote the Rule of Law, and protect the rights and freedoms of the people;
 3. Uphold national duty and safeguard the interest of the people when discharging the responsibilities and exercising the powers of the members of the Commission;
 4. When discharging the responsibilities and exercising the powers of members, no one shall be discriminated against based on race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property and wealth, birth or other status, family or native island, language or dialect, social status or position;
 5. Not to be influenced by any person or party when discharging the responsibilities and exercising the powers of members;
 6. In performing the functions of the Judiciary,

and in matters relating to the courts, apply the Constitution and the Law impartially and without fear, favour or prejudice;

7. Refrain from committing any act, or having any kind of involvement, or expressing any views or opinions, which may lead to the impartiality of the member being questioned, and refrain from any act which might question or compromise the independence, impartiality and fairness of the Commission;
8. A member shall not take advantage of the prestige of his/her position or use any information acquired therein, for personal gains or to obtain similar benefits to another person.
9. Information acquired by a member in a member's capacity, shall not be used or disclosed to a third party, for any other purpose not related to the member's duties and responsibilities.

10. Members of the Commission shall, at all times and in all their actions, conduct themselves in a socially acceptable manner.

b) If the Commission so determines, that a member who was involved in any decision making process of the Commission, was in breach of (a) of this Article, the Commission reserves the right to review that decision.

c) If a member of the Commission is convicted by a Court of having violated the Law, the Commission shall take responsibility in the matter as so decided by the Court, and furthermore, the Court reserves the right to penalize the convicted member in accordance with the Law.

d) Every member of the Commission shall annually submit to the Auditor General a statement of all the properties and monies owned by him/her, business interests and all assets and liabilities. And every member appointed to the Commission shall before assuming office, submit to the Auditor General a

statement of all the properties and monies owned by him/her, business interests and all assets and liabilities. If the Auditor General finds discrepancies in the statement, the Auditor General reserves the right to submit the issue to the People's Majlis.

Immunity

18. No criminal or civil suit shall be filed against the President or Vice President or a member or staff of the Commission in relation to committing or omitting an act in good faith while undertaking responsibilities of the Commission or exercising the powers of the Commission or the powers conferred to the Commission by a Law.

Meetings of the Commission

19. A meeting of the Commission shall be held at least once a month.

Quorum and Voting

20. a) A meeting of the Commission may only be held with a majority of members constituting the quorum.

b) Any decision of the Commission shall be taken by a majority of votes of the members present and voting.

c) A member shall not involve to any extent, in a matter concerning their self-interest, personal involvement, or financial or any other personal gain, when such a matter is being decided by the Commission. When the member becomes aware of the aforesaid connection, the member shall inform other members of the Commission and refrain from being involved in deciding on the matter.

Responsibilities and Powers of the Commission

21. Following are the responsibilities and the powers of the Commission.

- a) With the exception of the Chief Justice and the judges of the Supreme Court, appoint other judges and arrange for their promotions and transfers. And in accordance with Article 147 and 148 of the Constitution advise the President on appointing the Chief Justice and Judges to the Supreme Court.
- b) Investigate the complaints filed against judges and take necessary action against them and inform the relevant authorities to dismiss the party who need to be removed from their position.

- c) Formulate regulations for the following,
 - 1. On carrying out all necessary work related to seeking and appointing judges.
 - 2. On establishing the Code of Conduct for Judges
 - 3. On carrying out the tasks necessary to efficiently execute the duties and responsibilities of the Commission.
 - 4. Deciding on the cause of action in cases of conflict of interest between the responsibilities and personal matters of a judge.

- d) Advise the President and the Parliament on matters related to the administration of justice and on other matters of the Courts.

- e) Oversee, plan and execute the tasks related to general administration of the judicial power of the Maldives. In consultation with the Commission appoint a technical administrator by the Commission to administer and carry out these duties. In this manner the planning and execution of general administration include the following

- 1- In discussion with the senior most judge of the particular court oversee the task of hiring and dismissal of all administrative staff employed in all courts functioning under the Maldives judiciary.
 - 2- Plan and execute all tasks related to the training of judges.
 - 3- Hold the necessary conferences, seminars and meetings to improve the educational and technical skills of the judges.
 - 4- Plan and conduct programs to train and disseminate information on the changes to the laws and the legal system.
 - 5- Establish a system whereby a complete record of the rulings of the courts are kept and easily made accessible;
 - 6- Prepare a consolidated budget of the judicial sector in consultation with the courts.
- f) In addition to (a), (b), (c), (d) and (e) of this article, perform all other tasks assigned to the Commission by the Constitution and other laws.

Authority to Investigate Complaints and Allegations Submitted

22. (a) In relation to an issue or an allegation made against a Judge, the Commission has the authority to question the Judge and carry out an investigation.

b) Even though a complaint or an accusation has not been filed against a Judge, if the Commission has reason to question the conduct of a particular Judge the Commission has authority to look into and investigate the case.

c) The Commission has the authority to refrain from carrying out investigations related to cases if the Commission believes that a complaint has been made without substantial reasons or if the complaint submitted is deemed to be of a nature where a complaint cannot be made.

d) In accordance with section (c) of this Article, if the Commission refrains from carrying out an investigation, it shall inform in writing to the party who submitted the complaint and the recipient of the complaint as to the reasons why an investigation will not be carried out based on the complaint.

Investigation Committee

23. (a) As prescribed in this law, the Commission has the authority to form an investigation committee.

b) The Commission shall appoint members to the Investigation Committee.

c) The Commission has the authority to appoint persons who are not members of the Commission to the investigation committee.

d) The following persons cannot be appointed to the Investigation Committee

1- A staff of the Court where the judge who is being questioned or investigated presides.

2- When the need for creating an investigation Committee is felt related to a case, any person involved in the formation of such a Committee.

e) There shall be an odd number of members comprising the Investigation Committee. The number of members from the Commission in this Committee shall exceed the number of other members in this Committee.

f) President of the Commission shall appoint a Investigation Committee member as President of the Committee.

Being Just in Investigating Cases

24. Investigation of the cases shall be carried out on the basis of justice by the Commission or the Investigation Committee.

Powers of the Commission or the Investigating Committee

25. (a) In order to carry out an investigation, the Commission or the Investigating Committee has the power to summon witnesses or people related to the case and request to give direct evidence or documentary evidence under oath as according to the set principles and can order to submit written material and evidence related to the case.

b) Related to any case or any investigation, the Commission can order to withhold information anytime during the process of the investigation, if it believes that this information is one which does not have any relevance to public interest.

Giving Notice Related to the Investigation

26. In the event the Commission is investigating a case, the Judge who is the recipient of the complaint shall be given the following information and opportunities.

a) Details of the complaint which has been submitted, the scheduled date of

the hearing of the complaint, date and time.

b) In the hearing, the opportunity for self representation or get the assistance of a lawyer to present the defense, questioning witnesses, and presenting witnesses.

Appointing a Lawyer related to the Investigation

27. (a) If an Investigation Committee has been appointed to carry out an investigation related to a judge, the Commission has the authority to appoint a lawyer to lead the case.

b) The role of the lawyer appointed in accordance with Section (a) of this article is to facilitate the Investigation Committee in all matters to carry forward the case. Included in this is advising on the laws and regulations which would be applicable to the case and presenting the questions needed to gather information to carry the case forward.

c) In accordance with Section (a) of this Article, the appointed lawyer shall carryout the responsibilities in an impartial manner which protects public interest.

d) The lawyer appointed by the Commission in accordance with Section

(a) of this Article shall not in any way be related to the case being investigated or be directly or indirectly related to the judge who is the recipient of the complaint.

Hearing of the Case

28. The Commission has the authority to decide if the full hearing or partial hearing of any complaint or case investigated by the Commission or the Investigation Committee under this law shall be open to the public.

Report of the Investigation Committee

29. (a) The Investigating Committee shall submit a report to the Commission based on the decision of the Committee after the conclusion of the investigation of the case, this report shall provide information about the case gathered during the investigation informing the Commission if it needs to take action on the dismissal of a judge or not and give any additional advice which needs to be given.

b) If the report of the Investigating Committee is not fully comprehensive, or if the Commission considers that the report is incomplete or if an area needs further details or further investigation, the Commission shall submit to the Investigation Committee with questions on the specific area or the full case of

the report from which clarification is needed and advise the Committee to carry the issue forward in accordance with the set principles.

c) When the report stated in section (a) of this Article is submitted to the Commission, a copy of the report shall be forwarded to the recipient judge of the case and other parties related to the case.

d) If the case proceedings were open to the public, the report of the case also shall be made public.

e) When the case is being investigated, the Investigation Committee shall submit a written report based on the proceedings of the case to the Commission every 30 (thirty) days.

Judge's Response to the Report of the Investigation Committee

30. (a) Within 30 (thirty) days of receiving the Investigation Committees report of the case, the recipient judge of the complaint have the opportunity to act as following

1- In relation to the report, submit in writing any information that needs to be given to the Commission, and

2- Express the desire to be present at the Commission with or without a lawyer to give direct presentation in response to the report.

b) For reasons beyond the power of the judge who is the recipient of the complaint, the duration given in Section (a) (1) of this Article surpasses without the stated action being taken, the judge has the opportunity to request from the Commission for an extended period of time as per this Article.

c) Under Section (b) of this Article if a judge requests for an extended period of time, the Commission shall check if the reasons for the submission is valid and if so an extended period of time shall be granted to the judge.

Written Submissions of the Judge

31. (a) If a judge makes a submission in writing related to the report of the case, the Commission in accordance with Article 27 of this Act, shall forward a copy of the document to the lawyer appointed by the Commission to assist in the case.

b) Within 15 (fifteen) days of receiving a copy of the submission prescribed in Section (a) of this Article, the lawyer appointed by the Commission in accordance with Article 27 of this Law to assist in the case shall submit in writing to the Commission the answers to the issues raised.

c) Related to any issue if a Judge is giving any direct statement, it shall be

Areas for the Commission to consider when deciding on an issue

Report of the Commission

done in the presence of the Lawyer appointed by the Commission in accordance with Article 27 of this law to assist in the case. The Commission has the authority to request the lawyer to give a direct response to the statement of the judge.

32. In deciding on a case which is being investigated by the Commission, the Investigation Committee's report, or any information related to the case provided by the judge or if the lawyer appointed by the Commission in accordance with Article 27 of this law to assist in the case, had given any written material or verbal statement, it shall be considered.

33. (a) When the investigation has been concluded, the report on the decision of the Commission with the records from the investigation process shall be submitted to the relevant Committee of the Parliament. And a copy of this report shall be forwarded to the judge who is the recipient of the compliant.

- b) The report shall include the following
- 1- Information acquired by the Commission related to the case.
 - 2- If the Investigation was carried out in relation to a complaint, whether the complaint has any basis or not, and

3- In relation to the case if the Commission wishes to confer any advice on the action to be taken against the judge. Included in this is the Commission's advice on the dismissal of the judge.

c) If the proceedings of the investigation were open to the public the report shall be made public.

Appointing the Secretary General and staff of the Commission

34. (a) The Commission shall appoint a Secretary General for its administration. In accordance with the regulations formulated by the Commission, the Secretary General shall oversee the administration of the Commission.

b) The work of hiring and dismissal of staff needed for the Commission shall be carried out by the Commission.

Financial Matters

35. (a) Finances required to carry out the functions of the Commission most efficiently, shall be provided to the Commission from the state treasury through the annual budget passed by the Parliament. In regards to this, with consultation from the Ministry of Finances the Commission shall formulate its budget to be submitted to the Parliament with the state budget annually.

b) Any financial assistance provided to the Commission by any party or Association or a foreign Government shall be utilized only to fulfill the objectives of the Commission.

c) In consultation with the Auditor General and in accordance with the regulations formulated by the Auditor General keep written records of the Commission's revenue, expenses, property, and accounts of financial responsibilities, and after auditing, formulate a financial report and with the annual report stated in Article 36 of this law submit the report to the President and the Parliament.

Annual Report

36. (a) A annual report consisting of the activities carried out by the Commission shall be submitted to the President and Parliament before 28 February every year by the Commission.

b) The annual report stated in Section (a) of this Article shall include the following activities within the time frame of that report

- 1- Information on the work carried out by the Commission
- 2- Complaints lodged at the Commission

- 3- Complaints resolved by the Commission and the decisions taken
- 4- Out of the complaints lodged at the Commission the complaints which are being investigated
- 5- Complaints lodged at the Commission which have not been resolved

c) Fourteen days from the date the report stated in Section (a) of this Article is sent to the President and the Parliament, it shall be published and publicised by the Commission.

d) Even though Section (a) of this Article states so, the Commission has authority and can decide to submit special reports related to special situations to the President and the Parliament.

Formation of the Commission

37. Sixty days following the first session of the first elected Parliament under the Constitution, the Judicial Service Commission shall become functional and in accordance with this Act, the President, Vice President and members of the Commission shall all be appointed.

**The Judicial Service Commission
Appointed for the Transitional Period**

38. (a) The Judicial Service Commission appointed under Article 281 of the Constitution has all the powers and responsibilities that are bestowed upon the Judicial Service Commission appointed under this Act. And the Judicial Service Commission formed under Article 281 of the Constitution shall be governed by this law with the exception of Article 3, Article 4 and Article 6 from the day this Act comes into effect.

b) The Judicial Service Commission created as per Section (a) of this Article shall be in existence until a Judicial Service Commission comes into being as per Article 37 of this Act.

c) When the Judicial Service Commission is created as per Article 37 of this Act, all the work carried out by the Judicial Service Commission created under Section (a) of this Article shall be transferred to that Commission.

Date of Enactment of the Law

39. This Act will be enacted from the day it is passed, ratified and published in the Government Gazette.

Creating Regulations and Administering

40. (a) The Commission shall create and administer the regulations which needs to be formulated under this Act. Six months from the date of appointing a Judicial Service Commission in accordance with Article 37 (a) of this Act, all regulations under this Act shall be created and completed.

b) To amend any regulation created under Section (a) of this Article or if the Commission wishes to formulate additional regulations under this Act after the timeframe given in section (a) of this Article, it does not create any obstruction to this.

c) Even though Section (a) of this Article states so, it does not obstruct the creation of any regulation in order to carry out the duties and responsibilities of the Judicial Service Commission created under Article 281 of the Constitution.

Definitions

41. Unless otherwise stated in this Act

“Auditor General” means the Auditor General appointed under Act number 4/2007 (Audit Act)

“Commission” means the Judicial Service Commission.