

ISLAMIC LAWS ON MURDER, THEFT AND SEX CRIMES: A COMPARATIVE STUDY

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The Prophet Mohammad was not only a founder of a religion; he was also a political leader (he ruled Medina in Arabia). As such, he did not only teach religion, he also promulgated laws. The Koran (or Quran), Bible of Mohammedans, is not only a religious writing from which the Moslems draw spiritual inspiration: it is also a complete system of laws intended to govern man's relation towards other men.

Unlike other religious writings which concentrate more on man's relationship towards his God, or on fundamental, general moral concepts (like love, justice, truth, etc.), the Koran gives elaborate treatment of crimes and criminals, among others. For example, while other religious writings would condemn theft, the Koran goes further by providing how the thief should be punished (as would be explained in the latter part of this article). In other words, for the Moslems, the Koran is not merely a fundamental religious scripture, but also a fundamental law by which their acts are judged. The Koran can be said to be also a "Constitution" for the Mohammedans who consider it "the final, unalterable and most complete law for humanity."

It must be noted here, however, that the Moslems in the Philippines are not subject to the civil and criminal laws of Islam, unlike those in largely Mohammedan countries such as Saudi Arabia (where more than ninety percent of the population are Mohammedans, and where there is practically a union of Church and State as far as laws are concerned). In the Philippines, therefore, there are no Moslem courts to adjudicate the rights of conflicting parties, since the Filipino Moslems, like the rest of the Filipinos, are subject to the laws of the Philippines. While the Filipino Moslems are governed by the Koran on matters of religion, they are subject to the Philippine laws as citizens of this country.

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This study is intended to compare the Islamic laws on murder, theft and sexual offenses (as treated under the Koran) and the Philippine laws on the same crimes (as treated mainly in the Revised Penal Code of the Philippines).

On Murder

One main difference between the Islamic and the Philippine laws on murder is the manner by which this crime is extinguished. Under the Revised Penal Code, the crime of murder may be extinguished by: (1) the death of the convict; as to the personal liability and as to the penalties, liability, therefore, is extinguished only when the death of the offender occurs before final judgment; (2) service of the sentence; (3) amnesty, which completely extinguishes the penalty and all its effects; (4) absolute pardon; (5) prescription of the crime; (6) prescription of the penalty.¹

Murder being a public crime, its prosecution cannot be compromised, even if the aggrieved party agreed to amicably settle the case. As a matter of fact, under the Rules of Court,² "an offer of compromise by the accused may be received in evidence as an implied admission of guilt."

Under Islamic law, a case of murder can be and is encouraged to be compromised. The crime can be extinguished by: (1) remission of the victim's brother (or other relatives), and (2) the granting of a reasonable demand of the victim's brother by the offender, including compensation. Thus the Koran exhorts: "(But) if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with a handsome gratitude."³

By any "reasonable demand" means that which can be met by the wrongdoer according to his means and with due regard to justice, reason and good conscience. Goodwill must govern the compromise between the culprit and the victim of the crime: there should be no subterfuges, bribes or unseemly by-play, lest the whole intention of mercy and peace be defeated. A demand of the victim's brother which, for example, would seriously injure the honor of the offender, his wife or relatives, is an unreasonable demand and does not comply with the Koran's teachings of mercy.

The murder of a person belonging to one tribe should not beget further killings of the members of the other tribe where the offender belongs. This is the philosophy behind the allowance and encourage-

ment of compromises in murder cases. There should be no room for retaliation, and the Koran is clear on this point: “. . . the killing of the slave of a tribe should not involve a blood feud where many free men would be killed; but the law of mercy, where it can be obtained by consent, with reasonable compensation, would be better.”⁴

Mercy is shown both by the “brother of the slain” who forgives the murderer, who grants the demand and gives the compensation: “This is a concession and mercy from your Lord.”

And if either or both cannot compromise (e.g., the brother of the slain makes an unreasonable demand; or the murderer rejects the forgiveness of his victim’s brother), and the taking of life becomes inevitable, then there should be equality in the taking of life. “If you must take a life for life, at least there should be some measure of equality in the treatment of the lives of those who belong to the same class. Under Islamic laws, there are three classes of citizens: the freemen, the women and the slaves. (Strictly however, the women, though mentioned separately, are not a class by themselves, but merely a division in the two other classes, since their roles as mothers or economic workers are different from men). Thus within the class of freemen or free women, all are equal, regardless of wealth, power or influence. A very rich man’s life, for instance, cannot be said to be equivalent to two or three lives of poor men. And among slaves, all are equal, regardless of the greater value or abilities of some over the others.

On Theft

The Koran states: “As to the male or female thief, cut off his or her hands: A punishment by way of example, from God, for their crime, and amends his conduct, God turneth to him in forgiveness; for God is Oft-forgiving, Most Merciful.”⁶ It is clear from this verse that the punishment for theft is the cutting off of hands, from which the thief can be exempted only if he comes in repentance to God. The Canon Law Jurists of Islam are not agreed as to what the value of the stolen property would be in order to impose the punishment of amputation. However, the majority hold that petty thefts are exempt from the punishment.

The general opinion is that only one hand should be cut off for the first theft. The punishment of amputation is based on the principle that “if thy hand or thy foot offend thee, cut them off, and

cast them from thee”⁷ and is the only punishment provided for in the Koran for theft. Thus, in Saudi Arabia (where, as earlier mentioned, the law of the church and the state are one and the same), this punishment for a thief under the Koran is literally followed.

Under Philippine Law, the basis of the penalty for theft is: (1) the value of the thing stolen, and in some cases, (2) the value and also the nature of the property taken, and (3) the circumstances or causes that impelled the culprit to commit the crime.⁸

On Sex Crimes

The three main differences between the Islamic and Philippine laws on sexual offenses lie in: (1) the scope of the crime; (2) the evidence required to prove the offense, and (3) the punishment for the crime.

Scope of the crime. Under Islamic laws, sexual offenses refer in general to lewdness (as this is the term used in the Koran). Lewdness, as interpreted by the Koran commentators, refers to adultery and fornication. And fornication, in turn, includes sexual intercourse between a man and a woman who are not married to each other (which means that fornication can be committed by a married or unmarried woman). Under the Revised Penal Code, on the other hand, sex crimes include adultery or concubinage, rape, abduction, seduction and acts of lasciviousness.

Evidence required. Under the laws of Islam, the evidence necessary to prove the guilt of an accused depends on whether the woman is single or married. In case of unmarried women, the Koran says: “if any of your women are guilty of lewdness, take the evidence of four (reliable) witnesses from amongst you against them . . .”⁹ Whereas in case of married women, the following rule applies: “And for those who launch a charge against their spouses and have no evidence but their own, their solitary evidence (can be received) if they bear witness four times (with an oath) by God that they are solemnly telling the truth.”¹⁰ In addition, they invoke a curse upon their persons should the charge be false. This act of the accusing spouse serves as *prima facie* evidence of guilt of the accused spouse. However, the wife or husband accused can similarly swear four times and invoke a curse on himself or herself should the swearing be a lie. This act of the accused is enough to acquit him or her of the crime

charged.

Under the Revised Penal Code, the evidence required to convict the accused depends on the kind of sex crime committed: (1) In adultery, the testimony of the offended spouse and/or circumstantial evidence may prove the commission of the crime. Thus, the finding in the possession of a married woman of several letters signed by her paramour, their having been together in different places, and the fact that they were surprised in a well known assignation house which the accused woman admitted to have visited six times in company with her paramour are data and indications sufficient to convict them both of adultery.¹¹ (2) In concubinage, the testimony of the offended spouse and the people in the neighborhood where the sexual intercourse under scandalous circumstances took place, is an evidence to prove the crime of concubinage.¹²

(3) In rape, the uncorroborated testimony of the offended party most often is the only one available to prove directly the commission of rape; corroboration by other eye-witnesses is seldom available. In fact, the presence of such eye-witnesses would, in certain instances, place a serious doubt as to the probability of its commission. The testimony of the offended party, however, must be conclusive, logical and probable.¹³ (4) Seduction and acts of lasciviousness may be proved by the testimony of the offended party and witnesses.

As would be gleaned from the above explanations, conviction for sexual offenses under Islamic laws needs the testimony of four witnesses (in case of unmarried women), which is not required under Philippine laws, where the witnesses testifying to the commission of the crime may be more or less than four. And as to a married couple, the swearing under oath is enough to convict or exonerate without any need of any other evidence as is strictly required under Philippine laws.

Punishment imposed. For an unmarried person, there are two forms of punishment prescribed by the Koran: the first is flogging; the second is the denial of marriage to the offender with believers in Islam. In one verse of the Koran, the punishment for lewdness is confinement: "If any of your women are guilty of lewdness . . . confine them to houses until death do claim them or God ordain them for some (other) way."¹⁴ But since the Moslem commentators interpret "lewdness" as referring to adultery or fornication, this punishment of confinement has been altered to flogging the offender one hundred

times, as stated in another verse of the Koran: “[As for] the woman and the man guilty of adultery or fornication, flog each of them with a hundred stripes: let not compassion move you in their case, in a matter prescribed by God if you believe in God and the last Day . . .”¹⁵

The punishment, as mandated by the Koran, is executed in public, in order to serve as a deterrent: “. . . And let a party of the believers witness their punishment.”¹⁶

The second form of punishment for an unmarried sex criminal, as commanded by the Koran, is that he cannot marry any believer of Islam, although he can marry an unbeliever or another who is guilty of the same sex crime. “Let no man guilty of adultery or fornication marry any but a woman similarly guilty, or an unbeliever: Nor let any but such a man or an unbeliever marry such a woman: To the believers such a thing is forbidden.”¹⁷

As to married persons, the punishment is also flogging (100 stripes) in public. And, as a consequence of the accusation of unchastity of one spouse by the other, the marriage between the two will be dissolved.

The separation of the spouses is decreed, regardless of whether or not the accused is convicted of the crime charged (by swearing similarly four times, etc., as discussed above). This rule is not meant to encourage false charges of unchastity to achieve the dissolution of marriage. In the first place, a person who wants to separate with his/her spouse need not go into all the trouble of swearing falsehoods against that spouse, since separation is possible by means of divorce based on other grounds other than unchastity. In the second place, the followers of Islam are strictly enjoined from hurling false charges against their spouses: the accusation partly reflects on the accuser as well, and should therefore be made in good faith and honesty under pain of a curse that can befall him or her. And lastly, since the fact of accusation itself (whether or not rebutted by the quadruple swearing of the accused) makes it highly improbable for the spouses to live happily again; hence the dissolution of the marriage.

Under Philippine law, those guilty of adultery or concubinage are punished by imprisonment¹⁸ and also to indemnify the offended spouse for damages.¹⁹ Those guilty of rape, abduction or seduction are punished by imprisonment,²⁰ and in addition: to indemnify the offended woman; to acknowledge the offspring, unless the law should prevent him from so doing, and to support the offspring.²¹

It will be noted from the above explanations, therefore, that the punishment of sex crimes under Islamic and Philippine laws differs in that while the latter imposes imprisonment and civil sanctions as a punishment for the offender, the former provides for flogging in public. And peculiarly Mohammedan is the punishment of not allowing sex criminals to intermarry with believers, a prohibition nowhere to be found under Philippine laws on sexual offenses.

NOTES

¹The Revised Penal Code, Art. 89.

²Rules of Court, Sec. 24, Rule 130

³Koran, S. 11, 178-179.

⁴Ibid.

⁵Ibid.

⁶Ibid.

⁷Ibid., Matt. xviii. 8.

⁸The Revised Penal Code, Art. 309.

⁹Koran, S. IV. 15.

¹⁰Ibid., S. XXIV.

¹¹U.S. v. Legaspi, et. al., 14 Phil. 38.

¹²U.S. v. Casipong, et. al., 20 Phil. 178.

¹³People v. Landicho, C.A. 43 O.G. 3767.

¹⁴Koran, S. IV. 15.

¹⁵ *Ibid.*, S. XXIV, 2.

¹⁶ *Ibid.*

¹⁷ *Op. Cit.*, S—xviii, 3.

¹⁸ The Revised Penal Code, Art. 333.

¹⁹ *Ibid.*, Art. 345.

²⁰ *Ibid.*, Art. 335, 337, 338, 342.

²¹ *Ibid.*, Art. 345.