

THE FAMILY CODE OF THE PHILIPPINES IN RELATION TO THE
CODE OF MUSLIM PERSONAL LAWS OF THE PHILIPPINES.
A COMPARATIVE STUDY

MARIAM SAIDONA TAROHANAO

INSTITUTE OF COMPARATIVE LAWS
FACULTY OF LAWS
INTERNATIONAL ISLAMIC UNIVERSITY, MALAYSIA

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THE FAMILY CODE OF THE PHILIPPINES IN RELATION
TO THE CODE OF MUSLIM PERSONAL LAWS OF
THE PHILIPPINES: A COMPARATIVE STUDY

BY

MARIAM SAIDONA TAGORANAO
(G9211022)

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RESUME

MARIAM SAIDONA TAGORANAO

Date of Birth: March 20, 1960

Place of Birth: Bubong, Lanao del Sur, Philippines

Nationality: Muslim-Filipina

Education:

Bachelor of Laws (L.L.B.), 1987
Bachelor of Science in International Relations, 1981
Mindanao State University (MSU)
Marawi City, Philippines (Phils)

Diploma in Shariah Law and Practice, 1992 ..
International Islamic University, Malaysia

Scholarship Award:

MSU University Scholarship, 1977-1981; 1983-1987

Other Award:

First Placer, National Maahad Federation Qur'an
Reading Competition, 1984
Manila, Philippines

Eligibilities:

Shari'ah Lawyer (Bar License, 1991)

Barrister (Law)

Career Service Professional

Representative:

(1) First ASEAN Qur'an Reading Competition, 1989
Bangkok, Thailand

(2) Official Coach of the Philippine Participants to
the International Qur'an Reading Competition,
Malaysia, 1989

Work Experience:

Legal Officer II
Office on Muslim Affairs
Quezon City, Philippines

DEDICATION

To my family, relatives, and those friends
who are known in times of need.

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TABLE OF CONTENTS

	Page
Acknowledgments.....	ii
Abstract.....	vii
 CHAPTER	
I - The Conceptual Background of the Philippine Laws.....	1
A. A Brief History of the Enactment of the Family Code of the Philippines.....	1
B. A Brief History of the Codification of the Muslim Personal Laws of the Philippines.....	5
C. Importance of the Study.....	12
D. Scope and Limitation of the Study.....	13
II - Islamic Law Sources: An Overview.....	16
A. Qur'an.....	18
B. Sunnah.....	20
C. Ijma.....	22
D. Qiyas.....	24
E. Other Sources.....	25
III - Marriage	
I. Nature of Marriage.....	29
A. Under the Family Code.....	29
B. Under the Muslim Code.....	31
C. Comparative Study.....	34

II. Requisites of Marriage.....	36
A. Under the Family Code.....	36
B. Under the Muslim Code.....	39
C. Comparative Study.....	45

IV - Classification of Marriage

I. Valid Marriage.....	48
A. Under the Family Code.....	48
B. Under the Muslim Code.....	48
C. Comparative Study.....	49

II. Voidable and Irregular Marriage

A. Under the Family Code.....	49
B. Under the Muslim Code.....	55
C. Comparative Study.....	60

III. Void Marriage	61
A. Under the Family Code.....	61
B. Under the Muslim Code	63
C. Comparative Study.....	66

V - Dissolution of Marriage

I. Annulment of Marriage	69
A. Under the Family Code.....	69
B. Under the Muslim Code.....	74
C. Comparative Study.....	74

II. Absolute and Relative Divorce (Legal Separation)

A. Under the Family Code.....	75
Advantage of Relative Divorce.....	76

Ground for Legal Separation.....	76
Defenses for Legal Separation.....	82
Effects of Legal Separation.....	85
B. Under the Muslim Code.....	87
Divorce by Talaq.....	88
Divorce by Ila.....	91
Divorce by Zihar.....	92
Divorce by Lian.....	92
Divorce by Khul.....	94
Divorce by Tafwid.....	95
Divorce by Faskh.....	96

VI - Rights and Obligations Between Husband and Wife

A. Under the Family Code.....	99
B. Under the Muslim Code.....	104
C. Comparative Study	108

VII - Property Relations Between Husband and Wife

A. Under the Family Code.....	111
System of Absolute Community Property.....	112
Conjugal Partnership of Gains.....	120
Regime of Separation of Property.....	126
B. Under the Muslim Code.....	127
C. Comparative Study.....	129

CONCLUSION.....	131
NOTES.....	134
SELECTED BIBLIOGRAPHY.....	150
CASES.....	153

ABSTRACT

This study undertakes to examine and identify the relationship of the two distinct family law in the Philippines, one governing the Muslim citizens and the other applies to the Christian majority and all other non-Muslim populations of the country. To achieve this goal, a comparative approach is to be adopted.

The Family Code which applies to the non-Muslim Filipinos was enacted by the then President Corazon C. Aquino as Executive Order 227 and took effect on August 3, 1988. This Code superseded the provisions of the Civil Code of the Philippines relating to marriage and family relations.

The Code of Muslim Personal Laws which governs the Muslim Filipinos was adopted and signed into law by the then President Ferdinand E. Marcos as Presidential Decree No. 1083. This Code recognizes the legal system of the Muslims in the Philippines as part of the law of the country and the codification of the Muslim personal laws.

The two separate systems of family law in the Philippines are based on diverse legal systems. The Family Code is based on Catholic-dictated Civil Law; whereas the Muslim Code is sanctioned by the Islamic law.

With this, the findings reveal that the difference between the provisions of the two codes pertaining to marriage and family relations are numerous compared to their similarities.

The findings also disclosed the deficiencies or weaknesses in the pertinent provisions of the two codes.

Finally, it is the hope that this study would be a step towards the unity of Muslim and non-Muslim citizens in the Philippines.

CHAPTER 1

THE CONCEPTUAL BACKGROUND OF THE PHILIPPINE LAWS

A. A BRIEF HISTORY OF THE ENACTMENT OF THE FAMILY CODE OF THE PHILIPPINES

A study of the provisions of the Family Code of the Philippines necessarily brings with it the consideration of the Civil Code of the Philippines and its Constitutional law.

The Family Code was drafted to replace Book I of the Civil Code which had been in effect for almost forty (40) years. In order to understand the reason for the development of the present legal system in the Philippines, one has to go back to the history of the Philippines.

Before the Spaniards came in the Philippines, the pagan Filipinos were governed by their customary laws and practices. Marriage among them was "essentially a private affair, which was subjected to minimal regulation."¹

It was the coming of the Spaniards that marked the beginning of the new era in the history of the Philippine law. The Philippines became a Spanish colony by virtue of Magellan's discovery of the islands. During all those years, several Spanish codes and special laws were extended to the Philippines, among them was the voluminous Las leyes de Indios

(Laws of Indies)² and the Las Siete partidas,³ a compilation of all previous Spanish laws. The Civil Code of Spain came into law in May 1889 and was extended to the Philippines by virtue of the royal decrees of the King of Spain. The Code was published in the Manila Gazette and took effect as a law on December 8, 1889.⁴

On December 10, 1889, the treaty of Paris was signed which transferred the sovereignty over the Philippines to the United States after the victory of Admiral Dewey in the Battle of Manila Bay against the Spaniards. The American era was another milestone in the history of the Philippines.

During the American's occupation, new laws were enacted and added to the existing body of the law of the Philippines. However, the main body of the existing law affecting private rights was preserved. It has been alleged that there was one Spanish code that remained almost intact, that was the Spanish Code.⁵ However, when a Code of Civil Procedure was enacted by the Philippine Commission, an appreciable part of the Spanish Civil Code was impliedly repealed. The principal changes have been wrought with regard to will, the rights and liabilities of heirs and devisees, guardianship and the rights⁶ of parents with respect to the property of their children.

The Philippines finally became independent on July 4,

1946. It was the first time that the Philippines became free after almost four hundred years of foreign control.⁷ When the legislative power was vested in the Philippine Congress, the body created the Code of Commission under Executive Order No. 48. The Commission drafted the New Civil Code and this was completed after three years of intensive work. The New Civil Code took effect in July 1, 1950, replacing the Spanish Code of 1889. It is divided into four books- persons, property, different of acquiring ownership and obligations and contracts.

Almost four decades of experience under the Civil Code of the Philippines had passed when the Family Revision Committee constituted by the Integrated Bar of the Philippines was created to make a draft of revision of Book I of the Civil Code. The draft prepared by the said Committee was turned over to the Civil Code Revision Commission of the University of the Philippines Law Center after more than four years of extensive work. The newly created Committee was able to revise the said draft after three years (1984 up to 1987). It was submitted by the Committee to her Excellency President Corazon C. Aquino, on May 13, 1987, who referred the same to the Cabinet Assistance System (CAS) for study.⁸ There were some modifications or additions from the CAS which were added and incorporated into the second draft. The second draft was submitted and signed into law on July 8, 1987 by President Aquino as Executive Order NO. 209, otherwise known as Family

Code of the Philippines. On July 17, 1987, it was amended by the Executive Order No. 277 to embody the second paragraph of Article 26 of the Code.

The work of the Civil Code Revision Committee in revising the rest of the Civil Code of the Philippines is an on-going process. It is worthy to note that the Committee had drafted the Family Code apart from and independently of the Civil Code for the following reasons:

"Close to forty years of experience under the Civil Code adopted in 1949 and changes and developments in all aspects of Filipino life since then have revealed the unsuitability of certain provisions of that Code, implanted from foreign, to Philippine culture: the unfairness, unjustness, and gaps or inadequacies of others; and the need to attune them to contemporary developments and trends.

In particular- to cite only a few instances- (1) the property regime of conjugal partnership of gains is not in accord with Filipino custom, especially in the rural areas, which is more congenial to absolute community of property; (2) there have considerably been more grounds for annulment of marriage by the Church than those provided by the Code, thus giving rise to the absurd situation of several marriages already annulled under Canon Law but still considered subsisting under the Civil Law and making it necessary to make the grounds for annulment under both laws to coincide; (3) unequal treatment of husband and wife as to rights and responsibilities, which necessitates a response to the long-standing clamor for equality between men and women now mandated as a policy to be implemented under the New Constitution; (4) the inadequacy of the safeguards for strengthening marriage and the family as basic social institutions recognized as such by the New Constitution; (5) recent developments have shown the absurdity of limiting the grounds for legal separation to the antiquated two grounds provided under the Civil Code; (6) the need for additional safeguards to protect our children

in the matter of adoption by foreigners; and (7) to bring our law on paternity and filiation in step with or abreast of the latest scientific discoveries."9

Another reason for the enactment of the Family Code is to implement the following policies embodied in the New Constitution of the Philippines:

"The state recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous institution" (Sec. 12, Art.11).

"The state recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development" (Sec. 1, Art.XV).

"Marriage as an inviolable social institution, is the foundation of the family and shall be protected by the state" (Sec. 2, Art. XV).

"The state recognizes the role of women in nation-building, and shall ensure fundamental equality before the law of women and men" (Sec. 14 Art. II).

A. BRIEF HISTORY OF THE CODIFICATION OF THE MUSLIM PERSONAL LAWS IN THE PHILIPPINES

It is important to discuss the historical origin of the Philippine Government's recognition of the Muslim Personal laws in order to understand its present status and applications.

To know how this recognition came about, it is essential, firstly to unveil the origin and the development of the Islamic law in the Philippines and also the factors that led to its

codifications.

The Muslim Filipinos have developed their literate culture prior to the coming of the Spaniards in the Philippines. It should be observed that the first Sultan of Sulu crowned as Sultan Shariful Hashim in 1450 was well-known to have been a scholar and a Muslim jurist.¹⁰ But the customary or adat laws were not reduced into writing except in the nineteenth century when the so-called Principal Sulu Code was published under the auspices of Sultan Jamal-ul-Azam.

It was pointed out that the Principal Sulu Code was based more on adat laws than on orthodox Muslim laws and it only includes a short section on marriage and divorce. The preamble asserts the aim to introduce the Hadd law concerning theft,¹¹ while some sections are mainly concerned with sexual offenses.

A much more comprehensive codification existed in the middle of the nineteenth century, when the Luwaran of Maguindanao based on the original Code of Sultan Kudarat was codified. It is believed that this written code dates back before the eighteenth century for the reason that it is undated¹² and described by some writers as "very old".

It is said that the Luwaran has marginal Arabic quotations in each article which are relevant to other classical texts. The only other subject in which traceable Muslim elements can

be found is in inheritance where, together with a pronounced patrilateral bias, a very simplified version of the Shafii rules can be seen.¹³

The subsequent code was the so-called New Sulu Code issued by Sultan Jamal-ul-Kiram II in 1902. It was admitted that this Code never came into effect on the ground that it contains provisions which are beyond the power of the present Sultan.

During this period, the Muslim area of the present day was clearly dar-ul-Islam, that is, it was territorially part of the "abode of Islam" up to the American conquest. In 1903, the Philippines Commission, by authority of the United States, enacted Act No.787 which provided for the organization and government of Moro province.¹⁴ Section 13 of this Act directed the Legislature Council to enact a law which shall collect and codify the customary laws of the Moro as they are enforced in the various parts of the Moro province. But this law did not succeed when the Americans made a wrong presumption that the Muslim law was not suitable for more general purposes. The Americans were under the impression that "nothing worth admiring was found in the Muslim laws or customary laws".

In 1905, the Americans created and introduced the Tribal Ward Courts to deal with cases involving Muslims. The attempt failed when the Moros ignored and preferred to use the Agama Courts by the Datus.

From 1899 to 1929, marriages among Muslims were technically invalid in disregarding the General Orders No. 68 which only recognized the civil form of marriage. However, it was replaced in 1929 by the Marriage Law in which marriage between Muslim was exempted from the requirements of the Act for a period of twenty years by Republic Act No. 241 of 1948 and the exemption was further preserved in Art. 78 of the Civil Code of 1950. The Code provides:

Marriages between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites and practices. No marriage license or formal requisites shall be necessary. Nor shall the person solemnizing these marriages be obliged to comply with Art. 92.15

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 the said period, by proclamation, make any of said provisions applicable to the Mohammedans and non-Christian inhabitants of any of the non-Christian provinces".16

The twenty year exemption mentioned-above lapsed in 1970, but it was renewed for another ten year period by Republic Act No. 6208 which was passed and duly approved in June 1971. This renewal is no longer applicable having been succeeded by the Code of Muslim Personal Laws which took effect on February 4, 1977.

So far as divorced is concerned, the Moro divorce from 1899 to 1949 was technically invalid for failure to comply with Canon Law that allows only relative divorce. Divorce among Muslims was only recognized when Republic Act No. 394 of 1949 was enacted. The Act states:

"For a period of 20 years from the date of approval of this Act, divorce among Muslims residing in non-Christian provinces shall be recognized and governed by Moslem customs and practices".¹⁷

The twenty years provided for the validity of the Moro divorce lapsed in 1969 without renewal up to the enactment of Presidential Decree 1083, known as the "Code of Muslim Personal Laws of the Philippines."

It is an established historical fact that one of the factors that contributed to the state recognition of the Muslim family law is the pressure from the Muslim leaders appealing to the government to recognize and respect their personal laws, customs and traditions. But the upshot of all this that call for the attention of the government to change its policy towards the aspiration of the Muslims was the war that broke out in 1968 between the government and the Moro National Liberation Front (MNLF). President Marcos has to search for relatively painless concessions to Moro sentiments in order to prevent violent confrontation between two factions. He pointed out that to improve the government relationship with the

Muslims:

"The government needed a dramatic demonstration of its constructive concern for Muslims in the Philippines. A Muslim law code fitted the requirements admirably."¹⁸

One of the reasons that we may deduce for such a choice could be based upon the Islamic theory between dar-al-Islam and dar-al-harb (the abode of war). Islamic law recognizes that a country which passes into the hands of non-Muslim conquerors does not ipso facto become dar-al-harb unless the legal decisions of unbelievers are regarded and those of Islam are not.¹⁹ Thus, the government believed that as long as the Muslim family law is enforced, their areas are still part of dar-al-Islam and therefore, no legitimate jihad would take place in Moroland.

This is the background that leads to the codification of the Muslim Personal Laws, otherwise known as P.D. 1083.

The drafting of the Code was initiated through Memorandum Order No. 370 issued by the President Marcos to create a Research Staff for the codification of Muslim Personal Laws. The Staff completed its work and submitted the draft to the President on April 14, 1974.²⁰

After receiving the "Proposed Code for the Administration of Muslim Law of 1974", the President issued on December 23,

1974, the Executive Order No. 442 creating the Presidential Commission to review the Code of Muslim law.²¹ It is significant to note that this Order stated that the realization of the aspiration of the Muslims to have their system of laws enforced in their communities will reinforce the just struggle of the Filipino people to achieve national unity.²²

The Executive Order provided for eleven members: the Dean of Islamic Studies, University of the Philippines who served as Chairman; the representative from the Supreme Court as the Vice - Chairman, the representative from the Department of Justice; the representative from the IBP; the representative from the Law Center, University of the Philippines, the representative from Catholic Hierarchy of the Philippines; two Muslim lawyers; two Alim and the Project Officer from the Research Staff for the Codification of Filipino Muslim laws.

Some have criticized the membership of other government legal institutions particularly the non-Muslim representatives as to their role in reviewing the Proposed Code on Muslim Personal Laws. According to Cesar Adib Majul: "The idea of having representatives from different government legal institutions, some who happened to be non-Muslim was meant to see to it that the Muslim Personal Laws to be codified fitted well within the Constitution of the country. It was aimed at committing such government institutions to support the work of