

COMMENTS ON THE MUSLIM CODE: A PAPER ON P.D. NO. 1083

ANDRES H. HAGAD *

I. INTRODUCTION

Presidential Decree No. 1083, better known as the Code of Muslim Personal Laws of the Philippines, took effect on February 14, 1977.¹ The Code, as this paper shall generally refer to it from here on, represents the latest in a continuous series of attempts by the Philippine Government to integrate the Filipino Muslim into the general stream of Filipino social, political and civic life.

Conflicts with the Muslim religion have always posed a constant problem to most programs intended to integrate the Muslim Filipino. Islam, much more than Christianity does to Christians, penetrates deep into Muslim life and living. The closest ties exist between Muslim religion and law, to such an extent as to be virtually inseparable.² Thus, attempts to modify the social system of the Filipino Muslim are met with stiff resistance because, simply put, they are regarded as threats to their religion.³

Among other reasons therefore, the Code aims to go around this problem by adopting concepts and practices of Islamic law and religion, and infusing the same with complementary provisions of the Civil Code.

II. THE CONSTITUTIONAL BASIS OF THE MUSLIM CODE

The Code refers to Article XV, section 11 of the 1973 Constitution as the legal basis for its existence. Said section provides that:

The State shall consider the customs, traditions, beliefs and interests of the national cultural communities in the formulation and implementation of State policies.

Hector S. de Leon and Emilio Lugue, Jr. interpret the provision as empowering the State to draft any law on the cultural communities,⁴ and

* *Member*, Student Editorial Board, Philippine Law Journal.

¹ The Code provides that it shall take effect "immediately." Publication in the Official Gazette was therefore unnecessary to give it life.

² ANDERSON, ISLAMIC LAWS IN THE MUSLIM WORLD 2 (1959).

³ GOWING, MOSQUE AND MORO: A STUDY OF MUSLIMS IN THE PHILIPPINES 88 (1964).

⁴ DE LEON & LUGE, JR., TEXTBOOK ON THE NEW PHILIPPINE CONSTITUTION 284 (1973).

so do most of the other legal authorities⁵ who have commented on the subject. Under this view, the Code stands on a strong constitutional base.

Reading the minutes of the Committee on National Integration of the 1973 Constitutional Convention however seems to indicate that the framers of the New Constitution did not intend such an unqualified grant of legislative power under the above-mentioned section 11. For one thing, the original draft of what is now section 11 merely sought to empower the State to draft *educational* policies under the section.⁶ Later proposals to amend this draft likewise indicate a limited grant of legislative power.

One will note the amendment submitted by Delegate Cirilo Roy Montejo⁷ to the effect that that State should not be limited only to educational policies. He therefore suggested that the State be given unlimited power under the proposed provision to formulate *national policies*.⁸ Significantly, this proposed amendment by Delegate Montejo lost by a wide margin of thirty-one votes to sixty-two.⁹

Interesting to note too is the later amendment suggested by Delegate Macario C. Camello, to the effect that:

The State recognizes the existence of cultural communities. In the formulation and implementation of the State's policies, their traditions, practices and beliefs shall be given due consideration.¹⁰

Explaining his amendment, Delegate Camello warned against the emergence of small pocket republics if there would be different sets of laws for cultural minorities. He therefore suggested that customs and traditions of Muslims and Christians could be compromised with the promulgation of laws equally applicable to both.¹¹ Submitted to a vote, the Camello amendment was approved sixty-seven votes to forty-five.¹²

From the foregoing, it would seem that the framers of the 1973 Constitution never intended Article XV, section 11 to be used as the basis for laws similar to and including the Code of Muslim Personal Laws of the Philippines.

Furthermore, it also seems that if Article XV, section 11 had been drafted with something like the Code in mind, the framers could have used more accurate terms. They could, for example, have made a provision

⁵ See ARUEGO, *THE NEW PHILIPPINE CONSTITUTION EXPLAINED* 158 (1973), by way of example.

⁶ Minutes of the Committee on National Integration of the 1971 Constitutional Convention (May 15, 1972).

⁷ *Ibid.*, 9 (May 25, 1972).

⁸ Author's note: This is precisely the interpretation now given by legal authorities to article XV, section 11.

⁹ *Ibid.*, 9.1.

¹⁰ *Ibid.*, 13.

¹¹ *Ibid.*, 13.1.

¹² *Ibid.*, 13.3.

stating that the State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of laws *peculiar* to these communities.¹³

Is the Code therefore unconstitutional? Despite all that has been said above, the answer still seems to be: no, it is not. In the first place, an attempt to question the constitutionality of the Code based merely on the presumed intent of the framers of the Constitution is a weak argument at most. Besides, it is doubtful if the question of constitutionality can be raised, considering the provision of Article XVII, section 3(2) of the same Constitution, which reads:

All . . . decrees . . . promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, binding and effective even after the lifting of martial law . . .

III. SOME COMMENTS ON THE CODE'S PROVISION

A. *Marriage and Divorce*

It is primarily in the chapter on Marriage and Divorce where the applicable provisions of the Code and that of the Civil Code substantially differ.

1. Marriage

a) *In general*

So different is the Muslim practice of marriage from the Philippine general law concept that ever since 1929 when the Marriage Law was passed¹⁴ attempts were continually made to exempt Muslim marriages from the coverage of existing marriage laws. Immediately prior to the Code, the law applicable to Muslim marriages was Article 78 of the Civil Code which states:

ART. 78. Marriages between Mohammedans and pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices. No marriages license or formal requisites shall be necessary . . .

Article 78 is however deficient in several respects. For one thing, even with the extension of its application granted by Republic Act No. 6268¹⁵ beyond the original period set by the Civil Code, it is still set to expire by August 30, 1980. This is because Article 78 was never intended

¹³ Note the Constitution of Peru which is quite precise: "Art. 212. The State shall issue the civil, penal, educational and administrative legislation which the peculiar conditions of the natives demand." In 3 PEASLEE, CONSTITUTIONS OF NATIONS 155 (2nd ed., 1956).

¹⁴ Act No. 3613 (1929).

¹⁵ Where art. 78 was to remain effective up to 30 years after the approval of the CIVIL CODE.

to take on a permanent character. The apparent assumption was that the Filipino Muslim's way of life will at some point in time adapt to the general practices of Filipino social life.

For another, the provisions of Article 78 are ambiguous and have been the subject of much controversy. According to it, marriages between Mohammedans and pagans may be performed in accordance with their customs, rites or practices. The question that has been raised many times is whether or not in accordance with their customs, rites or practices refers only to the validity of the formal aspects of Muslim marriages (thus merely dispensing with the requirement of a marriage certificate), or also contemplates the inclusion of the substantial effects thereof. To hold the first view would be to hold Muslim polygamy and divorce as void. It would also subject the polygamous spouse to criminal punishment for bigamy¹⁶ under Article 349 of the Revised Penal Code, which provides that:

The penalty of prison mayor shall be imposed upon any person who shall contract a second or subsequent marriage before the first marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

To apply the second view, however, would be to recognize the validity of both Muslim polygamy and divorce.

The Code finally puts all of these questions to rest, first, by permanently applying its provisions to all Muslim marriages and divorces and second, by explicitly covering both the formal and substantial consequences of a Muslim marriage. Thus, polygamy and divorce, subject to certain exceptions and restrictions, are allowed to those covered under it. With respect to bigamous marriages, Article 180 of the Code recognizes that:

The provision of the Revised Penal Code relative to the crime of bigamy shall not apply to a person married in accordance with the provisions of this Code, or before its effectivity, under Muslim law.

Finally, the provisions of Article 78 apply to a Muslim-performed marriage when the parties live in the non-Christian provinces.¹⁷ Under the Code, however, such marriages may be conducted in any part of the Philippines.

b) *Polygamous Marriages*

When one speaks of Muslim marriages in the Philippines, the topic that inevitably comes up sooner or later is the apparent sanction of poly-

¹⁶ The reluctance of the Supreme Court to apply this view may be gleaned from its decision in the case of *People v. Mora Dumpo*, 62 Phil. 247 (1935) and similar cases where the Court went to great lengths to avoid having to rule a charge of bigamy.

¹⁷ See art. 78, CIVIL CODE.

gamy by the Islamic religion. With polygamy "apparently" allowed, it therefore comes as a surprise to the average non-Muslim Filipino to learn that the practice of the former is actually rare in the country. This is mainly because, contrary to the prevailing belief, Islamic trend is generally going away from the practice.¹⁸ Besides, polygamy is a complicated and expensive process. Even prior to the adoption of the Code, the husband, in order to contract a second or subsequent marriage, must first seek the permission of the first wife and her family. Granting he gets their consent, he must then proceed to prove that he can support more wives and children comfortably. The common practice is to give a huge bride's price, in cash and/or in kind, as *prima facie* evidence of such ability.¹⁹ Finally, the husband must be prepared to treat all his wives equitably and with justice.

These steps were on the whole adopted by the Code in its treatment of polygamous marriages. Thus, Article 27 prohibits a man to have more than one wife unless he can deal with them with equal companionship and just treatment.

Furthermore, "any Muslim husband desiring to contract a subsequent marriage shall, before so doing, file a written notice thereof with the Clerk of Court of the *Shari'a* Circuit Court of the place where his family resides. Upon receipt of said notice, the Clerk of Court shall serve a copy thereof to the wife or wives. Should any of them object, an *Agama* Arbitration Council shall be constituted . . . If the *Agama* Arbitration Council fails to obtain the wife's consent to the proposed marriage, the Court shall, pursuant to Article 27, decide whether or not to sustain her objection."²⁰

2. Divorce

The chapter on Divorce under the Code is one of the few areas where the Civil Code offers no counterpart provisions.²¹ Under Article 45 of the former, divorce is defined as "the formal dissolution of the marriage bond in accordance with (the) Code to be granted only after the exhaustion of all possible means of reconciliation between the spouses. . . ." Divorce severs the marital relation and puts an end to the marriage.²²

The provisions on divorce may be classified under two general headings, *i.e.*, divorce upon the instance of the husband,²³ and the one obtained through the wife's initiative. Article 46(1) of the Code prescribes the manner in which divorce may be done by the husband:

¹⁸ GOWING, *op. cit.*, *supra*, note 3 at 52.

¹⁹ *Ibid.*

²⁰ Pres. Decree No. 1083 (1977), art. 162.

²¹ Arts. 97-108 of the CIVIL CODE allows only legal separation, not divorce. However, Presidential Decree No. 793 promulgated September 4, 1975 provides for the recognition of Muslim divorce.

²² 1 TOLentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 286 (1974).

²³ Pres. Decree No. 1083 (1977), art. 46.

ART. 46(1). A divorce by *talaq* may be effected by the husband in a single repudiation of his wife during her non-menstrual period (*tuhr*) within which he has totally abstained from carnal relations with her. Any number of repudiations made during one *tuhr* shall constitute only one repudiation and shall be irrevocable after the expiration of the prescribed *'idda*.

Following the method found in Islamic divorce by *Talaq*, a husband can divorce his wife merely by telling her "I divorce you," or words to that effect, during her non-menstrual period.

One will immediately notice that divorce by *talaq* is quite easy to accomplish. It is probably for purposes of curbing possible abuse that a qualifying provision was added. Article 161 therefore requires the husband, after pronouncing a *talaq*, to immediately file with the Clerk of Court of the *Shari'a* District Court²⁴ within their district a written notice of such fact, a copy of the notice also provided the wife. Within seven days from receipt of such notice, the Clerk of Court shall then form an *Agama* Arbitration Council whose main object, following Article 45, will be to exhaust all possible means to reconcile the couple. It is only after this form of arbitration fails that the *Shari'a* Court may issue the order of divorce.

Article 52 on the other hand allows the wife to initiate the divorce proceedings (divorce by *faskh*) provided the petition is based on the following grounds:

- a) neglect or failure of the husband to provide support for the family for at least six consecutive months;
- b) conviction of the husband by final judgment sentencing him to imprisonment for at least one year;
- c) failure of the husband to perform for six months without reasonable cause his marital obligation in accordance with the Code;
- d) impotency of the husband;
- e) insanity or affliction of the husband with an incurable disease which would make the continuance of the marriage relationship injurious to the family;
- f) unusual cruelty of the husband, *e.g.*, habitually assaulting the wife, or attempting to force her to live an immoral life;
- g) any other cause recognized under Muslim law for the dissolution of marriage by *faskh* either at the instance of the wife or the proper *wali*.

²⁴ Pres. Decree No. 1083 (1977), art. 161.

In between these two forms of divorce are other types requiring positive acts from both parties. Thus, where the husband makes a vow to abstain from any carnal relation with his wife and actually does so for at least four months, the wife may petition for divorce which may be granted by the Court after due notice and hearing.²⁵ Or, in a case where the wife commits adultery, the husband may petition for divorce by *li'an*.²⁶

Is the rule the same where the wife is a non-Muslim? Article 13(1) of the Code seems to answer the question unqualifiedly when it states:

The provisions of this Title shall apply to marriage and divorce wherein both parties are Muslims or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines.

The effect of the above provision would seem to be that a non-Muslim woman who contracts marriage with a Muslim under the Code or under Muslim law is as fully covered by the provisions of the Code on marriage and divorce as her husband. She can therefore divorce and be divorced under the Code, even though for instance, she was covered by the Civil Code provisions denying divorce prior to her marriage. She is also legally allowed to remarry after the divorce.

In the light of Article 13(1) also, Muslims who marry in accordance with laws other than Muslim law or the Code are not deemed covered by the Code's provisions on marriage and divorce.

B. Paternity and Filiation

With some changes and differences, the Code's provisions on paternity and filiation are evidently based on counterpart provisions of the Civil Code. There however seems to be no sound basis for one of the distinctions. Specifically this comment refers to Article 59, par. 2 of the Code which states:

Children born after six months following the consummation of the marriage or *within two years* after the dissolution of the marriage shall be presumed legitimate. Against this presumption, no evidence shall be admitted other than that of the physical impossibility of access between the parents at or about the time of the conception of the child.

The Civil Code provision similar to the above Article 59(2) is Article 255 which provides that:

Children born after one hundred eighty days following the celebration of the marriage, and before *three hundred days* following its dissolution or the separation of the spouses shall be presumed legitimate...

²⁵ *Ibid.*, art. 47.

²⁶ *Ibid.*, art. 49.

Under the latter provision, the presumption of legitimacy is based on the assumption that there is sexual union in marriage, particularly during the period of conception.²⁷ Thus, where a child is born within three hundred days, or ten months after the dissolution of the marriage, it is clear why a presumption of legitimacy is given; the child could have been conceived on the day prior to the dissolution of the marriage, and birth could follow within ten months.

Can this rationale apply to Article 59(2) of the Muslim Code? Under its express provision a child is presumed legitimate if born within two years or twenty-four months after the dissolution of the marriage. If the basis of legitimacy is also the conception of the child when the marriage bond still existed, to assume a child being conceived even on the last day prior to the dissolution of the marriage and being born two years after is unrealistic.

In an interview with one of the members of the Commission who drafted the Code,²⁸ it was explained that the two-year period within which the presumption of legitimacy is taken is found in the 'Koran' or the Islamic Bible. Under the latter, the period of gestation of the child, and not only the day on which it is born, is considered in the determination of the child's legitimacy. It was the view of the Commission that to change this period with, say, the 300-day limitation found in Civil Code, would be in violation of the Koran and thus contrary to the intent of the Code, which is precisely to give Muslim practices and beliefs the legal force and effect of Philippine law.

While this paper agrees with the above view of the Commission, it is however submitted that the continuing sentence of Article 59(2) should not have been included. The sentence reads: "Against this presumption, no evidence shall be admitted other than that of the physical impossibility of access between the parents at or about the time of the conception of the child." The effect of this sentence becomes apparent in the following situation:

A and B, Muslim husband and wife, married under the Muslim Code, have two children by such marriage; C, a girl eight years of age, and D, a boy of fourteen. A and B later secure a divorce. Under Article 78 of the Code, a minor child above seven but below the age of puberty may, in the event of divorce between his or her parents, choose which parent he/she prefers to stay with. Under the same provision, an unmarried son above the age of puberty must stay with the mother. (At this point assume that both C and D were given to the mother's custody under Article 78.)

²⁷ 1 TOLentino, *op. cit.*, *supra*, note 21 at 512-513.

²⁸ Interview with Professor Esteban B. Bautista, Assistant Head, Division of Research and Law Reform of the U.P. Law Center. Professor Bautista was a member of the Code Commission that drafted the Code.

Six months after the divorce, B, the mother, has an illicit affair with another man. They were never married but the affair resulted in the birth of another child, F, within two years after B's divorce with A. B dies during the delivery.

As heirs of their mother B, the three children C, D, and F are entitled to parts of her estate, with C and D entitled to a larger share, being her legitimate children. Note, however, that Article 59(2) of the Code clearly says that children born *within two years* after the dissolution of the marriage (which is the case with F), shall be presumed legitimate. *"Against this presumption no evidence shall be admitted other than that of the physical impossibility of access between the parents at or about the time of the conception of the child."*

Under Article 59(2), F is conclusively presumed legitimate if C and D fail to show physical impossibility of access between A and B at the time of F's conception. F, under this provision, is seemingly entitled to the share of a legitimate child, assuming C and D cannot prove such physical impossibility of access.

Is Article 59(2) meant to be interpreted in this manner? It should not be. In the first place, F is clearly an illegitimate child. His illegitimacy can conclusively be proven by evidence other than physical impossibility of access between his parents. Why limit the scope of C and D's evidence only to the latter? In the second place, will the law be allowed to sanction a grant of legitimacy to one who is clearly illegitimate, based only on such a technicality?

It is therefore the opinion of this paper that, while the two-year presumption of legitimacy must be included in the Code, equity demands that such presumption, far from being quasi-conclusive, should only be *prima facie*, disputable by any evidence to the contrary that the rightful complainant may be able to show.

Besides, the same sentence of Article 59(2) mentions sexual access between the parents "at or about the time of the conception of the child," making his period of conception, and not the gestation period, the basis of the presumption of legitimacy. This conflicts with the Koranic intent espoused by the first sentence of the Article.

C. Others

The Code also provides for a few other areas dealing with personal rights and duties of the Muslim Filipino. For most of these however, a reading of the codal provisions will clarify the points covered so that this paper deems it unnecessary to discuss them in great detail.

1. Property Relations Between Spouses

In the matter of property relations between spouses, one feature that immediately stands out is the fact that, in the absence of a contrary stipulation, a complete separation of property between the spouses is the general rule.²⁹ Thus, there are more instances where a wife can sue and be sued without the consent of the husband. This contrasts with the more patriarchal system obtaining under the Civil Code.³⁰ A Muslim wife today possesses, under the Code, rights and responsibilities relative to property that an ordinary non-Muslim Filipina can only dream about.

2. Succession

The Code also provides for the successional rights of Muslims. Among its distinct features is that the testator, in his will, cannot dispose of more than one-third of his estate *mortis causa*. His heirs and creditors are therefore entitled to a greater share in the estate than their counterparts under the Civil Code.

On the other hand, note the two particular provisions of the Code. Under Article 111, the surviving husband is entitled to one-fourth of the hereditary estate of the wife in the presence of a legitimate child, and to one-half in the latter's absence. Should the wife survive the husband, however, Article 112 allows her only one-eighth of the hereditary estate, or at most one-fourth should there be no legitimate child. The effect of Article 112 is this: while the wife is allowed more instances to own separate property under the Muslim Code compared to the Civil Code, the means through which she acquires property is more limited under the former. Non-Muslim Filipino wives therefore have no cause to feel envious. The Muslim wife is not all that liberated yet.

D. The Muslim Courts of Law

An interesting feature of the Code is the creation³¹ of courts of law specifically enjoined to determine the personal rights and obligations of persons covered by the former, and by Islamic Law in some cases.³²

While one might very well wonder at the propriety of including this particular section in what is supposed to be a code of Muslim personal laws, the State is admittedly empowered to establish the two courts pursuant to our Constitution which provides:

ART. X(1). The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be provided by law...

1. The *Shari'a* Courts

²⁹ Pres. Decree No. 1083 (1977), art. 38.

³⁰ Art. 119 of the CIVIL CODE provides that: "...In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains... shall govern the property relations between husband and wife." The husband as a rule administers the conjugal properties, and all suits concerning the conjugal properties are addressed to him.

³¹ "Creation" may be the improper since these courts were already in existence under Muslim law long before the passage of the Code.

³² Pres. Decree No. 1083 (1977), art. 4.

One will not find a better commentary on the *Shari'a* Courts than the one made by Professor Esteban B. Bautista³³ in his paper, "The Muslim Code: Towards National Unity in Diversity". The author therefore reproduces the portion of Prof. Bautista's paper that discusses these courts of law.

1. The *Shari'a* Courts

The *Shari'a* Courts are made part of the country's judicial system and, together with their personnel, are subject to the administrative supervision of the Supreme Court. Anyone, even a non-Muslim, who has the necessary qualifications, may be appointed to these courts. They are of two kinds. The first, the *Shari'a* District Courts—of which there are five distributed among the provinces of Sulu, Tawi-Tawi, Basilan, Zamboanga del Norte, Zamboanga del Sur, Sultan Kudarat, and the cities of Dipolog, Pagadan, Zamboanga, Iligan, Marawi and Cotabato—correspond to and are of the same rank as the existing Courts of First Instance. The second, the *Shari'a* Circuit Courts, of which there are fifty-one distributed among the same provinces and cities, are of the same category as the Municipal Courts into which most of the existing municipal courts will be converted.

These courts will not replace, but will co-exist with, the Court of First Instance and city or municipal courts now existing in places where they are established, whether or not the proposed autonomous region is created. Their jurisdiction is quite limited. The *Shari'a* District Courts do not even have jurisdiction to try criminal cases; they only review such cases on appeal from the *Shari'a* Circuit Courts which themselves are limited to the trial of criminal cases involving offenses defined and punished under the Code. These offenses are quite few: illegal solemnization of marriage; contracting a marriage by a widow or divorced woman before the expiration of the waiting period (*'idda*) fixed by the Code; violation of the Code's requirements relative to subsequent marriage, divorce and revocation of divorce; failure to report for registration any matter required by the Code to be registered; and neglect of duty by registrars. All other offenses, even if the parties are all Muslims, must be prosecuted in either the Courts of First Instance, Circuit Criminal Courts, or municipal or city courts already existing in the areas mentioned above. These include the crime of bigamy committed by a Muslim who is not married in accordance with the Code or other Muslim law.

In civil cases, the *Shari'a* Circuit Courts are confined to cases involving matters specifically treated in the Code. The same is true in the case of the *Shari'a* District Courts, except that they can try, concurrently with the Courts of First Instance or the municipal or city courts, petitions by Muslims for the constitution of a family home, change of name, and commitment of an insane to an asylum; all personal and real actions involving Muslims (except those arising under a customary contract, which belong to their exclusive jurisdiction), and all actions for interpleader or declaratory relief wherein the parties are Muslims or the property involved belongs exclusively to Muslims, must be tried exclusively by the city, municipal or municipal circuit courts, or the Court of Agrarian Relations.

³³ BAUTISTA, THE MUSLIM CODE: TOWARDS NATIONAL UNITY IN DIVERSITY 10-11 (1977).

Deserving special notice is this point also raised by Professor Bautista: "Contrary to the recommendation of the Commission that drafted the Code, the Court of Appeals has been denied the power to review decisions of the *Shari'a* District Courts, a power that is given only to the Supreme Court. This change . . . is unfortunate because grave doubts may be entertained as to its constitutionality. For these courts are of the same rank and category as Courts of First Instance and therefore must be governed by the same rules and procedure as the latter courts, whose decisions are appealable to the Court of Appeals. The change would also violate the equal protection clause of the Constitution because parties to cases tried by the *Shari'a* District Courts are given the benefit of only one review of the facts while parties to cases tried by other courts may have the facts evaluated twice through an appeal to the Court of Appeals. The seriousness of this latter constitutional vice would particularly be apparent in criminal cases."

In the same light, this paper also puts forward the observation that, because of the above procedural distinction, one other effect may be the diminution of the usefulness of these Muslim Courts. Parties with cases falling under the concurrent jurisdiction of the *Shari'a* Courts and the Courts of First Instance may in many cases prefer to litigate their grievances in the latter courts, considering that here, they have the benefit of double review of any adverse decision.

2. The Office of the Jurisconsult (*Mufti*)

Article 164 of the Code provides for the creation of the Office of a Jurisconsult, which office shall be under the supervision of the Supreme Court. The *Mufti*, or the gentleman presiding over it, must, among others, be an eminent scholar in the Koran and the *Hadith*, and learned in Islamic jurisprudence.

The Office of the Jurisconsult operates in much the same manner as the Office of the Secretary of Justice does with respect to the various offices of the Government.³⁴ Thus, upon request, the *Mufti* may render legal opinions regarding questions involving Muslim law.

Especially during the formative years of the *Shari'a* courts however, the *Mufti* may prove more valuable than the description of the Code may lead one to believe. The *Shari'a* courts are presided over by judges, and like any other judge in our courts of law, must be a member of the Bar.³⁵ When one stops to wonder how many judges in the country are at present learned in either the Koran or in Islamic jurisprudence and, conversely, how many scholars in Islamic law are judges, the usefulness of the Jurisconsult becomes apparent. If and when the *Shari'a* courts begin operating, the legal advice and opinion of the *Mufti* will be one of the main sources

³⁴ *Ibid.*, 12.

³⁵ Rep. Act No. 298 (Judiciary Act of 1948), secs. 42 & 71.

of assurance that the same type of justice one seeks in any court of law will likewise be found in the *Shari'a* courts.

IV. CONCLUSION

To clear any misconceptions that this paper may have created, the following points are raised in conclusion:

1. THE CODE DOES NOT REMOVE MUSLIMS FROM ALL OTHER LAWS OF THE PHILIPPINES — One will note that the Code itself determines only the personal laws of the Filipino Muslim. Thus, with very few exceptions, only the title of the Civil Code relating to Persons and Family Relations and Succession have been excluded from covering Muslims. All other parts of the Civil Code still apply to them. With the exception of the provision regarding "bigamy" the Revised Penal Code of the Philippines likewise retains its force over the Muslim Filipino. The same holds true with all other laws and regulations in the country, whenever applicable.

2. THE CODE IS NOT AN ABSOLUTE PIECE OF LEGISLATION — This particular comment is raised due to a rather surprising observation that many people still move under the impression that the Code is stronger than an ordinary piece of legislation. The Code, like any other law, is subject to amendment, modification, and even repeal. Its constitutionality, or the constitutionality of any of its provisions, is subject to question. The only apparent advantage that the Code, as special law, has with similar special laws in the country, is its express mandate that in case of conflict with any such law, the latter shall be liberally construed in order to carry out the provisions of the Code.³⁶

Finally, this paper ends with the observation that, despite any imperfections that may later be discovered, despite any inherent limitations, and regardless of any other motive that may have prompted its creation, the Code stands as an honest attempt to integrate the Muslim Filipino. Whether or not it proves effective will have to be judged later.

³⁶ Pres. Decree No. 1083 (1977), art. 3(2).