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Advantages of Issuing the Saudi Penal Code Draft: Descriptive Analytical Study

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Abstract

The draft new penal law in the Kingdom of Saudi Arabia is one of the laws that resonated widely on social media platforms and various media channels. The new penal law includes a refutation of crimes and penalties committed by violators in Saudi Arabia. The new penal law in the Kingdom of Saudi Arabia is a law that includes more than 400 statutory articles through which the duties and obligations of individuals, entities and employees working in Saudi Arabia can be known, in a way that guarantees their rights, and this law is scheduled to be issued soon and it is expected that this law will be a quantum leap and development in the judicial and justice law in Saudi Arabia, as this new law aims to support social justice, activate alternative penalties, and enhance the sense of safety and justice that guarantee the security and safety of society. This study aims to address the positive aspects of issuing the draft Saudi Penal Code, as the study will provide an overview of the law in Saudi Arabia, and then it will deal with the development of the penal law, as well as the new penal law and its details, and then the focus will be on the advantages of passing the new penal law. The results showed several advantages of the new law i.e., it defines the foundations through which the Penal Code is applied, where the provisions of Islamic Sharia law are applied in all crimes and it stipulates that "there is no crime or disciplinary punishment except based on a legal text." Additionally, the results showed that the new law is better for the accused if it makes the behaviour unpunishable, narrows the scope of criminalization, decides for him an alternative or lighter penalty than the penalty prescribed in the previous provision, or restricts the scope of execution of the penalty. In conclusion, it can be said that the new Penal Code, and the rest of the new legislation that the Kingdom is working on, will move the new Saudi Arabia to another level in all indicators related to human rights and quality of life. This is the well-established policy adopted by Riyadh at present. For future studies, it is recommended to further investigate the new Penal Code after the enactment of its provisions.

Keywords: Penal Code, Islamic Law, Advantages, Saudi Arabia.

Background

Saudi Arabia's judicial law is founded on Sharia, Islamic law that is inherited from the Qur'an and the Sunnah (the customs) of the Islamic prophet Muhammad. The Islamic scholarly consensus that emerged after Muhammad's demise is another source of Sharia. The literalist Hanbali school of Islamic law's medieval writings influenced how Saudi Arabian judges interpreted it. Saudi Arabia is the only Muslim nation to have adopted Sharia in its uncodified form. The extent and content of the laws of the nation are quite unknown as a result of this and the lack of judicial precedent. As a result, the government declared its desire to codify

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Sharia in 2010, and in 2018, the Saudi government issued a sourcebook of legal precedents and principles (Arab News, 2018; Amaliyah & Zakhra, 2022). Regulations made by royal decree that address contemporary challenges like business law and intellectual property have also been included in the sharia. Nevertheless, the Qur'an and the Sunnah are proclaimed to be the nation's constitution, and Sharia continues to be the principal source of law, particularly in areas like a criminal, family, economic, and contract law. The Saudi state's (effectively, the Saudi royal family's) considerable proprietorial rights are a key element in the fields of land and energy law

King Abdul Aziz, who founded the Kingdom of Saudi Arabia in 1932, developed the country's modern judicial law, which was gradually implemented between 1927 and 1960. It consists of both general and summary Sharia courts, as well as some administrative tribunals to handle disagreements over particular contemporary legislation. In Saudi Arabia, trials are bench trials. The first criminal procedural code for Saudi Arabia, which was published in 2001, has been widely disregarded by courts there. Although they haven't been fully implemented, King Abdullah introduced several substantial judicial changes in 2007. (Pina, 2022)

Saudi Arabia's criminal justice law includes public beheading, stoning, amputation, and whipping as penalties. Serious criminal offences include apostasy, adultery, witchcraft, and sorcery in addition to internationally recognized crimes like murder, rape, theft, and robbery. Saudi Arabia also maintains a secret police unit known as the Mabahith and a "religious police" known as the Mutawa. The latter upholds Islamic social and moral standards, but in recent years, its authority has been drastically curtailed. Human rights groups with a Western focus, such as Amnesty International and Human Rights Watch, have criticized Saudi Arabia's human rights practices in general as well as the actions of the Mabahith and the Mutawa in particular. These include the frequency of executions, the variety of crimes that carry the death penalty, the absence of protections for those accused in the criminal justice law, how homosexuals are treated, the use of torture, the restriction of religion, and the extreme disadvantage faced by women. According to reports from the Albert Shanker Institute and Freedom House, Saudi Arabia's policies depart from the idea of the rule of law (Esmaceli, 2009; Omar & Muhammad Awais, 2023)

The Saudi legal law has come under fire for being cumbersome, slow, deficient in some legal safeguards, and unprepared for the demands of the modern world (Kechichian, 2013). A new court law and judicial reform were the goals of King Abdullah's royal decrees that year. The reforms, which included the establishment of the Supreme Court and the transfer of the Board of Grievances' commercial and criminal authorities to the general court law, were finished with the opening of labour courts on November 25, 2018 (Topal, 2019). General, criminal, personal status, commercial, and labour courts are now included in the speciality first instance courts (Otto & Ebrary, 2010). As a result, the Sharia courts no longer have the general authority to hear all cases, and the government's administrative tribunals' workload has been shifted to the new courts. The formation of appeal courts for each province is another significant shift (Otto & Ebrary, 2010). According to others, the revisions will create a framework for codifying Sharia and integrating the idea of judicial precedent into court procedures. The release of a sourcebook of legal precedents and principles on January 3, 2018, represents a significant advancement (Arab News, 2018; Pei, 2021)

The Specialized Criminal Court was established in 2008 (Human Rights Watch, 2011). Human rights advocates and suspected terrorists are both tried in this court. Trials for 85 defendants accused of participating in Al-Qaeda in the Arabian Peninsula and the 2003 Riyadh complex bombings began on June 26, 2011, while another 41 Al-Qaeda suspects appeared in court in

September 2011. (Amon & Said, 2018). The Saudi Civil and Political Rights Association (ACPRA) co-founder Mohammed Saleh al-Bejadi, long-term prisoner advocate Mubarak Zu'air, and protester Khaled al-Johani who spoke to BBC Arabic Television during a protest in Riyadh were all put on trial by the court that same year (Buchanan, 2011). On November 22, 2011, the court handed down sentences of 5 to 30 years to 16 human rights campaigners (Amon & Said, 2018; Wahyuni et al., 2022)

The King brought in a younger generation in 2009 to make some substantial changes to the judiciary's top leadership. For instance, a new Supreme Judicial Council chairman was appointed in addition to a new Minister of Justice. The outgoing chairman has a reputation for being against Sharia law codification. As well as appointing Abdulrahman Al Kelya as the first chief justice of the new Supreme Court, the monarch also nominated a new chairman of the Board of Grievances. The Supreme Judicial Council will henceforth be led by the justice minister as of January 2013 royal decree. Additionally, the Supreme Court's chief justice will be a member (Arab News, 2013; Valenzuela et al., 2022)

The draft new penal law in the Kingdom of Saudi Arabia is one of the laws that resonated widely on social media platforms and various media channels. The new penal law includes a refutation of crimes and penalties committed by violators in Saudi Arabia. The new penal law in the Kingdom of Saudi Arabia is a law that includes more than 400 statutory articles through which the duties and obligations of individuals, entities and employees working in Saudi Arabia can be known, in a way that guarantees their rights, and this law is scheduled to be issued soon and it is expected that this law will be a quantum leap and development In the judicial and justice law in Saudi Arabia, as this new law aims to support social justice, activate alternative penalties, and enhance the sense of safety and justice that guarantee the security and safety of society (Acosta & Marquez, 2022).

Since the announcement of the new Saudi penal code, discussion and controversy has increased about its feasibility and the advantages of its passing and activating in the Kingdom of Saudi Arabia. However, no studies are focusing on this law and its advantages. In light of this, this study aims to address the positive aspects of issuing the draft Saudi Penal Code, as the study will provide an overview of the law in Saudi Arabia, and then it will deal with the development of the penal law, as well as the new penal law and its details, and then the focus will be on the advantages of passing the new penal law (Cao & Zhang, 2022).

Research Problem

The principle of criminal legality that governs criminal laws in the modern era includes many penalties, and the legislator is the one with the first competence in determining the penalty for each crime, and this is based on the principle of legality of penalties, and for this reason, penal laws have been codified in many countries to determine the penalty for each crime. Since the Kingdom of Saudi Arabia follows the path of Islamic law, the judge must apply the penalties stipulated in the law and the book, and he must search until he arrives at the legal punishment for each crime. However, in the shadow of the modern age, the Saudi regulator took a very important step, as a special penal law will be codified in the Kingdom of Saudi Arabia for the first time, and the law contains penalties for each crime according to Islamic law.

The Saudi Penal Code will soon be issued in the Kingdom of Saudi Arabia, and it is expected to make a qualitative and developmental shift in the justice law, as it includes more than 400 statutory articles that define duties, obligations, and penalties for persons, entities, and

employees in a manner that preserves human rights, achieves criminal justice and activates alternative penalties in addition to enhancing feelings of justice and the security of society.

The draft new sanctions regime is still legitimate and has not yet been approved by any official body in the Kingdom of Saudi Arabia. While some human rights sources in Saudi Arabia discussed the draft of the new penal law as the final version submitted to the main committee.

In light of the aforementioned repercussions, it is necessary to identify the advantages of the new law to enhance the process of activating the law and to show the bright side of the new law, especially in light of the repeated criticisms of the laws and regulations in the Kingdom of Saudi Arabia.

Research Questions

The study seeks to answer the following questions:

1. What are the repercussions of issuing the Saudi Penal Code?
2. What are the advantages of issuing the Saudi Penal Code?

Study Aim and Objectives

This study aims to investigate the advantages of issuing the Saudi Penal Code. Besides, the study aims to achieve the following objectives:

1. To investigate the repercussions of issuing the Saudi Penal Code.
2. To identify the advantages of issuing the Saudi Penal Code.

Research Method

The research was conducted following the descriptive analytical approach which first describes the legal law in Saudi Arabia, and then moves to analyze the Saudi Penal Code. After that, a description of the advantages of the Saudi Penal Code was provided based on the existing studies and successful experiences of other countries.

The Legal Law in Saudi Arabia

Based on the core tenets of Islam, Saudi Arabia's legal law is Islamic law. There are three basic sources of law, however, they can come in many different forms: Islamic Law, Statutory Law, and Royal Orders. All official legal documentation in Saudi Arabia is written in Arabic, which is also the country's official language. The court is an autonomous branch of government, and no other authority—aside from Islamic Sharia—should have the power to overrule a judge's rulings. The Basic Law of Governance confirmed the supremacy of the Quran and the Prophet's Sunnah, which states that any ruling should be based on evidence from the Quran and the Sunnah rather than the opinions of jurists, as mentioned by Ibn Taymiyyah and Ibn Abdulwahab as well as in the speech given by King Abdulaziz. In line with the Quran, the Sunnah, and any royally-decreed laws that are not in conflict with the Quran or the Sunnah, courts are required by Article 48 of the Basic Law of Governance to apply Islamic Sharia in the cases that are presented before them (Eijk, 2010).

Furthermore, according to Article 7 of the Basic Law of Governance, the Saudi government derives its power from the Quran and the Sunnah, which serve as the cornerstones of Islamic

Sharia and are the ultimate sources of reference for the law (Aleid, 2017). Furthermore, according to article 1 of the Law of Procedure Before Sharia Courts, "Courts shall apply to cases before them provisions of Sharia laws, following the Quran and the Prophet's Sunnah and laws promulgated by the State that do not conflict with the Quran and Sunnah, and their proceedings shall comply with the provisions of this law." The judgments rendered by the judges there are regarded as valid and may not be overturned unless there is some violation (Trumbull, 2006).

In Saudi Arabia, a judge is also led by his understanding and interpretation of the texts in the Quran and the Sunnah that support particular laws in addition to jurisprudence doctrine, or "fiqh." Instead of consulting the Hanbali literature, the judge draws his conclusions about the case from these sources (Trumbull, 2006). When there is no support in the Quran and the Sunnah, Saudi courts often use legal reasoning, or "ijtihad," to reach conclusions. The proof evaluation theory is a widely accepted idea among judges in the Kingdom. Every judge must practice selecting among many opinions based on the quality of their evidence since they must identify which opinion is more important. (Vogel, 2012).

In Saudi Arabia, judges have both theoretical authority and legal authority to use their legal judgment. In cases where it is necessary to respond to fresh legal issues, the Saudi judge can use legal reasoning to seek out an independent decision that is novel to Islamic law. The Saudi judge approaches these fresh issues by directly consulting the Quran, the Sunnah, the consensus, analogy, and other supplemental sources of Islamic law, such as the presumption of continuity (*istishab*) and public interest (*maslaha mursala*), as previously indicated (Vogel, 2000). Furthermore, the Saudi judge has the option of using legal arguments from other schools. Although they are granted the opportunity to accept the views of other schools of thought, Saudi judges and their administration of Islamic law mostly follow the Hanbali School of thought's interpretation. It is conceivable to embrace the viewpoints of another school if there is a circumstance when applying the Hanbali thought causes difficulty and contradicts the interests of the general public. A decision based on any of the other three legal schools of jurisprudence may also be reviewed if there is no Hanbali School decision on a particular matter. Furthermore, as long as they follow the guidelines and standards consistent with the school's procedures, Saudi judges are permitted to draw new conclusions from preexisting ones (Aleid, 2017).

Because there are no norms for precedents, the Saudi legal law does not have a case law foundation. A judge is not required to follow another judge's earlier ruling. The history of Islamic law demonstrates that judges are not constrained by other people's legal arguments and are encouraged to use their legal arguments. In Saudi Arabia, judges have the power to overturn even their own earlier legal conclusions if they believe them to be wrong (Aleid, 2017). According to Saudi Arabia's appeals procedure, a lower court may be instructed on how to rule on a case if the appellate court (Mahkamat Altamyz) identifies an obvious inconsistency with the Quran, the Sunna, or the Consensus. This demonstrates that the appeal court will uphold and respect the judge's independence even when it disagrees with the trial judge's judgment (Pekka, 2013).

In Saudi Arabia, judges are constructing conflicting and inconsistent interpretations of Islamic law. In reality, they are given the authority to use independent legal analysis, or *ijtihad*, to decide any dispute that has been brought to their attention (Eijk, 2010). If the judge decides it is essential, previous rulings by other judges or even decisions made by the same judge may be discarded. The Saudi court is notorious for this disparity, with justices handing down conflicting decisions

in nearly identical situations. Due to this practice and the lack of legal precedent in Saudi Arabia, judgments in sometimes quite identical situations have resulted in a significant degree of diversity (Munir, 2008). Mansur Althbiti, a Saudi judge, did a study on the discrepancies in rulings in comparable situations in Saudi courts and provided 150 examples of such instances involving Saudi judges in criminal, familial, and commercial matters. The judges in these cases took diverse stances on related issues. Additionally, this discrepancy in rulings is visible amongst appellate courts in other cities. A specific Islamic opinion was not allowed to be applied in one particular criminal case, which was heard by the appeals court in Riyadh. However, the Meccan appeals court in a related case recognized the applicability of that specific Islamic doctrine. A lack of consistency and predictability in the law is being caused by the inequality that now exists in Saudi courts as a result of the various opinions held there (Aleid, 2017).

The traditional areas of law, such as family law, inheritance, trusts, contracts, and criminal law, are solely defined by Islamic rules. Islamic law is found in Islamic literature, especially that of the Hanbali School, rather than being codified in Saudi Arabia. Saudi Arabia's contract law is also not codified and is governed by Islamic contract law. As previously stated, the limits of the six Hanbali books and the novelty of electronic contracts in Islamic contract law make it difficult to provide certainty and clarity regarding the laws that apply to an electronic contract (Esmaeili et al., 2000).

Furthermore, Saudi Arabia has been regarded as a closed and complicated nation, making it challenging to find general and current information about the country's judicial law and society even within the kingdom. Saudi Arabia is frequently criticized for having ineffective judicial laws and excessive bureaucracy. Due to a lack of judges, the courts have a reputation for being overworked. Simple cases take a long time to reach a decision, which frustrates litigants (Kechichian, 2013).

In conclusion, it is crucial to examine Islamic law in order to comprehend Saudi law. The law is founded on the judgments and legal arguments of scholars who have earned the right to interpret Islamic sources and create laws via their piety, legal education, and expertise in Islamic law. Therefore, it is crucial to comprehend and look to the legal opinions of the religious scholars in Islamic jurisprudence, or "fiqh," that exist today and in the past, and not to state laws or court decisions, in order to grasp the law in Saudi Arabia. As a result, the views of these revered scholars have weight and are considered to be authoritative statements of Islamic law, which forms the cornerstone of Saudi Arabia's legal law.

Analysis of the New Saudi Penal Code

Division of the New Saudi Penal Code

The new Saudi Penal Code has been divided into two parts. The first part deals with the general provisions, so it was divided into a set of chapters that deal with preliminary provisions and definitions in terms of the scope of application of the law, the study of the crime in all that pertains to it, and the study of the criminal responsibility of the legal and natural person and its impediments. In the second part, the Saudi regulator deals with crimes and penalties, specifying the penalties for crimes affecting human life and physical integrity. The second part also clarifies the crimes against human freedom and sanctity, the crimes of general prohibition, the crimes related to organized criminal groups, the crimes of assaulting honour and breaching public morals, the crimes against the security and safety of society, offences against funds, the crimes against the public trust, and the crimes against the course of justice.

Preliminary Provisions of the Penal Code

The first article of the draft law stipulates:

- The provisions of Islamic Sharia apply to crimes that necessitate penalties and retribution “Hudud and Qisas” and retribution.
- Crimes and disciplinary penalties are determined in accordance with the provisions of this law and other laws.
- If the legal conditions for ruling the punishments of Hudud and Qisas are not met, and the elements of the disciplinary offence are met, the court shall rule with the penalties provided for in the law.

Among the advantages of this article is that it defines the foundations through which the Penal Code is applied, where the provisions of Islamic Sharia law are applied in all crimes related to Hudud and Qisas, which is the crime of murder, and that the disciplinary offences that are left to the guardian in order to determine the punishment for them, and where the judge ruled according to what He deems it appropriate to commit the crime according to his judgment. This shows that after the issuance of that law, the judge will apply the penalties contained in it and those contained in the other laws, and if the legal conditions for ruling the penalties for Hudud and Qisas are not met, but the elements of the disciplinary offence are met, then the court rules through the penalties stipulated in that law.

Looking at the second article of the law, we find that it stipulates that "there is no crime or disciplinary punishment except based on a legal text."

This principle stipulated in Article 2 was mentioned in general in all penal laws, where no penalty is applied to a person and the matter he/she committed is not considered a crime except through the existence of a legal provision. It is in accordance with Article 38 of the Basic Law of Governance (Saudi Institutional Law) issued by Royal Decree No. A/90 dated 8/27/1412 AH, which stipulates (there is no crime or punishment except based on a legal text), which is a principle established by Islamic law and is in accordance with all man-made laws and international agreements. However, the Saudi regulator differed in its provisions from other laws, as it mentioned the word "discrimination crime", which is the crime whose punishment is determined by the guardian because it differs according to time and place. There is no crime or disciplinary punishment except based on a legal text codified by the Saudi regulator. This principle is called the principle of criminal legitimacy so and its importance is due to the fact that the law determines the criminalization and punishment, so there is a legal rule that defines the behaviour and punishes it, and that rule is valid at the time and place in which the crime was committed.

Enactment of the New Saudi Penal Code

Article Fifteen of the law stipulates that "the legal text in force at the time of its occurrence applies to the crime, and the time in which the behaviour took place is used without regard to the time of achieving its result."

This indicates that, through this article, the new Penal Code is applied to the crime at the time of its occurrence, even if its result is achieved after many years. It is better for the accused, for he is the one who applies to others.”

Among the advantages of this provision is that it is better for the accused if it makes the behaviour unpunishable, narrows the scope of criminalization, decides for him an alternative or lighter penalty than the penalty prescribed in the previous provision, or restricts the scope

of execution of the penalty. If the subsequent text includes provisions that combine strictness and mitigation and these provisions are separable, then only the lighter provision shall apply retroactively.

It is clear from this article that the new Penal Code aims to apply the law that is best for the accused and is valid for him/her only in the following cases:

- Makes criminal conduct unpunished.
- Narrows the scope of criminalization.
- Decides on an alternative penalty for criminal conduct.
- Decides on a lighter penalty than in the previous provision.
- Restricts the scope of execution of the sentence.

In terms of the application of the law in terms of place, Article (24) stipulates that the provisions of this law shall apply to every crime committed in the territory of the Kingdom. This includes lands subject to its sovereignty, territorial waters and the subsequent airspace: It includes those crimes that are committed on board ships and aircraft owned by the Kingdom; Or carry its flag or manage it for any purpose wherever it is located, or commit at the headquarters of its missions abroad, including embassies and other diplomatic places or consulates affiliated to it. The crime is deemed to have been committed in the territory of the Kingdom if one of the constituent acts was committed there, or if its result or part thereof was realized therein, or it was intended or expected to be realized therein, or its effects extended to it. Among the advantages of this article is that it specified the place of application of the law, as it applies to all crimes committed within the territory of the Kingdom or achieved as a result of the crime or part thereof in the Kingdom.

Discussion

Through the analysis of the New Saudi Penal Code, it can be said that Saudi Arabia is entering a new era for codification and comprehensive regulation of laws, especially since the Kingdom's application of the provisions of Sharia through Islamic jurisprudence books caused many problems because there are differences between the jurists. The direct reference to jurisprudence, sometimes, leads to problems that can collide with reality when applied, so the formulation of jurisprudence with clear legal articles will reduce the space for Ijtihad (individual independent reasoning) in these matters. (Bakirova et al., 2022)

It is known that the newly develop laws are not perfect, so we expect them to be under continuous modification, revision, deletion and addition, to make the most of them, because the practical application shows problems that are not apparent during the theoretical formulation. It should be noted here that Saudi Arabia did not create a law from scratch. However, it has benefited from similar experiences and laws that already exist in other countries, and has been used in a manner consistent with the nature and circumstances of the Kingdom.

The proposed legislation goes through several stages before it is approved. The first stage begins with the submission of the proposal to the Council of Ministers by the competent minister, where the matter is referred to the Committee of Legal Experts for research, study, and preparation of the form and statutory rules, before moving to the next stage related to the discussion, so that it is discussed within the Council. (Korkut et al., 2022)

One of the advantages of this law is that it clearly defined the definition of a crime so that it is not considered a crime unless it is stipulated as a crime, thus ending an era of jurisprudential law, which could have developed the perceptions in characterizing crimes. One of the advantages of the new law is that it stipulates some trends that can be considered as contributing to the granting of personal freedoms on a larger scale i.e., it made it easier for the criminal defense lawyer and the parties to the criminal case to anticipate the criminal punishment before it is signed.

Through the new law, it appears that Article 87 related to alternative punishments carried a positive change in the concept of punishment; this could be the most prominent advantage. The articles of the law also included the criminalization of hatred, as it will work on the cultural refinement of the public scene, and its improvement and development.

We see here that the new law will contribute significantly to reducing racism represented by race, origin, and lineage, which will happen quickly if citizens find a deterrent application of the law and its penalties, which will change the social structure and end the era of racist terminology that some may not see as racist now. This, in turn, will greatly contribute to educating young generations about this matter, which will contribute to reforming the social law.

As a final point, one of the major advantages of the New Saudi Penal Code that it will lead to the abolition of many criminal laws, such as the law on combating information crimes, anti-harassment crimes, forgery and bribery crimes, etc., and combining them into one law that is easy to refer to, which is the Penal Code, and it will prevent discrepancies in criminal provisions in Saudi Arabia.

Conclusion

Despite the advantages that characterize the law, there will be problems when applying this type of law, as the problems vary between the problem of proving the material and moral element and the criminal part, which will be the responsibility of the investigation authorities. In addition to that, the mechanism for proving the occurrence of the crime itself and the investigation authorities confirming the occurrence of the incident is a pivotal matter in these types of cases.

The results show that the most prominent phenomena dealt with by the new penal law are violence, hatred and racism, as stipulated in Articles 217 to 220 of the initial draft of this law, as they contained penalties for these crimes until they are reduced, and then they do not appear in society as a whole. These penalties are imprisonment for a period of 3 years and a fine of 100,000 riyals; they are deterrent penalties.

In conclusion, it can be said that the new Penal Code, and the rest of the new legislation that the Kingdom is working on, will move the new Saudi Arabia to another level in all indicators related to human rights and quality of life. This is the well-established policy adopted by Riyadh at present. For future studies, it is recommended to further investigate the new Penal Code after the enactment of its provisions.

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