

**SPEECH BY THE HON TUN DR MAHATHIR BIN MOHAMAD
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Firstly I would like to thank the International Islamic University of for this honour conferred on me. I am not a lawyer although I did consider studying law.

2. With your kind indulgence I would like to say something about laws, in particular the current clamour for the rule of Law.

3. The early civilisations honour the law givers above everyone else. Kings became great because they gave laws which govern and regulate the lives of their people. We all know of the Codes of Hammurabi, believed to be the first written law given to his people by King Hammurabi.

4. The great religions of the world laid down laws which were intended to create just societies. Though in many instances the laws were God-given, human society still find justice elusive.

5. Finding that religious laws could be abused, some societies decided to formulate their own laws in order to ensure justice. In Europe the best known are the British Common Law and the Code Napoleon. But these too have failed. We are no nearer a just society despite these man-made laws.

6. Still there is great faith in laws as insurance against injustice. And so today there is a loud clamour for the Rule of Law to be practiced by every country. Failure to do so would expose a country not just to odium and condemnation but at times war and invasion in order to effect regime change and imposition of the rule of Law. It would seem that it is permissible to break the law by war and violence in order to enforce the rule of law.

7. But, man-made laws are often unjust. There was a time when, under British Common Law, a man may be hanged for stealing a sheep. The punishment was absolutely legal of course but was it just.

8. During the Spanish Inquisition torture was legal and those convicted after confessing under torture would be burnt at the stakes. Again it was according to the law but was it just.

9. During British colonial rule detention without trial was legal. There were laws which provide for this. Then the Brits lost their colonies and they condemn the newly independent countries like Malaysia for having laws which permit detention without trial. They say it is an abuse of human rights. It is unjust.

10. But when threatened with terror attacks, they happily detain suspects without trial. But the cry for the Rule of Law by them goes on unabated.

11. Modern Ethnic European ideas about morality accept homosexual practices. Accordingly many European countries have laws for gay rights and same sex marriages. Even priests may have male live-in partners. These practices conform to the rule of law. But are they morally right?

12. Clearly the Rule of Law does not guarantee a just or morally upright society.

13. We do need laws if we are not to be ruled at the whims and fancies of Kings, Sultans and dictators. But laws alone are not enough to protect the people from injustice. Even independent judges cannot guarantee justice.

14. Judges are human. As ordinary human beings judges are subject to feelings and emotion, indeed subject to errors of judgements. And judges can also be biased, be influenced by political affiliations and political creed.

15. Judges in Malaysia have been known to acquit a politically influential person not because he did not commit the offence but because the prosecutors got the dates wrong,

16. The independence of the judiciary is obviously important. Criticism of the judiciary may land a person in court on charges of contempt. Because of this the judges feel no fear for being impartial and for pronouncing even the most severe sentence. But what if the judges are deliberately and openly biased, unfair and unjust. Being free of criticism will result in injustice being done.

17. For this reason as many as three tiers of courts are provided, so that appeals can be made. And finally there is a pardons board. With this provision the chances of injustice being perpetrated would be much less. But it cost a lot of money to make these appeals. This simply means that the rich will get more justice than the poor.

18. Sometimes judges arrogate to themselves additional powers as when they create the concept of judicial review. Without need for any complain to the courts by anyone, a senior judge may call a case for review. This again will ensure that justice is done. But it may frustrate even a Government elected by a majority of the people from effectively dealing with delinquencies within society.

19. Litigation can redress injustice suffered by individuals or groups. But the discretion of judges is so wide that ridiculous awards are being made. Over time the awards are getting bigger and more ridiculous

20. The net result is to increase the cost of insurance to cover the eventualities. And increased insurance cost must increase the cost of living and the competitiveness of a nation. But judges are not concerned with the overall effect of their judgement. As long as they feel that justice is done, everything else is irrelevant. Discretion and independence can bring about negative results for society.

21. What about Islamic law -- the Shariah. Will its implementation result in justice. It is Allah's law. Therefore it is perfect.

22. Islam is the perfect religion but we all know that the followers of Islam are far from being perfect. We see crimes among Muslims, wars between Muslims, extreme wealth and extreme poverty among Muslims. We see sins being openly committed by Muslims. Indeed the unIslamic behaviour of Muslims is common.

23. Is it because of Islam that the Muslims are what they are? Certainly it is not. It is the human weaknesses of the Muslims that have resulted in their not achieving the ideal life as promised by Allah.

24. Similarly Islamic laws are perfect but the imperfectness in Muslim understanding of the teachings of Islam has made Islamic laws appear to be unjust.

25. For example we know it is unjust if the victim of a crime is punished while the perpetrator of the crime is not even charged.

26. Take a hypothetical case of a girl being raped. She recognises the rapist and she makes a report accusing him of the offence. Because she is not able to get four witnesses of unimpeachable character, some Muslim jurists insist that she has made a false accusation and merits being punished. No action would be taken against the person accused.

27. If on the other hand she does not report the rape and eventually she gave birth to a child, she can be accused of zinnah. The punishment for this is death by stoning.

28. Can we regard this as Islamic justice? In these days when a DNA test can verify the paternity of the child, can we disregard the evidence and proof provided by the DNA? Is Islamic law so unjust? Is Islamic law old-fashioned?

29. The Quran provides the procedures and the punishments for crimes. But the Quran also stresses several times that “when you judge, judge with justice”. If a judgement is obviously unjust, and punishing the victim while letting free the assailant is certainly, by any standard, by any religion, unjust, than the verdict cannot be Islamic. It is not Islamic law which is wrong. It is our understanding and interpretation of the verses of the Quran which is wrong.

30. Malaysia is a multi-racial, multi-religious country. Administering the law in Malaysia poses many problems. We have to abide by the teachings of Islam but we have to do so without losing the respect for Islam and the Muslims by the non-Muslims. We have to do so without giving the impression that Muslim countries cannot be well-governed, just and fair, stable and developed. We have to do so proving that Islam acknowledges the existence of people of other religions and that there is no forcing in Islam. Above all we have to prove that a Muslim Government is fair to all.

31. And so the stress in Malaysia is on justice, not the Rule of Islamic Law confined only to due process and punishment, without regard for justice. If justice is done than it is Islamic. If not, it is unIslamic.

32. Since Islam abhors disorder, anything done which will create disorder, will also not be in accordance with Islam.

33. Thus if a crime is committed together by a Muslim and a non-Muslim and the punishment for the crime according to the Shariah is amputation, than the question of justice and the maintenance of law and order in the country cannot be ignored.

34. To amputate the hands of both the Muslim and the non-Muslim will cause protest by the large non-Muslims community, leading to disorder in the country and therefore it would not be in keeping with the teachings of Islam.

35. On the other hand to amputate the hand of the Muslim and to give a light jail sentence to the non-Muslim would be a gross injustice. And injustice is unIslamic.

36. The Islamic solution to the dilemma is to give both the accused persons the same sentence – a light jail term.

37. Many Muslim scholars will of course dispute this. The Islamic punishment whether just or unjust must be upheld at all cost or else it is not Islamic. But we disagree with this view. The implementation of Islamic law must result in justice and must not bring about disorder in our country.

38. There are many things that we do today which appear to be against the injunctions of Islam. For example Islam forbids the productions of images of humans and other living creatures. Islamic arts must be confined to geometric designs. But today the most religious of scholars have their photographs displayed and even have movies of them in action and talking.

39. Are we disregarding Islamic injunctions and laws by so doing. No, we are not. The injunction against producing images is because the ignorant Arabs at the time of the Prophet were likely to worship the images. Today we know that these are mere images and we don't

worship them. So even if we reproduce the images, as long as we do not worship them, we are not committing a sin by ignoring a Quranic injunction.

40. In any case there is no way we can now avoid photographs from being taken and displayed. In the old days, when images were painted, it was possible to ban paintings. It is not possible to ban photography. What we need to ensure is that images are not worshipped. Certainly we must not allow images which are purported to be of God or Allah or his Prophet to be produced.

41. We live in the 21st century of the Masihi* Things have changed radically from the 7th century. There are too many things that were unknown 1400 years ago which are common today.

42. Some of us try to recreate the situation in the 1st century of Islam, believing that only in such an environment can they be true Muslims. But by doing that we are denigrating Islam; we are saying that Islam, its laws and injunctions are only suitable for the society of 1400 years ago and are incompatible with the modern age.

43. Islam is for all ages. If we fail to follow the teachings of Islam today it is our fault, our lack of understanding of Islam. If we study the fundamental teachings of Islam and understand them fully, we will find it possible to adhere to the teachings of Islam and yet cope with life as found today.

44. We can practice the rule of Islamic Law if we do not interpret it to mean only procedures and punishment, but instead that Islamic Law must include achieving justice. We must if necessary disregard the form but uphold the substance. And the substance in Islamic Law is justice. Procedures and punishment are forms.

45. And the same must apply to all laws, revealed or man-made. It is not the Rule of Law which is important. Rather it is whether the result is justice or not. We really need to uphold the Rule of Justice rather than the Rule of Law.

46. The legal profession is a noble profession. Unfortunately commercialisation has besmirched its image. If we go back to the original objective of having laws to regulate societies than the nobility of the profession will be restored and society would benefit.

47. I am not pontificating because I have just been made a doctor of Laws. I am talking as a layman who craves the benefits of laws and the justice they can bring in human society.

48. I thank you once again for the honour conferred on me.