

Islamic Law in the Philippines: A Study of Its Evolution

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The struggle of the Muslims in the Philippines, otherwise known as the Bangsa Moro, is among the longest and bitterest in Muslim history, especially among Muslim minority groups. It began in 1521 A.D., when Spanish *conquistadores*, with the Portuguese navigator and captain, Ferdinand E. Magellan as trailblazer, came to the Philippine archipelago to impose the sovereignty of King Felipe II of Spain and subsequently the Christian religion. As a natural reaction, the Muslims in the islands fought the invaders, particularly on the historic island of Mactan, where Datu Lapulapu led them. Since then the Bangsa Moro has fought through generations in their passionate love for and to defend their homeland, preserve their identity as Muslims, preserve their ideal way of life, Islam, and preserve their Islamic Law, the Shari'ah. This monograph is the first of its kind as a study of the evolution of Islamic Law in the Philippines and is the author's humble contribution to the development of Islamic jurisprudence, in general, and Philippine jurisprudence, in particular.

Nature of Islamic Law

Islamic law is divided into two aspects: the Shari'ah and the juristic. The former refers to Islamic Law or Shari'ah, while the latter refers to Islamic Jurisprudence or Fiqh.

A. Islamic Law or Shari'ah

Shari'ah, as alluded to in the Holy Qur'an, is best translated as "the right way of religion."¹ It is guidance (*hidayah*) from Allah

(S.W.T.) for mankind in order that people may reach the goal intended by Him for them.² Allah (S.W.T.) says, in effect:

Then we put thee on the right way of religion: so follow thou that way, and follow not the desires of those who know not.³

The Shari'ah is a creation of Allah (S.W.T.), the Lord of this world and the Lord of the next world, the Creator of Heaven and Earth, Who caused the sun, the stars and the moon to move in the fathomless expanse of the universe, Who caused the perpetuation of lives in this world until doomsday.

The Shari'ah was revealed to Prophet Muhammad (S.A.W.) within a very short period from the time of his conferment of prophethood up to the time when the following *ayat* was revealed:

This day have I perfected your religion for you, completed my favor upon you, and have chosen for you Al-Islam as your religion.⁴

This Shari'ah is a complete and comprehensive law. It covers all the possibilities of both the infinite past and the infinite future. It is perfect and immutable. It has been promulgated in such a manner that time, space and circumstances would not change it. Allah (S.W.T.) says, in effect: "No change can there be in the words of Allah."⁵

The Shari'ah is not meant exclusively for any particular community, nation or state. It is designed for the entire humanity, Arabs and non-Arabs, the people of the East as well as of the West, however vast the differences may be between their mores, customs, traditions and history.⁶

In short, the Shari'ah is a complete Code of Faith and Practice.⁷ It is an all embracing body of religious duties, the totality of Allah's commands that regulate the life of every Muslim in all its aspects.⁸ It is universal and extensive and cannot be exhausted by human intellect. It is embodied in the Holy Qur'an, which is the book of Allah (S.W.T.)

and the Sunnah of the Holy Prophet (S.A.W.).

In his last sermon at Mount Arafah at his farewell pilgrimage, the Holy Prophet (S.A.W.) said:

I am leaving you with the book of Allah (S.W.T.) and the Sunnah of His Prophet. If you follow them you will never go astray.

That is the Shari'ah, eternally in force, exquisite and wonderful, beyond human imagination.

B. Islamic Jurisprudence or Fiqh

Fiqh, literally, means understanding or knowledge.⁹ Technically, it is the scientific study and elucidation of the Shari'ah by the jurists (*fuqahah*).¹⁰ It is the knowledge of one's rights and obligations derived from the Qur'an or deduced thereof, or about which the learned have agreed.¹¹ It is therefore the law as a science.

Jurists have divided *fiqh* into two portions: the *Usul al-Fiqh* and the *Ilm al-Foru*.¹² *Usul al-Fiqh*, literally, means the root or the foundation of the law.¹³ Some scholars have described it as the methodology of law.¹⁴ A more comprehensive definition is that it is the science of the sources and methodology of law.¹⁵ It is an extensive science that deals with the sources of law, such as the Qur'an and the Sunnah of the Holy Prophet (S.A.W.), and the methods of reasoning such as Analogy (*Qiyas*), Juristic Preference (*Istihsan*), Presumption of Continuity (*Istishab*), etc.,¹⁶ by which the *Hukm* (Rules of law) is formulated.¹⁷

Ilm al-Foru, literally, means the branches of the law.¹⁸ It is the science that deals with the application of *Hukm* (rules of law) in terms of the human act in detailed areas of life.¹⁹ In modern terminology, it refers to substantive law.²⁰

The foregoing explanation has discussed substantially the relationship between Shari'ah and *Fiqh*, as well as their distinctions.

To summarize: Shari'ah is a divine law from which the science of law (fiqh) formulated by the jurists is based. Shari'ah is comprehensive, complete, perfect and immutable. Fiqh is limited to the wisdom of the jurists; it is growing, developing and dynamic; it is affected by time, place and circumstance. As formulated by human beings, it is subject to error and is susceptible to abrogation.²¹ There can be no fiqh without Shari'ah, but there can be Shari'ah even without fiqh. That is the reason why fiqh is said to have a divine origin.

Development of Islamic Law

Islamic Law developed through several periods. The **first period** of its growth and development was the so-called Revelation Period (13 B.H. to 10 H.). This revelation was of two kinds: the *direct inspiration*, which refers to the revelation of the Holy Qur'an through Angel Gabriel to the Holy Prophet (S.A.W.), and the *indirect inspiration*, which refers to acts, sayings and approvals or Sunnah of the Holy Prophet (S.A.W.).²²

Direct inspiration began when the following *ayat* of the Holy Qur'an was revealed to the Holy Prophet (S.A.W.):

Proclaim! (Or Read!) In thy name of the
Lord and Cherisher, Who created – Created man,
out of a (mere) clot of congealed blood: Proclaim!
And thy Lord is Most Bountiful, He Who taught
(the use of) the Pen, taught man that which he
knew not.²³

It took 23 years of revelation and was finally completed when the following *ayat* was revealed:

This day have I perfected your religion
for you, completed my favor upon you, and have
chosen for you Islam as your Religion.²⁴

This *direct inspiration* is now compiled in a form of a book called the Holy Qur'an.

The Sunnah of the Holy Prophet (S.A.W.) is preserved in the *ahadith* (reports) transmitted, collected, written, and compiled in voluminous books. The most important of these are the six authentic books of the Hadith: the *Sahih* of Imam al-Buhari, the *Sahih* of Imam Muslim, the *Sunan* of Abu Dawud, the *Jami* or *Sunan* of al-Tirmidhi, the *Sunan* of al-Nasa'I and the *Sunan* of ibn Majah.²⁵

The Holy Qur'an and the Sunnah of the Holy Prophet (S.A.W.) are the Divine Law or Shari'ah. Thus the Shari'ah is comprehensive, complete, perfect and immutable. It is the Supreme Law, in which all Islamic Law must conform.

The **second period** of great significance in the growth and development of Islamic Law was the period of the Orthodox Caliphate (10 A.H. – 40 A.H.), the reign of the first four successors of the Holy Prophet (S.A.W.). Two important achievements were made at this period: the collection, editing and compilation of the Holy Qur'an into a book (*mushaf*), and the close adherence of the successors to the Sunnah of the Holy Prophet (S.A.W.).²⁶

The **third period** was the reign of the Umayyad dynasty (41 – 132 A.H.). During this period, jurists were divided into the Ahl al-Hadith (Traditionists) and the Ahl al-Ra'y (Rationalist). The former were centered in the Hijaz (Makkah and Madinah). They adhered to the manifest meaning of the text without searching for their effective causes to extend to similar cases. The latter flourished in Iraq (Basrah and Kufah). They did not confine themselves to the text, but tried to discover the reasons for the rulings (*ahkam*) and, whenever necessary, they applied them on parallel and analogous cases.²⁷

The **fourth period** was the reign of the Abbasid dynasty (132-350 A.H.). During this period, two important achievements in the development of Islamic Law occurred. The first was the rise of the four Sunni Schools of Law; the second was the scientific collection and compilation of the Hadith.

The Hanafi School, the oldest among the four Sunni Schools, was named after Imam Abu Hanifah Nu'man ibn Thabit (80/699 to

130/766), who was known as “the great Imam.” This school was famous for using analogical reasoning (*Qiyas*) in the formulation of legal principles. It also relied upon *Ijma*, *Istihsan* and Custom as secondary sources. Among the famous jurists of the Hanafi School who expounded its view were: Abu Yusuf, Muhammad al-Shaibani, Zufar Ibn al-Hudhayl and Hasan ibn Ziyad.²⁸

The Maliki School is the second school of law in point of time. It was named after Imam Abu’ Abd Allah Malik ibn Anas (90 or 97/713 to 179/795). The greatest work of Imam Malik is the *Muwatta’*, a collection of traditions which he arranged according to the topics of jurisprudence. It was one of the earliest compilations of the Traditions of the Holy Prophet (S.A.W.). This school of law was famous for its reliance on the Hadith next to the Qur’an as the source of law. Thus it earned the title *Ahl al-Hadith* (People of the Traditions). Imam Malik also relied on the *Ijma al-Madinah* or the practice of the people of Madinah as a source of law. He adopted *istislah* or public interest as a legal method for the interpretation of certain questions of law.²⁹

The Shafi’i School was the third surviving Sunni school of law. It was named after its founder Imam Muhammad ibn Idris al-Shafi’i (150/767 to 204/820). Imam Shafi’i is regarded as the first imam to scientifically expound the principles of the sources and methodology of laws (*usul al-fiqh*) in his treatise *al-Risalah*. He was an eclectic who reconciled the traditionalism of the Maliki and the rationalism of the Hanafi schools of law. Besides the Qur’an and Hadith as the paramount sources of law, he also accepted *Ijam* and *Qiyas* as secondary sources of law.³⁰ He introduced the principles of *istishab* or presumption of continuity as a method of reasoning.³¹

The Hanbili School was the last among the four surviving Sunni schools of law. It was named after its founder, Imam Abu ‘Abd Allah Ahmad ibn Hanbal (164/780 to 241/855). Imam Hanbal’s famous works are the *Musnad*, a collection of more than 40,000 traditions of the Holy Prophet (S.A.W.), and the *Masail*, his answers to questions relating to dogmatism, ethics and law.³²

The second important achievement in the development of Islamic Law during this period was the scientific collection and

compilation of the Traditions of the Holy Prophet (S.A.W.). Strict conditions were made by the compilers in order to discard the forged and fabricated ones. Foremost among these compilers were Imam Buhari, Imam Muslim, Abu Dawud, al-Tirmidhi, al-Nasa'i, and ibn Majah.³³

The **fifth period** was the period of imitation (*taqlid*). If Islamic Law were likened to a tree, it may be said that upon the growth and full development of the four Sunni schools, Islamic Law had attained its full development. Its divine aspects were completely revealed and properly compiled in book form, such as the Holy Qur'an and the voluminous Ahadith. Its juristic aspects were likewise fully expounded. The jurists at that period agreed that there was no longer any question of law that had not been fully expounded by the four schools of law. This status led to the birth of the principle of *taqlid* (imitation). As the jurists could not surpass the achievements reached by their predecessors, what they did was that each jurist singled out and followed a school of law and crystallized the principles laid down by such school. The jurists at that period were known as the *Muqqallidon*.

The **sixth period**, the last and current, is the period of codification, modification and revision. As a result of the disintegration of the Islamic Ummah under the Abbasid Dynasty and the birth of the several Muslim states, each state codified its own laws. The first of these codifications was the *Majallah al-Ahkam al-Adliyyah* (commonly known as the Majelle), which was made in 1876 as the Ottoman Civil Code, and the Code of Civil Procedure, which relates to civil Transactions.

Regarding the family and the law of Inheritance, the first to be codified was the Iranian Civil Code, which was promulgated between 1927 and 1935. This example was followed in Syria (1935), Tunisia (1956), Morocco (1958), and Iraq (1959). Other Muslims countries followed later.³⁴

There are now thirty-five countries all over the world that have Muslim majorities and another twenty that have Muslim minorities.³⁵ Some of these countries that have Muslim minorities have also

codified the family laws, as in Singapore and in the Philippines. From time to time, as the case may arise, these codified Muslim laws are subjected to modification and revision, in keeping with the Muslim interests, provided such changes are made within the framework of the comprehensive principles of Shari'ah.

3. Sources of Islamic Law

The term "Sources" here means the places where the principles of law are first to be found. Jurists often use the term "roots," when speaking about how or from where the rules of law are deduced. Often they are of the opinion that the fundamental sources of Islamic Law are the Holy Qur'an and the Sunnah of the Holy Prophet (S.A.W.). Juristic opinions are mere secondary sources, such as consensus of opinion (*ijma*), analogical deduction (*qiyas*), juristic preference (*istihsan*), public policy (*masalihah/istislah*), and presumption of continuity (*istishab*).³⁶

A. The Holy Qur'an

Muslims admit the Holy Qur'an as the compilation of all the revealed words of Allah (S.W.T.) to His Messenger, Muhammad (S.A.W.), through Angel Gabriel. Therefore, to Muslims, the Holy Qur'an is the fundamental and supreme law, to which all laws must conform. No law shall be valid if it contravenes the mandate of the Holy Qur'an.

The Holy Qur'an was revealed to the Holy Prophet (S.A.W.) in fragments, as circumstances arose, within 23 years of his prophethood (13 B.H. to 10 A.H.). The first revelation was the first five *ayats* of Surah 96 of the Holy Qur'an and the last revelation was Ayat 4, Surah 5, which has been cited, *infra*, on the revelation period under the subject of the development of Islamic Law (which see).

The whole Holy Qur'an was committed in writing, though in scattered materials and from memory of the companions of the Holy Prophet (S.A.W.) before his death, which insured the certainty of the

belief by the Muslims that the Holy Qur'an is the true word of Allah (S.W.T.).

The Holy Qur'an is a complete and comprehensive source of law, covering the infinite past and the infinite future. It is absolute and immutable because time, place and circumstance do not affect it. Allah (S.W.T.) says, in effect: "No change can there be in the words of Allah."³⁷

The Holy Qur'an is not a code of law in the modern sense. It is basically a book of religious guidance. Nevertheless, it contains some legal principles which have been roughly estimated to be as follows: 70 on family law; 70 on civil law; 30 on penal law; 13 on jurisdiction and procedure; 10 on constitutional law; 25 on international law; and on economic and financial order.³⁸

B. The Sunnah of the Holy Prophet (S.A.W.)

The Sunnah, literally, means way, custom, habit of life. Technically, it is defined by the jurists as the utterances and personal acts of the Holy Prophet (S.A.W.) and the acts and saying of others tacitly approved by Him.³⁹

The Sunnah is also a divine inspiration (*ilham*), which explains and demonstrates the Holy Qur'an. Allah (S.W.T.) says, in effect:

...and we have sent down unto thee (also) the Message; that thou mayest explain clearly to men what is sent for them, and that they may give thought.⁴⁰

Therefore, to understand the Holy Qur'an, it is indispensable to learn and understand the Sunnah as its complement. These are the divine sources of Islamic Law, which is otherwise known as the Shari'ah.

Except for a few that were written down, most of the Sunnah was committed into memory during the lifetime of the Holy Prophet

(S.A.W.). Even after his death, the Sunnah was transmitted from generation to generation by narration or report, which is called the Hadith (plural, *ahadith*). To prove the authenticity and veracity of the Sunnah due to the trustworthiness of the narrators, the names of the chains of narration from the last narrator to the Holy Prophet (S.A.W.) are also mentioned in the narration. This portion of the narration or *hadith* is called the *isnad* or *sanad*.⁴¹

To determine the authenticity and veracity of a *hadith*, the names, background, trustworthiness and honesty of every narrator were properly investigated. This authentication process was a branch of the Hadith known as the science of *Mustalah al-Hadith*.⁴²

In view of the different backgrounds, as well as trustworthiness of the narrators and the different modes or chains of narration, the Hadith has been categorized qualitatively into sound (*sahih*), good (*hasan*), or weak (*da'if*). A *sound* hadith is one in which the chain of authority has been carried back without interruption to a Prophet's companion by a chain of narrators, each of whom is considered to be trustworthy. A *good* hadith is one in which the *sanad*, though complete, has one weak link, but is confirmed by another version.⁴³ A *weak* hadith is one that has a doubtful chain of narration or comes from a narrator of doubtful character. Therefore it has no weight in Islamic Jurisprudence.

The Hadith was compiled beginning from The Companions, or as early as during the lifetime of the Holy Prophet (S.A.W.), including the written Constitution of the Muslim state of Madinah, treaties, instruction to tax collectors, etc. After his death, collection and compilation of the Hadith were made by stages until a written form was arrived at.⁴⁴ At the last stage, the Hadith was properly and completely collected and compiled. Of the collection, six (*sihah-sitah*) were found to be the most authentic. They were the 1) Sahih Buhari, 2) Sahih Muslim, 3) Sunan Abu Dawud, 4) Sunan Termidhi, 5) Sunan Nasai, and 6) Sunan ibn Majah.⁴⁵

The Holy Qur'an and the Sunnah of the Holy Prophet (S.A.W.) are the divine sources of Islamic Law, to which all other Islamic laws

must conform. With regard to the juristic opinion as a source of law, classical Muslim writers on jurisprudence have divided juristic opinion into two kinds of unequal importance: the *Ijma* (consensus) and the *Qiyas* (individual analogical deduction).

1) *Ijma* (consensus of opinion)

Jurists defined *Ijma* as agreement of jurists among the followers of Muhammad (S.A.W.) in a particular age on a question of law.

After the death of the Holy Prophet (S.A.W.), some of the leading companions residing in Madinah served informally as a consultative body to help the Caliph in solving any complicated question which did not find a solution directly in the Qur'an or in the Sunnah.⁴⁶ The principle of law they unanimously agreed upon, which was within the framework of the Shari'ah, was acknowledged as a third source of law.⁴⁷ Whoever denied its authority was considered an infidel.⁴⁸

Ijma as a source of law has its bases in the Holy Qur'an, as well as in the Sunnah of the Holy Prophet (S.A.W.).

Among its Qur'anic bases are the following:

O ye who believe! Obey Allah, and obey the Apostles, and those charged with authority among you...⁴⁹

When there comes to them some matters touching (public) safety or fear, they divulge it. If they had only referred it to the Apostles, or those charged with authority among them, the proper investigators would have tested it from them...⁵⁰

If anyone contends with the Apostles even after guidance has been plainly conveyed to him, and follows a path other than that becoming to men of faith, we shall leave him in the path he has chosen, and land him in Hell, - what an evil refuge!⁵¹

From the saying of the Holy Prophet (S.A.W.), the following may be cited as the bases of Ijma as a source of law.⁵²

1. My people will never be unanimous in error.
2. The hand of Allah (S.W.T.) is over the collectivity, and whoever quits it, is sent to hell.
3. What Muslims agree to be good is also good in the sight of Allah (S.W.T.).

Classical jurists have different views with regard to the generation of jurists or group of jurists or people whose consensus of opinion would be valid as a source of law. Imam ibn Hanbal and al-Zahiri asserted that ijma must be limited to the companions. Imam Malik, on the other hand, confined ijma to the Muslim Community in Madinah. The majority view was that ijma as a source of law should not be limited to a certain generation or in a certain community but must be a consensus of opinion of jurists in a particular age on a particular question of law.⁵³ The ijma of a later generation may abrogate the ijma of a former.⁵⁴ However, it is an historical fact that after two generations from the death of the Holy Prophet (S.A.W.), Muslim jurists were dispersed into various Muslim provinces. The consensus of their opinions was almost impossible to attain. Thus the situation gave impetus to the utmost exercise of individual juristic opinion (*ijtihad*).

Ijtihad, literally, means exertion to the utmost degree to attain an object. Technically, it means the exercise of intelligence by a scholar in order to form an opinion on the interpretation or application of a provision in the Shari'ah, as to be applied on a case, which is not expressly covered by a provision in the Shari'ah.⁵⁵

Through *ijtihad*, *qiyas* and other subsidiary legal principles come into prominence.

2. *Qiyas (individual analogical deduction)*

Qiyas is defined as a process of deduction by which the law of the text is applied to cases which, though not covered by the language,

are governed by reason of the text.⁵⁶ The jurists derived qiyas from the fundamental juridical premise that all rules are based upon objectives and interests and such objectives and interests are the causes for the rules. Thus from the rules are deduced the causes. Having done so with any particular problem, they were able to apply the same rule to another problem whenever the case for both was identical.⁵⁷

In order that Qiyas or analogy may be employed, it is essential that four requisites are present. These are: (1) the original case (*asl*), upon which the attainment of qiyas is based; (2) the new case (*far'*), which is the subject matter to be referred back to the original case; (3) the effective cause (*illah*), upon which the original rule is based; and the rule (*hukm*) governing the original case which is to be applied on the new case.⁵⁸

The schools of law differed over the extent to which legal analogy could be relied upon. The Hanafite jurists used it extensively; the Malikites used it only sparingly; the Hanbalites used it only in dire necessity. The anti-analogy groups alleged that there was no need for it, because the Qur'an and Sunnah were sufficient. They asserted that analogy was a guess and could not be relied upon.⁵⁹ The Shafites tried to limit the use of analogy to questions of detail when there is no relevant text in the Qur'an, Sunnah or ijma. They established a balance between those who used analogy extensively and those who rejected it as a source of law.

Apart from qiyas, there are other supplementary sources of law, which are exclusive to each particular school of law. They are: (1) the *Istihsan* (legal preferences) of Imam Abu Hanifa. (2) the *Istislah* or *al-Masalih al-Mursalah* (public interests) of Imam Malik; and (3) the *Istishab* (presumption of continuity) of Imam Shafi'i.

(a) Istihsan

Istihsan has been variously translated as "legal preferences," "favorable construction" and "juristic equity." It was advocated by Imam Abu Hanifa to explain and liberalize the application of qiyas. It was founded upon a desire for beauty or symmetry; the removal

of discrepancies or inequities in law.⁶⁰ Technically, it denotes the abandonment of an opinion, to which reasoning by qiyas would lead, in favor of different opinions supported by stronger evidence. Such a departure from analogy may be necessarily based on and may be supported by the Sunnah, or Ijma, or it may be another type of analytical deduction hidden in nature.⁶¹

It is argued that Istihsan is one of the two qiyases, which are contradictory to each other, say, the former qiyas and the later qiyas. The later qiyas being more liberal, equitable and supported by strong evidence, jurists are allowed to prefer it to the former, which is called Istihsan.

This legal principle has its bases in the Holy Qur'an and the Sunnah of the Holy Prophet (S.A.W.). Among its Qur'anic bases are:

... Allah intends every facility for you; He does not want to put you to difficulties...⁶²

Those who listen to the word and follow the best (meaning) in it: those are the ones whom Allah has guided, and those are the ones endued with understanding.⁶³

It was reported that the Holy Prophet (S.A.W.), while sending Ali and Mu'ad on official mission to Yemen, directed them to be equitable instead of rigid towards the people.⁶⁴

(b) Istislah or al-Masalih al-Mursalah

Istislah or al-Masalih al-Mursalah has been translated as "public good" or "public interest." It has been defined as the establishment of a principle (hukm), which is recommended by reason of being advantageous.⁶⁵ It was originally introduced by Imam Malik as a term for the methodology of law contained in *Maslahah*. According to need of circumstance, it consists in permitting a thing simply because it serves a "useful purpose" or *maslahah*.⁶⁶ Useful purpose has been divided into three kinds:⁶⁷

1. Useful purpose that meets an absolute necessity (*daruri*), e.g., preservation of life, protection of property; preservation of offspring (prohibition of adultery); preservation of faith (killing of apostates); the holy war; and preservation of reason (prohibition of alcoholic drinks).
2. Useful purpose that meets no absolute necessity, but is merely expedient, e.g., the institution of location (*ijarah*).
3. Useful purpose that serves as an end, as the promotion of good morals.

There are three conditions for the adoption of *Istislah*:⁶⁸

- 1- The case should not be one relating to religious observances;
- 2- The interest to be protected should be in conformity with Shari'ah; and
- 3- It should be a necessity and not a luxury, or it should be for the betterment of life instead of being for mere show.

(c) *Istishab*

Imam Shafi'i introduced *Istishab*. It has been translated as "permanency," "concordance" or "presumption of continuity." Technically, it is used to indicate that things whose existence or nonexistence have been proven in the past should be presumed to have remained so until the contrary is proved.⁶⁹ It may be expressed in such rules as: freedom from obligation is presumed until the contrary is proved, or an established legal fact is presumed to exist until the contrary is proved.⁷⁰

This goes to show that jurists employ different methodology to formulate principles of law as the bases or sources of rules of law. It is also the reason why jurists have different views on the detailed interpretation of Shari'ah. However, each of them acknowledges the others as equally orthodox, as supported by the Sunnah of the Holy Prophet (S.A.W.), in which he said: "The difference in the view of my *ummah* is mercy."

4. Advent of Islam in the Philippines

Although the coming of Tuan Mash'ika in the Philippine archipelago, particularly in the islands of Sulu, is of scanty record, it is very significant in the history of the evolution of Islamic Law in the country, because it marked the first man to bring Islamic Law, as well as Islamic Faith in the country. The Sulu genealogy (*tarsila*) fails to provide the date of his coming.⁷¹ Also, it did not determine whether or not he was a Muslim.⁷² But it may be inferred in the following circumstances that he was. First, his name alone, "Tuan Masha'ika," signifies that he was a Muslim: Tuan is a Moro term for "Muslim religious leader." Masha'ika is derived from the Arabic word *shaik*, which means "Muslim tribal leader." *Tuan* as used by the Moro, as well as *shaik* in Arabic was never used for a non-Muslim. Second, it was reported in "Sulu Historical Notes" that he begot someone named Muamin, a name derived from the Arabic term *mu'min*, which means "believer."⁷³ It was so reported because he had children, Tuan Hakkim and Aisha, who were all *mu'min* (believers).⁷⁴

History records that in 1380 A.D.,⁷⁵ the first Muslim missionary, allegedly a noted Arabian judge named Karim ul Makhdum, who was later called "Tuan Sharif Aulia," landed in Sulu and propagated wisely and peacefully the Islamic faith. He was the first Muslim who built a *masjid* (mosque) in the area.⁷⁶ It was also stated that when he came "people from all different parts flocked to him."⁷⁷ This description indicated that there might have been already Muslims in the area. This information also strengthened the claim that Tuan Masha'ika was a Muslim.

Ten years after the arrival of Makhdum, a dashing Muslim prince from Menangkabaw, Sumatra, Rajah Baguinda, came with his warriors (1390 A.D.) and settled in Buansa.⁷⁸ Thus, they increased the population, as well as strengthened the Islamic consciousness in the area.

In 1450 A.D., Sayyid Abu Bakr, an Arab missionary and a jurist also came.⁷⁹ He married Princess Paramisuli, a daughter of Rajah Baguinda.⁸⁰ Later, he became a judge in Rajah Baguinda's

Court. Finally, because Baguinda had no son, he appointed Abubakr as his successor.⁸¹ Thus, his expertise in Islamic Law and jurisprudence came into play.⁸² He founded the first Sultanate of Sulu and assumed the title of Sultan Shareif Al-Hashim.⁸³ He led like a Caliph and appointed ministers (*wazirs*) and governors (*panglimas*) and instituted reforms within the framework of the Shari'ah and administered justice and settled cases in accordance with Islamic Law and jurisprudence.⁸⁴ Therefore, it was to his credit that the evolution of Islamic legal system in his jurisdiction reached the degree of a state law.

The Islamization of Mindanao was credited to Sharif Muhammad Kabungsuwan and his brother Sharif Alawi. Kabungsuwan, with his bold and seasoned Samal warriors, landed at the mouth of Pulangi River, now Cotabato River, in Maguindanao, sometime in 1475 A.D.⁸⁵ It was reported that he did not only marry the daughters of local datus⁸⁶ but he also entered into alliances with them that strengthened his political position.⁸⁷ Later, he propagated the Islamic Faith and finally founded the first Sultanate of Maguindanao in the same fashion as Abubakr in Sulu.⁸⁸

As to the islamization of Lanao, the Maranao *salsila* (genealogy) says that Sharif Kabungsuwan and Sharif Alawi were not merely the propagators of Islam in the area but were also the ascendants of some of the Maranaos.⁸⁹

The Maranao *salsila* says:⁹⁰

Sharif Kabungsuwan married Potri Tomanina. His daughters were Potri Maamor, Potri Miraganding and Potri Baibatula. Their descendants were the five "Noni"...

Then Sharif Kabungsuwan married Angintabo and his son was Saripada Macaalang sa Maguindanao...

Sharif Alawi married Asinalong. Ayaon and Landa were their children...

Sharif Alawi married Binidaya Salbo sa Lumbac ah Lupa sa Subangan a alongan...

The salsila shows that each of them had at least twice married in Lanao. It is therefore not erroneous to say that the islamization of Lanao was attributed to the joint efforts of the two brothers who entered from the north on one hand and from the south on the other. On the other hand, Sharif Alawi landed in Tagoloan, Misamis Oriental on the northern shores of Mindanao and from there he propagated Islam among the people around the beautiful Lake Lanao.⁹¹ On the other, Sharif Kabungsuwan came into Maguindanao from the southern shores of the island and, from there, went to Lanao and propagated Islam. These two efforts ultimately met and blended together to the extent that the work of one could not be distinguished from the work of the other.

The Sultans of Tagoloan in Balo-i claim their descent from Sharif Alawi,⁹² and the sultans of Butig claim their descent from Sharif Kabungsuwan.⁹³

Side by side with the Islamic propagation, every community, when dominated by Muslims, became an *agama*, a name that denotes an Islamic community.⁹⁴ As soon as an *agama* was established, the Muslims installed their leaders, whom they called "Sultan" and built their *masjid* (mosque) or house of worship. Thus, an *agama* even today connotes not only a Muslim community ruled by a sultan, but also a community that has a *masjid*. Later on, as the islamization flourished, various *agamas* cropped up with the installation of their corresponding sultans.

Out of these various sultans, the *taritib* and *igma* (customary law) recognized only the sixteen Grand or Royal Sultanates, which were disproportionately distributed among the "four federated states" or the "*Pat a Pangamong a Ranao*".

In a nutshell, it is worth emphasizing that the founders of the sultanate government were Arabs who had deep insight in Islamic Law and jurisprudence: Abubakr, the first Sultan of Sulu, was an Arab missionary, preacher, judge and a noted jurist; Sharif Kabungsuwan, the first Sultan of Maguindanao, was the son of Zain Al-Abidin of Hadramaut, Southern Arabia, whose ascent could be traced up to

the family of Prophet Muhammad (S.A.W). These Arabs came and brought a new faith, Islam; a new law, the Islamic Law or Shari'ah; and established a new form of government, the Sultanate, patterned after the Orthodox Caliphate.

It was also probable that when they came, they brought with them, besides copies of the Qur'an and Hadith, also copies of other islamic treatises, like the Minhaj, Taqrib al-Intifa, etc. These were their guides for their administration.

At this juncture, it is deemed not erroneous to say that before the coming of the Spaniards in 1521 A.D., Islam was the way of life in the area; the Sultanate was the form of government,⁹⁵ and Islamic Law was the legal system administered by the sultans with the help of the Cali or Qadi (Judge), the most learned in Islamic Law and jurisprudence.

5. Islamic Law or the Shari'ah as Law of the Land

From the founding sultans, such as Abubakr of Sulu and Sharif Kabungsuwan of Maguindanao, down to the succeeding sultans including the sultans of the sixteen Royal Houses of the "*Pat a Pangampong a Ranao*," as well as the sultans of the various agamas (communities), every sultan exercised executive, judicial and legislative functions. He led like a Calipa, taking the Four Orthodox Caliphs as the model. He legislated ordinances based on Islamic Law and Jurisprudence, particularly the Shafi'i School of law. He tried and settled cases with the help of the Cali or Qadi.

As a consequence, islamic legal terms found their way into the native tongues, like *adat* (Arabic, *ada*) or customary law; *taritib* (Arabic, *taritib*) or order or protocol; *igma* (Arabic, *ijma*) or consensus. Terms in Islamic Criminal Law were absorbed into the local language. Such words as *diyat* (Arabic, *diyah*) or compensation; *radiam* (Arabic, *rajm*) or stoning in the case of adultery; *kitas* (Arabic, *qisas*) or retaliation; and many others were loaned from islamic criminal terminology.⁹⁶

6. Rise of Islamic Jurisprudence

Despite the fact that the Philippines had been colonized by the Spaniards (1521-1889) and later by the Americans (1889-1935) and then occupied by the Japanese (1941-1946) with their constant attempt to subjugate the Muslims, the latter, with the help of Allah (S.W.T), did not merely survive but became even stronger.

Besides the Qur'an and Hadith, which are the divine and immutable laws of the Muslims, Islamic Jurisprudence came into existence in the archipelago when Muslim laws, such as the Diwan of the Tausug and the Luwaran of the Maguindanao, were codified.

As early as 1740 A.D., Sultan Azimuddin (1735-1773) promulgated the first Sulu Code.⁹⁷ Another code, which is more consistent with the Qur'anic legal injunctions, was subsequently promulgated by Sultan Muhammad "Pulalon" Fadl (1842-1862).⁹⁸ It was followed by the principal Sulu Code, promulgated during the reign of Sultan Jamalul (Alm) Azam (1862-1884), which was most welcomed for its modifications on the matter of severe punishment provided for in the earlier codes.⁹⁹ This same Code was used without modification by Sultan Harun ar-Rashid (1884-1894). Then an even newer Sulu Code was issued in 1902 during the reign of Sultan Jamalul Kiram II (1894-1936).¹⁰⁰ The latest was promulgated by Ismail Kiram on December 30, 1950.¹⁰¹ All these Sulu Codes promulgated by the Sulu Sultans were known as the *Diwan*.¹⁰⁴

On Mindanao, the Luwaran of the Maguindanao was written during the reign of Sultan Maulana Hamza Khairuddin (1710-1778), who was himself a noted jurist.¹⁰² The compilation was based on several Arabic legal treatises such as the Minhaj et Talibin,¹⁰³ Minhaj al-Arifin, Taqrib al-Intifa', Fath al Qarib and Miratu al-Tullab.

7. Judicial Power as Sultan's Prerogative

The administration of justice was a prerogative of the sultan. The sultan usually appointed a deputy to assist him on judicial matters. The deputy was called the Datu Kali.¹⁰⁵ The sultan was also assisted

by a *wazir* (minister) who performed quasi-judicial functions. He received petitions and complaints. If the petition or complaint involved a very important question of law, he would refer it to the Datu Kali for decision or expert opinion.¹⁰⁶

8. Philippine Laws Recognizing Islamic Law

a. Spanish Era

Under the Spanish regime, no Royal Decree was ever enforced in Moroland. It was a period of constant war between the Muslims and the Spaniards, a war which the Spaniards did not win.¹⁰⁷

b. American Era

Under the American regime, at the first instance, there was a bitter war between the Americans and the Muslims that produced great American generals. However, when the United States government realized that the policy of war was not effective, it changed it into the so-called policy of attraction. Thus the U.S. government began entering into peace treaties with the Muslim sultans.

On August 20, 1899, the U.S. government, through its representative, Brig. Gen. John C. Bates, entered into a "treaty of peace" with the Sultan of Sulu, Sultan Jamalul Kiram II. On March 22, 1915, another treaty of similar nature was entered into between the same parties. Frank W. Carpenter, the Governor of the Department of Mindanao and Sulu, represented the U.S. Government.¹⁰⁸

These treaties recognized the religion of the Muslims; the sovereignty of the Sultan of Sulu over his dominions and the jurisdiction of the Agama Courts over all crimes committed within the territory of the Sultan of Sulu.¹⁰⁹

This recognition was manifested in the following provisions of said treaties:

Art. III provided:

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 other religious customs shall be respected and no one shall be prosecuted on account of his religion.

Art. IX provided:

Where 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 Sultan by the United States authorities if in their possession. In all other cases persons charged with crimes and offenses will be delivered to the United States authorities for trial and punishment.

Besides the foregoing treaties, the Philippines Commission, a body serving both as Legislature and Supreme Court during the early years of the American occupation, promulgated a series of laws, which clearly showed that the United States government recognized and respected the laws as well as the religious practices of the Muslims.

On June 1, 1903, the Philippine Commission promulgated Act No. 787, which provided for the organization and government of the Moro Province.

Section 13 of said Act provided:

It shall be the duty and the power of the Legislative Council:

(j) To enact laws which shall collect and codify the customary laws of the Moros as they... are enforced in the various parts of the Moro province among the Moros, modifying

such laws as the legislative council thinks best and amending them as they may be inconsistent with the provisions of the Act of Congress... and to provide for the printing of such codification, when completed, in English, Arabic or the local Moro dialects as may be deemed wise. The Moro customary laws thus amended and codified shall apply in all civil and criminal actions arising between members of some non-Christian tribes other than Moros.

(k) To enact laws for the organization and procedure of district courts, to consider and decide civil and criminal actions arising between Moros, between members of non-Christian tribes, and between Moros and members of other non-Christian tribes. The district court shall be presided over by the Secretary of the district and the other members of the court shall be appointed by district governor and shall vary with the race or tribe of the litigants, so that where the action arises between members of other non-Christian tribes, and when the litigation arises between Moros and members of other non-Christian tribes there shall be at least one Moro member of the court.

On June 13, 1905, the Philippine Commission, by authority of the United States, passed Act No. 1283. This Act amended Act 787. Section 6(b) of Act 1283 amended Section 13(j) to as follows:

The substantive law as thus amended and modified shall apply in civil actions in which each of the parties is either a Moro or a member of some non-Christian tribe and in all criminal and civil law of the Philippine islands shall apply and be in force as in other provinces.

To enact laws amending and modifying the substantive civil and criminal law of the Philippines islands to suit local conditions among

the Moros and other non-Christian inhabitants of the province, and to cause such laws to conform, when practicable, to the local customs and usages of such inhabitants...

Section (c) amended sub-section (k) of section (13) to read as follows:

Mohammedan laws and customs – Judges of the courts of First Instance and Justices of the peace deciding civil cases in which the parties are Mohammedans or pagans, when such action is deemed wise, may modify the application of the laws of the Philippine Islands, taking into account local laws and customs; provided that such modification shall not be in conflict with the basic principles of the laws of the United States of America.¹¹⁰

(k) to enact for the organization and procedure of local tribal ward courts to consider and decide minor civil actions in which the parties in interest, or any of them, are Moros or members of some other non-Christian tribe, and minor criminal actions in which the accused, or any of them, are members of some others non-Christian tribe. Tribal ward courts shall, within limits defined in the preceding sentence, have and exercise the jurisdiction now or hereafter vested by law in courts of justice of the peace.

Section 13 amended Section 27 of Act 787 to read as follows:

Justice of the peace in the Moro province shall not have jurisdiction to try civil actions in which the parties or any of them, are Moros or members of some other non-Christian tribe, or criminal actions in which the accused or any of them are Moros or members of some other non-Christian tribe.

On April 3, 1915, the Philippine Commission, by authority of the United States, enacted Article No. 2520. Section 3 of this Act provides:

In view of the foregoing, the American government was able to win the support of some local datus to rally behind its new regime.

C. Philippine Independence

After the Philippines was granted independence, laws were passed recognizing the validity of the marriages and divorces between Muslims residing in non-Christian provinces and performed in accordance with their customs, rites or practices.¹¹¹

Art. 78 of the Civil Code provides:

Marriages between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices. No marriage license or formal requisites shall be necessary. Nor shall the persons solemnizing these marriages be obliged to comply with

However, twenty years after the approval of this Code, all marriages performed between Mohammedans or pagans shall be solemnized in accordance with the provision of this Code. But the President of the Philippines, upon recommendation of the Secretary of the Interior, may at any time before the expiration of said period, by proclamation, make any of the said provisions applicable to the Mohammedan and non-Christian inhabitants of any of the non-Christian provinces.

The recognition of these Muslim marriages, however, was limited to a period of 20 years after the approval of the Code. After it

lapsed, the 20 years period was extended subsequently by Republic Act No. 6268, which was approved on June 19, 1971. The extension was for a period of 10 years, or up to 1979.¹¹²

Republic Act No. 394, approved June 17, 1949, allowed absolute divorce among Muslims.¹¹³ Section 1 provides:

For the period of 20 years from the date of approval of this divorce among Muslims residing in non-Christian province shall be recognized and governed by Muslim customs and practices.

After it lapsed, a Bill to revive the same was still pending when Congress was dissolved in 1972 by President Marcos, who proclaimed Martial Law.¹¹⁴

Presently, the laws on marriages and divorces among Muslims are embodied in the Muslim Code (P.D 1083) which came in effect on February 4, 1977.

9. Incorporation of Islamic Law into the Philippine Legal System

Since the Spanish era, the Moros have fought to preserve their identity as Muslims, their way of life, which is Islam, and their homeland. These were the same reasons why they fought the Americans and the Japanese. These were also the underlying reasons why there were the battles at the Moro kotas around Lake Lanao, the Moro juramentados¹¹⁵ of Sulu; the Moro rebellions, such as those led by Kamlon in Sulu and Tawantawanan in Lanao; the declaration of the Mindanao Independence Movement led by former Governor of Cotabato Datu Udtog Matalam and recently the uprising of the Moro National Liberation Front and the Moro Islamic Liberation Front.

These were centuries-old problems, which could not be solved by processes of a decade. However, the government of the Philippines, through laws, provides programs and projects in the attempt at some resolution. A series of laws for the Muslims¹¹⁶ had been promulgated. One of these is Presidential Decree No. 1083, otherwise known as the

Code of Muslim Personal Laws of the Philippines.

This Code provides:¹¹⁷

Pursuant to section 11 of Article XV of the Constitution of the Philippines which provides that "The State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of State policies," this code:

- (a) Recognizing the legal system of the Muslims in the Philippines as part of the law of the land and seeking to make Islamic institutions more effective;
- (b) Codifies Muslims Personal Laws; and
- (c) Provides for an effective administration and enforcement of Muslim Personal Laws among Muslims.

When the Muslim Code recognizes the legal system of the Muslims as part of the law of the land, it is implied that such recognition is not limited to the codified personal laws (i.e., P.D. 1083), but pertains to the whole system (i.e., the Islamic Law or Shari'ah) which must be observed whenever applicable and which must be enforced like any other Philippine Law.¹¹⁸ Further, it was only when the said Muslim Code was signed into law on February 4, 1977, that Islamic Law became part of the Philippine legal system. Thus the Philippine legal system becomes the melting pot of three world legal systems, which are the Roman Law or Civil Law, the Anglo-American Law or the Common Law, and the Islamic Law or the Shari'ah.

The Muslim Code also codifies the Muslim personal laws, which includes all laws relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses, as provided for in this Code.¹¹⁹

Further, it provides for an effective administration and enforcement of Muslim personal laws among Muslims through the creation of the Courts of limited jurisdiction as part of the judicial system, to be known as the Shari'ah District Courts and the Shari'ah Circuit Courts, which shall exercise powers and functions in accordance with Title I of Book Four of the said Code.¹²⁰

Pursuant to the mandate of Art. 148 and 158 of the Muslim Code, the Supreme Court, *en banc*, through Resolution, provided the "Special Rules of Procedures in the Shari'ah Courts (Ijaraat al Mahakim al Shari'ah) on September 20, 1983. This "Special Rules of Procedures" is adopted from Islamic Procedural Law as it is practiced in Muslim courts in Muslim countries. This is also a part of Islamic adjective law being incorporated in Philippine adjective law.

At this juncture, it is perhaps right to say that Islamic Law has become a state law, like the Civil Law and the Common Law. The Civil Law and the Common Law are the laws for Christians, while the Islamic Law is the law for Muslims.

Conclusion

It is clear that the evolution of Islamic Law in the Philippines has been progressive and its contribution to the enrichment of the Philippine legal system is laudable. It started as a law for individual Muslims who migrated into this archipelago, then became the law of the Agama (Muslim community), then become the law of the Sultanate, and finally became recognized by the Philippine Republic as part of its legal system.

Notes

1. *The Holy Qur'an*, 45:18; Abdullah Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary*, Note 4746, 1359 (1946).
2. Anwar Ahmad Qadri, *Islamic Jurisprudence in the Modern World*, 17 (1986).
3. *The Holy Qur'an*, 45:8.
4. *Id.*, 5:4
5. *Id.*, 10:64.
6. Abdul Qadir, 'Oudah Shaheed, *Criminal Law of Islam*, 16 (1987).
7. Anwar Ahmad Qadri, *Supra* Note 2 at 16.
8. Joseph Schacht, *An Introduction to Islamic Law*, 1 (1971).
9. See Pama L. Muti, "The Family Code and the Muslim Code: Confluence and Divergence," *Mindanao Law Journal*, 7, (1989).
10. Hosny M. Gaber, *The Early Islamic State with Special Reference to the Evolution of the Principle of Islamic International Law, 632-750 AD*, 28
11. See Asaf A.A. Fyzee, *Outline of Muhammedan Law*, 8 (1949).
12. *Id.*, 20.
13. *Ibid.*
14. Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 1 (1989).
15. *Ibid.*
16. *Id.*, 1-2.
17. Anwar Ahmad Qadri, *Supra* Note 2 at 239.
18. Asaf A.A Fyzee, *Supra* Note 11 at 20.
19. Anwar Ahmad Qadri, *Supra* Note 2 at 238.
20. Asaf A.A Fyzee, *Supra* Note 11 at 20.
21. Anwar Ahmad Qadri, *Supra* Note 2 at 21.
22. Asaf A.A Fyzee, *Supra* Note 11 at 22.
23. *The Holy Qur'an*, 96:1-5.
24. *Id.*, 5:4.
25. Hamid Aminoddin Barra, *The Code of Muslim Personal Laws: A Study of Islamic Law in the Philippines*, 18 (1988).
26. Asaf A.A. Fyzee, *Supra* Note 11 at 23.
27. See Hamid Aminoddin Barra, *Supra* Note 25 at 22.
28. Asaf A.A. Fyzee, *Supra* Note 11 at 23.
29. *Ibid.*
30. *ID.*, at 24.
31. Hamid Aminoddin Barra, *Supra* Note 25 at 22.
32. *Id.*, at 27.
33. *Id.*, at 28.

34. Id, at 30-31.
35. Matthew Lippman, et.al., *Islamic Criminal Law and Procedure: An Introduction*, 1 (1988).
36. Anwar A. Qadri, Supra Note 2 at 174-175.
37. *The Holy Qur'an*, 10:64.
38. Hamid A. Barra, Supra Note 25 at 13-14.
39. Anwar A. Qadri. Supra Note 2 at 189.
40. *The Holy Qur'an*, 16:44.
41. Hosny M. Gaber, Supra Note 10 at 36.
42. Hamid A. Barra, Supra Note 25 at 11.
43. Hosny M. Gaber, Supra Note 10 at 36.
44. Muhammad Hamidullah, *Muslim Conduct of Statek*, 19 (1945).
45. Anwar A. Qadri, Supra Note 2 at 193.
46. Hosny M. Gaber, Supra Note 10 at 37.
47. Ibid.
48. Muhammad Hamidullah, Supra Note 44 at 22.
49. *The Holy Qur'an*, 4:59.
50. Id, 4:59.
51. Id, 4:115.
52. Muhammad Hamidullah, Supra Note 44 at 21-22.
53. See Hamid A. Barra, Supra Note 23 at 20.
54. See Muhammad Hamidullah, Supra Note 44 at 22.
55. Hosny M. Gaber, Supra Note 10 at 38.
56. Anwar A. Qadri, Supra Note 2 at 211.
57. Hosny M. Gaber, Supra Note 10 at 39.
58. Hamid A. Barra, Supra Note 23 at 21.
59. Hosny M. Gaber, Supra Note 10 at 46.
60. See Anwar A. Qadri, Supra Note 2 at 222-223.
61. Id, at 222.
62. *The Holy Qur'an*, 2:185.
63. Id, 39:18.
64. See Anwar A. Qadri, Supra Note 2 at 223.
65. Id, at 224.
66. Ibid.
67. Id, at 224-225.
68. Ibid.
69. Id, at 226.
70. Hosny M. Gaber, Supra Note 10 at 42.
71. Datumanong Di. A. Sarangani, "Islamic Penetration in Mindanao and Sulu." *Mindanao Journal*, 31, (1977).

72. Ibid.
73. Macapanton Y. Abbas Jr., "The Historical, Political, Social and Legal Justification for Codification and Enforcement of Muslim Laws and Adat Laws," *Mindanao Journal*, 110 (1977).
74. Ibid.
75. See Datumanong Di A. Sarangani, *Supra* Note 71 at 31.
76. Hamid A. Barra, *Supra* Note 25 at 36.
77. Ibid.
78. See Datumanong Di. A. Sarangani, *Supra* Note 71 at 32.
79. Ibid.
80. *Id.*, at 33.
81. Ibid.
82. Ibid.
83. Hamid A. Barra, *Supra* Note 25 at 36.
84. Datumanong Di A. Sarangani, *Supra* Note 71 at 33.
85. *Id.*, at 35.
86. Hamid A. Barra, *Supra* Note 25 at 36.
87. Datumanong Di A. Sarangani, *Supra* Note 71 (1989).
88. Ibid.
89. Atti T. Cayongcat, *Knowing the Meranao*, 17 (1989).
90. Ibid.
91. Datumanong Di A. Sarangani, *Supra* Note 71 at 35.
92. Atti T. Cayongcat, *Supra* Note 89 at 16.
93. Hamid A. Barra, *Supra* Note 25 at 36.
94. Atti T. Cayongcat, *Supra* Note 89 at 14.
95. Hamid A. Barra, *Supra* Note 25 at 36.
96. *Id.*, at 44.
97. *Id.*, at 47.
98. Ibid.
99. Ibid.
100. Ibid.
101. Musib M. Buat, "Survey of Filipino Muslim Adat (Customary Law) law and the Role of Agama Courts," *Mindanao Journal*, 86 (1977).
102. Michael O. Mastura, "Shari'ah and Codification: Islamic Legislation in Relation to Legal Reforms on the Philippines," *Shariah Law Journal*, 64 (1987).
103. Musib M. Buat, *Supra* Note 101 at 86.
104. Hamid A. Barra, *Supra* Note 25 at 47.
105. Musib M. Buat, *Supra* Note 101 at 98.
106. Ibid.
107. Hamid A. Barra, *Supra* Note 25 at 48.

108. Macapanton Y. Abbas Jr., *Supra* Note 73 at 116.

109. *Ibid.*

110. *Id.*, at 120-122.

111. *Civil Code of the Philippines*. (Otherwise known as Republic Act No. 386 which took effect on August 30, 1950), Art. 78.

112. Edgardo L. Paras, *Civil Code of the Philippines, Annotated*. 308 (1984).

113. *Id.*, at 309.

114. Hamid A. Barra, *Supra* Note 25 at 51.

115. Juramentado is a term used by government soldiers for Mudjahiddin. They meant suicide commando.

116. See Zenaida S. Reyes, *Philippine Laws for the Muslims*, (n.d.).

117. *Code of Muslim Personal Laws of the Philippines* (otherwise known as Presidential Decree No. 1083 which took effect on February 4, 1977), Art. 2.

118. Hamid A. Barra, *Supra* Note 25 at 59.

119. *Code of Muslim Personal Laws of the Philippines*, *Supra* Note 117, Art 7 (i).

120. *Id.*, Art. 137.

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