

THE RECONCILIATION PROCESS IN DIVORCE CASES
IN MALDIVES: CHALLENGES AND REFORMS

BY

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ABSTRACT

High divorce rate is one of the foremost concerns in Maldives that also has an adverse effect on the family dynamics and overall economy of the country. However, the general perception of the society towards family issues and divorce is considered to be a personal affair of the family rather than a social issue. One of the reasons is that divorce proceedings in the Maldives are facile due to the fact that the Maldives has an inefficient legal system when it comes to marriage and divorce, unlike many other countries where the procedures are immensely thorough, long and costly. Though Maldivian family law stipulates that reconciliation must be adapted to save marriages, it is not as effective as it should be because it is not regulated and handled in a systematic manner. The consequence of its ineffectiveness shows that there is a yearly increment in the divorce rate of the country. Additionally, the ineffectiveness of the current reconciliation process in the Family Court creates additional facets to this problem. To overcome this worrying situation which could damage an immense number of families in the country, it is extremely important to come up with a proper legal framework, well established structure for reconciliation and *Sulh* for family disputes. Therefore, one of the objectives of this research was to study and examine the best practices of other jurisdictions that practice Islamic law; and to identify the suitability as well as feasibility of incorporating those best practices into the Maldivian system. In this regard, Malaysia and Singapore models of reconciliation and *Sulh* processes were thoroughly analysed. The study inferred that a proper institutionalized reconciliation and *Sulh* process needs to be adopted that will ensure the efficiency and effectiveness of the reconciliation and *Sulh* procedures. Hence, from the outcome of this study, the hypothesis that the researcher intended to prove was that a well-established process of reconciliation and *Sulh* process would lead to lowering the divorce rate in Maldives to acceptable levels. The thesis adopted qualitative methods of analyses which included both doctoral and non-doctorial legal research. Data was collected from judges, social workers, and mediators from the Family Court, magistrates from nearby islands and individuals from divorce cases. In-depth interviews (with open ended questions) were conducted by direct interaction with the participants. This aided in the comprehension of human behaviour over a period of time. The interviews were recorded using an electronic voice recorder which were then transcribed and translated into English. This research found that the performance of governing bodies was substandard, owed to inadequate catering of marriage-related issues in Maldives. Based on the results, the researcher proposed a structure for the dispute resolution mechanism as well as a modified legal framework of reconciliation and mediation in family disputes in Maldives. Therefore, these recommendations were put forward in order to address the issue of high divorce rates in the Maldives and enable policy makers to incorporate it in the existing system, to minimize divorce rates in the country and opt for reconciliation as an alternative prior to juridical proceedings.

ملخص البحث

يعد معدل الطلاق المرتفع في المالديف من إحدى المخاوف الرئيسية في المجتمع والذي أيضا له تأثير سلبي على ديناميكيات الأسرة. ومع ذلك ، فإن التصور العام للمجتمع تجاه مثل هذه القضايا الأسرية يرى أنها من الشؤون الشخصية للأسرة بدلا من إعتبارها قضية اجتماعية. إنّ أحد أسباب هذه المشكلة هو أن إجراءات الطلاق في المالديف سهلة للغاية وذلك لعدم فعالية النظام القانوني المتعلق بأمور الزواج والطلاق في المالديف. وعلى الرغم من أن قانون الأسرة المالديفي ينص على ضرورة تكييف عملية الصلح بين الطرفين (أو التصالح) لإنقاذ الزيجات ، إلا أنها ليست فعالة كما ينبغي لأنها لا يتم تنظيمها والتعامل معها بطريقة منهجية. وتظهر نتيجة عدم فعاليتها بزيادة سنوية في معدل الطلاق في البلد. وعلى نفس المنوال ، أدى عدم فعالية عملية التصالح الحالية إلى سلسلة إضافية لهذه المشكلة الفاجعة. وللتغلب على هذا الوضع المقلق الذي يمكن أن يلحق الضرر بعدد هائل من العائلات في البلد ، أنه من الأهمية للغاية التوصل إلى إطار قانوني مناسب ، وهيكل راسخ لعملية التصالح للنزاعات العائلية. ومن ثم ، كان أحد أهداف هذا البحث هو دراسة وفحص أفضل الممارسات في السلطات القضائية في البلاد التي تمارس الشريعة الإسلامية ، وتحديد مدى ملاءمة وجدوى دمج أفضلهم في النظام المالديفي. في هذا الصدد ، تم تحليل نماذج عملية التصالح في ماليزيا وسنغافورة بدقة فائقة. واستنتجت الدراسة أنه من الضروري أن تبنى عملية التصالح المؤسسية اللائقة وذلك لضمان كفاءة وفعالية إجراءاتها. ومن نتائج الدراسة تثبت أن عملية التصالح الراسخة ستؤدي إلى خفض معدل الطلاق في المالديف إلى مستوى مقبول. لقد انتهجت هذه الأطروحة أساليب التحليل النوعية التي تضمنت تحليل الرسائل الدراسية القانونية في مرحلة الدكتوراه وغيرها. وتم جمع البيانات من القضاة ، وأخصائي اجتماعي ، وشخص قائم بالوساطة في محكمة الأسرة ، وقضاة محاكم الصلح في الجزر ، وأيضا من بعض ضحايا قضايا الطلاق. وقد تم إجراء مقابلات متعمقة مع المشاركين مع أسئلة مفتوحة من خلال التفاعل المباشر معهم. وتم تسجيل المقابلات ثم نسخهم وترجمتهم إلى اللغة الإنجليزية. وقد اكتشف هذا البحث ، أن الإطار القانوني الحالي غير ملائم لتلبية القضايا الحالية المتعلقة بالزواج في البلد ، وبالتالي ثبت أن أداء الهيئات الحاكمة دون المستوى المطلوب. وبناءً على نتائج هذه الدراسة ، اقترحت الباحثة هيكلًا لآلية تسوية المنازعات ، وإطارًا قانونيًا معدلاً للتصالح والوساطة في المنازعات الأسرية في المالديف. وتم تقديم هذه التوصيات حتى يتمكن صانعو السياسات من دمجها في النظام الحالي وذلك لتقليل معدل الطلاق في البلد واختيار التصالح كبديل قبل الدخول في الإجراءات القضائية.

APPROVAL PAGE

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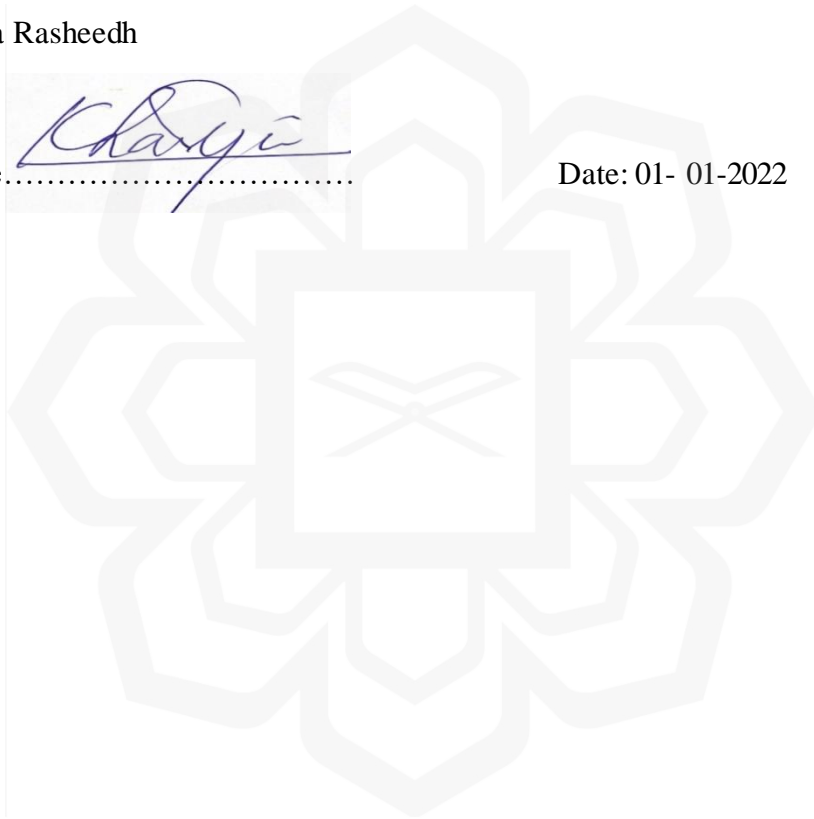
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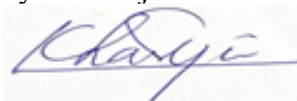
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This thesis is dedicated to my late father, Abdullah Rasheedh and my mother, Fauziya

Ali Didi for laying the foundation of what I turned out to be in life;

and to

My husband, daughter, son and granddaughter: Saudulla Waheedh, 'Aishath Shamrath

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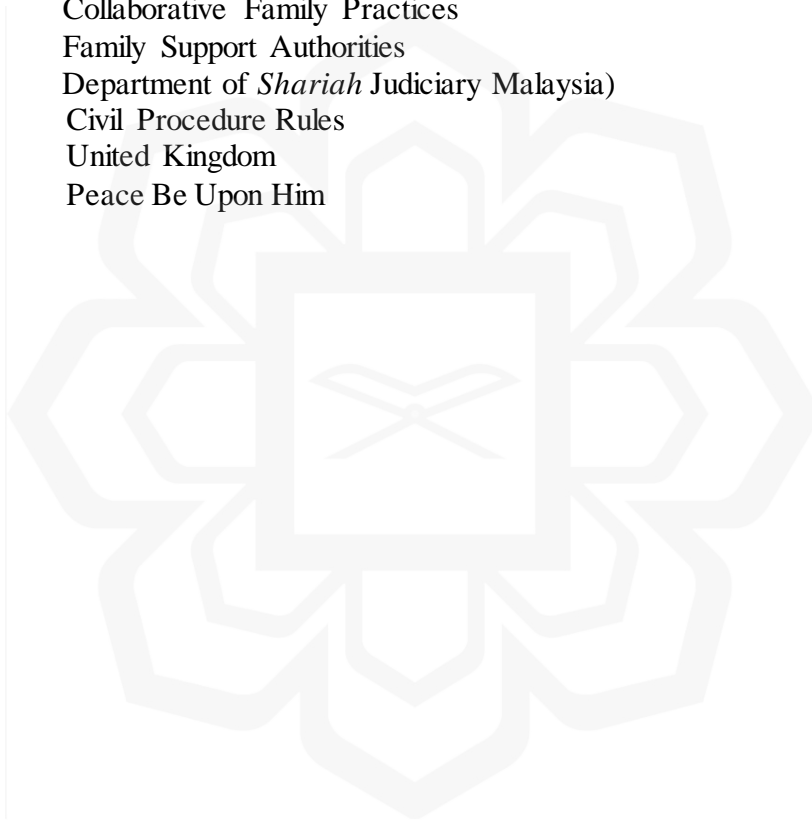
LIST OF STATUTES

Constitution of the Republic of Maldives (2008) (Maldives)
Family Law Act (2000) (Act 4) (Maldives)
Judicature Act (2010) (Act 22) (Maldives)
Islamic Family Law (Federal Territory) Act (1984) (Act 303) (Malaysia)
Administration of Muslim Law Act (1966) (2009) (Singapore)



LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
AMLA	Administration of Muslim Law Act
IFLA	Islamic Family Law (Federal Territories) Act
AAA	American Arbitration Association
USA	United States of America
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPF	Collaborative Family Practices
FSA	Family Support Authorities
JKSM	Department of <i>Shariah</i> Judiciary Malaysia)
CPR	Civil Procedure Rules
UK	United Kingdom
PBUH	Peace Be Upon Him



CHAPTER ONE

INTRODUCTION

1.1 INTRODUCTION

Maldives is a 100% Muslim Island nation, consisting of 1192 tropical islands scattered across the Indian Ocean.¹ As result of its geographical distribution, successful administration of laws across the country and providing equal opportunities for all nationals has become an extremely difficult task. Laws in the country are mainly based on Islamic law, though to some extent the legal system is constructed on English common law, particularly influential in certain areas such as commercial law.

A daunting fact in the Maldives is that family issues are a common and destructive phenomenon facing the community throughout the country. According to the statistics, Maldives also has the highest divorce rate in the world,² amounting to 10.97 percent. On average, a 30-year-old might have already been married and divorced three times.³ *Shariah*, out of that which is permissible in the Islamic law, divorce is the most disliked. The family law of the country allows men and women to seek dissolution of marriage if they do not live together for any reason. However, Islam encourages the couple to go for reconciliation and seek possible solutions for their marital issues.

¹ Roseline Ngcheong-Lumand et al, *Maldives*, (New York: Cavendish Square Publishing, 2019), 1.

² Mohammad Rauf and et al, "Socio-Legal Dimensions of Family Health under Marital Settings of Marriage and Divorce in the Maldives", *European Journal of Molecular & Clinical Medicine*, vol. 7, no. 11 (2021): 5215–5221.

³ Jochhem Winjnads, "Maldives Long Read: the highest divorcerate in the World", TRVL, <<https://trvl.com/maldives/maldives>> (accessed 4 December, 2018).

The history of Maldives reveals that divorce has been a common occurrence in the country. Normally, men divorce their wives without heed. The finding shows divorced women exhibit notable psychological stress.⁴ Marriage and divorce are simple practices in the country. The legal system formed in the Maldives facilitates divorce proceedings very simply. Therefore, getting a divorce is relatively easy for men compared to women. There are numerous reasons why such a high divorce rate can be observed in the country.

People compelled to migrate to the densely populated capital city, Male', further aggravates this problem. Moreover, the current nationwide drug epidemic, extra marital affairs and social problems, such as lack of proper housing or high cost of living are conditions leading to a significantly high rate of divorce in the country.

The above-mentioned social issues damage the unity of families in the society. As a result, children of these disputed families suffer and they do not receive adequate emotional or financial support from their families, leading to broken families. Though for any reason, if parents ultimately decide to separate, it does not mean that either parent should neglect their responsibilities towards their children.⁵ It is prescribed in *Shariah* that fathers should take the responsibility of looking after his children. Under no circumstance can he evade from these responsibilities as a father. However, in the Maldivian culture, individuals tend to neglect their obligations as parents. As a result, families of the disputed parties are highly affected. According to a counsellor and therapist Steven Earl, divorce leads to parents being unable to concentrate properly on matters relating to their children, which results in them being unable to care for their children and to make necessary

⁴ Mohamed Faisal, *Living on a Crowded Island: Urban Transformation in the Maldives*, (Wellington: De Vnet, 2008), 1–10.

⁵ Patrick F. Fagan and et al, "The Effects of Divorce on Children", *Marri Research*, vol. 1 (2012): 1–48.

decisions with regard to their wellbeing. Further, he highlighted that, children from divorced homes suffer academically and experience high levels of behavioural issues. Adolescents from broken families are much more likely to be involved in drugs and alcohol.⁶ The picture that we could see from the Maldivian social environment is not a sign of a promising future, rather it is perilous. The number of children from separated families are increasing day by day.

According to Prison Assessment and Proposed Rehabilitation and Reintegration of Offenders Report 2011, family problems are one of the major causes of crimes. First offences are committed as early as 8 years old. Some were sent to prison at a very young and vulnerable age of around 12 years or so.⁷ Consequently the most appropriate and essential steps would be to address current family issues, especially the high divorce rates, for the benefit of the whole society. Building a healthy society is imperative because the development of the country is heavily dependent on future generations. Hence, appropriate action is needed to be taken to minimize divorce rates to build a better future.

The introduction of a new family law in the year 2000 was met with a feeling of optimism across the nation, with hopes of strengthening family unity and introducing the concept of Alternative Dispute Resolution, ADR (reconciliation) in divorce and dissolution of marriage. Maldives family matters are governed by the Maldives Family Act 2000. According to article 23(a) when a husband desires to divorce his wife, he shall do that only with the approval of the judge, if he fails to do so, he faces a penalty of maximum 5000 Rf.

⁶ JD Amy Desai, "How Could Divorce Affect My Kids?", [focusonthefamily.com, <https://www.focusonthefamily.com/marriage/how-could-divorce-affect-my-kids/>](https://www.focusonthefamily.com/marriage/how-could-divorce-affect-my-kids/) (accessed 15 May, 2020).

⁷ United Nations Office on Drugs and Crime, *National Drug Use Survey Maldives 2011 / 2012*, (Male: Maldives, 2013).

(§. 325) In Article 23(b) it, further states that if the wife has no objection to being divorced, then with the consent of the judge, the husband may pronounce divorce. In contrast, if the wife expressed desire to remain in the marriage, the judge shall transmit the matter to the conciliation division. If conciliation is not successful, then the judge will give his approval for the divorce.⁸

However, despite the introduction of the Act, Maldivian men continue to use divorce in an abusive manner and are accustomed to this practice. The situation has not seen an improvement till date. Even though Maldivian family law stipulates that reconciliation must be followed to preserve marriages, it is not as effective as it should be because it is not regulated properly. The evidence of the ineffectiveness of the existing reconciliation process is the worsening divorce rate in the country. Recent statistics of marriage and divorce indicated a true picture. According to the reported statistics of 2016 and 2017 by the Department of Judicial Administration, there was an increase in the number of divorce cases compared to the previous year (2016). In July 2016, 556 marriages were registered and 225 were annulled, but in July 2017, 411 marriages were registered and 280 were filed for divorce. Therefore, according to the statistics of Department of Judicial Administration, release, family matters dominated the Maldivian courts due to the lodging of more than 20,600 cases in the year 2015, with 46 percent of the cases being related to family problems.⁹

Although the 2008 constitution guarantees equality when providing rights to people who are entitled to the rights and freedom stipulated in the constitution, it was noted that

⁸ The Family Law Act, (Maldives, 2000), s. 23 (a), (b).

⁹ Department of Judicial Administration, "Statistics of Marriage and Divorce 2016", judiciary.gov.mv, <<http://english.judiciary.gov.mv/statistics-of-marriage-and-divorce-2016/>> (accessed 15 May, 2020).

the people who are living in most islands do not enjoy the same rights. Unfortunately, they are still deprived from some services stipulated in the constitution such as reconciliation and other services, which are available in family court in capital city Male'. One of the reasons is that there is a lack of necessary human resource (lawyers, counsellors, etc.) and infrastructure to be served in islands. Furthermore, although reconciliation services should be provided in the islands, there is no systematic procedure or mechanism to be followed in order to provide these services in the islands.

In order to put reconciliation services in a systematic order, it is important to define the terms clearly. The word mediation and conciliation are used interchangeably. However, there is a fine distinction between these two concepts. Mediation and conciliation both make use of a facilitator to help with the process of resolving disputes between married couples. However, in mediation, the facilitators do not play an active role while in conciliation, facilitators play a proactive role in the process.¹⁰ Generally, mediation plays a vital role after divorce, while reconciliation is conducted as a pre-divorce process.¹¹ Furthermore, mediation intervenes when a substantial conflict or dispute that needs professional intervention has arisen, while conciliation is used preventively and aims to stop a dispute from developing into something substantial.¹²

When looking at conciliation in Islam, conciliation is given high priority in the religion. Islamic family law is based on two major sources of *Shariah*, the Holy *Qur'an* and the *Sunnah*, or the practices of Prophet Muhammad. *Shariah* as well as the family law

¹⁰ Joseph Schacht, *An Introduction to Islamic Law*, (Oxford: Oxford University Press, 1964), 7.

¹¹ John Wade, "Representing Clients Effectively at Negotiation, Mediation and Conciliation in Family Disputes", *ALTA Law Research Series*, vol. 5 (2004): 109.

¹² Surbhi S, "Difference Between Mediation and Conciliation", [keydifferences.com](https://keydifferences.com/difference-between-mediation-and-conciliation.html), <<https://keydifferences.com/difference-between-mediation-and-conciliation.html>> (accessed 15 May, 2020).

reveals the negative consequences of divorce.¹³ Due to this reason the existing family Act of Maldives also encourages reconciliation to resolve issues between couples and minimize the divorce rate in the Maldives. Moreover, Islam encourages the disputing couples to choose reconciliation to settle their problem. 1400 years ago, this concept encouraged the settling of disagreements in an amicable manner in Islam. Unlike many other countries, Maldivians do not have to face ethnic issues as the country consists of people belonging to one religion, race and one language. Therefore, it would be easy for the country to introduce a customised model for reconciliation, according to the needs and wants of the country. When identifying the benefits of reconciliation, it becomes important to study the reconciliation process or procedures carried out in other countries, specifically in places where *Shariah* Law is practised despite the limited availability of sources on reconciliation procedures that are conducted in countries where *Shariah* is followed.

When looking at the Singapore model of reconciliation, over the years it proved to be a fruitful model in resolving conflicts between couples. However, in Singapore, Muslim *Shariah* marriage and divorce is different from that of civil procedures for marriage and divorce under the civil system in Singapore. The *Shariah* court of Singapore applies the Islamic law procedures to conduct dispute resolution. It is mainly based on ‘*Nasih*’ (counselling), ‘*Sulh*’ (mediation), ‘*Tahkim*’ (arbitration) and ‘*Qada*’ (court adjudication). It can be noted that in Singapore, the reconciliation process is done immediately after there is a registration for a divorce unlike in Maldives, where reconciliation is carried out after litigation or after a court hearing. In Singapore *Shariah* court it is compulsory for both

¹³ Javaid Rehman, "The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq", *International Journal of Law, Policy and the Family*, vol. 21, no. 1 (2007): 108.

partners to attend counselling sessions prior to adjudication. Moreover, if the couple has children under the age of 18, it is required to submit an agreed parenting plan along with the case.¹⁴

When considering Malaysian family law, special consideration is given to Islamic family law, due to the fact that Malaysia is a nation with a Muslim majority as it would impact the lives of Muslims throughout the country. Family law is divided into two categories: one for Muslims and the other law for non-Muslims. Islamic Family law is not only focused law on marriage and divorce; but it also caters for matters relating to administration promotes ADR methods.

In Malay Muslim community, two methods of family dispute resolution are being practised. That is mediation by informal institutions and by the *Shariah* courts. Informal institutions here refer to the religious scholars, elderly people, and other influential people in the community who could resolve disputes between the couples. In *Shariah* courts, reconciliation is carried out through mediation to reconcile the parties and to find an amicable solution between the disputed parties.¹⁵

By comparing reconciliation models in the above-mentioned countries, it can be said that both Singapore and Malaysian models are quite successful. However, it can be seen that the Singapore model is easier to follow and is more systematic and efficient than that of Malaysia.

Conciliation is not a new concept for the judicial system in the Maldives either. Ever since this small nation converted to Islam during the 12th century, the advancements of the

¹⁴ Shariah Court Singapore, "Divorce: Court Process", syariahcourt.gov.sg, <<https://www.syariahcourt.gov.sg/Syariah/front-end/Default.aspx?pid=M31.01>>, (accessed 6 November, 2017).

legal system have been significantly influenced by and moulded by the Islamic law.¹⁵ Since then, unknowingly this concept is being used and practised throughout the country in different circumstances. The chief clerk of the royal court was one of the leading personnel to resolve disputes among the people during the Monarchical reign of Maldives.¹⁶ Since then it evolved at different levels till today. However, the family courts in the Maldives have used the concept of reconciliation mostly as a means to communicate with the disputed couples to resolve their issues.¹⁷

There is no systematic procedure that can be followed by judges to achieve the outcome of reconciliation. Therefore, there is a need to create awareness among the judges and the general public as to when and why reconciliation is essential to reduce divorce in the Maldives. The existing system requires modification and systematic procedures in order to achieve the required outcome of the Family Law. Establishment of a good framework at the same time with well-trained conciliators and counsellors is necessary as well.

Therefore, the purpose of this study is to look at the effectiveness and the appropriateness of the existing reconciliation process in the Maldivian family court. The research area is mainly based on the reconciliation process and identifies areas where development is most needed. Additionally, this research identifies the strengths and the weaknesses of the current legal framework and recognizes challenges that could be faced by practitioners among the existing Family Law.

¹⁵ Husnu AlSuood, *The Maldivian Legal System*, (Male: Maldives Law Institute, 2014), 111.

¹⁶ *Ibid.* 135.

¹⁷ Thomas J Moyer and et al, "Mediation as a Catalyst for Judicial Reform in Latin America", *Ohio State Journal on Dispute Resolution*, vol. 18, no. 3 (2003): 619.

1.2 STATEMENT OF PROBLEM

Since Maldives is an island nation scattered across the Indian Ocean, management of reconciliation has become an extremely difficult task and the judiciary is unable to provide equal rights to a portion of people requiring its services. High divorce rate in the Maldives has also become one of the most detrimental social issues that is hindering the social development of the country. Moreover, in the Maldivian judicial system, there is no comprehensive law and proceeding in the reconciliation process at the moment. As a result, the existing reconciliation process is under jeopardy. Lack of basic principles in the existing legal framework indicates an urgent need for alternatives to address the issues. In addition to these issues, judicial system of Maldives lacks human resources in this field, hindering the work of applying proper reconciliation procedures, especially in the islands. Therefore, the researcher believes that Maldives should develop a suitable framework for the development of reconciliation process in the family courts, promote mediation as a means to resolve disputes between the couples and provide equal opportunities for all throughout the country.

1.3 RESEARCH QUESTIONS

1. What is the present practice of the reconciliation process in Maldives?
2. How effective is the existing reconciliation process?
3. How can mediation be incorporated in the reconciliation process in the Maldives?
4. What would be the most applicable reconciliation procedure for family disputes recommended for Maldives?