

## SURVEY OF FILIPINO MUSLIM ADAT (CUSTOMARY) LAW AND THE ROLE OF THE AGAMA COURTS

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The subject I will discuss with you today is a general survey of the Customary laws of the Muslims in the Philippines and the role played by their *Agama Courts*. The legal system of the Muslims has sometimes been called by scholars the *agama system*, based upon Islam. Academically speaking, customary law and Islamic law are two different systems. But since the Muslims in the Philippines do not distinguish between law and custom it is submitted that the term may be appropriate. The word *agama* has come to be known as "practice" or "system." Among the Muslims, it is synonymous with the word *ideology*. (*Agama* is Sanskrit for religion). This synonymy is perhaps due to the general concept of law and policy among the Muslims: they do not distinguish law as either secular or divine, canon or civil.

The legal system of the Muslims, both customary and Islamic, is quite comprehensive. It embraces all legal, social, political and civil relations. It covers both social and political orders such as the relationship between the ruler (government) and the governed (citizens). Their old concept of government is called *datuism*, which is derived from the word *datu* or *dumatu* (meaning ruler or governor). The origin is basically Malay. *Datuism* was influenced by the Islamic concept of government known as the *sultanate*.

The *Agama System* is so deeply rooted in the socio-political and cultural history of the Muslims of Mindanao and Sulu that until now they still believe themselves to be a nation (*bangsa*) within the context of Philippine society. The introduction of the western concept of law and order has often resulted into dual loyalty and allegiance. The situation has often brought about conflicts, sometimes

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resulting into anarchy and outbreak of violence. This is also aggravated by the lack of sufficient understanding of the problem. It is submitted that a reform within the system, such as the legalizing of some of the traditional institutions of the Muslims, might go a long way in bringing lasting peace in Muslim Mindanao.

The Agama court of the Muslim, while not without its shortcomings, can play a very important role in our legal system, if it were given some form of recognition by legalization. As a rule, disputes settled before this native court are final and binding on the parties, thus relieving our government court from petty cases and disputes.

I shall briefly go into the whole field of the Muslim legal system, but I shall omit a good number of details in the process. At the outset, I would like to say that I have no pretensions about being an authority on the subject. I rather regard myself as one of the scholars present here who have taken some time to study and investigate this field of study. I shall start with a brief account of the legal system of the Muslims, and shall proceed with a survey of their civil substantive and procedural law.

## I. The Legal System

### A. Adat Law

*Its Nature.* *Adat* literally means custom and usages, or simply customary law. It embraces all the customs and traditions of the Malayan community which were given, through usage, the force of law in the course of time. They were enforced by tribal elders and chiefs. The *Adat Law* resembles the *Common Law* in England. Like the *Common Law*, it is based on reason and common sense known in jurisprudence as equity. The *adat* law is principally unwritten, being a case law and it adapts to change in time. An *adat* one hundred years ago may no longer be an acceptable *adat* today.

However, elements of the *adat* law are in written form, although very much influenced by *Hukum Shariah* (Islamic Law). They can be found in codes, digests, and compilations spread all over the Malay archipelago, including Indonesia, Mindanao and Sulu. Some of these codes and digests (entirely Islamic in character and found in Mindanao) are known as *paruwalan* or *luwaran* (Malay words for code, model or selection).

✓ *Sources of the Adat Law.* The *Adat Law* has three major sources, namely: the ancient Malay Adat Law; the Indian Law (Hindu); and the Hukum Shariah (Islamic Law). The ancient Malay Adat Law comes from the ancient *patriarchal* and *matriarchal* societies of Central Sumatra. These two societies spread throughout the Malayan and Indonesian archipelago and took with them their customary and political institutions. The ancient Malay Adat Law consisted of two types: *adat perpateh* and *adat temenggong*. The *adat temenggong* had autocratic characteristics, while *adat perpateh* had democratic matriarchal characteristics. The latter originated from Menangkabaw, Central Sumatra.

The Sulu archipelago has been very much influenced by the *adat temenggong*. This is shown by the centralized political institutions and the basic democratic character of some tribal governments there.

Indian influence in the *Adat* may be traced from the Sri Visjaya Hindu period down to the Madjapahit era. The Islamic influence can be dated from the rise of the Malaccan Islamic kingdom in the Malay peninsula. This period dates the coming of Muslim traders and teachers (*guru*) into Sulu and Mindanao. On the backdrop of the ancient Malay political institution was the introduction of the Sultanate form of government.

*Adat law, Distinguished from Pure Social Manners and Ceremonies.* Manners and customs which are purely social in character are known in Malay Adat Law as *adat resam* (manners and customs) and *adat istiadat* (customs and ceremonies).

The *Adat* must be distinguished also from religious customary practices. The *Ibadat* refers to observance and practice of religious duties. It refers to the relationship between man and God, while the *Adat Law* refers to the relationship among men.

The *Adat* must also be distinguished from *adab*, which refers to upright moral behaviour. The *Adab* also refers to respect, courtesy and manners; it governs the propriety of one's behavior in relation to parents, elders and superiors.

✓ *Relation Between the Adat and the Hukum Shariah.* The *Adat* is regarded as a material source of Islamic jurisprudence under the guise of *Ijma*. *Ijma* means the consensus of the Muslim jurists or the Muslim community. The test of *Ijma* is that it must not contravene the principles of the Quran and the traditions of the Holy Prophet (Hadith and Sunna). *Ijma* is the authority for the enactment of legislations in Islam. It approves of customary practices if said practices

have been the subject of consensus of the Muslim community. The agreement in opinion of learned Muslim jurists has the general force of law. The exercise of *Ijma* has been regulated in Muslim states and the rendering of *Fatwa* (legal opinion) on a particular point of law has been entrusted to the *Ulemas* (doctors).

The requirement for custom to have the same effect of law has been provided for under Articles 11 and 12 of the New Civil Code of the Philippines, which provide as follows:

Art. 11. Customs which are contrary to law; public order or public policy shall not be countenanced.

Art. 12. A custom must be proved as a fact, according to the rules of evidence.

## B. Islamic Law

*Nature of Islamic Law.* The Shariah is the canon law of Islam. It is regarded as the totality of God's commandments. Each commandment is called *Hukum* (law). The religious injunctions called *Hukum Al-Khamsa*, consist of five kinds, namely: 1. *Fard*, strictly enjoined; 2. *Haram*, strictly forbidden; 3. *Mandub*, advisable; 4. *Makruh*, advisable to refrain from; and 5. *Jaiz*, those to which religion is indifferent.

*Civil Law and Jurisprudence.* Shariah contains ethical guidelines and a doctrine of duties or a code of obligations. The observance of Shariah is regarded as a virtue. Legal duties and obligations belong to the science of *Fiqh* (jurisprudence). *Fiqh* is regarded as the civil law proper of Islam. The science of *Fiqh* is divided into two parts: 1. the *Uzul*, meaning the foundations or roots of law; and 2. the *Furu*, meaning substantive law. *Uzul* consists of the study of the Quran and the Hadith while *Furu* deals with *Qiyas* (equity) and *Kanun* (secular legislation). The study of *Fiqh* will reveal some elements of Roman, Jewish and Persian Law.

*Islamic Jurisprudence, Sources.* The general sources of ordinances in Islamic law are: the Quran, the Hadith and Sunna (traditions of the Prophet), the *Ijma*, and the *Qiyas*. The first group is regarded as the primary source of law, while the second group is arrived at through the exercise of reasoning or judgment called *Ijtihad*. The Holy Quran is regarded as the paramount source of law. All Muslim legislations must conform with it to be Islamic. The traditions of the Prophet consist of the *Hādith* and the *Sunna*. The Hadith consists of

the sayings of the Prophet which have been recorded by his contemporaries. The *Sunna* records the practices of the Prophet on particular situations.

The *Qiyas* is arrived at through the process of analogical reasoning or the exercise of judgment. The *Qiyas* is divided into the *Istisan*, meaning, the exercise of judgment on the basis of equity; the *Istislah*, meaning, deduction on the consideration of public good; and the *Istidlal*, meaning, reference of one thing from another.

*Islamic Schools of Jurisprudence.* The two major schools in Islam are the *Sunni* (Orthodox) and the *Shia* or *Shiite*. The Sunni School strongly adheres to the traditions and practices of the Prophet, while the Shia school strictly adheres to the letter of the Quran. The Sunni school is subdivided according to its Imams namely: Shafie school, Hanafi school, Maliki school and the Hambali school. The Muslims in the Philippines, Indonesia and Malaysia as a rule generally follow the Shafie school of law. The Muslim of India and Pakistan are generally Hanafia (follower of the Hanafi school).

*Major Distinction Between Adat and Islamic Law.* Theoretically speaking, *Adat* and Islamic laws differ in the concept of Criminal Law. Islamic Penal Law is based on the principle of retribution (*Qisas*) while the *Adat* law is based on the concept of compensation for the damage caused by the offender to the offended party. The other distinction appears on the rules of Evidence. Islamic law requires a stronger amount of proof or evidence in criminal cases, such as direct evidence, while the *Adat* law generally permits the admissibility of circumstantial evidence. The differences lie on the fact that the *Adat* Criminal law is founded on the concept of tort while Islamic law, which demand retribution for an offense, naturally would require a stronger amount of evidence. In actual practice, however, contrary to the impressions of western scholars, Islamic law is generally humanitarian in the impositions of penalties. If an offender repents for the crime he has committed and is forgiven by the aggrieved party, physical punishments are not usually carried out.

The principles of the *Adat* Law on Penal law appear to parallel the concept of tort in Common law.

*Islamic Jurisprudence in the Philippines.* The Luwaran Code of Mindanao is the major source of substantive jurisprudence on Islamic law found in the Philippines. While it served as a guide for Muslim judges, it is comprehensive enough to cover subjects such as Marriage and Divorce, Sales, Agency, Partnership, Inheritance and Criminal

Law. The Luwaran code was copied from the Islamic text on law. The major source is the Minhaj-et-Talibin which adheres basically to the Shafie School of Law. The substantive provisions of the Luwaran has been divided into articles and sections.

Sulu has two major codes such as the Principal Sulu Code of Sultan Jamalul Alam (d. 1884) and the New Sulu Code of Sultan Jamalul Kiram II around 1900. The Principal Sulu Code has liberalized the penal provisions for crimes compared with the one promulgated by Sultan Pulalum, which was more in conformity with the Quran. The New Sulu Code has increased the fines provided for under the Old Sulu Code. This Code did not have general public approval because it provided that the fines imposed was divided between the offended party and the deputies of the Sultan. It was regarded as an unjust form of taxation.

The Sulu Code now used in Sulu was promulgated by Ismail Kiram on December 30, 1950. It abolished corporal punishment and generally imposes fines so as to be more in conformity with customary laws.

## II. Government and Political Institutions

### System of Government

At the time of the coming of the Spaniards, the Muslims in the Philippines had already a highly developed political institution. This system of government was called the Sultanate. It was patterned after the orthodox sultanate of Islam. The relationship between the ruler and the governed was prescribed by the *Taritib* (*Tortib* in Arabic), which means, protocol, order, sequence or government. Other forms of government which were indigenous were also known. Some of these institutions, like the sultanate, exist up to the present day.

One of them is the tribal principality (*Bangsa*) which is ruled by a Datu. This form of political institution was introduced by the early Malays. Among the Visayans and Tagalogs, it was called *Barangay*. The barangays or tribal principalities managed to maintain their local autonomy from the Sultan. At times, encroachment or curtailment of their local autonomy had resulted into bloody battles. In Sulu, the claim to territory by the Sultan had been prescribed by the

**Taritib.** The Sultan owned all the lands where the royal gongs and drums could be heard. The rest of the territory were owned by the Datu and their followers. Tribal princes usually formed alliances or confederations.

An example of a confederation existed in the lake principalities of Lanao. This was known as the *Pat-a-Pongampong sa Ranao*. The confederation used to have a single titular sultan as the overall chief of state. But later, especially at the decline of the Maguindanao sultanate, these tribal principalities installed their own local sultans.

At the time of the coming of the Americans, there were at least eight petty sultanates in Mindanao and Sulu.

### **Branches of Government**

There was no strict operation of powers in the sultanate as what we know from the western point of view. The Sultan was both the chief executive and the chief judge over the realm. However, he appointed a deputy to assist him in the administration of justice. This office was held by the Chief Pandita. (A *pandita* was the most learned man in the community both in Shariah and Adat. He usually performed religious functions). The Chief Pandita had the title of *Datu Kali* (Chief Judge). The Sultan also had a chief minister or Grand Vizier. The Ministry or Cabinet was composed of the *Raja Muda* (Crown Prince); *Raja Bendahara* (a senior prince); *Nakoda* or Commander of the Royal Fleet; and the *Temenggong*, the chief of the royal guards.

The lesser officers of state were the *Panglimas* (governors), *Maharajahs*, and the *Mantiris* (ministers). The sultanate of Sulu was divided into five distinct regions for administrative purpose, each under a Panglima or governor. Obedience to the deputies of the Sultan depended upon his power and influence.

The council of State was called the *Rumah Bityara*. It gave assent and concurrence in the promulgation of laws, declaration of war, ratification of treaties, and nomination of a new sultan.

The central government was called the *Diwan* (royal court). It was called the *Turugan* among the Maguindanaos and Maranaos. The local government was administered by the Datus, Panglimas, and *Maharajahs*. The basis for the local autonomy of the tribal principalities was the *Taritib*. According to the Tarsilas of the Maguindanaos, the first Sultan, Muhammad Sharif Kabungsuan bin Jainul

Abirin, entered into a treaty with the *Timuway* (chiefs) of the Pulangi. The treaty defined the rights and prerogatives of the Sultan over the tribal chiefs and his subjects. The same *Taritib* was also used in Sulu: the first Sultan there also reportedly entered into an agreement with the tribal chiefs.

*Political and Social Status.* The social strata was prescribed by *Maratabat* (meaning: scale, grade or rank). Society was generally classed into: 1. the Sultanate; 2. the *Dumatus* (or nobles); 3. the Freemen or *Mantiris*; 4. the Slaves and servants; and 5. the *Banyagas* (absolute slaves).

The Sultanate class includes the Sultan and his family. Family members are generally eligible to the office of the Sultan. The sultanate class is also called the *Pidtaylan*, meaning, born of royal father and royal mother. A candidate for Sultan must be a *datu* who can prove his descent from the first Sultan. This practice has resulted to the close intermarriage among royalties, especially among cousins.

The *Dumatus* are a special group or class. By tradition, they claim to rule their respective tribes, not by right or descent from the first sultan, but from a sharif who was reported to have gone to Mindanao ahead of Kabungsuwan. This was Sharif Alawi who came ahead of Kabungsuwan and married a native princess. The account of this story is mixed with legend in the Maguindanao Tarsila. The claim is asserted by Iranun and Ibutegun datus.

The freemen are called *Mantiris* among the Sulus. They are distinguished from the Datus, who occupy offices in the sultanate. The *Mantiris* are eligible to public office, except the sultanate. They also enjoy certain rights and privileges like the *Dumatus*.

A son of a Datu with a free mother has the title only of *Wata-Mama*. In case of a son by a noble father and a slave, the son follows the status of the mother unless the father liberates the mother and acknowledges the son, in which case the son becomes a *Wata-Mama* also.

There used to be two forms of slaves, an absolute and a half slave. The status of a half slave was brought about by the traditional rights of the Datu over his subjects to demand service. A half slave was a member of the household and has certain rights and obligations. This is similar to the licensing of slaves known in Islamic law. Later in the course of time, this class of slaves acquired free status by prescription or liberality on the part of the master of Datu. They now constitute the greater mass of commoners.

This form of servitude was similar to those practiced among the Bisayans and Tagalogs.<sup>1</sup> It was different from slavery practiced in Europe and America. The relationship between the master and slave was like that of principal and agent. The act of the servant amounts to the benefit of the master, while the master is liable for the misconduct of his slave.

The *Banyaga*, however, was an absolute slave. He could be freely disposed of as chattel. The master had the power of life and death over him. The *Banyagas* were usually foreigners and captives. This kind of slave probably arose from the Moro-Spanish wars, when both sides held captives. For their part, the Spaniards sent captives to the galleys; some, they sold to rich families in Manila as servants. The Christian Indios called the Moros *Di-Binyagan* and the Moros called the allies of the Spaniards *Banyagas* for assisting the Spaniards in their aggression. The *Banyagas* were non-Muslims.

The *Tumarumpuk* works one day for his master and three days for himself. His wife and children were obliged to work for the master 15 days every month.

The *Tumataban* was required only to serve his master during a feast.

*Interstate Relations.* There existed interstate relationship among the tribal principalities. As noted earlier, the Datus enjoyed a certain degree of autonomy. At times, a Datu even became so powerful as to defy the Sultan. During the American period, the Datus enjoyed more and more independence from the Sultans of Mindanao and Buayan. Weak Sultans sometimes played the role of titular heads only. The *taritib*, however, demanded respect for the office and person of the Sultan. Disrespect to the sultans amounted to *lese majeste*, which demanded retaliation. The *taritib*, however, was prescriptive, as in a case where a powerful Datu would defy the Sultan and the Sultan would not take steps to punish the offender. Still, it was incumbent upon the people to protect and defend the office and person of the Sultan. An affront to his person would amount to an insult of his *maratabat*. This is based on the Islamic principle that provides that every loyal subject or citizen must defend the *Amir* (Prince or ruler), he being the guardian over all his subjects.

*Right of Intervention.* A subject of another tribe may seek the intervention of his Datu in cases where injustice has been committed on his person. This is called also in Maguindanao as *Tayakup*. But this right has been generally limited to the right to seek for inter-

cession from a higher authority such as the Sultan. In the olden days, an injustice committed on the subject of another principality may be the sufficient cause for a declaration of war.

*Asylum.* It is the obligation of a neighboring Datu or principality to surrender and deliver the person of an offender to the jurisdiction of the offended datu or principality, since said person is a subject of the latter. Otherwise, the former will be liable for damages. The rule on seduction, elopement, and abduction of a woman is different. If the purpose of the elopement is to seek the intervention of the Datu to solemnize or arrange the marriage, the Datu is obligated to give protection to the parties, unless the parents and relatives of the woman, through the intervention of a more powerful Datu, would manifest their objection. If this objection is made, the obligated Datu answers for the payment of the woman's dowry, as a fine, in case he assumes the protection of the persons who eloped and sought his protection.

*Foreign Relations.* The sultanates of Mindanao, Buayan and Sulu had opened and established relations with European powers in the modern sense, as evidenced by the treaties and agreements they had concluded. Among the treaties entered into by the Sulu sultanate with the Americans were the Bates Treaty of August 20, 1899 and the Carpenter Agreement of March 23, 1915.

The Bates treaty provided for the definition of the powers of the Sulu Sultan in relation to the American occupation of Jolo. This treaty met strong opposition from the datus who continued to resist the American forces. It was abrogated on March 21, 1904. Another treaty or agreement, called the Carpenter Agreement was drawn on March 22, 1915. In this agreement, the Sultan abdicated his sovereignty and in return he was recognized as the ecclesiastical head of the Muslim church of Sulu.

*Village Democracy.* A certain form of democratic government was practiced by all Malay-speaking peoples. This form was called the *Mushawara* or consultation of elders and the agreement it arrive at was called *Muafakat* (concensus). This *Adat* practice also finds sanction in Islamic law. The Quran provides that there shall be consultation in the affairs of state (government).

In Maguindanao, this form of government was called *Upakatan*. The *Diwan* or *Turugan* (royal court of the Sultan) which serves as the center of government had a consultative council with legislative functions known in Sulu as *Rumah Bityara*. On the village level, the

elders of the tribe or village constitute the village council. The Datu consults his council on matters affecting the tribe or principality. This democratic element must be the influence of the matriarchal democratic *adat* of Menangkabaw.

### III. Civil Substantive Law

#### A. Making, Promulgation and Publication of Laws

It was the practice of every newly elected sultan to promulgate and decree a New Law (*Hukum*) to govern his subjects. The chief scribe of the sultan drafted the new law. Before it came into effect, the assent and concurrence of all the officers of state, including the datus, was necessary. A new law without the concurrence and assent of the datus would not be operative and the deputies of the sultan would have difficulty in enforcing it. After the new law has been concurred upon by the datus and all the officers of state, the heralds would go around the villages to announce the new law. The Datu Kali (chief judge) was responsible for the enforcement of the new law, together with the Wazirs (ministers of the sultan). In Sulu, this was entrusted to the *Panglimas* or governors.

#### B. Persons

*Domicile and nationality.* Membership in a state or Bangsa was determined by birth and lineage (descent). A genealogical record (*Tarsila*) was kept to record the lineage of the nobles and freemen (*Barbangsa*). As a rule, children follow the nationality of their parents. Marriage and permanent residence in a tribal principality may be a ground for membership in that tribe or principality.

The principle of *jus sanguinis* was generally followed on questions of nationality. As a rule, a national of a state had to seek the permission of his ruler before he could go to another state. License to engage in trade was granted by the zuzerain or ruler to foreigners engaged in trade in the state.

*Islamic Law.* In Islamic law, nationals of a Muslim state are either Muslims or Dhimmis, meaning protected citizens. The Dhimmis are non-Muslims who enjoy the protection of the state by paying a poll-tax called *Jizya*. The distinction may be likened to the classification of citizens as natural born and naturalized citizens in the

modern sense. The Dhimmis are exempted from military service, but they enjoy equal civil and political rights with the Muslims, with certain exceptions. However, the Dhimmis may lose their citizenship by renunciation or acts inimical to the Muslim state and may be judicially declared as *Harbes* (enemy of the Muslim State or foreigners in general). On matters of personal status and family relations, the Muslim state allows the Dhimmis to follow their own personal law system. They are granted the right to have their own religious courts.

This principle in Islamic jurisprudence has been followed by modern Muslim states in dealing with national minorities and ethnic communities. The latter are permitted to follow their own personal law system and to have their disputes arbitrated by their own community courts.

Islamic law generally divides the whole world into two territories: those under the sway and control of Islam are called Darul-Islam, meaning abode of Islam or peaceful territory. The criteria for this territory is that it must either be ruled by a Muslim government or the Muslim nationals therein are able to enforce their *Shariah*. Otherwise, the territory would fall under *Darul-Harb*, or hostile territory. Those lands not under Muslim governments are called Darul-Harb. If a Muslim is under Darul-Harb, he has two choices, either to immigrate to safer lands, or bring back Darul-Harb into the sway of Darul-Islam, through the process of *Jihad*.

Modern Muslim jurists have included a third classification called Darul-Aman or secular territory. This refers to a country where Muslims are tolerated and allowed to freely practice their religion and observe their *Shariah*.

*Juridical Persons.* Islamic law also recognizes juridical personality. The Luwaran Code contains provisions governing partnership, trust, deposit, joint accounts and joint-ventures.

*Natural Persons.* Both in *Adat* and Islamic law, birth and liberation generally determine civil personality. Civil rights are extinguished either by death or slavery.

*Birth.* A person born of free parents is a freeman. A person born of slave parents is a slave. A person born of a free father and a slave mother, becomes a freeman if acknowledged by his free father.

*Liberation.* A slave may be liberated by ransom or compensation either by himself or through another person.

### C. Marriage

The contract of marriage is called *Akad Nikah* in Malay Adat Law. Muslim civil law regards marriage as a civil contract. In Islamic law, there are two kinds of marriages which is either a *valid* marriage or a *void* marriage. The third classification is *irregular* marriage.

A valid marriage is that which complies with all the valid requisites of marriage. A void marriage is contracted between prohibited degrees provided for under the Quran. An irregular marriage is one which could have been valid, but in view of the absence or lack of certain formal requisites, it becomes irregular.

As a rule, any sane and adult male Muslim has the capacity to contract marriage. Females must be assisted by guardians. The exception is in case of a widow or divorcee, who could validly enter into a marriage contract without assistance from her guardian.

Marriageable age is usually attained at the age of puberty, although a minor may marry through the assistance of a guardian.

*Courtship and Betrothal.* The first preliminary step in marriage is courtship and betrothal. Customary law on courtship and betrothal among the Maguindanaos is governed by *Kamaguingudi* (meaning, customary law). *Panalangguni* among the Maguindanaos is the formal proposal. *Kambalaya* or betrothal follows after the first step. A man who violates the customary law on betrothal will be liable for damages.

*Guardianship in Marriage.* Guardianship is a very important part of marriage law both in the *Adat* and Islamic law. The Datu or the Sultan is the overall guardian of his people. Orphans may be married through the assistance of the Datu or the Sultan. A woman's guardian are her parents and uncles, both maternal and paternal. They are called the *Walis-Patut*. A virgin or maiden must be given in marriage by her guardian. The right of the Datu or Sultan in the marriages among his subjects is called *endatuan*. The right of the guardian over the marriage of a female ward is called *pinangastulian* among the Maguindanaos.

*Dower (Nuptial Gift).* The Quran has made it obligatory for prospective grooms to give their brides their dower. The Quran has not fixed the price, which is generally governed by custom. The customary dower is called *mahar misl* in Islamic law, *mas kawin* in Malay Adat Law, and *bantigan* among the Maguindanaos. The *bantigan* is fixed in accordance with the social rank (*maratabat*) of

the woman. The dower of slaves ranges from fifty pesos to one hundred fifty pesos. The dower of freemen ranges from three hundred pesos to seven hundred pesos. The dower of the nobility range from one thousand pesos up. If a woman was of the sultanate class, her minimum dower was three thousand pesos and her right being reckoned in accordance with three traditional sultanates of Buayan, Kabuntalan, and Maguindanao.

*Classes of Dower (Customary).* Among the Maguindanaos, a woman's customary dower is classified as follows:

1. *Kawa-sa-teg* (or simply *Kawa*). This is the woman's principal dower. It is entrusted to the woman's guardian (*Walis-Patut*). It is fixed in accordance with the woman's social status.

2. *Siwaka*. This is a gift to the woman's lesser relatives. The amount is fixed at fifty pesos or more.

3. *Endatuan*. This is a fee collected by the Datu and his royal court. The amount is fifty pesos or more. The Datu's right to demand an *endatuan* is limited to the marriages among slaves and commoners. A Datu cannot demand an *endatuan* between marriages of nobles and freemen.

4. *Pinangastulian*. This consists of gold and precious ornaments. It is given as gift to the parents of the bride for giving their consent to the marriage of their daughter.

The other miscellaneous gifts which are not obligatory but must be given as a matter of custom are the *sulong* or *lakat*, which is given to the caretaker of the bride, and the *tatas* which is a bladed weapon to symbolize the virginity of the bride.

*Rule on Return of the Dower (nuptial gift).* The Luwaran Code, Article XI, provides as follows:

#### Article XI

Section 1. If a man divorces his wife after the conclusion of the marriage act or ceremonies, and before any sexual intercourse has taken place, the woman shall have half of the dower only. If the divorce occurs after sexual intercourse has taken place, the woman shall have all the dower.

Section 2. If a man refuses to marry a woman after having been engaged to her, the whole dower shall be returned to him, excepting the expenses for the feast incurred by the father of the woman.

The common ground for a husband to divorce or repudiate his wife after the consummation of the marriage in the *Adat* law is the woman's concealment of her loss of virginity. The divorce must be acted upon by the man as soon as possible otherwise he is deemed to have waived such right. This action is usually made after the first night or immediately after the *kulambo* ceremony.

*Annulment and Dissolution of Marriage (Divorce).* The forms of dissolving marriage in Islamic Law are as follows: The *talak*, repudiation or renunciation by the husband in the manner and form prescribed by law; the *faskh*, or judicial rescission granted by a Muslim judge; the *ila*, or vow of abstinence; the *zihar*, or injurious assimilation; the *lian*, or mutual cursing; and the *khula*, or release or redemption.

*Talak* divorce is exercised by the husband by repudiating the wife, by uttering words such as, "I divorce you" or words of similar import. A man can only repudiate his wife three times. If the husband has divorced his wife three times, the divorce becomes irrevocable. The Quran provides that when a man has repudiated his wife for the third time he can no longer take her back as his wife and any sexual intercourse with her thereafter becomes illegal, except when the wife has first married another person and subsequently divorced him. In this case, the man may again marry the former wife and is required to give her the customary dower.

*Faskh*, is a divorce decreed by a judge. This right to divorce grants women the equal right with man to exercise the choice of suing for divorce. The usual grounds are cruelty of the husband, abandonment, etc. *Fiqh* or Islamic civil law has laid down the grounds for *faskh* divorce.

*Ila* is the act of a man in making a vow of abstinence from performing his marital obligations (sexual intercourse with his wife). The period of abstinence is four months for free men and two months for slaves. *Ila* has the effect of making intercourse illegal during the said period, unless the man nullifies his vow in accordance with law.

*Zihar* means the act of the man of comparing his wife or any part of her with any person within the prohibited degrees.<sup>2</sup> The effect is the same as *Ila* which makes matrimonial relations illegal until the man performs an act of expiation in the manner prescribed by law. The wife has the right to call back the man to perform his matrimonial duties, otherwise, she may apply to the Muslim judge

to either perform expiation or repudiate her.

*Khula* means the right of the wife under certain circumstances to demand for her release from the matrimonial bond by paying the husband a certain amount of compensation. If it is mutual release, it is called *Mubarat*.

*Iddat or Waiting Period.* Before a divorce becomes final, the woman is required to observe an *iddat* or waiting period. The waiting period is usually three menstrual courses (Quran 65:4). The purpose is to effect reconciliation and to determine the paternity of any child conceived or born during the waiting period. A pregnant woman has to observe *iddat* up to childbirth.

*Rights and Obligations Between Husband and Wife.* The Quran recognizes separate property relations between husband and wife (4:32; 4:4). A woman's dower is her separate property. The husband is also granted the right to administer the property of the wife.

Property relations between husband and wife in the Malay Adat Law are expressed as follows: 1) *Harta Pusaka*, ancestral property; 2) *Harta Pembaya*, separate property of the husband; 3) *Harta Depatan*, separate property of the wife; and 4) *Harta Pencharian*, property jointly acquired during the marriage.

### **Paternity and Filiation**

Islamic law allows parents to chastise their children in order to discipline them. (According to custom, on the other hand, children do not address parents by their given names. Family ties in Islam being very strong, children, even after marriage, are required by custom to consult their parents on important family decisions.)

*Legitimate and Illegitimate Children.* The rule is that children born of wedlock are legitimate, and all children born out of wedlock are illegitimate. A child born out of wedlock cannot be legitimated under Islamic law unless the said child is born at least within six months from the date of the marriage. The reason for this, according to Imam Hanifa, is that the shortest period of gestation with the human species is at least six months.

*Acknowledgment (Ikrar).* An acknowledgment of a child amounts to the descent or paternity of the child.

*Rule of Polygyny.* Islamic law has placed a limitation on the practice of polygyny. According to the Quran, a man may legally marry up to four wives, if he is capable of dealing with them justly

and equitably. The requirement is rather prohibitive because rarely can a man, under normal conditions, act justly and equitably among his wives. The unrestricted practice among datus in taking more than four wives is un-Islamic.

#### D. Property

*Land Ownership.* Land ownership was recognized by the *Adat* law. The land was owned either by the Sultan or the tribes. The land belonging to the Sultan, by virtue of his office, may be equivalent to our concept of state land. The Sultan had the right to lease or grant this land. The other concept of land ownership was the so-called communal (*Pusaka*) lands ownership. The Sultan or the state had no right to alienate these lands because they were ancestral and belonged to the tribes. The members of the tribe may mark the boundaries of their lands with appropriate trees. The claim to a tribal land is usually proven by the existence of an ancestor's tomb (*tampat*).

The Supreme Court held that the Sultan had no right to grant public lands to private individuals. The reason was that under the Luwaran Code, the grant from the Sultan was not among the legitimate modes of land acquisition (*Cacho v. United States*, 28 Phils. 6/17/1914). However, according to the *taritib*, the Sultan, as the sovereign, had the right to grant state lands (or lands belonging to the sultanate).

*Ways of Acquiring Property.* According to the Quran, the legal modes of acquiring property are by means of earnings, *iktisab* (4:32); inheritance, *warathah* (4:7); and gift, *hibah* (4:20). Customary law has included *occupation* as another mode of acquiring ownership.

*Inheritance.* The law on inheritance, like the family law, is regarded as the very heart of Shariah or Islamic law. In some Muslim countries which adopted European civil codes, the Islamic law on inheritance and the law on persons and family relations are generally retained.

Islamic law recognizes both intestate and testamentary succession. The order of succession according to the Sunni school in Islam involve the Quranic heirs (*dhaw-l-furud*, twelve groups); the Agnates (*asabat* or residuaries); the Cognates (*dhaw-l-arham* or distant kindred); and the Islamic treasury (*baithul mal*).

The principle of interstate succession in Islam is that "the nearer relative excludes the more remote. A child excludes a grand-

child; a father excludes a grandfather; sons get twice as much as daughters. The surviving husband gets half of the estate where there are no children or agnates, otherwise, he gets one-fourth. The surviving wife gets one-fourth if there are no children or agnates, otherwise, she gets one-eighth."

Irrespective of sex, a Muslim who is adult and sane has the power to make a will. Testamentary power is limited to one-third of the estate of the testator. According to the Luwaran Code (Art. 74) a person may will his estate to one of the heirs if there is no objection from the co-heirs.

*Waqf*. This is another important subject related to inheritance. It means the devotion of property for charity or endowment.

### **Obligations and Contracts**

Islam enjoins every Muslim to be faithful in the performance of his legal and civil obligations. A pact or contract between persons is generally regarded as their *Shariah*.

The Luwaran Code contains provisions governing contracts such as deposit, trust, sale, exchange, partnership and loans contracts. Islamic law prohibits usury. It also discourages gambling and speculative transactions.

One form of contract known in customary law and is also practiced among some Filipinos is known as the *sanda* or *sangla*. This contract involves the pledge of orchards and fruit trees. The debtor gives the possession of the land and fruits to the creditor as guaranty or security (*tihaya*).

## **IV. Civil Procedure**

### **Judicial System**

In Islamic Law, administration of justice is the prerogative of the Caliph or Imam. A Caliph is the secular representative of the Holy Prophet. He is also called the Imam, meaning, head of the Muslim community. In the Philippines, administration of justice belongs to the Sultan or Datu. The Sultan usually appoints a deputy to assist him on judicial matters. The deputy is called Datu Kali. As mentioned earlier, the Datu Kali is the most learned man in the

realm. He is also the Chief Pandita. The Sultan is also assisted by a *Wazir* (Minister) who performs in a semi-judicial capacity. He receives petitions and complaints. If the petition or complaint involves a very important question of law, he will refer it to the Kali for decision or expert opinion.

The Datus and different tribes also maintained their own courts. The Court of the Sultan which is the highest judicial body in the land is called the *Turugan* among the Maguindanaos and the Maranaos. It is called the *Diwan* in Sulu. The local courts are the courts of the Datus. This kind of court is similar to the jury system because the elders in the tribe, who usually constituted the council of the Datu, are members of the court. If the Datu met with the jury of elders, he presides over the court.

*Procedure.* Procedure before the Agama Court is marked by simplicity. A complainant files his case orally or in writing. If the judge finds a sufficient cause for action, the defendant, if he were within the jurisdiction of the court, will be asked to answer it. In most cases, the plaintiff brings with him the defendant and applies for the decision of the court upon an oral stipulation of facts. The present practice among the Datus is to either require the parties to reduce their agreement into writing or seal their agreement with an oath in the Quran.

*Trial and Hearing.* Trial and hearing are also simple. The plaintiff is first asked to state his case and adduce evidence in support of the same. If the plaintiff cannot produce any witness or evidence, the defendant, if he does not admit the claim, will be required to take an oath.

*Judgment and Execution.* In the olden days, the Datu or Muslim judge had no problem of executing judgments because of their power and influence. The present practice is to make all parties conform with the decision of the Agama Court.

*Appeal.* Usually, decision rendered by the Datu and his judge is final. A party who submits to the jurisdiction of the Agama Court cannot appeal his case unless the decision is contrary to law and custom. However, an appeal may be taken to a higher Datu or the Sultan. In the past, in Sulu, the Sultan was regarded as the highest judicial authority in the land. Appeals may be made from the decisions of his deputies (such as *Wakils*, *Panglima* and *Maharajah*).

*Rules of Evidence.* The rules of evidence in a Shariah Court gives emphasis to the distinction between admissibility and inadmis-

sibility. As a rule, a testimony, if confirmed by an oath, is generally regarded as sufficient proof in the absence of evidence. A Muslim's fear of perjury upon making oaths especially on the Quran is so strong that technical procedures on evidence are not necessary.

### Rules of Evidence in the Luwaran Code

#### Article XVIII

If there is doubt over the truth of evidence or the truthfulness of a witness, the question shall be resolved by oath.

#### Article XIX

Testimony of a slave which is detrimental to himself shall be accepted.

#### Article XX

Testimony of children and the insane or imbecile shall be held invalid.

*Evidence.* Testimonial evidence of an eyewitness is regarded as the best proof. As a rule, *circumstantial* evidence is only admissible to establish affirmative allegations. (Quran 2:282). *Hearsay evidence* is inadmissible except on questions of pedigree such as birth, death, marriage, cohabitation, because ordinarily this involves no eyewitnesses.

*Oath on the Quran.* An oath on the Quran to confirm an affirmative allegations is regarded as the best proof. However, this method is rarely resorted to, considering the solemnity of the act involved. However persons who are known as liars and perjurers are generally disqualified from confirming their testimonies by an oath. Moreover, to be a valid proof, an oath must invoke the name of God.

*Arbitration in Divorce.* The Quran prescribes that before any divorce can be affected, arbiters must be appointed by the Muslim court to bring about the reconciliation of the parties (Quran 4:35).

*Arbitration and Amicable Settlement of Cases.* Among the Maranaos, there are three methods of settling cases in accordance with the *Adat*: the *kambabata-a*, or invoking the tie of kinship; the *idma*, or settlement of a case in accordance with customary practice; and

the *kambalay*, or the settling of disputes and misunderstanding through intermarriage.

*Mutual Swearing.* Mutual swearing is the procedure adopted in cases where a husband sues the wife for adultery and fails to adduce evidence thereof. This is called *lian* whose effect amounts to the dissolution of the matrimonial bond.

There is no distinction between civil procedure and criminal procedure in a Muslim court.

*Presumptions.* A trespasser of another's land or property is presumed to be the author of the loss of a thing if the loss occurred during the act of trespass (Luwaran Code, Art. XXI).

Children conceived or born during the *iddat* of a woman is presumed to be the child of the marriage. A child also born six months after the celebration of the marriage is presumed to be the child of the marriage.

*Prescriptions.* According to the Arabic marginal quotation of the Luwaran Code, citing Imam Shafie as authority, actions prescribe after the lapse of fifteen years.

*Presumptions of Absence.* The presumption of absence or death of in case of marriage is four years. After that period, a woman may apply to the judge to declare that her absent husband, who went on a long journey and of whom nothing has been heard, is presumed dead (Luwaran Code, Article XLIX). However the woman is required to observe the usual customary mourning.

## V. Penal Law

In Islamic law, there are three kinds of crimes namely: 1) the *Hudd*, those provided for in the Quran and the Hadith; 2) the *Qisas*, those which involve bodily harm and are penalized by chastisement or retaliation or may be pardoned by the aggrieved party; and 3) the *Ta'azir*, or those left at the discretion of the Imam, Judge or Sultan, because these crimes are not provided for in the Quran or Hadith.

*Felonies and Misdemeanors.* The distinction between felony and misdemeanor is provided for in the Luwaran Code (Article XVII). If the value of a thing stolen is less than one *malong* (*sarong*), it is regarded as a misdemeanor. But if the value is more than one *malong*, it is regarded as a felony.

*Circumstances Which Qualify and Modify Responsibility.* In determining criminal liability, circumstances are also taken into

account. In the Luwaran Code, an act committed by a slave against his master was aggravating. Self-defense was also regarded as an exempting circumstance. Drunkenness in the Luwaran Code does not exempt criminal liability (Article LXII).

In case of minority and insanity, the Code exempts criminal liability and only blood money may be imposed (Article LXV).

Recidivism is regarded as an aggravating circumstance.

### **Punishable Acts**

*Lese Majeste.* An affront on the person of the Sultan or Datu was regarded as *lese majeste*. This may involve disrespect to his person. The *taritib* requires that the subjects give due respect to the Sultan.

*Crimes Against Religion.* The crime against religion that may be penalized by the Muslim state is *apostasy*. If committed in time of war, it is punishable by death. The Muslim authority may also penalize Muslims for non-payment of *zakat* (alms due from every Muslim) and for committing disorder during congregational prayers.

*Crimes Against the Adat.* Crimes against good customs are generally penalized by compensatory and moral damages. This crime is called *Naka-adat* or general misconduct or behavior. Immoral acts are also crimes against good customs. A crime may be punishable according to customary practice or according to Islamic Law. Out of humanitarian consideration, native judges, as a rule, only impose the penalties provided for by the *Adat*.

Crimes against good customs generally involve the relationship among the sexes which includes acts of lasciviousness, seduction, abduction, elopement and adultery. The penalty involves the payment of fines. The fines are graduated in accordance with the social status of a woman. Unlawful intercourse with a maiden or virgin is penalized by requiring the offender to pay for the customary dower of the woman for violating her honor. These crimes are governed by the *kamaguingudi* among the Maguindanaos.

*Crimes Against Persons.* The Luwaran Code classifies crimes against persons into: intentional murder, unintentional murder (homicide), and physical injuries. These crimes involve retaliation. In case the relatives of the offended party grant forgiveness, physical punishment may be commuted to the payment of blood money.

A common custom among Maguindanaos and Tausogs is the

compensation for crimes committed against persons. This custom is called *pagbangon* or *pembangunun*. It involves the commutation of the penalty by surrendering the person of the offender to the offended party and seeking for forgiveness.

Other crimes penalized under the Luwaran Code are:

1. Crimes against property, which are: theft (penalized by the restitution of the property and the mutilation of the hand); robbery and illegal seizure; and damage to another's property.
2. Crimes against honor are: false claims, and insults and defamation.

*Crimes Against Chastity.* In the olden days, adultery and fornication were penalized by stoning, in accordance with Islamic laws. Now they are penalized merely by fines in the native courts, in accordance with *Adat* or customary laws.

*Quasi-Delicts.* The Luwaran Code provides for liability for acts causing damage to another person or another person's property, as follows:

If a person throws sweepings of a house or the parings of fruits on the road, and the person carrying certain articles and passing on the road steps on them and thereby slips and falls and loses his property, the person who threw the sweepings or the fruits parings on the road shall pay for the lost property. He shall be responsible for any injury resulting from the fall. (Article LXI)

*Fine and Blood Money.* The fines for wounds are classified in the Luwaran Code according to extent and gravity. Wounds are classified as simple, bleeding, skin penetrating, flesh, periosteal, deep, fracture, dislocating, deeply penetrating, brain wounds, deep bone wounds of the face or head, and fracture wounds of the head or face.

*Blood Money.* The amount of blood money to be paid by the offender depends upon whether the killing was intentional or unintentional. The blood money of a Muslim is higher than the blood money of a pagan or non-Muslim.

*The Principal Sulu Code.* Crimes penalized under the Principal Sulu Code include abduction, theft of property, false claim to property, forced exaction of claims without the consent of the

governor, murder and homicide, unintentional or accidental homicide, elopement, and adultery.

The Second or New Sulu Code is basically similar to the former code, although it increases the fines and penalty. It contains ten articles and covers subjects such as theft, murder, immoral conduct, adultery, defamation and slander, false claims, and unlawful exactions.

### **The Agama Court**

*Historical Basis.* We have gone briefly into the whole legal system of the Muslims in the Philippines. A background of the system is necessary in order that we will be able to determine its role in the present Philippine political system. The Agama court, as practiced in the Philippines, differs significantly from the so-called Shariah court in other countries where Shariah or Islamic law is enforced either as a national policy or as a personal law system of the Muslim national minorities. In the Agama court, both customary law and Islamic law are applied.

The Americans pursued a policy to respect the customs, traditions and religious practices of the Muslims. The Bates treaty (agreement) provided as follows:

X X X

Art. 111. The rights and dignities of his highness the Sultan and his datus shall be fully respected; the Moros shall not be interfered with on account of their religion; all their religious customs shall be respected; and no one shall be prosecuted on account of his religion.

X X X

Art. IX (9) When crimes and offenses are committed by Moros against Moros, the government of the Sultan will bring to trial and punishment the criminals and offenders, who will be delivered to the government of the United States authority by the Sultan if in their possession. In all other cases persons charged of offenses will be delivered to the United States authorities for trial and punishment.

This treaty entered into by the Sultan of Sulu with the Americans was abrogated on March 21, 1904 and another agreement,

otherwise known as the Carpenter Agreement, was entered into on March 23, 1915. In the latter treaty the Sultan renounced his sovereignty to America and the Sultan in turn was recognized as the ecclesiastical head of the Muslims in Sulu. When Mindanao and Sulu was organized into a Moro province in an Act passed by the Philippine Commission on July 1, 1903, the said Act provided for the establishment of Tribal Ward courts and native courts to assist in the administration of the province.

The Moro province comprised of five districts: Jolo, Zamboanga, Lanao, Cotabato and Davao. Each district had a district governor, a secretary, treasurer, engineer and a superintendent of schools. They composed the legislative council of the Moro province.

The governor and the secretary in each district were the justices of the tribal ward court. Auxiliary justices were appointed as the need arose. The decision of the tribal ward court from which no appeal was taken to the Court of First Instance was modified or remitted by the Governor of the Moro Province after review of the case. The abolition of the Moro Province did not stop the practice among Muslims to bring their disputes to their Datus or leaders who were usually appointed to public positions. This practice in the course of time became known as the *Agama Court*. The native courts also continued to exercise arbitration of disputes among Muslim litigants. The Muslim Governor of the province was regarded as the highest *Agama Court* in the province.

*Application of Customary Laws.* In the disputes brought before the *Agama Court*, Muslim law and custom was applied. The Americans took steps to codify Muslims laws. Act 787 which was the organic Act of the Moro Province provided for the codification of Muslim laws and customs (July 1, 1903). Act No. 1283 had also provided for the enactment of laws to amend the substantial application of Philippine civil and criminal laws, so as to modify and suit its application in accordance with the customary laws of the Muslims (June 13, 1905). Act No. 2520 also provided for the modification of the application of laws whenever the parties were Muslims (1915).

The provisions of these acts were not carried out. The New Civil Code, Art. 78, merely exempts the Muslims from the formal requirements of the law, such as solemnization of marriages and the requirement of obtaining marriage licences.

On criminal cases, Sect. 106 of the Administrative Code of the defunct department of Mindanao and Sulu, allowed a judge to

mitigate or modify the penalty under the Penal code if the offender was a Muslim.

The only substantive law which recognizes Muslim customary law is R.A. No. 394 which recognizes Muslim divorce for a period of twenty years (June 18, 1948).

*Legal Effect of the Decision of the Agama Court.* The Tribal Ward Court was created by Act 268 passed by the Legislative Council of the Moro Province by authority of the Philippine Commission. It had jurisdiction over minor civil and criminal actions whenever any of the parties was a Muslim or a non-Christian. It had original jurisdiction to hear and determine claims the value of which did not include capital punishment. Generally speaking, with the exception of divorce cases, any decision rendered by the Agama Court would be regarded as extra-judicial settlement of cases.

Under Act No. 2520, preference is made by the court in the appointment of assessors from the list of Muslim Kadis, Kalis and Panditas prepared by the provincial governor in civil and criminal cases, wherein any or the parties involved are Muslims. This law has been superseded by the New Rules of Court on the manner of appointment of assessors.

In case decision arrived at the Agama Court is in the nature of compromise or agreement, it is made binding on the parties. But this cannot be executed unless in compliance with a judicial compromise before our national courts (government).

On the part of a Muslim, the decision of the Agama court is generally made binding on him. The reason for this is his traditional adherence and confidence on the native tribunals of his forefathers.

The delay in the administration of justice in our national courts has generally encouraged the Muslim to bring his suit before the Agama court, which is characterized by simplicity of procedure and quick rendition of judgment.

On matters affecting persons and family relations and matrimonial disputes, Muslim litigants prefer to bring their actions to the Agama court in view of their personal belief that Muslim law and custom shall apply to them as a personal matter. On the other hand, the absence of legal recognition of and government supervision over these Agama courts have also caused some form of duplication and confusion. For instance, if a party feels that he could seek more remedy by availing of the two systems, the party against whom the decision were rendered would feel that injustice has been done on

him.

While the Agama court derives authority from tradition and Islam, it has also its own defects. Some powerful datus and Muslim leaders make use of the Agama courts to promote their interest and advantage. The general lack of a Supreme Muslim authority over the Muslims had resulted into some degree of power struggle with innocent people caught in the crossfire.

### Remarks and Recommendations

1. Reformation of the Agama Court to suit modern trends can be achieved by giving the court government recognition as well as some degree of administrative supervision. As a system, it has many desirable assets because it can aid the government in the administration of justice. The Muslims, as a general rule, have high regard for the wisdom of their native judges so that decisions of their Agama Court are regarded as binding on them.

2. Adoption of the personal law system, by fitting it in the context of our legal system, can bring about an equally significant legal system, which shall be a part of the legal systems of Southeast Asia.

3. Codification of Muslim Law and Custom is advisable in order to bring about uniformity, and it is also important to reform and adapt them to modern trends practiced in advanced Muslim countries or countries which recognize the personal law system of the Muslims.

4. There is also a need for creating an effective administrative framework within our judicial system, in order that there will be an effective administration of Muslim laws.

### NOTES

1. Among the Bisayans, there were three kinds of slaves: *Ayuey*, *Tumarampak* and *Tumataban*. The *ayuey* worked three days a week for his master and one day for himself. The wife also serves the master. But the master was obliged to provide him food and clothing.

2. *Zibar*. Lit., "likening to the back." A form of imprecation which involves the separation of husband and wife until expiation is made. According to the *Hidayab*, *zibar* signifies the likening of a woman to a kinswoman within the prohibited degrees, which interpretation is found in the comparison being

applied to any of the parts of the members of the body improper to be seen. The usual formula is *Anti' alaiya ka-zabri ummi* ("Thou art unto me as my mother's back.") — Thomas Patrick Hughes, *Dictionary of Islam* (rpt. Lahore), p. 702. [Footnote by A. T. Tiamson.]

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