

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

السلام عليكم ورحمة الله وبركاته

Good Morning

Yang Mulia

Associate Professor Dr Hj.Abdul Mohaimin, Dean of faculty of Syariah and Law, University Islam Sultan Sharif Ali, as Chair of the Conference;

Dr Haji Serbini bin Haji Matahir/Md. Tahir, Rector, UNISSA;

Pengiran-Pengiran, Dato-Dato, Datin-Datin, distinguished experts, honoured guests, ladies and gentlemen.

Let me begin by congratulating UNISSA for organising this important Conference. It is a great honour and pleasure to be here to speak on a subject which is very close to my heart. I am, after all, a 'Muslim woman in a modern world and above all a wife, a mother, a daughter, a sister, and more recently a grandmother!'

Being here on the podium this morning, surrounded by accomplished women, aspiring women and future leaders, and (a few accomplished good men, brave enough to be present with us) reminds me how fortunate we are to be here.

With the blessings of Allah Subhanahu Wata'ala, I was born in Brunei Darussalam, which is fortunate enough to be ruled by a Monarch who possesses the wisdom to give equal access to girls and boys to basic needs especially education and to give equal opportunities as long as it is not repugnant to Islam. I am also reminded how fortunate I am to have a father, who believes in giving his daughters, an opportunity to have a better future for both sons and daughters (and daughters actually did better than the sons!) a mother; who did not have the opportunity to pursue her dream but relentlessly encouraged her daughters to do so, a husband who is supportive and understand his career-minded and ambitious wife, (he usually tells his colleagues that he is the 'Boss' at home; the wife, only makes the decisions) and family, Bosses, colleagues, friends, men and women who have treated 'women' as individuals and dare them to make a difference. For me and the other 'trailblazers' in this room and others not present, the challenge is to do well, to live up to the high expectation upon us; to ensure that we will pave the way for

other women especially the younger generation. We hope that we will not fail them!

Ladies and Gentlemen,

I make no apologies for commencing my speech on such a personal note because we all KNOW that there are many, many women all around the world, Muslim and non-Muslim and even men, children who are not so fortunate which is seen from the Statistics released by Commonwealth Secretariat on Commonwealth Day 2011:

“Around the Commonwealth – over two third of people living on less than one US dollar a day are women. 24 million people are living with HIV and women account for more than half of all newly infected adults.

Around the world – gender based violence caused more deaths and disabilities among women of child-bearing age than cancer, malaria, traffic accident and war combined – 2/3 of the children denied schools are girls – civilians account for more the

70% of casualties in conflicts and most of them women and children.

I recall on the 20 September 2006 to be exact, on live TV, in a forum graced by the presentation of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, I said the following (in Malay) and translated more or less to English like this “we already have male 29 Leg Co members and I hope when the time is suitable, ‘women’ will be appointed as Leg Co members”. I was pleasantly surprised to hear the ‘men’ applauding louder than the women! Alhamdulillah, that hope had become a reality. The appointed two women Leg Co members brought up many issues during the recent sitting and not just issues affecting women. One day, One ‘male’ member of the Leg Co approached me when we were talking about the Leg Co sitting and the many good questions raised by our two women Leg Co members and then he suddenly said to me “it’s all your fault” and I said “Thank you, I will take that as a compliment!”

On another note, I just read with much interest the Minister of Health’s speech recently that the life expectancy of our male population raised from 74 in 2001, to 76.5 in 2010 and

for females, raised from 77.1 in 2001 to 78.8 in 2010. So, it looks like our women will be around for a long time!! InsyaAllah!

Ladies and gentlemen

It was a number of centuries ago when women's rights movements began its roots in the United States. Since then, although women worldwide have made great strides in their fight for equality and made inroads in equal opportunity in the workplace and in education, gender bias continues to create huge barriers for women and this is especially true in the case of Muslim women. We have seen many struggles especially in the fight to end gender-based violence and the need to address the harms and the limited protection afforded to women and girls in the Criminal Justice System.

Historically, and ironically, Muslim women were afforded greater legal status long before women in other cultures whose rights were only recognized centuries later. From 610 to 661 Hijrah, through revelations to our Prophet Muhammad s.a.w, the Quran introduced reforms to customary Arab laws and introduced rights for women in marriage, divorce and inheritance. These Quranic guidance to the Islamic community

modified the existing customs in the Arab pagan society by improving the status and elevating the position of Muslim women as wives, mothers and daughters.

In the modern world, this movement for women's rights is known as "feminism" or "women's liberation" when initially it was a simple question of equal pay, right to vote, equal job opportunity and rights to own property. Now new emerging issues affecting women include Domestic violence, Sexual Violence, Sexual harassment, Trafficking of Women and Girls, Women's Security, Women's status in the Family, Women's status in law , reproductive Choices and Sexual Autonomy, Forced Marriages, Rights to Sports, Honor killings, (which unfortunately occur in predominantly Muslim cultures and therefore 'unfairly' perceived and wrongly condemned as 'Islamic') and the list goes on.

I note that for these two days, the organisers have arranged an array of interesting women's rights topics, some of which, I dare say, may be more controversial than others. I am certain that these topics will surely ignite robust discussion, and hopefully provide more insights to pave ways to make further

inroads in areas which have previously been perceived to be male dominated or their inception influenced by male supremacy, the west and the world media.

At the international level, the Convention on the Elimination of All Forms of Discrimination Against Women was adopted in 1979 by the United Nations General Assembly and has been described as the International bill of rights for Women. Its agenda is to end sex-based discrimination by requiring state parties to enshrine gender equality into the domestic legislation, repeal all discriminatory provisions in the law and enact new provisions to safeguard women against discrimination by virtue of their gender, perpetrated by either individuals, organizations or enterprises.

Brunei Darussalam became a party to this Convention in 2006 but expressed “its reservations regarding those provisions of the said Convention that may be contrary to the Constitution and to the beliefs and principles of Islam,”. Brunei is not alone in making such reservations as other Muslim countries such as Bahrain, Kuwait, Malaysia, Maldives, Morocco, Pakistan and Saudi Arabia have also made their reservations one way or

another. These reservations were made on the grounds that some of the provisions of this Convention which require indiscriminate equal rights be afforded to both men and women in all spheres wherein Islam, the same may not be feasible taking account of the apparent natural distinction between both sexes requiring that different, yet fair, treatment be accorded to both.

I would not be far off to say that a true feminist may not necessarily be in complete agreement with how Islam perceives the role of a woman to be and would challenge the asymmetrical rights and responsibilities afforded to them. In Islam, men and women are equal partners, requiring similar basic necessities yet their natural differences dictate how complementary they are to each other. From their similarities and their differences, flow their rights and responsibilities which are asymmetrical yet equally fair.

The fact that men and women are equal, yet different must also be reflected in the law. Law is seen as an instrument to “change the distribution of power”, which requires not equal treatment but an “asymmetrical approach that adopts the

perspective of the less powerful group with the specific goal of equitable power sharing among diverse groups.”¹

Although domestically, there is as yet no Women’s Charter as they do in some countries such as Singapore, Egypt and the United Kingdom, the rights of women are afforded under numerous piecemeal legislation. In order to fulfill its obligation under CEDAW, the laws affecting women are constantly under review and that the government of His Majesty the Sultan and Yang Di Pertuan takes this obligation seriously is evidenced by the formation of a Special Committee on Women and Family issues which is chaired by Yang Berhormat the Minister of Culture, Youths and Sports. One of the areas of concern which this Committee is looking into is the adequacy and suitability of existing legislation to cover the needs of women in Brunei.

As the laws affecting the personal and private affairs of Muslim women come within the purview of the Syariah Courts and that of the non-Muslim women come within the purview of the Civil Courts, there are currently 2 separate legislation

¹ Feminist Jurisprudence: Equal Rights or neo-paternalism? By Michael Weiss and Cathy Young

governing them such as on the issues of marriage, divorce, inheritance and custody of children.

The Islamic Family Law Act is one of the major legislative strides for Muslim women in Brunei as it provided for the rights of Muslim woman to apply for divorce under certain circumstances known as “divorce under ta’liq” and divorce by way of ‘dharar syarie’. The same legislation also provided clear provisions on the rights for women for maintenance, custody of children, owning property and her right to consent to a marriage.

As recent as 2010, amendments have been made to both the Married Women Act and the Islamic Family Law Order, 1999 to provide for new provisions relating to domestic violence or ‘dharar syarie’ as it is called under the later. Although the new amendments are not gender-specific, the amendments actually provided steps in the right direction for the protection of not only women, but also their children and those who are dependent upon them against their aggressors. Where before, women who had been the subject of prolonged abuse had felt that their cries were left unheard, these new provisions

empower them to speak up for their rights and to challenge the inequitable status quo.

Under the 2010 amendments, women including wives, mothers, daughters, sisters, grand-mothers and so on are afforded several rights of legal recourse for any allegation of abuse , be it mental, emotional or physical through the provisions of protection order against the aggressors. The court can, in any such application, make orders granting the abused women exclusive occupation of the shared residence, either for the whole or any part of it, irrespective of who owns or rents the property. Other orders which could also be imposed by the courts are restraint order which can be used to prohibit the aggressor from entering the residence or any premises such as schools or place of employment. There are other additional orders which can also be made by the court such as compensation order or counseling order.

I note that so far there has been only two such applications under the Married Women Act, both of which had been successful. On the other hand, I had been informed that there had been 33 cases of alleged abuse of wives registered with the

Department of Community Development, with eleven applications made for protection order under section 60 of the Islamic Family Law Order and registered with the syariah courts, out of which only six had been successful. I was informed that there are a number of misconceptions of the new provisions resulting in some confusion either with the actual methods of application and misunderstood procedures. As such, in order to ensure a better understanding of these new provisions, my Chambers will, InsyaAllah, be hosting a workshop in May 2012 involving all relevant agencies to ensure that these provisions can be utilized more effectively and efficiently.

One of the issues which I hope will be discussed is the need to afford better protection for the alleged abuse women victims when giving evidence in the Syariah court. Provisions enabling witnesses to give evidence via live television-link with leave of the Court is afforded under section 60A of the Evidence Act if it is expedient in the interest of justice to do so. A similar provision may be useful to ensure that victims of abuse can give evidence without fear and intimidation, with further safeguards to ensure that the alleged aggressor is not prejudiced because of it.

Another issue that I hope will be given serious deliberations is how States through their NGOs and other interested stakeholders, should enhance awareness – raising programmes for men about the Islamic Prohibition of violence against women and children.

Cases of alleged abuse of women up to April this year and reported with the Women and Child Abuse Unit of the Royal Brunei Police Force currently stands at 19. It is feared that this figure may only be the tip of the iceberg reflecting their lack of confidence in the Criminal Justice System. Currently, cases such as these are being dealt under the general provisions of causing hurt and causing grievous hurt under the Penal Code and the question now is whether domestic violence offence should be categorized differently by introducing a specific offence or by enhancing the applicable sentences relating to such violence.

For example, In Pakistan, the Domestic Violence (Prevention and Protection) Bill was passed in February 2012 making violence against women and children an offence carrying jail terms and fines with those found guilty of beating women or children facing a minimum six months behind bars and a fine of at least 100,000 rupees (B\$1,386.00). This is surely a big step for

the women in Pakistan when previously, if a man beat her wife or children, police could not arrest him as it was considered a domestic affair.

Another great achievement for women in Brunei is the increased number of days for maternity leave afforded to working mothers from 56 days to 105 days. Surely, this is a recognition that women are not only valuable in their contribution to the society as a lawyer, doctor, lecturer, teacher, nurse and so forth, but that their natural and original role as the nurturing mother still plays a crucial and pivotal role towards the establishment of a society which is grounded in true Islamic values, intellectual, effectual, dynamic and competitive.

I have only highlighted in my speech a number of women's rights issues which are of interest to us in Brunei but as can be seen from the numerous topics which have been arranged for these two days, the issues affecting us, Muslim women both in Brunei and worldwide is diverse and wide-ranging and as such, I wish you the best in your deliberation of these issues. Amongst the pertinent questions that usually confront us is 'Are the

principles of Syariah sufficient to protect the rights of Muslim women as aspired by the global community?’

Ladies and gentlemen,

I believe I can do no better than to conclude by quoting an excerpt from His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam’s meaningful message on the Commonwealth Day 2011 theme “Women as Agents of Change:

“We join all our fellow members in recognizing a basic fact of modern international life that is becoming increasingly clear.

No nation can meet the rapid and extremely demanding changes of the twenty-first century successfully unless its women citizens are fully able to share in the task of shaping its future.”

It is my hope that this Conference will achieve its objective and hopefully, the benefits will be a guidance for all of us here and beyond.

With the kalimah 

Selawat dan salam to our prophet Mohammad Sallahualaihi Wassalam. It gives me great pleasure to declare this Conference officially opened.

وبالله التوفيق والهداية ، السلام عليكم ورحمة الله وبركاته

Acknowledgement:

I am grateful to Yang Mulia Dayang Zuraini binti Haji Sharbawi, Senior Council, Head of Research and Law Review Division, Attorney General's Chambers for her assistance in the preparation of this Paper.