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THE SHARI^CAH COURT SYSTEM

IN THE PHILIPPINES:

A STUDY IN MUSLIM PROCEDURAL LAW

By

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Bismi 'Llāhī 'r-Rahmāni 'r-Rahīm

P R E F A C E

Praise and Glory be to Allāh Almighty, the Fountain of Wisdom and Guidance, the Source of Grace and Mercy, and the Final Judge of our intentions, acts and strivings. He certainly guides and enlightens to His Way those who struggle in His Cause. Indeed, He is with those who do right. His peace and blessings be upon His Chosen Messenger, our Prophet and Guide, Muhammad (sallā 'Llāhu 'alayhī wa sallām), his family, his companions and those who follow his exalted way of life.

The path that leads to knowledge is infinite. The more that a Truth-seeker strives in his intellectual expedition, the further he realizes that wisdom, specially that which pertains to Allah's Divine Word, is a fathomless depth, an immense breadth and an immeasurable height. The more he goes up on the hill-top of learning, the farther he comprehends how vast and infinite is the plain below, how little he has learned and understood. Indeed, Allah Most High has given man only an ion of knowledge. Thus, the urge and desire to continue one's educational endeavor must not terminate and cease with a law degree or a graduate certificate. Neither must such end with a Ph.D. diploma, even if it may seem to be the culminating peak

of one's intellectual journey. For while a postgraduate degree may be fulfilling and gratifying, it is in actual sense challenging and exacting. It carries a pressing and heavy burden and a responsive and responsible obligation to live up to the high expectations of the Ummah Islāmiyah and the academic circle. Added to this is the moral duty that one owes to Allah Almighty for the privilege of having been granted a particle of knowledge. This is distinctively true if one's chosen field concerns with dissecting the mysteries and complexities of comparative laws and with discovering the dynamics and intricacies of the Shari^hah.

It is the insatiable thirst for knowledge which led me to plan and seek admission in the Ph.D. in Laws program of the International Islamic University. This I had been contemplating about since I finished my masteral degree in comparative laws, but unavoidable circumstances hindered me from immediately pursuing that noble goal. It was only in April 1991 that, with lessened commitments, I sought the advice of intimate friends and of my family to go on with my plans. Fortunately, in May 1991, I was privileged to be included among the Philippine delegates to the International Islamic Conference for Future Directions held in Kuala Lumpur. There I was able to meet Prof. Tan Sri Datuk Ahmad Ibrahim and discuss with him my plans of

taking my doctoral degree under his tutorship. He readily accepted the idea and facilitated my admission to the University in December 1991.

Before my admission, I have also communicated with Prof. Dr. Datuk AbdulHamid A. AbuSulayman and Prof. Dr. Mohammad Kamal Hassan, Rector and Deputy Rector, respectively, of the International Islamic University, regarding my application. Both favorably endorsed my bid to study. The Deputy Rector even sent a round-trip air ticket provided by Datuk Anwar Embong for my travel from Manila to Kuala Lumpur and back. Other IIU faculty members and personnel who helped in the early approval of my admission included Prof. Dr. Mohammad Hashim Kamali and Associate Prof. Dr. Razali B. Nawawi, my professors when I was doing my masteral degree, and Brother Hamdan B. Adnan, the then Secretary of the Kulliyah of Postgraduate Studies. For these brothers in Islam, I express my sincerest feeling of gratitude and thanks for contributing in one way or another for the realization of my dream.

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Wa mā tawfiqī illā bi 'Llāh.

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D E D I C A T I O N

In the Name of Allah,
Most Compassionate,
Most Gracious !

Think not of those
who are slain
in Allah's way as dead.

Nay, they live,
finding their sustenance
in the presence
of their Lord.

They rejoice
in the bounty
provided by Allah . . .

Al-Qur'ān, Sūrah Āl 'Imrān, 3:169-170.

For
the valiant Bangsamoro
men and women
who
through the pages
and phases
of Moro History
have gallantly
and unceasingly struggled
against oppression
and
foreign subjugation
and endlessly fought
for
Faith,
freedom
and fatherland
this
humble effort
is
sincerely
dedicated.

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A B S T R A C T

Among the most significant results of the struggle of the Muslims in the Philippines for self-determination are the recognition by the Philippine government of the Muslim legal system as part of the law of the land and the concomitant creation of the Shari^Cah courts. The Philippine government, recognizing and realizing that among the root causes of the Moro struggle is the imposition of alien laws to the Muslims which undermine their religious laws, political institutions, spiritual beliefs, moral and cultural values, and customary traditions, sought for the codification of Muslim personal laws and provided for their enforcement and administration through the establishment of the Shari^Cah courts.

The realization by the Culamā' (religious scholars), civil lawyers and other professional groups on the importance of the Shari^Cah tribunals as a viable instrument in the adjudication of marital disputes and in the redress and restitution of conjugal and filial rights among Muslims makes the study on the Shari^Cah courts not only timely but also necessary. A manifest proof of this trend of thinking is the increase in number of professionals, educated and trained in either the secular public school system

or the Islamic-Arabic educational system, who are taking the Special Shari^Cah Bar Examinations. Passing the said examinations makes a person a special member of the Philippine Bar with the appurtenant authority to practice in the Shari^Cah courts.

This thesis is an examination of the birth and nature of the Shari^Cah courts, their jurisdiction and the procedure they use in their administration and dispensation of justice. It is an analysis of the effectiveness and efficacy of the said courts in the enforcement of Islamic justice. It dissects the operation of these judicial institution and inquires whether or not they pursue the ends and goals of justice. Likewise, it peruses the extent of influence exercised by the Philippine legal system upon the functioning of the Shari^Cah tribunals. Thus, pertinent provisions of the Code of Muslim Personal Laws of the Philippines, the Organic Act for the Autonomous Region in Muslim Mindanao, the Rules of Court of the Philippines, the Special Rules of Procedure in the Shari^Cah Courts (Ijra'āt al-Mahākim al-Shar.^C Iyah), the Barangay Justice Law, the Rule on Summary Procedure and other legal enactments and Supreme Court resolutions having bearing with and relevance to the operation of the Shari^Cah tribunals are examined and analyzed. In the

same manner, relevant provisions of classical Islamic law are scrutinized and dissected to find out their pertinence and importance in the operation and procedure of the Shari^Cah courts and the qualifications of judges that administer them.

The study is divided into four parts, each having two chapters. The first part is a detailed presentation of the Islamic concept of justice, the beginning, nature and development of the Islamic court from the time of the Holy Prophet Muhammad (ṣallā 'Llāhu alayhi wa sallām) until the present. The second part is an exposition of the history, birth and administration of the Shari^Cah court in the Philippines. An historical overview of the creation of the Shari^Cah tribunals is traced with reference to the struggle of the Muslims in the Philippines for self-rule. The tiers of the Shari^Cah courts and the qualifications of judges that administer and man them are also dealt with in this portion of the research. The third part is an examination of the jurisdictions of the different levels or tiers of the Shari^Cah tribunals and the procedure promulgated for their dispensation and enforcement of justice. Pertinent Philippine legal and Islamic textual provisions on procedural or remedial law are scrutinized and analyzed

in this section of the research to find their relevance in the dispensation of justice by the said courts. The last portion of the thesis deals with extra-judicial arbitration, conciliation, arbitration, consultation and seeking legal opinion. Thereafter, a general conclusion is presented where suggestions are made to enhance a better understanding of the operation of the Shari^h courts and maximize their function and efficacy as an important Islamic institution.

I N T R O D U C T I O N

Preliminary Statement

The Republic of the Philippines is a predominantly Christian-populated country. However, it has a significant Muslim minority of over 10 % of the total population of more than sixty millions. The Muslims are basically concentrated in the southern islands of Mindanao, Sulu, Basilan, Tawi-Tawi and Palawan. Even in areas populated by the Christians, there are also Muslim residents, though sometimes considerably small, consisting of Muslim professionals, businessmen, traders and students who moved to the said places with their families for commercial, employment or educational reasons. There are also some local Christians who become self-realized Muslims. ¹

Statistics on the total number of Muslims in the Philippines are only rough estimations. While the Muslims claim that they are over 10 % of the total population of the country, the government puts their number as only 25 % of the population of Mindanao which is estimated to be around fourteen millions. Statistical data in census returns cannot be relied upon for reasons of inaccuracy and for failure to account for the mobility of Muslim population to non-Muslim areas and the growing number of

self-realized Muslims among the Christians and non-Christian tribes in the Philippines. ²

Muslim Sovereignty

Before the Philippine islands became the target of foreign conquest and domination, Muslim sovereignty was practically exercised and felt in the whole of Mindanao, Sulu and Palawan and its orbit of influence upon other areas of the Philippines was apparent. The Sultanate of Sulu exercised suzerain authority over the Sulu archipelago, Palawan and over the Muslim principalities of Panay and Mindoro (in the Visayas) and of Ilocos (in Northern Luzon). The Maguindanao Sultanate, on the other hand, controlled almost the whole of Mindanao. In Manila, there was a budding Muslim kingdom allied with the Sultanate of Brunei. Batangas, Southern Luzon, Central and Western Visayas were either under the control or influence of the afore-mentioned Sultanates. As these Muslim Sultanates based the legitimacy of their rule from the Shari'ah, it follows that they believed that the enforcement of their sovereign authority was founded upon the principles of Islamic Law.

Convergence of the World Legal Systems

The Philippines was colonized, first by Spain for more than three centuries (1565-1898) and later by the

United States of America for nearly five decades (1898-1946). Because of this foreign subjugation, Philippine law and jurisprudence have been dominated and characterized by the traditions of the Roman (Civil Law) and the Anglo-American (Common Law) legal systems. A review of Philippine history, however, reveals that these two world legal systems were not the first nor the only legal systems that have touched, penetrated, influenced and gained grounds in the Philippines. Almost two centuries before the Spanish conquest and more than four-and-a-half centuries before the American intrusion, by diffusion through da^Cwah³ work and trade efforts, Shari^Cah Islamiyah had already reached, dominated, prevailed upon and established roots in Philippine soil. Thus, we find the confluence and convergence of the three world legal systems in the country.

Forcible Incorporation of the Bangsamoro
in the Philippine State

When the Philippines was finally declared an independent republic in 1946 and self-rule was granted to the Filipino nation, the Bangsamoro people were forcibly incorporated in that declaration to the Philippine state against their will and contrary to their choice. In the centuries that Spain, and afterwards the United States, exercised sovereign power over the Philippines, the Bangsamoro never bowed down in submission nor surrendered to