

## CHAPTER I

### INTRODUCTION

#### *A. Background of the Study*

The circumstances behind the enactment of the Code of Muslim Personal laws of the Philippines<sup>1</sup> is a chronicle of resistance, battles and struggles. History records that since the coming of the Spanish invaders in the Philippines in 1521 A.D., the Muslims, who were called Moros by the Spaniards, resisted and fought for the preservation of their identity as Muslims, of their way of life which is Islam, and of their homeland. These were the same reasons why they resisted the American colonizers and later the Japanese invader. These were also the underlying reasons why there were waves of Moro juramentados<sup>2</sup> in Sulu against the military expeditions launched by the American government during the American regime and the Philippine government after the Philippines gained independence; the series of Muslim rebellions which were led by Kamlon in Sulu and Tawantawan in Lanao; the series of fortress-battles (Cota-fights), one after another in the Muslim ancient villages around beautiful Lake Lanao; the declaration of the Mindanao Independence Movement by the former governor of Cotabato, Datu Utog Matalam; and recently the emergence of the secessionist groups such as the Moro National Liberation Front and the Moro Islamic Liberation Front.

Since four hundred and seventy-one years ago, for many generations, the Moros have been struggling for the preservation of Islam as their way of life. On the other hand, since the Philippines gained independence in 1946, the Philippine government has introduced programmes and policies and enacted a series of laws aimed at preserving the sovereignty of the Philippines as a state, as well as its territorial integrity.<sup>3</sup>

On the sweet fruits of the long struggle of the Muslims, on the one hand, and the Philippine government on the other hand is the enactment of the Muslim Code. This is a kind of law that is self-gratifying to both

sides. To the Muslims, it is a victory that an islamic law has been given to them. To the Philippine government, it is a wise measure that should bring the Muslims into the mainstream of the national body politic through unity in diversity.

### ***B. Aims and objectives***

The enactment of the Muslim Code is significant to both Muslims and Christians. It serves as an instrument to enhance development after long years of neglect and retrogression; it fosters better understanding among Muslims and non-Muslims; it serves as a guidance to all Muslims for a better tomorrow; and, most importantly, it serves as a catalyst to facilitate the integration of the Muslims into the mainstream of the national body politic to ensure unity in diversity. Against this backdrop, this dissertation analyzes and surveys the provisions of the Muslim Code to bring to the fore its features which necessitate commentary and interpretation for better understanding and application. It also humbly seeks to pinpoint which part of the law requires modification to make it more responsive and attuned to the changing times.

### ***C. Statement of the Problem***

The promulgation of the Muslim Code brought a new dimension into the Philippine Legal System. This is the first codified Islamic Law recognized as part of the Philippine legal system. Though Islamic Law was ahead for more than a century in the Philippines than the Common Law and the Civil Law, yet, it is the last among them to be incorporated into the Philippine legal system. Thus, its promulgation in 1977 made the Philippine legal system the melting pot of the three world legal systems.

In keeping with the purpose of the Muslim Code to make Muslim institutions more effective<sup>4</sup> and conformable to islamic tenets and principles, this dissertation seeks to answer the following questions in order to provoke further study and intelligent discussions of the issues involved therein among Muslim scholars, lawyers and ulama to ensure better understanding of the law:

1. What are the bases of each provision of the Muslim Code from the Shari'ah or general principles of Islamic Law?
2. What are the provisions of the Muslim Code which are not in conformity with Islamic Law?
3. What may be suggestions, or recommendations for possible modification or amendment of the Muslim Code for its growth and development, keeping Philippine conditions in view?

#### ***D. Methodology***

Historical, analytical and critical modes of research were employed from the following aspects: Historical, in that the author investigated not only the evolution of Islamic Law in the Philippines and the causes that led to its birth but also the history of the birth, growth and development of its sources; Analytical, in that each provision of the law was examined in the light of Islamic Law; and Critical, in that those provisions which were found to be not in conformity with Islamic Law were subjected to criticism with the proper suggestion and recommendation for its possible modification or amendment.

#### ***E. Scope and outline***

This dissertation deals only with the substantive provisions of the Muslim Code pertaining to marriage and divorce. It consists of 44 articles. It covers Article 13 to Article 57 of the Muslim Code.

Every provision is explained in the light of the Shari'ah or the general principles of Islamic Law or the general principles of the Civil Law or other related laws.

More specifically this dissertation is organized as follows:

Chapter I. Explains the background of the study, aims and objectives of the study, statement of the problem, methodology of the study, and the

scope and outline of the study.

Chapter II. As the dissertation deals with the study of Islamic Law in the Philippines, it is necessary that an overview of Islamic Law shall be dealt with. This chapter consists of the following: nature of Islamic Law, development of Islamic Law and the sources of Islamic Law.

Chapter III. Evolution of Islamic Law in the Philippines is likewise an indispensable chapter. It consists of the following: the advent of Islam in the Philippines, Islamic Law or Shari'ah - the law of the land, how Islamic jurisprudence came into existence, judicial power as a prerogative of the Sultan, Philippine laws recognizing Islamic Law, and the incorporation of Islamic Law into the Philippine legal system.

Chapter IV. To have a clear idea of the proper application of the Muslim Code, the applicability clause of the said Code is explained.

Chapter V. In this chapter, the law of marriage is fully and exhaustively explained in the light of the Shari'ah or the general principles of Islamic Law or the general principles of Civil Law or other related laws. It consists of the following: nature of marriage, essential requisites of marriage, prohibited marriage, subsequent marriages, *batil* and *fasid* marriages, rights and obligations between spouses, and property relations between spouses.

Chapter VI. In this chapter, the law of divorce is fully and exhaustively explained in the light of the Shari'ah or the general principles of Islamic Law or the general principles of Civil Law or other related laws. It consists of the following: nature of divorce, forms of divorce and the law of *'idda*.

Chapter VII. This part of this dissertation incorporates the findings and conclusion of the author together with his suggestions and recommendations for possible modification and amendment of the Muslim Code.

**Notes**

1. Code of Muslim Personal Laws of the Philippines, (otherwise known as Presidential Decree No. 1083 which took effect on February 4, 1977). (To shorten the citation, this Code shall be cited in this dissertation as M.C.).
2. Juramentado is a name given by the government soldiers for Mudjahidin. They mean "suicide commando."
3. See Andres H. Hagad, "Comments on the Muslim Code: A paper on P.D. No. 1083," Philippine Law Journal, vol. 52, 107 (1977).
4. M.C., Art. 2 (a).