

The International Seminar On Islamic Law In The Contemporary World

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I would like to once again thank the Malaysian Institute of Islamic Understanding for inviting me to speak at this International Seminar on Islamic Law in the Contemporary World.

2. Law is about ensuring justice. There are bad laws which fail to bring about justice. The laws which permit slavery and the harsh treatment of slaves are among the bad laws. But as human society becomes more enlightened bad laws have been annulled and the new laws which replace them are much more equitable and just. In modern times liberal ideas about rights and wrongs, about what is just and what is not, have resulted in justice for some while resulting in injustice for others. Thus in liberal democracies the right of the majority may be ignored and negated in order to protect and uphold the rights of a minority or even an individual. The result is a travesty of justice. Throughout history over correction of a perceived defect often leads to a violent swing in opposite direction which is no less defective.

3. Today equality is almost a religious dictum. Everyone must be equal before the law. To be treated differently because of status or wealth would not be acceptable. Yet not so long ago society was elitist and equality was not an unchallenged principle. The slave owner or the employer merits different treatment from that meted to slaves and workers.

4. Then the pendulum began to swing. Slavery was abolished and workers demanded to be treated with fairness and justice as much as enjoyed by their employers. Eventually workers used their numbers to seize power. The Communists went one step further and they seized the property of their rich former employers, killed most of them or subjected them to indignities and injustice. Clearly the quest for justice for slaves and workers had ended in injustice for the others.

5. Perhaps this can be regarded as poetic justice but injustice cannot be considered as justice, poetic or otherwise. The tendency to be unjust to the unjust is very strong. But being unjust even to the unjust is still an injustice. Even the unjust must be accorded due justice.

6. The world has not yet learnt to understand what constitutes justice. And so there will always be injustice within human society and between human societies. This is made more so because the concepts of justice differ as between different

societies and cultures. What may appear to be just under certain laws may appear to be unjust under other laws. Still there are certain aspects of justice which are universal. Thus to punish the criminal is considered right but to punish his victim can never be considered fair or just.

7. The Prophet of Islam, Muhammad S.A.W. brought his message from Allah Subhanahu wa Ta'ala to a society that was manifestly oppressive and unjust. Slaves were ill-treated and regarded as hardly human. Infant girls were killed by being buried alive. The rich oppressed the poor. Women were regarded as chattels and a man may take as many wives as he pleased and may discard them without compensation or support whenever he liked. Quarrels between individuals were settled through tribal wars which knew no end. The strong will always have the better of the weak, regardless of rights and wrongs.

8. To this anarchic and oppressive society the Prophet brought the laws of Allah and the true concepts of justice. In the teachings of the al-Quran and later the true Hadis, the idea of justice was paramount. If injustice is the outcome of any act or procedure then it is forbidden. That is the substance of Islamic law and Islamic justice.

9. Form has never been as important as substance in Islam. Thus it is not the way that the `solat' is performed that is important but the `niat' or the intent associated with the ritual that is important. If possible the physical performance may be carried out. But if circumstances do not permit, as for example by illness or distance, or constraints of time, or whatever circumstance, the performances can be abbreviated or curtailed or the physical movements done away with or as in some cases foregone entirely.

10 It is unfortunate perhaps that so many Muslims believe more in the form than the substance of Islam. Thus whereas Islam enjoins the brotherhood of the Muslim `ummah', most Muslims would find any number of reasons for not regarding other Muslims as their brothers. Indeed they are likely to emphasise the minor differences between them or to declare that other professed Muslims are not Muslims in order to justify the enmity and rejection of brotherliness.

11. The Quran as we all know contains very specific injunctions which do not lend to misinterpretation. But the al-Quran also guide through parables which lend to many and different interpretations. Even the specific injunctions are qualified. But where Islamic laws are concerned justice is paramount. Unfortunately there are people who put a premium on form and care little about justice. For as long as form is achieved then the Islamic stress on justice matters not at

all. Indeed such is the veneration of form that injustice must somehow be regarded as justice as long as form is followed. That is why Islamic justice often appear harsh and pitiless.

12. The other problem that is faced by those adhering to the principles of Islamic justice is the tendency to mix tribal cultures with Islam. Thus in a recent case a brother shot dead his sister because the sister who had been forced into marriage with a man that she had had an affair with was divorced and had to return to the family. There is nothing in Islam which advocates or even permits this. But the impression given is that the fratricidal act was in accord with the teachings of Islam. In fact the alleged shame on the part of the family was the result of pre-Islamic culture.

13. The fact that Islamic laws are largely uncodified opens them to many interpretations, some of which must be contrary to the tenets of Islam. In Malaysia an attempt has been made to codify Islamic laws pertaining to certain societal behavior and activity. But because Malaysia is multiracial and multireligious, complete codification is not possible. However the laws of the country are not such as to negate the principles of Islamic laws and Islamic justice. The punishment may be different but the principles are the same.

14. Islamic laws are not rejected in Malaysia by the Malaysian Government. But it is acknowledged that at the moment under prevailing circumstances it is not possible to implement all of them fully.

15. In other Muslim countries Islamic laws are apparently not codified or not fully codified. It is quite impossible to obtain examples of codified Muslim laws from these countries. Indeed it is difficult to determine the procedures followed in carrying out due process of law. As a result there have been many arrests involving foreigners which were made quite arbitrarily. The relevant Islamic laws under which the arrests were made were not quoted and made known to the offenders. The subsequent charges and trials did not follow any given procedure. The presiding Judge would make reference to any book or writings, or the Quran or Hadis and sentence pronounced. Procedures for the defence to put up its case are not generally available.

16. Perhaps this is as it should be for the laws of Islam are based directly on the Quran and the Hadis. But the Quran and the Hadis have always lent themselves to different interpretations. It is entirely possible for different judges to interpret differently and for punishment to be variable. Justice must mean the same punishment for the same crime. It

is questionable whether the differing punishments meted out are in accord with Islamic justice.

17. It is in order to avoid such injustice that in Malaysia Islamic laws are codified. This is entirely in keeping with the teachings of Islam. Differences in the interpretations of Islam are common of course. Hence there are differences in the teachings of the 'Sunnis' from the 'Syiahs' and among the 'Sunnis' as well as the 'Syiahs' there are many different schools based on the teachings of different imams. It follows that codification of Islamic laws will result in at least minor differences between the different sects and schools. But at least within each sect or school there would be uniformity.

18. How difficult it is to achieve uniformity is shown by the Malaysian experience. The Islamic religion is not within the competence of the elected Federal Government. The Sultans have absolute authority over Islamic religious affairs. Despite the fact that all Malays are 'Sunni' Muslim of the 'Shafei' school, the different states have got different and frequently contradictory laws. Such are the differences that it is entirely possible for a Muslim from one state to escape the specific Islamic law by going to another state. Attempts have been made to have uniform laws but this has not been completely successful.

19. Now if Islamic laws governing people of the same sect and school in one country cannot be made uniform how much more difficult it would be to have uniform laws for all the Muslims of the world, or even for Muslims of the same sect in the world. It does seem that there is a great need for Muslims to meet and to compare notes and to discuss Islamic laws and their implementation in their countries.

20. Strictly speaking the head of a country, i.e. the person in authority over the administration of the country should be the final arbiter. At the time of the Prophet, he was the arbiter or at least the reference point. The Quran specifically enjoins Muslims to submit to the ruler and such submission must include judging over a dispute or the sentencing of the wrong doers. But with the population of countries exceeding tens of millions it is not quite possible to refer legal cases to the ruler of the country. Hence the institution of 'Kadis' or 'hakims' as provided by Islam. Whereas the head of Government would be less likely to pass judgement which differ when the cases are similar, different judges are likely to judge and sentence each according to his own assessments. Thus similar cases may receive differing assessments and sentences. Such differences would not be fair or just. And this would not be good for the perceptions of justice in Islam. It would seem therefore that there is a need

for codification of Islamic laws and standardisation of procedures and punishment for given offences. It is not that Islamic justice as prescribed by the Quran or the Hadis is inherently unjust. It is just that human fairness and weaknesses have tainted the laws and justice is often denied.

21. Whatever may be the way Islamic laws are implemented, there is no doubt that in the contemporary world where Muslims and Muslim countries can no longer be isolated from other peoples and countries, there is a need to demonstrate that Islamic laws and their enforcement are as just as can be. While Islamic laws cannot be in full accord with modern liberal thinking, it can be compatible with the universal concepts of justice. It cannot possibly condone homosexuality which is today accepted by Western society as normal and is therefore regarded as not contrary to the law. In Islam homosexual practices would still be treated as criminal and punishable by law even if Western society would consider this as an injustice. But Islamic justice would not differ much from Western justice when it comes to punishing the criminal and according justice to his victim. It can never be that Islam would punish the victim and let the person responsible for the crime against the victim to go free.

22. There are some Muslims who would consider that if the enforcement of Islamic laws results in the victim being punished and not the criminal, then it would still be just. Thus if a girl is raped but she could produce no witnesses then she would still be guilty of 'zina' if she conceived. While the rapist should not be brought to justice and punished, the girl must be stoned to death because the punishment for 'zina' is death by stoning. In the eyes of most people this could be unjust but some Muslims would still claim that in some way or other it would be just because it is prescribed by Islam. That Islam stresses justice is irrelevant to them simply because the correct prescription for trial and punishment has been followed.

23. When Muslims so interpret the teachings of Islam, then the religion would appear to be uncaring and unjust not only to non-Muslims but to the majority of Muslims as well. Still the learned Muslims who have made this interpretation would be regarded as correct because they seem to adhere rigidly to the letter of the Islamic laws. The mitigating circumstances which allow for justice to prevail if cited would make the proponents less ardent in their faith or even less Muslim. The extremely orthodox would condemn mitigation even if it would make Islam a more just religion. They would claim that the truly faithful must ignore the opinions of non-Muslims when it comes to adhering strictly to the injunction of Islam. That their interpretations of the injunction of Islam might be

wrong does not occur to them. For them the more the suffering they inflict on themselves or on other Muslims, the stronger would be their faith. For them challenges to their views would simply mean a lack of faith in the religion.

24. Islam is the religion which brought justice to the heathen 'jahiliah'. Because of this the Arab tribes and their slaves embraced Islam. The Prophet as the ruler of Madinah was the epitome of justice. While the laws of Islam were enforced under his rule, he nevertheless accepted the existence and legality of other laws. Thus when a Jewish couple admitted to having committed 'zina' he sentenced them to death because Jewish law provided for this punishment.

25. On other occasions he was very circumspect and did not appear anxious to punish until there was irrefutable proof of misdeeds. The quality of mercy was strong in him. It is no wonder that the 'jahiliah' Arabs flocked to the religion of Islam. For them Islam implied justice.

26. In Eastern Europe the Christian Serbs readily accepted Turkish Muslim rule because their feudal lords were oppressive. The Turkish conquerors allowed the peasants to own and work their land, paying only normal taxes. It was the same in Muslim states where Muslims, Christians and Jews lived together and accepted Muslim laws. When Spain was re-conquered by the Catholic King of Spain, Jews and Muslims were given the choice of converting to Christianity or expulsion. It is interesting to note that most Jews chose migration to Muslim Magreb to staying in Christian Spain. To this day more than one million Jews live in Morocco.

27. But the Muslims of today, including the Malays are less tolerant and care little for the views of others when practising the teachings of Islam, including the interpretation of Islamic laws and their implementation. It would seem that a Muslim is only Muslim if he is harsh in the execution of Islamic laws. Even when Islam permits flexibility it should be rejected in favour of rigidity. The greater the rigidity in the interpretations the more Muslim is the faithful.

28. Rivalry between Muslim groups in politics for example has led to each trying to outdo the other in the rigidity of interpretation. Any sign of tolerance or flexibility would be regarded as being unfaithful to the religion. In their desire to be holier than their rivals they have misquoted and misinterpreted. The religion is made as intolerant as possible in the process of demonising the rivals. And so a perfect religion in which the upholding of justice is paramount has been made to be uncaring and oppressive.

29. Today, Islam has become different from the religion of peace and tolerance that was brought by the Prophet Muhammad S.A.W. Islam has become a rigid, intolerant and seemingly an unjust religion to the faithful and to others because of the fanaticism and misplaced orthodoxy of people with vested interest.

30. If Islam is to be once again the religion of justice then modern Muslim jurists must look again at the old interpretations of Islam, in particular those relating to justice. There can be no doubt that Islam upholds justice. If it does not seem to do so it is not because Islam is wrong. It must be the practitioners of Islam who are wrong.

31. It is for this reason that I welcome the International Seminar on "Islamic law in the contemporary World". I am sure it will help the Islamic cause and in particular the proper interpretation and codification of Islamic laws.

32. I now have great pleasure in declaring this seminar open.