

ADDRESS BY YB PROF TAN SRI DATUK AHMAD IBRAHIM  
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I should like to express the thanks of the members of the South-East Asia Shariah Law Association (SEASA) to the Minister, Dr. Ahmad Mattar, for his support for this Semnar which we are holding in the beautiful city of Singapore and for his willingness to take away valuable time from his many duties including also the maintenance of the beauty of this city and the purity of its air, rivers and seas. May Allah reward him for his efforts in this regard.

The South East Asia Shariah Law Association held its first Regional Conference in the Philippines where we were hosted by His Excellency Dato Michael Mastura, then Deputy Minister for Muslim Affairs. The Conference was a success but what was important also was that we made many friends and in order to continue our friendship and to carry out the aims and objects which we held dear we decided to formalise the Association. This was done in Jakarta mainly through the efforts of our Secretary-General, the Hon Mr Justice Busthanul Arifin. The next conference was held in Bangkok, Thailand where our dear brother Dr Arong Suthasasna and his helpers gave us a wonderful reception. We then went to Sri Lanka where with the support of the Hon. Mr Mohamed Hanifa Mohamad, the Minister of Transport and Muslim Religious and Cultural Affairs and the efforts of our dear brother Mr. A. Hilmy Mohideen and his helpers, we had a most successful conference. In Sri Lanka too we were overwhelmed by the interest and questions of the many members of the Sri Lanka Branch, particularly the ladies. Our next conference was in Malaysia where we again obtained the support of the Hon. Encik Anwar Ibrahim, the Minister of Education and of Hon Dr. Yusof Nor, then Deputy Minister. We are now very happy to be in Singapore to renew our friendship and to learn and benefit from our brothers and sisters in Singapore.

The theme of our Conference in Singapore is "The Education of Shariah judges and lawyers." There will be a number of Country papers which will deal in detail with the efforts made in the various countries in the region to improve the education and training of Shariah lawyers and judges and thus to enhance their image and status. I do not propose to anticipate what they will have to say, but I should like to say that in dealing with the education and training of Shariah judges and lawyers we should not neglect the religious and ethical standards which we should foster and emphasise. It is necessary to remember that our function is to establish and maintain justice. In the Holy Quran we read to the effect

"Allah commands you to render back your trusts to those to whom they are due; and when you judge between peoples (baina nas) that you judge with justice. Verily how excellent is the teaching which He gives you. For Allah is He who hears and sees all things.

(Surah An-Nisaa (4): 58)

O you who believe! Stand out firmly for justice, as witness to Allah, even as against yourselves or your parents or your kin and whether it be against rich or poor. For Allah can best protect both. Follow not the lusts of your hearts lest you swerve and if you distort justice, verily Allah is well acquainted with all that you do"

(Sura An-Nisaa (4): 135)

Thus the task of the Muslim lawyer and judge is more onerous and difficult than that of the civil lawyer and judge; for the Muslim lawyer and judge has not only to follow and maintain the law but he has to follow and maintain justice. In doing so we must seek the guidance of Allah. The Holy Quran states to the effect -

"We have sent down to you the Book in truth that you may judge between men as guided by Allah; so be not used as an advocate by those who betray their trust."

(Surah An-Nisaa (4):105)

The responsibility of a judge or qadi in Islam is a very heavy and onerous one. It is reported by Buraidah that the Prophet (s.a.w) said to the effect -

"Judges are of three types, one of whom will go to paradise and two to hell. The one who will go to paradise is a man who knows what is right and gives judgment accordingly; but a man who knows what is right but acts tyrannically in his judgment will go to hell; and a man who gives judgment for people when he is ignorant will go to hell"

Sunan Abu Dawud Kitab al-Aqdiyyah)

Amr b. Al-As reported the Messenger of Allah (s.a.w) as saying to the effect "When a ruler or judge gives a decision trying his best to decide correctly and is right, he will have a double reward; and when he gives a decision having tried his best to decide correctly and is wrong he will have a single reward."

(Sunan Abu Dawud Kitab Al-Aqdiyyah)

When Syaiddina Ali was sent by the Prophet (s.a.w) as a judge to Yemen he is reported to have said "O Prophet, are you sending me whom I am young and have no knowledge of the duties of a judge. The Prophet (s.a.w) replied to the effect "Allah will guide your heart and keep your tongue true. When two litigants came in front of you, do not decide till you hear what the other has to say as you heard what the first had to say; for it is best that you should have a clear idea of the best decision".

Umar al-Khattab wrote a letter to Abu Musa Al-Ashaari when he had appointed as judge. Among other things he said to the effect -  
Jurisdiction is to be administered on the basis of Quran and Sunnah. First understand what is presented to you before passing any judgment... Full equality for all (litigants): in the way they take places in your presence, and in the way you look at them, and in your jurisdiction. That way, no highly-placed person would look forward to your being unjust nor would a weak one despair of your fairness... The burden of proof is the responsibility of the plaintiff, and the oath is upon the denying party. Compromise is always the right of litigants except if it allows what (Islam) has forbidden or forbids what (Islam) has allowed. Clear understanding of every case that is brought to you for which there is no applicable text of Quran and Sunnah. Yours, then, is a role of comparison and analogy, so as to distinguish similarities and dissimilarities - thereupon seeking your way to the judgment that seems nearest to justice and apt to be the best in the eyes of God. Never succumb to anger or anxiety, and never get impatient or tired of your litigants."

Ali when he was Caliph gave instructions to Malik-e-Ashter whom he had appointed as Governor of Egypt. Among other things he said to the effect

"So far as dispensing of justice is concerned, you have to be very careful in selecting officers for the same. You must select people of excellent character, superior calibre and meritorious record. They must possess the following qualifications. Abundance of litigations and compleity of cases should not make them lose their temper. When they realize that they have committed a mistake in judgment they should not persist upon it and should not try to justify it. When truth is made clear to them or when right path opens up before them, they should not consider it below their dignity to correct the mistake made or to undo the wrong

done. They should not be corrupt, covetous or greedy. They should not be satisfied with ordinary enquiry or scrutiny of a case but scrupulously go through all the pros and cons, must examine every aspect of the problem carefully and whenever and wherever they find doubtful and ambiguous points they must stop, go through further details, clear the points and only then proceed with their decisions. They must attach greatest importance to reasonings, arguments and proofs. They should not get tired with lengthy discussions and arguments. They must exhibit patience and perseverance in scanning the details. In testing the points presented as true and in shifting facts from fiction and when the truth presents itself to them they must pass their judgments without fear, favour or prejudice. They should not develop vanity and conceit when compliments and praises are showered upon them. And they should not be misled by flattery and cajolery. But unfortunately there are few persons having such characteristics. After you have selected such men, to act as your judges, make a point to go through some of their judgments and to check their proceedings. Pay them handsomely so that their needs are fully satisfied and they are not required to beg or borrow or resort to corruption. Give them such a prestige and position in your state that none of your courtiers or officers can overlord them or bring harm to them. Let judiciary be above every kind of executive pressure of influence, above fear or favour, intrigue or corruption. Take every particular care of this aspect because before your appointment this state was under sway of corrupt, time serving and wealth grasping opportunists who were lewd, greedy and vicious and who wanted nothing out of a state but a sinful consent of amassing wealth and pleasures for themselves."

It may not be out of place as many of us present today have been trained in a civil form of jurisprudence to quote what the former Lord Chancellor of England Lord Hailsham of St. Marylebone\* said -

"At the end of the day it is wise for judges to have studied as part of their training, or at least read widely, material outside their speciality. They ought at least to have a nodding acquaintance with history, not least of their own contry, and it may be perhaps have thought or read a little about political or moral philosophy, and, I would suggest even a lttle theology as contained in their own religion. Justice may be blind, but she is not as blind as she is painted, and, though many attempts have been made, and continue to be made, to divorce law and morality (between which there can never be either a direct correspondence or a

one for one relationship) all have ended in failure, and in principle, are bound to fail. For in the end law exists to give effect though with suitable limitations for human fallibility and human differences, to the moral judgments of mankind and not simply the command of the ruler, or the interests of the mighty. A law which is not protected by the sanction of conscience as well as the words of 'a statute is not a law likely to be literally obeyed, and a judge who is not sensitive to the social atmosphere and moral judgments of his contemporaries is not likely to leave a permanent mark on his country's jurisprudence."

The Islamic judiciary has had a proud record in history. It is a pity that when our countries came under colonial rule the system of Islamic law and justice fell to decay. Now that we have achieved independence we should strive to raise the status of Islamic Law and justice to its place of glory and pride. In making plans for the education and training of our judges and lawyers we pray to Allah to give us guidance so that we can by our efforts be truly worthy of our heritage and we can once again be proud to be Muslims.

Finally I should like to thank our friends from Singapore who have agreed to be the hosts at our Seminar this year and I wish you all a pleasant and successful seminar.